

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 179

Introduced by Assembly Member Portantino

February 2, 2009

An act to amend ~~Section 288~~ Sections 290.011, 290.012, 290.014, 290.015, 290.017, and 290.46 of the Penal Code, relating to ~~crime~~ sex offender registration.

LEGISLATIVE COUNSEL'S DIGEST

AB 179, as amended, Portantino. ~~Crime~~-Sex offender registration: e-mail addresses.

Existing law requires persons convicted of specified sex offenses to register with local law enforcement authorities and update that registration, as specified. A willful violation of these registration requirements is punishable as a misdemeanor or as a felony, as specified. Existing law requires that persons who are subject to registration be informed of their duty to register upon release from incarceration or confinement in a hospital, as specified, and requires the official responsible for the place of confinement or hospital to forward the person's expected address upon release to the Department of Justice.

This bill would require that a person required to register as a sex offender include all e-mail addresses and instant messaging identities that may be used by the person in the information provided at each registration or renewed registration, as specified. The bill would require the official in charge of a place of confinement or hospital releasing a person subject to registration to forward to the Department of Justice

all e-mail addresses and instant messaging identities that may be used by the person in addition to the person's expected address upon release.

By expanding the scope of registration requirements, the willful violation of which is an offense, and imposing additional reporting duties on local law enforcement entities, this bill would impose a state-mandated local program.

Existing law requires the Department of Justice to publish the names, aliases, photographs, physical descriptions, criminal histories, and addresses of persons convicted of specified sexual offenses on an Internet Web site, and to publish lesser amounts of information for other specified offenses.

This bill would additionally require the department to publish on the Internet Web site all e-mail addresses and instant messaging identities that may be used by any of these persons.

Existing law requires a person convicted of specified sexual offenses who changes his or her name to inform the local law enforcement agency of that change within 5 working days, as specified. Violation of these provisions is an offense. The local law enforcement agency is required to inform the Department of Justice of that change within 3 days.

This bill would also require the person to inform the local law enforcement agency of changes to any e-mail address or instant messaging identity that may be used by the person, imposing the same sanction for violation, and requiring the same forwarding of that information to the Department of Justice.

By expanding provisions, the violation of which is a crime, and by imposing additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law provides that any person who willfully and lewdly commits any lewd or lascivious act, upon or with the body, or any part or member thereof, of a child who is under 14 years of age, with the~~

intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is punishable by imprisonment in the state prison for 3, 6, or 8 years.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.

State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 290.011 of the Penal Code is amended
2 to read:

3 290.011. Every person who is required to register pursuant to
4 the Act who is living as a transient shall be required to register for
5 the rest of his or her life as follows:

6 (a) He or she shall register, or reregister if the person has
7 previously registered, within five working days from release from
8 incarceration, placement or commitment, or release on probation,
9 pursuant to subdivision (b) of Section 290, except that if the person
10 previously registered as a transient less than 30 days from the date
11 of his or her release from incarceration, he or she does not need
12 to reregister as a transient until his or her next required 30-day
13 update of registration. If a transient is not physically present in
14 any one jurisdiction for five consecutive working days, he or she
15 shall register in the jurisdiction in which he or she is physically
16 present on the fifth working day following release, pursuant to
17 subdivision (b) of Section 290. Beginning on or before the 30th
18 day following initial registration upon release, a transient shall
19 reregister no less than once every 30 days thereafter. A transient
20 shall register with the chief of police of the city in which he or she
21 is physically present within that 30-day period, or the sheriff of
22 the county if he or she is physically present in an unincorporated
23 area or city that has no police department, and additionally, with
24 the chief of police of a campus of the University of California, the
25 California State University, or community college if he or she is
26 physically present upon the campus or in any of its facilities. A
27 transient shall reregister no less than once every 30 days regardless
28 of the length of time he or she has been physically present in the
29 particular jurisdiction in which he or she reregisters. If a transient
30 fails to reregister within any 30-day period, he or she may be

1 prosecuted in any jurisdiction in which he or she is physically
2 present.

3 (b) A transient who moves to a residence shall have five working
4 days within which to register at that address, in accordance with
5 subdivision (b) of Section 290. A person registered at a residence
6 address in accordance with that provision who becomes transient
7 shall have five working days within which to reregister as a
8 transient in accordance with subdivision (a).

9 (c) Beginning on his or her first birthday following registration,
10 a transient shall register annually, within five working days of his
11 or her birthday, to update his or her registration with the entities
12 described in subdivision (a). A transient shall register in whichever
13 jurisdiction he or she is physically present on that date. At the
14 30-day updates and the annual update, a transient shall provide
15 current information as required on the Department of Justice annual
16 update form, including the information described in paragraphs
17 (1) to (3), inclusive, *and paragraph (6)*, of subdivision (a) of
18 Section 290.015, and the information specified in subdivision (d).

