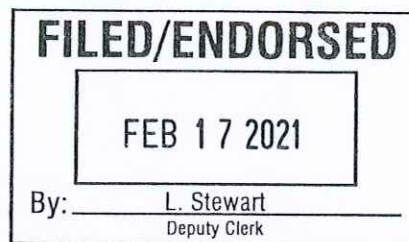


1 Janice M. Bellucci, SBN 108911  
2 LAW OFFICE OF JANICE M. BELLUCCI  
3 1215 K Street, 17th Floor  
4 Sacramento, CA 95814  
5 Tel: (805) 896-7854  
6 Fax: (916) 823-5248  
7 jmbellucci@aol.com

8 Attorney for Plaintiff



9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
10 **COUNTY OF SACRAMENTO**

11 JOHN DOE, an individual;

12 Plaintiff,

13 vs.

14  
15 CALIFORNIA DEPARTMENT OF JUSTICE;  
16 and XAVIER BECERRA, in his official  
17 capacity as Attorney General of the State of  
18 California;

19 Defendants.

Case No.: 34 2021 00294685

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

BY FAX

## INTRODUCTION

1. In 2017, the California Legislature passed and the Governor signed into law Senate Bill 384. This law transformed California's lifetime sex offender registry into a tiered system. (Sen. Bill No. 384 (2017-2018 Reg. Sess.) §§ 1-2 [hereinafter, "**SB 384**"].) That tiered system permits some individuals required to register as a sex offender ("**Registrants**") to petition the Superior Court of the county in which they reside to terminate their registration requirement after 10 or 20 years, depending on the tier to which SB 384 assigns them. In relevant part, SB 384 is codified in Penal Code sections 290, subd. (d), and 290.5, which shall be referred to herein collectively as the "**Tiered Registry Law.**"

2. Some tier assignments within the Tiered Registry Law make arbitrary, illogical, and irreconcilable distinctions between Registrants. Those distinctions include instances in which persons convicted of a less severe offense are assigned to a higher tier than persons convicted of more severe offenses, thereby subjecting the persons convicted of a less severe offense to longer registration periods than persons convicted of a more severe offense. Consequently, some persons convicted of a less severe offense are denied the opportunity to terminate their registration requirement, and must instead register for life, while persons convicted of a more severe offense are permitted to terminate their registration requirement after 10 or 20 years.

3. This action specifically challenges, both facially and as applied to Plaintiff, the arbitrary and irrational assignment to Tier 3 under the Tiered Registry Law of persons convicted of violating Penal Code section 288, subdivision (c)(1) (hereinafter, "**Section 288(c)(1)**"). Under the Tiered Registry Law, all persons convicted of violating Section 288(c)(1), an alternate felony/misdemeanor (*i.e.*, a "wobbler") offense, are assigned to Tier 3, the lifetime tier. In contrast, similarly situated persons convicted of a more severe felony offenses against a younger and more vulnerable victim are assigned to Tier 1 or Tier 2, and can petition for termination of their registration requirement after as few as 10 years. Even a person convicted of a misdemeanor violation of Section 288(c)(1), or who has had his or her felony Section 288(c)(1) conviction reduced to a misdemeanor through demonstrated rehabilitation under Penal Code section 17, subd. (b), is assigned to Tier 3 and denied an opportunity for removal from the registry.

1 4. As pleaded more fully herein, the irrational distinction between Section 288(c)(1) and other  
2 similar offenses within the Tiered Registry Law violates the rights of persons convicted of Section  
3 288(c)(1) to the equal protection of the law. Plaintiff seeks a judgment declaring the same, and to  
4 enjoin the assignment to Tier 3 of any person required to register for a conviction under Section  
5 288(c)(1).

#### 6 **JURISDICTION AND VENUE**

7 5. As a court of unlimited jurisdiction, the Superior Court of California, County of Sacramento,  
8 has jurisdiction over this action pursuant to Article VI, Section 10 of the California Constitution, as  
9 well as California Code of Civil Procedure sections 525, 526, 526a, and 1060.

10 6. Venue is proper within this Court pursuant to Code of Civil Procedure sections 395 and 401  
11 because Defendants are located in, and/or maintain an office in, Sacramento County.

#### 12 **PARTIES**

13  
14 7. Plaintiff realleges and incorporates herein, as though fully set forth, all and inclusively,  
15 paragraphs 1 through 6.

16 8. Plaintiff John Doe, age 79, is and at all times material to this action was a resident of the  
17 state of California and a citizen of the United States. Over 20 years ago, in 1998, Plaintiff John Doe  
18 pled guilty to, and was convicted of violating, subdivision (c) [currently subdivision (c)(1)] of  
19 Section 288, in the Superior Court of California, County of Orange. This conviction was Plaintiff  
20 John Doe's first and only conviction of any type, and Plaintiff John Doe has led a law-abiding life  
21 since that time. Upon conviction, the trial court granted probation without imposition of sentence.  
22 Plaintiff John Doe completed his term of probation without violation. In 2011, pursuant to Penal  
23 Code section 17, subdivision (b)(3), the trial court granted Plaintiff John Doe's motion to reduce his  
24 conviction under Section 288(c)(1) to a misdemeanor. In addition, Plaintiff John Doe is currently  
25 assessed to pay, and is currently liable to pay, taxes that fund the California Department of Justice,  
26 and has paid such taxes within the year prior commencing this action. As such, Plaintiff John Doe  
27 has taxpayer standing to bring this action to enjoin enforcement of an unlawful statute under Code  
28 of Civil Procedure section 526a.

1  
2 9. Defendant California Department of Justice is an agency of the Executive Branch of the  
3 State of California, and is the political entity responsible for implementing the Tiered Registry Law.  
4 As such, Defendant California Department of Justice is the state agency with the direct institutional  
5 interest in the Tiered Registry Law. Defendant California Department of Justice is headquartered in  
6 the County of Sacramento.

7 10. Defendant Xavier Becerra is the Attorney General of the State of California, and the highest  
8 official within the California Department of Justice, and as such is responsible for implementing the  
9 Tiered Registry Law. In his official capacity, as set forth in Article 5, Section 13 of the California  
10 Constitution, Defendant Becerra is the “chief law officer of the State,” with a duty “to see that the  
11 laws of the state are uniformly and adequately enforced.” Defendant Becerra “has charge, as  
12 attorney, of all legal matters in which the State is interested.” (Cal. Gov. Code § 12511.) Defendant  
13 Becerra is sued in his official capacity only.

