

Heather J. MacKay #161434  
Attorney at Law  
P.O. Box 3112  
Oakland, CA 94609  
(510) 653-7507  
Attorney for Appellant  
Jaime Vargas Soto

**COPY** SUPREME COURT  
**FILED**

JUN 22 2009

Frederick K. Ohlrich Clerk  

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Deputy

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JAIME VARGAS SOTO,

Defendant and Appellant.

No. S167531

Court of Appeal  
No. H030475

Santa Clara County  
Superior Court  
No. EE504317

**APPELLANT'S REQUEST FOR JUDICIAL NOTICE**

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE , AND  
TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA  
SUPREME COURT:

Pursuant to Evidence Code section 452 and 459, appellant  
respectfully requests that this Court take judicial notice of the following  
documents, copies of which are attached hereto:

Exhibit A: Senate Bill 586, as amended August 10, 1981 (1981-  
1982 Reg. Sess.)

Exhibit B: Assembly Bill 457, as amended July 6, 1981 (1981-  
1982 Reg. Sess.)

Exhibit C: Legislative Counsel of California, Report on Enrolled Bill (SB 586), September 28, 1981. (1981-1982 Reg. Sess.)

The exhibits consist of legislative history materials concerning 1981 amendments to Penal Code section 288, subdivision (b). This Court has previously granted respondent's request to take judicial notice of other legislative history materials submitted in support of respondent's argument that the Legislature's deletion of the phrase "against the will of the victim" demonstrated an intent to preclude a consent defense to a charge of lewd acts with a child committed by use of force, violence, duress, menace or fear. (See Opening Brief on the Merits at pp. 17-29.) The materials attached to the current motion are relevant to appellant's responsive argument that the legislative history materials do not directly address the issues in dispute in this case and do not necessarily reflect the view of the majority of legislators.

For these reasons, appellant requests that the Court take judicial notice of these records.

DATE: June 16, 2009

Respectfully submitted,



Heather J. MacKay  
Attorney for Appellant  
Jaime Vargas Soto

EXHIBIT A

AMENDED IN ASSEMBLY AUGUST 10, 1981

AMENDED IN ASSEMBLY JULY 10, 1981

AMENDED IN SENATE MAY 4, 1981

AMENDED IN SENATE APRIL 20, 1981

**SENATE BILL**

**No. 586**

**Introduced by Senators Rains, Garamendi, Keene, Presley,  
and Roberti**

**(Coauthors: Senators Davis, Montoya, and Stiern)  
(Coauthors: Assemblymen Bane, Bergeson, Chacon,  
Filante, Lewis, Moorhead, and Wright)**

March 16, 1981

An act to amend Sections 44010, 44424, 44435, 87010, 87334, and 87345 of the Education Code, to amend Sections 189, 220, 286, 288a, 290, 314, 667.5, 667.6, 1048, 1170.1, 1192.5, 1203, 1203.065, 12022.3, and 12022.8 of, to add Chapter 6 (commencing with Section 292) to Title 9 of Part 1 of, to repeal Sections 288, 288.1, and 647a of, the Penal Code, and to amend Sections 707 and 1732 of the Welfare and Institutions Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

SB 586, as amended, Rains. Sexual crimes against minors. Existing law prohibits as crimes the commission of various acts of sexual conduct and sexual assault performed upon children.

This bill would revise the provisions prohibiting such acts and add new provisions to prohibit acts of unlawful sexual conduct and unlawful sexual contact with a child under the age of 14 years and annoying or molesting a child under the age of 18 years. The bill would define terms and make related changes in provisions concerning punishment for sexual

offenses and registration of sex offenders. The bill would prohibit the granting of probation for persons convicted of certain sexual crimes against children in specified circumstances.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 44010 of the Education Code is
- 2 amended to read:
- 3 44010. "Sex offense," as used in Sections 44346, 44425,
- 4 44436, 44836, 45123, and 45304, means any one or more of
- 5 the offenses listed below:
- 6 (a) Any offense defined in Section 261.5, 266, 267, 285,
- 7 286, 288a, 293, 294, subdivision 3 or 4 of Section 261, or
- 8 subdivision (a) or (d) of Section 647 of the Penal Code.
- 9 (b) Any offense defined in former subdivision 5 of
- 10 former Section 647 of the Penal Code repealed by
- 11 Chapter 560 of the Statutes of 1961, or any offense defined
- 12 in former subdivision 2 of former Section 311 of the Penal
- 13 Code repealed by Chapter 2147 of the Statutes of 1961, if
- 14 the offense defined in such sections was committed prior
- 15 to September 15, 1961, to the same extent that such an
- 16 offense committed prior to such date was a sex offense for
- 17 the purposes of this section prior to September 15, 1961.
- 18 (c) Any offense defined in Section 314 of the Penal
- 19 Code committed on or after September 15, 1961.
- 20 (d) Any offense defined in former subdivision 1 of
- 21 former Section 311 of the Penal Code repealed by

1 Chapter 2147 of the Statutes of 1961 committed on or  
2 after September 7, 1955, and prior to September 15, 1961.

3 (e) Any offense involving lewd and lascivious conduct  
4 under Section 272 of the Penal Code committed on or  
5 after September 15, 1961.

6 (f) Any offense involving lewd and lascivious conduct  
7 under former Section 702 of the Welfare and Institutions  
8 Code repealed by Chapter 1616 of the Statutes of 1961, if  
9 such offense was committed prior to September 15, 1961,  
10 to the same extent that such an offense committed prior  
11 to such date was a sex offense for the purposes of this  
12 section prior to September 15, 1961.

13 (g) Any offense defined in Section 286 or 288a of the  
14 Penal Code prior to the effective date of the amendment  
15 of either section enacted at the 1975-76 Regular Session  
16 of the Legislature committed prior to the effective date  
17 of the amendment.

18 (h) Any offense defined in Section 288 or 647a of the  
19 Penal Code prior to the repeal of either section enacted  
20 at the 1981-82 Regular Session of the Legislature  
21 committed prior to the effective date of the repeal.

22 (i) Any attempt to commit any of the  
23 above-mentioned offenses.

24 (j) Any offense committed or attempted in any other  
25 state which, if committed or attempted in this state,  
26 would have been punishable as one or more of the  
27 above-mentioned offenses.

28 SEC. 2. Section 44424 of the Education Code is  
29 amended to read:

30 44424. Upon the becoming final of the conviction of  
31 the holder of any credential issued by the State Board of  
32 Education or the Commission for Teacher Preparation  
33 and Licensing of a violation, or attempted violation, of  
34 any one or more of Penal Code Sections 187 to 191, 192  
35 insofar as said section relates to voluntary manslaughter,  
36 193, 194 to 232, both inclusive, 244, 245, 261 to 267, both  
37 inclusive, 273a, 273f, 273g, 278, 285, 286, 286.5, 287, 288,  
38 288.1, 288a, 293, 294, 424, 425, 484 to 488, both inclusive,  
39 insofar as said sections relate to felony convictions, 503  
40 and 504, or of Penal Code Section 272, the commission

1 shall forthwith revoke the credential.

2 SEC. 3. Section 44435 of the Education Code is  
3 amended to read:

4 44435. Upon the becoming final of the conviction of  
5 the holder of a certificate issued by a county board of  
6 education of a violation or attempted violation of any one  
7 or more of Penal Code Sections 187 to 191, 192 insofar as  
8 said section relates to voluntary manslaughter, 193, 194 to  
9 232, inclusive, 244, 245, 261 to 267, inclusive, 273a, 273f,  
10 273g, 278, 285, 286, 286.5, 287, 288, 288.1, 288a, 293, 294, 424,  
11 425, 484 to 488, both inclusive, insofar as said sections  
12 relate to grand theft, 503 and 504, or of Penal Code  
13 Section 272, the county board of education shall forthwith  
14 revoke the certificate.

15 SEC. 4. Section 87010 of the Education Code is  
16 amended to read:

17 87010. "Sex offense," as used in Sections 87290, 87335,  
18 87346, 87405, 88022, and 88123, means any one or more of  
19 the offenses listed below:

20 (a) Any offense defined in Sections 261.5, 266, 267, 285,  
21 286, 288a, 293, 294, 295, subdivision 3 or 4 of Section 261,  
22 or subdivision (a) or (d) of Section 647 of the Penal Code.

23 (b) Any offense defined in former subdivision 5 of  
24 former Section 647 of the Penal Code repealed by  
25 Chapter 560 of the Statutes of 1961, or any offense defined  
26 in former subdivision 2 of former Section 311 of the Penal  
27 Code repealed by Chapter 2147 of the Statutes of 1961, if  
28 the offense defined in such sections was committed prior  
29 to September 15, 1961, to the same extent that such an  
30 offense committed prior to such date was a sex offense for  
31 the purposes of this section prior to September 15, 1961.

32 (c) Any offense defined in Section 314 of the Penal  
33 Code committed on or after September 15, 1961.

34 (d) Any offense defined in former subdivision 1 of  
35 former Section 311 of the Penal Code repealed by  
36 Chapter 2147 of the Statutes of 1961 committed on or  
37 after September 7, 1955, and prior to September 15, 1961.

38 (e) Any offense involving lewd and lascivious conduct  
39 under Section 272 of the Penal Code committed on or  
40 after September 15, 1961.

1 (f) Any offense involving lewd and lascivious conduct  
2 under former Section 702 of the Welfare and Institutions  
3 Code repealed by Chapter 1616 of the Statutes of 1961, if  
4 such offense was committed prior to September 15, 1961,  
5 to the same extent that such an offense committed prior  
6 to such date was a sex offense for the purposes of this  
7 section prior to September 15, 1961.

8 (g) Any offense defined in Section 286 or 288a of the  
9 Penal Code prior to the effective date of the amendment  
10 of either section enacted at the 1975-76 Regular Session  
11 of the Legislature committed prior to the effective date  
12 of the amendment.

13 (h) Any offense defined in Section 288 or 647a of the  
14 Penal Code prior to the repeal of either section enacted  
15 at the 1981-82 Regular Session of the Legislature  
16 committed prior to the effective date of the repeal.

17 (i) Any attempt to commit any of the  
18 above-mentioned offenses.

19 (j) Any offense committed or attempted in any other  
20 state which, if committed or attempted in this state,  
21 would have been punishable as one or more of the  
22 above-mentioned offenses.

23 SEC. 5. Section 87334 of the Education Code is  
24 amended to read:

25 87334. Upon the becoming final of the conviction of  
26 the holder of any credential issued by the board of  
27 governors, or State Board of Education of a violation, or  
28 attempted violation, of any one or more of Penal Code  
29 Sections 187 to 191, 192 insofar as said section relates to  
30 voluntary manslaughter, 193, 194 to 232, both inclusive,  
31 244, 245, 261 to 267, both inclusive, 273a, 273f, 273g, 278,  
32 285, 286, 286.5, 287, 288, 288.1, 288a, 293, 294, 424, 425, 484  
33 to 488, both inclusive, insofar as said sections relate to  
34 felony convictions, 503 and 504, or of Penal Code Section  
35 272, the board of governors shall forthwith revoke the  
36 credential.

37 SEC. 6. Section 87345 of the Education Code is  
38 amended to read:

39 87345. Upon the becoming final of the conviction of  
40 the holder of a certificate issued by a county board of

1 education of a violation or attempted violation of any one  
2 or more of Penal Code Sections 187 to 191, 192 insofar as  
3 said section relates to voluntary manslaughter, 193, 194 to  
4 232, both inclusive, 244, 245, 261 to 267, inclusive, 273a,  
5 273f, 273g, 278, 285, 286, 286.5, 287, 288, 288.1, 288a, 293,  
6 294, 424, 425, 484 to 488, both inclusive, insofar as said  
7 sections relate to grand theft, 503 and 504, or of Penal  
8 Code Section 272, the county board of education shall  
9 forthwith revoke the certificate.

10 SEC. 6.5. Section 189 of the Penal Code is amended to  
11 read:

12 189. All murder which is perpetrated by means of a  
13 destructive device or explosive, poison, lying in wait,  
14 torture, or by any other kind of willful, deliberate, and  
15 premeditated killing, or which is committed in the  
16 perpetration of, or attempt to perpetrate, arson, rape,  
17 robbery, burglary, mayhem, or any act punishable under  
18 Section 293 or 294, is murder of the first degree; and all  
19 other kinds of murders are of the second degree.

20 As used in this section, "destructive device" shall mean  
21 any destructive device as defined in Section 12301, and  
22 "explosive" shall mean any explosive as defined in  
23 Section 12000 of the Health and Safety Code.

24 SEC. 7. Section 220 of the Penal Code is amended to  
25 read:

26 220. Every person who assaults another with intent to  
27 commit mayhem, rape, sodomy, oral copulation, or any  
28 violation of Section 264.1, 289, 293, or 294 is punishable by  
29 imprisonment in the state prison for two, four, or six  
30 years.

31 SEC. 8. Section 286 of the Penal Code is amended to  
32 read:

33 286. (a) Sodomy is sexual conduct consisting of  
34 contact between the penis of one person and the anus of  
35 another person.

36 (b) (1) Except as provided in Sections 293 and 294,  
37 any person who participates in an act of sodomy with  
38 another person who is under 18 years of age shall be  
39 punished by imprisonment in the state prison, or in a  
40 county jail for a period of not more than one year.

1 (2) Except as provided in Section 293, or 294, any  
2 person over the age of 21 years who participates in an act  
3 of sodomy with another person who is under 16 years of  
4 age shall be guilty of a felony.

5 (c) Any person who commits an act of sodomy when  
6 the act is accomplished against the victim's will by means  
7 of force, violence, duress, menace, or fear of immediate  
8 and unlawful bodily injury on the victim or another  
9 person shall be punished by imprisonment in the state  
10 prison for three, six, or eight years.

11 (d) Any person who, while voluntarily acting in  
12 concert with another person, either personally or by  
13 aiding and abetting such other person, commits an act of  
14 sodomy when the act is accomplished against the victim's  
15 will by means of force or fear of immediate and unlawful  
16 bodily injury on the victim or another person shall be  
17 punished by imprisonment in the state prison for five,  
18 seven or nine years.

19 (e) Any person who participates in an act of sodomy  
20 with any person of any age while confined in any state  
21 prison, as defined in Section 4504, or in any local  
22 detention facility as defined in Section 6031.4, shall be  
23 punished by imprisonment in the state prison, or in a  
24 county jail for a period of not more than one year.

25 (f) Any person who commits an act of sodomy, and the  
26 victim is at the time unconscious of the nature of the act  
27 and this is known to the person committing the act, shall  
28 be punished by imprisonment in the state prison, or in a  
29 county jail for a period of not more than one year.

30 SEC. 9. Section 288 of the Penal Code is repealed.

31 SEC. 10. Section 288.1 of the Penal Code is repealed.

32 SEC. 11. Section 288a of the Penal Code is amended  
33 to read:

34 288a. (a) Oral copulation is the act of copulating the  
35 mouth of one person with the sexual organ of another  
36 person.

37 (b) (1) Except as provided in Sections 293 and 294,  
38 any person who participates in an act of oral copulation  
39 with another person who is under 18 years of age shall be  
40 punished by imprisonment in the state prison, or in a

1 county jail for a period of not more than one year.

2 (2) Except as provided in Section 293 or 294, any  
3 person over the age of 21 years who participates in an act  
4 of oral copulation with another person who is under 16  
5 years of age shall be guilty of a felony.

