

ASSEMBLY BILL

No. 757

Introduced by Assembly Member Blumenfield

February 17, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 757, as introduced, Blumenfield. Sex offenders: public information.

Existing law provides that with respect to a person who has been convicted of specified sex crimes, the Department of Justice shall make available to the public via the department's Internet Web site certain identifying and criminal history information. Existing law provides a statutory scheme for persons who have been convicted of the commission or attempted commission of specified crimes, including, among others, sexual battery and misdemeanor molesting of a child, and who meet specified conditions to file an application with the department for exclusion from the Internet Web site, as specified.

This bill would provide that with respect to those persons whose application for exclusion was granted by the department pursuant to the provisions specified above, if at any time after exclusion, any law enforcement agency notifies the department that, based on facts known to the agency about the offender, the agency believes that public safety may be compromised by the continued exclusion of the offender from public posting on the Internet Web site, the department shall, 30 days after notifying the offender, make information about the offender available to the public on the Internet Web site, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
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) (1) 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 Section
6 290 to the public via an Internet Web site as specified in this
7 section. The department shall update the Internet 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 Internet Web site. The name or address of the
11 person’s employer and the listed person’s criminal history other
12 than the specific crimes for which the person is required to register
13 shall not be included on the Internet Web site. The Internet Web
14 site shall be translated into languages other than English as
15 determined by the department.

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

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

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

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

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

32 (B) (i) Any state facility that releases from incarceration a
33 person who was incarcerated because of a crime for which he or
34 she is required to register as a sex offender pursuant to Section
35 290 shall, within 30 days of release, provide the year of release

1 for his or her most recent offense requiring registration to the
2 Department of Justice in a manner and format approved by the
3 department.

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

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

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

27 (3) The State Department of Mental Health shall provide to the
28 Department of Justice Sex Offender Tracking Program the names
29 of all persons committed to its custody pursuant to Article 4
30 (commencing with Section 6600) of Chapter 2 of Part 2 of Division
31 6 of the Welfare and Institutions Code, within 30 days of
32 commitment, and shall provide the names of all of those persons
33 released from its custody within five working days of release.

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

1 predator, the address at which the person resides, and any other
2 information that the Department of Justice deems relevant, but not
3 the information excluded pursuant to subdivision (a). On or before
4 January 1, 2013, the department shall make available to the public
5 via the Internet Web site his or her static SARATSO score and
6 information on an elevated risk level based on the SARATSO
7 future violence tool.

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

10 (A) Section 187 committed in the perpetration, or an attempt to
11 perpetrate, rape or any act punishable under Section 286, 288,
12 288a, or 289.

13 (B) Section 207 committed with intent to violate Section 261,
14 286, 288, 288a, or 289.

15 (C) Section 209 committed with intent to violate Section 261,
16 286, 288, 288a, or 289.

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

18 (E) Section 264.1.

19 (F) Section 269.

20 (G) Subdivision (c) or (d) of Section 286.

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

23 (I) Subdivision (c) or (d) of Section 288a.

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

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

26 (L) Section 288.5.

27 (M) Subdivision (a) or (j) of Section 289.

28 (N) Section 288.7.

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

32 (P) A felony violation of Section 311.1.

33 (Q) A felony violation of subdivision (b), (c), or (d) of Section
34 311.2.

35 (R) A felony violation of Section 311.3.

36 (S) A felony violation of subdivision (a), (b), or (c) of Section
37 311.4.

38 (T) Section 311.10.

39 (U) A felony violation of Section 311.11.

