

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2968

By: Sanders

4
5
6 AS INTRODUCED

7 An Act relating to sex offenses and sex offenders;
8 amending 10 O.S. 2001, Section 7115, as last amended
9 by Section 5, Chapter 3, O.S.L. 2008, and as
10 renumbered by Section 207, Chapter 233, O.S.L. 2009
11 (21 O.S. Supp. 2009, Section 843.5), which relates to
12 child abuse penalties; updating statutory references;
13 increasing minimum mandatory penalties for certain
14 crimes; amending 57 O.S. 2001, Section 584, as last
15 amended by Section 6, Chapter 404, O.S.L. 2009 (57
16 O.S. Supp. 2009, Section 584), which relates to the
17 Sex Offenders Registration Act; modifying address
18 registration requirement; and providing an effective
19 date.

20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7115, as
22 last amended by Section 5, Chapter 3, O.S.L. 2008, and as renumbered
23 by Section 207, Chapter 233, O.S.L. 2009 (21 O.S. Supp. 2009,
24 Section 843.5), is amended to read as follows:

25 Section 843.5 A. Any parent or other person who shall
26 willfully or maliciously engage in child abuse shall, upon
27 conviction, be guilty of a felony punishable by imprisonment in the
28 custody of the Department of Corrections not exceeding life

1 imprisonment, or by imprisonment in a county jail not exceeding one
2 (1) year, or by a fine of not less than Five Hundred Dollars
3 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both
4 such fine and imprisonment. As used in this subsection, "child
5 abuse" means the willful or malicious abuse, as defined by paragraph
6 ~~± 2 of subsection B of Section 7102~~ 1-1-105 of this title Title 10A
7 of the Oklahoma Statutes, of a child under eighteen (18) years of
8 age by another, or the act of willfully or maliciously injuring,
9 torturing or maiming a child under eighteen (18) years of age by
10 another.

11 B. Any parent or other person who shall willfully or
12 maliciously engage in enabling child abuse shall, upon conviction,
13 be punished by imprisonment in the custody of the Department of
14 Corrections not exceeding life imprisonment, or by imprisonment in a
15 county jail not exceeding one (1) year, or by a fine of not less
16 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
17 Dollars (\$5,000.00) or both such fine and imprisonment. As used in
18 this subsection, "enabling child abuse" means the causing, procuring
19 or permitting of a willful or malicious act of child abuse, as
20 defined by paragraph ~~± 2 of subsection B of Section 7102~~ 1-1-105 of
21 this title Title 10A of the Oklahoma Statutes, of a child under
22 eighteen (18) years of age by another. As used in this subsection,
23 "permit" means to authorize or allow for the care of a child by an
24 individual when the person authorizing or allowing such care knows

1 or reasonably should know that the child will be placed at risk of
2 abuse as proscribed by this subsection.

3 C. Any parent or other person who shall willfully or
4 maliciously engage in child neglect shall, upon conviction, be
5 punished by imprisonment in the custody of the Department of
6 Corrections not exceeding life imprisonment, or by imprisonment in a
7 county jail not exceeding one (1) year, or by a fine of not less
8 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
9 Dollars (\$5,000.00), or both such fine and imprisonment. As used in
10 this subsection, "child neglect" means the willful or malicious
11 neglect, as defined by paragraph ~~3~~ 46 of ~~subsection B of~~ Section
12 ~~7102~~ 1-1-105 of ~~this title~~ Title 10A of the Oklahoma Statutes, of a
13 child under eighteen (18) years of age by another.

14 D. Any parent or other person who shall willfully or
15 maliciously engage in enabling child neglect shall, upon conviction,
16 be punished by imprisonment in the custody of the Department of
17 Corrections not exceeding life imprisonment, or by imprisonment in a
18 county jail not exceeding one (1) year, or by a fine of not less
19 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
20 Dollars (\$5,000.00), or both such fine and imprisonment. As used in
21 this subsection, "enabling child neglect" means the causing,
22 procuring or permitting of a willful or malicious act of child
23 neglect, as defined by paragraph ~~3~~ 46 of ~~subsection B of~~ Section
24 ~~7102~~ 1-1-105 of ~~this title~~ Title 10A of the Oklahoma Statutes, of a

1 child under eighteen (18) years of age by another. As used in this
2 subsection, "permit" means to authorize or allow for the care of a
3 child by an individual when the person authorizing or allowing such
4 care knows or reasonably should know that the child will be placed
5 at risk of neglect as proscribed by this subsection.

