

Sexual Offenders Register Bill 2010

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2010

A Bill

for

An Act to provide for the notification of dangerous sex offenders to ensure that members of the public have adequate information about the identity and location of dangerous sex offenders who may put members of the public and their families at risk

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

Notes for V02, generally—

1 References to sections and subsections referred to in the US legislation have been maintained in the draft. For this reason, section and subsection numbering may appear to be out of sequence.

2 Suggested alternatives appear in square brackets in bold.

1 Short title

This Act may be cited as the *Sexual Offenders Register Act 2010*.

SEC. 2 Purpose

It is the Parliament's intention that the department—

- (a) continue to maximize all available resources to ensure the highest degree of accuracy in the dangerous sexual offenders register; and
- (b) assist local agencies in developing strategies to achieve Parliament's intention.

3 Dictionary

The dictionary in the schedule defines particular words used in this Act.

Part 2 The register

4 Dangerous sexual offenders register

- (1) The chief executive must establish a register of dangerous sexual offenders (the *register*).
- (2) The register must contain the following information about each registrant (to the extent that it is known by the chief executive)—
 - (a) full name;
 - (b) any aliases;
 - (c) date of birth;
 - (ca) residential address;
 - (d) a photograph;
 - (e) a physical description including gender and race;
 - (f) criminal history;
 - (g) ~~the community of residence and post code in which the person resides;~~
 - (h) the name and address of the registrant's employer;
 - (i) any other information the chief executive considers appropriate to include in the register, ~~but not the information excluded under section 4.~~
- (3) Also, the register must contain the following information about a victim of the registrant (to the extent that it is known by the chief executive)—
 - (a) full name;
 - (b) date of birth;
 - (c) residential address;
 - (d) relationship to the registrant.

[s 5]

- (4) The chief executive may keep the register in the way the chief executive considers appropriate, including, for example, in electronic form.

5 Review about entry on register

- (1) This section applies if a person believes that—
 - (a) the person has been placed on the register in error; or
 - (b) an error has been made in relation to the accuracy of the information about the person contained in the register.
- (2) The person may apply to QCAT to review the following—
 - (a) the decision to place the person on the register;
 - (b) the information about the person recorded in the register.

Part 2A Registrant information to be published

Division 1 Particular information to be published

(a) Application of div 1

This division applies if a person is required to register (the *registrant*) under section 290.

(aa) Department [chief executive?] to publish particular information

- (1) ~~On or before the dates specified in this section,~~ The Department of Justice [chief executive?] must publish, under this division, information about a registrant.

[s (b)]

- (2) The chief executive must ensure information published is updated regularly.
- (3) The information published must not contain any of the following—
 - (aa) any of the information mentioned in section 3(3) about a victim of the registrant;
 - (a) the name or address of the registrant’s employer;
 - (b) the registrant’s criminal history other than the offences for which the registrant is required to register under section 290.
- (4) The chief executive must ensure the information published is translated into languages other than English as decided by the chief executive.

(b) Information that must be published

- (1) ~~On or before 1 July 2005, with respect~~ This section applies to a registrant convicted of the commission or the attempted commission of a relevant offence.
- (3) Also, this section applies to a person adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.
- (3A) The chief executive must publish all of the following information for the registrant—
 - (a) full name;
 - (b) any aliases;
 - (c) date of birth;
 - (d) a photograph;
 - (e) a physical description including gender and race;
 - (f) criminal history;
 - (g) residential address;

[s (c)]

(h) any other information the chief executive considers relevant, but not the information excluded under section (a).

(4) In this section—

relevant offence means—

(a) the following offences—

- (a) Subdivision (b) of Section 207;
- (b) Subdivision (b) of Section 209, except kidnapping to commit robbery;
- (c) Paragraph (2) or (6) of subdivision (a) of Section 261;
- (d) Section 264.1;
- (e) Section 269;
- (f) Subdivision (c) or (d) of Section 286;
- (g) Subdivision (a), (b), or (c) of Section 288, provided that the offence is a felony;
- (h) Subdivision (c) or (d) of Section 288a;
- (i) Section 288.5;
- (j) Subdivision (a) or (j) of Section 289; or

(b) a statutory predecessor of an offence mentioned in paragraph (a); or

(c) an offence that, if committed or attempted to be committed in the State, would be punishable as 1 or more of the offences mentioned in paragraph (a) or (b).

(c) Information that must be published

(1) ~~On or before 1 July 2005, with respect~~ This section applies to a registrant convicted of the commission or the attempted commission of a relevant offence.

