

North Orange County Bar Association

New Laws for 2021

Presented by

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The Goals for Today

To tell you about some major new statutes, rules, and forms for 2021.

This is a memory-jogger. When these come up in your daily practice, you will remember to look them up for details.

Trends

This year's New Statutes emphasize

- (1) Eliminating racial, ethnic, sexual, religious and similar prejudice in trials and other proceedings.**
- (2) Curtailing law enforcement use of deadly force and increasing tolerance.**
- (3) Lessening unreasonable burdens of criminal proceedings on defendants.**

There are few new crimes.

More statutes substitute "they" and "their" for "he or she" and "his and hers."

Probation: Length of Terms

AB 1950. (Stats. 2020 Ch. 328) Amends PC 1203.1 & 1203a.

PC 1203.1: The max. length of felony probation is reduced from 5 or more years, down to 2 years, except for, in new Subd. (m),:

(1) [An offense in PC 667.5, subd. (c)] and [one stating a] specific probation length.... [For these, probation may last up to] the maximum ... of the sentence

(2) A felony conviction [PC 487, subd. (c), 503, and 532a], if the ... value ... exceeds \$25,000. For these offenses, [probation may last up to] three years....

Probation: Length of Terms

PC 1203a: The max. length of misdemeanor probation is reduced from 3 to 1 year, *unless the offense provides for a longer term.*

How to find them? (codifications may differ)

Good luck! 84 sections begin “1203.”

1203.1 usually is the 33rd., (after 1203.099)

PC 1203a is usually the 79th., (before 1203b).

Probation: Length of Terms

Exceptions. [They may outnumber the rule!]

ALWAYS check ALL relevant statutes.

Two main exceptions:

Domestic violence: “If a person is granted probation for a crime in which the victim is a person defined in [Fam. C.] 6211 ..., the terms of probation shall include... (1) a minimum period of probation of 36 months....” PC 1203.097, subd. (a).

DUI: “... a period of probation not less than three nor more than five years.” VC 23600, subd. (b)(1).

Probation: Length of Terms

Q: Does this apply to a case charged before Jan. 1, 2021, but not sentenced before that, or sentenced before that, but not yet final on appeal?

A: YES!

***P. v. Sims* (Jan. 12, 2021, D077024) __ Cal.App.5th __;**

***P. v. Quinn* (Jan. 11, 2021, A156932) __ Cal.App.5th __; petition for rehearing filed Jan. 26, 2021.**

***P. v. Burton* (2020) 58 Cal.App.5th Supp. 1.**

Probation: Length of Terms

Q: Is D's probation length automatically shortened, so that, e.g., D can stop reporting?

A: *The statute doesn't say. I recommend caution.*

See *P. v. Banks* (1959) 53 Cal.2d 370 (D was eligible to have the prior felony reduced or dismissed, but neither had been done when D was charged with felon possessing a gun, so D was guilty of that new charge.)

Probation: Length of Terms

Q. 1: Can D go to court and have the term shortened?

Q. 2: If so, can the court reconsider all probation terms?

A. to both Qs.: I think so. See generally:

***P. v. McKenzie* (2020) 9 Cal.5th 40 (An amelioration of the original sentence applies on an appeal from a VOP),**

***P v. Chavez* (2018) 4 Cal.5th 771 (probation is not a final judgment), and**

***P. v. Barton* (2020) 52 Cal.App.5th 1145 (discussing when the court may reconsider sentencing choices).**

Probation: Length of Terms

Q: Can a D, charged with a VOP before Jan. 1, 2021, defend that under AB 1950 probation would already have expired prior to the alleged VOP?

A: This can be argued both ways.

See generally *Banks, supra* (the Q is, was D a felon at the time, not could it have been reduced), and

***P. v. Leiva* (2013) 56 Cal.4th 498, addressing the court's jurisdiction to adjudicate, after prob. expired, an alleged VOP that occurred during probation.**

Many Criminal Fees Eliminated

AB 1869. Stats. 2020, Ch. 92.