14 11. Defendants California Department of Justice and Xavier Becerra shall be referred to  
15 collectively herein as “Defendants.”  
16

17 **FACTUAL ALLEGATIONS**

18 12. Plaintiff realleges and incorporates herein, as though fully set forth, each and every, all and  
19 inclusively, paragraphs 1 through 11.

20 13. The California Legislature first enacted a sex offender registry in 1947. (Stats. 1947, ch.  
21 1124, § 1, p. 2562. See also *Wright v. Superior Court* (1997) 15 Cal. 4th 521, 526.) For more than  
22 70 years, that is, between 1947 and 2021, California’s registration statute, Penal Code section 290,  
23 *et seq.*, required all Registrants to register for life, regardless of the offense for which that Registrant  
24 was convicted, the age of the conviction, or the absence of any risk to public safety. During that  
25 period, the only persons removed from California’s lifetime registry were certain individuals  
26 eligible to receive a Certificate of Rehabilitation pursuant to Penal Code section 4852.01, *et seq.*

27 ///

28 ///

1 **Summary of California's Tiered Registry Law**

2 14. In 2017, the California Legislature passed and the Governor signed SB 384, which reformed  
3 California's lifetime sex offender registry by transforming it into a three-tiered system and  
4 eliminating the Certificate of Rehabilitation as the vehicle for relief from the duty to register.  
5 Consistent with the prior lifetime registration system, the offenses for which a person is required to  
6 register are set forth in Section 290, subd. (c). A person may also be required to register for  
7 offenses not listed in Section 290, subd. (c) in certain circumstances. (See, e.g., Penal Code §§  
8 290.005, 290.006.)

9 15. The Tiered Registry Law assigns each Registrant who was convicted as an adult into one of  
10 three tiers. A Registrant's tier assignment dictates the minimum period that he or she must register  
11 before becoming eligible, if ever, to petition for termination of his or her registration requirement:<sup>1</sup>

12 a. Tier 1 Registrants are "subject to registration for a minimum of 10 years," and may  
13 generally petition for termination of their registration requirement after registering  
14 for 10 years. A person is a Tier 1 Registrant if he or she is required to register for "a  
15 misdemeanor described in subdivision (c), or for conviction of a felony described in  
16 subdivision (c) that was not a serious or violent felony as described in subdivision (c)  
17 of Section 667.5 or subdivision (c) of Section 1192.7," unless the offense for which  
18 that person is required to register is expressly assigned to Tier 2 or Tier 3. (Cal.  
19 Penal Code § 290, subd. (d)(1).)

20 b. Tier 2 Registrants are "subject to registration for a minimum of 20 years," and may  
21 generally petition for termination of their registration requirement after registering  
22 for 20 years. A person is a Tier 2 Registrant if he or she is required to register for  
23 "an offense described in subdivision (c) that is also described in subdivision (c) of  
24 Section 667.5 or subdivision (c) of Section 1192.7, Section 285, subdivision (g) or  
25

---

26 <sup>1</sup> The Tiered Registry Law was amended twice between 2017 and its operative date of January 1,  
27 2021. The only substantive amendment, Stats 2020 ch. 79 § 2 (SB 145), effective January 1, 2021,  
28 concerned the date on which Registrants assigned to Tier 1 and Tier 2 may petition for termination of  
their registration requirement.

(h) of Section 286, subdivision (g) or (h) of Section 287 or former Section 288a, subdivision (b) of Section 289, or Section 647.6 if it is a second or subsequent conviction for that offense that was brought and tried separately,” unless the offense for which that person is required to register is expressly assigned to Tier 3. (Cal. Penal Code § 290, subd. (d)(2).)

c. Tier 3 Registrants are, with one exception, “subject to registration for life” and may never petition for termination of their registration requirement. (Cal. Penal Code § 290, subd. (d)(3).) Subdivision (d)(3) of Section 290 lists dozens of specific offenses that are expressly assigned to Tier 3, as well as various additional grounds upon which a Registrant is assigned to Tier 3.

16. A person convicted of an offense that the Tiered Registry Law expressly assigns to Tier 3 may never petition for termination of his or her registration requirement. That is because the only persons assigned to Tier 3 who are eligible to petition for termination of their registration requirement are those assigned to Tier 3 solely because their “risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant to Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.” (Cal. Penal Code §§ 290, subd. (d)(3)(D); 290.5, subd. (b)(3).)

17. Because only Registrants convicted of offenses listed as Tier 1 and Tier 2 offenses may petition for termination of their registration requirement, Registrants convicted of offenses assigned to Tier 3 are treated dissimilarly from, and suffer an injury greater than, persons convicted of offenses assigned to Tier 1 and Tier 2. An example of an offense assigned to Tier 2 is subdivision (a) of Section 288 (hereinafter, “**Section 288(a)**”). That is because Section 288(a) is not assigned to Tier 3, but is “an offense described in subdivision (c) [of Section 290] that is also described in subdivision (c) of Section 667.5.” (See Cal. Penal Code § 667.5, subd. (c)(6).) In contrast, Section 288(c)(1) is expressly assigned to Tier 3. (See *id.* § 290, subd. (d)(3)(ix) [“A person is a tier three offender if . . . [t]he person was convicted of violating any of the following: . . . Subdivision . . . (c) of Section 288.”].) Thus, a Registrant convicted under Section 288(a), which is deemed a “violent” felony offense against a minor under the age of 14, is assigned to Tier 2, and is therefore treated less

1 severely than a Registrant convicted of the less severe wobbler offense against an older victim  
2 described in Section 288(c)(1) and assigned to Tier 3.

3 **Summary of Offenses Described in Subdivisions (a) and (c)(1) of Section 288**

4 18. Prior to January 1, 1989, Section 288 was a straight felony offense defined as committing  
5 “lewd and lascivious acts” upon a victim under the age of 14, and did not apply to victims age 14 or  
6 older. Thus, prior to January 1, 1989, a person who committed a lewd act upon a victim aged 14 or  
7 older, that was not otherwise described in another section of the Penal Code, could be convicted  
8 only of a misdemeanor. (*People v. Paz* (2000) 80 Cal. App. 4th 293, 296.)

