

AMENDED IN SENATE JUNE 17, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 448

Introduced by Senator ~~Galgiani~~ Hueso
(Principal coauthor: Senator Galgiani)

February 25, 2015

~~An act to amend Section 633 of the Penal Code, relating to law enforcement.~~ *An act to amend Sections 290.012, 290.014, and 290.024 of, and to amend and repeal Section 290.015 of, the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 448, as amended, ~~Galgiani~~ Hueso. ~~Law enforcement: communications.~~ *Sex offenders: Internet identifiers.*

Existing law, the Californians Against Sexual Exploitation Act, an initiative measure enacted by the approval of Proposition 35 at the November 6, 2012, statewide general election (CASE Act), requires a person who is subject to the Sex Offender Registration Act to list any and all Internet identifiers established or used by the person and any and all Internet service providers used by the person on his or her sex offender registration. The CASE Act requires a person subject to sex offender registration to send written notice of any addition of, or change to, an Internet identifier or Internet service provider to the law enforcement agency with which he or she is currently registered within 24 hours. Existing case law currently enjoins the application of the above provisions of the CASE Act through the imposition of a preliminary injunction on the grounds that these provisions violate the First Amendment to the United States Constitution. The CASE Act

allows its provisions to be amended by a statute in furtherance of its objectives passed in each house of the Legislature by a majority vote of the membership.

This bill would state the intent of the Legislature to amend the CASE Act to further its purposes. The bill would delete the requirement that a person subject to sex offender registration list on his or her sex offender registration all Internet service providers used by him or her. The bill would require a person subject to sex offender registration to list only those Internet identifiers actually used to participate in online communications, as specified. The bill would require the registrant to send written notice of any addition of, or change to, an Internet identifier to the law enforcement agency with which he or she is currently registered within 5 working days. The bill would authorize a law enforcement agency to which this information has been submitted to make the information available to another law enforcement agency for the sole purpose of preventing or investigating a sex-related crime, a kidnapping, or human trafficking, and would prohibit a law enforcement agency from disclosing this information to the public. The bill would authorize the Attorney General to disclose the information to another person if the Attorney General determines, based on specific, articulable facts, that the disclosure is likely to protect members of the public from sex-related crimes, kidnappings, or human trafficking, and the person to whom the disclosure is made signs an oath, as specified.

The bill would make other technical, nonsubstantive changes.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes various prohibitions against eavesdropping and recording or intercepting certain communications. Violations of these prohibitions are crimes. Existing law provides that specified law enforcement officers are not prohibited by those provisions from overhearing or recording any communication that they could lawfully overhear or record prior to the enactment of those prohibitions.~~

~~This bill would add uniformed peace officers of the Department of Fish and Wildlife, the Department of Parks and Recreation, the State~~

Department of Developmental Services, and the State Department of State Hospitals, and a special agent of the Attorney General or any district attorney, to the list of law enforcement officers to whom the prohibitions described above do not apply.

Vote: majority ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *It is the intent of the Legislature to further the*
2 *objectives of the Californians Against Sexual Exploitation Act, an*
3 *initiative measure enacted by the approval of Proposition 35 at*
4 *the November 6, 2012, statewide general election, by amending*
5 *its provisions to conform with the requirements of the court in the*
6 *case of Doe v. Harris (Case numbers 13-15263 and 13-15267).*

7 SEC. 2. *Section 290.012 of the Penal Code is amended to read:*

8 290.012. (a) Beginning on his or her first birthday following
9 registration or change of address, the person shall be required to
10 register annually, within five working days of his or her birthday,
11 to update his or her registration with the entities described in
12 subdivision (b) of Section 290. At the annual update, the person
13 shall provide current information as required on the Department
14 of Justice annual update form, including the information described
15 in paragraphs (1) to ~~(5)~~, *inclusive (4), inclusive*, of subdivision (a)
16 of Section 290.015. The registering agency shall give the registrant
17 a copy of the registration requirements from the Department of
18 Justice form.

19 (b) In addition, every person who has ever been adjudicated a
20 sexually violent predator, as defined in Section 6600 of the Welfare
21 and Institutions Code, shall, after his or her release from custody,
22 verify his or her address no less than once every 90 days and place
23 of employment, including the name and address of the employer,
24 in a manner established by the Department of Justice. Every person
25 who, as a sexually violent predator, is required to verify his or her
26 registration every 90 days, shall be notified wherever he or she
27 next registers of his or her increased registration obligations. This
28 notice shall be provided in writing by the registering agency or
29 agencies. Failure to receive this notice shall be a defense to the
30 penalties prescribed in subdivision (f) of Section 290.018.

1 (c) In addition, every person subject to the Act, while living as
2 a transient in California, shall update his or her registration at least
3 every 30 days, in accordance with Section 290.011.

