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THE TIERED SEX OFFENDER ACT

by MICHAEL J. OCAMPO

Currently, any person living in California who has been convicted of a California Penal Code section 290(c) crime must continuously register as a sex offender for the rest of his or her life.¹ Registration means disclosing one's status as a sex offender to the local police department² and being included in the California Megan's Law website, an online sex-offender database that is accessible to the public.³



The database makes available to the public the specific sex-related crime that an offender committed, as well as his or her photograph, and, depending on the crime, the person's home address and an assessment of the person's risk of re-offending.⁴

The requirement to register as a sex offender is indiscriminate. It applies whenever a person is convicted of any of the more than seventy sex-related crimes listed in California's Penal Code section 290(c), without regard to the severity of the offense.⁵ And the lifetime duty to register persists regardless of the status of the crime as a misdemeanor or felony, how much time has passed since the commission of the offense, or whether an offender's assessed risk to the public has diminished over time.⁶

However, three years from now, some offenders may no longer be required to register as a sex offender for life. Beginning January 1, 2021, the Tiered Sex Offender Act, also known as Senate Bill 384, will relieve some from the lifetime duty to register after ten or twenty years, depending on the specific crime for which they were convicted.⁷

The Tiered Sex Offender Act establishes a three-tiered system for sex offender registration. Tier 1 offenses are misdemeanor sex crimes and sex-related felonies that were not classified as "serious" or "violent," pursuant to Penal Code sections 1192.7(c) and 667.5(c), respectively. Only the most egregious felonies are classified as serious or violent. Such offenses are punishable by the longest periods of imprisonment. Persons convicted of a Tier 1 offense must register as a sex offender for a period of ten years.⁸

Tier 2 offenses are sex-related felonies that were committed against mentally disabled victims, sex crimes that are also classified as serious or violent, and subsequent convictions for annoying or molesting a child under the age of eighteen.⁹ The registration period for Tier 2 offenses is twenty years.¹⁰

Tier 3 offenses will require lifetime registration as a sex offender. Tier 3 contains the most heinous sex offenses, such as committing a lewd act on a child by force, possession of child pornography, engaging in human trafficking, and kidnapping with intent to commit rape.¹¹ Persons included within Tier 3 also include habitual sex offenders, those at high risk of re-offending upon release, and sex offenders who subsequently commit violent sex-related felonies.¹²

Additionally, commencing July 1, 2021, those relieved of the lifetime duty to register may also petition the court to remove them-

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selves from the state's online database of sex offenders.¹³ S.B. 384 will also be retroactive.¹⁴

The Tiered Sex Offender Act is a bipartisan law that was written with input from law enforcement, criminal justice reform groups, and rape crisis advocates. The law is supported by the California Police Chiefs Association, the California District Attorneys Association, the American Civil Liberties Union of California, and California Attorneys for Criminal Justice. Currently, the number of sex offenders that police must monitor is so large—more

than 100,000 people, which amounts to about 1 in every 400 Californians—that police are spending an inordinate amount of time writing monthly and annual reports about people who no longer pose a substantial risk to the public.¹⁵ Once S.B. 384 takes effect, people who have been registering as sex offenders for decades, if eligible for relief, will no longer have to do so. Gradually shedding Tier 1 and Tier 2 offenders will free police from the time-intensive burden of monitoring low-risk offenders and will enable them to instead focus

BY THE NUMBERS

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their efforts on high-risk offenders.

Before the new law takes effect, the only ways for persons to relieve themselves from the lifetime duty to register are to obtain a certificate of rehabilitation from the court or a governor's pardon. Both measures require more effort than mere eligibility and, even then, are available only for certain sex offenses.¹⁶ In three years, once the Tiered Sex Offender Act becomes operational, those convicted of less serious sex-related crimes will eventually be able to be relieved of the duty to register as a sex offender.

ENDNOTES

(1) Cal. Penal Code §§ 290(b), (c) (operative Jan. 1, 2021), 290.018 (Deering 2018).

(2) Cal. Penal Code § 290(b) (Deering 2018) (operative Jan. 1, 2021). Disclosure must also be made to any secondary educational, state-sponsored institution, such as a UC, Cal State, or community college.

(3) Cal. Penal Code § 290.46 (Deering 2018) (operative Jan. 1, 2022), also known as California's Megan's Law.

(4) *See id.* §§ 290.46(a)(2), (b)(1), (c)(1), (d)(1), (e)(1).

(5) *Id.* § 290(b).

(6) *Id.*

(7) Cal. Penal Code §§ 290(d)(1), (2) (Deering 2018) (operative Jan. 1, 2021).

(8) *See id.* § 290(d)(1).

(9) Cal. Penal Code § 290(d)(2).

(10) *Id.*

(11) Cal. Penal Code § 290(d)(3) (Deering 2018) (operative Jan. 1, 2021).

(12) *Id.*

(13) Cal. Penal Code § 290.5 (Deering 2018) (operative July 1, 2021).

(14) S.B. 384, once operative, will apply to everyone currently in the sex offender database and anyone who will have to register in the future, according to the commu-

nications director of Sen. Scott Wiener (D), San Francisco, the senator who co-authored the law. *See* Pablo Lopez, *He Admitted to One Huge Mistake. But He Didn't Want to be Branded a Sex Offender For Life*, The Fresno Bee (October 6, 2017), <http://www.fresnobee.com/news/local/crime/article177454751.html>. Additionally, the law's statutory language does not indicate that the three-tiered system applies only to convictions sustained on or after a specific date. *See also* Cal. Penal Code § 290.5.

(15) Pablo Lopez, *supra* note 14.

(16) *See* Cal. Penal Code § 290.5.

Michael J. Ocampo is a former deputy district attorney and is the principal attorney at Michael J. Ocampo, Attorney at Law. He focuses his practice exclusively on criminal law. He can be reached at michael@ocampocriminaldefense.com.



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