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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.

When did SB 384 take effect?

The tier-based sex offender registration schema took effect on January 1, 2021.

Pursuant to Penal Code section 290.5(a)(1) as amended under SB 118 and SB 384, tier one, tier two, and "Tier Three – Risk Assessment Level" registrants may file a petition in the superior court or juvenile court in their county of residence for termination of their California sex offender registration requirement. Registrants may petition the court following the expiration of their mandated minimum registration period on or after their next



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birthday after July 1, 2021. Beginning January 1, 2022, the CA DOJ will make information available to the public via the Megan's Law website in accordance with SB 384.

The previous lifetime sex offender registration schema ended December 31, 2020.

Tiering

How are the tiers determined?

Tiers are designated in accordance with the criteria specified in Penal Code sections 290 through 290.024, et seq., the Sex Offender Registration Act, which include registrable conviction(s) or adjudication(s) from California and non-California jurisdictions, risk assessment scores and levels, and other criteria.

What are the mandatory minimum registration periods for individuals who were convicted of their registrable offenses in superior court?

Tier One: 10 years

Tier Two: 20 years

Tier Three – Risk Assessment Level: 20 years*

Tier Three: Lifetime

*Please refer to Penal Code section 290.5(b)(3) as amended under SB 384 for additional information

What are the mandatory minimum registration periods for individuals who were adjudicated of their registrable offenses in juvenile court?

Tier One: 5 years

Tier Two: 10 years

What is considered when determining whether I have met my mandatory minimum registration period?

Pursuant to Penal Code section 290(e), "the minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registrable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under the Sex Offender Registration Act (the Act), and by three years for each felony conviction of failing to register under the Act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to



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terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.”

Who determines my tier designation?

The CA DOJ designates the tiers of most sex offender registrants. However, pursuant to Penal Code section 290.006, on and after January 1, 2021, the court shall determine the tier designations for individuals ordered by the court to register. Registrants who are court-ordered to register will be designated as tier one unless the court finds the person should register as a tier two or tier three registrant and states on the record the reasons for its finding. An individual is court-ordered to register pursuant to Penal Code section 290.006 when an individual is convicted of an offense, is not required to register pursuant to Penal Code section 290, and the court makes a finding that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

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?

Registrants who feel they have been designated as the wrong tier as specified in the Act as amended under SB 384 should consult with a public defender’s office or a private attorney.

What tier will I be in if I have a registrable non-California sex offense conviction (out-of-state, federal, military)?

Pursuant to Penal Code section 290(d)(4), “[a] person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c). If the person’s requirement to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two registrant, except that the person is subject to registration as a tier three registrant if one of the following applies:

- (i) The person’s risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.
- (ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.
- (iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.”



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Will a risk assessment score affect my tier? What if I have never been scored on a risk assessment tool?

Pursuant to Penal Code section 290(d)(3)(D), a registrant who, based on their registrable offense(s) is otherwise a tier one or tier two offender, is a tier three offender if a registrant's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument. Such individuals are designated as "Tier Three – Risk Assessment Level" by the CA DOJ. Individuals who are otherwise tier three are designated as "Tier Three – Lifetime" by the CA DOJ.

Pursuant to Penal Code section 290.5(b)(3) as amended under SB 384, a registrant required to register as a tier three offender based solely on the person's risk level may petition the court for termination from the registry after 20 years from release from custody on the registrable offense if the individual meets additional certain criteria, as outlined in Penal Code section 290.5(b)(3) as amended under SB 384.

A score on a risk assessment tool is not required in order to be tiered by CA DOJ or for an individual to be eligible to petition.

If I was convicted in another state/jurisdiction and I am not required to register as a sex offender in that jurisdiction (out-of-state, federal, military), am I still required to register in California?

If a registrant has a non-California conviction for which they are no longer required to register in the state of conviction, they may still be required to register in California. Pursuant to Penal Code section 290(d)(4), if the CA DOJ determines that the individual's non-California conviction is equivalent to a registrable offense listed in Penal Code section 290(c), they are required to meet the mandatory minimum registration requirements for the applicable tier for that offense before petitioning for termination from the requirement to register as a sex offender in California.

