

AMENDED IN SENATE AUGUST 2, 2016

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY APRIL 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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 require a local assistance center for victims and witnesses, as specified, prior to the department granting an application

for an ~~exclusion~~, *exclusion pursuant to the above specified provision*, to speak to the victim to determine if granting the exclusion would be in the best interest of the ~~victim~~. *victim, as provided*. The bill would require that an offender who is on probation at the time of his or her application for an exclusion be on probation for at least one year prior to the granting of his or her exclusion.

By imposing additional duties on local government agencies, this bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 290.46 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:

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

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

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

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

13 (B) (i) Any state facility that releases from incarceration a
14 person who was incarcerated because of a crime for which he or
15 she is required to register as a sex offender pursuant to Section
16 290 shall, within 30 days of release, provide the year of release
17 for his or her most recent offense requiring registration to the
18 Department of Justice in a manner and format approved by the
19 department.

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

25 (iii) Any state facility that, prior to January 1, 2007, released
26 from incarceration a person who was incarcerated because of a
27 crime for which he or she is required to register as a sex offender
28 pursuant to Section 290 shall provide the year of release for his or
29 her most recent offense requiring registration to the Department
30 of Justice in a manner and format approved by the department.
31 The information provided by the Department of Corrections and
32 Rehabilitation shall be limited to information that is currently
33 maintained in an electronic format.

34 (iv) Any state facility that, prior to January 1, 2007, released a
35 person who is required to register pursuant to Section 290 from
36 incarceration whose incarceration was for a felony committed
37 subsequently to the offense for which he or she is required to
38 register shall advise the Department of Justice of that fact in a
39 manner and format approved by the department. The information
40 provided by the Department of Corrections and Rehabilitation

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

3 (3) The State Department of State Hospitals shall provide to the
4 Department of Justice Sex Offender Tracking Program the names
5 of all persons committed to its custody pursuant to Article 4
6 (commencing with Section 6600) of Chapter 2 of Part 2 of Division
7 6 of the Welfare and Institutions Code, within 30 days of
8 commitment, and shall provide the names of all of those persons
9 released from its custody within five working days of release.

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

24 (2) This subdivision shall apply to the following offenses and
25 offenders:

26 (A) Section 187 committed in the perpetration, or an attempt to
27 perpetrate, rape or any act punishable under Section 286, 288,
28 288a, or 289.

29 (B) Section 207 committed with intent to violate Section 261,
30 286, 288, 288a, or 289.

31 (C) Section 209 committed with intent to violate Section 261,
32 286, 288, 288a, or 289.

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

34 (E) Section 264.1.

35 (F) Section 269.

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

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

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

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

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

2 (L) Section 288.5.

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

4 (N) Section 288.7.

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

8 (P) A felony violation of Section 311.1.

9 (Q) A felony violation of subdivision (b), (c), or (d) of Section
10 311.2.

11 (R) A felony violation of Section 311.3.

12 (S) A felony violation of subdivision (a), (b), or (c) of Section
13 311.4.

14 (T) Section 311.10.

15 (U) A felony violation of Section 311.11.

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

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

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

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

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

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

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

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

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

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

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

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

24 (D) Section 266j.

25 (E) Section 267.

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

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

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

30 (I) Section 626.81.

31 (J) Section 647.6.

32 (K) Section 653c.

33 (L) Any person required to register pursuant to Section 290
34 based upon an out-of-state conviction, unless that person is
35 excluded from the Internet Web site pursuant to subdivision (e).
36 However, if the Department of Justice has determined that the
37 out-of-state crime, if committed or attempted in this state, would
38 have been punishable in this state as a crime described in
39 subdivision (c) of Section 290, the person shall be placed on the

1 Internet Web site as provided in subdivision (b) or (c), as applicable
2 to the crime.

3 (e) (1) If a person has been convicted of the commission or the
4 attempted commission of any of the offenses listed in this
5 subdivision, and he or she has been convicted of no other offense
6 listed in subdivision (b), (c), or (d) other than those listed in this
7 subdivision, that person may file an application with the
8 Department of Justice, on a form approved by the department, for
9 exclusion from the Internet Web site. ~~If Except as provided in~~
10 ~~clause (iii) of subparagraph (D) of paragraph (2), if~~ the department
11 determines that the person meets the requirements of this
12 subdivision, the department shall grant the exclusion and no
13 information concerning the person shall be made available via the
14 Internet Web site described in this section. He or she bears the
15 burden of proving the facts that make him or her eligible for
16 exclusion from the Internet Web site. However, a person who has
17 filed for or been granted an exclusion from the Internet Web site
18 is not relieved of his or her duty to register as a sex offender
19 pursuant to Section 290 nor from any otherwise applicable
20 provision of law.