9 19. Effective January 1, 1989, the legislation known as AB 3835 amended Section 288 to  
10 “create[e] a new crime” described as lewd and lascivious acts against a victim age 14 or 15.  
11 (Assem. Bill No. 3835 (1987-1988 Reg. Sess.) § 1 [hereinafter, “**AB 3835**”].) AB 3835 amended  
12 Section 288 to designate the existing crime of lewd and lascivious acts against a victim under age 14  
13 as subdivision (a). AB 3835 further amended Section 288 by adding the new crime of lewd and  
14 lascivious acts against a victim age 14 or 15, and designating that new crime as subdivision (c). As  
15 of January 1, 1996, the offense of lewd and lascivious acts against a victim age 14 or 15 was  
16 redesignated subdivision (c)(1), and is therefore referred to as Section 288(c)(1) in this Complaint.  
17 (*Paz, supra*, 80 Cal. App. 4th at p. 296 n.8.)

18 20. The Court of Appeal in *People v. Paz* surveyed the legislative history of AB 3835 and  
19 described the Legislature’s purpose in codifying the “new crime” of lewd and lascivious acts against  
20 a victim aged 14 or 15. (*People v. Paz* (2000) 80 Cal. App. 4th 293.) The *Paz* court said:

21 Assembly Bill No. 3835, which added (as a new provision) subdivision (c) to section  
22 288, 8 was sponsored by the San Joaquin County Sheriffs’ Association and carried  
23 by Assemblyman Norman Waters. The bill was offered to close a perceived  
24 loophole in the felony laws, with respect to 14 and 15-year-olds, between felonious  
25 lewd conduct with a child under 14 (§ 288, subd. (a)) and unlawful sexual  
26 intercourse with a child under 18 (§ 261.5). According to the bill’s proponents, the  
27 only available criminal charge applicable to lewd conduct on a child who had just  
28 turned 14 was a misdemeanor under section 647.6, although the same conduct would  
constitute a felony if the child were under 14. According to the advocates of the bill,  
on and after the day of a child/victim’s 14th birthday, a perpetrator could commit all  
nature of lewd acts on or with the child and, so long as no act of penetration  
occurred, the perpetrator would not face felony punishment. This state of affairs  
meant a seven-year difference between the maximum penalties for the same conduct

committed, on the one hand, upon a victim age 13 (eight years; § 288, subd. (a)) and, on the other, upon a victim age 14 (one year; § 647.6). . . . In addition, the bill’s proponents pointed out that the three-year felony, rather than the one-year misdemeanor, statute of limitations would apply to the new subdivision (c).

(*Paz, supra*, 80 Cal. App. 4th at p. 295-96 & n.9.)

21. Significantly, the *actus reus* and *mens rea* elements of the crimes described in subdivisions (a) and (c)(1) of Section 288 are identical. Subdivision (a) defines the offense as follows:

Except as provided in subdivision (i), a person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of 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.

(Cal. Penal Code § 288, subd. (a), emphasis added.) Subdivision (c)(1) expressly incorporates the language of subdivision (a) in defining the *actus reus* and *mens rea* elements of the offense described in subdivision (c)(1), as follows:

A person who commits an act described in subdivision (a) with the intent described in that subdivision, 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.

(Cal. Penal Code § 288, subd. (c)(1), emphasis added.)

22. The legislative history of AB 3835 confirms that the *actus reus* and *mens rea* elements of the offense described in subdivision (c)(1) are identical to that described in subdivision (a). The Legislative Counsel’s Digest for AB 3835 states:

Existing law makes it a felony . . . for any person to willfully and lewdly commit any lewd or lascivious act . . . [on] a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of that child.

This bill would make it a misdemeanor or felony for any person to engage in the above-described conduct when the victim is a child of 14 or 15 years and the defendant is at least 10 years older than the child[.]

(**Exh. A**, AB 3835, Legislative Counsel’s Digest). The Bill Analysis by the Department of Justice likewise explained, “This bill [AB 3835] would make it a misdemeanor or a felony (16 mo., two or three years) for a person to engage in lewd and lascivious conduct as defined in Penal Code section



288, subdivision (a) where the victim is a child of 14 or 15 years old. . . . This bill would create a new criminal offense, although largely duplicative of existing law.” (Exh. B, Bill Analysis, Cal. Dept. of Justice, Mar. 9, 21988, at p. 1, emphasis added.)

23. Replying upon the same legislative history, the *Paz* Court explained that the Legislature intended subdivision (c)(1) as added by AB 3835 to merely expand liability for the same conduct defined in subdivision (a). The *Paz* Court said: “We see in this statutory background a legislative desire [in enacting subdivision (c)(1)] to protect 14- and 15-year-olds from predatory older adults to the same extent children under 14 are protected by subdivision (a) of section 288.” (*Paz, supra*, 80 Cal. App. 4th at p. 297.)

**The Legislature Deemed The Conduct Described in Section 288(c)(1) to be Less Severe Than that Described in Section 288(a) and Other Statutes**

24. Although the acts described in both subdivisions (a) and (c)(1) of Section 288 are identical, the Legislature deemed those acts, when committed against 14- and 15-year-old victims, to be deserving of lesser punishment than the same acts committed against younger victims. The Bill Analysis of AB 3835 by the Department of Justice stated that “[AB 3835] provides a lesser penalty for committing a lewd act with a 14-year-old (a ‘wobbler’) than with a 13-year-old (felony).” (Exh. B, Bill Analysis, Cal. Dept. of Justice, Mar. 9, 21988, at p. 2.). The *Paz* Court further explained that “section 288 offenses set out a hierarchy of victims [Court’s emphasis] from the most vulnerable – infants and children under subdivision (a) – to those perceived as less vulnerable – young teenagers under subdivision (c)(1). The age distinctions help define the gravity of, and the range of punishment for, the offense.” (*Paz, supra*, 80 Cal. App. 4th at p. 297, some emphasis added.)

25. The lesser culpability of persons convicted under Section 288(c)(1) is also reflected in the fact that Section 288(a) describes a straight felony, whereas Section 288(c)(1) prescribes an alternative felony/misdemeanor “wobbler” offense. The *Paz* court stated:

[T]he Legislature[] prescri[bed] a lower range of prison terms and alternate misdemeanor punishment for a violation of subdivision (c)(1) . . . . Subdivision (c)(1) permits the trial court to fashion a sentence consistent with the realities of the particular crime and discloses a legislative acknowledgement that some 14- and 15-year-olds may be more sexually sophisticated than others in those two age groups. . . [I]f in a particular case there exist extenuating circumstances, such as a mistake

1 about the victim's age, the statute allows for consideration of the factor for  
2 sentencing purposes.