19 (d) A transient shall, upon registration and reregistration, provide
20 current information as required on the Department of Justice
21 registration forms, and shall also list the places where he or she
22 sleeps, eats, works, frequents, and engages in leisure activities. If
23 a transient changes or adds to the places listed on the form during
24 the 30-day period, he or she does not need to report the new place
25 or places until the next required reregistration.

26 (e) Failure to comply with the requirement of reregistering every
27 30 days following initial registration pursuant to subdivision (a)
28 shall be punished in accordance with subdivision (g) of Section
29 290.018. Failure to comply with any other requirement of this
30 section shall be punished in accordance with either subdivision
31 (a) or (b) of Section 290.018.

32 (f) A transient who moves out of state shall inform, in person,
33 the chief of police in the city in which he or she is physically
34 present, or the sheriff of the county if he or she is physically present
35 in an unincorporated area or city that has no police department,
36 within five working days, of his or her move out of state. The
37 transient shall inform that registering agency of his or her planned
38 destination, residence or transient location out of state, and any
39 plans he or she has to return to California, if known. The law
40 enforcement agency shall, within three days after receipt of this

information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(g) For purposes of this section, “transient” means a person who has no residence. “Residence” means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

(h) The transient registrant’s duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this section became effective.

SEC. 2. Section 290.012 of the Penal Code is amended to read:

290.012. (a) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subdivision (b) of Section 290. At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in paragraphs (1) to (3), inclusive, *and paragraph (6)* of subdivision (a) of Section 290.015. The registering agency shall give the registrant a copy of the registration requirements from the Department of Justice form.

(b) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address, *including all e-mail addresses and instant messaging identities that may be used by the person*, no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice. Every person who, as a sexually violent predator, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive

1 this notice shall be a defense to the penalties prescribed in
2 subdivision (f) of Section 290.018.

3 (c) In addition, every person subject to the Act, while living as
4 a transient in California shall update his or her registration at least
5 every 30 days, in accordance with Section 290.011.

6 (d) No entity shall require a person to pay a fee to register or
7 update his or her registration pursuant to this section. The
8 registering agency shall submit registrations, including annual
9 updates or changes of address, directly into the Department of
10 Justice Violent Crime Information Network (VCIN).

11 *SEC. 3. Section 290.014 of the Penal Code is amended to read:*

12 290.014. If any person who is required to register pursuant to
13 the Act changes his or her name, *or any e-mail address or instant*
14 *messaging identity that may be used by the person*, the person shall
15 inform, in person, the law enforcement agency or agencies with
16 which he or she is currently registered within five working days.
17 The law enforcement agency or agencies shall forward a copy of
18 this information to the Department of Justice within three working
19 days of its receipt.

20 *SEC. 4. Section 290.015 of the Penal Code is amended to read:*

21 290.015. (a) A person who is subject to the Act shall register,
22 or reregister if the person has previously registered, upon release
23 from incarceration, placement, commitment, or release on probation
24 pursuant to subdivision (b) of Section 290. This section shall not
25 apply to a person who is incarcerated for less than 30 days if he
26 or she has registered as required by the Act, he or she returns after
27 incarceration to the last registered address, and the annual update
28 of registration that is required to occur within five working days
29 of his or her birthday, pursuant to subdivision (a) of Section
30 290.012, did not fall within that incarceration period. The
31 registration shall consist of all of the following:

32 (1) A statement in writing signed by the person, giving
33 information as shall be required by the Department of Justice and
34 giving the name and address of the person's employer, and the
35 address of the person's place of employment if that is different
36 from the employer's main address.

37 (2) The fingerprints and a current photograph of the person
38 taken by the registering official.

39 (3) The license plate number of any vehicle owned by, regularly
40 driven by, or registered in the name of the person.

(4) Notice to the person that, in addition to the requirements of the Act, he or she may have a duty to register in any other state where he or she may relocate.

(5) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the date he or she is allowed to register.

(6) *All e-mail addresses and instant messaging identities that may be used by the person. These e-mail addresses and instant messaging identities shall be provided by the Department of Justice to the registrant's probation or parole officer, as applicable.*

(b) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

SEC. 5. *Section 290.017 of the Penal Code is amended to read:*

290.017. (a) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined, who is required to register pursuant to the Act, shall, prior to discharge, parole, or release, be informed of his or her duty to register under the Act by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under the Act has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release, *and all e-mail addresses and instant messaging identities that may be used by*

1 *the person*, and shall report the *residence address and e-mail*
2 *addresses and instant messaging identities* to the Department of
3 Justice. The official shall at the same time forward a current
4 photograph of the person to the Department of Justice.

5 (b) The official in charge of the place of confinement or hospital
6 shall give one copy of the form to the person and shall send one
7 copy to the Department of Justice and one copy to the appropriate
8 law enforcement agency or agencies having jurisdiction over the
9 place the person expects to reside upon discharge, parole, or
10 release. If the conviction that makes the person subject to the Act
11 is a felony conviction, the official in charge shall, not later than
12 45 days prior to the scheduled release of the person, send one copy
13 to the appropriate law enforcement agency or agencies having
14 local jurisdiction where the person expects to reside upon
15 discharge, parole, or release; one copy to the prosecuting agency
16 that prosecuted the person; and one copy to the Department of
17 Justice. The official in charge of the place of confinement or
18 hospital shall retain one copy.

