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## Chapter 721: Providing Sex Offenders' Conviction and Release Dates to the Public

Laura Friedman

### Code Section Affected

Penal Code § 290.46 (amended).

AB 437 (Parra); 2005 STAT. Ch. 721

### I. INTRODUCTION

On July 29, 1994, seven year-old Megan Kanka disappeared.<sup>1</sup> Police later found her body hidden among the weeds in a nearby park.<sup>2</sup> Her neighbor Jesse Timmendequas confessed to inviting Megan inside his house and sexually assaulting and strangling her.<sup>3</sup> Timmendequas admitted he then drove to a nearby park, molested Megan a second time, and dumped her body.<sup>4</sup> Public outrage erupted when neighbors discovered that Timmendequas and his two housemates had been previously convicted of sex-related offenses; the neighbors believed that they should have been notified when a convicted sex offender moved into the neighborhood.<sup>5</sup> Following Megan's death, many states passed laws known as "Megan's Laws," which require law enforcement officials to make public information regarding the whereabouts of registered sex offenders within a community.<sup>6</sup> Chapter 721 adds to California's existing "Megan's Law" by requiring the Department of Justice to make information regarding an offender's conviction and release dates available to the public.

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1. State v. Timmendequas, 737 A.2d 55, 66 (N.J. 1999).

2. *Id.* at 68.

3. *Id.* at 68-69.

4. *Id.*

5. James Rutenberg & Larry Sutton, *Suspect Blames Pal in Megan Rape-Slay*, DAILY NEWS (N.Y.), May 27, 1997, at 28.

6. See, e.g., N.J. STAT. ANN. §§ 2C: 7-1, 7-13 (West 1995 & Supp. 2005) (requiring a person who has been convicted of, or found not guilty by reason of insanity for, a sex offense or another predatory act against a child, to register upon release from prison with law enforcement officials in the municipality in which he or she resides). This information must be made available to the public, and may not be used to harass or discriminate against registered individuals. *Id.*

## II. LEGAL BACKGROUND

## A. Existing California Law

Existing law requires a person who has been convicted of one of a number of specified sexual offenses<sup>7</sup> to register with the chief of police in the city in which he or she resides or with the county sheriff if he or she lives in an area that has no police department.<sup>8</sup> A person is also required to register if he or she is determined to be a “mentally disordered sex offender”<sup>9</sup> or if a jury found him or her to be not guilty by reason of insanity of any crime for which a conviction would require registration.<sup>10</sup> Further, if a convicted individual is a college student residing in California, he or she must also register with the chief of police of the university or community college that he or she attends.<sup>11</sup> Sexual offenders have five business days to register upon any temporary or permanent change in residence.<sup>12</sup> If a person has more than one residence in different jurisdictions, he or she must register with the police in each jurisdiction.<sup>13</sup> People who have multiple addresses within one jurisdiction must provide the registering authority with all of the addresses at which they have a regular residence.<sup>14</sup> The state may not charge a fee for a person to register or to update his or her registration.<sup>15</sup>

Additionally, individuals must register upon moving to California if convicted in other states or in federal or military court of crimes for which they would have been required to register had they been convicted in California.<sup>16</sup> Existing California law also requires new residents to register if they were required to register in their previous states of residence, even if the original convictions were for crimes that would not otherwise require registration in California.<sup>17</sup> Finally, any person who qualifies as a transient<sup>18</sup> is also subject to

7. See CAL. PENAL CODE § 290(a)(2) (West 1999) (listing the crimes for which a person must register).

8. *Id.* at § 290(a)(1)(A). But see CAL. DEP’T. OF JUSTICE, OFFICE OF THE ATT’Y GEN., SEX OFFENDER REGISTRATION—MEGAN’S LAW, <http://www.meganslaw.ca.gov/sexreg.htm> (last visited Oct. 1, 2005) (on file with the *McGeorge Law Review*) (indicating that, if certain conditions are met, some sex offenders may apply for exclusion from the registration requirements by completing a form available on the website).

9. See CAL. WELF. & INST. CODE § 6300 (defining a “mentally disordered sex offender” as “any person who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others”) (repealed 1981).

10. CAL. PENAL CODE § 290(a)(2)(C) (West 1999 & Supp. 2005).

11. *Id.* § 290(a)(1)(A) (West 1999).

12. *Id.*

13. *Id.* § 290(a)(1)(B).

14. *Id.*

15. *Id.* § 290(a)(1)(E).

16. *Id.* § 290(a)(2)(D).

17. *Id.* § 290(a)(2)(D)(iii); see also *id.* § 290(a)(2)(D)(iv) (listing exceptions to the registration requirements for offenders convicted outside of California).

