

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1022

Introduced by Assembly Member Fletcher
(Coauthor: Assembly Member Block)

February 18, 2011

An act to amend Sections 290.45 and 290.46 of the Penal Code, relating to sex offender registration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1022, as amended, Fletcher. Sex offenders: registration.

Existing law authorizes any designated law enforcement agency, including the Department of Justice, every district attorney, the Department of Corrections and Rehabilitation, and every state or local agency expressly authorized by statute to investigate or prosecute law violators, to provide information to the public about a person who is required to register as a sex offender, as specified, when disclosing that information is necessary to ensure the public safety, based upon information available to the entity concerning that specific person. Existing law requires that community notification by way of an Internet Web site be governed by this provision and prohibits a law enforcement entity from posting on an Internet Web site any information identifying an individual as a person required to register as a sex offender, except as specified and unless there is a warrant outstanding for that person's arrest.

This bill would expand the provisions described above relating to community notification regarding a registered sex offender by way of an Internet Web site to include, upon request, e-mail or other electronic notification.

Existing law also authorizes a designated law enforcement entity to make available by way of an Internet Web site certain identifying information regarding a person who is required to register as a sex offender if it determines that the public disclosure of the information about a specific offender by way of the entity’s Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender. *Existing law provides that the information released pursuant to these provisions includes, among others, the description and license plate number of the offender’s vehicle, the type of victim targeted by the offender, and relevant parole or probation conditions.* This provision also prohibits the disclosure of the person’s address, unless that address is already on the Department of Justice Internet Web site, as specified. Any person who uses information disclosed pursuant to these provisions to commit a felony shall be punished, in addition and consecutive to any other punishment, by a 5-year term of imprisonment in the state prison.

~~This bill would expand the provision authorizing a designated law enforcement entity to make information available to the public via an Internet Web site by additionally authorizing that entity to make the information available, upon request, via e-mail or other electronic notification. The bill would expand the exception from the prohibition against disclosure of an offender’s address to additionally authorize the disclosure of an offender’s address if the offense for which the offender was required to register was committed against a child who has not yet reached his or her 15th birthday.~~

This bill would remove the authority to provide the description and license plate number of the offender’s vehicle, the type of victim targeted by the offender, and relevant parole or probation conditions, and instead would permit the release of other specified information to be provided, upon request, by e-mail or other electronic notification, including the community of residence and ZIP Code in which the person resides.

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 290.45 of the Penal Code is amended to
- 2 read:
- 3 290.45. (a) (1) Notwithstanding any other provision of law,
- 4 and except as provided in paragraph (2), any designated law

1 enforcement entity may provide information to the public about a
2 person required to register as a sex offender pursuant to Section
3 290, by whatever means the entity deems appropriate, when
4 necessary to ensure the public safety based upon information
5 available to the entity concerning that specific person.

6 (2) The law enforcement entity shall include, with the disclosure,
7 a statement that the purpose of the release of information is to
8 allow members of the public to protect themselves and their
9 children from sex offenders.

10 (3) Community notification by way of an Internet Web site, or,
11 upon request, e-mail or other electronic notification, shall be
12 governed by Section 290.46, and a designated law enforcement
13 entity may not post on an Internet Web site, or include in an e-mail
14 or other electronic notification, any information identifying an
15 individual as a person required to register as a sex offender except
16 as provided in that section unless there is a warrant outstanding
17 for that person's arrest.

18 (b) Information that may be provided pursuant to subdivision
19 (a) may include, but is not limited to, the offender's name, known
20 aliases, gender, race, physical description, photograph, date of
21 birth, address, which shall be verified prior to publication,
22 description and license plate number of the offender's vehicles or
23 vehicles the offender is known to drive, type of victim targeted by
24 the offender, relevant parole or probation conditions, crimes
25 resulting in classification under this section, and date of release
26 from confinement, but excluding information that would identify
27 the victim.

