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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWIN BRUCE KRAMER,

Defendant and Appellant.

E059944

(Super.Ct.No. RIC1309662)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Michele D. Levine,
Judge. Affirmed.

Robert D. Salisbury, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, and Peter Quon, Jr., Susan Miller,
and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant, Edwin Bruce Kramer, appeals from an order denying his petition for a certificate of rehabilitation. (Pen. Code, § 4852.01.)¹ Certain sex offenders who obtain a certificate of rehabilitation are entitled to be relieved of their duty to register as a sex offender under section 290 (§ 290.5), but persons who, like defendant, have been convicted of violating section 288 are ineligible to petition for a certificate of rehabilitation (§ 4852.01, subd. (d)) and may not, therefore, be relieved of their duty to register as sex offenders under section 290 (§ 290.5).

Defendant claims his statutory ineligibility to petition for a certificate of rehabilitation and to be relieved of his duty to register as a sex offender violates his equal protection rights, because persons convicted of the more serious offense of violating section 288.7 (sexual intercourse, sodomy, oral copulation, or sexual penetration with a child 10 years of age or younger) are eligible to apply for a certificate of rehabilitation (§§ 3000.1, 4852.01), and if they obtain one, are entitled to be relieved of their duty to register as sex offenders (§ 290.5, subd. (a)). The trial court rejected this claim, and on independent review of this question of statutory interpretation, so do we.

Section 288.7 offenders are required to be sentenced to indeterminate life terms (§ 288.7, subds. (a) [25 years to life for sexual intercourse or sodomy], (b) [15 years to life for oral copulation or sexual penetration]), and persons who violate “Sections 269 *and* 288.7” are required to be on parole for life, if released on parole (§ 3000.1, subd.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

(a)(2), italics added). Defendant’s equal protection claim turns on whether a person who is convicted of violating section 288.7 *but not section 269* is required to be on parole for life. (§ 3000.1, subd. (a)(2).) We conclude the placement of the word “and” in the phrase “Sections 269 and 288.7,” as it appears in section 3000.1, subdivision (a)(2), is a drafting error. The Legislature intended to place a sequential comma or the word “or” instead of the “and” because it intended that persons who violate *either* section 269 *or* 288.7 are to remain on parole for life, if released. Thus, persons who violate either section 288.7 or section 269 are “serving a mandatory life parole” and are therefore ineligible to petition for a certificate of rehabilitation (§ 4852.01, subd. (d)), and cannot be relieved of their duty to register as sex offenders (§ 290.5, subd. (a)).

Accordingly, there is no disparate treatment between section 288 and section 288.7 offenders, and no equal protection problem. Neither group of offenders is eligible to petition for a certificate of rehabilitation or be relieved of the duty to register as a sex offender. We therefore affirm the order denying the petition.²

² Division Three of this court recently addressed the same equal protection claim defendant raises here in its two-to-one decision in *People v. Tirey* (2014) 225 Cal.App.4th 1150 (review granted Aug. 20, 2014, S219050). The majority concluded that section 288, subdivision (a) offenders, and section 288.7 offenders, are similarly situated for equal protection purposes; the former are ineligible to apply for a certificate of rehabilitation under section 4852.01, subdivision (d), while the latter are eligible; this violates the equal protection rights of section 288, subdivision (a) offenders; and it was premature to address whether section 290.5 also violates the equal protection rights of section 288, subdivision (a) offenders because the defendant in *Tirey*, a section 288, subdivision (a) offender, had not yet petitioned for a certificate of rehabilitation. (*Tirey, supra*, 225 Cal.App.4th at pp. 1154-1161.) In his dissenting opinion, Justice Thompson concluded that persons convicted of violating either section 288, subdivision (a) or 288.7 are ineligible to petition for a certificate of rehabilitation; hence, there is no disparate

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II. PROCEDURAL HISTORY

When he was 57 years old in 1994, defendant was convicted of violating section 288, subdivision (a) (lewd and lascivious acts with a child under the age of 14), among other sex offenses. He was sentenced to 12 years in prison, released on parole in 2000, and discharged from parole in 2003. In August 2013, he petitioned for a certificate of rehabilitation and pardon. (§ 4852.01, subd. (a).) The trial court denied the petition on the ground defendant was barred from petitioning for a certificate of rehabilitation (§ 4852.01, subd. (d)), and rejected his equal protection claim, concluding, as we do, that the word “and” between “Sections 269 and 288.7” in section 3000.1, subdivision (a)(2) was a drafting error. This appeal followed.