(1A) The Department of Justice [**chief executive?**] must publish all of the following information for the registrant—

- (a) full name;
 - (b) any aliases;
 - (c) date of birth;
 - (d) a photograph;
 - (e) a physical description including gender and race;
 - (f) criminal history;
 - (g) the community of residence and postcode in which the person resides;
 - (h) any other information the chief executive considers relevant, ~~but not the information excluded under section a.~~
- (2) However, a registrant’s residential address must not be disclosed until a determination is made that the registrant is, under this section, because of the registrant’s additional prior or subsequent conviction of an offence listed in section 290(a)(2), subject to this section.
- (3) ~~On or before July 1, 2006,~~ The Department of Justice [**chief executive?**] shall decide whether any person convicted of a relevant offence has one or more prior or subsequent convictions for an offence listed in section 290(a)(2), and, for those persons, the Department of Justice [**chief executive?**] shall make available on the department’s website the address at which the person resides.
- (4) In this section—
- relevant offence** means—
- (a) the following offences—
 - (a) Section 220, except assault to commit mayhem;
 - (b) Paragraph (1), (3), or (4) of subdivision (a) of Section 261;
 - (c) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286;

[s (d)]

- (d) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a;
- (e) Subdivision (b), (d), (e), or (i) of Section 289;
or
- (b) a statutory predecessor of an offence mentioned in paragraph (a); or
- (c) an offence that, if committed or attempted to be committed in the State, would be punishable as one or more of the offences mentioned in paragraph (a) or (b).

(d) Information that must be published

- (1) ~~On or before July 1, 2005, with respect~~ This section applies to a registrant convicted of the commission or the attempted commission of a relevant offence.
- (1A) The Department of Justice [**chief executive?**] must publish all of the following information for the registrant—
 - (a) full name;
 - (b) any aliases;
 - (c) date of birth;
 - (d) a photograph;
 - (e) a physical description including gender and race;
 - (f) criminal history;
 - (g) the community of residence and postcode in which the person resides;
 - (h) any other information that the Department of Justice [**chief executive?**] considers relevant, ~~but not the information excluded under section a or the address at which the person resides.~~
- (2) In this section—

relevant offence means—

 - (a) the following offences—

- (a) Section 220, except assault to commit mayhem, with no prior or subsequent conviction of an offence listed in paragraph (2) of subdivision (a) of Section 290;
 - (b) Subdivision (a) of Section 243.4, provided that the offence is a felony;
 - (c) Paragraph (1), (3), or (4) of subdivision (a) of Section 261, with no prior or subsequent conviction of an offence listed in paragraph (2) of subdivision (a) of Section 290;
 - (d) Section 266, provided that the offence is a felony;
 - (e) Section 266c, provided that the offence is a felony;
 - (f) Section 266j;
 - (g) Section 267;
 - (h) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286, with no prior or subsequent conviction of an offence listed in paragraph (2) of subdivision (a) of Section 290;
 - (i) Subdivision (c) of Section 288, provided that the offence is a misdemeanour;
 - (j) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a, with no prior or subsequent conviction of an offence listed in paragraph (2) of subdivision (a) of Section 290;
 - (k) Subdivision (b), (d), (e), or (i) of Section 289, with no prior or subsequent conviction of an offence listed in paragraph (2) of subdivision (a) of Section 290;
 - (l) Section 647.6; or
- (b) a statutory predecessor of an offence mentioned in paragraph (a); or

[s (e)]

- (c) an offence that, if committed or attempted to be committed in the State, would be punishable as one or more of the offences mentioned in paragraph (a) or (b).

Division 2 Applications for exclusion from publication

(e) Exclusion from publication

- (1) This section applies if a person [registrant?] has been convicted of—
 - (a) an exempting offence or the attempted commission of an exempting offence; and
 - (b) no other offence mentioned in section (b), (c), or (d), other than an exempting offence mentioned in this section.
- (1A) The person [registrant?] may apply for exclusion from publication of information (the *exclusion*) about the person [registrant?].
- (1B) A person [registrant?] has the onus of proving the facts that the person [registrant?] meets the requirements for the exclusion.
- (1C) The application must be made—
 - (a) to the Department of Justice [chief executive?]; and
 - (b) in the approved form.
- (1D) The department [chief executive?] must decide to grant or refuse to grant the exclusion.
- (1E) If the department [chief executive?] decides that the person [registrant?] meets the requirements under this section for the exclusion—
 - (a) the department must grant the exclusion; and
 - (b) no information about the person [registrant?] is to be published under this Act.

- (1F) The department [**chief executive?**] must give a person [**registrant?**] notice of the decision under subsection (1D) stating—
 - (a) the department’s [**chief executive’s?**] decision; and
 - (b) that the person [**registrant?**] may apply to QCAT for a review of the decision.

