

**Joint Response to Invitation to Comment SP20-03
Proposed Forms CR-415, CR-415-INFO, CR-416, and CR-417
By ACSOL, Bay Area Legal Aid, and Co-Signatories**

October 21, 2020

Via U.S. Mail and E-mail (Sarah.Fleischer-Ihn@jud.ca.gov)

Hon. J. Richard Couzens, Chair
Criminal Law Advisory Committee
Judicial Council of California
455 Golden Gate Avenue
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Commenting Parties

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**Joint Comments by ACSOL, BayLegal, and Co-Signatories
to Proposed Tiered Registry Petition Forms**

Dear Judge Couzens and Judicial Council Members:

The Alliance for Constitutional Sex Offense Laws, Inc. (“ACSOL”), Bay Area Legal Aid (“BayLegal”), and co-signatories respectfully submit these comments in response to Invitation to Comment SP20-03. ACSOL is a nationwide non-profit civil rights organization dedicated to protecting the constitutional rights of persons convicted of sex offenses and their loved ones. BayLegal is a regional non-profit organization that provides free civil legal services to eligible low-income and indigent clients in seven Bay Area counties, many of whom may be eligible to petition for removal from the California sex offender registry using the proposed petition forms.

The comments that follow address the current draft of the Judicial Council forms CR-415, CR-415-INFO, CR-416, and CR-416 (“Forms”) proposed in connection with petitions for removal from the California sex offender registry pursuant to Penal Code section 290.5, as amended by SB 384 (Stats. 2017, ch. 541).¹ ACSOL and BayLegal thank and commend the Judicial Council for producing Forms that are simple, readable, and reflective of the applicable law. In preparing these comments, ACSOL circulated the draft Forms to several of its constituents, including persons who are currently listed on the California sex offender registry and who anticipate using

¹ ACSOL previously submitted comments dated June 3, 2020, in response to Invitation to Comment SPR20-16 and the prior version of the Forms. ACSOL thanks the Judicial Council for considering those comments and for incorporating many of the suggested changes. In particular, ACSOL thanks the Judicial Council for incorporating changes that will clarify and facilitate the petitioning process by persons with federal, military, or other non-California convictions.

the Forms in future years. Additionally, BayLegal closely reviewed the forms with several advocates who have extensive experience directly representing and advocating for registrants. Based thereon, ACSOL and BayLegal propose the following six modifications to the current draft of the Forms, which we believe are necessary to ensure that petitions are correctly and efficiently processed. Specifically, the following proposed changes will prevent delay in processing petitions, protect valuable court resources, and guarantee access to the tiered registry to all eligible individuals.

1. Clarify generally on CR-415-INFO and on CR-415 § 9 that the requirement to serve the petition and proof of current registration upon law enforcement and the district attorney in the “county of conviction” applies only to registrants convicted in California county courts

Penal Code section 290.5(a)(2) requires that petitioners must serve their petition on the law enforcement agency and the district attorney in their county of registration and on the law enforcement agency and the district attorney in their county of conviction of a registerable offense if different than their county of registration. Nowhere does the law require petitioners who were convicted in a federal, military, or non-California court to serve the petition on agencies outside of California’s jurisdiction. This makes sense: Penal Code section 290.5(a)(2) mandates that law enforcement agencies of a petitioner’s county of conviction must report whether the petitioner has met the requirements for termination,² and the California Legislature cannot impose such obligations upon law enforcement agencies outside of California’s jurisdiction. Accordingly, the Forms’ failure to delineate between petitioners with convictions in California county courts and petitioners with convictions in federal, military, and other non-California courts has the potential to be confusing and misleading.

Clarifying that petitioners must only serve law enforcement agencies and district attorneys in their “county of conviction” if that county differs from their county of registration and if they were convicted in a California county court is necessary for the following reasons:

1. To remove a potential extra-legal barrier to relief for registrants by clarifying which petitioners must serve a petition to agencies in their county of conviction
2. To ensure that petitioners with federal, military, or non-California convictions are not discouraged from filing a petition because they are confused about what their “county of conviction” is and therefore who they must serve
3. To avoid confusion for law enforcement agencies and district attorneys in outside jurisdictions who would not understand their obligations upon receiving service of a petition

² See Cal. Penal Code § 290.5(a)(2), eff. Jan. 1, 2021.

