

1 XAVIER BECERRA, State Bar No. 118517  
Attorney General of California  
2 ANTHONY R. HAKL  
Acting Supervising Deputy Attorney General  
3 GABRIELLE D. BOUTIN, State Bar No. 267308  
Deputy Attorney General  
4 1300 I Street, Suite 125  
P.O. Box 944255  
5 Sacramento, CA 94244-2550  
Telephone: (916) 210-6053  
6 Fax: (916) 324-8835  
E-mail: Gabrielle.Boutin@doj.ca.gov  
7 *Attorneys for Defendant Attorney General Xavier  
Becerra*

8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
11

12  
13 **MICHAEL RICHARDSON,**

14 Plaintiff,

15 v.

16 **JEFFERSON SESSIONS, in his official  
17 capacities; XAVIER BECERRA, in his  
18 official capacities,**

19 Defendants.

2:17-cv-1838 JAM AC PS

**DECLARATION OF KARA WEILAND IN  
SUPPORT OF MOTION TO DISMISS  
COMPLAINT**

Date: January 24, 2018  
Time: 10:00 a.m.  
Dept: 26  
Judge: The Hon. Allison Claire  
Trial Date: None set  
Action Filed: 9/5/2017

20  
21 I, Kara Weiland declare:

22 1. I have personal knowledge of the following facts and am competent to testify as to  
23 the truth of these facts if called as a witness.

24 2. I am a librarian for the California Office of the Attorney General in Sacramento. I  
25 have been trained and am familiar with our office's methods for researching and compiling  
26 legislative histories. My job duties regularly include collecting legislative history materials for  
27 attorneys in this office. I am also custodian of the records retained in the library's files, including  
28 legislative histories compiled by our office's trained librarians.

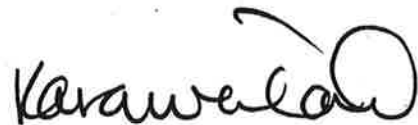
1           3.     Trained librarians in our office regularly compile legislative histories when requested  
2 to do so by attorneys in the Attorney General's Office. These librarians compile legislative  
3 histories of California statutes from the entire history pertaining to the statute as presented,  
4 chaptered, and archived by the California Secretary of State, California Legislative Counsel, and  
5 other sources of legislative history. After a legislative history has been compiled, we add it to our  
6 collection of legislative histories, and retain it in the library's files.

7           4.     The legislative histories are compiled from the entire archival history pertaining to the  
8 statute as presented and chaptered.

9           5.     In June of 2015, I compiled the legislative history of Assembly Bill 488 (Stats. 2004  
10 Ch. 745) in connection with a different legal action. The Deputy Attorney General in that case  
11 directed me to locate and obtain all available material on the bill. I did this, and saved all of the  
12 material that I had located in the library's files.

13          6.     Attached as Exhibit A to this Declaration are true and correct copies of certain  
14 documents that I located during my 2015 legislative history search for Assembly Bill 488.

15           I declare under penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct and that this declaration was executed in Sacramento, California on  
17 November 16, 2017.



---

KARA WEILAND  
Declarant

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

---

# **EXHIBIT A**

**SENATE COMMITTEE ON PUBLIC SAFETY**

Senator Bruce McPherson, Chair

2003-2004 Regular Session

A

B

4

8

8

AB 488 (Parra)

As Amended June 14, 2004

Hearing date: June 22, 2004

Penal Code

AA:br

SEX OFFENDER REGISTRATION:

INTERNET ACCESS TO MEGAN'S LAW INFORMATION

HISTORY

Source: Office of the Attorney General

Prior Legislation: SB 1780 (Hollingsworth) – 2004; failed passage, Senate Public Safety  
SB 1550 (Battin) – 2004; failed passage, Senate Public Safety  
SB 422 (Florez) – 2003; died in Senate Appropriations  
SB 327 (Battin) – 2003; died in Senate Public Safety (hearing postponed)  
SB 721 (Battin) – 2001-2002 Session; died in Senate Public Safety  
AB 347 (Battin) – 1999-2000 Session; died in the Assembly  
AB 166 (Battin) – 1997-98 Session; died in the Assembly  
AB 2471 (Battin) – 1995-96 Session; died in the Senate

Support: California District Attorneys Association; Crime Victims United of California;  
California National Organization for Women; Los Angeles District Attorney's  
Office; Peace Officers Research Association of California; City of Lake Forest;  
City of Temecula; Los Angeles County Board of Supervisors; California Law  
Enforcement Association of Records Supervisors (CLEARs)

Opposition: American Civil Liberties Union

Assembly Floor Vote: Ayes 73 - Noes 2

(More)

KEY ISSUE

SHOULD THE DEPARTMENT OF JUSTICE BE REQUIRED TO ESTABLISH AN INTERNET SITE DISCLOSING INFORMATION PERTAINING TO REGISTERED SEX OFFENDERS BEGINNING ON OR BEFORE JULY 1, 2005, AS SPECIFIED?

PURPOSE

*The purpose of this bill is to require the Department of Justice to establish an Internet site disclosing information pertaining to registered sex offenders beginning on or before July 1, 2005, as specified.*

Under current law, commonly known as "Megan's Law," sex offenders are subject to public disclosure by law enforcement, as specified. (Penal Code § 290.45.) Current law also requires the Department of Justice ("DOJ") to compile and categorize (by community of residence and ZIP code) specified information<sup>1</sup> concerning registered "serious" and "high-risk" sex offenders. (Penal Code § 290.4.)

Current law generally requires this information to be available to the public through a "900" telephone number operated by the Department, and through a subdirectory compiled by the Department of Justice and distributed to, and made publicly available by, local law enforcement. (*Id.*)

This bill would require the Department of Justice to make available information concerning persons required to register as sex offenders to the public via an Internet Web site, with the following specifications and requirements:

**Persons who can access site**

This bill would require the Department of Justice ("DOJ") to establish an Internet site to make information about registered sex offenders available to the public, as specified.

This bill would impose a misdemeanor punishment (a fine not exceeding \$1000 and/or county jail for up to six months) on any registered sex offender who enters the Web site.

This bill would authorize DOJ to translate the Web site "into languages other than English as determined by the department."

<sup>1</sup> The statute requires that the "information shall include the names and known aliases of the person, photograph, a physical description, gender, race, date of birth, the criminal history, and the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim." (Penal Code § 290.4(a)(2).)

**Information expressly prohibited from the Web site**

This bill would expressly prohibit the following information from being disclosed on the Web site:

- All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Web site.
- The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Web site.

**Information disclosed: home addresses included based on a single conviction offense**

This bill would require DOJ, on or before July 1, 2005, to post on an Internet Web site available for public access the following information concerning the registered sex offenders described directly below:

- name and known aliases;
- a photograph;
- a physical description including gender and race;
- date of birth;
- criminal history relating to the registerable sex offense;
- the address at which the person resides; and
- any other information that the Department of Justice deems relevant excluding the victim and employer information described above.

This bill would disclose the above information for persons convicted of the commission or attempted commission of the following offenses, as specified:

1. Kidnapping a child under 14 to commit a lewd act (Penal Code § 207(b));
2. Kidnapping to commit rape, sodomy, oral copulation or sexual penetration (Penal Code § 209(b));
3. Rape by force or by threat to kidnap or inflict extreme pain (Penal Code § 261(a)(2) or (6));
4. Rape or sexual penetration in concert (Penal Code § 264.1);
5. Aggravated sexual assault of a child under 14 by a person more than 10 years older (Penal Code § 269);
6. Sodomy of a child under 14 by a person more than 10 years older, by force, by threat to kidnap or infliction of extreme pain, or in concert (Penal Code § 286(c) or (d));
7. Oral copulation of a child under 14 by a person more than 10 years older, by threat to kidnap or infliction of extreme pain, or in concert (Penal Code § 288a(c) or (d));
8. Sexual penetration of a child under 14 by a person more than 10 years older, by force, by threat to kidnap or infliction of extreme pain, or in concert (Penal Code § 289(a) or (j));

(More)

9. Felony lewd or lascivious conduct with a child under 14 or a dependent adult (Penal Code § 288 (a), (b) or (c) provided the offense is a felony);
10. Continuous sexual abuse of a child under 14 (Penal Code § 288.5); and
11. Any person who has ever been adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.

**Information disclosed: home addresses included with additional sex offense history**

This bill would require DOJ, on or before July 1, 2005, to post on an Internet Web site available for public access the following information concerning the registered sex offenders described below:

- name and known aliases;
- a photograph;
- a physical description including gender and race;
- date of birth;
- criminal history relating to the registerable sex offense;
- the community of residence and ZIP code in which the person resides; and
- any other information that the Department of Justice deems relevant excluding the victim and employer information described above.

