

Introduced by Senator Battin

January 18, 2006

An act to amend Section 290.46 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1182, as introduced, Battin. Sex offenders.

Existing law requires the Department of Justice 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, unless the registrant applies to the department for exclusion from the Internet Web site and submits a probation report that states that all victims involved in the commission of the offense were at least 16 years of age at the time of the commission of the offense, 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:

SECTION 1. Section 290.46 of the Penal Code is amended to read:

290.46. (a) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(b) (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, or who is described in, paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

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

(A) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(B) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

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

(D) Section 264.1.

(E) Section 269.

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

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

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

1 (I) Section 288.5.

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

3 (K) Any person who has ever been adjudicated a sexually
4 violent predator as defined in Section 6600 of the Welfare and
5 Institutions Code.

6 (c) (1) On or before July 1, 2005, with respect to a person
7 who has been convicted of the commission or the attempted
8 commission of any of the offenses listed in paragraph (2), the
9 Department of Justice shall make available to the public via the
10 Internet Web site his or her name and known aliases, a
11 photograph, a physical description, including gender and race,
12 date of birth, criminal history, the community of residence and
13 ZIP Code in which the person resides or the county in which the
14 person is registered as a transient, and any other information that
15 the Department of Justice deems relevant, but not the information
16 excluded pursuant to subdivision (a). On or before July 1, 2006,
17 the Department of Justice shall determine whether any person
18 convicted of an offense listed in paragraph (2) also has one or
19 more prior or subsequent convictions of an offense listed in
20 paragraph (2) of subdivision (a) of Section 290, and, for those
21 persons, the Department of Justice shall make available to the
22 public via the Internet Web site the address at which the person
23 resides. However, the address at which the person resides shall
24 not be disclosed until a determination is made that the person is,
25 by virtue of his or her additional prior or subsequent conviction
26 of an offense listed in paragraph (2) of subdivision (a) of Section
27 290, subject to this subdivision.

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

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

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

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

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

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

36 (d) (1) On or before July 1, 2005, with respect to a person
37 who has been convicted of the commission or the attempted
38 commission of any of the offenses listed in, or who is described
39 in, this subdivision, the Department of Justice shall make
40 available to the public via the Internet Web site his or her name

1 and known aliases, a photograph, a physical description,
2 including gender and race, date of birth, criminal history, the
3 community of residence and ZIP Code in which the person
4 resides or the county in which the person is registered as a
5 transient, and any other information that the Department of
6 Justice deems relevant, but not the information excluded pursuant
7 to subdivision (a) or the address at which the person resides.

8 (2) This subdivision shall apply to the following offenses and
9 offenders:

10 (A) Subdivision (a) of Section 243.4, provided that the offense
11 is a felony.

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

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

14 (D) Section 266j.

15 (E) Section 267.

16 (F) Subdivision (c) of Section 288, provided that the offense is
17 a misdemeanor.

18 (G) ~~Section~~ *Section 311.1, subdivision (b), (c), or (d) of*
19 *Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11,*
20 *provided that the offense is a felony.*

21 (H) *Section 647.6.*

22 ~~(H)~~

23 (I) Any person required to register pursuant to Section 290
24 based upon an out-of-state conviction, unless that person is
25 excluded from the Internet Web site pursuant to subdivision (e).
26 However, if the Department of Justice has determined that the
27 out-of-state crime, if committed or attempted in this state, would
28 have been punishable in this state as a crime described in
29 subparagraph (A) of paragraph (2) of subdivision (a) of Section
30 290, the person shall be placed on the Internet Web site as
31 provided in subdivision (b) or (c), as applicable to the crime.

32 (e) (1) If a person has been convicted of the commission or
33 the attempted commission of any of the offenses listed in this
34 subdivision, and he or she has been convicted of no other offense
35 listed in subdivision (b), (c), or (d) other than those listed in this
36 subdivision, that person may file an application with the
37 Department of Justice, on a form approved by the department, for
38 exclusion from the Internet Web site. If the department
39 determines that the person meets the requirements of this
40 subdivision, the department shall grant the exclusion and no

1 information concerning the person shall be made available via
2 the Internet Web site described in this section. He or she bears
3 the burden of proving the facts that make him or her eligible for
4 exclusion from the Internet Web site. However, a person who has
5 filed for or been granted an exclusion from the Internet Web site
6 is not relieved of his or her duty to register as a sex offender
7 pursuant to Section 290 nor from any otherwise applicable
8 provision of law.

