

AMENDED IN SENATE MARCH 10, 2005

SENATE BILL

No. 43

Introduced by Senator Battin

(Coauthors: Senators Cox, Denham, Dutton, and Margett)

(Coauthors: Assembly Members Benoit, Cogdill, Daucher, DeVore, Garcia, Harman, Huff, La Malfa, La Suer, Leslie, Maze, Runner, Spitzer, and Strickland)

January 4, 2005

An act to amend Section 209.46 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 43, as amended, Battin. Megan's Law: applicable offenses.

Existing law requires the Department of Justice, on or before July 1, 2005, to make specified information about certain sex offenders available to the public via an Internet Web site, including a photograph, physical description, and criminal history, and to update that information on an ongoing basis. This information also includes the home address of specified offenders and the community of residence and ZIP Code of others. Existing law also provides that certain offenders with less serious sexual offense histories, as specified, may apply to the Department of Justice for exclusion from the Internet Web site.

This bill would add persons who have been convicted of spousal rape accomplished by use of force or violence to the list of offenders whose home addresses are to be made available on the Internet Web site. This bill would also add persons convicted of incest, various offenses involving obscene matter depicting a minor or matter depicting a minor engaging in or simulating sexual conduct; *and* sexual exploitation of a child, ~~and indecent exposure~~ to the list of

offenders whose communities of residence and ZIP Codes will be made available on 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:

- 1 SECTION 1. Section 290.46 of the Penal Code is amended to
2 read:
- 3 290.46. (a) 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
6 Section 290 to the public via an Internet Web site as specified in
7 this section. The department shall update the 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 Web site. The name or address of the person's
11 employer and the listed person's criminal history other than the
12 specific crimes for which the person is required to register shall
13 not be included on the Web site. The Web site shall be translated
14 into languages other than English as determined by the
15 department.
- 16 (b) (1) On or before July 1, 2005, with respect to a person
17 who has been convicted of the commission or the attempted
18 commission of any of the offenses listed in this subdivision or the
19 statutory predecessors of any of these offenses, or any offense
20 which, if committed or attempted to be committed in this state,
21 would have been punishable as one or more of the offenses listed
22 in this subdivision, the Department of Justice shall make
23 available to the public via the Internet Web site his or her names
24 and known aliases, a photograph, a physical description,
25 including gender and race, date of birth, criminal history, the
26 address at which the person resides, and any other information
27 that the Department of Justice deems relevant, but not the
28 information excluded pursuant to subdivision (a).
- 29 (2) This subdivision shall apply to the following offenses:
- 30 (A) Subdivision (b) of Section 207.
- 31 (B) Subdivision (b) of Section 209, except kidnapping to
32 commit robbery.
- 33 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

1 (D) Paragraph (1) of subdivision (a) of Section 262.

2 (E) Section 264.1.

3 (F) Section 269.

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

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

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

8 (J) Section 288.5.

9 (K) Subdivision (a) or (j) of Section 289.

10 (3) This subdivision shall also apply to any person who has
11 ever been adjudicated a sexually violent predator as defined in
12 Section 6600 of the Welfare and Institutions Code.

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

38 (2) This subdivision shall apply to the following offenses,
39 provided that the person has one or more prior or subsequent

1 convictions of an offense listed in paragraph (2) of subdivision
2 (a) of Section 290:
3 (A) Section 220, except assault to commit mayhem.
4 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.
5 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
6 (i), of Section 286.
7 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
8 (i), of Section 288a.
9 (E) Subdivision (b), (d), (e), or (i) of Section 289.
10 (d) (1) On or before July 1, 2005, with respect to a person
11 who has been convicted of the commission or the attempted
12 commission of any of the offenses listed in this subdivision or the
13 statutory predecessors of any of these offenses, or of any offense
14 which, if committed or attempted to be committed in this state,
15 would have been punishable as one or more of the offenses listed
16 in this subdivision, the Department of Justice shall make
17 available to the public via the Internet Web site his or her names
18 and known aliases, a photograph, a physical description,
19 including gender and race, date of birth, criminal history, the
20 community of residence and ZIP Code in which the person
21 resides, and any other information that the Department of Justice
22 deems relevant, but not the information excluded pursuant to
23 subdivision (a) or the address at which the person resides.
24 (2) This subdivision shall apply to the following offenses:
25 (A) Section 220, except assault to commit mayhem, with no
26 prior or subsequent conviction of an offense listed in paragraph
27 (2) of subdivision (a) of Section 290.
28 (B) Subdivision (a) of Section 243.4, provided that the offense
29 is a felony.
30 (C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261,
31 with no prior or subsequent conviction of an offense listed in
32 paragraph (2) of subdivision (a) of Section 290.
33 (D) Section 266, provided that the offense is a felony.
34 (E) Section 266c, provided that the offense is a felony.
35 (F) Section 266j.
36 (G) Section 267.
37 (H) Section 285.
38 (I) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
39 (i), of Section 286, with no prior or subsequent conviction of an
40 offense listed in paragraph (2) of subdivision (a) of Section 290.