This bill additionally would require DOJ to determine, on or before July 1, 2006, whether any person convicted of one of the below-enumerated offenses has one or more prior or subsequent registerable sex offense, as specified, and to disclose on the Web site their residence address if they do.

This bill would apply these provisions to persons convicted of the following offenses, as specified, provided that the person has *one or more prior or subsequent convictions* of a registerable offense:

1. Assault with intent to commit a sex crime (Penal Code § 220, except assault to commit mayhem);
2. Rape of an unconscious, disabled, or intoxicated victim (Penal Code § 261(a)(1), (3) or (4));
3. Sodomy of an unconscious, disabled or intoxicated victim, or with a child under 16 by a person over 21 (Penal Code § 286 (b)(2), (f), (g) or (i));
4. Oral copulation with an unconscious, disabled, or intoxicated victim, or with a child under 16 by a person over 21 (Penal Code § 288a(b)(2), (f), (g) or (i)); and
5. Sexual penetration with an unconscious, disabled, or intoxicated victim, or with a child under 16 by a person over 21 (Penal Code § 289 (b), (d), (e) or (i)).

**Information disclosed: home community of residence and ZIP code information included**

This bill would require DOJ, on or before July 1, 2005, to post on an Internet Web site available for public access the following information concerning the registered sex offenders described below:

- name and known aliases;
- a photograph;
- a physical description including gender and race;
- date of birth;
- criminal history relating to the registerable sex offense;
- the community of residence and ZIP code in which the person resides; and
- any other information that the Department of Justice deems relevant excluding the victim and employer information described above.

This bill would apply these provisions to persons convicted of the following offenses, as specified (and subject to subdivision (e), described below):

1. Assault with intent to commit a sex crime (Penal Code § 220, except assault to commit mayhem, with no prior or subsequent conviction for a registerable sex offense, as specified);
2. Felony sexual battery (Penal Code § 243.4(a), provided that the offense is a felony);
3. Rape of an unconscious, disabled or intoxicated victim (Penal Code § 261(a) (1), (3), or (4), with no prior or subsequent conviction for a registerable sex offense, as specified);
4. Felony enticement of a child under 18 for prostitution (Penal Code § 266, provided that the offense is a felony);
5. Felony inducement of a sex crime by fraud or fear (Penal Code § 266c, provided that the offense is a felony);
6. Procurement of a child under 16 for a lewd act (Penal Code § 266j);
7. Abduction of a child under 18 for purposes of prostitution (Penal Code § 267);
8. Sodomy of an unconscious, disabled or intoxicated victim, or with a child under 16 by a person over 21 (Penal Code § 286 (b)(2), (f), (g) or (i), with no prior or subsequent conviction of a registerable sex offense;
9. Misdemeanor molestation of a dependent adult by a caretaker, child molestation of a child 14 or 15 years old when the person is at least 10 years older than the child (Penal Code § 288(c), provided that the offense is a misdemeanor);
10. Oral copulation of an unconscious, disabled, or intoxicated victim, or a child under 16 by a person over 21 (Penal Code § 288a (b)(2), or (f), (g) or (i) with no prior or subsequent conviction of a registerable sex offense<sup>2</sup>);
11. Sexual penetration with an unconscious, disabled or intoxicated victim, or with a child under 16 by a person over 21 (Penal Code § 289 (b), (d), (e), or (i) of § 289, with no prior or subsequent conviction of a registerable sex offense); and
12. Child molestation (Penal Code § 647.6).

<sup>2</sup> There is a technical error in the bill as currently drafted in this paragraph; line 18 on page 7 should be stricken.



### **Exclusion from Internet disclosure if specified qualifications established**

This bill would provide that persons convicted of a sex offense, or attempted sex offense, listed below who have no other convictions for any of the offenses enumerated above may file an application with DOJ for exclusion from the Internet Web site.

This bill would require DOJ to grant an exclusion from inclusion on the Web site, and would require DOJ to ensure that no information concerning the person be made available via the Internet Web site, if DOJ determines the person meets one of the following requirements:

- Sexual battery (Penal Code § 243.4) except a felony violation of subdivision (a) of that section<sup>3</sup>;
- Misdemeanor child annoyance (Penal Code § 647.6); or
- An offense otherwise subject to inclusion on the Internet Web site if the offender is eligible for, granted, and successfully completes probation pursuant to Section 1203.066 of the Penal Code.

This bill would provide that the registrant bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site, and would expressly provide that such an exclusion in no way excuses the person from otherwise complying with, and being subject to, all other registration laws, as specified.

### **Notification to registrants of change in law**

This bill would require DOJ to "make a reasonable effort to provide notification to persons" who are subject to the provisions of this bill, as specified, "that on or before July 1, 2005, the department is required to make information about him or her available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that he or she may be eligible for exclusion from the Internet Web site if he or she may have been convicted of an offense for which exclusion is available . . . ."

### **Penalties for misuse of information**

This bill would provide that any person who uses information disclosed pursuant to the Internet Web site to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than \$10,000 and not more than \$50,000.

This bill additionally would provide that any person who uses information disclosed pursuant to the Internet Web site 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.

---

<sup>3</sup> The clause in this sentence concerning a felony conviction is in error, and should be stricken from this provision of this bill (page 8, line 5, beginning with "except" to the end of the line).

**Effective dates**

This bill would require DOJ to establish the Web site described above on or before July 1, 2005 for some home address and ZIP code-eligible offenses, and on or before July 1, 2006 for persons otherwise subject to ZIP code disclosure who may be eligible for home address disclosure, as specified and explained above.

**Report to the Legislature**

This bill would require DOJ to report to the Legislature on the operations of this section on or before July 1, 2006, and annually thereafter.

**Additional provisions**

This bill contains additional provisions identical to provisions currently set forth in the Megan's Law statute (Penal Code § 290.4) concerning limitations on use of the information, civil remedies for misuse, and liability for civil damages for misuse. This bill would provide that DOJ "and its employees shall be immune from liability for good faith conduct under this section."

**COMMENTS****1. Stated Need for This Bill**

The author states:

AB 488 will place sex offender information on the Internet – including the home addresses of the most serious offenders – so that people will have the information they need to take the steps necessary to protect their loved ones.

Megan's Law allows police authorities to provide information about sex offenders to the public. The Megan's Law database provides the offender's name and aliases, information on physical appearance, registered sex offenses, and location.

Regrettably, the database is not readily accessible to many Californians. In many rural communities such as those that I represent, information on sex offenders is not available to the public. My constituents want to be able to view the information about their area in their homes, after work or after their children have gone to bed. AB 488 will provide that access. (emphasis in original)

**2. What This Bill Would Do**

As explained in detail above, this bill would require DOJ to establish a public Web site listing specified information about certain persons required to register as sex offenders under California

(More)

law. The approach proposed by this bill would be comprised of four essential categories of Internet disclosure, all based on conviction offense and sex offense history. These four categories of information subject to Internet disclosure under this bill would be as follows:

- Name, photo, age, physical description and sex offense information, together with home address;
- Name, photo, age, physical description, sex offense information, and community of residence and ZIP code where the person resides, together with home address IF the person has additional prior or subsequent sex offense convictions, as specified;
- Name, photo, age, physical description and sex offense information, together with community of residence and ZIP code where the person resides; and
- Persons eligible for possible exclusion from Internet listing (but still subject to all other registration requirements) for certain, specific offenses or offense histories, if the person can prove to DOJ the facts that make him or her eligible under the provisions of the bill.

This bill would expressly exclude from Internet disclosure any information concerning a victim and an employer of a registrant.

In addition to the other information (described above) that would be disclosed in the Internet for registrants subject to Internet listing under this bill, this bill would require home address information to be included for persons who are required to register as sex offenders for the following offenses:

- Kidnapping a child under 14 to commit a lewd act;
- Kidnapping to commit rape, sodomy, oral copulation, or sexual penetration;
- Rape by force or by threat to kidnap or inflict extreme pain;
- Rape or sexual penetration in concert;
- Aggravated sexual assault of a child under 14 by a person more than 10 years older;
- Sodomy of a child under 14 by a person more than 10 years older, by force, by threat to kidnap or inflict extreme pain, or in concert;
- Oral copulation of a child under 14 by a person more than 10 years older, by threat to kidnap or inflict extreme pain, or in concert;
- Sexual penetration of a child under 14 by a person more than 10 years older, by force, by threat to kidnap or inflict extreme pain, or in concert;
- Felony lewd or lascivious conduct with a child under 14 or a dependent adult;
- Continuous sexual abuse of a child under 14; and
- Sexually Violent Predator.

