The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

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

(B) The fingerprints and photograph of the person.

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

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

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

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

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's residence address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4 and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.53 or 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the

police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's residence and employment address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of

subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 2. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 266j; Section 267; Section 269; paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses or any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in this section. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraph (5) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. 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.

(3) The department shall operate a "900" telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) On or before July 1, 1997, the department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall distribute the CD-ROM or other electronic medium on a quarterly basis to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriff's departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make, the CD-ROM or other electronic medium available for viewing by the public in accordance with the following: The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide

identification in the form of a California driver's license or California identification card, showing the applicant to be at least 18 years of age, and shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, 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 it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the designated law enforcement agency's office.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the "900" telephone number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the "900" telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the "900" telephone number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

(i) Notice that the caller's telephone number will be recorded.

(ii) The charges for use of the "900" telephone number.

(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the "900" telephone number to commit a crime against any registrant

or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, address, or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars ($600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section or Section 290, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (n) of Section 290. This subdivision shall not prohibit copying information by handwriting.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of

Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

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

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

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

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

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

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

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the "900" telephone number in violation of paragraph (2) of subdivision (e), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party

under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by subdivisions (m) and (n) of Section 290.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the "900" telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

(1) Number of calls received.

(2) Amount of income earned per year through operation of the "900" telephone number.

(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the "900" telephone number program based upon selected factors.

(i) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(j) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the "900" telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the "900" telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the "900" telephone number based upon selected factors.

(k) The registration and public notification provisions of this section are applicable to every person described in these sections,

without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

(*l*) No later than December 31, 1998, the Department of Justice shall prepare an informational pamphlet that shall be mailed to any member of the public who makes an inquiry using the "900" telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to identify suspicious activity by an adult, common facts and myths about child molesters, and how to obtain additional help and information. A notice to callers to the "900" telephone number that they will receive the pamphlet, if an address is provided, shall be included in the preamble required by this section.

(m) This section shall remain operative only until January 1, 2001, and as of that date is repealed unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

SEC. 2.5. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 266j; Section 267; Section 269; paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses or any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in this section. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraph (5) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. 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.

(3) The department shall operate a "900" telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) On or before July 1, 1997, the department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriff's departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make, the CD-ROM or other electronic medium available for viewing by the public in accordance with the

following: The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification in the form of a California driver's license or California identification card, showing the applicant to be at least 18 years of age, and shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, 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 it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the designated law enforcement agency's office.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the "900" telephone number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the "900" telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the "900" telephone number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

(i) Notice that the caller's telephone number will be recorded.

(ii) The charges for use of the "900" telephone number.

(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the "900" telephone number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, address, or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars ($600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section or Section 290, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (n) of Section 290. This subdivision shall not prohibit copying information by handwriting.

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

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

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

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

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

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

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

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

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the "900" telephone number in violation of paragraph (2) of subdivision (e), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the

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

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by subdivisions (m) and (n) of Section 290.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the "900" telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

(1) Number of calls received.

(2) Amount of income earned per year through operation of the "900" telephone number.

(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the "900" telephone number program based upon selected factors.

(i) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(j) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the "900" telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the "900" telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the "900" telephone number based upon selected factors.

(k) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

(*l*) No later than December 31, 1998, the Department of Justice shall prepare an informational pamphlet that shall be mailed to any member of the public who makes an inquiry using the "900" telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to identify suspicious activity by an adult, common facts and myths about child molesters, and how to obtain additional help and information. A notice to callers to the "900" telephone number that they will receive the pamphlet, if an address is provided, shall be included in the preamble required by this section.

(m) This section shall remain operative only until January 1, 2001, and as of that date is repealed unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

SEC. 3. (a) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1078, and AB 1927. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2116 and SB 2168 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 796, AB 1078, and AB 1927, in which case Sections 1, 1.2, 1.3, and 1.4 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1078, AB 1927, and SB 2116. It shall only become operative if (1) all five bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2168 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 796, AB 1078, AB 1927, and SB 2116, in which case Sections 1, 1.1, 1.3, and 1.4 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1078, AB 1927, and SB 2168. It shall only become operative if (1) all five bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2116 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 796, AB 1078, AB 1927, and SB 2168, in which case Section

290 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 1.3 of this bill shall become operative, and Sections 1, 1.1, 1.2, and 1.4 of this bill shall not become operative.

(d) Section 1.4 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1078, AB 1927, SB 2116, and SB 2168. It shall only become operative if (1) all six bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 796, AB 1078, AB 1927, SB 2116, and SB 2168, in which case Section 290 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 1.4 of this bill shall become operative, and Sections 1, 1.1, 1.2, and 1.3 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 290.4 of the Penal Code proposed by both this bill and AB 2799. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290.4 of the Penal Code, and (3) this bill is enacted after AB 2799, in which case Section 2 of this bill shall not become operative.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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Assembly Bill No. 1078

CHAPTER 930

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

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1078, Cardoza. Sex offenders: registration.

(1) Existing law authorizes a law enforcement agency, when a peace officer reasonably suspects that a child or other person may be at risk from a sex offender convicted of any specified offense, to provide certain information about that registered sex offender that the agency deems relevant and necessary to protect the public, to specified persons, agencies, or organizations the offender is likely to encounter. Under existing law, law enforcement agencies and employees of law enforcement agencies are immune from liability for good faith conduct under these provisions.

This bill would provide that (a) a law enforcement agency may authorize persons and entities who receive the information to disclose the information to additional persons only if the agency determines that specified conditions have been satisfied regarding disclosure to the additional persons and identifies the appropriate scope of further disclosure; (b) persons notified may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency; and (c) any public or private educational institution, day care facility, or any child care custodian or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability. To the extent this bill would increase the duties of local law enforcement with respect to the disclosure of information regarding registered sex offenders, this bill would impose a state-mandated local program.

(2) This bill would incorporate additional changes in Section 290 of the Penal Code proposed by AB 796, AB 1745, AB 1927, SB 2116, and SB 2168, to be operative if this bill and all of the other bills, or certain of the bills, are enacted and become effective on or before January 1, 1999, and this bill is enacted last.

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

reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into any city, county, or city and county in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address every 90 days in a manner established by the Department of Justice.

(E) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the

Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have

sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local

jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

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

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

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

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(2) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) In addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by

imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations.

This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4 and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on

separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sexual offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith

conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days in a manner established by the Department of Justice.

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

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military

court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall,

within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one

copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

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

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

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any

other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

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

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a

misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever

he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4 and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on

separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sexual offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five

years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.2. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, and place of employment, including the name and address of the employer, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

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

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial,

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no

other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy

to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the

address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and photograph of the person.

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

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

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

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

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or

commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the

circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any

provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's residence address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4 and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's residence and employment address, which shall be verified prior to publication; description and license plate number

of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.3. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days in a manner established by the Department of Justice.

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

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c,

subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of

those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1

(commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or

attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

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

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

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

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

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of

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

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the

person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined

on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4 and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.53 or 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated

offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified

high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

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

subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.4. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, and place of employment, including the name and address of the employer, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(E) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering

agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under

subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within

three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law

enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

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

(B) The fingerprints and photograph of the person.

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

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

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

allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

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

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this

section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law

enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's residence address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4 and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5,

289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.53 or 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator

under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(l) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's residence and employment address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California,

every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed, or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1745, and AB 1927. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2116 and SB 2168 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 796, AB 1745, and AB 1927, in which case Sections 1, 1.2, 1.3, and 1.4 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1745, AB 1927, and SB 2116. It shall only become operative if (1) all five bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2168 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 796, AB 1745, AB 1927, and SB 2116, in which case Sections 1, 1.1, 1.3, and 1.4 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1745, AB 1927, and SB 2168. It shall only become operative if (1) all five bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2116 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 796, AB 1745, AB 1927, and SB 2168, in which case Section

290 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 1.3 of this bill shall become operative, and Sections 1, 1.1, 1.2, and 1.4 of this bill shall not become operative.

(d) Section 1.4 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1745, AB 1927, SB 2116, and SB 2168. It shall only become operative if (1) all six bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 796, AB 1745, AB 1927, SB 2116, and SB 2168, in which case Section 290 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 1.4 of this bill shall become operative, and Sections 1, 1.1, 1.2, and 1.3 of this bill shall not become operative.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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STATE OF CALIFORNIA
DEPARTMENT OF FINANCE
915 L STREET
SACRAMENTO, CA 95814-3706

EXHIBIT E

September 10, 1999

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

This letter is submitted in response to the amended test claim submitted by the County of Tuolomne which has been given the title "Sex Offenders: Disclosure by Law Enforcement Officers" and assigned the number CSM-97-TC-15. As the result of our review of the claim, we have concluded that although the cited chapters may result in additional costs to local entities, these costs are not reimbursable bocause they are "costs mandated by the federal government. More specifically:

1. Section 17556(c) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order implemented a federal law or regulation and resulted in "costs mandated by the federal government," unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

2. Section 17513 of that Code defines "cost mandated by the federal government" as "...Any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation." "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

H.R. 2137, 104th Congress ("Megan's Law") requires that "the designated State law enforcement agency and any local law enforcement agency authorized by the State agency shall release relevant information that is necessary to protect the public concerning a person required to register under this section."

Section 290 of the California Penal Code requires persons convicted of specified sex offenses to register with the local law enforcement officials of the city or county in which he or she resides, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing or is located upon the campus, within five working days of coming into any city, county, or city and county in which he or she temporarily resides or is located.

Section 290.4 of the California Penal Code requires the Department of Justice (DOJ) to maintain and distribute a CD-ROM to local law enforcement containing information related to persons required to register as convicted sex offenders. The CD-ROM is updated on a monthly basis. This provision also requires that a person applying to view the CD-ROM be at least 18 years of age, provide identification, and sign a form acknowledging duties and responsibilities under the law.

The claimant cited sixteen statutes which are alleged to amend Sections 290 and 290.4 of the Penal Code. We would point out that the claim does not appear to comply with Section 1183 (3) of the Commission's regulations in that it does not identify what each of those sixteen statutes has mandated on local government. We have reviewed each of these, however, and found that they all do no more than implement "Megan's Law" and therefore, any costs resulting from these are costs mandated by the federal government.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst at (916) 445-8913 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

J. W. Mills
for
S. CALVIN SMITH
Program Budget Manager

PROOF OF SERVICE

Test Claim Name: "Sex Offenders: Disclosure by Law Enforcement Officers"
Test Claim Number: CSM-97-TC-15

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On September 10, 1999, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Paige Vorhies
3301 C Street, Room 500
Sacramento, CA 95816

DMG-MAXIMUS
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention : Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

County of Tuolomne
Ms. Sylvia Divita, Employee Relations Technician
28 North Lower Sunset Drive
Sonora, CA 95370

Mr. Steve Kiel
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814

Mr. Paul Minney
Girard & Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

Mr. Andy Nichols
Vavrinek Trine Day & Co., LLP
8300 Fair Oaks Blvd., Suite 403
Carmichael, CA 95608

Mr. Joseph D. Mullender, Jr.
Attorney at Law
89 Rivo Alto Canal
Long Beach, CA 90803

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 10, 1999, at Sacramento, California.

Abby Shawhan

Abby Shawhan

BEFORE THE
COMMISSION ON STATE MANDATES

CLAIMANT'S RESPONSE TO
DEPARTMENT OF FINANCE

Sex Offenders: Disclosure by Law Enforcement Officers ("Megan's Law")
97-TC-15

Chapter 908, Statutes of 1996
Chapter 909, Statutes of 1996
Chapter 17, Statutes of 1997
Chapter 80, Statutes of 1997
Chapter 817, Statutes of 1997
Chapter 818, Statutes of 1997
Chapter 819, Statutes of 1997
Chapter 820, Statutes of 1997
Chapter 821, Statutes of 1997
Chapter 822, Statutes of 1997
Chapter 485, Statutes of 1998
Chapter 550, Statutes of 1998
Chapter 927, Statutes of 1998
Chapter 928, Statutes of 1998
Chapter 929, Statutes of 1998
Chapter 930, Statutes of 1998

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OCT 26 1999
COMMISSION ON
STATE MANDATES

Penal Code Sections 290 and 290.4

The following is submitted in response to the letter of the Department of Finance, dated September 10, 1999. In that response the Department of Finance essentially claims that the legislation which is the subject of the test claim merely implements federal law, and on that basis, denies that there is a reimbursable state mandate. However, at the outset, it should be noted that the response of the Department of Finance does not quote nor attach the federal legislation to which it refers. As will be shown herein, the omission of the Department of Finance is critical: the federal legislation is merely directory to the states, and as such, does not constitute a "federal mandate", which would relieve the State of California from its obligation to reimburse local government.

I THE FEDERAL LEGISLATION IS NOT A MANDATE

It should be first noted that Public Law 103-322, enacted September 13, 1994, enacted 42 USC § 14071, known as the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program". (*See* Exhibit "1" attached hereto and

incorporated herein by reference.) The opening lines of the legislation specify distinctly that the program is voluntary as to the states, and commences as follows:

(a) **In general**

(1) **State guidelines**

The Attorney General shall establish guidelines for State programs that require --

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address with a designated State law enforcement agency for the time period specified in subparagraph (A) of subsection (b)(6) of this section; and

(B) a person who is a sexually violent predator to register a current address with a designated State law enforcement agency unless such requirement is terminated under subparagraph (B) of subsection (b)(6) of this section.

It was the amendments to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program enacted in 1996 as Public Law 104-145 that have come to be known as "Megan's Law". These amendments increased the obligations of the program to be established by the Attorney General, and for the states which opt into the program. (*See* Exhibit "1" attached hereto and incorporated herein by reference.)

The increased obligations include the transfer of information by the State to the FBI for participation in a national sex offender registry, and the state is required to participate in a national database established. State procedures are also required to make sure that the updated address information is promptly made available to the local law enforcement agency which has jurisdiction where the person will reside. The same procedures are to be followed if the registrant changes address by crossing state lines to a jurisdiction which has opted into the program.

A major change established through this legislation is that the information which is collected by a state may be released, and that provision is as follows:

(e) **Release of information.** (1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.

California has chosen to implement this section through public accessibility to information provided to local jurisdictions via CD-ROM, and the 900 telephone number.

See Penal Code, Section 290.4. The provisions for public dissemination of the information allowed by federal law go far beyond the federal program requirements.

Accordingly, from the outset, the program is voluntary as to the States; the establishment of guidelines is mandatory only upon the United States' Attorney General.

As the federal program is not mandated to be executed by the various states, it cannot be a "federal mandate" under California Government Code, Section 17556(c), as no costs are mandated to be expended by the federal government.

II ANY PENALTY FOR NONPARTICIPATION DOES NOT CREATE A FEDERAL MANDATE AND THERE ARE FEDERAL GRANT FUNDS AVAILABLE FOR PRORAM PARTICIPATION

Although the program is voluntary as to the various states, there is a penalty for a state which fails to implement this program, as set forth in subsection (g), which reads as follows:

> **(g) Compliance**
>
> **(1) Compliance date**
>
> Each State shall have not more than 3 years from the date of enactment of this Act [enacted Sept. 13 1994] in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.
>
> **(2) Ineligibility for funds**
>
> (A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 USCS 3765.)
>
> (B) **Reallocation of funds**
>
> Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

To return to the issue of penalty, if a State does not opt to establish a program for the registration of sex offenders and sexually violent predators, as mentioned above, the penalty is a 10% reduction in the funds provided by 42 U.S.C. § 3756.

42 U.S.C. § 3756 provides formula grants to states, which formula consists of two parts: the first part is a grant of $500,000 to each state; the second is funds remaining thereafter are allocated to each state in the proportion that its population bears to the population of all the states. Of course, there are strings to the funding provided. Section 3756 is but one in the grant program known as the "Edward Byrne Memorial State and Local Law Enforcement Assistance Programs", contained at 42 U.S.C. § 3750

et seq. The purpose of the grants is to carry out drug control strategy and help in national drug control priorities. The grants are to be made to states for the use of states and its units of local government for specified priorities, as follows:

(b) The Director of the Bureau of Justice Assistance (hereinafter in this part [42 USCS §§ 3750 et seq.] referred to as the "Director") is authorized to make grants to States, for the use by States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.) and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders. Such grants shall provide additional personnel, equipment, training, technical assistance, and information systems for the more widespread apprehension, prosecution, adjudication, and detention and rehabilitation of persons who violate these laws, and to assist the victims of such crimes (other than compensation), including –

(1) demand reduction education programs in which law enforcement officers participate;

(2) multijurisdictional task force programs that integrate Federal, State, and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, intelligence, and facilitating multijurisdictional investigations;

(3) programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivations;

(4) providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions;

(5) disrupting illicit commerce in stolen goods and property;

(6) improving the investigation and prosecution of white-collar crime, organized crime, public corruption crimes, and fraud against the government with priority attention to cases involving drug-related official corruption;

(7) (A) improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs;

(B) developing and implementing antiterrorism plans for deep draft ports, international airports, and other important facilities;

(8) career criminal prosecution programs including the development of proposed model drug control legislation;

(9) financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation,

financial investigative training, and financial information sharing systems;

(10) improving the operational effectiveness of the court process, by expanding prosecutorial, defender and judicial resources, and implementing court delay reduction programs;

(11) programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies;

(12) providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

(13) providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

(14) developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

(15) (A) developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug dependent offenders, enhancement of State and local forensic laboratories, and

(B) criminal and justice information systems to assist law enforcement, prosecution, courts, and corrections organization (including automated fingerprint identification systems);

(16) innovative programs that demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug offenses and other serious crimes;

(17) addressing the problems of drug trafficking and the illegal manufacture of controlled substances in public housing;

(18) improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly;

(19) drug control evaluation programs which the State and local units of government may utilize to evaluate programs and projects directed at State drug control activities;

(20) providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community;

(21) programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street drug sales;

(22) programs for the prosecution of driving while intoxicated charges and the enforcement of other laws relating to alcohol use and the operation of motor vehicles;

(23) programs that address the need for effective bindover systems for the prosecution of violent 16- and 17-year-old juveniles in courts with jurisdiction over adults for the crimes of –

(A) murder in the first degree;
(B) murder in the second degree;
(C) attempted murder;
(D) armed robbery when armed with a firearm;
(E) aggravated battery or assault when armed with a firearm;
(F) criminal sexual penetration when armed with a firearm; and
(G) drive-by shootings as described in section 36 of title 18, United States Code;

(24) law enforcement and prevention programs relating to gangs, or ot youth who are involved or at risk of involvement in gangs;

(25) developing or improving in a forensic laboratory a capability to analyze deoxyribonucleic acid (hereinafter in this title referred to as "DNA") for identification purposes; and

(26) to develop and implement antiterrorism training programs and to procure equipment for use by local law enforcement authorities. (*See* 42 U.S.C. § 3751(b).)

Thus, although participation in the program is voluntary on behalf of the State of California, the penalty for nonparticipation is a reduction of 10% in the grants for which the State of California would otherwise be eligible for the foregoing drug enforcement and criminal justice system enhancement purposes.

Granted that the State of California is one of the most populous in the nation, and on that basis, a 10% reduction in a grant could be of greater financial penalty than would a reduction in a grant given to, for example, the State of North Dakota. However, there is no mandate that the State of California even apply for such a grant, nor is there any mandate upon the federal government to fund all grants applied for. Thus, there is no assurance that even having a program which complies with the federal "Megan's Law" would result in the provision of the type of grant previously described.

However, it should further be noted that in passing "Megan's Law", the federal government not only used a stick, but included a carrot as well, and that is a provision for grants to the various states for the cost of compliance with this program:

(i) **Grants to States for costs of compliance.** (1) Program authorized. (A) In general. The Director of the Bureau of Justice Assistance (in this subsection referred to as the "Director") shall carry out a program, which shall be known as the "Sex Offender Management Assistance Program" (in this subsection known as the "SOMA program"), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

(B) Uses of funds. Each grant awarded under this subsection shall be –

(i) distributed directly to the State for distribution to State and local entities; and

(ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

(2) Eligibility. (A) Application. To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonable require) assuring that –

(i) the State complies with (or made a good faith effort to comply with) this section; and

(ii) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes listed in this section, except that the Director may waive the requirement of this clause if a State demonstrates an overriding need for assistance under this subsection.

(B) Regulations. (i) In general. Not later than 90 days after the date of enactment of this subsection [enacted Oct. 30, 1998], the Director shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the State must meet) in submitting the applications required under this subsection. In allocating funds under this subsection, the Director may consider the annual number of sex offenders registered in each eligible State's monitoring and notification programs.

(ii) Certain training programs. Prior to implementing this subsection, the Director shall study the feasibility of incorporating into the SOMA program the activities of any technical assistance or training program established as a result of section 40152 of this Act [42 UCS § 13941]. In a case in which incorporating such activities into the SOMA program will eliminate duplication of efforts or administrative costs, the Director shall take administrative actions, as allowable, and make recommendations to Congress to incorporate such activities into the SOMA program prior to implementing the SOMA program.

(3) Authorization of appropriations. There is authorized to be appropriated to carry out this subsection, $25,000,000 for each of fiscal years 1999 and 2000.

Thus, the State of California has had the ability, and will have the ability for this fiscal year, to apply for grants to defray the cost of this program. Although I have no information or belief regarding the State's application for such grant, I am informed and believe, and based upon such information and belief, state that the County of Tuolumne has not received any funds for the implementation of the provision of Megan's Law.

III THE REQUIREMENTS OF CALIFORNIA'S PROGRAM EXCEED THE FEDERAL REQUIREMENTS

Assuming, *arguendo*, that Megan's Law does constitute a federal mandate, the manner in which California has implemented this program far exceeds the federal requirements.

The statutory language in Megan's Law states what the requirements shall be of an "approved State registration program established under this section". (*See* 42 U.S.C. § 14071(b) as set forth in Exhibit "1".)

It should initially be noted that all requirements of this optional program is required either of the State or of its courts. The State law enforcement agency is the agency designated to receive the registration information and provide the conviction data and fingerprints to the Federal Bureau of Investigation. (*See* 42 U.S.C. § 14071 (b)(2).) Additionally, the State is required to immediately report a change of address to the appropriate law enforcement agency of the jurisdiction where the person required to report is living. (*See* 42 U.S.C. §14071(b)(4).)

This federal legislation also differs substantially from California's registration statute:

> (6) Length of registration. A person required to register under subsection (a)(1) shall continue to comply with this section, except during ensuing periods of incarceration, until –
>
> (A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or
>
> (B) for the life of htat person if htat person –
>
> (i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A); or
>
> (ii) has been convicted of an aggravated offense described in subsection (a)(1)(A); or
>
> (iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2). (*See* 42 USC § 14071(b)(6).)

This obligation to register should not be confused with that of California, which, regardless of the offense, continues throughout the lifetime of the registrant. (*See People* v. *Castellanos*, California Supreme Court No. S064388, filed August 30, 1999, attached hereto as Exhibit "2", at pages 3-4.)

The federal law also has a mandate which has yet to be incorporated into California law, which requires the registrant, if he or she lives in one state yet travels to another for employment or studies, to register as well in the jurisdiction where the person is employed or studies. (*See* 42 USC § 14071 (c).)

As it is the contention of claimant that the federal law in question is merely directory and not mandatory, a line by line comparison of the two statutes will not be undertaken at present. It is, however, our opinion that the California statute requires activities far and above that which is required by the federal law. Additionally, the State of California requires activities to be undertaken by local government which are imposed upon the State by the federal program.

As such, the claimant would like the Commission to consider *Hayes* v. *Commission on State Mandates* (3rd Dist., 1992) 11 Cal.App.4th 1564, which holds that a federal mandate imposed upon the state does not necessarily require the state to impose said costs upon local government. Additionally, to the extent that such requirements clearly exceed the federal mandate, they are reimbursable state mandated local costs.

Accordingly, should the Commission find that the program commonly known as "Megan's Law" is a federal mandate, the claimant wishes an opportunity to provide a line by line comparison of the two laws to clearly demonstrate that the requirements of the State of California clearly exceed "Megan's Law." To assist the Commission in its review of this program, attached hereto as Exhibit "3" is a true and correct copy of the U.S. Code Congressional and Administrative News, Volume 3, 1996 starting at page 980, pertaining to Megan's Law.

CONCLUSION

It is respectfully submitted by the County of Tuolumne that the within test claim is a reimbursable state mandated program. Although there is a federal program known as "Megan's Law", it is voluntary upon the States. There is a penalty for states which do not participate in "Megan's Law", which is a reduction in the state's allocation of annual crime-fighting funding, but there is also a bonus by way of grants available to states, for themselves and for units of local government, to implement the federal requirements. Additionally, the requirements imposed by the State of California far exceed those required of states that opt into the federal "Megan's Law" program.

CERTIFICATION

RICHARD L. ROGERS makes the following declaration and statement under oath:

I am the Sheriff for the County of Tuolumne. In my capacity as Sheriff, I am responsible to plan, direct, manage, coordinate and oversee activities related to law enforcement and the administration thereof.

I am familiar with the provisions and requirements of the Government Code and the Penal Code sections included in the test claim which required the County to provide additional information to the public, which may include the identities and locations of these sex

offenders, via electronic medium and to comply with increased reporting requirements.

I am the Tuolumne County Sheriff and presently direct the County's program to comply with the statutes included in the County's Test Claim. I have direct knowledge of Sheriff's Department costs incurred to comply with this state mandate for which the County has not been reimbursed by any federal, state or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally except as to those items stated upon information and belief, and as to those matters, I believe them to be true; and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 25th day of October, 1999, at Sonora, California.

Richard L. Rogers, Sheriff

designee), shall develop a national strategy to coordinate gang-related investigations by Federal law enforcement agencies.

(b) Data collection. The Director of the Federal Bureau of Investigation shall acquire and collect information on incidents of gang violence for inclusion in an annual uniform crime report.

(c) Report. The Attorney General shall prepare a report on national gang violence outlining the strategy developed under subsection (a) to be submitted to the President and Congress by January 1, 1996.

(Sept. 13, 1994, P. L. 103-322, Title XV, § 150008, 108 Stat. 2036.)

CROSS REFERENCES

This section is referred to in 42 USCS § 14214.

CRIMES AGAINST CHILDREN

§ 14071. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

(a) In General. (1) State guidelines. The Attorney General shall establish guidelines for State programs that require—

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address with a designated State law enforcement agency for the time period specified in subparagraph (A) of subsection (b)(6); and

(B) a person who is a sexually violent predator to register a current address with a designated State law enforcement agency unless such requirement is terminated under subparagraph (B) of subsection (b)(6).

(2) Court determination. A determination that a person is a sexually violent predator and a determination that a person is no longer a sexually violent predator shall be made by the sentencing court after receiving a report by a State board composed of experts in the field of the behavior and treatment of sexual offenders.

(3) Definitions. For purposes of this section:

(A) The term "criminal offense against a victim who is a minor" means any criminal offense that consists of—

(i) kidnapping of a minor, except by a parent;

(ii) false imprisonment of a minor, except by a parent;

(iii) criminal sexual conduct toward a minor;

(iv) solicitation of a minor to engage in sexual conduct;

(v) use of a minor in a sexual performance;

(vi) solicitation of a minor to practice prostitution;

(vii) any conduct that by its nature is a sexual offense against a minor; or

(viii) an attempt to commit an offense described in any of clauses (i) through (vii), if the State—

(I) makes such an attempt a criminal offense; and

(II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term "sexually violent offense" means any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18, United States Code, or as described in the State criminal code).

(C) The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(D) The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(E) The term "predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(b) Registration requirement upon release, parole, supervised release, or probation. An approved State registration program established under this section shall contain the following elements:

(1) Duty of State prison official or court. (A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, or in the case of probation, the court, shall—

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address the person shall give the new address to a designated State law enforcement agency in writing within 10 days;

(iii) inform the person that if the person changes residence to another State, the person shall register the new address with the law enforcement agency with whom the person last registered, and the person is also required to register with a designated law enforcement agency in the new State not later than 10 days after establishing residence in the new State, if the new State has a registration requirement;

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(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1), the State prison officer or the court, as the case may be, shall obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) Transfer of information to State and the FBI. The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.

(3) Verification. (A) For a person required to register under subparagraph (A) of subsection (a)(1), on each anniversary of the person's initial registration date during the period in which the person is required to register under this section the following applies:

(i) The designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

(ii) The person shall mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form.

(iii) The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency.

(iv) If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed the residence address.

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1), except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

(4) Notification of local law enforcement agencies of changes in address. A change of address by a person required to register under this section reported to the designated State law enforcement agency shall be immediately reported to the appropriate law enforcement agency having jurisdiction where the person is residing. The designated law enforcement agency shall, if the person changes residence to another State, notify the law enforcement agency with which the person must register in the new State, if the new State has a registration requirement.

(5) Registration for change of address to another state. A person who has been convicted of an offense which requires registration under this section shall register the new address with a designated law enforcement agency in another State to which the person moves not later than 10 days after such person establishes residence in the new State, if the new State has a registration requirement.

(6) Length of registration. (A) A person required to register under subparagraph (A) of subsection (a)(1) shall continue to comply with this section until 10 years have elapsed since the person was released from prison, placed on parole, supervised release, or probation.

(B) The requirement of a person to register under subparagraph (B) of subsection (a)(1) shall terminate upon a determination, made in accordance with paragraph (2) of subsection (a), that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

(c) Penalty. A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

(d) Release of information. (1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The designated State law enforcement agency and any local law enforcement agency authorized by the State agency shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.

(e) Immunity for good faith conduct. Law enforcement agencies, employees of law enforcement agencies, and State officials shall be immune from li[illegible] ability for good faith conduct under this section.

(f) Compliance. (1) Compliance date. Each State shall have not more than [illegible] years from the date of enactment of this Act [enacted Sept. 13, 1994] [illegible] which to implement this section, except that the Attorney General [illegible] grant an additional 2 years to a State that is making good faith [illegible] implement this section.

(2) Ineligibility for funds. (A) A State that fails to implement the [illegible] as described in this section shall not receive 10 percent of the [illegible] would otherwise be allocated to the State under section [illegible] Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. [illegible]

(B) Reallocation of funds. Any funds that are not allocated [illegible] to comply with this section shall be reallocated to States [illegible] with this section.

(Sept. 13, 1994, P. L. 103-322, Title XVII, Subtitle A, § 170[illegible])

2038; May 17, 1996, P. L. 104-145, § 2, 110 Stat. 1345; Oct. 3, 1996, P. L. 104-236, §§ 3–7, 110 Stat. 3096.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prospective amendments:

Amendment of section, effective Oct. 3, 1997, Act Oct. 3, 1996, P. L. 104-236, §§ 3–7, 110 Stat. 3096 (effective 1 year after enactment, as provided by § 10(a) of such Act, which appears as a note to this section), provides:

"Sec. 3. Duration of Sate registration requirement.

"Section 170101(b)(6) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(b)(6)) is amended to read as follows:

" '(6) Length of registration. A person required to register under subsection (a)(1) shall continue to comply with this section, except during ensuing periods of incarceration, until—

" '(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

" '(B) for the life of that person if that person—

" '(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A); or

" '(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A); or

" '(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2).'.

"Sec. 4. State boards.

"Section 170101(a)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)(2)) is amended by inserting before the period at the end the following: ', victim rights advocates, and representatives from law enforcement agencies'.

"Sec. 5. Fingerprints.

"Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071) is amended by adding at the end the following new subsection:

" '(g) Fingerprints. Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 170102(h) [42 USCS § 14072(h)].'.

"Sec. 6. Verification.

"Section 170101(b)(3)(A)(iii) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(b)(3)(A)(iii)) is amended by adding at the end the following: 'The person shall include with the verification form, fingerprints and a photograph of that person.'.

"Sec. 7. Registration information.

"Section 170101(b)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(b)(2)) is amended to read as follows:

" '(2) Transfer of information to State and the FBI. The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward

it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit all information described in paragraph (1) to the Federal Bureau of Investigation for inclusion in the FBI database described in section 170102.'.".

Amendments:

1996. Act May 17, 1996 substituted subsec. (d) for one which read:

"(d) Release of information. The information collected under a State registration program shall be treated as private data expect that—

"(1) such information may be disclosed to law enforcement agencies for law enforcement purposes;

"(2) such information may be disclosed to government agencies conducting confidential background checks; and

"(3) the designated State law enforcement agency and any local law enforcement agency authorized by the State agency may release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.".

Other provisions:

Act Oct. 3, 1996; implementing regulations. Act Oct. 3, 1996, P. L. 104-236, § 9, 110 Stat. 3098, provides: "Not later than 1 year after the date of enactment of this Act, the Attorney General shall issue regulations to carry out this Act and the amendments made by this Act [amending this section, adding 42 USCS § 14072, and classified in part to 42 USCS § 14073 and notes to this section].".

Effective date of Act Oct. 3, 1996; State compliance; ineligibility for funds. Act Oct. 3, 1996, P. L. 104-236, § 10, 110 Stat. 3098, provides:

"(a) In general. This Act and the amendments made by this Act [amending this section, adding 42 USCS § 14072, and classified in part to 42 USCS § 14073 and notes to this section] shall become effective 1 year after the date of enactment of this Act.

"(b) Compliance by States. Each State shall implement the amendments made by sections 3, 4, 5, 6, and 7 of this Act [amending this section] not later than 3 years after the date of enactment of this Act, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement such amendments.

"(c) Ineligibility for funds. (1) A State that fails to implement the program as described in sections 3, 4, 5, 6, and 7 of this Act [amending this section] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756).

"(2) Any funds that are not allocated for failure to comply with section 3, 4, 5, 6, or 7 of this Act [amending this section] shall be reallocated to States that comply with these sections.".

Act Oct. 3, 1996; severability. Act Oct. 3, 1996, P. L. 104-236, § 11, 110 Stat. 3098 (effective 1 year after enactment, as provided by § 10 of such

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§ 14072. FBI database

(a) Definitions. For purposes
(1) the term "FBI" mean
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and "predatory" have t
USCS § 14071(a)(3)]; and
(3) the term "minimally
means any State sexual
(A) requires the reg
offense described in
[42 USCS § 14071(a)
(B) requires that a
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tion;
(C) meets the re
[42 USCS § 140
(D) requires that
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placed on parole, su

(b) Establishment. The
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ment of—
(1) each person who
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(2) each person who
(3) each person who

(c) Registration requir
resides in a State that
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that person, and a curre
sion in the database es
specified under subsecti

(d) Length of registra
required to register un
of incarceration, conti

[illegible]

[illegible] FBI database

[illegible]

[illegible] the term "minimally sufficient sexual offender registration program" means any State sexual offender registration program that—

(A) requires the registration of each offender who is convicted of an offense described in subparagraph (A) or (B) of section [illegible] (42 USCS § 14071 (a)); [illegible]

(B) requires that all information gathered under such program be transmitted to the FBI in accordance with subsection (g) of this section;

(C) meets the requirements for verification under section [illegible] (42 USCS § 14071 (b)(3)); and

(D) requires that each person who is required to register under subparagraph (A) shall do so for a period of not less than [illegible] years beginning on the date that such person was released from prison or placed on parole, supervised release, or probation.

(b) Establishment. The Attorney General shall establish a national database at the Federal Bureau of Investigation to track the whereabouts and movement of—

(1) each person who has been convicted of a criminal offense against a victim who is a minor;

(2) each person who has been convicted of a sexually violent offense; and

(3) each person who is a sexually violent predator.

(c) Registration requirement. Each person described in subsection (b) who resides in a State that has not established a minimally sufficient sexual offender registration program shall register a current address, fingerprints of that person, and a current photograph of that person with the FBI for inclusion in the database established under subsection (b) for the time period specified under subsection (d).

(d) Length of registration. A person described in subsection (b) who is required to register under subsection (c) shall, except during ensuing periods of incarceration, continue to comply with this section—

1/98, as provided by § 3 of such Act, which appears as
the definition of "public school", substituted "101"
120 U.S.C. 1141(11)" following "1965".

ARY LAWS AND DIRECTIVES

03-322, Title III, Subtitle D, § 30402, 108 Stat. 1852)
105-277, Div A, § 101(f) [Title VIII, Subtitle III,
for a family and community endeavor schools grant

TY ECONOMIC PARTNERSHIP

Partnership Investment Funds

submitted under section 31112(b)(2)(B) [42 USCS
that—

t corporation will target job opportunities that arise
er this chapter so that 75 percent of the jobs retained
vided to—

g or have participated in job training programs
ership Act or title I of the Workforce Investment Act
1988 (Public Law 100-485);

iv A, § 101(f) [Title VIII, Subtitle IV, § 405(d)(44),

Y LAWS AND DIRECTIVES

to in this section, is Act Oct. 13, 1982, P. L. 97-
§ 1501 et seq. For full classification of such Act,

1998", referred to in this section, is Act Aug. 7,
ppears generally as 29 USCS §§ 2801 et seq. For
Tables volumes.

ly 1, 2000. Act Oct. 21, 1998, P. L. 105-277, Div
5)], 112 Stat. 2681-_ (effective on July 1, 2000,
hich appears as 5 USCS § 3502 note) provides:
Control and Law Enforcement Act of 1994 (42
'the Job Training Partnership Act or'.".

nt as provided by § 405(g)(1) of Subtitle IV of
Act, which appears as 5 USCS § 3502 note), in
r the Job Training Partnership Act or title I of
thorized under the Job Training Partnership Act

AINST WOMEN

FOR WOMEN

H GUIDE

Gender Motivated Violence Against Women

INTERPRETIVE NOTES AND DECISIONS

Parishioner adequately pleaded sexual exploitation under state law as "crime of violence" under 42 USCS § 13981(d)(2), where parishioner alleged that priest served as counselor to parishioner, kissed parishioner's neck, and rubbed her back, and that parishioner was emotionally dependent on priest. Doe v Hartz (1997, ND Iowa) 970 F Supp 1375.

Husband's constitutional challenge to Violence Against Women Act (42 USCS § 13981) must fail, where Congress compiled substantial documentation through numerous hearings over 4-year period of frequency and extent of gender-based violence and its effect on interstate commerce, and concluded that states did not offer adequate protection from gender-based crimes, because Congress was reasonable and authorized by Commerce Clause to create civil rights remedy to correct such deficiencies. Seaton v Seaton (1997, ED Tenn) 971 F Supp 1188.

Office employee's 42 USCS § 13981(c) claim against dentist may proceed, where she alleges that dentist made inappropriate sexual advances toward her, including fondling her, attempting to remove her clothing, grabbing her breasts, assaulting and attempting to rape her, and ultimately luring her to deserted office site and raping her, because complaint meets minimum requirements for pleading crime of violence "motivated by gender." Anisimov v Lake (1997, ND Ill) 982 F Supp 531.

Former employee's claim under civil enforcement provisions of Gender-Motivated Violence Act (GMVA) (42 USCS § 13981) may proceed, where allegations that superior called her "dumb bitch" and later shoved her so hard that she fell backward and hit floor, sustaining serious injuries, state viable claim that she was victim of gender-motivated crime of violence, because GMVA is valid exercise of Congress's Commerce Clause power. Crisonino v New York City Hous. Auth. (1997, SD NY) 985 F Supp 385, 76 BNA FEP Cas 75.

Male psychiatrist who made 3 sexual gestures toward female patient is entitled to dismissal of patient's claim under Violence Against Women Act (42 USCS § 13981), even though his brief contact with patient may have been unwelcome and, if so, should be punished, because opprobrious nature of his conduct does not convert it into assault involving "use of force or coercion" within meaning of Rhode Island statute or "crime of violence" within meaning of § 13981. Palazzolo v Ruggiano (1998, DC RI) 993 F Supp 45.

Female employees' claim against chiropractor under 42 USCS § 13981 must be dismissed, even though employees allege his inappropriate sexual remarks and touchings were serious enough to constitute felony crime of "forcible sexual abuse" under state law, where chiropractor characterizes his actions as "amorous" and "without animus," because court finds that actions alleged do not constitute offense that by its nature involved substantial risk of type of physical force required to state cause of action under § 13981. McCann v Bryon L. Rosquist, D.C., P.C. (1998, DC Utah) 998 F Supp 1246.

NATIONAL STALKER AND DOMESTIC VIOLENCE REDUCTION

§ 14039. Report to Congress

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

State laws and penalties for stalking crimes against children. Act Nov. 26, 1997, P. L. 105-119, Title I, § 115(b)(2), 111 Stat. 2467 (effective as provided by § 115(c) of such Act, which appears as 42 USCS § 14071 note), provides: "The Attorney General shall include in an annual report under section 40610 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14039) information concerning existing or proposed State laws and penalties for stalking crimes against children.".

CRIMES AGAINST CHILDREN

§ 14071. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

(a) **In general.** (1) State guidelines. The Attorney General shall establish guidelines for State programs that require—

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6); and

(B) a person who is a sexually violent predator to register a current address unless such requirement is terminated under subparagraph (B) of subsection (b)(6).

(2) Determination of sexually violent predator status; waiver; alternative measures. (A) In general. A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

(B) Waiver. The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(C) Alternative measures. The Attorney General may also approve alternative measures comparable or greater effectiveness in protecting the public from unusually dangerous

recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators

(3) Definitions. For purposes of this section:

(A) The term "criminal offense against a victim who is a minor" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

(i)—(viii) [Unchanged]

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term "sexually violent offense" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18, United States Code, or as described in the State criminal code).

(C)—(E)

(F) The term "employed, carries on a vocation" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(G) The term "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

(b) **Registration requirement upon release, parole, supervised release, or probation.** An approved State registration program established under this section shall contain the following elements:

(1) Duties of responsible officials. (A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, the court, or another responsible officer or official, shall—

(i) [Unchanged]

(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;

(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;

(iv), (v) [Unchanged]

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1), the State prison officer, the court, or another responsible officer or official, as the case may be, shall obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) Transfer of information to State and FBI; participation in national sex offender registry. (A) State reporting. State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

(B) National reporting. A State shall participate in the national database established under section 170102(b) [42 USCS § 14072(b)] in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.

(3) Verification. (A) For a person required to register under subparagraph (A) of subsection (a)(1), State procedures shall provide for verification of address at least annually.

(i)—(iv) [Deleted]

(B) [Unchanged]

(4) Notification of local law enforcement agencies of changes in address. A change of address by a person required to register under this section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.

specific measures set forth in this section regard-

victim who is a minor'' means any criminal of-
tate law which is comparable to or which exceeds

which is criminal only because of the age of the
offense if the perpetrator is 18 years of age or

means any criminal offense in a range of offenses
able to or which exceeds the range of offenses
or sexual abuse (as described in sections 2241 and
s described in the State criminal code) or an of-
physical contact with another person with intent
xual abuse (as described in such sections of title
the State criminal code).

cation'' includes employment that is full-time or
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on changes residence to another State, the person
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tion shall be reported by the person in the man-
hall ensure that the updated address information
nent agency having jurisdiction where the person
tate records or data system.

(5) Registration for change of address to another state. A person who has been convicted of an offense which requires registration under this section and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.

(6) Length of registration. A person required to register under subsection (a)(1) shall continue to comply with this section, except during ensuing periods of incarceration, until—

(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

(B) for the life of that person if that person—

(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A); or

(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A); or

(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2)

(7) Registration of out-of-State offenders, Federal offenders, persons sentenced by courts martial, and offenders crossing State borders. As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from—

(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and

(B) nonresident offenders who have crossed into another State in order to work or attend school.

(c) **Registration of offender crossing State border.** Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.

(d) **Penalty.** A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

(e) **Release of information.** (1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.

(f) **Immunity for good faith conduct.** Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

(g) **Compliance.** (1) Compliance date. Each State shall have not more than 3 years from the date of enactment of this Act [enacted Sept. 13, 1994] in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

(2) Ineligibility for funds. (A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765).

(B) Reallocation of funds. Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

(h) **Fingerprints.** Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 170102(h) [42 USCS § 14072(h)].

(i) **Grants to States for costs of compliance.** (1) Program authorized. (A) In general. The Director of the Bureau of Justice Assistance (in this subsection referred to as the ''Director'') shall carry out a program, which shall be known as the ''Sex Offender Management Assistance Program'' (in this subsection referred to as the ''SOMA program''), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

(B) Uses of funds. Each grant awarded under this subsection shall be—

(i) distributed directly to the State for distribution to State and local entities; and

(ii) used for training, salaries, equipment, materials, and other costs directly associated with com1376with this section.

(2) Eligibility. (A) Application. To be eligible to receive a grant under this subsection, the c executive of a State shall, on an annual basis, submit to the Director an application (in s form and containing such information as the Director may reasonably require) assu that—

(i) the State complies with (or made a good faith effort to comply with) this section;

(ii) where applicable, the State has penalties comparable to or greater than Federal pe ties for crimes listed in this section, except that the Director may waive the requiren of this clause if a State demonstrates an overriding need for assistance under this sub tion.

(B) Regulations. (i) In general. Not later than 90 days after the date of enactment of subsection [enacted Oct. 30, 1998], the Director shall promulgate regulations to im ment this subsection (including the information that must be included and the requ ments that the States must meet) in submitting the applications required under subsection. In allocating funds under this subsection, the Director may consider the nual number of sex offenders registered in each eligible State's monitoring and notif tion programs.

(ii) Certain training programs. Prior to implementing this subsection, the Director s study the feasibility of incorporating into the SOMA program the activities of technical assistance or training program established as a result of section 40152 of Act [42 USCS § 13941]. In a case in which incorporating such activities into the SO program will eliminate duplication of efforts or administrative costs, the Director s take administrative actions, as allowable, and make recommendations to Congres incorporate such activities into the SOMA program prior to implementing the SO program.

(3) Authorization of appropriations. There is authorized to be appropriated to carry out subsection, $25,000,000 for each of fiscal years 1999 and 2000.

(As amended Nov. 26, 1997, P. L. 105-119, Title I, § 115(a)(1)–(5), 111 Stat. 2461; Oct 30, 1 P. L. 105-314, Title VI, § 607(a), 112 Stat. 2985.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

Act Oct. 3, 1996 (effective 1 year after enactment, as provided by § 10(a) of such Act, which appears as a note to this section), in subsec. (a)(2), inserted ", victim rights advocates, and representatives from law enforcement agencies"; in subsec. (b), substituted para. (2) for one which read: (2) Transfer of information to State and the FBI. The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.", in para. (3)(A)(iii), added the sentence beginning "The person shall include . . .", and substituted para. (6) for one which read:

"(6) Length of registration. (A) A person required to register under subparagraph (A) of subsection (a)(1) shall continue to comply with this section until 10 years have elapsed since the person was released from prison, placed on parole, supervised release, or probation.

"(B) The requirement of a person to register under subparagraph (B) of subsection (a)(1) shall terminate upon a determination, made in accordance with paragraph (2) of subsection (a), that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.";

and added subsec. (g).

1997. Act Nov. 26, 1997 (effective as provided by § 115(c) of such Act, which appears as a note to this section), in subsec. (a), in para. (1), in subparas. (A) and (B), deleted "with a designated State law enforcement agency" following "register a current address", substituted para. (2) for one which read: "(2) Court determination. A determination that a person is a sexually violent predator and a determination that a person is no longer a sexually violent predator shall be made by the sentencing court after receiving a report by a State board composed of experts in the field of the behavior and treatment of sexual offenders, victim rights advocates, and representatives from law enforcement agencies.", in para. (3), in subpara. (A), in the introductory matter, substituted "in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:" for "that consists of—", in subpara. (B), substituted "in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by" for "that consists of", and added subparas. (F) and (G); in subsec. (b), in para. (1), substituted the heading for one which read: "Duty of State prison official or court.", in subpara. (A), in the introductory matter, substituted "the court, or another res officer or official" for "or in the case of probation, the court", in cl. (ii), substituted

to receive a grant under this subsection, the chief
sis, submit to the Director an application (in such
s the Director may reasonably require) assuring

good faith effort to comply with) this section; and
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cept that the Director may waive the requirement
overriding need for assistance under this subsec-

than 90 days after the date of enactment of this
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submitting the applications required under this
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implementing this subsection, the Director shall
into the SOMA program the activities of any
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hich incorporating such activities into the SOMA
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authorized to be appropriated to carry out this
rs 1999 and 2000.
I, § 115(a)(1)–(5), 111 Stat. 2461; Oct 30, 1998,
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LAWS AND DIRECTIVES

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for one which read: "Duty of State prison of-
ctory matter, substituted "the court, or another
e of probation, the court", in cl. (ii), substituted

"report the change of address as provided by State law" for "give the new address to a designated State law enforcement agency in writing within 10 days" and, in cl. (iii), substituted "shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student" for "shall register the new address with the law enforcement agency with whom the person last registered, and the person is also required to register with a designated law enforcement agency in the new State not later than 10 days after establishing residence in the new State, if the new State has a registration requirement", in subpara. (B), substituted ", the court, or another responsible officer or official" for "or the court", substituted para. (2) for one which read: "(2) Transfer of information to State and the FBI. The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit all information described in paragraph (1) to the Federal Bureau of Investigation for inclusion in the FBI database described in section 170102.", in para. (3)(A), in the introductory matter, substituted "State procedures shall provide for verification of address at least annually." for "on each anniversary of the person's initial registration date during the period in which the person is required to register under this section the following applies:", in para. (4), substituted "section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system" for "section reported to the designated State law enforcement agency shall be immediately reported to the appropriate law enforcement agency having jurisdiction where the person is residing. The designated law enforcement agency shall, if the person changes residence to another State, notify the law enforcement agency with which the person must register in the new State, if the new State has a registration requirement", in para. (5), substituted "and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration" for "shall register the new address with a designated law enforcement agency in another State to which the person moves not later than 10 days after such person establishes residence in the new State, if the new State has a registration requirement", and added para. (7); redesignated subsecs. (c)–(f) as subsecs. (d)–(g), respectively (resulting in the section having two subsections designated "(g)"); in subsec. (e)(2) as redesignated, substituted "The State or any agency authorized by the State" for "The designated State law enforcement agency and any local law enforcement agency authorized by the State agency"; and, in subsec. (f) as redesignated, substituted "and independent contractors acting at the direction of such agencies, and State officials" for ", and State officials".