3 (*Paz, supra*, 80 Cal. App. 4th at p. 297.)

4 26. Notably, the Penal Code consistently distinguishes between victims under the age of 14 and  
5 victims age 14 and older in the sections describing other registrable offenses, such as sodomy and  
6 oral copulation, and prescribes lesser punishments for such acts when committed upon victims age  
7 14 and older. The Court in *People v. Olsen*, decided before subdivision (c)(1) was enacted,  
8 explained as follows:

9 The Legislature has [] determined that persons who commit sexual offenses on  
10 children under the age of 14 should be punished more severely than those who  
11 commit such offenses on children under the age of 18. For example, sodomy or oral  
12 copulation with a person under 18 is punishable by a maximum of one year in  
13 county jail or three years in state prison. [*i.e.*, a wobbler] (§§ 286, subd. (b)(1), 288a,  
14 subd. (b)(1).) On the other hand, such conduct with a child under 14 is made  
15 punishable by a maximum state prison sentence of eight years. (§§ 286, subd. (c),  
16 288a, subd. (c).) These differences in punishment support the view that children  
17 under the age of 14 are given special protection under our laws.

18 (*People v. Olsen* (1984) 36 Cal. 3d 638, 648, emphasis added.) In other words, the Legislature's  
19 imposition of a wobbler punishment for registrable offenses against victims aged 14 or older  
20 reflects its view that persons who commit such offenses should be punished less severely than  
21 persons who commit the same acts against victims under age 14. In the context of AB 3835,  
22 several legislative analyses noted that AB 3835 "expands current law to make lewd and lascivious  
23 acts on a child of 14 or 15 years, by a person 10 years older than the child, subject to the same  
24 misdemeanor/felony terms (1, 2, or 3 [years] in State prison or 1 year county jail time) now  
25 provided for in other sex crimes (sodomy, oral copulation, etc.) by adults with victims under 18  
26 years." (**Exh. C**, Assem. Floor Analysis, AB 3835, as amended Aug. 10, 1998, p. 2, emphasis  
27 added.)

28 27. Thus, the distinction between the straight felony offense described in Section 288(a) and the  
wobbler offense described in Section 288(c)(1) is evidence of the Legislature's view that persons  
convicted under Section 288(c)(1) deserve lesser punishment than persons convicted under Section  
288(a). The "wobbler statutes," including Section 288(c)(1), are a "special subset" of offenses "that  
proscribe conduct that can vary widely in its level of seriousness." (*People v. Park* (2013) 56 Cal.

4th 782, 801.) By designating an offense as a wobbler, “the Legislature has empowered the courts to decide, in each individual case, whether the crime should be classified as a felony or a misdemeanor. In making that determination, the court considers the facts surrounding the offense and the characteristics of the offender.” (*Ibid.*) Among the characteristics of the offender are “a defendant’s potential for rehabilitation . . . [and] the community’s need for protection.” (*In re Anderson* (1968) 69 Cal. 2d 613, 627.)

28. Accordingly, some wobblers, are charged as misdemeanors, while others are charged as felonies. However, even a wobbler offense charged, or disposed of, as a felony becomes a “misdemeanor for all purposes” in various circumstances. For example, conviction of a wobbler offense is a misdemeanor when the court’s judgment “impos[es] a punishment other than imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.” (Cal. Penal Code § 17, subd. (b)(1).) In addition, as in the case of Plaintiff John Doe, conviction of a wobbler offense is a misdemeanor “[w]hen the court grants probation to a defendant and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.” (*Id.*, subd. (b)(3).)<sup>2</sup>

29. “When the court properly exercises its discretion to reduce a wobbler to a misdemeanor, it has found that felony punishment, and its consequences, are not appropriate for that particular defendant.” (*Park, supra*, 56 Cal. 4th at p. 801, quoting *Anderson, supra*, 69 Cal. 2d at pp. 664-665.) In fact, “one of the chief reasons for reducing a wobbler to a misdemeanor is that under such circumstances the offense is not considered to be serious enough to entitle the court to resort to it as a prior conviction of a felony for the purpose of increasing the penalty for a subsequent crime.” (*Ibid.*, citing *In re Rogers* (1937) 20 Cal. App. 2d 397, 400-401, internal quotations omitted.) In addition, the court may reduce a felony to a misdemeanor “in those cases in which the rehabilitation

---

<sup>2</sup> Prior to January 1, 2019, a reduction under subdivision (b)(3) of Section 17 for a defendant who received a felony probation was only available if imposition of sentence was suspended. (See *People v. Wood* (1998) 62 Cal. App. 4th 1262, 1267.) However, as of January 1, 2019, the trial court may now declare a wobbler offense to be a misdemeanor even if a felony sentence was imposed with execution suspended. (Stats 2018 ch. 18 § 1 (AB 1941), effective January 1, 2019.)

of the convicted defendant either does not require, or would be adversely affected by, incarceration in a state prison as a felon.” (*Anderson*, supra, 69 Cal. 2d at pp. 664-665.)

**The Tiered Registry Law Irrationally and Unlawfully Treats Persons Convicted Under Section 288(c) More Harshly Than Similarly Situated Persons**

30. For all purposes related to the Tiered Registry Law, persons convicted under Section 288(c)(1) are similarly situated to persons convicted under Section 288(a), since both subdivisions of Section 288 describe and apply to identical conduct.

31. By assigning persons convicted of a felony violation of Section 288(c)(1) to Tier 3, while assigning persons convicted of violating Section 288(a) to Tier 2, the Tiered Registry Law is arbitrary and irrational, in violation of the equal protection guarantee of the California Constitution.

32. By assigning persons convicted of a misdemeanor violation of Section 288(c)(1) to Tier 3, while assigning persons convicted of violating Section 288(a), a felony, to Tier 2, the Tiered Registry Law is arbitrary and irrational, in violation of the equal protection guarantee of the California Constitution.

