

Introduced by Senator Leslie

February 23, 1996

An act to amend Sections 290.1, 290.4, and 4852.01 of, and to repeal Section 290.5 of, the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 2161, as introduced, Leslie. Sex offenders: registration.

Existing law authorizes a person who is required to register annually with local law enforcement officials as a sex offender to petition for a certificate of rehabilitation and pardon. Upon obtaining a certificate of rehabilitation, that person is relieved of any further duty to register as a sex offender. Failure to register when required is a misdemeanor.

This bill would repeal the provision that relieves that person of any further duty to register as a sex offender upon obtaining a certificate of rehabilitation. Because the bill would expand the scope of an existing crime and impose an increased level of registration duties on local law enforcement officials, it 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 290.1 of the Penal Code is
2 amended to read:

3 290.1. Notwithstanding Section 1203.4 ~~and except as~~
4 ~~provided in Section 290.5~~, a person who is convicted of a
5 sex offense for which registration is required under
6 Section 290 shall not be relieved from the duty to register
7 under that section.

8 SEC. 2. Section 290.4 of the Penal Code is amended to
9 read:

10 290.4. (a) (1) The Department of Justice shall
11 continually compile information as described in
12 paragraph (2) regarding any person required to register
13 under Section 290 for a conviction of Section 261 if the
14 victim is a minor, Section 266 or 267, subdivision (b) of
15 Section 207, subdivision (b) or (c) of Section 286, Section
16 288, paragraph (2) of subdivision (b) or subdivision (c)
17 of Section 288a, Section 288.5, subdivision (i) or (j) of
18 Section 289, Section 647.6, kidnapping, as punishable
19 pursuant to subdivision (d) of Section 208 if the victim is
20 a minor, or the statutory predecessor of any of these
21 offenses. ~~This requirement shall not be applied to a~~
22 ~~person whose duty to register has been terminated~~
23 ~~pursuant to paragraphs (6) and (7) of subdivision (d) of~~
24 ~~Section 290, or to a person who has been relieved of his~~
25 ~~or her duty to register under Section 290.5.~~

26 (2) The information shall include the names of these
27 persons categorized by community of residence and ZIP



1 Code. The information shall include a physical
2 description and criminal history and the address of these
3 persons.

4 (3) The department shall operate a “900” telephone
5 number that members of the public may call and inquire
6 whether a named individual is listed among those
7 described in this subdivision. The caller shall furnish his
8 or her first name, middle initial, and last name. The
9 department shall ascertain whether a named person
10 reasonably appears to be a person so listed and provide
11 the caller with the information described in paragraph
12 (2), except the department shall not disclose the address
13 or criminal history of a person listed, except to describe
14 the specific crimes for which the registrant was required
15 to register. The department shall decide whether the
16 named person reasonably appears to be a person listed,
17 based upon information from the caller providing
18 information that shall include (A) an exact street address,
19 including apartment number, social security number,
20 California driver’s license or identification number, or
21 birth date along with additional information that may
22 include any of the following: name, hair color, eye color,
23 height, weight, distinctive markings, ethnicity; or (B) any
24 combination of at least six of the above listed
25 characteristics if an exact birth date or address is not
26 available. If three of the characteristics provided include
27 ethnicity, hair color, and eye color, a seventh identifying
28 characteristic shall be provided. Any information
29 identifying the victim by name, birth date, address, or
30 relation to the registrant shall be excluded by the
31 department.

32 (4) (A) The income from the operation of the “900”
33 number shall be deposited in the Sexual Predator Public
34 Information Account, which is hereby established within
35 the Department of Justice for the purpose of the
36 implementation of this section by the Department of
37 Justice, including all actual and reasonable costs related
38 to establishing and maintaining the information
39 described in subdivision (a) and the subdirectory
40 described in this subdivision.



1 (B) The moneys in the Sexual Predator Public
 2 Information Account shall consist of income from the
 3 operation of the “900” telephone number program
 4 authorized by this section, proceeds of the loan made
 5 pursuant to Section 6 of the act adding this section, and
 6 any other funds made available to the account by the
 7 Legislature. Moneys in the account shall be available to
 8 the Department of Justice upon appropriation by the
 9 Legislature for the purpose specified in subparagraph
 10 (A).

11 (C) When the “900” number is called, a preamble shall
 12 be played before charges begin to accrue. The preamble
 13 shall run at least the length of time required by federal
 14 law and shall provide the following information:

15 (i) Notice that the caller’s telephone number will be
 16 recorded.

17 (ii) The charges for use of the “900” number.

18 (iii) Notice that the caller is required to identify
 19 himself or herself to the operator.

20 (iv) Notice that the caller is required to be 18 years of
 21 age or older.

22 (v) A warning that it is illegal to use information
 23 obtained through the “900” number to commit a crime
 24 against any registrant or to engage in illegal
 25 discrimination or harassment against any registrant.