6 E. Any parent or other person who shall willfully or
7 maliciously engage in child sexual abuse shall, upon conviction, be
8 punished by imprisonment in the custody of the Department of
9 Corrections not exceeding life imprisonment, or by imprisonment in a
10 county jail not exceeding one (1) year, or by a fine of not less
11 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
12 Dollars (\$5,000.00), or both such fine and imprisonment, except as
13 provided in Section 51.1a of Title 21 of the Oklahoma Statutes or as
14 otherwise provided in subsection F of this section for a child
15 victim under twelve (12) years of age. Except for persons sentenced
16 to life or life without parole, any person sentenced to imprisonment
17 for two (2) years or more for a violation of this subsection shall
18 be required to serve a term of post-imprisonment supervision
19 pursuant to subparagraph f of paragraph 1 of subsection A of Section
20 991a of Title 22 of the Oklahoma Statutes under conditions
21 determined by the Department of Corrections. The jury shall be
22 advised that the mandatory post-imprisonment supervision shall be in
23 addition to the actual imprisonment. As used in this section,
24 "child sexual abuse" means the willful or malicious sexual abuse, as

1 defined by paragraph ~~6~~ 2 of ~~subsection B of Section 7102~~ 1-1-105 of
2 ~~this title~~ Title 10A of the Oklahoma Statutes, of a child under
3 eighteen (18) years of age by another.

4 F. Any parent or other person who shall willfully or
5 maliciously engage in sexual abuse to a child under twelve (12)
6 years of age shall, upon conviction, be punished by imprisonment in
7 the custody of the Department of Corrections for not less than
8 ~~twenty five (25)~~ fifty (50) years nor more than life imprisonment,
9 and by a fine of not less than Five Hundred Dollars (\$500.00) nor
10 more than Five Thousand Dollars (\$5,000.00).

11 G. Any parent or other person who shall willfully or
12 maliciously engage in enabling child sexual abuse shall, upon
13 conviction, be punished by imprisonment in the custody of the
14 Department of Corrections not exceeding life imprisonment, or by
15 imprisonment in a county jail not exceeding one (1) year, or by a
16 fine of not less than Five Hundred Dollars (\$500.00) nor more than
17 Five Thousand Dollars (\$5,000.00), or both such fine and
18 imprisonment. As used in this subsection, "enabling child sexual
19 abuse" means the causing, procuring or permitting of a willful or
20 malicious act of child sexual abuse, as defined by paragraph ~~6~~ 2 of
21 ~~subsection B of Section 7102~~ 1-1-105 of ~~this title~~ Title 10A of the
22 Oklahoma Statutes, of a child under the age of eighteen (18) by
23 another. As used in this subsection, "permit" means to authorize or
24 allow for the care of a child by an individual when the person

1 authorizing or allowing such care knows or reasonably should know
2 that the child will be placed at risk of sexual abuse as proscribed
3 by this subsection.

4 H. Any parent or other person who shall willfully or
5 maliciously engage in child sexual exploitation shall, upon
6 conviction, be punished by imprisonment in the custody of the
7 Department of Corrections not exceeding life imprisonment, or by
8 imprisonment in a county jail not exceeding one (1) year, or by a
9 fine of not less than Five Hundred Dollars (\$500.00) nor more than
10 Five Thousand Dollars (\$5,000.00), or both such fine and
11 imprisonment except as provided in subsection I of this section for
12 a child victim under twelve (12) years of age. Except for persons
13 sentenced to life or life without parole, any person sentenced to
14 imprisonment for two (2) years or more for a violation of this
15 subsection shall be required to serve a term of post-imprisonment
16 supervision pursuant to subparagraph f of paragraph 1 of subsection
17 A of Section 991a of Title 22 of the Oklahoma Statutes under
18 conditions determined by the Department of Corrections. The jury
19 shall be advised that the mandatory post-imprisonment supervision
20 shall be in addition to the actual imprisonment. As used in this
21 subsection, "child sexual exploitation" means the willful or
22 malicious sexual exploitation, as defined by paragraph 7 2 of
23 ~~subsection B of Section 7102~~ 1-1-105 of ~~this title~~ Title 10A of the

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1 Oklahoma Statutes, of a child under eighteen (18) years of age by
2 another.