- (1G) However, a person [**registrant?**] who has applied for, or been granted, an exclusion from publication of information about the person [**registrant?**] is not relieved of the person’s [**registrant’s?**] duty to register, under Section 290, as a sex offender nor from any otherwise applicable provision of law.

- (2) In this section—

exempting offence means—

 - (a) the following offences—
 - (a) A felony violation of subdivision (a) of Section 243.4;
 - (b) Section 647.6, provided the offence is a misdemeanour;
 - (c) An offence listed in subdivision (b), (c), or (d) if the offender is eligible for, granted, and successfully completes probation under Section 1203.066 of the Penal Code; or
 - (b) a statutory predecessor of an offence mentioned in paragraph (a); or
 - (c) an offence which, if committed or attempted to be committed in the State, would be punishable as one or more of the offences mentioned in paragraph (a) or (b).

[s (f)]

Division 3 Notifying registrant

(f) Notice to be given to registrant

- (1) The Department of Justice [**chief executive?**] must ~~make a reasonable effort to~~ give notice to a person [**registrant?**] convicted of the commission or attempted commission of a relevant offence mentioned in section (b), (c), or (d).
- (2) The notice must state that—
 - (a) ~~on or before 1 July 2005,~~ the department [**chief executive?**] is required, under this Act, to publish particular information about the person [**registrant?**]; and
 - (b) if section (e) applies to the person [**registrant?**], the person [**registrant?**] may apply under section (e), for an exclusion from publication of information.

Division 4 Disclosure and use of information

(g) Other restrictions on disclosure not affected

Notwithstanding Section 6254.5 of the Government Code, disclosure of information under this section—

- (a) 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
- (b) does not affect other statutory restrictions on disclosure in other situations.

(h) Prohibition on use of information to offence

- (1) A person must not use information about another person published under this Act to commit a misdemeanor.

Maximum penalty—not less than \$10,000 and not more than \$50,000.

- (2) A person must not use information about another person published under this Act to commit a felony.
Maximum penalty—5 years imprisonment in the state prison.

(j) Information to be disclosed only to protect person at risk

- (1) A person may use information disclosed [**published?**] under this Act only to protect a person at risk.
- (2) Subject to subsection (1) or any other provision of law, a person must not use information disclosed [**published?**] under this subsection [**Act?**] for a purpose relating to any of the following—
 - (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) This subsection shall [**does?**] not affect authorised access to, or use of, information under, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family 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.
- (4) Use of information disclosed [**published?**] under this section for a purpose other than a purpose under subsection (1) or in contravention of subsection (2) makes the user liable for—
 - (a) actual damages and—
 - (i) any amount that may be decided by a jury or a court sitting without a jury that is—

[s (j)]

- (A) at least \$250; and
- (B) not more than 3 times the amount of actual damages; and

(ii) attorney’s fees [**costs?**]; or

- (b) exemplary damages; or
- (c) a civil penalty of not more than \$25,000.

(j) Preventative relief that may be sought

(5) If there is reasonable cause to believe that a person has used the information published under this Act in contravention of section (j) (the *misuse*), the following are authorised to bring a civil action in the appropriate court requesting preventative relief—

- (a) the Attorney–General;
- (b) a district attorney or city attorney;
- (c) a person aggrieved by the use.

(6) The preventative relief that may sought under this section is independent of any other remedy or procedure 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.

(7) In this section—

preventive relief includes an application for the following against the person responsible for the misuse—

- (a) a permanent or temporary injunction;
- (b) a restraining order;
- (c) another order.

Division 5 Accessing website

(i) Person required to register must not enter department's website

A person who is required to register under Section 290 must not enter the department's website.

Maximum penalty—\$1,000 or 6 months imprisonment in a county jail.

Part 3 Miscellaneous

(k) Annual report

~~On or before 1 July 2006, and every year thereafter,~~ The Department of Justice [**chief executive**] must report to Parliament about the operation of this section [**Act?**].

(l) Protection from liability

The chief executive and its employees shall be immune from liability for good faith conduct under this section [**Act?**].

SEC. 3 Appropriation

~~The sum of six hundred fifty thousand dollars (\$650,000) is hereby appropriated from the General Fund to the Department of Justice for the purpose of implementing this act.~~

SEC. 4 Reimbursement

No reimbursement is required by this Act under Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this Act creates a new crime or

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[s SEC. 5]

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5 Act to take effect immediately

- (1) ~~This Act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect.~~
- (2) ~~The facts constituting the necessity are—~~
~~In order to ensure that members of the public have adequate information about the identities and locations of sex offenders who may put them and their families at risk, it is necessary that this Act take effect immediately.~~

Schedule Dictionary

section 3

conviction means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

notice means notice in writing.

publish means make available on the department's website.

register see section 4.

registrant see section (a).