

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]:
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: February 3, 2021

Title of proposal: Jury Instructions: Revisions to the Judicial Council Criminal Jury Instructions (CALCRIM).

Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):

Revise Nos. 202, 222, 520, 591, 730, 763, 1140, 1151, 1193, 1202, 1820, 2044, 2520, 2521, 2522, 2624, 2651; Add Nos. 768 and 1927; Revoke No. 3220.

Committee or other entity submitting the proposal:

Advisory Committee on Criminal Jury Instructions

Staff contact (name, phone and e-mail): Kara Portnow, 865-4961, kara.portnow@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by Rules Committee date: November 2, 2020

Project description from annual agenda: Maintenance, New Instructions and Expansion into New Areas, Technical Corrections

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-029

For business meeting on March 11–12, 2021

Title

Jury Instructions: Revisions, Additions, and Revocations to Criminal Jury Instructions

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Judicial Council of California Criminal Jury Instructions (CALCRIM)

Effective Date

March 12, 2021

Date of Report

January 27, 2021

Recommended by

Advisory Committee on Criminal Jury Instructions
Hon. Peter J. Siggins, Chair

Contact

Kara Portnow, 415-865-4961
kara.portnow@jud.ca.gov

Executive Summary

The Advisory Committee on Criminal Jury Instructions recommends approving for publication the revised criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. These changes will keep the instructions current with statutory and case authority. Once approved, the revised instructions will be published in the 2021 edition of the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective March 12, 2021, approve the following changes to the criminal jury instructions prepared by the committee:

1. Revisions to CALCRIM Nos. 202, 222, 520, 591, 730, 763, 1140, 1151, 1193, 1202, 1820, 2044, 2520, 2521, 2522, 2624, 2651;
2. Adoption of new CALCRIM Nos. 768 and 1933; and
3. Revocation of CALCRIM No. 3220.

The proposed jury instructions are attached at pages 13–99.

Relevant Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.59 of the California Rules of Court, which established the Advisory Committee on Criminal Jury Instructions and its charge.¹ In August 2005, the council voted to approve the *CALCRIM* instructions under what is now rule 2.1050 of the California Rules of Court.

Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CALCRIM*. The council approved the last *CALCRIM* release at its September 2020 meeting.

Analysis/Rationale

The committee revised the instructions based on comments and suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law.

Below is an overview of some of the proposed changes.

Note-Taking and Reading Back of Testimony (CALCRIM No. 202); Evidence (CALCRIM No. 222)

In *People v. Triplett* (2020) 48 Cal.App.5th 655 [267 Cal.Rptr.3d 675], the court found that the jury’s request for transcripts should have been broadly interpreted as a request for readback of testimony. The committee added a bench note that, if the jury requests transcripts, courts should remind the jury of its right to request readback, stating what testimony it wants read.

Vehicular Manslaughter While Intoxicated (CALCRIM No. 591)

In *People v. Machuca* (2020) 49 Cal.App.5th 393, 400–401 [263 Cal.Rptr.3d 52], the court held that a violation of Vehicle Code section 23153 is not a lesser included offense of Penal Code section 191.5 when the offenses involve separate victims. The committee added this case to the Lesser Included Offenses section and clarified that injury must be to the same victim for driving under the influence causing injury to be a lesser included offense.

Special Circumstance: Murder in Commission of Felony (CALCRIM No. 730)

In *People v. Garcia* (2020) 46 Cal.App.5th 123, 149–155 [259 Cal.Rptr.3d 600], the prosecutor argued that the defendant was an actual killer because he handed duct tape to the co-perpetrator who then used the duct tape to cover the victim’s mouth, ultimately causing the victim to die of asphyxiation. The court held that under these facts, only the person or persons who placed the duct tape on the victim’s mouth were actual killers within the meaning of Penal Code section

¹ Rule 10.59(a) states: “The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council’s criminal jury instructions.”

190.2(b). In a footnote, the court stated that CALCRIM No. 730 may have contributed to the legal error here and suggested that the committee consider revisions to clarify the concept of actual killer. Based on this opinion, the committee considered changing the definition of actual killer, which the instruction describes as someone who “did an act that caused the death.” However, the committee concluded that a change to the language would raise more issues in cases where an act is a substantial factor in causing death, when that act is combined with an act by another that could have caused death. The committee concluded that the error in *Garcia* was the result of improper prosecutorial argument, not the instruction. Thus, a note should be sufficient to prevent an erroneous argument about actual killer liability. The committee added a bench note that explains the meaning of actual killer versus aider and abettor.

Death Penalty: Factors to Consider (CALCRIM No. 763)

Based on a committee member’s suggestion, the committee added a sentence to inform jurors to disregard any jury instructions given in a prior guilt or sanity phase if they conflict with the jury’s consideration and weighing of factors. Although a similar admonition appears in CALCRIM No. 761 (*Death Penalty: Duty of Jury*), the committee decided to remind jurors of this important admonition by adding it to this instruction.

Penalty Trial: Pre-Deliberation Instructions (Proposed New CALCRIM No. 768)

A committee member pointed out that CALCRIM does not contain a pre-deliberation instruction for penalty trials and suggested that the committee adapt one from CALCRIM No. 3550 (*Pre-Deliberation Instructions*). Through careful line-by-line analysis, the committee drafted this new instruction for courts to use during the penalty phase.

Felony Unlawful Taking or Driving of Vehicle (CALCRIM No. 1820)

In *People v. Bullard* (2020) 9 Cal.5th 94, 110 [260 Cal.Rptr.3d 153, 460 P.3d 262], the California Supreme Court clarified the substantive effect of Proposition 47 on Vehicle Code section 10851: “Except where a conviction is based on posttheft driving (i.e., driving separated from the vehicle’s taking by a substantial break), a violation of section 10851 must be punished as a misdemeanor theft offense if the vehicle is worth \$950 or less.” In accordance with this holding, the committee simplified the instruction by combining the two taking alternatives (taking with intent to temporarily deprive and taking with intent to permanently deprive). The text now contains only two alternatives: taking with intent to deprive and posttheft driving. In accordance with *Bullard*, only the taking alternative includes the element that the vehicle was worth more than \$950.

Possession of Counterfeiting Equipment (Proposed New CALCRIM No. 1933)

In *People v. Seo* (2020) 48 Cal.App.5th 1081 [262 Cal.Rptr.3d 497], the defendant was convicted of possessing materials used to counterfeit currency. The defendant argued that the trial court incorrectly instructed the jury about the elements of Penal Code section 480(a). The court upheld the instruction that was given but agreed that it lacked clarity and proposed a clearer version for courts to consider in future cases. CALCRIM does not currently have an instruction for this offense. However, the committee reviewed the court’s proposed instruction and drafted a new jury instruction based on Penal Code section 480.

False Personation (CALCRIM No. 2044)

An attorney noted that this instruction failed to specify sufficiently that a separate act, apart from the false personation, is required for a violation of Penal Code section 529. The committee reviewed prior case law and decided to change the existing language of “did anything” to “did any act.” In reviewing the instruction, the committee determined that the instruction was trying to do too much by covering both sections 529 and 530 of the Penal Code. To clarify the instruction, the committee decided to remove those parts that relate to Penal Code section 530. The committee intends to draft a new instruction for Penal Code section 530 in the next publication cycle.

Carrying Concealed Firearm (Proposed CALCRIM Nos. 2520, 2521 & 2522)

People v. Duffy (2020) 51 Cal.App.5th 257, 266 [265 Cal.Rptr.3d 59] held that different subsections of Penal Code section 25400 do not describe separate offenses. The committee added this case and its holding to the Related Issues section, under the heading “Multiple Convictions Prohibited.”

Threatening a Witness After Testimony or Information Given (CALCRIM No. 2624); Trying to Prevent Executive Officer From Performing Duty (CALCRIM No. 2651)

In *People v. Smolkin* (2020) 49 Cal.App.5th 183, 188 [262 Cal.Rptr.3d 696], the court held that “a conviction under [Penal Code] § 69 based on threatening speech is unconstitutional if the speech was not a ‘true threat.’” CALCRIM No. 2624 already contains instructional language based on the reasonable listener standard stated in *People v. Lowery* (2011) 52 Cal.4th 419, 427 [128 Cal.Rptr.3d 648, 257 P.3d 72]. The committee inserted the same language from CALCRIM No. 2624 but didn’t include the phrase “rather than just an expression of jest or frustration.” The committee felt that the omitted phrase—by providing examples of what would *not* constitute a true threat—could potentially mislead jurors into concluding that jest or frustration was the only way in which a threat could not satisfy the reasonable listener standard.

Amount of Loss (CALCRIM No. 3220)

This enhancement penalty instruction is based on Penal Code section 12022.6, which contained a sunset date of January 1, 2018. Because the Legislature neither extended this date nor otherwise revived the statute, the enhancement no longer applies to offenses committed on or after January 1, 2018. As a result, the committee decided to revoke this instruction.

Policy implications

Rule 2.1050 of the California Rules of Court requires the Advisory Committee on Criminal Jury Instructions to regularly update, amend, and add topics to *CALCRIM* and to submit its recommendations to the council for approval. This proposal fulfills that requirement.

Comments

The proposed additions and revisions to *CALCRIM* circulated for public comment from November 9 through December 11, 2020. The committee received responses from three commenters. The text of all comments received and the committee’s responses are included in a comments chart attached at pages 6–11.

Alternatives considered

The proposed changes are necessary to ensure that the instructions remain clear, accurate, and complete; therefore, the advisory committee considered no alternative actions.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will print a new edition and pay royalties to the Judicial Council. The council's contract with West Publishing provides additional royalty revenue.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and document assembly software. With respect to commercial publishers, the council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the council provides a broad public license for their noncommercial use and reproduction.

Attachments and Links

1. Chart of comments, at pages 6–11
2. Full text of revised *CALCRIM* instructions, including table of contents, at pages 12–99

CALCRIM-2020-02 Invitation to Comment

Revised CALCRIM Instructions

All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
202 & 220	Orange County Bar Association, by Scott Garner, President	<p>Agree as modified.</p> <p>The Judicial Council proposes adding a Bench Note to CALCRIM 202 and 222 from the recent case of <i>People v Triplett</i> (2020) 48 Cal.App.5th 655, 662, regarding the instructional duty when the jury requests transcripts:</p> <p>The instructional duty should read instead: If the jury requests hard copy transcripts, the trial judge should deny the request, and should remind the jury of the right to request readback and to advise the court whether there is any testimony they request to review. (See <i>People v. Triplett</i> (2020) 48 Cal.App.5th 655, 662 [267 Cal.Rptr.3d 675].)</p>	<p>The committee declines to make the suggested change. The proposed bench note, as currently written, clearly conveys the holding of <i>People v. Triplett</i> and provides accurate guidance.</p>
520	John T. Philipsborn, criminal defense lawyer*	<p>In addition to the citation to <i>People v. Roberts</i> (1992) 2 Cal.4th 271, on the matter of causation, the Committee should recommend citation to <i>People v. Bland</i> (2002) 28 Cal.4th 313, 335-36, and <i>People v. Stanley</i> (2006) 39 Cal.4th 913, 946-47.</p>	<p>The committee declines to add these cases. <i>People v. Roberts</i> adequately explains causation and the proposed cases – which analyze CALJIC instructions - are not helpful to further explain the concept.</p>
730	Offices of the Los Angeles County Public Defender, by Ricardo D. Garcia	<p>The proposed amendment to CALCRIM 730 fails to define “actual killer” for the jury and invites the same type of error cited by the Court of Appeal in <i>People v. Garcia</i> (2020) 46 Cal.App.5th 123. In <i>Garcia</i>, the Court of Appeal reversed the defendant’s murder conviction holding “the language of instruction No. 730 given to [the] jury was wrong because it allowed the jury to consider [defendant’s] special circumstance liability based on a theory contrary to law, and constituted legal error.” (<i>People v. Garcia</i> (2020) 46 Cal.App.5th 123, 155.) The Court of Appeal stated that the jury should have been instructed that “it could find true the special circumstance under section 190.2(a)(17)(A) and (b) only if the prosecution proved beyond a reasonable doubt that [the defendant] “personally killed” [the victim]. Instead, the jury was instructed only that</p>	<p>The committee disagrees with this recommendation. In <i>Garcia</i>, the prosecutor’s theory of liability caused the error, not the instruction. Further, any change to the instructional definition of “actual killer” would raise more issues in cases where an act is a</p>

* Certified criminal law specialist; a contributor to the original comments (as mentioned in the introduction to the current volumes) of the original CALCRIM instructions. Former Chair, Co-Chair, and Vice-Chair of the *Amicus Curiae* Committee of California Attorneys for Criminal Justice since 1992, and in that capacity in some of my own cases, and in a number of *amicus curiae* briefs filed with the California Supreme Court and Courts of Appeal, have addressed issues that have a bearing on aspects of substantive criminal law.

CALCRIM-2020-02 Invitation to Comment
Revised CALCRIM Instructions

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Instruction	Commentator	Comment	Response
		<p>the prosecution must prove that the defendant “did an act that caused the death of another person.” (<i>Ibid.</i>)</p> <p>In <i>People v. Garcia</i>, the Court of Appeal identified CALCRIM 730’s deficiencies and suggested a remedy:</p> <p style="padding-left: 40px;">“The wording of the pattern instruction CALCRIM No. 730 and the bench notes that reference the sua sponte duty to instruct with CALCRIM No. 240 “[i]f the facts raise an issue whether the homicidal act caused the death” (Bench Notes. to CALCRIM No. 730 (2019) p. 464) may have contributed to the legal error here. It is unclear what authority the bench notes rely on for this proposition. In any event, bench notes are not authority for legal principles. (See <i>People v. Morales</i> (2001) 25 Cal.4th 34, 48, fn. 7 [104 Cal. Rptr. 2d 582, 18 P.3d 11] [recognizing that jury instructions and accompanying bench notes are not law].) As we have explained, we do not see a basis for applying section 190.2(b), which extends only to a person who personally kills, to a person who only proximately caused the death.</p> <p style="padding-left: 40px;">The Advisory Committee on Criminal Jury Instructions may wish to consider revisions to the language of CALCRIM No. 730 to clarify the concept of an actual killer for cases falling under section 190.2(b) that do not involve an intent to kill, as with section 190.2(a)(17).” (<i>People v. Garcia, supra</i>, 46 Cal.App.5th at p.155, fn. 32, emphasis added.)</p> <p>CALCRIM 730 should be revised to instruct the jury that the prosecution must prove beyond a reasonable doubt that the defendant was the actual killer, and define the phrase “actual killer” as someone who “personally killed” rather than proximately caused a death. (<i>Id.</i> at p. 155.) The Advisory Committee on Criminal Jury Instructions modification of CALCRIM 730’s bench notes to include a citation to <i>People v. Garcia</i> is an inadequate remedy. CALCRIM 730 should be amended to include language that instructs the jury “the meaning of actual killer is ‘particular and restricted’, and its application must be literal.” (<i>Ibid.</i>, internal citations omitted.)</p>	<p>substantial factor in causing death.</p>

CALCRIM-2020-02 Invitation to Comment

Revised CALCRIM Instructions

All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
730	Orange County Bar Association, by Scott Garner, President	<p>Agree as modified.</p> <p>The amendment to CALCRIM 730 involves the addition of a bench note related to the definition of “actual killer” based on the case of <i>People v. Garcia</i> (2020) 46 Cal.App.5th 123. The bench note is a legally correct statement of law and clarifies the definition of “actual killer.”</p> <p>OCBA agrees with the addition of the bench note regarding the meaning of “actual killer.” However, OCBA recommends the Committee revise Element 3/4 to comport with <i>Garcia</i> to be a correct statement of law.</p>	<p>The committee disagrees with this recommendation, for the reasons stated above.</p>
1140	Orange County Bar Association, by Scott Garner, President	<p>Agree as modified.</p> <p>The amendment to CALCRIM 1140 under Related Issues clarifies that effective January 1, 2014, misdemeanor distribution of harmful matter is not a lesser included offense of Penal Code section 288.2.</p> <p>Corrects inaccurate Pin Cite.</p> <p><u>Under the version of Penal Code section 288.2 effective January 1, 2014, misdemeanor distribution of harmful matter (Pen. Code, § 313.1(a)) is not a lesser included offense. (<i>People v. Collom</i> (2020) 52 Cal.App.5th 35, 45 [265 Cal.Rptr.3d 705].)</u></p> <p>Under <u>the</u> prior version of Penal Code section 288.2, in effect until December 31, 2013, the following were held to be lesser included offenses:</p> <ul style="list-style-type: none"> • Attempted Distribution of Harmful Matter to Minor. Pen. Code, §§ 664, 288.2; see, e.g., <i>Hatch v. Superior Court</i> (2000) 80 Cal.App.4th 170, 185 [94 Cal.Rptr.2d 453]. • Misdemeanor Distribution of Harmful Matter. Pen. Code, § 313.1(a); <i>People v. Jensen</i> (2003) 114 Cal.App.4th 224, 244 [7 Cal.Rptr.3d 609]. <p><u>Proper citation: <i>People v. Collom</i> (2020) 52 Cal.App.5th 35, 44 [265 Cal.Rptr.3d 705].</u></p>	<p>The proposed citation for <i>People v. Collom</i> originally contained the pin cite of 42 (not 45), which is where the discussion of statutory interpretation begins. The committee has changed this pin cite to extend through page 44.</p>
2520, 2521, 2522	Orange County Bar Association, by Scott Garner, President	<p>Agree as modified.</p> <p>The amendment to CALCRIMs 2520, 2521, 2522 under Related Issues, adds new case law from <i>People v. Duffy</i> (2020) 51 Cal.App.5th 257.</p>	<p>The committee agrees that this comment raises a valid point but decided to make a slightly different change than the one suggested. The sentence now states: “A</p>

CALCRIM-2020-02 Invitation to Comment

Revised CALCRIM Instructions

All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
		<p>Proposed modification to Judicial Council proposal: Change the word “different” to “multiple” in order to clarify that sub sections (1)-(3) are alternative ways of violating Penal Code section 25400(a), and can result in only one conviction for possession of the same firearm.</p> <p><i>Multiple Convictions Prohibited</i> A single act of carrying a concealed firearm cannot result in convictions under multiple subdivisions of Penal Code section 25400(a). (<i>People v. Duffy</i> (2020) 51 Cal.App.5th 257, 266 [265 Cal.Rptr.3d 59].)</p>	<p>single act of carrying a concealed firearm cannot result in multiple convictions under different subdivisions of Penal Code section 25400(a).”</p>
2624	Orange County Bar Association, by Scott Garner, President	<p>Disagree. The change to this CALCRIM is to remove the language “rather than just an expression of jest or frustration” from elements 3 and 4. There is no explanation for this change or any new case that OCBA is aware of that would justify the deletion of this language.</p> <p>The language “jest or frustration” comes from <i>People v. Lowery</i> (2011) 52 Cal.4th 419. In <i>Lowery</i>, the California Supreme Court analyzed whether Section 140 ran afoul of the First Amendment. In holding that it is constitutional, the California Supreme Court determined that it would construe Section 140(a) “as applying only to those threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat, namely a serious expression of an intent to commit an act of unlawful violence, rather than an expression of jest or frustration.” (<i>Id.</i> at p. 427, omitting internal citation and quotations.) The <i>Lowery</i> Court noted that the former category (a true threat) would not carry First Amendment protection, while an expression of jest or frustration necessarily would.</p> <p>There is no reason to remove the <i>Lowery</i> “jest or frustration” language. This language clarifies the elements and provides a correct statement of the law. Notably, CALCRIM 2624 still cites to <i>Lowery</i> for the reasonable listener standard in the use notes, and the “jest or frustration” information is a relevant addition to the CALCRIM.</p> <p>The OCBA disagrees that CALCRIM 2624 should be amended.</p>	<p>Although the proposed deleted language comes directly from <i>People v. Lowery</i>, this phrase merely sets forth examples. The committee deleted it because – by providing examples of what would <i>not</i> constitute a true threat – it could potentially mislead jurors into concluding that jest or frustration were the <i>only</i> ways in which a threat could not satisfy the reasonable listener standard.</p>
3220	Orange County Bar Association,	<p>Disagree. CPC 12022.6 was amended effective January 1, 2008. The statute contained a sunset clause requiring the statute to be repealed by January 1, 2018, unless the Legislature</p>	<p>The committee recommends revocation of this instruction because it is</p>

CALCRIM-2020-02 Invitation to Comment

Revised CALCRIM Instructions

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Instruction	Commentator	Comment	Response
	by Scott Garner, President	<p>requested an extension. (<i>People v. Medeiros</i> (2020) 46 Cal.App.5th 1142, 1147.) The Legislature did not request an extension, and as such CPC 12022.6 remains repealed and no longer in effect.</p> <p>However, CPC 12022.6 is still valid on cases where the offense pre-dates January 1, 2018. Therefore, the OCBA disagrees that CALCRIM 3220 should be revoked.</p>	based on an enhancement statute that has been repealed since 2018. For any case in which the enhancement still applies, courts and parties would be able to access this instruction from earlier editions.
520, 591, 763, 768, 1151, 1193, 1202, 1820, 1927, 2044, and 2651	Orange County Bar Association, by Scott Garner, President	Agree.	No response necessary.
3451	John T. Philipsborn, criminal defense lawyer*	<p>While this instruction is not presently in your collection of proposed changes and amendments, I am suggesting that the Advisory Committee should suggest a change to element (2) of the competence definition that reads as follows as present: “Assist, in a rational manner, (his/her) attorney in presenting (his/her) defense, the Committee should at the very least make reference to the United States Supreme Court’s seminal decisions on the subject of competence to stand trial.”</p> <p>My suggestion is that the Committee review <i>Indiana v. Edwards</i> (2008) 554 U.S. 164, 170-71, referencing the standard found in <i>Drope v. Missouri</i> (1975) 470 U.S. 162, 171, which is that the accused can “...consult with counsel, and [...] assist in preparing (his/her) defense...” I am respectfully suggesting that this change in the wording of Instruction 3451 because California trial judges who preside over competence-related jury trials are failing to provide an instruction on the definition of competence that squares with that set forth by the United States Supreme Court in two separate opinions.</p> <p>If the Committee is <u>not</u> inclined to suggest this change in the actual instruction, then at the very least, under the section “Related Issues” that is at the foot of the instruction (which contains no reference to the fundamental definition of competence to stand trial as set forth by the United States Supreme Court), the Committee should set forth a notation that: The United States Supreme Court has succinctly stated that two cases set</p>	This comment is outside the scope of the invitation. The committee will consider the suggestion at its next meeting.