Such Act further (effective as above) purported to amend subpara. (A) of subsec. (b)(3) by deleting cls. (i)–(v); however, since the subparagraph did not contain a cl. (v), the amendment was executed by deleting cls. (i)–(iv), which read:

"(i) The designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

"(ii) The person shall mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form.

"(iii) The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency. The person shall include with the verification form, fingerprints and a photograph of that person.

"(iv) If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed the residence address.".

1998. Act Oct. 30, 1998 redesignated the second subsec. (g) as subsec. (h); and added subsec. (i).

Other provisions:

Effective date of Act Oct. 3, 1996; State compliance; ineligibility for funds. Act Oct. 3, 1996, P. L. 104-236, § 10, 110 Stat. 3098; Nov. 26, 1997, P. L. 105-119, Title I, § 115(a)(7), 111 Stat. 2464 (effective on enactment as provided by § 115(c) of such Act, which appears as a note to this section), provides:

"(a) In general. This Act and the amendments made by this Act [amending this section, adding 42 USCS § 14072, and classified in part to 42 USCS § 14073 and notes to this section] shall become effective 1 year after the date of enactment of this Act.

"(b) Compliance by States. Each State shall implement the amendments made by sections 3, 4, 5, 6, and 7 of this Act [amending this section] not later than 3 years after the date of enactment of this Act, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement such amendments.

"(c) Ineligibility for funds. (1) A State that fails to implement the program as described in sections 3, 4, 5, 6, and 7 of this Act [amending this section] shall not receive 10 percent of the

Filed 8/30/99 (re-posted due to apparent .doc file damage on first posting)

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,	)	
	)	
Plaintiff and Respondent,	)	
	)	S064388
v.	)	
	)	Ct.App. 2/3 No. B102750
LUIS CASTELLANOS,	)	
	)	Los Angeles County
Defendant and Appellant.	)	Super. Ct. No. GA019800
	)	

Following defendant Luis Castellanos's conviction of a series of criminal offenses, the trial court ordered him to register as a sex offender pursuant to a provision in Penal Code section 290 that became effective after defendant committed those offenses. The Court of Appeal struck the trial court's order, concluding that requiring defendant to register as a sex offender violates the ex post facto clauses of the federal and California Constitutions (U.S. Const., art. I, § 10; Cal. Const., art. I, § 9). We disagree. As explained below, the trial court's order is valid because the requirement that a person register as a sex offender does not constitute punishment for purposes of ex post facto analysis.

I

In April 1994, defendant introduced himself to a member of the women's basketball team at Glendale College and subsequently appeared at her house. She allowed defendant to enter the residence but said she was getting ready to leave (which was not true) and left him in the living room for "a minute or two" while

she went upstairs to get her keys. Then both she and defendant left the house. The student went to her automobile and defendant appeared to go to his. She drove around the block, parked, and walked back to her house "through the back way" in order to avoid defendant if he still was present. As she approached her house, she saw defendant inside, replacing a screen on a window. She went to her grandmother's house and called the police.

The police arrested defendant the following day while he was attending a class at Glendale College. Defendant was carrying 26 $100 bills. In his locker, he had a three-month-old sports section of a local newspaper that contained an article that mentioned the student. In his backpack, police found a set of keys that belonged to a teacher at Glendale College, an address book, and a list of names of 14- and 15-year-old girls.

Defendant made a detailed confession. He explained that he had determined where the student lived by peering over her shoulder as she filled out a form at the library, and had memorized her address. While he was inside her residence and she was upstairs retrieving her keys, he unlocked a window and opened it a few inches. He left the house and pretended to go to his automobile, but when the student was out of sight he returned to her residence and climbed in through the window he had opened. After entering her bedroom, he stole a pair of her panties "as a memento of his contact" with her.

Defendant admitted that this was not his first burglary and that he had burglarized the homes of many of the girls named on the list found in his backpack. Each time, he took a pair of the girl's panties. Often, he also took money and photographs of the girl. He consented to have the police search the premises where he lived with his mother. At defendant's direction, the police looked inside a crawl space above the closet in defendant's bedroom and found, buried in the insulation, a trashbag that contained 27 pairs of women's panties,

numerous photographs of teenage girls, and some pubic hairs in plastic bags with notes identifying their sources.

The police contacted the girls involved. Many had not known that their property had been taken, but identified their underwear and photographs. Others had noticed that money was missing, usually in amounts close to $100, but had not suspected a burglary had occurred. On one occasion, $2,720 had been taken.

Defendant was convicted of 13 counts of first degree burglary in violation of Penal Code section 459[1] and 3 counts of receiving stolen property in violation of section 496, subdivision (a). He was sentenced to a term of 14 years in prison and ordered to register as a sex offender, pursuant to section 290, upon his release from custody.

Defendant argued on appeal that requiring him to register as a sex offender violates the ex post facto clauses of the federal and California Constitutions, because the provision in section 290 that requires him to register took effect after he committed the offenses of which he was convicted. The Court of Appeal agreed and modified the judgment of conviction by striking the order requiring defendant to register as a sex offender, stating it was bound by this court's decision in *In re Reed* (1983) 33 Cal.3d 914.

II

At the time defendant committed the present offenses in 1993 and 1994, section 290 required a person convicted of an enumerated sex-related crime to register as a sex offender. The registration requirement is lifelong, and includes furnishing to the chief of police of the city in which the offender resides (or to the sheriff of the county, if the offender resides in an unincorporated area) a written

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1 All further undesignated statutory references are to the Penal Code.

statement, fingerprints, and a photograph, which are forwarded to the California Department of Justice. Failure to register is a criminal offense. "The purpose of section 290 is 'to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future.' [Citations.]" (*In re Reed*, *supra*, 33 Cal.3d 914, 919.) The crimes enumerated in former section 290 included rape, sodomy, and oral copulation, but did not include the crimes of burglary and receiving stolen property committed by defendant.

On January 1, 1995 (after defendant committed the present offenses, but before he was convicted), an amendment to section 290 took effect that, among other changes, added subdivision (a)(2)(E), which broadened the scope of the statute by requiring registration upon conviction of "any offense . . if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.[2] The trial court ordered defendant to register as a sex offender pursuant to this provision. As noted above, the Court of Appeal struck the trial court's order, holding that it violated the ex post facto clauses of the federal and state Constitutions.

Article I, section 10, of the federal Constitution states in pertinent part: "No state shall . . . pass any . . . ex post facto law . . . ." Article I, section 9 of the

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[2] As enacted, subdivision (a)(2)(E) of section 290 included among the persons required to register as a sex offender: "Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration." (Stats. 1994, ch. 864.) The section later was amended to provide that the required finding could be made at the time of conviction or sentencing. (Stats. 1998, ch. 930, §1.1.)

California Constitution similarly states that an "ex post facto law . . . may not be passed." The California provision is analyzed in the same manner as its federal counterpart. (*People* v. *Grant* (1999) 20 Cal.4th 150, 158;*People* v. *McVickers* (1992) 4 Cal.4th 81, 86;*Tapia* v. *Superior Court* (1991) 53 Cal.3d 282, 295-296.)

More than 200 years ago, in*Calder* v. *Bull* (1798) 3 U.S. (3 Dall.) 386, 390, the United States Supreme Court discussed the meaning of the federal ex post facto clause: "The prohibition, in the letter, is not to pass any law concerning, and after the fact; but the plain and obvious meaning and intention of the prohibition is this; that the Legislatures of the several states, shall not pass laws, after a fact done by a subject, or citizen, which shall have relation to such fact, and shall punish him for having done it." The court then listed the type of laws that were ex post facto laws: "1st. Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2nd. Every law that aggravates a crime, or makes it greater than it was, when committed. 3rd. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. . ." (*Ibid.*)

In *Collins* v. *Youngblood*(1990) 497 U.S. 37, 41, the high court reaffirmed this interpretation of the ex post facto clause: "Although the Latin phrase 'ex post facto' literally encompasses any law passed 'after the fact,' it has long been recognized by this Court that the constitutional prohibition on ex post facto laws applies only to penal statutes which disadvantage the offender affected by them." Relying upon the decision in*Calder* v. *Bull*, *supra*, the high court restated the prohibition of the ex post facto clause in simple terms: "Legislatures may not retroactively alter the definition of crime or increase the punishment for criminal acts." (*Collins* v. *Youngblood*, *supra*, 497 U.S. 37, 43.)

In the present case, the amendment to section 290 that took effect after defendant committed the charged offenses did not alter the definition of the crimes

of which defendant was convicted, but it did require defendant to register as a sex offender. Accordingly, application of this amendment to defendant would violate the ex post facto clauses of the federal and state Constitutions only if the sex offender registration requirement constitutes an increase in the punishment for defendant's criminal acts.[3]

In *People* v. *McVickers*, *supra*, 4 Cal.4th 81, we held that requiring a defendant convicted of certain sex offenses to provide a blood sample for AIDS testing did not constitute punishment for purposes of ex post facto analysis. We observed that "the ex post facto clause prohibits not just a *burden* but a more burdensome *punishment*." (*Id.* at p. 84, italics in original.) Noting that the decision in *Collins* v. *Youngblood*, *supra*, "furnishes no definitive answer to the question of the meaning of punishment" (*People* v. *McVickers*, *supra*, 4 Cal.4th 81, 85), we turned for guidance to earlier federal cases, including the decision in *Kennedy* v. *Mendoza-Martinez* (1963) 372 U.S. 144, and concluded that requiring a defendant to provide a blood sample for AIDS testing may be a burden, but it does not constitute punishment for purposes of ex post facto analysis, because neither the purpose nor the effect of the provision is punitive. To the contrary, the AIDS testing provision "has a legitimate nonpunitive governmental purpose." (*People* v. *McVickers*, *supra*, 4 Cal.4th 81, 89.)

In so holding, we twice cited the decision of the Arizona Supreme Court in *State* v. *Noble* (1992) 171 Ariz. 171 [829 P.2d 1217] that "held that a statute

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[3] In *People* v. *Franklin* (1999) 20 Cal.4th 249, 253 and footnote 2, we held that "failure to comply with California's sex offender registration law constitutes a penal offense," but "express[ed] no opinion on whether the obligation that a person register as a sex offender, imposed as a consequence of a conviction of a criminal offense, constitutes punishment for purposes of ex post facto analysis," noting that that issue is before us in the present case.

requiring registration of sex offenders did not violate the ban on ex post facto legislation as applied to a defendant whose crimes preceded its enactment because the overriding purpose of the statute was 'facilitating the location of child sex offenders by law enforcement personnel,' a purpose unrelated to punishment. [Citation.]" (4 Cal.4th 81, 87, 89.)

The Arizona Supreme Court is not alone in concluding that a sex offender registration requirement does not constitute punishment for purposes of ex post facto analysis. As recognized by the Court of Appeal in *People* v. *Fioretti* (1997) 54 Cal.App.4th 1209, 1214: "[V]irtually every court recently considering sex offender registration laws has held that these requirements are regulatory rather than punitive. (See, e.g., *Kitze* v. *Com.* (1996) 23 Va.App. 213 [475 S.E.2d 830]; *Opinion of the Justices to the Senate* (1996) 423 Mass. 1201 [668 N.E.2d 738]; *State* v. *Myers* (Kan. 1996) 923 P.2d 1024; *Artway* v. *Attorney General of State of N.J.* (3d Cir. 1996) 81 F.3d 1235, 1267; *State* v. *Noble* (1992) 171 Ariz. 171 [829 P.2d 1217, 1219-1220]; *State* v. *Ward* (1994) 123 Wn.2d 488 [869 P.2d 1062].)" (See also *Doe* v. *Pataki* (2d Cir. 1997) 120 F.3d 1263; *State* v. *Burr* (N.D. July 29, 1999) 1999 WL 549365; *State* v. *Pickens* (Iowa 1997) 558 N.W.2d 396; *Doe* v. *Poritz* (N.J. 1995) 662 A.2d 367; *State* v. *Costello* (N.H. 1994) 643 A.2d 531; *State* v. *Manning* (Minn.App. 1995) 532 N.W.2d 244.)

Six months after our decision in *McVickers*, the United States Supreme Court decided *Austin* v. *United States* (1993) 509 U.S. 602. The issue in the *Austin* case was whether a civil forfeiture under title 21 United States Code section 881(a)(4) and (7) of property used to facilitate the transportation or possession of controlled substances (in that case a mobile home and an automobile repair shop) constituted an excessive fine prohibited by the Eighth Amendment of the United States Constitution. The question turned on whether the forfeiture constituted punishment: "The Excessive Fines Clause limits the government's power to

extract payments, whether in cash or in kind, 'as *punishment* for some offense.' [Citation.] 'The notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law.' [Citation.] 'It is commonly understood that civil proceedings may advance punitive as well as remedial goals, and, conversely, that both punitive and remedial goals may be served by criminal penalties.' [Citations.] Thus, the question is . . . whether [the forfeiture] is punishment." (*Austin* v. *United States*, *supra*, 509 U.S. 602, 609-610, fn. omitted, italics in original.)[4]

Reviewing the history of forfeiture provisions in both England and the United States, the court in *Austin* concluded "that forfeiture generally and statutory *in rem* forfeiture in particular historically have been understood, at least in part, as punishment." (*Austin* v. *United States*, *supra*, 509 U.S. 602, 618, fn. omitted.) The court then examined the federal statutes at issue and found "nothing in these provisions or their legislative history to contradict the historical understanding of forfeiture as punishment." (*Id.* at p. 619.) Having determined that forfeiture

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[4] In addressing this question, the high court explained that the decisions in *Kennedy* v. *Mendoza-Martinez*, *supra*, 372 U.S. 144, and *United States* v. *Ward* (1980) 448 U.S. 242 did not govern the determination of whether a provision constitutes punishment for purposes of the excessive fines clause of the Eighth Amendment: "The question in those cases was whether a nominally civil penalty should be reclassified as criminal and the safeguards that attend a criminal prosecution should be required. [Citations.] In addressing the separate question whether punishment is being imposed, the Court has not employed the tests articulated in *Mendoza-Martinez* and *Ward*. [Citation.]" (*Austin* v. *United States*, *supra*, 509 U.S. 602, 610, fn. 6.) The court focused, instead, upon "whether, at the time the Eighth Amendment was ratified, forfeiture was understood at least in part as punishment and whether forfeiture under §§881(a)(4) and (a)(7) should be so understood today." (*Id.* at pp. 610-611.)

constituted punishment within the meaning of the excessive fines clause of the Eighth Amendment, the court remanded the matter to the lower court for a determination of whether the forfeiture or fine in that case was "excessive." (*Id.* at pp. 622-623.)

In *United States* v. *Ursery* (1996) 518 U.S. 267, the United States Supreme Court adopted a different approach to determining what constitutes punishment, holding that the double jeopardy clause of the Fifth Amendment of the United States Constitution did not preclude "the Government from both punishing a defendant for a criminal offense and forfeiting his property for that same offense in a separate civil proceeding." (518 U.S. at p. 270 [135 L.Ed.2d at p. 557].) The high court held that, unlike an in personam penalty such as a fine that may constitute punishment, the in rem civil forfeiture of property there at issue never has been considered punitive within the meaning of the double jeopardy clause. The court examined the history of in rem civil forfeitures and observed that, from the earliest times, such forfeitures have been allowed in addition to any related criminal penalties. Ultimately, the court employed a two-part test, asking whether Congress intended the forfeiture proceedings to be criminal or civil, and then considering "whether the proceedings are so punitive in fact as to 'persuade us that the forfeiture proceeding[s] may not legitimately be viewed as civil in nature,' despite Congress' intent. [Citation.]" (518 U.S. at p. 288 [135 L.Ed.2d at p. 568].) Employing this test, the court upheld the civil in rem forfeiture in that case, stating: "[*I*]*n rem* civil forfeiture is a remedial civil sanction, distinct from potentially punitive *in personam* civil penalties such as fines, and does not constitute a punishment under the Double Jeopardy Clause." (*Id.* at p. 278 [135 L.Ed.2d at p. 562].)

The court in *Ursery* distinguished its holding in*Austin* on the basis that *Austin* involved the excessive fines clause of the Eighth Amendment, rather than

the double jeopardy clause of the Fifth Amendment. The high court explained that the double jeopardy clause prohibits all types of successive punishment. Thus, the court earlier had held in *United States* v. *Halper* (1989) 490 U.S. 435, 442, that imposition of an in personam civil penalty following the imposition of criminal penalties could violate the double jeopardy clause if the civil penalty is "so extreme and so divorced from the Government's damages and expenses as to constitute punishment." The Eighth Amendment, by contrast, prohibits only those fines that are "excessive." Therefore, "it appears to make little practical difference whether the Excessive Fines Clause applies to all forfeitures .. . or only to those that cannot be characterized as purely remedial," because the excessive fines clause "prohibits only the imposition of 'excessive' fines, and a fine that serves purely remedial purposes cannot be considered 'excessive' in any event." (*Austin* v. *United States*, *supra*, 509 U.S. 602, 622, n. 14.) Thus, the method of analysis under the double jeopardy clause differs from that applicable to the excessive fines clause, but both involve the same consideration of whether the penalty serves purely remedial purposes.

In *Kansas* v. *Hendricks* (1997) 521 U.S. 346 [138 L.Ed.2d 501], the United States Supreme Court held that civil commitment under Kansas's Sexually Violent Predator Act based upon past conduct for which the offender has been convicted and punished does not violate the double jeopardy clause or the ex post facto clause, because such civil commitment does not constitute punishment for purposes of either constitutional provision. The first question considered by the court was "whether the legislature meant the statute to establish 'civil' proceedings. If so, we ordinarily defer to the legislature's stated intent." (*Id.* at p. 361 [138 L.Ed.2d at p. 514].) The court found such a legislative intent, adding: "Although we recognize that a 'civil label is not always dispositive,' [citation], we will reject the legislature's manifest intent only where a party challenging the

statute provides 'the clearest proof' that 'the statutory scheme [is] so punitive either in purpose or effect as to negate 'the State's] intention' to deem it 'civil.' [Citation.]" (*Ibid.* [138 L.Ed.2d at p. 515].) The high court concluded the offender had "failed to satisfy this heavy burden" (*ibid.*), observing that the state "is not seeking retribution for a past misdeed" (*id.* at p. 362 [138 L.Ed.2d at p. 515]), but is acting to protect the public from "the dangerously mentally ill." (*Id.* at p. 363 [138 L.Ed.2d at p. 516].) Concluding that it could not say that the state "acted with punitive intent" in enacting the Sexually Violent Predator Act, the court held "that the Act does not establish criminal proceedings and that involuntary confinement pursuant to the Act is not punitive" within the meaning of the double jeopardy clause or the ex post facto clause. (*Id.* at p. 369 [138 L.Ed.2d at p. 519].)

None of the United States Supreme Court decisions discussed above address the precise issue before us. And the method of analyzing what constitutes punishment varies depending upon the context in which the question arises. But two factors appear important in each case: whether the Legislature intended the provision to constitute punishment and, if not, whether the provision is so punitive in nature or effect that it must be found to constitute punishment despite the Legislature's contrary intent.[5] In making these determinations in the present case,

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[5] Although, as we have noted, virtually every other court that has addressed the issue has concluded that sex offender registration does not constitute "punishment" for purposes of the ex post facto clause, there is some disagreement in the cases as to whether the multi-factor test articulated in *Kennedy* v. *Mendoza-Martinez*, *supra*, 448 U.S. 242, applies in this context. (Compare *Artway* v. *Attorney General of State of N.J*, *supra*, 81 F.3d 1235, 1261-1263 [questioning applicability of *Mendoza-Martinez*]; *Opinion of the Justices to the Senate*, *supra*, 668 N.E.2d 738, 749 [same]; *Doe* v. *Poritz*, *supra*, 662 A.2d 367, 399-404 [same] with *State* v. *Noble*, *supra*, 829 P.2d 1217, 1221-1224 [applying *Mendoza-*

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we are guided by our recent decisions in *McVickers* and *Wright* v. *Superior Court* (1997) 15 Cal.4th 521.

As noted above, we held in *McVickers*, *supra*, 4 Cal.4th 81, 88, that requiring a defendant to provide a blood sample for AIDS testing imposes a burden, but is not punitive in nature. We held that the statutes there under review "have a legitimate purpose other than punishment . . [and] the method chosen— a mandatory AIDS test with results given only to the defendant and to law enforcement officials — is not excessive in relation to the statute's asserted purpose." (*Id.* at p. 89.) Similarly, in the present case, requiring a defendant to register as a sex offender certainly imposes a burden, but whether the registration requirement constitutes punishment for purposes of ex post facto analysis depends upon whether the purpose or effect of this requirement is punitive in nature.

In *Wright* v. *Superior Court*, *supra*, 15 Cal.4th 521, we recently examined the nature of the sex offender registration requirement imposed by section 290, albeit in another context. We held in *Wright* that failure to register as required by section 290 is a continuing offense. In so holding, we observed that the sex

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Martinez factors]; *State* v. *Ward*, *supra*, 869 P.2d 1062, 1068-1074 [same]; *State* v. *Myers*, *supra*, 923 P.2d 1024, 1033-1043 [same].) Other courts have reached the same conclusion without discussing the applicability or inapplicability of the *Mendoza-Martinez* factors. (See, e.g., *Kitze* v. *Com.*, *supra*, 475 S.E.2d 830, 832-833; *State* v. *Costello*, *supra*, 643 A.2d 531.)

We believe there is no need to resolve that issue here, because all of the cases recognize that the two factors noted above— whether the Legislature intended the provision to constitute punishment, and, if not, whether the provision is nonetheless so punitive in nature and effect that it must be found to constitute punishment despite the Legislature's contrary intent— are the crucial elements to be considered.

offender registration requirement "is intended to promote the "state interest in controlling crime and preventing recidivism in sex offenders." [Citation.] As this court consistently has reiterated: 'The purpose of section 290 is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future. [Citation.]' [Citations.] . . . [¶] . . . The statute is thus regulatory in nature, intended to accomplish the government's objective by mandating certain affirmative acts." (*Id.* at p. 527.)

The sex offender registration requirement serves an important and proper remedial purpose, and it does not appear that the Legislature intended the registration requirement to constitute punishment. Nor is the sex offender registration requirement so punitive in fact that it must be regarded as punishment, despite the Legislature's contrary intent. Although registration imposes a substantial burden on the convicted offender, this burden is no more onerous than necessary to achieve the purpose of the statute.[6] We conclude that the sex offender registration requirement imposed by section 290 does not constitute punishment for purposes of ex post facto analysis.

The Court of Appeal reached the opposite conclusion, because it felt bound by this court's decision in *In re Reed, supra*, 33 Cal.3d 914.[7] We held in *Reed* that

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[6] It does not appear that defendant is subject to the public notification provisions of section 290, subdivisions (m) and (n), and section 290.4, and we express no opinion regarding the effect, if any, that application of those provisions would have upon our analysis.

[7] Although defendant argued successfully in the Court of Appeal that requiring him to register as a sex offender violates the ex post facto clauses of the California and federal Constitutions, causing the Court of Appeal to strike the registration order, defendant now concedes that "the trial court's order requiring appellant to register as a sex offender does not violate this Court's construction of

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requiring a person convicted of the *misdemeanor offense of soliciting "lewd or dissolute conduct" in violation of section 647, subdivision (a)* to register as a sex offender constitutes cruel or unusual punishment under the California Constitution (Cal. Const., art. I, § 17).[8] In concluding that sex offender registration constitutes punishment for purposes of cruel or unusual punishment analysis, this court applied the factors discussed in *Kennedy* v. *Mendoza-Martinez*, *supra*, 372 U.S. 144 and concluded that the registration requirement is "an affirmative disability or restraint." (*In re Reed*, *supra*, 33 Cal.3d 914, 920.) The court in *Reed* recognized that sex offender registration has not "'historically been regarded as punishment,'" but found that was "not dispositive." (*Id.* at p. 921.) The court also stated that registration comes into play only on a finding of scienter, that it promotes the traditional aims of punishment, and that the behavior to which it applies already is a crime. Turning to whether the requirement has "'an alternative purpose'" other than punishment, the court in *Reed* recognized that "the Legislature may reasonably have intended that sex offender registration serve

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the ex post facto clause." Defendant reasons that "[i]n light of this Court's recent opinion in *Wright* v. *Superior Court* (1997) 15 Cal.4th 421, it appears that this Court has already overruled the holding of *In re Reed* (1983) 33 Cal.3d 914." Defendant goes on to argue, however, that "[n]othing in the federal Constitution requires that *Reed* be overruled," citing *Collins*, *Austin*, and *Ursery*. On this issue, the gauntlet has been picked up by amicus curiae, which argues that our decision in *Reed* compels the conclusion that the trial court's order violates the ex post facto clauses of both the federal and California Constitutions.

[8] Two years later, the Legislature amended section 290 to delete the registration requirement for persons convicted of violating section 647, subdivision (a). (Stats 1985, ch 929, § 4, ch 1474, § 1.)

as a law enforcement tool to facilitate criminal investigations," but questioned whether it is "effective in practice" and found this factor was "outweighed here by the fact that the penalty of registration is '*excessive* in relation to the alternative purpose assigned' to it." (*Id.* at p. 922, fn. omitted, italics in original.)

As noted above, subsequent to our decision in *Reed*, the United States Supreme Court elaborated upon and refined the criteria to be considered in determining whether a provision should be considered "punishment" for purposes of ex post facto analysis (see, e.g., *Kansas* v. *Hendricks*, *supra*, 521 U.S. 346, 361-369 [138 L.Ed.2d at pp. 515-519] [indefinite civil commitment of a sexually violent offender does not constitute punishment for ex post facto purposes]), and our court also has spoken directly to the issue (see, e.g., *People* v. *McVickers*, *supra*, 4 Cal.4th 81 [requiring a convicted felon to submit to an AIDS test does not constitute punishment for ex post facto purposes]). Upon reexamination of the decision in *Reed* in light of these more recent cases, we conclude that *Reed* should be disapproved to the extent that decision can be interpreted as suggesting that sex offender registration constitutes punishment for purposes of ex post facto analysis.

To begin with, in this context, we believe it is appropriate to place greater emphasis than did the court in *In re Reed*, *supra*, on the circumstance that sex offender registration has not "'historically been regarded as punishment.'" (33 Cal.3d at p. 920.) While not dispositive, this factor is of great importance, because it supports the conclusions that the Legislature did not intend the provision to constitute punishment and that the provision is not punitive in nature. As noted above, virtually every other jurisdiction that has passed on the question has concluded that sex registration provisions are regulatory rather than punitive, and do not constitute punishment for purposes of the ex post facto doctrine. (See *ante*, p. 7.) As we have explained, our recent decision in *Wright* v. *Superior Court*,

supra, 15 Cal.4th 421, makes it clear that the registration provision is regulatory in nature.

Second, because the question at issue in *In re Reed, supra*, involved whether sex registration was "cruel or unusual punishment" as applied to the misdemeanor solicitation conviction of which the defendant in that case had been convicted, the court in *Reed* directed much of its consideration to whether the registration requirement was "excessive" in light of a statement made by the Los Angeles City Attorney, who appeared as amicus curiae in *Reed*. This statement maintained that "mandatory registration *of section 647(a) misdemeanants* as sex offenders is 'dysfunctional,'" because it overloads law enforcement computers with useless information and imposes a disability out of proportion to the relatively minor offense that triggered its application. (33 Cal.3d at p. 922, fn. 7, italics added.) These considerations do not apply in the present case. Further, because *Reed* addressed a claim of cruel or unusual punishment, the central issue was whether the registration requirement was excessive or disproportionate *to the severity of the offenses* committed by the defendant in *Reed*. The present case, by contrast, involves an ex post facto claim in which the excessiveness of the registration requirement *in relation to its purpose* is only one factor of several to be considered.

Accordingly, to the extent that the analysis in *Reed* can be understood, as the Court of Appeal in the present case viewed that decision, to indicate that the sex offender registration requirement should be considered "punishment" for purposes of ex post facto analysis, *Reed*'s analysis is disapproved.[9]

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[9] Our statement in *People* v. *McClellan* (1993) 6 Cal.4th 367, 380, that sex offender registration is an "element of punishment for the underlying offense" (in

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In sum, we conclude that sex offender registration does not constitute punishment for purposes of ex post facto analysis, because the Legislature did not intend such registration to constitute punishment and the provision is not so punitive in nature or effect that it must be held to constitute punishment despite the Legislature's contrary intent.

III

Defendant additionally contends that even if requiring him to register as a sex offender does not violate the ex post facto clause, the trial court's order nonetheless is invalid, because the court failed to state its reasons for ordering him to register as a sex offender as required by section 290, subdivision (a)(2)(E). As noted above, this subdivision requires persons convicted of an offense not specified in section 290 to register as a sex offender "if the court finds . . . that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification." Subdivision (a)(2)(E) further provides: "The court shall state on the record the reasons for its findings and the reasons for requiring registration."

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the context of a plea agreement) does not alter our analysis. That statement in *McClellan* was based upon an earlier citation to *Reed*. (6 Cal.4th 374.) The decision in *McClellan* did not address whether the sex offender registration requirement imposed by section 290 constitutes punishment, and "an opinion is not authority for a proposition not therein considered." *Ginns* v. *Savage* (1964) 61 Cal.2d 520, 524, fn. 2.)

Although defendant raised this issue on appeal, the Court of Appeal expressly declined to reach the issue, because of its decision striking the trial court's order requiring sex offender registration as violative of the ex post facto clause. On remand, the Court of Appeal should consider this issue.

IV

The judgment of the Court of Appeal is reversed, and the matter is remanded to that court for further proceedings consistent with the views expressed in this opinion.

GEORGE, C.J.

WE CONCUR:

BAXTER, J.
CHIN, J.

CONCURRING AND DISSENTING OPINION BY KENNARD, J.

Defendant here is subject to a requirement, enacted after he committed the crimes of which he was convicted, that he register as a sex offender. I conclude, as does the lead opinion, that the sex offender registration requirement imposed on defendant is not a punishment and thus does not violate the United States Constitution's prohibition against ex post facto laws. I do not join the lead opinion, however, because it misdescribes the United States Supreme Court's current jurisprudence interpreting the ex post facto clause. I write separately to forestall the mischief this misdescription threatens to work in future cases.

I

The United States Constitution forbids states from enacting ex post facto laws — laws that impose punishment for conduct occurring before the law was enacted. (U.S. Const., art. II, § 10.) At issue in this case is whether the sex offender registration requirement imposed on defendant violates the ex post facto prohibition. Because the Legislature expanded the registration requirement to include the crimes committed by defendant only after he committed those crimes, it is not disputed that the requirement violates the ex post facto prohibition *if* it is a form of punishment.

The lead opinion concludes that the registration requirement is not punishment; in doing so, it cites to United States Supreme Court precedent interpreting the meaning of punishment under the Eighth Amendment of the

United States Constitution, which prohibits cruel and unusual punishment and excessive fines. In addition, the lead opinion refuses to apply the multi-factor test of punishment first articulated in *Kennedy* v. *Mendoza-Martinez* (1963) 372 U.S. 144 (hereafter the *Mendoza-Martinez* factors) and subsequently applied in numerous high court decisions. Although I, too, conclude that the registration requirement is not punishment, in my view the United States Supreme Court has laid out a different path of analysis for us to follow.

The United States Supreme Court has concluded that punishment has the same meaning for both ex post facto and double jeopardy purposes. In *Kansas* v. *Hendricks* (1997) 521 U.S. 346, 361, the high court applied a single test to determine that the involuntary civil commitment of a sex offender after the end of his criminal imprisonment was not punishment either for ex post facto or double jeopardy purposes.

The United States Supreme Court has also made clear that the concept of punishment has a meaning that varies in the context of different constitutional provisions. In particular, punishment has a different and broader meaning under the Eighth Amendment than it does for purposes of ex post facto, double jeopardy, and other constitutional provisions. In *United States* v. *Ursery* (1996) 518 U.S. 267, 286-287, the high court distinguished between the meaning of punishment under the double jeopardy clause of the Fifth Amendment and its different meaning under the excessive fines clause of the Eighth Amendment. In that decision, the high court held that civil forfeitures were not punishment for purposes of the Fifth Amendment double jeopardy clause even though they were punishment subject to scrutiny under the Eighth Amendment. (518 U.S. at pp. 286-287, 292.) The definition of punishment under the Eighth Amendment is a broad one, and encompasses some sanctions whose purpose is both remedial as

well as punitive and some that are imposed in civil proceedings. *Austin* v. *United States* (1993) 509 U.S. 602.)

The lead opinion's reliance in this ex post facto case on Eighth Amendment decisions such as *Austin* v. *United States, supra*, 509 U.S. 602, is thus misplaced. Instead, the proper test of punishment in this case is the one the high court has applied in double jeopardy and ex post facto cases.

The test of whether a government sanction is punishment for ex post facto and double jeopardy purposes has two parts. The first question is whether the legislature intended the sanction to be civil or criminal. "Whether a particular punishment is criminal or civil is, at least initially, a matter of statutory construction. A court must first ask whether the legislature, 'in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.'" (*Hudson* v. *United States* (1997) 522 U.S. 93, __ [118 S.Ct. 488, 493].) The high court has viewed the civil or criminal character of the proceedings in which the sanction is imposed as a central and powerful indicium of legislative intent. (*Kansas* v. *Hendricks, supra*, 521 U.S. 346, 361 ["We must initially ascertain whether the legislature meant the statute to establish 'civil' proceedings."]; accord, *United States* v. *Ursery, supra*, 518 U.S. 267, 288 ["First, we ask whether Congress intended proceedings [for forfeiture] . . to be criminal or civil."]; *United States* v. *One Assortment of 89 Firearms* (1984) 465 U.S. 354, 362; *United States* v. *Ward* (1980) 448 U.S. 242, 248.)

If the legislature intended the sanction to be civil, then the second question is whether the sanction in purpose or effect is nonetheless so punitive that it can only be regarded as punishment. It is at this stage that the *Mendoza-Martinez* factors come into play. In the words of the high court:

"Even in those cases where the legislature 'has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme

was so punitive either in purpose or effect,' as to 'transfor[m] what was clearly intended as a civil remedy into a criminal penalty.'

"In making this latter determination, the factors listed in *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168-169, 83 S.Ct. 554, 567-568, 9 L.Ed.2d 644 (1963), provide useful guideposts, including: (1) '[w]hether the sanction involves an affirmative disability or restraint'; (2) 'whether it has historically been regarded as a punishment'; (3) 'whether it comes into play only on a finding of scienter'; (4) 'whether its operation will promote the traditional aims of punishment — retribution and deterrence'; (5) 'whether the behavior to which it applies is already a crime'; (6) 'whether an alternative purpose to which it may rationally be connected is assignable for it'; and (7) 'whether it appears excessive in relation to the alternative purpose assigned.' It is important to note, however, that 'these factors must be considered in relation to the statute on its face,' and 'only the clearest proof' will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Hudson* v. *United States, supra*, 522 U.S. 93, __ [118 S.Ct. 488, 493]; accord *Kansas* v. *Hendricks, supra*, 521 U.S. 346, 361-362; *United States* v. *Ursery, supra*, 518 U.S. 267, 288 ["Second, we turn to consider whether the proceedings are so punitive in fact as to 'persuade us that the forfeiture proceeding[s] may not legitimately be viewed as civil in nature,' despite Congress' intent."], 291; *United States* v. *One Assortment of 89 Firearms, supra*, 465 U.S. 354, 362; *United States* v. *Ward, supra*, 448 U.S. 242, 248.)

Thus, the lead opinion errs when it concludes that the *Mendoza-Martinez* factors have no application in deciding under this second prong whether a putatively civil sanction is nonetheless punishment. (Lead. opn. *ante*, at pp. 11-12, fn. 5; see *Hudson* v. *United States, supra*, 522 U.S. 93, __ [118 S.Ct. 488, 493]; *Kansas* v. *Hendricks, supra*, 521 U.S. 346, 362; *United States* v. *Ursery*,

supra, 518 U.S. 267, 291; *United States* v. *One Assortment of 89 Firearms*, *supra* 465 U.S. 354, 365; *United States* v. *Ward*, *supra*, 448 U.S. 242, 249-250.) The lead opinion's assertion that the two-prong ex post facto punishment test can be applied without deciding whether the *Mendoza-Martinez* factors apply to ex post facto cases ignores that the *Mendoza-Martinez* factors are a central part of the second prong of that test.

II

Applying the United States Supreme Court's two-part test of punishment to this case, the first question is whether our Legislature intended the proceedings in which the registration requirement is imposed to be criminal or civil. Here, the registration requirement was imposed in defendant's criminal proceeding. Ordinarily, this would indicate that the Legislature intended the requirement to be a form of criminal punishment. It appears a novel question whether a sanction imposed in a criminal proceeding can nonetheless *not* be punishment; the United States Supreme Court's case law on punishment has generally dealt with the converse question — when is a penalty imposed in a civil proceeding nonetheless punishment.

The purpose of the high court's two-part test of punishment, however, seems to be to divine the true character of the sanction in question. Legislative intent is a powerful indication of the character of the sanction; if a legislature intended it as punishment it probably is punitive. And legislative intent as to the nature of the proceeding by which the sanction is to be imposed is ordinarily a strong proxy for legislative intent as to the character of the sanction itself. If the legislature intended the sanction to be imposed in a criminal proceeding it probably intended the sanction to be punitive. Probably, but not necessarily. In *People* v. *McVickers* (1992) 4 Cal.4th 81, this court concluded that an AIDS

testing requirement imposed in the course of the defendant's criminal proceedings was not punishment for ex post facto purposes.

Here, likewise, it seems that our Legislature, having decided to extend registration at the discretion of the sentencing court to all sexually motivated crimes, made the registration determination part of the criminal proceeding not because it intended it to be an additional punishment for the crime but because, given that the determination turns on the facts of the underlying crime, it is far more efficient to make the determination as part of the criminal proceeding than in a separate civil proceeding (e.g., of the type used in *Kansas* v. *Hendricks supra*, 521 U.S. 346, to civilly commit sex offenders at the end of their penal sentences).

I pass to the second prong of the test — whether the sanction is so punitive it can only be regarded as punishment. On balance, I conclude it is not. On the one hand, it is sophistic to assert as the People do that the registration is purely regulatory and not punitive. As the high court has explained, "the two primary objectives of criminal punishment" are "retribution" and "deterrence." *Kansas* v. *Hendricks*, *supra*, 521 U.S. 346, 361-362.) We have said that one purpose of the registration requirement is "controlling crime and preventing recidivism" (*Wright* v. *Superior Court* (1997) 15 Cal.4th 521, 527; see lead opn., *ante*, at p. 13) — in other words, deterrence. Part of this deterrence arises from the substantial lifetime burden that registration imposes on sex offenders. Further increasing that burden are the recently created provisions for public disclosure of the identity of most registered offenders (but not those who, like defendant, are subject to registration only by virtue of Penal Code section 290, subdivision (a)(2)(E)). When, as here, the "regulatory" purpose is deterrence and the deterrent effect arises from the burdens imposed on the offender, then "regulation" becomes indistinguishable from punishment.

On the other hand, a second purpose we have identified for the registration requirement, making sex offenders available for police surveillance (*Wright* v. *Superior Court*, *supra*, 15 Cal.4th 521, 527), seems more aimed at ferreting out crime after it has occurred than deterring its commission, and thus is not punitive. (Requiring automobile owners to register their vehicles aids in the detection of crime, but that does not make registration punitive.) Whatever punitive aspects the statute may have, they do not seem so overwhelming as to turn registration into a form of punishment. This is especially true in light of the high court's conclusion in *Kansas* v. *Hendricks*, *supra*, 521 U.S. 346, 362, that the civil commitment of sex offenders is not punishment. It is hard to imagine how requiring a sex offender to file an address report could be punishment when physically confining the same offender beyond the end of his criminal sentence is not.

Application of the *Mendoza-Martinez* factors listed above also supports the conclusion that registration is not punishment. (See *Mendoza-Martinez*, *supra*, 372 U.S. 144, 168-169.) Registration, although burdensome, does not seem to involve an affirmative disability or restraint, for it does not prevent the registrant from doing anything he could otherwise do. Government registration, at least in the abstract and considered apart from the shaming function of public disclosure, has not historically been regarded as a punishment.[1] Registration does not solely

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[1] Cases, unlike this one, in which defendant's identity as a registered sex offender is open to widespread public disclosure would present significantly different issues in determining whether registration is punishment for either ex post facto or cruel and unusual punishment purposes. Public shaming of offenders has long been viewed as a form of punishment. (See generally Whitman, *What is Wrong With Inflicting Shame Sanctions?* (1998) 107 Yale L.J. 1055; Kahan, *What Do Alternative Sanctions Mean?* (1996) 63 U. Chi. L. Rev. 591, 630-53; Massaro, *Shame, Culture and American Criminal Law* (1991) 89 Mich. L. Rev. 1880, 1942-

(footnote continued on next page)

promote retribution and deterrence, the traditional aims of punishment. There is an alternative purpose, police access to known sex offenders after a sex crime has been committed, to which the registration requirement may rationally be connected. Finally, the registration requirement does not appear excessive in relation to the alternative purpose. Two other factors weigh in the opposite direction — registration comes into play only on a finding of scienter, and the behavior to which it applies is already a crime —but these factors do not seem sufficient to turn registration into punishment.

III

As I have explained, the ex post facto test of punishment incorporates the *Mendoza-Martinez* factors and differs from the Eighth Amendment test of punishment. This understanding of the ex post facto punishment test makes clear why *In re Reed* (1983) 33 Cal.3d 914, the decision the Court of Appeal relied upon to conclude that sex offender registration is punishment for ex post facto purposes, does not govern this case. At issue in *Reed* was the constitutionality of the sex offender registration requirement as applied to persons convicted of misdemeanor violations of Penal Code section 647, subdivision (a), a prohibition of lewd conduct in public places. This court in *Reed* applied the *Mendoza-Martinez* factors to conclude that registration is punishment for purposes of the prohibition against cruel or unusual punishment in article I, section 17 of the California Constitution, the state constitutional analogue of the Eighth

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(footnote continued from previous page)

43.) This case presents no occasion to decide whether public disclosure of a sex offender's identity amounts to punishment for ex post facto purposes.

Amendment. It further concluded that this punishment was cruel or unusual as applied to section 647, subdivision (a) misdemeanor offenders.

For the reasons stated above, I disagree with *Reed's* conclusion that under the *Mendoza-Martinez* factors sex offender registration is punishment. This does not, however, mean that *Reed* was incorrect in holding that registration is punishment for purposes of article I, section 17 of the California Constitution. Given the holding in *Austin* v. *United States, supra*, 509 U.S. 602, that for Eighth Amendment purposes the concept of punishment is broader than the *Mendoza-Martinez* definition, it is possible for a sanction to be punishment under the Eighth Amendment or its state constitutional equivalent in article I, section 17 and yet not be punishment under the *Mendoza-Martinez* factors. Thus, my analysis does not call *Reed's* holding into question.[2]

CONCLUSION

Although I conclude, as does the lead opinion, that the registration requirement imposed on defendant is not punishment for ex post facto purposes, I reach that result by the route set forth above. Most significantly, unlike the lead opinion I do not rely on the Eighth Amendment punishment case of *Austin* v. *United States, supra*, 509 U.S. 602, and I do rely on the factors set forth in *Kennedy* v. *Mendoza-Martinez, supra*, 372 U.S. 144. Finally, I agree that the case should be remanded to the Court of Appeal for it to consider in the first instance whether the trial court, in accordance with Penal Code section 290,

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[2] Although Penal Code section 647, subdivision (a), the crime at issue in *Reed*, is no longer an automatically registrable offense under Penal Code section 290, it continues to be registrable at the discretion of the sentencing court under the catch-all provision of section 290, subdivision (a)(2)(E).

subdivision (a)(2)(E), adequately stated its reasons for imposing the registration requirement.

KENNARD, J.

I CONCUR:

WERDEGAR, J.
BROWN, J.

DISSENTING OPINION BY MOSK, J.

I dissent. This court has long concluded, in a variety of different contexts, that sex offender registration is a form of punishment. Today, the court concludes to the contrary, and therefore holds that such a requirement may be imposed retrospectively without violating the ex post facto clauseof the federal and California Constitutions (U.S. Const., art. I, §10; Cal. Const., art. I, § 9). Focusing on the United States Supreme Court's definition of "punishment," they conclude the sex offender registration requirement is nonpenal, essentially because the Legislature has not professed an intention to punish. But a the lead opinion itself states, "*two* factors appear important in each case: whether the Legislature intended the provision to constitute punishment and, if not, whether the provision is so punitive in *nature or effect* that it must be found to constitute punishment despite the Legislature's contrary intent." (Lead opn., *ante*, at p. 11, italics added.) The lead opinion,[1] however, all but ignores the second factor. Accordingly, its analysis is one-sided and its conclusion is contrary to precedent and basic ex post facto principles.

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[1] Reference to the "lead opinion" includes the concurring and dissenting opinion to the extent it agrees with the lead opinion.

At the outset, it is important to recognize the narrowness of the issue in this case. California has had a sex offender registration law since 1947. (Stats. 1947, ch. 1124, § 1.) For many years, those who have committed various forms of sexual assault, child molestation, and other such serious offenses have been subject to these registration laws. The Legislature may expand, within the boundaries of the constitutional prohibition against cruel and unusual punishment (U.S. Const., 8th Amend., Cal. Const., art. I, § 17; *In re Reed* (1983) 33 Cal.3d 914 (*Reed*)), the scope of the registration laws. The question in this case is whether the registration requirement may be *retroactively* imposed, not on anyone who has committed any of the offenses long enumerated in Penal Code section 290,[2] but rather on one who fits into a recently created catch-all category of offenders. That category provides for mandatory registration "if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification." (§290, subd. (a)(2)(E).) Thus, this case will directly affect only a relatively small group of offenders, those who fit into the catch-all category, and who committed their offenses before section 290, subdivision (a)(2)(E) was enacted but are sentenced after that enactment.

In *Collins* v. *Youngblood* (1990) 497 U.S. 37, 41, the high court stated: "Although the Latin phrase '*ex post facto*' literally encompasses any law passed 'after the fact,' it has long been recognized by this Court that the constitutional prohibition on *ex post facto* laws applies only to penal statutes which disadvantage the offender affected by them." Accordingly, under the ex post facto clause "Legislatures may not retroactively alter the definition of crime or *increase the*

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[2] All statutory references are to the Penal Code unless otherwise indicated.

punishment for criminal acts" (*Id.*, at p. 43, italics added.) As this court recently explained: "The primary purpose of the constitutional guarantee is to ensure that the consequences of a particular *course of conduct* can be meaningfully assessed in advance, without fear that the rules of criminality and punishment will later change." (*People* v. *Frazer*, (Aug. 30, 1999, S067443) __ Cal.4th __ [maj. opn. at p. 30], italics in original.) The fair warning for the penal consequences of one's conduct that the ex post facto clause requires is "fundamental to our concept of constitutional liberty." (*Marks* v. *United States* (1977) 430 U.S. 188, 191.)