III. ANALYSIS

Section 4852.01 allows convicted felons who meet certain terms and conditions to petition for a certificate of rehabilitation and pardon. (§ 4852.01, subd. (a).)³ But persons who violate section 288, and persons “serving a mandatory life parole,” among

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treatment between the two groups of offenders, and no equal protection problem. (*Tirey, supra*, at pp. 1162-1171 (dis. opn. of Thompson, J.)) As will appear, we agree with Justice Thompson’s reasoning and analysis.

³ Section 4852.01, subdivision (a) states: “Any person convicted of a felony who has been released from a state prison or other state penal institution or agency in California, whether discharged on completion of the term for which he or she was sentenced or released on parole prior to May 13, 1943, who has not been incarcerated in a state prison or other state penal institution or agency since his or her release and who presents satisfactory evidence of a three-year residence in this state immediately prior to the filing of the petition for a certificate of rehabilitation and pardon provided for by this chapter, may file the petition pursuant to the provisions of this chapter.”

others, are ineligible to petition for a certificate of rehabilitation. (§ 4852.01, subd. (d).)⁴ Section 288 violators, like defendant, are also ineligible to be relieved of their duty to register as sex offenders under section 290, even if they obtain a certificate of rehabilitation. (§ 290.5, subd. (a).) But section 288.7 violators are, apparently, eligible to be relieved of their duty to register as sex offenders, *if* they obtain a certificate of rehabilitation. (§ 290.5, subd. (a).)⁵

As he did in the trial court, defendant claims sections 4852.01, subdivision (d) and 290.5 violate his equal protection rights. He postulates that persons who violate section 288.7,⁶ a more serious crime than section 288, subdivision (a),⁷ are eligible to petition for

⁴ Section 4852.01, subdivision (d) states: “This chapter shall not apply to persons serving *a mandatory life parole*, persons committed under death sentences, persons convicted of a violation of subdivision (c) of section 286, *Section 288*, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, or persons in the military service.” (Italics added.)

⁵ Section 290.5 provides: “(a)(1) A person required to register under Section 290 *for an offense not listed in paragraph (2)*, upon obtaining a certificate of rehabilitation . . . shall be relieved of any further duty to register [as a sex offender] under Section 290 if he or she is not in custody, on parole, or on probation.” (Italics added.) The offenses listed in subdivision (a)(2) of section 290.5 include section 288, but not section 288.7. (§ 290.5, subd. (a)(2).) Thus, section 290.5 bars section 288 violators from being relieved of their duty to register as sex offenders under section 290, even if they obtain a certificate of rehabilitation, but a section 288.7 violator, apparently, is entitled to be relieved of his or her duty to register as a sex offender, if he or she obtains a certificate of rehabilitation.

⁶ Section 288.7 provides: “(a) Any person 18 years of age or older who engages in sexual intercourse or sodomy with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 25 years to life. [¶] (b) Any person 18 years of age or older who engages in oral copulation or sexual penetration, as defined in Section 289, with a child who is 10 years of age or

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a certificate of rehabilitation and be relieved of their duty to register as sex offenders, while section 288 violators are ineligible to petition for a certificate of rehabilitation (§ 4852.01, subd. (d)) and may not be relieved of their duty to register as sex offenders, even if they obtain a certificate of rehabilitation (§ 290.5, subd. (a)).

We first discuss defendant’s equal protection challenge to section 4852.01, subdivision (d). We then discuss section 290.5.⁸

A. *Section 4852.01, Subdivision (d)*

Defendant’s equal protection challenge to section 4852.01, subdivision (d) turns on whether a person convicted of violating section 288.7, but not section 269, is required to remain on parole for life, if released on parole.

