

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR20-16

Title	Action Requested
Criminal Forms: Sex Offender Registration Termination	Review and submit comments by June 9, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO	July 1, 2021
Proposed by	Contact
Criminal Law Advisory Committee Hon. J. Richard Couzens, Chair	Sarah Fleischer-Ihn, 415-865-7702 Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee recommends four new mandatory forms and an optional information sheet to be used to petition the court for termination of sex offender registration, acknowledge receipt of a petition by the appropriate law enforcement agencies and district attorney's offices, indicate a district attorney's response to the petition, and make appropriate court orders. The state Department of Justice requested the Judicial Council's assistance with forms to implement relevant parts of the Sex Offender Registration Act (Sen. Bill 384; Stats. 2017, ch. 541).

Background

Under the Sex Offender Registration Act, 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 a tier 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 district attorney may request a hearing if they believe the person does not meet the requirements or if community safety would be enhanced by the person's continued registration. Penal Code section 290.5, effective July 1, 2021, outlines the procedure and 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It is circulated for comment purposes only.*

The Proposal

The committee proposes adoption of the following four mandatory forms and approval of an information sheet.

Petition to Terminate Sex Offender Registration (form CR-415) allows petitioner or counsel to:

- Indicate that petitioner has met the requirements for termination under Penal Code section 290.5(a)(2), including proof of current registration; that petitioner has no pending charges that could extend the time to complete the registration requirements of petitioner's tier or change petitioner's status; and that petitioner is not in custody and not on parole, probation, postconviction supervised release, or any other form of supervised release;
- Identify petitioner's tier designation and indicate whether petitioner has registered for the minimum number of years for that tier designation as required under Penal Code section 290(e);
- If applicable, indicate whether petitioner has met the exceptions requirements outlined in Penal Code section 290.5(b)¹;
- Provide information on any previously filed and denied petitions so the served parties and the court are aware of any time restrictions on filing a subsequent petition under Penal Code section 290.5(a)(4), (b)(2)—(3); and
- State the agencies that the petition was served on and the method of service, to indicate compliance with the service requirements of Penal Code section 290.5(a)(2).

The petition also prompts the petitioner to read the information sheet before using the form, states that the petitioner must continue to register as a sex offender unless and until a court terminates the registration requirement, and prompts the petitioner to provide *Acknowledgment of Receipt by Law Enforcement/District Attorney* (form CR-416) to each law enforcement agency and district attorney served with a copy of the petition.

Information on Filing a Petition to Terminate Sex Offender Registration (form CR-415-INFO). This information sheet provides background on eligibility for relief, tier designation, tolling of the registration period, exception categories, and the petition process.

¹ This subdivision includes specified exceptions to tier two's 20-year registration requirement and tier three's lifetime registration requirement. Tier two contains an exception that permits a minimum 10-year registration requirement for specified offenses involving a minor victim, 14 to 17 years of age, that occurred when the offender was under 21. The state Department of Justice has indicated that it will not separately designate tier two registrants in this exception category. There is also an exception for registrants who have been designated as tier three due to an above-average risk level on the sex offender risk-assessment instrument, which permits them to petition for termination after a minimum 20-year registration period. The state Department of Justice has indicated that it *will* separately designate persons in tier three based on a risk-level assessment. The court's role is to determine whether community safety would be enhanced by requiring continued registration and, if the court denies the request based on community safety concerns, the time period after which the person can file another petition.

Acknowledgment of Receipt by Law Enforcement/District Attorney (form CR-416) allows law enforcement and the district attorney to acknowledge to the court receipt of the petitioner's *Petition to Terminate Sex Offender Registration* (form CR-415) and petitioner's proof of current registration. Under Penal Code section 290.5(a)(2), receipt of the petition triggers law enforcement's eligibility review, the first of many steps in the termination process.

Response by District Attorney to Petition to Terminate Sex Offender Registration (form CR-417) allows the district attorney to:

- State that there is no objection to the petition; or
- Request a hearing based on a community safety argument (Pen. Code § 290.5(a)(2)); or
- Recommend that the court deny the petition based on petitioner's ineligibility.

Order on Petition to Terminate Sex Offender Registration (form CR-418) allows the court to take one or more of the following actions:

- Grant the request to terminate sex offender registration under Penal Code section 290 et seq;
- Summarily deny the request based on petitioner's ineligibility;
- Deny the request after hearing based on a finding that community safety would be significantly enhanced by petitioner's continued registration (Pen. Code, § 290.5(a)(2));
- Indicate that its findings after hearing are either stated on the record or set forth in writing in the order; and
- Indicate the time period after which the petitioner may file another petition (Pen. Code, § 290.5(a)(4), (b)(2)—(3)).

