



California Sex Offender Management Board
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Proposed Amendments to Sex Offender Tiered Registration

Sexual abuse is a serious public health problem. Long-term social control strategies such as tiered registration¹ were implemented to address the concern for the safety of those involved in sexual abuse. Starting in 1947, California required “universal lifetime” registration for individuals convicted for most sex crimes, and it was established as a crime-solving tool. Since 1947, research has improved our understanding of individuals who have committed a sexual offense and the impact of registration on community safety. In 2007, California responded to these changes by requiring risk assessment of individuals who have committed a sexual offense. Amendments continued in 2012 with mandated treatment and use of a team approach for the treatment and supervision of these individuals.

On February 15, 2017, Senator Wiener authored a bill for Tiered Registration for individuals required to register pursuant to Penal Code (PC) Section 290. This legislation created three registration tiers, 10-years, 20-years, and lifetime. The law requires the registrant to petition for removal only after review by law enforcement, district attorney and the court. The Governor approved Senate Bill 384 on October 6, 2017. The proposed bill was influenced by research on risk for sexual reoffense, impact of registration on community safety, as well as the fiscal and resource impact on all of those involved. Those placed in a 10-year, or 20-year term must complete their time with no new sexual reoffense.

Years were spent by the California Sex Offender Management Board (a multidisciplinary board that includes victim advocates, law enforcement, district attorney, defense attorney, judge, treatment providers, and other key stakeholders) and district attorneys to create a responsible and evidence informed bill. The bill was co-sponsored by Los Angeles District Attorneys, Equality California, and California Coalition Against Sexual Assault (victim advocates) and received no formal opposition. Through the amendment process, several changes were made to the well thought out and written proposal that affected tier placement for certain types of offense behavior. In its original version, it passed through the assembly public safety and senate public safety. It was modified as a condition of being released from the assembly appropriations

¹ Hanson et al (2019) Reductions in Risk Based on Time Offense-Free in the Community: Once a sexual offender not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1) p. 48-63.

committee. In this gut and amend process, many offense behaviors were moved from Tiers 1 and 2 and placed into Tier 3.

In examining Tier 3, the CASOMB recognizes that it requires amending as some of the offenses that were placed in Tier 3 were not research informed decisions. Tier 3 was intended for individuals with lifetime prison sentences, individuals found to meet the criteria under the Sexually Violent Predator Act, Mentally Disordered Offenders with increased risk of reoffense, and individuals with more than one separately tried sexual offense conviction against a minor. The CASOMB recommends restoring the original language and intent of the bill.

Risk for recidivism for general criminal offending, as well as sexual offense reoffending, decreases over time for those who are in the community and remain offense free. In the literature, this is referred to as “time offense-free.” Desistance is an important concept to consider and is marked by the absence of offending. In research on general offenders, this is usually defined as the absence of self-reported or officially recorded criminal behavior for a specific amount of time, such as 10 years. “For sexual offenders, a plausible threshold for desistance is when their risk for a new sexual offense is not different than the risk of a spontaneous sexual offense among individuals who have no prior sexual offense history but who have a history of nonsexual crime. . . . A recent review of 11 studies from diverse jurisdictions (n = 543,024) found a rate of spontaneous sexual offenses among nonsexual offenders to be in the 1% to 2% range after 5 years.”² Hanson, et al (2019) found that even the highest risk sexual offenders, who have not committed any new offenses (criminal or sexual) for 20 years while in the community, are no more likely to commit a new offense than the general criminal offender.

Individuals placed on Tier 3 are required to register for their lifetime with one exception. If the only reason an individual is placed on Tier 3 is due to a well above average Static-99R score (6+), then that individual may petition to no longer register after 20 years.

Research has also been conducted on the impact of registration on community safety and recidivism. Research does not support a link between registration and preventing recidivism or improving community safety. The cost of implementing registration for jurisdictions like Los Angeles County, is staggering. The CASOMB’s *Tiering Background Paper* released in 2014 highlighted many of these problems.

When considering the desistance of sexual offending after 20 years for individuals who remain offense free and the lack of research supporting the effectiveness of registration, an exit from

² Hanson et al (2019) Reductions in Risk Based on Time Offense-Free in the Community: Once a sexual offender not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1) p. 48-63.

lifetime registration is recommended. The CASOMB reviews three specific areas in this paper and will continue to examine Tier 3 for additional recommendations in relation to restoring the research informed recommendations put forth in the originally proposed bill.

The CASOMB currently highlights and proposes further action in three areas:

1. PC 311.11 – felony possession of child pornography;
2. PC 288(c)(1) – Lewd and Lascivious acts with a minor age 14/15;
3. PC 288.2 – 288.4

1. PC 311.11 felony possession of child pornography

There are an increasing number of individuals convicted for online sexual offenses, including the possession of Child Sexual Abuse Materials (CSAM). These types of offenses will continue to rise. In California, possession offenses are separate from production and distribution convictions, which are placed under PC 311.3. No changes are proposed for individuals convicted for the production or creation of CSAM. Individuals with felony possessions of CSAM (PC 311.11) are placed on Tier 3 lifetime registration alongside those convicted of production and distribution.