4 (d) No entity shall require a person to pay a fee to register or
5 update his or her registration pursuant to this section. The
6 registering agency shall submit registrations, including annual
7 updates or changes of address, directly into the Department of
8 Justice California Sex and Arson Registry (CSAR).

9 *SEC. 3. Section 290.014 of the Penal Code is amended to read:*

10 290.014. (a) If any person who is required to register pursuant
11 to the Act changes his or her name, the person shall inform, in
12 person, the law enforcement agency or agencies with which he or
13 she is currently registered within five working days. The law
14 enforcement agency or agencies shall forward a copy of this
15 information to the Department of Justice within three working
16 days of its receipt.

17 (b) (1) ~~If any person who is required to register pursuant to~~
18 ~~the Act adds or changes his or her account with an Internet service~~
19 ~~provider or adds or changes an Internet identifier, as described in~~
20 ~~Section 290.024, the person shall send written notice of the addition~~
21 ~~or change to the law enforcement agency or agencies with which~~
22 ~~he or she is currently registered within 24 hours. The law~~
23 ~~enforcement agency or agencies shall make this information~~
24 ~~available to the Department of Justice. five working days. Each~~
25 ~~person to whom this subdivision paragraph applies at the time~~
26 ~~this subdivision paragraph becomes effective shall immediately~~
27 ~~provide the information required by this subdivision. paragraph~~
28 ~~within five working days.~~

29 (2) (A) *A law enforcement agency to which an Internet identifier*
30 *is submitted pursuant to this subdivision, Section 290.012, or*
31 *Section 290.015 shall make the Internet identifier available to the*
32 *Department of Justice.*

33 (B) *A law enforcement agency to which an Internet identifier*
34 *is submitted pursuant to this subdivision, Section 290.012, or*
35 *Section 290.015 may only release that Internet identifier to another*
36 *law enforcement agency for the sole purpose of preventing or*
37 *investigating a sex-related crime, a kidnapping, or human*
38 *trafficking.*

39 (C) *Notwithstanding Sections 290.45 and 290.46, a law*
40 *enforcement agency shall not disclose an Internet identifier*

1 submitted pursuant to this subdivision, Section 290.012, or Section
2 290.015 to the public, except that the Attorney General may
3 disclose an Internet identifier to another person if the Attorney
4 General has determined, based on specific, articulable facts, that
5 the disclosure is likely to protect members of the public from
6 sex-related crimes, kidnappings, or human trafficking, and the
7 person to whom the disclosure is made signs an oath promising
8 to use the information only for the identified purpose, to maintain
9 the confidentiality of the information, and to refrain from disclosing
10 the information to anyone who has not been granted access to the
11 information by the Attorney General.

12 SEC. 4. Section 290.015 of the Penal Code, as amended
13 November 6, 2012, by initiative Proposition 35, Section 12, is
14 amended to read:

15 290.015. (a) A person who is subject to the Act shall register,
16 or reregister if he or she has previously registered, upon release
17 from incarceration, placement, commitment, or release on probation
18 pursuant to subdivision (b) of Section 290. This section shall not
19 apply to a person who is incarcerated for less than 30 days if he
20 or she has registered as required by the Act, he or she returns after
21 incarceration to the last registered address, and the annual update
22 of registration that is required to occur within five working days
23 of his or her birthday, pursuant to subdivision (a) of Section
24 290.012, did not fall within that incarceration period. The
25 registration shall consist of all of the following:

26 (1) A statement in writing signed by the person, giving
27 information as shall be required by the Department of Justice and
28 giving the name and address of the person's employer, and the
29 address of the person's place of employment if that is different
30 from the employer's main address.

31 (2) The fingerprints and a current photograph of the person
32 taken by the registering official.

33 (3) The license plate number of any vehicle owned by, regularly
34 driven by, or registered in the name of the person.

35 (4) A list of any and all Internet identifiers ~~established or used~~
36 ~~by the person.~~ *person for communicative purposes, as defined in*
37 *Section 290.024.*

38 (5) ~~A list of any and all Internet service providers used by the~~
39 ~~person.~~

40 (6)

1 (5) A statement in writing, signed by the person, acknowledging
2 that the person is required to register and update the information
3 in ~~paragraphs (4) and (5)~~; *paragraph (4)*, as required by this
4 chapter.

5 ~~(7)~~

6 (6) Notice to the person that, in addition to the requirements of
7 the Act, he or she may have a duty to register in any other state
8 where he or she may relocate.

9 ~~(8)~~

10 (7) Copies of adequate proof of residence, which shall be limited
11 to a California driver's license, California identification card, recent
12 rent or utility receipt, printed personalized checks or other recent
13 banking documents showing that person's name and address, or
14 any other information that the registering official believes is
15 reliable. If the person has no residence and no reasonable
16 expectation of obtaining a residence in the foreseeable future, the
17 person shall so advise the registering official and shall sign a
18 statement provided by the registering official stating that fact.
19 Upon presentation of proof of residence to the registering official
20 or a signed statement that the person has no residence, the person
21 shall be allowed to register. If the person claims that he or she has
22 a residence but does not have any proof of residence, he or she
23 shall be allowed to register but shall furnish proof of residence
24 within 30 days of the date he or she is allowed to register.