6 (c) Any person who commits an act of oral copulation  
7 when the act is accomplished against the victim's will by  
8 means of force, violence, duress, menace, or fear of  
9 immediate and unlawful bodily injury on the victim or  
10 another person shall be punished by imprisonment in the  
11 state prison for three, six, or eight years.

12 (d) Any person who, while voluntarily acting in  
13 concert with another person, either personally or by  
14 aiding and abetting such other person, commits an act of  
15 oral copulation when the act is accomplished against the  
16 victim's will by means of force or fear of immediate and  
17 unlawful bodily injury on the victim or another person  
18 shall be punished by imprisonment in the state prison for  
19 five, seven, or nine years.

20 (e) Any person who participates in an act of oral  
21 copulation while confined in any state prison, as defined  
22 in Section 4504 or in any local detention facility as defined  
23 in Section 6031.4, shall be punished by imprisonment in  
24 the state prison, or in a county jail for a period of not more  
25 than one year.

26 (f) Any person who commits an act of oral copulation,  
27 and the victim is at the time unconscious of the nature of  
28 the act and this is known to the person committing the  
29 act, shall be punished by imprisonment in the state  
30 prison, or in a county jail for a period of not more than  
31 one year.

32 SEC. 12. Section 290 of the Penal Code is amended to  
33 read:

34 290. (a) Any person who, since the first day of July,  
35 1944, has been or is hereafter convicted in the State of  
36 California of the offense of assault with intent to commit  
37 rape, the infamous crime against nature, or sodomy  
38 under Section 220, or of any offense defined in Section  
39 266, 267, 268, 285, 286, 288, 288a, 289, 293, 294, 295,  
40 subdivision 1 of Section 647a, subdivision 2 or 3 of Section

1 261, subdivision (a) or (d) of Section 647, or subdivision  
2 1 or 2 of Section 314, or of any offense involving lewd and  
3 lascivious conduct under Section 272; or any person who  
4 since such date has been or is hereafter convicted of the  
5 attempt to commit any of the above-mentioned offenses;  
6 or any person who since such date or at any time  
7 hereafter is discharged or paroled from a penal  
8 institution where he was confined because of the  
9 commission or attempt to commit one of the  
10 above-mentioned offenses; or any person who since such  
11 date or at any time hereafter is determined to be a  
12 mentally disordered sex offender under the provisions of  
13 Article 1 (commencing with Section 6300) of Chapter 2  
14 of Part 2 of Division 6 of the Welfare and Institutions  
15 Code; or any person who has been since such date or is  
16 hereafter convicted in any other state of any offense  
17 which, if committed or attempted in this state, would  
18 have been punishable as one or more of the  
19 above-mentioned offenses, shall within 30 days after the  
20 effective date of this section or within 30 days of his  
21 coming into any county or city, or city and county in  
22 which he resides or is temporarily domiciled for such  
23 length of time register with the chief of police of the city  
24 in which he resides or the sheriff of the county if he  
25 resides in an unincorporated area.

26 (b) Any person who, after the first day of August, 1950,  
27 is discharged or paroled from a jail, prison, school, road  
28 camp, or other institution where he was confined because  
29 of the commission or attempt to commit one of the  
30 above-mentioned offenses or is released from a state  
31 hospital to which he was committed as a mentally  
32 disordered sex offender under the provisions of Article 1  
33 (commencing with Section 6300) of Chapter 2 of Part 2  
34 of Division 6 of the Welfare and Institutions Code shall,  
35 prior to such discharge, parole, or release, be informed of  
36 his duty to register under this section by the official in  
37 charge of the place of confinement or hospital and the  
38 official shall require the person to read and sign such  
39 form as may be required by the Department of Justice,  
40 stating that the duty of the person to register under this

1 section has been explained to him. The official in charge  
2 of the place of confinement or hospital shall obtain the  
3 address where the person expects to reside upon his  
4 discharge, parole, or release and shall report such address  
5 to the Department of Justice. The official in charge of the  
6 place of confinement or hospital shall give one copy of  
7 the form to the person, and shall send two or, if the  
8 conviction which makes the person subject to this section  
9 is a felony conviction, shall, not later than 45 days prior  
10 to the scheduled release of such person, send four copies  
11 to the Department of Justice, which, in turn, shall  
12 forward one copy to the appropriate law enforcement  
13 agency having local jurisdiction where the person  
14 expects to reside upon his discharge, parole, or release,  
15 and, if the conviction which makes the person subject to  
16 this section is a felony conviction, one copy to the  
17 prosecuting agency which prosecuted the person and one  
18 copy to the court where he was prosecuted. All such  
19 forms shall, if the conviction which makes the person  
20 subject to this section is a felony conviction, be  
21 transmitted within such times as to be received by the  
22 local law enforcement agency, prosecuting agency and  
23 court 30 days prior to the discharge, parole or release of  
24 the person.

25 (c) Any person who after the first day of August, 1950,  
26 is convicted in the State of California of the commission  
27 or attempt to commit any of the above-mentioned  
28 offenses and who is released on probation or discharged  
29 upon payment of a fine shall, prior to such release or  
30 discharge, be informed of his duty to register under this  
31 section by the court in which he has been convicted and  
32 the court shall require the person to read and sign such  
33 form as may be required by the Department of Justice,  
34 stating that the duty of the person to register under this  
35 section has been explained to him. The court shall obtain  
36 the address where the person expects to reside upon his  
37 release or discharge and shall report within three days  
38 such address to the Department of Justice. The court shall  
39 give one copy of the form to the person, and shall send  
40 two copies to the Department of Justice, which, in turn,

1 shall forward one copy to the appropriate law  
2 enforcement agency having local jurisdiction where the  
3 person expects to reside upon his discharge, parole, or  
4 release.

5 (d) Such registration shall consist of (a) a statement in  
6 writing signed by such person, giving such information as  
7 may be required by the Department of Justice, and (b)  
8 the fingerprints and photograph of such person. Within  
9 three days thereafter the registering law enforcement  
10 agency shall forward such statement, fingerprints and  
11 photograph to the Department of Justice.

12 (e) If any person required to register hereunder  
13 changes his residence address he shall inform, in writing  
14 within 10 days, the law enforcement agency with whom  
15 he last registered of his new address. The law  
16 enforcement agency shall, within three days after receipt  
17 of such information, forward it to the Department of  
18 Justice. The Department of Justice shall forward  
19 appropriate registration data to the law enforcement  
20 agency having local jurisdiction of the new place of  
21 residence.

22 (f) Any person required to register under the  
23 provisions of this section who shall violate any of the  
24 provisions thereof is guilty of a misdemeanor. Any person  
25 who has been convicted of assault with intent to commit  
26 rape, oral copulation or sodomy, or of any violation of  
27 Section 286, 288, 288a, 289, 293, or 294, or subdivision 2 or  
28 3 of Section 261, and who is required to register under the  
29 provisions of this section who shall willfully violate any of  
30 the provisions thereof is guilty of a misdemeanor and  
31 shall be sentenced to serve a term of not less than 90 days  
32 nor more than one year in the county jail. In no event  
33 does the court have the power to absolve a person who  
34 willfully violates this section from the obligation of  
35 spending at least 90 days of confinement in the county jail  
36 and of completing probation of at least one year.

37 (g) Whenever any person is released on parole or  
38 probation and is required to register under the provisions  
39 of this section but fails to do so within the time  
40 prescribed, the Community Release Board, the Youth

1 Authority, or the court, as the case may be, shall order the  
2 parole or probation of such person revoked.

3 (h) The statements, photographs and fingerprints  
4 herein required shall not be open to inspection by the  
5 public or by any person other than a regularly employed  
6 peace or other law enforcement officer.

7 (i) In any case in which a person who would be  
8 required to register pursuant to this section for a felony  
9 conviction is to be temporarily sent outside the  
10 institution where he is confined on any assignment within  
11 a city or county including fire fighting, disaster control,  
12 or of whatever nature the assignment may be, the local  
13 law enforcement agency having jurisdiction over the  
14 place or places where such assignment shall occur shall be  
15 notified within a reasonable time prior to such removal  
16 from the institution. This provision shall not apply to any  
17 person temporarily released under guard from the  
18 institution where he is confined.

19 (j) As used in this section "mentally disordered sex  
20 offender" includes any person who has been determined  
21 to be a sexual psychopath or a mentally disordered sex  
22 offender under any provision which upon the effective  
23 date of the amendment of this section enacted at the  
24 1975-76 Regular Session of the Legislature is, or which  
25 prior to such date has been, contained in Division 6  
26 (commencing with Section 6000) of the Welfare and  
27 Institutions Code.

28 SEC. 13. Chapter 6 (commencing with Section 292) is  
29 added to Title 9 of Part 1 of the Penal Code, to read:

30

31 **CHAPTER 6. SEXUAL OFFENSES INVOLVING**  
32 **CHILDREN**

33

34 292. The following definitions and provisions are  
35 applicable to this chapter:

36 (a) In any arrest or prosecution under this chapter the  
37 peace officer, the district attorney and the court shall  
38 consider the needs of the child victim and shall do  
39 whatever is necessary and constitutionally permissible to  
40 prevent psychological harm to the child victim.

1 (b) "Sexual act" means:

2 (1) Vaginal intercourse.

3 (2) Anal intercourse.

4 (3) Contact between the mouth or tongue, and the  
5 penis, the scrotum, the anus, or the vulva with or upon a  
6 child.

7 ~~(4) Contact between the sex organs of one person and  
8 the sex organs of another.~~

9 (c) "Sexual penetration" means penetration, however  
10 slight, of the genital or anal openings of another person,  
11 by any foreign object, substance, instrument or device.

12 (d) ~~"Sexual contact"~~ "*Sexually touch*" means the  
13 touching of the primary genital area including the mens  
14 pubis, penis, testicles, mens veneris, vulva or vagina, the  
15 groin, buttocks, anus, or breasts, *or touching the clothing*  
16 *covering the primary genital area.*

17 (e) Penetration, however slight, is sufficient to  
18 complete vaginal or anal intercourse.

19 (f) Emission of semen is not required to complete a  
20 sexual act.

21 (g) "Child" means a person under 14 years of age,  
22 unless otherwise specified.

23 (h) "Position of ~~authority~~ *special trust*" means that  
24 position occupied by a natural parent, adoptive parent,  
25 stepparent, *foster parent*, relative, household member,  
26 teacher, *counselor, religious leader, doctor*, employer,  
27 or other person who by reason of that position; is able to  
28 exercise undue influence over a child.

29 293. ~~(a)~~ A person is guilty of unlawful sexual conduct  
30 with a child when he engages in a sexual act with a child,  
31 or when with the intent to arouse or gratify the sexual  
32 desire of any person he sexually penetrates or causes the  
33 sexual penetration of a child.

34 ~~(b)~~

35 (a) Unlawful sexual conduct with a child when  
36 committed by force, violence, duress, menace, or threat  
37 of bodily injury is a felony punishable by imprisonment  
38 in the state prison for five, seven, or nine years.

39 ~~(c)~~

40 (b) Unlawful sexual conduct with a child when

1 committed by a person in a position of ~~authority~~ *special*  
2 *trust* is a felony punishable by imprisonment in the state  
3 prison for four, six, or eight years.

4 ~~(d)~~

5 (c) Unlawful sexual conduct with a child when the  
6 actor is at least two years older than the child is a felony  
7 punishable by imprisonment in the state prison for three,  
8 six, or eight years.

9 294. ~~(a)~~ A person is guilty of unlawful sexual contact  
10 with a child when with the intent to arouse or gratify the  
11 sexual desire of any person he *sexually* touches or causes  
12 a child to be *sexually* touched, or causes the child to  
13 *sexually* touch him or another person.

14 ~~(b)~~

15 (a) Unlawful sexual contact with a child when  
16 committed by force, violence, duress, menace, or threat  
17 of bodily injury is a felony punishable by imprisonment  
18 in the state prison for five, seven, or nine years.

19 ~~(e)~~

20 (b) Unlawful sexual contact with a child when  
21 committed by a person in a position of ~~authority~~ *special*  
22 *trust* is a felony punishable by imprisonment in the state  
23 prison for four, six, or eight years.

24 ~~(d)~~

25 (c) Unlawful sexual contact with a child when the  
26 actor is at least five years older than the child is  
27 punishable by imprisonment in the state prison for three,  
28 six, or eight years.

29 295. Every person who annoys or molests any child  
30 under the age of 18 years is a vagrant and is punishable  
31 upon first conviction by a fine not exceeding five  
32 hundred dollars (\$500) or by imprisonment in the county  
33 jail for not exceeding six months or by both such fine and  
34 imprisonment and is punishable upon the second and  
35 each subsequent conviction or, upon the first conviction  
36 after a previous conviction under Section 288, 293, 294, or  
37 647a, by imprisonment in the state prison.

38 296. (a) Notwithstanding the provisions of Section  
39 1203, probation shall not be granted to, nor shall the  
40 execution or imposition of sentence be suspended for, nor

1 shall a finding bringing the defendant within the  
2 provision of this section be stricken pursuant to Section  
3 1385 for any of the following persons:

4 (1) A person convicted of violating subdivision ~~(b)~~ (a)  
5 of Section 293 or subdivision ~~(b)~~ (a) of Section 294.

6 (2) A person convicted of violating subdivision ~~(e)~~ (b)  
7 or ~~(d)~~ (c) of Section 293 or subdivision ~~(e)~~ (b) of Section  
8 294.

9 (3) A person who ~~personally inflicted~~ *caused* bodily  
10 injury on the child victim in committing or attempting to  
11 commit a violation of Section 293, 294 or 295.

12 (4) A person convicted of committing or attempting  
13 to commit a violation of Section 293 or 294 and who was  
14 a stranger to the child victim or made friends with the  
15 child victim for the purpose of engaging in unlawful  
16 sexual conduct or unlawful sexual contact with a child.

17 (5) A person who used a deadly weapon during the  
18 commission or attempted commission of a violation of  
19 Section 293 or 294.

20 (6) A person convicted of committing or attempting  
21 to commit a violation of Section 293 or 294 and who has  
22 had a prior conviction of ~~Section 261, 264.1, 286, 286.5, 288,~~  
23 ~~288a, 289, 293, or 294~~ which occurred within the prior 10  
24 ~~years~~ *subdivision (2) of Section 261, or Section 264.1,*  
25 *Section 288, or 289, of committing sodomy or oral*  
26 *copulation in violation of Section 286 or 288a by force,*  
27 *violence, duress, menace, or threat of great bodily harm,*  
28 *of assaulting another with intent to commit a crime*  
29 *specified in this paragraph in violation of Section 220, or*  
30 *a violation of Section 266.*

31 (7) A person convicted of kidnapping the child victim  
32 in violation of either Section 207 or 209 and who is  
33 convicted of committing or attempting to commit a  
34 violation of Section 293 or 294 during the kidnap.

35 (8) A person who is convicted of committing or  
36 attempting to commit a violation of Section 293 or 294 on  
37 more than one victim.

38 (b). Paragraphs (2) and (8) of subdivision (a) shall not  
39 apply when the court makes all of the following findings:

40 (1) The defendant is the victim's natural parent,

1 adoptive parent, stepparent, relative ~~or~~, or is a member  
2 of the victim's household *who has lived in the household*  
3 *for a substantial period of time but not less than one*  
4 *continuous year, while assuming the role as parent.*

5 ~~(2) Imprisonment of the defendant would either~~  
6 ~~cause psychological harm to the child, or cause the~~  
7 ~~breakup of the family, or both.~~

8 *(2) Imprisonment of the defendant is not in the best*  
9 *interest of the child.*

10 *(3) Rehabilitation of the defendant is feasible in a*  
11 *recognized treatment program designed to deal with*  
12 *child molestation, and if the defendant is to remain in the*  
13 *household, a program that is specifically designed to deal*  
14 *with molestation within the family.*

15 (4) There is no threat of physical harm to the child  
16 victim if there is no imprisonment. The court upon  
17 making its findings pursuant to this subdivision is not  
18 precluded from sentencing the defendant to jail or  
19 prison, but retains the discretion not to. The court shall  
20 state its reasons on the record for whatever sentence it  
21 imposes on the defendant.