19 (c) Any person who is required to register pursuant to the Act
20 and who is released on probation, shall, prior to release or
21 discharge, be informed of the duty to register under the Act by the
22 probation department, and a probation officer shall require the
23 person to read and sign any form that may be required by the
24 Department of Justice, stating that the duty of the person to register
25 has been explained to him or her. The probation officer shall obtain
26 the address where the person expects to reside upon release or
27 discharge and shall report within three days the address to the
28 Department of Justice. The probation officer shall give one copy
29 of the form to the person, send one copy to the Department of
30 Justice, and forward one copy to the appropriate law enforcement
31 agency or agencies having local jurisdiction where the person
32 expects to reside upon his or her discharge, parole, or release.

33 (d) Any person who is required to register pursuant to the Act
34 and who is granted conditional release without supervised
35 probation, or discharged upon payment of a fine, shall, prior to
36 release or discharge, be informed of the duty to register under the
37 Act in open court by the court in which the person has been
38 convicted, and the court shall require the person to read and sign
39 any form that may be required by the Department of Justice, stating
40 that the duty of the person to register has been explained to him

1 or her. If the court finds that it is in the interest of the efficiency
2 of the court, the court may assign the bailiff to require the person
3 to read and sign forms under the Act. The court shall obtain the
4 address where the person expects to reside upon release or
5 discharge and shall report within three days the address to the
6 Department of Justice. The court shall give one copy of the form
7 to the person, send one copy to the Department of Justice, and
8 forward one copy to the appropriate law enforcement agency or
9 agencies having local jurisdiction where the person expects to
10 reside upon his or her discharge, parole, or release.

11 *SEC. 6. Section 290.46 of the Penal Code, as amended by*
12 *Section 1 of Chapter 599 of the Statutes of 2008, is amended to*
13 *read:*

14 290.46. (a) (1) On or before the dates specified in this section,
15 the Department of Justice shall make available information
16 concerning persons who are required to register pursuant to Section
17 290 to the public via an Internet Web site as specified in this
18 section. The department shall update the Internet Web site on an
19 ongoing basis. All information identifying the victim by name,
20 birth date, address, or relationship to the registrant shall be
21 excluded from the Internet Web site. The name or address of the
22 person's employer and the listed person's criminal history other
23 than the specific crimes for which the person is required to register
24 shall not be included on the Internet Web site. The Internet Web
25 site shall be translated into languages other than English as
26 determined by the department.

27 (2) (A) On or before July 1, 2010, the Department of Justice
28 shall make available to the public, via an Internet Web site as
29 specified in this section, as to any person described in subdivision
30 (b), (c), or (d), the following information:

31 (i) The year of conviction of his or her most recent offense
32 requiring registration pursuant to Section 290.

33 (ii) The year he or she was released from incarceration for that
34 offense.

35 (iii) Whether he or she was subsequently incarcerated for any
36 other felony, if that fact is reported to the department. If the
37 department has no information about a subsequent incarceration
38 for any felony, that fact shall be noted on the Internet Web site.

39 (iv) *All e-mail addresses and instant messaging identities that*
40 *may be used by the person.*

1 However, no year of conviction shall be made available to the
2 public unless the department also is able to make available the
3 corresponding year of release of incarceration for that offense, and
4 the required notation regarding any subsequent felony.

5 (B) (i) Any state facility that releases from incarceration a
6 person who was incarcerated because of a crime for which he or
7 she is required to register as a sex offender pursuant to Section
8 290 shall, within 30 days of release, provide the year of release
9 for his or her most recent offense requiring registration to the
10 Department of Justice in a manner and format approved by the
11 department.

12 (ii) Any state facility that releases a person who is required to
13 register pursuant to Section 290 from incarceration whose
14 incarceration was for a felony committed subsequently to the
15 offense for which he or she is required to register shall, within 30
16 days of release, advise the Department of Justice of that fact.

17 (iii) Any state facility that, prior to January 1, 2007, released
18 from incarceration a person who was incarcerated because of a
19 crime for which he or she is required to register as a sex offender
20 pursuant to Section 290 shall provide the year of release for his or
21 her most recent offense requiring registration to the Department
22 of Justice in a manner and format approved by the department.
23 The information provided by the Department of Corrections and
24 Rehabilitation shall be limited to information that is currently
25 maintained in an electronic format.

26 (iv) Any state facility that, prior to January 1, 2007, released a
27 person who is required to register pursuant to Section 290 from
28 incarceration whose incarceration was for a felony committed
29 subsequently to the offense for which he or she is required to
30 register shall advise the Department of Justice of that fact in a
31 manner and format approved by the department. The information
32 provided by the Department of Corrections and Rehabilitation
33 shall be limited to information that is currently maintained in an
34 electronic format.