4. To avoid wasting valuable court resources on responding to questions from eligible registrants and law enforcements agencies and district attorneys in outside jurisdictions seeking clarification on this issue
5. To prevent the possibility of law enforcement agencies and district attorneys in outside jurisdictions improperly objecting to, commenting on, or otherwise participating in the petitioning process, which is not permitted by Penal Code section 290.5(a)(2)
6. To ensure that district attorneys’ offices within California’s 58 counties are clear on which agencies are authorized to participate in the petitioning process, which will avoid prejudicial procedural errors in individual cases

Based on the above reasons, ACSOL and BayLegal believe it necessary that the following changes are made to the corresponding section of the Forms:

Form number and section/location	Statement/s at issue	Proposed revision
CR-415-INFO, § 7	None (general suggestion)	Add affirmative statement that petitioners are not required to serve the petition and proof of current registration on any law enforcement agency or prosecutorial agency in the jurisdiction of conviction if they were convicted in a federal, military, or other non-California court
CR-415-INFO, § 7	“If you were convicted of a registrable offense in a different county than where you currently reside and/or register in, the petition and proof of current registration must also be delivered to the law enforcement agency and the district attorney of the county of conviction of the registrable offense.”	“ <u>If you were convicted in a California county court</u> , and if you were convicted of a registrable offense in a different county than where you currently reside and/or register in, the petition and proof of current registration must also be delivered to the law enforcement agency and the district attorney of the county of conviction of the registrable offense.”

Form number and section/location	Statement/s at issue	Proposed revision
CR-415-INFO, § 8, first bullet	“The law enforcement agency has 60 days from receipt of the petition to report on your eligibility to the court and district attorney.”	“The law enforcement agency <u>in the county where the petition is filed and the law enforcement agency of the county of conviction of a registerable offense (if different than the county where the petition is filed and if petitioner was convicted in a California county court)</u> has 60 days from receipt of the petition to report on your eligibility to the court and district attorney.”
CR-415-INFO, § 8, second bullet	“The district attorney must request a hearing within 60 days after receiving the eligibility report from law enforcement.”	“The district attorney <u>in the county where the petition is filed has 60 days after receiving the eligibility report from law enforcement to request a hearing.</u> ”
CR-415, § 9	“Law enforcement agency (county of conviction):” AND “District attorney (county of conviction):”	“Law enforcement agency (county of conviction), <u>if convicted in a California court and county of conviction is different from county of registration:</u> ” AND “District attorney (county of conviction), <u>if convicted in a California court and county of conviction is different from county of registration:</u> ”

2. Add the language “to my knowledge” in Question 4 to Questions 6 and 8(a)

ACSOL and BayLegal appreciate that Question 4 of CR-415 included the language “to my knowledge” in asking petitioners to affirm that there are no pending charges against them that could extend the time to complete the registration requirements of their tier or change their tier status. For the same reasons that the phrase “to my knowledge” was likely included in Question 4, we believe it is appropriate to add this phrase to Questions 6 and 8(a) on CR-415.

We believe the language “to my knowledge” should be added to Question 6 for consistency with Question 4 because in our experience, clients often do not realize that they are still on out of county court probation when they request clean slate assistance. We therefore anticipate that pro per petitioners and advocates assisting petitioners in their filing may have difficulty stating with certainty that a petitioner is not on any kind of supervision. We believe the additional language is necessary to ensure that advocates do not decline to assist petitioners for this reason.

We also propose adding the language “to my knowledge” to Question 8(a) for the same reasons. Again, we anticipate that pro per petitioners or advocates assisting petitioners would have difficulty ascertaining whether a petition had been previously filed in a different county.

