

ASSEMBLY BILL

No. 884

Introduced by Assembly Member Melendez

February 20, 2019

An act to amend Section 290 of the Penal Code, relating to sex offender registration.

LEGISLATIVE COUNSEL'S DIGEST

AB 884, as introduced, Melendez. Sex offender registration.

Existing law requires persons convicted of specified sex offenses to register with local law enforcement agencies while residing, attending school, or working in the state. Willful failure to register, as required, is a crime. Existing law establishes 3 tiers of registration based on specified criteria, requiring registration for periods of at least 10 years, at least 20 years, and for life, respectively, for a conviction of specified sex offenses.

Under existing law, a person convicted of willfully and lewdly committing any lewd or lascivious act upon a child under 14 years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, under circumstances that do not include the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is a tier 2 offender and is subject to registration for a minimum of 20 years. Under existing law, a person convicted of such an offense in 2 proceedings brought and tried separately or convicted of such an offense under circumstances that do include the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person is a tier 3 offender and is subject to registration for life.

This bill would make any person convicted of any violation of willfully and lewdly committing any lewd or lascivious act upon a child under 14 years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, a tier 3 offender subject to lifetime registration.

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

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

1 SECTION 1. Section 290 of the Penal Code, as amended by
2 Section 52 of Chapter 423 of the Statutes of 2018, is amended to
3 read:

4 290. (a) Sections 290 to 290.024, inclusive, shall be known,
5 and may be cited, as the Sex Offender Registration Act. All
6 references to “the Act” in those sections are to the Sex Offender
7 Registration Act.

8 (b) Every person described in subdivision (c), for the period
9 specified in subdivision (d) while residing in California, or while
10 attending school or working in California, as described in Sections
11 290.002 and 290.01, shall register with the chief of police of the
12 city in which ~~he or she~~ *that person* is residing, or the sheriff of the
13 county if ~~he or she~~ *that person* is residing in an unincorporated
14 area or city that has no police department, and, additionally, with
15 the chief of police of a campus of the University of California, the
16 California State University, or community college if ~~he or she~~ *that*
17 *person* is residing upon the campus or in any of its facilities, within
18 five working days of coming into, or changing ~~his or her~~ residence
19 within, any city, county, or city and county, or campus in which
20 ~~he or she~~ *they* temporarily ~~resides,~~ *reside,* and shall register
21 thereafter in accordance with the Act, unless the duty to register
22 is terminated pursuant to Section 290.5 or as otherwise provided
23 by law.

24 (c) The following persons shall register:

25 Every person who, since July 1, 1944, has been or is hereafter
26 convicted in any court in this state or in any federal or military
27 court of a violation of Section 187 committed in the perpetration,
28 or an attempt to perpetrate, rape or any act punishable under
29 Section 286, 287, 288, or 289 or former Section 288a, Section 207
30 or 209 committed with intent to violate Section 261, 286, 287,

1 288, or 289 or former Section 288a, Section 220, except assault
2 to commit mayhem, subdivision (b) or (c) of Section 236.1, Section
3 243.4, Section 261, paragraph (1) of subdivision (a) of Section
4 262 involving the use of force or violence for which the person is
5 sentenced to the state prison, Section 264.1, 266, or 266c,
6 subdivision (b) of Section 266h, subdivision (b) of Section 266i,
7 Section 266j, 267, 269, 285, 286, 287, 288, 288.3, 288.4, 288.5,
8 288.7, 289, or 311.1, or former Section 288a, subdivision (b), (c),
9 or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or
10 647.6, former Section 647a, subdivision (c) of Section 653f,
11 subdivision 1 or 2 of Section 314, any offense involving lewd or
12 lascivious conduct under Section 272, or any felony violation of
13 Section 288.2; any statutory predecessor that includes all elements
14 of one of the offenses described in this subdivision; or any person
15 who since that date has been or is hereafter convicted of the attempt
16 or conspiracy to commit any of the offenses described in this
17 subdivision.

18 (d) A person described in subdivision (c), or who is otherwise
19 required to register pursuant to the Act shall register for 10 years,
20 20 years, or life, following a conviction and release from
21 incarceration, placement, commitment, or release on probation or
22 other supervision, as follows:

23 (1) (A) A tier one offender is subject to registration for a
24 minimum of 10 years. A person is a tier one offender if the person
25 is required to register for conviction of a misdemeanor described
26 in subdivision (c), or for conviction of a felony described in
27 subdivision (c) that was not a serious or violent felony as described
28 in subdivision (c) of Section 667.5 or subdivision (c) of Section
29 1192.7.