25 (b) Within three days thereafter, the registering law enforcement
26 agency or agencies shall forward the statement, fingerprints,
27 photograph, and vehicle license plate number, if any, to the
28 Department of Justice.

29 (c) (1) If a person fails to register in accordance with subdivision
30 (a) after release, the district attorney in the jurisdiction where the
31 person was to be paroled or to be on probation may request that a
32 warrant be issued for the person's arrest and shall have the authority
33 to prosecute that person pursuant to Section 290.018.

34 (2) If the person was not on parole or probation *or on postrelease*
35 *community supervision or mandatory supervision* at the time of
36 release, the district attorney in the following applicable jurisdiction
37 shall have the authority to prosecute that person pursuant to Section
38 290.018:

39 (A) If the person was previously registered, in the jurisdiction
40 in which the person last registered.

1 (B) If there is no prior registration, but the person indicated on
2 the Department of Justice notice of sex offender registration
3 requirement form where he or she expected to reside, in the
4 jurisdiction where he or she expected to reside.

5 (C) If neither subparagraph (A) nor (B) applies, in the
6 jurisdiction where the offense subjecting the person to registration
7 pursuant to this Act was committed.

8 *SEC. 5. Section 290.015 of the Penal Code, as amended by*
9 *Section 17 of Chapter 867 of the Statutes of 2012, is repealed.*

10 ~~290.015. (a) A person who is subject to the Act shall register,~~
11 ~~or reregister if he or she has previously registered, upon release~~
12 ~~from incarceration, placement, commitment, or release on probation~~
13 ~~pursuant to subdivision (b) of Section 290. This section shall not~~
14 ~~apply to a person who is incarcerated for less than 30 days if he~~
15 ~~or she has registered as required by the Act, he or she returns after~~
16 ~~incarceration to the last registered address, and the annual update~~
17 ~~of registration that is required to occur within five working days~~
18 ~~of his or her birthday, pursuant to subdivision (a) of Section~~
19 ~~290.012, did not fall within that incarceration period. The~~
20 ~~registration shall consist of all of the following:~~

21 ~~(1) A statement in writing signed by the person, giving~~
22 ~~information as shall be required by the Department of Justice and~~
23 ~~giving the name and address of the person's employer, and the~~
24 ~~address of the person's place of employment if that is different~~
25 ~~from the employer's main address.~~

26 ~~(2) The fingerprints and a current photograph of the person~~
27 ~~taken by the registering official.~~

28 ~~(3) The license plate number of any vehicle owned by, regularly~~
29 ~~driven by, or registered in the name of the person.~~

30 ~~(4) Notice to the person that, in addition to the requirements of~~
31 ~~the Act, he or she may have a duty to register in any other state~~
32 ~~where he or she may relocate.~~

33 ~~(5) Copies of adequate proof of residence, which shall be limited~~
34 ~~to a California driver's license, California identification card, recent~~
35 ~~rent or utility receipt, printed personalized checks or other recent~~
36 ~~banking documents showing that person's name and address, or~~
37 ~~any other information that the registering official believes is~~
38 ~~reliable. If the person has no residence and no reasonable~~
39 ~~expectation of obtaining a residence in the foreseeable future, the~~
40 ~~person shall so advise the registering official and shall sign a~~

1 ~~statement provided by the registering official stating that fact.~~
2 ~~Upon presentation of proof of residence to the registering official~~
3 ~~or a signed statement that the person has no residence, the person~~
4 ~~shall be allowed to register. If the person claims that he or she has~~
5 ~~a residence but does not have any proof of residence, he or she~~
6 ~~shall be allowed to register but shall furnish proof of residence~~
7 ~~within 30 days of the date he or she is allowed to register.~~

8 ~~(b) Within three days thereafter, the registering law enforcement~~
9 ~~agency or agencies shall forward the statement, fingerprints,~~
10 ~~photograph, and vehicle license plate number, if any, to the~~
11 ~~Department of Justice.~~

12 ~~(c) (1) If a person fails to register in accordance with~~
13 ~~subdivision (a) after release, the district attorney in the jurisdiction~~
14 ~~where the person was to be paroled or to be on probation may~~
15 ~~request that a warrant be issued for the person's arrest and shall~~
16 ~~have the authority to prosecute that person pursuant to Section~~
17 ~~290.018.~~