CALCRIM-2020-02 Invitation to Comment

Revised CALCRIM Instructions

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Instruction	Commentator	Comment	Response
		<p>forth the Constitution's 'mental competence' standard, <i>Dusky v. United States</i> (1960) 362 U.S. 402, and <i>Drope v. Missouri</i> (1975) 420 U.S. 162. See <i>Indiana v. Edwards</i> (2008) 554 U.S. 164, 170-71.</p> <p>Inclusion of this note would avoid incorrect reference to Penal Code §§ 1367, et seq. and interpreting California decisions as the exclusive sources of the essential definitions of competence to stand trial.</p>	

CALCRIM Proposed Changes: Table of Contents

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2624 & 2651	Threatening a Witness; Trying to Prevent Executive Officer from Performing Duty
REVOKED: 3220	Amount of Loss

202. Note-Taking and Reading Back of Testimony

[You have been given notebooks and may have taken notes during the trial. You may use your notes during deliberations.] Your notes are for your own individual use to help you remember what happened during the trial. Please keep in mind that your notes may be inaccurate or incomplete.

If there is a disagreement about the testimony [and stipulations] at trial, you may ask that the (court reporter's record be read to/court's recording be played for) you. It is the record that must guide your deliberations, not your notes. You must accept the (court reporter's record /court's recording) as accurate. Do not ask the court reporter questions during the readback and do not discuss the case in the presence of the court reporter.

Please do not remove your notes from the jury room.

At the end of the trial, your notes will be (collected and destroyed/collected and retained by the court but not as a part of the case record/ _____ <specify other disposition>).

New January 2006; Revised June 2007, April 2008, August 2009, February 2012, March 2019, September 2020, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the members of the jury that they may take notes. California Rules of Court, Rule 2.1031.

The court may specify its preferred disposition of the notes after trial. No statute or rule of court requires any particular disposition.

If the jury requests transcripts, the court should remind the jury of the right to request readback and to advise the court whether there is any testimony they want read. (See *People v. Triplett* (2020) 48 Cal.App.5th 655, 662 [267 Cal.Rptr.3d 675].)

AUTHORITY

- Jurors' Use of Notes. ▶ California Rules of Court, Rule 2.1031.

- Juror Deliberations Must Be Private and Confidential. ▶ *People v. Oliver* (1987) 196 Cal.App.3d 423, 429 [241 Cal.Rptr. 804].

SECONDARY SOURCES

6 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Judgment, § 21.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 83, *Evidence*, § 83.05[1], Ch. 85, *Submission to Jury and Verdict*, § 85.05[2], [3], Ch. 87, *Death Penalty*, §§ 87.20, 87.24 (Matthew Bender).

222. Evidence

“Evidence” is the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I told you to consider as evidence.

Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discuss the case, but their remarks are not evidence. Their questions are not evidence. Only the witnesses’ answers are evidence. The attorneys’ questions are significant only if they helped you to understand the witnesses’ answers. Do not assume that something is true just because one of the attorneys asked a question that suggested it was true.

During the trial, the attorneys may have objected to questions or moved to strike answers given by the witnesses. I ruled on the objections according to the law. If I sustained an objection, you must ignore the question. If the witness was not permitted to answer, do not guess what the answer might have been or why I ruled as I did. If I ordered testimony stricken from the record you must disregard it and must not consider that testimony for any purpose.

You must disregard anything you saw or heard when the court was not in session, even if it was done or said by one of the parties or witnesses.

[During the trial, you were told that the People and the defense agreed, or stipulated, to certain facts. This means that they both accept those facts as true. Because there is no dispute about those facts you must also accept them as true.]

The court (reporter has made a record of/has recorded) everything that was said during the trial. If you decide that it is necessary, you may ask that the (court reporter’s record be read to/court’s recording be played for) you. You must accept the (court reporter’s record/court’s recording) as accurate.

New January 2006; Revised June 2007, August 2009, February 2012, March 2019, March 2021

BENCH NOTES

Instructional Duty

There is no sua sponte duty to instruct on these evidentiary topics; however, instruction on these topics has been approved. (*People v. Barajas* (1983) 145

Cal.App.3d 804, 809 [193 Cal.Rptr. 750]; *People v. Samayoa* (1997) 15 Cal.4th 795, 843–844 [64 Cal.Rptr.2d 400, 938 P.2d 2]; *People v. Horton* (1995) 11 Cal.4th 1068, 1121 [47 Cal.Rptr.2d 516, 906 P.2d 478].)

If the parties stipulated to one or more facts, give the bracketed paragraph that begins with “During the trial, you were told.”

If the jury requests transcripts, the court should remind the jury of the right to request readback and to advise the court whether there is any testimony they want read. (See *People v. Triplett* (2020) 48 Cal.App.5th 655, 662 [267 Cal.Rptr.3d 675].)

AUTHORITY

- Evidence Defined ▶ Evid. Code, § 140.
- Arguments Not Evidence ▶ *People v. Barajas* (1983) 145 Cal.App.3d 804, 809 [193 Cal.Rptr. 750].
- Questions Not Evidence ▶ *People v. Samayoa* (1997) 15 Cal.4th 795, 843–844 [64 Cal.Rptr.2d 400].
- Stipulations ▶ *Palmer v. City of Long Beach* (1948) 33 Cal.2d 134, 141–142 [199 P.2d 952].
- Striking Testimony ▶ *People v. Horton* (1995) 11 Cal.4th 1068, 1121 [47 Cal.Rptr.2d 516, 906 P.2d 478].

RELATED ISSUES

Non-Testifying Courtroom Conduct

There is authority for an instruction informing the jury to disregard defendant’s in-court, but non-testifying behavior. (*People v. Garcia* (1984) 160 Cal.App.3d 82, 90 [206 Cal.Rptr. 468] [defendant was disruptive in court; court instructed jurors they should not consider this behavior in deciding guilt or innocence].) However, if the defendant has put his or her character in issue or another basis for relevance exists, such an instruction should not be given. (*People v. Garcia, supra*, 160 Cal.App.3d at p. 91, fn. 7; *People v. Foster* (1988) 201 Cal.App.3d 20, 25 [246 Cal.Rptr. 855].)

SECONDARY SOURCES

5 Witkin & Epstein, *California Criminal Law* (4th ed. 2012), Criminal Trial, §§ 715, 726.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 83, *Evidence*, §§ 83.01[1], 83.02[2] (Matthew Bender).

520. First or Second Degree Murder With Malice Aforethought (Pen. Code, § 187)

The defendant is charged [in Count __] with murder [in violation of Penal Code section 187].

To prove that the defendant is guilty of this crime, the People must prove that:

[1A. The defendant committed an act that caused the death of (another person/ [or] a fetus);]

[OR]

[1B. The defendant had a legal duty to (help/care for/rescue/warn/maintain the property of/ _____ <insert other required action[s]>) _____ <insert description of decedent/person to whom duty is owed> and the defendant failed to perform that duty and that failure caused the death of (another person/ [or] a fetus);]

[AND]

2. When the defendant (acted/[or] failed to act), (he/she) had a state of mind called malice aforethought(;/.)

<Give element 3 when instructing on justifiable or excusable homicide.>

[AND]

3. (He/She) killed without lawful (excuse/[or] justification).]

There are two kinds of malice aforethought, express malice and implied malice. Proof of either is sufficient to establish the state of mind required for murder.

The defendant had *express malice* if (he/she) unlawfully intended to kill.

The defendant had *implied malice* if:

1. (He/She) intentionally (committed the act/[or] failed to act);

2. The natural and probable consequences of the (act/[or] failure to act) were dangerous to human life;
3. At the time (he/she) (acted/[or] failed to act), (he/she) knew (his/her) (act/[or] failure to act) was dangerous to human life;

AND

4. (He/She) deliberately (acted/[or] failed to act) with conscious disregard for (human/ [or] fetal) life.

Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act that causes death is committed. It does not require deliberation or the passage of any particular period of time.

[It is not necessary that the defendant be aware of the existence of a fetus to be guilty of murdering that fetus.]

[A *fetus* is an unborn human being that has progressed beyond the embryonic stage after major structures have been outlined, which typically occurs at seven to eight weeks after fertilization.]

[(An act/[or] (A/a) failure to act) causes death if the death is the direct, natural, and probable consequence of the (act/[or] failure to act) and the death would not have happened without the (act/[or] failure to act). A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. (An act/[or] (A/a) failure to act) causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

[(A/An) _____ <insert description of person owing duty> has a legal duty to (help/care for/rescue/warn/maintain the property of/ _____ <insert other required action[s]>) _____ <insert description of decedent/person to whom duty is owed>.]

<Give the following bracketed paragraph if the second degree is the only possible degree of the crime for which the jury may return a verdict>

[If you find the defendant guilty of murder, it is murder of the second degree.]

<Give the following bracketed paragraph if there is substantial evidence of first degree murder>

[If you decide that the defendant committed murder, it is murder of the second degree, unless the People have proved beyond a reasonable doubt that it is murder of the first degree as defined in CALCRIM No. ____ <insert number of appropriate first degree murder instruction>.]

New January 2006; Revised August 2009, October 2010, February 2013, August 2013, September 2017, March 2019, September 2019, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the first two elements of the crime. If there is sufficient evidence of excuse or justification, the court has a **sua sponte** duty to include the third, bracketed element in the instruction. (*People v. Frye* (1992) 7 Cal.App.4th 1148, 1155–1156 [10 Cal.Rptr.2d 217].) The court also has a **sua sponte** duty to give any other appropriate defense instructions. (See CALCRIM Nos. 505–627, and CALCRIM Nos. 3470–3477.)

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court should give the “direct, natural, and probable” language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the “substantial factor” instruction and definition in the second bracketed causation paragraph. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].) If there is an issue regarding a superseding or intervening cause, give the appropriate portion of CALCRIM No. 620, *Causation: Special Issues*.

If the prosecution’s theory of the case is that the defendant committed murder based on his or her failure to perform a legal duty, the court may give element 1B.

Review the Bench Notes to CALCRIM No. 582, *Involuntary Manslaughter: Failure to Perform Legal Duty—Murder Not Charged*.

If the defendant is charged with first degree murder, give this instruction and CALCRIM No. 521, *First Degree Murder*. If the defendant is charged with second degree murder, no other instruction need be given.

If the defendant is also charged with first degree felony murder, instruct on that crime and give CALCRIM No. 548, *Murder: Alternative Theories*.

AUTHORITY

- Elements ▶ Pen. Code, § 187.
- Malice ▶ Pen. Code, § 188; *People v. Dellinger* (1989) 49 Cal.3d 1212, 1217–1222 [264 Cal.Rptr. 841, 783 P.2d 200]; *People v. Nieto Benitez* (1992) 4 Cal.4th 91, 103–105 [13 Cal.Rptr.2d 864, 840 P.2d 969]; *People v. Blakeley* (2000) 23 Cal.4th 82, 87 [96 Cal.Rptr.2d 451, 999 P.2d 675].
- Causation ▶ *People v. Roberts* (1992) 2 Cal.4th 271, 315–321 [6 Cal.Rptr.2d 276, 826 P.2d 274].
- Fetus Defined ▶ *People v. Davis* (1994) 7 Cal.4th 797, 814–815 [30 Cal.Rptr.2d 50, 872 P.2d 591]; *People v. Taylor* (2004) 32 Cal.4th 863, 867 [11 Cal.Rptr.3d 510, 86 P.3d 881].
- Ill Will Not Required for Malice ▶ *People v. Sedeno* (1974) 10 Cal.3d 703, 722 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Breverman* (1998) 19 Cal.4th 142, 163 [77 Cal.Rptr.2d 870, 960 P.2d 1094].
- Prior Version of This Instruction Upheld ▶ *People v. Genovese* (2008) 168 Cal.App.4th 817, 831 [85 Cal.Rptr.3d 664].

LESSER INCLUDED OFFENSES

- Voluntary Manslaughter ▶ Pen. Code, § 192(a).
- Involuntary Manslaughter ▶ Pen. Code, § 192(b).
- Attempted Murder ▶ Pen. Code, §§ 663, 189.
- Sentence Enhancements and Special Circumstances Not Considered in Lesser Included Offense Analysis ▶ *People v. Boswell* (2016) 4 Cal.App.5th 55, 59-60 [208 Cal.Rptr.3d 244].

Gross vehicular manslaughter while intoxicated (Pen. Code, § 191.5(a)) and vehicular manslaughter (Pen. Code, § 192(c)) are ~~is~~-not a lesser included offenses of murder. (*People v. Sanchez* (2001) 24 Cal.4th 983, 988–992 [103 Cal.Rptr.2d 698, 16 P.3d 118]; *People v. Bettasso* (2020) 49 Cal.App.5th 1050, 1059 [263 Cal.Rptr.3d 563].) Similarly, child abuse homicide (Pen. Code, § 273ab) is not a necessarily included offense of murder. (*People v. Malfavon* (2002) 102 Cal.App.4th 727, 744 [125 Cal.Rptr.2d 618].)

RELATED ISSUES

Causation—Foreseeability

Authority is divided on whether a causation instruction should include the concept of foreseeability. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 362–363 [43 Cal.Rptr.2d 135]; *People v. Temple* (1993) 19 Cal.App.4th 1750, 1756 [24 Cal.Rptr.2d 228] [refusing defense-requested instruction on foreseeability in favor of standard causation instruction]; but see *People v. Gardner* (1995) 37 Cal.App.4th 473, 483 [43 Cal.Rptr.2d 603] [suggesting the following language be used in a causation instruction: “[t]he death of another person must be foreseeable in order to be the natural and probable consequence of the defendant’s act”].) It is clear, however, that it is error to instruct a jury that foreseeability is immaterial to causation. (*People v. Roberts* (1992) 2 Cal.4th 271, 315 [6 Cal.Rptr.2d 276, 826 P.2d 274] [error to instruct a jury that when deciding causation it “[w]as immaterial that the defendant could not reasonably have foreseen the harmful result”].)

Second Degree Murder of a Fetus

The defendant does not need to know a woman is pregnant to be convicted of second degree murder of her fetus. (*People v. Taylor* (2004) 32 Cal.4th 863, 868 [11 Cal.Rptr.3d 510, 86 P.3d 881] [“[t]here is no requirement that the defendant specifically know of the existence of each victim.”]) “[B]y engaging in the conduct he did, the defendant demonstrated a conscious disregard for all life, fetal or otherwise, and hence is liable for all deaths caused by his conduct.” (*Id.* at p. 870.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 96-101, 112-113.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.04, Ch. 142, *Crimes Against the Person*, § 142.01 (Matthew Bender).

**591 Vehicular Manslaughter While Intoxicated—Ordinary Negligence
(Pen. Code, § 191.5(b))**

<If vehicular manslaughter while intoxicated—ordinary negligence is a charged offense, give alternative A; if this instruction is being given as a lesser included offense, give alternative B.>

<Introductory Sentence: Alternative A—Charged Offense>

[The defendant is charged [in Count __] with vehicular manslaughter with ordinary negligence while intoxicated [in violation of Penal Code section 191.5(b)].]

<Introductory Sentence: Alternative B—Lesser Included Offense>

[Vehicular manslaughter with ordinary negligence while intoxicated is a lesser crime than the charged crime of gross vehicular manslaughter while intoxicated.]

To prove that the defendant is guilty of vehicular manslaughter with ordinary negligence while intoxicated, the People must prove that:

- 1. The defendant (drove under the influence of (an alcoholic beverage/[or] a drug) [or under the combined influence of an alcoholic beverage and a drug]/drove while having a blood alcohol level of 0.08 or higher/ drove under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug] when under the age of 21/drove while having a blood alcohol level of 0.05 or higher when under the age of 21/operated a vessel under the influence of (an alcoholic beverage/ [or] a drug) [or a combined influence of an alcoholic beverage and a drug]/operated a vessel while having a blood alcohol level of 0.08 or higher);**
- 2. While (driving that vehicle/operating that vessel) under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug], the defendant also committed (a/an) (misdemeanor[,]/ [or] infraction[,]/[or] otherwise lawful act that might cause death);**
- 3. The defendant committed the (misdemeanor[,]/ [or] infraction[,]/[or] otherwise lawful act that might cause death) with ordinary**

negligence;

AND

4. The defendant's negligent conduct caused the death of another person.

[The People allege that the defendant committed the following (misdemeanor[s]/ [and] infraction[s]): _____ <insert misdemeanor[s]/ infraction[s]>.

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant committed _____ <insert misdemeanor[s]/infraction[s]>.]

[The People [also] allege that the defendant committed the following otherwise lawful act(s) that might cause death: _____ <insert act[s] alleged>.]

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant (drove under the influence of (an alcoholic beverage/ [or] a drug) [or a combined influence of an alcoholic beverage and a drug]/drove while having a blood alcohol level of 0.08 or higher/ drove under the influence of (an alcoholic beverage/ [or] a drug) [or a combined influence of an alcoholic beverage and a drug] when under the age of 21/drove while having a blood alcohol level of 0.05 or higher when under the age of 21/operated a vessel under the influence of (an alcoholic beverage/ [or] a drug [or a combined influence of an alcoholic beverage and a drug])/operated a vessel while having a blood alcohol level of 0.08 or higher).

[The difference between this offense and the charged offense of gross vehicular manslaughter while intoxicated is the degree of negligence required. I have already defined *gross negligence* for you.]

Ordinary negligence[, on the other hand,] is the failure to use reasonable care to prevent reasonably foreseeable harm to oneself or someone else. A person is negligent if he or she (does something that a reasonably careful person would not do in the same situation/ [or] fails to do something that a reasonably careful person would do in the same situation).

