

Introduced by Senator Hollingsworth

February 22, 2005

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1044, as introduced, Hollingsworth. 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 and to update that information on an ongoing basis, as specified.

This bill would make a technical, nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 290.46 of the Penal Code is amended to
2 read:
3 290.46. (a) On or before the dates specified in this section,
4 the Department of Justice shall make ~~available~~ information
5 concerning persons who are required to register pursuant to
6 Section 290 *available* to the public via an Internet Web site as
7 specified in this section. The department shall update the Web
8 site on an ongoing basis. All information identifying the victim
9 by name, birth date, address, or relationship to the registrant shall
10 be excluded from the 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

1 register shall not be included on the Web site. The Web site shall
2 be translated into languages other than English as determined by
3 the department.

4 (b) (1) On or before July 1, 2005, with respect to a person
5 who has been convicted of the commission or the attempted
6 commission of any of the offenses listed in this subdivision or the
7 statutory predecessors of any of these offenses, or any offense
8 which, if committed or attempted to be committed in this state,
9 would have been punishable as one or more of the offenses listed
10 in this subdivision, the Department of Justice shall make
11 available to the public via the Internet Web site his or her names
12 and known aliases, a photograph, a physical description,
13 including gender and race, date of birth, criminal history, the
14 address at which the person resides, and any other information
15 that the Department of Justice deems relevant, but not the
16 information excluded pursuant to subdivision (a).

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

18 (A) Subdivision (b) of Section 207.

19 (B) Subdivision (b) of Section 209, except kidnapping to
20 commit robbery.

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

22 (D) Section 264.1.

23 (E) Section 269.

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

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

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

28 (I) Section 288.5.

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

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

33 (c) (1) On or before July 1, 2005, with respect to a person
34 who has been convicted of the commission or the attempted
35 commission of any of the offenses listed in paragraph (2) or the
36 statutory predecessors of any of these offenses, or any offense
37 which, if committed or attempted to be committed in this state,
38 would have been punishable as one or more of the offenses listed
39 in this subdivision, the Department of Justice shall make
40 available to the public via the Internet Web site his or her names

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, and any other information that the Department of Justice
5 deems relevant, but not the information excluded pursuant to
6 subdivision (a). However, the address at which the person resides
7 shall not be disclosed until a determination is made that the
8 person is, by virtue of his or her additional prior or subsequent
9 conviction of an offense listed in paragraph (2) of subdivision (a)
10 of Section 290, subject to this subdivision. On or before July 1,
11 2006, the Department of Justice shall determine whether any
12 person convicted of an offense listed in paragraph (2) also has
13 one or more prior or subsequent convictions of an offense listed
14 in paragraph (2) of subdivision (a) of Section 290, and, for those
15 persons, the Department of Justice shall make available to the
16 public via the Internet Web site the address at which the person
17 resides.

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

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

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

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

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

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

29 (d) (1) On or before July 1, 2005, with respect to a person
30 who has been convicted of the commission or the attempted
31 commission of any of the offenses listed in this subdivision or the
32 statutory predecessors of any of these offenses, or of any offense
33 which, if committed or attempted to be committed in this state,
34 would have been punishable as one or more of the offenses listed
35 in this subdivision, the Department of Justice shall make
36 available to the public via the Internet Web site his or her names
37 and known aliases, a photograph, a physical description,
38 including gender and race, date of birth, criminal history, the
39 community of residence and ZIP Code in which the person
40 resides, and any other information that the Department of Justice

1 deems relevant, but not the information excluded pursuant to
2 subdivision (a) or the address at which the person resides.

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

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

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

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

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

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

14 (F) Section 266j.

15 (G) Section 267.

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

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

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

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

27 (L) Section 647.6.

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

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

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

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

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

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

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

24 (g) Notwithstanding Section 6254.5 of the Government Code,
25 disclosure of information pursuant to this section is not a waiver
26 of exemptions under Chapter 3.5 (commencing with Section
27 6250) of Title 1 of Division 7 of the Government Code and does
28 not affect other statutory restrictions on disclosure in other
29 situations.

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

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

39 (i) Any person who is required to register pursuant to Section
40 290 who enters the Web site is punishable by a fine not

1 exceeding one thousand dollars (\$1,000), imprisonment in a
2 county jail for a period not to exceed six months, or by both that
3 fine and imprisonment.

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

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

10 (A) Health insurance.

11 (B) Insurance.

12 (C) Loans.

13 (D) Credit.

14 (E) Employment.

15 (F) Education, scholarships, or fellowships.

16 (G) Housing or accommodations.

17 (H) Benefits, privileges, or services provided by any business
18 establishment.

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

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

33 (B) Whenever there is reasonable cause to believe that any
34 person or group of persons is engaged in a pattern or practice of
35 misuse of the information available via the Internet Web site in
36 violation of paragraph (2), the Attorney General, any district
37 attorney, or city attorney, or any person aggrieved by the misuse
38 is authorized to bring a civil action in the appropriate court
39 requesting preventive relief, including an application for a
40 permanent or temporary injunction, restraining order, or other

1 order against the person or group of persons responsible for the
2 pattern or practice of misuse. The foregoing remedies shall be
3 independent of any other remedies or procedures that may be
4 available to an aggrieved party under other provisions of law,
5 including Part 2 (commencing with Section 43) of Division 1 of
6 the Civil Code.

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

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