35 (3) The State Department of Mental Health shall provide to the
36 Department of Justice Sex Offender Tracking Program the names
37 of all persons committed to its custody pursuant to Article 4
38 (commencing with Section 6600) of Chapter 2 of Part 2 of Division
39 6 of the Welfare and Institutions Code, within 30 days of

1 commitment, and shall provide the names of all of those persons
2 released from its custody within five working days of release.

3 (b) (1) On or before July 1, 2005, with respect to a person who
4 has been convicted of the commission or the attempted commission
5 of any of the offenses listed in, or who is described in, paragraph
6 (2), the Department of Justice shall make available to the public
7 via the Internet Web site his or her name and known aliases, a
8 photograph, a physical description, including gender and race, date
9 of birth, criminal history, prior adjudication as a sexually violent
10 predator, the address at which the person resides, and any other
11 information that the Department of Justice deems relevant, but not
12 the information excluded pursuant to subdivision (a).

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

15 (A) Section 187 committed in the perpetration, or an attempt to
16 perpetrate, rape or any act punishable under Section 286, 288,
17 288a, or 289.

18 (B) Section 207 committed with intent to violate Section 261,
19 286, 288, 288a, or 289.

20 (C) Section 209 committed with intent to violate Section 261,
21 286, 288, 288a, or 289.

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

23 (E) Section 264.1.

24 (F) Section 269.

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

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

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

29 (J) Section 288.3, provided that the offense is a felony.

30 (K) Section 288.4, provided that the offense is a felony.

31 (L) Section 288.5.

32 (M) Subdivision (a) or (j) of Section 289.

33 (N) Section 288.7.

34 (O) Any person who has ever been adjudicated a sexually violent
35 predator, as defined in Section 6600 of the Welfare and Institutions
36 Code.

37 (c) (1) On or before July 1, 2005, with respect to a person who
38 has been convicted of the commission or the attempted commission
39 of any of the offenses listed in paragraph (2), the Department of
40 Justice shall make available to the public via the Internet Web site

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

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

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

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

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

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

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

26 (d) (1) On or before July 1, 2005, with respect to a person who
27 has been convicted of the commission or the attempted commission
28 of any of the offenses listed in, or who is described in, this
29 subdivision, the Department of Justice shall make available to the
30 public via the Internet Web site his or her name and known aliases,
31 a photograph, a physical description, including gender and race,
32 date of birth, criminal history, the community of residence and
33 ZIP Code in which the person resides or the county in which the
34 person is registered as a transient, and any other information that
35 the Department of Justice deems relevant, but not the information
36 excluded pursuant to subdivision (a) or the address at which the
37 person resides.

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

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

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

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

5 (D) Section 266j.

6 (E) Section 267.

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

9 (G) Section 288.3, provided that the offense is a misdemeanor.

10 (H) Section 288.4, provided that the offense is a misdemeanor.

11 (I) Section 626.81.

12 (J) Section 647.6.

13 (K) Section 653c.

14 (L) Any person required to register pursuant to Section 290
15 based upon an out-of-state conviction, unless that person is
16 excluded from the Internet Web site pursuant to subdivision (e).
17 However, if the Department of Justice has determined that the
18 out-of-state crime, if committed or attempted in this state, would
19 have been punishable in this state as a crime described in
20 subdivision (c) of Section 290, the person shall be placed on the
21 Internet Web site as provided in subdivision (b) or (c), as applicable
22 to the crime.

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

2 (C) (i) An offense for which the offender successfully
3 completed probation, provided that the offender submits to the
4 department a certified copy of a probation report, presentencing
5 report, report prepared pursuant to Section 288.1, or other official
6 court document that clearly demonstrates that the offender was
7 the victim's parent, stepparent, sibling, or grandparent and that the
8 crime did not involve either oral copulation or penetration of the
9 vagina or rectum of either the victim or the offender by the penis
10 of the other or by any foreign object.

11 (ii) An offense for which the offender is on probation at the
12 time of his or her application, provided that the offender submits
13 to the department a certified copy of a probation report,
14 presentencing report, report prepared pursuant to Section 288.1,
15 or other official court document that clearly demonstrates that the
16 offender was the victim's parent, stepparent, sibling, or grandparent
17 and that the crime did not involve either oral copulation or
18 penetration of the vagina or rectum of either the victim or the
19 offender by the penis of the other or by any foreign object.

20 (iii) If, subsequent to his or her application, the offender commits
21 a violation of probation resulting in his or her incarceration in
22 county jail or state prison, his or her exclusion, or application for
23 exclusion, from the Internet Web site shall be terminated.

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

29 (3) If the department determines that a person who was granted
30 an exclusion under a former version of this subdivision would not
31 qualify for an exclusion under the current version of this
32 subdivision, the department shall rescind the exclusion, make a
33 reasonable effort to provide notification to the person that the
34 exclusion has been rescinded, and, no sooner than 30 days after
35 notification is attempted, make information about the offender
36 available to the public on the Internet Web site as provided in this
37 section.