In addition, this bill would authorize home address disclosure for persons required to register as sex offenders for the following offenses when they have been convicted of a prior or subsequent registerable sex offense:

- Assault with intent to commit a sex crime;
- Rape of an unconscious, disabled, or intoxicated victim;

(More)

- Sodomy of an unconscious, disabled, or intoxicated victim;
- Sodomy of a child under 16 by a person over 21;
- Oral copulation of an unconscious, disabled, or intoxicated victim;
- Oral copulation of a child under 16 by a person over 21;
- Sexual penetration of an unconscious, disabled, or intoxicated victim; and
- Sexual penetration of a child under 16 by a person over 21.

This bill would authorize community of residence and ZIP code information – but not home address information – for the following offenses:

- Assault with intent to commit a sex crime;
- Felony sexual battery (exclusion-eligible if no prior or subsequent registerable sex offense conviction);
- Rape of an unconscious, disabled, or intoxicated victim;
- Felony enticement of a child under 18 for prostitution;
- Felony inducement of a sex crime by fraud or fear;
- Procurement of a child under 16 for a lewd act;
- Abduction of a child under 18 for purposes of prostitution;
- Sodomy of an unconscious, disabled, or intoxicated victim;
- Sodomy of a child under 16 by a person over 21;
- Oral copulation of an unconscious, disabled, or intoxicated victim;
- Oral copulation of a child under 16 by a person over 21;
- Sexual penetration of an unconscious, disabled, or intoxicated victim;
- Sexual penetration of a child under 16 by a person over 21; and
- Child annoyance (exclusion-eligible if misdemeanor).

This bill also would authorize persons convicted of a sex offense otherwise subject to disclosure under its provisions to apply to DOJ for exclusion from the Web site if DOJ determines the person meets one of the following requirements:

- Their conviction is for sexual battery (Penal Code § 243.4) and they have no other prior or subsequent convictions for a registerable sex offense;
- Their conviction is for misdemeanor child annoyance (Penal Code § 647.6); or
- The person was eligible for, granted, and successfully completed probation pursuant to Section 1203.066 of the Penal Code.

The registrant would bear the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site, and would not be excused from otherwise complying with, and being subject to, all other registration laws, as specified.

SHOULD INFORMATION ABOUT REGISTERED SEX OFFENDERS BE POSTED ON THE INTERNET AS CONTEMPLATED BY THIS BILL?

### 3. Open Access to the Web Site

Currently, persons who view information about registered sex offenders in California first must provide specified identification to the law enforcement custodian of the information. Applicants for viewing also are required to sign a statement indicating they understand the purpose of the site and prohibitions concerning misuse of its information. This information is kept on file by law enforcement. (Penal Code § 290.4(a)(4)(A).) Registered sex offenders and minors unaccompanied by their parent or legal guardian are not legally permitted to view registry information.

Approximately 34 states currently provide some level of Internet access to registered sex offender information. An informal review of many of these Web sites suggests that very few states require viewers to provide any identification in order to access the information. At least one state, New York, requires persons to provide their name and address to access Internet information about New York's registered sex offenders who are deemed to be "high risk." The New York Web site indicates the information submitted by viewers is maintained by the division. It is not clear, however, how or if New York verifies the information required of viewers.

This bill would appear to provide open, unrestricted access to the Web site.

WOULD THE RISKS OF OPEN DISCLOSURE BE OUTWEIGHED BY THE BENEFITS OF EASIER PUBLIC ACCESS?

### 4. Disclosure of Home Addresses

This bill would require the Internet site to disclose, among other things, the address where the registration document indicates the registrant resides. Currently, the ZIP code in which a registrant resides is disclosed to public viewers who view registrant information at a law enforcement site.

Under the current registration system, sex offender registrants generally must register with the law enforcement agency where they reside.<sup>4</sup> The accuracy of registration information depends upon the information provided by the registrant, the local law enforcement personnel who input that information into the system, and the DOJ, which manages the data systems which are based on this locally-collected information. In its report on Megan's Law published in July of 2003, DOJ stated:

In December 2002, the DOJ conducted an evaluation of the VCIN database focusing on those registrants who, at that time, may have been in violation of their registration requirements pursuant to Section 290 of the Penal Code. It was found that of the 76,632 sex offenders who were last reported to be

<sup>4</sup> Dual registration is required if a registrant is enrolled in, or otherwise has business with as specified, an institution of higher learning. (See Penal Code § 290.01.)

living in California communities, as many as 33,190 registrants may be in violation of their registration requirements. That group included 229 high-risk offenders, 26,550 serious offenders, and 6,411 other offenders. (emphasis added.)

The public safety benefits of providing home addresses for sex offender registrants depend upon the accuracy of the information. Posting *incorrect* information on the Internet may lead to people who have never been convicted of a sex offense being subjected to unwarranted and unwanted scrutiny, or worse, and would do nothing to further public safety or awareness. It is unclear how someone affected in this way could correct the information, or the extent to which any residual effects would continue notwithstanding a subsequent correction.

In addition, the overall public safety benefits of providing this information on the Internet depends upon what members of the public do with the information. Unintended consequences may occur from broadly disseminating the home residences of these registrants. For example, earlier this year press reports recounted an incident where a Bakersfield man was shot and killed by police as he was trying to break down the front door of a registered sex offender. Many neighbors stated they believed the incident was precipitated by a law enforcement flyer that had been distributed warning neighbors about the registrant.

In light of the heightened public responsibility that goes with providing an Internet level of access to this information, the author and/or members of the Committee may wish to discuss whether this step should include a coordinated strategy to assist and educate the public in learning how this information – which historically has been disseminated routinely only to law enforcement professionals – can be used to enhance safe environments in neighborhoods and communities.

WOULD THE PUBLIC DISCLOSURE OF A SEX OFFENDER REGISTRANT'S HOME ADDRESS ON THE INTERNET ENHANCE PUBLIC SAFETY?

WOULD THERE BE INADVERTENT CONSEQUENCES OF DISCLOSING THIS INFORMATION PUBLICLY, SUCH AS ACTS OF VIGILANTISM AGAINST REGISTRANTS, OR PERSONS ERRONEOUSLY BELIEVED TO BE REGISTRANTS?

WOULD DISCLOSING THIS INFORMATION LEAD TO LAWFUL, BUT NOT NECESSARILY INTENDED, CONSEQUENCES, SUCH AS NEIGHBORHOOD PICKETING?

WOULD THE PUBLIC DISCLOSURE OF THIS INFORMATION ADVERSELY EFFECT THE PROPERTY VALUES OF NEARBY HOMES?

ARE THESE POTENTIAL INADVERTENT CONSEQUENCES OUTWEIGHED BY THE PUBLIC SAFETY BENEFITS OF MAKING THIS INFORMATION PUBLIC?

(More)

### 5. Background: Sex Offender Registration and "Megan's Law"

California has the nation's oldest sex offender registration statute, enacted in 1947. (Penal Code § 290.) Historically, sex offender registration information has been used as a law enforcement tool.

In 1996, California enacted "Megan's Law," which generally provides for the public disclosure of specified information about sex offenders who are categorized as "serious" or "high-risk." (AB 1562 (Alby) (Ch. 908, Stats. 1996); Penal Code § 290.4(a)(1).) Members of the general public<sup>5</sup> can receive specified information about serious and high-risk registered sex offenders under current law in several ways:

- Directly from a peace officer, when the officer reasonably suspects that someone may be at risk from a serious or high-risk sex offender (Penal Code § 290(m));
- Through an at-large, non-specific law enforcement community notification, with respect to "high-risk" sex offenders (Penal Code § 290(n));
- By contacting the Department of Justice and inquiring if a specific person is registered as a serious or high-risk sex offender (Penal Code § 290.4(a)(3)); and
- By viewing a computer-based list of serious and high-risk registrants, made available by law enforcement either at their offices or in public places. (Penal Code § 290.4(a)(4).)

As of June 1, 2004, California had 100,696 registered sex offenders. The following chart breaks down this data<sup>6</sup>:

	HIGH-RISK	SERIOUS	OTHER	TOTAL	% of All California Registrants
<b>In the Community</b>	576	54,904	12,059	67,539	67.1
<b>Incarcerated</b>	1,113	13,695	2,269	17,077	17.0
<b>Out of State</b>	133	10,908	1,794	12,835	12.7
<b>Deported</b>	11	2,964	270	3,245	3.2
<b>Total</b>	1,833	82,471	16,392	100,696	100.0%

<sup>5</sup> Minors without a parent or guardian and registered sex offenders are prohibited from gaining access to the CD-ROM list of registrants. (Penal Code § 290.4(a)(4).)

<sup>6</sup> Source: DOJ Sex Offender Statistics (<http://caag.state.ca.us/megan/pdf/0403chart.pdf>).

