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7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 JOHN DOE #1, an individual, and
12 JOHN DOE #2, an individual,

13 Plaintiffs,

14 v.

15 CITY OF SAN DIEGO, an
incorporated California Municipality;
16 and DOES 1 to 10, inclusive,

17 Defendant.
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Case No. 3:17-cv-01581-BTM-WVG

**DEFENDANT'S EX PARTE REQUEST
TO HAVE PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT TAKEN
OFF CALENDAR**

Defendant City of San Diego (“City”), submits the following memorandum of points and authorities in support of its ex-parte request to have Plaintiffs’ Motion for Summary Judgment taken off calendar.

I.

BACKGROUND

On June 27, 2019, Plaintiffs John Doe #1 and John Doe #2 filed a Motion for Summary Judgment on their first cause of action for preemption. Specifically, Plaintiffs challenge San Diego Municipal Code, Chapter 5, Article 8, Division 6, Sections 58.0601-58.0607 (the “Ordinance”), claiming, in short, that it is preempted by Penal Code section 3003.5.

Case law has called into question the scope of California Penal Code section 3003.5 (“3003.5”) and at least one court has found that the residency restrictions in subdivision (b) of 3003.5 applies only to parolees. *People v. Lynch*, 2 Cal.App.5th 524, 528 (Cal. Ct. App. 2016). Plaintiffs urge this Court to limit the exclusion found in section 3003.5(c), which specifically allows for municipalities to adopt stricter laws like the one at issue, to parolees as well. However, pending legislation, State Bill 145 (“SB145”), would make it clear that the right to adopt stricter legislation found in 3003.5(c) applies not only to parolees but to “anyone convicted of an offense requiring registration pursuant to Penal Code section 290.” A true and correct copy of SB145 is attached hereto as “Exhibit 1.” If adopted, this legislation would unequivocally determine this very issue currently being argued in Plaintiffs’ Motion for Summary Judgment.

Plaintiffs’ Motion for Summary Judgment should be taken off calendar as SB145, which is going before the Public Safety Commission in early July, then to the floor in August, will resolve Plaintiffs’ motion. Declaration of Jacob A. Gillick (“Gillick Decl.,”) Exhibit, 2. Specifically, SB145 expands the language of 3003.5 to explicitly include not only those persons on parole, but also anyone who is registered as a sex offender. Exhibit 1. If adopted, the language would explicitly

1 grant municipalities the right to adopt residency restrictions for non-parolees, and in
2 turn, resolve the only issue being litigated in Plaintiffs' motion.

3 SB145 has been moving quickly through California's legislature and on May
4 28, 2019, was passed by the California Senate in a 25 to 3 vote. Gillick Decl.,
5 Exhibit 3. The bill is going in front of the Committee of Public Safety on July 9,
6 2019, and is expected to be on the floor later this month. Gillick Decl., Exhibit 2.
7 If passed, as expected, this bill would make any ruling on Plaintiffs' Motion for
8 Summary Judgment void and irrelevant.

9 II.

10 REQUEST

11 Based on the above, Defendant respectfully requests that Plaintiffs' Motion
12 for Summary Judgment be taken off calendar while SB145 is considered.
13 Defendant has made good-faith efforts to resolve this issue with Plaintiffs' counsel,
14 who, without providing justification, has refused to withdraw the Motion.
15 Declaration of Christopher S. Morris, Exhibit 4. Having this motion taken off
16 calendar is proper and would both free up the Court's calendar and mitigate costs to
17 the parties in arguing a motion whose order may later be rendered moot.

