

SB 384 – Tiered Sex Offender Registration in California



CALIFORNIA SEX REGISTRATION HISTORY

- First and largest sex offender registry in the United States
- Lifetime registration for all sex offenses
- Three other states require lifetime only registration for all offenses: AL, FL, SC
- Limited relief from registration requirements:
 - Certificate of Rehabilitation
 - Governor's Pardon
 - Very few granted for PC 290 offenses



STATISTICS

- CSAR Statistics as of 10/26/2020
- Registrants in CSAR = 150,684
- Registrants in the Community = 82,089
- Registrants in Transient Status = 6,861
- Registrants on Megan's Law Website = 90,541
- SLO COUNTY = 1,418 total
- 482 active/out of custody (as of 5/7/21)
- 4 juveniles
- How many petitions do we expect? 130 -150 (30%)

SB 118

- Staggers petition dates for registrants, which will allow a registrant with a conviction for a registerable sex offense to petition for termination ONLY on or after their next birthday following July 1, 2021.
- Allows courts to summarily deny petitions that are statutorily ineligible

SB 384 TIERED
REGISTRATION
Effective:
1/1/2021

Adult Tiers

Tier 1 - 10-year

Tier 2 - 20-year

Tier 3 - Lifetime

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Juvenile Tiers


Tier 1 - 5-year

Tier 2 - 10-year

No Lifetime



Who determines tier?

- DOJ
 - All individuals requiring mandatory registration to be tiered pursuant to statutory requirements.
 - DOJ assigns nearly all tiers.
 - COURT
 - DISCRETIONARY Registration PC 290.006 (After 1/1/21)
 - Person NOT required to register pursuant to PC 290
 - Court must find at conviction or sentencing that the person committed the offense as a result of *sexual compulsion or for purposes of sexual gratification*
 - Default tier is Tier 1 (10 years)
 - Court may find that individual must register as Tier 2 or Tier 3, but must state on record the reasons for finding
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MEGAN'S LAW WEBSITE Effective: 1/1/2022

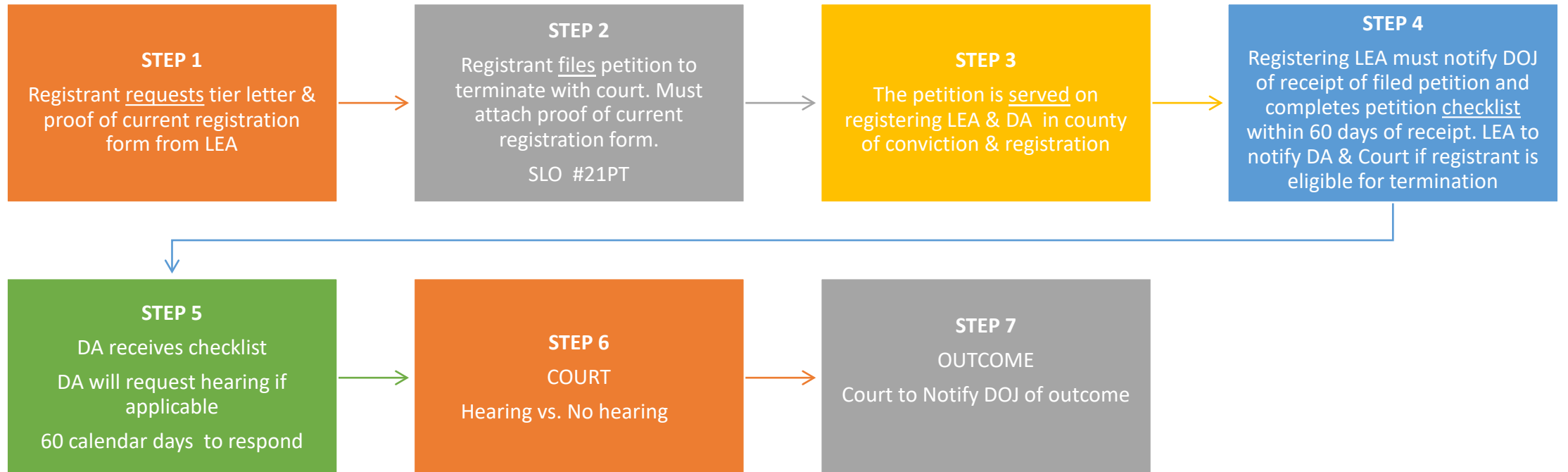
Until 1/1/22 offense based
After 1/1/22 Offense & Tiered based

Registrants tier levels will NOT be posted

Exclusions narrowed in PC 290.46 – some registrants previously excluded from the website will no longer be eligible for exclusion and will be re-posted

Registrants to be re-posted will be notified by DOJ

SB 384 Petition Process



TIER NOTIFICATION LETTER

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



VIOLENT CRIME INFORMATION CENTER
CALIFORNIA SEX OFFENDER REGISTRY
P.O. Box 903387
SACRAMENTO, CA 94203-3870
(916) 210-3113
Facsimile (916) 227-4345

[Date]

[Registrant's Name]
[Current Registered Street Address]
[City, State and Zip Code]

RE: California Sex Offender Registrant Tier Level Designation

Dear [Registrant Name]:

The California Department of Justice (DOJ) has reviewed your requirement to register as a sex offender in California pursuant to the Sex Offender Registration Act (California Penal Code sections 290 to 290.024, inclusive).

The DOJ has designated you as: **[Tier Level]**

[Tier 3 – Lifetime:

You are required to register as a sex offender in California. You are subject to registration for life and are not eligible to petition for termination of your sex offender registration requirements.]

The DOJ cannot provide legal assistance. If assistance is required, please consult the public defender's office or a private attorney.

