

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN SENATE JUNE 17, 2015

AMENDED IN SENATE APRIL 15, 2015

**SENATE BILL**

**No. 448**

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

February 25, 2015

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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, Hueso. 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~~ *objectives*. 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 *for a crime where the use of the Internet was essential to the commission of the crime* 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~~ *any* 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.

Vote:  $\frac{2}{3}$ . 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

1 initiative measure enacted by the approval of Proposition 35 at the  
2 November 6, 2012, statewide general election, by amending its  
3 provisions to conform with the requirements of the court in the  
4 case of Doe v. Harris (Case numbers 13-15263 and 13-15267).

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

6 290.012. (a) Beginning on his or her first birthday following  
7 registration or change of address, the person shall be required to  
8 register annually, within five working days of his or her birthday,  
9 to update his or her registration with the entities described in  
10 subdivision (b) of Section 290. At the annual update, the person  
11 shall provide current information as required on the Department  
12 of Justice annual update form, including the information described  
13 in paragraphs (1) to (4), inclusive, of subdivision (a) of Section  
14 290.015. The registering agency shall give the registrant a copy  
15 of the registration requirements from the Department of Justice  
16 form.

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

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

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

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

38 290.014. (a) If any person who is required to register pursuant  
39 to the Act changes his or her name, the person shall inform, in  
40 person, the law enforcement agency or agencies with which he or

1 she is currently registered within five working days. The law  
2 enforcement agency or agencies shall forward a copy of this  
3 information to the Department of Justice within three working  
4 days of its receipt.

5 (b) (1) If any person who is required to register pursuant to the  
6 *Act for a crime where the use of the Internet was essential to the*  
7 *commission of the crime* adds or changes an Internet identifier, as  
8 described in Section 290.024, the person shall send written notice  
9 of the addition or change to the law enforcement agency or agencies  
10 with which he or she is currently registered within five working  
11 days. Each person to whom this paragraph applies at the time this  
12 paragraph becomes effective shall immediately provide the  
13 information required by this paragraph within five working days.

14 (2) (A) A law enforcement agency to which an Internet  
15 identifier is submitted pursuant to this subdivision, Section  
16 290.012, or Section 290.015 shall make the Internet identifier  
17 available to the Department of Justice.

18 (B) ~~A~~—*Except as provided in subparagraph (A), a law*  
19 *enforcement agency to which an Internet identifier is submitted*  
20 *pursuant to this subdivision, Section 290.012, or Section 290.015*  
21 *may only release that Internet identifier to another law enforcement*  
22 *agency for the sole purpose of preventing or investigating a*  
23 *sex-related crime, a kidnapping, or human trafficking.*

24 (C) Notwithstanding Sections 290.45 and 290.46, a law  
25 enforcement agency shall not disclose an Internet identifier  
26 submitted pursuant to this subdivision, Section 290.012, or Section  
27 290.015 to the public, except that the Attorney General may  
28 disclose an Internet identifier to another person if the Attorney  
29 General has determined, based on specific, articulable facts, that  
30 the disclosure is likely to protect members of the public from  
31 sex-related crimes, kidnappings, or human trafficking, and the  
32 person to whom the disclosure is made signs an oath promising to  
33 use the information only for the identified purpose, to maintain  
34 the confidentiality of the information, and to refrain from disclosing  
35 the information to anyone who has not been granted access to the  
36 information by the Attorney General.

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

1 290.015. (a) A person who is subject to the Act shall register,  
2 or reregister if he or she has previously registered, upon release  
3 from incarceration, placement, commitment, or release on probation  
4 pursuant to subdivision (b) of Section 290. This section shall not  
5 apply to a person who is incarcerated for less than 30 days if he  
6 or she has registered as required by the Act, he or she returns after  
7 incarceration to the last registered address, and the annual update  
8 of registration that is required to occur within five working days  
9 of his or her birthday, pursuant to subdivision (a) of Section  
10 290.012, did not fall within that incarceration period. The  
11 registration shall consist of all of the following:

12 (1) A statement in writing signed by the person, giving  
13 information as shall be required by the Department of Justice and  
14 giving the name and address of the person's employer, and the  
15 address of the person's place of employment if that is different  
16 from the employer's main address.

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

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

21 (4) ~~If the person is required to register for a crime where the~~  
22 ~~use of the Internet was essential to the commission of the crime,~~  
23 ~~a list of any and all Internet identifiers used by the person for~~  
24 ~~communicative purposes, as defined in Section 290.024.~~

25 (5) A statement in writing, signed by the person, acknowledging  
26 that the person is required to register and update the information  
27 in paragraph (4), as required by this chapter.

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

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

1 or a signed statement that the person has no residence, the person  
2 shall be allowed to register. If the person claims that he or she has  
3 a residence but does not have any proof of residence, he or she  
4 shall be allowed to register but shall furnish proof of residence  
5 within 30 days of the date he or she is allowed to register.

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

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

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

21 (A) If the person was previously registered, in the jurisdiction  
22 in which the person last registered.

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

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

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

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

34 "Internet identifier" means an electronic mail address, user name,  
35 screen name, or similar identifier actually used to participate in  
36 online communications, including, but not limited to, Internet  
37 forum discussions, Internet chat room discussions, emailing, instant  
38 messaging, social networking, or similar methods of  
39 communicating online. For the purpose of this chapter, an "Internet  
40 identifier" does not include Internet passwords, or any electronic

1 mail address, user name, screen name, or similar identifier used  
2 solely to read online content, or solely for transactions with a lawful  
3 commercial enterprise or government agency concerning a lawful  
4 commercial or governmental transaction with that enterprise or  
5 agency.

6 SEC. 7. The Legislature finds and declares that Section 3 of  
7 this act, which amends Section 290.014 of the Penal Code, imposes  
8 a limitation on the public's right of access to the meetings of public  
9 bodies or the writings of public officials and agencies within the  
10 meaning of Section 3 of Article I of the California Constitution.  
11 Pursuant to that constitutional provision, the Legislature makes  
12 the following findings to demonstrate the interest protected by this  
13 limitation and the need for protecting that interest:

14 In order to protect the rights afforded by the First Amendment  
15 to the United States Constitution, it is necessary that Internet  
16 identifier information provided to law enforcement agencies by  
17 registerable sex offenders as part of their registration not be made  
18 generally available to the public.

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

23 In order to protect the rights afforded by the First Amendment  
24 to the United States Constitution while furthering the objectives  
25 of the Californians Against Sexual Exploitation Act, an initiative  
26 measure enacted by the approval of Proposition 35 at the November  
27 6, 2012, statewide general election, at the earliest possible time,  
28 it is necessary that this act take effect immediately.