28 (c) (1) The designated law enforcement entity may authorize
29 persons and entities who receive the information pursuant to this
30 section to disclose information to additional persons only if the
31 entity determines that disclosure to the additional persons will
32 enhance the public safety and identifies the appropriate scope of
33 further disclosure. A law enforcement entity may not authorize
34 any disclosure of this information by its placement on an Internet
35 Web site.

36 (2) A person who receives information from a law enforcement
37 entity pursuant to paragraph (1) may disclose that information only
38 in the manner and to the extent authorized by the law enforcement
39 entity.

1 (d) (1) A designated law enforcement entity and its employees
2 shall be immune from liability for good faith conduct under this
3 section.

4 (2) Any public or private educational institution, day care
5 facility, or any child care custodian described in Section 11165.7,
6 or any employee of a public or private educational institution or
7 day care facility which in good faith disseminates information as
8 authorized pursuant to subdivision (c) shall be immune from civil
9 liability.

10 (e) (1) Any person who uses information disclosed pursuant to
11 this section to commit a felony shall be punished, in addition and
12 consecutive to any other punishment, by a five-year term of
13 imprisonment in the state prison.

14 (2) Any person who uses information disclosed pursuant to this
15 section to commit a misdemeanor shall be subject to, in addition
16 to any other penalty or fine imposed, a fine of not less than five
17 hundred dollars (\$500) and not more than one thousand dollars
18 (\$1,000).

19 (f) For purposes of this section, “designated law enforcement
20 entity” means the Department of Justice, every district attorney,
21 the Department of Corrections and Rehabilitation, including, but
22 not limited to, the Division of Juvenile Facilities, and every state
23 or local agency expressly authorized by statute to investigate or
24 prosecute law violators.

25 (g) The public notification provisions of this section are
26 applicable to every person required to register pursuant to Section
27 290, without regard to when his or her crimes were committed or
28 his or her duty to register pursuant to Section 290 arose, and to
29 every offense described in Section 290, regardless of when it was
30 committed.

31 SEC. 2. Section 290.46 of the Penal Code is amended to read:

32 290.46. (a) (1) On or before the dates specified in this section,
33 the Department of Justice shall make available information
34 concerning persons who are required to register pursuant to Section
35 290 to the public via an Internet Web site as specified in this
36 section. The department shall update the Internet Web site on an
37 ongoing basis. All information identifying the victim by name,
38 birth date, address, or relationship to the registrant shall be
39 excluded from the Internet Web site. The name or address of the
40 person’s employer and the listed person’s criminal history other

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

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

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

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

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

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

21 (B) (i) Any state facility that releases from incarceration a
22 person who was incarcerated because of a crime for which he or
23 she is required to register as a sex offender pursuant to Section
24 290 shall, within 30 days of release, provide the year of release
25 for his or her most recent offense requiring registration to the
26 Department of Justice in a manner and format approved by the
27 department.

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

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

1 Rehabilitation shall be limited to information that is currently
2 maintained in an electronic format.

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

12 (3) The State Department of Mental Health shall provide to the
13 Department of Justice Sex Offender Tracking Program the names
14 of all persons committed to its custody pursuant to Article 4
15 (commencing with Section 6600) of Chapter 2 of Part 2 of Division
16 6 of the Welfare and Institutions Code, within 30 days of
17 commitment, and shall provide the names of all of those persons
18 released from its custody within five working days of release.

19 (b) (1) On or before July 1, 2005, with respect to a person who
20 has been convicted of the commission or the attempted commission
21 of any of the offenses listed in, or who is described in, paragraph
22 (2), the Department of Justice shall make available to the public
23 via the Internet Web site his or her name and known aliases, a
24 photograph, a physical description, including gender and race, date
25 of birth, criminal history, prior adjudication as a sexually violent
26 predator, the address at which the person resides, and any other
27 information that the Department of Justice deems relevant, but not
28 the information excluded pursuant to subdivision (a). On or before
29 January 1, 2013, the department shall make available to the public
30 via the Internet Web site his or her static SARATSO score and
31 information on an elevated risk level based on the SARATSO
32 future violence tool.

