

Date of Hearing: April 2, 2019
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 884 (Melendez) – As Introduced February 20, 2019

SUMMARY: Makes any person convicted of committing a lewd act upon a child under 14 years of age, a tier 3 offender, subject to lifetime registration as a sex offender.

EXISTING LAW:

- 1) Establishes the Sex Offender Registration Act (the Act). (Pen. Code, § 290, subd. (a).)
- 2) Requires persons convicted of the following offenses to register under the Act as a sex offender with law enforcement and with any school they attend, while residing, working, or studying in California:

Murder, Kidnapping and Assault, committed with the intent to commit specified offenses; Sexual Battery; Rape; Aiding and abetting a rape; Pimping or pandering a minor; Child Procurement; Aggravated sexual assault of a child under 14 years of age; Contributing to the delinquency of a minor with lewd or lascivious conduct; Incest; Sodomy; Lewd or lascivious act with a minor; Oral Copulation; Showing obscene material to minors; Contacting a minor with the intent to commit certain felonies; Arranging a meeting with a minor for lewd purposes; Continuous sexual abuse of a minor; Engaging in sodomy with a child 10 years or younger; Sexual penetration by force or fear; Child pornography laws; Indecent exposure; Annoying or molesting a child; Solicitation to commit a sex crime; Any statutory predecessor that includes all elements of one of the above-mentioned offenses; and Attempt or conspiracy to commit any of the above-mentioned offenses. (Pen. Code, §§ 290, subds. (b) – (c).)
- 3) Implements a three-tiered sex offender registration as of January 1, 2021. (Pen. Code, § 290 subds. (d) – (g).)
- 4) Provides specifically that a person required to register under the Act for an adult court conviction is subject to lifetime registration (tier three), if any of the following apply:
 - a) Following conviction of a registerable offense, the person was subsequently convicted of a violent registerable felony sex offense in a separate proceeding;
 - b) Following conviction of a registerable offense, the person was convicted of a violent felony, committed as a result of sexual compulsion or for purposes of sexual gratification, for which he or she was ordered to register;
 - c) The person was committed to a state mental hospital as a sexually violent predator;
 - d) The person was convicted of any of the following: (Pen. Code, § 290, subd. (d)(3).)

- i) murder while attempting to commit or committing a specified sex offense;
 - ii) kidnapping with the intent to commit a specified sex offense;
 - iii) assault with intent to commit a specified sex offense or commission of the same act(s) in the course of a first degree burglary;
 - iv) pimping a minor;
 - v) pandering with a minor;
 - vi) procurement of a child under age 16 for lewd or lascivious acts;
 - vii) abduction of a minor for purposes of prostitution;
 - viii) aggravated sexual assault of a child;
 - ix) lewd or lascivious acts on a child by force, violence, duress, menace, or fear
 - x) lewd or lascivious acts on a child under age 14 or by a caretaker upon a dependent person by force or violence, or lewd acts on a child 14 or 15 years of age by a person at least 10 years older than the child;
 - xi) sending harmful matter to a child that depicts a minor(s) engaged in sexual conduct;
 - xii) contacting a minor with the intent to commit a specified sex offense other than sodomy, oral copulation, or sexual penetration with a person under age 18;
 - xiii) contacting a minor with the intent to expose oneself or engage in lewd or lascivious behavior;
 - xiv) continuous sexual abuse of a child;
 - xv) sex offense with a child 10 years of age or younger;
 - xvi) solicitation of rape, sodomy, or oral copulation by force or violence, or solicitation of other specified sex offenses; and,
 - xvii) any offense for which the person is sentenced to a life term under the habitual sex offender law.
- e) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO) is well above average risk at the time of release into the community;
 - f) The person is a habitual sex offender;
 - g) The person was convicted of lewd or lascivious acts on a child under age 14 in two separate proceedings brought and tried separately;
 - h) The person was sentenced to 15 to 25 years to life for an offense under the habitual sex offender law;