38 (4) Effective January 1, 2012, no person shall be excluded
39 pursuant to this subdivision unless the offender has submitted to
40 the department documentation sufficient for the department to

1 determine that he or she has a SARATSO risk level of low or
2 moderate-low.

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

12 (g) (1) A designated law enforcement entity, as defined in
13 subdivision (f) of Section 290.45, may make available information
14 concerning persons who are required to register pursuant to Section
15 290 to the public via an Internet Web site as specified in paragraph
16 (2).

17 (2) The law enforcement entity may make available by way of
18 an Internet Web site the information described in subdivision (c)
19 if it determines that the public disclosure of the information about
20 a specific offender by way of the entity's Internet Web site is
21 necessary to ensure the public safety based upon information
22 available to the entity concerning that specific offender.

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

29 (h) For purposes of this section, "offense" includes the statutory
30 predecessors of that offense, or any offense committed in another
31 jurisdiction that, if committed or attempted to be committed in this
32 state, would have been punishable in this state as an offense listed
33 in subdivision (c) of Section 290.

34 (i) Notwithstanding Section 6254.5 of the Government Code,
35 disclosure of information pursuant to this section is not a waiver
36 of exemptions under Chapter 3.5 (commencing with Section 6250)
37 of Title 1 of Division 7 of the Government Code and does not
38 affect other statutory restrictions on disclosure in other situations.

39 (j) (1) Any person who uses information disclosed pursuant to
40 this section to commit a misdemeanor shall be subject to, in

1 addition to any other penalty or fine imposed, a fine of not less
2 than ten thousand dollars (\$10,000) and not more than fifty
3 thousand dollars (\$50,000).

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

8 (k) Any person who is required to register pursuant to Section
9 290 who enters an Internet Web site established pursuant to this
10 section shall be punished by a fine not exceeding one thousand
11 dollars (\$1,000), imprisonment in a county jail for a period not to
12 exceed six months, or by both that fine and imprisonment.

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

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

19 (A) Health insurance.

20 (B) Insurance.

21 (C) Loans.

22 (D) Credit.

23 (E) Employment.

24 (F) Education, scholarships, or fellowships.

25 (G) Housing or accommodations.

26 (H) Benefits, privileges, or services provided by any business
27 establishment.

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

34 (4) (A) Any use of information disclosed pursuant to this section
35 for purposes other than those provided by paragraph (1) or in
36 violation of paragraph (2) shall make the user liable for the actual
37 damages, and any amount that may be determined by a jury or a
38 court sitting without a jury, not exceeding three times the amount
39 of actual damage, and not less than two hundred fifty dollars

1 (\$250), and attorney's fees, exemplary damages, or a civil penalty
2 not exceeding twenty-five thousand dollars (\$25,000).

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

17 (m) The public notification provisions of this section are
18 applicable to every person described in this section, without regard
19 to when his or her crimes were committed or his or her duty to
20 register pursuant to Section 290 arose, and to every offense
21 described in this section, regardless of when it was committed.

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

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

27 (p) The Attorney General, in collaboration with local law
28 enforcement and others knowledgeable about sex offenders, shall
29 develop strategies to assist members of the public in understanding
30 and using publicly available information about registered sex
31 offenders to further public safety. These strategies may include,
32 but are not limited to, a hotline for community inquiries,
33 neighborhood and business guidelines for how to respond to
34 information posted on this Internet Web site, and any other resource
35 that promotes public education about these offenders.

36 *SEC. 7. Section 290.46 of the Penal Code, as amended by*
37 *Section 1.5 of Chapter 599 of the Statutes of 2008, is amended to*
38 *read:*

39 290.46. (a) (1) On or before the dates specified in this section,
40 the Department of Justice shall make available information

1 concerning persons who are required to register pursuant to Section
2 290 to the public via an Internet Web site as specified in this
3 section. The department shall update the Internet Web site on an
4 ongoing basis. All information identifying the victim by name,
5 birth date, address, or relationship to the registrant shall be
6 excluded from the Internet Web site. The name or address of the
7 person's employer and the listed person's criminal history other
8 than the specific crimes for which the person is required to register
9 shall not be included on the Internet Web site. The Internet Web
10 site shall be translated into languages other than English as
11 determined by the department.

12 (2) (A) On or before July 1, 2010, the Department of Justice
13 shall make available to the public, via an Internet Web site as
14 specified in this section, as to any person described in subdivision
15 (b), (c), or (d), the following information:

16 (i) The year of conviction of his or her most recent offense
17 requiring registration pursuant to Section 290.

18 (ii) The year he or she was released from incarceration for that
19 offense.

20 (iii) Whether he or she was subsequently incarcerated for any
21 other felony, if that fact is reported to the department. If the
22 department has no information about a subsequent incarceration
23 for any felony, that fact shall be noted on the Internet Web site.