22 (c) The existence of any fact which would make a  
23 person ineligible for probation under subdivision (a)  
24 shall be alleged in the accusatory pleading, and either  
25 admitted by the defendant in open court, or found to be  
26 true by the jury trying the issue of guilt or by the court  
27 where guilt is established by plea of guilty or nolo  
28 contendere or by trial by the court sitting without a jury.

29 298. (a) Any person who is found guilty of violating  
30 Section 293 or 294 shall receive a five-year enhancement  
31 for each prior conviction of an offense listed in  
32 subdivision (b) *provided that no additional term shall be*  
33 *imposed under this subdivision for any prison term*  
34 *served prior to a period of 10 years in which the*  
35 *defendant remained free of both prison custody and the*  
36 *commission of an offense which results in a felony*  
37 *conviction.*

38 (b) Section 261, 264.1, 285, 286, 288, 288a, 289, 293 or  
39 294.

40 (c) A violation of Section 293 or 294 by a person who

1 has served two or more prior prison terms for a violation  
2 of an offense listed in subdivision (b) is punishable as a  
3 felony by imprisonment in the state prison for 15 years to  
4 life. For purposes of this subdivision a conviction for a  
5 violation of an offense listed in subdivision (b) in which  
6 the person was committed to a state hospital shall be the  
7 equivalent of a sentence to state prison. *The provisions*  
8 *of Article 2.5 (commencing with Section 2930) of*  
9 *Chapter 7 of Title 1 of Part 3 shall apply to reduce any*  
10 *minimum term in a state prison imposed pursuant to this*  
11 *section, but such person shall not otherwise be released*  
12 *on parole prior to such time.*

13 SEC. 14. Section 314 of the Penal Code is amended to  
14 read:

15 314. Every person who willfully and lewdly, either:  
16 1. Exposes his person, or the private parts thereof, in  
17 any public place, or in any place where there are present  
18 other persons to be offended or annoyed thereby; or,  
19 2. Procures, counsels, or assists any person so to expose  
20 himself or take part in any model artist exhibition, or to  
21 make any other exhibition of himself to public view, or  
22 the view of any number of persons, such as is offensive to  
23 decency, or is adapted to excite to vicious or lewd  
24 thoughts or acts, is guilty of a misdemeanor.

25 Upon the second and each subsequent conviction  
26 under subdivision 1 of this section, or upon a first  
27 conviction under subdivision 1 of this section after a  
28 previous conviction under Section 288, 293 or 294 of this  
29 code, every person so convicted is guilty of a felony, and  
30 is punishable by imprisonment in state prison.

31 SEC. 15. Section 647a of the Penal Code is repealed.

32 SEC. 16. Section 667.5 of the Penal Code is amended  
33 to read:

34 667.5. Enhancement of prison terms for new offenses  
35 because of prior prison terms shall be imposed as follows:

36 (a) Where one of the new offenses is one of the violent  
37 felonies specified in subdivision (c), in addition and  
38 consecutive to any other prison terms therefor, the court  
39 shall impose a three-year term for each prior separate  
40 prison term served by the defendant where the prior was

1 one of the violent felonies specified in subdivision (c);  
2 provided that no additional term shall be imposed under  
3 this subdivision for any prison term served prior to a  
4 period of 10 years in which defendant remained free of  
5 both prison custody and the commission of an offense  
6 which results in a felony conviction.

7 (b) Except where subdivision (a) applies, where the  
8 new offense is any felony for which a prison sentence is  
9 imposed, in addition and consecutive to any other prison  
10 terms therefor, the court shall impose a one-year term for  
11 each prior separate prison term served for any felony;  
12 provided that no additional term shall be imposed under  
13 this subdivision for any prison term served prior to a  
14 period of five years in which defendant remained free of  
15 both prison custody and the commission of an offense  
16 which results in a felony conviction.

17 (c) For the purpose of this section, "violent felony"  
18 shall mean any of the following:

19 (1) Murder or voluntary manslaughter.

20 (2) Mayhem.

21 (3) Rape as defined in subdivision (2) of Section 261.

22 (4) Sodomy by force, violence, duress, menace, or  
23 threat of great bodily harm.

24 (5) Oral copulation by force, violence, duress, menace,  
25 or threat of great bodily harm.

26 (6) Unlawful sexual conduct with a child or unlawful  
27 sexual contact with a child as defined in subdivision (b)  
28 of Section 288, subdivision ~~(b)~~ (a) of Section 293, or  
29 subdivision ~~(b)~~ (a) of Section 294.

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

32 (8) Any other felony in which the defendant inflicts  
33 great bodily injury on any person other than an  
34 accomplice which has been charged and proved as  
35 provided for in Section 12022.7 on or after July 1, 1977, or  
36 as specified prior to July 1, 1977, in Sections 213, 264, and  
37 461, or any felony in which the defendant uses a firearm  
38 which use has been charged and proved as provided in  
39 Section 12022.5.

40 The Legislature finds and declares that these specified

1 crimes merit special consideration when imposing a  
2 sentence to display society's condemnation for such  
3 extraordinary crimes of violence against the person.

4 (d) For the purposes of this section the defendant shall  
5 be deemed to remain in prison custody for an offense  
6 until the official discharge from such custody or until  
7 release on parole whichever first occurs including any  
8 time during which the defendant remains subject to  
9 reimprisonment for escape from such custody or is  
10 reimprisoned on revocation of parole. The additional  
11 penalties provided for prior prison terms shall not be  
12 imposed unless they are charged and admitted or found  
13 true in the action for the new offense.

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

18 (f) A prior conviction of a felony shall include a  
19 conviction in another jurisdiction for an offense which if  
20 committed in California is punishable by imprisonment  
21 in state prison provided the defendant served one year or  
22 more in prison for such offense in the other jurisdiction.  
23 A prior conviction of a particular felony shall include a  
24 conviction in another jurisdiction for an offense which  
25 includes all of the elements of the particular felony as  
26 defined under California law provided the defendant  
27 served one year or more in prison for such offense in the  
28 other jurisdiction.

29 (g) A prior separate prison term for the purposes of  
30 this section shall mean a continuous completed period of  
31 prison incarceration imposed for the particular offense  
32 alone or in combination with concurrent or consecutive  
33 sentences for other crimes, including any  
34 reimprisonment on revocation of parole which is not  
35 accompanied by a new commitment to prison, and  
36 including any reimprisonment after escape from such  
37 incarceration.

38 (h) Serving a prison term includes any confinement  
39 time in any state prison or federal penal institution as  
40 punishment for commission of an offense, including

1 confinement in a hospital or other institution or facility  
2 credited as service of prison time in the jurisdiction of  
3 such confinement.

4 (i) For the purposes of this section, a commitment to  
5 the State Department of Health as a mentally disordered  
6 sex offender following a conviction of a felony, which  
7 commitment exceeds one year in duration, shall be  
8 deemed a prior prison term.

9 SEC. 17. Section 667.6 of the Penal Code is amended  
10 to read:

11 667.6. (a) Any person who is found guilty of violating  
12 subdivision (2) or (3) of Section 261, Section 264.1,  
13 subdivision (b) of former Section 288, subdivision ~~(b)~~ (a)  
14 of Section 293 or subdivision ~~(b)~~ (a) of Section 294,  
15 Section 289, or of committing sodomy or oral copulation  
16 in violation of Section 286 or 288a by force, violence,  
17 duress, menace or threat of great bodily harm who has  
18 been convicted previously of any such offense shall  
19 receive a five-year enhancement for each such prior  
20 conviction provided that no enhancement shall be  
21 imposed under this subdivision for any conviction  
22 occurring prior to a period of 10 years in which the person  
23 remained free of both prison custody and the commission  
24 of an offense which results in a felony conviction.

25 (b) Any person convicted of an offense specified in  
26 subdivision (a) who has served two or more prior prison  
27 terms as defined in Section 667.5 for any offense specified  
28 in subdivision (a), shall receive a 10-year enhancement  
29 for each such prior term provided that no additional  
30 enhancement shall be imposed under this subdivision for  
31 any prison term served prior to a period of 10 years in  
32 which the person remained free of both prison custody  
33 and the commission of an offense which results in a felony  
34 conviction.

35 (c) In lieu of the term provided in Section 1170.1, a  
36 full, separate, and consecutive term may be imposed for  
37 each violation of subdivision (2) or (3) of Section 261,  
38 Section 264.1, subdivision (b) of former Section 288,  
39 Section 289, subdivision ~~(b)~~ (a) of Section 293,  
40 subdivision ~~(b)~~ (a) of Section 294, or of committing

1 sodomy or oral copulation in violation of Section 286 or  
2 288a by force, violence, duress, menace or threat of great  
3 bodily harm whether or not the crimes were committed  
4 during a single transaction. If such term is imposed  
5 consecutively pursuant to this subdivision, it shall be  
6 served consecutively to any other term of imprisonment,  
7 and shall commence from the time such person would  
8 otherwise have been released from imprisonment. Such  
9 term shall not be included in any determination pursuant  
10 to Section 1170.1. Any other term imposed subsequent to  
11 such term shall not be merged therein but shall  
12 commence at the time such person would otherwise have  
13 been released from prison.

14 (d) A full, separate, and consecutive term shall be  
15 served for each violation of subdivision (2) or (3) of  
16 Section 261, Section 264.1, Section 289, subdivision ~~(b)~~ (a)  
17 of Section 293, subdivision ~~(b)~~ (a) of Section 294, or of  
18 committing sodomy or oral copulation in violation of  
19 Section 286 or 288a by force, violence, duress, menace or  
20 threat of great bodily harm if such crimes involve  
21 separate victims or involve the same victim on separate  
22 occasions.

23 Such term shall be served consecutively to any other  
24 term of imprisonment, and shall commence from the  
25 time such person would otherwise have been released  
26 from imprisonment. Such term shall not be included in  
27 any determination pursuant to Section 1170.1. Any other  
28 term imposed subsequent to such term shall not be  
29 merged therein but shall commence at the time such  
30 person would otherwise have been released from prison.

31 SEC. 18. Section 1048 of the Penal Code is amended  
32 to read:

33 1048. The issues on the calendar must be disposed of  
34 in the following order, unless for good cause the court  
35 shall direct an action to be tried out of its order:

36 1. Prosecutions for felony, when the defendant is in  
37 custody.

38 2. Prosecutions for misdemeanor, when the defendant  
39 is in custody.

40 3. Prosecutions for felony, when the defendant is on

1 bail.

2 4. Prosecutions for misdemeanor, when the defendant  
3 is on bail.

4 However, all criminal actions wherein a minor is  
5 detained as a material witness, or wherein the minor is  
6 the victim of the alleged offense, or wherein any person  
7 is a victim of an alleged violation of Section 261, 264.1, 286,  
8 288a, 289, 293, or 294, committed by the use of force,  
9 violence, or the threat thereof, shall be given precedence  
10 over all other criminal actions in the order of trial. In such  
11 actions continuations shall be granted by the court only  
12 after a hearing and determination of the necessity  
13 thereof, and in any event, the trial shall be commenced  
14 within thirty days after arraignment, unless for good  
15 cause the court shall direct the action to be continued,  
16 after a hearing and determination of the necessity of such  
17 continuance, and states the findings for such good cause  
18 on the record.

19 Nothing in this section shall be deemed to provide a  
20 statutory right to a trial within 30 days.

21 SEC. 19. Section 1170.1 of the Penal Code is amended  
22 to read:

23 1170.1. (a) Except as provided in subdivision (b) and  
24 subject to Section 654, when any person is convicted of  
25 two or more felonies, whether in the same proceeding or  
26 court or in different proceedings or courts, and whether  
27 by judgment rendered by the same or by a different  
28 court, and a consecutive term of imprisonment is  
29 imposed under Sections 669 and 1170, the aggregate term  
30 of imprisonment for all such convictions shall be the sum  
31 of the principal term, the subordinate term and any  
32 additional term imposed pursuant to Section 667.5 or  
33 667.6. The principal term shall consist of the greatest term  
34 of imprisonment imposed by the court for any of the  
35 crimes, including any enhancements imposed pursuant  
36 to Section 12022, 12022.3, 12022.5, 12022.6, 12022.7 or  
37 12022.8. The subordinate term for each consecutive  
38 offense which is not a "violent felony" as defined in  
39 subdivision (c) of Section 667.5 shall consist of one-third  
40 of the middle term of imprisonment prescribed for each

1 other such felony conviction for which a consecutive  
2 term of imprisonment is imposed, and shall exclude any  
3 enhancements. In no case shall the total of subordinate  
4 terms for such consecutive offenses which are not  
5 “violent felonies” as defined in subdivision (c) of Section  
6 667.5 exceed five years. The subordinate term for each  
7 consecutive offense which is a “violent felony” as defined  
8 in subdivision (c) of Section 667.5, including those  
9 offenses described in paragraph (8) of subdivision (c) of  
10 Section 667.5, shall consist of one-third of the middle term  
11 of imprisonment prescribed for each other such felony  
12 conviction for which a consecutive term of imprisonment  
13 is imposed, and shall include one-third of any  
14 enhancements imposed pursuant to Section 12022,  
15 12022.5 or 12022.7.

16 (b) In the case of any person convicted of one or more  
17 felonies committed while such person is confined in a  
18 state prison, or is subject to reimprisonment for escape  
19 from such custody and the law either requires the terms  
20 to be served consecutively or the court imposes  
21 consecutive terms, the term of imprisonment for all such  
22 convictions which such person is required to serve  
23 consecutively shall commence from the time such person  
24 would otherwise have been released from prison. If the  
25 new offenses are consecutive with each other, the  
26 principal and subordinate terms shall be calculated as  
27 provided in subdivision (a), except that the total of  
28 subordinate terms may exceed five years. The provisions  
29 of this subdivision shall be applicable in cases of  
30 convictions of more than one offense in different  
31 proceedings, and convictions of more than one offense in  
32 the same or different proceedings.

33 (c) When the court imposes a prison sentence for a  
34 felony pursuant to Section 1170 the court shall also  
35 impose the additional terms provided in Sections 667.5,  
36 12022, 12022.5, 12022.6, and 12022.7, unless the additional  
37 punishment therefore is stricken pursuant to subdivision  
38 (g). The court shall also impose any other additional term  
39 which the court determines in its discretion or as  
40 required by law shall run consecutive to the term

1 imposed under Section 1170. In considering the  
2 imposition of such additional term, the court shall apply  
3 the sentencing rules of the Judicial Council.

4 (d) When two or more enhancements under Sections  
5 12022, 12022.5, and 12022.7 may be imposed for any single  
6 offense, only the greatest enhancement shall apply;  
7 however, in cases of robbery, rape or burglary, or  
8 attempted robbery, rape or burglary the court may  
9 impose both (1) one enhancement for weapons as  
10 provided in either Section 12022 or 12022.5 and (2) an  
11 enhancement for great bodily injury as provided in  
12 Section 12022.7.

13 (e) The enhancements provided in Sections 667.5,  
14 667.6, 12022, 12022.3, 12022.5, 12022.6, 12022.7, and 12022.8  
15 shall be pleaded and proven as provided by law.