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

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

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

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

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

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

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

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

1 excluded pursuant to subdivision (a) or the address at which the
2 person resides.
3 (2) This subdivision shall apply to the following offenses and
4 offenders:
5 (A) Subdivision (a) of Section 243.4, provided that the offense
6 is a felony.
7 (B) Section 266, provided that the offense is a felony.
8 (C) Section 266c, provided that the offense is a felony.
9 (D) Section 266j.
10 (E) Section 267.
11 (F) Subdivision (c) of Section 288, provided that the offense is
12 a misdemeanor.
13 (G) Section 288.3, provided that the offense is a misdemeanor.
14 (H) Section 288.4, provided that the offense is a misdemeanor.
15 (I) Section 626.81.
16 (J) Section 647.6.
17 (K) Section 653c.
18 (L) Any person required to register pursuant to Section 290
19 based upon an out-of-state conviction, unless that person is
20 excluded from the Internet Web site pursuant to subdivision (e).
21 However, if the Department of Justice has determined that the
22 out-of-state crime, if committed or attempted in this state, would
23 have been punishable in this state as a crime described in
24 subdivision (c) of Section 290, the person shall be placed on the
25 Internet Web site as provided in subdivision (b) or (c), as applicable
26 to the crime.
27 (e) (1) If a person has been convicted of the commission or the
28 attempted commission of any of the offenses listed in this
29 subdivision, and he or she has been convicted of no other offense
30 listed in subdivision (b), (c), or (d) other than those listed in this
31 subdivision, that person may file an application with the
32 Department of Justice, on a form approved by the department, for
33 exclusion from the Internet Web site. If the department determines
34 that the person meets the requirements of this subdivision, the
35 department shall grant the exclusion and no information concerning
36 the person shall be made available via the Internet Web site
37 described in this section. He or she bears the burden of proving
38 the facts that make him or her eligible for exclusion from the
39 Internet Web site. However, a person who has filed for or been
40 granted an exclusion from the Internet Web site is not relieved of

1 his or her duty to register as a sex offender pursuant to Section
2 290 nor from any otherwise applicable provision of law.

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

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

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

6 (C) A felony violation of Section 311.1, subdivision (b), (c), or
7 (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if
8 the person submits to the department a certified copy of a probation
9 report filed in court that clearly states that all victims involved in
10 the commission of the offense were at least 16 years of age or older
11 at the time of the commission of the offense.

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

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

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

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

39 (3) If the department determines that a person who was granted
40 an exclusion under a former version of this subdivision would not

1 qualify for an exclusion under the current version of this
2 subdivision, the department shall rescind the exclusion, make a
3 reasonable effort to provide notification to the person that the
4 exclusion has been rescinded, and, no sooner than 30 days after
5 notification is attempted, make information about the offender
6 available to the public on the Internet Web site as provided in this
7 section.

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

13 (5) *If at any time after exclusion, any law enforcement agency*
14 *notifies the department that, based on facts known to the agency*
15 *about the offender, the agency believes that public safety may be*
16 *compromised by the continued exclusion of the offender from public*
17 *posting on the Internet Web site, the department shall, 30 days*
18 *after notifying the offender, make information about the offender*
19 *available to the public on the Internet Web site as provided in this*
20 *section.*

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

30 (g) (1) A designated law enforcement entity, as defined in
31 subdivision (f) of Section 290.45, may make available information
32 concerning persons who are required to register pursuant to Section
33 290 to the public via an Internet Web site as specified in paragraph
34 (2).

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

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

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

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

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

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

26 (k) Any person who is required to register pursuant to Section
27 290 who enters an Internet Web site established pursuant to this
28 section shall be punished by a fine not exceeding one thousand
29 dollars (\$1,000), imprisonment in a county jail for a period not to
30 exceed six months, or by both that fine and imprisonment.

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

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

- 37 (A) Health insurance.
- 38 (B) Insurance.
- 39 (C) Loans.
- 40 (D) Credit.

- 1 (E) Employment.
- 2 (F) Education, scholarships, or fellowships.
- 3 (G) Housing or accommodations.
- 4 (H) Benefits, privileges, or services provided by any business
- 5 establishment.

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

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

20 (B) Whenever there is reasonable cause to believe that any
21 person or group of persons is engaged in a pattern or practice of
22 misuse of the information available via an Internet Web site
23 established pursuant to this section in violation of paragraph (2),
24 the Attorney General, any district attorney, or city attorney, or any
25 person aggrieved by the misuse is authorized to bring a civil action
26 in the appropriate court requesting preventive relief, including an
27 application for a permanent or temporary injunction, restraining
28 order, or other order against the person or group of persons
29 responsible for the pattern or practice of misuse. The foregoing
30 remedies shall be independent of any other remedies or procedures
31 that may be available to an aggrieved party under other provisions
32 of law, including Part 2 (commencing with Section 43) of Division
33 1 of the Civil Code.

34 (m) The public notification provisions of this section are
35 applicable to every person described in this section, without regard
36 to when his or her crimes were committed or his or her duty to
37 register pursuant to Section 290 arose, and to every offense
38 described in this section, regardless of when it was committed.

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

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

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