## 6. Background: Operation and Use of Megan's Law in California

As noted above, Californians generally can obtain information about registered sex offenders either through telephone or written inquiry to the Department of Justice, or by viewing computer-based information available through local law enforcement agencies.<sup>7</sup> According to a July 2002 report published by the Department of Justice, in 2001 (the most recently published data) the Department conducted a total of 43,978 searches generated from either phone (4,422) or mail (704) inquiries under the Department's "900" telephone number program; of those, 179 matches were made against the database. Callers pay a flat rate of \$10 for up to two individual inquiries, and mail-in requests are charged \$4 per named individual.

In 2001, the department reports that 209 law enforcement agencies across the state offered public viewing of Megan's Law information. According to the department, during 2001 at least 42,599 members of the public viewed CD-ROM sex offender registration information. At public viewing events sponsored by the department, nearly 18 percent (1,450) persons indicated they recognized sex offender registrants on the CD-ROM as friends, neighbors, employers, relatives and in a few instances youth coaches.

With respect to law enforcement public disclosures of "high risk" and "serious" sex offenders, the department reports that in 2001 a survey indicated that 122 law enforcement agencies made public disclosures on 620 registered sex offenders.

The Department's reports concerning the implementation of California's public notification laws chronicle a number of anecdotal examples of matches – where the person who is being inquired about is found to be a registered sex offender – involving members of the public checking on prospective roommates, boyfriends, parents, grandparents, brothers, neighbors, health professionals and employees.

## 7. Vigilantism

In 2000, the Department of Justice reported that since Megan's Law has been implemented in California, "there have only been two minor 'vigilante' acts against sex offenders resulting from Megan's Law disclosures reported to the Department of Justice by law enforcement." In the late 1990s, there were a few other California incidents reported in the press concerning public outcry against sex offenders, such as their homes or places of employment being picketed, but these incidents were not formally reported to the Department.

---

<sup>7</sup> In March 2002, the DOJ replaced the CD-ROM system with the Megan's Law Web Application. This system allows law enforcement agencies to access the information through DOJ's private communications network (Intranet). The information is now updated daily, rather than monthly, and may be viewed in 12 additional languages.



In its 2002 report, the department states that there has been no reported instance of improper public use of the data made available under California's Megan's Law. However, as noted above with the recent incident in Bakersfield, there are incidents that occur that may not be included in these reports.

8. Intra-familial Cases Where Probation was Granted and Successfully Completed: Misdemeanor Child Annoyance

This bill would allow persons who are eligible for, granted and have successfully completed probation pursuant to Penal Code Section 1203.066 to apply to be excluded from Internet listing. This is a very narrow category of non-violent, intra-familial offenders convicted of child molestation who, unlike all other sex offenders, are eligible for probation. (Penal Code §§ 1203.065; 1203.166.) In some instances, these are cases that can be prosecuted only because family member witnesses are willing to cooperate with prosecutors because of the availability of probation. Offenders in these cases are eligible for probation only if all of the following are found:

1. The defendant is the close family member of the victim, as specified;
2. A grant of probation to the defendant is in the best interest of the child;
3. Rehabilitation of the defendant is feasible, the defendant is amenable to undergoing treatment, and the defendant is placed in a recognized treatment program, as specified;
4. The defendant is removed from the household of the victim until the court determines that the best interests of the victim would be served by returning the defendant to the household of the victim, as specified;
5. There is no threat of physical harm to the child victim if probation is granted.

This bill also would require Internet disclosure for offenses under Penal Code Section 647.6, but would allow exclusion from the Internet provisions of this bill for misdemeanor violations of this section (under specified circumstances, violations of this provision can be a wobbler or a felony).

The basic crime of child annoyance/molestation is a misdemeanor punishable by up to one year in county jail and/or a fine of up to \$1,000. A person commits the crime when he or she "annoys or molests any child under the age of 18." The act of child annoyance requires motivation by an abnormal or unnatural sexual interest in the victim but does not require the specific act to be lewd or obscene. (*People v. Thompson* (1988) 206 Cal.App.3d 459.) It is not necessary that the defendant be touched or that the act be lewd in itself. Actual molestation is covered under Penal Code Section 288, which covers the crime of lewd conduct.

9. Status of Constitutional Challenges to Sex Offender Notification Laws

In March 2003, the United States Supreme Court upheld the constitutionality of the Alaska Sex Offender Registration Act, which included public notification of registrants via the Internet, on

(More)

the grounds that the statute did not violate the Ex Post Facto Clause.<sup>8</sup> (*Smith v. Doe* (2003) 123 S.Ct. 1140, 1154.) As part of its analysis, the Court scrutinized the legislative objective of the Act, and concluded "that the intent of the Alaska Legislature was to create a civil, nonpunitive regime." (*Smith v. Doe* at 1149.) The Court specifically affirmed the Internet element of Alaska's statute as not being punishment:

The fact that Alaska posts the information on the Internet does not alter our conclusion. It must be acknowledged that notice of a criminal conviction subjects the offender to public shame, the humiliation increasing in proportion to the extent of the publicity. And the geographic reach of the Internet is greater than anything which could have been designed in colonial times. These facts do not render Internet notification punitive. The purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation.

The State's Web site does not provide the public with means to shame the offender by, say, posting comments underneath his record. An individual seeking the information must take the initial step of going to the Department of Public Safety's Web site, proceed to the sex offender registry, and then look up the desired information. The process is more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality. The Internet makes the document search more efficient, cost effective, and convenient for Alaska's citizenry.

...

Although the public availability of the information may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record. The State makes the facts underlying the offenses and the resulting convictions accessible so members of the public can take the precautions they deem necessary before dealing with the registrant.<sup>9</sup> (*Id.* at 1150, 1152.)

<sup>8</sup> The California Supreme Court also has found that California's sex offender registration laws do not violate the constitutional proscription against ex post facto laws. (*People v. Castellanos* (1999) 21 Cal.4<sup>th</sup> 785, 796.)

<sup>9</sup> Justice Stevens strongly dissented from the majority's conclusion in this regard: "No matter how often the Court may repeat and manipulate multifactor tests that have been applied in wholly dissimilar cases involving only one or two of these three aspects of these statutory sanctions, it will never persuade me that the registration and reporting obligations that are imposed on convicted sex offenders *and on no one else* as a result of their convictions are not part of their punishment. In my opinion, a sanction that (1) is imposed on everyone who commits a criminal offense, (2) is not imposed on anyone else, and (3) severely impairs a person's liberty is punishment." (Dissent, *Smith v. Doe*, *supra*, 123 S.Ct. at 1158 (emphasis in original).)

The same day it decided *Smith v. Doe*, the Court also upheld Connecticut's sex offender registry laws, which permitted public disclosure of some of its information in certain state offices.<sup>10</sup> (*Connecticut v. Doe* (2003) 123 S.Ct. 1160.)

#### 10. Danger Posed by Registered Sex Offenders

Public notification of registered sex offenders is rooted in the belief that there is a substantial risk of recidivism among sex offenders. As explained by the United States Supreme Court, legislative findings to this effect "are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is 'frightening and high.'"<sup>11</sup> "When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault."<sup>12</sup> This belief is repeated in the legislative findings and declarations stated in this bill.

Some commentators, however, have disputed this assertion, arguing that a high rate of recidivism among sex offenders is a "myth":

A closer look at the scholarly research reveals that almost all studies show a relatively low recidivism rate for sex offenses as opposed to other crimes. For example, a study published by the American Psychological Association found only a 13% average recidivism rate for sex offenses. In arguing that Megan's Laws are misguided and ineffective, American Civil Liberties Union president, Nadine Strossen, cited a National Center for Institutions and Alternatives metanalysis study of recidivism rates, which found that the recidivism rates of sex offenders are lower than any other category of offenders except murderers.<sup>13</sup>

IS THIS PROPOSAL BASED ON A WRONG ASSUMPTION THAT THESE OFFENDERS POSE A HEIGHTENED RISK FOR RE-OFFENDING? DOES THE UNIQUE NATURE OF SEX OFFENSES AND THEIR HARM TO VICTIMS MAKE THIS INQUIRY LESS RELEVANT?

\*\*\*\*\*

<sup>10</sup> The respondent in the Connecticut case claimed that the law violated the Due Process Clause of the Fourteenth Amendment because the statute afforded him no opportunity to demonstrate he was not a dangerous sex offender. The Court reasoned, however, that since the Connecticut registry was based on the fact of a previous conviction and not current dangerousness, "due process does not entitle him to a hearing to establish a fact that is not material under the Connecticut statute." (*Connecticut v. Doe, supra*, 123 S.Ct. 1164.) The Court expressly declined to opine on "whether Connecticut's Megan's Law violates principles of substantive due process." *Id.* at 1165.

<sup>11</sup> *Smith v. Doe, supra*, 123 S.Ct. at 1153 (citation omitted).

