

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1640

Introduced by Assembly Member Jones-Sawyer

February 11, 2014

An act to amend Sections 290 and 290.005 of, *and to add Section 288.6 to*, the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1640, as amended, Jones-Sawyer. Sex offenders: registration.

Existing law requires persons convicted of specified sex offenses, or attempts to commit those offenses, to register with local law enforcement agencies while residing in the state or while attending school or working in the state. Existing law includes among the specified offenses for which registration is required, the offenses of sodomy, oral copulation, sexual penetration, and contacting or communicating with a minor, when the offender knows or reasonably should know that the person is a minor, with the intent to commit sodomy, oral copulation, or sexual penetration. *Existing court decisions invalidated the application of the mandatory registration requirement to persons convicted of certain of these sex offenses.*

This bill would ~~delete~~ *conform statutory law to those court decisions by deleting* from the list of offenses or attempts to commit those offenses requiring registration, sodomy, oral copulation, and sexual penetration, if in each case the offender participates in the offense with another person who is under 18 years of age or when the offender is over 21 years of age and participates in the offense with another person who is under 16 years of age. ~~The bill would also delete from that list the offense of contacting or communicating with a minor, if the offender~~

~~knows or reasonably should know that the person is a minor, with the intent to commit one of the offenses as described above. The bill would authorize a person who is convicted, on or before January 1, 2015, of any of the listed offenses sodomy, oral copulation, and sexual penetration, if in each case the offender participates in the offense with another person who is under 18 years of age or when the offender is over 21 years of age and participates in the offense with another person who is under 16 years of age to seek discretionary relief from the registration requirement. The bill would make those listed offenses sodomy, oral copulation, and sexual penetration, if in each case the offender participates in the offense with another person who is under 18 years of age or when the offender is over 21 years of age and participates in the offense with another person who is under 16 years of age subject to provisions authorizing the discretionary imposition of the registration requirement. The bill would make additional conforming changes.~~

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 288.6 is added to the Penal Code, to read:
- 2 288.6. (a) Notwithstanding Section 288.3, every person who
- 3 contacts or communicates with a minor, or attempts to contact or
- 4 communicate with a minor, who knows or reasonably should know
- 5 that the person is a minor, with intent to commit an offense
- 6 specified in subdivision (b) of Section 286, subdivision (b) of
- 7 Section 288a, or subdivision (h) or (i) of Section 289, involving
- 8 the minor shall be punished by imprisonment in the state prison
- 9 for the term prescribed for an attempt to commit the intended
- 10 offense.
- 11 (b) As used in this section, “contacts or communicates with”
- 12 shall include direct and indirect contact or communication that
- 13 may be achieved personally or by use of an agent or agency, any
- 14 print medium, any postal service, a common carrier or
- 15 communication common carrier, any electronic communications
- 16 system, or any telecommunications, wire, computer, or radio
- 17 communications device or system.
- 18 (c) A person convicted of a violation of subdivision (a) who has
- 19 previously been convicted of a violation of subdivision (a) shall

1 *be punished by an additional and consecutive term of imprisonment*
2 *in the state prison for five years.*

3 *(d) A person convicted under subdivision (a) shall not be*
4 *required to register pursuant to subdivision (c) of Section 290.*

5 SECTION 1.

6 SEC. 2. Section 290 of the Penal Code is amended to read:

7 290. (a) Sections 290 to 290.024, inclusive, shall be known
8 and may be cited as the Sex Offender Registration Act. All
9 references to “the Act” in those sections are to the Sex Offender
10 Registration Act.

11 (b) Every person described in subdivision (c), for the rest of his
12 or her life while residing in California, or while attending school
13 or working in California, as described in Sections 290.002 and
14 290.01, shall register with the chief of police of the city in which
15 he or she is residing, or the sheriff of the county if he or she is
16 residing in an unincorporated area or city that has no police
17 department, and, additionally, with the chief of police of a campus
18 of the University of California, the California State University, or
19 community college if he or she is residing upon the campus or in
20 any of its facilities, within five working days of coming into, or
21 changing his or her residence within, any city, county, or city and
22 county, or campus in which he or she temporarily resides, and
23 shall be required to register thereafter in accordance with the Act.

