

1 **II. ARGUMENT**

2 Mr. X’s registration requirement arises from a single case involving convictions under Penal  
3 Code section 288(a). Mr. X has no other criminal history. The Tiered Registry Law assigned Mr. X  
4 to Tier 2, and imposed a 20-year mandatory minimum registration period. (Penal Code §  
5 290(d)(2).)

6 **A. The Tiered Registry Law Confirms the Legislature’s Desire that “Low Risk**  
7 **Offenders” Be Removed from the Registry**

8 The purpose of the Tiered Registry Law to remove “offenders [] considered low risk and  
9 [focus attention on] offenders [] considered high risk and therefore truly dangerous.” (*People v.*  
10 *Smyth* (2024) 99 Cal. App. 5th 22, 28.) The primary sponsor of the Tiered Registry Law, the  
11 California Sex Offender Management Board (CASOMB), is a multi-disciplinary state board created  
12 in 2006 to assess the state’s sex offender management practices and to make “evidence-based and  
13 data driven” recommendations for reform with the purpose of increasing community safety. (See  
14 Cal Penal Code §§ 9000–03.) CASOMB has long advocated for a tiered registry based upon  
15 empirical research demonstrating that “Sex offenders differ in many important ways, including their  
16 risk to reoffend.” (CASOMB, *A Better Path to Community Safety: Sex Offender Registration in*  
17 *Cal. – Tiering Background Paper* (2014), at p. 2 [“CASOMB”].)<sup>1</sup> Specifically “[i]t is possible to  
18 use well-researched actuarial risk assessment instruments to assign offenders to groups according to  
19 risk level. (i.e., Low, Medium, High.)” (*Id.* at p. 4.) These empirical tools reveal that:

20 **[r]isk of a new sex offense drops each year the offender remains offense-free in**  
21 **the community. Eventually, for many offenders, the risk becomes so low as to**  
22 **be meaningless and the identification of these individuals through a registry**  
23 **becomes unhelpful due to the sheer numbers on the registry.**

(CASOMB, *supra*, at pp. 2, 4, emphasis added.)

24 In light of this data, and upon CASOMB’s recommendation, the Legislature determined that  
25 registrants with Mr. X’s record may petition for removal after 20 years of registration, if they have  
26 not reoffended or violated any registration law. The Legislature’s intent in removing from the  
27 registry persons such as Mr. X who have served the minimum registration period or longer is stated

28 <sup>1</sup> <https://casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf>

1 as follows:

2 [L]ocal law enforcement agencies spend between 60–66% of their resources  
3 dedicated for sex offender supervision on monthly or annual registration paperwork  
4 because of the large numbers of registered sex offenders on our registry. **If we can**  
5 **remove low risk offenders from the registry it will free up law enforcement**  
6 **officers to monitor the high risk offenders living in our communities.** Law  
7 enforcement cannot protect the community effectively when they are in the office  
8 doing monthly or annual paperwork for **low risk offenders**, when they could be out  
9 in the community monitoring high risk offenders. Furthermore, the public is  
10 overwhelmed by the number of offenders displayed online in each neighborhood and  
11 do not know which offenders are considered low risk and **which offenders are**  
12 **considered high risk and therefore truly dangerous.**

13 (Sen. Rules. Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 384 (2017–2018 Reg.  
14 Sess.) Sept. 15, 2017, pp. 7–8, emphasis added, cited in *Smyth, supra*, 99 Cal. App. 5th at p. 28.) In  
15 other words, requiring low risk offenders to register for life does not increase public safety. Instead,  
16 it has the opposite effect of draining limited government resources needed to monitor high risk  
17 offenders. Draining limited government resources in fact decreases public safety.

18 **B. A Petition to Terminate the Registration Requirement Cannot be Denied**  
19 **Without a Significant Evidentiary Showing of Re-offense Risk**

20 The purposes and language of the Tiered Registry Law indicate a Legislative determination  
21 that a person who has served his or her minimum registration period or longer should be relieved of  
22 the duty to register unless evidence demonstrates that the individual possesses a “significant” risk of  
23 re-offense. Specifically, Penal Code section 290.5(a)(3) provides that:

24 If the district attorney [objects to a petition for termination from the sex offender  
25 registry and] requests a hearing, the district attorney shall be entitled to **present**  
26 **evidence** regarding whether **community safety** would be **significantly enhanced** by  
27 requiring continued registration. . . . Any judicial determination made pursuant to  
28 this section may be heard and determined upon declarations, affidavits, police  
reports, or any other evidence submitted by the parties which is reliable, material,  
and relevant.

(Cal. Penal Code § 290.5(a)(3), emphasis added.)

The Court of Appeal in *People v. Thai* interpreted this standard to mean that the  
“prosecution . . . [has the] burden to produce evidence” that the petitioner is “**currently** likely to  
reoffend.” (*Thai, supra*, 90 Cal. App. 5th at p. 432.) If courts routinely extend the minimum  
registration period without a significant evidentiary showing of re-offense risk, the Legislature’s

1 judgment that public safety is best served by a tiered registry will be undermined, as would the  
2 Legislature’s intent to remove from the registry “offenders [] considered low risk and [focusing  
3 attention on] offenders [] considered high risk and therefore truly dangerous.” (*Smyth, supra*, 99  
4 Cal. App. 5th at p. 28.)

5 **III. THERE IS NO EVIDENCE THAT COMMUNITY SAFETY WILL BE**  
6 **“SIGNIFICANTLY ENHANCED” BY MR. X’S CONTINUED REGISTRATION**

7 The high bar for continued registration includes seven mandatory considerations to guide  
8 the court’s evidentiary determination whether “community safety would be significantly enhanced  
9 by continued registration.” These considerations, addressed in turn below, are:

10 [1] the nature and facts of the registerable offense; [2] the age and number of  
11 victims; [3] whether any victim was a stranger at the time of the offense (known to  
12 the offender for less than 24 hours); [4] criminal and relevant noncriminal behavior  
13 before and after conviction for the registerable offense; [5] the time period during  
14 which the person has not reoffended; [6] successful completion, if any, of a Sex  
Offender Management Board-certified sex offender treatment program; and [7] the  
person’s current risk of sexual or violent re-offense, including the person’s risk  
levels on SARATSO static, dynamic, and violence risk assessment instruments[.]

15 (Cal. Penal Code § 290.5(a)(3).)