

AMENDED IN SENATE MAY 3, 2005
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~~, Sharon 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 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~~ *applies* to the department *for exclusion from the Internet Web site and submits* 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) Section 264.1.

5 (E) Section 269.

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

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

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

10 (I) Section 288.5.

11 ~~(K)~~

12 (J) Subdivision (a) or (j) of Section 289.

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

16 (c) (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 paragraph (2) 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 community of residence and ZIP Code in which the person
27 resides, and any other information that the Department of Justice
28 deems relevant, but not the information excluded pursuant to
29 subdivision (a). However, the address at which the person resides
30 shall not be disclosed until a determination is made that the
31 person is, by virtue of his or her additional prior or subsequent
32 conviction of an offense listed in paragraph (2) of subdivision (a)
33 of Section 290, subject to this subdivision. On or before July 1,
34 2006, the Department of Justice shall determine whether any
35 person convicted of an offense listed in paragraph (2) also has
36 one or more prior or subsequent convictions of an offense listed
37 in paragraph (2) of subdivision (a) of Section 290, and, for those
38 persons, the Department of Justice shall make available to the
39 public via the Internet Web site the address at which the person
40 resides.

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

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

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

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

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

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

(d) (1) On or before July 1, 2005, with respect to a person who 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, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

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

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

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

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

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

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

(F) Section 266j.

(G) Section 267.

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

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

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

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

12 ~~(L) Felony convictions of any of the following offenses, unless~~
13 ~~the registrant submits to the Department of Justice a certified~~
14 ~~copy of a probation report filed in court that clearly states the~~
15 ~~depicted person was at least 16 years of age at the time of the~~
16 ~~depiction.~~

17 ~~(i) Section 311.1.~~

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

19 ~~(iii) Section 311.3.~~

20 ~~(iv) Section 311.4.~~

21 ~~(v) Section 311.10.~~

22 ~~(vi) Section 311.11.~~

23 ~~(M) Section 647.6.~~

24 *(L) A violation of Section 311.1, subdivision (b), (c), or (d) of*
25 *Section 311.2, Section 311.3, 311.4, or 311.10, provided that the*
26 *offense is a felony.*

27 (e) (1) If a person has been convicted of the commission or
28 the attempted commission of any of the offenses listed in this
29 subdivision or the statutory predecessors of any of these offenses,
30 or of any offense which, if committed or attempted to be
31 committed in this state, would have been punishable as one or
32 more of the offenses listed in this subdivision, and he or she has
33 been convicted of no other offense listed in subdivision (b), (c),
34 or (d) other than those listed in this subdivision, that person may
35 file an application for exclusion from the Internet Web site with
36 the Department of Justice. If the department determines that the
37 person meets the requirements of this subdivision, the department
38 shall grant the exclusion and no information concerning him or
39 her shall be made available via the Internet Web site described in
40 this section. He or she bears the burden of proving the facts that

1 make him or her eligible for exclusion from the Internet Web
2 site. However, a person who has filed for or been granted an
3 exclusion from the Internet Web site is not relieved of his or her
4 duty to register as a sex offender pursuant to Section 290 nor
5 from any otherwise applicable provision of law.

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

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

8 (B) Section 647.6, provided the offense is a misdemeanor.

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

12 *(D) A felony violation of Section 311.1, subdivision (b), (c), or*
13 *(d) of Section 311.2, Section 311.3, 311.4, or 311.10, if the*
14 *person submits to the department a certified copy of a probation*
15 *report filed in court that clearly states that the depicted person*
16 *was 16 years of age or older at the time of the depiction.*

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

28 (g) Notwithstanding Section 6254.5 of the Government Code,
29 disclosure of information pursuant to this section is not a waiver
30 of exemptions under Chapter 3.5 (commencing with Section
31 6250) of Title 1 of Division 7 of the Government Code and does
32 not affect other statutory restrictions on disclosure in other
33 situations.

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

39 (2) Any person who uses information disclosed pursuant to the
40 Internet Web site to commit a felony shall be punished, in

1 addition and consecutive to any other punishment, by a five-year
2 term of imprisonment in the state prison.

3 (i) Any person who is required to register pursuant to Section
4 290 who enters the Web site is punishable by a fine not
5 exceeding one thousand dollars (\$1,000), imprisonment in a
6 county jail for a period not to exceed six months, or by both that
7 fine and imprisonment.

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

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

14 (A) Health insurance.

15 (B) Insurance.

16 (C) Loans.

17 (D) Credit.

18 (E) Employment.

19 (F) Education, scholarships, or fellowships.

20 (G) Housing or accommodations.
21 (H) Benefits, privileges, or services provided by any business
22 establishment.

23 (3) This section shall not affect authorized access to, or use of,
24 information pursuant to, among other provisions, Sections 11105
25 and 11105.3, Section 8808 of the Family Code, Sections 777.5
26 and 14409.2 of the Financial Code, Sections 1522.01 and
27 1596.871 of the Health and Safety Code, and Section 432.7 of
28 the Labor Code.

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

37 (B) Whenever there is reasonable cause to believe that any
38 person or group of persons is engaged in a pattern or practice of
39 misuse of the information available via the Internet Web site in
40 violation of paragraph (2), the Attorney General, any district

1 attorney, or city attorney, or any person aggrieved by the misuse
2 is authorized to bring a civil action in the appropriate court
3 requesting preventive relief, including an application for a
4 permanent or temporary injunction, restraining order, or other
5 order against the person or group of persons responsible for the
6 pattern or practice of misuse. The foregoing remedies shall be
7 independent of any other remedies or procedures that may be
8 available to an aggrieved party under other provisions of law,
9 including Part 2 (commencing with Section 43) of Division 1 of
10 the Civil Code.

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

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