

## **Megan's Law – More Information about Registered Sex Offenders**

By Kelly G. Richardson, Esq.

In July 1994, seven year old Megan Kanka was lured by her neighbor into his house, where she was assaulted and murdered. Her parents had no idea that this neighbor, 90 feet from their front door, had already served a prison term for sexually assaulting children.

### **Megan's Law**

The outcry from this tragedy led to many states passing "Megan's Laws" which provided limited public access to Registered Sex Offender information. California's law, Penal Code 290 et seq., was passed in 1996. Under that statute, citizens could visit a law enforcement office and find out limited information about Registered Sex Offenders living in a certain area. Under PC 290.4, a person could call the Department of Justice and ask if a specific name was included in the list of Registered Sex Offenders.

### **Expansion of Megan's Law**

Last year, AB 244, authored by Assemblyperson Parra, significantly expanded both the information that will be made available and required that the information will be more accessible as well. The bill sailed through both houses, passing the Senate 35-1 on August 19, and Assembly 77-2 on August 24. It was signed into law by the Governor on September 24 as an emergency measure, and was therefore immediately in force.

The new law expands the information available regarding the most serious sex offenders, and also requires that the information be available to the public on a web site established by the state Department of Justice. The web site is now operational, and that web address is [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov) .

### **New Disclosures**

For the most serious sex offenders, a substantial amount of information must be disclosed on this web site and therefore available to the general public: If a Registered Sex Offender's offense was: Kidnapping, rape, aggravated sexual assault of a child, sodomy, child molestation by force or duress, oral copulation by force or upon a child, continuous child abuse, penetration by force or upon child, or if the offender has been determined a "Sexually Violent Predator", then the state web site must reveal the following information about that person: "names and known aliases, photograph, 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..." PC 290.46 (b)(1).

However, victim identifying information, the non-sexual offense history of the offender, or the offender's employer, are not to be listed on the web site. PC 290.46 (a).

The law also sets up two other levels of sexual offenders, each with a lower amount of information to be provided on the web site. Since there are three levels of sexual offender categories on the web site, one must be careful not to immediately assume that each person on the site is dangerous.

### **What To Do With This Information?**

What is not clarified by the law is what exactly citizens are allowed to do with the information, since it cannot be used to make decisions regarding insurance, credit, housing or employment. PC 290.46(j)(2). The information can only be used "to protect a person at risk". PC 290.46 (j)(1). Apparently, it can only be used to warn someone who might not realize they or their children are at risk from the offender. No other guidance or information is provided in the new law.

### **Cannot Discriminate**

The California Attorney General web site states simply:

"Unless the information is used to protect a person at risk, it is also prohibited to use any information that is disclosed pursuant to this Internet Web site for a purpose relating to health insurance, insurance, loans, credit, employment, education, scholarships, fellowships, housing, accommodations, or benefits, privileges, or services provided by any business. Misuse of the information may make the user liable for money damages or an injunction against the misuse. Before using the information disclosed on this Web site, you may want to consult with an attorney or merely suggest to others that they view the Web site for themselves."

This suggests that what one might first be inclined to do, post fliers in the area warning of the presence of the offender, may not be permissible. Clearly, taking direct action to harass or otherwise discriminate against the offender is also illegal. So what is permissible really is not clear.

### **Duties of Associations Unclear**

This is a very emotional issue, and is already challenging community association boards. Does a board have a duty to notify all of the members that an offender lives in the association? If the association publicizes the presence of an offender, is it liable if that publicity incites violent or other illegal action against the offender? Does the board have to disclose to prospective buyers of the presence of this person? If the association makes this disclosure, could it be liable for damaging property values in the community? Answers to these questions are still being debated by the legal community.

Sex offenses, and those who commit them, are an upsetting subject. The most serious sex offenders are statistically extremely likely to repeat their behaviors. On the other hand, many thousands of persons convicted of sexual offenses are not repeat offenders or child molesters, but are nevertheless required to register and are listed on the web site. So how do we determine who is dangerous, and who is not?

Expect further growth of the law in this area, as society continues to struggle about what to do with sex offenders. In the meantime, exercise extreme judgment in dealing with this issue. Avoid sudden actions, and keep your counsel involved in the discussion.

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