The committee recommends an effective date of July 1, 2021, for the proposed forms since the termination petition process goes into effect on that date.

Alternatives Considered

Mandatory forms

The committee discussed whether to recommend mandatory or optional forms. Under Government Code section 68511, designating a form as mandatory prohibits courts from creating an alternative local form. The committee is recommending mandatory forms to promote uniformity throughout the state, especially since a significant number of petitions may involve petitioners with different counties of registration and conviction.

Procedure

Besides registering for the minimum number of years for their tier, petitioners in tiers one and two must also provide proof of current registration and cannot have pending charges, be in custody, or be on supervision. These requirements are not specified for petitioners in the exceptions categories for tiers two and three under Penal Code section 290.5(b), which permit a shortened registration time period if the petitioner meets specified criteria. The committee recommends that the petition include these requirements for petitioners in the tiers two and three

exceptions categories, noting that it is reasonable to have those subject to exceptions comply with similar prerequisites to relief as petitioners in tiers one and two.

Law enforcement response form

The committee discussed whether to develop a form for law enforcement to use in their response to the courts and the district attorney regarding a petitioner's eligibility, noting that many courts prefer consistency across forms. The state Department of Justice indicated that the California Sex and Arson Registry would likely develop a response document for optional use by agencies that could be automatically populated to assist in determining eligibility. Because this option seemed preferable to a Judicial Council form, the committee decided not to develop a law enforcement response form.

Service and receipt of petition and proof of current registration

Receipt of the petition triggers law enforcement's eligibility review, the first of many steps in the termination process. The committee discussed the importance to the court in tracking that both law enforcement and the district attorney received the petition and proof of current registration. The committee considered developing a form for proof of service of the petition and proof of current registration, but concluded that a proof of service form was insufficient to confirm whether the petition and proof of current registration were actually received by law enforcement and the district attorney. The committee ultimately decided to develop a separate acknowledgement of receipt form for law enforcement and the district attorney to confirm receipt of the petition, similar to the acknowledgment requirement for a mailed civil summons and complaint under Code of Civil Procedure section 415.30.

District attorney or prosecuting agency

Penal Code section 290.5 references the role of the district attorney in the registration termination process. The committee discussed whether the forms should use a broader term, such as *prosecuting agency*, since city attorney's offices in some jurisdictions charge and prosecute registrable offenses and may be involved in responding to a petition. The committee decided to follow the statutory language and uses the term *district attorney* in the forms.

Juvenile adjudications

The committee discussed whether to develop forms that included requests to terminate registration based on juvenile adjudications. The Family and Juvenile Law Advisory Committee is tracking the issue and may develop separate forms to be used for those instances.

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 forms are 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?
- Are the forms and information sheet written in a way that would be understandable to most self-represented court users?

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 9 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. Forms CR-415, CR-415-INFO, CR-416, CR-417, and CR-418, at pages 6–14
2. Link A: Senate Bill 384; Stats. 2017, ch. 541,
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB384
3. Link B: 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.

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- Before using this form, read *Information on Filing a Petition to Terminate Sex Offender Registration* (form CR-415-INFO).
- Petitioner must continue to register as a sex offender unless and until a court terminates the registration requirement.
- Petitioner must provide *Acknowledgment of Receipt by Law Enforcement/District Attorney* (form CR-416) to each law enforcement agency and district attorney served with a copy of this petition.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

For Court use only:

Date:
Time:
Department:

1 Petitioner's Information

a. Name: _____
Last First MI
 Date of birth: _____ (mm/dd/yyyy)
 The county or counties where petitioner was convicted of an offense requiring registration: _____

b. Attorney Information (if applicable)

Attorney Name: _____
 Firm: _____
 State Bar No.: _____

c. Contact Information (*IMPORTANT: You may be contacted about this matter at the address, phone, or e-mail listed below.*)

Street
 _____ Phone: _____
City State Zip
 E-mail (if available): _____

d. If there is a hearing, petitioner requests an interpreter in (language): _____

2 Termination Request

Petitioner requests termination of the requirement to register as a sex offender in California.

3 Registration Status

- a. Petitioner is **currently registered** as a sex offender in California in the County of: _____
- b. Proof of current registration is attached.