18 Respectfully submitted,

19 **MORRIS LAW FIRM, APC**

20
21 Dated: July 2, 2019

22 by: s/ Christopher S. Morris
23 Christopher S. Morris, Esq.
24 cmorris@morrislawfirmapc.com
25 Attorneys for Defendant
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27
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EXHIBIT 1

AMENDED IN SENATE MAY 21, 2019

AMENDED IN SENATE MARCH 4, 2019

SENATE BILL

No. 145

Introduced by Senator Wiener

January 18, 2019

An act to amend ~~Section 288.3 of, and to add Section 290.55 to, Sections 290, 290.006, 3000.07, 3003.5, and 3004 of the Penal Code,~~ relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as amended, Wiener. Sex offenders: registration.

Existing law, the Sex Offender Registration Act, ~~amended by Proposition 35, as approved by the voters at the November 6, 2012, statewide general election,~~ requires a person convicted of one of certain crimes, as specified, to register with law enforcement as a sex offender while residing in California or while attending school or working in California, as specified. A willful failure to register, as required by the act, is a misdemeanor or felony, depending on the underlying offense.

This bill would ~~authorize~~ *exempt from mandatory registration under the act* a person convicted of certain offenses involving minors ~~to seek discretionary relief from the duty to register~~ if the person is not more than 10 years older than the minor and if that offense is the only one requiring the person to register.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 *SECTION 1. Section 290 of the Penal Code, as amended by*
 2 *Section 51 of Chapter 423 of the Statutes of 2018, is amended to*
 3 *read:*

4 290. (a) Sections 290 to 290.024, inclusive, shall be known
 5 and may be cited as the Sex Offender Registration Act. All
 6 references to “the Act” in those sections are to the Sex Offender
 7 Registration Act.

8 (b) Every person described in subdivision (c), for the rest of ~~his~~
 9 ~~or her~~ *the person’s* life while residing in California, or while
 10 attending school or working in California, as described in Sections
 11 290.002 and 290.01, shall register with the chief of police of the
 12 city in which ~~he or she~~ *the person* is residing, or the sheriff of the
 13 county if ~~he or she~~ *the person* is residing in an unincorporated area
 14 or city that has no police department, and, additionally, with the
 15 chief of police of a campus of the University of California, the
 16 California State University, or community college if ~~he or she~~ *the*
 17 *person* is residing upon the campus or in any of its facilities, within
 18 five working days of coming into, or changing ~~his or her~~ *the*
 19 *person’s* residence within, any city, county, or city and county, or
 20 campus in which ~~he or she~~ *the person* temporarily resides, and
 21 shall be required to register thereafter in accordance with the Act.

22 (c) (1) The following persons shall register:

23 Any person who, since July 1, 1944, has been or is hereafter
 24 convicted in any court in this state or in any federal or military
 25 court of a violation of Section 187 committed in the perpetration,
 26 or an attempt to perpetrate, rape or any act punishable under
 27 Section 286, 287, 288, or 289 or former Section 288a, Section 207
 28 or 209 committed with intent to violate Section 261, 286, 287,
 29 288, or 289 or former Section 288a, Section 220, except assault
 30 to commit mayhem, subdivision (b) and (c) of Section 236.1,
 31 Section 243.4, Section 261, paragraph (1) of subdivision (a) of
 32 Section 262 involving the use of force or violence for which the
 33 person is sentenced to the state prison, Section 264.1, 266, or 266c,
 34 subdivision (b) of Section 266h, subdivision (b) of Section 266i,
 35 Section 266j, 267, 269, 285, 286, 287, 288, 288.3, 288.4, 288.5,
 36 288.7, 289, or 311.1, or former Section 288a, subdivision (b), (c),
 37 or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or
 38 647.6, former Section 647a, subdivision (c) of Section 653f,

subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

(2) *Notwithstanding paragraph (1), a person convicted of a violation of subdivision (b) of Section 286, subdivision (b) of Section 287, or subdivision (h) or (i) of Section 289 shall not be required to register if, at the time of the offense, the person is not more than 10 years older than the minor, as measured from the minor's date of birth to the person's date of birth, and the conviction is the only one requiring the person to register. This paragraph does not preclude the court from requiring a person to register pursuant to Section 290.006.*

