



MEAGAN'S LAW DISCLOSURE

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ACCESS TO INFORMATION ABOUT REGISTERED SEX OFFENDERS

Many states have passed so called "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

In 2005, California lawmakers passed an expansion of the law regarding sex offender disclosure. The law expanded 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.

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.

LIABILITY FOR DISCRIMINATION

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 warning suggests that to avoid liability one should exercise caution before reacting on instinct or emotion to the information disclosed on the website. Actions such as posting fliers in the area warning of the presence of the offender, may subject one to damage claims. Clearly, taking direct action to harass or otherwise discriminate against the offender is also illegal. So what is permissible really is not clear.

WHAT CAN BE DONE WITH THE INFORMATION?

Needless to say, this law and the website access create a very emotional struggle which is particularly challenging for 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 to the convicted sex offender or to the owners for damaging property values in the community? What can one do with this information? Answers to these questions are still being debated by the legal community. Nevertheless, communities are looking to their Board's for guidance and for action in response to information received from the Megan's Law Website.

What is clear is that the most prudent way for an Association Board to meet its disclosure obligations and not violate the Megan's Law Statute is to direct owners to the website to conduct their own investigation.

Of course the Board has no control over a neighbor who notifies all of the residents in a neighborhood that an offender lives nearby. The neighbor who publicizes the presence of an offender may be liable to the registered sex offender if that publicity incites violence or other illegal action against the offender.

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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