

AMENDED IN SENATE APRIL 11, 2024

AMENDED IN SENATE APRIL 2, 2024

AMENDED IN SENATE MARCH 18, 2024

SENATE BILL

No. 1128

Introduced by Senator Portantino

(Principal coauthor: Senator Rubio)

(Coauthors: Senators Niello, Ochoa Bogh, and Wilk)

~~(Coauthor: Coauthors: Assembly Member Members Boerner, Chen,~~
Low, Blanca Rubio, and Schiavo)

February 13, 2024

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1128, as amended, Portantino. Sex offender registration: unlawful sexual intercourse with a minor.

Existing law, the Sex Offender Registration Act (the Act), requires a person convicted of specified crimes to register with law enforcement as a sex offender while residing in California or while attending school or working in California, as specified. Existing law establishes 3 tiers of registration based on specified criteria, for periods of at least 10 years, at least 20 years, and life, respectively, for a conviction of specified sex offenses. Existing law exempts from mandatory registration under the Act a person convicted of certain offenses involving minors if the person is not more than 10 years older than the minor and if that offense is the only one requiring the person to register. A willful failure to register, as required by the Act, is a misdemeanor or felony, depending on the underlying offense.

This bill would require offenders guilty of engaging in an act of unlawful sexual intercourse with a minor who is more than 3 years younger than the offender, or, if the offender was 21 years of age or older, engaging in an act of unlawful sexual intercourse with a minor who is under 16 years of age, to register for 10 years as a tier one offender under the Act, unless the offender was not more than 10 years older than the minor and if that offense is the only one requiring the offender to register. ~~The bill would require an individual who was required to register for a violation described above, to register for life under the Act if they are subsequently convicted in a separate proceeding of engaging in an act of unlawful sexual intercourse with a minor who is more than 3 years younger than the offender, or, if the offender was 21 years of age or older, engaging in an act of unlawful sexual intercourse with a minor who is under 16 years of age.~~ By expanding the scope of a crime, this bill would impose a state-mandated local program.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 290 of the Penal Code is amended to
2 read:
3 290. (a) Sections 290 to 290.024, inclusive, shall be known,
4 and may be cited, as the Sex Offender Registration Act. All
5 references to “the Act” in those sections are to the Sex Offender
6 Registration Act.
7 (b) Every person described in subdivision (c), for the period
8 specified in subdivision (d) while residing in California, or while
9 attending school or working in California, as described in Sections
10 290.002 and 290.01, shall register with the chief of police of the
11 city in which the person is residing, or the sheriff of the county if
12 the person is residing in an unincorporated area or city that has no
13 police department, and, additionally, with the chief of police of a
14 campus of the University of California, the California State

University, or community college if the person is residing upon the campus or in any of its facilities, within five working days of coming into, or changing the person's residence within, any city, county, or city and county, or campus in which the person temporarily resides, and shall register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(c) (1) The following persons shall register:

Every 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 187 committed in the perpetration, or an attempt to perpetrate, rape, or any act punishable under Section 286, 287, 288, or 289 or former Section 288a, Section 207 or 209 committed with intent to violate Section 261, subdivision (c) or (d) of Section 261.5, 286, 287, 288, or 289 or former Section 288a, Section 220, except assault to commit mayhem, subdivision (b) or (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of former Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 287, 288, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, or former Section 288a, 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; any statutory predecessor that includes all elements of one of the offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the offenses described in this subdivision.

(2) Notwithstanding paragraph (1), a person convicted of a violation of subdivision (c) or (d) of Section 261.5, subdivision (b) of Section 286, subdivision (b) of Section 287, or subdivision (h) or (i) of Section 289 shall not be required to register if, at the time of the offense, the person is not more than 10 years older than the minor, as measured from the minor's date of birth to the person's date of birth, and the conviction is the only one requiring the person to register. This paragraph does not preclude the court from requiring a person to register pursuant to Section 290.006.

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

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

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

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

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

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

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

(B) The person was committed to a state mental hospital as 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.

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

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

5 (ii) Section 207 or 209 with intent to violate Section 261, 286,
6 287, 288, or 289 or former Section 288a.

7 (iii) Section 220.

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

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

10 (vi) Section 266j.

11 (vii) Section 267.

12 (viii) Section 269.

13 (ix) Subdivision (b) or (c) of Section 288.

14 (x) Section 288.2.

15 (xi) Section 288.3, unless committed with the intent to commit
16 a violation of subdivision (b) of Section 286, subdivision (b) of
17 Section 287 or former Section 288a, or subdivision (h) or (i) of
18 Section 289.

19 (xii) Section 288.4.

20 (xiii) Section 288.5.

21 (xiv) Section 288.7.

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

23 (xvi) Any offense for which the person is sentenced to a life
24 term pursuant to Section 667.61.

25 (D) The person's risk level on the static risk assessment
26 instrument for sex offenders (SARATSO), pursuant to Section
27 290.04, is well above average risk at the time of release on the
28 index sex offense into the community, as defined in the Coding
29 Rules for that instrument.

30 (E) The person is a habitual sex offender pursuant to Section
31 667.71.

