

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN SENATE JUNE 17, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 448

Introduced by Senator Hueso
(Principal coauthor: Senator Galgiani)
(Coauthors: Senators Hall and Runner)
(Coauthor: Assembly Member Mathis)

February 25, 2015

An act to amend Sections 290.012, 290.014, ~~and 290.024~~ 290.024, and 290.45 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 (*the 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 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 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 require a person who is convicted of a felony on or after January 1, 2016, requiring registration pursuant to the Act, under any one of specified circumstances, including when the person used the Internet to collect any private information to identify a victim of the crime to further the commission of the crime, to register his or her Internet identifiers, as defined, and to send written notice to the law enforcement agency or agencies with which he or she is currently registered when he or she establishes or changes an Internet identifier within 30 working days of the addition or change, as specified. The bill would require a law enforcement agency to which this information has been submitted to make the information available to the Department of Justice. The bill would require a designated law enforcement entity to only use an Internet identifier submitted pursuant to these provisions,~~

or to release that Internet identifier to another law enforcement entity, for the purpose of investigating a sex-related crime, a kidnapping, or human trafficking. The bill would prohibit a designated law enforcement entity from disclosing or authorizing persons or entities to disclose an Internet identifier submitted pursuant to these provisions to the public or other persons, except as required by court order.

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
3 initiative measure enacted by the approval of Proposition 35 at the
4 November 6, 2012, statewide general election, by amending its
5 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 (4), inclusive, of subdivision (a) of Section
16 290.015. The registering agency shall give the registrant a copy
17 of the registration requirements from the Department of Justice
18 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

1 and Institutions Code, shall, after his or her release from custody,
2 verify his or her address no less than once every 90 days and place
3 of employment, including the name and address of the employer,
4 in a manner established by the Department of Justice. Every person
5 who, as a sexually violent predator, is required to verify his or her
6 registration every 90 days, shall be notified wherever he or she
7 next registers of his or her increased registration obligations. This
8 notice shall be provided in writing by the registering agency or
9 agencies. Failure to receive this notice shall be a defense to the
10 penalties prescribed in subdivision (f) of Section 290.018.

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

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

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

20 290.014. (a) If any person who is required to register pursuant
21 to the Act changes his or her name, the person shall inform, in
22 person, the law enforcement agency or agencies with which he or
23 she is currently registered within five working days. The law
24 enforcement agency or agencies shall forward a copy of this
25 information to the Department of Justice within three working
26 days of its receipt.

27 ~~(b) (1) If any person who is required to register pursuant to the~~
28 ~~Act for a crime where the use of the Internet was essential to the~~
29 ~~commission of the crime adds or changes an Internet identifier, as~~
30 ~~described in Section 290.024, the person shall send written notice~~
31 ~~of the addition or change to the law enforcement agency or agencies~~
32 ~~with which he or she is currently registered within five working~~
33 ~~days. Each person to whom this paragraph applies at the time this~~
34 ~~paragraph becomes effective shall immediately provide the~~
35 ~~information required by this paragraph within five working days.~~

36 ~~(2) (A) A law enforcement agency to which an Internet~~
37 ~~identifier is submitted pursuant to this subdivision, Section~~
38 ~~290.012, or Section 290.015 shall make the Internet identifier~~
39 ~~available to the Department of Justice.~~

1 (B) Except as provided in subparagraph (A), a law enforcement
2 agency to which an Internet identifier is submitted pursuant to this
3 subdivision, Section 290.012, or Section 290.015 may only release
4 that Internet identifier to another law enforcement agency for the
5 sole purpose of preventing or investigating a sex-related crime, a
6 kidnapping, or human trafficking.

7 (C) Notwithstanding Sections 290.45 and 290.46, a law
8 enforcement agency shall not disclose an Internet identifier
9 submitted pursuant to this subdivision, Section 290.012, or Section
10 290.015 to the public, except that the Attorney General may
11 disclose an Internet identifier to another person if the Attorney
12 General has determined, based on specific, articulable facts, that
13 the disclosure is likely to protect members of the public from
14 sex-related crimes, kidnappings, or human trafficking, and the
15 person to whom the disclosure is made signs an oath promising to
16 use the information only for the identified purpose, to maintain
17 the confidentiality of the information, and to refrain from disclosing
18 the information to anyone who has not been granted access to the
19 information by the Attorney General.

20 (b) *If any person who is required to register Internet identifiers*
21 *pursuant to Section 290.024 adds or changes an Internet identifier,*
22 *as defined in Section 290.024, the person shall send written notice*
23 *by mail of the addition or change to the law enforcement agency*
24 *or agencies with which he or she is currently registered within 30*
25 *working days of the addition or change. The law enforcement*
26 *agency or agencies shall make the information available to the*
27 *Department of Justice.*

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

31 290.015. (a) A person who is subject to the Act shall register,
32 or reregister if he or she has previously registered, upon release
33 from incarceration, placement, commitment, or release on probation
34 pursuant to subdivision (b) of Section 290. This section shall not
35 apply to a person who is incarcerated for less than 30 days if he
36 or she has registered as required by the Act, he or she returns after
37 incarceration to the last registered address, and the annual update
38 of registration that is required to occur within five working days
39 of his or her birthday, pursuant to subdivision (a) of Section

1 290.012, did not fall within that incarceration period. The
2 registration shall consist of all of the following:

3 (1) A statement in writing signed by the person, giving
4 information as shall be required by the Department of Justice and
5 giving the name and address of the person's employer, and the
6 address of the person's place of employment if that is different
7 from the employer's main address.