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2 (J) Subdivision (c) of Section 288, provided that the offense is
3 a misdemeanor.

4 (K) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
5 (i), of Section 288a, with no prior or subsequent conviction of an
6 offense listed in paragraph (2) of subdivision (a) of Section 290.

7 (L) Subdivision (b), (d), (e), or (i) of Section 289, with no
8 prior or subsequent conviction of an offense listed in paragraph
9 (2) of subdivision (a) of Section 290.

10
11 (M) Section 311.1.

12 (N) Subdivisions (b), (c), and (d) of Section 311.2.

13 (O) Section 311.3.

14 (P) Section 311.4.

15 (Q) Section 311.10.

16 (R) Section 311.11.

17 ~~(S) Subdivision 1 of Section 314.~~

18 ~~(T)~~

19 (S) Section 647.6.

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

2 (C) An offense listed in subdivision (b), (c), or (d) if the
3 offender is eligible for, granted, and successfully completes
4 probation pursuant to Section 1203.066 of the Penal Code.

5 (f) The Department of Justice shall make a reasonable effort to
6 provide notification to persons who have been convicted of the
7 commission or attempted commission of an offense specified in
8 subdivision (b), (c), or (d), that on or before July 1, 2005, the
9 department is required to make information about him or her
10 available to the public via an Internet Web site as specified in
11 this section. The Department of Justice shall also make a
12 reasonable effort to provide notice that he or she may be eligible
13 for exclusion from the Internet Web site if he or she may have
14 been convicted of an offense for which exclusion is available
15 pursuant to subdivision (e).

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

22 (h) (1) Any person who uses information disclosed pursuant
23 to the Internet Web site to commit a misdemeanor shall be
24 subject to, in addition to any other penalty or fine imposed, a fine
25 of not less than ten thousand dollars (\$10,000) and not more than
26 fifty thousand dollars (\$50,000).

27 (2) Any person who uses information disclosed pursuant to the
28 Internet Web site to commit a felony shall be punished, in
29 addition and consecutive to any other punishment, by a five-year
30 term of imprisonment in the state prison.

31 (i) Any person who is required to register pursuant to Section
32 290 who enters the Web site is punishable by a fine not
33 exceeding one thousand dollars (\$1,000), imprisonment in a
34 county jail for a period not to exceed six months, or by both that
35 fine and imprisonment.

36 (j) (1) A person is authorized to use information disclosed
37 pursuant to this section only to protect a person at risk.

38 (2) Except as authorized under paragraph (1) or any other
39 provision of law, use of any information that is disclosed

1 pursuant to this section for purposes relating to any of the
2 following is prohibited:

3 (A) Health insurance.

4 (B) Insurance.

5 (C) Loans.

6 (D) Credit.

7 (E) Employment.

8 (F) Education, scholarships, or fellowships.

9 (G) Housing or accommodations.

10 (H) Benefits, privileges, or services provided by any business
11 establishment.

12 (3) This section shall not affect authorized access to, or use of,
13 information pursuant to, among other provisions, Sections 11105
14 and 11105.3, Section 8808 of the Family Code, Sections 777.5
15 and 14409.2 of the Financial Code, Sections 1522.01 and
16 1596.871 of the Health and Safety Code, and Section 432.7 of
17 the Labor Code.

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

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

- 1 (k) On or before July 1, 2006, and every year thereafter, the
- 2 Department of Justice shall make a report to the Legislature
- 3 concerning the operation of this section.
- 4 (l) The Department of Justice and its employees shall be
- 5 immune from liability for good faith conduct under this section.