What if the CA DOJ is unable to immediately determine my tier?

Pursuant to Penal Code section 290(d)(5), a registrant is placed in a tier-to-be-determined category if their appropriate tier designation cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit for any period for which they register towards their mandated minimum registration period.

The CA DOJ shall ascertain an individual's appropriate tier designation within 24 months of their placement in the tier-to-be-determined category. A registrant is ineligible to petition for termination of their sex offender registration requirement in California while they are placed in a tier-to-be-determined status.

If my requirement to register as a sex offender in California is terminated and I subsequently move out of the state, am I required to register in my new state of residence?

Each state/jurisdiction has their own sex offender registration requirements; therefore, the CA DOJ cannot confirm a registrant's requirement to register as a sex offender in another state/jurisdiction. Registrants should contact the sex offender registry of the appropriate state/jurisdiction for additional information about registration requirements in that state/jurisdiction.



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If I believe I already meet the mandatory minimum registration requirements as included in SB 384, do I still need to register?

Yes. Registrants must continue to register as sex offenders in accordance with the Act. After July 1, 2021, on or after their next birthday following the expiration of the minimum mandated registration period, specified registrants may petition the courts for termination of the requirement to register as a sex offender in accordance with SB 384.

However, registrants are required to continue registering in accordance with the Act unless and until a court grants a petition for termination of sex offender registration requirements in California.

Failure to continue registering in accordance with the Act may make you subject to prosecution for failure to register.

Megan's Law Website

When will I be posted on the Megan's Law website pursuant to SB 384?

Beginning January 1, 2022, the Megan's Law website will reflect changes pursuant to SB 384. These changes include the elimination of certain exclusion criteria.

Who will be posted on the website?

Not all registrants will be posted on the public website. Penal Code section 290.46 as amended under SB 384 provides the criteria for individuals to be posted to the Megan's Law website.

Will the exclusion criteria change for removal from the Megan's Law website?

Yes. Pursuant to Penal Code section 290.46(d) as amended under SB 384, only registrants who meet the following requirements will be eligible to apply for exclusion on or after January 1, 2022.

“(i) An offense for which the registrant successfully completed probation, provided that the registrant submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the registrant was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the registrant by the penis of the other or by any foreign object.

(ii) An offense for which the registrant is on probation at the time of his or her application, provided that the registrant submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the registrant was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the registrant by the penis of the other or by any foreign object.



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If, subsequent to his or her application, the registrant commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion from the Internet Web site shall be terminated.”

If I am currently excluded from the Megan’s Law website will I remain excluded?

Pursuant to amendments to Penal Code section 290.46 resulting from SB 384, registrants who were previously granted exclusion may no longer be eligible for exclusion. If the CA DOJ determines that a person who was granted an exclusion under a former version of Penal Code section 290.46(e) would not qualify for exclusion under Penal Code section 290.46(d) as amended under SB 384, the CA DOJ shall rescind the exclusion, make a reasonable effort to provide notification to registrant that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the registrant available to the public on the Megan’s Law website as provided in Penal Code section 290.46(d) as amended under SB 384.

Will my tier designation be posted on the Megan’s Law website?

No, your tier designation will not be posted on the Megan’s Law website.

Petition for Termination of Sex Offender Registration Requirement

(Pen. Code § 290.5 as amended under SB 384)

When and where do I petition for termination of my sex offender registration requirement in California?

On or after July 1, 2021, on or after their next birthday following the expiration of their mandated minimum registration period, registrants who meet the mandated minimum requirements may petition the superior court or juvenile court in the county in which they reside.

The CA DOJ cannot provide legal assistance. If assistance is required, a registrant may contact a local public defender’s office or a private attorney.

An individual who is registering solely for a juvenile adjudication will petition the juvenile court. An individual registering for an adult conviction of a sex offense, even if that person also registers for a juvenile adjudication, will petition the superior court.