32 (F) The person was convicted of violating subdivision (a) of
33 Section 288 in two proceedings brought and tried separately.

34 (G) The person was sentenced to 15 to 25 years to life for an
35 offense listed in Section 667.61.

36 (H) The person is required to register pursuant to Section
37 290.004.

38 (I) The person was convicted of a felony offense described in
39 subdivision (b) or (c) of Section 236.1.

1 (J) The person was convicted of a felony offense described in
2 subdivision (a), (c), or (d) of Section 243.4.

3 (K) The person was convicted of violating paragraph (2), (3),
4 or (4) of subdivision (a) of Section 261 or was convicted of
5 violating Section 261 and punished pursuant to paragraph (1) or
6 (2) of subdivision (c) of Section 264, ~~or following conviction of~~
7 ~~a registerable offense under Section 261.5, the person is convicted~~
8 ~~in a separate proceeding of committing an offense described in~~
9 ~~subdivision (c) or (d) of Section 261.5. 264.~~

10 (L) The person was convicted of violating paragraph (1) of
11 subdivision (a) of former Section 262.

12 (M) The person was convicted of violating Section 264.1.

13 (N) The person was convicted of any offense involving lewd
14 or lascivious conduct under Section 272.

15 (O) The person was convicted of violating paragraph (2) of
16 subdivision (c) or subdivision (d), (f), or (i) of Section 286.

17 (P) The person was convicted of violating paragraph (2) of
18 subdivision (c) or subdivision (d), (f), or (i) of Section 287 or
19 former Section 288a.

20 (Q) The person was convicted of violating paragraph (1) of
21 subdivision (a) or subdivision (d), (e), or (j) of Section 289.

22 (R) The person was convicted of a felony violation of Section
23 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section
24 311.2, Section 311.3, 311.4, or 311.10.

25 (4) (A) A person who is required to register pursuant to Section
26 290.005 shall be placed in the appropriate tier if the offense is
27 assessed as equivalent to a California registerable offense described
28 in subdivision (c).

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

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

39 (ii) The person was subsequently convicted in a separate
40 proceeding of an offense substantially similar to an offense listed

1 in subdivision (c) which is also substantially similar to an offense
2 described in subdivision (c) of Section 667.5, or is substantially
3 similar to Section 269 or 288.7.

4 (iii) The person has ever been committed to a state mental
5 hospital or mental health facility in a proceeding substantially
6 similar to civil commitment as a sexually violent predator pursuant
7 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
8 2 of Division 6 of the Welfare and Institutions Code.

9 (5) (A) The Department of Justice may place a person described
10 in subdivision (c), or who is otherwise required to register pursuant
11 to the Act, in a tier-to-be-determined category if the appropriate
12 tier designation described in this subdivision cannot be immediately
13 ascertained. An individual placed in this tier-to-be-determined
14 category shall continue to register in accordance with the Act. The
15 individual shall be given credit toward the mandated minimum
16 registration period for any period for which the individual registers.

17 (B) The Department of Justice shall ascertain an individual's
18 appropriate tier designation as described in this subdivision within
19 24 months of the individual's placement in the
20 tier-to-be-determined category.

21 (e) The minimum time period for the completion of the required
22 registration period in tier one or two commences on the date of
23 release from incarceration, placement, or commitment, including
24 any related civil commitment on the registerable offense. The
25 minimum time for the completion of the required registration
26 period for a designated tier is tolled during any period of
27 subsequent incarceration, placement, or commitment, including
28 any subsequent civil commitment, except that arrests not resulting
29 in conviction, adjudication, or revocation of probation or parole
30 shall not toll the required registration period. The minimum time
31 period shall be extended by one year for each misdemeanor
32 conviction of failing to register under this Act, and by three years
33 for each felony conviction of failing to register under this Act,
34 without regard to the actual time served in custody for the
35 conviction. If a registrant is subsequently convicted of another
36 offense requiring registration pursuant to the Act, a new minimum
37 time period for the completion of the registration requirement for
38 the applicable tier shall commence upon that person's release from
39 incarceration, placement, or commitment, including any related
40 civil commitment. If the subsequent conviction requiring

1 registration pursuant to the Act occurs prior to an order to terminate
 2 the registrant from the registry after completion of a tier associated
 3 with the first conviction for a registerable offense, the applicable
 4 tier shall be the highest tier associated with the convictions.

5 (f) This section does not require a ward of the juvenile court to
 6 register under the Act, except as provided in Section 290.008.

7 SEC. 2. No reimbursement is required by this act pursuant to
 8 Section 6 of Article XIII B of the California Constitution because
 9 the only costs that may be incurred by a local agency or school
 10 district will be incurred because this act creates a new crime or
 11 infraction, eliminates a crime or infraction, or changes the penalty
 12 for a crime or infraction, within the meaning of Section 17556 of
 13 the Government Code, or changes the definition of a crime within
 14 the meaning of Section 6 of Article XIII B of the California
 15 Constitution.

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 18 **REVISIONS:**

19 **Heading—Lines 3 and 4.**
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