[A person facing a sudden and unexpected emergency situation not caused by that person's own negligence is required only to use the same care and judgment that an ordinarily careful person would use in the same situation,

even if it appears later that a different course of action would have been safer.]

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

[The People allege that the defendant committed the following (misdemeanor[s][,]/ [and] infraction[s][,]/ [and] otherwise lawful act[s] that might cause death): _____ <insert alleged predicate acts when multiple acts alleged>. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant committed at least one of these alleged (misdemeanors[,]/ [or] infractions[,]/ [or] otherwise lawful acts that might cause death) and you all agree on which (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) the defendant committed.]

[The People have the burden of proving beyond a reasonable doubt that the defendant committed vehicular manslaughter with ordinary negligence while intoxicated. If the People have not met this burden, you must find the defendant not guilty of that crime. You must consider whether the defendant is guilty of the lesser crime[s] of _____ <insert lesser offense[s]>.]

New January 2006; Revised June 2007, March 2021

BENCH NOTES

Instructional Duty

Important note: The legislature repealed Penal Code section 192(c)(3) in the form that was previously the basis for this instruction effective January 1, 2007.

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The court has a **sua sponte** duty to specify the predicate misdemeanor(s) or infraction(s) alleged and to instruct on the elements of the predicate offense(s). (*People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].) In element 1, instruct on the particular “under the influence” offense charged. In element 2, instruct on either theory of vehicular manslaughter (misdemeanor/infraction or lawful act committed with negligence) as appropriate. The court **must** also give the appropriate instruction on the elements of the driving under the influence offense and the predicate misdemeanor or infraction.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court should give the “direct, natural, and probable” language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the “substantial factor” instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required, overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, harmless error if was required].) A unanimity instruction is included in a bracketed paragraph for the court to use at its discretion.

If there is sufficient evidence and the defendant requests it, the court should instruct on the imminent peril/sudden emergency doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) Give the bracketed sentence that begins with “A person facing a sudden and unexpected emergency.”

AUTHORITY

- Vehicular Manslaughter While Intoxicated. ▶ Pen. Code, § 191.5(b).
- Vehicular Manslaughter During Operation of a Vessel While Intoxicated. ▶ Pen. Code, § 192.5(c).

- Unlawful Act Dangerous Under the Circumstances of Its Commission. ▶ *People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374].
- Specifying Predicate Unlawful Act. ▶ *People v. Milham* (1984) 159 Cal.App.3d 487, 506 [82 Cal.Rptr. 688].
- Elements of the Predicate Unlawful Act. ▶ *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Unanimity Instruction. ▶ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].
- Ordinary Negligence. ▶ Pen. Code, § 7, subd. 2; Rest.2d Torts, § 282.
- Causation. ▶ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal. Rptr. 863].
- Imminent Peril/Sudden Emergency Doctrine. ▶ *People v. Boulware* (1940) 41 Cal.App.2d 268, 269 [106 P.2d 436].

LESSER INCLUDED OFFENSES

- Vehicular Manslaughter With Ordinary Negligence Without Intoxication. ▶ Pen. Code, § 192(c)(2); see *People v. Miranda* (1994) 21 Cal.App.4th 1464, 1466–1467 [26 Cal.Rptr.2d 610].
- Injury to ~~Someone~~ Same Victim While Driving Under the Influence of Alcohol or Drugs. ▶ Veh. Code, § 23153; *People v. Machuca* (2020) 49 Cal.App.5th 393, 400–401 [263 Cal.Rptr.3d 52]; *People v. Miranda* (1994) 21 Cal.App.4th 1464, 1466–1467 [26 Cal.Rptr.2d 610].

RELATED ISSUES

See the Related Issues section to CALCRIM No. 590, *Gross Vehicular Manslaughter While Intoxicated*.

SECONDARY SOURCES

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against the Person, §§ 263–271.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.04, Ch. 142, *Crimes Against the Person*, § 142.02[1][a], [2][c], [4], Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02[4][c] (Matthew Bender).

**730 Special Circumstances: Murder in Commission of Felony
(Pen. Code, § 190.2(a)(17))**

The defendant is charged with the special circumstance of murder committed while engaged in the commission of _____ *<insert felony or felonies from Pen. Code, § 190.2(a)(17)>* [in violation of Penal Code section 190.2(a)(17)].

To prove that this special circumstance is true, the People must prove that:

1. The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit) _____ *<insert felony or felonies from Pen. Code, § 190.2(a)(17)>*;
2. The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit) _____ *<insert felony or felonies from Pen. Code, § 190.2(a)(17)>*;

<Give element 3 if defendant did not personally commit or attempt felony.>

- [3. If the defendant did not personally commit [or attempt to commit] _____ *<insert felony or felonies from Pen. Code, § 190.2(a)(17)>*, then a perpetrator , (whom the defendant was aiding and abetting before or during the killing/ [or] with whom the defendant conspired), personally committed [or attempted to commit] _____ *<insert felony or felonies from Pen. Code, § 190.2(a)(17)>*;]

AND

- (3/4). (The defendant/ _____ *<insert name or description of person causing death if not defendant>*) did an act that caused the death of another person.

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ *<insert felony or felonies from Pen. Code, § 190.2(a)(17)>*, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You

must apply those instructions when you decide whether the People have proved this special circumstance.

<Make certain that all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy are given.>

[The defendant must have (intended to commit[,]/ [or] aided and abetted/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____ <insert felony or felonies from Pen. Code, § 190.2(a)(17)> before or at the time of the act causing the death.]

[In addition, in order for this special circumstance to be true, the People must prove that the defendant intended to commit _____ <insert felony or felonies from Pen. Code, § 190.2(a)(17)> independent of the killing. If you find that the defendant only intended to commit murder and the commission of _____ <insert felony or felonies from Pen. Code, § 190.2(a)(17)> was merely part of or incidental to the commission of that murder, then the special circumstance has not been proved.]

New January 2006; Revised August 2006, April 2008, August 2013, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the elements of the special circumstance. (See *People v. Williams* (1997) 16 Cal.4th 635, 689 [66 Cal.Rptr.2d 573, 941 P.2d 752].) The court also has a **sua sponte** duty to instruct on the elements of any felonies alleged. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

If the evidence raises the potential for accomplice liability, the court has a **sua sponte** duty to instruct on that issue. Give CALCRIM No. 703, *Special Circumstances: Intent Requirement for Accomplice After June 5, 1990—Felony Murder, Pen. Code, § 190.2(a)(17)*. If the homicide occurred on or before June 5, 1990, give CALCRIM No. 701, *Special Circumstances: Intent Requirement for Accomplice Before June 6, 1990*.

If the facts raise an issue whether the homicidal act caused the death, the court has a **sua sponte** duty to give CALCRIM No. 240, *Causation*.

If the prosecution’s theory is that the defendant committed or attempted to commit the underlying felony, then select “committed [or attempted to commit]” in element 1 and “intended to commit” in element 2. In addition, in the paragraph

that begins with “To decide whether,” select “the defendant” in the first sentence. Give all appropriate instructions on any underlying felonies.

If the prosecution’s theory is that the defendant aided and abetted or conspired to commit the felony, select one or both of these options in element 1 and the corresponding intent requirement in element 2. Give bracketed element 3. In addition, in the paragraph that begins with “To decide whether,” select “the perpetrator” in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction.

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with “The defendant must have (intended to commit.” For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

In addition, the court must give the final bracketed paragraph stating that the felony must be independent of the murder if the evidence supports a reasonable inference that the felony was committed merely to facilitate the murder. (*People v. Green* (1980) 27 Cal.3d 1, 61 [164 Cal.Rptr. 1, 609 P.2d 468]; *People v. Clark* (1990) 50 Cal.3d 583, 609 [268 Cal.Rptr. 399, 789 P.2d 127]; *People v. Kimble* (1988) 44 Cal.3d 480; *People v. Navarette* (2003) 30 Cal.4th 458, 505 [133 Cal.Rptr.2d 89, 66 P.3d 1182].)

Proposition 115 added Penal Code section 190.41, eliminating the corpus delicti rule for the felony-murder special circumstance. (Pen. Code, § 190.41; *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 298 [279 Cal.Rptr. 592, 807 P.2d 434].) If, however, the alleged homicide predates the effective date of the statute (June 6, 1990), then the court must modify this instruction to require proof of the corpus delicti of the underlying felony independent of the defendant’s extrajudicial statements. (*Tapia v. Superior Court, supra*, 53 Cal.3d at p. 298.)

If the alleged homicide occurred between 1983 and 1987 (the window of time between *Carlos v. Superior Court* (1983) 35 Cal.3d 131, 135 [197 Cal.Rptr. 79, 672 P.2d 862] and *People v. Anderson* (1987) 43 Cal.3d 1104, 1147 [240 Cal.Rptr. 585, 742 P.2d 1306]), then the prosecution must also prove intent to kill on the part of the actual killer. (*People v. Bolden* (2002) 29 Cal.4th 515, 560 [127 Cal.Rptr.2d 802, 58 P.3d 931]; *People v. Mendoza* (2000) 24 Cal.4th 130, 182 [99

Cal.Rptr.2d 485, 6 P.3d 150].) The court should then modify this instruction to specify intent to kill as an element.

AUTHORITY

- Special Circumstance. ▶ Pen. Code, § 190.2(a)(17).
- Specific Intent to Commit Felony Required. ▶ *People v. Valdez* (2004) 32 Cal.4th 73, 105 [8 Cal.Rptr.3d 271, 82 P.3d 296].
- Provocative Act Murder. ▶ *People v. Briscoe* (2001) 92 Cal.App.4th 568, 596 [112 Cal.Rptr.2d 401] [citing *People v. Kainzrants* (1996) 45 Cal.App.4th 1068, 1081 [53 Cal.Rptr.2d 207]].
- Concurrent Intent. ▶ *People v. Mendoza* (2000) 24 Cal.4th 130, 183 [99 Cal.Rptr.2d 485, 6 P.3d 150]; *People v. Clark* (1990) 50 Cal.3d 583, 608–609 [268 Cal.Rptr. 399, 789 P.2d 127].
- Felony Cannot Be Incidental to Murder. ▶ *People v. Green* (1980) 27 Cal.3d 1, 61 [164 Cal.Rptr. 1, 609 P.2d 468], disapproved on other grounds in *People v. Hall* (1986) 41 Cal.3d 826, 834 fn. 3 [226 Cal.Rptr. 112, 718 P.2d 99]; *People v. Mendoza* (2000) 24 Cal.4th 130, 182 [99 Cal.Rptr.2d 485, 6 P.3d 150].
- Instruction on Felony as Incidental to Murder. ▶ *People v. Kimble* (1988) 44 Cal.3d 480, 501 [244 Cal.Rptr. 148, 749 P.2d 803]; *People v. Clark* (1990) 50 Cal.3d 583, 609 [268 Cal.Rptr. 399, 789 P.2d 127]; *People v. Navarette* (2003) 30 Cal.4th 458, 505 [133 Cal.Rptr.2d 89, 66 P.3d 1182].
- Proposition 115 Amendments to Special Circumstance. ▶ *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 298 [279 Cal.Rptr. 592, 807 P.2d 434].
- Meaning of “Actual Killer.” ▶ *People v. Garcia* (2020) 46 Cal.App.5th 123, 149–155 [259 Cal.Rptr.3d 600].

RELATED ISSUES

Applies to Felony Murder and Provocative Act Murder

“The fact that the defendant is convicted of murder under the application of the provocative act murder doctrine rather than pursuant to the felony-murder doctrine is irrelevant to the question of whether the murder qualified as a special-circumstances murder under former section 190.2, subdivision (a)(17). The statute requires only that the murder be committed while the defendant was engaged in the commission of an enumerated felony.” (*People v. Briscoe* (2001) 92 Cal.App.4th 568, 596 [112 Cal.Rptr.2d 401] [citing *People v. Kainzrants* (1996) 45 Cal.App.4th 1068, 1081 [53 Cal.Rptr.2d 207]].)

Concurrent Intent to Kill and Commit Felony

“Concurrent intent to kill and to commit an independent felony will support a felony-murder special circumstance.” (*People v. Mendoza* (2000) 24 Cal.4th 130, 183 [99 Cal.Rptr.2d 485, 6 P.3d 150]; *People v. Clark* (1990) 50 Cal.3d 583, 608–609 [268 Cal.Rptr. 399, 789 P.2d 127].)

Multiple Special Circumstances May Be Alleged

The defendant may be charged with multiple felony-related special circumstances based on multiple felonies committed against one victim or multiple victims of one felony. (*People v. Holt* (1997) 15 Cal.4th 619, 682 [63 Cal.Rptr.2d 782, 937 P.2d 213]; *People v. Andrews* (1989) 49 Cal.3d 200, 225–226 [260 Cal.Rptr. 583, 776 P.2d 285].)

Actual Killer vs. Aider and Abettor

The meaning of actual killer is literal. It is not enough that the defendant’s act formed part of a series of events that resulted in the death, if the act itself would not cause death. *People v. Garcia* (2020) 46 Cal.App.5th 123, 149–155 [259 Cal.Rptr.3d 600].

SECONDARY SOURCES

3 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Punishment, §§ 532–534, 536.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 87, *Death Penalty*, § 87.13[17] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.01[2][b] (Matthew Bender).

763 Death Penalty: Factors to Consider—Not Identified as Aggravating or Mitigating (Pen. Code, § 190.3)

In reaching your decision, you must consider and weigh the aggravating and mitigating circumstances or factors shown by the evidence.

An *aggravating circumstance or factor* is any fact, condition, or event relating to the commission of a crime, above and beyond the elements of the crime itself, that increases the wrongfulness of the defendant’s conduct, the enormity of the offense, or the harmful impact of the crime. An aggravating circumstance may support a decision to impose the death penalty.

A *mitigating circumstance or factor* is any fact, condition, or event that makes the death penalty less appropriate as a punishment, even though it does not legally justify or excuse the crime. A mitigating circumstance is something that reduces the defendant’s blameworthiness or otherwise supports a less severe punishment. A mitigating circumstance may support a decision not to impose the death penalty.

Under the law, you must consider, weigh, and be guided by specific factors, where applicable, some of which may be aggravating and some of which may be mitigating. I will read you the entire list of factors. Some of them may not apply to this case. If you find there is no evidence of a factor, then you should disregard that factor.

The factors are:

- (a) The circumstances of the crime[s] of which the defendant was convicted in this case and any special circumstances that were found true.**
- (b) Whether or not the defendant has engaged in violent criminal activity other than the crime[s] of which the defendant was convicted in this case. *Violent criminal activity* is criminal activity involving the unlawful use, attempt to use, or direct or implied threat to use force or violence against a person. [The other violent criminal activity alleged in this case will be described in these instructions.]**
- (c) Whether or not the defendant has been convicted of any prior felony other than the crime[s] of which (he/she) was convicted in this case.**

- (d) Whether the defendant was under the influence of extreme mental or emotional disturbance when (he/she) committed the crime[s] of which (he/she) was convicted in this case.
- (e) Whether the victim participated in the defendant's homicidal conduct or consented to the homicidal act.
- (f) Whether the defendant reasonably believed that circumstances morally justified or extenuated (his/her) conduct in committing the crime[s] of which (he/she) was convicted in this case.
- (g) Whether at the time of the murder the defendant acted under extreme duress or under the substantial domination of another person.
- (h) Whether, at the time of the offense, the defendant's capacity to appreciate the criminality of (his/her) conduct or to follow the requirements of the law was impaired as a result of mental disease, defect, or intoxication.
- (i) The defendant's age at the time of the crime[s] of which (he/she) was convicted in this case.
- (j) Whether the defendant was an accomplice to the murder and (his/her) participation in the murder was relatively minor.
- (k) Any other circumstance, whether related to these charges or not, that lessens the gravity of the crime[s] even though the circumstance is not a legal excuse or justification. These circumstances include sympathy or compassion for the defendant or anything you consider to be a mitigating factor, regardless of whether it is one of the factors listed above.

[You must disregard any jury instruction given to you in the guilt [and sanity] phase[s] of this trial if it conflicts with your consideration and weighing of these factors.]

Do not consider the absence of a mitigating factor as an aggravating factor.

[You may not consider as an aggravating factor anything other than the factors contained in this list that you conclude are aggravating in this case. You must not take into account any other facts or circumstances as a basis for imposing the death penalty.]

[Even if a fact is both a “special circumstance” and also a “circumstance of the crime,” you may consider that fact only once as an aggravating factor in your weighing process. Do not double-count that fact simply because it is both a “special circumstance” and a “circumstance of the crime.”]

[Although you may consider sympathy or compassion for the defendant, you may not let sympathy for the defendant’s family influence your decision.

[However, you may consider evidence about the impact the defendant’s execution would have on (his/her) family if that evidence demonstrates some positive quality of the defendant’s background or character.]]

New January 2006; Revised August 2006, June 2007, April 2008, December 2008, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jury on the factors to consider in reaching a decision on the appropriate sentence. (*Lockett v. Ohio* (1978) 438 U.S. 586, 604–605 [98 S.Ct. 2954, 57 L.Ed.2d 973]; *People v. Benson* (1990) 52 Cal.3d 754, 799 [276 Cal.Rptr. 827, 802 P.2d 330].)

Although not required, “[i]t is . . . the better practice for a court to instruct on all the statutory penalty factors, directing the jury to be guided by those that are applicable on the record.” (*People v. Marshall* (1990) 50 Cal.3d 907, 932 [269 Cal.Rptr. 269, 790 P.2d 676], cert. den. sub nom. *Marshall v. California* (1991) 498 U.S. 1110]; *People v. Miranda* (1987) 44 Cal.3d 57, 104–105 [241 Cal.Rptr. 594, 744 P.2d 1127]; *People v. Melton* (1988) 44 Cal.3d 713, 770 [244 Cal.Rptr. 867, 750 P.2d 741].) The jury must be instructed to consider only those factors that are “applicable.” (*Williams v. Calderon* (1998) 48 F.Supp.2d 979, 1023.)

When the court will be instructing the jury on prior violent criminal activity in aggravation, give the bracketed sentence that begins with “The other violent criminal activity alleged in this case.” (See *People v. Robertson* (1982) 33 Cal.3d 21, 55 [188 Cal.Rptr. 77, 655 P.2d 279]; *People v. Yeoman* (2003) 31 Cal.4th 93, 151 [2 Cal.Rptr.3d 186, 72 P.3d 1166].) The court also has a **sua sponte** duty to give CALCRIM No. 764, *Death Penalty: Evidence of Other Violent Crimes* in addition to this instruction.

When the court will be instructing the jury on prior felony convictions, the court also has a **sua sponte** duty to give CALCRIM No. 765, *Death Penalty: Conviction for Other Felony Crimes* in addition to this instruction.

On request, the court must instruct the jury not to double-count any “circumstances of the crime” that are also “special circumstances.” (*People v. Melton, supra*, 44 Cal.3d at p. 768.) When requested, give the bracketed paragraph that begins with “Even if a fact is both a ‘special circumstance’ and also a ‘circumstance of the crime’.”

On request, give the bracketed sentence that begins with “You may not let sympathy for the defendant’s family.” (*People v. Ochoa* (1998) 19 Cal.4th 353, 456 [79 Cal.Rptr.2d 408, 966 P.2d 442].) On request, give the bracketed sentence that begins with “However, you may consider evidence about the impact the defendant’s execution.” (*Ibid.*)

The bracketed sentence that begins with “You must disregard any jury instruction” may be given unless the jury did not hear a prior phase of the case. (See *People v. Arias* (1996) 13 Cal.4th 92, 171 [51 Cal.Rptr.2d 770, 913 P.2d 980], cert. den. sub nom. *Arias v. California* (1997) 520 U.S. 1251 [117 S.Ct. 2408, 138 L.Ed.2d 175].)

