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Submitted Electronically

Senator Scott Wiener
State Capitol
Room 5100
Sacramento, CA 95814

RE: **Support for Senate Bill 145 (Wiener)**

Dear Senator Wiener,

The California Civil Liberties Advocacy (CCLA) is writing to express its **SUPPORT** for Senate Bill 145 (SB 145). SB 145 will exempt persons convicted of non-forcible sex offenses from automatic lifetime registration, where the offender was not more than 10 years older than the minor at the time of the offense (often referred to as "Romeo and Juliet" cases), and that same offense is the only one giving rise to the registration requirement. SB 145 shifts discretion back to the court, who may impose the registration requirement upon a finding that the offense was committed as a result of sexual compulsion or for the purpose of sexual gratification.

Thus, the CCLA strongly supports SB 145 for the following reasons:

I. Research tends to support the proposition that California's criminal justice system overly criminalizes voluntary sexual conduct between juveniles, and that minors account for about one-third of reported sex offenses in the United States.

In a report from the US Department of Justice, it was found that juveniles account for about one-third of reported sex offenses, and that most sex offenses committed by minors occur at home or school, during the daylight hours between 6:00 AM and 6:00 PM. (Finkelhor, D., Ormrod, R., Chaffin, M., *Juveniles Who Commit Sex Offenses Against Minors*, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice (Dec. 2009) (hereinafter Finkelhor).) The report states that "[a]lthough those who commit sex offenses against minors are often described as 'pedophiles' or 'predators' and thought of as adults, it is important to

understand that a substantial portion of these offenses are committed by other minors who do not fit the image of such terms." (Finkelhor.) It is common knowledge that teens under the age of 18 engage in sexual conduct, while younger children tend to be curious about "experimenting." Anyone who doesn't understand this simple fact of life is suffering from cognitive dissonance. This is not to argue against state intervention when juvenile offenders commit a wrong, but to argue that young people should not be criminalized for experimenting or exploring sexuality. Despite the personal morals of the parties involved or their respective households, children do not have the ability to make informed decisions. That is the very rationale used to protect minors from entering into contracts, from obtaining a driver's license, from voting in elections, and from engaging a sexual conduct. But what if both parties are minors and the conduct is voluntary? In that case, unless there are certain facts to warrant criminal punishment, minors would be better suited to guidance and counseling than being treated like ordinary criminal defendants. And there is a rational basis for arguing that even young adults should be afforded similar protections. According to NPR, "[u]nder most laws, young people are recognized as adults at age 18. But emerging science about brain development suggests that most people don't reach full maturity until the age 25." (Science, *Brain Maturity Extends Well Beyond Teen Years*, NPR (Oct. 10, 2011).)

II. California's lifetime sex offender registry has become bloated with low-risk and first-time offenders, many for whose offenses were never committed against strangers, thus making California's archaic registry nothing more than a public wall of shame for a majority of registrants, and a misdirection of law enforcement resources.

In their 2014 report, the California Sex Offender Management Board stated that "[e]ffective policy must be based on . . . scientific evidence. Research on sex offender risk and recidivism now has created a body of evidence which offers little justification for continuing the current registration system since it does not effectively serve public safety interests." (Cal. Sex Offender Management Board (CASOMB*), A Better Path to Community Safety – Sex Offender Registration in California, "Tiering Background Paper,"* (2014), p. 4. (hereinafter, "Tiering Paper".) That same report also stated that "[a]bout 95% of solved sex crimes are committed by individuals never previously identified as sex offenders and so not registered." (Tiering Paper, supra, p. 2.) Not all persons required to register pursuant to Penal Code section 290 are high-risk. In fact, the overwhelming majority of "crimes against children (about 93%) are committed not by a stranger but by a person known to the child and his or her family, usually an acquaintance or family member." (Tiering Paper, supra, p. 2.) Thus a substantial portion—perhaps even a majority—of California's growing registry (with over 100,000 people registered so far) are people who do not pose an imminent threat to the public at large. As an aside,

registrants who were released from community supervision were concurrently required to successfully complete a sex offender counseling and rehabilitation program prior to release. (Tiering Paper, supra, p. 4.) Those who failed to successfully complete such a program necessarily failed to meet the requirements imposed upon them by their parole or probation terms. But many of those who do successfully complete such programs go on to become productive members of society with families and children of their own, children who are vicariously victimized by the shame and humiliation brought on by association with a parent or sibling who is listed on the public registry.

III. California's lifetime sex offender registry is counterintuitive to public safety because it adversely affects the ability of people who register to maintain gainful employment and find adequate housing, both factors which have been associated with elevated risk.

