

ASSEMBLY BILL

No. 2569

Introduced by Assembly Member Melendez

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2569, as introduced, Melendez. Registered sex offenders.

Existing law requires the Department of Justice to make available specified information about registered sex offenders via an Internet Web site. Existing law authorizes an offender who has been convicted of the commission or attempted commission of felony sexual battery, misdemeanor child molestation, or other specified sexual offenses, to apply to the department for exclusion from the Internet Web site. Existing law also authorizes an offender who has been convicted of the commission or attempted commission of an offense for which the offender is on probation at the time of his or her application or has successfully completed probation, to apply for exclusion from the Internet Web site if he or she submits a certified copy of an official court document, as specified, that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent, and the crime did not involve specified sexual offenses.

This bill would terminate the authorization for an offender who commits a specified sexual offense against a victim who is the child, stepchild, sibling, or grandchild of the offender from being eligible for exclusion from the Internet Web site.

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

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

SECTION 1. Section 290.46 of the Penal Code is amended to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

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

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

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

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

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

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

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

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

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

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

31 (b) (1) On or before July 1, 2005, with respect to a person who
32 has been convicted of the commission or the attempted commission
33 of any of the offenses listed in, or who is described in, paragraph
34 (2), the Department of Justice shall make available to the public
35 via the Internet Web site his or her name and known aliases, a
36 photograph, a physical description, including gender and race, date
37 of birth, criminal history, prior adjudication as a sexually violent
38 predator, the address at which the person resides, and any other
39 information that the Department of Justice deems relevant, but not
40 the information excluded pursuant to subdivision (a). On or before

1 January 1, 2013, the department shall make available to the public
2 via the Internet Web site his or her static SARATSO score and
3 information on an elevated risk level based on the SARATSO
4 future violence tool.

5 (2) This subdivision shall apply to the following offenses and
6 offenders:

7 (A) Section 187 committed in the perpetration, or an attempt to
8 perpetrate, rape or any act punishable under Section 286, 288,
9 288a, or 289.

10 (B) Section 207 committed with intent to violate Section 261,
11 286, 288, 288a, or 289.

12 (C) Section 209 committed with intent to violate Section 261,
13 286, 288, 288a, or 289.

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

15 (E) Section 264.1.

16 (F) Section 269.

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

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

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

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

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

23 (L) Section 288.5.

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

25 (N) Section 288.7.

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

29 (P) A felony violation of Section 311.1.

30 (Q) A felony violation of subdivision (b), (c), or (d) of Section
31 311.2.

32 (R) A felony violation of Section 311.3.

33 (S) A felony violation of subdivision (a), (b), or (c) of Section
34 311.4.

35 (T) Section 311.10.

36 (U) A felony violation of Section 311.11.

37 (c) (1) On or before July 1, 2005, with respect to a person who
38 has been convicted of the commission or the attempted commission
39 of any of the offenses listed in paragraph (2), the Department of
40 Justice shall make available to the public via the Internet Web site

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

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

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

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

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

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

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

26 (d) (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, or who is described in, this
29 subdivision, the Department of Justice shall make available to the
30 public via the Internet Web site his or her name and known aliases,
31 a photograph, a physical description, including gender and race,
32 date of birth, criminal history, the community of residence and
33 ZIP Code in which the person resides or the county in which the
34 person is registered as a transient, and any other information that
35 the Department of Justice deems relevant, but not the information
36 excluded pursuant to subdivision (a) or the address at which the
37 person resides.

38 (2) This subdivision shall apply to the following offenses and
39 offenders:

1 (A) Subdivision (a) of Section 243.4, provided that the offense
2 is a felony.

3 (B) Section 266, provided that the offense is a felony.

4 (C) Section 266c, provided that the offense is a felony.

5 (D) Section 266j.

6 (E) Section 267.

7 (F) Subdivision (c) of Section 288, provided that the offense is
8 a misdemeanor.

9 (G) Section 288.3, provided that the offense is a misdemeanor.

10 (H) Section 288.4, provided that the offense is a misdemeanor.

11 (I) Section 626.81.

12 (J) Section 647.6.

13 (K) Section 653c.

14 (L) Any person required to register pursuant to Section 290
15 based upon an out-of-state conviction, unless that person is
16 excluded from the Internet Web site pursuant to subdivision (e).
17 However, if the Department of Justice has determined that the
18 out-of-state crime, if committed or attempted in this state, would
19 have been punishable in this state as a crime described in
20 subdivision (c) of Section 290, the person shall be placed on the
21 Internet Web site as provided in subdivision (b) or (c), as applicable
22 to the crime.