AUTHORITY

- Death Penalty Statute. ▶ Pen. Code, § 190.3.
- Jury Must Be Instructed to Consider Any Mitigating Evidence and Sympathy. ▶ *Lockett v. Ohio* (1978) 438 U.S. 586, 604–605 [98 S.Ct. 2954, 57 L.Ed.2d 973]; *People v. Benson* (1990) 52 Cal.3d 754, 799 [276 Cal.Rptr. 827, 802 P.2d 330]; *People v. Easley* (1983) 34 Cal.3d 858, 876 [196 Cal.Rptr. 309, 671 P.2d 813].
- Should Instruct on All Factors. ▶ *People v. Marshall* (1990) 50 Cal.3d 907, 932 [269 Cal.Rptr. 269, 790 P.2d 676], cert. den. sub nom. *Marshall v. California* (1991) 498 U.S. 1110 [111 S.Ct. 1023, 112 L.Ed.2d 1105].
- Must Instruct to Consider Only “Applicable Factors”. ▶ *Williams v. Calderon* (1998) 48 F.Supp.2d 979, 1023; *People v. Marshall* (1990) 50 Cal.3d 907, 932 [269 Cal.Rptr. 269, 790 P.2d 676], cert. den. sub nom. *Marshall v. California* (1991) 498 U.S. 1110 [111 S.Ct. 1023, 112 L.Ed.2d 1105].
- Mitigating Factor Must Be Supported by Evidence. ▶ *Delo v. Lashley* (1993) 507 U.S. 272, 275, 277 [113 S.Ct. 1222, 122 L.Ed.2d 620].

- Aggravating and Mitigating Defined. ▶ *People v. Dyer* (1988) 45 Cal.3d 26, 77–78 [246 Cal.Rptr. 209, 753 P.2d 1]; *People v. Adcox* (1988) 47 Cal.3d 207, 269–270 [253 Cal.Rptr. 55, 763 P.2d 906].
- On Request Must Instruct to Consider Only Statutory Aggravating Factors. ▶ *People v. Hillhouse* (2002) 27 Cal.4th 469, 509 [117 Cal.Rptr. 2d 45, 40 P.3d 754], cert. den. sub nom. *Hillhouse v. California* (2003) 537 U.S. 1114 [123 S.Ct. 869, 154 L.Ed.2d 789]; *People v. Gordon* (1990) 50 Cal.3d 1223, 1275, fn. 14 [270 Cal.Rptr. 451, 792 P.2d 251].
- Mitigating Factors Are Examples. ▶ *People v. Melton* (1988) 44 Cal.3d 713, 760 [244 Cal.Rptr. 867, 750 P.2d 741]; *Belmontes v. Woodford* (2003) 350 F.3d 861, 897].
- Must Instruct to Not Double-Count. ▶ *People v. Melton* (1988) 44 Cal.3d 713, 768 [244 Cal.Rptr. 867, 750 P.2d 741].
- Threats of Violence Must Be Directed at Persons. ▶ *People v. Kirkpatrick* (1994) 7 Cal.4th 988, 1016 [30 Cal.Rptr.2d 818, 874 P.2d 248].

COMMENTARY

Aggravating and Mitigating Factors—Need Not Specify

The court is not required to identify for the jury which factors may be aggravating and which may be mitigating. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 509 [117 Cal.Rptr.2d 45, 40 P.3d 754], cert. den. sub nom. *Hillhouse v. California* (2003) 537 U.S. 1114 [123 S.Ct. 869, 154 L.Ed.2d 789].) “The aggravating or mitigating nature of the factors is self-evident within the context of each case.” (*Ibid.*) However, the court is required on request to instruct the jury to consider only the aggravating factors listed. (*Ibid.*; *People v. Gordon* (1990) 50 Cal.3d 1223, 1275, fn. 14 [270 Cal.Rptr. 451, 792 P.2d 251].) In *People v. Hillhouse*, the Supreme Court stated, “we suggest that, on request, the court merely tell the jury it may not consider in aggravation anything other than the aggravating statutory factors.” The committee has rephrased this for clarity and included in the text of this instruction, “You may not consider as an aggravating factor anything other than the factors contained in this list that you conclude are aggravating in this case.” (*People v. Hillhouse* (2002) 27 Cal.4th 469, 509, fn. 6 [117 Cal.Rptr.2d 45, 40 P.3d 754], cert. den. sub nom. *Hillhouse v. California* (2003) 537 U.S. 1114 [123 S.Ct. 869, 154 L.Ed.2d 789].)

Although the court is not required to specify which factors are the aggravating factors, it is not error for the court to do so. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1269 [74 Cal.Rptr.2d 212, 954 P.2d 475].) In *People v. Musselwhite*, *supra*, 17 Cal.4th at p. 1269, decided prior to *Hillhouse*, the Supreme Court held

that the trial court properly instructed the jury that “*only* factors (a), (b) and (c) of section 190.3 could be considered in aggravation . . .” (italics in original).

SECONDARY SOURCES

3 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Punishment, §§ 545, 549–550, 563, 568, 571–572, 584–591.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 87, *Death Penalty*, §§ 87.23, 87.24 (Matthew Bender).

768 Penalty Trial: Pre-Deliberation Instructions

When you go to the jury room, the first thing you should do is (choose a foreperson/decide whether to retain the same foreperson). The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. Please treat one another courteously.

It is your duty to talk with one another and to deliberate in the jury room in order to agree on a penalty if you can. Each of you must decide the penalty for yourself, but only after you have discussed the evidence with the other jurors. Do not hesitate to change your mind if you become convinced that you are wrong. But do not change your mind just because other jurors disagree with you.

Keep an open mind and openly exchange your thoughts and ideas about this case. Stating your opinions too strongly at the beginning or immediately announcing how you plan to vote may interfere with an open discussion.

Do not talk about the case or about any of the people or any subject involved in it with anyone, including, but not limited to, your spouse or other family, or friends, spiritual leaders or advisors, or therapists. You must discuss the case only in the jury room and only when all jurors are present. Do not discuss your deliberations with anyone. Do not communicate using:

_____ <insert currently popular social media> during your deliberations.

It is very important that you not use the Internet (, a dictionary/[, or _____ <insert other relevant source of information>]) in any way in connection with this case during your deliberations or at any time until your jury service is completed.

[During the trial, several items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your deliberations. (These exhibits will be sent into the jury room with you when you begin to deliberate./If you wish to see any exhibits, please request them in writing.)]

If you need to communicate with me while you are deliberating, send a note through the bailiff, signed by the foreperson or by one or more members of the jury. To have a complete record of this trial, it is important that you not communicate with me except by a written note. If you have questions, I will talk with the attorneys before I answer, so it may take some time. You should

continue your deliberations while you wait for my answer. I will answer any questions in writing or orally here in open court.

Do not reveal to me or anyone else any aspect of your deliberations or how the vote stands on the question of penalty unless I ask you to do so.

Your verdict of either death or life without possibility of parole must be unanimous. This means that, to return a verdict, all of you must agree to it. [Do not reach a decision by the flip of a coin or by any similar act.]

<During a retrial, give the following paragraph on request to inform jury about prior proceedings without introducing extraneous matters>

[Sometimes issues are tried in separate trials. The only issue in this trial is the penalty.]

It is not my role to tell you what your verdict should be. [Do not take anything I said or did during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.]

You will be given [a] verdict form[s]. As soon as all jurors have agreed on a verdict, the foreperson must date and sign the [appropriate] verdict form[s] and notify the bailiff.

New March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct that the jury's verdict must be unanimous. Although there is no sua sponte duty to instruct on the other topics relating to deliberations, there is authority approving such instructions. (See *People v. Gainer* (1977) 19 Cal.3d 835, 856 [139 Cal.Rptr. 861, 566 P.2d 997]; *People v. Selby* (1926) 198 Cal. 426, 439 [245 P. 426]; *People v. Hunt* (1915) 26 Cal.App. 514, 517 [147 P. 476].)

If the court automatically sends exhibits into the jury room, give the bracketed sentence that begins with "These exhibits will be sent into the jury room." If not, give the bracketed phrase that begins with "You may examine whatever exhibits you think."

Give the bracketed sentence that begins with “Do not take anything I said or did during the trial” unless the court will be commenting on the evidence. (See Pen. Code, §§ 1127, 1093(f).)

Give the bracketed paragraph that begins with “Sometimes issues are tried in separate trials” if requested. (*People v. Hicks* (2017) 4 Cal.5th 203, 205 [226 Cal.Rptr.3d 565, 407 P.3d 409].)

AUTHORITY

- Exhibits. ▶ Pen. Code, § 1137.
- Questions. ▶ Pen. Code, § 1138.
- Verdict Forms. ▶ Pen. Code, § 1140.
- Unanimous Verdict. ▶ Cal. Const., art. I, § 16; Pen. Code, § 190.4(b); *People v. Howard* (1930) 211 Cal. 322, 325 [295 P. 333]; *People v. Kelso* (1945) 25 Cal.2d 848, 853–854 [155 P.2d 819]; *People v. Collins* (1976) 17 Cal.3d 687, 692 [131 Cal.Rptr. 782, 552 P.2d 742]; *People v. Anderson* (2018) 5 Cal.5th 372, 425 [235 Cal.Rptr.3d 1].
- Duty to Deliberate. ▶ *People v. Gainer* (1977) 19 Cal.3d 835, 856 [139 Cal.Rptr. 861, 566 P.2d 997].
- Judge’s Conduct as Indication of Verdict. ▶ *People v. Hunt* (1915) 26 Cal.App. 514, 517 [147 P. 476].
- Keep an Open Mind. ▶ *People v. Selby* (1926) 198 Cal. 426, 439 [245 P. 426].
- Hung Jury. ▶ *People v. Gainer* (1977) 19 Cal.3d 835, 850–852 [139 Cal.Rptr. 861, 566 P.2d 997]; *People v. Moore* (2002) 96 Cal.App.4th 1105, 1118-1121 [117 Cal.Rptr.2d 715].

RELATED ISSUES

Admonition Not to Discuss Case with Anyone

In *People v. Danks* (2004) 32 Cal.4th 269, 298–300 [8 Cal.Rptr.3d 767, 82 P.3d 1249], a capital case, two jurors violated the court’s admonition not to discuss the case with anyone by consulting with their pastors regarding the death penalty. The Supreme Court stated:

It is troubling that during deliberations not one but two jurors had conversations with their pastors that ultimately addressed the issue being resolved at the penalty phase in this case. Because jurors instructed not to speak to anyone about the case except a fellow juror

during deliberations may assume such an instruction does not apply to confidential relationships, we recommend the jury be expressly instructed that they may not speak to anyone about the case, except a fellow juror during deliberations, and that this includes, but is not limited to, spouses, spiritual leaders or advisers, or therapists. Moreover, the jury should also be instructed that if anyone, other than a fellow juror during deliberations, tells a juror his or her view of the evidence in the case, the juror should report that conversation immediately to the court.

(Id. at p. 306, fn. 11.)

The court may, in its discretion, add the suggested language to the fourth paragraph of this instruction.

SECONDARY SOURCES

4 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Criminal Trial §§ 726-727.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02, 85.03[1], 85.05[1] (Matthew Bender).

1140 Distributing, Sending, or Exhibiting Harmful Material (Pen. Code, § 288.2(a)(1) & (2))

The defendant is charged [in Count __] with (exhibiting[,]/ sending[,]/ distributing[,]/ [or] offering to exhibit or distribute) harmful material to a minor [or to a person the defendant believed was a minor] [in violation of Penal Code section 288.2].

To prove that the defendant is guilty of this crime, the People must prove that:

<Give alternative paragraph 1A for violations of Penal Code section 288.2(a)(1)>

[1. The defendant (exhibited[,]/ sent[,]/ caused to be sent[,]/ distributed[,]/ [or] offered to exhibit or distribute) harmful material depicting a minor or minors engaging in sexual conduct to another person by any means;]

<Give alternative paragraph 1B for violations of Penal Code section 288.2(a)(2)>

[1. The defendant (exhibited[,]/ sent[,]/ caused to be sent[,]/ distributed[,]/ [or] offered to exhibit or distribute) harmful material to another person by any means;]

- 2. When the defendant acted, (he/she) knew the character of the material;**
- 3. When the defendant acted, (he/she) knew, should have known, or believed that the other person was a minor;**
- 4. When the defendant acted, (he/she) intended to arouse, appeal to, or gratify the lust, passions, or sexual desires of (himself/herself) or of the other person;**

AND

- 5. When the defendant acted, (he/she) intended to engage in sexual intercourse, sodomy, or oral copulation with the other person or to have either person touch an intimate body part of the other person.**

You must decide whether the material at issue in this case meet[s] the definition of harmful material. Material is *harmful* if, when considered as a whole:

1. It shows or describes sexual conduct in an obviously offensive way;
2. A reasonable person would conclude that it lacks serious literary, artistic, political, or scientific value for minors;

AND

3. An average adult person, applying contemporary statewide standards, would conclude it appeals to prurient interest.

For the purpose of this instruction, an *intimate body part* includes the sexual organ, anus, groin, or buttocks of any person, or the breasts of a female.

A *prurient interest* is a shameful or morbid interest in nudity, sex, or excretion.

Material, as used in this instruction, means any (book, magazine, newspaper, video recording, or other printed or written material[;]/ [or] any picture, drawing, photograph, motion picture, or other pictorial representation[;]/ [or] any statue or other figure[;]/ [or] any recording, transcription, or mechanical, chemical, or electrical reproduction[;]/ [or] any other articles, equipment, machines, or materials). [*Material* includes live or recorded telephone messages when transmitted or distributed as part of a commercial transaction.]

Applying contemporary statewide standards means using present-day standards and determining the effect of the material on all those whom it is likely to reach within the state, in other words, its impact on the average person in the statewide community. The *average adult person* is a hypothetical person who represents the entire community, including both men and women; religious and nonreligious people; and adults of varying ages, educational and economic levels, races, ethnicities, and points of view. The *contemporary statewide standard* means what is acceptable to the statewide community as a whole, not what some person or persons may believe the community ought to accept. The test you must apply is not what you find offensive based on your own personal, social, or moral views. Instead, you

must make an objective determination of what would offend the statewide community as a whole.

[You may consider evidence of local community standards in deciding what the contemporary statewide standard is. However, you may not use the standard of a local community, by itself, to establish the contemporary statewide standard.]

The material is not harmful unless a reasonable person would conclude that, taken as a whole, it lacks serious literary, artistic, political, or scientific value for minors. When deciding whether the material is harmful, do not weigh its value against its prurient appeal.

[The depiction of nudity, by itself, does not make material harmful. In order for material containing nudity to be harmful, it must depict sexual activity and it must meet the requirements for harmful material listed above.]

[The depiction of sexual activity, by itself, does not make material harmful. In order for material depicting sexual activity to be harmful, it must meet the requirements for harmful material listed above.]

The People must prove that the defendant knew the character of the material but do not need to prove that the defendant knew whether the material met the definition of harmful material.

A *minor* is anyone under the age of 18. [Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[If it appears from the nature of the material or the circumstances of its distribution or showing that it is designed for clearly defined deviant sexual groups, the appeal of the material must be judged based on its intended audience.]

[In deciding the material's nature and whether it lacks serious literary, artistic, political, or scientific value, consider whether the circumstances of its (production[,]/ presentation[,]/ sale[,]/ dissemination[,]/ distribution[,]/ publicity) indicate that the material was being commercially exploited because of its prurient appeal. You must determine the weight, if any, to give this evidence.]

[In deciding whether, applying contemporary statewide standards, the material appeals to a prurient interest, you may consider whether similar

material is openly shown in the community. You must determine the weight, if any, to give this evidence.]

[Harmful material may be sent or distributed by live or recorded telephone messages.]

[To *distribute* means to transfer possession, whether or not the transfer is made for money or anything else of value.]

<Defense: Parent providing sex education>

[A parent or guardian is not guilty of this offense if he or she acted to promote legitimate sex education. The People must prove beyond a reasonable doubt that the defendant was not providing legitimate sex education. If the People have not met this burden, you must find the defendant not guilty of this crime.]

<Defense: Legitimate scientific or educational purpose>

[The defendant is not guilty of this crime if (he/she) was engaging in legitimate scientific or educational activities. The People have the burden of proving beyond a reasonable doubt that the defendant was not acting for a legitimate scientific or educational purpose. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006; Revised February 2015, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed sentence about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Penal Code section 288.2(a) was amended effective January 1, 2014. Give any of the other bracketed paragraphs on request.

Defenses—Instructional Duty

If there is sufficient evidence that the defendant was “acting in aid of legitimate sex education,” the court has a **sua sponte** duty to instruct on that defense. (See Pen. Code, § 288.2(f).) It is unclear who bears the burden of proof and what standard of proof applies to this defense. In the absence of statutory authority or

case law stating that the defendant must prove the defense by a preponderance of the evidence, the committee has drafted the instruction to provide that the prosecution must prove beyond a reasonable doubt that the defense does not apply. (See *People v. Mower* (2002) 28 Cal.4th 457, 478–479 [122 Cal.Rptr.2d 326, 49 P.3d 1067].)

If there is sufficient evidence that the defendant was engaging in legitimate scientific or educational activities, the court has a **sua sponte** duty to instruct on that defense. (See Pen. Code, § 288.2(g).) It is unclear who bears the burden of proof and what standard of proof applies to this defense. In the absence of statutory authority or case law stating that the defendant must prove the defense by a preponderance of the evidence, the committee has drafted the instruction to provide that the prosecution must prove beyond a reasonable doubt that the defense does not apply. (See *People v. Mower* (2002) 28 Cal.4th 457, 478–479 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; see also *People v. Woodward* (2004) 116 Cal.App.4th 821, 840–841 [10 Cal.Rptr.3d 779] [“legitimate” does not require definition and the trial court erred in giving amplifying instruction based on *People v. Marler* (1962) 199 Cal.App.2d Supp. 889 [18 Cal.Rptr. 923]].)

AUTHORITY

- Elements. ▶ Pen. Code, § 288.2(a)(1), (2)).
- Harmful Matter Defined. ▶ Pen. Code, § 313.
- Know Character of Matter. ▶ Pen. Code, § 313(e); see *People v. Kuhns* (1976) 61 Cal.App.3d 735, 756–758 [132 Cal.Rptr. 725] [no error in instructing that it was unnecessary to establish that the accused had knowledge that material was legally obscene].
- Means of Distribution. ▶ Pen. Code, § 288.2(a)(1), (2)).
- Contemporary Community Standards. ▶ See *Roth v. United States* (1957) 354 U.S. 476, 489–490 [77 S.Ct. 1304, 1 L.Ed.2d 1498] [quoting trial court instruction].
- Prurient Interest Defined. ▶ *Bloom v. Municipal Court* (1976) 16 Cal.3d 71, 77 [127 Cal.Rptr. 317, 545 P.2d 229] [quoting former Pen. Code, § 311].
- Taken or Considered as a Whole. ▶ *People v. Goulet* (1971) 21 Cal.App.3d Supp. 1, 3 [98 Cal.Rptr. 782]; *Kois v. Wisconsin* (1972) 408 U.S. 229, 231 [92 S.Ct 2245, 33 L.Ed.2d 312].
- Matter Designed for Deviant Sexual Group. ▶ Pen. Code, § 313(a)(1); see *People v. Young* (1977) 77 Cal.App.3d Supp. 10, 14–15 [143 Cal.Rptr. 604].

- Commercial Exploitation Is Probative of Matter’s Nature. ▶ Pen. Code, § 313(a)(2); *People v. Kuhns* (1976) 61 Cal.App.3d 735, 748–753 [132 Cal.Rptr. 725].
- Similar Matter Shown in Community. ▶ *In re Harris* (1961) 56 Cal.2d 879, 880 [366 P.2d 305]; *People v. Heller* (1979) 96 Cal.App.3d Supp. 1, 7 [157 Cal.Rptr. 830].
- Obscenity Contrasted With Sex. ▶ *Roth v. United States* (1957) 354 U.S. 476, 487 [77 S.Ct. 1304, 1 L.Ed.2d 1498].
- Obscenity Contrasted With Nudity. ▶ *People v. Noroff* (1967) 67 Cal.2d 791, 795–796 [63 Cal.Rptr. 575, 433 P.2d 479]; *In re Panchot* (1968) 70 Cal.2d 105, 108–109 [73 Cal.Rptr. 689, 448 P.2d 385].
- Defense of Sex Education. ▶ Pen. Code, § 288.2(f).
- Defense of Legitimate Scientific or Educational Activity. ▶ Pen. Code, § 288.2(g).
- Prior Version of This Instruction Was Correct. ▶ *People v. Richardson* (2007) 151 Cal.App.4th 790, 803 [60 Cal.Rptr.3d 458].