33. By assigning persons who have had their felony convictions under Section 288(c)(1) reduced to a misdemeanor pursuant to Penal Code section 17, subd. (b), to Tier 3, while assigning persons convicted of violating Section 288(a), a felony, to Tier 2, the Tiered Registry Law is arbitrary and irrational, in violation of the equal protection guarantee of the California Constitution.

34. As reflected in Section 288, persons convicted of either felony or misdemeanor violations of Section 288(c)(1) are deemed by the Legislature to be deserving of less severe punishment than persons convicted of Section 288(a). The Legislature has elsewhere confirmed that either felony or misdemeanor violations of Section 288(c)(1) are deserving of less severe punishment than persons convicted of Section 288(a). For example, a conviction under Section 288(a) is deemed a “violent” offense for the purpose of sentencing enhancements under Section 667.5, subd. (c), while a conviction under Section 288(c)(1) is not considered a “violent” offense. (Cal. Penal Code § 667.5, subd. (c)(6).)

35. In addition, Persons convicted of either felony or misdemeanor violations of Section 288(c)(1) are deemed by the Legislature to be capable of rehabilitation, and have in fact been

1 extended opportunities for rehabilitation through Penal Code section 17 that are not available to  
2 persons convicted under Section 288(a). For example, there are many Registrants who were  
3 convicted of a misdemeanor violation of Section 288(c)(1), rather than a felony. In addition, many  
4 Registrants convicted of felony violations of section 288(c)(1), including Plaintiff John Doe, have  
5 achieved rehabilitation sufficient to have their felony convictions under Section 288(c)(1) reduced  
6 by a trial court to a misdemeanor, and treated as “a misdemeanor for all purposes.” (See Cal. Penal  
7 Code § 17, subd. (b).) In the case of persons, including Plaintiff John Doe, who have earned a  
8 reduction under Penal Code section 17, subdivision (b)(3), the trial court has found that such  
9 persons are rehabilitated to the same degree that persons assigned to Tier 1 and Tier 2 must  
10 demonstrate in order to have their registration requirement terminated under the Tiered Registry  
11 Law. (See Penal Code § 290.5.) Nevertheless, the Tiered Registry Law assigns Plaintiff, and all  
12 persons with either a misdemeanor or a felony conviction under Section 288(c)(1), to Tier 3,  
13 without a rational basis, and in a manner that frustrates the retributive and deterrent purposes of  
14 Section 288(c)(1), the monitoring purposes of the Tiered Registry Law, and the rehabilitative  
15 purposes of Penal Code section 17.

16 36. For all purposes related to the Tiered Registry Law, persons convicted under Section  
17 288(c)(1) are similarly situated to persons convicted under the following statutes: (i) Section 243.4  
18 (sexual battery) where the victim is a minor, a wobbler; (ii) subdivision (b)(1) of Section 286  
19 (sodomy against a victim under age 18), a wobbler; (iii) subdivision (b)(2) of Section 286 (sodomy  
20 by person over age 21 against a victim under age 16, a felony; (iv) subdivision (b)(1) of Section 287  
21 (oral copulation of a person under age 18), a wobbler; and (v) subdivision (b)(2) of Section 286  
22 (oral copulation by a person over age 21 against a victim under age 16), a felony. Among the  
23 purposes of the Legislature in enacting Section 288(c)(1) was to make the offense of lewd and  
24 lascivious acts against a victim age 14 or 15 “subject to the same misdemeanor/felony terms . . .  
25 now provided for in [the] other sex crimes (sodomy, oral copulation, etc.) by adults with victims  
26 under 18 years” listed above. (**Exh. C**, Assem. Floor Analysis, AB 3835, as amended Aug. 10,  
27 1998, p. 2.) By assigning persons convicted of a felony violation of Section 288(c)(1) to Tier 3,  
28 while assigning to Tier 1 persons convicted of violating the wobbler or felony statutes listed in this

paragraph, the Tiered Registry Law is arbitrary and irrational, and without a legitimate state purpose, in violation of the equal protection guarantee of the California Constitution.

37. In assigning person convicted of violating Section 288(c)(1) to Tier 3, the Tiered Registry Law irrationally deprives such persons of benefits and protections afforded to similarly situated persons assigned to Tier 1 or Tier 2, for no rational purpose. Such benefits and protections extended to persons assigned to Tier 1 and Tier 2 include, but are not limited to, the opportunity to petition for termination of their registration requirement, and the corresponding relief from the approximately 100 affirmative restrictions and restraints that would otherwise be imposed upon them but for the availability of relief under the Tiered Registry Law. Among these restrictions and restraints are: (i) sex offender registration and public notification requirements<sup>3</sup>; (ii) restrictions on housing and medical care<sup>4</sup>; (iii) exclusion from dozens of licensed and certificated professions<sup>5</sup>; (iv)

---

<sup>3</sup> Cal. Penal Code §§ 290, 290.01, 290.002, 290.009-290.13, 290.024, 290.014(b), 290.45-290.46; 34 U.S.C. §§ 20913, 20917, 20921.

<sup>4</sup> Cal. Penal Code § 3003.5; Cal. Health & Saf. Code § 1522.01, 1564; 42 U.S.C. § 13663; 12 C.C.R. § 505.2; Cal. Civ. Code § 2079.10a.

