

AMENDED IN SENATE MAY 2, 2006
AMENDED IN SENATE APRIL 6, 2006
AMENDED IN SENATE MARCH 15, 2006

SENATE BILL

No. 1182

Introduced by Senator Battin

**(Coauthors: Senators Ackerman, Cox, Dutton, Margett, and
Morrow)**

(Coauthors: Assembly Members Benoit, Bermudez, Bogh, Cogdill,
DeVore, Garcia, Harman, Shirley Horton, Huff, Mountjoy,
Nakanishi, Spitzer, and Strickland)

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 amended, 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~~ *the depicted person* was at least 16 years of age at the time of the ~~commission of the offense~~ *depiction*, 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 information available
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 Internet Web site on
8 an ongoing basis. All information identifying the victim by name,
9 birth date, address, or relationship to the registrant shall be
10 excluded from the Internet Web site. The name or address of the
11 person's employer and the listed person's criminal history other
12 than the specific crimes for which the person is required to
13 register shall not be included on the Internet Web site. The
14 Internet Web site shall be translated into languages other than
15 English as determined by the 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, or who is described
19 in, paragraph (2), the Department of Justice shall make available
20 to the public via the Internet Web site his or her name and known
21 aliases, a photograph, a physical description, including gender
22 and race, date of birth, criminal history, the address at which the
23 person resides, and any other information that the Department of
24 Justice deems relevant, but not the information excluded pursuant
25 to subdivision (a).

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

1 (A) Section 207 committed with intent to violate Section 261,
2 286, 288, 288a, or 289.

3 (B) Section 209 committed with intent to violate Section 261,
4 286, 288, 288a, or 289.

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

6 (D) Section 264.1.

7 (E) Section 269.

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

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

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

12 (I) Section 288.5.

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

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

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

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

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

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

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

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

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

7 (d) (1) On or before July 1, 2005, with respect to a person
8 who has been convicted of the commission or the attempted
9 commission of any of the offenses listed in, or who is described
10 in, this subdivision, the Department of Justice shall make
11 available to the public via the Internet Web site his or her name
12 and known aliases, a photograph, a physical description,
13 including gender and race, date of birth, criminal history, the
14 community of residence and ZIP Code in which the person
15 resides or the county in which the person is registered as a
16 transient, and any other information that the Department of
17 Justice deems relevant, but not the information excluded pursuant
18 to subdivision (a) or the address at which the person resides.

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

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

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

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

25 (D) Section 266j.

26 (E) Section 267.

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

29 (G) Section 311.1, subdivision (b), (c), or (d) of Section
30 311.2, or Section 311.3, 311.4, 311.10, or 311.11, provided that
31 the offense is a felony.

32 (H) Section 647.6.

33 (I) Any person required to register pursuant to Section 290
34 based upon an out-of-state conviction, unless that person is
35 excluded from the Internet Web site pursuant to subdivision (e).
36 However, if the Department of Justice has determined that the
37 out-of-state crime, if committed or attempted in this state, would
38 have been punishable in this state as a crime described in
39 subparagraph (A) of paragraph (2) of subdivision (a) of Section

290, the person shall be placed on the Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.

(e) (1) If a person has been convicted of the commission or the attempted commission of any 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 with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person 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) A felony violation of Section 311.3, 311.4, or 311.10, if the person submits to the department a certified copy of a probation report filed in court that clearly states that ~~all victims involved in the commission of the offense were the depicted person~~ *was at least 16 years of age at the time of the commission of the offense depiction.*

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

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

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

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits

1 to the department a certified copy of a probation report,
2 presentencing report, report prepared pursuant to Section 288.1,
3 or other official court document that clearly demonstrates both of
4 the following:

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

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

10 (iii) If, subsequent to his or her application, the offender
11 commits a violation of probation resulting in his or her
12 incarceration in county jail or state prison, his or her exclusion,
13 or application for exclusion, from the Internet Web site shall be
14 terminated.

15 (iv) For the purposes of this subparagraph, "successfully
16 completed probation" means that during the period of probation
17 the offender neither received additional county jail or state prison
18 time for a violation of probation nor was convicted of another
19 offense resulting in a sentence to county jail or state prison.

20 (f) The Department of Justice shall make a reasonable effort to
21 provide notification to persons who have been convicted of the
22 commission or attempted commission of an offense specified in
23 subdivision (b), (c), or (d), that on or before July 1, 2005, the
24 department is required to make information about specified sex
25 offenders available to the public via an Internet Web site as
26 specified in this section. The Department of Justice shall also
27 make a reasonable effort to provide notice that some offenders
28 are eligible to apply for exclusion from the Internet Web site.

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

34 (2) The law enforcement entity may make available by way of
35 an Internet Web site the information described in subdivision (c)
36 if it determines that the public disclosure of the information
37 about a specific offender by way of the entity's Internet Web site
38 is necessary to ensure the public safety based upon information
39 available to the entity concerning that specific offender.

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

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subparagraph (A) of paragraph (2) of 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.

- 1 (C) Loans.
- 2 (D) Credit.
- 3 (E) Employment.
- 4 (F) Education, scholarships, or fellowships.
- 5 (G) Housing or accommodations.
- 6 (H) Benefits, privileges, or services provided by any business
- 7 establishment.

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

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

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

36 (m) The public notification provisions of this section are
37 applicable to every person described in this section, without
38 regard to when his or her crimes were committed or his or her
39 duty to register pursuant to Section 290 arose, and to every

1 offense described in this section, regardless of when it was
2 committed.

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

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

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