LESSER INCLUDED OFFENSES

Under the version of Penal Code section 288.2 effective January 1, 2014, misdemeanor distribution of harmful matter (Pen. Code, § 313.1(a)) is not a lesser included offense. (*People v. Collom* (2020) 52 Cal.App.5th 35, 42–44 [265 Cal.Rptr.3d 705].)

Under the prior version of Penal Code section 288.2, in effect until December 31, 2013, the following were held to be lesser included offenses:

- Attempted Distribution of Harmful Matter to Minor. ▶ Pen. Code, §§ 664, 288.2; see, e.g., *Hatch v. Superior Court* (2000) 80 Cal.App.4th 170, 185 [94 Cal.Rptr.2d 453].
- Misdemeanor Distribution of Harmful Matter. ▶ Pen. Code, § 313.1(a); *People v. Jensen* (2003) 114 Cal.App.4th 224, 244 [7 Cal.Rptr.3d 609].

RELATED ISSUES

Telephone, Cable, or ISPs

A telephone corporation, a cable television company or its affiliates, an Internet service provider, or commercial online service provider does not violate section 288.2 by

carrying, broadcasting, or transmitting harmful matter while providing its services. (Pen. Code, § 288.2(e).)

Expert Testimony Not Required

Neither the prosecution nor the defense is required to introduce expert witness testimony regarding the harmful nature of the matter. (Pen. Code, § 312.1 [abrogating *In re Giannini* (1968) 69 Cal.2d 563, 574 [72 Cal.Rptr. 655, 446 P.2d 535]].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 125.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.21[1][d][iii], [2][c], Ch. 144, *Crimes Against Order*, § 144.10[2] (Matthew Bender).

| Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1151 Pandering (Pen. Code, § 266i)

The defendant is charged [in Count _____] with pandering [in violation of Penal Code section 266i].

To prove that the defendant is guilty of pandering, the People must prove that:

<Alternative 1A—persuaded/procured>

**[1. The defendant successfully (persuaded/procured)
_____ <insert name> to become a prostitute(;/.)]**

<Alternative 1B—promises/threats/violence used to cause person to become prostitute>

**[1. The defendant used (promises[,]/ threats[,]/ violence[,]/ [or] any device or scheme) to (cause/persuade/encourage/induce)
_____ <insert name> to become a prostitute[,
although the defendant’s efforts need not have been successful](;/.)]**

<Alternative 1C—arranged/procured a position>

**[1. The defendant (arranged/procured a position) for
_____ <insert name> to be a prostitute in either a house of prostitution or any other place where prostitution is encouraged or allowed(;/.)]**

<Alternative 1D—promises/threats/violence used to cause person to remain>

**[1. The defendant used (promises[,]/ threats[,]/ violence[,]/ [or] any device or scheme) to (cause/persuade/encourage/induce)
_____ <insert name> to remain as a prostitute in a house of prostitution or any other place where prostitution is encouraged or allowed(;/.)]**

<Alternative 1E—used fraud>

**[1. The defendant used fraud, trickery, or duress [or abused a position of confidence or authority] to (persuade/procure)
_____ <insert name> to (be a prostitute/enter any place where prostitution is encouraged or allowed/enter or leave California for the purpose of prostitution)(;/.)]**

<Alternative 1F—received money>

[1. The defendant (received/gave/agreed to receive/agreed to give) money or something of value in exchange for (persuading/attempting to persuade/procuring/attempting to procure) _____ <insert name> to (be a prostitute/enter or leave California for the purpose of prostitution)(;/.)]

AND

2. The defendant intended to influence _____ <insert name> to be a prostitute(;/.)

<Give element 3 when defendant charged with pandering a minor.>

[AND

3. _____ <insert name> was (16 years old or older/under the age of 16) at the time the defendant acted.]

[It does not matter whether _____ <insert name> was (a prostitute already/ [or] an undercover police officer).]

A *prostitute* is a person who engages in sexual intercourse or any lewd act with another person in exchange for money [or other compensation]. [Pandering requires that an intended act of prostitution be with someone other than the defendant.] A *lewd act* means physical contact of the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification.

[*Duress* means a direct or implied threat of force, violence, danger, hardship, or retribution that would cause a reasonable person to do [or submit to] something that he or she would not do [or submit to] otherwise. When deciding whether the act was accomplished by duress, consider all the circumstances, including the person's age and (her/his) relationship to the defendant.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised April 2011, February 2012, August 2012, February 2015, April 2020, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In element 1, give the appropriate alternative A-F depending on the evidence in the case. (See *People v. Montgomery* (1941) 47 Cal.App.2d 1, 12, 24, 27–28 [117 P.2d 437] [statutory alternatives are not mutually exclusive], disapproved on other grounds in *People v. Dillon* (1983) 34 Cal.3d 441, 454 fn. 2 [194 Cal.Rptr. 390, 668 P.2d 697] and *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 301 fn. 11 [124 Cal.Rptr. 204, 540 P.2d 44].)

The committee included “persuade” and “arrange” as options in element one because the statutory language, “procure,” may be difficult for jurors to understand.

Give bracketed element 3 if it is alleged that the person procured, or otherwise caused to act, by the defendant was a minor “over” or “under” the age of 16 years. (Pen. Code, § 266i(b).)

Give the bracketed paragraph defining duress on request if there is sufficient evidence that duress was used to procure a person for prostitution. (Pen. Code, § 266i(a)(5); see *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071] [definition of “duress”].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

There is a split of authority on whether pandering requires that services be procured for a person other than the defendant. (*People v. Dixon* (2011) 191 Cal.App.4th 1154, 1159–1160 [119 Cal.Rptr.3d 901] [third person required]; *People v. Jacobo* (2019) 37 Cal.App.5th 32, 47 [249 Cal.Rptr.3d 236] [no third person required].) If the court concludes that Penal Code section 266i(a)(2) requires a third person, give the bracketed sentence that begins with “Pandering requires.”

Defenses—Instructional Duty

If necessary for the jury’s understanding of the case, the court must instruct **sua sponte** on a defense theory in evidence, for example, that nude modeling does not constitute an act of prostitution and that an act of procuring a person solely for the purpose of nude modeling does not violate either the pimping or pandering statute. (*People v. Hill* (1980) 103 Cal.App.3d 525, 536–537 [163 Cal.Rptr. 99].)

AUTHORITY

- Elements. ▶ Pen. Code, § 266i.
- Prostitution Defined. ▶ Pen. Code, § 647(b); *People v. Hill* (1980) 103 Cal.App.3d 525, 534–535 [163 Cal.Rptr. 99]; *People v. Romo* (1962) 200 Cal.App.2d 83, 90–91 [19 Cal.Rptr. 179]; *Wooten v. Superior Court* (2001) 93 Cal.App.4th 422, 431–433 [lewd act requires touching between prostitute and customer].
- Procurement Defined. ▶ *People v. Montgomery* (1941) 47 Cal.App.2d 1, 12 [117 P.2d 437], disapproved on other grounds in *People v. Dillon* (1983) 34 Cal.3d 441, 454 fn. 2 [194 Cal.Rptr. 390, 668 P.2d 697] and *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 301 fn. 11 [124 Cal.Rptr. 204, 540 P.2d 44].
- Proof of Actual Prostitution Not Required. ▶ *People v. Osuna* (1967) 251 Cal.App.2d 528, 531–532 [59 Cal.Rptr. 559].
- Duress Defined. ▶ *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221]; *People v. Cochran* (2002) 103 Cal.App.4th 8, 13–14 [126 Cal.Rptr.2d 416].
- Good Faith Belief That Minor Is 18 No Defense to Pimping and Pandering. ▶ *People v. Branch* (2010) 184 Cal.App.4th 516, 521–522 [109 Cal.Rptr.3d 412].
- Specific Intent Crime. ▶ *People v. Zambia* (2011) 51 Cal.4th 965, 980 [127 Cal.Rptr.3d 662, 254 P.3d 965].
- Victim May [Appear to] Be a Prostitute Already. ▶ *People v. Zambia* (2011) 51 Cal.4th 965, 981 [127 Cal.Rptr.3d 662, 254 P.3d 965].
- Encouraging Person to Become Prostitute Need Not Be Successful. ▶ —*People v. Zambia* (2011) 51 Cal.4th 965, 980 [127 Cal.Rptr.3d 662, 254 P.3d 965].
- This Instruction Upheld. ▶ *People v. Campbell* (2020) 51 Cal.App.5th 463, 495–496 [265 Cal.Rptr.3d 136]

LESSER INCLUDED OFFENSES

- Attempted Pandering. ▶ Pen. Code, §§ 664, 266i; *People v. Charles* (1963) 218 Cal.App.2d 812, 819 [32 Cal.Rptr. 653]; *People v. Benenato* (1946) 77 Cal.App.2d 350, 366–367 [175 P.2d 296], disapproved on other grounds in *In re Wright* (1967) 65 Cal.2d 650, 654–655, fn. 3 [56 Cal.Rptr. 110, 422 P.2d 998].

There is no crime of aiding and abetting prostitution. (*People v. Gibson* (2001) 90 Cal.App.4th 371, 385 [108 Cal.Rptr.2d 809].)

RELATED ISSUES

See Related Issues section to CALCRIM No. 1150, *Pimping*.

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 85.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 144, *Crimes Against Order*, § 144.11[3] (Matthew Bender).

| Couzens & Bigelow, *Sex Crimes: California Law and -Procedure* §§ 12:16, 12:17 (The Rutter Group).

1193 Testimony on Child Sexual Abuse Accommodation Syndrome

You have heard testimony from _____ <insert name of expert> regarding child sexual abuse accommodation syndrome.

_____’s <insert name of expert> testimony about child sexual abuse accommodation syndrome is not evidence that the defendant committed any of the crimes charged against (him/her) [or any conduct or crime[s] with which (he/she) was not charged].

You may consider this evidence only in deciding whether or not _____’s <insert name of alleged victim of abuse> conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of (his/her) testimony.

New January 2006; Revised August 2016, April 2020, March 2021

BENCH NOTES

Instructional Duty

Several courts of review have concluded there is no sua sponte duty to give this instruction when an expert testifies on child sexual abuse accommodation syndrome. (*People v. Mateo* (2016) 243 Cal.App.4th 1063, 1073-1074 [197 Cal.Rptr.3d 248]; *People v. Sanchez* (1989) 208 Cal.App.3d 721, 736 [256 Cal.Rptr. 446] and *People v. Stark* (1989) 213 Cal.App.3d 107, 116 [261 Cal.Rptr. 479] [instruction required only on request].) See also *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088, fn. 5, 1090-1091, 1100 [56 Cal.Rptr.2d 142, 921 P.2d 1], which concludes that a limiting instruction on battered woman syndrome is required only on request. But see *People v. Housley* (1992) 6 Cal.App.4th 947, 958–959 [9 Cal.Rptr.2d 431], which did find a sua sponte duty to give this instruction.

Related Instructions

If this instruction is given, also give CALCRIM No. 303, *Limited Purpose Evidence in General*, and CALCRIM No. 332, *Expert Witness*.

AUTHORITY

- Eliminate Juror Misconceptions or Rebut Attack on Victim’s Credibility. ▶ *People v. Bowker* (1988) 203 Cal.App.3d 385, 393–394 [249 Cal.Rptr. 886].
- This Instruction Upheld. ▶ *People v. Munch* (2020) 52 Cal.App.5th 464, 473–474 [266 Cal.Rptr.3d 136]; *People v. Gonzales* (2017) 16 Cal.App.5th 494, 504 [224 Cal.Rptr.3d 421].

COMMENTARY

The jurors must understand that the research on child sexual abuse accommodation syndrome assumes a molestation occurred and seeks to describe and explain children’s common reactions to the experience. (*People v. Bowker* (1988) 203 Cal.App.3d 385, 394 [249 Cal.Rptr. 886].) However, it is unnecessary and potentially misleading to instruct that the expert testimony assumes that a molestation has in fact occurred. (See *People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1387 [7 Cal.Rptr.2d 660].)

The prosecution must identify the myth or misconception the evidence is designed to rebut (*People v. Bowker, supra*, 203 Cal.App.3d at p. 394; *People v. Sanchez* (1989) 208 Cal.App.3d 721, 735 [256 Cal.Rptr. 446]; *People v. Harlan* (1990) 222 Cal.App.3d 439, 449–450 [271 Cal.Rptr. 653]), or the victim’s credibility must have been placed in issue (*People v. Patino* (1994) 26 Cal.App.4th 1737, 1744–1745 [32 Cal.Rptr.2d 345]).

RELATED ISSUES

Expert Testimony Regarding Parent’s Behavior

An expert may also testify regarding reasons why a parent may delay reporting molestation of his or her child. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300–1301 [283 Cal.Rptr. 382, 812 P.2d 563].)

SECONDARY SOURCES

1 Witkin, *California Evidence* (5th ed. 2012) Opinion Evidence, §§ 54–56.

3 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 71, *Scientific and Expert Evidence*, § 71.04[1][d][v][B] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.23[3][d] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure § 12:7 (The Rutter Group).

1202 Kidnapping: For Ransom, Reward, ~~or~~ Extortion or to Exact From Another Person (Pen. Code, § 209(a))

The defendant is charged [in Count __] with kidnapping ~~for the purpose of~~ **(for ransom[,]/ [or] for reward[,]/ [or] to commit extortion[,]/ [or] to get from a different person money or something valuable)** [that resulted in (death[,]/ [or] bodily harm[,]/ [or] exposure to a substantial likelihood of death)] [in violation of Penal Code section 209(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (kidnapped[,]/ [or] abducted[,]/ [or] seized[,]/ [or] confined[,]/ [or] concealed[,]/ [or] carried away[,]/ [or] inveigled[,]/ [or] enticed[,]/ [or] decoyed) a person;

<Alternative 2A—held or detained>

2. The defendant held or detained that person;

<Alternative 2B—intended to hold or detain that person>

2. When the defendant acted, (he/she) intended to hold or detain that person;

3. The defendant did so (for ransom[,]/ [or] for reward[,]/ [or] to commit extortion[,]/ [or] to get from a different person money or something valuable);

[AND]

4. The person did not consent to being (kidnapped[,]/ [or] abducted[,]/ [or] seized[,]/ [or] confined[,]/ [or] concealed[,]/ [or] carried away[,]/ [or] inveigled[,]/ [or] enticed[,]/ [or] decoyed)(;/.)

<Give element 5 if instructing on reasonable belief in consent>

[AND]

5. The defendant did not actually and reasonably believe that the person consented to being (kidnapped[,]/ [or] abducted[,]/ [or] seized[,]/ [or] confined[,]/ [or] concealed[,]/ [or] carried away[,]/ [or] inveigled[,]/ [or] enticed[,]/ [or] decoyed).

[It is not necessary that the person be moved for any distance.]

[In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

<Defense: Good Faith Belief in Consent>

[The defendant is not guilty of kidnapping if (he/she) reasonably and actually believed that the person consented to the movement. The People have the burden of proving beyond a reasonable doubt that the defendant did not reasonably and actually believe that the person consented to the movement. If the People have not met this burden, you must find the defendant not guilty of this crime.]

<Defense: Consent Given>

[The defendant is not guilty of kidnapping if the person consented to go with the defendant. The person consented if (he/she) (1) freely and voluntarily agreed to go with or be moved by the defendant, (2) was aware of the movement, and (3) had sufficient mental capacity to choose to go with the defendant. The People have the burden of proving beyond a reasonable doubt that the person did not consent to go with the defendant. If the People have not met this burden, you must find the defendant not guilty of this crime.]

[Consent may be withdrawn. If, at first, a person agreed to go with the defendant, that consent ended if the person changed his or her mind and no longer freely and voluntarily agreed to go with or be moved by the defendant. The defendant is guilty of kidnapping if after the person withdrew consent, the defendant committed the crime as I have defined it.]

[Someone intends to commit *extortion* if he or she intends to: (1) obtain a person's property with the person's consent and (2) obtain the person's consent through the use of force or fear.]

[Someone intends to commit *extortion* if he or she: (1) intends to get a public official to do an official act and (2) uses force or fear to make the official do the act.] [An *official act* is an act that a person does in his or her official capacity using the authority of his or her public office.]

<Sentencing Factor>

[If you find the defendant guilty of kidnapping (for (ransom [,]/ [or] for reward[,]/ [or] to commit extortion[,]/ [or] to get from a different person money or something valuable), you must then decide whether the People have proved the additional allegation that the defendant (caused the kidnapped

person to (die/suffer bodily harm)/ [or] intentionally confined the kidnapped person in a way that created a substantial likelihood of death).

[*Bodily harm* means any substantial physical injury resulting from the use of force that is more than the force necessary to commit kidnapping.]

[The defendant caused _____'s <insert name of allegedly kidnapped person> (death/bodily harm) if:

1. A reasonable person in the defendant's position would have foreseen that the defendant's use of force or fear could begin a chain of events likely to result in _____'s <insert name of allegedly kidnapped person> (death/bodily harm);
2. The defendant's use of force or fear was a direct and substantial factor in causing _____'s <insert name of allegedly kidnapped person> (death/bodily harm);

AND

3. _____'s <insert name of allegedly kidnapped person> (death/bodily harm) would not have happened if the defendant had not used force or fear to hold or detain _____ <insert name of allegedly kidnapped person>.

A *substantial factor* is more than a trivial or remote factor. However, it need not have been the only factor that caused _____'s <insert name of allegedly kidnapped person> (death/bodily harm).]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.]

New January 2006; Revised April 2011, February 2015, March 2017, September 2020, March 2021

BENCH NOTES

Instructional Duty

The court has a *sua sponte* duty to give an instruction defining the elements of the crime.

If the prosecution alleges that the kidnapping resulted in death or bodily harm, or exposed the victim to a substantial likelihood of death (see Pen. Code, § 209(a)), the court has a **sua sponte** duty to instruct on the sentencing factor. (See *People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685–686 [168 Cal.Rptr. 762] [bodily harm defined]); see also *People v. Ryan* (1999) 76 Cal.App.4th 1304, 1318 [76 Cal.Rptr.2d 160] [court must instruct on general principles of law relevant to issues raised by the evidence].) The court must also give the jury a verdict form on which the jury can indicate whether this allegation has been proved. If causation is an issue, the court has a **sua sponte** duty to give the bracketed section that begins “The defendant caused.” (See Pen. Code, § 209(a); *People v. Monk* (1961) 56 Cal.2d 288, 296 [14 Cal.Rptr. 633, 363 P.2d 865]; *People v. Reed* (1969) 270 Cal.App.2d 37, 48–49 [75 Cal.Rptr. 430].)

Give the bracketed definition of “consent” on request.

Give alternative 2A if the evidence supports the conclusion that the defendant actually held or detained the alleged victim. Otherwise, give alternative 2B. (See Pen. Code, § 209(a).)

“Extortion” is defined in Penal Code section 518. If the kidnapping was for purposes of extortion, give one of the bracketed definitions of extortion on request. Give the second definition if the defendant is charged with intending to extort an official act. (*People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628]; see *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1229–1230 [277 Cal.Rptr. 382]; *People v. Norris* (1985) 40 Cal.3d 51, 55–56 [219 Cal.Rptr. 7, 706 P.2d 1141] [defining “official act”].) Extortion may also be committed by using “the color of official right” to make an official do an act. (Pen. Code, § 518; see *Evans v. United States* (1992) 504 U.S. 255, 258 [112 S.Ct. 1881, 119 L.Ed.2d 57]; *McCormick v. United States* (1990) 500 U.S. 257, 273 [111 S.Ct. 1807, 114 L.Ed.2d 307] [both discussing common law definition].) It appears that this type of extortion rarely occurs in the context of kidnapping, so it is excluded from this instruction.