From the Legislative Counsel's Digest:

This bill, [mostly operative] July 1, 2021, makes the following changes to 23 criminal administrative fees:

- 1) Repeals many statutes with Public Defense Fees and Cost of Counsel for adults and Minors.**
- 2) Repeals [various] statutes associated with ... Criminal Justice Administration**
- 3) Repeals statutes associated with the \$25 Administrative Processing Fee and \$10 Citation Processing Fee.**

Many Criminal Fees Eliminated

4) [Eliminates]... administrative or application fees for work furlough or home detention and eliminates other fees relating to home detention....

[Repeals]... fees [and charges] for pretrial electronic monitoring, ..., and [no longer] [lets] a county ... seek reimbursement for ... county parole supervision....

[Repeals] the Probation[‘s] ... Investigation/Progress Report Fee....

[M]akes the unpaid balances related to the ... eliminated fees uncollectable.

Many Criminal Fees Eliminated

SEC. 62 of this bill adds PC 1465.9:

(a) On and after July 1, 2021, the balance of any court-imposed costs pursuant to [PC] [A] 987.4, [B] 987.5 subd. (a), [C] 987.8, [D] 1203, [E] 1203.1e, [F] 1203.016, [G] 1203.018, [H] 1203.1b, [I] 1208.2, [J] 1210.15, [K] 3010.8 [L] 4024.2, and [M] 6266,

..., shall be unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated.

The “California Racial Justice Act”

AB 2542 [§ 3.5] (Stats. 2020, Ch. 317).

Adds PC 745, amends PC 1473 and 1473.7.

PC 745(j) “This *section* applies only prospectively [when] *judgment* [hasn’t] been entered prior to Jan. 1, 2021.”

PC 745, subd. (a): The state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin [R, E, or N.O.].

A violation is established if [D] proves, by a preponderance ..., any of the following:

The “Racial Justice Act” [RJA]

(1) The judge, an attorney in the case, a [Cop] involved ..., an expert witness, or juror exhibited bias or animus towards [D] because of [D’s] [R, E, or N.O.].

(2) During [D’s] trial, in court and during the proceedings, the judge, an attorney ..., a [Cop] ..., an expert witness, or juror, used racially discriminatory language about [D’s] [R, E, or N.O.], or otherwise exhibited bias or animus towards [D] because of [D’s] [R, E, or N.O.], whether or not purposeful.

[Subd. (a)(2)] doesn’t apply if the speaker is describing [relevant] language used by another ... or is giving a racially neutral and unbiased description of the suspect.

[Continued]

The RJA

(3) [D] was charged or convicted of a more serious offense than [Ds] of other [R, E, or N.O.] who commit similar offenses and are similarly situated,

and the evidence establishes that [P] more frequently sought or obtained convictions for more serious offenses against people who share [D's] [R, E, or N.O.] in the county....

The California RJA (or CRJA)

(4) (A) A longer or more severe sentence was imposed on [D] than ... on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share [D's] [R., E., or N.O.] than on [D's] of other [R, E, or N.O.] in the county

(B) A longer or more severe sentence was imposed on [D] than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on [Ds] in cases with [Vs] of one [R, E, or N.O.] than in cases with [Vs] of other [R, E, or N.O.], in the county ...

The California Racial Justice Act

PC 745, subd. (b): “[D] may file a motion in the trial court or, [after judgment], ... a petition for writ of habeas corpus [PC 1473] or a motion under [PC] 1473.7 ... alleging a violation....”

PC 1473, subd. (f), states that a writ of habeas corpus may be prosecuted for violation of PC 745 “if judgment was entered ... after Jan. 1, 2021.”

PC 1473.7, subd. (a) states “A person ... no longer in ... custody may file a motion to vacate a conviction or sentence for ... (3) A conviction or sentence was sought, obtained, or imposed on the basis of [R, E, or N.O.] [violating PC 745].

PC 1473.7, subd. (c), says this must be filed “without undue delay....]”

The “California Racial Justice Act”

(c) If a motion is filed in the trial court and [D] makes a prima facie showing ..., the trial court shall hold a hearing.

(1) ... [E]vidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and [witness] testimony.... The court may also appoint an independent expert.

(2) [D has] the burden ... by a preponderance....

(3) [T]he court shall make findings on the record.