- i) The person is required to register as a mentally disordered sex offender;
 - j) The person was convicted of specified felony human trafficking offenses;
 - k) The person was convicted of felony sexual battery by restraint or while the victim was unconscious of the nature of the act;
 - l) The person was convicted of rape of a child, or by force or violence, or where the victim was prevented from resisting by an intoxicating or controlled substance, or where the victim was unconscious of the nature of the act;
 - m) The person was convicted of spousal rape by force or violence;
 - n) The person was convicted of rape in concert;
 - o) The person was convicted of contributing to the delinquency of a minor involving lewd or lascivious conduct;
 - p) The person was convicted of sodomy by force or violence, or in concert, or where the victim was unconscious of the nature of the act, or where the victim was prevented from resisting by an intoxicating or controlled substance;
 - q) The person was convicted of oral copulation upon by force or violence, or in concert, or where the victim is unconscious of the nature of the act, or where the victim was prevented from resisting by an intoxicating or controlled substance;
 - r) The person was convicted of an act of sexual penetration by force or violence, or where the victim is unconscious of the nature of the act, or where the victim is prevented from resisting by an intoxicating or controlled substance, or where with a child under age 14 and who was more than 10 years younger than the person;
 - s) The person was convicted of child pornography (other than misdemeanor possession of child pornography).
- 5) Provides that unless a person is subject to registration under tier three as specified above, a person required to register under the Act for an adult court conviction of a serious or violent or other specified felony sex offenses must register for a minimum of 20 years (tier two). (Pen. Code, § 290, sub. (d)(2).)
- 6) Provides that unless a person is subject to registration under tier two or tier three as specified above, a person required to register under the Act for an adult court conviction of a misdemeanor or non-violent, non-serious sex offense must register for a minimum of 10 years (tier one). (Pen. Code, § 290, sub. (d)(1).)
- 7) Sets forth a procedure, effective July 1, 2021, for a registrant who is either in tier one or tier two to petition to be removed from the sex offender registry following the expiration of his or her minimum registration period. (Pen. Code, § 290.5, subd. (a).)

- 8) Sets forth a procedure, effective July 1, 2021, for a registrant who is either in tier two or tier three to petition to be removed from the sex offender registry before the expiration of his or her registration period, if specified criteria are met. (Pen. Code, § 290.5, subd. (b).)
- 9) Gives the judge discretion to order sex offender registration for any offense if it finds that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. (Pen. Code, § 290.006.)
- 10) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony if the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Pen. Code, § 290.018, subds. (a) and (b).)
- 11) States that a person who commits any lewd or lascivious act, including any of the acts upon a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 288, subd. (a).)
- 12) Provides that person who commits any lewd or lascivious act, including any of the acts upon a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years. (Pen. Code, § 288, subd. (b)(1).)
- 13) Specifies that person who commits any lewd or lascivious act, including any of the acts upon a child, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. (Pen. Code, § 288, subd. (c)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Under the new tiered registration system for sex offenders, predators that molest 14 or 15 year olds are required to register for life, while those who molest young children (under 14) only have to register for 20 years.

"AB 884 cleans up the registration requirement for adults who commit lewd acts on children under the age of 14 from tier 2 status, registration for 20 years, to tier 3 status, registration for life. This is one of the most common sex crimes and the most common sex offense against children, in which we cannot allow registrants to fall out of the system. In California from 2014 to 2018, there were over 9,000 convictions of molesting a child under the age of 14, which doesn't including all those that went unreported and not convicted.

“Requiring lifetime registration for those who molest a child under the age of 14, this will protect victims by mandating that child molesters be registered for life, and that their information will always be made available to law enforcement.”

- 2) **The Sex Offender Registration Act:** California has required sex offender registration since 1947. The purpose for sex offender registration is to deter offenders from committing future crimes, provide law enforcement with an additional investigative tool, and increase public protection. (*Wright vs. Superior Court* (1997) 15 Cal.4th 521, 526; Alissa Pleau (2007) *Review of Selected 2007 California Legislation: Closing a Loophole in California's Sex Offender Registration Laws*, 38 McGeorge L. Rev. 276, 278.)

