

TIERED REGISTRY BILL

Proposed Revisions to SB 384

Senate Bill 384, as passed by the legislature and signed by the Governor in 2017, created a Tiered Registry that took effect in 2021. That registry requires adults to register as a sex offender pursuant to Penal Code Section 290 (“registrants”) for a minimum of 10 or 20 years, or a lifetime depending upon the offense for which they were convicted. Although the Tiered Registry is a significant improvement as compared to 70 years of exclusively lifetime registration for virtually all registrants, improvements in SB384’s approach are required in order to address inequities in several areas: (1) Tier 3 assignment for all felony illegal images under Penal Code (PC) 311 series; (2) lack of completion of tier assignments by DOJ for all registrants; (3) Delay or Failure to Update DOJ Records; (4) Revision of current assignment of those convicted of PC 288(c) to Tier 3; (5) Assignment of those convicted of an attempted offense to Tier 3; and (6) Alternative Approach for termination of specified Tier 3 registrants; (7) Allowing access to Megan’s Law data for current registrants to allow them access to their profiles on the website to prepare their petitions requesting removal from the registry and for other purposes.

Analysis for Proposed Revisions

1. Illegal Images—Selective Sections of PC 311 series

The Tiered Registry currently assigns all individuals convicted of a felony child pornography (“CP”) offense to Tier 3. This assignment is more stringent than federal law which recommends that individuals convicted of non-production CP offenses be assigned to Tier 1. The CA registry includes more than 2,000 individuals convicted of felony non-production CP offenses, including young adults questioning their sexual orientation and those addicted to pornography. If kept on Tier 3, these individuals would not be eligible to petition for removal from the registry. ACSOL and CACJ recommend that individuals convicted of CP possession and distribution possession (PC 311.11(a), 311.1 and 311.2) be assigned to Tier 1.

2. Lack of Tier Assignments

Statistics provided by California DOJ report that as of November, 2022, approximately 12,400 registrants remain in the category of “Tier To Be Determined”, notwithstanding the requirement set forth in PC 290(d)(5)(B) that tiers are to be assigned no later than 24 months after the enactment became effective on January 1, 2021. This deadline will be missed because that there are currently more than 12,400 registrants who have not yet been assigned a tier. Currently courts will not consider a petition filed by or on behalf of an individual who does not have a tier assignment even though their conviction offense is assigned to Tier 1 or Tier 2 by SB384. ACSOL and CACJ recommend an amendment that confirms that courts have the authority to consider a petition and determine tier assignment even though the registrant has not yet been assigned a tier by DOJ.

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3.Delay or Failure to Update DOJ Records

Despite current law in Penal Code section 17(b) allowing reduction in many offenses to misdemeanor from felony, DOJ records often do not correspond to the controlling orders granted by the court. Sometimes this reflects the failure of the court to advise DOJ by amended abstract of the change. Sometimes it is as a result of administrative congestion at DOJ that result in updates that do not get made to the individual criminal history as kept by the department. The orders of the court, when granted, reclassify the former felony to a new status of “misdemeanor for all purposes” which includes for reviewing registration obligations. Tier assignments must correspond to court orders. Failure to accurately reflect the court-determined reductions will result in erroneously overstated tier levels being designated in criminal histories and in tier designations. ASCOL and CACJ recommend that DOJ apply adequate staffing to timely update departmental records to reflect court orders validly issued.

4. Convictions for PC 288(c)

The Tiered Registry Law currently assigns individuals convicted of PC 288(a), lewd and lascivious acts with a minor 13 or younger, to Tier 2. The law, however, assigns individuals convicted of PC 288(c), who commit the same acts with an older victim (14 or 15), where the registrant is more than 10 years older, to Tier 3. This assignment to Tier 3 for those convicted of PC 288(c), whether for felony or misdemeanor, is irrational as a distinction. It may also be in violation of the equal protection clause of the state constitution. ACSOL and CACJ recommend that individuals convicted of PC 288(c) be assigned to Tier 2 for felony offenses and Tier 1 for misdemeanor offenses.

5. Attempted Offenses

Some registrants have been convicted of an attempted offense because they did not complete the conduct they started constituting a crime. For example, PC 290(c)(1) includes “attempt or conspiracy” in the list of enumerated registerable offenses. These registrants, who have been convicted of Penal Code 664, associated with a specific sex offense, are currently being assigned to Tier 3, the highest tier, which eliminates the possibility of petitioning for removal from the registry. ACSOL and CACJ recommends that registrants convicted for an attempt under Penal Code 664 be assigned to Tier 1.

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6. Off-ramp for Tier 3 registrants

After the Tiered Registry provisions of SB384 took effect in 2021, California joined 46 states that have tiered registries. Of that total, there are 15 states that provide one or more methods by which a registrant on Tier 3 who has not re-offended can be considered for removal from the state's sex offender registry. For example, a Tier 3 Georgia registrant with a non-aggravated offense may petition after ten years (O.C.G.A. § 42-1-19(a)(4), (c)(2)), and any Tier 3 Pennsylvania registrant may petition after 25 years (42 Pa.C.S. § 9799.15(a.2)).

ACSOL and CACJ recommends that PC 290 and 290.5 be amended to grant judges authority to remove registrants assigned to Tier 3 after 30 years of registration if they have not committed a subsequent sex offense and meet the statutory criteria now in effect, i.e., whether community safety would be significantly enhanced by requiring continued registration (PC 290.5(a)(3)).

7. Megan's Law Website profiles

PC 290.46(k) prohibits registrants from viewing their profiles on the California Megan's Law website. The penalties for violating this law include up to six months in jail and a fine up to \$1,000. Registrants need information from their profiles to prepare their petitions for removal from the registry. No identified harm or other justification is known which merits restraining registrants from access to this publicly available information. ACSOL and CACJ recommends repeal of this statutory provision.