3 I. Any parent or other person who shall willfully or
4 maliciously engage in sexual exploitation of a child under twelve
5 (12) years of age shall, upon conviction, be punished by
6 imprisonment in the custody of the Department of Corrections for not
7 less than ~~twenty-five (25)~~ fifty (50) years nor more than life
8 imprisonment, and by a fine of not less than Five Hundred Dollars
9 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

10 J. Any parent or other person who shall willfully or
11 maliciously engage in enabling child sexual exploitation shall, upon
12 conviction, be punished by imprisonment in the custody of the
13 Department of Corrections not exceeding life imprisonment, or by
14 imprisonment in a county jail not exceeding one (1) year, or by a
15 fine of not less than Five Hundred Dollars (\$500.00) nor more than
16 Five Thousand Dollars (\$5,000.00), or both such fine and
17 imprisonment. As used in this subsection, "enabling child sexual
18 exploitation" means the causing, procuring or permitting of a
19 willful or malicious act of child sexual exploitation, as defined by
20 paragraph 7 2 of ~~subsection B of Section 7102~~ 1-1-105 of ~~this title~~
21 Title 10A of the Oklahoma Statutes, of a child under eighteen (18)
22 years of age by another. As used in this subsection, "permit" means
23 to authorize or allow for the care of a child by an individual when
24 the person authorizing or allowing such care knows or reasonably

1 should know that the child will be placed at risk of sexual
2 exploitation as proscribed by this subsection.

3 K. Notwithstanding any other provision of law, any parent or
4 other person convicted of forcible anal or oral sodomy, rape, rape
5 by instrumentation, or lewd molestation of a child under fourteen
6 (14) years of age subsequent to a previous conviction for any
7 offense of forcible anal or oral sodomy, rape, rape by
8 instrumentation, or lewd molestation of a child under fourteen (14)
9 years of age shall be punished by death or by imprisonment for life
10 without parole.

11 SECTION 2. AMENDATORY 57 O.S. 2001, Section 584, as last
12 amended by Section 6, Chapter 404, O.S.L. 2009 (57 O.S. Supp. 2009,
13 Section 584), is amended to read as follows:

14 Section 584. A. Any registration with the Department of
15 Corrections required by the Sex Offenders Registration Act shall be
16 in a form approved by the Department and shall include the following
17 information about the person registering:

18 1. The name of the person and all aliases used or under which
19 the person has been known;

20 2. A complete description of the person, including a photograph
21 and fingerprints, and when requested by the Department of
22 Corrections, such registrant shall submit to a blood or saliva test
23 for purposes of a deoxyribonucleic acid (DNA) profile. Submission
24 to testing for individuals registering shall be within thirty (30)

1 days of registration. Registrants who already have valid samples on
2 file in the Oklahoma State Bureau of Investigation (OSBI) DNA
3 Offender Database shall not be required to submit duplicate samples
4 for testing;

5 3. The offenses listed in Section 582 of this title for which
6 the person has been convicted or the person received a suspended
7 sentence or any form of probation, where the offense was committed,
8 where the person was convicted or received the suspended sentence or
9 any form of probation, and the name under which the person was
10 convicted or received the suspended sentence or probation;

11 4. The name and location of each hospital or penal institution
12 to which the person was committed for each offense listed in Section
13 582 of this title;

14 5. Where the person previously resided, where the person
15 currently resides including a mappable address and a zip code, how
16 long the person has resided there, how long the person expects to
17 reside there, and how long the person expects to remain in the
18 county and in this state. The Department of Corrections shall
19 conduct address verification of each registered sex offender as
20 follows:

- 21 a. on an annual basis, if the numeric risk level of the
22 person is one, or
- 23 b. on a semiannual basis, if the numeric risk level of
24 the person is two.