16 (f) The term of imprisonment shall not exceed twice  
17 the number of years imposed by the trial court as the base  
18 term pursuant to subdivision (b) of Section 1170 unless  
19 the defendant stands convicted of a "violent felony" as  
20 defined in subdivision (c) of Section 667.5, or a  
21 consecutive sentence is being imposed pursuant to  
22 subdivision (b) of this section, or an enhancement is  
23 imposed pursuant to Section 12022, 12022.5, 12022.6 or  
24 12022.7 or the defendant stands convicted of felony  
25 escape from an institution in which he is lawfully  
26 confined.

27 (g) Notwithstanding any other provision of law, the  
28 court may strike the additional punishment for the  
29 enhancements provided in Sections 667.5, 12022, 12022.5,  
30 12022.6, and 12022.7 if it determines that there are  
31 circumstances in mitigation of the additional punishment  
32 and states on the record its reasons for striking the  
33 additional punishment.

34 (h) For any violation of subdivision (2) or (3) of  
35 Section 261, Section 264.1, Section 289, Section 293,  
36 Section 294, or sodomy or oral copulation by force,  
37 violence, duress, menace or threat of great bodily harm  
38 as provided in Section 286 or 288a, the number of  
39 enhancements which may be imposed shall not be  
40 limited, regardless of whether such enhancements are

1 pursuant to this or some other section of law. Each of such  
2 enhancements shall be a full and separately served  
3 enhancement and shall not be merged with any term or  
4 with any other enhancement.

5 SEC. 20. Section 1192.5 of the Penal Code is amended  
6 to read:

7 1192.5. Upon a plea of guilty or nolo contendere to an  
8 accusatory pleading charging a felony, other than a  
9 violation of subdivision (2) or (3) of Section 261, Section  
10 264.1, Section 286 by force, violence, duress, menace or  
11 threat of great bodily harm, Section 288a by force,  
12 violence, duress, menace or threat of great bodily harm,  
13 Section 289, or subdivision ~~(b)~~ (a) of Section 293 or 294,  
14 the plea may specify the punishment to the same extent  
15 as it may be specified by the jury on a plea of not guilty  
16 or fixed by the court on a plea of guilty, nolo contendere,  
17 or not guilty, and may specify the exercise by the court  
18 thereafter of other powers legally available to it.

19 Where such plea is accepted by the prosecuting  
20 attorney in open court and is approved by the court, the  
21 defendant, except as otherwise provided in this section,  
22 cannot be sentenced on such plea to a punishment more  
23 severe than that specified in the plea and the court may  
24 not proceed as to such plea other than as specified in the  
25 plea.

26 If the court approves of the plea, it shall inform the  
27 defendant prior to the making of the plea that (1) its  
28 approval is not binding, (2) it may, at the time set for the  
29 hearing on the application for probation or  
30 pronouncement of judgment, withdraw its approval in  
31 the light of further consideration of the matter, and (3)  
32 in such case, the defendant shall be permitted to  
33 withdraw his plea if he desires to do so. The court shall  
34 also cause an inquiry to be made of the defendant to  
35 satisfy itself that the plea is freely and voluntarily made,  
36 and that there is a factual basis for such plea.

37 If such plea is not accepted by the prosecuting attorney  
38 and approved by the court, the plea shall be deemed  
39 withdrawn and the defendant may then enter such plea  
40 or pleas as would otherwise have been available.

1 If such plea is withdrawn or deemed withdrawn, it may  
2 not be received in evidence in any criminal, civil, or  
3 special action or proceeding of any nature, including  
4 proceedings before agencies, commissions, boards, and  
5 tribunals.

6 SEC. 21. Section 1203 of the Penal Code is amended  
7 to read:

8 1203. (a) As used in this code, "probation" shall mean  
9 the suspension of the imposition or execution of a  
10 sentence and the order of conditional and revocable  
11 release in the community. Except as otherwise provided  
12 in this code, persons placed on probation by the court  
13 shall be under the supervision of the probation officer.

14 (b) In every case in which a person is convicted of a  
15 felony and is eligible for probation, before judgment is  
16 pronounced, the court shall immediately refer the matter  
17 to the probation officer to investigate and report to the  
18 court, at a specified time, upon the circumstances  
19 surrounding the crime and the prior history and record  
20 of the person, which may be considered either in  
21 aggravation or mitigation of the punishment. The  
22 probation officer shall immediately investigate and make  
23 a written report to the court of his findings and  
24 recommendations, including his recommendations as to  
25 the granting or denying of probation and the conditions  
26 of probation, if granted. The probation officer shall also  
27 include in his report his determination of whether the  
28 defendant is a person who is required to pay a fine  
29 pursuant to Section 13967 of the Government Code. The  
30 probation officer shall also include in his report for the  
31 court's consideration whether the court shall require, as  
32 a condition of probation, restitution to the victim or to the  
33 Indemnity Fund if assistance has been granted to the  
34 victim pursuant to Article 1 (commencing with Section  
35 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the  
36 Government Code, a recommendation thereof, and if so,  
37 the amount thereof, and the means and manner of  
38 payment. The report shall be made available to the court  
39 and the prosecuting and defense attorney at least nine  
40 days prior to the time fixed by the court for the hearing

1 and determination of the report, and shall be filed with  
2 the clerk of the court as a record in the case at the time  
3 of the hearing. The time within which the report shall be  
4 made available and filed may be waived by written  
5 stipulation of the prosecuting and defense attorney  
6 which is filed with the court or an oral stipulation in open  
7 court which is made and entered upon the minutes of the  
8 court. At a time fixed by the court, the court shall hear  
9 and determine the application, if one has been made, or,  
10 in any case, the suitability of probation in the particular  
11 case. At the hearing, the court shall consider any report  
12 of the probation officer and shall make a statement that  
13 it has considered such report which shall be filed with the  
14 clerk of the court as a record in the case. If the court  
15 determines that there are circumstances in mitigation of  
16 the punishment prescribed by law or that the ends of  
17 justice would be subserved by granting probation to the  
18 person, it may place him on probation. If probation is  
19 denied, the clerk of the court shall immediately send a  
20 copy of the report to the Department of Corrections at  
21 the prison or other institution to which the person is  
22 delivered.

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

27 (d) In every case in which a person is convicted of a  
28 misdemeanor, the court may either refer the matter to  
29 the probation officer for an investigation and a report or  
30 summarily grant or deny probation. If such a case is not  
31 referred to the probation officer, in sentencing the  
32 person, the court may consider any information  
33 concerning him which could have been included in a  
34 probation report. The court shall inform the person of the  
35 information to be considered and permit him to answer  
36 or controvert it. For this purpose, upon the request of the  
37 person, the court shall grant a continuance before the  
38 judgment is pronounced.

39 (e) Except in unusual cases where the interests of  
40 justice would best be served if the person is granted

1 probation, probation shall not be granted to any of the  
2 following persons:

3 (1) Unless he had a lawful right to carry a deadly  
4 weapon, other than a firearm, at the time of the  
5 perpetration of the crime or his arrest, any person who  
6 has been convicted of arson, robbery, burglary, burglary  
7 with explosives, rape with force or violence, murder,  
8 assault with intent to commit murder, attempt to commit  
9 murder, trainwrecking, kidnapping, escape from the  
10 state prison, or a conspiracy to commit one or more of  
11 such crimes and was armed with such weapon at either  
12 of such times.

13 (2) Any person who used or attempted to use a deadly  
14 weapon upon a human being in connection with the  
15 perpetration of the crime of which he has been  
16 convicted.

17 (3) Any person who willfully inflicted great bodily  
18 injury or torture in the perpetration of the crime of which  
19 he has been convicted.

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

24 (5) Unless he has never been previously convicted  
25 once in this state of a felony or in any other place of a  
26 public offense which, if committed in this state, would  
27 have been punishable as a felony, any person who has  
28 been convicted of burglary with explosives, rape with  
29 force or violence, murder, attempt to commit murder,  
30 assault with intent to commit murder, trainwrecking,  
31 extortion, kidnapping, escape from the state prison, a  
32 violation of Section 286, 288a, 293, or 294 or a conspiracy  
33 to commit one or more of such crimes.

34 (6) Any person who has been previously convicted  
35 once in this state of a felony or in any other place of a  
36 public offense which, if committed in this state, would  
37 have been punishable as a felony, if he committed any of  
38 the following acts:

39 (i) Unless he had a lawful right to carry a deadly  
40 weapon at the time of the perpetration of such previous

1 crime or his arrest for such previous crime, he was armed  
2 with such weapon at either of such times.

3 (ii) He used or attempted to use a deadly weapon  
4 upon a human being in connection with the perpetration  
5 of such previous crime.

6 (iii) He willfully inflicted great bodily injury or torture  
7 in the perpetration of such previous crime.

8 (7) Any public official or peace officer of this state or  
9 any city, county, or other political subdivision who, in the  
10 discharge of the duties of his public office or  
11 employment, accepted or gave or offered to accept or  
12 give any bribe, embezzled public money, or was guilty of  
13 extortion.

14 (8) Any person who knowingly manufactures  
15 phencyclidine. Should the court grant probation, it shall  
16 specify the reason or reasons for such order. On appeal by  
17 the people from such a grant of probation, it shall be  
18 conclusively presumed that such order was made only for  
19 the reasons specified in such order, and such order shall  
20 be reversed if there is no substantial basis in the record  
21 for any of such reasons.

22 (f) When probation is granted in a case which comes  
23 within the provisions of subdivision (e), the court shall  
24 specify on the record and shall enter on the minutes the  
25 circumstances indicating that the interests of justice  
26 would best be served by such a disposition.

27 (g) If a person is not eligible for probation, the judge  
28 may, in his discretion, refer the matter to the probation  
29 officer for an investigation of the facts relevant to the  
30 sentencing of the person. Upon such referral, the  
31 probation officer shall immediately investigate the  
32 circumstances surrounding the crime and the prior  
33 record and history of the person and make a written  
34 report to the court of his findings.

35 (h) In any case in which a defendant is convicted of a  
36 felony and a probation report is prepared pursuant to  
37 subdivision (a) or (g), the probation officer shall obtain  
38 and include in such report a statement of the comments  
39 of the victim concerning the offense. The court may  
40 direct the probation officer not to obtain such a statement

1 in any case where the victim has in fact testified at any  
2 of the court proceedings concerning the offense.

3 (i) No probationer shall be released to enter another  
4 state unless his case has been referred to the  
5 Administrator, Interstate Probation and Parole  
6 Compacts, pursuant to the Uniform Act for Out-of-State  
7 Probationer or Parolee Supervision (Article 3  
8 (commencing with Section 11175) of Chapter 2 of Title  
9 1 of Part 4).

10 SEC. 22. Section 1203.065 of the Penal Code is  
11 amended to read:

12 1203.065. (a) Notwithstanding any other provision of  
13 law, probation shall not be granted to, nor shall the  
14 execution or imposition of sentence be suspended for,  
15 any person convicted of violating subdivision (2) of  
16 Section 261, or Section 264.1 or 289, or of committing  
17 sodomy or oral copulation in violation of Section 286 or  
18 288a by force, violence, duress, menace or threat of great  
19 bodily harm.

20 (b) Except in unusual cases where the interests of  
21 justice would best be served if the person is granted  
22 probation, probation shall not be granted to any person  
23 convicted of a violation of Section 220 for assault with  
24 intent to commit rape, sodomy, oral copulation or any  
25 violation of Section 264.1, or Section 289.

26 When probation is granted, the court shall specify on  
27 the record and shall enter on the minutes the  
28 circumstances indicating that the interests of justice  
29 would best be served by such a disposition.

30 (c) This section does not prohibit the adjournment of  
31 criminal proceedings pursuant to Division 3  
32 (commencing with Section 3000) or Division 6  
33 (commencing with Section 6000) of the Welfare and  
34 Institutions Code.

35 SEC. 23. Section 12022.3 of the Penal Code is  
36 amended to read:

37 12022.3. For each violation of Section 261, 264.1, 286,  
38 288a, 289, 293, or 294 and in addition to the sentence  
39 provided, any person shall receive an enhancement (a)  
40 of three years if such person uses a firearm or any other

1 deadly weapon in the commission of such violation or (b)  
2 of two years if such person is armed with a firearm or any  
3 other deadly weapon.

4 SEC. 24. Section 12022.8 of the Penal Code is  
5 amended to read:

6 12022.8. Any person who inflicts great bodily injury,  
7 as defined in Section 12022.7, on any victim in a violation  
8 of subdivision (2) or (3) of Section 261, Section 264.1,  
9 Section 289, subdivision ~~(b)~~ (a) of Section 293, or  
10 subdivision ~~(b)~~ (a) of Section 294, or sodomy or oral  
11 copulation by force, violence, duress, menace or threat of  
12 great bodily harm as provided in Section 286 or 288a shall  
13 receive a five-year enhancement for each such violation  
14 in addition to the sentence provided for the felony  
15 conviction.

16 SEC. 25. Section 707 of the Welfare and Institutions  
17 Code is amended to read:

18 707. (a) In any case in which a minor is alleged to be  
19 a person described in Section 602 by reason of the  
20 violation, when he or she was 16 years of age or older, of  
21 any criminal statute or ordinance except those listed in  
22 subdivision (b), upon motion of the petitioner made  
23 prior to the attachment of jeopardy the court shall cause  
24 the probation officer to investigate and submit a report  
25 on the behavioral patterns and social history of the minor  
26 being considered for a determination of unfitness.  
27 Following submission and consideration of the report,  
28 and of any other relevant evidence which the petitioner  
29 or the minor may wish to submit, the juvenile court may  
30 find that the minor is not a fit and proper subject to be  
31 dealt with under the juvenile court law if it concludes  
32 that the minor would not be amenable to the care,  
33 treatment, and training program available through the  
34 facilities of the juvenile court, based upon an evaluation  
35 of the following criteria:

36 (1) The degree of criminal sophistication exhibited by  
37 the minor.

38 (2) Whether the minor can be rehabilitated prior to  
39 the expiration of the juvenile court's jurisdiction.

40 (3) The minor's previous delinquent history.

1 (4) Success of previous attempts by the juvenile court  
2 to rehabilitate the minor.

3 (5) The circumstances and gravity of the offense  
4 alleged to have been committed by the minor.

5 A determination that the minor is not a fit and proper  
6 subject to be dealt with under the juvenile court law may  
7 be based on any one or a combination of the factors set  
8 forth above, which shall be recited in the order of  
9 unfitness. In any case in which a hearing has been noticed  
10 pursuant to this section, the court shall postpone the  
11 taking of a plea to the petition until the conclusion of the  
12 fitness hearing, and no plea which may already have been  
13 entered shall constitute evidence at such hearing.

14 (b) The provisions of subdivision (c) shall be  
15 applicable in any case in which a minor is alleged to be  
16 a person described in Section 602 by reason of the  
17 violation, when he or she was 16 years of age or older, of  
18 one of the following offenses:

19 (1) Murder;

20 (2) Arson of an inhabited building;

21 (3) Robbery while armed with a dangerous or deadly  
22 weapon;

23 (4) Rape with force or violence or threat of great  
24 bodily harm;

25 (5) Sodomy by force, violence, duress, menace, or  
26 threat of great bodily harm;

27 (6) Unlawful sexual conduct with a child as provided  
28 in subdivision ~~(b)~~ (a) of Section 293 or unlawful sexual  
29 contact with a child as provided in subdivision ~~(b)~~ (a) of  
30 Section 294.