4 Pending Charges

To my knowledge, there are no pending charges against petitioner that could extend the time to complete the registration requirements of petitioner's tier or change petitioner's tier status.

5 Custody Status

Petitioner is not in custody (*in jail or prison*).

6 Supervision Status

Petitioner is not on parole, probation, postconviction supervised release, or any other form of supervised release.

7 Tier Designation and Eligibility

Petitioner was designated by the Department of Justice in the following tier and has registered for the following number of years:

- a. Tier 1 (Adult)
- (1) Petitioner has registered for at least 10 years.
- b. Tier 2 (Adult)
- (1) Petitioner has registered for at least 20 years; **or**
- (2) Petitioner has registered for at least 10 years and all of the following apply:
- (a) Petitioner has not been convicted of a new offense requiring sex offender registration since petitioner was released from custody on the offense requiring sex offender registration;
- (b) Petitioner has not been convicted of a new offense listed in Penal Code section 667.5(c) (violent felonies) since petitioner was released from custody on the offense requiring sex offender registration; and
- (c) The offense for which petitioner is required to register as a sex offender in California
- (1) involved no more than one victim 14 to 17 years of age, (2) occurred when petitioner was under 21 years of age, (3) is not one listed in Penal Code section 667.5(c) (except Penal Code section 288(a)), and (4) is not one listed in Penal Code section 236.1.
- c. Tier 3 (*all of the following apply*)
- (1) Petitioner's designation is based only on a risk level assessment;
- (2) Petitioner has registered for at least 20 years;
- (3) Petitioner has not been convicted of a new offense requiring sex offender registration since petitioner was released from custody on the offense requiring sex offender registration; and
- (4) Petitioner has not been convicted of a new offense listed in Penal Code section 667.5(c) (violent felonies) since petitioner was released from custody on the offense requiring sex offender registration.

8 Previous Petition

- a. Petitioner (*check one*) has has not previously filed a petition in California for termination of a sex offender registration requirement that was denied by the court.
- b. The previous petition was denied in (*case number*): _____, in the Superior Court of California, County of _____, on (*date*): _____
- c. The court set _____ (months/years) as the time period after which petitioner may request termination again.

9 Service

A copy of this petition and the proof of current registration was served on the following agencies:

Agency Name	Service
Registering law enforcement agency:	Date of service: _____ Method: <input type="checkbox"/> mail <input type="checkbox"/> in-person <input type="checkbox"/> electronic
District attorney (county of registration):	Date of service: _____ Method: <input type="checkbox"/> mail <input type="checkbox"/> in-person <input type="checkbox"/> electronic
Law enforcement (county of conviction):	Date of service: _____ Method: <input type="checkbox"/> mail <input type="checkbox"/> in-person <input type="checkbox"/> electronic
District attorney (county of conviction):	Date of service: _____ Method: <input type="checkbox"/> mail <input type="checkbox"/> in-person <input type="checkbox"/> electronic

10 Registration Period

Petitioner believes that they have met the requirements to register for the time period required by petitioner's tier designation.

Date: _____

Printed Name of Petitioner or Attorney

Signature of Petitioner or Attorney

1 General Information

- Do not file this information sheet with your petition.
- You must continue to register as a sex offender unless and until a court grants your request to terminate the registration requirement.
- You may be required to register as a sex offender in another jurisdiction even if your requirement to register in California is terminated.
- This information sheet is for registration based on convictions in adult criminal court. It does not address registration based on juvenile adjudications.

2 Am I eligible for relief under Penal Code section 290.5?

You *may be* eligible to petition for relief under Penal Code section 290.5 if:

- You are required to register as a sex offender as a result of a California state court conviction;
- Your “tier assignment” has been determined by the Department of Justice;
- You have been assessed as being within Tier 1 or Tier 2; or
- You have been assessed as being within Tier 3 based solely on your assessed level of relative risk.

3 Which tier am I? How is my tier determined?

- Your tier is based on your conviction, risk assessment scores, and other factors. The Department of Justice will determine tier placement for all current registrants and will notify the law enforcement agency where they register. Your minimum required registration period begins on the date you were released from incarceration, placement, or commitment upon being convicted of a registrable offense.
- The period “tolls” during any subsequent period of incarceration, placement, or commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole do not toll the required registration period.