It is evident that the imposition of a lifelong sex offender registration requirement changes the rules of punishment and precludes the meaningful assessment of "a particular course of conduct." For this reason, we have consistently held that in order for a guilty plea to be deemed knowing and intelligent, a defendant must be informed of any such registration requirements. (*People* v. *McClellan* (1993) 6 Cal.4th 367, 376; *Bunnell* v. *Superior Court* (1975) 13 Cal.3d 592, 605; *In re Birch* (1973) 10 Cal.3d 314, 321-322 (*Birch*).) As we explained: "Under Penal Code section 290, a person convicted of one of the enumerated offenses . . . must register for life with the police department in the city in which he lives. He must reregister whenever he moves and must report each change of address within 10 days.[3] Individuals convicted of one of the enumerated crimes have been deemed by the Legislature to have a propensity to commit such antisocial crimes in the future and thus are the subject of continual

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[3] Since our decision in *Birch*, section 290 has been amended to impose on individuals subject to sex offender registration the additional burden of annual reregistration. (§ 290, subd, (a)(1)(C); Stats. 1994, ch. 865, §1.) This is to say nothing of the recently added public notification provisions of section 290, subdivisions (m) and (n) and section 290.4, which, as the lead opinion acknowledges, are not at issue in this case. (Lead opn., *ante*, at p. 13, fn. 6.)

police surveillance. Whenever any sex crime occurs in his area, the registrant may very well be subjected to investigation. Although the stigma of a short jail sentence should eventually fade, the ignominious badge carried by the convicted sex offender can remain for a lifetime." (*Birch*, *supra*, 10 Cal.3d at pp. 321-322.)

Thus in *Birch*, *supra*, 10 Cal.3d at page 322, we concluded that a defendant's guilty plea without the assistance of counsel was invalid because "we cannot believe that he was aware that as a consequence of urinating in a parking lot at 1:30 in the morning he would be required to register as a *sex offender*" and that "[c]ertainly counsel would have advised him of this grave and direct consequence of his guilty plea." (Italics in original.) Our conclusion in *Birch* and the other cases cited above was based on the de facto recognition of sex offender registration as a form of punishment. How can it be that we do not regard a defendant entering a plea agreement to have done so knowingly and intelligently if he is not notified of the sex offender registration requirement, but we do not consider advanced notice of these requirements necessary for a "meaningful assessment" of "a particular course of conduct" under the ex post facto clause of the United States and California Constitutions?

In *Kelly* v. *Municipal Court* (1958) 160 Cal.App.2d 38 (*Kelly*), the court considered whether the sex offender registration requirement was one of the "penalties and disabilities resulting from the offense of which [a defendant] has been convicted" that may be discharged upon fulfillment of the conditions of probation under section 1203.4. In concluding affirmatively, the court stated: "The duty to reregister upon changing one's place of address is a continuing duty, a burden which the convicted person carries with him until his dying day. Being thus severely limited in his freedom of movement and continuously under police surveillance, all stemming from the conviction which has been set aside, the conclusion seems irresistible that this registration requirement is one of the

'penalties and disabilities resulting from the offense or crime of which he has been convicted' . . . ."[4] (160 Cal.App.3d at p. 41.)

Reed, supra, 33 Cal.3d 914, contains the most extensive discussion of the question of the punitive nature of sex offender registration and for that reason will be discussed at length. In that case, we held that the imposition of sex offender registration on a misdemeanant convicted under section 647, subdivision (a), for soliciting sex in a public restroom violates the cruel or unusual punishment clause of the California Constitution, article I, section 17. Before considering whether the requirement was "cruel or unusual," we first had to answer the question whether the registration requirement was "punishment." (33 Cal.3d at p919.)

In addressing this question, the*Reed* court cited the test set forth in *Kennedy* v. *Mendoza-Martinez* (*Mendoza-Martinez*) (1963) 372 U.S. 144, for whether a nominally civil sanction was in fact punitive: "[T]he United States Supreme Court enumerated the following factors for consideration on this issue: 'Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment — retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the

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[4] The Legislature later added section 290.1 to provide that the registration requirement may not be discharged through the procedures of section 1203.4. (Stats. 1981, ch. 105, § 1, p. 794.) This legislative amendment does not alter the relevance for purposes of constitutional analysis of the*Kelly* court's conclusion that this requirement is indeed a penalty or disability.

alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions.'" (*Reed*, *supra*, 33 Cal.3d at p. 920.)

Applying this test, the *Reed* court first determined, "that such registration is an 'affirmative disability or restraint,'" citing language in *Kelly* and *Birch* quoted above regarding the onerous nature of the requirement. *Reed*, *supra*, 33 Cal.3d at p. 920.) The *Reed* court added: "Similarly, albeit in a different context, Justice Kaus has characterized the sex offender registration requirement as follows: 'Apart from the bother and loss of privacy which mere registration entails, the "ready availability" to the police, if it serves its purpose, presumably means a series of command performances at lineups.' [Citation.] Needless to emphasize, law enforcement 'command performances' involve compulsion and restraint." *Ibid.*, fn. omitted.)

Continuing our consideration of the *Mendoza-Martinez* factors, we stated: "The fact that sex offender registration may not have 'historically been regarded as punishment' is not dispositive. The *Mendoza-Martinez* opinion sets out a number of relevant considerations, not a checklist of absolute requirements. Furthermore, in *Trop* v. *Dulles* (1958) 356 U.S. 86, the Supreme Court invalidated the penalty of denationalization imposed for wartime desertion. The court denied that the government has 'a license . . . to devise any punishment short of death within the limits of its imagination. . . . [¶] . . . Fines, imprisonment, and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of these traditional penalties is constitutionally suspect. [Citation.]

"Similarly in *Weems* v. *United States* (1910) 217 U.S. 349, the high court stressed the severity of the nonphysical punishment imposed. Though no doubt influenced in its decision by the harshness of the physical punishment, the court also addressed the postimprisonment penalties: 'His prison bars and chains are removed, it is true, after twelve years, but he goes from them to a perpetual

limitation of his liberty. He is forever kept under the shadow of his crime, forever kept within voice and view of the criminal magistrate, not being able to change his domicile without giving notice to the 'authority immediately in charge of his surveillance,' and without permission in writing. He may not seek, even in other scenes and among other people, to retrieve his fall from rectitude. Even that hope is taken from him and he is subject to tormenting regulations that, if not so tangible as iron bars and stone walls, oppress as much by their continuity, and deprive of essential liberty.' [Citation.]

"The third, fourth, and fifth factors enumerated in *Mendoza-Martinez* are readily satisfied here. We have interpreted section 647(a) to require lewd intent and specific sexual touching. [Citation.] Thus registration 'comes into play only on a finding of *scienter*.' (372 U.S. at p. 168.) Whether or not recidivism is in fact a problem with section 647(a) misdemeanants, the legislative intent was surely to deter recidivism by facilitating the apprehension of past offenders. (*Barrows* v. *Municipal Court* (1970) 1 Cal.3d 821, 825-826.) And, of course, 'the conduct to which [registration] applies is already a crime.'

"We may also consider, under *Mendoza-Martinez*, whether there exists 'an alternative purpose' to which the punishment 'may rationally be connected.' (372 U.S. at p. 168.) Although the Legislature may reasonably have intended that sex offender registration serve as a law enforcement tool to facilitate criminal investigations, it is not clear that the measure is effective in practice. Moreover, the fact that a minimal or 'rational' basis may underlie the legislation is outweighed here by the fact that the penalty of registration is *excessive* in relation to the alternative purpose assigned' to it." (*Reed*, *supra*, 33 Cal.3d at pp. 921-922, fn. omitted.)

For all of these reasons we concluded "that the sex offender registration compelled by section 290 is a form of punishment within the meaning of article I, section 17, of the [California] Constitution." (*Reed*, *supra*, 33 Cal.3d at p. 322.)

The lead opinion attempts to distinguish *Reed*. It points out that our conclusion in *Reed* that sex offender registration was excessive in relation to the alternative, nonpunitive purpose assigned to it was based on our doubt about whether sex offender registration was effective in practice, which in turn was based in part on concessions in the amicus curiae brief of the Los Angeles City Attorney. The city attorney had advised this court of his opinion that registration of misdemeanants overloaded computers with useless information and made it more difficult to identify more serious sex offenders. (*Reed*, *supra*, 33 Cal.3d at p. 922, fn. 7.) The lead opinion implies that the fact no comparable concession can be found in this case limits the applicability of *Reed*. But this point has little merit for two reasons: First, the primary focus of our opinion in *Reed* was on the punitive effect or impact of sex offender registration as well as the fact that it is imposed only in connection with criminal conviction. As discussed, the lead opinion barely addresses the punitive effect prong of ex post facto analysis, focusing almost exclusively on legislative intent. Thus, even if the portion of the *Reed* opinion regarding the practical effectiveness of sex offender registration were discounted, *Reed* would still stand for the proposition that the registration requirement was punitive in its impact.

Second, the practical effectiveness of the registration requirement remains in doubt. Since registration is voluntary and police resources are limited, it is questionable whether those who are intent on repeating their offenses will comply with registration laws. Registration has therefore been criticized, as one law enforcement official put it, because it "just keeps honest offenders honest." (Quoted in Note, *Examining Sex Offender Community Notification Laws*, 83 Cal.

L.Rev. (1995) 885, 903.) This criticism is borne out by reports of widespread inaccuracy in the sex offender registration data bases. (*Id.*, at pp. 900-902 [recounting various reports of 80-90 percent inaccuracy in the addresses of registered sex offenders in various California locations].) Thus, although the emphasis in *Reed* was on the burden and stigma of registration and the connection between the registration requirement and criminal conviction, the fact that substantial questions remain about the practical effectiveness of this requirement also supports the continued viability of *Reed*'s conclusion that sex offender registration is in fact a punitive measure.[5]

The lead opinion also finds *Reed* inapposite because in that case "the central issue was whether the registration requirement was excessive or disproportionate *to the severity of the offenses* committed by the defendant" under the cruel or unusual punishment clause (lead opn., *ante*, at p. 16, italics in original), which is not at issue in this case. But as noted, in order for the *Reed* court to conclude that the registration requirement was an excessive or disproportionate punishment in relation to the severity of the offense, it first had to conclude, and did conclude, that the registration requirement was a form of

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[5] The Legislature has recently increased the penalty for failure to register in many cases from a misdemeanor to a felony with a maximum of 16 months in a state prison. (Stats. 1996, ch. 908, §2.) These increased sanctions may improve compliance with the registration law, although recidivists still have a strong incentive to evade that law. But the fact that the failure of a sex offender to regularly report his whereabouts to the police now results in an additional felony conviction lends further support to the conclusion that, in terms of its effect, section 290 is indeed a punitive measure, i.e., the kind of consequence of criminal activity that, under the ex post facto clause, an individual should be notified of in advance in order to meaningfully assess his course of conduct.

punishment. (*Reed*, *supra*, 33 Cal.3d at p. 922.) This foundational conclusion cannot be squared with the court's holding in the present case.

The lead opinion also contends that "reexamination of the decision in *Reed* in light of . . . more recent cases," leads to the conclusion that *Reed* should be disapproved at least in part. (Lead opn., *ante*, at p. 15.) The two cases cited by way of example, *People* v. *McVickers* (1992) 4 Cal.4th 81, and *Kansas* v. *Hendricks*, *supra*, 521 U.S. 346 (*Hendricks*), do not support the lead's position. In *McVickers*, we upheld against an ex post facto challenge a statute, section 1202.1, that requires every person convicted of various sexual offenses to submit to a blood test for acquired immune deficiency syndrome (AIDS). The lead opinion emphasizes our conclusion in that case that AIDS testing under these circumstances "has a legitimate nonpunitive . . . purpose" (*McVickers*, *supra*, 4 Cal.4th at p. 89), and that the sex offender registration statute has such a purpose. But just as central to our holding in *McVickers* was the conclusion that the burden imposed upon the defendant was minimal. "It is well settled that the physically intrusive effects of drawing blood for a test are slight. 'The blood test procedure has become routine in our everyday life.' [Citation.] . . . [¶] The strictly limited disclosure provisions of the statute likewise do not have the effect of punishment. Defendant's fears of social ostracism if he tests positive for the AIDS virus and the result of his test becomes known are unwarranted. Until such time as he becomes a repeat offender, the test result will be disclosed to no one other than defendant and his attorney. It will be recorded at the state's Department of Justice but only for use by the prosecutor in connection with a future criminal offense." (*Id.* at p. 88.) In contrast to this onetime minimal intrusion of drawing blood and being tested, confidentially, for AIDS, a defendant subject to section 290 bears the lifetime burden of informing police of his presence and being subject to continuing police surveillance.

In *Hendricks*, the court considered a statute that authorized the civil commitment of a person convicted of a "sexually violent offense," when it is proven beyond a reasonable doubt that the person "'suffers from a mental abnormality or personality disorder which makes a person likely to engage in the predatory acts of [such] sexual violence.'" (521 U.S. at p. 352.) Civil commitment could also be brought against those charged with a sexually violent offense who have been found incompetent to stand trial, or have been found not guilty by reason of insanity or some other mental disease or defect. (*Ibid.*) The commitment is reviewed annually to determine if continued detention was warranted. (*Id.*, at p. 353.) The court reasoned that this statutory scheme did not differ appreciably from other civil commitment statutes that had long been regarded as nonpunitive. (*Id.* at p. 356-357.) The court emphasized the disjunction between past criminal liability and commitment under the statute. Prior criminal conduct "is used solely for evidentiary purposes, to demonstrate that a 'mental abnormality' exists or to support a finding of future dangerousness . . . In addition, the Kansas Act does not make a criminal conviction a prerequisite for commitment — persons absolved of criminal responsibility may nonetheless be subject to confinement under the Act." (*Id.* at p. 362.) Furthermore, citing *Mendoza-Martinez*, the court found the existence of "a scienter requirement is customarily an important element in distinguishing criminal from civil statutes," and concluded that in the case of the Kansas statute "no finding of scienter is required to commit an individual who is found to be a sexually violent predator; instead, the commitment determination is based on a 'mental abnormality' or 'personality disorder' rather than on one's criminal intent." (*Ibid.*)

By contrast, the sex offender registration statute applies only to those convicted of criminal offenses. Moreover, in the present case it is imposed on one who commits an offense under "sexual compulsion or for purposes of sexual

gratification," and is therefore contingent on a finding of scienter. Thus, although civil commitment can certainly be as disabling a form of restraint as incarceration, its disjunction from criminal liability in *Hendricks* makes that case inapposite to the present one.

In short, I am not persuaded that our consistent conclusion in *Reed*, *McClellan*, *Birch*, and other cases that the lengthy sex offender registration requirement is a penal sanction, was incorrect. Therefore, to impose such a sanction retroactively violates that most basic guarantee found in the ex post facto clause that a person be notified in advance of the penal consequences of his actions. For this reason, I would affirm the judgment of the Court of Appeal.

MOSK, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion People v. Castellanos

Unpublished Opinion XXX NP opn. filed 8/8/97, 2d Dist., Div. 3
Original Appeal
Original Proceeding
Review Granted
Rehearing Granted

Opinion No. S064388
Date Filed: August 30, 1999

Court: Superior
County: Los Angeles
Judge: Martin H. Wegman, Commissioner

Attorneys for Appellant:

Richard L. Fitzer, under appointment by the Supreme Court, for Defendant and Appellant.

Brissman & Schlueter, Peter B. Schlueter and Jon R. Schlueter as Amici Curiae on behalf of Defendant and Appellant.

Attorneys for Respondent:

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MEGAN'S LAW

P.L. 104–145, see page 110 Stat. 1345

DATES OF CONSIDERATION AND PASSAGE

House: May 7, 1996

Senate: May 9, 1996

Cong. Record Vol. 142 (1996)

House Report (Judiciary Committee)
No. 104–555, May 6, 1996
[To accompany H.R. 2137]

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 104–555

[page 1]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2137) to amend the Violent Crime Control and Law Enforcement Act of 1994 to require the release of relevant information to protect the public from sexually violent offenders, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

[page 2]

PURPOSE AND SUMMARY

This bill would amend a provision enacted as part of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322). Title XVII of that Act, the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act" (42 U.S.C. 14071), requires States to implement a system where all persons who commit sexual or kidnapping crimes against children or who commit sexually violent crimes against any person (whether adult or child) are required to register their addresses with the State upon their release from prison. The 1994 Act also provides that law enforcement agencies may release "relevant information" about an offender if they deem it necessary to protect the public. This bill will require the release of such information when law enforcement officials deem it to be necessary to protect the public.

While the 1994 Act does not mandate that States comply with its provisions, a State's failure to implement such a system by September 1997 will result in that State losing part of its annual federal crime-fighting funding.

MEGAN'S LAW

BACKGROUND AND NEED FOR THE LEGISLATION

Perhaps no type of crime has received more attention in recent years than crimes against children involving sexual acts and violence. Several recent tragic cases have focused public attention on this type of crime and resulted in public demand that government take stronger action against those who commit these crimes.

In partial response to this demand, Congress passed Title XVII of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322). That title, the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act," attempted to address the concerns about these crimes by encouraging States to establish a system where every person who commits a sexual or kidnapping crime against children or who commit sexually violent crimes against any person (whether adult or child) would be required to register his or her address with the State upon their release from prison. As a further protection, the 1994 Act required States to allow law enforcement agencies to release "relevant information" about an offender if they deemed it necessary to protect the public.

The 1994 Act provision with respect to notification only required States to give law enforcement agencies the discretion to release offender registry information when they deemed it necessary to protect the public. It has been brought to the attention of the Committee, however, that notwithstanding the clear intent of Congress that relevant information about these offenders be released to the public in these situations, some law enforcement agencies are still reluctant to do so. This bill would amend the 1994 Act to mandate that States require their law enforcement agencies to release "relevant information" in all cases when they deem it "necessary to protect the public."

The bill also amends the 1994 Act to provide that information collected under a State registration program may be disclosed for any purpose permitted under the laws of that State. The 1994 Act required that information collected by the registration program be

[page 3]

kept confidential. In some instances this requirement limited public access to what had been public records before the 1994 Act became law. H.R. 2137 will correct this unintended consequence of the 1994 Act by allowing each State to determine the extent to which the public may gain access to the information kept by the State.

HEARINGS

The Committee's Subcommittee on Crime held one day of hearings on H.R. 2137 on March 7, 1996. Testimony was received from two witnesses, Representative Dick Zimmer of New Jersey, the sponsor of H.R. 2137, and Kevin Di Gregory, Deputy Assistant Attorney General, Department of Justice, with no additional material submitted.

COMMITTEE CONSIDERATION

On March 21, 1996, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 2137, as amended, by a voice vote, a quorum being present. On April 25, 1996, the Committee met in open session and ordered reported favorably the bill H.R. 2137, without amendment, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes in Committee with respect to this bill.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2137, the following cost estimate for the next five fiscal years:

The Committee estimates that the costs associated with the implementation of H.R. 2137 will not be substantial. A significant number of variables are associated with the States' costs as a result of the bill's implementation. For example, the number of offenders released from prison subject to notification requirements will vary from one State to another. Also, methods of notification will be different depending upon the nature of the community involved. It is important to note that the bill does not impose conditions on federal funds to the States beyond what was contained in the 1994 Act.

While States which choose to comply with the bill will be required to give public notice as to the residence of certain offenders, the frequency of this notice will depend upon when offenders sub-

ject to the reporting requirement are released, a fact which cannot be estimated. Also, under current law, State law enforcement officials have the discretion as to the type of notice to be given to the public, a fact that further complicates any estimate of the costs of this bill.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2137 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Title. Section 1 states the short title of the bill as "Megan's Law."

Sec. 2. Release of Information and Clarification of Public Nature of Information. Section 2 restates the entire text of section 170101(d) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(d)) as amended by the bill. Specifically that section of title 42 will now provide that States must requires law enforcement agencies to release "relevant information that is necessary to protect the public" in all cases in order to comply with the 1994 Act and not lose the federal crime fighting funds tied to compliance with the Act. In other words, whenever State law enforcement officials believe that releasing relevant information about an offender required to register with the State's offender registry would be necessary to protect the public, they must release that information in order to comply with the 1994 Act.

Section 2 also amends current law with respect to the question of whether information collected in a State's offender registry will be treated as public or private information. The 1994 Act required States to treat all such information as private data. However, some States had already established policies pursuant to State's law whereby some of the information was available to the public. H.R. 2137 amends the 1994 law to provide that each State may decide to what extent information in its State offender registry will be made available to the public.

AGENCY VIEWS

The Committee received a letter from Andrew Fois, Assistant Attorney General, U.S. Department of Justice, providing Administration views on H.R. 2137 and other bills. The letter addressed the issues presented in H.R. 2137, in pertinent part, as follows:

H.R. 2137—MEGAN'S LAW

H.R. 2137 would require the release of relevant information to protect the public from child molesters and other sexually violent offenders. The Department of Justice supports the enactment of this legislation.

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act provides a financial incentive for States to establish effective registration system for released child molesters and other sexually violent offenders. States that fail to establish conforming registration systems will be subject to a 10 percent reduction of formula Byrne Grant funding, and resulting surplus funds will be reallocated to States that are in compliance. The current provisions of the Jacob Wetterling Act permit but do not require States to release relevant registration information that is necessary to protect the public concerning persons required to register.

H.R. 2137 would make the disclosure of registration information necessary to protect the public mandatory rather than permissive under the Act's standards. The Department of Justice supports the reform. Where a State has information through its registration system concerning a child molester or other sexually violent criminal who poses a continuing danger to others, the State should not withhold this information from persons who need it for the security of themselves and their families. A number of States already provide for community notification or other forms of disclosure in appropriate circumstances, and the change in the Jacob Wetterling provisions proposed in H.R. 2137 would encourage additional States to adopt such measures.

In the Department's proposed guidelines for the Jacob Wetterling Act (60 Fed. Reg. 18617, April 12, 1995), we have explained that the Act accords States discretion concerning the standards and procedures to be applied in determining whether a registering offender constitutes a danger to the public, and concerning the nature and extent of disclosure necessary to protect the public from such an offender. H.R. 2137 makes the "public safety" disclosure provision of the Act mandatory—changing "may" to "shall"—but does not otherwise change the language of this provision.

Hence, States will need to provide for such disclosure following the enactment of H.R. 2137 to comply with the Act, but they will retain discretion concerning specific standards and procedures and the nature and extent of disclosure in implementing this requirement. For example, New Jersey's multitiered system for classifying offenders based on risk and making varying degrees of disclosure on the basis of that classification would be consistent with the "public safety" disclosure provision of the Jacob Wetterling Act as amended by H.R. 2137.

In addition to endorsing the particular change proposed in H.R. 2137, we recommend an additional amendment to the provision of the Jacob Wetterling Act relating to the release of information. Section 170101(d) of the Jacob Wetterling Act provides that information collected under sub-

State registration programs "shall be treated as private data," subject to three exceptions—disclosure to law enforcement agencies for law enforcement purposes, disclosure to government agencies conducting confidential background checks, and disclosure for public safety reasons as discussed above.

The requirement that registration information generally be treated as private data is not necessary or helpful in realizing the objectives of the Jacob Wetterling Act, and it imposes a limitation on the States that did not exist prior to the enactment of the Jacob Wetterling Act. We see no reason why States should not generally be free to make their own decisions concerning the extent to which registration data should or should not be treated as private data, as they have been in the past.

We accordingly recommend deletion of the provision that information collected under State registration systems is generally to be treated as private data. This change, together with the change proposed in H.R. 2137, could be implemented by revising subsection (d) of § 170101 of the Violent Crime Control and Law Enforcement Act of 1994 to read as follows:

"(d) RELEASE OF INFORMATION.—(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

"(2) The designated State law enforcement agency and any local law enforcement agency authorized by the State agency shall release relevant information collected under the registration program that is necessary to protect the public concerning a specific person required to register under this section, provided, that this paragraph shall not be construed to require the disclosure of the identity of a victim of an offense that requires registration under this section."

Beyond the notification issue raised by H.R. 2137, discussion with the States indicates that some of the more detailed prescription in the registration provisions of the Jacob Wetterling Act may impede some State compliance, though that level of detail may be unnecessary to realize the essential objectives of the Act. We would be pleased to work with interested members of Congress to strengthen the Act by addressing legitimate concerns regarding impediments to effective State implementation.

Finally, we believe that in conjunction with our efforts to encourage and strengthen State-based registration sys-

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tems under the Jacob Wetterling Act, we should consider developing additional forms of federal assistance for the States that would complement and magnify the benefits of the Act.

On at least one front, such assistance already is being provided. The FBI has developed a powerful tool known as CODIS to assist States in investigating and solving crimes

involving biological evidence, including particularly serial and stranger sexual assaults. CODIS (short for "Combined DNA Index System") permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level, and will enable States to exchange DNA records among themselves through the national CODIS system. In the Final Guidelines implementing the Jacob Wetterling Act, which we plan to publish in the near future, we encourage States to collect DNA samples from registering sex offenders to be typed and stored in State DNA databases, and to participate in CODIS.

In addition, we are exploring a modification to the National Crime Information Center, which is operated by the FBI, that would provide further assistance to law enforcement in this area. Under existing law and administrative arrangements, the information on sex offenders that is provided by the FBI is generally limited to "rap sheet" information, and does not include residence address information for the offenders. The Jacob Wetterling Act contemplates that States will have central registration authorities that administer their sex offender registration systems, and will provide mechanisms for ensuring that address information is kept up to date when the offender moves elsewhere in the State or to another State.

However, implementation of these tracking systems will depend on compliance by the various States with these aspects of the Jacob Wetterling system. As States comply with Jacob Wetterling, the resulting databases would be maintained at the State level.

Currently, the FBI is working with its Criminal Justice Information Services (CJIS) Advisory Policy Board, which advises the Director on criminal justice and law enforcement agency matters, to establish a Sex Offender Registration Index in the National Crime Information Center (NCIC). The FBI is working on additional technical and legal research related to this expansion of the NCIC 2000 Individuals on Supervised Release database and expansion of NCIC 2000 to include a category of records for persons registered under the requirements of the Jacob Wetterling Act. We anticipate implementation of the Sex Offender Registration Index in NCIC 2000 sometime after [illegible]

[illegible]

MEGAN'S LAW

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ADDITIONAL VIEWS

This bill amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, enacted as part of the 1994 Crime Bill, to require, rather than permit, states to release certain information regarding persons convicted of molesting or kidnapping children, and certain other sex crimes when it is necessary to protect the public.

While we are concerned about the costs of this bill and query whether this is yet another unfunded mandate, we understand the impetus behind the legislation. Anyone who has children certainly would want to know if a convicted child molester moved in next door.

Nonetheless, we are always concerned about passing legislation with potential constitutional problems and we believe that the Committee has not adequately addressed these concerns with respect to this legislation. A federal district court has already found a similar statute unconstitutional, finding the notification provisions to constitute more a form of punishment than a regulatory scheme, and therefore, violative of the prohibition on ex post facto clause of the Constitution.[1]

On appeal, the Court of Appeals for the Third Circuit noted that the defendant's arguments that the community notification provisions could expose him to vigilantism and threats, harm his ability to find and hold a job and subject him to public shame.[2] Nevertheless, the Court declined to rule on the constitutionality of the notification provision because the defendant had not registered with the police and the state had not officially notified anyone about his record. As a result, the court held that it could not make a decision based on a hypothetical situation and dismissed the case.[3]

We share the Third Circuit's concern that this legislation may lead to harassment and even physical harm against people who have served their debt to society and this legislation has the effect of presuming them guilty of some future wrong which may never be committed. We hope that people will not take the passage of this legislation as "open season" on released felons. The fact of the matter is that once a person has been released from prison, they are deemed to have paid their debt to society. This legislation should not be used to make citizens into vigilantes who might decide that a particular offender has not paid enough.

[1] *Artway* v. *Attorney General*, 876 F. Supp. 666, 692 (D. N.J. 1995), *aff'd in part, vacated in part, claim dismissed*, Nos. 95-5157, 95-5194, 95-5195, 1996 U.S. App. LEXIS 7573 (3rd Cir. April 12, 1996).

[2] *Artway* v. *Attorney General*, Nos. 95-5157, 95-5194, 95-5195, 1996 U.S. App. LEXIS 7573 (3rd Cir. April 12, 1996).

[3] *Id.*

We believe that this matter deserves further consideration, and hope that the Committee will pay close attention to the progress of similar legislation through the federal courts.

RICK BOUCHER.
BOBBY SCOTT.
MELVIN L. WATT.
JOHN CONYERS, Jr.

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On July 14, 1999, I served the Claimant's Response to Department of Finance, 97-TC-15, *Sex Offenders: Disclosure by Law Enforcement Officers ("Megan's Law")* and Exhibits 1 through 3, inclusive, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list, and by sealing and depositing said envelope in the United State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 26th day of October, 1999 at Sacramento, California.

MAILING LIST

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EXHIBIT G

April 2, 2001

Ms. Pamela Stone
DMG-MAXIMUS, Inc
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: Draft Staff Analysis/Hearing Schedule
Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15
Claimant: County of Tuolumne
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Dear Ms. Stone:

The draft staff analysis of this test claim has been completed and is enclosed for your review and comment. The hearing on the test claim has been scheduled for **May 24, 2001.**

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **April 30, 2001.** You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties (on the mailing list), and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Hearing

This test claim is set for hearing on **May 24, 2001** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about **May 11, 2001.** Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

If you have any questions regarding the above, please contact Kathy Lynch, Staff Counsel, at (916) 323-8221.

Sincerely,

Paula Higashi
Executive Director

Enc. Draft Staff Analysis

cc. Mailing List

MAILED: Mail List FAXED: _____
DATE: 4/2/01 INITIAL: CD
CHRON: _____ FILE: ✓
WORKING BINDER: _____

Hearing Date: May 24, 2001
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ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Sex Offenders: Disclosure by Law Enforcement Officers

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN ITS FINAL ANALYSIS

Claimant

County of Tuolumne

Chronology

12/30/97	Claimant files test claim with Commission.
02/06/98	Department of Finance files comments on test claim regarding "disputed" status of test claim as it relates to the extension of timelines.
05/19/98	Department of Finance files comments to the merits of the test claim.
07/14/99	Claimant files amended test claim.
09/10/99	Department of Finance files comments on amended test claim.
10/26/99	Claimant files reply to Department of Finance's comments to amended test claim.
04/02/01	Commission staff issues draft staff analysis.

Test Claim Legislation

The test claim legislation (Penal Code sections 290 and 290.4[1]) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn "may" then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

Claimant's Position

Claimant contends that the test claim legislation imposes a reimbursable state mandate for the following activities:[2]

1. Registration (§290, subdivision (a))
2. Record Retention (§290, subdivision (o))
3. Reporting to the Department of Justice (§290, subdivisions (b)(2), (e)(3) and (f)(1))

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Although claimant has only specifically claimed reimbursement for certain portions of the test claim legislation, claimant has included all of its provisions by reference.

4. Records Destruction (§290, subdivision (d)(5))
5. Notification of Change of Address (§290, subdivision (f))
6. Notice of Prohibited Conduct (§290, subdivision (l)(1))
7. Disclosure of Information to the Public (§290, subdivision (m))
8. Public Access to CD-ROM & File Maintenance (§290.4, subdivision (a)(4)(A))

Department of Finance's Position

The Department of Finance (DOF) concedes that the test claim legislation may result in additional costs to local law enforcement agencies. Nonetheless, DOF contends that these costs are not reimbursable, because the test claim legislation results in "costs mandated by the federal government." Specifically, DOF asserts that the test claim legislation does no more than implement federal law relating to the public disclosure of the identity of certain sex offenders. DOF contends:

> 1. Section 17556(c) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order implemented a federal law or regulation and resulted in "costs mandated by the federal government," unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
>
> 2. Section 17513 of that Code defines "costs mandated by the federal government" as "... Any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation." "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

Staff Analysis

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution[3] and Government Code section

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[3] Article XIII B, section 6 of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

17514,[4] the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create a higher level of service over the former required level of service. The California Supreme Court has defined the word "program," subject to article XIII B, section 6 of the California Constitution, as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose "costs mandated by the state."[5]

The analysis is divided into two parts. Part 1 concerns new crimes and new timelines that an individual must register for as a convicted sex offender with the local law enforcement agency in which the offender resides. Part 2 relates to the remaining activities presented by the test claim legislation and includes whether some or all of these activities are a "new program or higher level of service" and impose "costs mandated by the state" on local law enforcement agencies.

At the outset, staff notes that the test claim legislation is a complex and comprehensive statutory scheme concerning the registration of certain convicted sex offenders and the disclosure of their identity to the public. It imposes duties on law enforcement agencies at every level of government, including local law enforcement agencies and the Department of Justice, as well as the convicted sex offender. However, despite the far-reaching span of the test claim legislation, staff has limited its analysis to those activities that may potentially be imposed on local law enforcement agencies.

In addition, claimant seeks reimbursement under sections 290 and 290.4 of the Penal Code and included the Statutes of 1996 through the Statutes of 1998 and their corresponding Chapters. In 1996 sections 290 and 290.4 were enacted by an "urgency statute" and became effective on September 25, 1996. Thus, when analyzing prior law, staff is referring to that law which was in effect on September 24, 1996.

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[4] Government Code section 17514 provides: "Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

[5] Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

PART 1 –REGISTRATION FOR NEW CRIMES AND TIMELINES

The only issue presented by Part 1, "Registration for New Crimes and Timelines," is whether this portion of the test claim legislation creates a new crime and thus does not impose "costs mandated by the state" under 17566, subdivision (g), of the Government Code and is not a reimbursable state mandated activity under article XIII B, section 6 of the California Constitution.

Article XIII B, section 6 of the California Constitution provides that the Legislature may not provide subvention of funds for mandates that define a new crime or change the existing definition of a crime. Section 6 specifically states:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
>
> (a) Legislative mandates requested by the local agency affected
>
> (b) Legislation **defining a new crime or changing an existing definition of a crime**; or [Emphasis added.]
>
> (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Article XIII B, section 6 was codified by Government Code section 17556, subdivision (g), and provides that there are no "costs mandated by the state" when:

> The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a new crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

Claimant contends that the registration requirements in the test claim legislation, section 290, subdivision (a), which includes the duty to register and the time periods in which to register are a reimbursable state mandated program. Although these registration requirements are placed on the convicted sex offender, they also affect local law enforcement agencies, because they increase the number of individuals who are required to register with local law enforcement agencies

- New Crimes That Require Registration

Under prior law, any person, since July 1, 1944, who has been convicted in any court in California, another state or a federal or military court who has been released, discharged or paroled or who has been determined to be a mentally disordered sex offender must register under section 290 if convicted under the following offenses:

> kidnapping; assault to commit rape, sodomy or oral copulation; aiding or abetting rape; lewd or lascivious acts involving children; penetration by a

foreign object; sexual battery (includes seriously disabled or medically incapacitated victims); rape with a person who cannot give consent because of a mental or physical disability; rape against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another; rape when a person cannot resist because of intoxication or anesthetic; rape when the person is unconscious; rape by threat of future harm; spousal rape; procurement; procurement of a child; abduction of a minor for prostitution; incest; sodomy; oral copulation; continuous sexual abuse of a child; production, distribution or exhibition of obscene matter; sexual exploitation of a child; employment of a minor in the sale or distribution of obscene matter or production of pornography; advertisement of obscene matters depicting minors; possession or control of child pornography; annoying or molesting children; loitering around public, open toilets for the purpose of soliciting any lewd or lascivious or unlawful act; indecent exposure; any felony violation for sending harmful matter to a minor or any crime that a court finds was committed as a result of sexual compulsion or for the purpose of sexual gratification.[6]

The test claim legislation[7] expands the list of crimes that require registration by a convicted sex to include the following:

> kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object[8] as well as pimping, pandering and aggravated sexual assault of a child.[9]

If the offender fails to register as a sex offender for these new crimes, then the offender is guilty of a misdemeanor, felony and/or a continuing offense. Specifically, section 290 of the test claim legislation, subdivision (g)(1), provides:

> Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

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[6] Penal Code sections 207; 220; 264.1; 288; 272; 289; 243.4; 261, subdivision (a)(1); 261, subdivision (a)(2); 261, subdivision (a)(3); 261, subdivision (a)(4); 261, subdivision (a)(6); 262, subdivision (a)(1); 266; 266j; 267; 285; 286; 288a; 288.5; 311.2; 311.3; 311.4; 311.10; 311.11; 247, subdivision (a); 647, subdivision (d); 314; 288.2 and 290, subdivision (E).

[7] Penal Code section 290, subdivision (a)(2)(A)-(E).

[8] Penal Code sections 209, 261, 286, 288, 288a, and 289, Statutes of 1997, Chapter 817.

[9] Penal Code sections 266, subdivisions (h)(b); 266, subdivisions (i)(b) and 269, Statutes of 1997, Chapter 818.

In addition, subdivision (g)(2) provides:

> [A]ny person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

Also, subdivision (g)(7) provides:

> Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

Thus, under prior law, a sex offender convicted of kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object as well as pimping, pandering and aggravated sexual assault of a child, did not have to register as a sex offender. Now, under the test claim legislation, if these convicted sex offenders fail to register, they will be guilty of a misdemeanor, felony and/or a continuing offense. Accordingly, this portion of the test claim legislation creates a new crime.

- **New Time Periods in Which to Register**[10]

Section 290 of the test claim legislation has also created new time periods in which certain convicted sex offenders must register including when an offender has multiple addresses, is a sexually violent predator or changes his or her name. Like the above new crimes, failure to register within the proscribed timelines is a misdemeanor, felony and/or a continuing offense.

Specifically, section 290 of the test claim legislation requires a convicted sex offender who has more then one residence to register in each jurisdiction where the offender resides. If the offender resides in one jurisdiction but has multiple addresses in that jurisdiction, then the offender must provide the local law enforcement agency in that jurisdiction with all addresses.[11] If the offender has no residence, the offender must update his or her registration no less than every 90 days with the local law enforcement agency in which the offender is located at the time of registration.[12]

Additionally, if the convicted sex offender is a sexually violent predator, then the offender must verify his or her address and place of employment including the name and address of the

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[10] Penal Code section 290, subdivision (G) was added by the Statutes of 1999, Chapter 576 and pertains to the registration of out of state residents. This section was not analyzed by staff, because claimant did not include the Statutes of 1999 in the test claim. Nonetheless, subdivision (G) is similar to this portion of the test claim analysis insomuch as it adds new timelines in which a convicted sex offender must register.

[11] Penal Code section 290, subdivision (a)(1)(B), Statutes of 1998, Chapter 929.

[12] Penal Code section 290, subdivision (a)(1)(C), Statutes of 1997, Chapter 820.

employer, no less than once every 90 days in a manner established by the Department of Justice.[13]

Lastly, if a convicted sex offender changes his or her name, the offender then must inform the local law enforcement agency where the offender is registered within 5 working days of the name change.[14]

As mentioned above, section 290 of the test claim legislation, subdivisions (g)(1)(2)(7), states that it is a misdemeanor, felony and/or a continuing offense if a convicted sex offender does not register as required under the test claim legislation. In addition, other provisions in section 290 state that it is a crime if a convicted sex offender does not register within a specified time period. Specifically, subdivision (g)(6) provides that:

> Except as otherwise provided in paragraph (5), **and in addition to any other penalty imposed under this subdivision**, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. [Emphasis added.]

Subdivision (g)(5), provides that:

> Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

Accordingly, by adding additional timelines in which convicted sex offenders must register, section 290 of the test claim legislation defines a new crime. Under prior law, these convicted sex offenders had no duty to register in the proscribed time periods. Now, under section 290 of the test claim legislation, if they do not register or provide notification of a name change, the offender may be guilty of a misdemeanor, felony or continuing offense. Accordingly, this portion of the test claim legislation creates a new crime.

Conclusion

Based on the foregoing, a convicted sex offender's "Duty to Register for New Crimes and Timelines" does not impose "costs mandated by the state" under Government Code section 17556, subdivision (g).[15]

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[13] Penal Code section 290, subdivision (a)(1)(E), Statutes of 1997, Chapter 818.

[14] Penal Code section 290, subdivision (f)(3), Statutes of 1996, Chapter 909.

PART 2 - REMAINING ISSUES PRESENTED BY THE TEST CLAIM LEGISLATION

Issue 1

> **Is the test claim legislation a "program" within the meaning of article XIII B, section 6 of the California Constitution by carrying out either the governmental function of providing services to the public or imposing unique requirements on local law enforcement agencies?**

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the test claim legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program," within the meaning of article XIII B, section 6, as a program that carries out the governmental function of providing a service to the public, or laws, which to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[16] In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[17]

To determine whether the test claim legislation carries out the governmental function of providing services to the public, it is necessary to define the program in which the test claim legislation operates.

California courts have continually held that police and fire protection are two of the most basic functions of local government and are peculiarly governmental in nature.[18] In the present case, the test claim legislation concerns police protection, because it relates specifically to the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies.

Accordingly, staff finds that test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Issue 2:

> **Is the test claim legislation a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?**

To determine if a program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately

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[15] Since Part 1 focus on "costs mandated by the state," staff has not continued it analysis to determine if these activities are a "new program or higher level of service."

[16] *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

[17] *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at 537.

[18] *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

before the enactment of the test claim legislation.[19] As previously mentioned, the test claim legislation was enacted by an "urgency statute" and became effective on September 25, 1996. Thus, in analyzing prior law, staff has used that law in effect prior to the effective date of the test claim legislation or that law in effect on September 24, 1996.

A breakdown of the required activities imposed on local law enforcement agencies is as follows:

- **Change in Existing Timelines to Register**

Prior law required every convicted sex offender of a specified crime to register in the jurisdiction where the offender resides within 14 days of coming into the applicable jurisdiction and to update the registration within 10 days of the offender's birthday.[20] The test claim legislation shortened these deadlines to within 5 working days of when an offender enters the applicable jurisdiction, and to within 5 working days of the offender's birthday for annual updates.[21]

In addition, prior law required that the convicted sex offender register with the local law enforcement agency that the offender was last registered with in writing within 10 days of a change of address. Within three days after receipt of this information, the local law enforcement agency must forward a copy of the change of address or location to the Department of Justice. The Department of Justice shall forward the appropriate registration data to the local law enforcement agency or agencies having jurisdiction over the new place of residence or location.[22] The test claim legislation is the same as prior law, except that the time period in which an offender has to report his or her change of address was changed from 10 days to 5 working days.

The mere shortening in time of registration deadlines does not change the level of service related to the above activities. Accordingly, there is no new program or higher level of service due to a change in the existing registration deadlines.

- **Violent Crime Information Network**

The test claim legislation states that "[t]he registering agency [local law enforcement agency] shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN)."[23] There was no activity in prior law requiring local law enforcement agencies to submit registrations to VCIN. Therefore, this activity is a new program or higher level of service.

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[19] *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835.

[20] Penal Code section 290, subdivision (a), Statutes of 1984, Chapter 1419.

[21] Penal Code section 290, subdivision (a)(1)(A), Statutes of 1996, Chapter 909.

[22] Penal Code section 290, subdivision (e), Statutes of 1950, Chapter 70.

[23] Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

- Removal of Registration for Decriminalized Conduct

The test claim legislation exempts a person from registering as a sex offender under specified conditions if the offender was convicted of sodomy or oral copulation between consenting adults prior to January 1, 1976. The Department of Justice is required to remove these individuals from the Sex Offender Registry. Upon notification from the Department of Justice that an offender should be removed from the register, the local law enforcement agency must remove the offender's registration from its files within 30 days from receipt of notification.[24] There was no activity in prior law providing for the decriminalization of this conduct. Therefore, the activity of removing an individual from a local law enforcement agency's file is a new program or higher level of service.

- Notice of Duty to Register Upon Release, Discharge or Parole

Prior law provides that any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where the person was confined or is released from a state hospital to which he was committed as a psychopath be informed of the duty to register by the official in charge of the place of confinement before the offender is released. The official in charge must advise the convicted sex offender of the duty to register and must also have the offender read and sign a form that states this duty was explained to the offender. The official in charge of the offender's release must also obtain the address of where the person expects to reside and will report the address to the Department of Justice and to the local law enforcement agency or agencies having jurisdiction over the place that the offender expects to reside. The official in charge must give one copy of the form to the offender, send one copy to the Department of Justice and one copy to the local law enforcement agency or agencies having jurisdiction over the offender.[25]

The test claim legislation contains the same "Notice of Duty to Register" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision (b)(1) and (2). Nonetheless, since the test claim legislation contains the same notification requirement on local law enforcement agencies as prior law, there is no new program or higher level of service related to this activity.

- Destruction of Records

Prior law provided that all records specifically relating to the registration of sex offenders in the custody of the Department of Justice, local law enforcement agencies and other agencies or public officials be destroyed when the offender required to register has his or her records sealed under the procedures set forth in section 781 of the Welfare and Institutions Code.[26]

The test claim legislation contains the same "Destruction of Records" requirement as prior law, except that some non-substantive changes have been made including moving this section

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[24] Penal Code section 290, subdivision (a)(2)(F)(i), Statutes of 1997, Chapter 821.

[25] Penal Code section 290, subdivision (b), Statutes of 1950, Chapter 70.

[26] Penal Code section 290, subdivision (d)(6).

to 290, subdivision(d)(5). However, the requirement to destroy the records has remained the same. Thus, there is no new program or higher level of service related to this activity.

- Pre-register

The test claim legislation states that a convicted sex offender required to register under its provisions on or after January 1, 1998, shall also pre-register upon incarceration, placement or commitment or prior to release on probation. The pre-registering official shall be the admitting officer at the place of incarceration, placement or commitment or the probation officer if the person is to be released on probation. The pre-registration shall consist of a pre-registration statement in writing, signed by the person, giving information that shall be required by the Department of Justice, fingerprints and a photograph of the person.[27] Prior law contained no provision for the activity of pre-registering. Thus, to the extent that a local law enforcement agency must pre-register convicted sex offenders, this activity is a new program or higher level of service.

- Contents of Registration Upon Release

Prior law required that a convicted sex offender register upon release from incarceration, placement or commitment with the local law enforcement agency or agencies in which the offender resides. The registration must contain a statement in writing signed by the offender, giving information as may be required by the Department of Justice, fingerprints, a photograph of the offender and the license plate number of any vehicle owned by or registered in the name of the offender. Within three days of receiving this information, the registering law enforcement agency must forward this information to the Department of Justice.[28]

In addition to the above requirements, the test claim legislation imposes some additional requirements on the convicted sex offender as well as local law enforcement agencies. With regard to the signed statement, in addition to the information required by the Department of Justice, the offender must also provide the name and address of his or her employer, and the address of the offender's place of employment if it is different from the employer's main address.[29] With regard to vehicle information, the convicted sex offender must also include information related to any vehicle regularly driven by the offender.[30] The offender must also be notified by the local law enforcement agency that in addition to the requirements of the test claim legislation, the offender may also have a duty to register in any other state where the offender may relocate.[31]

Lastly, the test claim legislation requires that the offender provide the local law enforcement agency with adequate proof of residence, which is limited to a California driver's license,

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[27] Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

[28] Penal Code section 290, Statutes of 1947, Chapter 1124. This provision, absent minor non-substantive changes, has remained the same since section 290 was originally enacted in 1947.

[29] Penal Code section 290, subdivision (e)(2)(A), Statutes of 1998, Chapter 930.

[30] Penal Code section 290, subdivision (e)(2)(C), Statutes of 1997, Chapter 927.

[31] Penal Code section 290, subdivision (e)(2)(D), Statutes of 1997, Chapter 927.

California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing the offender's name and address or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the offender shall advise the registering official and sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the offender has no residence, the offender shall be allowed to register. If the offender claims that he or she has a residence but does not have any proof of residence, the offender shall be allowed to register but shall furnish proof of residence within 30 days of the day the offender is allowed to register.[32]

Although the above activities are directed at the convicted sex offenders, they also require various activities on local law enforcement agencies to the extent that local law enforcement agencies have to compile this information so that it can be sent to the Department of Justice. Thus, the compiling of this additional data is a new program or higher level of service.

- **Notice of Reduction of Registration Period**

The test claim legislation requires that every convicted sex offender who was required to register before January 1, 1997, shall be notified whenever the offender next re-registers of the reduction in the registration period from 14 days to 5 working days. The notice must be in writing from the local law enforcement agency responsible for registering the individual.[33]

Prior law required every convicted sex offender registering before January 1, 1985 to be notified of the reduction in the registration period from 30 to 14 days. Since the test claim legislation changes the registration period, a new notification is required.[34] Accordingly, the activity of notifying convicted sex offenders of the 14 to 5 day reduction in the timelines to register is a new program or higher level of service.

- **High-Risk Sex Offenders**

The test claim legislation provides that individuals considered to be high-risk offenders can be re-evaluated by the Department of Justice to be removed from the high-risk classification. This process does not involve law enforcement agencies except that the form for evaluation must be available at any sheriff's office. Thus, to the extent that a sheriff's office must maintain this form, there is a new program or higher level of service.[35]

The test claim legislation also provides that the Department of Justice shall continually search its records and identify, on the basis of those records, high-risk offenders. Four times each year, the Department must provide each chief of police and sheriff in the state and any other designated law enforcement entity upon request information regarding the identity of high-risk sex offenders. Thus, to the extent that local law enforcement agencies need to compile this

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[32] Penal Code section 290, subdivision (e)(2)(E), Statutes of 1997, Chapter 927.