Therefore, to reflect the varying amounts of information that pro per petitioners and advocates representing petitioners are privy to when completing CR-415, ASCOL and BayLegal suggest the following change:

Form number and section/location	Statement at issue	Proposed revision
CR-415, § 6	“Petitioner is not on parole, probation, postconviction supervised release, or any other form of supervised release.”	“ <u>To my knowledge</u> , Petitioner is not on parole, probation, postconviction supervised release, or any other form of supervised release.”
CR-415, § 8(a)	“Petitioner (<i>check one</i>) <input type="checkbox"/> has <input type="checkbox"/> has not previously filed a Penal Code section 290.5 petition in California for termination of a sex offender registration requirement that was denied by the court.”	“ <u>To my knowledge</u> , Petitioner (<i>check one</i>) <input type="checkbox"/> has <input type="checkbox"/> has not previously filed a Penal Code section 290.5 petition in California for termination of a sex offender registration requirement that was denied by the court.”

3. Provide examples of what constitutes “proof of current registration”

In several locations, the Forms require petitioners to attach “proof of current registration.” These statements confused many people because there is no standard document or other “proof” provided to registrants to demonstrate that they are currently registered. Petitioners are therefore left to guess what proof is sufficient. The failure to clarify this may discourage eligible registrants from filing a petition for fear of filing inadequate proof, or may create inefficiencies if registrants file with inadequate proof and must later resubmit their petitions. To assist registrants, the Forms should be revised to include examples of what constitutes proof of the person’s current registration, such as a copy of DOJ Form CJIS 8102S, “Sex Offender Registration Change of Address/Annual or Other Update,” or any other proof the Judicial Council deems sufficient.

4. Modification or elimination of the circled numbers that designate individual sections on Form CR-415-INFO

Some registrants found it confusing that the same circled number format is used to designate individual sections on both Form CR-415 and Form CR-415-INFO because it seems to indicate that the sections should be read together. For example, Form CR-415-INFO Section 1 appears to contain instructions for completing Section 1 on Form CR-415 and so forth. To avoid this possible confusion, ACSOL and BayLegal suggest using circled letters (instead of numbers) to designate the individual sections on Form CR-415-INFO or eliminating the designations altogether since they do not appear necessary on Form CR-415-INFO.

5. Add statement re: minimum registration period to Section 2 of Form CR-415-INFO so that question “Am I eligible for relief under Penal Code section 290.5?” is answered completely

Section 2 of Form CR-415-INFO purports to answer the question “Am I eligible for relief under Penal Code section 290.5?” by setting forth the eligibility requirements in bullet points. However, the answer set forth in Section 2 of Form CR-415-INFO is incomplete because it does not state that the registrant must have been registered for the minimum time period corresponding to his or her tier to be eligible for termination of sex offender registration. Indeed, information regarding the minimum time period for registration is not addressed until well into Section 3 of Form CR-415-INFO. To completely answer the question posed in Section 2 of Form CR-415-INFO, ACSOL and BayLegal suggest adding an additional bullet point to that section, stating: “You have registered for the minimum time period for your assigned tier.”

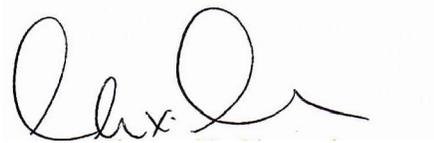
6. Clarify in Section 3 of Form CR-415-INFO that registrants can obtain their tier assignment from their local registering agency

Section 3 of Form CR-415-INFO purports to answer the questions “Which tier am I? How is my tier determined?” but the answer is incomplete. Although Section 3 states that “the Department of Justice will determine tier assignments for all current registrants and will notify the law enforcement agency where you register,” it fails to inform registrants about how they can discover their assigned tier. Therefore, ACSOL and BayLegal propose adding the following statement to Section 3 of Form CR-415-INFO: “Registrants can request that the local enforcement agency in their county of registration provide them with a tier notification letter after January 1, 2021.”

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re: Proposed Judicial Council Forms CR-415, CR-415-INFO, CR-415, and CR-417
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Conclusion

ACSOL, BayLegal, and co-signatories thank the Judicial Council for the opportunity to comment on these important forms.



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Respectfully submitted,



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