

Introduction to Sex Offender Registration: Steps to Accomplish Ending the Obligation

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No more chilling impact exists than the realization that for the remainder of one's life, you will carry the terrible designation of "registered sex offender". This devastating and life-changing label was first adopted in California in 1947. Despite the status being referred to as "lifetime registration" it never has been a universally lifelong obligation. Because the path currently available to end sex offender registration is complex and beyond the comfort of most lawyers, virtually no familiarity exists in undertaking the admittedly challenging termination process. The purpose of this article is to raise awareness of the current legally available procedure to terminate registration duties, and to make known the coming far broader availability, for a far wider group of people registered, for a far wider class of offenses, to end the obligation to register. This new statutory alternative goes into effect in 2021, if the current law now in effect does not offer relief. The article also provides some guidance, illuminating why such termination is socially responsible, community-benefiting and "smart on crime". It is worthwhile to note that the options to end the duty to register have existed in the law for many years. The new change was accomplished with the support of law enforcement and based on scientific research developed by the state agency charged with overseeing registration.

The Back Story

California was the first place in the world to envision registering sex offenders, based not on science or evidence, but a twisting path thru fear and unfounded notions about public safety. Great detail, complete with a rich collection of contemporaneous source materials, can be found in an article, "Origin of Registry" at: http://www.solresearch.org/report/Origin_of_Registry. Some key facts: As Prohibition began in 1920, an era of organized crime blossomed nationwide to exploit the imbalance between supply and demand of alcohol. Major cities began to consider "gangster laws" requiring those convicted of certain crimes to register with law enforcement where they lived, with the trigger being any felony or certain drug and weapon offenses convictions. Sex crimes were not yet in the picture.

As social mores evolved, struggles developed between social liberals who viewed consensual sexual matters as *laissez faire* items better left outside of government purview, and the moralists who saw the growing "sexual license" as a danger to society. Added to this was the common view that consensual homosexual acts were worthy of harsh treatment. In 1938, the LA Police Department created the Bureau of Sex Offenses, which began keeping detailed records of individuals and their offenses. The claimed reasons for such efforts was the unfounded belief that those who commit minor sex offenses were potential major sex offenders, whose records should be used to assist law enforcement efforts to find possible perpetrators of future crimes. In 1940, the Parent Teacher Association passed a resolution, seeking to add registering of sex offenders, including any consenting adults convicted, to the list of those

required to register. Also added to the list developing was the crime then called “lewd vagrancy” which focused on consensual homosexual sexual activity.

By 1947, the legislature adopted and Gov. Earl Warren signed into law Penal Code section 290, the world’s first enumerated listing of offenses requiring lifetime registration for convicted sex offenders. Over time, as is the typical pattern in criminal law, the list grew of crimes requiring registration. Of critical importance, in 2018 the state agency charged with supervising the registration, California Sex Offender Management Board (<http://www.casomb.org>) noted that currently there were approximately 67,000 people registered and living in the communities of California, and about 100,000 people registered overall, including more than 23,000 people registered who were either in prison or civil commitment.

The Path for Termination of Registration Duty-Old and New

Current Law Thru 2020-Termination of Registration is Possible!

Although the registration is described as a “lifetime” obligation, under the current law, a method for terminating registration does exist for some offenses. For many years, this obscure path has existed but been rarely used, based both on lack of awareness of the option’s existence, and the difficulty to successfully accomplish the result. It is available for a list of offenses set out in the Penal Code, but barred for others, absent a governor’s pardon, which is rarely granted for a sex offender. The specifics of the process, the tactical considerations and the evidentiary approaches that accomplish a successful application are beyond the scope of this article. **The take-away is that a reasonable basis exists for optimism that this registration burden can be removed from one obligated to register. What is required is a case-by-case basis examination of the original conviction, to determine suitability to seek termination under the existing law.** The basic required information is the specific legal section resulting in the conviction, the county where it was sentenced and the date on which any custody terminated.

Where to Seek Relief

Under current and newly adopted law, the place to seek to terminate sex offender registration is the current county of residence, surprisingly, not the country of conviction.