<sup>12</sup> *McKune v. Lile* (2002) 122 S.Ct. 2017, 2024, citing Sex Offenses 27; U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997).

<sup>13</sup> Comment, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles* (2003) Cal.L.Rev.163, 171 (citations omitted).

AB 488 (PARRA)  
SEX OFFENDERS: INTERNET

Version: 6/2/03 Last Amended  
Vote: Majority  
Support

Vice-Chair: Jay La Suer  
Tax or Fee Increase: No

Placing Megan's Law information about sex offenders on the Internet is an important policy goal and should be adopted this year, now that the U.S. Supreme Court has held that placing this information on the Internet is constitutional. However, this bill's provisions are too restrictive. The Court has upheld, and California should adopt, placement of information about the sex offender's home address, work address, vehicle information, criminal history, whether the offender has victimized children, and connection with colleges and universities on the Internet. The bill's ZIP code search provisions are less useful than home address information and does not include workplace information.

**Policy Question**

1. Should law enforcement and organizations receiving information from law enforcement, pursuant to law enforcement's discretionary ability to release information to the public about high-risk sex and serious sex offenders, be permitted to release information about the date that the sex offender last registered or re-registered and whether the sex offender is in violation of his or her obligations under the sex offender registration laws?
2. Should law enforcement agencies' obligation to keep records of persons who view the Megan's Law CD-ROM cease as of July 1, 2010?
3. Should Penal Code § 290.4 sunset on July 1, 2005? Should the existing Megan's Law CD-ROM and "900" number systems be abolished as of that date?
4. Should, beginning July 1, 2005, the Department of Justice be required to provide an Internet web site with information about sex offenders?
5. Should the Internet information NOT include the person's vehicle information, connections to institutions of higher learning, name or address of the person's employer, street address, and criminal history (other than the crimes for which registration is required)?
6. Should the Internet site include information about when the person last registered or re-registered as a sex offender and whether he or she is in compliance with his or her registration obligations?
7. Should the current provisions relating to "high-risk" sex offenders be deleted and replaced with revised (and somewhat broader) community notification authorization provisions?
8. Should this Internet system sunset on July 1, 2008?

**Summary**

1. This bill would provide that law enforcement and organizations receiving information from law enforcement, pursuant to law enforcement's discretionary ability to release information to the public about high-risk sex and serious sex offenders; be permitted to release information about the date that the sex offender last registered or re-registered and whether the sex offender is in violation of his or her obligations under the sex offender registration laws.
2. This bill would provide that the sex offender registration laws will be clarified to provide that the violations of law which require a person to register as a sex offender include any predecessor sections of law that includes the same elements of a currently covered offense.
3. This bill would provide that law enforcement agencies' obligation to keep records of persons who view the Megan's Law CD-ROM cease as of July 1, 2010.
4. This bill would provide that Penal Code § 290.4 will sunset on July 1, 2005. This bill would provide that the current Megan's Law CD-

**Assembly Republican Public Safety Votes (5-0)**  
4/01/03

Ayes: None  
Noes: None  
Abs. / NV: La Suer, Spitzer

**Assembly Republican Appropriations Votes (23-1)**  
5/28/03

Ayes: Bates, Daucher, Maldonado, Pacheco, Runner, Samuelian  
Noes: Haynes  
Abs. / NV: None

**Assembly Republican Votes (0-0) 1/1/03**

Ayes: None  
Noes: None  
Abs. / NV: None

**Assembly Republican Votes (0-0) 1/1/03**

Ayes: None  
Noes: None  
Abs. / NV: None

## Assembly Republican Bill Analysis

AB 488 (Parra)

- ROM and "900" number systems will be abolished as of that date.
5. This bill would provide that, beginning July 1, 2005, the Department of Justice would be required to provide an Internet web site with information about sex offenders.
  6. **This bill would provide that the Internet information will NOT include the person's vehicle information, connections to institutions of higher learning, name or address of the person's employer, street address, and criminal history (other than the crimes for which registration is required).** (Law enforcement would have access to this information.)
  7. This bill would provide, at the discretion of the Department of Justice, that the website would be translated into languages other than English.
  8. This bill would provide that the Department of Justice will be required to report to the Legislature on the operation of the website annually, beginning July 1, 2006, including the number of website hits and allegations regarding, and prosecutions for, the misuse of information.
  9. This bill would delete the current provisions allowing for community notification regarding high-risk sex offenders.
  10. This bill would repeal the current Megan's Law CD-ROM and "900" number provisions, effective July 1, 2005.
  11. This bill would recast the current community notification provisions, moving these provisions into a new section and somewhat expanding officers' authority to make disclosures.
  12. This bill would require law enforcement agencies allowing the public to view the current Megan's Law CD-ROM to retain records of the persons who did so for at least five years.
  13. This bill would make related, minor changes to Penal Code § 290.
  14. This bill would include a sunset date of July 1, 2008 for the Internet provisions.

### Support

Department of Justice (Sponsor)  
San Bernardino County Sheriff Penrod; Los Angeles District Attorney's Office; Faculty Association of California Community Colleges; Los Angeles County Sheriff Baca.

### Opposition

Californians for the Positive Enforcement of Megan's Law (Opposed to restrictive nature of information included on the Internet site); American Civil Liberties Union.

### Arguments In Support of the Bill

Supporters would support placing Megan's Law information on the Internet. The existing Megan's Law "900" number and CD-ROM are inconvenient.

Parents should have the ability to search for sex offenders in their neighborhood via the Internet, as is allowed in 40 other states.

### Arguments In Opposition to the Bill

1. The ACLU argues that placing Megan's Law information on the Internet unduly stigmatizes offenders and that this bill fails to distinguish between individuals who pose a threat of future dangerousness and those that do not.
2. Californians for the Positive Enforcement of Megan's Law are supportive of placing Megan's Law information on the Internet, but oppose this bill's restrictions on the inclusion of home address, work, and vehicle information.

### Fiscal Effect

As amended in Assembly Appropriations Committee on 5/28/03

**MAJOR STATE COST** -- Probably in the range of \$500,000 to \$2 million one-time and \$400,000 annually for the DOJ to collect specified data and maintain a new database and website.

### Comments

1. **Author's Statement:** According to the author, "The approval of the federal Megan's Law in 1996 allowed police authorities for the first time to release information about violent sex offenders. As a result, many law enforcement agencies make the Megan's Law database available to the public. The database provides the offender's name and aliases, information on physical appearance, registered sex offenses, and location. Megan's Law, however, is only as effective as the availability of the sex offender database. Regrettably, the database is not readily accessible for many Californians. The database is generally only available at police stations in urban areas. In many rural communities, information on sex offenders is not available to the public, or only available for a limited number of hours, hours that may pose difficulties for working parents. However, the Internet is a great vehicle for sharing information. Almost every citizen has Internet access, whether it's at their public library, their workplace, their school, or their home computer. As a result, AB 488 would require the Department of Justice to establish an Internet website to make sex offender information more easily accessible. Over 30 U.S. states already provide sex offender information on the Internet. California typically leads the nation in areas of technological innovations, yet, in this instance, we are behind the majority of states. The recent U.S. Supreme Court decision in *Smith v. Doe* provides a 'green light' for California to join the state that are

doing what's needed to protect the public's safety."

2. **Sex Offender Registration Overview:**

California has had some form of registration requirements for sex offenders since 1948. In general, California requires offenders who have committed any of 36 types of sex crimes, or attempts to commit those crimes, to register with local law enforcement for life. It applies to persons convicted of these offenses in California, federal, or military courts committed since July 1, 1944. It also applies to convictions in other states (if the elements of the offense are the same as California-covered offenses) and to persons found not guilty by reason of insanity. A "certificate of rehabilitation" is possible for some offenders, relieving them of the duty to register, but this is not permitted for serious sex offenses. The purpose of sex offender registration is to assure that these offenders are available for police surveillance at all times because the Legislature deems them likely to commit similar offenses in the future. Sex offenders are required to register with the chief of police or sheriff within five working days of coming into, or changing residence or location within, any city or county where the offender resides, or if he or she has no residence, wherever the offender is located. Sex offenders who are university and college students, employees, and independent contractors working on the campus a specified amount of time are also required to register with the campus police department, if there is one, or with the law enforcement agency with jurisdiction over the campus, if there is not. Persons who live outside of the State, but who work in California or attend class here, and persons with multiple residences are also required to register. Annual updates are required, beginning on his or her first birthday following registration or change of address, within 5 working days of that date. A person who has no residence is required to register every 60 days. "Sexually violent predators" are required to register every 90 days. Offenders are notified of the duty to register upon release from jail, prison, the Youth Authority, or a state hospital or when placed on probation. Pre-registration has been required since 1998. Failure to register by a person on probation or parole leads to mandatory parole/probation revocation. Failure to register as required is a criminal offense. If the offense for which the person was required to register was a felony, the penalty is 16 months, 2, or 3 years in state prison. If probation is granted, the person is required to serve at least 90 days in county the omission occur intentionally. The defendant must have had actual knowledge of the duty to register, however. (Penal Code § 290.)