30 (B) This paragraph does not apply to a person who is subject
31 to registration pursuant to paragraph (2) or (3).

32 (2) (A) A tier two offender is subject to registration for a
33 minimum of 20 years. A person is a tier two offender if the person
34 was convicted of an offense described in subdivision (c) that is
35 also described in subdivision (c) of Section 667.5 or subdivision
36 (c) of Section 1192.7, Section 285, subdivision (g) or (h) of Section
37 286, subdivision (g) or (h) of Section 287 or former Section 288a,
38 subdivision (b) of Section 289, or Section 647.6 if it is a second
39 or subsequent conviction for that offense that was brought and
40 tried separately.

1 (B) This paragraph does not apply if the person is subject to
2 lifetime registration as required in paragraph (3).

3 (3) A tier three offender is subject to registration for life. A
4 person is a tier three offender if any one of the following applies:

5 (A) Following conviction of a registerable offense, the person
6 was subsequently convicted in a separate proceeding of committing
7 an offense described in subdivision (c) and the conviction is for
8 commission of a violent felony described in subdivision (c) of
9 Section 667.5, or the person was subsequently convicted of
10 committing an offense for which the person was ordered to register
11 pursuant to Section 290.006, and the conviction is for the
12 commission of a violent felony described in subdivision (c) of
13 Section 667.5.

14 (B) The person was committed to a state mental hospital as a
15 sexually violent predator pursuant to Article 4 (commencing with
16 Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare
17 and Institutions Code.

18 (C) The person was convicted of violating any of the following:

19 (i) Section 187 while attempting to commit or committing an
20 act punishable under Section 261, 286, 287, 288, or 289 or former
21 Section 288a.

22 (ii) Section 207 or 209 with intent to violate Section 261, 286,
23 287, 288, or 289 or former Section 288a.

24 (iii) Section 220.

25 (iv) Subdivision (b) of Section 266h.

26 (v) Subdivision (b) of Section 266i.

27 (vi) Section 266j.

28 (vii) Section 267.

29 (viii) Section 269.

30 (ix) ~~Subdivision (b) or (c) of Section 288.~~

31 (x) Section 288.2.

32 (xi) Section 288.3, unless committed with the intent to commit
33 a violation of subdivision (b) of Section 286, subdivision (b) of
34 Section 287 or former Section 288a, or subdivision (h) or (i) of
35 Section 289.

36 (xii) Section 288.4.

37 (xiii) Section 288.5.

38 (xiv) Section 288.7.

39 (xv) Subdivision (c) of Section 653f.

- 1 (xvi) Any offense for which the person is sentenced to a life
- 2 term pursuant to Section 667.61.
- 3 (D) The person's risk level on the static risk assessment
- 4 instrument for sex offenders (SARATSO), pursuant to Section
- 5 290.04, is well above average risk at the time of release on the
- 6 index sex offense into the community, as defined in the Coding
- 7 Rules for that instrument.
- 8 (E) The person is a habitual sex offender pursuant to Section
- 9 667.71.
- 10 ~~(F) The person was convicted of violating subdivision (a) of~~
- 11 ~~Section 288 in two proceedings brought and tried separately.~~
- 12 ~~(G)~~
- 13 (F) The person was sentenced to 15 to 25 years to life for an
- 14 offense listed in Section 667.61.
- 15 ~~(H)~~
- 16 (G) The person is required to register pursuant to Section
- 17 290.004.
- 18 ~~(I)~~
- 19 (H) The person was convicted of a felony offense described in
- 20 subdivision (b) or (c) of Section 236.1.
- 21 ~~(J)~~
- 22 (I) The person was convicted of a felony offense described in
- 23 subdivision (a), (c), or (d) of Section 243.4.
- 24 ~~(K)~~
- 25 (J) The person was convicted of violating paragraph (2), (3), or
- 26 (4) of subdivision (a) of Section 261 or was convicted of violating
- 27 Section 261 and punished pursuant to paragraph (1) or (2) of
- 28 subdivision (c) of Section 264.
- 29 ~~(L)~~
- 30 (K) The person was convicted of violating paragraph (1) of
- 31 subdivision (a) of Section 262.
- 32 ~~(M)~~
- 33 (L) The person was convicted of violating Section 264.1.
- 34 ~~(N)~~
- 35 (M) The person was convicted of any offense involving lewd
- 36 or lascivious conduct under Section 272.
- 37 ~~(O)~~
- 38 (N) The person was convicted of violating paragraph (2) of
- 39 subdivision (c) or subdivision (d), (f), or (i) of Section 286.
- 40 ~~(P)~~