24 (iv) *All e-mail addresses and instant messaging identities that*
25 *may be used by the person.*

26 However, no year of conviction shall be made available to the
27 public unless the department also is able to make available the
28 corresponding year of release of incarceration for that offense, and
29 the required notation regarding any subsequent felony.

30 (B) (i) Any state facility that releases from incarceration a
31 person who was incarcerated because of a crime for which he or
32 she is required to register as a sex offender pursuant to Section
33 290 shall, within 30 days of release, provide the year of release
34 for his or her most recent offense requiring registration to the
35 Department of Justice in a manner and format approved by the
36 department.

37 (ii) Any state facility that releases a person who is required to
38 register pursuant to Section 290 from incarceration whose
39 incarceration was for a felony committed subsequently to the

1 offense for which he or she is required to register shall, within 30
2 days of release, advise the Department of Justice of that fact.

3 (iii) Any state facility that, prior to January 1, 2007, released
4 from incarceration a person who was incarcerated because of a
5 crime for which he or she is required to register as a sex offender
6 pursuant to Section 290 shall provide the year of release for his or
7 her most recent offense requiring registration to the Department
8 of Justice in a manner and format approved by the department.
9 The information provided by the Department of Corrections and
10 Rehabilitation shall be limited to information that is currently
11 maintained in an electronic format.

12 (iv) Any state facility that, prior to January 1, 2007, released a
13 person who is required to register pursuant to Section 290 from
14 incarceration whose incarceration was for a felony committed
15 subsequently to the offense for which he or she is required to
16 register shall advise the Department of Justice of that fact in a
17 manner and format approved by the department. The information
18 provided by the Department of Corrections and Rehabilitation
19 shall be limited to information that is currently maintained in an
20 electronic format.

21 (3) The State Department of Mental Health shall provide to the
22 Department of Justice Sex Offender Tracking Program the names
23 of all persons committed to its custody pursuant to Article 4
24 (commencing with Section 6600) of Chapter 2 of Part 2 of Division
25 6 of the Welfare and Institutions Code, within 30 days of
26 commitment, and shall provide the names of all of those persons
27 released from its custody within five working days of release.

28 (b) (1) On or before July 1, 2005, with respect to a person who
29 has been convicted of the commission or the attempted commission
30 of any of the offenses listed in, or who is described in, paragraph
31 (2), the Department of Justice shall make available to the public
32 via the Internet Web site his or her name and known aliases, a
33 photograph, a physical description, including gender and race, date
34 of birth, criminal history, prior adjudication as a sexually violent
35 predator, the address at which the person resides, and any other
36 information that the Department of Justice deems relevant, but not
37 the information excluded pursuant to subdivision (a).

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

- 1 (A) Section 187 committed in the perpetration, or an attempt to
2 perpetrate, rape or any act punishable under Section 286, 288,
3 288a, or 289.
- 4 (B) Section 207 committed with intent to violate Section 261,
5 286, 288, 288a, or 289.
- 6 (C) Section 209 committed with intent to violate Section 261,
7 286, 288, 288a, or 289.
- 8 (D) Paragraph (2) or (6) of subdivision (a) of Section 261.
- 9 (E) Section 264.1.
- 10 (F) Section 269.
- 11 (G) Subdivision (c) or (d) of Section 286.
- 12 (H) Subdivision (a), (b), or (c) of Section 288, provided that the
13 offense is a felony.
- 14 (I) Subdivision (c) or (d) of Section 288a.
- 15 (J) Section 288.3, provided that the offense is a felony.
- 16 (K) Section 288.4, provided that the offense is a felony.
- 17 (L) Section 288.5.
- 18 (M) Subdivision (a) or (j) of Section 289.
- 19 (N) Section 288.7.
- 20 (O) Any person who has ever been adjudicated a sexually violent
21 predator, as defined in Section 6600 of the Welfare and Institutions
22 Code.
- 23 (P) A felony violation of Section 311.1.
- 24 (Q) A felony violation of subdivision (b), (c), or (d) of Section
25 311.2.
- 26 (R) A felony violation of Section 311.3.
- 27 (S) A felony violation of subdivision (a), (b), (c), or (d) of
28 Section 311.4.
- 29 (T) Section 311.10.
- 30 (U) A felony violation of Section 311.11.
- 31 (c) (1) On or before July 1, 2005, with respect to a person who
32 has been convicted of the commission or the attempted commission
33 of any of the offenses listed in paragraph (2), the Department of
34 Justice shall make available to the public via the Internet Web site
35 his or her name and known aliases, a photograph, a physical
36 description, including gender and race, date of birth, criminal
37 history, the community of residence and ZIP Code in which the
38 person resides or the county in which the person is registered as a
39 transient, and any other information that the Department of Justice
40 deems relevant, but not the information excluded pursuant to

subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in subdivision (c) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in subdivision (c) of Section 290, subject to this subdivision.

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

(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, or who is described in, this subdivision, 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 community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, 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 and offenders:

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

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

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

(D) Section 266j.

(E) Section 267.

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

3 (G) Section 288.3, provided that the offense is a misdemeanor.