(d) [D] may [move for] disclosure ... of all evidence relevant to a potential violation ... in the possession or control of the state. [The] motion ... shall describe the type of records or information [D] seeks. *Upon a showing of good cause*, the court shall order the records to be released.... [No time to seek discovery is stated, only that there must be good cause. GB]

The California [RJA]

(e) Notwithstanding any other law, except for [a voter-passed] initiative ..., if the court finds, by a preponderance ... a violation ..., the court shall impose a remedy ... from the following list:

(1) Before a judgment has been entered, ... any of the following.....:

(A) Declare a mistrial, if requested the by defendant. [Sic]

(B) Discharge the jury panel and empanel a new jury.

(C) If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges. [Continued]

The RJA, a.k.a. CRJA, a.k.a. CRJ Act

(2) (A) [After judgment], if the court finds that a conviction was sought or obtained in violation ..., the court shall vacate the conviction and sentence ... and order new proceedings....

If ... the only violation ... is based on [subd. (a)(3), greater charges] and the court [can] rectify the violation by modifying the judgment, the court shall vacate the conviction and sentence ... and ...impose an appropriate remedy....

(B) [After judgment], if the court finds that only the sentence was sought, obtained, or imposed in violation..., the court shall vacate the sentence, ... and impose a new sentence. [But not a greater sentence].

The Racial Justice Act

(e)(3) When ... there has been a violation ..., [D] shall not be eligible for the death penalty.

(e)(4) The[se] remedies [are not exclusive of other remedies].

(f) This section also applies to ... juvenile delinquency.... (g)....

(h) [Definitions]

(1) "More frequently sought or obtained" or "more frequently imposed"

(2) "Prima facie showing"

(3) "Racially discriminatory language means language that, "to an objective observer appeals to racial bias...."

(4) "State" includes the [A.G.], a [D.A.], or a city prosecutor.

(i) [D] may share a [R, E, or N.O.] with more than one group. [D] may aggregate data among groups to demonstrate a violation....

Better than Batson/Wheeler

AB 3070 (Sats. 2020, Ch. 318) Adds CCP 231.7

“[A]ppplies in all jury trials in which jury selection begins on or after January 1, 2022.” (CCP 231.7(i))

(a) A party shall not use a peremptory challenge to remove a prospective juror on the basis of ... [1] race, [2] ethnicity, [3] gender, [4] gender identity, [4] sexual orientation, [5] national origin, or [6] religious affiliation, or [1A to 6A] the perceived membership of the prospective juror in any of those groups.

Better than Batson/Wheeler

(b) A party, or the trial court on its own motion, may object to the improper use of a peremptory challenge....

The objection shall be made before the jury is impaneled, unless information becomes known that could not have reasonably been known before [that].

(c) [U]pon objection to ... a peremptory ..., the party exercising the peremptory ... shall state the reasons the peremptory

Better than Batson/Wheeler

(d) (1) The court shall consider only the reasons actually given and shall not speculate on, or assume the existence of, other possible justifications....

If the court determines there is a substantial likelihood that an objectively reasonable person would view [race, etc.] ..., as a factor in the ... peremptory ..., the objection shall be sustained. *[continued]*

Better than Batson/Wheeler

(d) (1) [continued] The court need not find purposeful discrimination to sustain the objection....

[The] motion ... shall also be deemed a sufficient presentation of claims [of] discriminatory exclusion of jurors in violation of the [U.S.] and [CA] Constitutions.

Better than Batson/Wheeler

(2) (A) [A]n objectively reasonable person is aware that unconscious bias, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors....

(B) “[S]ubstantial likelihood” means more than a mere possibility but less than a standard of more likely than not.

(C) “[U]nconscious bias” includes implicit and institutional biases....

(d)(3) [Some factors the court may consider.]

Better than Batson/Wheeler

(e) A peremptory ... for any of the following ... is *presumed ... invalid unless* the party exercising [it] ... show[s] ... that an objectively reasonable person would view the rationale as unrelated to a prospective juror's race, [etc.] *and* that the reasons ... bear on the prospective juror's ability to be fair and impartial...:

(1) Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system.

(2) Expressing a belief that ... officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.

(3) Having a close relationship with people who have been stopped, arrested, or convicted of a crime.

Better than Batson/Wheeler

CCP 231.7, subd. (e), continued.

(4) A prospective juror's neighborhood.

(5) Having a child outside of marriage.

(6) Receiving state benefits.

(7) Not being a native English speaker.

(8) The ability to speak another language.

(9) Dress, attire, or personal appearance.

