

AMENDED IN SENATE MAY 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1438

Introduced by Assembly Member Linder
(Coauthors: Assembly Members Allen, Olsen, Patterson, and Waldron)
(Coauthor: Senator Vidak)

January 6, 2014

An act to amend Sections 290.5, 3000.1, and 4852.01 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1438, as amended, Linder. Sex offenders: certificates of rehabilitation.

Existing

(1) *Existing* law requires a person who has been convicted of specified sex offenses to register with local law enforcement authorities as a sex offender. Existing law authorizes a person convicted of a felony or a misdemeanor violation of certain sex offenses, the accusatory pleading of which has been dismissed, to file a petition for a certificate of rehabilitation and pardon provided that the petitioner has not been incarcerated since the dismissal of the accusatory pleading, is not on probation for the commission of another felony, and presents satisfactory evidence of 5 years residence in this state prior to the filing of the petition. Under existing law, a petition for a certificate of rehabilitation and pardon does not apply to a person who, among other specified crimes, has been convicted of willfully and lewdly committing any lewd and lascivious act upon the body of a child who is under the age of 14. Under existing law, a person convicted of certain sex offenses is not,

upon obtaining a certificate of rehabilitation, relieved of his or her duty to register as a sex offender.

This bill, in addition, would make the provisions for obtaining a certificate of rehabilitation inapplicable to a person who is convicted of engaging in sexual intercourse, sodomy, oral copulation, or sexual penetration with a child who is 10 years of age or younger and would provide that such a person who has obtained a certificate of rehabilitation is not relieved of his or her duty to register as a sex offender.

Because certain sex offenders would be precluded from ~~relief from~~ *being relieved of* the duty to register with local officials, the bill would impose a state-mandated local program.

(2) Existing law requires the period of parole for an inmate sentenced to a life term for aggravated sexual assault of a child and for engaging in sexual intercourse, sodomy, oral copulation, or sexual penetration with a child who is 10 years of age or younger to be for the remainder of the inmate's life.

This bill would instead impose lifetime parole on a person convicted of either of the above offenses.

~~The~~

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

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

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 290.5 of the Penal Code is amended to
- 2 read:
- 3 290.5. (a) (1) A person required to register under Section 290
- 4 for an offense not listed in paragraph (2), upon obtaining a
- 5 certificate of rehabilitation under Chapter 3.5 (commencing with
- 6 Section 4852.01) of Title 6 of Part 3, shall be relieved of any
- 7 further duty to register under Section 290 if he or she is not in
- 8 custody, on parole, or on probation.
- 9 (2) A person required to register under Section 290, upon
- 10 obtaining a certificate of rehabilitation under Chapter 3.5
- 11 (commencing with Section 4852.01) of Title 6 of Part 3, shall not

1 be relieved of the duty to register under Section 290, or of the duty
2 to register under Section 290 for any offense subject to that section
3 of which he or she is convicted in the future, if his or her conviction
4 is for one of the following offenses:

5 (A) Section 207 or 209 committed with the intent to violate
6 Section 261, 286, 288, 288a, or 289.

7 (B) Section 220, except assault to commit mayhem.

8 (C) Section 243.4, provided that the offense is a felony.

9 (D) Paragraph (1), (2), (3), (4), or (6) of subdivision (a) of
10 Section 261.

11 (E) Section 264.1.

12 (F) Section 266, provided that the offense is a felony.

13 (G) Section 266c, provided that the offense is a felony.

14 (H) Section 266j.

15 (I) Section 267.

16 (J) Section 269.

17 (K) Paragraph (1) of subdivision (b) of Section 286, provided
18 that the offense is a felony.

19 (L) Paragraph (2) of subdivision (b) of, or subdivision (c), (d),
20 (f), (g), (i), (j), or (k) of, Section 286.

21 (M) Section 288.

22 (N) Paragraph (1) of subdivision (b) of Section 288a, provided
23 that the offense is a felony.

24 (O) Paragraph (2) of subdivision (b) of, or subdivision (c), (d),
25 (f), (g), (i), (j), or (k) of, Section 288a.

26 (P) Section 288.5.

27 (Q) Section 288.7.

28 (R) Subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289,
29 provided that the offense is a felony.

30 (S) Subdivision (i) or (j) of Section 289.

31 (T) Section 647.6.

32 (U) The attempted commission of any of the offenses specified
33 in this paragraph.

34 (V) The statutory predecessor of any of the offenses specified
35 in this paragraph.

36 (W) Any offense which, if committed or attempted in this state,
37 would have been punishable as one or more of the offenses
38 specified in this paragraph.

39 (b) (1) Except as provided in paragraphs (2) and (3), a person
40 described in paragraph (2) of subdivision (a) shall not be relieved

1 of the duty to register until that person has obtained a full pardon
2 as provided in Chapter 1 (commencing with Section 4800) or
3 Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

4 (2) This subdivision does not apply to misdemeanor violations
5 of Section 647.6.

6 (3) The court, upon granting a petition for a certificate of
7 rehabilitation pursuant to Chapter 3.5 (commencing with Section
8 4852.01) of Title 6 of Part 3, if the petition was granted prior to
9 January 1, 1998, may relieve a person of the duty to register under
10 Section 290 for a violation of Section 288 or 288.5, provided that
11 the person was granted probation pursuant to subdivision (d) of
12 Section 1203.066, has complied with the provisions of Section
13 290 for a continuous period of at least 10 years immediately
14 preceding the filing of the petition, and has not been convicted of
15 a felony during that period.