18. See *id.* § 290(a)(1)(C)(vii) (defining a transient as “a person who has no residence”). A residence is “a place where a person is living or temporarily staying for more than five days, such as a shelter or structure that can be located by a street address, including . . . motels, hotels, homeless shelters, and recreational and other vehicles.” *Id.*

registration requirements.<sup>19</sup> These registration requirements apply equally to those convicted as minors.<sup>20</sup>

The Department of Justice (DOJ) must furnish information about registered sex offenders to the public, at no charge, via an Internet website that must be updated on an ongoing basis.<sup>21</sup> The website must list each offender's "names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the address at which the person resides, and any other information that the Department of Justice deems relevant."<sup>22</sup> People may search the registry using a specific name or by searching a city, county, or zip code.<sup>23</sup> The DOJ may not release any information identifying the victim, the name or address of the offender's employer, or any criminal history that does not relate to the specific crime[s] for which the offender must register.<sup>24</sup> The DOJ has a system to determine whether an offender's specific home address should be listed or if only the offender's community of residence and zip code should be released to the public.<sup>25</sup>

Existing California law forbids the use of the information posted on the website to discriminate against a person with regard to insurance, loans, credit, employment, education, scholarships or fellowships, housing or accommodations, or benefits, privileges, or services provided by a business.<sup>26</sup> Further, the law makes it illegal for a private citizen to use the information on the website to commit a crime against a registered individual where the citizen acts based upon knowledge that the individual is a registered sex offender.<sup>27</sup>

19. *Id.*

20. *Id.* § 290(d)(1).

21. *Id.* § 290.46; *see also* CAL. DEP'T. OF JUSTICE, *supra* note 8 (explaining that, depending on the offense committed, California may not release information for approximately twenty-five percent of the state's sex offenders).

22. *Id.* § 290.46(b).

23. *See generally* CAL. DEP'T. OF JUSTICE, OFFICE OF THE ATT'Y GEN., MEGAN'S LAW—INFORMATION ON REGISTERED SEX OFFENDERS, <http://www.meganslaw.ca.gov> (last visited July 23, 2005) (on file with the *McGeorge Law Review*) (providing public access to California's sex offender registry). Prior to being allowed access to the website, viewers are required to read and acknowledge a disclaimer indicating that they understand that the information provided may be used for informational purposes only, and that the site may contain errors, mistakes, or omissions. *Id.*

24. CAL. PENAL CODE § 290.46(a) (West 1999 & Supp. 2005).

25. *See id.* § 290.46(c)(1) (explaining that whether an offender's entire address will be made available, as opposed to only his or her zip code, depends on the offense committed).

26. *Id.* § 290.46(j)(2).

27. *See id.* § 290.46(h)(1)-(2) (indicating that a person who uses the information provided to commit a misdemeanor against a registered individual will be subject to a ten thousand dollar fine). One who commits a felony as the result of this information may be punished by five years imprisonment, served consecutively to any prison sentence imposed for the felony committed. *Id.*

Upon their release from prison, jail, or a state mental facility, or as a condition of probation, convicted sex offenders receive notice of the registration requirements in writing.<sup>28</sup> An offender generally must update his or her registration annually, within five days of his or her birthday.<sup>29</sup>

### B. Other States

All fifty states and the District of Columbia have enacted a version of Megan's Law that requires sex offenders to register with authorities whenever they move into a community or obtain a change of address.<sup>30</sup> The majority of these laws are substantially similar to those found in California.<sup>31</sup> A number of states also provide public sex offender registries via official Internet websites.<sup>32</sup> The federal government has also enacted guidelines for state programs requiring registration.<sup>33</sup>

Megan's Laws have withstood a variety of attacks on constitutional grounds. For example, the United States Supreme Court held that requiring a sex offender to register following a conviction does not violate an offender's right to procedural due process,<sup>34</sup> provided that the registry does not indicate the registrant is currently a danger to the public.<sup>35</sup> Additionally, the retroactive

28. CAL. DEP'T. OF JUSTICE, *supra* note 8 (outlining registration requirements). Violent sex offenders must update their registration every ninety days and transients must update their information every thirty days. *Id.*

29. *Id.*

30. *Smith v. Doe*, 538 U.S. 84, 90 (2003).

31. See ALASKA STAT. § 12.63.010 (West 2004) (explaining that registration requirements depend on the crime that resulted in the conviction); N.J. STAT. ANN. §§ 2C: 7-2, 7-13 (West 1995 & Supp. 2005) (requiring a person who has been convicted of a sex offense or another predatory act against a child, or a person who has been found not guilty by reason of insanity for one of these offenses, to register with law enforcement officials in the municipality in which he or she resides following release into the community). This information must be made available to the public and may not be used to harass or discriminate against registered individuals. *Id.*; CONN. GEN. STAT. ANN. §§ 54-251, 54-252, 54-254 (West 2001) ("Those convicted of sexually violent crimes must register for life."). All other convicted sex offenders must register for only ten years." *Id.*; MO. ANN. STAT. §§ 589.400-589.425 (West 2003 & Supp. 2005) (indicating that certain sex offenders must register for life unless the conviction becomes "vacated, reversed, or set aside or unless the offender is pardoned."). Offenders may petition to terminate the registration requirement after showing proof that they have not committed an offense within fifteen years of being released from prison and are not likely to pose a danger to the public. *Id.*

32. See *e.g.*, *Smith*, 538 U.S. at 91 ("Alaska has chosen to make most of the non-confidential information available on the Internet"); CONN. GEN. STAT. §§ 54-257, 54-258 (West 2001) (requiring the Department of Public Safety to provide public access to the state's sex offender registry).