(10) & (11): [Employment issues.]

(12) [Friendship among people of same group.]

(13) [Comparative Q's to other prospective jurors.]

Court Initiated Misd. Diversion

AB 3234. Stats. 2020, Ch. 334. Adds PC 1001.95-1001.97

PC 1001.95:

(a) A ... judge may, at the judge's discretion, and over [P's] objection..., offer diversion to a [misdemeanor] [D]....

[Compare "Misd. Diversion" at PC 1001.2, subd. (b): P approves programs]]

(b) [Diversion can last up to] 24 months and [can have] terms, ..., or programs ... based on [D's] specific situation.

(c) If [D] has complied ... the judge shall dismiss the [case].

Court Initiated Misd. Diversion

PC 1001.95 (Continued)

(e) [Not eligible:] (1) Any [PC 290] offense...., (2) ... [PC] 273.5, (3)...[PC 243, subd. (e) [domestic battery.”], (4) ...[PC] 646.9. [stalking]

[DUI is not included as a no-no. But see VC 23640, prohibiting DUI diversion, and *Tellez v. Super. Ct.* (2020) 56 Cal.App.5th 439 (DUI not divertable under PC 1001.36, mental health diversion).]

PC 1001.96. A [D] who [gets this diversion] [must]...:

(b) Make full restitution. [But] inability to pay ... shall not be grounds for denial of diversion or a finding that [D] has failed to comply

Court Initiated Misd. Diversion

- **This does not expressly require any admissions or a guilty plea.**
- **Can the Court order probation supervision?**
- **Terms, etc., aren't required to be in writing. Get that, or an immediate transcript, anyway.**

Prison Enhancements attached to County Jail Felonies: Served in Jail

SB 118 (Stats 2020, ch. 29) Adds PC 1170, subd. (h)(9)

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement.

[This] ... abrogate[s] ... *People v. Vega* (2014) 222 Cal.App.4th 1374....

Juveniles: Custodial Interrogation

SB 203. (Stats. 2020 Ch. 335.)

Amends WI 625.6

[Deleted text is in strikeout; New text is underlined]

(a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth ~~15~~ 17 years ... or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.

(b) The court shall, in adjudicating the admissibility of statements of a youth ~~15~~ 17 years ... or younger made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a) and, additionally, shall consider any willful violation of subdivision (a) in determining the credibility of a law enforcement officer....

[There are exceptions]

Juveniles: Custodial Interrogation

“[WI] 625.6 does not [itself] authorize a court to ... exclude statements [that] are admissible under federal law.” (*In re Anthony L.* (2019) 43 Cal.App.5th 438, 450)]

But can suppression now be done indirectly through WI 625.6’s addition re: consideration of officer credibility?

E.g., the court might disbelieve an officer who deliberately violated WI 625.6, when the officer testifies that, E.g., *Miranda* warnings were given

Statements taken in violation of *Miranda per se* are not not admissible under fed. law. (*In re Gilbert E.* (1995) 32 Cal.App.4th 1598.)

Women jail and prison inmates, incl. Pregnant, Possibly-So, and Postpartum

AB 732. Stats. 2020, Ch. 732. Requires a variety of tests and services be provided to all such inmates, including

- **Free feminine hygiene products;**
- **Certain family planning;**
- **Prenatal care; and access by pregnant inmates to Dr.'s, social workers, and community-based programs;**
- **Hospital delivery with some privacy and possibly a support person;**
- **Prohibition of tasers and chemicals against pregnant inmates.**

These may differ depending on whether this is in prison or local jail.

Pregnant jail and prison inmates

Here is Subd. (k) of added PC 3408 (prison) & 4023.8 (jail):

(k) Each incarcerated pregnant person shall be referred to a social worker who shall do all of the following:

(1) Discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation.

(2) Assist the incarcerated pregnant person with access to a phone ... to contact relatives regarding newborn placement.

(3) Oversee the placement of the newborn child.

Confidential Calls to Prisons

AB 3043. Stats. 2020, Ch. 333.

From the Legislative Counsel's Digest: "Existing [CDCR] regulations ... permit an inmate to make a confidential call ... with the inmate's attorney only as approved on a case-by-case basis by the [prison]."

