

ASSEMBLY BILL

No. 1683

Introduced by Assembly Member Shirley Horton

February 22, 2005

An act to amend Section 290.46 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1683, as introduced, Shirley Horton. Sex offenders: Megan's law.

Existing law requires the Department of Justice to make available certain information about sex offenders on an internet Web site.

This bill would make a technical, nonsubstantive change to that provision.

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

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

1 SECTION 1. Section 290.46 of the Penal Code is amended to
2 read:
3 290.46. (a) On or before the dates specified in this section,
4 the Department of Justice shall make available information
5 concerning persons who are required to register pursuant to
6 Section 290 to the public via an Internet Web site as specified in
7 this section. The department shall update the Web site on an
8 ongoing basis. All information identifying the victim by name,
9 birth date, address, or relationship to the registrant shall be
10 excluded from the Web site. The name or address of the person's
11 employer and the listed person's criminal history other than the

1 specific crimes for which the person is required to register shall
2 not be included on the Web site. The Web site shall be translated
3 into languages other than English as determined by the
4 department.

5 (b) (1) On or before July 1, 2005, ~~with respect to a person~~
6 ~~who has been convicted of the commission or the attempted~~
7 ~~commission of any of the offenses listed in this subdivision or the~~
8 ~~statutory predecessors of any of these offenses, or any offense~~
9 ~~which, if committed or attempted to be committed in this state,~~
10 ~~would have been punishable as one or more of the offenses listed~~
11 ~~in this subdivision,~~ the Department of Justice shall make
12 available to the public via the Internet Web site ~~his or her~~ *the*
13 *following information about any person who has been convicted*
14 *of the commission or the attempted commission of any of the*
15 *offenses listed in this subdivision or the statutory predecessors of*
16 *any of these offenses, or any offense that, if committed or*
17 *attempted to be committed in this state, would have been*
18 *punishable as one or more of the offenses listed in this*
19 *subdivision: any names and known aliases, a photograph, a*
20 *physical description, including gender and race, date of birth,*
21 *criminal history, the address at which the person resides, and any*
22 *other information that the Department of Justice deems relevant,*
23 *but not the information excluded pursuant to subdivision (a).*

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

25 (A) Subdivision (b) of Section 207.

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

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

29 (D) Section 264.1.

30 (E) Section 269.

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

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

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

35 (I) Section 288.5.

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

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

1 (c) (1) On or before July 1, 2005, ~~with respect to a person~~
2 ~~who has been convicted of the commission or the attempted~~
3 ~~commission of any of the offenses listed in paragraph (2) or the~~
4 ~~statutory predecessors of any of these offenses, or any offense~~
5 ~~which, if committed or attempted to be committed in this state,~~
6 ~~would have been punishable as one or more of the offenses listed~~
7 ~~in this subdivision,~~ the Department of Justice shall make
8 available to the public via the Internet Web site ~~his or her~~ *the*
9 *following information about any person who has been convicted*
10 *of the commission or the attempted commission of any of the*
11 *offenses listed in this subdivision or the statutory predecessors of*
12 *any of these offenses, or any offense that, if committed or*
13 *attempted to be committed in this state, would have been*
14 *punishable as one or more of the offenses listed in this*
15 *subdivision: any names and known aliases, a photograph, a*
16 *physical description, including gender and race, date of birth,*
17 *criminal history, the community of residence and ZIP Code in*
18 *which the person resides, and any other information that the*
19 *Department of Justice deems relevant, but not the information*
20 *excluded pursuant to subdivision (a). However, the address at*
21 *which the person resides shall not be disclosed until a*
22 *determination is made that the person is, by virtue of his or her*
23 *additional prior or subsequent conviction of an offense listed in*
24 *paragraph (2) of subdivision (a) of Section 290, subject to this*
25 *subdivision. On or before July 1, 2006, the Department of Justice*
26 *shall determine whether any person convicted of an offense listed*
27 *in paragraph (2) also has one or more prior or subsequent*
28 *convictions of an offense listed in paragraph (2) of subdivision*
29 *(a) of Section 290, and, for those persons, the Department of*
30 *Justice shall make available to the public via the Internet Web*
31 *site the address at which the person resides.*

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

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

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

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

- 1 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
2 (i), of Section 288a.
- 3 (E) Subdivision (b), (d), (e), or (i) of Section 289.
- 4 (d) (1) On or before July 1, 2005, with respect to a person
5 who has been convicted of the commission or the attempted
6 commission of any of the offenses listed in this subdivision or the
7 statutory predecessors of any of these offenses, or of any offense
8 which, if committed or attempted to be committed in this state,
9 would have been punishable as one or more of the offenses listed
10 in this subdivision, the Department of Justice shall make
11 available to the public via the Internet Web site his or her names
12 and known aliases, a photograph, a physical description,
13 including gender and race, date of birth, criminal history, the
14 community of residence and ZIP Code in which the person
15 resides, and any other information that the Department of Justice
16 deems relevant, but not the information excluded pursuant to
17 subdivision (a) or the address at which the person resides.
- 18 (2) This subdivision shall apply to the following offenses:
- 19 (A) Section 220, except assault to commit mayhem, with no
20 prior or subsequent conviction of an offense listed in paragraph
21 (2) of subdivision (a) of Section 290.
- 22 (B) Subdivision (a) of Section 243.4, provided that the offense
23 is a felony.
- 24 (C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261,
25 with no prior or subsequent conviction of an offense listed in
26 paragraph (2) of subdivision (a) of Section 290.
- 27 (D) Section 266, provided that the offense is a felony.
- 28 (E) Section 266c, provided that the offense is a felony.
- 29 (F) Section 266j.
- 30 (G) Section 267.
- 31 (H) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
32 (i), of Section 286, with no prior or subsequent conviction of an
33 offense listed in paragraph (2) of subdivision (a) of Section 290.
- 34 (I) Subdivision (c) of Section 288, provided that the offense is
35 a misdemeanor.
- 36 (J) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
37 (i), of Section 288a, with no prior or subsequent conviction of an
38 offense listed in paragraph (2) of subdivision (a) of Section 290.

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

4 (L) Section 647.6.

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

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

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

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

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

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

1 (g) Notwithstanding Section 6254.5 of the Government Code,
2 disclosure of information pursuant to this section is not a waiver
3 of exemptions under Chapter 3.5 (commencing with Section
4 6250) of Title 1 of Division 7 of the Government Code and does
5 not affect other statutory restrictions on disclosure in other
6 situations.

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

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

16 (i) Any person who is required to register pursuant to Section
17 290 who enters the Web site is punishable by a fine not
18 exceeding one thousand dollars (\$1,000), imprisonment in a
19 county jail for a period not to exceed six months, or by both that
20 fine and imprisonment.

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

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

27 (A) Health insurance.

28 (B) Insurance.

29 (C) Loans.

30 (D) Credit.

31 (E) Employment.

32 (F) Education, scholarships, or fellowships.

33 (G) Housing or accommodations.

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

36 (3) This section shall not affect authorized access to, or use of,
37 information pursuant to, among other provisions, Sections 11105
38 and 11105.3, Section 8808 of the Family Code, Sections 777.5
39 and 14409.2 of the Financial Code, Sections 1522.01 and

1 1596.871 of the Health and Safety Code, and Section 432.7 of
2 the Labor Code.

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

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

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

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