[33] Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

[34] Penal Code section 290, subdivision (l), Statutes of 1985, Chapter 1474.

[35] Penal Code section 290, subdivision (n)(1)(G)(ii), Statutes of 1996, Chapter 908.

statistical data related to high-risk offenders, this activity is a new program or higher level of service.[36]

- Community Notification

The test claim legislation permits a local law enforcement agency to disclose information about a convicted sex offender[37] or high-risk sex offender[38] under certain circumstances if a peace officer reasonably suspects that a child or other person is at risk. Specifically, the test claim legislation provides:

> When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency **may**, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:
>
> (A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.
>
> (B) Other community members at risk. [Emphasis added.]

This information generally includes information that the agency deems relevant and necessary to protect the public and may include the following:

1. The offender's full name.
2. The offender's known aliases.
3. The offender's gender.
4. The offender's race.
5. The offender's physical description.
6. The offender's photograph.
7. The offender's date of birth.
8. Crimes resulting in registration.

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[36] Penal Code section 290, subdivision (n)(2), Statutes of 1996, Chapter 908.

[37] Penal Code section 290, subdivision (m), Statutes of 1996, Chapter 908.

[38] Penal Code section 290, subdivision (n), Statutes of 1996, Chapter 908.

9. The offender's address, which must be verified prior to publication.

10. Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

11. Type of victim targeted by the offender.

12. Relevant parole or probation conditions, such as one prohibiting contact with children.

13. Dates of crimes resulting in classification under the test claim legislation.

14. The date of release from confinement.[39]

Although it is a well-settled principle of statutory construction that the word "may" is ordinarily construed as permissive and "shall" is ordinarily construed as mandatory, there are situations in which "may" is interpreted to mean "shall."[40] In *Los Angeles County v. State*[41] the Third District Court of Appeal held:

> The word "may" as used in a statute or constitution is often interpreted to mean "shall" or "must." Such interpretation always depends largely, if not altogether, on the object sought to be accomplished by the law in which the word is used. It seems to be the uniform rule that, where the purpose of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large – that is, where the public interest or private rights requires that the thing be done then the language, though permissive in form, is peremptory . . .

Since a peace officer is a "public officer,"[42] if a peace officer reasonably suspects that a child or another person is at risk from a sex offender or high-risk sex offender, the peace officer must notify certain members of the public that may be in danger from the sex offender. There was no activity in prior law related to community notification of sex offenders. Thus, the community notification activity is a new program or higher level of service.

- CD ROM

The test claim legislation states that on or before July 1, 1997, the Department of Justice shall provide a CD-ROM or other electronic medium containing information about certain sex offenders and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other law enforcement agencies. The local law

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[39] Penal Code section 290, subdivision (m)(4), Statutes of 1996, Chapter 908.

[40] *Common Cause of California v. Board of Supervisors of L.A. County* (1989) 49 Cal.3d 432, attached as Exhibit ___, pages ___to___.

[41] *Los Angeles County v. State* (1923) 64 Cal.App.290, attached as Exhibit ___, pages ___to___.

[42] Government Code section 195 and Evidence Code section 200, attached as Exhibit ___, pages ___to___.

enforcement agencies "may" obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee and "may" make the CD-ROM or other electronic medium available for viewing by the public.[43]

Like the Community Notification activity above, the use of the term "may," though permissive in form, is peremptory. In fact, according to the legislative history, it was the legislative intent that the CD-ROM or other electronic medium shall be made available to the public.[44] Assembly Bill 1562 states that:

> Knowing the identity of sex registrants empowers parents to protect their children from exposure to persons who might do them harm. Likewise, adult victims would similarly be empowered. It deters sex offenders from re-offending by increasing public awareness of their proclivities, thereby discouraging them from contact with children.[45]

Moreover, the California Department of Justice evaluated patterns of sex offenders and conducted a 15-year follow-up of sex offenders first arrested in 1973. The Department of Justice found:

> An analysis of subsequent arrests over the 15-year period (1973-1988) found that nearly one-half (49.4%) were re-arrested for some type of offense and almost 20% (19.7%) for a subsequent sex offense. Sex offenders whose first arrest was for rape by force or threat had the highest recidivism rate, 63.4% for any offense and 25.5% for a subsequent offense. The high recidivist rate could be attributed, in part, to the anonymity of the sex offender.[46]

Accordingly, the test claim legislation requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium. Prior law had no provision related to this activity. Thus, this activity is a new program or higher level of service.

- **Records Retention**

The test claim legislation requires local law enforcement agencies to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five

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[43] Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

[44] Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, page 2, paragraph 12, attached as Exhibit_____, pages ____to____

[45] *Supra*, page 4, paragraph 3.

[46] *Supra*, page 4, paragraph 4.

years related to the disclosure of high-risk offenders.[47] There is no records retention activity under prior law related to CD-ROM or other electronic medium. Accordingly, the records retention activity is a new program or higher level of service.

Conclusion

Based on the foregoing, the following activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution:

- Violent Crime Information Network (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- Community Notification (§290, subdivision (m))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

However, the analysis must continue to determine if the above activities impose "costs mandated by the state," under Government Code section 17514.

Issue 3

Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code section 17514?

Under Government Code section 17514 a new program or higher level of service must impose "costs mandated by the state." However, under Government Code section 17556, subdivision (c), the Commission **shall not** find "costs mandated by state" if the test claim legislation implemented a federal law.

Government Code section 17556, subdivision (c), provides that there are no "costs mandated by the state" when:

> (c) The statute or executive order implemented a federal law or regulation **and** resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. [Emphasis added.]

Government Code section 17513 defines "costs mandated by the federal government" as:

> . . . any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a

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[47] Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

federal statute or regulation. "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state**, local agency, or school district. [Emphasis added.]

- Federal Law

History of the Federal Law

There are three federal enactments that concern the test claim legislation: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan's Law and the Pam Lychner Sexual Offender Tracking and Identification Act. The collective result of these enactments is codified in 42 U.S.C. 14071-72 (referred to below as "section 14071)[48] and represents the federal law in this matter. These three enactments are as follows:

1. The Wetterling Act, which was enacted by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994,[49] encourages states to establish an effective sex offender registration system.
2. Megan's Law,[50] which amended the provisions of the Wetterling Act, relates to the release of registration information.
3. The Lychner Act,[51] which makes further amendments to the Wetterling Act, contains provisions to ensure the nationwide availability of sex offender registration information to law enforcement agencies.

The federal Department of Justice issued guidelines for state compliance with the original version of the Wetterling Act[52] and has more recently published guidelines to implement Megan's Law and clarify other issues concerning Wetterling Act compliance, or section 14071.[53]

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[48] 42 U.S.C.A. section 14072 is not relevant to the test claim as it specifically deals with the FBI database. Thus, section 14072 will not be part of the staff analysis. 42 U.S.C.A. section 14071, attached as Exhibit ___, pages ___ to ___.

[49] 42 U.S.C.A. section 14071, Public Law 102-322, 108 Stat. 1796, 2038.

[50] 42 U.S.C.A. section 14071, Public Law 104-145, 110 Stat. 1345, May 17, 1996.

[51] 42 U.S.C.A. section 14071, Public Law 104-236, 110 Stat. 3096, 3097, October 3, 1996.

[52] 61 FR 15110 (issued April 4, 1996), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration, attached as Exhibit ___, pages ___ to ___.

[53] 64 FR 572 (issued January 5, 1999) and 64 FR 3590 (issued January 22, 1999), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration, attached as Exhibit ___, pages ___ to ___.

Overview of Section 14071

Section 14071 provides a financial incentive for states to establish 10 year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders characterized as "sexually violent predators." States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in funding for HIV testing.[54]

In order to determine if the federal exception applies to the test claim legislation, the Commission must first determine if the test claim legislation implemented section 14071 and resulted in "costs mandated by the federal government." If so, the Commission must then determine if the test claim legislation exceeds the scope of section 14071.

- **Analysis**

Did the Test Claim Legislation Implement Section 14071?

The legislative history of the test claim legislation shows that it was enacted to implement section 14071. Assembly Bill 1562 specifically states that the passage of the test claim legislation "will launch Megan's Law in California and fulfill the requirements of the federal law." "Failure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly $5 million in ...funding."[55]

In addition, section 14071 specifically provides that states must comply/implement its provisions or lose funding for HIV testing. Section 14071 states that the Attorney General shall establish guidelines for state programs for certain individuals convicted of specified sexual offenses.[56] As mentioned above, the Attorney General issued these guidelines in 1996 and revised and reissued them again in 1999. Section 14071 specifically outlines the provisions that a state registration program must contain[57] and specifies the dates in which states must comply with section 14071 as well as the consequences if a state fails to comply with its provisions.[58]

Accordingly, staff finds that the test claim legislation implemented section 14071.[59] However, the analysis must continue to determine if the test claim legislation results in "costs mandated by the federal government."

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[54] 42 U.S.C.A. section 3756, subdivision (f), attached as Exhibit____, pages ____to____.

[55] Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

[56] 42 U.S.C.A., section 1407(a), Public Law 103-322, 108 Stat. 2038.

[57] 42 U.S.C.A., section 1407(b), Public Law 103-322, 108 Stat. 2038.

[58] 42 U.S.C.A., section 1407(f)(1)(2), Public Law 103-322, 108 Stat. 2038.

[59] In order to determine if the test claim legislation implemented the federal legislation, staff analyzed the law in effect in 1996, when the federal legislation was implemented. However, staff notes that the provisions in the federal legislation have substantively remained the same over the years.

Does the Test Claim Legislation Result in Costs Mandated by the Federal Government?

"Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet a specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. However, "costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which **may be implemented at the option of the state, local agency or school district.**[60] [Emphasis added.]

In order to determine if the test claim legislation was "implemented at the option of the state," California courts, including the California Supreme Court, have held that "[t]he test for determining whether there is a federal mandate is whether compliance with federal standards 'is a matter of true choice,' that is, whether participation in the federal program 'is truly voluntary.'"[61] The *Hayes* court in following the California Supreme Court's decisions in *City of Sacramento* v. *State of California* (*Sacramento II*),[62] held that a "determination of whether compliance with a federal law is mandatory or optional must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance or withdrawal."[63] Application of these factors in the present case is as follows:

- **Nature and Purpose of the Federal Program** - The federal legislation was enacted to provide the public with information regarding certain convicted sex offenders. The centerpiece of the test claim legislation, the registration and notification provisions related to convicted sex offenders, has its genesis in a New Jersey murder case. On July 29, 1994, Megan Kanka was raped and asphyxiated to death by Jesse Timmendequas, Megan's thirty-three year old neighbor. Unbeknownst to Megan's parents, Timmendequas was a convicted child molester living in a nearby home with two other convicted pedophiles. The brutal murder of this young girl shocked the nation, and catapulted the issue of sexually violent crimes against children onto a national stage.
- **Whether the Federal Statute Suggests an Intent to Coerce** – Although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders. According to the test claim legislation, "[a] state that fails to implement the program as described in this section

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[60] Government Code section 17513.

[61] *Hayes v.The Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, 76.

[62] *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51.

[63] *Hayes v.The Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582; *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, 76.

[the test claim legislation] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title."[64] Section 3756 provides:

> (a) States
>
> Subject to subsection (f) of this section, of the total amount appropriated for this subchapter in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 3761 of this title shall be set aside for section 3752 of this title and allocated to States as follows:
>
> (1) $500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and
>
> (2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.[65]

Subsection (f) provides for the testing of certain sex offenders for human immunodeficiency virus.[66]

In addition, as discussed above, the legislative history of the test claim legislation shows that if California refused to implement section 14071, it would lose substantial funds for HIV testing. Specifically, Assembly Bill 1562 states that "[f]ailure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly $5 million in ...funding."[67] Clearly, the Legislature believed that such a loss in funding was "substantial," since it was the basis of compliance with section 14071.

Thus, although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders.

- **When State and/or Local Participation Began** – Section 170101 of the Violent Crime Control and Law Enforcement Act was enacted on September 13, 1994. Congress amended and President Clinton signed the Wetterling Act portion of section 14071 in May of 1996. The test claim legislation was enacted by an "urgency statute" and became effective on September 25, 1996.

- **The Penalties, if any Assessed for Withdrawal or Refusal to Participate or Comply** – There are no penalties if a state fails to comply with the federal legislation. However, as

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[64] 42 U.S.C.A. section 1407(a), 108 Stat. 2038.

[65] 42 U.S.C.A. section 3756(a), 108 Stat. 2138.

[66] 42 U.S.C.A. section 3756(f), 108 Stat. 2138.

[67] Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

mentioned above, failure to comply will result in a loss of federal funding for HIV testing for certain sex offenders.

- **Any Other Practical or Legal Consequence of Nonparticipation, noncompliance or withdrawal** - Practically speaking, California, like all the other states, had no choice but to comply with the federal legislation or lose substantial funding.

Based on the above factors, staff finds that the state had no "true choice" but to comply with the provisions of section 14071. Accordingly, the test claim legislation implemented a federal law and resulted in costs mandated by the federal government.[68]

However, the federal exception does not apply to the extent that the test claim legislation mandates costs that exceed the mandate in that federal law or regulation.[69] Thus, the Commission must compare the test claim legislation to the federal legislation to determine which costs or activities exceed the federal mandate.

Does the Test Claim Legislation Exceed the Federal Mandate?

In order to determine if the test claim legislation exceeds section 14071, staff has compared the activities imposed by the test claim legislation to section 14071 below. However, before comparing the test claim legislation and section 14071, it should be noted that section 14071 was not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, section 14071's standards constitute a floor for state programs, not a ceiling. States do not have to go beyond sections 14071's minimum requirements to maintain eligibility for funding, but they may retain the discretion to do so. State programs often contain elements that are not required under section 14071.[70]

Activities Imposed by the Test Claim Legislation	Federal Mandate Section14071.
Violent Crime Information Network[71]	Section 14071 has no requirement that the state establish a Violent Crime Information System. Thus, this activity exceeds the federal mandate.[72]
Removal of Registration for Decriminalized Conduct[73]	Section 14071 has no provision related to the activity of removing a registration for decriminalized conduct. Thus, this activity exceeds the federal mandate.

[68] Government Code section 17556(c).

[69] *Ibid.*

[70] 64 FR 572.

[71] Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

[72] 42 U.S.C.A. section 14071, subdivision (b)(2)(3)(4), 108 Stat. 2038.

[73] Penal Code section 290, subdivision (F)(i)(I)(II)(III), Statutes of 1997, Chapter 821.

Pre-register[74]	Section 14071 has no provision related to the activity of pre-registering convicted sex offenders. Thus, this activity exceeds the federal mandate.
Contents of Registration Upon Release[75]	The only activity in section 14071 related to the registration activities in the test claim legislation is the requirement that local law enforcement agencies advise a convicted sex offender of a possible duty to register in any other state where the offender resides.[76] Thus, with the exception of this activity, section 14071 does not have a specific mandate related to the registration activities imposed by the test claim legislation.
Notice of Reduction of Registration Period[77]	Section 14071 has no provision related to the notice activity. Thus, this activity exceeds the federal mandate
High-Risk Sex Offenders[78]	Section 14071 has no provision related to the activities associated with high-risk sex offenders. Thus, this activity exceeds the federal mandate.
Community Notification[79]	Section 14071 provides that any local law enforcement agency "may" release relevant information about a convicted sex offender that is necessary to protect the public concerning a specific person required to register.[80] In the context of this section, the use of the term "may," though permissive in form, is peremptory.[81] Thus, the community notification activity is a federal mandate and not a "cost mandated by the state."

[74] Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

[75] Penal Code section 290, subdivision (e)(2)(A)(B)(C)(D)(E), Statutes of 1997, Chapter 927.

[76] 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

[77] Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

[78] Penal Code section 290, subdivision (n)(1)(G)(ii)(2), Statutes of 1996, Chapter 908.

[79] Penal Code section 290, subdivision (m)(n), Statutes of 1996, Chapter 908.

[80] 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

[81] See pages 14-16 of the draft staff analysis for staff's analysis of "may" in the context of this section.

CD ROM[82]	Section 14071 has no provision related to the CD-ROM activity. Thus, this activity exceeds the federal mandate.
Records Retention[83]	Section 14071 has no provision related to the record retention activity. Thus, this activity exceeds the federal mandate.

In summary, the following activities imposed by the test claim legislation exceed section 14071, the federal mandate, and thus result in "costs mandated by the state:"

- **Violent Crime Information Network**

  This activity requires a local law enforcement agency to submit sex offender registrations from its jurisdictions directly into the Department of Justice Violent Crime Information Network

- **Removal of Registration for Decriminalized Conduct**

  This activity requires a local law enforcement agency to remove an offender's registration from its files within 30 days of receiving a notification to do so from the Department of Justice.

- **Pre-register**

  This activity requires the admitting officer of a local law enforcement agency to pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender.

- **Contents of Registration Upon Release**

  A convicted sex offender has always had the duty to register upon release with the local law enforcement agency in which the offender will reside. While most of the activities related to this registration falls on the convicted sex offender, the following related activities are imposed on the registering local law enforcement agency:

  1. The local law enforcement agency must ensure that the signed statement that a convicted sex offender must fill out upon registration contains the name and address of the offender's employer, and the address of the offender's place of employment if that is different from the employer's main address.

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[82] Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

[83] Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

2. The local law enforcement agency must ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration.

3. The local law enforcement agency must ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.

- **Notice of Reduction of Registration Period**

  This activity requires that convicted sex offenders who were required to register before January 1, 1997, shall be notified when the offender next re-registers of the reduction in the registration period was from 14 days to 5 working days. The one-time notice must be in writing from the local law enforcement agency responsible for registering the individual.

- **High-Risk Sex Offenders**

  The test claim legislation imposes some new activities on specific local law enforcement agencies related to high-risk offenders. These activities are as follows:

  1. Sheriffs' offices must make available to high-risk offenders a pre-printed form from the Department of Justice regarding re-evaluation by the Department of Justice to be removed from the high-risk classification.

  2. A local law enforcement agency must maintain statistical information on high-risk offenders and photographs that it receives four times a year from the Department of Justice.

- CD ROM

  This activity requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium.

- Records Retention

  This activity requires a local law enforcement agency to maintain records of those persons requesting to view the CD-ROM or other electronic

medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.

Finally, the test claim legislation contains a sunset provision wherein it is only operative until January 1, 2004.

Conclusion

Staff finds that Part 2 of the test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Staff further finds that the following required activities, as outlined in more detail above, are a "new program or higher level of service" under article XIII B, section 6 of the California Constitution and result in "costs mandated by the state" within the meaning of Government Code section 17514:

- Violent Crime Information Network (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Lastly, staff finds that all other activities in the test claim legislation do not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends that the Commission approve the staff analysis.

EXHIBIT H

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COMMISSION ON
STATE MANDATES

COMMENTS OF CLAIMANT,
COUNTY OF TUOLUMNE
TO DRAFT STAFF ANALYSIS

Sex Offenders: Disclosure by Law Enforcement Officers

97-TC-15
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

The following is submitted in response to the Draft Staff Analysis issued in the above entitled matter on April 2, 2001.

I. THE REQUIREMENT TO REGISTER FOR NEW CRIMES AND TIME LINES IS NOT A NEW CRIME

In its Draft Staff Analysis, the Commission's staff examines the requirement that additional categories of sex offenders are now required to register. Staff states that:

> "Now, under section 290 of the test claim legislation, if they do not register or provide notification of a name change, the offender may be guilty of a misdemeanor, felony or continuing offense. Accordingly, this portion of the test claim legislation creates a new crime."

Claimant believes that this analysis is an over-simplification of the actual situation.

First of all, the law in question does not create a new crime or change the existing definition of a crime: it expands the requirement of registration for sex offenders. Registration, in and of itself, is not a crime. Rather, as will be seen *infra*, it is the failure to register which constitutes a crime. *People* v. *Franklin* (1999) 20 Cal.4th 249, 253.

To that end, Penal Code, Section 290, subdivision (a)(1)(A) states as follows:

> 290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State

Thus, the purpose of the statutory requirements to register as a sex offender is not to describe a new crime or change the existing definition of a crime. Rather, the purpose of the legislation is regulatory: to obtain continuous knowledge of the whereabouts of sexual offenders, as the Legislature has deemed that these individuals are prone to reoffend. If the purpose of the legislation were, as claimed by Commission Staff, to be a crime, the *ex post facto* challenges to this regulatory scheme would have been successful.

Rather, this regulatory scheme is much like the federal requirement that all men, upon their 18th birthday, register with the Selective Service. 50 U.S.C. Appendix, Section 453. The purpose of such registration is not to create a crime; rather, the purpose is to have information available in the event war or national emergency requires conscription. It is only the failure to register that could lead to criminal penalties.

As Commission Staff has noted, the registration requirement, although predating Article XIIIB, Section 6 of the California Constitution, has been expanded to include more registrants, being those convicted of other crimes. It has been expanded, such that the registration requirement is now life long. It has been amended, to exclude certain sexual conduct which subsequently was decriminalized. If registration were to describe a crime, as contended by Commission Staff, it would be the form of punishment that would have fallen to *ex post facto* challenges.

II. THE FEDERAL LEGISLATION IS NOT A 'FEDERAL MANDATE'

Commission Staff goes to great lengths to demonstrate that the federal law, which contains no penalty for non-compliance, constitutes a federal mandate because the state could lose health funding if it chooses not to comply. Based on this "coercion", the Commission Staff finds that the federal law constitutes a federal mandate, and only to the extent that the state law exceeds the federal mandate is there a reimbursable mandate.

The County of Tuolumne briefed this issue extensively in its Claimant's Response to Department of Finance, filed October 26, 1999 with the Commission. This response further noted that the federal government passed funds through to the states, to pass on to local entities, funds for implementing the federal legislation.

One portion of the analysis which is missing in the Commission Staff's analysis, is the applicability of *Hayes* v. *Commission on State Mandates* (1992) 11 Cal.App.4th 1565. This case sought reimbursement for special education requirements imposed by the state. The Commission's predecessor, Board of Control, had held that the requirements were a federal mandate. In a mandamus proceeding, the superior court had held that the Commission on State Mandates was to set aside the decision of the Board of Control and reconsider in light of *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 1. On appeal, the appellate court held that the Education of the Handicapped Act was a federal mandate. However, the fact that special education was a federal mandate was the beginning of the court's analysis.

> ". . . A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government

> from itself to local agencies. [Citation omitted.] Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift sate costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless of whether the costs were imposed upon the state by the federal government."

The state did not have to require local governments comply with its mandate. Rather, it could have implemented the federal requirements itself.

Accordingly, Claimant respectfully requests that Commission Staff reexamine the requirements of the federal laws in light of the foregoing.

CERTTIFICATION

I, Lt. John Steely, state:

That I am a Lieutenant with the Tuolumne County Sheriff's Department, and have been so employed in the office for over 29 years, and have been in a management position for approximately 25 years. That I am responsible for the civil function, coroner function, records, volunteers, Megan's Law and Internal Affairs. That accordingly, I have personal knowledge of the facts stated herein, except as to those alleged upon information and belief, and as to those facts, I believe them to be true.

Executed this 26 day of April, 2001, at Sonora, California.

Lt. John Steely

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action.. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On April 27, 2001 I served COMMENTS OF CLAIMANT, COUNTY OF TUOLUMNE TO DRAFT STAFF ANALYSIS, Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the Untied State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 27th day of April, 2001 at Sacramento, California.

Declarant

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EXHIBIT I

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
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April 30, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of April 2, 2001 the Department of Finance has reviewed the test claim submitted by the County of Tuolumne-Sheriff's Department (claimant) asking the Commission to determine whether specified costs incurred under Chapters No. 908 and 909, Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822, Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930, Statutes of 1998, are reimbursable state mandated costs (Claim No. CSM-97-TC-15 "Disclosure by Law Enforcement Officers"). Due to workload for preparing the May Revision, we request additional time to prepare our response.

As required by the Commission regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your April 2, 2001, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail.

If you have any questions regarding this letter, please contact Todd Jerue, Principal Program Budget Analyst at (916) 445-8913 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachments

RECEIVED
APR 30 2001
COMMISSION ON STATE MANDATES

PROOF OF SERVICE

Test Claim Name: "Disclosure by Law Enforcement Officers"
Test Claim Number: CSM-97-TC-15

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On April 30, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Mr. Allen Burdick
DMG-MAXIMUS
4320 Auburn Blvd. Suite 2000
Sacramento, CA 95841

Ms. Marcia C. Faulkner, Manager
Reimbursable Projects
County of San Bernadino
Office of the Auditor/Controller
222 W. Hospitality Lane, 4th Floor
San Bernadino, CA 92415-0018

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

Ms. Jean Green, Employee Relations Technician
County of Tuolumne-Sheriff's Department
28 N. Lower Sunset Drive
Sonora, CA 95370

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street #294
Folsom, CA 95630

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Long Beach, CA 90803

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Sacramento, CA 95814

Jim Spano
State Controller's Office
Division of Audits (B-8)
300 Capitol Mall, Suite 518
PO Box 942850
Sacramento, CA 95814

Mr. David Wellhouse
Wellhouse & Associates
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 30, 2001 at Sacramento, California.

Mary Latorre

Mary Latorre

EXHIBIT J

DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

GRAY DAVIS, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

May 22, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of April 2, 2001 the Department of Finance has reviewed the test claim submitted by the County of Tuolumne-Sheriff's Department (claimant) asking the Commission to determine whether specified costs incurred under Chapters No. 908 and 909, Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822, Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930, Statutes of 1998, are reimbursable state mandated costs (Claim No. CSM-97-TC-15 "Disclosure by Law Enforcement Officers"). Due to workload for preparing the May Revision, we requested additional time to prepare our response, and we received an extension to June 1, 2001. Due to the need to retain legal assistance in reviewing this test claim from the Attorney General's Office, we request a second extension of additional time to prepare our response.

As required by the Commission regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your April 2, 2001, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail.

If you have any questions regarding this letter, please contact Todd Jerue, Principal Program Budget Analyst at (916) 445-8913 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachment

PROOF OF SERVICE

Test Claim Name: "Disclosure by Law Enforcement Officers"
Test Claim Number: CSM-97-TC-15

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On May 22, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

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Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

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Legislative Analyst's Office
Attention Marianne O'Malley
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Sacramento, CA 95814-3941

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
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9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 22, 2001 at Sacramento, California.

Mary Latorre

Mary Latorre

EXHIBIT K

GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

July 9, 2001

RECEIVED
JUL 10 2001
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of April 2, 2001, the Department of Finance has reviewed the Draft Staff Analysis related to the test claim submitted by the County of Tuolumne-Sheriff's Department (claimant) asking the Commission on State Mandates (the Commission) to determine whether specified costs incurred under Chapters No. 908 and 909, Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822, Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930, Statutes of 1998, are reimbursable state mandated costs (Claim No. CSM-97-TC-15 "Disclosure by Law Enforcement Officers").

The draft analysis completed by staff of the Commission concludes that there are numerous required activities in test claim legislation that impose a reimbursable state mandate. We respectfully disagree with three of these specific areas, as follows:

Reevaluation of High Risk Sex Offenders: While the Department of Justice (DOJ) is required to perform an evaluation and provide quarterly reporting to local law enforcement on the identity of registrants, the test claim legislation does not require local law enforcement to provide the statistical information used by DOJ to compile the report. Commission staff cite Penal Code Section 290 subdivision (n)(2) as the source of this requirement on local agencies, but nowhere in that section is such a requirement present. We believe that instead, local agencies have discretion as to whether or not to provide this information. As a result, we do not agree with the Commission staff's statement that DOJ's requirement to report certain information creates a mandate on local agencies.

Disclosure of Information to the Public or Community Notice: Commission staff have determined that while the test legislation states that local law enforcement "may" provide sex registration information to members of the public, that "may", in this instance, is a requirement for a higher level of service. This position references a 1923 state appellate case, *Los Angeles v. State* (64 Cal.App. 290), which determined that the word "may" was in actuality a requirement when it involves 1) a public officer, who 2) would have discretion to exercise a power for the benefit of third persons or the public at large. Since, in the Commission staff's opinion, the notification to specified public members fall into the above category, Commission staff have concluded that this notification is a new level of service and constitutes a mandated cost.

We note that it is unclear whether the specific public notification based on risk to specific public entities or specific individuals falls within the specification of *Los Angeles v. State*. The staff analysis specifically cites that the notification activity is required when a peace officer reasonably suspects, based on information available, that a child or person may be at risk. Such a threshold seems to be akin to the need for "probable cause" before the officer can initiate the activity and depends on specific individual case elements to occur first. That said, the protection of the public is fundamentally a local law enforcement responsibility. If a peace officer notes a specific, potential risk to a person by a sex offender registrant exists, that officer is duty-bound under the "probable cause" threshold to exercise police power and prevent the risk from occurring. Under such a scenario, we are unable to then agree that such activity is a reimbursable mandate absent a specified State requirement.

CD-ROM: The test claim legislation requires DOJ to create a CD-ROM or electronic media for sex offender registration data and distribute it to specified law enforcement agencies. The test claim legislation also specifies that DOJ, the sheriff's departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make, the CD-ROM or other electronic medium available for viewing by the public.

The staff analysis concluded that for municipal police departments in jurisdictions of less than 200,000 and other agencies, as defined, the term "may", though permissive in form, is peremptory per *Los Angeles v. State*, and that this is a required higher level of service resulting in a mandated cost. In our opinion, the Commission staff's application of the "may" principle as peremptory is overly broad in the case of the CD-ROM distribution. As such, we do not believe that the test claim legislation constitutes any mandated costs on these agencies.

We agree that the requirement that the sheriff's departments and the municipal police departments of cities with a population of more than 200,000 make the CD-ROM or other electronic medium available for viewing by the public, constitutes a higher level of service. However, we maintain that such distribution of information is an implementation of the federal requirements under 42 U.S.C. 14071 subdivision (e)(2) which states that "the State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section." Further, with regards to all local jurisdictions, regardless of size, we maintain that distribution of this information is implementation of a federal requirement, which if not fulfilled by the State, would have resulted in loss of significant federal funding to the State related to human immunodeficiency virus testing (HIV-AIDS). The Commission staff's analysis concurs with our interpretation, however, it also concludes that using a CD-ROM format to provide the information exceeds federal law, and is therefore reimbursable.

We believe that a CD-ROM format is a logical and cost-effective choice of "releasing relevant information that is necessary to protect the public". If in fact local law enforcement attempted to comply with federal law in this area without the use of CD-ROM, and chose a different publishing format, we believe the associated expenses incurred would be significantly higher. The CD-ROM format is comparatively the most inexpensive, easy to duplicate, format available for mass distribution of database information using today's technology. The database information is already compiled by DOJ, each specified law enforcement agency is provided a free copy by DOJ, and using this format, it is easy for local agencies to make the information available. Thus we are unable to conclude that by using the CD-ROM format that the State has gone beyond what has already been mandated by the federal government. All that has occurred is that an information medium has been chosen which was not clarified in the prior

federal language. That is not akin to exceeding the federal mandate and its implementation in our view.

Regarding those elements of the Draft Staff Analysis that are not mentioned above, we are in agreement with the conclusions. For those items in the conclusion that are determined to be reimbursable, we intend to address specific cost components as part of the Parameters and Guidelines phase of the Test Claim.

If you have any questions regarding this letter, please contact Todd Jerue, Principal Program Budget Analyst at (916) 445-8913 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

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PROOF OF SERVICE

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Test Claim Number: CSM-97-TC-15

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Mr. David Wellhouse
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Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 9, 2001 at Sacramento, California.

Mary Latorre

Mary Latorre

COMMON CAUSE OF CALIFORNIA et al., Plaintiffs and Respondents,
v.
BOARD OF SUPERVISORS OF LOS ANGELES COUNTY et al., Defendants and Appellants

No. S001833.

Supreme Court of California

Aug 24, 1989.

SUMMARY

In proceedings brought by a taxpayer and several organizations concerned with voting rights, against a county and associated defendants, the trial court granted a preliminary mandatory injunction requiring defendants to deputize as voting registrars certain county employees who have frequent contact with low- income and minority citizens. Plaintiffs contended that the county had not complied with Elec. Code, § 304, requiring counties to develop and implement voter outreach programs, and Elec. Code, § 302, authorizing county clerks to deputize citizens as deputy registrars. (Superior Court of Los Angeles County, No. C601821, Jack M. Newman, Judge.) The Court of Appeal, Second Dist., Div. Four, No. B022802, affirmed.

The Supreme Court reversed the decision of the Court of Appeal and remanded to that court with directions to remand to the trial court with directions to vacate the preliminary injunction and for further proceedings in accordance with the Supreme Court's decision. The court held that, while mandamus will lie to correct an abuse of discretion by an official acting in an administrative capacity, the county's authority to decide whether and how to deputize its employees was quasi-legislative, and therefore not subject to the broader review of administrative acts. The court held the statutes in question did not require the deputization of county employees as voting registrars, even if such deputization would substantially further the statutory goal of maximum registration and, assuming arguendo, that the county's outreach program violated Elec. Code §§ 302 or 304 and the accompanying administrative regulations, the Court of Appeal erred in affirming the trial court's order requiring deputization as a remedial device. It held that as there was no possibility that the relief sought could be properly awarded after a trial on the merits, such relief could not be awarded on a provisional basis. (Opinion by Lucas, C.J., with Panelli, E *433, Kaufman, JJ., and Arguelles, J., [FN*] concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.)

FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Appellate Rev 36--Presenting and Preserving Questions in Trial Court--Parties--Standing.
Contentions based on a lack of standing involve jurisdictional challenges and may be raised at any time in the proceeding.

(2) Mandamus and Prohibitic § 58--Mandamus--Parties--Standing--Enforcing Public Duty.
Where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced. Accordingly, county taxpayers and citizens who had standing to seek to require a county to deputize as voting registrars certain county employees who have frequent contact with low-income and minority citizens, pursuant to authorization in Elec. Code §§ 302 and 304, also had standing to seek the same relief on a provisional basis in the form of a preliminary mandatory injunction, if such relief is otherwise proper. The purpose of a standing requirement is to ensure that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor. This purpose is met when, as here, plaintiffs possessed standing to have the underlying controversy adjudicated and the desired relief granted after a trial on the merits; no greater interest

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is required to seek the same relief on an interim basis. Accordingly, it was unnecessary for plaintiffs to show a separate basis for standing to obtain a preliminary injunction, distinct from the basis for their standing to seek a writ of mandate at a trial on the merits.

[See Cal.Jur.3d, Mandamus and Prohibition § 36; Am.Jur.2d, Mandamus, § 394.]

(3) Elections § 8--Registration of Voters--Minority Outreach Programs-- Enforcement--Standing.
Although Elec. Code § 304, directs the Secretary of State to formulate regulations requiring counties *434 to develop and implement voter outreach programs, and to report violations to the Attorney General, the Attorney General does not have exclusive standing to bring a court action against counties to enforce the statute, to the exclusion of citizens and taxpayers. The plain language c § 304 contains no limitation on the right of private citizens to sue to enforce it. To infer such a limitation would contradict the long-standing approval of citizen actions to require governmental officials to follow the law. Moreover, it could not reasonably be maintained that by enacting and providing for the enforcement o: § 304, the Legislature intended to preclude citizens from bringing actions to enforce the provisions of Elec. Cod § 302, a preexisting statute authorizing county clerks to deputize citizens as deputy registrars.

(4) Administrative Lav § 88--Judicial Review and Relief--Limitations on Availability--Exhaustion of Administrative Remedies--Particular Applications.
The mere possession by some official body of a continuing supervisory or investigatory power does not itself suffice to afford an administrative remedy unless the statute or regulation under which that power is exercised establishes clearly defined machinery for the submission, evaluation, and resolution of complaints by aggrieved parties.

(5) Injunctio 15--Preliminary Injunctions--Factors.
In deciding whether to issue a preliminary injunction a trial court must evaluate two interrelated factors: (1) the likelihood that the party seeking the injunction will ultimately prevail on the merits of his claim, and (2) the balance of harm presented, i.e., the comparative consequences of the issuance and nonissuance of the injunction. The scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits.

(6) Mandamus and Prohibiti 7--Mandamus--Conditions Affecting Issuance-- Discretion--Distinctions.
Mandamus will lie to compel a public official to perform an official act required by law (Code Civ. Proc., § 1085), but not to control and exercise of discretion in a particular manner. Mandamus may issue, however, to compel an official both to exercise its discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law, or to correct an abuse of discretion by an official acting in an administrative capacity.

(7a, 7b) Electio 8--Registration of Voters--Minority Outreach Program--Statutory Requirements--Deputization of County Employees *435 -- Discretion.
In a taxpayers' proceeding, the Court of Appeal erred in concluding that Elec. Co §§ 302 and 304, read together, mandated deputization of county employees as voting registrars if doing so would maximize voting registration. Elec. Co 302, subd. (b), states that "county clerks ... shall deputize as registrars qualified citizens in such a way as to reach most effectively every resident of the county," while Elec. Code § 302, subd. (e), provides that "the governing board of any county ... may authorize and assign any of its officers or employees to become deputy registrars of voters." Construing "may" as permissive and "shall" as mandatc §, 302, subd. (e) does not require deputization of county employees, even if it could be shown that such deputization would constitute the most effective means of reaching every resident of the county. Thus, the decision whether to adopt an employee deputization program rests in the discretion of the individual counties. The decision whether to take advantage of the authority granted t § 302, subd. (e) to deputize citizens as registrars is not administrative, but a quasi- legislative decision entrusted solely to local elected officials.

(8) Statute 35--Construction--Language--Words and Phrases--"May" and "Shall."
The word "may" in a statute is ordinarily construed

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as permissive, whereas "shall" is ordinarily construed as mandatory, particularly when both terms are used in the same statute.

(9) Mandamus and Prohibitic § 48--Mandamus--To Legislative and Executive Officers--Legislative Discretion--Counties--Voter Registration Statute--Enforcement--Remedy.

Although a court may issue a writ of mandate requiring legislative or executive action to conform to the law, it may not substitute its discretion for that of legislative or executive bodies in matters committed to the discretion of those branches. It may order a local legislative body to perform a nondiscretionary ministerial act, but may not control a local board's discretion. Procedures that give other branches of government a reasonable opportunity to devise plans to correct violations of law in matters involving the exercise of their discretion are required by the rule that mandamus generally will not issue to control discretion. A court seeking to remedy a violation of law should not require a particular remedy unless the respective governmental entity has no discretion to exercise or unless it fails to exercise that discretion after being given a reasonable opportunity to do so. Thus, the trial court erred in issuing a preliminary injunction requiring a county to deputize as voting registrars certain county employees, as authorized by statute, where the statutory scheme did not require implementation of an employee deputization program in order to register low-income and minority citizens. *436

COUNSEL

De Witt W. Clinton, Raymond G. Fortner, Jr., Philip H. Hickok, Sidley & Austin, Charles S. Vogel and Lori Huff Dillman for Defendants and Appellants.

Daniel J. Popel, Paul D. Kamenar, Marianne Mele Hall, Phillip D. Mink, Ronald A. Zumbrun, Anthony T. Caso and Jonathan M. Coupal as Amici Curiae on behalf of Defendants and Appellants.

Hufstedler, Miller, Carlson & Beardsley, Dennis M. Perluss, Linda J. Wong, Richard Fajardo, Roy M. Ulrich, Mark D. Rosenbaum, Paul L. Hoffman, William J. Genego, Margaret C. Crosby, Alan Schlosser and Edward Chen for Plaintiffs and Respondents.

John K. Van de Kamp, Attorney General, Andrea Sheridan Ordin, Chief Assistant Attorney General, Marian M. Johnston, Deputy Attorney General, R. Samuel Paz, Munger, Tolles & Olson, Bradley S. Phillips and Felicia A. Marcus as Amici Curiae on behalf of Plaintiffs and Respondents.

LUCAS, C. J.

The Registrar-Recorder, County Clerk, and Board of Supervisors of the County of Los Angeles (collectively referred to as County), appeal from the granting of a preliminary mandatory injunction requiring them to deputize as voting registrars certain county employees who have frequent contact with low-income and minority citizens. The Court of Appeal affirmed the trial court's order. We reverse.

I. Background

County operates a "voter outreach program" which includes various measures designed to encourage eligible citizens to register to vote. It distributes registration-by-mail forms in several thousand locations throughout the county, including libraries, post offices, fire stations, state and local public services offices, and state Department of Motor Vehicles branches. It mails such forms to registered voters to encourage them to keep their registrations current. County also maintains a toll-free telephone information service, uses news bulletins and public service announcements to promote registration, conducts an educational program at local high schools, and provides a van to volunteer organizations conducting con *437 registration drives. It does not, however, deputize significant numbers of its employees as voting registrars.

Plaintiffs, a Los Angeles County taxpayer and several organizations concerned with voting rights, brought the present action in superior court, [FN1] seeking declaratory relief, a writ of mandate, and a preliminary and permanent injunction requiring County to implement an employee deputization program, under which county employees who have frequent contact with non-White and low- income citizens would be deputized as registrars. Plaintiffs contend that a great disparity exists between the

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registration rates of high-income White citizens and those of low-income and minority citizens, and that an employee deputization program would reduce this disparity. Their complaint alleges that County's present voter outreach program violates the requirements of the Elections Code and the equal protection guaranties of the United States and California Constitutions.

FN1 Plaintiffs first sought relief by way of an original petition for a writ of mandamus in this court, which we summarily denied on May 7, 1986.

Simultaneously with the filing of this action, plaintiffs moved for a preliminary injunction requiring County to implement an employee deputization program. In support of their motion, plaintiffs produced a statistical analysis demonstrating disparities based on race and income in voter registration rates in the county, and declarations of various prominent political scientists to the effect that voter registration requirements greatly depress actual voter turnout. County, in response, produced a statistical analysis concluding that age and education are more important factors than race or income in predicting voter registration patterns.

After a hearing, the trial court granted a preliminary injunction. [FN2] Applying the usual test for reviewing the propriety of a preliminary injunction, *438 the Court of Appeal affirmed. It sustained the trial court's finding that the probability of plaintiffs' success on the merits at trial, together with the balance of harm (i.e., the likely degree of harm flowing from a failure to issue the injunction compared to such harm flowing from its issuance), justified issuance of the preliminary mandatory injunction. The Court of Appeal determined that plaintiffs had demonstrated a strong likelihood of success on the merits on either of two statutory theories: (i) that the Elections Code requires the implementation of an employee deputization program if such a program will maximize registration; and (ii) even if the code does not require such a program, a court may require that one be implemented as a remedy for a county's violation of other requirements of the code. The Court of Appeal did not reach plaintiffs' constitutional claims.

FN2 The injunction specifically requires that: "1. Within 30 days of the entry of this Order, defendants ... shall adopt and implement voter registration programs that will comply with the mandate of California Elections Code sections 302 and 304 (and accompanying administrative regulations). These programs shall include the following elements: ¶ (a) The County Registrar shall identify, deputize and train appropriate County public employees, except emergency medical, crisis, fire, and law enforcement personnel, who have regular contact in the performance of their daily duties with those subgroups of the community, including non-whites and low-income persons, who have lower rates of voter registration than the white and high-income subgroups of the community. Nothing in this Order shall be construed to prevent the County from deputizing public employees for the purpose of offering registration assistance to individuals or members of sub-groups not otherwise identified in this Order. ¶ (b) Those County employees who are deputized pursuant to this injunction shall discharge their duties as Deputy Registrars by engaging in a brief dialogue with their clients, along the following lin¶ (i) 'Are you registered to vote?' ¶ (ii) 'If you would like to register, I can provide you with a voter registration card'; ¶ (iii) 'Please fill out and sign the card, and I will forward it to the County Registrar, or you can mail it in yourself'; ¶ (iv) 'The decision to register or not to register is yours. It will not affect your receipt of County services in any way.' [¶ (c) Those County employees who are deputized pursuant to this injunction shall not engage in any partisan political activity in discharging their duty as Deputy Registrars.¶ 2. The County, the County Registrar, and the County Clerk are ordered to undertake any other steps necessary to achieve the highest possible level of voter registration in Los Angeles County by October 6, 1986, the registration deadline for the November 1986 general election ...."

County has not challenged the propriety, as a procedural matter, of awarding interim mandamus relief that neither preserves the status quo nor restores a status quo that previously existed. (Cf. People ex rel. S.F. Bay etc. Com. v. Town of Emeryville (1968) 69 Cal.2d 533, 536-539 [72 Cal.Rptr. 790, 446 P.2d 790].) Because any error would not be jurisdictional, we do not address the issue. Rather, we conclude there is no likelihood that plaintiffs could prevail on the merits at trial. Thus, the Court of Appeal erred in upholding issuance of the preliminary injunction.

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II. Discussion
A. Standing

County offers three reasons why plaintiffs lack standing to bring this action. First, it argues taxpayers have no standing under Code of Civil Procedure section 526a to force a municipality to expend funds to adopt a new program in the absence of any illegal expenditure by that municipality for an existing program. Second, County ascribes to the Attorney General exclusive standing to enforce the relevant provisions of the Elections Code. Third, County asserts plaintiffs failed to exhaust their administrative remedies before filing suit. (1) Although County did not raise these issues before the Court of Appeal, contentions based on a lack of standing involve jurisdictional challenges and may be raised at any time in the proceeding. (McKinny v. Board of Trustees (1982) 31 Cal.3d 79, 90 [181 Cal.Rptr. 549 *43! 642 P.2d 460]; Horn v. County of Ventura (1979) 24 Cal.3d 605, 619 [156 Cal.Rptr. 718, 596 P.2d 1134].) We therefore consider each claim in turn.

1. Taxpayer Standing

Plaintiff Mark Ridley-Thomas is a Los Angeles County taxpayer. The other plaintiffs are organizations whose members include Los Angeles County taxpayers. They assert standing to seek an injunction under Code of Civil Procedure section 526a, which provides taxpayers with standing to bring "An action to obtain a judgment, restraining and preventing any illegal expenditure of ... funds ... of a county ...." County contends that plaintiffs lack standing under section 526a because the object of their suit is not to halt any existing or threatened illegal expenditure, but to require County to expend funds to incorporate a new feature into its existing voter outreach program.

We find it unnecessary to reach the question whether plaintiffs have standing to seek an injunction under Code of Civil Procedure section 526a, because there is an independent basis for permitting them to proceed. The ultimate relief sought in this action includes a writ of mandate compelling adoption of the employee deputization program. (2) ""'[W]here the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced .... ""' (Green v. Obledo (1981) 29 Cal.3d 126, 144 [172 Cal.Rptr. 206, 624 P.2d 256]; see 8 Witkin, Cal. Procedure (3d ed. 1985) Extraordinary W 74, pp. 713-714, and cases cited.) The question in this case involves a public right to voter outreach programs, and plaintiffs have standing as citizens to seek its vindication.

Given that plaintiffs have standing as citizens to seek the relief granted here at a trial on the merits, they have standing to seek the same relief on a provisional basis, if such relief is otherwise proper. [FN3] The purpose of a standing requirement is to ensure that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor. (Baker v. Carr (1962) 369 U.S. 186, 204 [7 L.Ed.2d 663, 677-678, 82 S.Ct. 691]; Harman v. City and County of San Francisco (1972) 7 Cal.3d 150, 159 [101 Cal.Rptr. 880, 496 P.2d 1248].) This purpose is met when, as here, plaintiffs possess standing to hi *440e underlying controversy adjudicated and the desired relief granted after a trial on the merits; no greater interest is required to seek the same relief on an interim basis. (Cf. Harman, supra, 7 Cal.3d at pp. 159-160 [taxpayer standing to seek injunction establishes standing to seek money damages on behalf of municipality].) Accordingly, it is unnecessary for plaintiffs to show a separate basis for standing to obtain a preliminary injunction, distinct from the basis for their standing to seek a writ of mandate at a trial on the merits.

FN3 Our approval of plaintiffs' standing does not indicate approval of the grant of a preliminary or permanent injunction when the relief sought may be obtained by way of a mandamus action. We hold only that a party who has standing to bring an action has standing to seek available provisional relief in that action.

2. Exclusive Enforcement

(3) Elections Code section 304 [FN4] directs the Secretary of State to formulate regulations requiring counties to develop and implement voter outreach programs. It also provides for the Secretary to

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review the design and implementation of county outreach programs annually and to report violations to the Attorney General. County suggests that only the Attorney General has standing to bring a court action against it to enforce the statute.

FN4 Unless otherwise indicated, all further statutory references are to the Elections Code.

