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September 1, 2020

The Honorable Gavin Newsom

Governor, State of California

State Capitol

Sacramento, CA 95814

**SENATE BILL 145 (WIENER)**

**CO-SPONSOR**

**Request for Signature**

Dear Governor Newsom:

The Los Angeles County District Attorney’s respectfully requests that you sign Senate Bill 145 (Wiener) which we are pleased to co-sponsor with Equality California.

Under current law, there are several non-forcible, “consensual” sexual offenses involving minors that require mandatory sex offender registration. These cases involve minors who are having a sexual relationship with someone over age 18. Although minors cannot legally consent to sexual activity, the cases are viewed as “consensual” or “voluntary” because the sexual activity is not forced, and the minor is a willing participant.

However current law does not treat all voluntary sex acts between a minor and a person over the age of 18 the same. There are separate sex offender registration rules for consensual intercourse and consensual acts of oral copulation, sodomy, sexual penetration. A consensual act of intercourse does not, nor had it ever, required mandatory sex offender registration. In cases of sexual intercourse sex offender registration has always been discretionary. This differential treatment has a direct discriminatory effect for people in same sex relationships. For example, if a 19-year-old male in a romantic relationship with a 17-year-old male were to be prosecuted for sodomy or oral copulation with a person under 18, he would be required to register as a sex offender. However, a 24-year-old male who had vaginal intercourse with a 15-year-old girl and impregnated her is not required to register.

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The California Supreme Court and Appellate Courts had previously found that mandatory registration violated equal protection laws under these circumstances. In *People v. Hofsheier ((2006) 37 Cal.4th 1185.),* the California Supreme Court ruled that mandatory sex offender registration pursuant to Penal Code 290 for a violation of 288a(b)(1) was unconstitutional. In *Hofsheier*, the defendant at the time was 22 years old when he committed a violation of Penal Code Section 288a(b)(1), oral copulation with a minor, who was 16 years old. The *Hofsheier* court noted that if the Defendant had been convicted of Penal Code Section 261.5, unlawful sexual intercourse with a minor, he would not have been subjected to mandatory lifetime sex offender registration. Using the rational basis test, the California Supreme Court determined that there was no rational basis for treating convicted offenders of 288a(b)(1) differently that those convicted of 261.5. Following the *Hofsheier* ruling, courts did not impose sex offender registration for certain offenses. Although the California Penal Code still listed these offenses, by case law the courts could not impose it.

However, because of the California Supreme Court’s decision in *People v. Johnson* (2015) 60 Cal.4th 871, the law regarding sex offender registration for numerous consensual offenses has changed. The *Johnson* ruling reversed the previous decision in *People v. Hofsheier*, as well as those in several other cases in which the Court held that it was unconstitutional to require mandatory sex offender registration for persons convicted of certain consensual sex offenses on equal protection grounds. The *Johnson* ruling is irrational and in no way addressed the intrinsic unfairness of the disparate registration requirements for these consensual offenses. In fact, it narrowly ruled that because there was an identifiable difference between unlawful sex with a minor and oral copulation – that pregnancy can occur, there was no violation of equal protection. The decision ignored the fact that pregnancy committed during the commission of a crime is considered a serious bodily injury under California law.

Additionally, it is important to consider the purpose of sex offender registration. Under California law the primary legal purpose of our sex offender registry is to be used as an investigative tool to locate suspects when a new sexual assault occurs. It is also a means of tracking sexual predators through annual and transient registration. Because these offenses do not represent predatory or violent behavior, the registration requirement does not serve its intended purpose. Furthermore, being a sex offender registrant can have catastrophic consequences, particularly for someone of college age or just beginning their career. It is a hindrance to housing as well as employment. Additionally, if any fact pattern or offense does warrant registration, it can be ordered under Penal Code Section 290.006 (discretionary registration).

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SB 145 authorizes a person convicted of Penal Code Sections 288a(b)(1) and (2); 286(b)(1) & (2); and 289(h) & (i) to seek discretionary relief from the duty to register if the person is not more than 10 years older than the minor. Courts would still retain their discretionary power under Penal Code Section 290.006 to impose sex offender registration in any case in which the judge deems it appropriate.

SB 145 does NOT decriminalize anything or reduce the penalty for any crime under California law. Defendants who fall under the provisions of SB 145 will still be convicted of an underlying crime. Prosecutors have, and will retain, tools that allow us to seek registration *and* long state prison sentences against anyone who preys on a child. SB 145 simply replaces automatic sex offender registration with discretionary registration, meaning that, under specified circumstances, prosecutors have discretion to use the facts of the case to decide when registration is necessary and appropriate, a framework that matches the *existing* treatment of penile-vaginal sex, which has never carried automatic registration.

We are pleased to be joined by Equality California in sponsoring SB 145. SB 145 is supported by the California Police Chiefs Association, California District Attorney’s Association, Alameda County District Attorney’s Office, California Coalition Against Sexual Assault, Children Now, Crime Victims Action Alliance, San Francisco Mayor London Breed, California Public Defenders Association, ACLU of California, Anti-Defamation League, California LGBTQ+ Health and Human Services Network, El/La Para TransLatinas, Family Equality, Lambda Legal, Latino Equality Alliance, National Center for Lesbian Rights, O.L.A. Raza, Inc., San Gabriel Valley LGBTQ Center, and Smart Justice California. These organizations wholeheartedly understand that SB 145 supports justice and equity by simply providing courts and prosecutors with discretion in cases involving voluntary, non-forcible offenses and does not put anyone at risk or jeopardize public safety.

SB 145 brings much-needed parity to California’s sexual offender registration law. We drafted this bill because we believe the law must be applied equally to ensure justice for all Californians.

**We respectfully request you sign Senate Bill 145.**

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If you have any questions or need additional information, please feel free to contact our office at (916) 442-0668.

Very truly yours,

JACKIE LACEY

District Attorney

By

DANIEL FELIZZATTO
Special Assistant Deputy District Attorney

cc: Senator Wiener

 Jessica Devencenzi, Governor’s Office