31 (7) Oral copulation by force, violence, duress, menace,  
32 or threat of great bodily harm;

33 (8) Any offense specified in Section 289 of the Penal  
34 Code;

35 (9) Kidnapping for ransom;

36 (10) Kidnapping for purpose of robbery;

37 (11) Kidnapping with bodily harm;

38 (12) Assault with intent to murder or attempted  
39 murder;

40 (13) Assault with a firearm or destructive device;

1 (14) Assault by any means of force likely to produce  
2 great bodily injury;

3 (15) Discharge of a firearm into an inhabited or  
4 occupied building;

5 (16) Any offense described in Section 1203.09 of the  
6 Penal Code.

7 (c) With regard to a minor alleged to be a person  
8 described in Section 602 by reason of the violation, when  
9 he or she was 16 years of age or older, of any of the  
10 offenses listed in subdivision (b), upon motion of the  
11 petitioner made prior to the attachment of jeopardy the  
12 court shall cause the probation officer to investigate and  
13 submit a report on the behavioral patterns and social  
14 history of the minor being considered for a determination  
15 of unfitness. Following submission and consideration of  
16 the report, and of any other relevant evidence which the  
17 petitioner or the minor may wish to submit the minor  
18 shall be presumed to be not a fit and proper subject to be  
19 dealt with under the juvenile court law unless the  
20 juvenile court concludes, based upon evidence, which  
21 evidence may be of extenuating or mitigating  
22 circumstances, that the minor would be amenable to the  
23 care, treatment, and training program available through  
24 the facilities of the juvenile court based upon an  
25 evaluation of each of the following criteria:

26 (1) The degree of criminal sophistication exhibited by  
27 the minor.

28 (2) Whether the minor can be rehabilitated prior to  
29 the expiration of the juvenile court's jurisdiction.

30 (3) The minor's previous delinquent history.

31 (4) Success of previous attempts by the juvenile court  
32 to rehabilitate the minor.

33 (5) The circumstances and gravity of the offenses  
34 alleged to have been committed by the minor.

35 A determination that the minor is a fit and proper  
36 subject to be dealt with under the juvenile court law shall  
37 be based on a finding of amenability after consideration  
38 of the criteria set forth above, and findings therefor  
39 recited in the order as to each of the above criteria that  
40 the minor is fit and proper under each and every one of

1 the above criteria. In making a finding of fitness, the  
2 court may consider extenuating or mitigating  
3 circumstances in evaluating each of the above criteria. In  
4 any case in which a hearing has been noticed pursuant to  
5 this section, the court shall postpone the taking of a plea  
6 to the petition until the conclusion of the fitness hearing  
7 and no plea which may already have been entered shall  
8 constitute evidence at such hearing.

9 SEC. 26. Section 1732 of the Welfare and Institutions  
10 Code is amended to read:

11 1732. No person convicted of violating subdivision (2)  
12 or (3) of Section 261, Section 264.1, Section 289, Section  
13 293, Section 294 or of sodomy or oral copulation by force,  
14 violence, duress, menace or threat of great bodily harm  
15 as provided in Section 286 or 288a of the Penal Code  
16 committed when such person was 18 years of age who has  
17 previously been convicted of any such felony shall be  
18 committed to the Youth Authority. This section does not  
19 prohibit the adjournment of criminal proceedings  
20 pursuant to Division 3 (commencing with Section 3000)  
21 or Division 6 (commencing with Section 6000) of the  
22 Welfare and Institutions Code.

23 SEC. 27. No appropriation is made and no  
24 reimbursement is required by this act pursuant to Section  
25 6 of Article XIII B of the California Constitution or  
26 Section 2231 or 2234 of the Revenue and Taxation Code  
27 because the only costs which may be incurred by a local  
28 agency or school district will be incurred because this act  
29 creates a new crime or infraction, changes the definition  
30 of a crime or infraction, changes the penalty for a crime  
31 or infraction, or eliminates a crime or infraction.

**EXHIBIT B**



AMENDED IN ASSEMBLY JULY 6, 1981  
AMENDED IN ASSEMBLY MAY 6, 1981  
AMENDED IN ASSEMBLY APRIL 7, 1981  
AMENDED IN ASSEMBLY MARCH 24, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

**ASSEMBLY BILL**

**No. 457**

Introduced by Assemblymen Imbrecht and Goggin,  
*Goggin, Levine, and Vasconcellos*

February 10, 1981

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An act to amend Sections 288, 667.6, 1203.065, and 5068, and to add Article 5 (commencing with Section 2970) to Chapter 7 of Title 1 of Part 3 of the Penal Code, relating to sex offenders, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 457, as amended, Imbrecht. Crimes: sex offenders.

(1) Existing law specifies a term of imprisonment in a state prison of 3, 5, or 7 years for a person who, by use of force, violence, duress, menace, or threat of great bodily harm, and against the will of the victim, willfully and lewdly commits any lewd or lascivious act, as specified, upon a child under 14 years.

This bill would specify a term of imprisonment for such crime of 3, 6, or 8 years and would include intimidation or coercion as proscribed behavior.

(2) Existing law makes it a felony punishable by a term of 3, 5, or 7 years to willfully and lewdly commit any lewd or lascivious act upon a child under 14 with specified intent.

This bill would specify a term of imprisonment for such crime of 3, 6, or 8 years; would include the above-described

felony within the existing statutory provision for a 5- or 10-year enhancement of the prison term if the person has one or more prior convictions, as specified; and would prohibit probation or a suspended sentence for any person convicted of the above-described felony under specified circumstances.

(3) Existing law provides for the treatment at a state hospital of certain mentally ill, mentally deficient, or insane persons confined in a state prison.

This bill would make special provision for the *extended* commitment of ~~mentally disordered violent dangerous sex~~ offenders, ~~as defined~~, under specified circumstances.

(4) Under existing law, Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

~~(5) The bill would appropriate \$ / / / / to the Controller for allocation to the Department of Corrections and State Department of Mental Health for the 1981/82 fiscal year.~~

*(5) The bill would take effect immediately as an urgency statute.*

Vote:  $\frac{2}{3}$ . Appropriation: *yes no*. Fiscal committee: *yes*. State-mandated local program: *yes*.

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

1 SECTION 1. Section 288 of the Penal Code is  
2 amended to read:

1 288. (a) Any person who shall willfully and lewdly  
2 commit any lewd or lascivious act including any of the  
3 acts constituting other crimes provided for in Part 1 of  
4 this code upon or with the body, or any part or member  
5 thereof, of a child under the age of 14 years, with the  
6 intent of arousing, appealing to, or gratifying the lust or  
7 passions or sexual desires of such person or of such child,  
8 shall be guilty of a felony and shall be imprisoned in the  
9 state prison for a term of three, six, or eight years.

10 (b) Any person who commits an act described in  
11 subdivision (a) by use of force, violence, duress, menace,  
12 intimidation, coercion, or threat of bodily harm and  
13 against the will of the victim shall be guilty of a felony and  
14 shall be imprisoned in the state prison for a term of three,  
15 six or eight years.

16 SEC. 2. Section 667.6 of the Penal Code is amended to  
17 read:

18 667.6. (a) Any person who is found guilty of violating  
19 subdivision (2) or (3) of Section 261, Section 264.1, of  
20 Section 288, Section 289, or of committing sodomy or oral  
21 copulation in violation of Section 286 or 288a by force,  
22 violence, duress, menace or threat of great bodily harm  
23 who has been convicted previously of any such offense  
24 shall receive a five-year enhancement for each such prior  
25 conviction provided that no enhancement shall be  
26 imposed under this subdivision for any conviction  
27 occurring prior to a period of 10 years in which the person  
28 remained free of both prison custody and the commission  
29 of an offense which results in a felony conviction.

30 (b) Any person convicted of an offense specified in  
31 subdivision (a) who has served two or more prior prison  
32 terms as defined in Section 667.5 for any offense specified  
33 in subdivision (a), shall receive a 10-year enhancement  
34 for each such prior term provided that no additional  
35 enhancement shall be imposed under this subdivision for  
36 any prison term served prior to a period of 10 years in  
37 which the person remained free of both prison custody  
38 and the commission of an offense which results in a felony  
39 conviction.

40 (c) In lieu of the term provided in Section 1170.1, a

1 full, separate, and consecutive term may be imposed for  
2 each violation of subdivision (2) or (3) of Section 261,  
3 Section 264.1, subdivision (b) of Section 288, Section 289,  
4 or of committing sodomy or oral copulation in violation  
5 of Section 286 or 288a by force, violence, duress, menace  
6 or threat of great bodily harm whether or not the crimes  
7 were committed during a single transaction. If such term  
8 is imposed consecutively pursuant to this subdivision, it  
9 shall be served consecutively to any other term of  
10 imprisonment, and shall commence from the time such  
11 person would otherwise have been released from  
12 imprisonment. Such term shall not be included in any  
13 determination pursuant to Section 1170.1. Any other term  
14 imposed subsequent to such term shall not be merged  
15 therein but shall commence at the time such person  
16 would otherwise have been released from prison.

17 (d) A full, separate, and consecutive term shall be  
18 served for each violation of subdivision (2) or (3) of  
19 Section 261, Section 264.1, subdivision (b) of Section 288,  
20 Section 289, or of committing sodomy or oral copulation  
21 in violation of Section 286 or 288a by force, violence,  
22 duress, menace or threat of great bodily harm if such  
23 crimes involve separate victims or involve the same  
24 victim on separate occasions.

25 Such term shall be served consecutively to any other  
26 term of imprisonment, and shall commence from the  
27 time such person would otherwise have been released  
28 from imprisonment. Such term shall not be included in  
29 any determination pursuant to Section 1170.1. Any other  
30 term imposed subsequent to such term shall not be  
31 merged therein but shall commence at the time such  
32 person would otherwise have been released from prison.

33 SEC. 3. Section 1203.065 of the Penal Code is  
34 amended to read:

35 1203.065. (a) Notwithstanding any other provision of  
36 law, probation shall not be granted to, nor shall the  
37 execution or imposition of sentence be suspended for,  
38 any person convicted of violating subdivision (2) of  
39 Section 261, or Section 264.1, subdivision (b) of Section  
40 288, or 289, or of committing sodomy or oral copulation

1 in violation of Section 286 or 288a by force, violence,  
2 duress, menace or threat of great bodily harm.

3 (b) Except in unusual cases where the interests of  
4 justice would best be served if the person is granted  
5 probation, probation shall not be granted to any person  
6 convicted of a violation of Section 220 for assault with  
7 intent to commit rape, sodomy, oral copulation or any  
8 violation of Section 264.1, subdivision (b) of Section 288,  
9 or Section 289.

10 When probation is granted, the court shall specify on  
11 the record and shall enter on the minutes the  
12 circumstances indicating that the interests of justice  
13 would best be served by such a disposition.

14 (c) Notwithstanding any other provision of law,  
15 probation shall not be granted to, nor shall the execution  
16 of sentence be suspended for, any person convicted of  
17 subdivision (a) of Section 288 if any of the following  
18 circumstances are found to exist:

19 (1) If the victim has been physically injured.

20 (2) If the defendant used a weapon in the commission  
21 of the offense.

22 (3) If the defendant kidnapped the victim for the  
23 purpose of child molestation.

24 (4) If prior to the commission of the offense, the  
25 defendant had been convicted of violating subdivision  
26 (2) of Section 261, or Section 264.1, Section 288, or 289, of  
27 committing sodomy or oral copulation in violation of  
28 Section 286 or 288a by force, violence, duress, menace or  
29 threat of great bodily harm, of assaulting another with  
30 intent to commit a crime specified in this paragraph in  
31 violation of Section 220, or a violation of Section 266.

32 (d) Except as provided in subdivision (e), probation  
33 shall not be granted to, nor shall the execution of  
34 sentence be suspended for any person convicted of a  
35 violation of subdivision (a) of Section 288 if any of the  
36 following circumstances are found to exist:

37 (1) If there is substantial sexual contact with a victim  
38 10 years old or less which includes penetration of the  
39 vagina or rectum by the penis of the offender or by any  
40 foreign object, oral copulation, or masturbation of either

1 the victim or the offender.

2 (2) If the defendant has molested more than one  
3 victim at the same time or in the same course of conduct  
4 for the purpose of child molestation.

5 (3) If the defendant befriends the victim for the  
6 purpose of initiating sexual relations and the victim  
7 neither solicits sexual contact nor shares in that initial  
8 purpose at the time of the befriending.

9 (4) Unless the defendant has been found guilty of  
10 subdivision (b) of Section 288, if the act is committed by  
11 use of force, violence, duress, menace, intimidation,  
12 coercion, or threat of bodily harm.

13 (5) Where the defendant occupies a position of  
14 "special trust" in relation to the victim and uses that  
15 special trust to accomplish an act of substantial sexual  
16 contact. "Special trust" includes, but is not limited to, a  
17 teacher, youth leader, counselor, religious leader, doctor,  
18 or foster parent. "Substantial sexual contact" includes  
19 penetration of the vagina or rectum by the penis of the  
20 offender or by any foreign object, oral copulation, or  
21 masturbation of either the victim or the offender.

22 (e) Probation may be granted in circumstances  
23 described in subdivision (d) only in unusual cases where  
24 the interests of justice are best served if the defendant is  
25 granted probation. In such cases the court must make all  
26 of the following findings:

27 (1) The defendant is a member of the victim's  
28 immediate family including parent, grandparent, aunt,  
29 uncle, brother or sister, or is a step-parent, adopted  
30 parent, or has been living in the household for a  
31 substantial period of time but not less than one  
32 continuous year, while assuming the role as a parent.

33 (2) Imprisonment of the defendant would either  
34 cause psychological harm to the child, or cause breakup  
35 of the family, or both.

36 (3) There is no reasonable likelihood of physical harm  
37 to the child victim if there is no imprisonment.

38 (4) Rehabilitation of the defendant is feasible in a  
39 recognized treatment program designed to deal with  
40 child molestation and if the defendant is to remain in the

1 household, a program that is specifically designed to deal  
2 with molestation within the family.

3 (f) The existence of any fact which would bring a  
4 person under subdivision (c) or (d) shall be alleged in the  
5 information or indictment, and either admitted by the  
6 defendant in open court, or found to be true by the jury  
7 trying the issue of guilt, or by the court where guilt is  
8 established by plea of guilty or nolo contendere, or by  
9 trial by the court sitting without a jury.

10 (g) This section does not prohibit the adjournment of  
11 criminal proceedings pursuant to Division 3  
12 (commencing with Section 3000) or Division 6  
13 (commencing with Section 6000) of the Welfare and  
14 Institutions Code.

15 SEC. 4. Article 5 (commencing with Section 2970) is  
16 added to Chapter 7 of Title 1 of Part 3 of the Penal Code,  
17 to read:

18

19 Article 5. Extended Commitments of Sex Offenders

20

21 2970. A person committed to prison for a felony sex  
22 offense who is predisposed to the commission of sex  
23 offenses and who constitutes a substantial danger of  
24 physical harm to others may be committed beyond the  
25 determinate prison term.

26 2971. (a) If, after the completion of the diagnosis and  
27 examination provided by Sections 5068 and 5079 or at any  
28 other time during the prison sentence, the Director of  
29 Corrections concludes that a prisoner is a person  
30 described in Section 2970, the Director of Corrections  
31 shall provide treatment for the person's mental disease,  
32 defect, or disorder. The treatment may occur in an  
33 appropriate facility of the Department of Corrections or  
34 the Director of Corrections may transfer the person to  
35 the State Department of Mental Health for such  
36 treatment pursuant to Section 2684. If the treatment  
37 occurs in a facility of the Department of Corrections, it  
38 shall be of a similar kind and quality as provided in a state  
39 hospital with acute psychiatric treatment programs. The  
40 Department of Corrections in consultation with the State

1 Department of Mental Health shall develop staffing  
2 standards for treatment programs for persons described  
3 in this article within the Department of Corrections. The  
4 staffing shall be at a level that will enable the equivalent  
5 quality of care and therapy that would be received in a  
6 similar state hospital program.