3. **Megan's Law Overview:** "Megan's Law" was added by AB 2500 (Alby) in 1994 and became effective on July 1, 1995. The statute is named after Megan Kanka, a 7-year-old New Jersey girl who was raped and murdered by a known child molester. It allows disclosure of information about the whereabouts of sex offenders in certain circumstances. The Department of Justice is required to compile a list of the address and other specified information, categorized by community of residence and ZIP code on persons required to register as sex offenders for the following offenses: kidnapping with the intent to commit a sex crime, assault with the intent to commit a sex crime, sexual battery, rape, forcible rape in concert, felony procurement, obtaining consent to specified sex acts by false representation intended to create fear, providing a child for lewd and lascivious acts, abduction of a minor for prostitution, aggravated sexual assault of a child, felony sodomy, lewd acts with a child, felony forcible oral copulation, continuous sexual abuse of a child, sexual penetration by foreign object, and annoying or molesting children. The Department of Justice refers to these offenses as "serious" sex offenses. The information includes the names and known aliases of the person, photograph, a physical description, gender, race, date of birth, criminal history, and the address in which the person resides. The Department of Justice is required to operate a "900" telephone number where members of the public can obtain information about sex offenders in their neighborhood. The Department is permitted to disclose the registrant's ZIP code and describe the crimes for which registration is required, but may not otherwise disclose the registrant's street address, criminal history, or the name of address of the registrant's employer. The caller is required to identify himself or herself by full name. The Department charges \$10 for access to this service. Only adults are permitted to check the database. The number is 1-900-448-3000. The Department is also required to provide a CD-ROM containing the information that it collects on serious sex offenders (described above), except that the registrant's street address, employer information, and general criminal history information is omitted. The CD-ROM is updated and distributed monthly to law enforcement agencies. Sheriffs' departments and police departments in cities with a population of over 200,000 are required to make the CD-ROM available to the public. Smaller jurisdictions are permitted to do so. Citizens who wish to view the CD-ROM are required to provide identification, sign a register, and sign a statement that he or she is not a sex offender, and may be required to provide an articulable purpose for seeing the information. The person

is required to sign a statement, on a form developed by the Department of Justice, that he or she understands the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and he or she understands that it is unlawful to use the information obtained to commit a crime against the registrant or to engage in illegal harassment or discrimination against the registrant. A person who uses information obtained under these provisions to commit a felony is required to be punished by an additional 5 years in state prison, in addition to the penalties for the underlying offense. A person who uses the information to commit a misdemeanor shall receive an additional fine of \$500-\$1,000, in addition to any other penalties authorized for the underlying offense. A person who copies, distributes, discloses, or receives the record on, or information from, the CD-ROM, except as authorized by law, is guilty of a misdemeanor, punishable by up to six months in county jail, a fine of up to \$1,000, or both. Unauthorized removal or destruction of the CD-ROM from a law enforcement agency is a misdemeanor, punishable by up to a year in county jail, a fine of up to \$1,000, or both. When a peace officer receives information leading the officer to reasonably suspect that a child or other person may be at risk from a sex offenders convicted of one of the "serious" sex offenses described above, the law enforcement agency may release information deemed necessary to protect the public. The information may be given to educational institutions, day care establishments, establishments that primarily service persons the offender is likely to victimize, and other community members at risk. The offender's full name, known aliases, gender, race, physical description, photograph, date of birth, crimes for which registration is required, address, license plate number, type of victim targeted, probation/parole conditions, dates of crimes committed resulting in classification, date of release from confinement, and enrollment, employment or vocational information may be released. These recipients may disclose the information to additional persons only if authorized by the agency, which must determine that all conditions of disclosure are satisfied and identify the scope of further disclosure. Law enforcement may advise the general public of the presence of a "high-risk" sex offender. A high-risk sex offender is one who has been convicted of a serious sex offense (described above), and has been convicted of multiple violent offenses, including at least one violent sex offense, or adjudicated a "sexually violent predator," unless the person has not been arrested within 5 years (excluding periods of confinement) or the person has not been convicted of a registerable sex offense within 15

- years (excluding periods of confinement). The Department of Justice is required to compile a list of recently released high-risk sex offenders to law enforcement agencies four times each year, upon request. The names and identifying information about high-risk sex offenders may be made public upon a finding that disclosure would protect public safety. The address is generally not released, but may be if the law enforcement agency finds that the release would aid in the protection of public safety. Megan's Law is currently scheduled to sunset on January 1, 2004. (Penal Code §§ 290(m)-(n), 290.4.)
4. **Federal Funding Requirements:** Many features of California's sex offender registration system are required as a condition for receipt of full funding under the Byrne Formula grant. The Jacob Wetterling Crimes Against Children Act, 42 U.S.C. § 14071, as amended, requires state sex offender registration systems to have certain features or lose 10% of their funding. California currently receives approximately \$51 million in Byrne funds, so this would represent a loss of approximately \$5.1 million. Mandatory provisions include lifetime registration for violent sex offenders, Megan's Law, registration every 90 days for sexually violent predators, and information sharing with the FBI. California is currently deemed to be in full-compliance with these requirements, although there are issues regarding whether California is in compliance with some additional requirements, relating to the reporting of campus sex crimes.
  5. **Number of Registered Sex Offenders:** According to the Department of Justice, as of January 2, 2003, there were 98,910 sex offender registrants in California. Of this amount, 1,812 were classified as high risk, 79,045 as serious, and 18,053 as other. The "other" category, offenses for which registration is required but which are not classified as either high risk or serious, consist of pornography, incest, indecent exposure, misdemeanor sexual battery, and spousal rape offenses.
  6. **U.S. Supreme Court Cases Challenging Megan's Law:** The United States Supreme Court heard two cases addressing the issue of sex offender registration/Megan's Law this year, *Connecticut Department of Public Safety v. Doe* and *Smith v. Doe*. In *Connecticut Department of Public Safety v. Doe* (2003) 538 U.S. \_\_\_, the Court (9-0), in an opinion by Chief Justice Rehnquist, held that the Due Process Clause of the 14<sup>th</sup> Amendment does not require an individual hearing to determine the dangerousness of an offender prior to placing him or her into an Internet Megan's law database. Four of the justices filed or signed onto concurring opinions. Connecticut's release is based upon prior convictions, not current dangerousness. The Court held that "due

process does not require an opportunity to prove a fact that is not material to the State's sentencing scheme." The Court expressly reserved judgment on whether this disclosure scheme would violate *substantive* due process. In *Smith v. Doe* (2003) 538 U.S. \_\_\_, the Court (6-3) in an opinion by Justice Kennedy, joined by Rehnquist, O'Connor, Scalia, and Thomas, held that sex offender registration and public disclosure provisions applying to offenders whose crimes were committed prior to the effective date of these requirements do not violate the constitutional prohibition against *ex post facto* laws, reversing the Ninth Circuit. Justices Thomas and Souter filed concurring opinions. According to the Court, "The stigma of Alaska's Megan's Law results not from public display for ridicule and shaming but from the dissemination of accurate information from a criminal record, most of which is already public. Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment." The Court rejected the argument that dissemination of this information on the Internet was overbroad and that this constituted punishment. "Given the general mobility of our population, for Alaska to make its registry system available and easily accessible throughout the State was not so excessive a regulatory requirement as to become a punishment." Justices Stevens, Ginsberg, and Breyer dissented. Efforts underway to place Megan's Law information on the Internet will be strengthened by these opinions and should be tailored to comport with these holdings. As amended, this bill incorporates some features of the Connecticut and Alaska statutes that were upheld in these cases.

7. **Reported Problems With California Sex Offender Registration System:** A January 7, 2003 Associated Press report found that California has lost track of 33,000 sex offenders, approximately 44% of the total who registered at least once. While Megan's Law and sex offender registration are different statutes, release of information via Megan's Law is based on the accuracy of information obtained through sex offender registration. Follow-up stories have questioned the accuracy

of the Associated Press' methodology and revealed that other states also have lost track of substantial numbers of sex offenders, to varying degrees. Newspaper stories seem to indicate that jurisdictions that have made tracking compliance with sex offender registration requirements a high priority have had much higher compliance rates than jurisdictions that have not. Other reported problems with Megan's Law is that some police departments refer citizens to the county sheriff for information and others only make the CD-ROM available at inconvenient times. There are likely to be several bills on these topics this session.

