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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 1128                      **Hearing Date:** April 9, 2024  
**Author:** Portantino  
**Version:** April 2, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Sex offender registration: unlawful sexual intercourse with a minor*

## HISTORY

**Source:** Los Angeles City Attorney

**Prior Legislation:** SB 615 (Melendez) failed Senate Public Safety 2021  
SB 145 (Wiener), Ch, 79, Stats. of 2020  
AB 1640 (Jones-Sawyer), 2014, failed passage on the Assembly Floor

**Support:** California District Attorneys Association; Los Angeles City Attorney's Office  
Los Angeles County Prosecutors Association; Peace Officers Research;  
Association of California (PORAC); Sistahfriends; The Teen Project

**Opposition:** California Attorneys for Criminal Justice; California Public Defenders  
Association; Pacific Juvenile Defender Center; Root & Rebound

## PURPOSE

***This bill would require a person to register as a sex offender who is convicted of statutory rape when the age difference is more than 10 years between the victim and perpetrator.***

*Existing law* requires persons convicted of specified sex offenses to register a sex offender, or reregister if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following:

- a) A statement signed in writing by the person, giving information as shall be required by DOJ and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;
- b) Fingerprints and a current photograph taken by the registering official;
- c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;
- d) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,

- e) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable. (Pen. Code, § 290.015(a).)

*Existing law* 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(a)(b).)

*Existing law* provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ. (Pen. Code, § 290.015(b).)

*Existing law* states that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register shall be punishable in the state prison for 16 months, 2 or 3 years. (Pen. Code, § 290.018(a)(b).)

Existing law provides that provides that a court can require a person not otherwise required to register if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for the purpose of sexual gratification. (Pen. Code, § 290.006)

*Under existing law*, the Department of Justice ("DOJ") is required to make information about registered sex offenders available to the public via an Internet Web site, as specified. (Pen. Code, § 290.46.) DOJ is required to include on this Web site a registrant's name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, any other information that the Department of Justice deems relevant unless expressly excluded under the statute. (*Id.*) Existing law additionally requires DOJ to include on its Internet Web site either the home address or zip code of residence of persons who are required to register as sex offenders based upon their registration offense (Pen. Code, §§ 290.46(b)(2); 290.46(d)(2).)

*Existing law* requires people who are sex offender registrants to disclose this status to the licensee of a community care facility before becoming a client of that facility. (Health and Safety Code § 1522.01.)

*Existing law* imposes specified restrictions on persons registered as sex offenders with respect to employment in certain areas, such as in education (Education Code §§ 35021, 44345), community care facilities (Health and Safety Code § 1522), residential care facilities (Health and Safety Code § 1568.09), residential care facilities for the elderly (Health and Safety Code § 1569.17), day care facilities (Health and Safety Code § 1596.871), engaging in the business of massage (Government Code § 51032), physicians and surgeons (Business and Professions Code § 2221 ), registered nurses (Business and Professions Code § 2760.1), and others.

*Existing law* provides that "(n)otwithstanding any other law, an inmate who is released on parole for any violation of Section 288<sup>1</sup> or 288.5<sup>2</sup> shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any school including any public or

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<sup>1</sup> Penal Code § 288 pertains to lewd or lascivious acts on a child under the age of 14, as specified.

<sup>2</sup> Penal Code § 288.5 pertains to continuous sexual abuse of a child under the age of 14, as specified.

private school including any or all of kindergarten and grades 1 to 8, inclusive." (Pen. Code, § 3003(g) (emphasis added).)

*Existing law* creates the Sex Offender Management board to address any issue, concerns and problem related to the community management of adult sex offenders. (Pen. Code, § 9000 et seq)

*Existing law* provides that unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator if the person is a minor under 18 years of age. (Pen. Code, § 261.5 (a))

*Existing law* provides that a person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator is guilty of a misdemeanor. (Pen. Code, § 261.5 (b))

*Existing law* provides that a person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of a wobbler. (Pen. Code, § 261.5 (c))

*Existing law* provides that a person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who under 16 years of age is guilty of a wobbler. (Pen. Code, § 261.5 (d))

*This bill* requires a person convicted of Penal Code Section 261.5 (c) or (d) to register as a sex offender, however, registration is not required if the person is not more than 10 years older than the victim.