We disagree. First, the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. n5 To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing (see Harman, supra, 7 Cal.3d 150, 160; Blair v. Pitchess (1971) 5 Cal.3d 258, 267-268 [96 Cal.Rptr. 42, 486 P.2d 1242, 45 A.L.R.3d 1206]; Wirin v. Parker (1957) 48 Cal.2d 890, 894 [313 P.2d 844]), and our recognition of a "public interest" exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings (Green v. Obledo, supra, 29 Cal.3d 126, 144; Bd. of Soc. Welfare v. County of L.A. (1945) 27 Cal.2d 98, 100-101 [162 P.2d 627].) In the absence of either an express limitation on citizen standing or any indication of legislative intent to confer exclusive powers on the Attorney General, we decline to impose such a limitation on citizen actions to enforce section 304 and its accompanying regulations. (Cf. People v. City of South Lake Tahoe (E.D.Cal. 1978) 466 F.Supp. 527 [conferral of enforcemen *441 power on Attorney General not determinative of exclusivity question under California law].)

Second, plaintiffs' action is not based solely on section 304. To the contrary, they rely principally on section 302, which authorizes county clerks to deputize citizens as deputy registrars. It cannot reasonably be maintained that, by enacting and providing for the enforcement of section 304 - which mandates the adoption of outreach programs - the Legislature intended to preclude citizens from bringing actions to enforce the provisions of section 302, a preexisting statute that governs counties' deputization of voting registrars. Were we to accept County's contention, courts would be required to consider claims alleging violations of section 302 in isolation from closely related claims alleging violations of section 304 and its accompanying regulations. Considerations of judicial efficiency militate strongly against such a result.

3. Exhaustion of Administrative Remedies

Amicus curiae argues on County's behalf that the suit is barred by the doctrine of exhaustion of administrative remedies, because the Secretary of State has power to remedy violations of the Elections Code through approval of outreach programs and review of their implementation. (4) It is settled, however, that ""'the mere possession by some official body of a continuing supervisory or investigatory power does not itself suffice to afford an ' administrative remedy' unless the statute or regulation under which that power is exercised establishes clearly defined machinery for the submission, evaluation and resolution of complaints by aggrieved parties.""' (Ross v. Superior Court (1977) 19 Cal.3d 899, 912 [141 Cal.Rptr. 133, 569 P.2d 727], italics in original.) Neither the Elections Code nor the accompanying administrative regulations creates a mechanism for submission of complaints regarding outreach programs to the Secretary of State or any other agency. Hence we reject amicus curiae's contention. [FN6]

FN6. We do not reach County's arguments concerning the doctrine of primary jurisdiction. The issue is not a jurisdictional one (see E.B. Ackerman Importing Co. v. City of Los Angeles (1964) 61 Cal.2d 595, 596-598 [39 Cal.Rptr. 726, 394 P.2d 566]), and was not raised before the trial court or the Court of Appeal.

B. Issuance of the Injunction

1. Standard of Review

(5) In deciding whether to issue a preliminary injunction, a trial court must evaluate two interrelated factors: (i) the likelihood that the party seeking the injunction will ultimately prevail on the merits of his claim, ar *442 (ii) the balance of harm presented, i.e., the comparative consequences of the issuance and nonissuance of the injunction. [FN7] (King v. Meese (1987) 43 Cal.3d 1217, 1227 [240 Cal.Rptr. 829, 743 P.2d 889]; Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528 [67 Cal.Rptr. 761, 439 P.2d 889].) The scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial

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on the merits.

FN7 The parties devote considerable attention to the question whether the test for a mandatory preliminary injunction requires a higher degree of probability of success on the merits than the test for a prohibitory preliminary injunction. In light of our conclusion below that there is not only no likelihood, but indeed no possibility that plaintiffs will prevail on the merits of their claim to the specific relief granted in this case, it is unnecessary to reach this issue.

The ultimate relief sought in plaintiffs' complaint includes an injunction and a writ of mandate to compel County to fulfill its duties under the Elections Code. Mandamus, rather than mandatory injunction, is the traditional remedy for the failure of a public official to perform a legal duty. (See authorities cited in 42 Am.Jur.2d, Injunctions § 19, p. 750 § 43, p. 783, and 43 C.J.S. (rev. 1978) Injunctions, 3, pp. 742-743.) Thus, the legal principles governing judicial compulsion of official acts have developed under the rubric of mandamus rather than injunction. [FN8] An order after trial requiring the implementation of an employee deputization program, even if captioned an injunction, would be identical in purpose and function to a writ of mandate. Thus, we evaluate the merits of plaintiffs' claim for this relief in light of the legal principles governing mandamus actions. (See Miguel v. McCarl (1934) 291 U.S. 442, 452 [78 L.Ed. 901, 907, 54 S.Ct. 465]; Fallini v. Hodel (9th Cir. 1986) 783 F.2d 1343, 1345.)

FN8 County has not challenged the issuance of the preliminary injunction on the ground that mandamus is an available legal remedy. With regard to actions for permanent injunctive relief, it is generally held that such an objection is not jurisdictional and may be waived. (See 30 C.J.S. (rev. 1965) Equity, p. 971 and cases cited.) We see no basis for distinguishing issuance of a preliminary injunction. We therefore deem the issue waived for purposes of the preliminary injunction under consideration.

(6) Mandamus will lie to compel a public official to perform an official act required by law. (Code Civ. Proc., § 1085.) Mandamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner. Mandamus may issue, however, to compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law. (Shepherd v. Superior Court (1976) 17 Cal.3d 107, 118 [130 Cal.Rptr. 257, 550 P.2d 161]; Anderson v. Phillips (1975) 13 Cal.3d 733, 737 [119 Cal.Rptr. 879, 532 P.2d 1247].) As the dissent correctly notes, mandamus will lie to correct an abuse of discretion by an official acting in an administrative capacity. (Dis. opn. at pp. 451-452.) However, County's authority to decide whether and how to deputize its employees is, as we will explain, quasi-legislative, and *443 therefore is not subject to the broader review of administrative acts. (See Pitts v. Perluss (1962) 58 Cal.2d 824, 833 [27 Cal.Rptr. 19, 377 P.2d 83].)

Applying these principles to the trial court's order of employee deputization, we find the relief granted is unavailable under either theory expounded by the Court of Appeal. As will appear, we conclude that the Elections Code does not require the deputization of county employees as voting registrars, even if such deputization would substantially further the statutory goal of maximum registration. Assuming arguendo that County's outreach program violates sections 302 or 304 and the accompanying administrative regulations, we also conclude the Court of Appeal erred in affirming the trial court's order requiring deputization as a remedial device.

Because, as a matter of law, there is no possibility that the relief sought could be properly awarded after a trial on the merits, such relief may not be awarded on a provisional basis. Accordingly, the Court of Appeal's affirmance of the preliminary injunction must be reversed.

2. Deputization as a Statutory Requirement

(7a) The Court of Appeal concluded that sections 302 and 304, read together, mandate deputization of county employees as registrars if doing so will maximize voting registration. We disagree.

Section 302, subdivision (b), states that "county clerks ... shall deputize as registrars qualified citizens in such a way as to reach most effectively every resident of the county." (Italics added.) In contrast, section 302, subdivision (e), provides that "the governing board of any county ... or other

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public agency, may authorize and assign any of its officers or employees to become deputy registrars of voters ...." (Italics added.) (8) It is a well- settled principle of statutory construction that the word "may" is ordinarily construed as permissive, whereas "shall" is ordinarily construed as mandatory, particularly when both terms are used in the same statute. (Santa Cruz Rock Pavement Co. v. Heaton (1894) 105 Cal. 162, 165 [38 P. 693]; Rosenfield v. Superior Court (1983) 143 Cal.App.3d 198, 202 [191 Cal.Rptr. 611].) (7b) Accordingly, section 302, subdivision (e), does not require deputization of county employees.

The Court of Appeal held that section 302, subdivision (b), imposes on counties a mandatory duty to deputize employees if such deputization is necessary to reach most effectively every resident of the county. It is an elementary principle that specific provisions of a statutory scheme modify more general provisions of the same scheme. (Code Civ. Proc., § 1859; Long Beach City School District v. Payne (1933) 219 Cal. 598, 605 [28 P.2d 663]; *444 Rose v. State of California (1942) 19 Cal.2d 713, 723-724 [123 P.2d 505].) Section 302, subdivision (b), imposes a general duty to deputize qualified citizens as registrars in such a way as to reach most effectively every resident of a county. Section 302, subdivision (e), specifically addresses one class of potential registrars - public employees - and squarely places the decision whether to adopt a program deputizing such employees in the discretion of the governing board of the county. The general requirement of section 302, subdivision (b), cannot override the specific discretionary language of section 302, subdivision (e). Accordingly, section 302, subsection (b), does not mandate the deputization of employees as registrars, even if it could be shown that such deputization would constitute the most effective means of reaching every resident of the county.

In concluding that an employee deputization program is mandated if it can be shown that deputization will maximize voter registration, the Court of Appeal also relied on the Legislature's declaration, in section 304, of its intent that "voter registration be maintained at the highest possible level." Unlike section 302, subdivisions (b) and (e), however, section 304 imposes a duty on the Secretary of State to devise regulations and monitor the counties' compliance with the regulations, rather than imposing a duty directly on counties. The counties' duties under section 304 are governed by the Secretary of State's administrative regulations. [FN9] The precatory declaration of intent expressed in the statute must be read in context as a principle to guide the Secretary of State in promulgating appropriate regulations. It cannot be viewed as independently creating substantive duties imposed on counties in addition to those imposed by the regulations; nor may it be torn from its context to alter the counties' duties under section 302.

FN9 No challenge to the validity of the Secretary of State's regulations has been raised in this proceeding. Thus we presume that the regulations promulgated under section 304 constitute a valid interpretation of County's duties under that section. Those regulations require that counties solicit assistance from government agencies "in providing the incidental use of their premises and/or personnel for the purposes of outreach." (Cal. Code Regs., tit. 1 20001, subd. (f).) It is undisputed here that the regulations themselves do not require employee deputization programs.

We conclude that neither section 302 nor section 304 requires County to adopt the employee deputization program sought by plaintiffs. The Court of Appeal's conclusion that the two statutes "read together" create such a duty if it can be shown that such a program will maximize voter registration is unsupportable. Although the Legislature has made clear its desire to maximize registration (in its statements of intent and in various substantive provisions of the Elections Code), it also has made clear in the plain language of section 302, subdivision (e), that the decision whether to adopt an employee deputization program rests in the discretion of the individual counties. *445

Thus, regardless of whether counties have a ministerial duty under section 304 to implement voter outreach programs or under section 302 to deputize qualified citizens as registrars, we read section 302, subdivision (e), as, in essence, enabling legislation that authorizes counties to deputize their employees should they decide to do so. The decision whether to take advantage of the authority granted by section 302, subdivision (e), is not administrative, as the dissent asserts; it is a quasi-legislative decision entrusted solely to local elected officials.

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3. Deputization as a Remedial Device

(9) Plaintiffs alternatively assert that even if the statutory scheme does not mandate deputization of county employees, a court may order deputization as a remedy for a county's failure to implement the statutory scheme, or for its violation of federal or state constitutional equal protection guaranties. Under this theory, although County might have found ways to implement the requirements of the Elections Code and to meet equal protection standards without the deputization program, in light of its failure to do so the court could order deputization if, in its judgment, such a measure would effectively remedy County's violation of the law. The Court of Appeal did not reach plaintiffs' equal protection claims, which were rejected by the trial court.

As noted above, it is well settled that although a court may issue a writ of mandate requiring legislative or executive action to conform to the law, it may not substitute its discretion for that of legislative or executive bodies in matters committed to the discretion of those branches. In Serrano v. Priest (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929], we noted that "the courts may not order the Legislature or its members to enact or not to enact, or the Governor to sign or not to sign, specific legislation ...." (Id. at p. 751.) Similarly, although a court may order a local legislative body to perform a nondiscretionary ministerial act, it may not control a local board's discretion. (Glendale City Employees' Assn., Inc. v. City of Glendale (1975) 15 Cal.3d 328, 344 [124 Cal.Rptr. 513, 540 P.2d 609].)

Serrano is instructive regarding the proper role of a court in providing remedies for violations of law by other branches of government. In that case we rejected a claim that the trial court had exceeded its jurisdiction by issuing an order requiring the Legislature and the Governor to adopt a plan for school financing in conformity with state constitutional guaranties of equal protection. We noted with approval that the trial court "explicitly and properly refrained from issuing directives to the lawmakers and the chief executive, stating in its judgment: '... [T]his judgment is not intended to require, and is not to be construed as requiring, the adoption of any *446 particular plan or system for financing the public elementary and secondary schools of the state ....'" (Serrano, supra, 18 Cal.3d at p. 752.)

Unlike the court in Serrano, the trial court in this case did not limit its order to requiring governmental defendants to take action in conformity with the law. Its order required County to take a particular course of action - deputization of public employees - specifically committed to County's discretion by statute. (§ 302, subd. (e).)

In Legislature v. Reinecke (1973) 10 Cal.3d 396 [110 Cal.Rptr. 718, 516 P.2d 6], we selected a reapportionment plan for the state (ordinarily a legislative act) to remedy the failure of the other branches to effect a plan conforming to the constitutional requirement of equal protection. Our decision in Reinecke, however, was issued only after the Legislature was given a reasonable opportunity to formulate a constitutionally valid plan. (Id. at p. 400.) We declined in that case to issue an order to the Legislature, relying on the parties to accede to our stated holdings. (Id. at p. 407; see also Young v. Gnoss (1972) 7 Cal.3d 18, 29 [101 Cal.Rptr. 533, 496 P.2d 445] [declining to issue order to county clerks, relying on them to accede to holding].) Procedures that give other branches of government a reasonable opportunity to devise plans to correct violations of law in matters involving the exercise of their discretion are required by the well-settled rule that mandamus generally will not issue to control discretion. A court seeking to remedy a violation of law should not require a particular remedy unless the respective governmental entity has no discretion to exercise (as when the particular duty is made ministerial either by statute or by constitutional compulsion) [FN10] or unless, as in Reinecke, it fails to exercise that discretion after being given a reasonable opportunity to do so.

FN10 Significantly, plaintiffs do not contend that a deputization program is the only possible remedy for the equal protection violation they allege. Thus, their equal protection challenge, even if meritorious, would n justify the trial court's order requiring an employee deputization program.

Accordingly, the Court of Appeal erred in upholding the issuance of the preliminary injunction. The statutory scheme does not require

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implementation of an employee deputization program. Even assuming arguendo that County's present outreach program is inadequate to fulfill the requirements of the Elections Code or violates equal protection principles, the trial court's order requiring an employee deputization program over County's objection was not an available remedy for the alleged violation.

4. Disposition

In view of the foregoing conclusions, we need not decide whether the Court of Appeal erred in its balance-of-harm analysis. The likelihood *447 success on the merits and the balance-of-harm analysis are ordinarily "interrelated" factors in the decision whether to issue a preliminary injunction. (King v. Meese, supra, 43 Cal.3d 1217, 1226; IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69 [196 Cal.Rptr. 715, 672 P.2d 121].) The presence or absence of each factor is usually a matter of degree, and if the party seeking the injunction can make a sufficiently strong showing of likelihood of success on the merits, the trial court has discretion to issue the injunction notwithstanding that party's inability to show that the balance of harms tips in his favor. (King v. Meese, supra, 43 Cal.3d at pp. 1227-1228 [dictum].) In this case, however, there is no likelihood that plaintiffs will prevail on their claim for specific injunctive relief under either of their asserted theories. A preliminary injunction may not issue without some showing of potential entitlement to such relief.

Accordingly, we reverse the decision of the Court of Appeal affirming the issuance of the injunction and order the matter remanded to the Court of Appeal. The Court of Appeal is directed to remand this matter to the trial court with directions to vacate the preliminary injunction and for further proceedings in accordance with this decision. On remand, plaintiffs remain free to renew their contentions that County has refused to deputize qualified citizens as registrars in accordance with the requirements of section 302, subdivision (b), and that its voter registration program violates equal protection guaranties, and they may seek other appropriate relief not inconsistent with this opinion.

Panelli, J., Eagleson, J., Kaufman, J., and Arguelles, J., [FN*] concurred.

FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

BROUSSARD, J.

I respectfully dissent. The right to vote is fundamental because in a democracy it is "preservative of all rights." (Yick Wo v. Hopkins (1886) 118 U.S. 356, 370 [30 L.Ed. 220, 226, 6 S.Ct. 1064].) Requirements burdening the right to vote are subject to the strictest of scrutiny. (Dunn v. Blumstein (1972) 405 U.S. 330, 336, 342 [31 L.Ed.2d 274, 280-281, 284, 92 S.Ct. 995]; Young v. Gnoss (1972) 7 Cal.3d 18, 22 [101 Cal.Rptr. 533, 496 P.2d 445]; Castro v. State of California (1970) 2 Cal.3d 223, 234 [85 Cal.Rptr. 20, 466 P.2d 244]; Otsuka v. Hite (1966) 64 Cal.2d 596, 602-603 [51 Cal.Rptr. 284, 414 P.2d 412]; Keane v. Mihaly (1970) 11 Cal.App.3d 1037, 1041 [90 Cal.Rptr. 263].) The record in the instant case makes clear that the preelection registration requirement in California, although neutral on its face and seemingly innocuous, has the practical effect, at least in Los Angeles County, of resulting in a denial of the right to vote to many citizens who want to vote on election day and that this practical effect impacts most seriously upon the poor and minorities. *448

The Legislature, obviously aware of the economic and racial impact of the preelection registration requirement, has enjoined upon the counties the administrative duties to maintain registration at the highest possible level, to design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote. (Elec. Co(§ 304.) [FN1] To accomplish those goals, the Legislature has given the boards of supervisors of the counties extensive discretionary powers, including the power to deputize any of its officers and employees as registrars. § 302.) Notwithstanding the specially enjoined duties, the Board of Supervisors of the County of Los Angeles decided to stonewall. It refused to design and implement a program intended to identify qualified electors who were not registered voters, and thus did not attempt to register those persons.

FN1 All statutory references are to the Elections

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Code unless otherwise indicated.

Based on overwhelming evidence, the trial court found a significant class of underregistered, eligible low-income and non-White citizens. In some of the towns and cities where the population was predominantly poor or non-White as many as 70 percent of the eligible voters were unregistered, whereas in wealthy White communities it was shown that only 10 to 15 percent of the eligible voters were not registered. Based on this showing, the trial court issued a preliminary injunction requiring the county to deputize as deputy registrars appropriate county employees having daily contact with eligible but unregistered voters. In short, the court said to the county that you cannot stonewall and temporarily, pending further proceedings, the county shall engage in a program to reduce the number of unregistered, qualified electors. There is nothing in the court's order to prevent the county from mending the error of its ways, investigating to determine which electors are effectively deprived of the franchise by the preelection registration requirement, and developing programs to increase registration.

The majority tell us that courts cannot compel the county to deputize its employees as registrars because the Legislature in section 302, subdivision (e) gave it discretion to determine whether to deputize its employees and that section 304 is applicable to the Secretary of State and does not impose a direct duty on the county. (Maj. opn. at pp. 443-445.) The majority also argue that the preliminary injunction was improper even if the county was acting unlawfully, and that the court should not act until it has given the county an opportunity to remedy the situation. (Maj. opn. at pp. 445-446.)

However, it is clear that the Legislature has established the legislative policy and imposed an administrative duty on the county, that while the county is given discretion in appointing its employees as deputy registrars, *449 its discretion is not limitless, and that the courts have authority to correct its abuse of discretion. The county's stonewalling in refusing to implement a program to even identify the unregistered electors is a clear abuse of discretion, and the fact that the county is to act in accordance with the Secretary of State's regulations does not furnish a defense when it has violated them also.

Nor was the court required to delay attempts to remedy the situation. As shown by the main authority cited by the majority, the proper function of the court in matters as important as elections is to take temporary action to assure that they are conducted in accordance with law, while leaving the authorized agency free to devise a permanent solution in accordance with law. The preliminary injunction does not preclude the county from devising its own plan in accordance with the law and obviously is only a temporary measure.

The election process is so important to the maintenance of our democracy that abuses, whether they take the form of fraud or abuse of legislatively conferred discretion, must be addressed immediately. Although the record in the instant case of practical disenfranchisement of large numbers of poor and minorities by the preelection registration requirement draws into question the validity of the requirement itself, the trial court did not invalidate the process but sought to enforce the legislative attempts to square preelection registration requirements with the citizens' right to vote without economic or racial discrimination. Attempts ordained by the Legislature to modify the economic and racial effects of the preelection registration system must be enforced to maintain the integrity of the system.

It has long been recognized that county boards of supervisors exercise both administrative powers and duties and legislative powers. (E.g., Horn v. County of Ventura (1979) 24 Cal.3d 605, 612-615 [156 Cal.Rptr. 718, 596 P.2d 1134]; Simpson v. Hite (1950) 36 Cal.2d 125, 129 et seq. [222 P.2d 225].) As a generalization, matters which affect numerous people are legislative in character. However, where the general policy is established by the Legislature, the county board's function in carrying out the policy by performing its duty is an administrative function delegated by the state. The determination whether the board's function is legislative or administrative may not always be easy, and one of the factors that is usually considered is the procedures established by the Legislature for the board. (Ibid.)

The statutory pattern is clear. In the area of

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elections, including registration of voters, probably more than any other area in the law and in recognition that our dedication to a democratic form of government is involved, the Legislature has acted comprehensively dotting the i's, crossing the t's and *450 directing county and local officials to enforce its policy determinations. (See Elections Code generally.) Turning to the specific code sections before us, the Legislature has specified its intent that registration be maintained at the highest possible level and directed the Secretary of State to adopt regulations requiring each county "to design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vo§ 304.) The Secretary of State has adopted regulations. (Cal. Code Regs., tit. ' § 20000 et seq.) Section 304 obviously requires counties to adopt outreach programs and does not permit the county board to ignore the directive. Indeed section 304 provides that the Secretary of State shall adopt regulations prescribing minimum "requirements" and continues by providing that if the "Secretary of State finds that a county has not designed and implemented a program meeting such prescribed minimum requirements, the Secretary of State shall design a program for such county."

The policy judgment as to whether a program shall be adopted has been made by the Legislature. The Legislature has required the Secretary of State to adopt regulations prescribing the minimum requirements, obviously an administrative function, since the Secretary of State is not given legislative powers. Although conceivably a county board of supervisors may be acting in a legislative capacity in adopting a program which goes beyond the Secretary of State's minimum requirements, a board is acting in an administrative capacity when it attempts to meet the minimum requirements. Moreover, the Legislature has provided that if a county fails to meet the minimum requirements, the Secretary of State may design a program for the county. Again, the Secretary of State is not a legislature.

The Secretary of State has adopted extensive regulations. (Cal. Code Regs., tit § 20000 -20005.) California Code of Regulations, title 2, section 20000 provides that "all counties shall design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote, hereinafter referred to as outreach programs." California Code of Regulations, title 2, section 20001, subdivision (f) provides that each county voter outreach program shall provide for the solicitation of assistance from local government offices, including the incidental use of their premises and/or personnel for the purpose of outreach, and the offices to be solicited include those which in the opinion of the county clerk come into frequent contact with unregistered electors. And California Code of Regulations, title 2, section 20002 mandates each outreach program to "stress" the solicitation of voter registrations by persons whose activities place them in frequent contact with potential registrants. The Secretary of State's regulations specifies that affirmative and positive steps must be taken to attain the Legislature's goal. These provisions significantly directing the particular steps to be taken and providing discretion for the county *451 further show the administrative character of the duty imposed by the Legislature by section 304.

The fact that section 302, subdivision (e) provides that counties "may" assign any of its officers and employees to become deputy registrars does not show that the county's power is a legislative one or that the Secretary of State or the courts may not require some employees to act as deputy registrars. The fact that the board of supervisors may exercise substantial discretion does not mean that it is not acting in an administrative capacity. For example, subdivision map approvals, variances and conditional use permits involve considerable discretion in applying the state established standards to the particular application but all are administrative determinations. (Horn v. County of Ventura, supra, 24 Cal.3d 605, 612-615; Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 513-514 [113 Cal.Rptr. 836; 522 P.2d 12]; Johnston v. Board of Supervisors (1947) 31 Cal.2d 66, 74 [187 P.2d 686].) Whether acting under subdivision (e) of section 302 or any other provision in sections 302 and 304, the board of supervisors acts in administrative and not in a legislative or quasi- legislative capacity. [FN2]

FN2 The majority (maj. opn. at p. 445) mischaracterize the board's decisions under section

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302, subdivision (e) as quasi-legislative.

Legislative history makes it clear that the "may" in subdivision (e) of section 302 should not be read as a limitation on the county's duty to adopt an outreach program under section 304. The provisions of subdivision (e) of section 302 were first added in 1965. (Stats. 1965, ch. 1866 § 1.) Obviously, they were found insufficient to fully accomplish the legislative purpose, and in 1975 the Legislature established the outreach program of section 304 (Stats. 1975, ch. 704, § 3.5), an additional program to accomplish the same purpose. Since subdivision (e) of section 302 and section 304 are both designed to increase voter registration and section 304 is designed to go beyond section 302, it would frustrate rather than further legislative intent to read subdivision (e) of section 302 as imposing an implied limitation on the duty imposed by section 304.

It has long been settled that while mandamus will not lie to control the discretion of administrative officials, it will lie to correct abuse of discretion of those officials. (E.g., Glendale City Employees' Assn., Inc. v. City of Glendale (1975) 15 Cal.3d 328, 344, fn. 24 [124 Cal.Rptr. 513, 540 P.2d 609]; Griffin v. Board of Supervisors (1963) 60 Cal.2d 318, 322 [33 Cal.Rptr. 101, 384 P.2d 421]; Baldwin-Lima-Hamilton Corp. v. Superior Court (1962) 208 Cal.App.2d 803, 823 [25 Cal.Rptr. 798]; Munns v. Stenman (1957) 152 Cal.App.2d 543, 555-557 [314 P.2d 67]; see Robbins v. Superior Court *45 (1985) 38 Cal.3d 199, 205 [211 Cal.Rptr. 398, 695 P.2d 695].) The discretion that is conferred on administrative officials is not an absolute discretion, but a discretion to be exercised in accordance with the purposes of the legislation. There can be no question but that in failing to take any steps to identify electors who are not registered, the board has violated section 304 and the Secretary of State's regulations. While the statute and the regulations confer on the board discretion as to the steps to be taken, the failure to take any steps constitutes an abuse of discretion. Similarly, while subdivision (e) of section 302 confers discretion upon the board with respect to appointment of employees and officials as deputy registrars in pursuance of the legislative goal to maintain registration at the highest level, and to register those identified as unregistered electors, the record before us shows a clear abuse of discretion. The board has not attempted to identify the unregistered electors and thus did not take any steps to register them. The board has not suggested any other programs to register them. In the circumstances, the trial court injunction requiring appointment of some employees as deputy registrars - with limited duties not interfering with their other duties - is a reasonable method to correct the abuse of discretion.

I conclude that the provision in section 302 providing that the county "may" deputize governmental employees does not establish an absolute right to refuse to deputize any, does not establish that the duty imposed by section 304 and the Secretary of State's regulation to establish an outreach program may not include a duty to deputize in the exercise of discretion, and does not preclude a court order requiring deputizing some county employees.

In concluding that courts may not compel counties to deputize any employees, the majority ignore the numerous cases which have recognized that courts may correct abuses of discretion of administrators.

The majority's reliance on Serrano v. Priest (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929] and Legislature v. Reinecke (1973) 10 Cal.3d 396 [110 Cal.Rptr. 718, 516 P.2d 6] is misplaced because those cases do not involve administrator's duties but legislative powers to establish a system of public school financing and to reapportion legislative and congressional districts. Moreover, the latter case makes clear that, even as to the exercise of legislative powers, courts may adopt temporary solutions when the Legislature has failed to act. Thus, when the Legislature failed to reapportion the congressional districts, this court proceeded to do so itself for the 1972 election providing that the Legislature could adopt its own redistricting plan for the 1974 election and that if it did not do so, the court would adopt a plan. (10 Cal.3d at p. 400; Legislature v. Reinecke (1972) 6 Cal.3d 595, 601 et seq. [99 Cal.Rptr. 481, 492 P.2d 385].) Similar procedure was *453 followed in this case. The trial court issued a preliminary injunction requiring the county to appoint some employees as deputy registrars. The injunction does not preclude the county from commencing its own outreach program to identify unregistered electors and to register those

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identified. Should the county comply with the law, it obviously is free to seek to have the preliminary injunction vacated. The temporary relief authorized herein is entirely consistent with the approach of Legislature v. Reinecke, supra, 10 Cal.3d 396. As there, the court was faced with upcoming elections and acted to protect the integrity of the electoral process.

At the trial, plaintiffs established that the proposed preliminary injunction would not impose great burdens on the county and that it would significantly reduce the imbalances in voter registration existing in the county. Although the county claimed that there were significant burdens, it was unable to establish the claim. When the hearing comes on for the permanent injunction, the county, of course, will be able to show how burdensome the preliminary injunction is and whether it is effective.

I would affirm the judgment of the Court of Appeal.

Mosk, J., concurred. *454

Cal.,1989.

Common Cause of California v. Board of Sup'rs of Los Angeles County

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COUNTY OF LOS ANGELES, Appellant,
v.
STATE OF CALIFORNIA, Respondent.

Civ. No. 2574.

Court of Appeal, Third District, California.

October 31, 1923.

[1] STATUTORY CONSTRUCTION--WORD "MAY," WHEN MANDATORY.
While the word "may" is primarily and ordinarily a permissive term and not peremptory, nevertheless, when the rights of the public or of other persons--in this case the state of California--are dependent upon the exercise of the power conferred, the word "may" takes on the mandatory form and the performance of the act provided for is neither optional nor discretionary upon the person or officer designated and authorized to perform the act.
1. When the word "may" in statute is to be deemed mandatory, notes, 4 Ann. Cas. 420; 5 L. R. A. (N. S.) 340.

[2] JUVENILE COURT LAW--COMMITMENT TO PRESTON SCHOOL OF INDUSTRY--MAINTENANCE--ASSUMPTION OF BURDEN.
Where a superior court commits a boy under the age of twenty-one years to the Preston School of Industry, it is the duty of the court to make the order prescribed by section 11 of the Juvenile Court Act for his support and maintenance; and it is also the duty of of the county from which such boy is committed to provide for his maintenance and not to shift that burden upon the state or upon other counties of the state which, following the statute, make provision for the support and maintenance of their wards.

[3] ID.--MAINTENANCE OF WARDS--PAYMENT BY COUNTY TO STATE--ABSENCE OF COURT ORDERS--RIGHT OF COUNTY TO REPAYMENT--ACT OF 1893.
A contract, either express or implied, for the refund or repayment by the state to a county of money paid by the latter to the former for maintenance of wards committed from such county to the Preston School of Industry does not arise under the provisions of section 1 of the act of 1893, which authorizes "all persons who have, or shall hereafter have, claims on contract" against the state not allowed by the State Board of Examiners to bring suit thereon against the state, even though such money was paid by the county without orders of the superior court directing payment as provided by section 11 of the Juvenile Court Act.

APPEAL from a judgment of the Superior Court of Sacramento County. Peter J. Shields, Judge. Affirmed.

The facts are stated in the opinion of the court.

*291 A. J. Hill, County Counsel, and Edward T. Bishop, Assistant County Counsel, for Appellant.

U. S. Webb, Attorney-General, and Frank L. Guerena, Deputy Attorney-General, for Respondent.

PLUMMER, J.

In this action the County of Los Angeles seeks to recover from the State of California the sum of $12,963.48 and bases its action upon the following facts: During the period between the ninth day of February, 1918, and the twenty- eighth day of December, 1920, a number of boys from the age of eighteen and under the age of twenty-one years were committed to the Preston School of Industry by the superior court of the county of Los Ang *292 under the provisions of the juvenile court law of the state. (Stats. 1915, p. 1225.) No finding of the court was made in any of the cases concerning the ability of the parents or guardians of the wards, or as to the ability of the earnings of any of the wards, or of the estates belonging to any of them, to pay in whole or in part any of the maintenance charges at the Preston School of Industry. After commitment as aforesaid and without any orders made by the superior court of the county of Los Angeles directing such payment, the auditor of the County of Los Angeles drew warrants upon the treasurer of that county in favor of the State of California and the sum heretofore mentioned was accordingly paid to the state through the Preston School of Industry. Payments were made at the rate of $20 per month for the cost and maintenance of each ward.

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On or about the sixteenth day of May, 1921, the County of Los Angeles filed with the State Board of Control of the state of California a claim for the refund of the said sum of $12,963.48, alleging that each and all of the various monthly payments to the state were illegal, and were made in the absence of the findings and orders for payment above referred to. This claim was disallowed by the State Board of Control. Action against the state was thereupon begun by the filing of the complaint setting forth the foregoing facts to which complaint the defendant demurred which demurrer was sustained without leave to amend. The matter is now on appeal to this court from the judgment of the trial court entered after sustaining the defendant's demurrer. In order to sustain its contention that a right of action existed on the part of the County of Los Angeles against the State of California, plaintiff lays down three propositions,--first: That the payments of the county moneys were illegally made to the state; second, a cause of action for money had and received has arisen against the state; and, third, an action against the state for money had and received is authorized by statute.

If any one of these propositions is faulty, then the action must fail and for that reason consideration need not further be given if such is found to be the case.

Were the payments illegally made to the state? We think this question can be answered by a consideration of the law *293 relating to the Preston School of Industry and the maintenance of wards committed thereto.

By an act by the legislature approved March 11, 1889 (Stats. 1889, p. 100), the state of California provided for the establishment of an educational institution to be designated as the Preston School of Industry to be located at Ione in the county of Amador. This act, however, made no provision for the maintenance or support of the wards committed to said school.

By the act approved March 26, 1895 (Stats. 1895, p. 123), the legislature provided in section 2 of said act:

"That for each and every person hereafter committed to either Whittier State School or Preston School of Industry, the county from which the commitment is made shall pay into the state treasury the sum of one hundred and thirty-two dollars per annum, and at that rate for each fraction of a year."

The juvenile court law as originally adopted provided in substance for the court making the commitment to direct the payment of the same amount per month. In 1919, economic conditions having undergone such a radical change and the sum of $11 per month being manifestly insufficient for the maintenance of any ward committed to either Preston or Whittier, the legislature amended section 11 to read as follows:

"Any order providing for the care and custody of a ward of the juvenile court may provide that the expense of support and maintenance of said ward shall be paid by the parent, parents, guardian of said ward or other person liable therefor, after citation thereto, or from the earnings, property or estate of said ward, and in such case shall state the amount to be so paid. If it is found, however, that the parent, parents, guardian of said ward, or other person liable therefor, are unable to pay or that the earnings, property, or estate, of said ward is insufficient to pay the whole expense of support and maintenance of said ward, the court may direct such additional amount as may be necessary for the maintenance and support of said ward to be paid from the county treasury of the county for the support and maintenance of said ward, the amount so ordered to be paid from the treasury of said county not to exceed, in the case of a *294 one ward, the sum of twenty dollars in any one month. ..." (Stats. 1919, p. 476.)

These orders are valid for six-month periods. Provision is then made by the act for the keeping of books and reimbursements of the county by parents or guardians if found able, etc. On the part of the appellant and in order to establish the illegality of the state's claim it is necessarily argued that the making of any order by the superior court in relation to the maintenance of the wards being dealt with is purely optional or discretionary. Is this interpretation correct? The juvenile court law does not directly repeal the provisions of section 2 of the act of 1895 making it mandatory for the counties to pay to the state the sum of $11 per month for each ward committed either to the Preston School of

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Industry or the Whittier State School. Our attention has not been called to any portion of the juvenile court law which repeals the act of 1895 by necessary implication, and for the purpose of this decision we do not deem it necessary to refer to the act of 1895 further than to call attention to its mandatory provisions in which it is made obligatory upon the counties to pay the sum of $11 per month irrespective of any order or orders made by the superior court. In this connection we deem it proper to inquire as to the intent and purposes of the legislature in amending section 11 of the juvenile court law in 1919. It is a matter of common knowledge, a knowledge of which we think the court may take cognizance, that between the period of 1895, the date of the enactment of the law providing for the payment of $11 per month for the maintenance of the wards, and the year 1919, the cost of living and necessarily the cost of maintaining inmates at any of the state institutions practically doubled, and we think the legislature must have had this in mind in providing for the payment of a sum not exceeding $20 per month for each ward by the counties from which the wards were committed. There is another matter which must also be taken into consideration when determining the meaning of the word "may" as used in section 11 of the amendment to the juvenile court law and that is the uniform operation and effect to be given to such section. If the words contained in that section, relating to paying the state for the maintenance and support of wards committed to it from the different counties, are purely optional and discretionary, *295 then in that case it is possible for the larger counties, through the failure of the trial courts to exercise such option or discretion, to saddle the entire expense of maintaining their numerous wards upon the state, while other and smaller counties of the state where the commitments are few in number may exercise the option or discretion of providing for payment by the county, and thus a number of the counties of the state might be supporting their own wards and also contributing to the expense of maintaining wards committed from other counties where the option or discretion was either not exercised or if exercised determined in favor of the county. It is scarcely probable that the legislature intended by the words used to adopt a system that would have no uniformity of operation and leave the burden of maintaining the wards sent to the different institutions subject to any such shifting process. It seems to us the more reasonable conclusion that the legislature intended not to relieve the counties from the burden of maintaining their own wards but simply intended to limit the amount to a sum not exceeding $20. And also that the word "may" as used in section 11 of the amendment to the juvenile court law has a mandatory meaning and that the trial courts are not at liberty either to deny provision for the support of the wards committed to said institutions under the terms of that act or to shift the burden of maintaining such wards to other counties of the state by adding to the state's expenses in failing to exercise such power. In the Matter of Cencinino, 31 Cal. App. 238 [160 Pac. 167], this court in considering the meaning of the word "may," where the purpose of the law was to clothe a public officer with power to be exercised for the benefit of the public, said:

"The word 'may' as used in a statute or constitution is often interpreted to mean 'shall' or 'must.' Such interpretation always depends largely, if not altogether, on the object sought to be accomplished by the law in which that word is used. It seems to be the uniform rule that, where the purpose of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large--that is, where the public interest or private right requires that the thing should be done--then the language, though permissive in form, is peremptory. As was said by the Supreme Court of the United States in Su*296 visors v. United States, 4 Wall. (U. S.) 436 [[18 L. Ed. 419, see, also, Rose's U. S. Notes], construing a statute of the state of Illinois similarly phrased to the provision in question here: 'What they [public officers] are employed to do for a third person, the law requires shall be done. The power is given, not for their benefit, but for his. It is given as a remedy to those entitled to invoke its aid.' (See, also, Hayes v. County of Los Angeles, 99 Cal. 74 [33 Pac. 766].)"

In Hayes v. County of Los Angeles, 99 Cal. 74 [33 Pac. 766], the court, in construing section 3804 of the Political Code, where it is stated that the board of supervisors may by order, etc., provide for the refunding of taxes, used the following language:

"It is urged by respondent that the code, by providing that the board of supervisors may by order provide for refunding taxes, etc., paid more than

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once, made it optional with that body whether to do so or not, and that the board in this instance, having refused to refund, its action is conclusive upon the plaintiff. Where the public interest or private right requires that the thing should be done, then the word 'may' is generally construed to mean the same as 'shall.' (People v. Supervisors, 68 N. Y. 119.) Where the statute directs the doing of a thing for the sake of justice or the public good, the word 'may' is the same as the word 'shall.' (Rex v. Barlow, 2 Salk. 609.) Where a statute directs a thing to be done for justice's sake may means shall. (Selvey v. United States, 7 Court of Claims, 334.) Where persons or the public have an interest in having the act done by a public body, may in such a statute means must. (Phelps v. Hawley, 52 N. Y. 27; People v. Supervisors, 51 N. Y. 401. See Estate of Ballentine, 45 Cal. 696.)

"In Supervisors v. United States, 4 Wall. (U. S.) 436 [18 L. Ed. 419, see, also, Rose's U. S. Notes], a statute of Illinois provided that the board of supervisors 'may, if deemed advisable, levy a special tax,' etc. Mr. Justice Swayne sums up the authorities on the question as follows:

" 'The conclusion to be adduced from the authorities is, that where power is given to public officers, in the language of the act before us, or in equivalent language--whenever the public interest or individual rights call for its exercise--the language used, though permissive in form, is in fact peremptory. What they are empowered to do for a third *297 person, the law requires shall be done. The power is given, not for their benefit, but for his. It is placed with the depositary to meet the demands of right, and to prevent a failure of justice. It is given as a remedy to those entitled to invoke its aid, and who would otherwise be remediless.' "

To the same effect is the case of Brenner v. Los Angeles, 160 Cal. 72, 79 [[116 Pac. 397], where the previous California cases are cited with approval. In Estate of Ballentine, 45 Cal. 696, the court construing the provisions of the probate law, where it says that the trial court may set aside for the widow a homestead, it was held that the word "may" should be interpreted as a mandatory expression, a provision intended by the legislature to be made for the support of the family. It can scarcely be doubted that the legislature, in amending section 11 of the juvenile court law, intended likewise to make provision, or at least that provision should be made by the court having to do with juvenile cases, for their support and maintenance. In states outside of California it seems, also, to be held by an almost unbroken line of authorities that wherever the word "may" is used in reference to courts and officers such words will be regarded as imperative in cases where the public or individuals have the right to demand the exercise of the power conferred. (Note to State v. Henry, 5 L. R. A. (N. S.) 340.)

(1) It thus appears that, while the word "may" is primarily and ordinarily a permissive term and not peremptory, nevertheless, when the rights of the public or of other persons--in this case the State of California--are dependent upon the exercise of the power conferred, the word "may" takes on the mandatory form and that the performance of the act provided for is neither optional nor discretionary upon the person or officer designated and authorized to perform the act.

(2) While the payments were undoubtedly irregularly made by the auditor and treasurer of the County of Los Angeles, does that necessarily vitiate the claim of the state for payment of expenses incurred by the maintenance of the wards committed to the Preston School of Industry by the superior court of Los Angeles County? We think not. It was the duty of the court of Los Angeles County to make the order, and under the law, as we read it, it was also the duty of Los Angeles County to provide for the maintenance *298 of its own wards and not to shift that burden upon the state or upon other counties of the state who, following the statute, had made provision for the support and maintenance of their wards.

(3) This brings us to the consideration of section 1 of the act of 1893 (Stats. 1893, p. 57), which reads as follows:

"All persons who have, or shall hereafter have, claims on contract or for negligence against the state not allowed by the State Board of Examiners, are hereby authorized, on the terms and conditions herein contained, to bring suit thereon against the state in any of the courts of this state of competent jurisdiction, and prosecute the same to final

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judgment. The rules of practice in civil cases shall apply to such suits, except as herein otherwise provided."

There is no question of an express contract or obligation on the part of the state to refund or pay any money to the County of Los Angeles. It can only arise, if at all, by implication. Can it arise in this manner in this case?

The earliest case in the state of California upon this subject to which our attention has been called is that of Argenti v. San Francisco, 16 Cal. 255, where it is held that if one obtains or if the city obtains money from another by mistake, or without authority of law, or property which does not belong to it, the moral duty immediately arises to make restitution. This doctrine is supported by a large number of California cases and cases from other states. If applicable to the present case and assuming, as the supreme court did in the case of the County of San Luis Obispo v. Gage, 139 Cal. 408 [73 Pac. 174], that a county is a person having the right to maintain an action under the act of 1893, then in that case the judgment of the trial court should be reversed. But is the doctrine of the Argenti case and others of similar import applicable? We think not. There is no express contract existing between the State of California and the County of Los Angeles for the payment of any part or portion of the sum claimed by the appellant. The moral obligations, as we have seen, all rest upon the County of Los Angeles. There is no violation of the principle of good conscience or right dealing on the part of the state in accepting and receiving the money from the County of Los Angeles which should have been paid to it by orders of the superior court of that county, for the maintenance of wards transferr *29! from the County of Los Angeles and placed within the care, custody, and control of the institutions of the state, in which institutions, as we have seen, the costs of maintaining the several wards were intended to be borne by the counties making the commitments. If it was the intent of the legislature, as evidenced by the acts to which we have referred and the interpretation which we think should be given by these acts, that the several counties should bear the burden of maintaining their own wards sent to the Preston School of Industry, not exceeding the sum of $20 per month, then, and in that case, the state had a moral and a legal claim against the County of Los Angeles, and therefore has received nothing from the County of Los Angeles which in good conscience it should restore. This being true, then there is no contract, either express or implied, arising under the provisions of section 1 of the act of 1893 heretofore referred to. That the county auditor of the County of Los Angeles, before drawing warrants in favor of the state, and the treasurer of said county, before paying the same, should have been fortified by orders of the superior court does not affect the claim of the state. In other words, the irregularity in payment does not reach down into and affect the validity of the claim itself or taint it with any moral turpitude which would cause or necessitate the court to attach to the receipt of money an implied contract to refund the same to the County of Los Angeles. As to whether a county is or is not a person within the meaning of the act of 1893, and is entitled to prosecute a suit against the state, we express no opinion, the determination of that question not being necessary to the decision herein. For the reason hereinbefore given we are of the opinion that the judgment of the trial court, following its order sustaining the defendant's demurrer without leave to amend, should be affirmed and it is so ordered.

Finch, P. J., and Hart, J., concurred.

Cal.App. 3 Dist. 1923.

COUNTY OF LOS ANGELES, Appellant, v. STATE OF CALIFORNIA, Respondent.

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§ 195. Public employee

"Public employee" means an officer, agent, or employee of a public entity.

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(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

<General Materials (GM) - References, Annotations, or Tables>

LAW REVISION COMMISSION COMMENT

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This **definition** specifically includes **public officers** and agents, thereby eliminating any distinction between employees and officers and making it unnecessary to repeat the phrase "officer, agent, or employee" in numerous code sections. [7 Cal.L.Rev.Comm. Reports 1 (1965)]

CROSS REFERENCES

Definitions,
Public entity, see Evidence Code § 200.
Public officers and employees, see Government Code § 3101; Military and Veterans Code §§ 389, 395.3.

LIBRARY REFERENCES

1995 Main Volume

Officers and Public Employees ⚷1.
WESTLAW Topic No. 283.
C.J.S. Officers and Public Employees §§ 2 to 15.

Legal Jurisprudences
Cal Jur 3d Evid §§ 119, 280, 370, 592.
Am Jur 2d Public Officers and Employees § 1.

Treatises and Practice Aids
1 Witkin, Evidence (4th ed) Intro--Evid § 17.

West's Ann. Cal. Evid. Code § 195

CA EVID § 195

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§ 200. Public entity

"Public entity" includes a nation, state, county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation, whether foreign or domestic.

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(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

<General Materials (GM) - References, Annotations, or Tables>

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The broad definition of "public entity" includes every form of public authority, both foreign and domestic. Occasionally, "public entity" is used in the Evidence Code with limiting language to refer specifically to entities within this State or the United States. E.g., Evidence Code § 452(b). Cf. Evidence Code § 452(f). [7 Cal.L.Rev.Comm. Reports 1 (1965)]

CROSS REFERENCES

State, definition, see Evidence Code § 220.

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1995 Main Volume

Municipal Corporations ⚷1.
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations §§ 1, 3, 4, 34.

Legal Jurisprudences
Cal Jur 3d Evid §§ 20, 31, 33, 71, 119, 285, 322, 370, 371, 434, 466, 592;
Negl § 92.

Treatises and Practice Aids
Witkin, Summary (9th ed) Torts §§ 232, 822.
1 Witkin, Evidence (4th ed) Intro--Evid § 17.
1 Witkin, Evidence (4th ed) Jud Notice §§ 18, 28.
2 Witkin, Evidence (4th ed) Witnesses §§ 105, 125, 248.
The Rutter Group, Civil Procedure Before Trial (Weil & Brown) § 7:17.4.

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The Rutter Group, Civil Trials and Evidence (Wegner, Fairbank, Epstein & Chernow) § 8:422.

Additional References
Jefferson's California Evidence Benchbook, 2nd Edition (CEB, 1982) §§ 42.1, 43.1, 47.2.

NOTES OF DECISIONS

Construction and application 1
Head of public entity 2

1. Construction and application

As respects definition of "public entity" under this section, each of listed entities, as well as classification found in concluding language, describes independent body politic with sovereignty and not department or office within entity; while "public agency" may be somewhat vague term, its use as part of definition of "public entity" must contemplate body with some degree of sovereignty since to construe "public agency" any other way would be to destroy concept of "entity." Vallas v. City of Chula Vista (App. 4 Dist. 1976) 128 Cal.Rptr. 469, 56 Cal.App.3d 382.

2. Head of a public entity

When city manager and police chief promulgated police department manual, they were acting as heads of a "public entity," and provision of manual governing discharge of firearms was a "regulation" within meaning of § 669 giving rise to a presumption of failure to exercise due care when person violates the regulation of a public entity, with result that such presumption of lack of due care arose where police officer fatally shot person under circumstances where firing weapon violated the provisions of the manual. Peterson v. City of Long Beach (1979) 155 Cal.Rptr. 360, 24 Cal.3d 238, 594 P.2d 477.