7 (b) During the last year of the prisoner's term, but not  
8 later than 180 days before the prisoner's scheduled  
9 release date, the Director of Corrections shall make  
10 written application to the Board of Prison Terms  
11 requesting that a petition be filed for an extended  
12 commitment if the Director of Corrections concludes  
13 that the prisoner is a person described in Section 2970.  
14 Upon making the application, the Director of Corrections  
15 shall immediately refer the prisoner to the State  
16 Department of Mental Health for an evaluation of  
17 whether the prisoner is a person described in Section  
18 2970.

19 (c) Amenability to treatment is not required for a  
20 finding that the person is described in Section 2970 nor is  
21 it required for treatment of the person. Treatment  
22 programs need only be made available to the person.  
23 Treatment does not mean that the treatment be  
24 successful or potentially successful, nor does it mean that  
25 the person must recognize his or her problem and  
26 willingly participate in the treatment program.

27 2972. The State Department of Mental Health shall  
28 evaluate the prisoner for a period not to exceed 30 days.  
29 The evaluation shall be conducted at a state hospital if the  
30 prisoner has been, or is, transferred pursuant to Section  
31 2684 or at a facility of the Department of Corrections if  
32 the prisoner remains within the custody of the Director  
33 of Corrections. At the conclusion of the evaluation, the  
34 State Department of Mental Health shall prepare a  
35 written evaluation with specific conclusions and reasons  
36 therefor stating whether the prisoner is a person  
37 described in Section 2970. The evaluation shall be  
38 immediately forwarded to the Board of Prison Terms.

39 The Board of Prison Terms shall fully review the  
40 evaluation and the application for the petition with

1 supporting documents from the Director of Corrections.  
2 If the State Department of Mental Health concludes that  
3 the prisoner is not a person described in Section 2970, the  
4 Board of Prison Terms may order further examinations  
5 by at least two independent psychiatrists or licensed  
6 psychologists who have a doctoral degree in psychology  
7 and at least five years of postgraduate experience in the  
8 diagnosis and treatment of emotional and mental  
9 disorders. If, after review of the application for the  
10 petition with supporting documents from the Director of  
11 Corrections and the evaluation of the State Department  
12 of Mental Health and the evaluations of the independent  
13 psychiatrists or psychologists, if any, the Board of Prison  
14 Terms determines that the prisoner is a person described  
15 in Section 2970, it shall request the district attorney of the  
16 county in which the prisoner was convicted to file a  
17 petition for extended commitment of the prisoner. The  
18 district attorney shall file the petition no later than 120  
19 days prior to the prisoner's scheduled release date.

20 If a petition is filed, the prisoner shall remain in the  
21 custody of the Director of Corrections or the State  
22 Department of Mental Health until the petition is  
23 adjudicated. If a petition is not filed, the prisoner shall be  
24 released as otherwise provided by law.

25 2973. The petition shall be filed in the superior court  
26 in the county in which the prisoner was convicted of the  
27 offense which resulted in the present imprisonment. The  
28 petition shall state that the prisoner is a person described  
29 in Section 2970 and shall summarize the supporting facts.  
30 All supporting affidavits shall be attached to the petition.  
31 The Board of Prison Terms shall be represented by the  
32 district attorney.

33 2974. At the time of filing a petition the court shall  
34 advise the prisoner of the right to be represented by an  
35 attorney and of the right to a jury trial.

36 The attorney shall be given a copy of the evaluation,  
37 the application for petition, the petition, and any  
38 supporting documents. The rules of discovery in criminal  
39 cases shall apply. Notwithstanding any other provision of  
40 law regarding confidentiality of medical and treatment

1 records, the district attorney shall be entitled to access to  
2 any such record concerning the prisoner in the custody  
3 of the Department of Corrections or the State  
4 Department of Mental Health.

5 2975. A trial shall be conducted on the petition for  
6 commitment, which shall be by a jury, unless waived by  
7 the prisoner and the district attorney. If a trial by jury is  
8 waived, the court shall determine whether the prisoner  
9 is a person described in Section 2970. The trial shall be  
10 completed prior to the time the prisoner would  
11 otherwise have been released from prison.

12 2976. The prisoner shall be entitled to the rights  
13 guaranteed under the federal and state constitutions for  
14 criminal proceedings. All proceedings shall be in  
15 accordance with applicable constitutional guarantees.  
16 The Controller shall reimburse the counties for all  
17 expenses of transportation, care, and custody of the  
18 prisoner and all trial and related costs attributable to  
19 these proceedings. The state shall be represented by the  
20 district attorney. If the prisoner is indigent, the State  
21 Public Defender, the county public defender, or other  
22 attorney shall be appointed. Appointment of necessary  
23 psychiatrists and psychologists shall be made in  
24 accordance with the provisions of Section 1027.

25 2977. If the court or jury finds that the prisoner is a  
26 person described in Section 2970, the court shall order the  
27 prisoner committed to the State Department of Mental  
28 Health at the completion of the prisoner's prison term. A  
29 commitment or a recommitment under Section 2981  
30 shall be for a period of two years.

31 The person committed or recommitted pursuant to  
32 this section shall be confined in a state hospital. The  
33 Director of Mental Health may, with the consent of the  
34 Director of Corrections, transfer the person to a  
35 treatment unit in the Department of Corrections for  
36 confinement and treatment if the person is not amenable  
37 for treatment in existing hospital programs or is in need  
38 of stricter security and custody measures than are  
39 available within the state hospitals. The treatment unit  
40 shall be designated by the Director of Corrections. A

1 person transferred under this section shall be entitled to  
2 a hearing by the State Department of Mental Health to  
3 determine whether he or she may be confined and  
4 treated in a state hospital.

5 The person shall be entitled to be present at the  
6 hearing, to ask and answer questions, to speak on his or  
7 her own behalf, and to offer relevant evidence. The  
8 hearing shall be held before any transfer to the  
9 Department of Corrections unless the person is already  
10 in the custody of the Director of Corrections or the need  
11 for transfer becomes immediate making a hearing before  
12 transfer impractical.

13 Any person transferred to the Department of  
14 Corrections pursuant to this section shall be entitled to  
15 treatment of a kind and quality similar to that which he  
16 would receive if confined by the State Department of  
17 Mental Health. He or she shall be treated in a unit at a  
18 level of staffing that will enable him or her to receive the  
19 equivalent quality of care and therapy that would be  
20 received in a similar state hospital program.

21 2978. The superintendent of a state hospital may  
22 extend to any person confined therein pursuant to a  
23 commitment under this article any of the privileges  
24 granted to other patients of the hospital which are not  
25 incompatible with his or her detention or unreasonably  
26 conducive to his or her escape from custody. The rights  
27 as provided in Sections 2600 and 2601 shall apply to any  
28 person confined in the Department of Corrections  
29 pursuant to a commitment and transfer under Section  
30 2977.

31 2979. (a) An application for the release of a person on  
32 an extended commitment upon the ground that he or she  
33 is no longer a person described in Section 2970 may be  
34 made by the person or by the Director of Mental Health  
35 to the superior court of the county from which he was  
36 committed. The person or the Director of Mental Health  
37 shall transmit a copy of the application to the committing  
38 court. No application shall be allowed until the person  
39 committed or recommitted shall have been confined for  
40 a period of not less than six months from the date of the

1 order of commitment or recommitment.

2 (b) The court may require the superintendent of the  
3 state hospital or other facility in which the person is  
4 confined to forward to the committing court, within 30  
5 days, his or her opinion as to whether the person is still  
6 described in Section 2970, including therein a report,  
7 diagnosis, and recommendation concerning the person's  
8 future care, supervision, or treatment. After receipt of  
9 the report, the committing court may order the return of  
10 the person to the court and set the matter for a trial to  
11 determine whether the person is still a mentally  
12 disordered violent offender within the meaning of this  
13 article.

14 (c) A trial conducted on the application shall be by a  
15 jury, unless waived by the person and the district  
16 attorney. At any hearing or trial authorized by this  
17 section, the applicant shall have the burden of proving by  
18 a preponderance of the evidence that the person is no  
19 longer a person described in Section 2970. The person  
20 shall be entitled to the rights specified in Section 2976. If  
21 the trial is by a jury, at least nine members shall agree on  
22 the finding.

23 (d) If the finding of the court or jury is adverse to the  
24 applicant, no further application may be filed until six  
25 months has elapsed from the date of hearing upon the last  
26 preceding application or commitment under this article.

27 2981. Not later than 120 days before the termination  
28 of a commitment under Section 2977 or a recommitment  
29 under this section, the State Department of Mental  
30 Health shall evaluate the person in the manner provided  
31 in Section 2972. The evaluation shall be immediately  
32 forwarded to the district attorney of the county of  
33 commitment and the committing court. Not later than 60  
34 days prior to the termination of a commitment under  
35 Section 2977, a petition for recommitment may be filed.  
36 In a recommitment proceeding, the procedural rights  
37 specified in Sections 2975 and 2976 shall apply.

38 2982. An order of commitment or recommitment by  
39 the court may be appealed by the person in the same  
40 manner as a conviction in a criminal case.

1     2983. (a) Commitment to the State Department of  
2 Mental Health under this article places an affirmative  
3 obligation on the department to provide treatment for  
4 the underlying causes of the person's mental disease,  
5 defect, or disorder.

6     (b) Treatment occurring in a facility of the  
7 Department of Corrections shall be of a similar kind and  
8 quality as provided in a state hospital with acute  
9 psychiatric treatment programs. The Department of  
10 Corrections, in consultation with the State Department  
11 of Mental Health, shall develop standards of treatment  
12 for persons described in Section 2970. These standards  
13 shall include the provision for peer review. The State  
14 Department of Mental Health shall periodically review  
15 the adequacy, appropriateness, and quality of treatment  
16 services provided by the Department of Corrections.

17     2984. Every person confined in a facility pursuant to  
18 a commitment under this article who escapes from or  
19 who escapes while being conveyed to or from such  
20 facility is punishable by imprisonment in the state prison,  
21 or in the county jail not to exceed one year.

22     SEC. 5. Section 5068 of the Penal Code is amended to  
23 read:

24     5068. The Director of Corrections shall cause each  
25 person committed to a state prison to be examined and  
26 studied. This includes the investigation of all pertinent  
27 circumstances of his life and the antecedents of the  
28 violation of law because of which he has been committed  
29 to prison. Any person may be reexamined to determine  
30 whether existing orders and dispositions should be  
31 modified or continued in force.

32     Upon the basis of the examination and study, the  
33 Director of Corrections shall classify prisoners and  
34 determine the prison in which the prisoners shall be  
35 confined.

36     A person who may come within the provisions of  
37 Section 2970 shall be evaluated to determine if he needs  
38 special treatment as provided in subdivision (a) of  
39 Section 2971.

40     When diagnostic study of any inmate committed under

1 subdivision (b) of Section 1168 so indicates, the director  
2 shall cause a psychiatric or psychological report to be  
3 prepared for the Board of Prison Terms prior to release  
4 of such inmate.

5 Before the release of any inmate committed under  
6 subdivision (b) of Section 1168, the director shall provide  
7 the Board of Prison Terms with a written evaluation of  
8 the prisoner.

9 **SEC. 6.** The sum of        dollars (~~\$~~) is  
10 hereby appropriated to the Controller for allocation to  
11 the Department of Corrections and the State  
12 Department of Mental Health for carrying out the  
13 provisions of this act during the 1981/82 fiscal year.

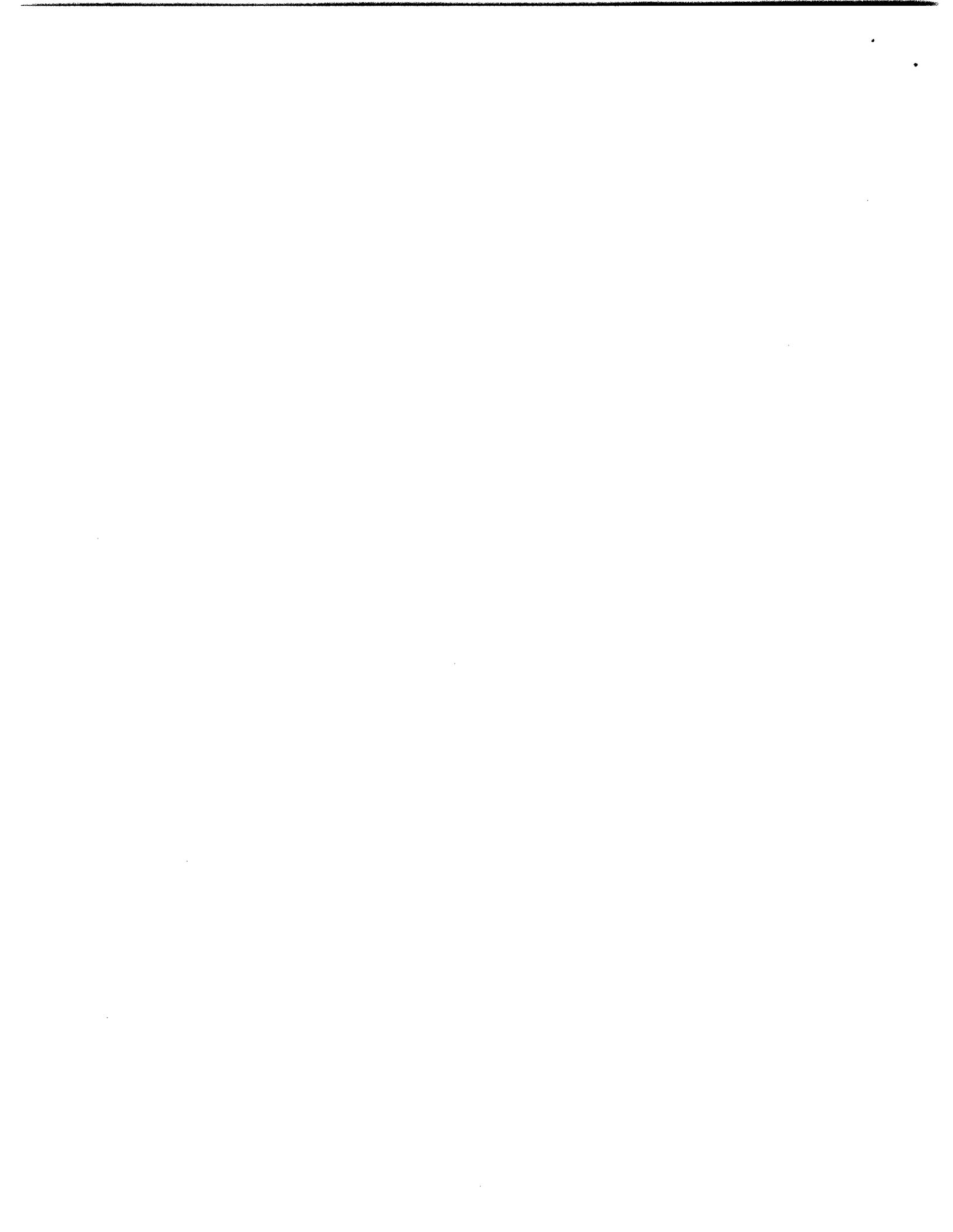
14 **SEC. 7.**

15 **SEC. 6.** No appropriation is made and no  
16 reimbursement is required by this act pursuant to Section  
17 6 of Article XIII B of the California Constitution or  
18 Section 2231 or 2234 of the Revenue and Taxation Code  
19 because the Legislature finds and declares that, the  
20 duties, obligations, or responsibilities imposed on local  
21 agencies or school districts by this act are such that  
22 related costs are incurred as part of their normal  
23 operating procedures.