In enacting the Sex Offender Registration Act in 2006 (P.C. 290 et seq.), the Legislature expressly declared its intent to establish a comprehensive and standardized system for regulating sex offenders. (9 Witkin Cal. Crim. Law, *supra*, § 136.) The Act includes a lifetime registration requirement for persons convicted of or adjudicated for specified sex offenses. (See Pen. Code, § 290 et seq.) It also created a “standardized, statewide system” and a “comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities.” (*People v. Nguyen* (2014) 222 Cal.App.4th 1168, 1179.) These statutes regulate numerous aspects of a sex offender’s life including restricting the places a sex offender may visit and the people with whom he or she may interact. (*Ibid.*)

- 3) **California Has Established a Tiered System of Registration Which Will Go Into Effect on January 1, 2021:** SB 384 (Wiener) Chapter 541, Statutes of 2017, established a three-tiered sex offender registry, requiring the most serious sex offenders (tier 3) to register for life, requiring tier 2 sex offenders to register for 20 years, and requiring tier 1 sex offenders to register for 10 years.

“The California Sex Offender Management Board (CASOMB) was created to provide the Governor and the State Legislature as well as relevant state and local agencies with an assessment of current sex offender management practices and recommended areas of improvement.” (Cal. Sex Offender Management Board, *Recommendations Report* (Jan. 2010) p. 5

<http://www.casomb.org/docs/CASOMB%20Report%20Jan%202010_Final%20Report.pdf>
[as of July 1, 2017].)

In a 2010 report, the CASOMB made several key recommendations, including the recommendations below:

- California should concentrate state resources on more closely monitoring high and-moderate risk sex offenders. A sex offender’s risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet; other factors that should determine duration of registration and Internet posting include whether the sex offense was violent, was against a child, involved sexual or violent recidivism, and whether the person was civilly committed as a sexually violent predator.
- Law enforcement should allocate resources to enforce registration law, actively pursue violations, maximize resources and results by devoting more attention to

higher-risk offenders.

(*Recommendations Report, supra*, at p. 6.)

At the time of the report, California had the largest number of registered sex offenders of any state in the United States. This large number was attributed “to the large overall population of the state, the length of time California ha[s] been registering sex offenders (since 1947, retroactive to 1944), the length of time that registration (lifetime) is required for all registrants, and the large number of offenses that require mandatory sex offender registration. (*Recommendations Report, supra*, at p. 50.)

The CASOMB noted that California is one of the few states that has lifetime registration for all sex offenders. “On the positive side, this allows the public to be aware of the majority of sex offenders living in their neighborhoods. On the negative side, the public and local law enforcement agencies have no way of differentiating between higher and lower risk sex offenders. In this one-size-fits-all system of registration, law enforcement cannot concentrate its scarce resources on close supervision of the more dangerous offenders or on those who are at higher risk of committing another sex crime.” (*Recommendations Report, supra*, at p. 50.)

Specifically, the CASOMB recommended that:

- Not all California sex offenders need to register for life in order to safeguard the public and so a risk-based system of differentiated registration requirements should be created[;]
- Focusing resources on registering and monitoring moderate to high risk sex offenders makes a community safer than trying to monitor all offenders for life[;]
- A sex offender’s risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet. Other factors which should determine duration of registration and Internet posting include:

Whether the sex offense was violent[;]

Whether the sex offense was against a child[;]

Whether the offender was convicted of a new sex offense or violent offense after the first sex offense conviction[; and,]

Whether the person was civilly committed as a sexually violent predator[.]

(*Recommendations Report, supra*, at p. 51.) The CASOMB “recommended that California amend its law on duration of registration, which should depend on individual risk assessment, history of violent convictions, and sex offense recidivism[.]”

The proposed changes to California law take into consideration the seriousness of the offender’s criminal history, the empirically assessed risk level of the offender,

and whether the offender is a recidivist or has violated California's sex offender registration law. Duration of registration would range from ten (10) years to lifetime (10/20/life). For purposes of the tiering scheme, Penal Code section 667.5 lists violent offenses, including violent sexual offenses....

(*Recommendations Report, supra*, at p. 56.)