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 2. *Section 290 of the Penal Code, as amended by Section 52 of Chapter 423 of the Statutes of 2018, is amended to read:*

290. (a) Sections 290 to 290.024, inclusive, shall be known, and may be cited, as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the period specified in subdivision (d) while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which ~~he or she~~ *the person* is residing, or the sheriff of the county if ~~he or she~~ *the person* is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if ~~he or she~~ *the person* is residing upon the campus or in any of its facilities, within five working days of coming into, or changing ~~his or her~~ *the person's* residence within, any city, county, or city and county, or campus in which ~~he or she~~ *the person* temporarily resides, and shall register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(c) (1) The following persons shall register:

Every person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 287, 288, or 289 or former Section 288a, Section 207 or 209 committed with intent to violate Section 261, 286, 287, 288, or 289 or former Section 288a, Section 220, except assault to commit mayhem, subdivision (b) or (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 287, 288, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, or former Section 288a, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the offenses described in this subdivision.

(2) Notwithstanding paragraph (1), a person convicted of a violation of subdivision (b) of Section 286, subdivision (b) of Section 287, or subdivision (h) or (i) of Section 289 shall not be required to register if, at the time of the offense, the person is not more than 10 years older than the minor, as measured from the minor's date of birth to the person's date of birth, and the conviction is the only one requiring the person to register. This paragraph does not preclude the court from requiring a person to register pursuant to Section 290.006.

(d) A person described in subdivision (c), or who is otherwise required to register pursuant to the Act shall register for 10 years, 20 years, or life, following a conviction and release from incarceration, placement, commitment, or release on probation or other supervision, as follows:

(1) (A) A tier one offender is subject to registration for a minimum of 10 years. A person is a tier one offender if the person is required to register for conviction of a misdemeanor described

1 in subdivision (c), or for conviction of a felony described in
2 subdivision (c) that was not a serious or violent felony as described
3 in subdivision (c) of Section 667.5 or subdivision (c) of Section
4 1192.7.

5 (B) This paragraph does not apply to a person who is subject
6 to registration pursuant to paragraph (2) or (3).

7 (2) (A) A tier two offender is subject to registration for a
8 minimum of 20 years. A person is a tier two offender if the person
9 was convicted of an offense described in subdivision (c) that is
10 also described in subdivision (c) of Section 667.5 or subdivision
11 (c) of Section 1192.7, Section 285, subdivision (g) or (h) of Section
12 286, subdivision (g) or (h) of Section 287 or former Section 288a,
13 subdivision (b) of Section 289, or Section 647.6 if it is a second
14 or subsequent conviction for that offense that was brought and
15 tried separately.

16 (B) This paragraph does not apply if the person is subject to
17 lifetime registration as required in paragraph (3).

18 (3) A tier three offender is subject to registration for life. A
19 person is a tier three offender if any one of the following applies:

20 (A) Following conviction of a registerable offense, the person
21 was subsequently convicted in a separate proceeding of committing
22 an offense described in subdivision (c) and the conviction is for
23 commission of a violent felony described in subdivision (c) of
24 Section 667.5, or the person was subsequently convicted of
25 committing an offense for which the person was ordered to register
26 pursuant to Section 290.006, and the conviction is for the
27 commission of a violent felony described in subdivision (c) of
28 Section 667.5.

29 (B) The person was committed to a state mental hospital as a
30 sexually violent predator pursuant to Article 4 (commencing with
31 Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare
32 and Institutions Code.

33 (C) The person was convicted of violating any of the following:

34 (i) Section 187 while attempting to commit or committing an
35 act punishable under Section 261, 286, 287, 288, or 289 or former
36 Section 288a.

37 (ii) Section 207 or 209 with intent to violate Section 261, 286,
38 287, 288, or 289 or former Section 288a.

39 (iii) Section 220.

40 (iv) Subdivision (b) of Section 266h.