Now, PC 5058.7:

(a) [CDCR] shall approve an attorney's request [for] a confidential call with the inmate that they represent. [This] shall be at least 30 minutes once per month, per inmate, per case....

MCLE on Bias Reducing Strategies

AB 3364. Stats. 2020, Ch. 36. Amends BP 6070.5

(a) The State Bar shall ... require, as of Jan[.] 1, 2022, that the ... (MCLE) curriculum ... includes training on *implicit bias and the promotion of bias-reducing strategies* to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, *socioeconomic status*, or other characteristics *undermine confidence in the legal system.*

[This must be met] for each MCLE compliance period ending after January 31, ~~2023~~ 2022.

JUVENILE JUSTICE REALIGNMENT

SB 823 Stats. 2021 Ch. 337

Background: Laws effective July 2019 required transfer of DJJ to a new Dep't of Youth and Community Restoration in HHS, by July 1, 2020.

Then COVID-19 hit. An Executive Order extended that to July 1, 2021.

***This* bill adjusts that plan again.**

JUVENILE JUSTICE REALIGNMENT

From the Legislative Counsel's Digest:

Implementing an intent to close DJJ:

[This] bill ..., [as of] July 1, 2021, prohibit[s] [most] further commitment[s] ... to [DJJ], ... and ... require[s] that all wards committed to [DJJ] prior to that date remain within [DJJ's] custody ... until ... discharged, released, or transferred.

[This] bill ... declare[s] the [Legislature's] intent ... to close [DJJ] through the shifting of this responsibility, as specified. The bill ... commencing July 1, 2021, establish[es] the Office of Youth and Community Restoration in [HHS] to administer these provisions and ... to support this transition.

JUVENILE JUSTICE REALIGNMENT

From the Legislative Counsel's Digest:

Establishing Grants to Counties:

[of] a Juvenile Justice Realignment Block Grant ... to provide county-based custody, care, and supervision of youth who are realigned from [DJJJ] or who would have otherwise been eligible for ...[DJJJ].

JUVENILE JUSTICE REALIGNMENT

For much more on this, CPDA's Annual Juvenile Defense Practice Webinar Series, for Mon. & Tues. Jan. 25 (30 min.) and Jan. 26 (90 min.), is all about the nuts and bolts of practice under this new law.

CPDA Member's website:

<https://www.claraweb.us>

Peace Officers: Use of Force, 1

AB 1196, Stats. 2020 Ch. 324. Adds GC 7286.5

(a) A law enforcement agency shall not authorize the use of a carotid restraint or choke hold by any peace officer....

(b) [Defines “Carotid restraint”; “Choke hold” and “Law enforcement agency”]

Peace Officers: Use of Force, 2

AB 1506. Stats. 2020, Ch. 326. Adds Gov. Code
12525.3:

[Subd. (e) says this is subject to a Legislative appropriation.]

(b) (1) A state prosecutor shall investigate ... officer-involved shooting[s] resulting in the death of an unarmed civilian. The [AG] is the state prosecutor unless otherwise ... named.

(2) The state prosecutor is authorized to...:submit a written report [with specified minimum contents]. [And] [I]nitiate and prosecute [criminal charges if warranted].

Peace Officers: Use of Force, 3

AB 846. Stats 2020 Ch. 322. Amends GC 1031, adds GC 1031.3, and PC 13651.

From the Legislative Counsel's Digest:

[R]equire[s] peace officers be evaluated by a [Psychiatrist or Psychologist] for bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation....

....

[E]very [dep't] or agency that employs peace officers [must] ... make changes [in job descriptions to] deemphasize ... paramilitary aspects ... and place more emphasis on community interaction and collaborative problem solving....

V or W testimony in sexual assault cases of drugs or alcohol: inadmissible in a separate prosecution.

AB 1927. Stats. 2020, Ch. 241. Adds PC 1324.2:

(a) Testimony of a [V or W] in a felony prosecution for a violation or attempt[] ... of [PC] 220, 243.4, 261, 261.5, 286, 287, 288, or 289, that ... [V or W] ... unlawfully possessed or used a [drug] or alcohol is inadmissible in a separate prosecution of that [V or W] to prove illegal possession or use of that [drug] or alcohol.

(b) Evidence that the testifying [W] unlawfully possessed or used a [drug] or alcohol is not excluded in the felony prosecution of a violation or attempted violation of [those crimes].

