

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP20-11

Title	Action Requested
Rules and Forms: Proof of Service for Sex Offender Registration Termination	Review and submit comments by December 23, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve form CR-416	July 1, 2021
Proposed by	Contact
Criminal Law Advisory Committee Hon. Brian M. Hoffstadt, Chair	Sarah Fleischer-Ihn, 415-865-7702 Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes a new optional form for proof of service of a petition to terminate sex offender registration and proof of current registration to the required law enforcement agencies and district attorney's offices.

Background

Under the Sex Offender Registration Act (Pen. Code, §§ 290–290.024), effective January 1, 2021, sex offender registration will convert from a lifetime requirement to a tier-based registration system with a minimum registration time period of 10 years, 20 years, or lifetime, largely depending on the registrable offense. The state Department of Justice will designate appropriate tiers for all current registrants and will notify the registering law enforcement agency. Starting July 1, 2021, registrants may petition the court in the county of registration to terminate the registration requirement if the registrant has been registered for the minimum required time and meets other criteria.

The registrant is required to serve a copy of the petition and proof of current registration 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. The court may summarily dismiss the petition if the filing and service requirements are not met. (Pen. Code, § 290.5(a)(2).) Penal Code section 290.5, effective July 1, 2021, further outlines the procedural requirements for the petition process.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.*

Prior Circulation

Earlier this year, two proposals from the Criminal Law Advisory Committee recommending adoption of forms implementing the sex offender registration termination process circulated for public comment. (Invitations to Comment SPR20-16 and SP20-03.) In the most recent circulation, 12 comments were received from a range of stakeholders: courts, the Department of Justice, law enforcement agencies, district attorney's offices, a public defender's office, and advocates. Most commenters agreed with the proposal if modified. In response to the comments received on service of the petition, the committee proposes a new optional proof of service form be included with the other forms proposed by the committee.

Service of the petition

In the first proposal circulated for public comment, the committee circulated an *Acknowledgment of Receipt* form requiring law enforcement and the district attorney to confirm receipt of the petition to the court within 10 days, similar to the acknowledgment option for a mailed civil summons and complaint under Code of Civil Procedure section 415.30. The committee's rationale for developing this form was to allow a court to track receipt of the petition, since that triggers law enforcement's review of whether the person has met the minimum time requirements for termination, the first of many steps in the termination process. The committee also considered developing a proof of service form as part of the original proposal but concluded that proof of service was insufficient to confirm whether the petition and proof of current registration were actually received by law enforcement and the district attorney.

Several law enforcement agencies, district attorney's offices, and a public defender's office commented to oppose the acknowledgment form, stating, in part, that the form shifted the burden of providing proof of service to the court from the petitioner to law enforcement and prosecuting agencies and imposed a nonstatutory burden on law enforcement and prosecuting agencies by requiring them to file the form with the superior court in which the registrant resides within 10 days. The committee accepted the comments and decided not to move forward with the *Acknowledgement of Receipt* form.

One commenter noted that the service section of the petition, where the petitioner confirmed that the petition was served on the proper agencies, provided sufficient information about proper service. The committee agreed, with modifications to the service section of the petition to include the name of the agency and the address on which service was effectuated, a declaration by the petitioner or counsel that the information contained in the petition is true and correct, and notice to the petitioner that a court may deny a petition that is not properly served. This assumed service prior to filing of the petition in court. These revisions were included in the second circulation for public comment.

In the second round of public comment, the committee received two comments regarding service of the petition to the required law enforcement agencies and district attorney's offices. The Department of Justice (DOJ) noted that Senate Bill 118 (Stats. 2020, ch. 29) amended Penal Code section 290.5(a)(2) to add the following language: "The registering law enforcement

agency shall report receipt of service of a filed petition to the Department of Justice in a manner prescribed by the department.” The DOJ noted that this amendment contemplated that the petition would be filed with the court prior to service. DOJ recommended creating a proof of service form to identify the filed petition information and to verify service of the filed petition to the proper parties.

To address issues arising from elimination of the *Acknowledgement of Receipt* form, another commenter recommended requiring petitioners to file a proof of service to establish the deadline for the law enforcement agency’s report to the court and district attorney—and thus also the district attorney’s deadline to object to the petition—in order to avoid disputes about the date of receipt.