33. 42 U.S.C.A. § 14071 (West 2003).

34. See U.S. CONST. amend. XIV, § 1 (providing that no state may "deprive any citizen of life, liberty, or property without due process of law").

35. See *Conn. Dep't. of Pub. Safety v. Doe*, 538 U.S. 1, 4 (2003) (rejecting the plaintiff's argument that by requiring him to register as a sex offender, the state violated his due process by denying him a hearing to determine whether he currently posed a threat to the community). The Court determined that a hearing is not necessary because the Legislature created the law to inform the public of crimes committed in the past, not to warn the public about the presence of individuals who are currently dangerous. *Id.*

application of Megan's Laws does not violate the Ex Post Facto Clause<sup>36</sup> of the Constitution.<sup>37</sup> Furthermore, the Court found that Megan's Laws are not punitive because most of the information provided is already public and "our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment."<sup>38</sup>

### III. CHAPTER 721

Chapter 721 requires that, in addition to providing other information to the public via the Internet, the state must provide a sex offender's conviction date and date of release from incarceration.<sup>39</sup> The law further provides that the DOJ will not be required to add this information to the website if any question arises as to the accuracy of the dates.<sup>40</sup>

### IV. ANALYSIS

The author of Chapter 721 believes that including the dates on which an individual was convicted and was released from incarceration will allow the public to better determine how much of a threat the individual poses.<sup>41</sup> Access to this information will allow people to distinguish between those offenders whose convictions are not recent and those offenders who have only recently been released from incarceration.<sup>42</sup> Supporters of Chapter 721 believe that a person assessing the risk posed to his or her family by a sex offender in the community may feel very differently about a person who re-entered society twenty years ago as opposed to a person released from prison the previous week.<sup>43</sup> They suggest that offenders who re-entered society years ago had the opportunity to demonstrate rehabilitation and control, whereas someone who has been recently released has not had that chance.<sup>44</sup>

There is no registered opposition to Chapter 721.<sup>45</sup> The Assembly Committee on Public Safety, however, raised some concerns regarding technical issues that could arise and make the law ineffective.<sup>46</sup> For example, information regarding

36. See U.S. CONST. art. I, § 10, cl. 1 (stating that Congress may not pass any *ex post facto* law); see also BLACK'S LAW DICTIONARY, 601 (7th ed.) (defining an "*ex post facto* law" as one "that applies retroactively, esp[ecially] in a way that negatively affects a person's rights").

37. *Smith*, 538 U.S. at 105-6.

38. *Id.* at 98.

39. CAL. PENAL CODE § 290.46(a) (amended by Chapter 721).

40. *Id.* § 290.46(m).

41. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 437, at 3 (June 28, 2005).

42. *Id.* at 3-4.

43. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 437, at 4 (Apr. 19, 2005).

44. *Id.*

45. *Id.* at 5.

46. *Id.* at 3.

conviction and release dates of offenders convicted outside California is not readily available to California law enforcement officers.<sup>47</sup> Even for offenders convicted in California, the information is useful only to the extent that it is accurate. The committee raised concern that the dates furnished to the DOJ by the Department of Corrections, the youth authority, and local departments may be inaccurate, as the DOJ does not have independent records with which it can compare the information provided by these departments.<sup>48</sup>

Furthermore, the DOJ indicated that the system that provides the registered sex offender website is unable to support adding information to the website pursuant to Chapter 721.<sup>49</sup> Planned system upgrades should allow the system to handle the additional information in the near future.<sup>50</sup>

The Assembly Committee on Public Safety additionally questioned whether the conviction and release dates are information that is “vitaly important to members of the public.”<sup>51</sup> If it is, the question is whether providing information that may be inaccurate is worse than providing no information at all and whether a disclaimer that the information could be inaccurate is sufficient to notify the public.<sup>52</sup>

## V. CONCLUSION

Providing the public with information regarding the conviction and release dates of convicted sex offenders should enable people to better evaluate the risk created by members of their communities.<sup>53</sup> This information is only valuable provided that it is accurate and complete.<sup>54</sup> If the DOJ is able to obtain and disseminate this information, Chapter 721 will provide the public with a valuable service. It remains to be seen whether the DOJ will have the resources to comply with this new law.<sup>55</sup>

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47. *Id.*

48. *Id.*

49. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 437, at 2 (May 18, 2005).

50. *Id.*

51. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 437, at 4 (Apr. 19, 2005).

52. *Id.* at 3.

53. *Id.* at 4.

54. *Id.*

55. *Id.* at 2.