

Senate Bill No. 448

Passed the Senate August 24, 2016

Secretary of the Senate

Passed the Assembly August 23, 2016

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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.

LEGISLATIVE COUNSEL'S DIGEST

SB 448, 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, 2017, that requires registration pursuant to the Act, and one or more specified circumstances, including that 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 within 30 days of establishing or changing an Internet identifier, 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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

290.018. (a) 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 is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

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

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

(d) A person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under the act, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required pursuant to Section 290.008, but who has been found not guilty by reason of insanity, who willfully violates any requirement of the act is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of the

act, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

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

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

(g) Except as otherwise provided in subdivision (f), a person who is required to register or reregister pursuant to Section 290.011 and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. A person who willfully commits a third or subsequent violation of the requirements of Section 290.011 that he or she reregister no less than every 30 days shall be punished in accordance with either subdivision (a) or (b).

(h) A person who fails to provide proof of residence as required by paragraph (7) of subdivision (a) of Section 290.015, regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(i) A person who fails to provide his or her Internet identifiers, as required by paragraph (4) of subdivision (a) of Section 290.015, regardless of the offense upon which the duty to register is based,

is guilty of a misdemeanor punishable in a county jail not exceeding six months.

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

(k) In addition to any other penalty imposed under this section, the failure to provide information required on registration and reregistration forms of the Department of Justice, or the provision of false information, is a crime punishable by imprisonment in a county jail for a period not exceeding one year. This subdivision shall not be construed to limit or prevent prosecution under any applicable law.

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

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

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

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

(2) The person was convicted of a felony pursuant to subdivision (b) or (c) of Section 236.1 and used the Internet to traffic the victim of the crime.

(3) The person was convicted of a felony pursuant to Chapter 7.5 (commencing with Section 311) and used the Internet to prepare, publish, distribute, send, exchange, or download the obscene matter or matter depicting a minor engaging in sexual conduct, as defined in subdivision (d) of Section 311.4.

(b) For purposes of this chapter:

(1) “Internet identifier” means any electronic mail address or user name used for instant messaging or social networking that is actually used for direct communication between users on the Internet in a manner that makes the communication not accessible

to the general public. “Internet identifier” does not include Internet passwords, date of birth, social security number, or PIN number.

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

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

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

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

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

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

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

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

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

(2) A public or private educational institution, a day care facility, or a child care custodian described in Section 11165.7, or an employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to subdivision (c) shall be immune from civil liability.

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

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

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

(g) The public notification provisions of this section are applicable to every person required to register pursuant to Section 290, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to

every offense described in Section 290, regardless of when it was committed.

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

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

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

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

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

Approved _____, 2016

Governor