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

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

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

16 *(4) A list of all Internet identifiers actually used by the person,*
17 *as required by Section 290.024.*

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

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

24 (7) Copies of adequate proof of residence, which shall be limited
25 to a California driver's license, California identification card, recent
26 rent or utility receipt, printed personalized checks or other recent
27 banking documents showing that person's name and address, or
28 any other information that the registering official believes is
29 reliable. If the person has no residence and no reasonable
30 expectation of obtaining a residence in the foreseeable future, the
31 person shall so advise the registering official and shall sign a
32 statement provided by the registering official stating that fact.
33 Upon presentation of proof of residence to the registering official
34 or a signed statement that the person has no residence, the person
35 shall be allowed to register. If the person claims that he or she has
36 a residence but does not have any proof of residence, he or she
37 shall be allowed to register but shall furnish proof of residence
38 within 30 days of the date he or she is allowed to register.

39 (b) Within three days thereafter, the registering law enforcement
40 agency or agencies shall forward the statement, fingerprints,

1 photograph, and vehicle license plate number, if any, to the
2 Department of Justice.

3 (c) (1) If a person fails to register in accordance with
4 subdivision (a) after release, the district attorney in the jurisdiction
5 where the person was to be paroled or to be on probation may
6 request that a warrant be issued for the person's arrest and shall
7 have the authority to prosecute that person pursuant to Section
8 290.018.

9 (2) If the person was not on parole or probation or on postrelease
10 community supervision or mandatory supervision at the time of
11 release, the district attorney in the following applicable jurisdiction
12 shall have the authority to prosecute that person pursuant to Section
13 290.018:

14 (A) If the person was previously registered, in the jurisdiction
15 in which the person last registered.

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

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

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

25 SEC. 6. Section 290.024 of the Penal Code is amended to read:

26 290.024. For purposes of this ~~chapter~~, *chapter*:

27 ~~“Internet identifier” means an electronic mail address, user name,~~
28 ~~screen name, or similar identifier actually used to participate in~~
29 ~~online communications, including, but not limited to, Internet~~
30 ~~forum discussions, Internet chat room discussions, emailing, instant~~
31 ~~messaging, social networking, or similar methods of~~
32 ~~communicating online. For the purpose of this chapter, an “Internet~~
33 ~~identifier” does not include Internet passwords, or any electronic~~
34 ~~mail address, user name, screen name, or similar identifier used~~
35 ~~solely to read online content, or solely for transactions with a lawful~~
36 ~~commercial enterprise or government agency concerning a lawful~~
37 ~~commercial or governmental transaction with that enterprise or~~
38 ~~agency.~~

39 (a) *A person who is convicted of a felony on or after January*
40 *1, 2016, requiring registration pursuant to the Act, shall register*

1 *his or her Internet identifiers if a court determines at the time of*
2 *sentencing that any of the following apply:*

3 *(1) The person used the Internet to collect any private*
4 *information to identify a victim of the crime to further the*
5 *commission of the crime.*

6 *(2) The person was convicted of a felony pursuant to subdivision*
7 *(b) or (c) of Section 236.1 and used an electronic communication*
8 *device, as defined under subdivision (b) of Section 653.2, to traffic*
9 *a victim of the crime.*

10 *(3) The person was convicted of a felony pursuant to Chapter*
11 *7.5 (commencing with Section 311) and used an electronic*
12 *communication device, as defined under subdivision (b) of Section*
13 *653.2, to prepare, publish, distribute, send, exchange, or download*
14 *the obscene matter or matter depicting a minor engaging in sexual*
15 *conduct, as defined in subdivision (d) of Section 311.4.*

16 *(b) For purposes of this chapter:*

17 *(1) “Internet identifier” means any electronic mail address or*
18 *user name used for instant messaging or social networking that*
19 *is actually used for direct communication between users on the*
20 *Internet in a manner that makes the communication not accessible*
21 *to the general public. “Internet identifier” does not include Internet*
22 *passwords, date of birth, social security number, or PIN number.*

23 *(2) “Private information” means any information that identifies*
24 *or describes an individual, including, but not limited to, his or her*
25 *name; electronic mail, chat, instant messenger, social networking,*
26 *or similar name used for Internet communication; social security*
27 *number; account numbers; passwords; personal identification*
28 *numbers; physical description; physical location; home address;*
29 *home telephone number; education; financial matters; medical or*
30 *employment history; and statements made by, or attributed to, the*
31 *individual.*

32 *SEC. 7. Section 290.45 of the Penal Code is amended to read:*

33 *290.45. (a) (1) Notwithstanding any other ~~provision of~~ law,*
34 *and except as provided in paragraph (2), any designated law*
35 *enforcement entity may provide information to the public about a*
36 *person required to register as a sex offender pursuant to Section*
37 *290, by whatever means the entity deems appropriate, when*
38 *necessary to ensure the public safety based upon information*
39 *available to the entity concerning that specific person.*

1 (2) The law enforcement entity shall include, with the disclosure,
2 a statement that the purpose of the release of information is to
3 allow members of the public to protect themselves and their
4 children from sex offenders.