24 **SEC. 7.** *This act is an urgency statute necessary for*  
25 *the immediate preservation of the public peace, health,*  
26 *or safety within the meaning of Article IV of the*  
27 *Constitution and shall go into immediate effect. The facts*  
28 *constituting the necessity are:*

29 *The protection of the public from violent sex offenders*  
30 *requires that this bill take immediate effect.*

EXHIBIT C



OWEN K. KUNS  
RAY H. WHITAKER  
CHIEF DEPUTIES

JERRY L. BASSETT  
KENT L. DECHAMBEAU  
STANLEY M. LOURIMORE  
EDWARD K. PURCELL  
JOHN T. STUDEBAKER

JOHN CORZINE  
ROBERT CULLEN DUFFY  
ROBERT D. GRONKE  
SHERWIN C. MACKENZIE JR.  
ANN M. MACKAY  
TRACY D. POWELL II  
RUSSELL L. SPARLING  
JIMMIE WING  
PRINCIPAL DEPUTIES

3021 STATE CAPITOL  
SACRAMENTO 95814  
(916) 445-3057

8011 STATE BUILDING  
107 SOUTH BROADWAY  
LOS ANGELES 90012  
(213) 820-2550

# Legislative Counsel of California

BION M. GREGORY

GERALD ROSS ADAMS  
DAVID D. ALVES  
MARTIN L. ANDERSON  
PAUL ANTILA  
CHARLES C. ASBILL  
JAMES L. ASHFORD  
SHARON G. BIRENBAUM  
AMELIA I. BUDD  
EILEEN J. BURTON  
LINDA A. CABATIC  
HENRY J. CONTIPERAS  
BEN E. DALE  
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C. DAVID DICKERSON  
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JOYCE E. HEE  
THOMAS R. HEUER  
JACK I. HORTON  
SANDRA HUGHES  
MICHAEL J. KERSTEN  
L. DOUGLAS KINNEY  
VICTOR KUDELSKI  
ROMULO I. LOPEZ  
JAMES A. MARSALA  
PETER F. MELNCOE  
ROBERT G. MILLER  
JOHN A. MOGER  
VERNE L. OLIVER  
EUGENE L. PAINE  
MARGUERITE ROTH  
JERRY J. RUIZ  
MARY SHAW  
WILLIAM K. STARR  
JEFF THOM  
MICHAEL H. UPSON  
RICHARD B. WEISBERG  
DANIEL A. WEITZMAN  
THOMAS D. WHELAN  
CHRISTOPHER ZIRKLE  
DEPUTIES

Sacramento, California  
September 28, 1981

Honorable Edmund G. Brown Jr.  
Governor of California  
Sacramento, CA

## REPORT ON ENROLLED BILL

S.B. 586

JOINT COMMITTEE FOR REVISION OF THE  
PENAL CODE. Amends Secs. 288 and  
1203.065, and adds Secs. 667.51 and  
1203.066, Pen. C., re sex offenders.

SUMMARY:

See Legislative Counsel's Digest on the  
attached copy of the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY:

Approved.

TITLE:

Approved.

CONFLICTS:

This bill and S.B. 776, which is also  
before the Governor, would both amend and make  
different changes in Section 1203.065 of the Penal  
Code.

This bill would prohibit the granting of  
probation for persons convicted of certain sexual  
crimes against children in specified circumstances  
by creating a new section and deleting any reference  
to those cases from Section 1203.065.

S.B. 776, which would take effect immediately as an urgency statute, would prohibit probation in cases of pimping, pandering, and specified commercial activities relative to children.

S.B. 776 does not contain the changes made by this bill in Section 1203.065.

However, this bill would incorporate the changes made by S.B. 776 in Section 1203.065.

Thus, if both this bill and S.B. 776 are chaptered and S.B. 776 is chaptered last, the changes made by S.B. 776 in Section 1203.065 will prevail (Sec. 9605, Gov. C.).

However, if this bill is chaptered last, the changes made by both bills will become law. In that event, the changes made by S.B. 776 would take effect immediately and would remain operative until January 1, 1982, the effective date of this bill, when Section 1203.065 would be further amended in the form set forth in Section 3.5 of this bill.

Bion M. Gregory  
Legislative Counsel

*Ben E. Dale*

By  
Ben E. Dale  
Deputy Legislative Counsel

BED:lgh

Two copies to Honorable Omer L. Rains, Chairman,  
Joint Committee for Revision of the Penal Code,  
and Honorable Jim Ellis, pursuant to Joint Rule 34.

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE September 29, 1981
BILL NO. SB 586	AUTHOR Rains

Vote—Senate \_\_\_\_\_ Unanimous

Ayes— 28  
Noes— 0

Vote—Assembly \_\_\_\_\_ Unanimous

Ayes— 71  
Noes— 0

SB 586 - Rains

Increases penalties, permits enhancements, and prohibits probation for specified sexual crimes against children. The bill also authorizes extended commitment of mentally disordered sex offenders under specified circumstances.

SUPPORT

Department of Finance  
Legal Affairs Unit

OPPOSITION

No expressed opposition

FISCAL IMPACT

Unknown

Recommendation  
APPROVE

**NO ENROLLED BILL REPORT REQUIRED**

MH 37 (7/81)

Department Mental Health	Author Rains	Bill Number SB 586
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Technical Bill — No program or fiscal changes to existing program. No analysis required. No recommendation on signature.

Bill as enrolled no longer within scope of responsibility or program of this Department.

Comments: The enrolled version of SB 586 deletes the provision for the extended  
commitment of dangerous sex offenders beyond the determinate prison sentence by a  
transfer to a facility under the jurisdiction of the Department of Mental Health.  
Therefore, the bill no longer impacts this Department.

Recommendation  
No recommendation.

Department Director <i>Al M. Galt</i>	Date <i>9/25/81</i>	Agency Secretary <i>Carol Shelley</i>	Date <i>9/25/81</i>
--	------------------------	--	------------------------

AUTHOR  
Roberti, et al.

BILL NUMBER  
SB 586

SUBJECT:

DATE LAST AMENDED

September 8, 1981

SB 586 increases penalties, permits enhancements, and prohibits probation for specified sexual crimes against children. The bill also authorizes extended commitment of mentally disordered sex offenders under specified circumstances.

SUMMARY OF REASONS FOR SIGNATURE:

On a policy basis, the Administration supports protecting the public by extending commitment of dangerous sex offenders, including increasing penalties and prohibiting probation for specified sexual crimes against children as contained in SB 586.

FISCAL SUMMARY

Department/Agency	FC 1982-83	FC 1983-84	FC 1984-85	FC 1985-86	Fund
A. Corrections					
1. State Operations					
a. Sex crimes against children	B \$760,700 <sup>1/</sup>	B \$2,114,300 <sup>1/</sup>	B \$13,527,100 <sup>1/</sup>	B \$20,527,100 <sup>1/</sup>	General
b. Extended Commitments <sup>2/</sup>	Unknown	B Unknown	B Unknown	B Unknown	General
2. Capital Outlay <sup>3/</sup>	--	B Unknown	B Unknown	B Unknown	General
B. Department of Mental Health	--	B Unknown	B Unknown <sup>4/</sup>	B Unknown <sup>4/</sup>	General
C. Board of Prison Terms	--	B Unknown <sup>5/</sup>	B Unknown <sup>5/</sup>	B Unknown <sup>5/</sup>	General
D. Local - nonreimbursable	--	Unknown	Unknown	Unknown	Local

<sup>1/</sup>Assumes upper range of impact for probation provisions

<sup>2/</sup>Possible significant costs in 1980-81 depending on applicability of diagnosis provisions to inmates already in prison.

<sup>3/</sup>Possibly exceeding \$68 million.

<sup>4/</sup>Possibly major. Extended commitment provisions would cost a minimum of \$200,000 annually just for inmate diagnosis.

<sup>5/</sup>Probably significant.

RECOMMENDATION

Sign the bill

PRINCIPAL ANALYST

R. Reynolds 9/29/81

PROGRAM BUDGET MANAGER

[Signature]

9-29-81

DEPARTMENT REPRESENTATIVE

DATE

DIRECTOR

DATE

[Signature] 9-29-81

AUTHOR

DATE LAST AMENDED

BILL NUMBER

Roberti, et al.

September 8, 1981

SB 586

ANALYSIS

A. Specific Findings

1. Analysis of this bill is divided into two sections: (1) lewd and lascivious on children, and (2) extended commitments for mentally disordered sex offenders.

Current law provides that committing a lewd and lascivious act on a child under 14 years old is punishable by imprisonment in State prison for three, five, or seven years. In addition, five or ten year enhancements may be imposed for prior prison terms for any violent sex offenses. Probation is prohibited for child molestation involving violence.

SB 586 amends current law by (1) increasing sentences to three, six, or eight years for lewd and lascivious acts, (2) allowing enhancement provisions to be applied to nonviolent child molestation, and (3) prohibiting probation for nonviolent child molestation under specified circumstances.

Comments: Last year there were about 120 persons sentenced to prison for lewd and lascivious acts upon children. The average sentence served was 39 months. The increase in the determinate sentence to three, six, or eight years under SB 586 would result in an average sentence served of 48 months. The impact of the increased sentence is delayed until 1985-86 because the original 39 months must first be served, but eventually the longer sentence will result in an additional 90 inmates annually in prison.

The impact of the enhancements is difficult to estimate since no data exists on prior convictions (as opposed to prior prison terms), but what evidence is available suggests that the enhancement provisions will have negligible impact on prison population. On the other hand, denial of probation would affect up to a maximum of 365 felons who would be new to prison and would serve an estimated term of 46 months. As a result, inmate years could increase by up to 180 in 1982-83, and 1,270 by 1985-86. This represents a major potential addition to inmate population.

2. Under existing law, persons convicted of felony sex offenses may be committed to prison or found to be mentally disordered sex offenders and committed to the Department of Mental Health. Those committed to prison are psychiatrically evaluated in the reception process and, if special care is indicated, they are generally sent to the California Medical Facility or the California Men's Colony.

Also under current statutes, the Determinate Sentence Law requires a prison sentence of specific length. There is no provision under which the felon may be continued in penal confinement, regardless of his mental state, although he/she may be referred for possible civil commitment.

SB 586 amends current law by providing that a person committed to prison for a felony sex offense who is predisposed to committing sex offenses and who constitutes a substantial danger of physical harm to others may be committed beyond the determinate prison term for two years in a State hospital or in a treatment unit of the Department of Corrections. The bill would require Correction's treatment unit to have facilities comparable to a State hospital.

Discussion: Corrections does not have data pertaining to the number of inmates who might be classified as dangerous sex offenders and thus subject to the proposed extended commitment. An estimated 1,600 inmates are incarcerated for sex offenses,

(continued)

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Roberti, et al.	September 8, 1981	SB 586

## ANALYSIS

## A. Specific Findings (continued)

but a diagnostic evaluation would have to be made on each to determine the number who would be classified as dangerous. In addition, there are no data on how many of the dangerous sex offenders would be committed to a State hospital rather than a correctional facility. Currently, about 425 persons convicted of sex felonies are sent to a State hospital for treatment as an MDSO.

It should be noted that both Corrections and Mental Health are supporting legislation to abolish the category of MDSO. If the MDSO program is eliminated and SB 586 is enacted, all extended commitments would probably be served in prison.

## B. Fiscal Analysis

The fiscal impact of extended commitments upon inmate and patient populations of Corrections and Mental Health is unknown, but possibly major. At the minimum, Corrections estimates that it would incur \$200,000 annually for evaluating whether sex offenders were dangerous. A portion of these costs could be incurred as early as 1981-82 if it were ruled that extended commitments can be applied to inmates already in prison.

The fiscal impact of enhancements for nonviolent sexual crimes against children is presumed to be negligible. It should be noted that enhancements would be based on prior felony convictions, as opposed to prior prison terms. Corrections does not have data on prior convictions and must base its conclusion of negligible impact on prison term data.

The fiscal impact of increased sentences and denial of probation to child molesters is major. The additional 90 inmate-years resulting from longer sentences will cost anywhere from \$150,000 to \$1.1 million\* (in 1980-81 dollars) beginning in 1985-86. If the upper range of impact is assumed for the provisions on denial of probation (1270 inmate years), annual support costs could vary from \$300,000 to \$2.2\* million in 1982-83 and might increase up to \$15 million by 1985-86 (in 1980-81 dollars). However, costs associated with inmate population increases would be considered annually during the budget process.

When inflation is considered, the annual support cost of the child molestation portion of the bill could be as high as \$20.7 million by 1985-86.

Capital outlay impact could be enormous (\$80 million per 1,000 bed institution) but due to the inability to precisely estimate population impact, attendant costs are not identifiable at this time. (Speculative estimate: Assuming a construction program of \$50,000 per bed at the minimum, 1360 new beds would cost \$68 million. Costs could run higher if medium security facilities were constructed.) Any capital outlay requirements would also be considered as part of the department's new facilities plan during the budget process.

The bill contains a State-mandated local program, costs for which are nonreimbursable.

Range of impact for a fixed number of inmate years results from different methods of costing. On an incremental basis, each inmate year up to 100 costs \$1,700, and each inmate year from 100 to 1,000 costs \$3,000 on a per capita (full) cost basis, however, each inmate year costs \$12,000. The Department uses incremental costs which is a questionable practice since the prison system is at 110 percent capacity. However, its data has been used in the fiscal summary.

**Suggested Signature Message**

**SB 586**

**I am signing SB 586 as it would increase penalties for persons convicted of sexual crimes against children and extends commitments for mentally disordered sex offenders. I consider it a significant step forward in our fight against crime. This measure has potentially significant costs over time. However, because of its importance we will manage these costs within existing resources.**

# NO ENROLLED BILL REPORT REQUIRED

YOUTH AND ADULT CORRECTIONAL AGENCY

DEPARTMENT Youth Authority	AUTHOR Roberti	BILL NUMBER SB 586
<input type="checkbox"/> Technical bill—no program or fiscal changes to existing program. No analysis required. No recommendation on signature.		
<input checked="" type="checkbox"/> Bill as enrolled no longer within scope of responsibility or program of this Department.		
Comments: <u>The two sections of the bill that would have affected</u> <u>the Youth Authority's area of responsibility</u> <u>(amendments to §§ 707 and 1732.5 W&amp;IC) were amended</u> <u>out of the bill by the August 25, 1981 amendment.</u>		
RECOMMENDATION		
DEPARTMENT DIRECTOR <i>Pearl S. West</i>	DATE 9/22/81	AGENCY SECRETARY <i>Taugher</i>
		DATE 9-23-81

Pearl S. West, Director, 209/477-1571

Prepared by: Richard Lew, Ass't. Dir., Leg. 916/422-3394

# ENROLLED BILL REPORT

AGENCY <b>GOVERNOR'S OFFICE</b>	BILL NUMBER <b>SB 586</b>
DEPARTMENT, BOARD OR COMMISSION <b>LEGAL AFFAIRS</b>	AUTHOR <b>Rains</b>

Joint Committee on Revision of the Penal Code

This bill enacts strong mandatory prison terms for child molesters under the new Roberti-Imbrecht-Rains-Goggin Child Sexual Abuse Prevention Act as follows:

1. The base penalty for child molest is increased from 3, 5 or 7 years to 3, 6 or 8 years;
2. A new sentence of 15 years to life is imposed for repeat sex offenders as defined;
3. Prison is mandatory for all serious cases of child molest, unless the court expressly finds:
  - the defendant is a close relative of the child, and
  - imprisonment would not benefit the victim, and
  - rehabilitation is feasible, and
  - there is no danger to the child if the defendant is not sent to prison

RECOMMENDATION:

SIGN



ANALYST <b>Allen Sumner</b>	DATE <b>9/24/</b>	LEGAL AFFAIRS SECRETARY <b>Byron S. Georgiou</b>	DATE <b>9/25/81</b>
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# ENROLLED BILL REPORT

Ch. 1064

AGENCY <b>YOUTH AND ADULT CORRECTIONAL AGENCY</b>	BILL NUMBER <b>SB 586 as enrolled</b>
DEPARTMENT, BOARD OR COMMISSION <b>CORRECTIONS</b>	AUTHOR <b>ROBERTI</b>

## SUBJECT

Increases the basic sentence for child molesting, provides additional penalties for repeat offenders and generally prohibits probation for child molesters.