Defenses—Instructional Duty

The court has a **sua sponte** duty to instruct on the defense of consent if there is sufficient evidence to support the defense. (See *People v. Davis* (1995) 10 Cal.4th 463, 516–518 [41 Cal.Rptr.2d 826, 896 P.2d 119] [approving consent instruction as given]; see also *People v. Sedeno* (1974) 10 Cal.3d 703, 717, fn. 7 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Breverman* (1998) 19 Cal.4th 142, 165 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [when court must instruct on defenses].) Give the bracketed paragraph on the defense of consent. On request, if supported by the evidence, also give the bracketed paragraph that

begins with “Consent may be withdrawn.” (See *People v. Camden* (1976) 16 Cal.3d 808, 814 [129 Cal.Rptr. 438, 548 P.2d 1110].)

The defendant’s reasonable and actual belief in the victim’s consent to go with the defendant may be a defense. (See *People v. Greenberger* (1997) 58 Cal.App.4th 298, 375 [68 Cal.Rptr.2d 61]; *People v. Isitt* (1976) 55 Cal.App.3d 23, 28 [127 Cal.Rptr. 279] [reasonable, good faith belief that victim consented to movement is a defense to kidnapping].)

Related Instructions

For the elements of extortion, see CALCRIM No. 1830, *Extortion by Threat or Force*.

AUTHORITY

- Elements. ▶ Pen. Code, § 209(a).
- Requirement of Lack of Consent. ▶ *People v. Eid* (2010) 187 Cal.App.4th 859, 878 [114 Cal.Rptr.3d 520].
- Extortion. ▶ Pen. Code, § 518; *People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628]; see *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1229–1230 [277 Cal.Rptr. 382].
- Amount of Physical Force Required. ▶ *People v. Chacon* (1995) 37 Cal.App.4th 52, 59 [43 Cal.Rptr.2d 434]; *People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685–686 [168 Cal.Rptr. 762].
- Bodily Injury Defined. ▶ *People v. Chacon* (1995) 37 Cal.App.4th 52, 59; *People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685–686; see *People v. Reed* (1969) 270 Cal.App.2d 37, 48–50 [75 Cal.Rptr. 430] [injury reasonably foreseeable from defendant’s act].
- Control Over Victim When Intent Formed. ▶ *People v. Martinez* (1984) 150 Cal.App.3d 579, 600–602 [198 Cal.Rptr. 565] [disapproved on other ground in *People v. Hayes* (1990) 52 Cal.3d 577, 627–628, fn. 10 [276 Cal.Rptr. 874, 802 P.2d 376].]
- No Asportation Required. ▶ *People v. Macinnes* (1973) 30 Cal.App.3d 838, 844 [106 Cal.Rptr. 589]; see *People v. Rayford* (1994) 9 Cal.4th 1, 11–12, fn. 8 [36 Cal.Rptr.2d 317, 884 P.2d 1369]; *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1227 [277 Cal.Rptr. 382].
- Official Act Defined. ▶ *People v. Mayfield* (1997) 14 Cal.4th 668, 769–773 [60 Cal.Rptr.2d 1, 928 P.2d 485]; *People v. Norris* (1985) 40 Cal.3d 51, 55–56 [219 Cal.Rptr. 7, 706 P.2d 1141].

- Kidnapping To Extract From Another Person Any Money or Valuable Thing Requires That The Other Person Not Be The Person Kidnapped. ▶ *People v. Harper* (2020) 44 Cal.App.5th 172, 192–193 [257 Cal.Rptr.3d 440]; *People v. Stringer* (2019) 41 Cal.App.5th 974, 983 [254 Cal.Rptr.3d 678].

COMMENTARY

A trial court may refuse to define “reward.” There is no need to instruct a jury on the meaning of terms in common usage. Reward means something given in return for good or evil done or received, and especially something that is offered or given for some service or attainment. (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 367–368 [68 Cal.Rptr.2d 61].) In the absence of a request, there is also no duty to define “ransom.” The word has no statutory definition and is commonly understood by those familiar with the English language. (*People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628].)

LESSER INCLUDED OFFENSES

- False Imprisonment ▶ Pen. Code, §§ 236, 237; *People v. Chacon* (1995) 37 Cal.App.4th 52, 65 [43 Cal.Rptr.2d 434]; *People v. Magana* (1991) 230 Cal.App.3d 1117, 1121 [281 Cal.Rptr. 338]; *People v. Gibbs* (1970) 12 Cal.App.3d 526, 547 [90 Cal.Rptr. 866].
- Extortion ▶ Pen. Code, § 518.
- Attempted Extortion ▶ Pen. Code, §§ 664, 518.
- Multiple Convictions of Lesser Included Offenses of Pen. Code, § 209(a) Possible ▶ *People v. Eid* (2014) 59 Cal.4th 650, 655–658 [174 Cal.Rptr.3d 82, 328 P.3d 69].

If the prosecution alleges that the kidnapping resulted in death or bodily harm, or exposed the victim to a substantial likelihood of death (see Pen. Code, § 209(a)), then kidnapping for ransom without death or bodily harm is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the allegation has been proved.

Simple kidnapping under section 207 of the Penal Code is not a lesser and necessarily included offense of kidnapping for ransom, reward, or extortion. (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 368, fn. 56 [68 Cal.Rptr.2d 61] [kidnapping for ransom can be accomplished without asportation while simple kidnapping cannot]; see *People v. Macinnes* (1973) 30 Cal.App.3d 838, 843–844 [106 Cal.Rptr. 589]; *People v. Bigelow* (1984) 37 Cal.3d 731, 755, fn. 14 [209 Cal.Rptr. 328, 691 P.2d 994].)

RELATED ISSUES

Extortion Target

The kidnapped victim may also be the person from whom the defendant wishes to extort something. (*People v. Ibrahim* (1993) 19 Cal.App.4th 1692, 1696–1698 [24 Cal.Rptr.2d 269].)

No Good-Faith Exception

A good faith exception to extortion or kidnapping for ransom does not exist. Even actual debts cannot be collected by the reprehensible and dangerous means of abducting and holding a person to be ransomed by payment of the debt. (*People v. Serrano* (1992) 11 Cal.App.4th 1672, 1677–1678 [15 Cal.Rptr.2d 305].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 301–302.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14 (Matthew Bender).

1820. Felony Unlawful Taking or Driving of Vehicle (Veh. Code, § 10851(a), (b))

The defendant is charged [in Count __] with unlawfully taking or driving a vehicle [in violation of Vehicle Code section 10851].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative A—taking with intent to deprive>

1. The defendant took someone else's vehicle without the owner's consent;

2. When the defendant took the vehicle, (he/she) intended to deprive the owner of possession or ownership of the vehicle for any period of time;

AND

3. The vehicle was worth more than \$950.]

[OR]

<Alternative BA—joyriding posttheft driving>

[1. The defendant drove someone else's vehicle without the owner's consent;

AND

2. When the defendant drove the vehicle, (he/she) intended to deprive the owner of possession or ownership of the vehicle for any period of time(;/.)]

{OR}

<Alternative B—taking with intent to temporarily deprive>

~~1. The defendant took someone else's vehicle without the owner's consent;~~

~~AND~~

~~2. When the defendant took the vehicle, (he/she) intended to temporarily deprive the owner of possession or ownership of the vehicle(;/.)}~~

~~{OR}~~

~~<Alternative C— theft with intent to permanently deprive>~~

~~1. The defendant took someone else's vehicle without the owner's consent;~~

~~2. When the defendant took the vehicle, (he/she) intended to permanently deprive the owner of possession or ownership of the vehicle;~~

~~AND~~

~~3. The vehicle was worth more than \$950.]~~

[Even if you conclude that the owner had allowed the defendant or someone else to take or drive the vehicle before, you may not conclude that the owner consented to the driving or taking on _____ <insert date of alleged crime> based on that previous consent alone.]

[A *taking* requires that the vehicle be moved for any distance, no matter how small.]

[A *vehicle* includes a (passenger vehicle/motorcycle/motor scooter/bus/schoolbus/commercial vehicle/truck tractor/ [and] trailer/ [and] semitrailer/ _____ <insert other type of vehicle>).]

<Sentencing Factor: Ambulance, Police Vehicle, Fire Dept. Vehicle>

[If you find the defendant guilty of unlawfully taking or driving a vehicle, you must then decide whether the People have proved the additional allegation that the defendant took or drove an emergency vehicle on call. To prove this allegation, the People must prove that:

1. The vehicle was (an ambulance/a distinctively marked law enforcement vehicle/a distinctively marked fire department vehicle);
2. The vehicle was on an emergency call when it was taken;

AND

3. The defendant knew that the vehicle was on an emergency call.

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.]

<Sentencing Factor: Modified for Disabled Person>

[If you find the defendant guilty of unlawfully taking or driving a vehicle, you must then decide whether the People have proved the additional allegation that the defendant took or drove a vehicle modified for a disabled person. To prove this allegation, the People must prove that:

1. The vehicle was modified for the use of a disabled person;
2. The vehicle displayed a distinguishing license plate or placard issued to disabled persons;

AND

3. The defendant knew or reasonably should have known that the vehicle was so modified and displayed the distinguishing plate or placard.

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.]

New January 2006; Revised September 2018, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges that the vehicle was an emergency vehicle or was modified for a disabled person, the court has a **sua sponte** duty to instruct on the sentencing factor. (Veh. Code, § 10851(b); see Veh. Code, § 10851(d) [fact issues for jury].)

If the defendant is charged with unlawfully driving or taking an automobile and with receiving the vehicle as stolen property, and there is evidence of only one act or transaction, the trial court has a **sua sponte** duty to instruct the jury that the defendant cannot be convicted of both stealing the vehicle and receiving a stolen vehicle. (*People v. Black* (1990) 222 Cal.App.3d 523, 525 [271 Cal.Rptr. 771]; *People v. Strong* (1994) 30 Cal.App.4th 366, 376 [35 Cal.Rptr.2d 494].) In such cases, give CALCRIM No. 3516, *Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited*.

Similarly, a defendant cannot be convicted of grand theft of a vehicle and unlawfully taking the vehicle in the absence of any evidence showing a substantial break between the taking and the use of the vehicle. (*People v. Kehoe* (1949) 33 Cal.2d 711, 715 [204 P.2d 321]; see *People v. Malamut* (1971) 16 Cal.App.3d 237, 242 [93 Cal.Rptr. 782] [finding substantial lapse between theft and driving].) In such cases, give CALCRIM No. 3516, *Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited*.

The bracketed paragraph that begins with “Even if you conclude that” may be given on request if there is evidence that the owner of the vehicle previously agreed to let the defendant or another person drive or take the vehicle. (Veh. Code, § 10851(c).)

The bracketed sentence defining “taking” may be given on request if there is a question whether a vehicle that was taken was moved any distance. (*People v. White* (1945) 71 Cal.App.2d 524, 525 [162 P.2d 862].)

The definition of “vehicle” may be given on request. (See Veh. Code, § 670 [“vehicle” defined].)

AUTHORITY

- Elements ▶ Veh. Code, § 10851(a), (b); *De Mond v. Superior Court* (1962) 57 Cal.2d 340, 344 [368 P.2d 865].
- Ambulance Defined ▶ Veh. Code, § 165(a).
- Owner Defined ▶ Veh. Code, § 460.
- Application to Trolley Coaches ▶ Veh. Code, § 21051.

- Expiration of Owner’s Consent to Drive ▶ *People v. Hutchings* (1966) 242 Cal.App.2d 294, 295 [51 Cal.Rptr. 415].
- Taking Defined ▶ *People v. White* (1945) 71 Cal.App.2d 524, 525 [162 P.2d 862] [any removal, however slight, constitutes taking]; *People v. Frye* (1994) 28 Cal.App.4th 1080, 1088 [34 Cal.Rptr.2d 180] [taking is limited to removing vehicle from owner’s possession].
- Vehicle Value Must Exceed \$950 for Felony Taking With Intent to Temporarily or Permanently Deprive ▶ *People v. Bullard* (2020) 9 Cal.5th 94, 109 [260 Cal.Rptr.3d 153, 460 P.3d 262], *People v. Page* (2017) 3 Cal.5th 1175, 1183-1187 [225 Cal.Rptr.3d 786, 406 P.3d 319].

LESSER INCLUDED OFFENSES

- Attempted Unlawful Driving or Taking of Vehicle ▶ Pen. Code, § 664; Veh. Code, § 10851(a), (b).

RELATED ISSUES

Other Modes of Transportation

The “joyriding” statute, Penal Code section 499b, now only prohibits the unlawful taking of bicycles, motorboats, or vessels. The unlawful taking or operation of an aircraft is a felony, as prohibited by Penal Code section 499d.

Community Property

A spouse who takes a community property vehicle with the intent to temporarily, not permanently, deprive the other spouse of its use is not guilty of violating Vehicle Code section 10851. (*People v. Llamas* (1997) 51 Cal.App.4th 1729, 1739–1740 [60 Cal.Rptr.2d 357].)

Consent Not Vitiating by Fraud

The fact that an owner’s consent was obtained by fraud or misrepresentation does not supply the element of nonconsent. (*People v. Cook* (1964) 228 Cal.App.2d 716, 719 [39 Cal.Rptr. 802].)

Theft-Related Convictions

A person cannot be convicted of taking a vehicle and receiving it as stolen property unless the jury finds that the defendant unlawfully drove the vehicle, as opposed to unlawfully taking it, and there is other evidence that establishes the elements of receiving stolen property. (*People v. Jaramillo* (1976) 16 Cal.3d 752, 757–759 [129 Cal.Rptr. 306, 548 P.2d 706]; *People v. Cratty* (1999) 77

Cal.App.4th 98, 102–103 [91 Cal.Rptr.2d 370]; *People v. Strong* (1994) 30 Cal.App.4th 366, 372–374 [35 Cal.Rptr.2d 494].)

SECONDARY SOURCES

5 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against Property, §§ 107–113.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.10A, Ch. 143, *Crimes Against Property*, § 143.01[1][j], [2][c], [4][c] (Matthew Bender).

1933. Possession of Counterfeiting Equipment (Pen. Code, § 480)

The defendant is charged [in Count __] with making or possessing counterfeiting equipment [in violation of Penal Code section 480].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant [made] [or] [possessed] (a/an) (die/ [or] plate/ [or] apparatus/ [or] paper/ [or] metal/ [or] machine/ [or] _____ <insert other item>);

[2. The defendant knew of the equipment's presence;]

AND

(2/3). The defendant knew that the (die/ [or] plate/ [or] apparatus/ [or] paper/ [or] metal/ [or] machine/ [or] _____ <insert other item>) had been or would be used to counterfeit (coin/gold dust/gold or silver (bars/bullion/lumps/pieces/nuggets)/bank notes or bills).

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[The People allege that the defendant possessed the following items:

_____ <insert description of each item when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these items and you all agree on which item (he/she) possessed.]

New March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed sentence that begins with “The defendant knew” if the defendant is charged with possessing the equipment. Do not give this bracketed sentence if the defendant is only charged with making the equipment.

If the prosecution alleges under a single count that the defendant possessed multiple counterfeiting equipment, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

AUTHORITY

- Elements ▶ Pen. Code, § 480; *People v. Seo* (2020) 48 Cal.App.5th 1081, 1084–1085 [262 Cal.Rptr.3d 497].
- Statute Constitutional ▶ *Ex parte Dixon* (1953) 41 Cal.2d 756, 763–764 [264 P.2d 513].
- Possession of the Means for Counterfeiting Does Not Include Possession of Completed Counterfeit Items ▶ *People v. Clark* (1992) 10 Cal.App.4th 1259, 1267 [13 Cal.Rptr.2d 209].
- Bills Include Federal and Foreign Currency ▶ *People v. McDonnell* (1889) 80 Cal. 285, 287 [22 P. 190]; *People v. Ray* (1996) 42 Cal.App.4th 1718, 1723 [50 Cal.Rptr.2d 612].
- Unanimity Instruction If Multiple Items ▶ *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

2044. False Personation (Pen. Code, §§ 529(a), ~~530~~)

The defendant is charged [in Count ____] with falsely impersonating another person in that person's private or official capacity and performing certain acts [in violation of Penal Code section ~~529(a)/530~~].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant falsely impersonated another person in the other person's private or official capacity;

AND

2. While falsely impersonating that person, the defendant:

<Use the following paragraphs for violations of Penal Code section 529(a)>

~~2A.~~ **2A.** Posted bail or acted as surety for anyone in any proceeding, before any judge or officer authorized to take that bail or surety(./;)]

~~[OR~~ **[OR**]

~~2B(1).~~ **2B(1).** Verified, published, acknowledged, or proved, in the name of that person, any written document;

AND

~~2B(2).~~ **2B(2).** When the defendant did so, (he/she) intended that the written document be recorded, delivered, or used as though it were an authentic document(./;)]

~~[OR~~ **[OR**]

~~2C(1).~~ **2C(1).** Did any ~~thing~~ **act** that, if done by the person being falsely impersonated, might cause (that person to be liable in a lawsuit or criminal prosecution/ [or] that person to pay any amount of money/ [or] that person to be subject to any charge, forfeiture, or penalty/ [or] the defendant or anyone else to receive a benefit as a result.)]

<Use the following paragraphs for violations of Penal Code section 530>

~~2E. Received money or property;~~
~~2F. The defendant knew that the money or property was intended to be delivered to the person that (he/she) was falsely impersonating;~~
~~2G. The money or property was worth (more than \$950/\$950 or less);~~
~~2H. When the defendant acted, (he/she) intended to deprive the true owner of the money or property, or use it for (his/her) own benefit, or let someone else use it.}}~~

New February 2015; Revised March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

AUTHORITY

- Elements ▶ Pen. Code, §§ 529(a), ~~530~~.
- Additional Act Requirement ▶ *People v. Guion* (2013) 213 Cal.App.4th 1426, 1431–1432 [153 Cal.Rptr.3d 395].

RELATED ISSUES

Penal Code section 529(a)(3) does not require any specific mental state beyond intentionally falsely impersonating another.- *People v. Rathert* (2000) 24 Cal.4th 200, 205–206 [99 Cal.Rptr.2d 779, 6 P.3d 700].

~~LESSER INCLUDED OFFENSES~~

- ~~A violation of Penal Code section 529(b) is a lesser included offense of section 529(a).~~

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, § 202

1 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 10, *Investigative Detention*, § 10.05[2] (Matthew Bender)

2045–2099. Reserved for Future Use

2520. Carrying Concealed Firearm on Person (Pen. Code, § 25400(a)(2))

The defendant is charged [in Count __] with unlawfully carrying a concealed firearm on (his/her) person [in violation of Penal Code section 25400(a)(2)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant carried on (his/her) person a firearm capable of being concealed on the person;
2. The defendant knew that (he/she) was carrying a firearm;

AND

3. It was substantially concealed on the defendant's person.

[A *firearm capable of being concealed on the person* is any device designed to be used as a weapon, from which a projectile is expelled or discharged through a barrel by the force of an explosion or other form of combustion and that has a barrel less than 16 inches in length. [A *firearm capable of being concealed on the person* also includes any device that has a barrel 16 inches or more in length that is designed to be interchanged with a barrel less than 16 inches in length.] [A *firearm* also includes any rocket, rocket-propelled projectile launcher, or similar device containing any explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes.]]

[The term *firearm capable of being concealed on the person* is defined in another instruction.]

[A firearm does not need to be in working order if it was designed to shoot and appears capable of shooting.]

[Firearms carried openly in belt holsters are not concealed.]

<Defense: Statutory Exemption>

[The defendant did not unlawfully carry a concealed firearm if _____ <insert defense from Pen. Code, § 25600, 25605, 25525, 25510, or 25450>. The People have the burden of proving beyond a reasonable doubt that the defendant unlawfully carried a concealed firearm. If the People have not met this burden, you must find the defendant not guilty of this crime.]

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. If the defendant is charged with any of the sentencing factors in Penal Code section 25400(c), the court must also give the appropriate instruction from CALCRIM Nos. 2540–2546. (*People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].)

The court should give the bracketed definition of “firearm capable of being concealed on the person” unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Penal Code section 25400(a) prohibits carrying a concealed “pistol, revolver, or other firearm capable of being concealed upon the person.” Penal Code section 16530 provides a single definition for this class of weapons. Thus, the committee has chosen to use solely the all-inclusive phrase “firearm capable of being concealed on the person.”