24 (c) The following persons shall register:

25 Any person who, since July 1, 1944, has been or is hereafter
26 convicted in any court in this state or in any federal or military
27 court of a violation of Section 187 committed in the perpetration,
28 or an attempt to perpetrate, rape or any act punishable under
29 Section 286, ~~except subdivision (b) thereof, Section 288, 288a,~~
30 ~~except subdivision (b) thereof, or Section 289, except subdivisions~~
31 ~~(h) and (i); or 289, Section 207 or 209 committed with intent to~~
32 ~~violate Section 261, 286, except subdivision (b) thereof, Section~~
33 ~~288, 288a, except subdivision (b) thereof, or Section 289, except~~
34 ~~subdivisions (h) and (i) thereof or 289, Section 220, except assault~~
35 ~~to commit mayhem, subdivision (b) and (c) of Section 236.1,~~
36 ~~Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a)~~
37 ~~of Section 261, paragraph (1) of subdivision (a) of Section 262~~
38 ~~involving the use of force or violence for which the person is~~
39 ~~sentenced to the state prison, Section 264.1, 266, or 266c,~~
40 ~~subdivision (b) of Section 266h, subdivision (b) of Section 266i,~~

1 Section 266j, 267, 269, 285, 286, except subdivision (b) thereof,
2 Section 288, 288a, except subdivision (b) thereof, Section 288.3,
3 ~~except if committed with the intent to commit a violation of~~
4 ~~subdivision (b) of Section 286, subdivision (b) of Section 288a,~~
5 ~~or subdivision (h) or (i) of Section 289, Section 288.4, 288.5, 288.7,~~
6 ~~289, except subdivision (h) or (i) thereof,~~ or 311.1, subdivision
7 (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10,
8 311.11, or 647.6, former Section 647a, subdivision (c) of Section
9 653f, subdivision 1 or 2 of Section 314, any offense involving
10 lewd or lascivious conduct under Section 272, or any felony
11 violation of Section 288.2; any statutory predecessor that includes
12 all elements of one of these listed offenses; or any person who
13 since that date has been or is hereafter convicted of the attempt or
14 conspiracy to commit any of the above-mentioned offenses.

15 (d) Any person convicted on or before January 1, 2015, of any
16 of the following offenses or attempt to commit any of those
17 offenses, may, *if not already granted relief by other available*
18 *means*, seek discretionary relief from registration imposed under
19 subdivision (b), if the person has not suffered any other conviction
20 requiring registration:

21 (1) Subdivision (b) of Section 286.

22 (2) Subdivision (b) of Section 288a.

23 (3) Subdivision (h) or (i) of Section 289.

24 ~~(4) Section 283, if committed with the intent to commit a~~
25 ~~violation of subdivision (b) of Section 286, subdivision (b) of~~
26 ~~Section 288a, or subdivision (h) or (i) of Section 289.~~

27 (e) The offenses listed in subdivision (d) shall, pursuant to
28 Section 290.006, be subject to discretionary imposition of the
29 registration requirement in subdivision (b).

30 ~~SEC. 2.~~

31 *SEC. 3.* Section 290.005 of the Penal Code is amended to read:
32 290.005. The following persons shall register in accordance
33 with the Act:

34 (a) Except as provided in subdivision (c) or (d), any person who,
35 since July 1, 1944, has been, or is hereafter convicted in any other
36 court, including any state, federal, or military court, of any offense
37 that, if committed or attempted in this state, based on the elements
38 of the convicted offense or facts admitted by the person or found
39 true by the trier of fact or stipulated facts in the record of military
40 proceedings, would have been punishable as one or more of the

1 offenses described in subdivision (c) of Section 290, including
2 offenses in which the person was a principal, as defined in Section
3 31.

4 (b) Any person ordered by any other court, including any state,
5 federal, or military court, to register as a sex offender for any
6 offense, if the court found at the time of conviction or sentencing
7 that the person committed the offense as a result of sexual
8 compulsion or for purposes of sexual gratification.

9 (c) Except as provided in subdivision (d), any person who would
10 be required to register while residing in the state of conviction for
11 a sex offense committed in that state.

12 (d) Notwithstanding any other law, a person convicted in another
13 state of an offense similar to one of the following offenses who is
14 required to register in the state of conviction is not required to
15 register in California unless the out-of-state offense, based on the
16 elements of the conviction offense or proven or stipulated facts in
17 the record of conviction, contains all of the elements of a
18 registerable California offense described in subdivision (c) of
19 Section 290:

20 (1) Indecent exposure, pursuant to Section 314.

21 (2) Unlawful sexual intercourse, pursuant to Section 261.5.

22 (3) Incest, pursuant to Section 285.

23 (4) Sodomy, pursuant to Section 286, except subdivision (b)
24 thereof, or oral copulation, pursuant to Section 288a, except
25 subdivision (b) thereof, provided that the offender notifies the
26 Department of Justice that the sodomy or oral copulation conviction
27 was for conduct between consenting adults, as described in Section
28 290.019, and the department is able, upon the exercise of
29 reasonable diligence, to verify that fact.

30 (5) Pimping, pursuant to Section 266h, or pandering, pursuant
31 to Section 266i.