## HISTORY, SPONSORSHIP AND RELATED BILLS

The measure started out as the product of the Joint Committee to Revise the Penal Code which held an interim hearing on the general topic. When it reached the Criminal Justice Committee, its content was stricken and, over the strong objections of its author, the content of AB 457 was substituted. AB 457 was originally sponsored by the Ventura County District Attorneys Office (which also supported SB 586 in its Senate version) and was supported by S.L.A.M. (Concerned Citizens for Stronger Legislation Against Child Molesters). Additional substantive amendments were made in a conference committee. The department was not authorized to take a position. SB 278, if signed, will result in additional child molesters being sent to prison instead of state hospitals.

## VOTE

Senate Judiciary 5-1 (Sieroty); Senate Finance 9-0; Senate 28-0. After converting it to AB 457, Criminal Justice approved 9-0; Ways and Means 23-0; Assembly 71-0. Senate refused to concur. Senate adopted Conference Report 38-0. Assembly adopted 69-0. The Assembly had approved AB 457 8-0 in Criminal Justice; Ways and Means 20-0 and Assembly 77-0. SB 586 was one of the very few major cost penalty bills approved by Ways and Means.

## SPECIFIC FINDINGS

### Longer Sentences and Increased Enhancements

Section 288 provides that felons committing lewd and lascivious acts on children under 14 years old shall be imprisoned in the state prison for three, five or seven years. SB 586 would increase the punishment to three, six or eight years.

Under current law (Section 667.6 of the Penal Code) five-year or ten-year enhancements are imposed on any person convicted of certain violent sex offenses, including violations of Section 288(b) (committing a lewd and lascivious act on a child under 14 years old by using force, violence, etc.) who has been previously convicted of such violent sex offenses. A five-year enhancement is imposed per prior conviction on any person who has been previously convicted of any of those offenses. A 10-year enhancement is imposed per prior prison term (PPT) for any person who has served two or more prior prison terms for any of those sex offenses.

These enhancements can't be imposed for any conviction (for the five-year enhancements) or for any PPT served (for the 10-year enhancement) prior to a period of 10 years in which the person remained free of both prison custody and the commission of a felony offense.

RECOMMENDATION			
SIGN			
DEPARTMENT HEAD <i>Robert Barthelemy</i>	DATE 9/25/81	AGENCY HEAD <i>Laugher</i>	DATE 9/28/81

SPECIFIC FINDINGS - continued

SB 586 would add Section 667.51 regarding repeat sex offenders. It would provide that any Section 288 offender shall receive a five-year enhancement for each prior conviction of rape, forcible rape in concert with another person, incest, sodomy, child molestation (288PC) oral copulation, or object rape. This enhancement would not be imposed for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of a felony offense.

The section is apparently inconsistent since the enhancement is for convictions, but the washout provision specifies prison terms. The change to convictions was made in the Conference Report without changing the rest of the section. This could result in the anomalous situation of charging prior convictions for which the person got probation and washing out more serious offenses for which the person was sent to prison.

The bill also provides that a child molester who has served two or more prior prison terms for committing a sex offense listed above shall receive a punishment of 15 years to life.

This may well mean that the 10-year enhancement per prior prison term for any person who has served two or more PPT's for committing a violent sex offense probably would not be allowed since the 15 years to life punishment is for committing a sex offense and serving two or more PPT's for a sex offense; the PPT's would then be an element of the offense. This could result in some felons with two or more PPT's for violent sex offenses serving less time under the provisions of SB 586 than under current law, as shown in the following example.

	Felon A (SB 586)	Felon B (Current law)
Base term for a felon with two PPT's for sex offenses	15 years to life	3, 5, or 7 years
Enhancements for two PPT's for violent sex offenses	0	20 years
Sentence	15 years to life <sup>1/</sup>	23 - 27 years
Time to serve in prison	9.6 years to life <sup>1/</sup>	15.0 years - 17.6 years

<sup>1/</sup> Parole date to be set by Board of Prison Terms

Denial of Probation

Current law prohibits probation or suspension of sentence for persons convicted of rape, rape in concert with another, child molestation, object rape, sodomy or oral copulation when the act is accomplished by force, violence, duress, menace or threat of bodily harm. It is also forbidden for persons convicted of assault with intent to commit rape or sodomy if the person used a firearm or inflicted great bodily injury on the victim.

SPECIFIC FINDINGS - continued

The bill expands the prohibition of probation for persons convicted of molestation to include a child molester who:

1. uses force, violence, etc.;
2. inflicts bodily injury on the child victim;
3. was a stranger or made friends with the child victim for the purpose of violating Section 288;
4. used a weapon;
5. has had a prior conviction of Section 261, 264.1, 267, 285, 288, 289, 286 by force, 288a by force, 220, or 266;
6. kidnaps for the purpose of violating Section 288;
7. is convicted of committing Section 288 offenses on more than one victim;
8. has substantial sexual conduct, as defined, with a child under 11 years old;
9. occupies a position of special trust and commits an act of substantial sexual conduct, as defined.

Paragraphs (7), (8), and (9) would not apply when the court makes all of the following findings:

1. The defendant is the victim's natural parent, adoptive parent, stepparent, etc.;
2. Imprisonment of the defendant is not in the best interest of the child;
3. Rehabilitation of the defendant is feasible;
4. There is no threat of physical harm to the child victim if the defendant is not imprisoned.

ANALYSIS

The increase in the basic sentence for child molestation will affect about 120 prisoners a year who presently come to prison based on 1980 intake (more if the mentally disordered sex offender program is discontinued). The average time served in prison is currently 39 months. This bill will increase the time to an average of 48 months. Assuming the usual six months lag in commitments after the effective date, the additional time will not increase the prison population until 1985-86 when it will add 35 inmate years.

A person convicted of forcible child molestation is now subject to a sentence enhancement of five years for each prior conviction of various forcible sex crimes or if he has served two prior prison terms for them, a 10-year enhancement for each. If he has been convicted of child molestation without force, he is subject to a three-year enhancement for each prior prison sentence.

ANALYSIS - continued

There is no data available with respect to prior convictions of the offenses listed in the bill. Few of the child molesters currently sentenced to prison have served a prior prison term and still less have served a prior term for the specific offenses listed. Therefore, it is unlikely the bill's provisions will add significantly to time served. As noted earlier, the provisions could reduce time served under some circumstances.

Probation data for 1979 indicates that about 365 defendants convicted of child molestation received probation. Judicial Council data for the first half of 1980 indicates a similar number.

Since definitive data is not available as to the proportions of child molesters now receiving probation who fit the categories in the bill--and since the wording of Section (9) relating to persons in positions of special trust could be read to include persons convicted of crimes other than child molestation--all persons now receiving probation are considered in this estimate to be sent to prison.

A special study of every seventh prisoner received for child molestation during the first half of 1980 supports use of the maximum figure. Eight out of 10 fell within the probation provisions of the bill, most of them coming under more than one of the prohibitions. Two of the eight could be considered under the court's four-part test for probation.

Projected population effect of the bill is estimated to be:

Fiscal Year	Increasing Punishment to 3, 6, or 8 years (120 felons) or 15 years to life	Enhancements for prior convictions	Probation prohibited (Maximum 365 new to prison)	Total
1981-82	0	unable to	0	0
1982-83	0	estimate	180	180
1983-84	0	or	550	550
1984-85	0	negligible	910	910
1985-86	35	impact	1,270	1,305

Inmate years would stabilize at 1,470 in FY 1986-87 (70 for the 120 felons and 1,400 for the 365 felons new to prison).

FISCAL FINDINGS

The maximum contracted costs for felons entering prison between July 1, 1982 (the assumed date the impact would first be seen on intakes) and June 30, 1986 is estimated to be \$47,850,900. The contracted costs for each of the changes proposed in this bill are estimated as follows:

FISCAL IMPACT - continued

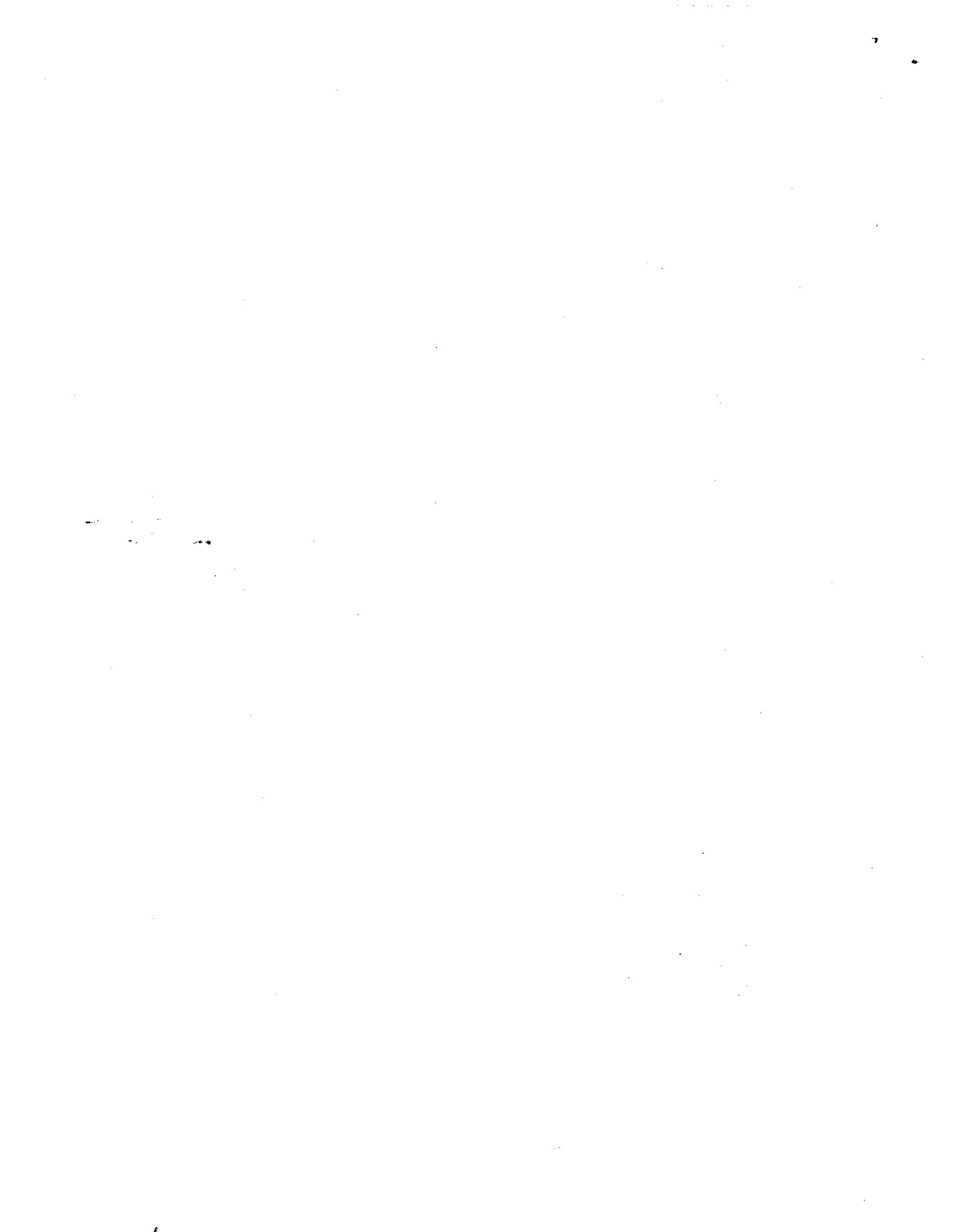
	# of felons per year	Reception center	Care & treatment	Parole	Total (maximum)
a. Increasing punishment to 3, 6, or 8 years for Section 26C offenders	120	0	\$2,902,900	0	\$2,902,900
b. Enhancements for prior prison terms	negligible	0	negligible	0	negligible
c. Probation prohibited for some Section 25C(z) offenders	365 new to prison (maximum)	\$751,500 (maximum)	\$42,463,900 (maximum)	\$2,332,600 (maximum)	\$45,548,000 (maximum)
<b>TOTAL (maximum)</b>	<b>485 felons</b>	<b>\$751,500</b>	<b>\$44,766,800</b>	<b>\$2,332,600</b>	<b>\$47,850,900</b>

Cash outlay required for these provisions is estimated to be:

	<u>Reception centers</u>	<u>Care and treatment</u>	<u>Parole</u>	<u>Total</u>
1981/82	0	0	0	0
1982/83	\$169,400	\$ 591,300	0	\$ 760,700
1983/84	181,000	1,933,300	0	2,114,300
1984/85	193,800	3,422,500	0	3,616,300
1985/86	207,300	20,459,800	\$6,000	20,673,100

RECOMMENDATION: SIGN

The measure received overwhelming votes in the Legislature, touches upon a very emotional problem, and was not opposed by the Administration. The measure will cause a relatively immediate and significant increase in the population of the department's already critically overcrowded facilities. It will add to capital outlay required and substantially increase operating costs.



DECLARATION OF SERVICE BY MAIL

Case Name: *People v. Soto*, No. S167531  
Court of Appeal No. H030475  
Santa Clara County Superior Court No. EE504317

I am employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause: my business address is P.O. Box 3112, Oakland, CA 94609

On June 17, 2009, I served the attached

**APPELLANT'S REQUEST FOR JUDICIAL NOTICE**

in said cause, placing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail at Oakland, California, addressed as follows:

Office of Attorney General  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, CA 94102

Sixth District Appellate Program  
100 N. Winchester Blvd.,  
Suite 310  
Santa Clara, CA 95050

Mr. Jaime Soto, F-37241  
Red Rock Correctional Facility  
1750 East Arica Rd.  
Eloy, AZ 85231

Santa Clara County Superior Court  
191 N. First St  
San Jose, CA 95113

Court of Appeal  
Sixth Appellate District  
333 W. Santa Clara St, Ste. 1060  
San Jose, CA 95113

Santa Clara Public Defender  
120 W. Mission St.  
San Jose, CA 95510

Santa Clara County District Attorney  
West Wing, 5th Fl.  
70 W. Hedding St.  
San Jose, CA 95110

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Oakland, California on June 17, 2009.



Heather J. MacKay