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

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

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

12 (C) ~~(i) An~~ *A felony violation of Section 311.3, 311.4, or*
13 *311.10, if the person submits to the department a certified copy*
14 *of a probation report filed in court that clearly states that all*
15 *victims involved in the commission of the offense were 16 years*
16 *of age at the time of the commission of the offense.*

17 (D) (i) An offense for which the offender successfully
18 completed probation, provided that the offender submits to the
19 department a certified copy of a probation report, presentencing
20 report, report prepared pursuant to Section 288.1, or other official
21 court document that clearly demonstrates both of the following:

22 (I) The offender was the victim's parent, stepparent, sibling, or
23 grandparent.

24 (II) The crime did not involve either oral copulation or
25 penetration of the vagina or rectum of either the victim or the
26 offender by the penis of the other or by any foreign object.

27 (ii) An offense for which the offender is on probation at the
28 time of his or her application, provided that the offender submits
29 to the department a certified copy of a probation report,
30 presentencing report, report prepared pursuant to Section 288.1,
31 or other official court document that clearly demonstrates both of
32 the following:

33 (I) The offender was the victim's parent, stepparent, sibling, or
34 grandparent.

35 (II) The crime did not involve either oral copulation or
36 penetration of the vagina or rectum of either the victim or the
37 offender by the penis of the other or by any foreign object.

38 (iii) If, subsequent to his or her application, the offender
39 commits a violation of probation resulting in his or her
40 incarceration in county jail or state prison, his or her exclusion,

1 or application for exclusion, from the Internet Web site shall be
2 terminated.

3 (iv) For the purposes of this subparagraph, “successfully
4 completed probation” means that during the period of probation
5 the offender neither received additional county jail or state prison
6 time for a violation of probation nor was convicted of another
7 offense resulting in a sentence to county jail or state prison.

8 (f) The Department of Justice shall make a reasonable effort to
9 provide notification to persons who have been convicted of the
10 commission or attempted commission of an offense specified in
11 subdivision (b), (c), or (d), that on or before July 1, 2005, the
12 department is required to make information about specified sex
13 offenders available to the public via an Internet Web site as
14 specified in this section. The Department of Justice shall also
15 make a reasonable effort to provide notice that some offenders
16 are eligible to apply for exclusion from the Internet Web site.

17 (g) (1) A designated law enforcement entity, as defined in
18 subdivision (f) of Section 290.45, may make available
19 information concerning persons who are required to register
20 pursuant to Section 290 to the public via an Internet Web site as
21 specified in paragraph (2).

22 (2) The law enforcement entity may make available by way of
23 an Internet Web site the information described in subdivision (c)
24 if it determines that the public disclosure of the information
25 about a specific offender by way of the entity’s Internet Web site
26 is necessary to ensure the public safety based upon information
27 available to the entity concerning that specific offender.

28 (3) The information that may be provided pursuant to this
29 subdivision may include the information specified in subdivision
30 (b) of Section 290.45. However, that offender’s address may not
31 be disclosed unless he or she is a person whose address is on the
32 Department of Justice’s Internet Web site pursuant to subdivision
33 (b) or (c).

34 (h) For purposes of this section, “offense” includes the
35 statutory predecessors of that offense, or any offense committed
36 in another jurisdiction that, if committed or attempted to be
37 committed in this state, would have been punishable in this state
38 as an offense listed in subparagraph (A) of paragraph (2) of
39 subdivision (a) of Section 290.

(i) 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 not affect other statutory restrictions on disclosure in other situations.

(j) (1) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000).

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

(k) Any person who is required to register pursuant to Section 290 who enters an Internet Web site established pursuant to this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

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

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

- (A) Health insurance.
- (B) Insurance.
- (C) Loans.
- (D) Credit.
- (E) Employment.
- (F) Education, scholarships, or fellowships.
- (G) Housing or accommodations.
- (H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and

1 1596.871 of the Health and Safety Code, and Section 432.7 of
2 the Labor Code.

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

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

25 (m) The public notification provisions of this section are
26 applicable to every person described in this section, without
27 regard to when his or her crimes were committed or his or her
28 duty to register pursuant to Section 290 arose, and to every
29 offense described in this section, regardless of when it was
30 committed.

31 (n) On or before July 1, 2006, and every year thereafter, the
32 Department of Justice shall make a report to the Legislature
33 concerning the operation of this section.

34 (o) A designated law enforcement entity and its employees
35 shall be immune from liability for good faith conduct under this
36 section.

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