

AMENDED IN ASSEMBLY JUNE 27, 2016
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, 290.018, 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. *offenders.*

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 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.

Existing law makes a person who is required to register under the Act based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of the act guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

This bill would make a person who fails to provide his or her Internet identifiers, as required by the bill, regardless of the offense upon which the duty to register is based, guilty of a misdemeanor punishable in a county jail not exceeding 6 months. By creating a new crime, the bill would impose a state-mandated local program.

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.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

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) If any person who is required to register Internet identifiers
28 pursuant to Section 290.024 adds or changes an Internet identifier,
29 as defined in Section 290.024, the person shall send written notice
30 by mail of the addition or change to the law enforcement agency
31 or agencies with which he or she is currently registered within 30
32 working days of the addition or change. The law enforcement
33 agency or agencies shall make the information available to the
34 Department of Justice.

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

38 290.015. (a) A person who is subject to the Act shall register,
39 or reregister if he or she has previously registered, upon release
40 from incarceration, placement, commitment, or release on probation

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

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

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

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

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

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

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

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

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

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

11 (2) If the person was not on parole or probation or on postrelease
12 community supervision or mandatory supervision at the time of
13 release, the district attorney in the following applicable jurisdiction
14 shall have the authority to prosecute that person pursuant to Section
15 290.018:

16 (A) If the person was previously registered, in the jurisdiction
17 in which the person last registered.

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

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

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

27 SEC. 6. Section 290.018 of the Penal Code is amended to read:

28 290.018. (a) Any person who is required to register under the
29 Act based on a misdemeanor conviction or juvenile adjudication
30 who willfully violates any requirement of the act is guilty of a
31 misdemeanor punishable by imprisonment in a county jail not
32 exceeding one year.

33 (b) Except as provided in subdivisions (f), (h), and (j), any
34 person who is required to register under the act based on a felony
35 conviction or juvenile adjudication who willfully violates any
36 requirement of the act or who has a prior conviction or juvenile
37 adjudication for the offense of failing to register under the act and
38 who subsequently and willfully violates any requirement of the
39 act is guilty of a felony and shall be punished by imprisonment in
40 the state prison for 16 months, or two or three years.

1 (c) If probation is granted or if the imposition or execution of
2 sentence is suspended, it shall be a condition of the probation or
3 suspension that the person serve at least 90 days in a county jail.
4 The penalty described in subdivision (b) or this subdivision shall
5 apply whether or not the person has been released on parole or has
6 been discharged from parole.

7 (d) Any person determined to be a mentally disordered sex
8 offender or who has been found guilty in the guilt phase of trial
9 for an offense for which registration is required under the act, but
10 who has been found not guilty by reason of insanity in the sanity
11 phase of the trial, or who has had a petition sustained in a juvenile
12 adjudication for an offense for which registration is required
13 pursuant to Section 290.008, but who has been found not guilty
14 by reason of insanity, who willfully violates any requirement of
15 the act is guilty of a misdemeanor and shall be punished by
16 imprisonment in a county jail not exceeding one year. For any
17 second or subsequent willful violation of any requirement of the
18 act, the person is guilty of a felony and shall be punished by
19 imprisonment in the state prison for 16 months, or two or three
20 years.

21 (e) If, after discharge from parole, the person is convicted of a
22 felony or suffers a juvenile adjudication as specified in this act,
23 he or she shall be required to complete parole of at least one year,
24 in addition to any other punishment imposed under this section.
25 A person convicted of a felony as specified in this section may be
26 granted probation only in the unusual case where the interests of
27 justice would best be served. When probation is granted under this
28 act, the court shall specify on the record and shall enter into the
29 minutes the circumstances indicating that the interests of justice
30 would best be served by the disposition.

31 (f) Any person who has ever been adjudicated a sexually violent
32 predator, as defined in Section 6600 of the Welfare and Institutions
33 Code, and who fails to verify his or her registration every 90 days
34 as required pursuant to subdivision (b) of Section 290.012, shall
35 be punished by imprisonment in the state prison or in a county jail
36 not exceeding one year.

37 (g) Except as otherwise provided in subdivision (f), any person
38 who is required to register or reregister pursuant to Section 290.011
39 and willfully fails to comply with the requirement that he or she
40 reregister no less than every 30 days is guilty of a misdemeanor

1 and shall be punished by imprisonment in a county jail for at least
 2 30 days, but not exceeding six months. A person who willfully
 3 fails to comply with the requirement that he or she reregister no
 4 less than every 30 days shall not be charged with this violation
 5 more often than once for a failure to register in any period of 90
 6 days. Any person who willfully commits a third or subsequent
 7 violation of the requirements of Section 290.011 that he or she
 8 reregister no less than every 30 days shall be punished in
 9 accordance with either subdivision (a) or (b).

10 (h) Any person who fails to provide proof of residence as
 11 required by paragraph (5) of subdivision (a) of Section 290.015,
 12 regardless of the offense upon which the duty to register is based,
 13 is guilty of a misdemeanor punishable by imprisonment in a county
 14 jail not exceeding six months.

