

Senate Bill No. 748

Passed the Senate August 31, 2009

Secretary of the Senate

Passed the Assembly August 24, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 14029.5 to the Penal Code, relating to witness relocation and assistance.

LEGISLATIVE COUNSEL'S DIGEST

SB 748, Leno. Witness Relocation and Assistance Program: address records.

Existing law establishes the Witness Relocation and Assistance Program.

This bill would provide that no person, state or local public agency, or private entity shall post the home address, the telephone number, or personal identifying information that discloses the location of any witness or witness family member participating in the Witness Relocation and Assistance Program (WRAP) with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against that witness or witness' family member, and that a violation of these provisions would be a misdemeanor punishable by a fine of up to \$2,500, or up to 6 months in a county jail, or by both that fine and imprisonment. The bill would also provide that a violation that leads to the bodily injury of the witness, or the witness' family members who are participating in the program, is a misdemeanor punishable by a fine of up to \$5,000, or up to one year in a county jail, or by both that fine and imprisonment. The bill would authorize participants in the program to submit opt-out forms to Internet search engine providers to notify those providers of the participants, and to prevent inclusion of the participants' addresses and telephone numbers in public Internet search databases, as specified. The bill would require a business, state or local agency, private entity, or person to remove the home address or telephone number of a WRAP participant from its public Internet search databases within two business days of delivery of the opt-out form, and to ensure the information is not reposted on the same Internet Web site, a subsidiary site, or any other Internet Web site maintained by the recipient of the opt-out form, and would subject a violator of this provision to a \$5,000 civil fine, as specified. The bill would authorize a witness whose home address or telephone

number is made public as a result of a violation, as specified, to bring an action seeking injunctive or declaratory relief. The bill would further provide that no business, state or local agency, private entity, or person that has received an opt-out form from a WRAP participant shall solicit, sell, or trade on the Internet the home address or telephone number of that participant, and would authorize an action for damages, as specified, for a violation of this prohibition.

By creating new crimes, this bill would impose a state-mandated local program.

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. Section 14029.5 is added to the Penal Code, to read:

14029.5. (a) (1) No person or private entity shall post on the Internet the home address, the telephone number, or personal identifying information that discloses the location of any witness or witness' family member participating in the Witness Relocation and Assistance Program (WRAP) with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against that witness or witness' family member.

(2) A violation of this subdivision is a misdemeanor punishable by a fine of up to two thousand five hundred dollars (\$2,500), or imprisonment of up to six months in a county jail, or by both that fine and imprisonment.

(3) A violation of this subdivision that leads to the bodily injury of the witness, or of any of the witness' family members who are participating in the program, is a misdemeanor punishable by a fine of up to five thousand dollars (\$5,000), or imprisonment of up to one year in a county jail, or by both that fine and imprisonment.

(b) Upon admission to WRAP, local or state prosecutors shall give each participant a written opt-out form for submission to relevant Internet search engine companies or entities. This form shall notify entities of the protected person and prevent the inclusion of the participant's addresses and telephone numbers in public Internet search databases.

(c) A business, state or local agency, private entity, or person that receives the opt-out form of a WRAP participant pursuant to this paragraph shall remove the participant's personal information from public display on the Internet within two business days of delivery of the opt-out form, and shall continue to ensure that this information is not reposted on the same Internet Web site, a subsidiary site, or any other Internet Web site maintained by the recipient of the opt-out form. No business, state or local agency, private entity, or person that has received an opt-out form from a WRAP participant shall solicit, sell, or trade on the Internet the home address or telephone number of that participant.

(d) A business, state or local agency, private entity, or person that violates subdivision (c) shall be subject to a civil penalty for each violation in the amount of five thousand dollars (\$5,000). An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment.

(e) A witness whose home address or telephone number is made public as a result of a violation of subdivision (c) may bring an action seeking injunctive or declaratory relief in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it may grant injunctive or declaratory relief and shall award the witness court costs and reasonable attorney's fees.

(f) Notwithstanding any other provision of law, a witness whose home address or telephone number is solicited, sold, or traded in violation of subdivision (c) may bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it shall award damages to that witness in an amount up to a maximum of three times the actual damages, but in no case less than four thousand dollars (\$4,000).

(g) Nothing in this section shall preclude prosecution under any other provision of law.

SEC. 2. 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 _____, 2009

Governor