26 (vi) Notice that the caller is required to have the birth
 27 date, California driver’s license or identification number,
 28 social security number, or address or other identifying
 29 information regarding the person about whom
 30 information is sought in order to achieve a positive
 31 identification of that person.

32 (vii) A statement that the number is not a crime
 33 hotline and that any suspected criminal activity should be
 34 reported to local authorities.

35 (viii) A statement that the caller should have a
 36 reasonable suspicion that a child is at risk.

37 (D) The Department of Justice shall expend no more
 38 than six hundred thousand dollars (\$600,000) per year
 39 from any moneys appropriated by the Legislature from
 40 the account.



1 (b) (1) The Department of Justice shall maintain a
2 subdirectory of persons described in subdivision (a) who
3 are deemed by the department to be sexual habitual
4 offenders and a threat to the public safety. The
5 subdirectory shall include a photograph of the offender
6 along with the following information, if available: name,
7 physical description, age, and distinctive markings. The
8 subdirectory shall not include the exact address or the
9 criminal history of the person listed, except to describe
10 the specific crimes for which the registrant was required
11 to register.

12 (2) The subdirectory shall be organized by county and
13 ZIP Code.

14 (3) A copy of the subdirectory shall annually be
15 distributed to the offices of county sheriffs and police
16 departments for purposes of public access.

17 (4) County sheriff's and police departments may
18 require that a person express an articulable purpose in
19 order to have access to the subdirectory.

20 (5) Any information identifying the victim by name,
21 birthdate, address, or relation to the registrant shall be
22 excluded from the subdirectory distributed for purposes
23 of public access.

24 (c) (1) Any person who uses information disclosed
25 pursuant to this section to commit a felony shall be
26 punished, in addition and consecutive to, any other
27 punishment, by a five-year term of imprisonment in the
28 state prison.

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

34 (d) Any person who makes a photocopy of any part of
35 the subdirectory of sexual habitual offenders is guilty of
36 a misdemeanor, punishable by imprisonment in the
37 county jail not to exceed six months or by a fine not
38 exceeding one thousand dollars (\$1,000), or by both. This
39 subdivision shall not apply to a law enforcement officer



1 who makes a photocopy as part of his or her official duties
2 in the course of a criminal investigation or court case.

3 (e) Unauthorized removal of the subdirectory of
4 sexual habitual offenders from the offices of county
5 sheriffs or any police department is a misdemeanor,
6 punishable by imprisonment in the county jail not to
7 exceed one year or by a fine not exceeding one thousand
8 dollars (\$1,000), or by both.

9 (f) (1) A person is authorized to use information
10 disclosed pursuant to this section only to protect a child
11 at risk. Authorized use includes, but is not limited to,
12 either of the following:

13 (A) A person in a position of authority or special trust
14 who by reason of that position is able to exercise undue
15 influence over a minor. A position of authority includes,
16 but is not limited to, a natural parent, adoptive parent,
17 stepparent, foster parent, relative, household member,
18 adult youth leader, recreational director who is an adult,
19 adult athletic manager, adult coach, teacher, counselor,
20 religious leader, doctor, or employer.

21 (B) A person possessing a license or holding an
22 employment or volunteer position with supervisory or
23 disciplinary power over a minor or any person under his
24 or her care, a person who supervises a slumber party, or
25 a babysitter.

26 This act shall not affect authorized access to, or use of,
27 information pursuant to, among other provisions,
28 Sections 11105 and 11105.3 of this code, Section 226.55 of
29 the Civil Code, Sections 777.5 and 14409.2 of the Financial
30 Code, Sections 1522.01 and 1596.871 of the Health and
31 Safety Code, and Section 432.7 of the Labor Code.

32 (2) Except as authorized under another provision of
33 law, use of any of the following information disclosed
34 pursuant to this section is prohibited:

- 35 (A) Health insurance.
- 36 (B) Insurance.
- 37 (C) Loans.
- 38 (D) Credit.
- 39 (E) Employment, except as specified in paragraph (1)
- 40 of subdivision (f).



1 (F) Education, scholarships, or fellowships.

2 (G) Housing or accommodations.

3 (H) Benefits, privileges, or services provided by any
4 business establishment.

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

15 (B) Whenever there is reasonable cause to believe
16 that any person or group of persons is engaged in a
17 pattern or practice of misuse of the "900" number in
18 violation of paragraph (2) of subdivision (f), the Attorney
19 General, any district attorney, or city attorney, or any
20 person aggrieved by the misuse of that number is
21 authorized to bring a civil action in the appropriate court
22 requesting preventive relief, including an application for
23 a permanent or temporary injunction, restraining order,
24 or other order against the person or group of persons
25 responsible for the pattern or practice of misuse. The
26 foregoing remedies shall be independent of any other
27 remedies or procedures that may be available to an
28 aggrieved party under other provisions of law, including
29 Part 2 (commencing with Section 43) of Division 1 of the
30 Civil Code.