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

35 (A) Section 187 committed in the perpetration, or an attempt to
36 perpetrate, rape or any act punishable under Section 286, 288,
37 288a, or 289.

38 (B) Section 207 committed with intent to violate Section 261,
39 286, 288, 288a, or 289.

- 1 (C) Section 209 committed with intent to violate Section 261,
2 286, 288, 288a, or 289.
- 3 (D) Paragraph (2) or (6) of subdivision (a) of Section 261.
- 4 (E) Section 264.1.
- 5 (F) Section 269.
- 6 (G) Subdivision (c) or (d) of Section 286.
- 7 (H) Subdivision (a), (b), or (c) of Section 288, provided that the
8 offense is a felony.
- 9 (I) Subdivision (c) or (d) of Section 288a.
- 10 (J) Section 288.3, provided that the offense is a felony.
- 11 (K) Section 288.4, provided that the offense is a felony.
- 12 (L) Section 288.5.
- 13 (M) Subdivision (a) or (j) of Section 289.
- 14 (N) Section 288.7.
- 15 (O) Any person who has ever been adjudicated a sexually violent
16 predator, as defined in Section 6600 of the Welfare and Institutions
17 Code.
- 18 (P) A felony violation of Section 311.1.
- 19 (Q) A felony violation of subdivision (b), (c), or (d) of Section
20 311.2.
- 21 (R) A felony violation of Section 311.3.
- 22 (S) A felony violation of subdivision (a), (b), or (c) of Section
23 311.4.
- 24 (T) Section 311.10.
- 25 (U) A felony violation of Section 311.11.
- 26 (c) (1) On or before July 1, 2005, with respect to a person who
27 has been convicted of the commission or the attempted commission
28 of any of the offenses listed in paragraph (2), the Department of
29 Justice shall make available to the public via the Internet Web site
30 his or her name and known aliases, a photograph, a physical
31 description, including gender and race, date of birth, criminal
32 history, the community of residence and ZIP Code in which the
33 person resides or the county in which the person is registered as a
34 transient, and any other information that the Department of Justice
35 deems relevant, but not the information excluded pursuant to
36 subdivision (a). On or before July 1, 2006, the Department of
37 Justice shall determine whether any person convicted of an offense
38 listed in paragraph (2) also has one or more prior or subsequent
39 convictions of an offense listed in subdivision (c) of Section 290,
40 and, for those persons, the Department of Justice shall make

1 available to the public via the Internet Web site the address at
 2 which the person resides. However, the address at which the person
 3 resides shall not be disclosed until a determination is made that
 4 the person is, by virtue of his or her additional prior or subsequent
 5 conviction of an offense listed in subdivision (c) of Section 290,
 6 subject to this subdivision.

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

- 8 (A) Section 220, except assault to commit mayhem.
- 9 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.
- 10 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
 11 (i), of Section 286.
- 12 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
 13 (i), of Section 288a.
- 14 (E) Subdivision (b), (d), (e), or (i) of Section 289.

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

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

- 29 (A) Subdivision (a) of Section 243.4, provided that the offense
 30 is a felony.
- 31 (B) Section 266, provided that the offense is a felony.
- 32 (C) Section 266c, provided that the offense is a felony.
- 33 (D) Section 266j.
- 34 (E) Section 267.
- 35 (F) Subdivision (c) of Section 288, provided that the offense is
 36 a misdemeanor.
- 37 (G) Section 288.3, provided that the offense is a misdemeanor.
- 38 (H) Section 288.4, provided that the offense is a misdemeanor.
- 39 (I) Section 626.81.
- 40 (J) Section 647.6.

1 (K) Section 653c.