23 (e) (1) If a person has been convicted of the commission or the
24 attempted commission of any of the offenses listed in this
25 subdivision, and he or she has been convicted of no other offense
26 listed in subdivision (b), (c), or (d) other than those listed in this
27 subdivision, that person may file an application with the
28 Department of Justice, on a form approved by the department, for
29 exclusion from the Internet Web site. If the department determines
30 that the person meets the requirements of this subdivision, the
31 department shall grant the exclusion and no information concerning
32 the person shall be made available via the Internet Web site
33 described in this section. He or she bears the burden of proving
34 the facts that make him or her eligible for exclusion from the
35 Internet Web site. However, a person who has filed for or been
36 granted an exclusion from the Internet Web site is not relieved of
37 his or her duty to register as a sex offender pursuant to Section
38 290 nor from any otherwise applicable provision of law.

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

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

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

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

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

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

26 ~~(iii) If, subsequent to his or her application, the offender commits~~
27 ~~a violation of probation resulting in his or her incarceration in~~
28 ~~county jail or state prison, his or her exclusion, or application for~~
29 ~~exclusion, from the Internet Web site shall be terminated.~~

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

35 (3) If the department determines that a person who was granted
36 an exclusion under a former version of this subdivision would not
37 qualify for an exclusion under the current version of this
38 subdivision, the department shall rescind the exclusion, make a
39 reasonable effort to provide notification to the person that the
40 exclusion has been rescinded, and, no sooner than 30 days after

1 notification is attempted, make information about the offender
2 available to the public on the Internet Web site as provided in this
3 section.

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

9 (f) The Department of Justice shall make a reasonable effort to
10 provide notification to persons who have been convicted of the
11 commission or attempted commission of an offense specified in
12 subdivision (b), (c), or (d), that on or before July 1, 2005, the
13 department is required to make information about specified sex
14 offenders available to the public via an Internet Web site as
15 specified in this section. The Department of Justice shall also make
16 a reasonable effort to provide notice that some offenders are
17 eligible to apply for exclusion from the Internet Web site.

18 (g) (1) A designated law enforcement entity, as defined in
19 subdivision (f) of Section 290.45, may make available information
20 concerning persons who are required to register pursuant to Section
21 290 to the public via an Internet Web site as specified in paragraph
22 (2).

23 (2) The law enforcement entity may make available by way of
24 an Internet Web site the information described in subdivision (c)
25 if it determines that the public disclosure of the information about
26 a specific offender by way of the entity's Internet Web site is
27 necessary to ensure the public safety based upon information
28 available to the entity concerning that specific offender.

29 (3) The information that may be provided pursuant to this
30 subdivision may include the information specified in subdivision
31 (b) of Section 290.45. However, that offender's address may not
32 be disclosed unless he or she is a person whose address is on the
33 Department of Justice's Internet Web site pursuant to subdivision
34 (b) or (c).

35 (h) For purposes of this section, "offense" includes the statutory
36 predecessors of that offense, or any offense committed in another
37 jurisdiction that, if committed or attempted to be committed in this
38 state, would have been punishable in this state as an offense listed
39 in subdivision (c) of Section 290.

1 (i) 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 6250)
4 of Title 1 of Division 7 of the Government Code and does not
5 affect other statutory restrictions on disclosure in other situations.

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

11 (2) Any person who uses information disclosed pursuant to this
12 section to commit a felony shall be punished, in addition and
13 consecutive to any other punishment, by a five-year term of
14 imprisonment pursuant to subdivision (h) of Section 1170.

15 (k) Any person who is required to register pursuant to Section
16 290 who enters an Internet Web site established pursuant to this
17 section shall be punished by a fine not exceeding one thousand
18 dollars (\$1,000), imprisonment in a county jail for a period not to
19 exceed six months, or by both that fine and imprisonment.

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

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

26 (A) Health insurance.

27 (B) Insurance.

28 (C) Loans.

29 (D) Credit.

30 (E) Employment.

31 (F) Education, scholarships, or fellowships.

32 (G) Housing or accommodations.

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

35 (3) This section shall not affect authorized access to, or use of,
36 information pursuant to, among other provisions, Sections 11105
37 and 11105.3, Section 8808 of the Family Code, Sections 777.5
38 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871
39 of the Health and Safety Code, and Section 432.7 of the Labor
40 Code.

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

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

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

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

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

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