West's Ann. Cal. Evid. Code § 200

CA EVID § 200

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EXHIBIT O

PROPOSED CONFERENCE REPORT NO. 1 - August 27, 1996
AB 1562 (Alby)
As Amended June 18, 1996
2/3 vote. Urgency

ASSEMBLY: 71-1 (January 31, 1996) SENATE: 35-0 (August 8, 1996)

ASSEMBLY CONFERENCE: 3-0 SENATE CONFERENCE: 2-0

Ayes: Alby, Boland, Escutia Ayes: Boatwright, Johnson

Original Committee Reference: PUB. S.

SUMMARY: Creates a three-tiered system of public notification concerning specified sex offenders. Specifically, the conference committee amendments:

1) Make legislative findings and declarations.

2) Provide that when a peace officer reasonably suspects, as defined, that a child or other person may be at risk, as defined, from a sex offender convicted of a specified crime, a law enforcement agency may provide specified information about that registered sex offender that the agency deems relevant and necessary to protect the public, persons, agencies, or organizations the offender is likely to encounter, as defined.

3) Provide that information may be given to public and private educational institutions, day care establishments, and establishments that primarily serve individuals likely to be victimized by the offender and other community members at risk.

4) Provide that information that may be disclosed includes the offender's name and known aliases, gender, race, physical description, photograph, date of birth, crimes resulting in registration (including dates), address, license plate number and description of vehicle, relevant parole and probation conditions, and date of release from confinement.

5) Provide that if information is disclosed, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders is to be included.

6) Allow a law enforcement agency to advise the public of the presence of a high-risk sex offender, as defined, in its community. Requires the Department of Justice (DOJ) to continually search provided records and identify high-risk sex offenders, as specified. DOJ and any law enforcement agency make this information public by whatever means deemed necessary to ensure the public safety.

7) Provide that agencies disseminating information to the public shall maintain records of the offender and the means and dates

of dissemination for a minimum of five years.

8) State that law enforcement agencies, employees, and state officials shall be immune from liability for good faith conduct.

9) Provide that persons who use disclosed information to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year prison term. Persons who use disclosed information to commit a misdemeanor shall be subject to, in addition and consecutive to any other punishment, a fine of not less than $500 and not more than $1,000.

10) With respect to DOJ's 1-900 number, this bill expands list of sex offenses for which the DOJ shall continually compile information as well as the identifying information that is compiled.

11) Repeal the subdirectory provisions of current law, and supplants it with an expanded CD-ROM system or other electronic medium, as specified. The conference committee amendments require DOJ to distribute the CD-ROM on a quarterly basis to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and to other specified law enforcement agencies.

12) Require that the CD-ROM or other electronic medium shall be made available for public viewing, as specified. Penalties for misuse are provided. Immunity from liability is provided when a law enforcement agency, employee, or state official acted in good faith.

13) Require DOJ to make a report on the "900" telephone number to the Legislature on or before July 1, 2000. The report shall include all of the following: number of calls received by county, number of calls that did and did not result in a positive response, number of persons listed pursuant to this provision, a summary of the success of the "900" telephone number based on selected factors, and specified statistical information concerning prosecutions for misuse.

14) Incorporate changes made to Penal Code (PC) Section 290 by AB 401 (Setencich), pending in the Assembly. The conference committee amendments provide that these changes shall only be effective if: a) both bills are enacted and become effective on or before January 1, 1997, but this bill become operative

first; b) each bill amends PC Section 290; and c) this bill is enacted after AB 401, in which case PC Section 290, as amended by Section 2 in this bill, shall remain operative only until the operative date of AB 401, at which time Section 2.5 in this bill shall become operative.

15) Make technical and clarifying changes.

FISCAL EFFECT: None

EXISTING LAW requires:

1) A specified sex offender to register with local officials, as provided, within 14 days of coming into the city, county or city and county in which the offender temporarily resides or is domiciled for that length of time. Further, persons required to register shall update their registrations annually, within 10 days of their birthdays. Failure to register is a punishable offense.

2) DOJ to continually compile specified information on offenders required to register under PC Section 290. DOJ shall operate a "900" telephone number
that members of the public may call and inquire whether a named individual is listed among those required to register.

AS PASSED BY THE ASSEMBLY, this bill provided that a law enforcement officer may disclose the identity and the location of a person required to register under this section in order to preserve the public safety or to serve another legitimate law enforcement purpose.

The Senate amendments:

1) Added an urgency clause.

2) Provided that police departments and sheriff's offices shall release information necessary to protect the public concerning persons required to register as sex offenders. This information may include the identity and location of those persons. Provided that no law enforcement agency shall release the identity of any victim of any person required to register.

3) Provided that the information shall be released pursuant to guidelines established by the Attorney General.

BACKGROUND:

1) According to the author:

Public consternation surrounding the release of the "Pillowcase Rapist" Reginald Muldrew from California Department of Corrections custody underscores the need for amendments to Penal Code Section 290 that would permit law enforcement officers to inform the public of the identity and whereabouts of predatory sex offenders. Before the enactment of AB 2500 in 1994, which set up a public inquiry system for the identities of convicted child molesters, sex offenders were permitted complete anonymity. Today, citizens may use a 1-900 telephone line to confirm that a person with access to children is a registered child molester. Shortly, they will also be able to consult a "subdirectory" of the

"worst-of-the-worse" pedophile sex registrants at police and sheriffs' offices. However, law enforcement officers are still forbidden from disclosing to the public that a person is a sex registrant, even when such disclosure will prevent victimization or otherwise serve public safety objectives. AB 1562 will change that and, in effect, give the benefit of the doubt to the pubic rather than to the convicted sex offenders.

2) California, like 23 other states, has a registration requirement for those convicted of felony sex offenses. PC Section 290 registrants currently number some 64,000 persons, about 60% (40,000) of whom were found guilty of sex offenses against children.

3) Knowing the identity of sex registrants empowers parents to protect their children from exposure to persons who might do them harm. Likewise, adult victims would similarly be empowered. It deters sex offenders from re-offending by increasing public awareness of their proclivities, thereby discouraging them from contact with children.

4) DOJ evaluated the recidivism patterns of sex offenders and conducted a
15-year follow-up of sex offenders first arrested in 1973. An analysis of subsequent arrests over the 15-year period (1973-1988) found that nearly one-half (49.4%) were re-arrested for some type of offense and almost 20% (19.7%) for a subsequent sex offense. Sex offenders whose first arrest was for rape by force or threat had the highest recidivism rate, 63.4% for any offense and 25.5% for a subsequent sex offense. The high recidivist rate could be attributed, in part, to the anonymity of the sex offender.

5) Three-Tiered Approach for Community Notification:

a) Tier I - Public Inquiry. This bill expands and clarifies the type of information provided by the current "1-900" telephone number. In addition to the "1-900" telephone system currently in place, DOJ will create and make accessible a CD-ROM or other electronic medium system available to specified law enforcement agencies for public viewing.

b) Tier II - Law Enforcement Disclosure. This bill authorizes a peace officer who reasonably suspects that a child or other person may be at risk from a sex offender convicted of a specified crime to provide specified information about that registered sex offender that the law enforcement agency deems relevant and necessary to protect the public, persons, agencies, or organizations the offender is likely to encounter, as defined.

The information that may be disclosed includes the offender's name and known aliases, gender, race, physical description, photograph, date of birth, crimes resulting in

registration (along with dates), address, license plate number and description of vehicle, relevant parole and probation conditions, and date of release from confinement.

The purpose of disclosing such information is to allow the public to protect themselves and their children from sex offenders.

c) Tier III - Public Notification. Under Tier III, law enforcement is authorized to "cause to be made public, by whatever means the agency deems necessary to ensure the public safety based upon information available to the agency concerning a specific person." The notification under Tier III applies only to "high-risk sex offenders," as defined. Only specified information would be released to the public and penalties for misuse are provided.

ARGUMENTS IN SUPPORT: Proponents argue that before the enactment of AB 2500 (Alby), Chapter 867, Statutes of 1994, which established a public inquiry system for the identities of convicted child molesters, sex offenders were permitted complete anonymity. The 1-900 Child Molester ID Line has been very successful, helping parents identify more than 400 dangerous pedophiles who had acted suspiciously with children.

Recently, the Congress unanimously passed "Megan's Law," requiring states to disclose to the public information about dangerous sex

offenders. On May 17, President Clinton signed this bill into law, thus setting the stage for the passage of this bill, which will launch Megan's Law in California and fulfill the requirements of the federal law.

Failure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly $5 million in formula Byrne Grant funding.
Empowering communities with relevant information about dangerous sex offenders makes good sense and can help prevent future victimization of California's most vulnerable citizens.

ARGUMENTS IN OPPOSITION: Opponents argue that community notification, rather than protecting the public, tends to give residents an illusion of security, diverting attention away from danger from those never convicted of a crime. The reality is most sex offenses are committed by people Californians are not aware pose a threat: friends, relatives, and others. Community notification tends to generate hysteria about a small group of people for a short period of time. It does not solve a problem, it merely moves ex-offenders around as they are driven from community to community.

Analysis prepared by: Martin Gonzalez / apubs / (916) 445-3268

FN

029425

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 136--VIOLENT CRIME CONTROL AND LAW ENFORCEMENT
SUBCHAPTER VI--CRIMES AGAINST CHILDREN

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Current through P.L. 107-11, approved 5-28-01

§ 14071. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

(a) In general

(1) State guidelines

The Attorney General shall establish guidelines for State programs that require--

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6) of this section; and

(B) a person who is a sexually violent predator to register a current address unless such requirement is terminated under subparagraph (B) of subsection (b)(6) of this section.

(2) Determination of sexually violent predator status; waiver; alternative measures

(A) In general

A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

(B) Waiver

The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(C) Alternative measures

The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.

(3) Definitions

For purposes of this section:

(A) The term "criminal offense against a victim who is a minor" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

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(i) kidnapping of a minor, except by a parent;

(ii) false imprisonment of a minor, except by a parent;

(iii) criminal sexual conduct toward a minor;

(iv) solicitation of a minor to engage in sexual conduct;

(v) use of a minor in a sexual performance;

(vi) solicitation of a minor to practice prostitution;

(vii) any conduct that by its nature is a sexual offense against a minor; or

(viii) an attempt to commit an offense described in any of clauses (i) through (vii), if the State--

(I) makes such an attempt a criminal offense; and

(II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term "sexually violent offense" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of Title 18 or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of Title 18 or as described in the State criminal code).

(C) The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(D) The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(E) The term "predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(F) The term "employed, carries on a vocation" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(G) The term "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

(b) Registration requirement upon release, parole, supervised release, or probation

An approved State registration program established under this section shall contain the following elements:

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(1) Duties of responsible officials

(A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, the court, or another responsible officer or official, shall--

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;

(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;

(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1) of this section, the State prison officer, the court, or another responsible officer or official, as the case may be, shall obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) Transfer of information to State and FBI; participation in National Sex Offender Registry

(A) State reporting

State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

(B) National reporting

A State shall participate in the national database established under section 14072(b) of this title in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.

(3) Verification

(A) For a person required to register under subparagraph (A) of subsection (a)(1) of this section, State procedures shall provide for verification of address at least annually.

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1) of this section, except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

(4) Notification of local law enforcement agencies of changes in address

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A change of address by a person required to register under this section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.

(5) Registration for change of address to another State

A person who has been convicted of an offense which requires registration under this section and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.

(6) Length of registration

A person required to register under subsection (a)(1) of this section shall continue to comply with this section, except during ensuing periods of incarceration, until--

(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

(B) for the life of that person if that person--

(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A) of this section; or

(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A) of this section; or

(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2) of this section.

(7) Registration of out-of-State offenders, Federal offenders, persons sentenced by courts martial, and offenders crossing State borders

As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from--

(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and

(B) nonresident offenders who have crossed into another State in order to work or attend school.

(c) Registration of offender crossing State border

Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.

(d) Penalty

A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

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(e) Release of information

(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.

(f) Immunity for good faith conduct

Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

(g) Compliance

(1) Compliance date

Each State shall have not more than 3 years from September 13, 1994, in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

(2) Ineligibility for funds

(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.

(B) Reallocation of funds

Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

(h) Fingerprints

Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 14072(h) of this title.

(i) Grants to States for costs of compliance

(1) Program authorized

(A) In general

The Director of the Bureau of Justice Assistance (in this subsection referred to as the "Director") shall carry out a program, which shall be known as the "Sex Offender Management Assistance Program" (in this subsection referred to as the "SOMA program"), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

(B) Uses of funds

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Each grant awarded under this subsection shall be--

(i) distributed directly to the State for distribution to State and local entities; and

(ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

(2) Eligibility

(A) Application

To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonably require) assuring that--

(i) the State complies with (or made a good faith effort to comply with) this section; and

(ii) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes listed in this section, except that the Director may waive the requirement of this clause if a State demonstrates an overriding need for assistance under this subsection.

(B) Regulations

(i) In general

Not later than 90 days after October 30, 1998, the Director shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this subsection. In allocating funds under this subsection, the Director may consider the annual number of sex offenders registered in each eligible State's monitoring and notification programs.

(ii) Certain training programs

Prior to implementing this subsection, the Director shall study the feasibility of incorporating into the SOMA program the activities of any technical assistance or training program established as a result of section 13941 of this title. In a case in which incorporating such activities into the SOMA program will eliminate duplication of efforts or administrative costs, the Director shall take administrative actions, as allowable, and make recommendations to Congress to incorporate such activities into the SOMA program prior to implementing the SOMA program.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection, $25,000,000 for each of fiscal years 1999 and 2000.

CREDIT(S)

1995 Main Volume

(Pub.L. 103-322, Title XVII, § 170101, Sept. 13, 1994, 108 Stat. 2038.)

2001 Electronic Update

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(As amended Pub.L. 104-145, § 2, May 17, 1996, 110 Stat. 1345; Pub.L. 104-236 §§ 3 to 7, Oct. 3, 1996, 110 Stat. 3096, 3097; Pub.L. 105-119, Title I § 115(a)(1) to (5), Nov. 26, 1997, 111 Stat. 2461 to 2463; Pub.L. 105-314, Title VI, § 607(a), Oct. 30, 1998, 112 Stat. 2985; Pub.L. 106-386, Div. B, Title VI, § 1601(b)(1), Oct. 28, 2000, 114 Stat. 1537.)

ENACTMENT OF SUBSEC. (J)

<Pub.L. 106-386, Div. B, Title VI § 1601(b)(1), (2), Oct. 28, 2000, 114 Stat. 1537, provided that, to take effect two years after Oct. 28, 2000, this section is amended by adding at the end the following new subsec. (j):>

<(j) Notice of enrollment at or employment by institutions of higher education>

<(1) Notice by offenders>

<(A) In general>

<In addition to any other requirements of this section, any person who is required to register in a State shall provide notice as required under State law-->

<(i) of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student; and>

<(ii) of each change in enrollment or employment status of such person at an institution of higher education in that State.>

<(B) Change in status>

<A change in status under subparagraph (A)(ii) shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated information is promptly made available to a law enforcement agency having jurisdiction where such institution is located and entered into the appropriate State records or data system.>

<(2) State reporting>

<State procedures shall ensure that the registration information collected under paragraph (1)-->

<(A) is promptly made available to a law enforcement agency having jurisdiction where such institution is located; and>

<(B) entered into the appropriate State records or data system.>

<(3) Request>

<Nothing in this subsection shall require an educational institution to request such information from any State.>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report Nos. 103-324, 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

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1996 Acts. House Report No. 104-555, see 1996 U.S. Code Cong. and Adm. News, p. 980.

1997 Acts. House Conference Report No. 105-405, see 1997 U.S. Code Cong. and Adm. News, p. 2942.

1998 Acts. House Report No. 105-557, see 1998 U.S. Code Cong. and Adm. News, p. 684.

2000 Acts. House Report No. 106-939, see 2000 U.S. Code Cong. and Adm. News, p. 1380.

Codifications

Section 115(a)(2)(C)(ii) of Pub.L. 105-119, which directed that subsec. (b)(3)(A) be amended "by striking clauses (i) through (v)", was executed by striking clauses (i) through (iv), as the probable intent of Congress, since no clause (v) was ever enacted under subsec. (b)(3)(A) of this section.

Section 115(a)(4) and (5) of Pub.L. 105-119, which directed amendment of subsecs. (e)(2) and (f), respectively, as redesignated by "subsection (c) of this section", were executed to such subsections as redesignated by section 115(a)(3) of this Act, to reflect the probable intent of Congress.

Amendments

2000 Amendments. Subsec. (j). Pub.L. 106-386, § 1601(b)(1), added subsec. (j).

1998 Amendments. Subsecs. (g), (h). Pub.L. 105-31 § 607(a)(1), redesignated subsec. (g), formerly set out second, as subsec. (h).

Subsec. (i). Pub.L. 105-314, § 607(a)(2), added subsec. (i).

1997 Amendments. Subsec. (a)(1). Pub.L. 105-11 § 115(a)(1)(A), struck out "with a designated State law enforcement agency" in subpars. (A) and (B).

Subsec. (a)(2). Pub.L. 105-119, § 115(a)(1)(B), rewrote par. (2), which formerly read:

"(2) Court determination.--A determination that a person is a sexually violent predator and a determination that a person is no longer a sexually violent predator shall be made by the sentencing court after receiving a report by a State board composed of experts in the field of the behavior and treatment of sexual offenders, victim rights advocates, and representatives from law enforcement agencies."

Subsec. (a)(3)(A). Pub.L. 105-119 § 115(a)(1)(C)(i), substituted "in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:" for "that consists of--".

Subsec. (a)(3)(B). Pub.L. 105-119 § 115(a)(1)(C)(ii), substituted "in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by" for "that consists of".

Subsec. (a)(3)(F), (G). Pub.L. 105-119, § 115(a)(1)(D), added subpars. (F) and (G).

Subsec. (b)(1). Pub.L. 105-11 § 115(a)(2)(A)(i), substituted "Duties of responsible officials" for "Duty of State prison official or court".

Subsec. (b)(1)(A). Pub.L. 105-119 § 115(a)(2)(A)(ii)(I), in the matter preceding cl. (i), substituted "the court, or another responsible officer or official" for "or in the case of probation, the court".

Subsec. (b)(1)(A)(ii). Pub.L. 105-11 § 115(a)(2)(A)(ii)(II), substituted "report the change of address as

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provided by State law" for "give the new address to a designated State law enforcement agency in writing within 10 days".

Subsec. (b)(1)(A)(iii). Pub.L. 105-119 § 115(a)(2)(A)(ii)(III), substituted "shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student" for "shall register the new address with the law enforcement agency with whom the person last registered, and the person is also required to register with a designated law enforcement agency in the new State not later than 10 days after establishing residence in the new State, if the new State has a registration requirement".

Subsec. (b)(1)(B). Pub.L. 105-119, § 115(a)(2)(A)(iii), substituted ", the court, or another responsible officer or official" for "or the court".

Subsec. (b)(2). Pub.L. 105-119, § 115(a)(2)(B), rewrote par. (2), which formerly read:

"(2) Transfer of information to State and the FBI.--The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit all information described in paragraph (1) to the Federal Bureau of Investigation for inclusion in the FBI database described in section 14072 of this title.".

Subsec. (b)(3)(A). Pub.L. 105-1 { 115(a)(2)(C)(i), in the matter preceding cl. (i), substituted "State procedures shall provide for verification of address at least annually." for "on each anniversary of the person's initial registration date during the period in which the person is required to register under this section the following applies:".

Subsec. (b)(3)(A)(i) to (v)[iv]. Pub.L. 105-11 § 115(a)(2)(C)(ii), struck out cls. (i) through (v)[iv], which formerly read:

"(i) The designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

"(ii) The person shall mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form.

"(iii) The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency. The person shall include with the verification form, fingerprints and a photograph of that person.

"(iv) If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed the residence address.". See Codifications note set out under this section.

Subsec. (b)(4). Pub.L. 105-11 § 115(a)(2)(D), substituted "section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system" for "section reported to the designated State law enforcement agency shall be immediately reported to the appropriate law enforcement agency having jurisdiction where the person is residing. The designated law enforcement agency shall, if the person changes residence to another State, notify

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the law enforcement agency with which the person must register in the new State, if the new State has a registration requirement".

Subsec. (b)(5). Pub.L. 105-119 § 115(a)(2)(E), substituted "and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration" for "shall register the new address with a designated law enforcement agency in another State to which the person moves not later than 10 days after such person establishes residence in the new State, if the new State has a registration requirement".

Subsec. (b)(7). Pub.L. 105-119, § 115(a)(2)(F), added par. (7).

Subsecs. (c), (d). Pub.L. 105-119 § 115(a)(3), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub.L. 105-1 { 115(a)(3), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub.L. 105-119 § 115(a)(4), in subsec. (e)(2), as so redesignated by section 115(a)(3) of this Act, substituted "The State or any agency authorized by the State" for "The designated State law enforcement agency and any local law enforcement agency authorized by the State agency".

Subsec. (f). Pub.L. 105-1 { 115(a)(3), redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Pub.L. 105-119, § 115(a)(5), in subsec. (f), as so redesignated by section 115(a)(3) of this Act, substituted "and independent contractors acting at the direction of such agencies, and State officials" for ", and State officials".

Subsec. (g). Pub.L. 105-119, § 115(a)(3), redesignated former subsec. (f) as (g).

1996 Amendments. Subsec. (a)(2). Pub.L. 104- { 4, included input of victim rights advocates and representatives from law enforcement agencies in State board report regarding court determination of whether a person is a sexually violent predator.

Subsec. (b)(2). Pub.L. 104-2: { 7, required State law enforcement agency to transmit all information described in par. (1) to the FBI for inclusion in the FBI database described in section 14072 of this title rather than the transmission of the conviction data and fingerprints to the FBI.

Subsec. (b)(3)(A)(iii). Pub.L. 104-2: { 6, added "The person shall include with the verification form, fingerprints and a photograph of that person." at the end thereof.

Subsec. (b)(6). Pub.L. 104-236 § 3, extending duration of State registration requirement to 10 years or the life of the person for provisions requiring such registration requirement for 10 years and termination of such registration upon a determination that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

Subsec. (d). Pub.L. 104-145 § 2, amended subsec. generally, substituting provisions authorizing disclosure of information for any permitted purpose and directing State and local law enforcement agencies to release information necessary to protect the public, for provisions directing that information be treated as private data except for law enforcement purposes, for confidential background checks, and except that State and local law enforcement agencies may release information necessary to protect the public.

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Subsec. (g). Pub.L. 104-236, § 5, added subsec. (g).

Effective and Applicability Provisions

2000 Acts. Pub.L. 106-386, Div. B, Title VI, § 1601(b)(2), Oct. 28, 2000, 114 Stat. 1537, provided that: "The amendment made by this subsection [amending this section] shall take effect 2 years after the date of the enactment of this Act [Oct. 28, 2000]."

1997 Acts. Section 115(c) of Pub.L. 105-119 provided that: "This section [amending this section, section 14072 of this title, and sections 3521, 3563, 3583, 4042, and 4209 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section, section 14039 of this title, and section 951 of Title 10, Armed Forces] shall take effect on the date of the enactment of this Act [Nov. 26, 1997], except that--

"(1) subparagraphs (A), (B), and (C) of subsection (a)(8) [amending sections 3563, 3583, 4042, and 4209 of Title 18 and enacting provisions set out as a note under section 951 of Title 10] shall take effect 1 year after the date of the enactment of this Act [Nov. 26, 1997]; and

"(2) States shall have 3 years from such date of enactment [Nov. 26, 1997] to implement amendments made by this Act [Pub.L. 104-119; see Tables for classifications] which impose new requirements under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act [this subchapter], and the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement these amendments."

1996 Acts. Section 10 of Pub.L. 104-236, as amended Pub.L. 105-119, Title I § 115(a)(7), Nov. 26, 1997, 111 Stat. 2464, provided that:

"(a) In general.--This Act and the amendments made by this Act [enacting sections 14072 and 14073 of this title, amending this section, and enacting provisions set out as notes under this section and section 13701 of this title] shall become effective 1 year after the date of enactment of this Act [Oct. 3, 1996].

"(b) Compliance by States.--Each State shall implement the amendments made by sections 3, 4, 5, 6, and 7 of this Act [amending this section] not later than 3 years after the date of enactment of this Act, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement such amendments.

"(c) Ineligibility for funds.--

"(1) A State that fails to implement the program as described in sections 3, 4, 5, 6, and 7 of this Act [amending this section] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756) [section 3756 of this title].

"(2) Any funds that are not allocated for failure to comply with section 3, 4, 5, 6, or 7 of this Act [amending this section] shall be reallocated to States that comply with these sections.

"(d) Effective date.--States shall be allowed the time specified in subsection (b) [of this note] to establish minimally sufficient sexual offender registration programs for purposes of the amendments made by section 2 [section 14072 of this title]. Subsections (c) and (k) of section 170102 of the Violent Crime Control and Law Enforcement Act of 1994 [section 14072(c) and (k) of this title], and any requirement to issue related regulations, shall take effect at the conclusion of the time provided under this subsection [this note] for the establishment of minimally sufficient sexual offender registration programs."

Severability of Provisions

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Section 11 of Pub.L. 104-236 provided that: "If any provision of this Act, an amendment made by this Act [see Effective Date of 1996 Acts note set out under this section], or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act [see Effective Date of 1996 Acts note set out under this section], the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby."

Promulgation of Regulations

Section 9 of Pub.L. 104-236 provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 3, 1996], the Attorney General shall issue regulations to carry out this Act and the amendments made by this Act [see Effective Date of 1996 Acts note set out under this section]."

Study of Sex Offender Management Assistance Program

Pub.L. 105-314, § 607(b), Oct. 30, 1998, 112 Stat. 2986, provided: "Not later than March 1, 2000, the Director shall conduct a study to assess the efficacy of the Sex Offender Management Assistance Program under section 170101(i) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(i) [subsec. (i) of this section]), as added by this section, and submit recommendations to Congress."

Study of Hotlines

Pub.L. 105-314, Title IX, § 902, Oct. 30, 1998, 112 Stat. 2991, provided:

"(a) IN GENERAL.--Not later than 1 year after the date of enactment of this Act [Oct. 30, 1998], the Attorney General shall conduct a study in accordance with subsection (b) and submit to Congress a report on the results of that study.

"(b) CONTENTS OF STUDY.--The study under this section shall include an examination of--

"(1) existing State programs for informing the public about the presence of sexual predators released from prison, as required in section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071), including the use of CD-ROMs, Internet databases, and Sexual Offender Identification Hotlines, such as those used in the State of California; and

"(2) the feasibility of establishing a national hotline for parents to access a Federal Bureau of Investigation database that tracks the location of convicted sexual predators established under section 170102 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072) and, in determining that feasibility, the Attorney General shall examine issues including the cost, necessary changes to Federal and State laws necessitated by the creation of such a hotline, consistency with Federal and State case law pertaining to community notification, and the need for, and accuracy and reliability of, the information available through such a hotline.".

LIBRARY REFERENCES

American Digest System

Criminal prosecutions under laws for protection of children, see Infants ⚷20.

Discharge of prisoner by prison authorities in general, see Prisons ⚷14.

Parole conditions; status, rights, and supervision of parolee, see Pardon and Parole ⚷64 et seq., 66, 68.

Prevention and investigation of crime generally; criminal records, see Criminal Lav ⚷1222 et seq., 1226(1 to

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5).

Encyclopedias

Criminal prosecutions under laws for protection of children, see C.J.S. Infants §§ 92 et seq., 100 et seq.

Discharge of prisoner by prison authorities in general, see C.J.S. Prisons and Rights of Prisoners §§ 154, 155.

Parole conditions; status, rights, and supervision of parolee, see C.J.S. Pardon and Parole §§ 55 et seq., 58.

Prevention and investigation of crime generally; criminal records, see C.J.S. Criminal Law § 1724 et seq.

Law Review and Journal Commentaries

Keeping children out of double jeopardy: An assessment of punishment and Megan's Law. 81 Minn.L.Rev. 501 (1996).

Megan's Law: Branding the sex offender or benefitting the community? 5 Seton Hall Const.L.J. 1127 (1995).

"Megan's Law": Community notification and the constitution. 29 Colum.J.L. & Soc.Probs. 117 (1995).

Megan's Law: Can it stop sexual predators--and at what cost to constitutional rights? Joel B. Rudin, 11 Crim.Just. 3 (Fall 1996).

Protection and treatment: Permissible civil detention of sexual predators. John Kip Cornwell, 53 Wash. & Lee L.Rev. 1293 (1996).

Sex offender registration and community notification: Protection, not punishment. 30 New Eng.L.Rev. 183 (1995).

NOTES OF DECISIONS

Equal protection rights 3
Privacy interests 2
Remedial nature of state laws 1

1. Remedial nature of state laws

Statutes for registration and community notification of convicted sex offenders were totally remedial in purpose, and any deterrent effect from offenders' loss of anonymity was merely inevitable consequence, which thus supported conclusion that statutes did not impose punishment for purposes of constitutional challenges under ex post facto, double jeopardy, bill of attainder, and cruel and unusual punishment clauses; statutes were designed solely to enable public to protect itself from danger posed by sex offenders who were widely regarded as having highest risk of recidivism. Doe v. Poritz, N.J.1995, 662 A.2d 367, 142 N.J. 1, 36 A.L.R.5th 711.

2. Privacy interests

State interest in public disclosure of sex offender's name, home address, appearance, and crime as required by convicted sex offender community notification statute substantially outweighed offender's limited privacy interest under Federal Constitution, in light of public nature of information, express public policy of protecting public from danger of recidivism posed by sex offenders, and calibration of degree and scope of disclosure by need for disclosure and risk of reoffense. Doe v. Poritz, N.J.1995, 662 A.2d 367, 142 N.J. 1, 36 A.L.R.5th 711.

3. Equal protection rights

Statutory registration and community notification requirements for convicted sex offenders were rationally related to legitimate state interest of

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protecting public from risk from recidivist offenders and, thus, did not violate offender's federal equal protection rights even though he, unlike most convicted sex offenders, had successfully completed treatment program and had been released on parole. Doe v. Poritz, N.J.1995, 662 A.2d 367, 142 N.J. 1, 36 A.L.R.5th 711.

42 U.S.C.A. § 14071

42 USCA § 14071

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NOTICES

DEPARTMENT OF JUSTICE

Office of the Attorney General

[AG Order No. 2014-96]

RIN 1105-AA36

Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

Thursday, April 4, 1996

***15110** AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The United States Department of Justice (DOJ) is publishing Final Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

EFFECTIVE DATE: April 4, 1996.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Campbell, Director, Violence Against Women Office, U.S. Department of Justice, Tenth and Pennsylvania Avenue, NW, Washington, DC 20530, 202-616-8894.

SUPPLEMENTARY INFORMATION: Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (hereafter referred to as the "Jacob Wetterling Act" or "the Act"). The Act provides a financial incentive for states to establish 10-year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses, and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders, characterized as "sexually violent predators." States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in their Byrne Formula Grant funding (under 42 U.S.C. 3756), and resulting surplus funds will be reallocated to states that are in compliance with the Act.

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Summary of Comments on the Proposed Guidelines

On April 12, 1995, the U.S. Department of Justice published Proposed Guidelines in the Federal Register (60 FR 18613) to implement the Jacob Wetterling Act. The original 90 day comment period expired on July 11, 1995. To ensure the public ample opportunity to review and comment on the Proposed Guidelines, on September 14, 1995, the Department published a notice in the Federal Register to reopen the comment period for an additional 45 days (60 FR 47760). In addition, the Department mailed copies of the Proposed Guidelines to state registration authorities and requested their comments. The extended comment period closed on October 30, 1995.

Following the publication of the Proposed Guidelines, the Department of Justice received 19 letters, mostly from state officials. These letters contained numerous comments, questions, and recommendations, all of which were carefully considered in developing the Final Guidelines. A summary of the comments and responses to them are provided in the following paragraphs.

*15111 A. Coverage of the Jacob Wetterling Act

One respondent expressed concern that the Act does not provide for sex offender registration and notification in relation to military offenders who are convicted in court martial proceedings, in prosecutions under the federal criminal code, or in prosecutions by foreign host nations. In order to extend registration as far as possible to categories of convicted sex offenders who may not be within the scope of the statute as presently formulated, the Guidelines have been revised to encourage states to consider including federal and military sex offenders within their registration programs.

B. "Sexually Violent Predator" Determinations

1. Necessity for Determination

A number of respondents questioned the need for a two-tier registration system under which states must adopt means for determining whether an offender is a "sexually violent predator" and follow more stringent registration procedures for offenders so classified. The Department recognizes that this scheme may require states to make changes in their existing registration systems. The two-tier scheme was established by the Act, however, and cannot be modified by the Guidelines, absent legislative changes. As explained in the Final Guidelines, a two-tier approach can be dispensed with only if a state is willing to subject all persons convicted of a "sexually violent offense" to the more stringent registration requirements and standards provided by the Act for "sexually violent predators."

2. State Board of Experts

A number of commenters posed questions about the composition and activities of

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the state boards of experts that will assist sentencing courts in determining whether an offender is a "sexually violent predator". In particular, respondents questioned the necessity for using such boards, inquired as to what qualification experts must possess to serve on the boards, and raised concerns about the timing of the "sexually violent predator" determination. One commenter also expressed concerns about the ability of small states to assemble panels of experts.

States wishing to comply with the Act must utilize boards of experts to assist sentencing courts in making "sexually violent predator" determinations because the statue expressly requires this procedure. The Guidelines have been clarified to address commenters' other concerns, however. In particular, the Guidelines make clear that states are free to (1) determine who qualifies as an expert for purposes of board participation, (2) utilize out-of-state experts, and (3) decide at what point the "sexually violent predator" determination will be made.

3. Definition of "Sexually Violent Predator"

A number of commenters expressed concerns about the definition of "sexually violent predator" and sought various clarifications in the definition. The Guidelines have not been changed to reflect these concerns. The Act itself contains definitions of "sexually violent predator" and the component term "mental abnormality." The Guidelines cannot alter definitions appearing in the statute. Since the Act does not define the component term "personality disorder," the Guidelines already provide that the definition of this term is a matter of state discretion.

4. Required Documentation

One respondent expressed concern about the extent of documentation required by the Act concerning treatment received by a "sexually violent predator" for a mental abnormality or personality disorder. The Guidelines have been modified to reflect this concern. Under the Final Guidelines, states may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment.

The respondent also proposed that the Guidelines clarify that documentation of treatment history is a one-time event. However, this change is unnecessary because nothing in the Act or Guidelines states or suggests that the treatment history of a "sexually violent predator" must be updated following the initial submission of information.

5. Interaction with Insanity Defense

One respondent raised questions about the possible interaction between a determination that an offender is a "sexually violent predator" and the insanity defense. The commenter questioned whether a state may classify an offender as a "sexually violent predator" only when the offender successfully raised an insanity defense, and also questioned whether a determination that an offender is a

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"sexually violent predator" could bolster the offender's insanity claim.

The Guidelines have not been revised to reflect these concerns because there is no relationship between the two legal categories. Of course, if an offender had successfully raised an insanity defense, he could not be convicted for the offense charged, and no registration requirement based on that offense would arise under the Jacob Wetterling Act. Further, because the elements in the statutory definition of "sexually violent predator" do not establish the necessary elements of an insanity defense under state laws, a state could conclude that an offender is a "sexually violent predator," though the offender could not successfully raise an insanity defense. Finally, with regard to an offender who was classified as a "sexually violent predator" in connection with a previous prosecution and conviction, the Act does not contemplate any impact from that determination on the offender's ability to raise an insanity defense in a later prosecution.

C. State Law Enforcement Agency

1. Designation of Agency

One commenter posed questions concerning how, when, and by whom the state law enforcement agency responsible for registration matters is to be designated, and another expressed concerns about the types of entities that may be selected. The Guidelines have been revised to clarify that states have discretion with regard to the means by which an agency is designated as the state law enforcement agency, the timing of such a designation, and the agencies that may be designated.

2. Necessity for using a State Agency

A number of respondents questioned the necessity for using a state agency to receive registration information and conduct address verification. These commenters noted that in several states, registration and verification is conducted at the county or local level, rather than at the state level.

The Guidelines have not been revised to reflect these concerns. Although the Act provides that registration information is to be shared with local law enforcement agencies, it requires that this information be submitted to a state law enforcement agency and that the state agency also conduct address verification. These procedures, which are set forth clearly in the Act, cannot be modified by the Guidelines, absent statutory changes.

D. Public Access to Registration Information

One commenter expressed concern about the effect of the Act on a state's ability to disseminate registration information to the public. The Guidelines have not been modified to reflect this concern because they already ***15112** afford states the maximum discretion in this area that is consistent with the terms of the Act. The Guidelines make it clear that any restrictions placed by the Act on the disclosure of information do not constrain the release of information that a state

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would have independently of the operation of the registration system. Further, the Guidelines note and elaborate on the Act's provisions that registration information may be disclosed for certain law enforcement and background check purposes, and as necessary for public safety. The Guidelines also provide that states have discretion concerning the nature and extent of disclosure (including community notification and access to information on request by members of the public) that is necessary for public safety.

E. Compliance Review

One commenter suggested that the Department provide states with written feedback concerning their compliance with the Act no later than the date on which a state receives its Byrne Formula Grant Funding. This recommendation has not been adopted in the Guidelines because the Department is still in the process of developing compliance review procedures. States will be notified about these procedures as they are developed.

Final Guidelines

These guidelines carry out a statutory directive to the Attorney General, in section 170101)a)(1), to establish guidelines for registration systems under the Act. Before turning to the specific provisions of the Act, four general points should be noted concerning its interpretation and application.

First, states that wish to achieve compliance with the Jacob Wetterling Act should understand that its requirements constitute a floor for state registration systems, not a ceiling, and that they do not risk the loss of part of their Byrne Formula Grant funding by going beyond its standards. For example, a state may have a registration system that covers a broader class of sex offenders than those identified in the Jacob Wetterling Act, or requires address verification for such offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act.

Exercising these options creates no problem of compliance, since the provisions in the Jacob Wetterling Act concerning duration of registration, covered offenders, and other matters, do not preclude states from imposing additional or more stringent requirements than encompass the Act's baseline requirements. The general objective of the Act is to protect people from child molesters and violent sex offenders through registration requirements. It is not intended, and does not have the effect, of making states less free than they were under prior law to impose registration requirements for this purpose.

Second, states that wish to achieve compliance with the Jacob Wetterling Act also should understand that they may, within certain constraints, use their own criminal law definitions in defining registration requirements, and will not necessarily have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. This point will be explained more

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fully below.

Third, the Jacob Wetterling Act contemplates the establishment of programs that will impose registration requirements on offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and impose registration requirements on offenders who were convicted of offenses in these categories prior to the establishment of a conforming registration system. Nevertheless, the Act does not preclude states from imposing any new registration requirements on offenders convicted prior to the establishment of the registration system.

Fourth, the Act gives states wide latitude in designing registration programs that best meet their public safety needs. For instance, the Act allows states to release relevant information necessary to protect the public, including information released through community notification programs. Some state registration and notification systems have been challenged on constitutional grounds. A few courts have struck down registration requirements in certain cases. See Rowe v. Burton, 884 F. Supp. 1372 (D. Alaska 1994) (on motion for preliminary relief); State v. Babin, 637 So.2d 814 (La. App. 1994), writ denied, 644 So.2d 649 (La. 1994); State v. Payne, 633 So.2d 701 (La. App. 1993), writ denied, 637 So.2d 497 (La. 1994); In re Reed, 663 P.2d 216 (Cal. 1983) (en banc). However, a majority of courts that have dealt with the issue have held that registration systems like those contemplated by the Jacob Wetterling Act do not violate released offenders' constitutional rights.

Some recent decisions have held that aspects of New Jersey's community notification program violate due process guarantees, or violate ex post facto guarantees as applied to persons who committed the covered offense prior to enactment of the notification statute. See Artway v. Attorney General of New Jersey, 876 F. Supp. 666 (D.N.J. 1995) (appeal pending); W.P. v. Poritz, No. 96-97 (JWB) (D.N.J. Mar. 15, 1996); Diaz v. Whitman, No. 94- 6376 (JWB) (D.N.J. Jan. 6, 1995). However, the Department of Justice believes that the New Jersey community notification statute at issue in those cases does not violate the Ex Post Facto Clause and that the Fourteenth Amendment's Due Process Clause of its own force does not require recognition of such a liberty interest on the part of offenders affected by that statute, and has filed "friend of the court" briefs in cases challenging the New Jersey law. Moreover, the New Jersey Supreme Court, in John Doe v. Deborah Poritz, 662 A.2d 367 (N.J. 1995), upheld the New Jersey statute, although it imposed certain procedural protections under federal and state law.

There has been ongoing litigation over the validity of notification systems in other states as well. see, e.g., Doe v. Pataki, No. 96 Civ. 1657 (DC) (S.D.N.Y.); Nitz v. Otte, No. A95-486CI (JWS) (D. Alaska Jan. 25, 1996) (appeal pending).

The remainder of these guidelines address the provisions of the Jacob Wetterling Act in the order in which they appear in Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994.

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General Provisions--Subsection (a)(1)-(2)

Paragraph (1) of subsection (a) of §170101 directs the Attorney General to establish guidelines for state programs that require:

(A) Current address registration for persons convicted of "a criminal offense against a victim who is a minor" or "a sexually violent offense," and

(B) Current address registration under a different set of requirements for persons who are determined to be "sexually violent predators."

For purposes of the Act, "state" should be understood to encompass the political units identified in the provision defining "state" for purposes of eligibility for Byrne Formula Grant funding (42 U.S.C. 3791(a)(2)) in light of the tie-in between compliance with the Act and the allocation of Byrne Formula Grant funding. Hence, the "states" that must comply with the Act to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

***15113** Paragraph (2) of subsection (a) states that the determination whether a person is a "sexually violent predator" (which brings the more stringent registration standards into play), and the determination that a person is no longer a "sexually violent predator" (which terminates the registration requirement under those standards), shall be made by the sentencing court after receiving a report by a state board composed of experts in the field of the behavior and treatment of sexual offenders.

"State board" in paragraph (2) should be understood to mean a body or group containing two or more experts that is authorized by state law or designated under the authority of state law. Beyond the requirement that a board must be composed of experts in the field of the behavior and treatment of sexual offenders, the Act affords states discretion concerning the selection and composition of such boards. For example, a state could establish a single permanent board for this purpose, could establish a system of state-designated boards, or could authorize the designation of different boards for different courts, time periods, geographic areas or cases. In addition, the Act permits states to set their own standards concerning who qualifies as an expert in the field of the behavior and treatment of sexual offenders for purposes of board participation, and to utilize qualifying experts from outside the state to serve on the boards.

As noted above, subsection (a)(1) requires states to register persons convicted of certain crimes against minors and sexually violent offenses, but states are free to go beyond the Act's minimum standards and include other classes of offenders within their sex offender registration programs. For example, states are encouraged to require sex offenders convicted in federal or military courts who reside in their jurisdictions to register. Although the Act does not require states to register such offenders, the presence of any convicted sex offender in the state--whether the offender was prosecuted in a state, federal, or military

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court--raises similar public safety concerns. Some states, including Washington and California, already require sex offenders convicted in federal or military courts to register.

Definition of "Criminal Offense Against a Victim Who is a Minor"--Subsection (a)(3)(A)

The Act prescribes a 10-year registration requirement for persons convicted of a "criminal offense against a victim who is a minor." Subparagraph (A) of paragraph (3) of subsection (a) defines the term "criminal offense against a victim who is a minor." "Minor" should be understood to mean a person below the age of 18, consistent with the normal understanding.

The specific clauses in the definition of "criminal offense against a victim who is a minor" are as follows:

(1) Clauses (i) and (ii) cover kidnapping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses--going by such names as "kidnapping," "criminal restraint," or "false imprisonment"--whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. The Act does not require inclusion of these offenses in the registration requirement when the offender is a parent, but states may choose to require registration for parents who commit these offenses.

(2) Clause (iii) covers offenses consisting of "criminal sexual conduct toward a minor." Such offenses include convictions under general provisions defining sexually assaultive crimes--such as provisions defining crimes of "rape," "sexual assault," or "sexual abuse"--in cases where the victim is in fact a minor. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses).

States can comply with clause (iii) by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim, where the victim was below the age of 18 at the time of the offense. Offenses that do not involve physical contact, such as exhibitionism, are not subject to the Act's mandatory registration requirements pursuant to clause (iii), but states are free to require registration for persons convicted of such offenses as well if they so choose.

(3) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. This covers any conviction for an offense involving the solicitation of conduct that would be covered by clause (iii) if carried out.

(4) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live performances and using minors in the production of pornography.

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(5) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution.

(6) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to insure uniform coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes uniformly in the registration requirement.

(7) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv)), and make it subject to the Act's mandatory registration requirements. Moreover, this provision must be considered in conjunction with the Act's requirement of registration for persons convicted of a "sexually violent offense," which does not allow the exclusion of attempts if they are otherwise encompassed within the definition of a "sexually violent offense."

Hence, state discretion to exclude attempted sexual offenses against minors from registration requirements pursuant to clause (viii) is limited by other provisions of the Act. The simplest approach for states would be to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

At the conclusion of the definition of "criminal offense against a victim who is a minor," the Act states that (for purposes of the definition) conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger. For example, suppose that state law prohibits sexual relations with a person below the age of 16, where the defendant is more than 4 years older than the victim. Suppose further that an 18-year-old is convicted of violating this prohibition by engaging in consensual sexual relations with a 13-year-old, where the conduct would not violate state law but for the victim's age. Under the provision, if a state did not require such an offender to register, the state would still be in compliance with the Act. However, here again, states are free to go beyond the Act's baseline requirements. The exemption of certain offenders based on age from ***15114** the Act's mandatory registration requirements does not bar states from including such offenders in their registration systems if they wish. Moreover, the scope of subsection (a)(3)(A)'s exemption is also limited by other provisions of the Act that require registration of persons convicted of "sexually violent offenses" (as defined in (a)(3)(B)), with no provision excluding younger offenders where the criminality of the conduct depends on the victim's age.

Since the Act's registration requirements depend in all circumstances on conviction of certain types of offenses, states are not required to mandate

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registration for juveniles who are adjudicated delinquent--as opposed to adults convicted of crimes and juveniles convicted as adults--even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, states remain free to require registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

Definition of "Sexually Violent Offense"--Subsection (a)(3)(B)

The Act prescribes a ten-year registration requirement for offenders convicted of a "sexually violent offense," as well a for those convicted of a "criminal offense against a victim who is a minor."

Subparagraph (B) of paragraph (3) defines the term "sexually violent offense" to mean any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code), or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense. In light of this definition, there are two ways in which a state could satisfy the requirement of registration for persons convicted of "sexually violent offenses":

First, suppose that a state has offenses in its criminal code that are designated "aggravated sexual abuse" and "sexual abuse," or has a definitional provision that characterizes certain offenses in its criminal code (however denominated) as constituting "aggravated sexual abuse" and "sexual abuse" for registration purposes or other purposes. Such a state could comply simply by requiring registration for all offenders who are convicted of these state offenses, and all offenders convicted of any state crime that has as its elements engaging in physical contact with another person with intent to commit such an offense.

Second, a state could comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 2241 or section 2242-- the federal "aggravated sexual abuse" and "sexual abuse" offenses--if subject to federal prosecution. (The second part of the definition in subparagraph (B) of paragraph (3), relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse, does not enlarge the class of covered offenses under the federal law definitions, since sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Specifically, 18 U.S.C. §§2241-42 generally proscribe non-consensual "sexual acts" with anyone, "sexual acts" with persons below the age of 12, and attempts to engage in such conduct. "Sexual act" is generally defined (in 18 U.S.C. 2246(2)) to mean an act involving any degree of genital or anal penetration, oral-genital or oral-anal contact, or direct genital touching of a victim below the age of 16 in certain circumstances even without penetration.

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States that elect this second option--requiring registration for offenses that consist of aggravated sexual abuse or sexual abuse as defined in federal law provisions (18 U.S.C. 2241-42)--do not necessarily have to refer to these federal statutes in their registration provisions, but could alternatively achieve compliance by requiring registration for the state law offenses that encompass types of conduct proscribed by 18 U.S.C. 2241-42. Moreover, a state does not have to have sex offenses whose scope is congruent with 18 U.S.C. 2241-42 to take the latter approach. If state law does not criminalize some types of conduct that are covered by 18 U.S.C. 2241-42, then a person who engages in the conduct will not be subject to prosecution and conviction under state law, and there will be no basis for a registration requirement. On the other hand, if state sex offenses are defined more broadly than 18 U.S.C. 2241-42, then states are free to require registration for all offenders convicted under these state provisions (notwithstanding their greater breadth), and this would be sufficient to ensure coverage of convictions for criminal conduct that would violate 18 U.S.C. §§2241-42 if subject to federal prosecution.