1 (O) The person was convicted of violating paragraph (2) of
2 subdivision (c) or subdivision (d), (f), or (i) of Section 287 or
3 former Section 288a.

4 ~~(Q)~~

5 (P) The person was convicted of violating paragraph (1) of
6 subdivision (a) or subdivision (d), (e), or (j) of Section 289.

7 ~~(R)~~

8 (Q) The person was convicted of a felony violation of Section
9 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section
10 311.2, Section 311.3, 311.4, or 311.10.

11 (4) (A) A person who is required to register pursuant to Section
12 290.005 shall be placed in the appropriate tier if the offense is
13 assessed as equivalent to a California registerable offense described
14 in subdivision (c).

15 (B) If the person's duty to register pursuant to Section 290.005
16 is based solely on the requirement of registration in another
17 jurisdiction, and there is no equivalent California registerable
18 offense, the person shall be subject to registration as a tier two
19 offender, except that the person is subject to registration as a tier
20 three offender if one of the following applies:

21 (i) The person's risk level on the static risk assessment
22 instrument (SARATSO), pursuant to Section 290.06, is well above
23 average risk at the time of release on the index sex offense into
24 the community, as defined in the Coding Rules for that instrument.

25 (ii) The person was subsequently convicted in a separate
26 proceeding of an offense substantially similar to an offense listed
27 in subdivision (c) which is also substantially similar to an offense
28 described in subdivision (c) of Section 667.5, or is substantially
29 similar to Section 269 or 288.7.

30 (iii) The person has ever been committed to a state mental
31 hospital or mental health facility in a proceeding substantially
32 similar to civil commitment as a sexually violent predator pursuant
33 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
34 2 of Division 6 of the Welfare and Institutions Code.

35 (5) (A) The Department of Justice may place a person described
36 in subdivision (c), or who is otherwise required to register pursuant
37 to the Act, in a tier-to-be-determined category if ~~his or her~~ *the*
38 appropriate tier designation described in this subdivision cannot
39 be immediately ascertained. An individual placed in this
40 tier-to-be-determined category shall continue to register in

1 accordance with the Act. The individual shall be given credit for
2 any period for which ~~he or she~~ *that individual* registers towards
3 ~~his or her~~ *the* mandated minimum registration period.

4 (B) The Department of Justice shall ascertain an individual's
5 appropriate tier designation as described in this subdivision within
6 24 months of ~~his or her~~ placement in the tier-to-be-determined
7 category.

8 (e) The minimum time period for the completion of the required
9 registration period in tier one or two commences on the date of
10 release from incarceration, placement, or commitment, including
11 any related civil commitment on the registerable offense. The
12 minimum time for the completion of the required registration
13 period for a designated tier is tolled during any period of
14 subsequent incarceration, placement, or commitment, including
15 any subsequent civil commitment, except that arrests not resulting
16 in conviction, adjudication, or revocation of probation or parole
17 shall not toll the required registration period. The minimum time
18 period shall be extended by one year for each misdemeanor
19 conviction of failing to register under this act, and by three years
20 for each felony conviction of failing to register under this act,
21 without regard to the actual time served in custody for the
22 conviction. If a registrant is subsequently convicted of another
23 offense requiring registration pursuant to the Act, a new minimum
24 time period for the completion of the registration requirement for
25 the applicable tier shall commence upon that person's release from
26 incarceration, placement, or commitment, including any related
27 civil commitment. If the subsequent conviction requiring
28 registration pursuant to the Act occurs prior to an order to terminate
29 the registrant from the registry after completion of a tier associated
30 with the first conviction for a registerable offense, the applicable
31 tier shall be the highest tier associated with the convictions.

32 (f) Nothing in this section shall be construed to require a ward
33 of the juvenile court to register under the Act, except as provided
34 in Section 290.008.

35 (g) This section shall become operative on January 1, 2021.