Section 3000.1, subdivision (a)(2) provides: “Notwithstanding any other provision of law, *in the case of any inmate sentenced to a life term under* subdivision (b)

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younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 15 years to life.”

⁷ Section 288, subdivision (a) provides: “[A]ny person who willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.”

⁸ In light of our conclusion that sections 4852.01, subdivision (d) and 290.5 do not treat sections 288 and 288.7 offenders differently, it is unnecessary to determine and we do not determine whether sections 288 and 288.7 offenders are similarly situated for equal protection purposes, that is, that sections 4852.01, subdivision (d) and 290.5 adopt classifications that affect two or more similarly situated groups in an unequal manner. (See *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.)

of Section 209, if that offense was committed with the intent to commit a specified sexual offense, *Sections 269 and 288.7*, subdivision (c) of Section 667.51, Section 667.71 in which one or more of the victims of the offense was a child under 14 years of age, or subdivision (j), (l), or (m) of Section 667.61, *the period of parole, if parole is granted, shall be the remainder of the inmate's life.*" (Italics added.)

Defendant argues the word "and," as it appears in the phrase "Sections 269 and 288.7" in section 3000.1, subdivision (a)(2), is clear and unambiguous, and is used in its conjunctive sense. Thus, he argues, a person must be convicted of violating *both* sections 269⁹ and 288.7 in order to be subject to lifetime parole, but a person convicted of violating section 288.7 but not section 269, or section 269 but not section 288.7, is not required to be on parole for life if released. Under this interpretation, a person convicted of violating section 288.7 but not section 269, and vice versa, is not "serving a mandatory

⁹ Section 269 defines aggravated sexual assault of a child as including several sex offenses involving force or fear: "(a) Any person who commits any of the following acts upon a child who is under 14 years of age and seven or more years younger than the person is guilty of aggravated sexual assault of a child: [¶] (1) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261. [¶] (2) Rape or sexual penetration, in concert, in violation of Section 264.1. [¶] (3) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286. [¶] (4) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) of Section 288a. [¶] (5) Sexual penetration, in violation of subdivision (a) of Section 289. [¶] (b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life. [¶] (c) The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6."

life parole” and is eligible to petition for a certificate of rehabilitation, though section 288 violators are expressly ineligible. (§ 4852.01, subd. (d).)

The Attorney General takes the opposite view and argues the word “and” is used in its disjunctive sense, equivalent to the word “or” or a serial comma. Under this interpretation, a person convicted of violating *either* section 269 *or* section 288.7, is serving “a mandatory life parole” if released and is therefore ineligible to petition for a certificate of rehabilitation, just as section 288 violators are ineligible. (§ 4852.01, subd. (d).)

We review questions of statutory interpretations de novo. (*Whitney v. Montegut* (2014) 222 Cal.App.4th 906, 911.) ““As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature’s intent so as to effectuate the law’s purpose. [Citation.] We begin by examining the statute’s words, giving them a plain and commonsense meaning. [Citation.]” [Citation.] ““When the language of a statute is clear, we need go no further.’ [Citation.] But where a statute’s terms are unclear or ambiguous, we may ‘look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.’” [Citation.]’ [Citation.]” (*People v. Scott* (2014) 58 Cal.4th 1415, 1421.) ““We must also avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend. [Citations.]’ [Citation.]” (*In re Greg F.* (2012) 55 Cal.4th 393, 406.)

In the context of section 3000.1, subdivision (a)(2), the meaning of the word “and” in the phrase “Sections 269 and 288.7” is by no means clear and unambiguous. It is odd that the Legislature would, as defendant argues, require violators of both “*Sections 269 and 288.7*,” but not violators of either statute, to be on parole for life if released.