Definition of "Sexually Violent Predator"--Subsection (a)(3)(C)-(E)

Offenders who meet the definition of "sexually violent predator" are subject to more stringent registration requirements than other sex offenders.

(1) Subparagraph (C) defines "sexually violent predator" to mean a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(2) Subparagraph (D) essentially defines "mental abnormality" to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. There is no definition of "personality disorder" in the Act; hence, the definition of this term is a matter of state discretion. For example, a state may choose to utilize the definition of "personality disorder" that appears in the Diagnostic and Statistical Manual of Mental Disorders: DSM-IV. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

(3) Subparagraph (E) defines "predatory" to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

As noted earlier, the Act provides that the determination whether an offender is a "sexually violent predator" is to be made by the sentencing court with the assistance of a board of experts. The Act does not require, or preclude, that all persons convicted of a sexually violent offense undergo a determination as to whether they satisfy the definition of "sexually violent predator." It also does not specify under what conditions such an inquiry must be undertaken. A state that wishes to comply with the Act must adopt some approach to this issue, but the specifics are a matter of state discretion. For example, a state might provide

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that the decision whether to seek classification of an offender as a "sexually violent predator" is a matter of judgment for prosecutors, or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes.

Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a "sexually violent predator." A sate may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the ***15115** original sentence. It could, for example, be made instead by the sentencing court when the offender has served a term of imprisonment and is about to be released from custody. In addition, a determination whether an offender is a "sexually violent predator" need not be made by the judge who imposed the original sentence, so long as the determination is made in the same court that imposed the sentence.

As with other features of the Jacob Wetterling Act, the sexually violent predator provisions only define baseline requirements for states that wish to maintain eligibility for full Byrne Formula Grant funding. States are free to impose these more stringent registration requirements on a broader class of offenders, and may use state law categories or definitions for that purpose, without contravening the Jacob Wetterling Act.

If a state chooses to subject all persons convicted of a "sexually violent offense" to the more stringent registration requirements and standards provided by the Act for "sexually violent predators," then a particularized determination that an offender is a "sexually violent predator" would have no practical effect and would be superfluous. Hence, if a state elected this approach, it would not be necessary for the state to have "sexually violent predator" determinations made by the sentencing court, or to constitute boards of experts to advise the courts concerning such determinations, prior to the commencement of registration. In a state that eschewed particularized "front end" determinations of "sexually violent predator" status in this manner, however, it would still be necessary to condition termination of the registration requirement on a determination by sentencing court (assisted by a board of experts) pursuant to section 170101(b)(6)(B) of the Act that the person does not suffer from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

Specifications concerning State Registration Systems under the Act--Subsection (b)

Paragraph (1) of subsection (b) sets out duties for prison officials and courts in relation to offenders required to register who are released from prison, or who are placed on any form of post-conviction supervised release "parole, supervised release, or probation").

The duties, set out in subparagraph (A) of paragraph (1), include: (i) informing the person of the duty to register and obtaining the information required for

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registration (i.e., address information), (ii) informing the person that he must give written notice of a new address within 10 days to a designated state law enforcement agency if he changes residence, (iii) informing the person that, if he changes residence to another state, he must inform the registration agency in the state he is leaving, and must also register the new address with a designated state law enforcement agency in the new state within 10 days (if the new state has a registration requirement), (iv) obtaining fingerprints and a photograph if they have not already been obtained, and (v) requiring the person to read and sign a form stating that these requirements have been explained.

Beyond these basic requirements, which apply to all registrants, subparagraph (B) of paragraph (1) of subsection (b) requires that additional information be obtained in relation to a person who is required to register as a "sexually violent predator." The information that is specifically required under subparagraph (B) is the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person. The Act does not require that prison officials or courts conduct an investigation to determine the offender's treatment history. For purposes of documenting the treatment received, prison officials and courts may rely on information that is readily available to them, either from existing records or the offender. In addition, prison officials and courts may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment for a mental abnormality or personality disorder. If states want to require the inclusion of more detailed information about the offender's treatment history, however, they are free to do so.

States that wish to comply with the Act will need to adopt statutes or administrative provisions to establish the duties specified in subsection (b)(1) and ensure that they are carried out. These informational requirements, like other requirements in the Act, only define minimum standards, and states may require more extensive information from offenders. For example, the Act does not require that information be obtained relating to registering offenders' employment, but states may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care for children.

As a second example, although it is not required under the Act, states are strongly encouraged to collect DNA samples from registering offenders to be typed and stored in state DNA databases. States also are urged to participate in the FBI's Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level, and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA samples and

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participation in CODIS greatly enhances a state's capacity to investigate and solve crimes involving biological evidence, especially serial and stranger rapes.

Paragraph (2) of subsection (b) states that the responsible officer or court shall forward the registration information to a designated state law enforcement agency within three days after receipt of the information. The Act leaves states discretion in designating an agency as the responsible "state law enforcement agency," including the means by which such a designation is made, the timing of such a designation, and the agencies that may be designated. States are not required to select the state police as the designated agency, and may choose any agency with functions relating to the enforcement of law or protection of public safety. For example, states may designate as the pertinent "State law enforcement agency" a correctional agency, a crime statistics bureau or criminal records agency, or a department of public safety. States also are permitted to employ a private contractor to carry out the functions of the designated state law enforcement agency.

After receiving the registration information from the responsible officer or court, the designated state law enforcement agency must immediately enter the information into the appropriate state law enforcement record system and notify a law enforcement agency having jurisdiction where the person expects to reside. The Act leaves states discretion in determining which state record system is appropriate for storing registration information. States that wish to achieve compliance with the Act, however, may need to modify state record systems if ***15116** they are not currently set up to receive all the types of information that the Act requires from registrants.

The state law enforcement agency is also required to transmit immediately the conviction data and fingerprints to the Federal Bureau of Investigation. No changes will be required in the national records system because the Act only requires transmission of conviction data and fingerprints, which the FBI already receives. The Act should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

Paragraph (3) of subsection (b) relates to verification of the offender's address. In essence, annual verification of address with the designated state law enforcement agency is required for offenders generally, through the return within ten days of an address verification form sent by the agency to the registrant. However, the verification intervals are 90 days (rather than a year) for "sexually violent predators." As noted earlier, these are baseline requirements which do not bar states from requiring verification of address at shorter intervals than those specified in the Act.

Paragraph (4) requires the designated state law enforcement agency to notify other interested law enforcement agencies of a change of address by the registrant. Specifically, when a registrant changes residence to a new address,

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the designated law enforcement agency must (i) notify a law enforcement agency having jurisdiction where the registrant will reside, and (ii) if the registrant moves to a new state, notify the law enforcement agency with which the offender must register in the new state (if the new state has a registration requirement).

Paragragph (5) further requires an offender who moves out of state to register within ten days with a designated state law enforcement agency in his new state of residence (if the new state has a registration requirement). This partially reiterates the requirements concerning notice of changes of address by the offender that were described above.

Subparagraph (A) of paragraph (6) states that the registration requirement remains in effect for ten years. As noted earlier, states may choose to establish longer registration periods.

Subparagraph (B) of paragraph (6) states that the registration requirement for "sexually violent predators" under the Act terminates upon a determination that the offender no longer suffers from a mental abnormality or personality disorder that would make him likely to engage in a predatory sexually violent offense. This provision does not require review of the offender's status at any particular interval. For example, a state could set a minimum period of 10 years before entertaining a request to review the status of a "sexually violent predator," the same period as the general minimum registration period for sex offenders under the Act.

Moreover, this termination provision only affects the requirement that a person register as a "sexually violent predator" under subparagraph (B) of subsection (a)(1) of the Jacob Wetterling Act. It does not limit states in imposing more extensive registration requirements under their own laws, and does not limit any registration requirement that arises independently under other provisions of the Jacob Wetterling Act from the person's conviction of a "criminal offense against a victim who is a minor" or a "sexually violent offense."

Criminal Penalties for Registration Violations--Subsection (c)

The Act provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act will need to enact criminal provisions covering this situation as part of, or in conjunction with, the legislation defining their registration systems, if they have not already done so. If the violation by a registrant consists of failing to return an address verification form within 10 days of receipt, the state may allow a defense if the registrant can prove that he did not in fact change his residence address, as provided in subsection (b)(3)(A)(iv).

Release of Registration Information--Subsection (d)

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Subsection (d) governs the disclosure of "information collected under a State registration program." Restrictions on the release of information under this subsection do not constrain the release of information that a state would have independently of the operation of the registration system. For example, a state will normally have criminal history information about an offender, and will often have current address information as part of general probation or parole supervision requirements, independently of any special requirements imposed as part of the sex offender registration system. The Act does not limit the release of such information.

Subsection (d) states specifically that the information collected under a state registration program shall be treated as private data, except under specified conditions.

The first condition under which disclosure is authorized--paragraph (1)--is that "such information may be disclosed to law enforcement agencies for law enforcement purposes." This exemption permits use of the information for all law enforcement purposes, including all police, prosecutorial, release supervision, correctional, and judicial uses.

Paragragph (2) in subsection (d) says that registration information may be disclosed to government agencies conducting confidential background checks. "Confidential" should be understood to mean a background check where information is disclosed to an interested party or parties--such as a background check conducted by a government agency that provides information concerning prospective employees to public or private employers--as opposed to release of the information to the general public. Release to the public, and other non-law enforcement, non-background check uses, are governed by paragraph (3).

Paragragph (3) in subsection (d) says that the designated state law enforcement agency, and any local law enforcement agency authorized by the state agency, may release relevant information that is necessary to protect the public concerning a specific person required to register under this section. The Act does not impose any limitations on the standards and procedures that states may adopt for determining when public safety necessitates community notification. For example, states could implement this authority by engaging in particularized determinations that individual offenders are sufficiently dangerous to require community notification concerning the offender's presence. Alternatively, states could make categorical judgments that protection of the public necessitates community notification with respect to all offenders with certain characteristics or in certain offense categories.

Releases of information for public-protection purposes short of general community notification--such as giving notice about an offender's location to the victims of his offenses, or to agencies or organizations in specified categories--are also permitted under paragraph (3).

The language in paragraph (3), like that in paragraphs (1) and (2), is

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permissive, and does not require states ***15117** to release information. Paragraph (3) also does not deprive states of the authority to exercise centralized control over the release of information, or if the state prefers, to generally authorize local agencies to release information as necessary. In addition to permitting proactive community notification and other notification, as discussed above, paragraph (3) and other provisions of the Act do not bar states from making registration information available upon request, if it is determined that such access is necessary for the protection of the public concerning who are required to register.

A proviso at the end of paragraph (3) in subsection (d) states that the identity of the victim of an offense that requires registration under the Act shall not be released. The purpose of this proviso is to protect the privacy of victims, and its restrictions may accordingly be waived at the victim's option. The proviso only applies to paragraph (3), and does not limit the disclosure of victim identity pursuant to paragraphs (1) and (2), relating to law enforcement uses and confidential background checks.

Immunity for Good Faith Conduct--Subsection (e)

Subsection (e) states that law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under the Act.

Compliance--Subsection (f)

States have three years from the date of enactment (i.e., September 13, 1994) to come into compliance with the Act unless the Attorney General grants an additional two years where a state is making good faith efforts at implementation. States that fail to come into compliance within the specified time period will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. The reallocated funds will be distributed among complying states in proportion to their populations.

States are encouraged to submit descriptions of their existing or proposed registration systems for sex offenders to the Department of Justice as promptly as possible. States may find it convenient, for example, to submit such descriptions in conjunction with their applications for Byrne Formula Grant funding. These submissions will enable the Department of Justice to review the status of state compliance with the Act, and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect.

To maintain eligibility for full Byrne Formula Grant funding following the end of the three-year implementation period provided by the Act, states will be required to submit information that shows compliance with the Act in at least one program year, or an explanation of why compliance cannot be achieved within that period and a description of good faith efforts that justify an extension of time (but not

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more than two years) for achieving compliance. States will also be required to submit information in subsequent program years concerning any changes in sex offender registration systems that may affect compliance with the Act.

Dated: March 27, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96-8186 Filed 4-3-96; 8:45 am]

BILLING CODE 4410-01-M

61 FR 15110-02, 1996 WL 153812 (F.R.)

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EXHIBIT R

Westlaw.

64 FR 572-01, 1999 WL 1737 (F.R.)

(Cite as: 64 FR 572)

NOTICES

DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2196-98]

RIN 1105-AA56

Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

Tuesday, January 5, 1999

*572 Correction and Republication

Editorial Note: Due to typesetting errors, notice document FR Doc. 98-33377, originally published in the issue of Thursday, December 17, 1998, at pages 69656-69667 is being republished in its entirety.

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The United States Department of Justice is publishing Final Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998.

EFFECTIVE DATE: December 17, 1998.

SUPPLEMENTARY INFORMATION: The Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. 104-236, 110 Stat. 3093 (the "Pam Lychner Act"), and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. 105-119, 111 Stat. 2440, 2461 (the "CJSA"), amended section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), which contains the Jacob Wettlering Crimes Against Children and Sexually Violent Offender Registration Act (the "Wetterling Act" or "the Act"). These legislative changes

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require conforming changes in the Final Guidelines for the Jacob Wetterling Act and Megan's Law (Pub. L. 104- 145, 110 Stat. 1345) that were published by the Department of Justice on July 21, 1997, in the Federal Register (62 FR 39009).

The Wettlerling Act generally sets out minimum standards for state sex offender registration programs. States that fail to comply with these standards within the applicable time frame will be subject to a mandatory 10% reduction of formula grant funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice. Any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. Information concerning compliance review procedures and requirements appears in part VIII of these guidelines.

The Wetterling Act's requirements for compliance may be divided into three categories, each of which carries a different compliance deadline, depending on the legislation from which it derives:

1. Original requirements. Many of the provisions of the current formulation of the Wetterling Act derive from the original version of the Act, which was enacted on September 13, 1994, or from the Megan's Law amendment to the Act. These include, for example, the basic requirements to register offenders for at least 10 years; to take registration information from offenders and to inform them of registration obligations when they are released; to require registrants to update address information when they move; to verify the registered address periodically; and to release registration information as necessary for public safety. The deadline for compliance with these features of the Act was September 12, 1997, based on the specification of 42 U.S.C. 14071(g) that states have three years from the Act's original enactment date (i.e., September 13, 1994) to achieve compliance. However, 42 U.S.C. 14071(g) allows a two-year extension of the deadline for states that are making good faith efforts to achieve compliance, and states that have been granted this extension have until September 12, 1999, to comply with these features of the Act.

2. Pam Lychner Act requirements. The Pam Lychner Act's amendments to the Wetterling Act created a limited number of new requirements for state registration programs, including a requirement that the perpetrators of particularly serious offenses and recidivists be subject to lifetime registration. The time frame for compliance with these new requirements is specified in section 10(b) of the Pam Lychner Act--three years from the Pam Lychner Act's enactment date of October 3, 1996, subject to a possible extension of two years for states that are making good faith efforts to come into compliance. Hence, barring an extension, states will need to comply with these features of the Act by October 2, 1999.

3. CJSA requirements. The CJSA amendments made extensive changes to the Wetterling Act, many of which afford states greater flexibility in achieving compliance. Under the effective date provisions in section 115(c) of the CJSA, states immediately have the benefit of amendments that afford them greater

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discretion and can rely on these amendments in determining what changes (if any) are needed in their registration programs to comply with the Act. For example, the Act as amended by CJSA affords states discretion concerning the procedures to be used in periodic verification of registrants' addresses, in contrast to the Act's original requirement that a specific verification-form procedure be used. In light of this change, effective immediately, states have discretion concerning the particular procedures that will be used in address verification.

While the CJSA's amendments to the Wetterling Act were largely in the direction of affording states greater discretion, the CJSA did add some new requirements to the Wetterling Act. For example, the CJSA added provisions to promote registration of sex offenders in states where they work or attend school (as well as states of residence) and to promote registration of federal and military sex offenders. The time frame for compliance with new requirements under the CJSA amendments, as specified in section 115(c)(2) of the CJSA, is three years from the CJSA's enactment date of November 26, 1997, subject to a possible extension of two years for states that are making good faith efforts to come into compliance, Hence, barring an extension, states will need to comply with these features of the Act by November 25, 2000.

The final guidelines in this publication identify and discuss separately all of the requirements that states will need to meet by each of the three specified deadlines, thereby making it clear when states will need to be in compliance with each element of the Wetterling Act to maintain eligibility for full Byrne Formula Grant funding.

Summary of Comments on the Proposed Guidelines

On June 19, 1998, the U.S. Department of Justice published Proposed Guidelines in the Federal Register (63 FR 33696) to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General ***573** Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998. The comment period expired on August 18, 1998.

Following the publication of the proposed guidelines, the Department received 9 comment letters, primarily from state law enforcement agencies. These letters contained numerous comments, questions and recommendations, all of which were considered carefully in developing the Final Guidelines. A summary of the comments and responses to them are provided in the following paragraphs.

A. Offense Coverage

One respondent commented that some states appear to be imposing registration requirements on individuals convicted of consensual adult sodomy. As the guidelines state, such offenses are not among the offenses for which the Act requires registration, and registration of persons convicted of such offenses

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would not further the Act's objectives.

B. Basic Registration Requirements

1. Initial Registration Requirement

One respondent asked about the applicability of the Act's requirements in relation to an offender who is released from custody and immediately moves to another state. In such cases, the state must: (1) inform the offender of the pertinent registration requirements and take information on the offender as prescribed in the Act; and (2) have procedures that ensure that notice is provided promptly to an agency responsible for registration in the state to which the offender moves, as with any other offender who is moving interstate (42 U.S.C. 14071(b)(1), (2) and (5)). The final guidelines include language that clarifies these requirements.

2. Duration of Registration

Two respondents commented on the minimum registration period required by the Act. One respondent noted that its state law currently allows discontinuance of registration "upon restoration of civil rights," while another noted that its state law allows discontinuance of registration after seven years in certain circumstances. As the guidelines state, for persons convicted of offenses within the Act's offense categories, registration may be discontinued prior to 10 years only if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned. Thus, laws allowing discontinuance of registration for such persons prior to ten years for any other reason would not be in compliance with the Act.

The requirement of registration for at least 10 years, like the other requirements of the Act, does not have to be applied retroactively to offenders who were convicted prior to the establishment of a conforming registration program. Hence, it is a matter of state discretion whether to allow termination of registration for such offenders after some shorter period of time.

C. Registration in Certain Interstate Contexts

1. Offense Coverage

One respondent inquired whether an offender's new state of residence, or a state in which an offender works or attends school, must register the offender if he or she does not fall into the categories of registration offenses specified in the state's sex offender registration laws. The Act requires states to register--or, in the case of non-resident workers and students, to accept registration information from--persons convicted of the offenses described in 42 U.S.C. 14071(a)(3)(A)-(B) or a comparable range of offenses. Thus, a state must register (or, for non-resident workers and students, accept registration information from) at least those persons to comply with the Act. The coverage of any offenses

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beyond those offenses is a matter of state discretion. Thus, for example, the Act does not require a state to accept registration information from a non-resident worker or student if that person's state of residence is registering the person on the basis of an offense that is outside of the Act's offense coverage requirements.

2. Notification to Other States

One respondent asked whether, to comply with the Act, a state must enact a statutory requirement providing for notification to other states when an offender moves interstate, or whether it could rely on informal practice to do so. As the guidelines state, in determining compliance, the Act does not require that its standards be implemented by statute. Thus, in assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification system will be considered, including administrative policies and procedures as well as statutes. However, a completely informal practice, not adopted by statute and not included in an articulated administrative policy or procedure, would not be sufficient.

D. Requirements Related to Non-Resident Workers and Students

1. General Requirement

One respondent commented that the requirement that non-resident workers and students register both in the state in which they reside and the state in which they are employed places a burden on the non-resident state. The Act itself requires that states accept registration information from out-of-state workers and students (42 U.S.C. 14071(b)(7)). The guidelines cannot alter requirements appearing in the statute.

2. Procedures for Accepting Registration Information

One respondent asked whether states may comply with the requirement to accept registration information concerning non-resident workers and students by having local law enforcement agencies collect the information and then transfer it to the state. This approach is consistent with the Act.

One respondent asked whether registration information must be collected directly from the non-resident workers and students, or whether states may enter into agreements to exchange information on such persons. The Act requires states to "ensure that procedures are in place to accept registration information from" these categories of offenders (42 U.S.C. 14071(b)(7)). Thus, states must have some mechanism in place to accept registration information from non-resident workers and students. Should states also wish to enter into agreements for information exchange with other states, they are free to do so under the Act.

3. Offenders to Whom the Registration Requirements Apply

One respondent asked how the number of days of employment in the state should be

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calculated. More specifically, the respondent asked how to deal with employment involving travel through several states, and whether work-related travel through a state or any amount of time spent working during a day should be counted towards or as a "day" of employment in the state. As the guidelines state, the Act requires states to accept registration information from non-residents who are employed "full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year" (42 U.S.C. 14071(a)(3)(F). The Act and guidelines do not provide more specific rules concerning such questions as ***574** whether traveling through a state in the course of employment constitutes being employed in the state, or whether there is a lower limit on the amount of time worked during a day that will count as part-time employment. Thus, the resolution of those issues is a matter of state discretion.

One respondent inquired as to the definition of part-time student. The Act defines a "student" as a "person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education." (42 U.S.C. 14071(a)(3)(G)). The Act and guidelines do not further define the term "part-time." Thus, is left to the states to apply this term in a manner consistent with the Act.

E. Requirements Related to Federal and Military Offenders

One respondent expressed interest in the federal government's role in sex offender registration, including the National Sex Offender Registry (NSOR) and the registration of federal and military offenders. Another respondent noted that, in order for the state to notify federal authorities if a federal or military offender fails to register, some mechanism must be established to alert the state when such an offender moves into the state. Procedures for state participation in NSOR are described in the guidelines, and the FBI will issue formal regulations governing the operation of NSOR. As the guidelines explain, recent legislation requires federal and military authorities to give notice to state and local authorities concerning the release to their areas of federal and military sex offenders. The responsible federal agencies are in the process of establishing procedures to implement these requirements.

F. Requirements Related to Aggravated Offenders and Recidivists

1. Application of Lifetime Registration Requirement

Two respondents questioned whether the lifetime registration requirements for aggravated offenders and recidivists apply retroactively or prospectively. The final guidelines clarify that the Act requires states to register for life offenders convicted for an aggravated offense, and recidivists convicted of the current offense, where such convictions occur after the adoption by the state of the lifetime registration requirement. However, states remain free to apply the lifetime registration requirement retroactively to offenders convicted prior to their adoption of the requirement, if they so wish. The lifetime registration

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requirement for aggravated offenders and recidivists was enacted by the Pam Lychner Act, and thus carries a deadline of October 3, 1999, with a possible two-year extension for states making good faith efforts to comply.

One respondent asked how far back a state must look in determining whether an offender has a prior offense that would qualify him or her as a recidivist. There is no time limit under the Act on prior qualifying convictions. As the final guidelines make clear, in determining whether a person has a qualifying prior conviction, states may rely on the methods they normally use in searching criminal records.

2. Definition of Aggravated Offenses

One respondent sought clarification on the aggravated offenses for which lifetime registration is required. As the guidelines state, "aggravated offense" refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 2241), which principally encompasses: (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; and (2) engaging in sexual acts involving penetration with victims below the age of 12. Thus, states can comply with this provision by requiring lifetime registration for persons convicted of the state offenses that cover such conduct, i.e., (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; and (2) engaging in sexual acts involving penetration with victims below the age of 12.

G. Requirements Related to Sexually Violent Predators

1. Waiver

Several respondents expressed concern over the particular requirements regarding sexually violent predators. For example, two respondents noted that their state either does not use a board of experts to designate sexually violent predators or does not include certain representatives on the board that they use. The Act requires that the determination whether a person is a sexually violent predator be made by a court after considering the recommendation of a board with a specified composition (42 U.S.C. 14071(a)(2)(A)). However, the Act also allows the Attorney General to grant a waiver from these requirements where a state has established alternative procedures or legal standards for designating a person as a sexually violent predator (42 U.S.C. 14071(a)(2)(B)). As a result, as the guidelines state, the approach taken to determining whether an offender is a sexually violent predator will be treated as a matter of state discretion.

In addition, the Act allows the Attorney General to approve "alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders" in lieu of the specific measure set forth in the Act regarding sexually violent predators (42 U.S.C. 14071(a)(2)(C)). States that wish to request approval under this provision should do so during the compliance review process. States also may consider the adoption of alternative

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measures at any time after coming into compliance with the Act, and may seek approval from the reviewing authority for such later-developed alternatives.

2. Documentation of Treatment

Two respondents expressed concern with the requirement that the registration information collected on sexually violent predators must include documentation of treatment. The Act requires that, for registrants who have been designated as "sexually violent predators" under the Act's definition, the initial registration information must include "documentation of treatment received for any mental abnormality or personality disorder of the person" (42 U.S.C. 14071(b)(1)(B)). As the guidelines note, however, in determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records or the offender, and may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment. Of course, states that wish to include more detailed information about offenders' treatment histories are free to do so.

3. Termination of Sexually Violent Predator Status

One state commented that its law allows certain sexually violent predators to obtain certificates of rehabilitation that terminate sexually violent predator status. As the guidelines make clear, the Act requires lifetime registration once it has been determined that a registrant is a sexually violent predator. Thus, a state would not be in compliance with this feature of the Act if it were to allow registration to be terminated for a person who has been found to be a sexually violent predator on the basis of ***575** a later determination that the person has been "rehabilitated" or is no longer a sexually violent predator. However, as noted in the guidelines and in (G)(1) above, the Attorney General may approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in the Act regarding sexually violent predators (42 U.S.C. 14071(a)(2)(C)).

H. The National Sex Offender Registry (NSOR)

One respondent had specific questions regarding the interface of its offender tracking system with NSOR. Procedures for state participation in NSOR are described in the guidelines, and the FBI will issue formal regulations governing the operation of NSOR. As the guidelines note, funding is available through the National Sex Offender Registry Assistance Program of the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and to upgrade state sex offender registries.

Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

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1. General Purposes and Principles of Interpretation

These guidelines carry out a statutory directive to the Attorney General in subsection (a)(1) of the Wetterling Act (42 U.S.C. 14071(a)(1)) to establish guidelines for state registration programs under the Act. Before turning to the specific provisions of the Act, five general points should be noted concerning the Act's interpretation and application.

First, the general objective of the Act is to assist law enforcement and protect the public from convicted child molesters and violent sex offenders through requirements of registration and appropriate release of registration information. The Act is not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, the Act's standards constitute a floor for state programs, not a ceiling. States do not have to go beyond the Act's minimum requirements to maintain eligibility for full Byrne Grant funding, but they retain the discretion to do so, and state programs do often contain elements that are not required under the Act's standards. For example, a state may have a registration system that covers broader classes of offenders than those identified in the Act, requires address verification for registered offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act. Exercising these options creates no problem of compliance because the Act's provisions concerning duration of registration, covered offenders, and other matters do not limit state discretion to impose more extensive or stringent requirements that encompass the Act's baseline requirements.

Second, to comply with the Wetterling Act, states do not have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. Rather, subject to certain constraints, they may use their own criminal law definitions and categories in defining registration requirements. This point is explained more fully below.

Third, the Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act, and requiring registration for persons convicted of such offenses would not further the Act's objectives.

Fourth, the Wetterling Act contemplates the establishment of programs that will prescribe registration and notification requirements for offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and to prescribe such requirements for offenders who were convicted prior to the establishment of a conforming program. Nevertheless, the Act does not preclude states from prescribing registration and notification requirements for offenders convicted prior to the establishment of

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the program.

Fifth, the Act sets minimum standards for state registration and notification programs but does not require that its standards be implemented by statue. In assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification program will be considered, including administrative policies and procedures as well as statutes.

2. Related Litigation

Some state registration and notification systems have been challenged on constitutional grounds. The majority of courts, and all federal appeals courts, that have dealt with the issue thus far have held that systems like those contemplated by the Wetterling Act do not violate released offenders' constitutional rights. See e.g., Roe v. Office of Adult Probation, 125 F.3d 47 (2d Cir. 1997) (Connecticut probation office notification policy); Russell v. Gregoire, 124 F.3d 1079 (9th Cir. 1997) (Washington state act), cert. denied, 118 S.Ct. 1191 (1998); Doe v. Pataki, 120 F.3d 1263 (2d Cir. 1997) (New York act), cert. denied, 118 S.Ct. 1066 (1998); E.B. v. Verniero, 119 F.3d 1077 (3d Cir. 1997) (New Jersey notification provisions), cert. denied, 118 S.Ct. 1039 (1998); Artway v. Attorney General, 81 F.3d 1235 (3d Cir. 1996) (New Jersey registration provision); Doe v. Kelley, 961 F. Supp. 1105 (W.D. Mich. 1997) (Michigan notification provisions); Doe v. Weld, 954 F. Supp. 425 (D. Mass. 1996) (Massachusetts registration of juvenile offenders); State v. Pickens, 558 N.W.2d 396 (Iowa 1997); Arizona Dep't of Public Safety v. Superior Court, 949 P.2d 983 (Ariz. App. 1997); Opinion of the Justices to the Senate, 423 Mass. 1201, 668 N.E. 2d 738 (Mass. 1996); Doe v. Poritz, 142 N.J. 1, 662 A.2d 367 (N.J. 1995); State v. Ward, 123 Wash. 2d 488, 869 P.2d 1062 (Wash. 1994). The United States has filed "friend of the court" briefs in several of these cases, arguing that sex offender registration and community notification do not impose punishment for purposes of the Ex Post Facto and Double Jeopardy Clauses or violate privacy or liberty interests guaranteed by the federal Constitution.

In a few other cases, however, courts have found that certain applications or provisions of some state systems violate the United States Constitution or provisions of a state constitution. See, e.g., Doe v. Attorney General, 426 Mass. 136, 686 N.E. 2d 1007 (Mass. 1997) (holding that the Massachusetts act implicates liberty and property interests protected by the Massachusetts constitution, so that the act could not be applied to Doe--who had been convicted of "indecent assault" for sexually suggestive touching of an undercover police officer in an area known for consensual sexual activity between adult maleE--without a prior hearing to determine if he individually presented any threat to persons for whose protection the act was passed; the court did not rule out the possibility that a categorical "dangerousness" *576 determination could be justified by certain other conviction offenses); State v. Myers, 260 Kan. 669, 923 P.2d 1024 (Kan. 1996) (holding that due to the breadth of offenses subject to Kansas registration act and the potentially unlimited scope of notification, Kansas notification provisions violate the Ex Post Facto Clause), cert. denied, 117

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} S.Ct. 2508 (1997). The New Jersey Supreme Court in Doe v. Poritz (above) also found a state law privacy interest requiring certain procedural protections, and those procedures were further elaborated upon by the Third Circuit in E.B. v. Verniero (above).

In addition, when these guidelines were written, there were appeals pending in the Second Circuit, see Doe v. Pataki, 3 F. Supp. 2d 456 (S.D.N.Y. 1998) (finding a federally protected liberty interest sufficient to trigger due process concerns and that New York's law did not provide sufficient due process), appeal pending, 2d Cir. No. __, in the Sixth Circuit, see Cutshall v. Sundquist, 980 F. Supp. 928 (M.D. Tenn. 1997) (holding that the Tennessee notification provisions implicate federal and state law privacy and employment interests, requiring procedural protections prior to notification), appeal pending, 6th Cir. Nos. 97-6276 & 97-6321, and in the Third Circuit, see Paul v. Verniero, 3d Cir. No. 97-5791 (from district court's rejection of constitutional privacy challenge to community notification). There was also ongoing litigation in federal district court in Minnesota and in state courts in Ohio and Pennsylvania.

3. Summary and Text of Guidelines

The following guidelines explain the interpretation and application of the Wetterling Act's standards for registration programs and related requirements. All citations in these guidelines to the Act are to the Act's current text, reflecting the Megan's Law, Pam Lychner Act, and CJSA amendments. The detailed explanation is preceded by a table that summarizes the organization of the guidelines, the major elements of the Act, and the time for compliance with each element under the enacting legislation.

Summary and Deadlines for Wetterling Act Compliance

I. Ten-year Minimum Registration For Persons Convicted of a Criminal Offense Against a Victim Who Is a Minor or a Sexually Violent Offense [Sept. 12, 1997; Possible Two-year Extension]

A. "States" to which the Act applies

B. Duration of registration

C. Coverage of offenses

D. Coverage of offenders

II. Registration and Tracking Procedures; Penalties for Registration Violations [Sept. 12, 1997; Possible Two-year Extension]

A. Initial registration procedures

B. Change of address procedures

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C. Periodic address verification

D. Penalties for registration violations

III. Release of Registration Information [Sept. 12, 1997; Possible Two-year Extension]

IV. Special Registration Requirements Under the Pam Lychner Act for Recidivists and Aggravated Offenders [Oct. 2, 1999; Possible Two-year Extension]

V. Special Registration Requirements Under the Cjsa Amendments Relating to Sexually Violent Predators, Federal and Military Offenders, and Non-resident Workers and Students [Nov. 25, 2000; Possible Two-year Extension]

A. Heightened sexually violent predator registration or alternative measures

B. Federal and military offenders; non-resident workers and students

VI. Participation in the National Sex Offender Registry [Nov. 25, 2000; Possible Two-year Extension]

VII. Good Faith Immunity [Available to States Immediately]

VIII. Compliance Review; Consequences of Non-compliance

Text of Detailed Guidelines for Wetterling Act Compliance

I. Ten-year Minimum Registration for Persons Convicted of a Criminal Offense Against a Victim Who Is a Minor or a Sexually Violent Offense [September 12, 1997; Possible Two-year Extension]

To comply with subsections (a)(1) and (b)(6)(A) of the Wetterling Act, a state registration program must require current address registration for a period of 10 years for persons convicted of "a criminal offense against a victim who is a minor" or a "sexually violent offense."

This requirement derives from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)-- Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

The interpretation and application of this requirement are as follows:

A. "States" to Which the Act Applies

For purposes of the Act, "state" refers to the political units identified in the provision defining "state" for purposes of eligibility for Byrne Formula Grant funding (42 U.S.C. 3791(a)(2)). Hence, the "states" that must comply with the

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Act's standards for registration programs to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

B. Duration of Registration

Subsection (b)(6)(A) provides that the registration requirement must remain in effect for 10 years following the registrant's release from prison or placement on parole, supervised release, or probation. States may choose to establish longer registration periods, and are required to do so under the Act's standards for certain types of offenders as discussed in parts IV and V of these guidelines. Registration requirements of shorter duration than 10 years are not consistent with the Act. Hence, for example, a state program would not be in compliance with the Act if it allowed registration obligations to be waived or terminated before the end of the 10 year period on such grounds as a finding of rehabilitation or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, of if the registrant is pardoned, registration (or continued registration) is not required under the Act.

Also, in light of a proviso in subsection (b)(6), a state need not require registration "during ensuing periods of incarceration." The reference to subsequent "incarceration" should be understood to include periods of civil commitment, as well as imprisonment for the commission of another criminal offense, since a state may conclude that it is superfluous to carry out address registration and verification procedures while the registrant is in either criminal or civil confinement. To comply with the Act, a state that does waive registration during subsequent criminal or civil confinement must require that registration resume when the registrant is released, if time remains under the registration period required by the Act.

C. Coverage of Offenses

1. "Criminal offense against a victim who is a minor". The Act requires registration of any person convicted of a "criminal offense against a victim who is a minor." Subsection (a)(3)(A) defines the relevant category of offenses. The general purpose of the definition is to ensure comprehensive registration for persons convicted of offenses involving sexual molestation or sexual ***577** exploitation of minors. "Minor" for purposes of the Act means a person below the age of 18.

The specific clauses in the Act's definition of "criminal offense against a victim who is a minor" are as follows:

(1)-(2) Clauses (i) and (ii) cover kidnaping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses--going by such names as "kidnaping," "criminal restraint," or "false imprisonment"--whose gravamen is abduction or unlawful restraint of a

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person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. It is a matter of state discretion under these clauses whether registration should be required for such offenses in cases where the offender is a parent of the victim.

(3) Clause (iii) covers offenses consisting of "criminal sexual conduct toward a minor." States can comply with this clause by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim--such as provisions defining crimes of "rape," "sexual assault," "sexual abuse," or "incest"--in cases where the victim was a minor at the time of the offense. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses). It is a matter of state discretion under this clause whether registration should be required for sex offenses that do not involve physical contact, such as exhibitionism offenses.

(4) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. The notion of "sexual conduct" should be understood in the same sense as in clause (iii). Hence, states can comply with clause (iv) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

--A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense would be covered by clause (iii), and

--A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

(5) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live performances and using minors in the production of pornography.

(6) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution. The interpretation of this clause is parallel to that of clause (iv). States can comply with clause (vi) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

--A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

--A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

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(7) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to ensure coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes in the registration requirement. A proviso at the conclusion of the Act's definition of "criminal offense against a victim who is a minor" allows states to exclude from registration requirements persons convicted for conduct that is criminal only because of the age of the victim if the perpetrator is 18 years of age or younger. Whether registration should be required for such offenders is a matter of state discretion under the Act.

(8) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, state discretion to exclude attempted sexual offenses against minors is limited by other provisions of the Act, since any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv), and make it subject to the Act's mandatory registration requirements. Hence, the simplest approach for states is to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

2. "Sexually violent offense". The Act prescribes a 10-year registration requirement for offenders convicted of a "sexually violent offense," as well as for those convicted of a "criminal offense against a victim who is a minor." Subsection (a)(3)(B) defines the term "sexually violent offense." The general purpose of the definition is to require registration of persons convicted of rape or rape-like offenses--i.e., non-consensual sexually assaultive crimes involving penetration--regardless of the age of the victim. The definition refers specifically to any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 of the United States Code, or as described in the state criminal code), or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense.

In light of this definition, there are two ways in which a state can satisfy the requirement of registration for persons convicted of "sexually violent offenses":

First, a state can comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 2241 or 2242--the federal "aggravated sexual abuse" and "sexual abuse" offenses--if prosecuted federally. (The part of the definition relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse does not enlarge the class of covered offenses under the federal law definitions, because sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Second, a state can comply by requiring registration for offenders convicted of

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the state offenses that correspond to the federal offenses described above-- i.e., the most serious sexually assaultive crime or crimes under state law, covering non-consensual sexual acts involving penetration-- together with state offenses (if any) that have as their elements engaging in physical contact with another person with intent to commit such a crime.

Like the other requirements of the Act, the requirement to register persons convicted of sexually violent offenses, regardless of the age of the victim, establishes only a baseline for state registration programs. Whether registration should be required for additional offenses against adult victims is a matter of state discretion under the Act.

3. "Comparable * * * range of offenses". As a result of language added by the CJSA amendments, states need not comply exactly with the specific offense coverage requirements in subparagraph (A) or (B) of subsection (a)(3). Rather, a state may comply with ***578** the Act by requiring registration for persons convicted of offenses in a "range of offenses specified by State law which is comparable to or which exceeds" the range of offenses described in the Act.

This change reflects a practical recognition by Congress that exact state compliance with the Act's offense coverage specifications may be difficult because of the degree of detail in the Act's definitions and because of the variations among different jurisdictions in the terminology and categorizations used in defining sex offenses. See H.R. Rep. No. 256, 105th Cong. 1st Sess. 15 (1997). As a result, Congress was concerned that some states "may inadvertently find themselves out of compliance with the Wetterling Act" because the state registration provisions "are not exactly congruent" with the Act's offense categories, "even if the offenses covered by the [state] program are much broader in other respects than required by the Wetterling Act." Id. The language concerning coverage of a "comparable" range of offenses was added to address this concern.

States should aim to have their registration offenses fully encompass the offense categories described in the Act and will be assured of compliance with the Act's offense coverage requirements if they do so. However, in light of the CJSA amendments affording a degree of flexibility concerning offense coverage, inadvertent departures from the Act's offense category specifications will not necessarily result in a finding of non-compliance. Such departures will be allowed if, in the judgment of the reviewing authority, they do not substantially undermine the objective of comprehensive registration for persons convicted of crimes involving sexual molestation or sexual exploitation of minors, and persons convicted of rape or rape-like crimes against victims of any age.

In addition, in assessing compliance, the reviewing authority may consider whether a state program imposes registration requirements that are broader in other respects than the offense coverage specifications of the Act. For example, consistently requiring registration for persons convicted of attempted offenses, and of sexual assaults against adult victims other than rape-like offenses, goes

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beyond the Act's mandatory standards. Such additional coverage may be considered by the reviewing authority in deciding whether the overall offense coverage under a state program "is comparable to or * * * exceeds" the Act's offense coverage specifications.

D. Coverage of Offenders

1. Resident offenders convicted in other states. In addition to the Act's requirement that states register their own offenders in the pertinent categories, subsection (b)(7) of the Act requires states, as provided in these guidelines, to include in their registration programs residents who were convicted in other states.

To comply with this requirement, states must apply the Act's standards to residents who were convicted in other states of a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act). Specifically, states must require such persons to promptly provide current address information to the appropriate authorities when they establish residence in the state, and thereafter must apply to such persons all of the Act's standards relating to treatment of registered offenders following release including reporting of subsequent changes of address, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. States also should be aware that it is a federal offense for registered offenders to change residence to another state without notifying the new state of residence and the FBI. See 42 U.S.C. 14072(g)(3) and (i).

The durational requirements for registration of offenders convicted in other states are the same as those for in-state offenders--registration for at least 10 years or for life as provided in subsection (b)(6) of the Act. If a portion of the applicable registration period has run while the registrant was residing in another state, a new state of residence may give the registrant credit for that period. For example, if a person required to register for 10 years under the Act's standards has lived for six years following release in the state of conviction, another state to which the registrant moves at that point does not have to require registration for more than the four remaining years.

2. Juvenile delinquents and offenders. The Act's registration requirements depend in all circumstances on conviction for certain types of offenses. Hence, states are not required to mandate registration for juveniles who are adjudicated delinquent--as opposed to adults convicted of crimes and juveniles convicted as adults--even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, nothing in the Act prohibits states from requiring registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

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3. Tribal offenders. The Act does not impose any requirements relating to registration of persons convicted of sex offenses in Indian tribal courts. However, a sex offender convicted in an Indian tribal court whose presence is unknown to state authorities or Indian tribal authorities raises the same public safety concerns as an unregistered offender convicted of a similar offense in a state court. States are accordingly encouraged to require registration for sex offenders subject to their jurisdiction who were convicted in Indian tribal courts and to work with tribal authorities to ensure effective registration for such persons.

4. Protected witnesses. The Act requires current address registration but does not dictate under what name a person must be required to register. Hence, the Act does not preclude states from taking measures for the security of registrants who have been provided new identities and relocated under the federal witness security program (see 18 U.S.C. 3521 et seq.) or comparable state programs. A state may provide that the registration system records will identify such a registrant only by his or her new name and that the registration system records will not include the true pre-location address of the registrant or other information from which his or her original identity or participation in a witness security program could be inferred. States are encouraged to make provision in their laws and procedures for the security of such registrants and to honor requests from the United States Marshals Service and other agencies responsible for witness protection to ensure that the identities of these registrants are not compromised.

States should also be aware that 18 U.S.C. 3521(b)(1)(H), enacted by section 115(a)(9) of the CJSA, specifically authorizes the Attorney General to adopt regulations to "protect the confidentiality of the identity and location" of protected witnesses who are subject to registration requirements, "including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons." The Attorney General's policy, to the maximum extent allowed by security considerations, is to require the registration of all federally protected witnesses who otherwise would be required to register. However, in the ***579** Attorney General's discretion, the Attorney General will decide on a case-by-case basis whether these registrations will utilize new identities, modified listings, or other special conditions or procedures that are warranted to avoid inappropriately jeopardizing the safety of the protected witnesses.

II. Registration and Tracking Procedures; Penalties for Registration Violations [September 12, 1997; Possible Two-year Extension]

Paragraphs (1)(A) and (2)(A) of subsection (b) of the Act set out general duties for states in relation to offenders required to register who are released from prison or who are placed on any form of post-conviction supervised release ("parole, supervised release, or probation"). The duties include taking registration information, informing the offender of registration obligations, making the information available at the state level and to local law enforcement, and transmission of conviction data and fingerprints to the FBI. Paragraphs

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(4)-(5) of subsection (b) of the Act contain requirements that are designed to ensure that registration information will be updated when the registrant changes address and that registrants will continue to be required to register when they move from one state to another during the registration period. Subsection (b)(3)(A) states that "State procedures shall provide for verification of address at least annually."

These requirements generally derive from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)--Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. However, one aspect of subsection (b)(1)(A)--a requirement to inform offenders that they must register in states where they work or attend school, in clause (iii)--derives from the CJSA and consequently is subject to a longer deadline for compliance as discussed in part V of these guidelines.

A. Initial Registration Procedures

1. Taking of registration information and informing offenders of registration obligations. Subsection (b)(1)(A) provides that "a State prison officer, the court, or another responsible officer or official" must carry out specified duties in relation to persons who are required to register. The purpose of this provision is to ensure that offenders are made aware of their registration obligations and to preclude "honor systems" in which the initial registration depends on the offender's reporting the information on his own. States have discretion under the Act concerning what types of officials or officers will be made responsible for these initial registration functions.

The specific duties set out in subparagraph (A) of paragraph (1) include: (i) informing the person of the duty to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must report subsequent changes of address in the manner provided by state law, (iii) informing the person that if he moves to another state, he must report the change of address in the manner provided by state law and comply with any registration requirement in the new state of residence, (iv) obtaining fingerprints and a photograph if they have not already been obtained, and (v) requiring the person to read and sign a form stating that these requirements have been explained.

In addition, the CJSA amended subparagraph (A)(iii) to require that the person be informed that he also must register in states where he works or attends school. States must comply with this new requirement by November 25, 2000 (subject to a possible two-year extension), as explained in part V of these guidelines.

These informational requirements, like other requirements in the Act, only define minimum standards. Hence, states may require more extensive information from offenders. For example, the Act does not require a state to obtain information about a registrant's expected employment when it releases him, but a state may

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legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care of children.

As a second example, states are strongly encouraged to collect DNA samples, where permitted under applicable legal standards, to be typed and stored in state DNA databases. States are also urged to participate in the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA samples and participation in CODIS greatly enhance a state's capacity to investigate and solve crimes involving biological evidence, especially serial and stranger rapes.

2. Transmission of registration information. Paragraph (2)(A) of subsection (b) states, in part, that the registration information must be promptly made available to a law enforcement agency having jurisdiction where the registrant expects to reside and entered into the appropriate state records system. The purpose of this provision is to ensure that registration information will be available both to local law enforcement and at the state level.

States have discretion under the Act concerning the specific mechanisms and procedures for carrying out this requirement. For example, a state may provide that the responsible official or officer is to transmit the registration information concurrently to an appropriate local law enforcement agency and to the agency responsible for maintenance of the information at the state level, or may provide that the information is to be provided in the first instance only to the local agency or to the state agency, which then transmits it to the other. States also have discretion concerning the form of notification or transmission. For example, in meeting the requirement to make the information available to a law enforcement agency where the registrant will reside, permissible options include written notice, electronic transmission of registration information, and provision of on-line access to registration information.

While the Act generally leaves states discretion concerning specific procedures for taking and transmitting registration information, it does require that the information be "promptly" made available to the appropriate recipient agencies (both state and local). This requirement precludes procedures under which lengthy delays are allowed in the transmission or forwarding of the information. For example, in relation to registrants released from prison, state procedures must ensure: (1) that the registration information taken from the offender will be transmitted prior to release or within a short time (e.g., five days) thereafter, and (2) that there is no long delay in any subsequent forwarding of the information required for compliance with the Act, such as provision of the

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information to an ***580** appropriate local law enforcement agency by a state agency if only the state agency receives the information in the first instance.

The Act leaves states discretion in determining which state record system is appropriate for storing registration information, and which agency will be responsible at the state level for the maintenance of this information. As discussed in Part VI of these guidelines, however, states will be required effective November 25, 2000, to participate in the National Sex Offender Registry (NSOR), which is administered by the FBI. States can ensure that they will be able to freely exchange registration information with the FBI's records systems and comply with the requirement of participation in NSOR by making a "criminal justice agency" as defined in 28 CFR 20.3(c) responsible for the registration information at the state level. This continues to leave states with broad discretion concerning the designation of responsibility for the state registry, since "criminal justice agency" is defined broadly in the rule and generally includes, inter alia, law enforcement agencies, correctional and offender supervision agencies, and agencies responsible for criminal identification activities or criminal history records.