The Proposal

Based on these comments and feedback about the committee’s prior iterations at addressing the service requirements of section 290.5(a), the committee recommends an optional proof of service form for mail and personal delivery of the petition and proof of current registration. The form would note that electronic service should conform to the relevant rule of court and the Judicial Council’s electronic service proof of service form. The committee limited the options to mail, personal delivery, and electronic service because these are the most common modes of service in criminal matters, particularly for self-represented petitioners. The committee recommends a new proof of service form, rather than encouraging use of existing proof of service forms, because of the specific parties required to be served, and to simplify the process for self-represented petitioners. Though the proof of service would not require the law enforcement agency or the district attorney’s office to verify receipt as contemplated by the *Acknowledgment of Receipt* form, it requires the server to attest to the details of service under penalty of perjury. It is anticipated that the form would provide courts with the required information about service on the appropriate agencies for purposes of confirming the petitioner’s compliance with the requirements of Penal Code section 290.5(a), as well as the date of service triggering the law enforcement agency’s response. *Proof of Service—Sex Offender Registration Termination* (form CR-416) allows the server to state which agencies were served with copies of the petition and proof of current registration, and whether the copies were served through mail or personal delivery.

The committee anticipates that this form will be presented to the Judicial Council for approval at its March 2021 meeting, along with the proposed forms that have already been circulated for comment, the petition (form CR-415) and information sheet (form CR-415-INFO), with minor revisions to reflect the new proof of service, the proposed district attorney response form (renumbered as CR-417), and the court order form (renumbered as CR-418).

Alternatives Considered

As noted above, the committee circulated for public comment the *Acknowledgment of Receipt* form for law enforcement agencies and district attorney’s offices, and an integrated proof of

service within the petition. Based on comments received and the statutory changes to section 290.5(a), the committee concluded that a separate proof of service form best implemented the statutory requirements.

Fiscal and Operational Impacts

It is anticipated that the volume of petitions for termination under Penal Code section 290.5 will be significant. Courts will have to process and act on the requests for termination by setting and conducting hearings and issuing written orders. The proposed form is intended to mitigate workload burdens by streamlining some of this process and providing greater thoroughness and consistency in the presentation of the relevant information. Expected costs include training, case management system updates, and the production of new forms.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Form CR-416, at pages 5–6
2. Link A: Senate Bill 384 (Stats. 2017, ch. 541),
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB384
3. Link B: Senate Bill 118,
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB118
4. Link C: Penal Code section 290.5, effective July 1, 2021,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=290.5.&lawCode=PEN

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

Instructions

- This form is for providing proof that a copy of a filed *Petition to Terminate Sex Offender Registration* (form CR-415) and proof of current registration was served (delivered) to the required law enforcement agencies and district attorney's offices. Read *Information on Filing a Petition to Terminate Sex Offender Registration* (form CR-415-INFO) for more information.
- The person who serves (delivers) a document or form in this case and who fills out this form must be at least 18 years old.
- This form is for proof of service by mail or personal delivery. For proof of electronic service, read and follow Cal. Rules of Court, rule 2.251, and use *Proof of Electronic Service* (form POS-050/EFS-050).
- File a completed form with the court. Keep a copy of this form for your records.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

① At the time I served the *Petition to Terminate Sex Offender Registration* and proof of current registration, I was at least 18 years old.

② My name is: _____
My mailing address is: _____

③ I served copies of the *Petition to Terminate Sex Offender Registration* and proof of current registration filed (*check one*):
 for myself on behalf of (*name of petitioner*): _____

④ I mailed or personally delivered a filed-stamped copy of *Petition to Terminate Sex Offender Registration* (form CR-415) and proof of current registration to the agencies listed below:

(a) Registering law enforcement agency

Name of agency: _____

Address: _____
Street City State Zip

Date of service: _____

Method of service (*check one*):

Mailed the documents to the agency at the address above in a sealed envelope from (*city, state*): _____ by depositing the envelope with the U.S. Postal Service

Delivered in-person to (*name*): _____ at (*time*): _____ at the address above.

(b) District Attorney (county of registration):

County of: _____

Address: _____
Street City State Zip

Date of service: _____

Method of service (*check one*):

Mailed the documents to the district attorney's office at the address above in a sealed envelope from (*city, state*): _____ by depositing the envelope with the U.S. Postal Service or

Delivered in-person to (*name*): _____ at (*time*): _____ at the address above.