Violators of each of the statutes listed in section 3000.1, subdivision (a)(2) are required to be sentenced to life terms, and all of the listed statutes proscribe serious sex offenses committed by presumably dangerous sex offenders.¹⁰ A disjunctive interpretation of the “and” between “Sections 269 and 288.7” is consistent with the ostensible object to be achieved by section 3000.1, subdivision (a)(2): ensuring that persons sentenced to life terms for committing *any* of the serious sex offenses listed in the statute will, if released, remain on parole for life.

The meaning of the word “and” between “Sections 269 and 288.7” was discussed but not determined in *People v. Tuck* (2012) 204 Cal.App.4th 724, 731-738 (*Tuck*).

There, the defendant Tuck pled no contest to a single violation of section 288, subdivision (a), when he was 19 years old, based on consensual sexual activities with his then 13-year-old girlfriend, and was ordered to register as a sex offender for life. (*Tuck*,

¹⁰ A person who violates section 269, which proscribes aggravated sexual assault of a child under 14 years of age and seven or more years younger than the defendant, is ostensibly no less dangerous than a person 18 years of age or older who engaged in sexual intercourse, sodomy, oral copulation, or sexual penetration with a child 10 years of age or younger (§ 288.7), even though a violation of section 288.7, unlike most violations of section 269, is not required to be committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on a child or another person (see, e.g., §§ 269, subd. (a)(4), 288a, subds. (c)(2), (3), (d)).

supra, at pp. 727-728.) Over 12 years later, Tuck petitioned for a writ of mandate setting aside his lifetime sex offender registration requirement on the grounds sections 290.5 and 4852.01, subdivision (d) violated his equal protection rights. Tuck argued, as defendant does here, that unlike section 288 offenders, section 288.7 offenders, among others, are eligible to petition for certificates of rehabilitation and be relieved of their lifetime sex offender registration requirements. (*Tuck, supra*, at pp. 728-729.)

The majority in *Tuck* held that the equal protection analysis articulated in *People v. Hofsheier* (2006) 37 Cal.4th 1185 did not support Tuck’s claim that the lifetime registration requirement for section 288 offenders denied them equal protection, because there was “no sexual offense involving only minors less than 14 years of age for which conviction does not require mandatory registration.” (*Tuck, supra*, 204 Cal.App.4th at pp. 731-738.) And because Tuck had not yet applied for a certificate of rehabilitation and the trial court had not considered whether the equal protection principles articulated in *Hofsheier* required that equal protection relief be made available to Tuck, the majority declined to address “whether the eligibility criteria of sections 290.5 and 4852.01 result in the arbitrarily different treatment of similarly situated offenders . . . ,” and called Tuck’s attention to this “possible avenue of redress.” (*Tuck, supra*, at pp. 738-739.)

In a concurrence to his own majority opinion in *Tuck*, Justice Pollak “expand[ed] on the final observation that Tuck may ultimately be entitled to relief from the lifetime registration requirement by obtaining a certificate of rehabilitation.” (*Tuck, supra*, 204 Cal.App.4th at p. 739 (conc. opn. of Pollak, J.)) Justice Pollak reviewed the legislative

history of section 3000.1, subdivision (a)(2), and concluded that the word “and” in the phrase “Sections 269 and 288.7” was *apparently* intended to be conjunctive. (*Tuck, supra*, at p. 740 & fn. 4 (conc. opn. of Pollak, J.))¹¹

Justice Pollak explained: “As indicted by the conjunction ‘and,’ lifetime parole is imposed only if the individual is convicted of violating both sections [269 and 288.7]. The legislative history of section 3000.1 reflects that this conjunction was intentional. Section 288.7 penalizes any sexual contact with a child under the age of 10, regardless of whether force is involved, while section 269 refers exclusively to forcible sex crimes on minors. In the author’s statement accompanying the 2010 amendment that added this provision to section 3000.1, he states, “‘*We believe this is an important change because there currently is no distinction between forcible and non-forcible sex crimes on a child. A forcible sex crime . . . involves ‘violence, duress, menace, or fear of immediate and unlawful bodily injury,’ And while all sex crimes are awful, these crimes are a red flag that the perpetrator is capable of much, much worse. And we should acknowledge that. [¶] This is why, under Chelsea’s Law, these offenders will serve a lifetime on parole if released*” (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 1844 (2009-2010 Reg. Sess.) as amended Apr. 13, 2010, p. 19, italics added.)” (*Tuck, supra*, 204 Cal.App.4th at p. 740, fn 4 (conc. opn. of Pollak, J.))