In its 2014 report, the CASOMB noted there were nearly 100,000 registrants in California, as a result of California's "universal lifetime" registration for persons convicted of most sex offenses. "California is among only four states which require lifetime registration for every convicted sex offender, no matter the nature of the crime or the level of risk for reoffending." (Cal. Sex Offender Management Board, *A Better Path to Community Safety – Sex Offender Registration in California, "Tiering Background Paper"* (2014) p. 3 <<http://www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%2004-2-14.pdf>> [as of July 2, 2017].)

According to the CASOMB: "Effective policy must be based on the scientific evidence. Research on sex-offender risk and recidivism now has created a body of evidence which offers little justification for continuing the current registration system since it does not effectively serve public safety interests. (*Tiering Background Paper, supra*, at p. 4.) The CASOMB also noted the unintended consequences of lifetime registration. "These consequences include serious obstacles to finding appropriate housing – or any housing; obstacles to finding employment; obstacles to developing positive support systems; obstacles to developing close relationships; and obstacles to reintegrating successfully into communities." (*Ibid.*)

In line with its 2010 report, the CAOMB's 2014 report proposed a new registration system that would take into account the following considerations:

- A tiered system of registration should be introduced so that the length and level of registration matches the risk level of the offender.
- In the future, all those convicted of a sex offense which currently requires registration would continue to be required to register. The list of registrable sex crimes would not change.
- The duration of registration would be [sic] no longer be for life for each and every registrant, no matter what the type of crime or the risk level.
- Only high risk offenders, such as kidnappers, sexually violent predators and selected high risk offenders would be required to register for life.
- The Megan's Law web site would display specified higher risk offenders.
- Local law enforcement would have the ability to notify the public about any registered sex offender posing a current risk to the public.

(*Tiering Background Paper, supra*, at p. 7.)

In January of 2011, the Assistant Director of the California Research Bureau (CRB) testified before this committee after the CRB had examined: (a) registration requirements, (b) tiered registration, (c) the duration of registration, and (d) best practices and the overall cost-effectiveness of sex offender registration requirements. Specifically, as the Assistant Director testified, the CRB had also examined how other states have implemented registration requirements:

In our more detailed review of sex offender registration practices in other states, we selected states bordering California (Arizona, Nevada, and Oregon) as well as states with large populations and/or similar demographic characteristics to California: Florida, New Jersey, New York, Pennsylvania and Texas. Of the states we reviewed, only one, Florida, requires lifetime registration for all sex offenders. The others have tiers for registration – meaning that the offenders register for ten, 15 or 20 years for first-time offenses, and face lifetime registration for more violent or repeat offenses.

Some of the states do allow registrants to petition for removal from the list, generally after a period of not having committing any registrable offenses. In contrast, California requires lifetime registration for all offenses, and only allows people convicted of certain misdemeanor sex offenses to apply for relief via a certificate of rehabilitation with a trial court.

(<http://www.library.ca.gov/crb/docs/Testimony_to_Public_Safety_Comm.1.25.2011.pdf
>[as of July 1, 2017].)

- 4) **Under the Tiered Registry, the Crimes Which Are the Subject of This Bill Would Fall Under Tier 2, 20 Year Period of Registration:** This bill addresses the crime of a lewd act on a child under the age of 14 that does not involve the use of force, violence, or duress. Under the tiered registration law, conviction of such an offense would place the individual in Tier 2, 20 year minimum registration. This bill would make conviction of such a crime, Tier 3, registerable for life. SB 384 (Wiener), which established tiered registration, was enacted in 2017. The tiered system of registration will go into effect on January 1, 2021.
- 5) **Argument in Support:** According to the California Police Chiefs Association, “Existing law only requires lifetime registration if the victim is 14 or 15 years of age; however, if the victim is younger than 14 years of age, the offender is only required to be registered for 20 years – this is unfair to the victims younger than the age of 14. AB 884 protects victims by mandating child molesters be registered for life and allows law enforcement to continually have access to this information.”
- 6) **Argument in Opposition:** According to the *California Public Defenders Association*, “In 2017, the California legislature passed historic reform to the 290 registration system, creating three tiers of registration and enumerating the criminal offenses that would fall into each tier. The impetus for this reform was to make the sex offender registry more humane, accurately tailored, and effective. The reform was supported by a wide variety of interest groups, including District Attorneys, law enforcement organizations, Public Defenders, and civil liberties groups. It was also extremely careful in its implementation, only taking effect in 2021.