31 (g) This section shall not be deemed to authorize the
32 publication, distribution, or disclosure of the address of
33 any person about whom information can be published,
34 distributed, or disclosed pursuant to this section.

35 (h) The Department of Justice shall submit to the
36 Legislature an annual report on the operation of the
37 "900" telephone number required by paragraph (3) of
38 subdivision (a) on July 1, 1996, July 1, 1997, and July 1,
39 1998. The annual report shall include all of the following:

40 (1) Number of calls received.



1 (2) Amount of income earned per year through
2 operation of the "900" telephone number.

3 (3) A detailed outline of the amount of money
4 expended and the manner in which it was expended for
5 purposes of this section.

6 (4) Number of calls that resulted in an affirmative
7 response and the number of calls that resulted in a
8 negative response with regard to whether a named
9 individual was listed pursuant to subdivision (a).

10 (5) Number of persons listed pursuant to subdivision
11 (a).

12 (6) A summary of the success of the "900" telephone
13 number program based upon selected factors.

14 (i) The "900" telephone number program authorized
15 by this section shall terminate operation on January 1,
16 1998.

17 (j) This section shall become operative on July 1, 1995,
18 and shall become inoperative on January 1, 1999, and as
19 of that date is repealed unless a later enacted statute,
20 which becomes effective on or before January 1, 1999,
21 deletes or extends the dates on which it becomes
22 inoperative and is repealed.

23 SEC. 3. Section 290.5 of the Penal Code is repealed.

24 ~~290.5. A person required to register under Section 290~~
25 ~~may initiate a proceeding under Chapter 3.5~~
26 ~~(commencing with Section 4852.01) of Title 6 of Part 3 of~~
27 ~~this code, and upon obtaining a certificate of~~
28 ~~rehabilitation, shall be relieved of any further duty to~~
29 ~~register under Section 290. Such certificate shall not~~
30 ~~relieve petitioner of the duty to register under Section~~
31 ~~290 for any offense subject to that section of which he is~~
32 ~~convicted in the future.~~

33 SEC. 4. Section 4852.01 of the Penal Code is amended
34 to read:

35 4852.01. (a) Any person convicted of a felony who
36 has been released from a state prison or other state penal
37 institution or agency in California, whether discharged on
38 completion of the term for which he *or she* was sentenced
39 or released on parole prior to May 13, 1943, who has not
40 been incarcerated in a state prison or other state penal



1 institution or agency since his *or her* release and who
2 presents satisfactory evidence of a three-year residence
3 in this state immediately prior to the filing of the petition
4 for a certificate of rehabilitation and pardon provided for
5 by this chapter, may file ~~such~~ a petition pursuant to the
6 provisions of this chapter.

7 (b) Any person convicted of a felony who, on May 13,
8 1943, was confined in a state prison or other institution or
9 agency to which he *or she* was committed and any person
10 convicted of a felony after that date who is committed to
11 a state prison or other institution or agency may file a
12 petition for a certificate of rehabilitation and pardon
13 pursuant to the provisions of this chapter.

14 (c) Any person convicted of a felony ~~or any person~~
15 ~~who is convicted of a misdemeanor violation of any sex~~
16 ~~offense specified in Section 290~~, the accusatory pleading
17 of which has been dismissed pursuant to Section 1203.4,
18 may file a petition for certificate of rehabilitation and
19 pardon pursuant to the provisions of this chapter,
20 provided *that* the petitioner has not been incarcerated in
21 any prison, jail, detention facility or other penal
22 institution or agency since the dismissal of the accusatory
23 pleading and is not on probation for the commission of
24 any other felony, and petitioner presents satisfactory
25 evidence of three years residence in this state prior to the
26 filing of the petition.

27 (d) This chapter shall not apply to persons serving a
28 mandatory life parole;, to persons committed under
29 death sentences;, or to persons in the military service.

30 SEC. 5. No reimbursement is required by this act
31 pursuant to Section 6 of Article XIII B of the California
32 Constitution for certain costs that may be incurred by a
33 local agency or school district because in that regard this
34 act creates a new crime or infraction, eliminates a crime
35 or infraction, or changes the penalty for a crime or
36 infraction, within the meaning of Section 17556 of the
37 Government Code, or changes the definition of a crime
38 within the meaning of Section 6 of Article XIII B of the
39 California Constitution.



1 However, notwithstanding Section 17610 of the
2 Government Code, if the Commission on State Mandates
3 determines that this act contains other costs mandated by
4 the state, reimbursement to local agencies and school
5 districts for those costs shall be made pursuant to Part 7
6 (commencing with Section 17500) of Division 4 of Title
7 2 of the Government Code. If the statewide cost of the
8 claim for reimbursement does not exceed one million
9 dollars (\$1,000,000), reimbursement shall be made from
10 the State Mandates Claims Fund.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