3

- Any misdemeanor conviction for failure to register extends the minimum time period by one year. Any felony conviction for failure to register extends the minimum time period by three years.
- If there have been no tolling or extensions of the minimum registration period, you are eligible to petition for relief after you have registered for the following minimum time periods:

If you are...	You must have registered for at least...
Tier 1 (Adult)	10 years
Tier 2 (Adult)	20 years
Tier 2 (10-Year Registration Exception)	10 years
Tier 3 - Based on Risk Level	20 years

4**Are there any other requirements besides registering for my tier's minimum time period?**

If you are assessed as coming within Tier 1 or Tier 2, you are *only* eligible to petition for relief on reaching the end of the minimum registration period, and only if *all of* the following are true:

- You are not the subject of pending criminal charges;
- You are not in custody; *and*
- You are not on parole, probation, post conviction supervised release, or any other form of supervised release.

If you are assessed as coming within Tier 3 solely based on your assessed relative risk level, you are *only* eligible to petition for relief at the end of the minimum period of registration if all of the above factors *and* all of the following are true:



- You were not convicted of a new offense requiring sex offender registration since your release from custody following your conviction for the offense originally giving rise to your duty to register; *and*
- You were not convicted of a new offense listed in Penal Code section 667.5(c) (“violent felony”) since your release from custody following your conviction for the offense originally giving rise to your duty to register.

5 If I have been designated as being in Tier 2 (Adult), how do I know if I qualify for the Tier 2 10-year registration exception?

For adult registrants, a small number of Tier 2 offenses qualify for a 10-year registration period, instead of 20 years. Your designation letter or proof of current registration will not tell you whether you qualify. You may qualify if you have registered for 10 years and all of the following apply:

- The offense involved only one victim, between the ages of 14 and 17;
- You were under 21 years of age at the time of the offense;
- The offense is not listed in Penal Code section 667.5(c), violent felonies, with the exception of Penal Code section 288(a), lewd or lascivious act, or in Penal Code section 236.1, false imprisonment and human trafficking;
- You were not convicted of a new offense requiring sex offender registration since your release from custody following your conviction for the offense originally giving rise to your duty to register; and
- You were not convicted of a new offense described in Penal Code section 667.5(c) since your release from custody upon conviction for the offense originally giving rise to your duty to register.

6 At the end of my minimum period of registration, where and how do I file my petition with the court?

- Beginning July 1, 2021, you can file your petition and proof that you are current with your registration in the superior court in the county where you register. If you register with more than one law enforcement agency (for example, campus registration or additional residence address), you must file the petition in the county of your primary residence.
- Make a copy of the petition, proof of current registration, and copies of *Acknowledgment of Receipt by Law Enforcement/District Attorney* (form CR-416) for each law enforcement agency and district attorney’s office you (or someone on your behalf) must serve.
- Contact the court clerk or check the court’s website to see if any local rules exist regarding filing and/or service of the petition.
- File the petition by:
 - taking it to the court clerk in person;
 - mailing the petition to the court; or
 - depending on the court’s local rules and practices, filing the petition electronically.

7 Who else gets a copy of the petition, and how?

You or someone on your behalf must deliver a copy of the petition and the proof that you are current with your registration on:

- The law enforcement agency with which you currently register; and
- The district attorney in the county in which you currently register.

If your registrable offense is from a different county than the one you register in, the petition and the proof of current registration must be delivered to the law enforcement agency and the district attorney of the county of conviction of the registrable offense.

Example: If you were convicted of a registrable offense in Los Angeles County but register in Orange County, you or someone else on your behalf must serve law enforcement and the district attorney in both counties.

Contact every agency that must be served to check if there is a specific person or mailing address that should receive the petition. If the agencies do not get a copy, they will not be able to provide the information the court needs to consider your request, and the court may deny the request or put it over until it receives this information.

There are three main ways to serve the petition:

- **Personal service:** You may serve the petition or ask someone else to do it. Go in person to hand-deliver the petition and proof of current registration to a representative of the law enforcement agency and district attorney's office during business hours. This is the most reliable form of service.
- **Service by mail:** Place copies of the petition and the proof of current registration in a stamped, sealed envelope addressed to the law enforcement agency and district attorney's office. Put first-class postage on the envelope and mail it by depositing the envelope with the U.S. Postal Service or at an office or business mail drop where the mail is picked up every day and deposited with the U.S. Postal Service.
- **Electronic service:** Contact the law enforcement agency and district attorney's office to check if they accept electronic service. If so, the court may require proof of consent and proof of electronic service. You can use *Consent to Electronic Service and Notice of Electronic Notification Address* (form EFS-005-CV) and *Proof of Electronic Service* (form EFS-050), available at www.courts.ca.gov/forms.