Helmus (2023)³ published a meta-analysis looking at the recidivism rates of individuals who have viewed CSAM. The research looked at the recidivism rates for individuals with CSAM only offenses, this does not include individuals that participate in the production or creation of CSAM, and those with both CSAM and contact sexual offenses. The recidivism rates for individuals with CSAM only offenses were lower than those with both CSAM and contact offenses. The estimated 5-year recidivism rates for CSAM only offenders for any new sexual offense are 3.9 percent, for any contact sexual offense is 1.4 percent, and for any CSAM only offense is 4.8 percent. This means that out of 100 individuals with a CSAM only offense, approximately 5 of them would commit a new sexual offense and 95 would not. The majority of the reoffending was for non-contact reoffense. This is considered a low risk of recidivism. As previously explained, Hanson's research supports a desistance rate of 2 percent.

Prior to the implementation of Tiered Registration in California, individuals convicted for CSAM only offenses could pursue a certificate of rehabilitation after 10 years. The certificate of rehabilitation is a court order that states that someone who was convicted of a felony, has served time in state or local prison and has been rehabilitated. Under the new tiered registration act, individuals convicted of a sexual offense are no longer able to apply for a certificate of rehabilitation.

³ Helmus, L. M. (2023). Recidivism Rates of Men Charged/Convicted for Child Pornography Offences. The Forum Newsletter: ATSA, Vol. 35(2).

Based on the low risk for recidivism and historical legal options open to this subset of individuals the following tier designation is recommended for individuals who have a CSAM only conviction.

- **The CASOMB recommends that individuals with a felony conviction for PC 311.11 possession of child pornography shall be placed in tier 1.**

2. PC 288(c)(1) – Lewd and Lascivious acts with a minor age 14/15

Individuals with a conviction of PC 288(c) Lewd and Lascivious acts with a minor age 14/15 are placed in Tier 3 – lifetime registration. Individuals with a PC 288(a) – Lewd and Lascivious acts with a minor age 13 or younger are currently placed on tier 2 – 20 years registration. While a distinction can be made in the professional literature for pedophilic interest based on preferred age or physical development of the victim, risk for recidivism is not impacted by the age of the victim. Other factors such as relationship to the victim, prior criminal history, prior sexual offense history, or age of the offender are relevant.

Placing individuals with a conviction of PC 288(c)(1) on Tier 3 is not consistent with the current legal continuum for sentencing. Individuals convicted under PC 261.5(d) unlawful sexual intercourse, sentencing includes a range of 1 year for misdemeanors, and 2, 3, or 4 years for felonies and does not require registration. Individuals convicted for PC 288(a) – Lewd and Lascivious acts with a minor under the age of 14 are placed in tier 2. Individuals convicted for PC 288(a) have more severe sentences. The statute states, “they shall be punished by imprisonment in the state prison, by three, six, or eight years.” While those convicted for PC 288(c)(1) “shall be punished by one, two, or three years, or by imprisonment in a county jail for not more than one year.” PC 667.5 defines Section (a) as a serious offense, which allows for them to stay on probation for 5 years.

The discrepancy can be seen in the table below.

	261.5 (d) Unlawful sexual intercourse def. over 21/vic. Under 16	288(a) - Lewd and Lascivious with a minor under 14	288(c)(1) - Lewd and Lascivious with a minor 14/15
Sentencing Guidelines	1 year (misdemeanor) 2, 3, or 4 years (felony)	3, 6, or 8 years state prison	1, 2, or 3 years state prison, or no more than 1 year county jail
Serious felony per PC 667.5	No	Yes	No
Probation Term	1 year for Misdemeanor 2 years for felony	Up to 5 years	1 year for Misdemeanor 2 years for Felony
Tier Level	No registration	2 (20 years)	3 (Lifetime)

- **The CASOMB recommends that individuals convicted for PC 288(c) be placed in tier 2.**

3. PC 288.2 – 288.4

Individuals who have been convicted for PC 288.2 – sending harmful matter to a minor; PC 288.3 – contacting a minor with the intent to commit a sexual offense, these individuals are often captured through sting operations; and PC 288.4 – contacting a minor with the intent to expose oneself, are currently placed in Tier 3 - lifetime registration. Many individuals who are convicted for PC 288.3 are captured through sting operations in which they do not have contact with a minor but have contact with an undercover officer posing to be a minor. It is very clear that PC 288.2 – 288.4 which involve no actual contact with a minor or no sexual activity, do not belong in Tier 3 when many of the offenses which involve actual contact are in tier 1 and 2.

- **The CASOMB recommends convicted for PC 288.2, 288.3, and 288.4 be moved to tier 1. This is contrasted with individual who had sexual contact with a minor who are placed in tier 2.**