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- 1 (v) Subdivision (b) of Section 266i.
2 (vi) Section 266j.
3 (vii) Section 267.
4 (viii) Section 269.
5 (ix) Subdivision (b) or (c) of Section 288.
6 (x) Section 288.2.
7 (xi) Section 288.3, unless committed with the intent to commit
8 a violation of subdivision (b) of Section 286, subdivision (b) of
9 Section 287 or former Section 288a, or subdivision (h) or (i) of
10 Section 289.
11 (xii) Section 288.4.
12 (xiii) Section 288.5.
13 (xiv) Section 288.7.
14 (xv) Subdivision (c) of Section 653f.
15 (xvi) Any offense for which the person is sentenced to a life
16 term pursuant to Section 667.61.
17 (D) The person's risk level on the static risk assessment
18 instrument for sex offenders (SARATSO), pursuant to Section
19 290.04, is well above average risk at the time of release on the
20 index sex offense into the community, as defined in the Coding
21 Rules for that instrument.
22 (E) The person is a habitual sex offender pursuant to Section
23 667.71.
24 (F) The person was convicted of violating subdivision (a) of
25 Section 288 in two proceedings brought and tried separately.
26 (G) The person was sentenced to 15 to 25 years to life for an
27 offense listed in Section 667.61.
28 (H) The person is required to register pursuant to Section
29 290.004.
30 (I) The person was convicted of a felony offense described in
31 subdivision (b) or (c) of Section 236.1.
32 (J) The person was convicted of a felony offense described in
33 subdivision (a), (c), or (d) of Section 243.4.
34 (K) The person was convicted of violating paragraph (2), (3),
35 or (4) of subdivision (a) of Section 261 or was convicted of
36 violating Section 261 and punished pursuant to paragraph (1) or
37 (2) of subdivision (c) of Section 264.
38 (L) The person was convicted of violating paragraph (1) of
39 subdivision (a) of Section 262.
40 (M) The person was convicted of violating Section 264.1.

1 (N) The person was convicted of any offense involving lewd
2 or lascivious conduct under Section 272.

3 (O) The person was convicted of violating paragraph (2) of
4 subdivision (c) or subdivision (d), (f), or (i) of Section 286.

5 (P) The person was convicted of violating paragraph (2) of
6 subdivision (c) or subdivision (d), (f), or (i) of Section 287 or
7 former Section 288a.

8 (Q) The person was convicted of violating paragraph (1) of
9 subdivision (a) or subdivision (d), (e), or (j) of Section 289.

10 (R) The person was convicted of a felony violation of Section
11 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section
12 311.2, Section 311.3, 311.4, or 311.10.

13 (4) (A) A person who is required to register pursuant to Section
14 290.005 shall be placed in the appropriate tier if the offense is
15 assessed as equivalent to a California registerable offense described
16 in subdivision (c).

17 (B) If the person's duty to register pursuant to Section 290.005
18 is based solely on the requirement of registration in another
19 jurisdiction, and there is no equivalent California registerable
20 offense, the person shall be subject to registration as a tier two
21 offender, except that the person is subject to registration as a tier
22 three offender if one of the following applies:

23 (i) The person's risk level on the static risk assessment
24 instrument (SARATSO), pursuant to Section 290.06, is well above
25 average risk at the time of release on the index sex offense into
26 the community, as defined in the Coding Rules for that instrument.

27 (ii) The person was subsequently convicted in a separate
28 proceeding of an offense substantially similar to an offense listed
29 in subdivision (c) which is also substantially similar to an offense
30 described in subdivision (c) of Section 667.5, or is substantially
31 similar to Section 269 or 288.7.

32 (iii) The person has ever been committed to a state mental
33 hospital or mental health facility in a proceeding substantially
34 similar to civil commitment as a sexually violent predator pursuant
35 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
36 2 of Division 6 of the Welfare and Institutions Code.