4 (H) Section 288.4, provided that the offense is a misdemeanor.

5 (I) Section 626.81.

6 (J) Section 647.6.

7 (K) Section 653c.

8 (L) Any person required to register pursuant to Section 290
9 based upon an out-of-state conviction, unless that person is
10 excluded from the Internet Web site pursuant to subdivision (e).
11 However, if the Department of Justice has determined that the
12 out-of-state crime, if committed or attempted in this state, would
13 have been punishable in this state as a crime described in
14 subdivision (c) of Section 290, the person shall be placed on the
15 Internet Web site as provided in subdivision (b) or (c), as applicable
16 to the crime.

17 (e) (1) If a person has been convicted of the commission or the
18 attempted commission of any of the offenses listed in this
19 subdivision, and he or she has been convicted of no other offense
20 listed in subdivision (b), (c), or (d) other than those listed in this
21 subdivision, that person may file an application with the
22 Department of Justice, on a form approved by the department, for
23 exclusion from the Internet Web site. If the department determines
24 that the person meets the requirements of this subdivision, the
25 department shall grant the exclusion and no information concerning
26 the person shall be made available via the Internet Web site
27 described in this section. He or she bears the burden of proving
28 the facts that make him or her eligible for exclusion from the
29 Internet Web site. However, a person who has filed for or been
30 granted an exclusion from the Internet Web site is not relieved of
31 his or her duty to register as a sex offender pursuant to Section
32 290 nor from any otherwise applicable provision of law.

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

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

35 (B) Section 647.6, if the offense is a misdemeanor.

36 (C) A felony violation of Section 311.1, subdivision (b), (c), or
37 (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if
38 the person submits to the department a certified copy of a probation
39 report filed in court that clearly states that all victims involved in

1 the commission of the offense were at least 16 years of age or older
2 at the time of the commission of the offense.

3 (D) (i) An offense for which the offender successfully
4 completed probation, provided that the offender submits to the
5 department a certified copy of a probation report, presentencing
6 report, report prepared pursuant to Section 288.1, or other official
7 court document that clearly demonstrates that the offender was
8 the victim's parent, stepparent, sibling, or grandparent and that the
9 crime did not involve either oral copulation or penetration of the
10 vagina or rectum of either the victim or the offender by the penis
11 of the other or by any foreign object.

12 (ii) An offense for which the offender is on probation at the
13 time of his or her application, provided that the offender submits
14 to the department a certified copy of a probation report,
15 presentencing report, report prepared pursuant to Section 288.1,
16 or other official court document that clearly demonstrates that the
17 offender was the victim's parent, stepparent, sibling, or grandparent
18 and that the crime did not involve either oral copulation or
19 penetration of the vagina or rectum of either the victim or the
20 offender by the penis of the other or by any foreign object.

21 (iii) If, subsequent to his or her application, the offender commits
22 a violation of probation resulting in his or her incarceration in
23 county jail or state prison, his or her exclusion, or application for
24 exclusion, from the Internet Web site shall be terminated.

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

30 (3) If the department determines that a person who was granted
31 an exclusion under a former version of this subdivision would not
32 qualify for an exclusion under the current version of this
33 subdivision, the department shall rescind the exclusion, make a
34 reasonable effort to provide notification to the person that the
35 exclusion has been rescinded, and, no sooner than 30 days after
36 notification is attempted, make information about the offender
37 available to the public on the Internet Web site as provided in this
38 section.

39 (4) Effective January 1, 2012, no person shall be excluded
40 pursuant to this subdivision unless the offender has submitted to

1 the department documentation sufficient for the department to
2 determine that he or she has a SARATSO risk level of low or
3 moderate-low.

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

13 (g) (1) A designated law enforcement entity, as defined in
14 subdivision (f) of Section 290.45, may make available information
15 concerning persons who are required to register pursuant to Section
16 290 to the public via an Internet Web site as specified in paragraph
17 (2).

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

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

30 (h) For purposes of this section, "offense" includes the statutory
31 predecessors of that offense, or any offense committed in another
32 jurisdiction that, if committed or attempted to be committed in this
33 state, would have been punishable in this state as an offense listed
34 in subdivision (c) of Section 290.

35 (i) Notwithstanding Section 6254.5 of the Government Code,
36 disclosure of information pursuant to this section is not a waiver
37 of exemptions under Chapter 3.5 (commencing with Section 6250)
38 of Title 1 of Division 7 of the Government Code and does not
39 affect other statutory restrictions on disclosure in other situations.

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

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

10 (k) Any person who is required to register pursuant to Section
11 290 who enters an Internet Web site established pursuant to this
12 section shall be punished by a fine not exceeding one thousand
13 dollars (\$1,000), imprisonment in a county jail for a period not to
14 exceed six months, or by both that fine and imprisonment.

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

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

21 (A) Health insurance.

22 (B) Insurance.

23 (C) Loans.

24 (D) Credit.

25 (E) Employment.

26 (F) Education, scholarships, or fellowships.