(c) Evidence that a [W] received use immunity for testimony [under] subd[.] (a) is not excluded in the felony prosecution of a violation or attempt[] ... of [those crimes.]

Exemption from PC 290 registration for certain crimes against minors

SB 145. Stats. 2020 Ch. 79. Adds PC 290, subd. (c)(2):

[A] [D] convicted of ... [PC 286, subd. (b); PC 287, subd. (b); or PC 289, subds. (h) or (i)] [is not] required to register if ... [D] is not more than 10 years older than the minor, as measured from the minor's [DOB] to [D's] date of birth, and the conviction is the only one requiring [D] to register.

This ... does not preclude the court from requiring [D] to register pursuant to [PC] 290.006.

[Q: Is this retroactive?]

3-Tiered PC 290 Registration

This 2018 law becomes operative on 1/1/21.

SB 1494 (Stats 2018, ch. 423), as further amended by SB 145 (Stats 2020, ch. 79) [the preceding slide]

Tier 3 *mostly* cannot end registration. [No tier 3 for WI 602's.] (PC 290, subd. (d)(1)(A); Exception: PC 290.5, subd. (b)(1).)

Tier 2: *mostly* can petition to end registration after 20 yrs. [For 602's: 10 yrs.] (PC 290, subd. (d)(2)(A); Exception (10 yr.): PC 290.5, subd. (b)(1).

Tier 1: can petition to end registration after 10 years. [For 602's: 5 yrs.] (PC 290, subd. (d)(3).

No one's registration is guaranteed to ever end.

3-Tiered PC 290 Registration

Make sure you are using the version of PC 290, including new subd. (c)(2), operative on Jan. 1, 2021

The tiers are in the most recent PC 290, subd. (d).

In deciding which tier your D is in, start with tier 3! Reason: Your D might qualify for more than one tier, and only the highest one counts!

How time is calculated toward the minimum, e.g., it is interrupted by custody, is in PC 290, subd. (e).

3-Tiered PC 290 Registration

(d)(1)(A): [A] tier one offender [was] convicted of a registerable misdemeanor or for a non-violent, non-serious felony. Unless D is in tier 2 or 3.

(d)(2)(A): [A] tier two offender ... was convicted of a registerable violent or serious felony, or [any of several specified sex offenses.]

Both (d)(1)(B) and (d)(2)(B) state that the lower tier doesn't apply if D is also in a higher tier.

3-Tiered PC 290 Registration

Tier 3 (Subd. (d)(3)) is long and complex.

(d)(3)(A) is subsequent conviction of a registerable violent felony by a registrant.

(d)(3)(B) is for an SVP.

(d)(3)(C) and (E)-(R) list many, many specific offenses.

(d)(3)(D) is [D's] risk level on the ... (SARATSO), pursuant to [PC] 290.04 is well above average risk at the time of release ... as defined [by the SARATSO]....

3-Tiered PC 290 Registration California Sex Offender Registry



CALIFORNIA DEPARTMENT OF JUSTICE CALIFORNIA JUSTICE INFORMATION SERVICES SEX OFFENDER REGISTRY



Frequently Asked Questions California Tiered Sex Offender Registration (Senate Bill 384) For Registrants

The California Department of Justice (CA DOJ) Sex Offender Registry has developed the following frequently asked questions in reference to Senate Bill (SB) 384. The information provided below is general information and is not intended as legal advice.

NOTE: The CA DOJ cannot provide legal advice.

What is SB 384?

Effective January 1, 2021, SB 384 transitioned California's lifetime sex offender registration schema to a tier-based schema. SB 384 established three tiers of registration for adult registrants for periods of 10 years, 20 years, and life, and two tiers of registration for juvenile registrants for periods of 5 years and 10 years. SB 384 allows the registrant to petition the superior court or juvenile court for termination of their sex offender registration requirement on or after their next birthday after July 1, 2021, following the expiration of their mandated minimum registration period. Based on criteria listed in SB 384, the court will either grant or deny the petition.

IMPORTANT DATES

Beginning on January 1, 2021, the CA DOJ designates tiers for registrants.

Beginning on July 1, 2021, on or after their next birthday after July 1, 2021, registrants who meet the mandated minimum requirements may petition for termination of their sex offender registration requirement in the superior court or juvenile court in the county in which they reside.