<sup>5</sup> Registrants are prohibited from obtaining most occupational or professional licenses if the licensing agency determines that the Registrant committed an act “substantially related” to the duties of that occupation or profession. See, e.g., cal. Bus. & Prof. Code § 480(a)(1)(A), (a)(2). In addition, registrants are prohibited by law from dozens of occupations and professions, including: Ambulance Driver, Cal. Veh. Code § 13372(a)(1); Ambulance Attendant, Cal. Code Regs. tit. 13, § 1101(b)(1); Acupuncturist, Cal. Code Regs. tit. 16, § 1399.469.1(a); Certified Access Specialist, Cal. Code Regs. tit. 21, § 161(c)(2); Chiropractor, see Cal. Code Regs. tit. 16, § 317(h); Daycare Operator, Cal. Health & Saf. Code § 1596.871(a)(1); Dental Hygienist, Cal. Bus. & Prof. Code § 1958.1(a); Dentist, *id.* § 1687(a); Cal. Code Regs. tit. 16, § 1018(c); Emergency Medical Technician or Paramedic, Cal. Code Regs. tit. 22, § 100174(a)(1); Home Health Care Worker, absent waiver, *id.* § 130110(a)(1); Horse Racing Board, any profession licensed by the board, Cal. Code Regs. tit. 4, § 1489(a)(1); Insurance Broker, Bail Agent, or Bail Permittee, Cal. Code Regs. tit. 10, § 2183.2(b)(4); Licensed Marriage and Family Therapist, Cal. Bus. & Prof. Code § 4980.40(e); Licensed Professional Clinical Counselor, *id.* § 4999.51(b); Licensed Educational Psychologist, *id.* § 4989.24; Massage Therapist, *id.* § 4609(a)(11)(c); Cal. Gov’t Code § 51032(b); Medical Doctor, Cal. Bus. & Prof. Code § 2232; Midwife, *id.* § 2523; Naturopathic Doctor, Cal. Code Regs. tit. 16, § 4256(c); Nurse, Cal. Bus. & Prof. Code § 2760.1(i); Cal. Code Regs. tit. 16, § 1444(d); Occupational Therapist, Cal. Bus. & Prof. Code § 2570.32(f); Cal. Code Regs. tit. 16, § 4146(d)(8); Optometrist, Cal. Bus. & Prof. Code § 3046; Psychologist, *id.* § 2964.3; Psychoanalyst, *id.* § 2529.6(a); Psychiatric Technician, *id.* § 4524(e); Cal. Code Regs. tit. 16, § 2579.11(a); Speech Pathologist or Audiologist, Cal. Code Regs. tit. 16, §§ 1399.130.1(a), 1399.156.5(a); Polysomnography [sleep disorders], Cal. Bus. & Prof. Code § 3576.2(a); Physician Assistant, Cal. Code Regs. tit. 16, § 1399.523.5(a); Pharmacist, *id.* § 1762(c); Physical Therapist, Cal. Bus. & Prof. Code § 2660.5; Cal. Code Regs. tit. 16, § 1399.23(a); Realtor,

1 restrictions on employment and volunteering<sup>6</sup>; (v) restrictions on familial and other intimate  
2 relationships<sup>7</sup>; and (vi) restrictions on travel.<sup>8</sup> There is no rational basis for depriving persons  
3 convicted of violating Section 288(c)(1) of these benefits, while extending them to persons  
4 convicted of the objectively more severely punishable offenses described herein.

## 6 **CLAIM FOR RELIEF**

### 7 **(Violation of the Equal Protection guarantee of the California Constitution)**

8 38. Plaintiff realleges and incorporates herein, as though fully set forth, each and every, all and  
9 inclusively, paragraphs 1 through 37.

10 39. Article 1, section 7 of the California Constitution declares that “A person may not be . . .  
11 denied equal protection of the laws[.]” (Cal. Const. art. I § 7, subd. (a).) Any legislation that  
12 specifically targets a class of persons cannot survive constitutional scrutiny unless the legislation is  
13 rationally related to a legitimate state purpose, and/or rationally serves the purpose of the legislation.

14 40. As pleaded more fully above, and as fully incorporated herein, there is no rational basis for  
15 assigning persons convicted of felony or misdemeanor violations of Section 288(c)(1) to Tier 3  
16 under the Tiered Registry Law, while assigning persons convicted of violating Section 288(a) to  
17 Tier 2.

18  
19  
20 see Cal. Code Regs. tit. 10, §§ 2910(a)(5), 2911(a)(4), 2912(d); Respiratory Therapist, Cal. Bus. &  
21 Prof. Code § 3752.7; Social Worker, *id.* § 4996.2(d); Teacher—credentialed or certificated, Cal.  
22 Educ. Code §§ 44346(a)(2), (b)(2), 44425(a); Vocational Nurse, Cal. Bus. & Prof. Code § 2878.7(e);  
23 Cal. Code Regs. tit. 16, § 2524(c).

24 <sup>6</sup> Cal. Penal Code §§ 626.81 290.95; Cal. Educ. Code §§ 35021, 44020, 45123, 44836, 87405, 88022;  
25 Cal. Gov’t C. § 51032; 5 C.C.R. § 5592; 8 C.C.R. §§ 11772, 11772; Cal. Health & Saf. Code §§  
1568.09, 1569.17; 22 C.C.R. § 87819.1; 22 C.C.R. § 87356; Cal. Pub. Util. Code § 5445.2; Cal. Veh.  
26 Code §§ 13370, 13376; 22 C.C.R. § 51458; Cal. Welf. & Inst. Code § 12305.87(b)(2); 42 U.S.C. §  
27 12645g(c)(3); 12 U.S.C. § 5710(b)(2); Cal. Code Civ. Proc. § 203(a)(11).

28 <sup>7</sup> Cal. Fam. Code §§ 3030, 3030.5; Cal. Welf. & Inst. Code §§ 361.5(b)(16), 14133.225; 8 U.S.C. §  
1154(a)(1)(A)(viii)(I); Cal. Gov’t Code § 13956(c)(1); 2 C.C.R. § 649.4(b)(3); Cal. Health & Saf.  
Code § 1522; Cal. Penal Code §§ 3003.6, 290.02, 290.014(a), 3053.8; 22 U.S.C. § 212b; Cal. Elec.  
Code § 12287.5; Cal. Code Civ. Proc. § 1279.5.

<sup>8</sup> 34 U.S.C. § 21502; 22 U.S.C. § 212b.

1 41. As pleaded more fully above, and as fully incorporated herein, there is no rational basis for  
2 assigning persons convicted of felony or misdemeanor violations of Section 288(c)(1) to Tier 3  
3 under the Tiered Registry Law, while assigning to Tier 2 persons convicted of violating (i) Section  
4 243.4 (sexual battery) where the victim is a minor; (ii) subdivision (b)(1) of Section 286 (sodomy  
5 against a victim under age 18); (iii) subdivision (b)(2) of Section 286 (sodomy by person over age  
6 21 against a victim under age 16; (iv) subdivision (b)(1) of Section 287 (oral copulation of a person  
7 under age 18); or (v) subdivision (b)(2) of Section 286 (oral copulation by a person over age 21  
8 against a victim under age 16).