1 The Department of Corrections shall mail a nonforwardable
2 verification form to the last-reported address of the person. The
3 person shall return the verification form in person to the local law
4 enforcement authority of that jurisdiction within ten (10) days
5 after receipt of the form and may be photographed by the local law
6 enforcement authority at that time. The local law enforcement
7 authority shall require the person to produce proof of the identity
8 of the person and a current mappable address with a zip code. Upon
9 confirming the information contained within the verification form,
10 the local law enforcement authority shall forward the form to the
11 Department of Corrections within three (3) days after receipt of the
12 form. The verification form shall be signed by the person and state
13 the current address of the person. Failure to return the
14 verification form shall be a violation of the Sex Offenders
15 Registration Act. If the offender has been determined to be a
16 habitual or aggravated sex offender by the Department of Corrections
17 or has been assigned a level assignment of three, the address
18 verification shall be conducted every ninety (90) days. The
19 Department of Corrections shall notify the office of the district
20 attorney and local law enforcement authority of the appropriate
21 county, within forty-five (45) days if unable to verify the address
22 of a sex offender. A local law enforcement authority may notify the
23 office of the district attorney whenever it comes to the attention
24 of the local law enforcement authority that a sex offender is not in

1 compliance with any provisions of this act. A local law enforcement
2 authority designated as the primary registration authority of the
3 person may, at any time, mail a nonforwardable verification form to
4 the last-reported address of the person. The person shall return
5 the verification form in person to the local law enforcement
6 authority that mailed the form within ten (10) days after receipt of
7 the form. The local law enforcement authority shall require the
8 person to produce proof of the identity of the person and a current
9 mappable address with a zip code;

10 6. The name and address of any school where the person expects
11 to become or is enrolled or employed for any length of time;

12 7. A description of all occupants residing with the person
13 registering, including, but not limited to, name, date of birth,
14 gender, relation to the person registering, and how long the
15 occupant has resided there; and

16 8. The level assignment of the person.

17 B. Conviction data and fingerprints shall be promptly
18 transmitted at the time of registration to the Oklahoma State Bureau
19 of Investigation (OSBI) and the Federal Bureau of Investigation
20 (FBI) if the state has not previously sent the information at the
21 time of conviction.

22 C. The registration with the local law enforcement authority
23 required by the Sex Offenders Registration Act shall be in a form
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1 approved by the local law enforcement authority and shall include
2 the following information about the person registering:

3 1. The full name of the person, alias, date of birth, sex,
4 race, height, weight, eye color, social security number, driver
5 license number, and a mappable home address with a zip code;

6 2. A description of the offense for which the offender was
7 convicted, the date of the conviction, and the sentence imposed, if
8 applicable;

9 3. A photocopy of the driver license of the person; and

10 4. The level assignment of the person.

11 For purposes of this section, "local law enforcement authority"
12 means:

13 a. the municipal police department, if the person resides
14 or intends to reside or stay within the jurisdiction
15 of any municipality of this state, or

16 b. the county sheriff, if the person resides or intends
17 to reside or stay at any place outside the
18 jurisdiction of any municipality within this state,
19 and

20 c. the police or security department of any institution
21 of higher learning within this state if the person:

22 (1) enrolls as a full-time or part-time student,

23 (2) is a full-time or part-time employee at an
24 institution of higher learning, or

1 (3) resides or intends to reside or stay on any
2 property owned or controlled by the institution
3 of higher learning.

4 D. Any person subject to the provisions of the Sex Offenders
5 Registration Act who changes address, employment or student
6 enrollment status shall appear in person and give notification to
7 the Department of Corrections and the local law enforcement
8 authority of the change of address and the new mappable address with
9 zip code, the change of employment or the change of student
10 enrollment status no later than three (3) business days prior to the
11 abandonment of or move from the current address or, in the case of
12 change of employment or student enrollment, within three (3)
13 business days of such change. If the new address, employment or
14 student enrollment is under the jurisdiction of a different local
15 law enforcement authority:

16 1. The Department of Corrections and the local law enforcement
17 authority shall notify the new local law enforcement authority by
18 teletype or electronic transmission of the change of address,
19 employment or student enrollment status;

20 2. The offender shall notify the new local law enforcement
21 authority of any previous registration; and

22 3. The new local law enforcement authority shall notify the
23 most recent registering agency by teletype or electronic
24 transmission of the change in address, employment or student

1 enrollment status of the offender. If the new address is in another
2 state the Department of Corrections shall promptly notify the agency
3 responsible for registration in that state of the new address of the
4 offender.