15 *(i) Any person who fails to provide his or her Internet identifiers,*
 16 *as required by paragraph (4) of Section 290.015, regardless of*
 17 *the offense upon which the duty to register is based, is guilty of a*
 18 *misdemeanor punishable in a county jail not exceeding six months.*

19 ~~(i)~~

20 (j) Any person who is required to register under the act who
 21 willfully violates any requirement of the act is guilty of a
 22 continuing offense as to each requirement he or she violated.

23 ~~(j)~~

24 (k) In addition to any other penalty imposed under this section,
 25 the failure to provide information required on registration and
 26 reregistration forms of the Department of Justice, or the provision
 27 of false information, is a crime punishable by imprisonment in a
 28 county jail for a period not exceeding one year. Nothing in this
 29 subdivision shall be construed to limit or prevent prosecution under
 30 any applicable provision of law.

31 ~~(k)~~

32 (l) Whenever any person is released on parole or probation and
 33 is required to register under the act but fails to do so within the
 34 time prescribed, the parole authority or the court, as the case may
 35 be, shall order the parole or probation of the person revoked. For
 36 purposes of this subdivision, “parole authority” has the same
 37 meaning as described in Section 3000.

38 ~~SEC. 6.~~

39 *SEC. 7.* Section 290.024 of the Penal Code is amended to read:
 40 290.024. For purposes of this chapter:

1 (a) A person who is convicted of a felony on or after January
2 1, ~~2016~~, 2017, requiring registration pursuant to the Act, shall
3 register his or her Internet identifiers if a court determines at the
4 time of sentencing that any of the following apply:

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

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

12 (3) The person was convicted of a felony pursuant to Chapter
13 7.5 (commencing with Section 311) and used ~~an electronic~~
14 ~~communication device, as defined under subdivision (b) of Section~~
15 ~~653.2, the Internet to prepare, publish, distribute, send, exchange,~~
16 or download the obscene matter or matter depicting a minor
17 engaging in sexual conduct, as defined in subdivision (d) of Section
18 311.4.

19 (b) For purposes of this chapter:

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

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

35 ~~SEC. 7.~~

36 *SEC. 8.* Section 290.45 of the Penal Code is amended to read:

37 290.45. (a) (1) Notwithstanding any other law, and except as
38 provided in paragraph (2), any designated law enforcement entity
39 may provide information to the public about a person required to
40 register as a sex offender pursuant to Section 290, by whatever

1 means the entity deems appropriate, when necessary to ensure the
2 public safety based upon information available to the entity
3 concerning that specific person.

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

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

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

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

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

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

4 (2) Any public or private educational institution, day care
5 facility, or any child care custodian described in Section 11165.7,
6 or any employee of a public or private educational institution or
7 day care facility which in good faith disseminates information as
8 authorized pursuant to subdivision (c) shall be immune from civil
9 liability.

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

14 (2) Any person who uses information disclosed pursuant to this
15 section to commit a misdemeanor shall be subject to, in addition
16 to any other penalty or fine imposed, a fine of not less than five
17 hundred dollars (\$500) and not more than one thousand dollars
18 (\$1,000).

19 (f) For purposes of this section, “designated law enforcement
20 entity” means the Department of Justice, every district attorney,
21 the Department of Corrections, the Department of the Youth
22 Authority, and every state or local agency expressly authorized by
23 statute to investigate or prosecute law violators.

24 (g) The public notification provisions of this section are
25 applicable to every person required to register pursuant to Section
26 290, without regard to when his or her crimes were committed or
27 his or her duty to register pursuant to Section 290 arose, and to
28 every offense described in Section 290, regardless of when it was
29 committed.

30 (h) (1) Notwithstanding any other law, a designated law
31 enforcement entity shall only use an Internet identifier submitted
32 pursuant to this chapter, or release that Internet identifier to another
33 law enforcement entity, for the purpose of investigating a
34 sex-related crime, a kidnapping, or human trafficking.

35 (2) A designated law enforcement entity shall not disclose or
36 authorize persons or entities to disclose an Internet identifier
37 submitted pursuant to this chapter to the public or other persons,
38 except as required by court order.

1 ~~SEC. 8.~~

2 *SEC. 9.* The Legislature finds and declares that this act, which
3 amends Section 290.45 of the Penal Code, imposes a limitation
4 on the public's right of access to the meetings of public bodies or
5 the writings of public officials and agencies within the meaning
6 of Section 3 of Article I of the California Constitution. Pursuant
7 to that constitutional provision, the Legislature makes the following
8 findings to demonstrate the interest protected by this limitation
9 and the need for protecting that interest:

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

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

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

25 *SEC. 10.* *No reimbursement is required by this act pursuant*
26 *to Section 6 of Article XIII B of the California Constitution because*
27 *the only costs that may be incurred by a local agency or school*
28 *district will be incurred because this act creates a new crime or*
29 *infraction, eliminates a crime or infraction, or changes the penalty*
30 *for a crime or infraction, within the meaning of Section 17556 of*
31 *the Government Code, or changes the definition of a crime within*
32 *the meaning of Section 6 of Article XIII B of the California*
33 *Constitution.*