If you would like to request a review of your criminal history record, please contact the DOJ Record Review Unit at (916) 227-3835. If you have any questions concerning this letter, please contact the California Sex Offender Registry at (916) 210-3113.

Provided By:

[Agency Name]

Agency

Printed Name

Signature

A large, dark gray arrow pointing to the right, which serves as a background for the title. The arrow is a simple geometric shape with a flat left side and a pointed right side. The text "CSAR Checklist" is centered within the arrow in a white, sans-serif font. The word "CSAR" is on the top line and "Checklist" is on the bottom line, both in all caps.

CSAR Checklist

[illegible]

PETITION PROCESS

- LEA must find that petitioner:
 - Does not have pending charges which could change tier or add to tier time
 - Is not on parole, probation, or supervised release
 - Is not in custody
 - Has completed required time free and clear in the community

What is Tolling? PC 290(e)

- Registering LEAs calculate the amount of time a petitioner has spent offense-free in the community since release from custody for the registrable offense
 - Time begins on the date of release from incarceration, placement or commitment on registrable offense
- However, time is tolled for time spent in any period of subsequent incarceration, placement or commitment (for any offense)
- Includes time spent in local facilities, CDCR, and out-of-state facilities

What is Tolling? PC 290(e) Cont'd

- Arrests not resulting in conviction, adjudication, or revocation of probation or parole do not toll the required period
- California Failure to Register Convictions:
 - Each Misdemeanor conviction adds one year to the minimum registration period, without regard to the actual time served in custody for the conviction.
 - Each Felony conviction adds three years to the minimum registration period, without regard to the actual time served in custody for the conviction.

Eligibility Determinations: Ineligible Petition

Court may summarily deny the petition if:

- (1) Court determines registrant does not meet statutory requirements for termination OR
- (2) If registrant has not fulfilled the filing and service requirements of Penal Code section 290.5.

Eligibility Determinations: Ineligible Petition

Court may summarily deny –No Hearing Required

- Under PC 290.5(a)(2): “the court may summarily deny a petition....”
- Examples:
 - Tier 3 – Lifetime
 - Did not attach proof of current registration to petition
 - Petitioned prior to first birthday on or after 7/1/21 (See PC 290.5(a)(1))
 - LEA reported individual ineligible

Note: Petition is not prohibited from re-petitioning for any period of time if petition is summarily denied.

DA REVIEW & RESPONSE


If registering LEA reports to court and DA that registrant is eligible to petition, DA in county of registration has to respond

60 calendar days to respond

DA may request a hearing challenging granting of petition on the ground that:


New information or circumstance makes registrant ineligible to petition

Community safety would be significantly enhanced by requiring continued registration




Hearing is Requested: Community Safety

- Within 60 calendar days of report from LEA, DA may request hearing to oppose granting of the petition
 - Community safety would be significantly enhanced by the petitioner's continued registration
- DA may present declarations, affidavits, police reports, and any other evidence which is reliable, material and relevant



Hearing is Requested: Community Safety

- Court shall consider:
 - Nature and facts of registrable offense
 - Age and number of victims
 - Whether any victim was known to the offender for less than 24 hours
 - Time period during which the petitioner has not reoffended
 - Successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program
 - Petitioner's risk of sexual or violent re-offense, including risk levels on risk assessment instruments




Hearing is NOT Requested:

- If DA does not request a hearing following LEA report of eligibility, court shall grant the petition
- Court must make certain findings:
 - Proof of current registration presented in petition
 - Registering LEA reports PC 290(e) requirements met
 - No pending charges which could add time to tier registration period
 - Not on parole, probation or supervised release
 - Not in custody
- If court cannot make findings, petition should be denied



COMMUNITY SAFETY HEARING

- No statutory requirement for court to hold hearing within a certain date of DA request
 - No statutory authority for registrant right to counsel
 - Marsy's law (code silent)
 - Evidentiary standard: reliable, material and relevant.
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Petition Outcomes

- If petition is denied following a hearing, court determines the time period for re-petition and reports date to CA DOJ in a manner prescribed by DOJ
 - Re-petition date set no earlier than one year from hearing and no later than 5 years from hearing



Petition Outcomes

- If petition is granted, petitioner is no longer required to register as a sex offender in California
 - Court notifies DOJ of granted petition in a manner prescribed by DOJ
 - Registration cycle is updated and remains on RAP sheet indicating “no longer required to register”
 - Conviction remains on RAP sheet

Planning and Logistics: Law Enforcement

- Caseload impact
 - How many offenders are within each jurisdiction?
- Staffing?
- How much time will it take to complete the eligibility review?
- Tracking system to ensure LEA's are completing eligibility reviews and submitting to the court and DA's w/in 60 days
- How will agency provide results to court and DA?
- Establish policies and procedures

Planning and Logistics: District Attorneys

- Who will be tasked to determine whether to challenge a petition?
- How will we determine which petitions will be challenged?
 - Policies and procedures?
- Tracking system to ensure DA requests hearing within 60 calendar days
 - Establish communication system with LEA's, Court and Defense atty
 - How will tiering affect plea and charging decisions for the office?
- Staffing needs: Clerk, Investigator, Victim Services
- Establish court protocol for processing petitions
 - What department or judge will handle petitions?

Plea Agreements

- Tiers are not discretionary
- You can't negotiate a tier
- Illegal plea to try to change a tier

Failure to Register Convictions:

PC 290 Felony – Adds 3 years

PC 290 Misd – Adds 1 year



Questions

Judicial Council Forms

The forms are effective July 1, 2021 and will be made available here at that time: <https://www.courts.ca.gov/forms.htm>

Below is a link to the approved versions of the forms:
<https://jcc.legistar.com/View.ashx?M=F&ID=9183000&GUID=C952EF51-7DC9-4D06-8519-CF6CCC9811D1>