¹¹ Justice Pollak’s concurring opinion in *Tuck* is dictum proprium, not precedent. (*People v. Lucatero* (2008) 166 Cal.App.4th 1110, 1116.)

Section 3000.1, subdivision (a)(2) was enacted in 2010 as part of Chelsea’s Law. (Stats. 2010, ch. 219 (Assem. Bill No. 1844).) We believe Justice Pollak misconstrued the comment by the author of Assembly Bill No. 1844 (2009-2010 Reg. Sess.) when he construed the comment to mean that *only* persons convicted of committing forcible sex crimes, but not section 288.7 violators, would be subject to lifetime parole. The analysis of Assembly Bill No. 1844 in which the comment appears states: “This bill increases parole to lifetime parole for the following offenses: . . . sexual intercourse; oral copulation; or sodomy with a child 10 years of age or younger [§ 288.7 violators]; . . . aggravated sexual assault of a child [§ 269 violators] . . .” (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 1844 (2009-2010 Reg. Sess.) as amended Apr. 13, 2010, p. 23.) There is no indication in the April 13, 2010, analysis of the bill that persons who violate both sections 269 and 288.7, but not persons who violate either statute, are subject to lifetime parole. (*Id.* at pp. 1-26.)

Additionally, the chaptered version of Assembly Bill No. 1844 that passed both houses of the Legislature and was signed into law states it “would require lifetime parole for habitual sex offenders, persons convicted of kidnapping a child under 14 years of age with the intent to commit a specified sexual offense, and persons convicted of other specified sex crimes, including, among others, aggravated sexual assault of a child.” (Stats. 2010, ch. 219 (Assem. Bill No. 1844, p. 3.) Thus, we do not believe Assembly Bill No. 1844 was intended to require that *only* persons who commit forcible sex crimes

would be subject to lifetime parole, but persons who violate section 288.7 but not section 269, and vice versa, would *not* be subject to lifetime parole.

Finally, a conjunctive interpretation of the “and” in the phrase “Sections 269 and 288.7” in section 3000.1, subdivision (a)(2) would lead to patently absurd results the Legislature could not have intended. Among other things, it would mean that a person convicted of violating section 269 but not section 288.7—one who commits aggravated sexual assault on a child under age 14 and is seven or more years older than the victim—would not be subject to mandatory lifetime parole. But that result is directly contrary to what Assemblyman Fletcher, the author of Assembly Bill No. 1844, stated the bill would accomplish. It would also mean that a person convicted of engaging in nonforcible sexual intercourse or sodomy with a child 10 years of age or younger (§ 288.7, subd. (a)) could petition for a certificate of rehabilitation because he or she is not “serving a mandatory life parole” (§ 4852.01, subd. (d)), while a person convicted of a less egregious, nonforcible lewd act on a child under the age of 14 (§ 288, subd.(a)), like defendant here, would be ineligible. This, too, would be absurd and completely out of step with the ostensible object of section 3000.1, subdivision (a)(2): ensuring that persons who violate any of the serious sex offenses listed in the statute remain on parole for life, if released.

A disjunctive interpretation of the word “and” between “Sections 269 and 288.7” would eliminate the equal protection problem defendant raises and render section 4852.01, subdivision (d) constitutional as applied to section 288 offenders vis-à-vis

section 288.7 and section 269 offenders. ““If a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, the court will adopt the construction which, without doing violence to the reasonable meaning of the language used, will render it valid in its entirety, . . . even though the other construction is equally reasonable. [Citations.]”” (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 509.)