Defenses—Instructional Duty

Exemptions and a justification for carrying a concealed firearm are stated in Penal Code sections 25600, 25605, 25525, 25510, and 25450. If sufficient evidence has been presented to raise a reasonable doubt about the existence of a legal basis for the defendant’s actions, the court has a **sua sponte** duty to give the bracketed instruction on the defense. (See *People v. Mower* (2002) 28 Cal.4th 457, 478–481 [122 Cal.Rptr.2d 326, 49 P.3d 1067] [discussing affirmative defenses generally and the burden of proof].) Insert the appropriate language in the bracketed paragraph that begins, “The defendant did not unlawfully”

Related Instructions

CALCRIM No. 2540, *Carrying Firearm: Specified Convictions*.

CALCRIM No. 2541, *Carrying Firearm: Stolen Firearm*.

CALCRIM No. 2542, *Carrying Firearm: Active Participant in Criminal Street Gang*.

CALCRIM No. 2543, *Carrying Firearm: Not in Lawful Possession*.

CALCRIM No. 2544, *Carrying Firearm: Possession of Firearm Prohibited Due to Conviction, Court Order, or Mental Illness*.

CALCRIM No. 2545, *Carrying Firearm: Not Registered Owner*.

CALCRIM No. 2546, *Carrying Concealed Firearm: Not Registered Owner and Weapon Loaded*.

AUTHORITY

- Elements ▶ Pen. Code, § 25400(a)(2).
- Firearm Defined ▶ Pen. Code, § 16520.
- Knowledge Required ▶ *People v. Jurado* (1972) 25 Cal.App.3d 1027, 1030–1031 [102 Cal.Rptr. 498]; *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52].
- Concealment Required ▶ *People v. Nelson* (1960) 185 Cal.App.2d 578, 580–581 [8 Cal.Rptr. 288].
- Factors in Pen. Code, § 25400(c) Sentencing Factors, Not Elements ▶ *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].
- Justifications and Exemptions ▶ Pen. Code, §§ 25600, 25605, 25525, 25510, 25450.
- Need Not Be Operable ▶ *People v. Marroquin* (1989) 210 Cal.App.3d 77, 82 [258 Cal.Rptr. 290].
- Substantial Concealment ▶ *People v. Wharton* (1992) 5 Cal.App.4th 72, 75 [6 Cal.Rptr.2d 673] [interpreting now-repealed Pen. Code, § 12020(a)(4)]; *People v. Fuentes* (1976) 64 Cal.App.3d 953, 955 [134 Cal.Rptr. 885] [same].
- Statute Is Not Unconstitutionally Vague ▶ *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1355 [83 Cal.Rptr.2d 619].

LESSER INCLUDED OFFENSES

If the defendant is charged with one of the sentencing factors that makes this offense a felony, then the misdemeanor offense is a lesser included offense. The statute defines as a misdemeanor all violations of the statute not covered by the specified sentencing factors. (Pen. Code, § 25400(c)(7).) The court must provide the jury with a verdict form on which the jury will indicate if the sentencing factor has been proved. If the jury finds that the sentencing factor has not been proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

Multiple Convictions Prohibited

A single act of carrying a concealed firearm cannot result in multiple convictions under different subdivisions of Penal Code section 25400(a). (*People v. Duffy* (2020) 51 Cal.App.5th 257, 266 [265 Cal.Rptr.3d 59].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 203, 204 – 209.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][d] (Matthew Bender).

2521. Carrying Concealed Firearm Within Vehicle (Pen. Code, § 25400(a)(1))

The defendant is charged [in Count __] with unlawfully carrying a concealed firearm within a vehicle [in violation of Penal Code section 25400].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant carried within a vehicle a firearm capable of being concealed on the person;
2. The defendant knew the firearm was in the vehicle;
3. The firearm was substantially concealed within the vehicle;

AND

4. The vehicle was under the defendant's control or direction.

[A *firearm capable of being concealed on the person* is any device designed to be used as a weapon, from which a projectile is expelled or discharged through a barrel by the force of an explosion or other form of combustion and that has a barrel less than 16 inches in length. [A *firearm capable of being concealed on the person* also includes any device that has a barrel 16 inches or more in length that is designed to be interchanged with a barrel less than 16 inches in length.] [A *firearm* also includes any rocket, rocket-propelled projectile launcher, or similar device containing any explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes.]]

[The term *firearm capable of being concealed on the person* is defined in another instruction.]

[A firearm does not need to be in working order if it was designed to shoot and appears capable of shooting.]

[Firearms carried openly in belt holsters are not concealed.]

<Defense: Statutory Exemption>

[The defendant did not unlawfully carry a concealed firearm within a vehicle if _____ <insert defense from Pen. Code, §§ 25450, 25510, 25525, 25600, 25605, or 25610, , >. The People have the burden of proving beyond a reasonable doubt that the defendant unlawfully carried a concealed firearm within a vehicle. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006; Revised February 2012, March 2018, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. If the defendant is charged with any of the sentencing factors in Penal Code section 25400(c), the court must also give the appropriate instruction from CALCRIM Nos. 2540–2546. (*People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].)

The court should give the bracketed definition of “firearm capable of being concealed on the person” unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Penal Code section 25400(a) prohibits carrying a concealed “pistol, revolver, or other firearm capable of being concealed upon the person.” Penal Code section 16530 provides a single definition for this class of weapons. Thus, the committee has chosen to use solely the all-inclusive phrase “firearm capable of being concealed on the person.”

Defenses—Instructional Duty

Exemptions and a justification for carrying a concealed firearm are stated in Penal Code sections 25450, 25510, 25525, 25600, 25605, and ~~25610~~. If sufficient evidence has been presented to raise a reasonable doubt about the existence of a legal basis for the defendant’s actions, the court has a **sua sponte** duty to give the bracketed instruction on the defense. (See *People v. Mower* (2002) 28 Cal.4th 457, 478–481 [122 Cal.Rptr.2d 326, 49 P.3d 1067] [discussing affirmative defenses generally and the burden of proof].) Insert the appropriate language in the bracketed paragraph that begins, “The defendant did not unlawfully”

Related Instructions

CALCRIM No. 2540, *Carrying Firearm: Specified Convictions*.
CALCRIM No. 2541, *Carrying Firearm: Stolen Firearm*.

CALCRIM No. 2542, *Carrying Firearm: Active Participant in Criminal Street Gang*.

CALCRIM No. 2543, *Carrying Firearm: Not in Lawful Possession*.

CALCRIM No. 2544, *Carrying Firearm: Possession of Firearm Prohibited Due to Conviction, Court Order, or Mental Illness*.

CALCRIM No. 2545, *Carrying Firearm: Not Registered Owner*.

CALCRIM No. 2546, *Carrying Concealed Firearm: Not Registered Owner and Weapon Loaded*.

AUTHORITY

- Elements ▶ Pen. Code, § 25400(a)(1)-.
- Firearm Defined ▶ Pen. Code, § 16520.
- Knowledge Required ▶ *People v. Jurado* (1972) 25 Cal.App.3d 1027, 1030–1031 [102 Cal.Rptr. 498]; *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52].
- Concealment Required ▶ *People v. Nelson* (1960) 185 Cal.App.2d 578, 580–581 [8 Cal.Rptr. 288].
- Factors in Pen. Code, § 25400(c) Sentencing Factors, Not Elements ▶ *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].
- Justifications and Exemptions ▶ Pen. Code, §§ 25600, 25605, 25525, 25510, 25450.
- Need Not Be Operable ▶ *People v. Marroquin* (1989) 210 Cal.App.3d 77, 82 [258 Cal.Rptr. 290].
- Substantial Concealment ▶ *People v. Wharton* (1992) 5 Cal.App.4th 72, 75 [6 Cal.Rptr.2d 673] [interpreting now-repealed Pen. Code, § 12020(a)(4)]; *People v. Fuentes* (1976) 64 Cal.App.3d 953, 955 [134 Cal.Rptr. 885] [same].
- Statute Is Not Unconstitutionally Vague ▶ *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1355 [83 Cal.Rptr.2d 619].

LESSER INCLUDED OFFENSES

If the defendant is charged with one of the sentencing factors that makes this offense a felony, then the misdemeanor offense is a lesser included offense. The statute defines as a misdemeanor all violations of the statute not covered by the specified sentencing factors. (Pen. Code, § 25400(c)(7).) The court must provide the jury with a verdict form on which the jury will indicate if the sentencing factor

has been proved. If the jury finds that the sentencing factor has not been proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

Gun in Unlocked Carrying Case Is Concealed

“If a firearm is transported in a vehicle in such a manner as to be invisible unless its carrying case is opened, it is concealed in the ordinary and usual meaning of the term.” (*People v. Hodges* (1999) 70 Cal.App.4th 1348, 1355 [83 Cal.Rptr.2d 619].) Thus, carrying a firearm in an unlocked case in a vehicle violates Penal Code section 25400(a)(1). (*Ibid.*) However, Penal Code section 25525 makes it lawful to transport a firearm in a vehicle if it is in a *locked* case.

Not Necessary for Defendant to Possess or Control the Firearm

“The statute does not require that the defendant have the exclusive possession and control of the firearm.” (*People v. Davis* (1958) 157 Cal.App.2d 33, 36 [320 P.2d 88].) The court in *People v. Davis, supra*, upheld the conviction where the defendant owned and controlled the vehicle and knew of the presence of the firearm below the seat, even though the weapon was placed there by someone else and belonged to someone else. (*Ibid.*)

Multiple Convictions Prohibited

A single act of carrying a concealed firearm cannot result in multiple convictions under different subdivisions of Penal Code section 25400(a). (*People v. Duffy* (2020) 51 Cal.App.5th 257, 266 [265 Cal.Rptr.3d 59].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 203-209.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][d] (Matthew Bender).

2522. Carrying Concealed Firearm: Caused to Be Carried Within Vehicle (Pen. Code, § 25400(a)(3))

The defendant is charged [in Count __] with unlawfully causing a firearm to be carried concealed within a vehicle [in violation of Penal Code section 25400].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant caused a firearm capable of being concealed on the person to be concealed while it was carried within a vehicle;
2. The defendant knew that (he/she) caused the firearm to be concealed in the vehicle;
3. The firearm was substantially concealed within the vehicle;

AND

4. The defendant was in the vehicle during the time the firearm was concealed there.

[A *firearm capable of being concealed on the person* is any device designed to be used as a weapon, from which a projectile is expelled or discharged through a barrel by the force of an explosion or other form of combustion and that has a barrel less than 16 inches in length. [A *firearm capable of being concealed on the person* also includes any device that has a barrel 16 inches or more in length that is designed to be interchanged with a barrel less than 16 inches in length.] [A *firearm* also includes any rocket, rocket-propelled projectile launcher, or similar device containing any explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes.]]

[The term *firearm capable of being concealed on the person* is defined in another instruction.]

[A firearm does not need to be in working order if it was designed to shoot and appears capable of shooting.]

[Firearms carried openly in belt holsters are not concealed.]

[The People do not need to prove that the defendant initially brought the firearm into the vehicle.]

<Defense: Statutory Exemption>

[The defendant did not unlawfully cause a firearm to be carried concealed within a vehicle if _____ *<insert defense from Pen. Code, § 25600, 25605, 25525, 25510, or 25450>*. The People have the burden of proving beyond a reasonable doubt that the defendant unlawfully caused a firearm to be carried concealed within a vehicle. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006; Revised February 2012, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. If the defendant is charged with any of the sentencing factors in Penal Code section 25400(c), the court must also give the appropriate instruction from CALCRIM Nos. 2540–2546. (*People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].)

The court should give the bracketed definition of “firearm capable of being concealed on the person” unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Penal Code section 25400(a) prohibits carrying a concealed “pistol, revolver, or other firearm capable of being concealed upon the person.” Penal Code section 16530 provides a single definition for this class of weapons. Thus, the committee has chosen to use solely the all-inclusive phrase “firearm capable of being concealed on the person.”

Defenses—Instructional Duty

Exemptions and a justification for carrying a concealed firearm are stated in Penal Code sections 25600, 25605, 25525, 25510, and 25450. If the defense presents sufficient evidence to raise a reasonable doubt about the existence of a legal basis for the defendant’s actions, the court has a **sua sponte** duty to give the bracketed instruction on the defense. (See *People v. Mower* (2002) 28 Cal.4th 457, 478–481 [122 Cal.Rptr.2d 326, 49 P.3d 1067] [discussing affirmative defenses generally and the burden of proof].) Insert the appropriate language in the bracketed paragraph that begins, “The defendant did not unlawfully”

Related Instructions

CALCRIM No. 2540, *Carrying Firearm: Specified Convictions*.

CALCRIM No. 2541, *Carrying Firearm: Stolen Firearm*.

CALCRIM No. 2542, *Carrying Firearm: Active Participant in Criminal Street Gang*.

CALCRIM No. 2543, *Carrying Firearm: Not in Lawful Possession*.

CALCRIM No. 2544, *Carrying Firearm: Possession of Firearm Prohibited Due to Conviction, Court Order, or Mental Illness*.

CALCRIM No. 2545, *Carrying Firearm: Not Registered Owner*.

CALCRIM No. 2546, *Carrying Concealed Firearm: Not Registered Owner and Weapon Loaded*.

AUTHORITY

- Elements ▶ Pen. Code, § 25400(a)(3).
- Firearm Defined ▶ Pen. Code, § 16520.
- Knowledge Required ▶ *People v. Jurado* (1972) 25 Cal.App.3d 1027, 1030–1031 [102 Cal.Rptr. 498]; *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52].
- Concealment Required ▶ *People v. Nelson* (1960) 185 Cal.App.2d 578, 580–581 [8 Cal.Rptr. 288].
- Factors in Pen. Code, § 25400(c) Sentencing Factors, Not Elements ▶ *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].
- Justifications and Exemptions ▶ Pen. Code, §§ 25600, 25605, 25525, 25510, 25450.
- Need Not Be Operable ▶ *People v. Marroquin* (1989) 210 Cal.App.3d 77, 82 [258 Cal.Rptr. 290].
- Substantial Concealment ▶ *People v. Wharton* (1992) 5 Cal.App.4th 72, 75 [6 Cal.Rptr.2d 673] [interpreting now-repealed Pen. Code, § 12020(a)(4)]; *People v. Fuentes* (1976) 64 Cal.App.3d 953, 955 [134 Cal.Rptr. 885] [same].
- Statute Is Not Unconstitutionally Vague ▶ *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1355 [83 Cal.Rptr.2d 619].

LESSER INCLUDED OFFENSES

If the defendant is charged with one of the sentencing factors that makes this offense a felony, then the misdemeanor offense is a lesser included offense. The

statute defines as a misdemeanor all violations of the statute not covered by the specified sentencing factors. (Pen. Code, § 25400(c)(7).) The court must provide the jury with a verdict form on which the jury will indicate if the sentencing factor has been proved. If the jury finds that the sentencing factor has not been proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

Defendant Need Not Bring Firearm Into Car

“Appellant caused the gun to be carried concealed in a vehicle in which he was an occupant, by concealing the gun between the seats. His conduct fits the language and purpose of the statute. The prosecution was not required to prove that appellant initially brought the gun into the car.” (*People v. Padilla* (2002) 98 Cal.App.4th 127, 134 [119 Cal.Rptr.2d 457].)

Multiple Convictions Prohibited

A single act of carrying a concealed firearm cannot result in multiple convictions under different subdivisions of Penal Code section 25400(a). (*People v. Duffy* (2020) 51 Cal.App.5th 257, 266 [265 Cal.Rptr.3d 59].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 203, 204–209.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][d] (Matthew Bender).

2523–2529. Reserved for Future Use

**2624. Threatening a Witness After Testimony or Information Given
(Pen. Code, § 140(a))**

The defendant is charged [in Count __] with (using force/ [or] threatening to use force) against a witness [in violation of Penal Code section 140(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. _____ <insert name/description of person allegedly targeted> gave (assistance/ [or] information) to a (law enforcement officer/public prosecutor) in a (criminal case/juvenile court case);

[AND]

2. The defendant willfully (used force/ [or] threatened to use force or violence against _____ <insert name/description of person allegedly targeted>/ [or] threatened to take, damage, or destroy the property of _____ <insert name/description of person allegedly targeted>) because (he/she) had given that (assistance/[or] information)(;/.)

<Give the following language if the violation is based on a threat>

[AND]

- [3. A reasonable listener in a similar situation with similar knowledge would interpret the threat, in light of the context and surrounding circumstances, as a serious expression of intent to commit an act of unlawful force or violence ~~rather than just an expression of jest or frustration~~(;/.)]

[OR]

- [(3./4.) A reasonable listener in a similar situation with similar knowledge would interpret the threat, in light of the context and surrounding circumstances, as a serious expression of intent to commit an act of unlawful taking, damage or destruction of property ~~rather than just an expression of jest or frustration.~~]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

[An officer or employee of (a/an) (local police department[,]/ [or] sheriff's office[,]/ [or] _____ <insert title of agency of peace officer enumerated in Pen. Code, § 13519(b)>) is a **law enforcement officer.**]

[A lawyer employed by (a/an/the) (district attorney's office[,]/ [or] Attorney General's office[,]/ [or] city (prosecutor's/attorney's) office) to prosecute cases is a **public prosecutor.**]

[The People do not need to prove that the threat was communicated to _____ <insert name/description of person allegedly targeted> or that (he/she) was aware of the threat.]

New January 2006; Revised August 2012, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

AUTHORITY

- Elements ▶ Pen. Code, § 140(a).
- Witness Defined ▶ Pen. Code, § 136(2).
- Victim Defined ▶ Pen. Code, § 136(3).
- Public Prosecutor Defined ▶ Gov. Code, §§ 26500, 12550, 41803.
- Law Enforcement Officer Defined ▶ Pen. Code, § 13519(b).
- General Intent Offense ▶ *People v. McDaniel* (1994) 22 Cal.App.4th 278, 283 [27 Cal.Rptr.2d 306].
- Threat Need Not Be Communicated to Target ▶ *People v. McLaughlin* (1996) 46 Cal.App.4th 836, 842 [54 Cal.Rptr.2d 4].
- Reasonable Listener Standard ▶ *People v. Lowery* (2011) 52 Cal.4th 419, 427 [128 Cal.Rptr.3d 648, 257 P.3d 72].

COMMENTARY

Penal Code section 140 does not define “threat.” (Cf. Pen. Code, §§ 137(b), 76 [both statutes containing definition of threat].) In *People v. McDaniel* (1994) 22 Cal.App.4th 278, 283 [27 Cal.Rptr.2d 306], the Court of Appeal held that threatening a witness under Penal Code section 140 is a general intent crime. According to the holding of *People v. McDaniel, supra*, 22 Cal.App.4th at p. 284, there is no requirement that the defendant intend to cause fear to the victim or intend to affect the victim’s conduct in any manner. In *People v. McLaughlin* (1996) 46 Cal.App.4th 836, 842 [54 Cal.Rptr.2d 4], the court held that the threat does not need to be communicated to the intended target in any manner. The committee has drafted this instruction in accordance with these holdings. However, the court may wish to consider whether the facts in the case before it demonstrate a sufficiently “genuine threat” to withstand First Amendment scrutiny. (See *In re George T.* (2004) 33 Cal.4th 620, 637–638 [16 Cal.Rptr.3d 61, 93 P.3d 1007]; *People v. Gudger* (1994) 29 Cal.App.4th 310, 320–321 [34 Cal.Rptr.2d 510]; *Watts v. United States* (1969) 394 U.S. 705, 707 [89 S.Ct. 1399, 22 L.Ed.2d 664]; *United States v. Kelner* (2d Cir. 1976) 534 F.2d 1020, 1027.)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Governmental Authority, § 9.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.02; Ch. 142, *Crimes Against the Person*, § 142.11A[1][a] (Matthew Bender).