It has been demonstrated that California's lifetime registry creates unintended, yet very adverse effects on housing and employment, further promoting indigence, homelessness, and a concentration of such registrants in low-income communities. All of these are factors which have been associated with higher levels of risk. CASOMB stated in their 2015 year-end report to the legislature that "[h]aving an alarmingly large number of transient sex offenders in California does not make communities safer," and that "the promulgation of conditions which actually create homelessness and transience among registered sex offenders while producing no discernible benefit to community safety is counterproductive and continues to be the single most problematic aspect of sex offender management policy in California." (Cal. Sex Offender Management Board, *The State of California Sex Offender Management Board Year End Report*, (February 3, 2015), p.11. (hereinafter, "Year End Report".)

IV. California's public registry was ostensibly presumed to protect potential victims, particularly children, from sexual predators. Yet there is little to no evidence that supports maintaining the status quo.

According to a report published by Fox News in 2012, only about 0.19% of cases are " 'stereotypical' kidnappings carried out by strangers . . . [a]nd 16[%] of those were taken from home." (Associated Press, Experts: Child abductions at home relatively rare, (April 23, 2012), Web, FoxNews.com.) In other words, about 1 out of every 1,200 (0.083%) registrants committed the type of offense that the public registry was purported to protect children from. In a 2011 report by the California State Auditor, less than 1% of defendants are deemed sexually violent predators, or "SVP's." (California State Auditor, *Sex Offender Commitment Program – Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work*, (July, 2011), p. 13.) Additionally, a more recent 2014 report by the State Auditor reveals that only 97 sexually violent predators were released from the Department of

State Hospitals between 2009 and 2014, which constitutes only about 0.082% of the state's estimated 100,000-plus registered sex offenders. (California State Auditor, *California Department of State Hospitals – It Could Increase the Consistency of Its Evaluations of Sex Offenders by Improving Its Assessment Protocol and Training*, Report 2014-125, (2014), pp. 13-14.) Horrific and heart-rending as such cases may be, perpetuation of California's lifetime registry ignores the fact that such cases are extremely rare – the severity and sensationalism which often surround such high-profile cases simply do not translate into frequency or prevalence.

V. The latest and most definitive research dictates that public policy must focus on applying resources to the monitoring and counseling of registered persons in the first few years, since the likelihood of re-offending drops significantly after the first 10 years.

Doctors Karl R. Hanson, Andrew J.R. Harris, Leslie Helmus, and David Thornton, considered by many to be North America's foremost experts on sex offender treatment, recidivism, and public policy, published a study in 2014 which found that the longer a registered person stays offense-free, the less likely they are to re-offend with each passing year. Interestingly, this was found to be especially true for individuals deemed high-risk. The researchers concluded that "sexual offenders' risk of serious and persistent sexual crime decreased the longer they had been sex offence-free in the community. This pattern was particularly evident for high risk sexual offenders, whose yearly recidivism rates declined from approximately 7% during the first calendar year, to less than 1% per year when they have been offence-free for 10 years or more. Consequently, intervention and monitoring resources should be concentrated in the first few years after release, with diminishing attention and concern for individuals who remain offence-free for substantial periods of time." (Hanson, R. Karl, et. al., *High Risk Sex Offender May Not Be High Risk Forever,* (Oct. 2014) 29 J. of Interpersonal Violence, no. 15, at 2792-2813.) With such evidence, it is clear that stretching law enforcement to monitor individuals for the rest of their lives is nothing more than a drain on state and local resources — resources that could be diverted to detection of actual sexual predators who have yet to be identified, and for treatment and prevention programs, and victim assistance.

Conclusion

SB 145 does not absolve anyone, not even minors, from criminal prosecution. It does not create a diversion program of any kind and it does not decriminalize sexual deviance. SB 145 merely makes the lifetime registration requirement discretionary, rather than mandatory. All of the scientific data cited above tends to prove that lifetime registration does little, if anything, to enhance public safety and therefore a drain on state and local resources, and by extension, taxpayer dollars. When sex offenses are committed by minors, who are in a better position to respond to guidance and counseling, or when the offenses are committed in the home rather

than as a result of "stranger danger," or when committed voluntarily by young people exploring their sexuality, then requiring such ones to register for life appears to serve little more purpose than a mere shaming tool that harkens back to medieval times.

For all of the abovementioned reasons, the CCLA strongly supports SB 145.

Respectfully,

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Cc: Assembly Appropriations Committee
Los Angeles District Attorney's Office