37 (5) (A) The Department of Justice may place a person described
38 in subdivision (c), or who is otherwise required to register pursuant
39 to the Act, in a tier-to-be-determined category if ~~his or her~~ *the*
40 appropriate tier designation described in this subdivision cannot

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1 be immediately ascertained. An individual placed in this
2 tier-to-be-determined category shall continue to register in
3 accordance with the Act. The individual shall be given credit for
4 any period for which ~~he or she registers towards his or her~~ *the*
5 *individual registers towards the individual's* mandated minimum
6 registration period.

7 (B) The Department of Justice shall ascertain an individual's
8 appropriate tier designation as described in this subdivision within
9 24 months of ~~his or her~~ *the individual's* placement in the
10 tier-to-be-determined category.

11 (e) The minimum time period for the completion of the required
12 registration period in tier one or two commences on the date of
13 release from incarceration, placement, or commitment, including
14 any related civil commitment on the registerable offense. The
15 minimum time for the completion of the required registration
16 period for a designated tier is tolled during any period of
17 subsequent incarceration, placement, or commitment, including
18 any subsequent civil commitment, except that arrests not resulting
19 in conviction, adjudication, or revocation of probation or parole
20 shall not toll the required registration period. The minimum time
21 period shall be extended by one year for each misdemeanor
22 conviction of failing to register under this act, and by three years
23 for each felony conviction of failing to register under this act,
24 without regard to the actual time served in custody for the
25 conviction. If a registrant is subsequently convicted of another
26 offense requiring registration pursuant to the Act, a new minimum
27 time period for the completion of the registration requirement for
28 the applicable tier shall commence upon that person's release from
29 incarceration, placement, or commitment, including any related
30 civil commitment. If the subsequent conviction requiring
31 registration pursuant to the Act occurs prior to an order to terminate
32 the registrant from the registry after completion of a tier associated
33 with the first conviction for a registerable offense, the applicable
34 tier shall be the highest tier associated with the convictions.

35 (f) Nothing in this section shall be construed to require a ward
36 of the juvenile court to register under the Act, except as provided
37 in Section 290.008.

38 (g) This section shall become operative on January 1, 2021.

1 *SEC. 3. Section 290.006 of the Penal Code, as amended by*
2 *Section 3 of Chapter 541 of the Statutes of 2017, is amended to*
3 *read:*

4 290.006. (a) Any person ordered by any court to register
5 pursuant to the ~~Act for any offense not included specifically in~~
6 ~~subdivision (e) of act, who is not required to register pursuant to~~
7 Section 290, shall so register, if the court finds at the time of
8 conviction or sentencing that the person committed the offense as
9 a result of sexual compulsion or for purposes of sexual
10 gratification. The court shall state on the record the reasons for its
11 findings and the reasons for requiring registration.

12 (b) This section shall remain in effect only until January 1, 2021,
13 and as of that date is repealed.

14 *SEC. 4. Section 290.006 of the Penal Code, as added by Section*
15 *4 of Chapter 541 of the Statutes of 2017, is amended to read:*

16 290.006. (a) Any person ordered by any court to register
17 pursuant to the ~~Act for any offense not included specifically in~~
18 ~~subdivision (e) of act, who is not required to register pursuant to~~
19 Section 290, shall so register, if the court finds at the time of
20 conviction or sentencing that the person committed the offense as
21 a result of sexual compulsion or for purposes of sexual
22 gratification. The court shall state on the record the reasons for its
23 findings and the reasons for requiring registration.

24 (b) The person shall register as a tier one offender in accordance
25 with paragraph (1) of subdivision (d) of Section 290, unless the
26 court finds the person should register as a tier two or tier three
27 offender and states on the record the reasons for its finding.

28 (c) In determining whether to require the person to register as
29 a tier two or tier three offender, the court shall consider all of the
30 following:

31 (1) The nature of the registerable offense.