16 *SEC. 2. Section 3000.1 of the Penal Code is amended to read:*

17 3000.1. (a) (1) In the case of any inmate sentenced under
18 Section 1168 for any offense of first or second degree murder with
19 a maximum term of life imprisonment, the period of parole, if
20 parole is granted, shall be the remainder of the inmate's life.

21 (2) Notwithstanding any other ~~provision of law~~, in the case of
22 any inmate sentenced to a life term under subdivision (b) of Section
23 209, if that offense was committed with the intent to commit a
24 specified sexual offense, ~~Sections 269 and Section 269 or 288.7,~~
25 subdivision (c) of Section 667.51, Section 667.71 in which one or
26 more of the victims of the offense was a child under 14 years of
27 age, or subdivision (j), (l), or (m) of Section 667.61, the period of
28 parole, if parole is granted, shall be the remainder of the inmate's
29 life.

30 (b) Notwithstanding any other ~~provision of law~~, when any person
31 referred to in paragraph (1) of subdivision (a) has been released
32 on parole from the state prison, and has been on parole
33 continuously for seven years in the case of any person imprisoned
34 for first degree murder, and five years in the case of any person
35 imprisoned for second degree murder, since release from
36 confinement, the board shall, within 30 days, discharge that person
37 from parole, unless the board, for good cause, determines that the
38 person will be retained on parole. The board shall make a written
39 record of its determination and transmit a copy of it to the parolee.

1 (c) In the event of a retention on parole pursuant to subdivision
2 (b), the parolee shall be entitled to a review by the board each year
3 thereafter.

4 (d) There shall be a hearing as provided in Sections 3041.5 and
5 3041.7 within 12 months of the date of any revocation of parole
6 of a person referred to in subdivision (a) to consider the release of
7 the inmate on parole and, notwithstanding ~~the provisions of~~
8 paragraph (3) of subdivision (b) of Section 3041.5, there shall be
9 annual parole consideration hearings thereafter, unless the person
10 is released or otherwise ineligible for parole release. The panel or
11 board shall release the person within one year of the date of the
12 revocation unless it determines that the circumstances and gravity
13 of the parole violation are such that consideration of the public
14 safety requires a more lengthy period of incarceration or unless
15 there is a new prison commitment following a conviction.

16 ~~(e)~~

17 (e) The provisions of Section 3042 shall not apply to any
18 hearing held pursuant to this section.

19 ~~SEC. 2.~~

20 *SEC. 3.* Section 4852.01 of the Penal Code is amended to read:

21 4852.01. (a) Any person convicted of a felony who has been
22 released from a state prison or other state penal institution or
23 agency in California, whether discharged on completion of the
24 term for which he or she was sentenced or released on parole prior
25 to May 13, 1943, who has not been incarcerated in a state prison
26 or other state penal institution or agency since his or her release,
27 and who presents satisfactory evidence of a three-year residence
28 in this state immediately prior to the filing of the petition for a
29 certificate of rehabilitation and pardon provided for by this chapter,
30 may file the petition pursuant to the provisions of this chapter.

31 (b) Any person convicted of a felony who, on May 13, 1943,
32 was confined in a state prison or other institution or agency to
33 which he or she was committed and any person convicted of a
34 felony after that date who is committed to a state prison or other
35 institution or agency may file a petition for a certificate of
36 rehabilitation and pardon pursuant to the provisions of this chapter.

37 (c) Any person convicted of a felony or any person who is
38 convicted of a misdemeanor violation of any sex offense specified
39 in Section 290, the accusatory pleading of which has been
40 dismissed pursuant to Section 1203.4, may file a petition for

1 certificate of rehabilitation and pardon pursuant to the provisions
 2 of this chapter if the petitioner has not been incarcerated in any
 3 prison, jail, detention facility, or other penal institution or agency
 4 since the dismissal of the accusatory pleading and is not on
 5 probation for the commission of any other felony, and the petitioner
 6 presents satisfactory evidence of five years residence in this state
 7 prior to the filing of the petition.

8 (d) This chapter shall not apply to persons serving a mandatory
 9 life parole, persons committed under death sentences, persons
 10 convicted of a violation of subdivision (c) of Section 286, Section
 11 288, subdivision (c) of Section 288a, Section 288.5, Section 288.7,
 12 or subdivision (j) of Section 289, or persons in ~~the~~ military service.

13 (e) Notwithstanding any other law, the Governor has the right
 14 to pardon a person convicted of a violation of subdivision (c) of
 15 Section 286, Section 288, subdivision (c) of Section 288a, Section
 16 288.5, Section 288.7, or subdivision (j) of Section 289, if there are
 17 extraordinary circumstances.

18 ~~SEC. 3.~~

19 *SEC. 4.* No reimbursement is required by this act pursuant to
 20 Section 6 of Article XIII B of the California Constitution because
 21 the only costs that may be incurred by a local agency or school
 22 district will be incurred because this act creates a new crime or
 23 infraction, eliminates a crime or infraction, or changes the penalty
 24 for a crime or infraction, within the meaning of Section 17556 of
 25 the Government Code, or changes the definition of a crime within
 26 the meaning of Section 6 of Article XIII B of the California
 27 Constitution.