Your petition may be denied if all law enforcement agencies and district attorney's offices required to be served are not served.

8 Time frame for court's decision

The court will not make a decision until it hears from the law enforcement agency and the prosecuting agency. This may take four months or longer. The court may grant your request, deny your request, or set the request for a hearing if one is requested by the prosecuting agency.

9 Hearing

The prosecuting agency may request a hearing if it does not believe you have registered for the minimum time period required or if it believes that you should continue registering for community safety. At the hearing, the court will make its decision about whether you should continue registering for community safety by reviewing the facts of your case and your conduct since the conviction.

10 Subsequent petition

If the court denies your request, it will let you know how much time must pass before you can make the request again. This depends in part on your tier.

- Tier 1 and 2 (Adult): at least one year from date of denial, but not to exceed five years, based on facts presented at the hearing
- Tier 2 (*10-year registration exception*): at least one year from date of denial
- Tier 3 (*based on risk level*): at least three years from date of denial

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**Acknowledgment of Receipt by
Law Enforcement/District Attorney
(Sex Offender Registration Termination)***Clerk stamps date here when form is filed.***DRAFT
Not approved by
the Judicial Council**

1 The petition and proof of current sex offender registration are for:
a. Name: _____
Last First Middle

b. Date of birth: _____ (mm/dd/yyyy)

2 I received a copy of a *Petition to Terminate Sex Offender Registration* (form CR-415) and proof of current sex offender registration of the above-named petitioner on (date): _____

*Fill in court name and street address:***Superior Court of California, County of**

3 Agency name: _____ and county: _____

- Registering law enforcement agency
- District attorney's office (county of registration)
- Law enforcement agency (county of conviction)
- District attorney's office (county of conviction)

*Court fills in case number when form is filed.***Case Number:**

Printed Name and Title of Agency Representative

Signature of Agency Representative

To the agency: Return this Acknowledgment of Receipt to the court in the registering county within 10 days of receipt.

**Response by District Attorney to
Petition to Terminate Sex Offender
Registration**

Clerk stamps date here when form is filed.

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the Judicial Council**

1 Petitioner's Information

This is a response to a petition filed by:

a. Name: _____
Last First Middle

Date of birth: _____ (mm/dd/yyyy)

b. Tier (check one):

- Tier 1 (Adult)
- Tier 2 (Adult)
- Tier 2 (10-year registration exception)
- Tier 3 (based on risk level)
- Tier 3 (lifetime)

Fill in court name and street address:

Superior Court of California, County of

Case Number:

For Court use only:

**Date:
Time:
Department:**

2 Response

- a. The district attorney has no objection to this petition;
- b. The district attorney requests a hearing because community safety would be significantly enhanced by the petitioner's continued registration; or
- c. The district attorney requests the petition be denied because (check one):
 - (1) Petitioner has not met the minimum time period for registration;
 - (2) Petitioner does not qualify for termination because petitioner is a Tier 3 lifetime registrant and does not fall under the risk level exception; or
 - (3) Other: _____

Date: _____

Printed Name

Signature

Order on Petition to Terminate Sex Offender Registration (Pen. Code, § 290.5)

Clerk stamps date here when form is filed.

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① Name: _____
Last First Middle

Mailing address: _____
Street

City State Zip

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

② The court **GRANTS** the petition to terminate the sex offender registration requirement under Penal Code section 290 et seq.

③ The court summarily **DENIES** the petition to terminate the sex offender registration requirement because *(check one)*:

- a. Petitioner has not met the minimum time period for registration;
- b. Petitioner does not qualify for termination because petitioner is a Tier 3 lifetime registrant and does not fall under the risk level exception; or
- c. Other: _____

④ After hearing, the court **DENIES** the petition to terminate the adult sex offender registration requirement because the court finds that community safety would be significantly enhanced by the petitioner’s continued registration.

The court’s findings are: stated orally on the record *or* set forth below:

a. **For Tier 1 and Tier 2 denials:** The court has set the time period after which the petitioner may file another petition for termination on *(date)*: _____ for the following reasons:

b. **For Tier 2 (10-year registration exception) denials:** The court has set the time period after which the petitioner may file another petition for termination at least one year from the date of denial: _____

c. **For Tier 3 (based on risk level) denials:** The court has set the time period after which the petitioner may file another petition for termination at least three years from the date of denial: _____

Date: _____

Signature of judicial officer

This is a Court Order.