18 ~~(2) If the person was not on parole or probation or on postrelease~~
19 ~~community supervision or mandatory supervision at the time of~~
20 ~~release, the district attorney in the following applicable jurisdiction~~
21 ~~shall have the authority to prosecute that person pursuant to Section~~
22 ~~290.018:~~

23 ~~(A) If the person was previously registered, in the jurisdiction~~
24 ~~in which the person last registered.~~

25 ~~(B) If there is no prior registration, but the person indicated on~~
26 ~~the Department of Justice notice of sex offender registration~~
27 ~~requirement form where he or she expected to reside, in the~~
28 ~~jurisdiction where he or she expected to reside.~~

29 ~~(C) If neither subparagraph (A) nor (B) applies, in the~~
30 ~~jurisdiction where the offense subjecting the person to registration~~
31 ~~pursuant to this Act was committed.~~

32 *SEC. 6. Section 290.024 of the Penal Code is amended to read:*
33 *290.024. For purposes of this chapter, the following terms*
34 *apply:*

35 ~~(a) "Internet service provider" means a business, organization,~~
36 ~~or other entity providing a computer and communications facility~~
37 ~~directly to consumers through which a person may obtain access~~
38 ~~to the Internet. An Internet service provider does not include a~~
39 ~~business, organization, or other entity that provides only~~
40 ~~telecommunications services, cable services, or video services, or~~

1 any system operated or services offered by a library or educational
2 institution.

3 (b) “Internet identifier” means an electronic mail address, user
4 name, screen name, or similar identifier *actually used for the*
5 ~~purpose of to participate in online communications, including, but~~
6 ~~not limited to,~~ Internet forum discussions, Internet chat room
7 discussions, *emailing*, instant messaging, social networking, or
8 similar ~~Internet communication methods of communicating online.~~
9 *For the purpose of this chapter, an “Internet identifier” does not*
10 *include Internet passwords, or any electronic mail address, user*
11 *name, screen name, or similar identifier used solely to read online*
12 *content, or solely for transactions with a lawful commercial*
13 *enterprise or government agency concerning a lawful commercial*
14 *or governmental transaction with that enterprise or agency.*

15 *SEC. 7. The Legislature finds and declares that Section 3 of*
16 *this act, which amends Section 290.014 of the Penal Code, imposes*
17 *a limitation on the public’s right of access to the meetings of public*
18 *bodies or the writings of public officials and agencies within the*
19 *meaning of Section 3 of Article I of the California Constitution.*
20 *Pursuant to that constitutional provision, the Legislature makes*
21 *the following findings to demonstrate the interest protected by this*
22 *limitation and the need for protecting that interest:*

23 *In order to protect the rights afforded by the First Amendment*
24 *to the United States Constitution, it is necessary that Internet*
25 *identifier information provided to law enforcement agencies by*
26 *registrable sex offenders as part of their registration not be made*
27 *generally available to the public.*

28 *SEC. 8. This act is an urgency statute necessary for the*
29 *immediate preservation of the public peace, health, or safety within*
30 *the meaning of Article IV of the Constitution and shall go into*
31 *immediate effect. The facts constituting the necessity are:*

32 *In order to protect the rights afforded by the First Amendment*
33 *to the United States Constitution while furthering the objectives*
34 *of the Californians Against Sexual Exploitation Act, an initiative*
35 *measure enacted by the approval of Proposition 35 at the*
36 *November 6, 2012, statewide general election, at the earliest*
37 *possible time, it is necessary that this act take effect immediately.*

38 ~~SECTION 1. Section 633 of the Penal Code is amended to~~
39 ~~read:~~

1 ~~633. (a) Nothing in Section 631, 632, 632.5, 632.6, or 632.7~~
2 ~~prohibits the Attorney General, any district attorney, or any~~
3 ~~assistant, deputy, special agent, or investigator of the Attorney~~
4 ~~General or any district attorney, any officer of the California~~
5 ~~Highway Patrol, any uniformed peace officer of the Department~~
6 ~~of Fish and Wildlife, the Department of Parks and Recreation, the~~
7 ~~State Department of Developmental Services, or the State~~
8 ~~Department of State Hospitals, any chief of police, assistant chief~~
9 ~~of police, or police officer of a city or city and county, any sheriff,~~
10 ~~undersheriff, or deputy sheriff regularly employed and paid in that~~
11 ~~capacity by a county, any police officer of the County of Los~~
12 ~~Angeles, or any person acting pursuant to the direction of one of~~
13 ~~these law enforcement officers acting within the scope of his or~~
14 ~~her authority, from overhearing or recording any communication~~
15 ~~that they could lawfully overhear or record prior to the effective~~
16 ~~date of this chapter.~~

17 ~~(b) Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders~~
18 ~~inadmissible any evidence obtained by the above-named persons~~
19 ~~by means of overhearing or recording any communication that~~
20 ~~they could lawfully overhear or record prior to the effective date~~
21 ~~of this chapter.~~