

AMENDED IN SENATE APRIL 20, 2005

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~~ *felony* offenses involving obscene matter depicting a minor or matter depicting a minor engaging in or simulating sexual conduct and sexual

exploitation of a child to the list of offenders whose communities of residence and ZIP Codes will be made available on the Internet Web site *unless the registrant submits to the department a probation report that states that the person depicted in the unlawful matter at issue was at least 16 years of age at the time of the depiction, as specified.*

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.

1 (B) Subdivision (b) of Section 209, except kidnapping to
2 commit robbery.

3 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

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

5 ~~(E)~~

6 (D) Section 264.1.

7 ~~(F)~~

8 (E) Section 269.

9 ~~(G)~~

10 (F) Subdivision (c) or (d) of Section 286.

11 ~~(H)~~

12 (G) Subdivision (a), (b), or (c) of Section 288, provided that
13 the offense is a felony.

14 ~~(I)~~

15 (H) Subdivision (c) or (d) of Section 288a.

16 ~~(J)~~

17 (I) Section 288.5.

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

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

22 (c) (1) On or before July 1, 2005, with respect to a person
23 who has been convicted of the commission or the attempted
24 commission of any of the offenses listed in paragraph (2) or the
25 statutory predecessors of any of these offenses, or any offense
26 which, if committed or attempted to be committed in this state,
27 would have been punishable as one or more of the offenses listed
28 in this subdivision, the Department of Justice shall make
29 available to the public via the Internet Web site his or her names
30 and known aliases, a photograph, a physical description,
31 including gender and race, date of birth, criminal history, the
32 community of residence and ZIP Code in which the person
33 resides, and any other information that the Department of Justice
34 deems relevant, but not the information excluded pursuant to
35 subdivision (a). However, the address at which the person resides
36 shall not be disclosed until a determination is made that the
37 person is, by virtue of his or her additional prior or subsequent
38 conviction of an offense listed in paragraph (2) of subdivision (a)
39 of Section 290, subject to this subdivision. On or before July 1,
40 2006, the Department of Justice shall determine whether any

1 person convicted of an offense listed in paragraph (2) also has
2 one or more prior or subsequent convictions of an offense listed
3 in paragraph (2) of subdivision (a) of Section 290, and, for those
4 persons, the Department of Justice shall make available to the
5 public via the Internet Web site the address at which the person
6 resides.

7 (2) This subdivision shall apply to the following offenses,
8 provided that the person has one or more prior or subsequent
9 convictions of an offense listed in paragraph (2) of subdivision
10 (a) of Section 290:

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

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

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

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

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

18 (d) (1) On or before July 1, 2005, with respect to a person
19 who has been convicted of the commission or the attempted
20 commission of any of the offenses listed in this subdivision or the
21 statutory predecessors of any of these offenses, or of any offense
22 which, if committed or attempted to be committed in this state,
23 would have been punishable as one or more of the offenses listed
24 in this subdivision, the Department of Justice shall make
25 available to the public via the Internet Web site his or her names
26 and known aliases, a photograph, a physical description,
27 including gender and race, date of birth, criminal history, the
28 community of residence and ZIP Code in which the person
29 resides, and any other information that the Department of Justice
30 deems relevant, but not the information excluded pursuant to
31 subdivision (a) or the address at which the person resides.

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

33 (A) Section 220, except assault to commit mayhem, with no
34 prior or subsequent conviction of an offense listed in paragraph
35 (2) of subdivision (a) of Section 290.

36 (B) Subdivision (a) of Section 243.4, provided that the offense
37 is a felony.

38 (C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261,
39 with no prior or subsequent conviction of an offense listed in
40 paragraph (2) of subdivision (a) of Section 290.

1 (D) Section 266, provided that the offense is a felony.

2 (E) Section 266c, provided that the offense is a felony.

3 (F) Section 266j.

4 (G) Section 267.

5 ~~(H) Section 285.~~

6 ~~(H)~~

7 (H) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
8 (i), of Section 286, with no prior or subsequent conviction of an
9 offense listed in paragraph (2) of subdivision (a) of Section 290.

10 ~~(I)~~

11 (I) Subdivision (c) of Section 288, provided that the offense is
12 a misdemeanor.

13 ~~(K)~~

14 (J) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
15 (i), of Section 288a, with no prior or subsequent conviction of an
16 offense listed in paragraph (2) of subdivision (a) of Section 290.

17 ~~(L)~~

18 (K) Subdivision (b), (d), (e), or (i) of Section 289, with no
19 prior or subsequent conviction of an offense listed in paragraph
20 (2) of subdivision (a) of Section 290.

21 ~~(M)~~

22 (L) *Felony convictions of any of the following offenses, unless*
23 *the registrant submits to the Department of Justice a certified*
24 *copy of a probation report filed in court that clearly states the*
25 *depicted person was at least 16 years of age at the time of the*
26 *depiction.*

27 (i) Section 311.1.

28 ~~(N)~~

29 (ii) Subdivisions (b), (c), and (d) of Section 311.2.

30 ~~(O)~~

31 (iii) Section 311.3.

32 ~~(P)~~

33 (iv) Section 311.4.

34 ~~(Q)~~

35 (v) Section 311.10.

36 ~~(R)~~

37 (vi) Section 311.11.

38 ~~(S)~~

39 (M) Section 647.6.

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

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

- (A) A felony violation of subdivision (a) of Section 243.4.
- (B) Section 647.6, provided the offense is a misdemeanor.
- (C) An offense listed in subdivision (b), (c), or (d) if the offender is eligible for, granted, and successfully completes probation pursuant to Section 1203.066 of the Penal Code.

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

(g) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does

1 not affect other statutory restrictions on disclosure in other
2 situations.

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

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

12 (i) Any person who is required to register pursuant to Section
13 290 who enters the Web site is punishable by a fine not
14 exceeding one thousand dollars (\$1,000), imprisonment in a
15 county jail for a period not to exceed six months, or by both that
16 fine and imprisonment.

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

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

23 (A) Health insurance.

24 (B) Insurance.

25 (C) Loans.

26 (D) Credit.

27 (E) Employment.

28 (F) Education, scholarships, or fellowships.

29 (G) Housing or accommodations.

30 (H) Benefits, privileges, or services provided by any business
31 establishment.

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

38 (4) (A) Any use of information disclosed pursuant to this
39 section for purposes other than those provided by paragraph (1)
40 or in violation of paragraph (2) shall make the user liable for the

1 actual damages, and any amount that may be determined by a
2 jury or a court sitting without a jury, not exceeding three times
3 the amount of actual damage, and not less than two hundred fifty
4 dollars (\$250), and attorney's fees, exemplary damages, or a civil
5 penalty not exceeding twenty-five thousand dollars (\$25,000).

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

20 (k) On or before July 1, 2006, and every year thereafter, the
21 Department of Justice shall make a report to the Legislature
22 concerning the operation of this section.

23 (l) The Department of Justice and its employees shall be
24 immune from liability for good faith conduct under this section.