5 E. Any person subject to the provisions of the Sex Offenders
6 Registration Act who is unable to provide ~~an~~ a mappable address with
7 a zip code to the Department of Corrections or local law enforcement
8 authority as required in subsections A and C of this section and
9 registers as a transient shall report in person to the nearest local
10 law enforcement authority every seven (7) days and provide to the
11 local law enforcement authority the approximate location of where
12 the person is staying and where the person plans to stay.

13 F. The Department of Corrections shall maintain a file of all
14 sex offender registrations. A copy of the information contained in
15 the registration shall promptly be available to state, county and
16 municipal law enforcement agencies, the State Superintendent of
17 Public Instruction, the Commissioner of Health, and the National Sex
18 Offender Registry maintained by the Federal Bureau of Investigation.
19 The file shall promptly be made available for public inspection or
20 copying pursuant to rules promulgated by the Department of
21 Corrections and may be made available through Internet access. The
22 Department of Corrections shall promptly provide all municipal
23 police departments, all county sheriff departments and all campus
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1 police departments a list of those sex offenders registered and
2 living in their county.

3 G. The Superintendent of Public Instruction is authorized to
4 copy and shall distribute information from the sex offender registry
5 to school districts and individual public and private schools within
6 the state with a notice using the following or similar language: "A
7 person whose name appears on this registry has been convicted of a
8 sex offense. Continuing to employ a person whose name appears on
9 this registry may result in civil liability for the employer or
10 criminal prosecution pursuant to Section 589 of Title 57 of the
11 Oklahoma Statutes."

12 H. The State Commissioner of Health is authorized to distribute
13 information from the sex offender registry to any nursing home or
14 long-term care facility. Nothing in this subsection shall be deemed
15 to impose any liability upon or give rise to a cause of action
16 against any person, agency, organization, or company for failing to
17 release information in accordance with the Sex Offenders
18 Registration Act.

19 I. Each local law enforcement authority shall make its sex
20 offender registry available upon request, without restriction, at a
21 cost that is no more than what is charged for other records provided
22 by the local law enforcement authority pursuant to the Oklahoma Open
23 Records Act.

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1 When a local law enforcement authority sends a copy of or
2 otherwise makes the sex offender registry available to any public or
3 private school offering any combination of prekindergarten through
4 twelfth grade classes or child care facility licensed by the state,
5 the agency shall provide a notice using the following or similar
6 language: "A person whose name appears on this registry has been
7 convicted of a sex offense. Continuing to employ a person whose
8 name appears on this registry may result in civil liability for the
9 employer or criminal prosecution pursuant to Section 589 of Title 57
10 of the Oklahoma Statutes."

11 J. Samples of blood or saliva for DNA testing required by
12 subsection A of this section shall be taken by employees or
13 contractors of the Department of Corrections. Said individuals
14 shall be properly trained to collect blood or saliva samples.
15 Persons collecting samples for DNA testing pursuant to this section
16 shall be immune from civil liabilities arising from this activity.
17 The Department of Corrections shall ensure the collection of samples
18 is mailed to the Oklahoma State Bureau of Investigation (OSBI)
19 within ten (10) days of the time the subject appears for testing.
20 The Department shall use sample kits provided by the OSBI and
21 procedures promulgated by the OSBI. Persons subject to DNA testing
22 pursuant to this section shall be required to pay to the Department
23 of Corrections a fee of Fifteen Dollars (\$15.00). Any fees
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1 collected pursuant to this subsection shall be deposited in the
2 Department of Corrections revolving account.