9 42. There is a good faith dispute, as well as a presently existing actual controversy, between  
10 Plaintiff and Defendants regarding the interpretation of the equal protection guarantee of Article I,  
11 section 7 of the California Constitution, and its application to the Tiered Registry Law. Therefore,  
12 pursuant to the Code of Civil Procedure section 1060, Plaintiff is entitled to a declaration as to the  
13 legality of the Tiered Registry Law under the California Constitution, as well as a declaration of  
14 Plaintiff's rights and the rights of all persons affected by the Tiered Registry Law under Article I,  
15 section 7 of the California Constitution. In addition, this Court is authorized by Code of Civil  
16 Procedures sections 525 and 526 to enjoin the enforcement of the Tiered Registry Law.

17 43. Plaintiff John Doe is a taxpayer residing in the State of California who has paid, and who is  
18 liable to pay, taxes that fund the California Department of Justice. Defendant California  
19 Department of Justice is the agency responsible for enforcing the Tiered Registry Law, and  
20 Defendant Becerra is the official responsible for the implementation of the Tiered Registry Law. In  
21 performing these duties, Defendants have expended, or will expend, public funds. Pursuant to Code  
22 of Civil Procedure section 526a, Plaintiff seeks to enjoin the expenditure of public funds resulting  
23 from the enforcement of an unconstitutional law.

24 44. The injuries that Plaintiff and the public are suffering and will suffer as a result of the  
25 actions of Defendants, along with their deputies, agents, and employees, are severe, irreparable, and  
26 ongoing, and there is no plain, adequate, complete, speedy, or required alternative remedies  
27 available to redress the violations of law committed by Defendants in this action, nor are there any  
28 available, non-futile, or required administrative remedies available to redress the violations of law



1 committed by Defendants. Damages are not adequate to protect Plaintiff from the continuing  
2 effects of Defendants' violations of the law and from Defendants' failure to carry out their duties  
3 under the law. Immediate mandamus relief is necessary to halt and prevent further occurrence of  
4 these ongoing unlawful acts and the infliction of irreparable harm to Plaintiff and the public.

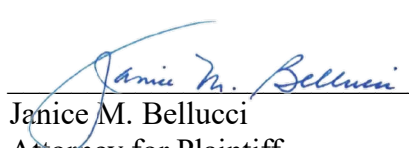
5  
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment against Defendants California Department of  
8 Justice and Xavier Becerra, in his official capacity as California Attorney General, as follows:

- 9 A. For a judgment declaring that the Tiered Registry Law, California Penal Code section 290,  
10 subdivision (d), violates the equal protection guarantee of Article 1, section 7 of the  
11 California Constitution to the extent that it assigns persons convicted of violating  
12 subdivision (c)(1) of Section 288 of the Penal Code to Tier 3;
- 13 B. For an injunction preventing Defendants from assigning persons convicted of violating  
14 subdivision (c)(1) of Section 288 of the Penal Code to Tier 3 under the Tiered Registry Law;
- 15 C. That Plaintiff recovers from Defendants all of Plaintiff's reasonable attorneys' fees, costs,  
16 and expenses of this litigation pursuant to California Code of Civil Procedure sections 52.1,  
17 1021.5, and other applicable law; and
- 18 D. For such other and further relief as the Court deems just and proper.

19  
20 Dated: February 16, 2021

LAW OFFICE OF JANICE M. BELLUCCI

21  
22 By:   
23 Janice M. Bellucci  
24 Attorney for Plaintiff  
25  
26  
27  
28

# **EXHIBIT A**

## CHAPTER 1398

### (Assembly Bill No. 3835)

An act to amend Sections 288 and 868.5 of the Penal Code, relating to crime.

[Approved by Governor September 26, 1988.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 3835, N. Waters. Sex offenses: child victim.

Existing law makes it a felony, punishable by imprisonment in the state prison for a term of 3, 6, or 8 years for any person to willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of that child.

This bill would make it a misdemeanor or a felony for any person to engage in the above-described conduct when the victim is a child of 14 or 15 years and the defendant is at least 10 years older than the child, thereby constituting a state-mandated local program by creating a new crime.

Existing law provides that a prosecuting witness, 16 years of age or under, in prosecutions for specified sex offenses is entitled for support to the attendance of up to 2 family members of his or her own choosing at the preliminary hearing and at the trial.

This bill would delete reference to the 16 year or under age limitation on the above-described right, and would authorize any prosecuting witness in prosecutions for specified sex offenses to be entitled to the support of up to 2 persons, rather than 2 family members, of his or her own choosing at the preliminary hearing and at the trial. The bill would also specify that nothing in this provision shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing a witness.

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 288 of the Penal Code is amended to read:

§ 288. (a) Any person who shall willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of the child, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.

(b) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the



victim or another person, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.

(c) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and the defendant is at least 10 years older than the child, shall be guilty of a public offense and shall be imprisoned in the state prison for one, two, or three years, or by imprisonment in the county jail for not more than one year.

(d) In any arrest or prosecution under this section the peace officer, the district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary and constitutionally permissible to prevent psychological harm to the child victim.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed five thousand dollars (\$5,000). In setting the amount of the fine, the court shall consider any relevant factors including, but not limited to, the seriousness and gravity of the offense, and the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine to be imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 2. Section 868.5 of the Penal Code is amended to read:

§ 868.5. (a) Notwithstanding any other provision of law, a prosecuting witness in a case involving a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 289, 647.6, or former Section 647a, or a violation of subdivision (1) of Section 314, shall be entitled for support to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

# **EXHIBIT B**

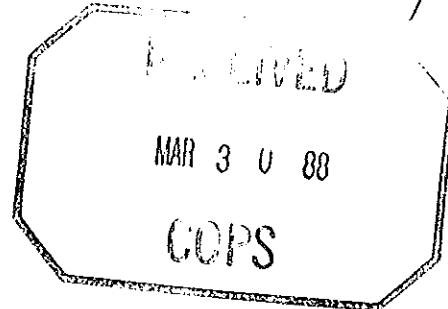
JOHN K. VAN DE KAMP  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511  
P.O. BOX 944255  
SACRAMENTO 94244-2550  
(916) 445-9555

March 28, 1988



Honorable Norman Waters  
Assembly Member, 7th District  
State Capitol, Room 6028  
Sacramento, CA 95814

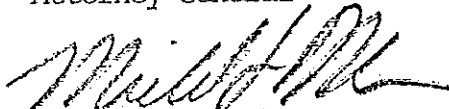
Dear Assembly Member Waters:

Re: AB 3835 - Sex Offenses: Child Victim

The Attorney General's Office has no position on AB 3835 at this time. I am, however, forwarding the enclosed analysis for your information. If we can be of further assistance, please let me know.