27 (G) Housing or accommodations.

28 (H) Benefits, privileges, or services provided by any business
29 establishment.

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

36 (4) (A) Any use of information disclosed pursuant to this section
37 for purposes other than those provided by paragraph (1) or in
38 violation of paragraph (2) shall make the user liable for the actual
39 damages, and any amount that may be determined by a jury or a
40 court sitting without a jury, not exceeding three times the amount

1 of actual damage, and not less than two hundred fifty dollars
2 (\$250), and attorney's fees, exemplary damages, or a civil penalty
3 not exceeding twenty-five thousand dollars (\$25,000).

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

18 (m) The public notification provisions of this section are
19 applicable to every person described in this section, without regard
20 to when his or her crimes were committed or his or her duty to
21 register pursuant to Section 290 arose, and to every offense
22 described in this section, regardless of when it was committed.

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

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

28 (p) The Attorney General, in collaboration with local law
29 enforcement and others knowledgeable about sex offenders, shall
30 develop strategies to assist members of the public in understanding
31 and using publicly available information about registered sex
32 offenders to further public safety. These strategies may include,
33 but are not limited to, a hotline for community inquiries,
34 neighborhood and business guidelines for how to respond to
35 information posted on this Internet Web site, and any other resource
36 that promotes public education about these offenders.

37 *SEC. 8. No reimbursement is required by this act pursuant to*
38 *Section 6 of Article XIII B of the California Constitution for certain*
39 *costs that may be incurred by a local agency or school district*
40 *because, in that regard, this act creates a new crime or infraction,*

eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SECTION 1. ~~Section 288 of the Penal Code is amended to read:~~

~~288. (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under 14 years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.~~

~~(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.~~

~~(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.~~

~~(c) (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years of age, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.~~

~~(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.~~

~~(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.~~

~~(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars (\$10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.~~

~~If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.~~

~~(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:~~

~~(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:~~

~~(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.~~

~~(B) Clinics.~~

1 ~~(C) Home health agencies.~~

2 ~~(D) Adult day health care centers.~~

3 ~~(E) Secondary schools that serve dependent persons and~~
4 ~~postsecondary educational institutions that serve dependent persons~~
5 ~~or elders.~~

6 ~~(F) Sheltered workshops.~~

7 ~~(G) Camps.~~

8 ~~(H) Community care facilities, as defined by Section 1402 of~~
9 ~~the Health and Safety Code, and residential care facilities for the~~
10 ~~elderly, as defined in Section 1569.2 of the Health and Safety~~
11 ~~Code.~~

12 ~~(I) Respite care facilities.~~

13 ~~(J) Foster homes.~~

14 ~~(K) Regional centers for persons with developmental disabilities.~~

15 ~~(L) A home health agency licensed in accordance with Chapter~~
16 ~~8 (commencing with Section 1725) of Division 2 of the Health~~
17 ~~and Safety Code.~~

18 ~~(M) An agency that supplies in-home supportive services.~~

19 ~~(N) Board and care facilities.~~

20 ~~(O) Any other protective or public assistance agency that~~
21 ~~provides health services or social services to elder or dependent~~
22 ~~persons, including, but not limited to, in-home supportive services,~~
23 ~~as defined in Section 14005.14 of the Welfare and Institutions~~
24 ~~Code.~~

25 ~~(P) Private residences.~~

26 ~~(2) "Board and care facilities" means licensed or unlicensed~~
27 ~~facilities that provide assistance with one or more of the following~~
28 ~~activities:~~

29 ~~(A) Bathing.~~

30 ~~(B) Dressing.~~

31 ~~(C) Grooming.~~

32 ~~(D) Medication storage.~~

33 ~~(E) Medical dispensation.~~

34 ~~(F) Money management.~~

35 ~~(3) "Dependent person" means any person who has a physical~~
36 ~~or mental impairment that substantially restricts his or her ability~~
37 ~~to carry out normal activities or to protect his or her rights,~~
38 ~~including, but not limited to, persons who have physical or~~
39 ~~developmental disabilities or whose physical or mental abilities~~
40 ~~have significantly diminished because of age. "Dependent person"~~

1 includes any person who is admitted as an inpatient to a 24-hour
2 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
3 the Health and Safety Code.

4 ~~(g) Paragraph (2) of subdivision (b) and paragraph (2) of~~
5 ~~subdivision (c) apply to the owners, operators, administrators,~~
6 ~~employees, independent contractors, agents, or volunteers working~~
7 ~~at these public or private facilities and only to the extent that the~~
8 ~~individuals personally commit, conspire, aid, abet, or facilitate any~~
9 ~~act prohibited by paragraph (2) of subdivision (b) and paragraph~~
10 ~~(2) of subdivision (c).~~

11 ~~(h) Paragraph (2) of subdivision (b) and paragraph (2) of~~
12 ~~subdivision (c) do not apply to a caretaker who is a spouse of, or~~
13 ~~who is in an equivalent domestic relationship with, the dependent~~
14 ~~person under care.~~