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

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

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

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

30 (D) (i) An offense for which the offender successfully
31 completed probation, provided that the offender submits to the
32 department a certified copy of a probation report, presentencing
33 report, report prepared pursuant to Section 288.1, or other official
34 court document that clearly demonstrates that the offender was
35 the victim's parent, stepparent, sibling, or grandparent and that the
36 crime did not involve either oral copulation or penetration of the
37 vagina or rectum of either the victim or the offender by the penis
38 of the other or by any foreign object.

39 (ii) An offense for which the offender is on probation at the
40 time of his or her application, provided that the offender submits

1 to the department a certified copy of a probation report,
2 presentencing report, report prepared pursuant to Section 288.1,
3 or other official court document that clearly demonstrates that the
4 offender was the victim's parent, stepparent, sibling, or grandparent
5 and that the crime did not involve either oral copulation or
6 penetration of the vagina or rectum of either the victim or the
7 offender by the penis of the other or by any foreign object. An
8 offender who is on probation at the time of his or her application
9 shall have been on probation for at least one year prior to the
10 granting of his or her application.

11 (iii) (I) Prior to the department granting an application under
12 this subparagraph, a local assistance center for victims and
13 witnesses, established pursuant to Article 2 (commencing with
14 Section 13835) of Chapter 4 of Title 6 of Part 4 shall speak to the
15 victim to determine if granting the exemption would be in the best
16 interest of the victim. *Upon receiving the application, the*
17 *department shall contact the local assistance center for victims*
18 *and witnesses in the county in which the person was convicted. If*
19 *the offense was committed in another state, the department shall*
20 *contact the center in the county in which the offender is registered*
21 *as a sex offender on the date the application for exclusion was*
22 *filed. If the person was convicted for multiple offenses against*
23 *multiple victims, the department shall contact only one center to*
24 *make a determination pursuant to this subclause.*

25 (II) *The center shall provide its determination of whether*
26 *granting an exemption would be in the best interest of the victim*
27 *to the department within 60 days of being contacted by the*
28 *department pursuant to subclause (I). If the victim cannot be*
29 *located by the center, declines to speak with a representative of*
30 *the center, or if the center does not otherwise speak with the victim*
31 *and submit its determination within 60 days of being contacted by*
32 *the department, the department shall grant the exclusion if the*
33 *requirements of this subdivision are otherwise met.*

34 (III) *If the application for the exclusion is denied pursuant to*
35 *this clause, the application may not be reconsidered until after 3*
36 *months after the date the application for exclusion was denied.*

37 (IV) *Notwithstanding paragraph (3), an exclusion application*
38 *already granted prior to the effective date of the measure that adds*
39 *this clause shall not be subject to rescission pursuant to this clause.*

1 (iv) If, subsequent to his or her application, the offender commits
2 a violation of probation resulting in his or her incarceration in
3 county jail or state prison, his or her exclusion, or application for
4 exclusion, from the Internet Web site shall be terminated.

5 (v) For the purposes of this subparagraph, “successfully
6 completed probation” means that during the period of probation
7 the offender neither received additional county jail or state prison
8 time for a violation of probation nor was convicted of another
9 offense resulting in a sentence to county jail or state prison.

10 (3) If the department determines that a person who was granted
11 an exclusion under a former version of this subdivision would not
12 qualify for an exclusion under the current version of this
13 subdivision, the department shall rescind the exclusion, make a
14 reasonable effort to provide notification to the person that the
15 exclusion has been rescinded, and, no sooner than 30 days after
16 notification is attempted, make information about the offender
17 available to the public on the Internet Web site as provided in this
18 section.

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

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

33 (g) (1) A designated law enforcement entity, as defined in
34 subdivision (f) of Section 290.45, may make available information
35 concerning persons who are required to register pursuant to Section
36 290 to the public via an Internet Web site as specified in paragraph
37 (2).

38 (2) The law enforcement entity may make available by way of
39 an Internet Web site the information described in subdivision (c)
40 if it determines that the public disclosure of the information about

1 a specific offender by way of the entity's Internet Web site is
2 necessary to ensure the public safety based upon information
3 available to the entity concerning that specific offender.

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

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

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

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

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

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

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

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

39 (A) Health insurance.

40 (B) Insurance.

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

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

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

22 (B) Whenever there is reasonable cause to believe that any
23 person or group of persons is engaged in a pattern or practice of
24 misuse of the information available via an Internet Web site
25 established pursuant to this section in violation of paragraph (2),
26 the Attorney General, any district attorney, or city attorney, or any
27 person aggrieved by the misuse is authorized to bring a civil action
28 in the appropriate court requesting preventive relief, including an
29 application for a permanent or temporary injunction, restraining
30 order, or other order against the person or group of persons
31 responsible for the pattern or practice of misuse. The foregoing
32 remedies shall be independent of any other remedies or procedures
33 that may be available to an aggrieved party under other provisions
34 of law, including Part 2 (commencing with Section 43) of Division
35 1 of the Civil Code.

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

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

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

12 SEC. 2. If the Commission on State Mandates determines that
13 this act contains costs mandated by the state, reimbursement to
14 local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.