Registrants must initiate the petition process by completing the petition forms, requesting proof of current registration from their individual registering law enforcement agencies, filing their petitions, and serving copies of their filed petitions on the required parties.

Where do I receive proof of current registration to attach to my petition?

The registrant’s current registering law enforcement agency will provide the proof of current registration upon request from the registrant.



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Where can I find the petition forms?

Please contact your local superior or juvenile court to request information about the petition forms.

On whom do I serve my petition?

The petition is required to be served on the registering law enforcement agency and the district attorney in the county where the petition is filed and on the law enforcement agency and the district attorney of the county of conviction of a registrable offense if different than the county where the petition is filed.

Who grants or denies a petition for termination?

The superior court or juvenile court where the registrant filed their petition will either grant or deny the petition for termination. For more information on the criteria used to grant or deny a petition, please refer to Penal Code section 290.5 as amended under SB 384.

Can the court deny a petition without holding a hearing?

Pursuant to Penal Code section 290.5(a)(3) as amended under SB 118, "The court may summarily deny a petition if the court determines the petitioner does not meet the statutory requirements for termination of sex offender registration or if the petitioner has not fulfilled the filing and service requirements of this section. In summarily denying a petition the court shall state the reason or reasons the petition is being denied."

What would make me automatically ineligible to petition?

Please find below a list of some scenarios that make you automatically ineligible to petition pursuant to SB 384. Please note that the below list does not include all the reasons you may be found automatically ineligible to petition.

- You have not met your minimum mandatory registration period pursuant to Penal Code section 290(e)
- There are pending charges against you which could extend the time to complete your tier or change your tier
- You are in custody
- You are on parole, probation, or supervised release
- You are a "Tier Three – Lifetime" registrant
- You have not received your final tier designation and have been placed in a tier-to-be-determined status
- You have not fulfilled the filing and service requirements

Can a tier three registrant petition for termination of their sex offender registration requirement?

As addressed above, if a tier three registrant is designated as tier three solely due to their risk level, which was well above average risk (formerly high risk) on the static risk assessment tool for sex offenders, at least 20 years from release from custody on the registrant's registrable offense, the registrant may petition for termination of their sex offender registration requirement unless the conviction offense is listed in Penal Code sections 1192.7



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or 288. The court shall determine, based on factors listed in Penal Code section 290.5 as amended under SB 384, whether community safety would be significantly enhanced by continued registration.

Individuals designated as tier three solely due to their risk level are designated as “Tier Three – Risk Assessment Level” by the CA DOJ.

If you are designated as “Tier Three – Lifetime”, you may not petition for termination.

If my petition for termination is denied following a court hearing, when can I re-petition for termination?

Pursuant to Penal Code section 290.5 as amended under SB 384, the court shall set the time period after which the person can re-petition for termination for tier one and tier two registrants whose petitions for termination were denied following a hearing. The earliest re-petition date shall be at least one year from the date of the denial, but not more than five years, based on facts presented at the hearing. The court shall state on the record the reason for its determination setting the time period after which the person may re-petition.

As noted above, “Tier Three – Risk Assessment Level” registrants may petition the court for termination of sex offender registration requirements. If the petition is denied, the re-petition date shall be three to five years from the date of denial. (Pen. Code § 290.5(b)(3) as amended under SB 384).

What will I receive from the court if my petition is granted?

Registrants will receive notice from the court whether their petition is granted or denied. Registrants should retain the court order for their own records.

How long will it take after my petition for termination is granted by the court for my registration requirement to be terminated by the CA DOJ?

The CA DOJ anticipates full termination from the registry after a petition is granted to take between 30-90 days. Please retain a copy of the court order granting your petition until you receive a letter from CA DOJ indicating your registration requirement has been fully terminated. Your requirement to register as a sex offender in California ends at the time the court grants your petition.

Whom may I contact for more information regarding how to file a petition for termination of my sex offender registration requirement?

Registrants may contact the local public defender’s office or a private attorney. The CA DOJ cannot provide legal advice.

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