

TIERED REGISTRY LAW MODIFICATIONS

Senate Bill 384 created a Tiered Registry in 2017 that will take effect in 2021. That registry requires adults to register as a sex offender pursuant to Penal Code Section 290 (“registrants”) for a minimum of 10 years, 20 years or a lifetime depending upon the offense for which they were convicted. Although the Tiered Registry Law is an improvement as compared to 70 years of lifetime registration for virtually all registrants, changes to the law are required in order to address deficiencies in three areas: illegal images, sexual battery, and Tier 3 registrants. In addition, it is necessary to allow registrants to lawfully access their profiles on the Megan’s Law website to prepare their petitions requesting removal from the registry.

Illegal Images

The Tiered Registry Law currently assigns all individuals convicted of a felony child pornography (“CP” or “illegal images”) offense to Tier 3. This tier assignment is contrary to federal law which recommends that most individuals convicted of CP offenses be assigned to Tier 1. The CA registry includes more than 2,500 individuals convicted of felony CP offenses, including young adults questioning their sexual orientation, as well as those addicted to pornography. If kept on Tier 3, these individuals will be required to register as a sex offender for the rest of their lives. Consistent with federal law, ACSOL recommends that individuals convicted of CP possession and distribution possession (PC 311.11(a), 311.1 and 311.2) be assigned to Tier 1 and that individuals convicted of CP production (PC 311.3 and 311.4) be assigned to Tier 2.

Sexual Battery

The Tiered Registry Law currently assigns all individuals convicted of felony sexual battery to Tier 3 even though that offense is not a violent offense in accordance with PC 667.5(c). This tier assignment is contrary to federal law which recommends that felony sexual battery against an adult be assigned to Tier 1, and that felony sexual battery against a minor be assigned to another tier based upon the age of the victim. ACSOL recommends that individuals convicted of felony sexual battery (PC 243.4) against an adult be assigned to Tier 1, felony sexual battery against a minor age 13 or older be assigned to Tier 2, and felony sexual battery against a minor aged 12 or younger be assigned to Tier 3.

Conduct with 14 and 15-year-olds

The Tiered Registry Law currently assigns all individuals convicted of lewd or lascivious conduct with a 14 or 15-year-old to Tier 3. The law assigns all individuals convicted of the same acts with a person under the age of 14 to a lower tier, Tier 2. This disparity could result in litigation based upon the equal protection clauses of the state constitution. ACSOL recommends that individuals convicted of PC 288(c) be assigned to Tier 2.

Off-ramp for Tier 3 registrants

After the Tiered Registry Law takes effect in 2021, California will join 46 states that have tiered registries. Of that total, 15 states provide one or more methods by which a registrant on Tier 3 who has not re-offended can be considered for removal from the state’s sex offender registry. For example, a Tier 3 registrant in Georgia with a non-violent offense may petition for removal after ten years (O.C.G.A. § 42-1-19(a)(4), (c)(2)), and any Tier 3 registrant in Pennsylvania may petition for removal after 25 years (42 Pa.C.S. § 9799.15(a.2)). ACSOL recommends that judges be granted discretion to remove registrants assigned to Tier 3 after 30 years if they have not committed a subsequent sex offense.

Megan’s Law Website profiles

Penal Code 290.46(k) currently prohibits registrants from viewing their profiles on the California Megan’s Law website which include important information such as their risk level (Static 99-R score). The penalties for violating this law include up to six months in jail and a fine up to \$1,000. Registrants will need information from their profiles in order to prepare their petitions for removal from the registry. ACSOL recommends repeal of this law.