Beginning on January 1, 2022, registrants will be displayed on the Megan's Law website pursuant to Penal Code section 290.46 as amended under SB 384.

3-Tiered PC 290 Registration.

From DOJ's CSOR's FAQs:

Who determines my tier designation?

The CA DOJ designates the tiers of most sex offender registrants.

However, ... after Jan[.] 1, 2021, the court shall determine the tier ... for individuals [it orders] to register [under PC 290.006]. [These] will be ... tier one unless the court [orders tier 2 or 3].

Will I be notified of my tier designation? Registrants may request their local registering agencies to provide them with their tier notification letters.

What if I disagree with my tier designation? ... consult with a public defender's office or a private attorney.

Link: <https://oag.ca.gov/sites/all/files/agweb/pdfs/csor/registrant-faqs.pdf>?

Or: go to California Sex Offender Registry, click on "Sex Offender Tiering (SB 384).

How to Petition to End Registration

PC 290.5, as amended by SB 118 (Stats 2020, ch. 29.)

Operative July 1, 2021.

(a) (1) A ... tier one or ... two [D] may file a petition in the superior court in the county [of registration] ... on or after their next birthday after July 1, 2021, following [D's] ... mandated minimum registration period,

or if the person is required to register pursuant to Section 290.008, [M] may file the petition in juvenile court on or after their next birthday after July 1, 2021, following [M's] ... mandated minimum registration period.

Subd. (b) has one circumstance letting a tier 2 [D] to petition after 10 years, and a tier 3 [D] to petition after 20 years.

How to Petition to End Registration

PC 290.5, subd. (a)(3) and (4)

(3) [At the] hearing, the [D.A.] [can] present evidence [on] whether community safety would be significantly enhanced by requiring continued registration. ...

[Factors the court can consider vary, and are listed throughout PC 290.5. These include [D's] ... risk of sexual or violent reoffense, including [any scores] on SARATSO static, dynamic, and violence risk assessment [tools]....

[This may be] heard ... upon declarations, affidavits, police reports, or any other evidence ... which is reliable, material, and relevant.

(4) If termination ... is denied, the court shall set the time ... after which [D] can repetition ..., which shall be [1 to 5] years, The court shall state on the record the reason for ... the time period

How to Petition to End Registration

*Draft forms, not yet approved by Judicial Council, CR-415 to CR-417, and CR-415-INFO, “Information on Filing a Petition to Terminate Sex Offender Registration.” **Use these when they are officially released!***

<https://www.courts.ca.gov/documents/sp20-03.pdf> .

At “California Courts”, put in search box, “Invitations to Comment”; click on “Past Proposals”; at “Archive of Past Proposals for Public Comment,” “Criminal”, click on the “+” then click on “Criminal Forms: Sex Offender Registration Termination (Item No. SP20-03.)”]

False Reports and Harassment

AB 1775, Stats. 2020 Ch. 327

Adds to PC 653y new Subds. (b), (c), and (e)(2):

(b) Knowingly allowing the use of or using the 911 ... system for ... harassing another is a crime:

(1) For a first violation, as an infraction [with] a [\$250] fine or as a misdemeanor [with] up to six months ... jail, a fine of up to [\$1,000, or both

(2) For a second or subsequent violation, as a misdemeanor [with] up to six months ... jail, a fine of up to [\$1,000], or both

False Reports and Harassment

(c) [Knowingly] allow[ing] the use of[,] or uses[,] the 911 ... system for ... harassing another person [as] described in [PC] 422.55 or 422.85, ... is ... a misdemeanor punishable by up to one year in ...jail, a fine of [between \$500 to \$2,000] or both [jail] ... and fine.

(e) (2) This [§] does not apply to [911 calls] by a person with an intellectual ... or other mental disability that makes it difficult or impossible for the person to understand the potential consequences of their actions.

Length of Parole Reduced

SB 118 (Stats. 2020, Ch. 29) Adds PC 3000.01

Applies to inmates released from prison after July 1, 2020, whose parole is supervised by CDCR under PC 3000.08; and does not apply to PC 290's.

If released on a determinate term, parole time is no more than 2 years. If released on a life term, the max is 3 years. Both are reviewed annually for possible earlier discharge.

Thank you!

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