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

11 (e) (1) If a person has been convicted of the commission or the
12 attempted commission of any of the offenses listed in this
13 subdivision, and he or she has been convicted of no other offense
14 listed in subdivision (b), (c), or (d) other than those listed in this
15 subdivision, that person may file an application with the
16 Department of Justice, on a form approved by the department, for
17 exclusion from the Internet Web site. If the department determines
18 that the person meets the requirements of this subdivision, the
19 department shall grant the exclusion and no information concerning
20 the person shall be made available via the Internet Web site
21 described in this section. He or she bears the burden of proving
22 the facts that make him or her eligible for exclusion from the
23 Internet Web site. However, a person who has filed for or been
24 granted an exclusion from the Internet Web site is not relieved of
25 his or her duty to register as a sex offender pursuant to Section
26 290 nor from any otherwise applicable provision of law.

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

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

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

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

36 (D) (i) An offense for which the offender successfully
37 completed probation, provided that the offender submits to the
38 department a certified copy of a probation report, presentencing
39 report, report prepared pursuant to Section 288.1, or other official
40 court document that clearly demonstrates that the offender was

1 the victim's parent, stepparent, sibling, or grandparent and that the
2 crime did not involve either oral copulation or penetration of the
3 vagina or rectum of either the victim or the offender by the penis
4 of the other or by any foreign object.

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

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

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

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

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

37 (f) The Department of Justice shall make a reasonable effort to
38 provide notification to persons who have been convicted of the
39 commission or attempted commission of an offense specified in
40 subdivision (b), (c), or (d), that on or before July 1, 2005, the

1 department is required to make information about specified sex
2 offenders available to the public via an Internet Web site as
3 specified in this section. The Department of Justice shall also make
4 a reasonable effort to provide notice that some offenders are
5 eligible to apply for exclusion from the Internet Web site.

6 (g) (1) A designated law enforcement entity, as defined in
7 subdivision (f) of Section 290.45, may make available information
8 concerning persons who are required to register pursuant to Section
9 290 to the public via an Internet Web site *as specified in paragraph*
10 *(2)*, or, upon request, by e-mail or other ~~electronic notification~~
11 *notification pursuant to paragraph (3)*.

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

18 ~~(2)~~

19 (3) The information that may be provided pursuant to this
20 subdivision may include the information specified in subdivisions
21 ~~(b) and (e) of Section 290.45, (c), and (d) upon request, by e-mail~~
22 ~~or other electronic notification~~. However, that offender's address
23 may not be disclosed unless he or she is a person whose address
24 is on the Department of Justice's Internet Web site pursuant to
25 subdivision (b) or (c), ~~or the offense for which the offender is~~
26 ~~required to register pursuant to Section 290 was committed against~~
27 ~~a child who has not yet reached his or her 15th birthday.~~

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

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

38 (j) (1) Any person who uses information disclosed pursuant to
39 this section to commit a misdemeanor shall be subject to, in
40 addition to any other penalty or fine imposed, a fine of not less

1 than ten thousand dollars (\$10,000) and not more than fifty
 2 thousand dollars (\$50,000).

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

7 (k) Any person who is required to register pursuant to Section
 8 290 who enters an Internet Web site established pursuant to this
 9 section shall be punished by a fine not exceeding one thousand
 10 dollars (\$1,000), imprisonment in a county jail for a period not to
 11 exceed six months, or by both that fine and imprisonment.

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

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

- 18 (A) Health insurance.
- 19 (B) Insurance.
- 20 (C) Loans.
- 21 (D) Credit.
- 22 (E) Employment.
- 23 (F) Education, scholarships, or fellowships.
- 24 (G) Housing or accommodations.
- 25 (H) Benefits, privileges, or services provided by any business
 26 establishment.

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

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

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

15 (m) The public notification provisions of this section are
16 applicable to every person described in this section, without regard
17 to when his or her crimes were committed or his or her duty to
18 register pursuant to Section 290 arose, and to every offense
19 described in this section, regardless of when it was committed.

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

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