The word “and” between “Sections 269 and 288.7” in section 3000.1, subdivision (a)(2) is an apparent drafting error. If treated as a comma or an “or,” as the Legislature apparently intended, then violators of either section 269 *or* 288.7 will be subject to mandatory life parole, if released, and both will be ineligible to petition for certificates of rehabilitation, just as section 288 offenders are ineligible. (§ 4852.01, subd. (d).)

B. *Section 290.5*

Defendant claims section 290.5 also violates his equal protection rights because it allows section 288.7 offenders to be relieved of their lifetime duty to register as sex offenders under section 290, but does not allow section 288 offenders like himself to be relieved of their registration requirement. We disagree with defendant’s interpretation of section 290.5.

Subdivision (a)(1) of section 290.5 provides that persons required to register under section 290 “for an offense not listed in paragraph (2), upon obtaining a certificate of rehabilitation . . . shall be relieved of any further duty to register under Section 290 if he

or she is not in custody, on parole, or on probation.” Subdivision (a)(2) of section 290.5 lists section 288, among many other sex offenses, as an offense for which a person, “upon obtaining a certificate of rehabilitation . . . shall not be relieved of the duty to register under section 290 . . .” (§ 290.5, subd. (a)(2)(M)), but does not list section 288.7 as such an offense.

Even though section 288.7 is not expressly listed in section 290.5, subdivision (a)(2) as an offense for which a person may not be relieved of his or her lifetime registration obligation, section 288.7 falls within subdivision (a)(2)(V) of section 290.5, which additionally exempts from relief from the registration requirement persons convicted of “[a]ny offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this paragraph.” (§ 290.5, subd. (a)(2)(V).) Any section 288.7 offender meets this definition.

A violation of section 288.7 is punishable by 15 years to life (§ 288.7, subd. (b) [oral copulation or sexual penetration]) or 25 years to life (§ 288.7, subd. (a) [sexual intercourse or sodomy]). A section 269 violation is punishable by 15 years to life, and section 269 is specified in section 290.5, subdivision (a)(2)(J). And under the one strike law (§ 667.61), kidnapping (§ 209), with the intent to commit a forcible act of sexual penetration (§ 289, subd. (a)), is punishable by 25 years to life, provided the movement of the victim substantially increases the risk of harm to the victim over and above the level or risk inherent in the underlying offense of sexual penetration. Kidnapping with the intent to commit sexual penetration is specified in section 290.5, subdivision (a)(2)(A).

Accordingly, a section 288.7 offender is not entitled to be relieved of their lifetime registration obligation under section 290, even if he, she, or they (somehow) obtain a certificate of rehabilitation. (§ 290.5, subd. (a).) There is therefore no disparate treatment, under section 290.5, of persons convicted of violating sections 288 and 288.7, and no equal protection violation.

C. Recent Legislation Amending Sections 290.5, 3000.1, and 4852.01, Subdivision (d)

The Legislature recently passed and, on August 25, 2014, the Governor approved, Assembly Bill No. 1438 (2013-2014 Reg. Sess.), a nonurgency measure amending sections 290.5, 3000.1, and 4852.01 to clarify that section 288.7 offenders, like section 288 offenders, are neither eligible to petition for a certificate of rehabilitation nor be relieved of their lifetime duty to register as sex offenders under section 290. (Stats. 2014, ch. 280 (Assen. Bill No. 1438).) Specifically, Assembly Bill No. 1438 adds “section 288.7” to the offenses listed in sections 4852.01, subdivision (d) and 290.5, subdivision (a)(2), and amends section 3000.1 subdivision (a)(2) to place an “or” in lieu of the “and” between “Sections 269 and 288.7.” (Stats. 2014, ch. 280, §§ 1-3, pp. 2-4.)

Assembly Bill No. 1438 is not retroactive, however, and its enactment has no bearing on defendant’s equal protection claim. We urge the California Supreme Court to review this case and establish a uniform, statewide rule that applies to section 288 offenders who, like defendant, have petitioned for certificates of rehabilitation or have sought to be relieved of their lifetime sex offender registration obligations before Assembly Bill No. 1438 becomes effective on January 1, 2015.

IV. DISPOSITION

The order denying the petition for a certificate of rehabilitation is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.