8. **Vigilantism:** The U.S. Supreme Court has dismissed the argument that disclosure of home addresses will lead to vigilantism. The Court wrote, "The Court of Appeals identified only one incident from the 7-year history of Alaska's law where a sex offender suffered community hostility to his reputation and damage to his business after the information he submitted to the registry became public. This could have occurred in any event, because the information about the individual's conviction was already in the public domain. Although the public availability of the information may have a lasting an painful impact on the convicted sex offender, these consequences flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record." *Smith* (slip opinion at 13).
9. **Governor Davis and Attorney General Lockyer:** Both Governor Davis and Attorney General Lockyer have made public statements that they support including the sex offender's home address on the Internet. This bill would not permit this information to be revealed. The Attorney General also supported the broader bills AB 26 (Pacheco) and AB 1184 (Spitzer).
10. **Similar Legislation:** There are many bills on sex offender registration-related issues this year. Some similar to this bill are AB 26 (Pacheco), AB 27 (Parra) (sunset removal on Penal Code § 290.4 and intent language on the Internet), AB 726 (Leslie) (sunset date and Internet provisions), AB 876 (Campbell), AB 1184 (Spitzer), and AB 1224 (Diaz) (Internet provision).

Policy Consultant: Gary Olson 6/2/03

Fiscal Consultant: Eric Csizmar 6/02/03



Date of Hearing: April 1, 2003  
Chief Counsel: Bruce E. Chan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Mark Leno, Chair

C.O.P.S.  
Do Not Remove

AB 488 (Parra) – As Amended: March 26, 2003  
As Proposed to be Amended in Committee

SUMMARY: Provides that on July 1, 2005 public dissemination of sex offender information pursuant to "Megan's Law" shall occur through an Internet web site operated by the Department of Justice (DOJ), as specified. Specifically, this bill:

- 1) Makes technical changes to existing provisions in Penal Code Section 290(m) authorizing designated law enforcement entities to provide specified information to the public as to the risk posed by sex offenders.
- 2) Expands the type of information that law enforcement entities may provide to the public regarding sex offenders to include:
  - a) The date of last registration or reregistration; and,
  - b) Whether the person is in violation of sex offender registration requirements.
- 3) Deletes the provisions of existing law set forth in Penal Code Section 290(n) relating to public notification of the presence of "high-risk" sex offenders by designated law enforcement entities in response to the United States Supreme Court opinion in Connecticut Department of Public Safety et al. v. Doe (March 5, 2003) 123 S. Ct. 1160.
- 4) Provides that the DOJ shall maintain specified records of those persons requesting to view the CD-ROM until July 1, 2010 - five years after the termination of the CD-ROM and the implementation of the DOJ Internet web site created by this bill.
- 5) Provides that the existing public notification provisions of Megan's Law through a CD-ROM or a "900" telephone number shall remain in effect until July 1, 2005. As of January 1, 2006, Penal Code Section 290.4 as set forth in Section 2 of this bill is repealed unless a later enacted statute is enacted before January 1, 2006 deletes or extends the dates on which it becomes inoperative and is repealed.
- 6) Requires the DOJ to categorize sex offender information by county in addition to the current categories of community of residence and ZIP code. Modifies the type of sex offender information collected and categorized by the DOJ to include specified data regarding employment, vehicles, connections to institutions of higher learning, and the date of last registration or reregistration.
- 7) Provides that on July 1, 2005, public notification pursuant to Megan's Law in Penal Code Section 290.4 as set forth in Section 3 of this bill shall occur through an Internet web site

including all sex offenders about whom the DOJ is required to compile information, as specified.

- 8) Provides that the Megan's Law Internet web site retains the provision of existing law that excludes information concerning the listed person's: employer, address of the employer, street address, and criminal history other than the specific crimes for which the person was required to register.
- 9) Provides that the Megan's Law Internet web site shall exclude the listed person's vehicle information and information relating to connections to institutions of higher learning.
- 10) Expands the type of information made available to the public regarding sex offenders by including the following information on the Internet web site:
  - a) The dates of commission of crimes for which the person was required to register;
  - b) The date of the person's last registration or reregistration; and,
  - c) Whether the person is in violation of specified sex offender registration requirements.
- 11) Requires the DOJ to provide on the web site a detailed map of the state of California, overlaid with a fixed grid of squares, each square being one-quarter mile on a side and assigned a unique identifying number or set of coordinates, as specified. The web site shall for any California address entered in a properly identified field, indicate which square on the grid contains that address, and provide a direct link or other means to access information on persons required to register as a sex offender who reside in that square.
- 12) Deletes provisions relating to the dissemination of sex offender information through the existing "900" telephone number on July 1, 2005.
- 13) Deletes provisions relating to the dissemination of sex offender information through the CD-ROM or other electronic medium on July 1, 2005.
- 14) Requires a person visiting the web site to enter his or her name and to indicate that he or she is not a registered sex offender. The visitor's name and electronic acknowledgement of the conditions for viewing the web site shall be maintained by DOJ for two years. If a person required to register as a sex offender enters the web site, he or she is guilty of a misdemeanor.
- 15) Requires the DOJ to submit an annual report to the Legislature beginning on July 1, 2006. The report shall include information provided to the DOJ from local law enforcement agencies concerning allegations against, and investigations and prosecutions of, persons for misuse of the information on the web site.
- 16) Provides that the provisions of this bill shall become inoperative on July 1, 2008 and as of January 1, 2009 is repealed unless a later enacted statute is enacted before January 1, 2009 deletes or extends the dates on which it becomes inoperative and is repealed.

EXISTING LAW

- 1) Requires the DOJ to continually compile information as to specified persons who are required to register as sex offenders. The information shall be categorized by community of residence and ZIP code and include the name; aliases; photograph; physical description; gender; race; date of birth; criminal history; and the address, including ZIP code, in which the person resides. [Penal Code Section 290.4(a)(1), (2).]
- 2) Directs the DOJ to operate a 900 telephone number which a member of the public may call to determine whether a named person is on the list of persons required to register as a sex offender. After the caller identifies himself or herself, the caller shall be informed of the offender's registerable offense, physical description, and the ZIP code area where the offender resides. [Penal Code Section 290.4(a)(3).]
- 3) Requires the DOJ to maintain and distribute a CD-ROM or other electronic medium on a monthly basis to local law enforcement containing information related to persons required to register as convicted sex offenders. The person applying to view the CD-ROM must be at least 18 years of age; provide identification in the form of a California driver's license, California identification card, or military identification card; and sign a form acknowledging duties and responsibilities under the law. The person applying to view the information must also state that he or she is not a registered sex offender. [Penal Code Section 290.4(a)(4)(A).]
- 4) Provides that a person under 18 years of age may accompany an applicant who is that person's parent or legal guardian for the purpose of viewing the CD-ROM or other electronic medium. [Penal Code Section 290.4(a)(4)(A).]
- 5) Provides that any law enforcement entity may release information regarding specific serious or high-risk sex offenders by any means necessary to ensure the public safety, and any person who receives that information from law enforcement may disclose that information to the extent authorized by the law enforcement agency. [Penal Code Section 290(m)(N)(4).]

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Statement: According to the author, "The approval of the federal Megan's Law in 1996 allowed police authorities for the first time to release of information about violent sex offenders. As a result, many law enforcement agencies make the Megan's Law database available to members of the public. The database provides the offender's name and aliases, information on physical appearance, registered sex offenses, and location.

"However, Megan's Law is only as effective as the availability of the sex offender database. Regrettably, the database is not readily accessible for many Californians. The database is generally only available at police stations in urban areas. In many rural communities, information on sex offenders is not available to the public or only available for a limited number of hours, hours that may pose difficulties for working parents.

"The Internet is a great vehicle for sharing information. Almost every citizen has Internet access, whether it is at his or her public library; workplace, school, or home computer. As a result, this bill requires the DOJ to establish an Internet web site to make sex offender information more easily accessible.

"Over 30 states already provide sex offender information on the Internet. California typically leads the nation in the area of technological innovations, yet, in this instance, California is behind the majority. The recent United States Supreme Court decision in Smith v. Doe provides a 'green light' for California to join the states that are doing what is needed to protect the public's safety.

- 2) Public Usage of Megan's Law: Megan's Law allows citizens to access information on the identities and whereabouts of the most serious registered sex offenders in California. The information is made available to the public in three ways: law enforcement agencies notifying citizens of "high-risk" or "serious" sex offenders, citizens calling a 900 telephone number, or citizens viewing computerized information at local law enforcement agencies.