5 (3) Community notification by way of an Internet Web site shall
6 be governed by Section 290.46, and a designated law enforcement
7 entity may not post on an Internet Web site any information
8 identifying an individual as a person required to register as a sex
9 offender except as provided in that section unless there is a warrant
10 outstanding for that person's arrest.

11 (b) Information that may be provided pursuant to subdivision
12 (a) may include, but is not limited to, the offender's name, known
13 aliases, gender, race, physical description, photograph, date of
14 birth, address, which shall be verified prior to publication,
15 description and license plate number of the offender's vehicles or
16 vehicles the offender is known to drive, type of victim targeted by
17 the offender, relevant parole or probation conditions, crimes
18 resulting in classification under this section, and date of release
19 from confinement, but excluding information that would identify
20 the victim. *It shall not include any Internet identifier submitted*
21 *pursuant to this chapter.*

22 (c) (1) The designated law enforcement entity may authorize
23 persons and entities who receive the information pursuant to this
24 section to disclose information to additional persons only if the
25 entity determines that disclosure to the additional persons will
26 enhance the public safety and identifies the appropriate scope of
27 further disclosure. A law enforcement entity may not authorize
28 any disclosure of this information by ~~its placement~~ *placing that*
29 *information on an Internet Web site, and shall not authorize*
30 *disclosure of Internet identifiers submitted pursuant to this chapter,*
31 *except as provided in subdivision (h).*

32 (2) A person who receives information from a law enforcement
33 entity pursuant to paragraph (1) may disclose that information only
34 in the manner and to the extent authorized by the law enforcement
35 entity.

36 (d) (1) A designated law enforcement entity and its employees
37 shall be immune from liability for good faith conduct under this
38 section.

39 (2) Any public or private educational institution, day care
40 facility, or any child care custodian described in Section 11165.7,

1 or any employee of a public or private educational institution or
 2 day care facility which in good faith disseminates information as
 3 authorized pursuant to subdivision (c) shall be immune from civil
 4 liability.

5 (e) (1) Any person who uses information disclosed pursuant to
 6 this section to commit a felony shall be punished, in addition and
 7 consecutive to any other punishment, by a five-year term of
 8 imprisonment pursuant to subdivision (h) of Section 1170.

9 (2) Any person who uses information disclosed pursuant to this
 10 section to commit a misdemeanor shall be subject to, in addition
 11 to any other penalty or fine imposed, a fine of not less than five
 12 hundred dollars (\$500) and not more than one thousand dollars
 13 (\$1,000).

14 (f) For purposes of this section, “designated law enforcement
 15 entity” means the Department of Justice, every district attorney,
 16 the Department of Corrections, the Department of the Youth
 17 Authority, and every state or local agency expressly authorized by
 18 statute to investigate or prosecute law violators.

19 (g) The public notification provisions of this section are
 20 applicable to every person required to register pursuant to Section
 21 290, without regard to when his or her crimes were committed or
 22 his or her duty to register pursuant to Section 290 arose, and to
 23 every offense described in Section 290, regardless of when it was
 24 committed.

25 (h) (1) *Notwithstanding any other law, a designated law*
 26 *enforcement entity shall only use an Internet identifier submitted*
 27 *pursuant to this chapter, or release that Internet identifier to*
 28 *another law enforcement entity, for the purpose of investigating*
 29 *a sex-related crime, a kidnapping, or human trafficking.*

30 (2) *A designated law enforcement entity shall not disclose or*
 31 *authorize persons or entities to disclose an Internet identifier*
 32 *submitted pursuant to this chapter to the public or other persons,*
 33 *except as required by court order.*

34 ~~SEC. 7.~~

35 ~~SEC. 8.~~ The Legislature finds and declares that ~~Section 3~~ of
 36 this act, which amends Section ~~290.014~~ 290.45 of the Penal Code,
 37 imposes a limitation on the public’s right of access to the meetings
 38 of public bodies or the writings of public officials and agencies
 39 within the meaning of Section 3 of Article I of the California
 40 Constitution. Pursuant to that constitutional provision, the

1 Legislature makes the following findings to demonstrate the interest
2 protected by this limitation and the need for protecting that interest:

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

8 ~~SEC. 8:~~

9 *SEC. 9.* This act is an urgency statute necessary for the
10 immediate preservation of the public peace, health, or safety within
11 the meaning of Article IV of the Constitution and shall go into
12 immediate effect. The facts constituting the necessity are:

13 In order to protect the rights afforded by the First Amendment
14 to the United States Constitution while furthering the objectives
15 of the Californians Against Sexual Exploitation Act, an initiative
16 measure enacted by the approval of Proposition 35 at the November
17 6, 2012, statewide general election, at the earliest possible time,
18 it is necessary that this act take effect immediately.