32 (2) The age and number of victims, and whether any victim was
33 personally unknown to the person at the time of the offense. A
34 victim is personally unknown to the person for purposes of this
35 paragraph if the victim was known to the offender for less than 24
36 hours.

37 (3) The criminal and relevant noncriminal behavior of the person
38 before and after conviction for the registerable offense.

39 (4) Whether the person has previously been arrested for, or
40 convicted of, a sexually motivated offense.

(5) The person's current risk of sexual or violent reoffense, including the person's risk level on the SARATSO static risk assessment instrument, and, if available from past supervision for a sexual offense, the person's risk level on the SARATSO dynamic and violence risk assessment instruments.

(d) This section shall become operative on January 1, 2021.

SEC. 5. Section 3000.07 of the Penal Code is amended to read:

3000.07. (a) Every inmate who has been convicted for ~~any a~~ felony violation of a ~~“registerable sex offense”~~ *an offense* described in ~~paragraph (1) of subdivision (c) of Section 290, or for a~~ *paragraph (1) of subdivision (c) of Section 290, or for a* ~~felony violation of an offense described in paragraph (2) of~~ *felony violation of an offense described in paragraph (2) of* ~~subdivision (c) of Section 290, or any attempt to commit any of~~ *subdivision (c) of Section 290, or any attempt to commit any of* ~~the above-mentioned offenses described in this subdivision and~~ *the above-mentioned offenses described in this subdivision and* who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for the term of ~~his or her~~ *the inmate's* parole, or for the duration or any remaining part thereof, whichever period of time is less.

(b) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. ~~No~~ *An* inmate shall *not* be denied parole on the basis of ~~his or her~~ *the inmate's* inability to pay for those monitoring costs.

SEC. 6. Section 3003.5 of the Penal Code is amended to read:

3003.5. (a) Notwithstanding any other ~~provision of law~~, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, ~~or for a felony violation of an offense described in paragraph (2) of subdivision (c) of Section 290,~~ that person may not, during the period of parole, reside in ~~any single-family single-family dwelling with any other person~~ *any single-family single-family dwelling with any other person* ~~also~~ *also* person required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, ~~“single-family”~~ *“single-family”*

1 dwelling” shall not include a residential facility which serves six
2 or fewer persons.

3 (b) Notwithstanding any other ~~provision of law~~, it is unlawful
4 for any person for whom registration is required pursuant to Section
5 ~~290 290, or who has been convicted of a felony violation of an~~
6 ~~offense described in paragraph (2) of subdivision (c) of Section~~
7 ~~290, to reside within 2000 2,000 feet of any public or private~~
8 school, or park where children regularly gather.

9 (c) Nothing in this section shall prohibit municipal jurisdictions
10 from enacting local ordinances that further restrict the residency
11 of any person for whom registration is required pursuant to Section
12 ~~290. 290 or who has been convicted of a felony violation of an~~
13 ~~offense described in paragraph (2) of subdivision (c) of Section~~
14 ~~290.~~

15 *SEC. 7. Section 3004 of the Penal Code is amended to read:*

16 3004. (a) Notwithstanding any other law, the Board of Parole
17 Hearings, the court, or the supervising parole authority may require,
18 as a condition of release on parole or reinstatement on parole, or
19 as an intermediate sanction in lieu of return to custody, that an
20 inmate or parolee agree in writing to the use of electronic
21 monitoring or supervising devices for the purpose of helping to
22 verify ~~his or her~~ *the inmate’s or parolee’s* compliance with all
23 other conditions of parole. The devices shall not be used to
24 eavesdrop or record any conversation, except a conversation
25 between the parolee and the agent supervising the parolee ~~which~~
26 *that* is to be used solely for the purposes of voice identification.