## COMMENTS

### 1. Need for This Bill

According to the author:

It is imperative that we do everything we can to protect vulnerable youth and reduce the demand for sex and the human trafficking of minors. It is inexplicable that some "consensual" sex acts with a minor require sex offender registration but the unlawful sexual intercourse with a minor, irrespective of the age difference, does not. This is particularly troubling considering the increased risk for unintended pregnancies and sexually transmitted infections that may result from sexual intercourse. Unintended adolescent pregnancies often lead to poor outcomes and frequently results in socioeconomic and health related challenges for the adolescent and their children. SB 1128 fixes this discrepancy. This bill will ensure those who engage in the unlawful sexual intercourse with a minor who is more than three (3) younger than the offender, or if the offender is over 21 years of age and minor is under 16 years of age, are required to register as a sex offender. This bill seeks to eliminate the current omission in the law that prevents offenders that engage in the unlawful sexual intercourse with a minor from mandated sex registration. In doing so, offenders will be held accountable and the demand for sex and human trafficking of minors will be reduced.

## 2. History of Sex Registration

California was the first state to require sex offender registration in 1947. The stated 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.4<sup>th</sup> 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, 277; *Hatton vs. Bonner* (2004) 365 F. 3<sup>rd</sup> 955, 961.] Pen. Code, § 290 historically required lifetime registration by persons convicted of specified sex crimes that reside in, attend school or work in California. (Pen. Code, § 290 subd. (a).) In 2017 SB 384 (Wiener), Ch. 541 modified California's sex registration to a three-tiered registration system.

Sex offenders are required to register annually within five working days of their birthday. (Pen. Code, § 290 subd. (b).) If the offender has no fixed address, he or she is required to register every 30 days. (Pen. Code, § 290.011 subd. (a).) A person is also required to notify law enforcement of any change of address within five days of moving. (Pen. Code, § 290.014.) A person who fails to register as a sex offender within the period required by law is guilty of a felony punishable by 16 months, 2 or 3 years. (Pen. Code, § 290.018 subd. (b).)

In 1996, California enacted "Megan's Law" allowing the public to access an address list of registered sex offenders. Before 2003, members of the public could only obtain the information on the Megan's Law list by calling a "900" or visiting certain designated law enforcement agencies and reviewing a CD-ROM. However, in 2003, California required the DOJ to put the Megan's Law list of offenders on a public access Web site with the offender's address, photo and list of offenses. [See Pen. Code, § 290.46(a).] For some offenders with less serious offenses, only his or her ZIP code is listed. Now, a citizen can enter his or her address and see if there are registered sex offenders living in his or her community or even next door.

The registration statute does not distinguish crimes based on severity and instead requires all persons convicted of a listed crime must register annually within five days of his or her birthday and for the rest of his or her life. (Pen. Code, § 290.012 subd. (a).) Although most registerable offenses are felonies, there some alternate felony/misdemeanor penalties and a few straight misdemeanors. [See (Pen. Code, § 243.4 (sexual battery); (Pen. Code, § 266c (obtaining sexual consent by fraud); (Pen. Code, §§ 311.1, 311.2(c), 311.4, 311.11 (child pornography); (Pen. Code § 647.6 (annoying or molesting a child); and, (Pen. Code, § 314(1)(2) (indecent exposure).) A court may also order a person not otherwise required to register if they find that the person committed the offense as a result of sexual compulsion or for the purposes of sexual gratification. (Pen. Code, § 290.006.)

## 3. Registration as Applied to Offenses Involving Minors Aged 14-17

Until passage of SB 145 (Wiener), Ch. 145, Stats. of 2020, California mandated sex offender registration for the following offenses involving voluntary sexual acts minors with someone who was aged within 10 years of the minor:

- Sodomy
- Sexual penetration
- Oral copulation

At the time that California created the sex offender registry in 1947, the acts of sodomy, oral copulation, and sexual penetration were illegal amongst consenting adults. At the time, that was likely the reason these offenses were included in the registry. The articulated conduct was legalized between consenting adults in 1975 by AB 489.