3 K. 1. Any person who has been convicted of or received a
4 suspended sentence or any probationary term, including a deferred
5 sentence imposed in violation of subsection G of Section 991c of
6 Title 22 of the Oklahoma Statutes, for any crime listed in Section
7 582 of this title and:

8 a. who is subsequently convicted of a crime or an attempt
9 to commit a crime listed in subsection A of Section
10 582 of this title, or

11 b. who enters this state after November 1, 1997, and who
12 has been convicted of an additional crime or attempted
13 crime which, if committed or attempted in this state,
14 would be a crime or an attempt to commit a crime
15 provided for in subsection A of Section 582 of this
16 title,

17 shall be subject to all of the registration requirements of this act
18 and shall be designated by the Department of Corrections as a
19 habitual sex offender. A habitual sex offender shall be required to
20 register for the lifetime of the habitual sex offender.

21 2. On or after November 1, 1999, any person who has been
22 convicted of a crime or an attempt to commit a crime, received a
23 suspended sentence or any probationary term, including a deferred
24 sentence imposed in violation of subsection G of Section 991c of

1 Title 22 of the Oklahoma Statutes, for a crime provided for in
2 Section 7115 of Title 10 of the Oklahoma Statutes, if the offense
3 involved sexual abuse or sexual exploitation as these terms are
4 defined in Section 7102 of Title 10 of the Oklahoma Statutes,
5 Section 885, 888, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma
6 Statutes shall be subject to all the registration requirements of
7 this act and shall be designated by the Department of Corrections as
8 an aggravated sex offender. An aggravated sex offender shall be
9 required to register for the lifetime of the aggravated sex
10 offender.

11 3. Upon registration of any person designated as a habitual or
12 aggravated sex offender, pursuant to this subsection, a local law
13 enforcement authority shall notify, by any method of communication
14 it deems appropriate, anyone that the local law enforcement
15 authority determines appropriate, including, but not limited to:

- 16 a. the family of the habitual or aggravated sex offender,
- 17 b. any prior victim of the habitual or aggravated sex
18 offender,
- 19 c. residential neighbors and churches, community parks,
20 schools, convenience stores, businesses and other
21 places that children or other potential victims may
22 frequent, and
- 23 d. a nursing facility, a specialized facility, a
24 residential care home, a continuum-of-care facility,

1 an assisted living center, and an adult day care
2 facility.

3 4. The notification may include, but is not limited to, the
4 following information:

5 a. the name and physical address of the habitual or
6 aggravated sex offender,

7 b. a physical description of the habitual or aggravated
8 sex offender, including, but not limited to, age,
9 height, weight and eye and hair color,

10 c. a description of the vehicle that the habitual or
11 aggravated sex offender is known to drive,

12 d. any conditions or restrictions upon the probation,
13 parole or conditional release of the habitual or
14 aggravated sex offender,

15 e. a description of the primary and secondary targets of
16 the habitual or aggravated sex offender,

17 f. a description of the method of offense of the habitual
18 or aggravated sex offender,

19 g. a current photograph of the habitual or aggravated sex
20 offender,

21 h. the name and telephone number of the probation or
22 parole officer of the habitual or aggravated sex
23 offender, and

24 i. the level assignment of the person.

1 5. The local law enforcement authority shall make the
2 notification provided for in this subsection regarding a habitual or
3 aggravated sex offender available to any person upon request.

4 L. If the probation and parole officer supervising a person
5 subject to registration receives information to the effect that the
6 status of the person has changed in any manner that affects proper
7 supervision of the person including, but not limited to, a change in
8 the physical health of the person, address, employment, or
9 educational status, higher educational status, incarceration, or
10 terms of release, the supervising officer or administrator shall
11 notify the appropriate local law enforcement authority or
12 authorities of that change.

13 M. Public officials, public employees, and public agencies are
14 immune from civil liability for good faith conduct under any
15 provision of the Sex Offenders Registration Act.

16 1. Nothing in the Sex Offenders Registration Act shall be
17 deemed to impose any liability upon or to give rise to a cause of
18 action against any public official, public employee, or public
19 agency for releasing information to the public or for failing to
20 release information in accordance with the Sex Offenders
21 Registration Act.

22 2. Nothing in this section shall be construed to prevent law
23 enforcement officers from notifying members of the public of any
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1 persons that pose a danger under circumstances that are not
2 enumerated in the Sex Offenders Registration Act.

3 SECTION 3. This act shall become effective November 1, 2010.
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