“AB 884 seeks to undercut this reform two years before it is implemented. It would effectively move 40,000 people from Tier 2 (20 years registration) to Tier 3 (lifetime registration). Though the bill only makes changes for one category of offense, it would substantially weaken The Tiered Registry Law.

“The Tiered Registry Law was a recognition that not all sex offenses are the same and they should not be treated in an identical manner. The law’s second tier, out of which the 40,000 people who will be affected by this bill would be moved, requires registration for 20 years after the date of conviction. This 20 year requirement, carries with it all of the burdens and collateral consequences that sex offender registry entails, but it allows for some relief after an appropriate amount of time. At the time that the Tiered Registry Law was passed, there was a fulsome debate about which offenses should be assigned to which tiers. AB 884 is an attempt to rehash that debate and change a fundamental aspect of that law’s promised reform.

“AB 884 would upset the careful balance that went into the passage of the Tiered Registry Law in 2017. It would deny relief to a substantial number of Californians, even after 20 years of onerous registration. It is a misguided step backwards.”

7) Related Legislation:

- a) AB 135 (Cervantes), would make it a crime to contact or communicate with a minor, or attempt to contact or communicate with a minor, as specified, with the intent to commit human trafficking of the minor. AB 135 has been referred to the Assembly Appropriations Committee Suspense File.
- b) AB 444 (Choi), would require a person convicted of who solicits, or who agrees to engage in, an act of prostitution with another person who is a minor, to register as a sex offender. AB 444 is awaiting hearing the Assembly Public Safety Committee.
- c) SB 145 (Wiener), would authorize 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. SB 145 is set for hearing in the Senate Public Safety Committee on April 9, 2018.

8) Prior Legislation:

- a) SB 384 (Wiener), Chapter 541, Statutes of 2017, established a three-tiered sex offender registry, requiring the most serious sex offenders (tier 3) to register for life, requiring tier 2 sex offenders to register for 20 years, and requiring tier 1 sex offenders to register for 10 years.
- b) AB 484 (Cunningham), Chapter 526, Statutes of 2017, added rape by fraud and rape by authority of a public official to the list of offenses that require registration as a sex offender.
- c) SB 757 (Glazer), of the 2017-2018 Legislative Session, would have required a person convicted of prostitution with a minor to register unless the court finds that the defendant had reason to believe the victim was not a minor, was misled about the victim’s age, or

was less than three years older than the victim at the time of the solicitation. SB 757 is pending referral from the Assembly Rules Committee. SB 757 was held in the Assembly Public Safety Committee.

- d) AB 1912 (Achadjian), of the 2015-2016 Legislative Session, would have required a person convicted of soliciting a minor, who the person knew or reasonably should have known, was both a minor and a victim of human trafficking to register as a sex offender for a period of five years after a first conviction, 10 years after a second conviction, and 20 years after a third or subsequent conviction. AB 1912 failed passage in the Assembly Public Safety Committee.
- e) AB 733 (Chavez), of the 2015-2016 Legislative Session, would have required sex offender registration for a person convicted of the offense of solicitation of a minor. AB 733 failed passage in the Assembly Public Safety Committee.
- f) SB 303 (Morell), of the 2017-2018 Legislative Session, would have added an additional term to the sentence of a convicted human trafficker if it was pled and proved that the offense involved a victim who was under the age of 16. SB 303 died in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Family Council
California Police Chiefs Association
Riverside Sheriffs' Association

Oppose

Alliance for Constitutional Sex Offense Laws
American Civil Liberties Union of California
Asian Americans Advancing Justice - California
Building Opportunities for Self-Sufficiency
California Attorneys for Criminal Justice
California Public Defenders Association
California Sex Offender Management Board
East Bay Community Law Center
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
Root and Rebound Reentry Advocates
Rubicon Programs

78 Private Individuals

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