The California Supreme Court has twice spoken on the issue of unequal registration requirements for similarly situated offenders. The first case on this issue was *People v. Hofsheier* (2004), 37 Cal. 4th 1185. The second case was *Johnson v. Department of Justice* (2015), 60 Cal. 4th 871. The two decisions reached very different results with very similar fact patterns. The Legislature speaking on this issue in SB 145 provided necessary guidance to resolve the issue going forward.

Existing law does not require registration for a person convicted of statutory rape, although in appropriate cases a court can order registration under Penal Code Section 290.006.

This bill provides that a person convicted of statutory rape when there is a three year age difference or when the person is older than 21 and has sexual intercourse with a person is under 16 if the age difference is more than 10 years.

#### **4. Argument in Support**

The California District Attorneys Association supports this bill stating:

As a society, we must protect vulnerable youth and hold those who harm them accountable. Unfortunately, sex trafficking of minors is on the rise. According to the Public Policy Institute of California, between 2015 and 2021, the share of human trafficking cases that involved sex trafficking grew from 87% to 89% in California and from 85% to 88% nationally. And according to the California Department of Justice, the victims of human trafficking are often young girls and women. Young girls and women are 57.6% of forced labor victims and 99.4% of sex trafficking victims.

California has standards requiring sex offender registration for all those convicted of a wide variety of sexual offenses. However, current law does not require adults convicted of unlawful sexual activity with a minor in violation of Penal Code section 261.5(c) or (d) to be listed on the sex offender registry. SB 1128 would close this gap, strengthen our laws, and hold accountable sex offenders who target minors.

#### **5. Argument in Opposition**

The California Attorneys for Criminal Justice oppose this bill stating:

While current law recognizes that cases of unlawful sex with a minor vary widely in their circumstances and potential harm, and thus provides flexibility in charging, SB 1128 ignores those varying circumstances and applies the measure of sex offender registration to anyone convicted of this crime, regardless of circumstance, and regardless of whether the individual is convicted of a felony or a misdemeanor. The California Sex Offender Management Board reviews registration laws, has suggested revisions to ensure proper focus and investment of law enforcement

resources and the Board has not recommended expansion of registration as outlined in this legislation.

The majority of people affected by SB 1128 would be youth, as they are the people most likely to enter into sexual relationships with minors. According to the Sex Offender Management Board, “[y]outh, ages 13-17, are significantly different from adults in virtually all aspects of life. Youth are in a developmental stage of life in which rapid changes and maturation processes are affected by many forces, including biological, familial, educational and social. Youth who have offended sexually have a low likelihood of committing a new sexual offense, with estimates as low as 2.75%. Common methods of supervision and treatment used with adult sexual offenders are, for the most part, inappropriate and potentially harmful with youth. The Board strongly recommends that youth who have offended sexually should have services specialized for their needs.”

(<https://casomb.org/index.cfm?pid=1211>) Accordingly, the experts at the CASOMB do not recommend sex offender registration for minors, even for serious sex offenses. Those most likely to be prosecuted under Penal Code section 261.5 are young adults, under twenty-six, who are youthful offenders, which California law recognizes are subject to many of the same developmental issues as those under 18.

Sex offender registration, even for serious sexual offenders, has a problematic history and has not been shown to benefit either the offender or the community. More often, sex offender registration programs have been counterproductive, marginalizing and isolating offenders, depriving them of homes and jobs, and hindering rehabilitation. According to CASOMB, California already supervises 88,000 registered sex offenders. SB 1128 would drastically increase that number and include within it young people who have engaged in conduct that is commonplace and not indicative of a potential for societal harm. Although SB 1128 has been described as aimed at “human trafficking,” it is not so limited and would sweep within its ambit ordinary young people with poor judgement. Penal Code section 261.5 is more than adequate to address the problem of age-inappropriate sexual relationships. Adding sex offender registration would add no benefit, cause great harm to youth, and be enormously expensive.

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