

Assembly Bill No. 2680

CHAPTER 960

An act to amend Sections 17, 290.6, 1243, and 1467 of, and to add Sections 290.8 and 290.85 to, the Penal Code, relating to sex offender registration.

[Approved by Governor September 28, 1998. Filed
with Secretary of State September 29, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2680, R. Wright. Sex offender registration.

(1) Existing law specifies that when a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in a county jail, it is a misdemeanor for all purposes under specified circumstances.

This bill would declare that nothing in this provision authorizes a judge to relieve a defendant of the duty to register as a sex offender if the defendant is charged with an offense for which registration as a sex offender is required, and for which the trier of fact has found the defendant guilty.

(2) Existing law requires the Department of Corrections, 15 days before the scheduled release date of a person who is required to register as a sex offender for the conviction of any specified sex offense, or who is sentenced to an enhanced term for prior sex offense convictions, to provide to local law enforcement certain information regarding the person.

This bill would generally extend the application of this provision by removing limitations with respect to the age of the victim of the specified sex offenses, and including additional offenses, including, but not limited to, kidnapping or assault with the intent to commit a specified sex offense, felony sexual battery, and rape in concert. The bill would delete the notification requirement with respect to any person who is sentenced to an enhanced term for prior sex offense convictions or as a habitual sexual offender or habitual child molester.

(3) Existing law provides that an appeal from a judgment of conviction does not stay the execution of the judgment or order granting probation in any case other than where sentence of death has been imposed, unless the trial, reviewing, or appellate court, in its discretion, so orders.

This bill would prohibit the court from staying any duty to register as a sex offender.

(4) Existing law requires a person convicted of a specified sex offense or the attempt to commit any specified sex offense, to register with a local law enforcement agency upon his or her discharge,

parole, or release from confinement and to update that registration annually or upon a change of residence address.

This bill would require any local law enforcement agency that does not register sex offenders during regular daytime business hours on a daily basis, to notify the regional parole office for the Department of Corrections and the Department of the Youth Authority, of the times, days, and locations that the agency is available for registration of sex offenders pursuant to the above provision. The bill would also require every parolee who is required to register as a sex offender to provide proof of registration to his or her parole agent within 6 working days of release on parole. By expanding the duties of local officials, this bill would impose a state-mandated local program.

(5) 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, 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.

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

SECTION 1. Section 17 of the Penal Code is amended to read:

17. (a) A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison.

(2) When the court, upon committing the defendant to the Youth Authority, designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a



misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor, in which event the case shall proceed as if the defendant had been arraigned on a misdemeanor complaint.

(c) When a defendant is committed to the Youth Authority for a crime punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, the offense shall, upon the discharge of the defendant from the Youth Authority, thereafter be deemed a misdemeanor for all purposes.

(d) A violation of any code section listed in Section 19.8 is an infraction subject to the procedures described in Sections 19.6 and 19.7 when:

(1) The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to have the case proceed as a misdemeanor, or;

(2) The court, with the consent of the defendant, determines that the offense is an infraction in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

(e) Nothing in this section authorizes a judge to relieve a defendant of the duty to register as a sex offender pursuant to Section 290 if the defendant is charged with an offense for which registration as a sex offender is required pursuant to Section 290, and for which the trier of fact has found the defendant guilty.

SEC. 2. Section 290.6 of the Penal Code is amended to read:

290.6. (a) Fifteen days before the scheduled release date of a person described in subdivision (b), the Department of Corrections shall provide to local law enforcement all of the following information regarding the person:

- (1) Name.
- (2) Community residence and address, including ZIP Code.
- (3) Physical description.
- (4) Conviction information.

(b) This subdivision shall apply to any person sentenced to the state prison who is required to register pursuant to Section 290 for a conviction of an offense specified in paragraph (1) of subdivision (a) of Section 290.4.

(c) For the purpose of this section, “law enforcement” includes any agency with which the person will be required to register upon his or her release pursuant to Section 290 based upon the person’s community of residence upon release.

(d) If it is not possible for the Department of Corrections to provide the information specified in subdivision (a) on a date that is



15 days before the scheduled release date, the information shall be provided on the next business day following that date.

(e) The Department of Corrections shall notify local law enforcement within 36 hours of learning of the change if the scheduled release date or any of the required information changes prior to the scheduled release date.

SEC. 3. Section 1243 of the Penal Code is amended to read:

1243. An appeal to the Supreme Court or to a court of appeal from a judgment of conviction stays the execution of the judgment in all cases where a sentence of death has been imposed, but does not stay the execution of the judgment or order granting probation in any other case unless the trial or appellate court shall so order. The granting or refusal of such an order shall rest in the discretion of the court, except that a court shall not stay any duty to register as a sex offender pursuant to Section 290. If the order is made, the clerk of the court shall issue a certificate stating that the order has been made.

SEC. 4. Section 290.8 is added to the Penal Code, to read:

290.8. Effective January 1, 1999, any local law enforcement agency that does not register sex offenders during regular daytime business hours on a daily basis, excluding weekends and holidays, shall notify the regional parole office for the Department of Corrections and the regional parole office for the Department of the Youth Authority of the days, times, and locations the agency is available for registration of sex offenders pursuant to Section 290.

SEC. 5. Section 290.85 is added to the Penal Code, to read:

290.85. Every parolee who is required to register as a sex offender, pursuant to Section 290, shall provide proof of registration to his or her parole agent within six working days of release on parole. The six-day period for providing proof of registration may be extended only upon determination by the parole agent that unusual circumstances exist relating to the availability of local law enforcement registration capabilities that preclude the parolee's ability to meet the deadline. Every parolee who is required to register as a sex offender pursuant to Section 290 shall provide proof of any revision or annual update to his or her registration information to his or her parole agent at his or her next scheduled supervision appointment.

SEC. 6. Section 1467 of the Penal Code is amended to read:

1467. An appeal from a judgment of conviction does not stay the execution of the judgment in any case unless the trial or a reviewing court shall so order. The granting or refusal of such an order shall rest in the discretion of the court, except that a court shall not stay any duty to register as a sex offender pursuant to Section 290.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant



to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