27 (b) Every inmate who has been convicted for ~~any~~ a felony
28 violation of a ~~“registerable sex offense”~~ *an offense* described in
29 *paragraph (1) of subdivision (c) of Section 290, for a felony*
30 *violation of an offense described in paragraph (2) of subdivision*
31 *(c) of Section 290, or any attempt to commit any of the*
32 ~~above-mentioned~~ *offenses described in this subdivision* and who
33 is committed to prison and released on parole pursuant to Section
34 3000 or 3000.1 shall be monitored by a global positioning system
35 for life.

36 (c) Any inmate released on parole pursuant to this section shall
37 be required to pay for the costs associated with the monitoring by
38 a global positioning system. However, the Department of
39 Corrections and Rehabilitation shall waive any or all of that
40 payment upon a finding of an inability to pay. The department

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1 shall consider any remaining amounts the inmate has been ordered
 2 to pay in fines, assessments and restitution fines, fees, and orders,
 3 and shall give priority to the payment of those items before
 4 requiring that the inmate pay for the global positioning monitoring.

5 SECTION 1. ~~Section 288.3 of the Penal Code is amended to~~
 6 ~~read:~~

7 ~~288.3.— (a) (1) Every person who contacts or communicates~~
 8 ~~with a minor, or attempts to contact or communicate with a minor,~~
 9 ~~who knows or reasonably should know that the person is a minor,~~
 10 ~~with intent to commit an offense specified in Section 207, 209,~~
 11 ~~261, 264.1, 273a, 288, 288.2, 311.1, 311.2, 311.4 or 311.11, former~~
 12 ~~Section 288a, or, except as otherwise specified in paragraph (2),~~
 13 ~~Section 286, 287, or 289, involving the minor shall be punished~~
 14 ~~by imprisonment in the state prison for the term prescribed for an~~
 15 ~~attempt to commit the intended offense.~~

16 ~~(2) (A) Every person who contacts or communicates with a~~
 17 ~~minor, or attempts to contact or communicate with a minor, who~~
 18 ~~knows or reasonably should know that the person is a minor, with~~
 19 ~~intent to commit an offense specified in subdivision (b) of Section~~
 20 ~~286, subdivision (b) of Section 287, or subdivision (h) or (i) of~~
 21 ~~Section 289, involving the minor shall be punished by~~
 22 ~~imprisonment in the state prison for the term prescribed for an~~
 23 ~~attempt to commit the intended offense.~~

24 ~~(B) A person convicted of violating this paragraph may seek~~
 25 ~~the discretionary relief described in Section 290.55.~~

26 ~~(b) As used in this section, “contacts or communicates with”~~
 27 ~~shall include direct and indirect contact or communication that~~
 28 ~~may be achieved personally or by use of an agent or agency, any~~
 29 ~~print medium, any postal service, a common carrier or~~
 30 ~~communication common carrier, any electronic communications~~
 31 ~~system, or any telecommunications, wire, computer, or radio~~
 32 ~~communications device or system.~~

33 ~~(c) A person convicted of a violation of subdivision (a) who has~~
 34 ~~previously been convicted of a violation of subdivision (a) shall~~
 35 ~~be punished by an additional and consecutive term of imprisonment~~
 36 ~~in the state prison for five years.~~

37 SEC. 2. ~~Section 290.55 is added to the Penal Code, immediately~~
 38 ~~following Section 290.5, to read:~~

39 290.55. (a) If the only offense that requires a person to register
 40 pursuant to Section 290 is an offense specified in subdivision (b);

1 the person may, by writ of mandate, seek discretionary relief from
2 the duty, imposed as a result of that conviction, to register pursuant
3 to the act if, at the time of the offense, the person is not more than
4 10 years older than the minor, as measured from the minor's date
5 of birth to the person's date of birth.

6 (b) This section applies to the offenses described in subdivision
7 (b) of Section 286, subdivision (b) of Section 287, paragraph (2)
8 of subdivision (a) of Section 288.3, and subdivisions (h) and (i)
9 of Section 289.

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