In 2001, the 900 line received a total of 5,126 inquiries, which generated 43,978 database searches and 179 sex offender "hits". At law enforcement facilities, 16,026 citizens viewed the CD-ROM. At community events sponsored by law enforcement agencies, 19,576 citizens viewed the CD-ROM. In addition, 8,278 citizens accessed the database in booths operated by the DOJ at various public events. As mentioned, Megan's Law also permits law enforcement agencies to actively notify the public when the most dangerous sex offenders are in their communities. During 2001, 122 law enforcement agencies publicly distributed a total of 14,182 fliers on 620 such offenders.

In March 2002, the DOJ replaced the CD-ROM system with the Megan's Law Web Application. This system allows law enforcement agencies to access the information through DOJ's private communications network (Intranet). The information is now updated daily, rather than monthly, and may be viewed in 12 additional languages.

- 3) Posting of Sex Offender Information on the Internet: On March 5, 2003 the United States Supreme Court decided the case of Smith v. Doe, No. 01-729. Before then, the issue of whether retroactively applying sex offender registration and public notification provisions of Megan's Law violated the Ex Post Facto Clause of the Constitution was unclear. In Smith v. Doe, the court upheld the validity of the Alaska Sex Offender Registration Act as a valid regulatory program that does not impose punitive restraints in violation of the Constitution.

The defendant argued that sex offender registration and notification statutes resemble shaming punishments of the colonial period that effectively banished a person from a community. The Supreme Court rejected the comparison:

"Even punishments that lacked the corporal component, such as public shaming, humiliation, and banishment, involved more than the dissemination of information. They either held the person up before his fellow citizens for face to face shaming or expelled him from the community. . . . By contrast, the stigma of Alaska's Megan's Law results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public. Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment."

The court held that posting the information on the Internet was not punitive, acknowledging the reach of the Internet is greater than anything during colonial times. The purpose and principal effect of notification are to inform the public for its own safety, not to humiliate the offender.

"Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation. . . . The state's web site does not provide the public with means to shame the offender by posting comments underneath his record. . . . The process is more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality. The Internet makes the document search more efficient, cost effective and convenient."

The majority opinion made the following observation that is relevant to the consideration of this bill:

"The excessiveness inquiry of our *ex post facto* jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy. The question is whether the regulatory means chosen are reasonable in light of the non-punitive objective."

- 4) Smith v. Doe: Concurring Opinion: Justice Souter concurred in the judgement of the court based on the presumption of constitutionality normally accorded a state's law. "That presumption gives the state the benefit of the doubt in close cases like this one, and on that basis alone, I concur in the Court's judgement." An excerpt from his opinion follows:

"Ensuring public safety is, of course, a fundamental regulatory goal, see, and this objective should be given serious weight in the analyses. But, at the same time, it would be naïve to look no further, given pervasive attitudes toward sex offenders. The fact that the Act uses past crime as the touchstone, probably sweeping in a significant number of people who pose no real threat to the community, serves to feed suspicion that something more than regulation of safety is going on; when a legislature uses prior convictions to impose burdens that outpace the law's stated civil aims, there is room for serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones. That argument can claim support, too, from the severity of the burdens imposed. Widespread dissemination of offenders' names, photographs, addresses, and criminal history serves not only to inform the public but also to humiliate and ostracize the convicts. It thus bears some resemblance to shaming punishments that were used earlier in our history to disable offenders from living normally in the community. While the Court accepts the State's explanation that the Act simply makes public information available in a new way, the scheme does much more. Its point, after all, is to send a message that probably would not otherwise be heard, by selecting some conviction information out of its corpus of penal records and broadcasting it with a warning. Selection makes a statement, one that affects common reputation and sometimes carries harsher consequences, such as exclusion from jobs or housing, harassment, and physical harm."

- 5) This Bill Places Existing Megan's Law Information on the Internet: Penal Code Section 290.4(a)(3), (4) provides for the disclosure of specified sex offender information through the DOJ's CD-ROM or 900 telephone number. Currently, the information made available to the

public regarding a sex offender consists of: name and known aliases, photograph, physical description, gender, race, date of birth, limited criminal history information consisting of the crimes that required registration, and ZIP code where the person resides.

This bill places the above information on a DOJ Internet web site. This bill does not publish address, employment, and vehicle information on the Internet and is, therefore, consistent with the existing statutory framework that balances the protection of the public against the privacy of persons required to register (See: The Scarlet Letter Branding: A Constitutional Analysis of Community Notification Provisions in Sex Offender Statutes, 47 Drake L. Rev. 635.) However, this bill expands the type of information released to the public to include: (a) the dates of commission of crimes for which the person was required to register; (b) the date of the person's last registration or reregistration; and, (c) whether the person is in violation of specified sex offender registration requirements.

- 6) Grid Mapping: This bill requires the DOJ to provide on the web site a detailed map of the state of California, overlaid with a fixed grid of squares, each square being one-quarter mile on a side and assigned a unique identifying number or set of coordinates, as specified. The web site shall for any California address entered in a properly identified field indicate which square on the grid contains that address, and provide a direct link or other means to access information on persons required to register as sex offenders who reside in that square. According to the author, this provision will assist the public as it permits a more focused search of areas within a particular ZIP code.
- 7) Deletion of Penal Code Section 290(n): This bill deletes the provisions of existing law set forth in Penal Code Section 290(n) relating to public notification of the presence of "high-risk" sex offenders by designated law enforcement entities. On March 5, 2003, the United States Supreme Court decided Connecticut Department of Public Safety et al. v. Doe (2003) 123 S. Ct. 1160. The High Court held that principles of procedural due process do not require states to provide sex registrants hearings on the issue of whether they are likely to be currently dangerous before posting their identities on an Internet web site. The Court stated, "Individuals are included within the registry solely by virtue of their conviction record and state law. . . . Connecticut has decided that the registry information of all sex offenders - currently dangerous or not - must be publicly disclosed." According to discussions with representatives of the Attorney General, the current provisions relating to high-risk sex offenders in Penal Code Section 290(n) potentially expose the statutory scheme to a constitutional challenge. By creating categories of sex offenders based on different levels of risk, California's Megan's Law may be unconstitutional if it does not provide an opportunity for a person to dispute the finding that he or she is a high-risk offender.

Deleting the provisions of Penal Code Section 290(n) does not hinder the ability of law enforcement to actively notify the public when the most dangerous sex offenders are in their communities. Police and sheriffs' departments may continue public notification efforts pursuant to Penal Code Section 290(m). According to the author, this is a critical function of law enforcement agencies, especially in low-income communities that typically do not have the same degree of access to personal computer technology.

- 8) Other Provisions: This bill has a number of other provisions that differ somewhat from existing law:

- a) Delayed implementation: The current CD-ROM and 900 telephone number will remain in effect until July 1, 2005 when the DOJ projects that the Internet web site becomes operational.
  - b) Reporting requirement: The report to the Legislature required by this bill shall include information provided to the DOJ from local law enforcement agencies concerning allegations against, and investigations and prosecutions of, persons for misuse of the information on the web site. In light of the potential for misuse of sex offender information that may accompany Internet disclosure, the reporting requirements of this bill are more extensive than those found in existing law.
  - c) Three-year sunset provision: The provisions of this bill shall become inoperative on July 1, 2008 and as of January 1, 2009 is repealed unless a later enacted statute deletes or extends the dates on which it becomes inoperative and is repealed.
- 9) Similar Legislation: AB 27 (Parra) is pending hearing by the Assembly Committee on Appropriations. AB 26 (Pacheco), AB 726 (Leslie), AB 876 (Campbell), AB 891 (Runner), AB 1184 (Spitzer), AB 1445 (Dutton) are all pending hearing by this Committee.
- 10) Prior Legislation: SB 1965 (Alpert), Chapter 118, Statutes of 2002, allowed military personnel in California access to the Megan's Law registry. AB 1340 (Honda), Chapter 648, Statutes of 2002, permitted persons under 18 years of age to view the registry if accompanied by the person's parent or legal guardian.

AB 347 (Battin), of the 1999-2000 Legislative Session, was never heard by the Assembly Appropriations Committee. SB 721 (Battin), of the 2001-02 Legislative Session, failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Office of the Attorney General (Sponsor)

Opposition

None on file

Analysis Prepared by: Bruce Chan / PUB. S. / (916) 319-3744

## CERTIFICATE OF SERVICE

Case Name: Richards, Michael v. Jefferson                      No. 2:17-cv-1838 JAM AC PS  
Sessions, et al.

I hereby certify that on November 27, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DECLARATION OF KARA WEILAND IN SUPPORT OF MOTION TO DISMISS COMPLAINT**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On November 27, 2017, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Michael Richardson  
4624 Ashdale Court, #4  
Sacramento, CA 95841

*Pro Per*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 27, 2017, at Sacramento, California.

\_\_\_\_\_  
Tursun Bier  
Declarant

\_\_\_\_\_  
*/s/ Tursun Bier*  
Signature