Yours very truly,

JOHN K. VAN DE KAMP  
Attorney General

  
Michael L. Pinkerton  
Deputy Attorney General  
(916) 324-5474

nt  
Enclosure

cc: Governor  
Consultant, Assembly Public Safety Committee, w/enclosure

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP-17

DEPARTMENT OF JUSTICE

BILL ANALYSIS

DATE: March 9, 1988

BILL NO.: AB 3835

BILL AUTHOR: Waters

DATE LAST AMENDED: Feb. 18, 1988

ANALYST: Maureen Daly

SECTION/BRANCH: AG/Crim.

TELEPHONE: 324-5165

I. Summary of Bill and Existing Law

This bill would make it a misdemeanor or a felony (16 mo., two or three years) for a person to engage in lewd conduct as defined in Penal Code section 288, subdivision (a) where the victim is a child of 14 or 15 years old.

Under Penal Code section 288 as it now exists, it is a felony punishable by three, six, or eight years in state prison for any person to willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes upon or with the body, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of that child. Penal Code section 288, subdivision (b) specifically provides that it is a felony (three, six, or eight years) to commit a lewd act upon a child under 14 where the act is done by use of force, violence, duress, menace or fear.

II. Background Information

This bill, sponsored by PORAC, is intended to address cases in which a child victim over 14 years old is touched with intent of appealing to the lust or passions of the victim, as where the victim is fondled or masturbated by the offender. Such cases may present prosecution problems under existing law, since they are not covered under Penal Code section 288 (because the victim is over 14), or under sex crime legislation focusing on acts against the victim's will or for the purpose of sexual arousal of the perpetrator. For example, sexual battery must be against the victim's will. (Pen. Code, § 243.4.)

III. Impact of the Bill

This bill would create a new criminal offense, although largely duplicative of existing law. Some degree of attendant financial impact and increased workload could be expected.





#### IV. Recommendation

Watch. For the most part, acts addressed by this bill should be prosecutable under other sections. However, as to sexual acts not necessarily against the will of a victim 14 years or older, there appears to be a need for legislation.

However, this particular bill presents the following problems:

- 1) It includes only 14 and 15-year olds;
- 2) It provides a lesser penalty for committing a lewd act with a 14-year-old (a "wobbler") than with a 13-year-old (felony); and
- 3) It fails to incorporate commission of a lewd act with a child over 14 in Penal Code section 288, subdivision (b), providing for felony treatment where a lewd act is forcefully committed.

#### V. Suggested Amendment

Instead of the language added by this bill, why not merely raise the age limit of those who may be considered victims under Penal Code section 288, subdivision (a)? This would address the problem of sexual touching (not amounting to rape, sodomy, oral copulation, etc.) which is morally reprehensible but as to which the victim does not resist. It would not create the class of wobbler offenses as created in this bill where the victim is 14 years old or older. Also, it would include crimes against such older children in subdivision (b) providing for felony treatment where force is used.



# **EXHIBIT C**

Honorable Norman Waters  
Member of the Assembly  
State Capitol, Room 6028  
Sacramento, CA 95814

DEPARTMENT  
Finance

AUTHOR  
Waters

BILL NUMBER  
AB 3835

SPONSORED BY

RELATED BILLS  
AB 3423

AMENDMENT DATE  
August 10, 1988

#### BILL SUMMARY

This bill expands current law to make lewd and lascivious acts on a child of 14 or 15 years, by a person 10 years older than the child, subject to the same misdemeanor/felony terms now provided for other sex crimes by adults and minors under 18.

#### SUMMARY OF CHANGES

This version of the bill makes the following minor/technical changes from the previous analysis of May 17, 1988.

The August 10 amendment reduces the base term from 16 months to one year for committing lewd and lascivious acts on a child of 14 or 15 years, by a person 10 years older than the child and deletes the requirement that these acts must be committed without the consent of the child.

#### SUMMARY OF COMMENTS

This bill could result in persons new to State prison. However, no conviction data is available to predict the number of persons who would commit this new crime.

#### FISCAL SUMMARY--STATE LEVEL

| Code/Department<br>Agency or Revenue | SO<br>LA<br>CO | (Fiscal Impact by Fiscal Year)<br>(Dollars in Thousands) |              |    |         | Code<br>Fund |         |        |
|--------------------------------------|----------------|--|--------------|----|---------|--------------|---------|--------|
| Type                                 | RV             | FC   | 1988-89      | FC | 1989-90 | FC           | 1990-91 |        |
| 5240/Corrections                     | SO             | -----  | Unknown----- |    |         |              |         | 001/GF |

Impact on State Appropriations Limit--No  
\*Indeterminable

#### ANALYSIS

##### A. Specific Findings

Current law provides that any person who commits a lewd or lascivious act on a child under the age of 14 accomplished by means of fear or force is punishable in the state prison for 3, 6, or 8 years.

(Continued)

POSITION:

Neutral

Department Director Date

Principal Analyst  
(234) M. Ewing

Date

Program Budget Manager  
Wallis L. Clark

Date

Governor's Office

Position noted

Position approved

Position disapproved  
by: date:

BILL ANALYSIS

CJ:BA,AB3835-8/3

Form DF-43 (Rev 03/88 Buff)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

| AUTHOR    | AMENDMENT DATE  | BILL NUMBER |
|-----------|-----------------|-------------|
| N. Waters | August 10, 1988 | AB 3835     |

ANALYSIS

## A. Specific Findings (Continued)

This bill expands current law to make lewd and lascivious acts on a child of 14 or 15 years, by a person 10 years older than the child, subject to the same misdemeanor/felony terms (1, 2, or 3 in State prison or 1 year county jail time) now provided for other sex crimes (sodomy, oral copulation, etc.) by adults with victims under 18 years.

The bill further provides that no reimbursement is required by this act for a specified reason.

## B. Fiscal Analysis

This bill could result in additional felons in the State prison system. However, there is no conviction data to identify persons committing the specified lewd and lascivious act involving a 14 or 15 year old in situations which would not already be subject to existing felony provisions with similar or longer prison sentences.

The Local Mandate Unit indicates that the local cost disclaimer is appropriate.

CJ:2BA,AB3835-8/3