In addition to requiring procedures that ensure the prompt availability of the initial registration information both to local law enforcement and at the state level, paragraph (2)(A) of subsection (b) requires the prompt transmission of conviction data and fingerprints of registrants to the FBI. This should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

3. Fingerprinting. The final subsection of the Wetterling Act--which should be designated as subsection (h) but is designated as a second subsection (g) because of a technical drafting error in section 115(a)(3) of the CJSA--relates to a requirement under the Pam Lychner Act that certain offenders register directly with the FBI. In conjunction with other provisions of the Pam Lychner Act, it requires that fingerprints be obtained from such offenders by the FBI or by a local law enforcement official pursuant to regulations issued by the Attorney General. However, section 115(a)(7) of the CJSA deferred the effective date for direct FBI registration of certain offenders and issuance of related regulations. Hence, the final subsection of the Wetterling Act does not impose any requirements on the states at the present time.

B. Change of Address Procedures

1. Intrastate moves. Subsection (b)(4) provides that registrants are to report changes of address in the manner provided by state law. It further provides that state procedures must ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and is entered into the appropriate state records or data system.

The purpose of this provision is to ensure that current address information will

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continue to be available both to local law enforcement and at the state level. To comply with this part of the Act, states must require registrants to report changes of address within the state in a manner that ensures that information concerning the new address will promptly be made available to local law enforcement in the new place of residence and at the state level. Thus, states must require registrants to report changes of address prior to moving, or by some short time (e.g., 10 days) after moving.

States have discretion under the Act concerning specific mechanisms and procedures for reporting the updated address information and ensuring that it reaches the appropriate recipients. For example, many states require the registrant to notify local law enforcement agencies (e.g., local sheriffs' offices) in the place he is leaving and the place to which he is going and then require one of these local agencies to notify the agency responsible for maintenance of registration information at the state level. Alternatively, a state may require the registrant to directly notify a central registration agency at the state level, which then makes the information available to an appropriate local law enforcement agency. Another possibility is to require the registrant to report the change of address to a third party, such as a probation officer responsible for his supervision, who then is responsible for notifying a law enforcement agency in the new place of residence and the state registration agency.

The choice among these alternatives or the election of other alternatives beyond those described is a matter of state discretion. States will be in compliance as long as the procedures adopted ensure the prompt availability of the updated address information to law enforcement in the relevant local jurisdiction and at the state level.

2. Interstate moves. Subsection (b)(5) states that a registrant who moves to another state must report the change of address to the responsible agency in the state he is leaving and must comply with any registration requirement in the new state of residence. It further provides that the procedures of the state the registrant is leaving must ensure that notice is provided promptly to an agency responsible for registration in the new state of residence, if that state requires registration.

The purpose of this provision is to ensure a gap-free nationwide network of state registration programs that reliably tracks all offenders throughout the applicable period of registration and ensures that offenders cannot evade registration obligations by moving from one state to another. Hence, a state's procedures must require the registrant to report his departure to a responsible agency in the state, and must provide for prompt notice of the registrant's move by an agency in the state to the responsible registration authority in the new state of residence. An "honor system" approach, under which it is left to the registrant to notify the registration authority in the new state of residence on his own, does not satisfy the Act's requirements.

As discussed in part I.D.1 of these guidelines, the Wetterling Act's registration

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requirements "follow the registrant" if he moves to another state, and any state in which he establishes residence must include him in its registration program if registration is still required under the Wetterling Act's standards. This includes requiring the registrant to continue to register for at least the remainder of the Act's minimum ten-year registration period and to register for life if he is in a lifetime registration category under subsection (b)(6)(B) of the Act. Hence, the state a registrant is leaving is strongly encouraged to provide as part of its notice to the new state of residence sufficiently detailed information concerning the registrant's offenses and status to enable the new state to register him without difficulty in the appropriate category and for the appropriate amount of time.

In some instances, an offender convicted in a state may never be registered in that state as a resident, because the offender goes to live in another state immediately upon release from imprisonment or sentencing to probation. The requirement under subsection (b)(5) that the state of conviction promptly notify a responsible registration agency in the state where the offender will reside ***581** remains applicable in such situations. In addition, a number of the Act's requirements under subsection (b)(1)-(2) remain relevant and applicable in relation to such an offender. These include: taking information concerning the offender's expected place of residence; informing the offender of the obligation to comply with any registration requirement in the state where he will reside and also to register in a state where he works or attends school; obtaining fingerprints and a photograph, if they have not already been obtained; obtaining a signed acknowledgment; and ensuring that conviction data and fingerprints are promptly transmitted to the FBI.

C. Periodic Address Verification

Subsection (b)(3)(A) requires that state procedures provide for the verification of registrants' addresses at least annually. The purpose of the requirement of periodic address verification is to ensure that the authorities will become aware if a registrant has moved away from the registered address and has failed to report the change of address. Such procedures are obviously important for effective tracking of sex offenders and enforcement of registration requirements.

As a result of changes made by the CJSA amendments, the particular approach to address verification is a matter of state discretion under the Act. For example, some states verify addresses by having the responsible state or local agency annually send to the registered address a non-forwardable address verification form, which the registrant is required to sign and return within 10 days or some other limited period. This is one means by which states may comply with the verification requirement under subsection (b)(3)(A). The legislative history of the CJSA amendments to the Act noted other possible approaches: "A review of State sex offender registry laws indicates that some States require registrants to appear in person periodically at local law enforcement agencies to verify their address (and for such purposes as photographing and fingerprinting). Some States assign caseworkers to verify periodically that registrants still reside at the

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registered address. These * * * procedures effectively verify registrants' location, and impress on registrants that they are under observation by the authorities, in addition to making law enforcement agencies aware of the presence and identity of registered sex offenders in their neighborhoods." H.R. Rep. No. 256, 105th Cong., 1st Sess. 17 (1997).

D. Penalties for Registration Violations

Subsection (d) provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act must have criminal provisions covering this situation.

The requirement of criminal penalties for registration violations under the Act applies both to a state's own offenders who are required to register and to persons convicted in other states who are required to register because they have moved into the state to reside.

The Act neither requires states to allow a defense for offenders who were unaware of their legal registration obligations nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time of release and obtaining a signed acknowledgment that this information has been provided.

As discussed in part V of these guidelines, the Act as amended by the CJSA includes provisions that are designed to promote the registration of federal and military offenders and of non-resident workers and students. The CJSA amendments did not apply the Act's mandatory requirement of criminal penalties under state law for registration violations to federal and military offenders who reside in the state or to non-resident workers and students. However, Congress recognized the desirability of fully incorporating such offenders into state registration programs by statute, see H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997), and the availability of substantial sanctions for registration violations by all types of sex offenders is important to realize the Act's objective of a comprehensive, nationwide sex offender registration system. Hence, states are strongly encouraged to provide criminal penalties for registration violations by all offenders within the scope of the Act, regardless of whether the registrant is present in the state as a resident, worker, or student, and regardless of whether registration is premised on a conviction under the law of a state or under federal or military law.

III. Release of Registration Information [September 12, 1997; Possible Two-Year Extension]

Subsection (e) of the Act governs the disclosure of information collected under state registration programs.

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This part of the Act derives from the federal Megan's Law amendment to the Wetterling Act (Pub. L. No. 104-145, 110 Stat. 1345), which is subject to the same deadline for compliance as the original provisions of the Act under 42 U.S.C. 14071(g). Hence, the deadline for compliance is Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

Paragraph (1) of subsection (e) provides that information collected under a state registration program may be disclosed for any purpose permitted under the laws of the state. Hence, there is no requirements under the Act that registration information be treated as private or confidential to any greater extent than the state may wish.

Paragraph (2) of subsection (e) provides that the state or any agency authorized by the state shall release relevant information as necessary to protect the public. To comply with this requirement, a state must establish a conforming information release program that applies to offenders required to register on the basis of convictions occurring after the establishment of the program. States do not have to apply new information release standards to offenders whose convictions predate the establishment of a conforming program, but the Act does not preclude states from applying such standards retroactively to offenders convicted earlier if they so wish.

The principal objective of the information release requirement in paragraph (2) of subsection (e) is to ensure that registration programs will include means for members of the public to obtain information concerning registered offenders that is necessary for the protection of themselves or their families. Hence, a state cannot comply with the Act by releasing registration information only to law enforcement agencies, to other governmental or non-governmental agencies or organizations, to prospective employers, or to the victims of registrants' offenses. States also cannot comply by having purely permissive or discretionary authority for officials to release registration information. Information must be released to members of the public as necessary to protect the public from registered offenders. This disclosure requirement applies both in relation to offenders required to register because of ***582** conviction for "a criminal offense against a victim who is a minor" and those required to register because of conviction for a "sexually violent offense."

States do, however, retain discretion to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations. Several different approaches to this issue appear in existing state laws.

One type of approach, which is consistent with the requirements of the Act, involves particularized risk assessments of registered offenders, with differing degrees of information release based on the degree of risk. For example, some states classify registered offenders in this manner into risk levels, with

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registration information limited to law enforcement uses for offenders in the "low-risk" level; notice to organizations with a particular safety interest (such as schools and other child care entities) for "medium risk" offenders; and notice to neighbors for "high risk" offenders.

States also are free under the Act to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories. For example, states may decide to focus particularly on child molesters, in light of the vulnerability of the potential victim class, and on recidivists, in light of the threat posed by offenders who persistently commit sexual offenses.

Another approach by which states can comply with the Act is to make information accessible to members of the public on request. This may be done, for example, by making registration lists open for inspection by the public, or by establishing procedures to provide information concerning the registration status of identified individuals in response to requests by members of the public. As with proactive notification systems, states that have information-on-request systems may make judgments about which registered offenders or classes of registered offenders should be covered and what information will be disclosed concerning these offenders.

States are encouraged to involve victims and victim advocates in the development of their information release programs, and in the process for particularized risk assessments of registrants if the state program involves such assessments.

A proviso at the end of paragraph (2) of subsection (e) states that the identify of the victim of an offense that requires registration under the Act shall not be released. This proviso safeguards victim privacy by prohibiting disclosure of victim identity to the general public in the context of information release programs for registered offenders. It does not bar the dissemination of victim identity information for law enforcement or other governmental purposes (as opposed to disclosure to the public) and does not require that a state limit maintenance of or access to victim identity information in public records (such as police and court records) that exist independently of the registration system. Because the purpose of the proviso is to protect the privacy of victims, its restriction may be waived at the victim's option.

So long as the victim is not identified, the proviso in paragraph (2) does not bar including information concerning the characteristics of the victim and the nature and circumstances of the offense in information release programs for registered offenders. For example, states are not barred by the proviso from releasing such information as victim age and gender, a description of the offender's conduct, and the geographic area where the offense occurred. However, states are encouraged to avoid unnecessarily including information that may inadvertently result in the victim's identity becoming known, such as identifying a specific familial relationship between the offender and a victim who still lives

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in the area.

Concerns have been raised that the disclosure of registration information to the public under "community notification" programs may result in criminal acts or other reprisals against registrants. While currently available information does not indicate that this has been a significant problem under state programs, states are encouraged to consider including measures in their programs to minimize any possibility of misuse of the information released under the program. For example, some states include in their informational notices statements that the information is provided only for legitimate protective purposes, and that criminal acts against registrants will result in prosecution. As a further example, some states provide special training for officers responsible for community notification and/or hold community meetings in connection with the provision of notice to the community concerning a registrant's presence.

IV. Special Registration Requirements Under the Pam Lychner Act for Recidivists and Aggravated Offenders [October 2, 1999; Possible Two-Year Extension]

Subsection (b)(6)(B)(i)-(ii) of the Act requires lifetime registration for persons in two categories: (1) registrants who have a prior conviction for an offense for which registration is required by the Act, and (2) registrants who have been convicted of an "aggravated offense."

This requirement derives from an amendment to the Wetterling Act enacted by the Pam Lychner Act. The time for compliance is accordingly that provided in section 10(b) of the Pam Lychner Act--Oct 2, 1999, subject to a possible two-year extension for states making good faith efforts to come into compliance.

Subsection (b)(6)(B)(i) requires lifetime registration for certain recidivists. States can comply with this provision by requiring offenders to register for life where the following conditions are satisfied: (1) the current offense is one for which registrations is required by the Act--i.e., an offense in the range of offenses specified in subsection (a)(3)(A)-(B) or a comparable range of offenses, and (2) the offender has a prior conviction for an offense for which registration is required by the Act. There is no time limit under the Act on qualifying prior convictions. In determining whether a person has a qualifying prior conviction, states may rely on the methods they normally use in searching criminal records.

Subsection (b)(6)(B)(ii) requires lifetime registration for persons convicted of an "aggravated offense," even on a first conviction. "Aggravated offense" refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 2241), which principally encompasses: (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, and (2) engaging in sexual acts involving penetration with victims below the age of 12. Hence, states can comply with this provision by requiring lifetime registration for person convicted of the state offenses which cover such conduct.

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A state is not in compliance with subsection (b)(6)(B) (i) or (ii) if it has a procedure or authorization for terminating the registration of convicted offenders within the scope of these provisions at any point in their lifetimes. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is ***583** not required under the Act. Likewise, if the applicability of the lifetime registration requirement is premised on a prior conviction pursuant to subsection (b)(6)(B)(i), it becomes inapplicable if the prior conviction is reversed, vacated, or set aside, or if the registrant is pardoned for the prior conviction offense.

The proviso in subsection (b)(6) that registration need not be required "during ensuing periods of incarceration" applies to registrants subject to lifetime registration. Hence, states are not required to carry out address registration and verification procedures for such registrants during subsequent periods in which the registrant is imprisoned or civilly committed. To comply with the Act, a state that does waive registration for such registrants during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

As with the other requirements of the Act, a state may impose the lifetime registration requirement for recidivists and aggravated offenders prospectively, so that it applies only to offenders required to register on the basis of convictions occurring after the state has adopted the requirement. Hence, it is sufficient for compliance with the Act if lifetime registration is imposed on: (1) all offenders convicted of an aggravated offense after the lifetime registration requirement is adopted; and (2) all recidivists convicted of an offense for which registration is required under the Act after the lifetime registration requirement is adopted (regardless of when the prior qualifying conviction occurred). Of course, states remain free to apply the lifetime registration requirement retroactively to offenders convicted prior to its adoption if they so wish.

V. Special Registration Requirements Under the CJSA Amendments Relating to Sexually Violent Predators, Federal and Military Offenders, and Non-resident Workers and Students [November 25, 2000; Possible Two-Year Extension]

Subsections (a)(2), (a)(3)(C)-(E), (b)(1)(B), (b)(3)(B), and (b)(6)(B)(iii) of the Act prescribe heightened registration requirements for persons who are determined to be "sexually violent predators" under specified procedures. These provisions also, however, allow the approval of alternative procedures and of alternative measures of comparable or greater effectiveness in protecting the public.

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of a federal offense or sentenced by a court martial, and (2) nonresident offenders who have crossed into another state in order to work or attend school.

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Because these requirements, in their current form, derive from the CJSA, the time for compliance is that provided in section 115(c)(2) of the CJSA--Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance.

A. Heightened Sexually Violent Predator Registration or Alternative Measures

1. Heightened sexually violent predator registration. Subparagraphs (B)-(E) of subsection (a)(3) contain the Act's definition of "sexually violent predator" and related definitions. Subparagraph (C) defines "sexually violent predator" to mean a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. Subparagraph (D) essentially defines "mental abnormality" to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. The definition of "personality disorder" is a matter of state discretion since the Act includes no specification on this point. For example, a state may choose to utilize the definition of "personality disorder" that appears in the Diagnostic and Statistical Manual of Medical Disorders: DSM-IV. American Psychiatric Association, Diagnostic and Statistical Manual of Medical Disorders (4th ed. 1994). Subparagraph (E) defines "predatory" to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

A state that wishes to comply with the Act's provisions concerning sexually violent predator registration must adopt some approach to deciding when a determination will be sought as to whether a particular offender is a sexually violent predator. However, the specifics are a matter of state discretion. For example, a state might commit the decision whether to seek classification of an offender as a sexually violent predator to the judgment of prosecutors, or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes. Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a "sexually violent predator." A state may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the original sentence. It could, for example, be made instead when the offender has served a term of imprisonment and is about to be released from custody.

Subparagraphs (A) and (B) of subsection (a)(2) govern the procedures for making the sexually violent predator determination. Subparagraph (A) states that the determination is to be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies. However, subparagraph (B) allows the Attorney General to waive these requirements where a state has established alternative procedures or legal standards for designating a person as a sexually violent predator.

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The waiver authority under subparagraph (B), which was added by the CJSA amendments, recognizes that a judicial determination informed by the recommendations of a board of mixed composition is not the only approach states may validly adopt to secure appropriate input and make fair determinations. For example, at a sentencing proceeding or other hearing to determine sexually violent predator status, a state might provide for input concerning psychological assessment through expert testimony; input from the law enforcement perspective through the prosecutor's presentation; and input from the perspective of victims through allocution or testimony by the victim(s) of the underlying sexually violent offense or offenses. Moreover, judicial determinations concerning sexually violent predator status are not the only legitimate approach since, for example, a state may decide to assign responsibility for such determinations to a parole board or other administrative agency with adjudicatory functions. Because there are many valid approaches that states may devise, the particular approach taken to determine whether an offender is a sexually violent predator as defined in the Act will be treated as a matter of state discretion under the Act.

For registrants who have been determined to be "sexually violent predators" under the Act's definitions, ***584** the Act prescribes three special registration requirements:

First, subsection (b)(1)(B) provides that the initial registration information obtained from a sexually violent predator must include "the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person." In determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records or the offender, and may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment. If states want to require the inclusion of more detailed information about offenders' treatment history, however, they are free to do so.

Second, subsection (b)(3)(B) requires quarterly address verification for sexually violent predators, as opposed to the annual address verification required for registrants generally under subsection (b)(3)(A). Part II.C of these guidelines provides a general explanation of the Act's address verification requirement.

Third, subsection (b)(6)(B)(iii) requires lifetime registration for sexually violent predators. This requirement is unqualified. While language in subsection (a)(1)(B) of the Act alludes to possible termination of sexually violent predator status under subsection (b)(6)(B), this is a relic of earlier versions of the Act that has no referent in the Act's current text following the Pam Lychner Act and CJSA amendments.

Hence, for example, a state is not in compliance with the Act's requirements if it allows registration to be terminated for a person who has been found to be a sexually violent predator on the basis of a later determination that the person is

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no longer a sexually violent predator or has been rehabilitated. However, if the underlying conviction for a sexually violent offense is reversed, vacated, or set aside, or if the registrant is pardoned for that offense, registration (or continued registration) as a sexually violent predator is not required under the Act. Moreover, the proviso in subsection (b)(6) that registration need not be required "during ensuing periods of incarceration" applies to sexually violent predators. Hence, states are not required to carry out address registration and verification procedures when a sexually violent predator is subsequently imprisoned or civilly committed. To comply with the Act, a state that does waive registration for sexually violent predators during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

2. Alternative measures of comparable or greater effectiveness. Subparagraph (C) of subsection (a)(2) authorizes the Attorney General to approve "alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators." A state that wishes to have "alternative measures" approved under subparagraph (C) must make a request for such approval to the reviewing authority.

The authorization to approve alternative measures under subparagraph (C) was added by the CJSA, reflecting Congress's recognition that few states followed the Act's specific provisions concerning sexually violent predators; that it would be difficult for many states to do so; and that states can "incorporate other features into their systems which further the objective of protecting the public from particularly dangerous sex offenders." H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

The legislative history of the CJSA identified a number of factors that would be pertinent to a determination whether a state has adopted alternative measures of comparable or greater effectiveness:

For example, some State programs have registration periods for broadly defined categories of sex offenders which are much longer than the basic 10-year registration period under the Wetterling Act. This may provide more protection for the public than heightened registration requirements limited to a relatively small class of offenders who would be classified as sexually violent predators * * *. Moreover, some States require civil commitment, lifetime supervision, or very long periods of imprisonment for sexually violent predators or broader classes of serious sex offenders. [Subsection (a)(2)] makes it clear that alternative approaches like these can be approved if a State's approach is equally effective or more effective in protecting the public from particularly dangerous sex offenders.

H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

Hence, for example, the reviewing authority will approve a state system as providing alternative measures "of comparable or greater effectiveness" if the

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state applies the principal heightened registration requirements under the Act's sexually violent predator provisions--i.e., lifetime registration and quarterly address verification--to a class of offenders that is generally broader than "sexually violent predators." Since "sexually violent predators" are, by definition, a subclass of persons convicted of a "sexually violent offense," a state has obviously adopted an alternative measure of comparable or greater effectiveness if it requires lifetime registration and quarterly address verification uniformly for persons in the broader class of those convicted of a "sexually violent offense".

For states that follow other approaches, the determination whether "alternative measures of comparable or greater effectiveness" have been adopted will be made on a case-by-case basis.

B. Federal and Military Offenders; Non-resident Workers and Students

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of federal offenses or sentenced by courts martial, and (2) nonresident offenders who cross into other states in order to work or attend school.

This requirement was added to close two gaps in the Wetterling Act standards for registration programs. First, Congress was concerned about the lack of any provision for registration of persons convicted of federal sex offenses--such as those defined in chapters 109A, 110, and 117 of title 18, United States Code--and the lack of any provision for registration of persons convicted of sexual offenses under the Uniform Code of Military Justice while in the armed forces. Second, Congress was concerned about the commission of offenses by registered offenders at or near their places of work or study, where the local authorities are unaware of the offenders' presence in those areas because they reside in a different state. The new provisions relating to registration of federal and military offenders, and non-resident workers and students, were added to address these concerns.

1. Federal and military offenders. In relation to federal and military offenders, states can comply with the new requirement under subsection (b)(7) by accepting in their registration programs address information from such offenders who reside in the state, where the federal conviction or court martial ***585** sentence was for a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act).

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to federal and military offenders. Congress, however, did note that "it would be preferable that States fully incorporate federal offenders [and] persons sentenced by courts martial * * * into their registration and notification programs by statute." H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). As a practical matter, the presence in a state of a sex offender whose whereabouts are unknown to the authorities poses the same

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potential danger to the public, regardless of whether the offender was convicted in a state court for a state offense or for a comparable offense under federal or military law.

Hence, as a matter of sound policy, states are strongly encouraged to subject federal and military offenders to the full panoply of registration requirements and procedures established for state offenders, including reporting of subsequent changes of address following the initial registration, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. Some states currently put sex offenders convicted in federal or military courts on the same footing as state offenders under their registration programs; all states are encouraged to adopt this approach.

States should be aware that the CJSA enacted provisions that impose complementary obligations on federal authorities to facilitate state registration of federal and military offenders. Specifically, provisions in section 115(a)(8) of the CJSA require federal and military authorities to notify state and local law enforcement and registration agencies concerning the release or subsequent movement to their areas of federal and military sex offenders. In addition, under amendments in section 115(a)(8) of the CJSA, federal sex offenders are required to register in states where they reside, work, or attend school as mandatory conditions of probation, parole, and post-imprisonment supervised release. State and local officers accordingly are encouraged to notify federal authorities of any failure by such offenders to register, so that appropriate action can be taken with respect to their federal release status. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope federal and military sex offenders who fail to register.

2. Non-resident workers and students. Subsection (b)(7)(B) of the Act requires states to accept registration information from non-residents who have come into the state to work or attend school. Related provisions appear in subsections (a)(3)(F)-(G) and (c). As specified in these provisions, the workers from whom registration information must be accepted include those who have any sort of full-time or part-time employment in the state, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year. The students from whom registration information must be accepted include those who are enrolled in any type of school in the state on a full-time or part-time basis.

The Act's provisions regarding non-resident workers and students sometimes refer to persons who cross into another state "in order to work or attend school" and sometimes refer to persons who are or may be in another state where the person "is employed," "carries on a vocation," or "is a student." These are merely terminological variations; the Act's various references to non-resident workers and students all refer to the same classes of persons, as defined above.

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States can comply with the Act's requirement to accept registration information from non-resident workers and students by accepting registration information from such persons, where the person would be required to register in his state of residence under the Act's standards. The "registration information" the state must accept from such a registrant to comply with the Act is, at a minimum, information concerning the registrant's place of employment or the school attended in the state and his address in his state of residence. States are free to accept or require more extensive information if they wish, such as information concerning any place of lodging the registrant may have in the state for purposes of work or school attendance.

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to non-resident workers and students, but did note that "it would be preferable that States fully incorporate * * * offenders crossing State borders to work or go to school * * * into their registration and notification programs by statute." H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). States are encouraged to include measures in their registration systems that will ensure effective registration of non-resident workers and students, including provision of criminal penalties under state law for such offenders who fail to register and release of registration information concerning such offenders as necessary for public safety. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope non-resident workers and students who fail to register.

In addition to requiring states to accept registration information from non-resident workers and students, the CJSA amendments added, as part of subsection (b)(1)(A)(iii), a requirement to inform a registrant in the initial registration process that he must register in a state where he is employed, carries on a vocation, or is a student. As discussed in Part II.A of these guidelines, subsection (b)(1)(A) of the Act has always required that offenders be informed of the general duty to register, of the duty to report subsequent changes of address, and of the duty to register in any state of residence. States can readily supplement their procedures for informing offenders of registration obligations to include the information that the offender also must register in any state where he is employed, carries on a vocation, or is a student.

VI. Participation in the National Sex Offender Registry [November 25, 2000; Possible Two-Year Extension]

Subsequent (b)(2)(B) of the Act requires states to "participate in the national database established under section 14072(b)"--i.e., the National Sex Offender Registry (NSOR)--"in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines."

This requirement derives from the amendment of the Wetterling Act by section 115(a)(2)(B) of CJSA. The time for compliance is accordingly that provided in

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section 115(c)(2) of CJSA--Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance. At the present time, many states are already participating in NSOR, and the remainder are strongly encouraged to do so as promptly as possible.

States should be aware that participation in NSOR is a condition for determining that a state has a "minimally sufficient" sex offender ***586** registration program as defined in 42 U.S.C. 14072(a)(3). Pursuant to section 115(a)(7) of the CJSA, states have until October 2, 1999, to establish "minimally sufficient" programs (subject to a possible two-year extension for states making good faith efforts). In states that have not established "minimally sufficient" programs by that time, the FBI will be required to directly register sex offenders convicted in the state, and there will be correlative responsibilities on such states to facilitate FBI registration of their sex offenders as provided in 42 U.S.C. 14072(h)(1) and (k). Hence, the failure of a state to participate in NSOR by October 2, 1999, may result in otherwise avoidable federal intervention in sex offender registration in the state.

States should also be aware that under the National Sex Offender Registry Assistance Program (NSOR-AP), funding is available from the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and upgrade state sex offender registries. States desiring additional information concerning this funding program should contact the Bureau of Justice Statistics.

In accordance with 42 U.S.C. 14072(b), the FBI has established an interim version of NSOR (the "Interim Registry") to track the whereabouts and movement of persons required to register under sex offender registration programs. The Interim Registry functions as a "pointer" system, indicating on an individual's FBI Identification Record the fact that the individual is a registered sex offender and the name and location of the state agency that maintains the offender's registration information.

The FBI will be issuing regulations concerning state participation in NSOR. To participate in NSOR under current procedures, states must submit the following information on registrants to the FBI: the name under which the person is registered; the registering agency's name and location; the date of registration; and the date registration expires. Upon the submission of this information, a notice indicating that an individual is a registered sex offender and listing the information will be included on the individual's FBI Identification Record.

The FBI is in the process of modifying the National Crime Information Center (NCIC) to establish a new crime information system that will be known as "NCIC 2000." NCIC 2000, which is expected to go on-line in mid-1999, will include a Convicted Sexual Offender Registry File that will serve as the permanent National Sex Offender Registry (the "Permanent Registry"). In the Permanent Registry, sex offender registration information will be entered directly into the NCIC Convicted Sexual Offender Registry File, via the NCIC communication circuit, and will

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include such information as the offender's name and address and details regarding the conviction resulting in registration. States will receive further guidance concerning participation in the Permanent Registry through future modifications of regulations and guidelines.

VII. Good Faith Immunity [Available to States Immediately]

Subsection (f) states that law enforcement agencies, employees of law enforcement agencies, independent contractors acting at the direction of such agencies, and state officials shall be immune from liability for good faith conduct under the Act. Inclusion of this provision in the Act was necessary to protect state actors and contractors involved in registration and notification programs from unwarranted exposure to liability, since the states cannot legislate immunities to liability under federal causes of action. This part of the Act does not impose any requirement on states and the character of state law provisions regarding the scope of immunity or liability will not be considered in the compliance review under the Act.

VIII. Compliance Review; Consequences of Non-Compliance

The time states have to comply with the Act's requirements depends on the legislation from which the requirements derive, as specified in these guidelines. Thus, the initial deadline for complying with requirements derived from the Wetterling Act as originally enacted or from Megan's Law was September 12, 1997, and the deadline is now September 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. Requirements deriving from the Pam Lychner Act must be complied with by October 2, 1999, subject to a possible two-year extension for states making good faith efforts to comply. Requirements deriving from the CJSA must be complied with by November 25, 2000, subject to a possible two-year extension for states making good faith efforts to comply.

These deadlines set outer limits for state compliance to avoid a reduction of Byrne Formula Grant funding. States are strongly encouraged to attempt to achieve compliance with all parts of the Act as quickly as possible to maximize the benefits of the Act's reforms.

States that fail to come into compliance within the specified time periods will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. If a state's funding has been reduced because it has failed to comply with the Act's requirements by an applicable deadline, the state may regain eligibility for full funding in later program years by establishing compliance with all applicable requirements of the Act in such later years.

States are encouraged to submit information concerning existing and proposed sex offender registration provisions to the Bureau of Justice Assistance with as much lead-time as possible. This will enable the reviewing authority to assess the

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status of state compliance with the Act and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect. At the latest, state submissions must be provided on the following timetable:

To maintain eligibility for full Byrne Formula Grant funding following September 12, 1999--the end of the implementation period for the Act's original requirements and Megan's Law, for states that have received the two-year "good faith" extension--such states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in parts I, II, and III of these guidelines.

To maintain eligibility for full Byrne Formula Grant funding following October 2, 1999--the end of the implementation period for the Pam Lychner Act requirements, absent an extension--states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in part IV of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

To maintain eligibility for full Byrne Grant funding following November 25, 2000--the end of the implementation period for the CJSA requirements, absent an extension--states must submit to the Bureau of Justice Assistance by September 25, 2000, information that ***587** shows compliance, in the reviewing authority's judgment, with the requirements described in parts V and VI of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

After the reviewing authority has determined that a state is in compliance with the Act,the state will be required as part of the Byrne Formula Grant application process in subsequent program years to certify that the state remains in compliance with the Act.

Dated: December 10, 1998.

Janet Reno,

Attorney General.

Editorial Note: Due to typesetting errors, notice document FR Doc. 98-33377, originally published in the issue of Thursday, December 17, 1998, at pages 69652-69667 is being republished in its entirety.

[FR Doc. 98-33377 Filed 12-16-98; 8:45 am]

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64 FR 572-01, 1999 WL 1737 (F.R.)

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UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 46--JUSTICE SYSTEM IMPROVEMENT
SUBCHAPTER V--BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS
PART A--DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM

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§ 3756. Allocation and distribution of funds under formula grants

(a) States

Subject to subsection (f) of this section, of the total amount appropriated for this subchapter in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 3761 of this title shall be set aside for section 3752 of this title and allocated to States as follows:

(1) $500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

(b) Units of local government

(1) Each State which receives funds under subsection (a) of this section in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 3751(b) of this title that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

(2) In distributing funds received under this subchapter among urban, rural, and suburban units of local government and combinations thereof, the State shall give priority to those jurisdictions with the greatest need.

(3) Any funds not distributed to units of local government under paragraph (2) shall be available for expenditure by the State involved.

(4) For purposes of determining the distribution of funds under paragraphs (1) and (2), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

(c) Programs eligible

No funds allocated to a State under subsection (a) of this section or received by a State for distribution under subsection (b) of this section may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

(d) Unneeded State allocated funds distributed to units of local government

If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under section 3752 of this title, or that a State chooses not to participate in the program established under such section, then such portion shall be awarded by the Director to urban, rural, and suburban units of local government

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or combinations thereof within such State giving priority to those jurisdictions with greatest need.

(e) Funds not distributed

Any funds allocated under subsection (a) or (f) of this section that are not distributed under this section shall be available for obligation under part B of this subchapter.

(f) Testing certain sex offenders for human immunodeficiency virus

(1) For any fiscal year beginning more than 2 years after November 29, 1990--

(A) 90 percent of the funds allocated under subsection (a) of this section without regard to this subsection to a State described in paragraph (2) shall be distributed by the Director to such State; and

(B) 10 percent of such funds shall be allocated equally among States that are not affected by the operation of subparagraph (A).

(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act--

(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immune deficiency syndrome;

(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and support services.

(3) For purposes of this subsection--

(A) the term "convicted" includes adjudicated under juvenile proceedings; and

(B) the term "sexual act" has the meaning given such term in subparagraph (A) or (B) of section 2245(1) of Title 18.

CREDIT(S)

1995 Main Volume

(Pub.L. 90-351, Title I, § 506, as added Pub.L. 100-690, Title VI, § 6091(a), Nov. 18, 1988, 102 Stat. 4334, and amended Pub.L. 101-162, Title II, § 212, Nov. 21, 1989, 103 Stat. 998, 1006; Pub.L. 101-302, Title III, § 320(c)(1), May 25, 1990, 104 Stat. 248; Pub.L. 101-647, Title XVIII, § 1804, Nov. 29, 1990, 104 Stat. 4851; Pub.L. 103-322, Title XXXIII, § 330001(a), Sept. 13, 1994, 108 Stat. 2138.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1988 Acts. For Related Reports, see 1988 U.S. Code Cong. and Adm. News, p. 5937.

1989 Acts. Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 733-3.

1990 Acts. Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 206-2.

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House Report Nos. 101-681(Parts I and II) and 101-736, Senate Report No. 101- 460, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 6472.

1994 Acts. House Report Nos. 103-324 and 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

Amendments

1994 Amendments. Subsec. (a). Pub.L. 103-322, § 330001(a)(1), substituted "Subject to subsection (f) of this section, of" for "Of".

Subsec. (c). Pub.L. 103-322, § 330001(a)(2), substituted "subsection (b)" for "subsections (b) and (c)".

Subsec. (e). Pub.L. 103-322, § 330001(a)(3), substituted "or (f)" for "or (e)".

Subsec. (f)(1)(A). Pub.L. 103-322, § 330001(a)(4)(A)(i), struck out ", taking into consideration subsection (e) of this section but" following "subsection (a) of this section."

Pub.L. 103-322, § 330001(a)(4)(A)(ii), substituted "this subsection" for "this subsection,".

Subsec. (f)(1)(B). Pub.L. 103-322, § 330001(a)(4)(B), substituted "such funds" for "such amount".

1990 Amendments. Subsec. (a). Pub.L. 101-302, § 320(c)(1)(A), inserted "required" in the provisions preceding par. (1).

Subsec. (a)(1). Pub.L. 101-647, § 1804(1), which directed substitution of "subsections (e) and (f) of this section" for "subsection (e) of this section", could not be executed because the words "subsection (e)" did not appear.

Pub.L. 101-302, § 320(c)(1)(B), substituted "$500,000 or 0.25 percent, whichever is greater," for "0.4 percent".

Subsec. (f). Pub.L. 101-647, § 1804(2), (3), which directed the addition of subsec. (f) and redesignation of former subsec. (f) as (g), was executed by adding subsec. (f), there being no prior subsec. (f).

1989 Amendments. Subsec. (a), opening par. Pub.L. 101-162, § 212, reenacted opening par. without change.

Subsec. (a)(1). Pub.L. 101-162, § 212, substituted "0.4 percent" for "$500,000 or 0.25 percent, whichever is greater".

Pub.L. 101-162, Title II, in part, inserted "or 0.25 percent, whichever is greater," after "$500,000".

Subsec. (a)(2). Pub.L. 101-162, § 212, reenacted par. (2) without change.

Prior Provisions

A prior section 3756, Pub.L. 90-351, Title I, § 508, June 19, 1968, 82 Stat. 205; Pub.L. 91-644, Title I, § 7(3), Jan. 2, 1971, 84 Stat. 1887; Pub.L. 93- 83, § 2, Aug. 6, 1973, 87 Stat. 211, which related to the use of services, equipment, personnel, and facilities of other Federal agencies, was omitted in the general revision of this chapter by Pub.L. 96-157.

CROSS REFERENCES

Comprehensive evaluations and review of programs funded under this section, see 42 USCA § 3766.

Reports to Director of Bureau of Justice Assistance by each State receiving a grant under this section, see 42 USCA §

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3766b.

State defined, see 42 USCA § 3791.

State ineligibility for funds under this section for failure to implement Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration Program, see 42 USCA § 14071.

LIBRARY REFERENCES

American Digest System

Disbursement of federal funds; aid to state and local agencies in general, see United States ⚷82(2).

Encyclopedias

Disbursement of federal funds in general, see C.J.S. United States § 122.

42 U.S.C.A. § 3756

42 USCA § 3756

END OF DOCUMENT

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List Date: 01/08/1998 Mailing Information Final Staff Analysis

Mailing List

Claim Number	97-TC-15	Claimant	Claim of County of Tuolumne-Sheriff's Department
Subject	Penal Code sections 290 and 290.4 908/96		
Issue	Sex Offenders: Disclosure by Law Enforcement Officers		

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State Capitol, Room 437
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

ALBERT P. "AL" BELTRAMI
Public Member

HEATHER A. HALSEY
Representative for STEVEN A. NISSEN, Director
State Office of Planning and Research

JOHN R. HARRIGAN
Representative for KATHLEEN CONNELL
State Controller

WILLIAM SHERWOOD, Vice Chair
Representative for PHILIP ANGELIDES
State Treasurer

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

KATHY LYNCH, Staff Counsel

CAMILLE SHELTON, Staff Counsel

SEAN AVALOS, Staff Counsel

CATHERINE CRUZ, Program Analyst

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1 All in favor, indicate with "aye."
2 *(A chorus of "ayes" was heard.)*
3 CHAIR PORINI: Opposed?
4 Abstain?
5 Motion carries.
6 MS. HIGASHI: I'd just like to note for the
7 record, that Item 4, which had also been included on the
8 proposed consent calendar, has been postponed at the
9 request of claimants.
10 CHAIR PORINI: Okay.
11 MS. HIGASHI: This brings us to the hearing
12 portion of our meeting. We have a test claim and an
13 incorrect reduction claim for hearing today.
14 I'd like to ask all of the parties and witnesses
15 for Items 2 and 3 to rise, if anyone in the audience
16 intends to come to the table for either of these items.
17 Would you please raise your right hands?
18 Do you solemnly swear or affirm that the
19 testimony you are about to give is true and correct,
20 based upon your personal knowledge, information or
21 belief?
22 *(A chorus of "I do's" was heard.)*
23 MS. HIGASHI: Thank you.
24 Kathy Lynch will present Item 2.
25 CHAIR PORINI: We'll let the claimants come

1 forward to the table.
2 All right, Kathy?
3 MS. LYNCH: The test claim legislation concerns
4 Sections 290 and 290.4 of the Penal Code, and requires
5 the registration of certain convicted sex --
6 CHAIR PORINI: Kathy, I'm sorry. Is your
7 microphone on? We can't hear you.
8 MS. LYNCH: It is. Hello?
9 CHAIR PORINI: There you go. You just have to
10 get a little closer.
11 MS. LYNCH: Okay, sorry.
12 CHAIR PORINI: That's okay.
13 MS. LYNCH: I'll start over.
14 CHAIR PORINI: Please.
15 MS. LYNCH: The test claim legislation concerns
16 Sections 290 and 290.4 of the Penal Code, and requires
17 the registration of certain convicted sex offenders and
18 public disclosure of their identity by local law
19 enforcement agencies.
20 Staff's analysis of the test claim legislation
21 is divided into two parts.
22 Part 1: Part 1 concerns new crimes and new time
23 lines in which an individual must register as a convicted
24 sex offender. Under prior law, an individual did not
25 have to register as a sex offender for these new crimes

1 or within the specified time frame for certain crimes.
2 Now, under the test claim legislation, if these convicted
3 sex offenders fail to register for the new crimes or
4 within the prescribed time period for specific crimes,
5 they will be guilty of a misdemeanor, felony and/or
6 continuing offense.
7 Accordingly, staff finds that this portion of
8 the test claim legislation creates a new crime and, thus,
9 is not a reimbursable state mandate under Article XIII B,
10 Section 6, of the California Constitution and Government
11 Code Section 17556(g).
12 Part 2: Part 2 relates to the remaining
13 activities presented by the test claim legislation, and
14 includes whether some or all of these activities are a
15 new program or higher level of service, and impose costs
16 mandated by the state under Article XIII B, Section 6
17 of the California Constitution and Government Code
18 Section 17514.
19 Staff finds that Part 2 of the test claim
20 legislation is a program within the meaning of
21 Article XIII B, Section 6, because it carries out the
22 governmental function of providing police protection to
23 the public.
24 Staff further finds that the following required
25 activities are a new program or higher level of service

1 under Article XIII B, Section 6, and also result in costs
2 mandated by the state within the meaning of Government
3 Code Section 17514.
4 These activities are as follows: Submission of
5 registered sex offender information to the Department of
6 Justice's Violent Crime Information Network by local law
7 enforcement agencies; removal of registration for
8 decriminalized conduct; preregistration of convicted sex
9 offenders; new information required in the registration
10 upon release of the convicted sex offender; notice to the
11 convicted sex offender of the reduction of the
12 registration period; compiling of statistical data
13 relating to high-risk sex offenders; public access of
14 registered sex offenders by CD-ROM; and record retention
15 of individuals viewing the CD-ROM.
16 The staff recommends that the Commission approve
17 the staff analysis.
18 Will the parties and witnesses please state your
19 name for the record?
20 MS. STONE: Good morning, Madam Chairman.
21 Pamela Stone on behalf of the County of Tuolumne.
22 MR. STEELY: I'm John Steely. I'm a lieutenant
23 with the Tuolumne County Sheriff's Department.
24 MR. BURDICK: And Allan Burdick on behalf of the
25 California State Association of Counties.

1 MR. LOMBARD: ~~John~~ JIM Lombard, Department of
2 Finance.
3 MR. LUTZENBERGER: Tom Lutzenberger for the
4 Department of Finance.
5 CHAIR PORINI: Ms. Stone, would you like to
6 begin?
7 MS. STONE: Thank you very much, Madam Chair,
8 Members of the Commission.
9 I would like to address the first part of the
10 staff analysis to which we disagree, which is the
11 registration for new crimes and time lines.
12 It is the position of your Commission staff that
13 the registration constitutes a new crime or changing the
14 existing definition of a crime and, therefore, is not a
15 cost which is eligible for reimbursement.
16 First of all, I would like to request that you
17 take a look at TC-9, which quotes from Government Code
18 Section 17556(g). This is the codification of the
19 constitutional provision regarding the new crime or
20 infraction exception. It states: "The statute created a
21 new crime or infraction, eliminated a crime or
22 infraction, or changed the penalty for a new crime or
23 infraction" -- and this is important -- "but only for
24 that portion of the statute relating directly to the
25 enforcement of the crime or infraction."

1 As you will hear from myself and Lieutenant
2 Steely, it is our contention that the registration is
3 not -- does not pertain to the actual enforcement of a
4 new crime or infraction.
5 As your staff has noted, there have been
6 sex offender registration requirements in the State of
7 California since 1945. With the advent of the test claim
8 legislation, two important things have occurred:
9 One is that the total universe of individuals subject to
10 registration has been substantially expanded. The second
11 thing that you will note, is that the requirements for
12 registration have changed substantially.
13 What you'll hear from Lieutenant Steely, is that
14 in the old days, the information basically consisted of
15 the name, address and place of employment.
16 The new registration requirements are the same
17 as you have for preregistration and release, which is on
18 page TC-16. This is a requirement that substantial
19 additional information be provided.
20 First of all, the registrant must provide actual
21 proof of residence. This must consist of a California
22 driver's license or a California I.D. card; and also as
23 proof of residence, you can have such things as a utility
24 bill or your personalized checks. But there has to be
25 some actual demonstration of where you live.

1 Second of all, when you first register, there is
2 a requirement for a full set of fingerprints.
3 Thereafter, on an annual basis, a thumbprint is taken to
4 make sure that the person that is registering is actually
5 the person who they say they are.
6 There is a requirement of taking a photograph of
7 this individual, upon annual registration. And these
8 photographs are updated annually because, unfortunately,
9 with the passage of time, we don't look as good as we
10 used to. And it's necessary to have an actual current
11 photograph because people's appearances do change with
12 the passage of time.
13 There is a request for information pertaining to
14 vehicle license information, so that law enforcement
15 officers can find the individual through their vehicle.
16 So you will note that the information has
17 substantially increased.
18 There is also now a requirement for
19 preregistration. This is a requirement that the
20 convicted sex offender be registered, in essence, prior
21 to release from jail, prison or a release on probation.
22 The purpose of this is to compare it with the actual
23 registration form, which they're required to do upon a
24 release, so the Department of Justice and local law
25 enforcement officers know if the convicted sex offender

1 actually shows up where they say they're going to go, and
2 be able to verify that the person has, in fact, been
3 there.
4 The request for information also includes such
5 detailed information as tattoos and scars, as well as
6 next of kin, and how to be able to contact that person.
7 As you will hear from Lieutenant Steely, this
8 has absolutely nothing to do whatsoever with the issue of
9 the actual enforcement of the failure to register.
10 Also, it's important to note that this
11 registration requirement continues for the life of the
12 offender, whereas the federal requirement is merely for a
13 period of ten years and does not require the detailed
14 specific information that the California legislation
15 does.
16 We believe that P.C. 290 did not create a new
17 crime with regard to the exclusion under the Government
18 Code section.
19 The purpose of this particular legislation has
20 been stated by the California Supreme Court in Wright v.
21 Superior Court, that the statute is regulatory in nature
22 and intended to accomplish the government's objective by
23 mandating certain affirmative acts. This is so that law
24 enforcement agencies can have the ability of tracking
25 sex offenders because they are known to have a high

1 probability to reoffend.

2 Also, if you examine it, the California Supreme

3 Court held that this sex offender registration law did

4 not violate the rule against *ex post facto* legislation

5 because the Legislature did not intend the provision to

6 constitute punishment.

7 If the Legislature had found this to constitute

8 punishment, then two things would have happened: One is

9 that with the passage of this particular legislation,

10 individuals who were convicted of sex crimes perhaps ten,

11 twenty years previously and did not have to register, as

12 the offenses were now included within the registration

13 requirements, now had to go and register -- something

14 which didn't happen previously.

15 Furthermore, as you will notice, this test claim

16 has been amended because it seems like for a number of

17 years every legislator desired to have their name on some

18 sex offender legislation. And not only were the

19 notification requirements changed, but the penalty for

20 failure to register was changed from a misdemeanor to a

21 felony.

22 If this, in fact, were a crime or changing the

23 existing definition of the crime, then it would not be

24 possible to change the penalty for a violation from a

25 misdemeanor to a felony. This is what was alleged in

1 Wright vs. Superior -- in the Wright case, where the
2 sex offender had refused -- or failed to register during
3 a period of time. The first part of the time, it was a
4 misdemeanor; the second part of the time, it was a
5 felony. And he was trying to say you couldn't change his
6 crime and charge me with a felony because when I started
7 not registering, it was a misdemeanor.
8 So we believe that the true purpose of this is
9 to pursue the State's interest in controlling crime and
10 preventing recidivism. And we believe that if the
11 amendments actually created a new crime by requiring
12 registration, this could not have been applied to sex
13 offenders convicted prior to the enactment of the
14 legislation which, in fact, it has.
15 Actually, what we liken this most to, is
16 registration for selective service. You are required,
17 upon attaining a specific age, if you are male, to
18 register for selective service. There is no penalty
19 which attaches to the affirmative act of registering for
20 selective service. It is only the failure to register
21 for selective service that constitutes the crime. And
22 the act of registration is totally separate and apart
23 from the activities necessary to enforce the crime of
24 having failed to register.
25 We would like to introduce to the record --

1 unfortunately, we just have one copy -- of the packet of
2 materials from the Tuolumne County Sheriff's Department,
3 which includes a registration receipt that the individual
4 who registers receives, so that they have proof that they
5 have registered until they get confirmation from the
6 State.
7 There are two fingerprint cards. One is
8 provided to the State of California; the other is kept in
9 hard copy.
10 There are the forms which must be completed for
11 registration, which you will notice have a substantial
12 number of boxes that must be completed and filled out,
13 far more detailed.
14 You also have a sex offender notification form,
15 which must be given to the offender on an annual basis,
16 which gives a number of advisements, including the fact
17 that the individual must acknowledge that the
18 responsibility to register is a lifetime requirement.
19 They are required to register and reregister within
20 five days of coming into or changing location within any
21 city or county. What they must -- that they must
22 annually reregister within five days of their birthday.
23 And other acknowledgements, including if I had
24 been convicted of a felony sex offense and I have not
25 previously given a DNA sample, I am required to submit