New Law-Termination of Registration is More Broadly Available--How It Was Achieved

The legislature became convinced that current law was far too limiting in granting relief, both for less serious and for most more serious offenses, and as a result, was profoundly wasting law enforcement resources and putting public safety at risk. In 2017, Sen. Scott Wiener (D-San Francisco) was able to assemble an unlikely coalition, overcoming the historic fear of elected politicians, that if they supported reasonable reform, they would be attached as “soft on crime”. The proposed legislation received wide-spread support, in a public and “on the record” fashion, from law enforcement and district attorneys alike.

What was approved is a new and more generous approach for those required to register called “Tiered Registration”. Supporters were as diverse as the California Sex Offender Management Board, ACLU, the California Police Chiefs Associations, many district attorney’s offices and criminal defense attorneys. The basis for the widespread support was the universal acceptance that for each registrant on the list, many of whom were extremely low risk and offense-free for decades, impact on law enforcement time and availability was profound, preventing them from

prioritizing dealing with serious and dangerous registrants in the community. Authoritative research supporting this conclusion came from the CASOMB and their studies in 2010 and 2014, regarding both the focus of resources and value of tiered registration, which included the evidence on re-offense rates for registrants with good backgrounds and treatment subsequent to their original offense. They reported as follows:

California should concentrate state resources on more closely monitoring high and-moderate risk sex offenders. A sex offender's risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet; other factors that should determine duration of registration and Internet posting include whether the sex offense was violent, was against a child, involved sexual or violent recidivism, and whether the person was civilly committed as a sexually violent predator. (**CASOMB, *Recommendations Report*, 2010**)

Having set the groundwork for reviewing lifetime registration, the CASOMB next addressed the premise that registration as structured, based on the assumption of the stranger as perpetrator, **disserved** the public good as currently constituted. Here is the summary they presented:

"Sex offender management is an extremely complex issue that continues to pose enormous challenges for state policymakers, who struggle to identify and implement effective and evidence-based policies and programs that are not merely reactions to individual tragic events. Myths about sex offenders continue to abound, such as the widespread belief that most victims are targeted by strangers, while in fact it is much more likely to be perpetrated by someone the victims know. These myths continue to influence policymakers and may have detrimental effects on public safety. Successful strategies must take into account current research on sex offender management, most notably the distinctions between various types of sex offenders and the different risk levels they pose to the public". (**CASOMB, *A Better Path to Community Safety*, 2014**)

With these authoritative law enforcement endorsements, the legislature adopted, and the governor signed the new, tiered registration law, which ends "lifetime" registration and allows planned termination of the registration obligation on a good-cause basis, after a specified time on the list has passed. It takes effect January 1, 2021. **The prior law continues to be available in suitable instances until then.**

New Law-How It Differs and How It Works

How It Differs

Sen. Wiener's SB 384 greatly broadens the available list of offenses for which a registrant can seek relief, reducing to just a very few those subject to lifetime registration. The details of who is excluded from court-ordered termination of the registration duty, and the specifics of the path to that relief, are too nuanced to detail here. **Suffice it to confirm that most sex offender registrants, after 10-20 years on the list after release from custody, with presentation of proof of treatment, law-abiding post-release behavior, with satisfactory and competent mental health evaluation utilizing state-approved testing instruments for assessing level of risk, can apply and qualify to terminate the duty to register in California.** By this landmark legislation, California joins the vast majority of states in the US that impose registration for a term less than life.

How It Works

- 1 Once the designated period after completion of service of custody time has passed, which varies from 10 to 20 years, the registrant can petition the superior court in the county of residence for termination of the obligation to register. Required notice to interested parties produces a right to a hearing at the request of the district attorney. In the hearing, the court determines appropriateness of the petition, including a determination of whether relief would have an adverse impact on public safety. The current approved state risk assessment tools are relied on to make these judgments. The rules of evidence are very relaxed allowing any relevant evidence to be considered to informed decision-making. As before, the individual variances require a case-by-case assessment. The take-away is that there is a path and realistic hope that registration can be ended for those convicted of both misdemeanor and felony registerable offenses previously requiring lifetime registration.

Conclusion

For many, current opportunity now exists to apply to end sex offender registration obligations under the current law. For those not currently available to get termination, the new law effective in 2021 offers far wider hope of ending the registration nightmare. There is a growing recognition in the legal system that the challenge of responsibly and fairly managing people required to register is substantial, calling for a balance of concerns for treatment, public safety and avoidance of devastating, stigmatizing harms which serve no public good.

The new tiered registration law strikes a balance, serving both public safety and those past offenders who are our fellow citizens and neighbors.