2625–2629. Reserved for Future Use

**2651. Trying to Prevent an Executive Officer From Performing Duty
(Pen. Code, § 69)**

The defendant is charged [in Count __] with trying to (prevent/ [or] deter) an executive officer from performing that officer's duty [in violation of Penal Code section 69].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant willfully and unlawfully used (violence/ [or] a threat of violence) to try to (prevent/ [or] deter) an executive officer from performing the officer's lawful duty;
2. When the defendant acted, (he/she) intended to (prevent/ [or] deter) the executive officer from performing the officer's lawful duty;

<Give the following language if the violation is based on a threat>

- [3. A reasonable listener in a similar situation with similar knowledge would interpret the threat, in light of the context and surrounding circumstances, as a serious expression of intent to commit an act of unlawful force or violence;]**

AND

- (3/4).** When the defendant acted, (he/she) knew that the person was an executive officer.

Someone commits an act *willfully* when he or she does it willingly or on purpose.

An *executive officer* is a government official who may use his or her own discretion in performing his or her job duties. [(A/An) _____] *<insert title, e.g., peace officer, commissioner, etc.>* is an *executive officer*.]

The executive officer does not need to be performing his or her job duties at the time the threat is communicated.

A threat may be oral or written and may be implied by a pattern of conduct or a combination of statements and conduct.

[Photographing or recording an *executive officer* while the officer is in a public place or while the person photographing or recording is in a place where he or she has the right to be is not, by itself, a crime.]

[The defendant does not have to communicate the threat directly to the intended victim, but may do so through someone else. The defendant must, however, intend that (his/her) statement be taken as a threat by the intended victim.]

[Someone who intends that a statement be understood as a threat does not have to actually intend to carry out the threatened act [or intend to have someone else do so].]

[A sworn member of _____ <insert name of agency that employs peace officer>, authorized by _____ <insert appropriate section from Pen. Code, § 830 et seq.> to _____ <describe statutory authority>, is a **peace officer**.]

[The duties of (a/an) _____ <insert title of officer specified in Pen. Code, § 830 et seq.> include _____ <insert job duties>.]

<When lawful performance is an issue, give the following paragraph and Instruction 2670, Lawful Performance: Peace Officer.>

[A peace officer is not lawfully performing his or her duties if he or she is (unlawfully arresting or detaining someone/ [or] using unreasonable or excessive force in his or her duties). Instruction 2670 explains (when an arrest or detention is unlawful/ [and] when force is unreasonable or excessive).]

New January 2006; Revised August 2014, August 2016, September 2019, March 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In order to be “performing a lawful duty,” an executive officer, including a peace officer, must be acting lawfully. (*In re Manuel G.* (1997) 16 Cal.4th 805, 816–817 [66 Cal.Rptr.2d 701, 941 P.2d 880]; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1217 [275 Cal.Rptr. 729, 800 P.2d 1159].) The court has a **sua sponte** duty to

instruct on lawful performance and the defendant’s reliance on self-defense as it relates to the use of excessive force when this is an issue in the case. (*People v. Castain* (1981) 122 Cal.App.3d 138, 145 [175 Cal.Rptr. 651]; *People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663]; *People v. White* (1980) 101 Cal.App.3d 161, 167–168 [161 Cal.Rptr. 541].)

For this offense, “the relevant factor is simply the lawfulness of the official conduct that the defendant (through threat or violence) has attempted to deter, and not the lawfulness (or official nature) of the conduct in which the officer is engaged at the time the threat is made.” (*In re Manuel G.*, *supra*, 16 Cal.4th at p. 817.) Thus, if the evidence supports the conclusion that the defendant attempted to deter the officer’s current performance of a duty, the court should instruct on the lawfulness of that duty. (*Ibid.*) Where the evidences supports the conclusion that the defendant attempted to deter the officer from performing a duty in the future, the court should only instruct on the lawfulness of that future duty. (*Ibid.*)

If there is an issue in the case as to the lawful performance of a duty by a peace officer, give the last bracketed paragraph and CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

If a different executive officer was the alleged victim, the court will need to draft an appropriate definition of lawful duty if this is an issue in the case.

AUTHORITY

- Elements. ▶ Pen. Code, § 69; *People v. Atkins* (2019) 31 Cal.App.5th 963, 979 [243 Cal.Rptr.3d 283] [statute requires actual knowledge that person was an executive officer].
- Specific Intent Required. ▶ *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1154 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Immediate Ability to Carry Out Threat Not Required. ▶ *People v. Hines* (1997) 15 Cal.4th 997, 1061 [64 Cal.Rptr.2d 594, 938 P.2d 388].
- Lawful Performance Element to Attempting to Deter. ▶ *In re Manuel G.* (1997) 16 Cal.4th 805, 816–817 [66 Cal.Rptr.2d 701, 941 P.2d 880].
- Statute Constitutional. ▶ *People v. Hines* (1997) 15 Cal.4th 997, 1061 [64 Cal.Rptr.2d 594, 938 P.2d 388].
- Merely Photographing or Recording Officers Not a Crime ▶ Pen. Code, § 69(b).

- Reasonable Listener Standard ▶ *People v. Lowery* (2011) 52 Cal.4th 419, 427 [128 Cal.Rptr.3d 648, 257 P.3d 72]; *People v. Smolkin* (2020) 49 Cal.App.5th 183, 188 [262 Cal.Rptr.3d 696].

RELATED ISSUES

Resisting an Officer Not Lesser Included Offense

Resisting an officer, Penal Code section 148(a), is not a lesser included offense of attempting by force or violence to deter an officer. (*People v. Smith* (2013) 57 Cal.4th 232, 240-245 [159 Cal.Rptr.3d 57, 303 P.3d 368].)

Statute as Written Is Overbroad

The statute as written would prohibit lawful threatening conduct. To avoid overbreadth, this instruction requires that the defendant act both “willfully” and “unlawfully.” (*People v. Superior Court (Anderson)* (1984) 151 Cal.App.3d 893, 895–896 [199 Cal.Rptr. 150].)

State of Mind of Victim Irrelevant

Unlike other threat crimes, the state of mind of the intended victim is irrelevant. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1153 [124 Cal.Rptr.2d 373, 52 P.3d 572]; *People v. Hines* (1997) 15 Cal.4th 997, 1061, fn. 15 [64 Cal.Rptr.2d 594, 938 P.2d 388].)

Immediate Ability to Carry Out Threat Not Required

“As long as the threat reasonably appears to be a serious expression of intention to inflict bodily harm and its circumstances are such that there is a reasonable tendency to produce in the victim a fear that the threat will be carried out, a statute proscribing such threats is not unconstitutional for lacking a requirement of immediacy or imminence. Thus, threats may be constitutionally prohibited even when there is no *immediate* danger that they will be carried out.” (*People v. Hines* (1997) 15 Cal.4th 997, 1061 [64 Cal.Rptr.2d 594, 938 P.2d 388] [quoting *In re M.S.* (1995) 10 Cal.4th 698, 714 [42 Cal.Rptr.2d 355, 896 P.2d 1365], citation and internal quotation marks removed, emphasis in original]; see also *People v. Gudger* (1994) 29 Cal.App.4th 310, 320–321 [34 Cal.Rptr.2d 510]; *Watts v. United States* (1969) 394 U.S. 705, 707 [89 S.Ct. 1399, 22 L.Ed.2d 664]; *United States v. Kelner* (2d Cir. 1976) 534 F.2d 1020, 1027.)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Governmental Authority, § 128.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142,
Crimes Against the Person, § 142.11A[1][b] (Matthew Bender).

TO BE REVOKED

3220. Amount of Loss (Pen. Code, § 12022.6)

If you find the defendant guilty of the crime[s] charged in Count[s] __[,], [or of attempting to commit (that/those) crime[s]] [or the lesser crimes[s] of _____ *<insert lesser offense[s]>*], you must then decide whether the People have proved the additional allegation that the value of the property (taken[,]/ [or] damaged[,]/ [or] destroyed) was more than \$ _____ *<insert amount alleged>*.

To prove this allegation, the People must prove that:

1. In the commission [or attempted commission] of the crime, the defendant (took[,]/ [or] damaged[,]/ [or] destroyed) property;
2. When the defendant acted, (he/she) intended to (take[,]/ [or] damage[,]/ [or] destroy) the property;

AND

3. The loss caused by the defendant's (taking[,]/ [or] damaging[,]/ [or] destroying) the property was greater than \$ _____ *<insert amount alleged>*.

[If you find the defendant guilty of more than one crime, you may add together the loss suffered by each victim in Count[s] _____ *<specify all counts that jury may use to compute cumulative total loss>* to determine whether the total losses to all the victims were more than \$ _____ *<insert amount alleged>* if the People prove that:

- A. The defendant intended to and did (take[,]/ [or] damage[,]/ [or] destroy) property in each crime;

AND

- B. The losses arose from a common scheme or plan.]

[The value of property is the fair market value of the property.]

[When computing the amount of loss according to this instruction, do not count any taking, damage, or destruction more than once simply because it is mentioned in more than one count, if the taking, damage, or destruction mentioned in those counts refers to the same taking, damage, or destruction with respect to the same victim.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised August 2009, April 2010, August 2016

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the enhancement when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

The court **must** insert the alleged amounts of loss in the blanks provided so that the jury may first determine whether the statutory threshold amount exists for any single victim, and then whether the statutory threshold amount exists for all victims or for all losses to one victim cumulatively.

AUTHORITY

- Enhancement ▶ Pen. Code, § 12022.6 [in effect until January 1, 2018 unless otherwise extended].
- Value Is Fair Market Value ▶ *People v. Swanson* (1983) 142 Cal.App.3d 104, 107–109 [190 Cal.Rptr. 768].
- Definition of “Loss” of Computer Software ▶ Pen. Code, § 12022.6(e).
- Defendant Need Not Intend to Permanently Deprive Owner of Property ▶ *People v. Kellett* (1982) 134 Cal.App.3d 949, 958–959 [185 Cal.Rptr. 1].
- Victim Need Not Suffer Actual Loss ▶ *People v. Bates* (1980) 113 Cal.App.3d 481, 483–484 [169 Cal.Rptr 853]; *People v. Ramirez* (1980) 109 Cal.App.3d 529, 539–540 [167 Cal.Rptr. 174].
- Defendant Need Not Know or Reasonably Believe Value of Item Exceeded Amount Specified ▶ *People v. DeLeon* (1982) 138 Cal.App.3d 602, 606–607 [188 Cal.Rptr. 63].

- Great Taking Enhancement Encompasses Liability of Aiders and Abettors ▶ *People v. Acosta* (2014) 226 Cal.App.4th 108, 123-126 [171 Cal.Rptr.3d 774].

RELATED ISSUES

“Take”

As used in Penal Code section 12022.6, “take” does not have the same meaning as in the context of theft. (*People v. Kellett* (1982) 134 Cal.App.3d 949, 958–959 [185 Cal.Rptr. 1].) The defendant need not intend to permanently deprive the owner of the property so long as the defendant intends to take, damage, or destroy the property. (*Ibid.*) Moreover, the defendant need not actually steal the property but may “take” it in other ways. (*People v. Superior Court (Kizer)* (1984) 155 Cal.App.3d 932, 935 [204 Cal.Rptr. 179].) Thus, the enhancement may be applied to the crime of receiving stolen property (*ibid.*) and to the crime of driving a stolen vehicle (*People v. Kellett, supra*, 134 Cal.App.3d at pp. 958–959).

“Loss”

As used in Penal Code section 12022.6, “loss” does not require that the victim suffer an actual or permanent loss. (*People v. Bates* (1980) 113 Cal.App.3d 481, 483–484 [169 Cal.Rptr. 853]; *People v. Ramirez* (1980) 109 Cal.App.3d 529, 539–540 [167 Cal.Rptr. 174].) Thus, the enhancement may be imposed when the defendant had temporary possession of the stolen property but the property was recovered (*People v. Bates, supra*, 113 Cal.App.3d at pp. 483–484), and when the defendant attempted fraudulent wire transfers but the bank suffered no actual financial loss (*People v. Ramirez, supra*, 109 Cal.App.3d at pp. 539–540).

SECONDARY SOURCES

3 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Punishment, § 378.

5 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Criminal Trial, § 727.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.45 (Matthew Bender).

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]:
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: 2/3/2021

Title of proposal: Criminal Forms: Sex Offender Registration Termination

Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):
Adopt forms CR-415, CR-417, and CR-418; approve forms CR-415-INFO and CR-416

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 5-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by Rules Committee date: November 3, 2020

Project description from annual agenda: Implementation of SB 384 (Stats. 2017, ch. 541), Sex offenders: registration: criminal offender record information systems

Project Summary: Develop forms to implement SB 384, which, in relevant part, establishes three tiers of sex offender registration based on specified criteria and a petition process to request termination from the registry upon completion of a mandated minimum registration period under specified conditions. The proposal was suggested by the California Department of Justice. Assist criminal courts with any required implementation.

If requesting July 1 or out of cycle, explain:

The implementing statute is effective July 1, 2021.

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-068

For business meeting on: March 11–12, 2021

Title

Criminal Forms: Sex Offender Registration Termination

Agenda Item Type

Action Required

Effective Date

July 1, 2021

Rules, Forms, Standards, or Statutes Affected

Adopt forms CR-415, CR-417, and CR-418; approve forms CR-415-INFO and CR-416

Date of Report

January 27, 2021

Recommended by

Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Contact

Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends three new mandatory forms and two new optional forms to be used to petition the court for termination of sex offender registration, provide proof of service, 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 sex offender registration termination under Penal Code section 290.5 (Sen. Bill 384; Stats. 2017, ch. 541), which becomes effective July 1, 2021.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective July 1, 2021:

1. Adopt *Petition to Terminate Sex Offender Registration* (Pen. Code, § 290.5) (form CR-415), *Response by District Attorney to Petition to Terminate Sex Offender Registration* (form CR-417), and *Order on Petition to Terminate Sex Offender Registration* (Pen. Code, § 290.5) (form CR-418); and

2. Approve *Information on Filing a Petition to Terminate Sex Offender Registration* (form CR-415-INFO) and *Proof of Service—Sex Offender Registration Termination* (*Pen. Code*, § 290.5) (form CR-416).

The proposed new forms are attached at pages 7–18.

Relevant Previous Council Action

Because these forms address a new statutory procedure, there is no relevant previous council action.

Analysis/Rationale

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 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.

The proposed forms include (1) a petition form, (2) information sheet, (3) proof of service form, (4) district attorney response form, and (5) court order. The committee recommends the petition, district attorney response form, and court order to be mandatory to promote uniformity throughout the state, especially since a significant number of petitions may involve petitioners with different counties of registration and conviction that must serve the petition on multiple law enforcement agencies and district attorney’s offices.

Policy implications

This proposal furthers the council’s policy of ensuring access to justice for all litigants. The committee anticipates that many petitioners will be self-represented. The forms were developed, in part, to provide self-represented petitioners with the relevant legal and procedural information for seeking relief, as well as to promote access to the courts.

Comments

The Criminal Law Advisory Committee circulated forms for public comment three separate times in 2020, incorporating revisions based on comments and legislative changes in each subsequent circulation. The committee’s specific responses to each comment are available in the attached comment charts at pages 19–125.

First circulation (SPR20-16)

In the first circulation, 20 comments were received from a range of stakeholders: superior courts, the Department of Justice, law enforcement agencies, district attorney's offices, a public defender's office, advocates, and members of the public. Most commenters agreed with the proposal if modified. The committee incorporated several comments suggesting further clarity around procedures and requirements and correcting errors and omissions.

Acknowledgment of Receipt. Several commenters, including the law enforcement agencies and district attorney's offices, opposed a proposed form requiring law enforcement and the district attorney to confirm receipt of the petition to the court within 10 days. The commenters stated, in part, that the form shifted the burden of providing proof of service to the court from the petitioner to law enforcement and prosecuting agencies and imposed a non-statutory burden on law enforcement and prosecuting agencies by requiring them to file the form with the superior court in which the registrant resides within 10 days. Based on these comments, the committee decided not to move forward with the *Acknowledgement of Receipt* form.

A commenter stated that the service section of the petition, where petitioner could indicate the date and method of service to the appropriate law enforcement agencies and district attorney's offices, provided sufficient information about proper service. The committee agreed, with minor modifications to include the name of the agency served, the address of service, a declaration by the petitioner or counsel that the information contained in the petition is true and correct, and notice to the petitioner that a court may deny a petition that is not properly served.

Senate Bill 118. While the forms circulated in the first round of public comment, the Legislature introduced, and the Governor subsequently signed into law, a budget trailer bill (Sen. Bill 118; Stats. 2020, ch. 29) amending Penal Code section 290.5. The amendments prohibit the filing of a petition for termination until on or after the petitioner's next birthday after July 1, 2021, and explicitly allows the court to summarily deny a petition if the court determines the petitioner does not meet the statutory requirements for termination or if the petitioner has not fulfilled the filing or service requirements. In response to the legislative changes, the committee modified the petition and information sheet to state that petitions must be filed only on or after the petitioner's next birthday after July 1, 2021, and modified the district attorney response form and court order to expand the summary denial sections to include eight reasons for summary denial, based on the statutory requirements in section 290.5.

Other comments. Two commenters suggested amending the forms to indicate that service to the law enforcement agency and district attorney in the county of conviction does not apply if the petitioner's registration obligation is based on a non-California conviction. Penal Code section 290.5(a)(2) requires the petition and proof of current registration to be served on the law enforcement agency and district attorney in the county of conviction. It is not clear what, if any, notice requirement applies for non-California convictions, so the committee declined to specify that the service requirement on the law enforcement agency and district attorney in the county of conviction does not apply to non-California convictions.

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. (Pen. Code, § 290.5(a).) 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. In the invitation to comment, the committee proposed that the petition include these procedural requirements for petitioners in the exceptions categories for tiers two and three, noting that it is reasonable to have those petitioners who are subject to exceptions comply with similar prerequisites to relief as petitioners in tiers one and two. A commenter suggested the forms state that the eligibility and procedural requirements of section 290.5(a) apply to the exceptions categories under section 290.5(b). The committee declined to add a statement to this effect.

Second circulation (SP20-03)

In the second circulation, 12 comments were received from a range of stakeholders: courts, the Department of Justice (DOJ), law enforcement agencies, district attorney's offices, a public defender's office, and advocates. Most commenters agreed with the proposal if modified.

Proof of service of a filed petition. The DOJ commented that Senate Bill 118 amended Penal Code section 290.5(a)(2) to add the following language: "The registering law enforcement agency shall report receipt of service of a filed petition to the Department of Justice in a manner prescribed by the department." The DOJ noted that this amendment contemplated that the petition would be filed with the court prior to service, while the proposed petition contemplated filing *after* service. The DOJ recommended creating a proof of service form to identify the filed petition information and to verify service of the filed petition to the proper parties. The committee agreed, developing a new optional proof of service form, updating the information sheet to reflect the new procedure, and amending the petition to delete the service provision.

Other comments. A commenter suggested amending the court hearing section of the information sheet to state that the court would consider community safety considerations if requested by the district attorney, rather than in all cases, to better reflect the statutory language. The committee agreed with this suggestion.

Penal Code section 290.5(a)(2) excludes from eligibility from relief anyone on "parole, probation, or supervised release." The petition and information sheet refer to anyone on "parole, probation, postconviction supervised release, or any other form of supervised release." A commenter suggested replacing the language on the petition with the statutory language, but the committee declined, finding that the more expansive language better communicated the exclusion categories to registrants.

The DOJ requested adding information on the forms directing a petitioner required to register for both a juvenile adjudication of a sex offense and an adult conviction of a sex offense to file the petition to terminate with the superior court. The DOJ noted that this information would help reduce inquiries to the courts and improper additional filings with the juvenile courts. The committee declined the suggestion, based on an overarching policy decision to minimize

discussion of juvenile adjudications requiring registration because the proposed forms are intended for use in criminal court only. The committee felt that adding this information would likely create a need to provide further information about the termination process for juvenile adjudications requiring registration.

Third circulation (SP20-11)

The third circulation consisted only of the new, optional proof of service form. Three comments were received from courts and a bar association. A court noted a spacing error and requested references on the form to “district attorney” be changed to “prosecutor” or “prosecuting agency” because a city attorney can be the prosecutor on a case with sex offender registration ordered. The committee decided to use the term “district attorney” to reflect the statutory language of Penal Code section 290.5. A juvenile division of a superior court did not indicate a position, but requested the development of sex offender registration termination forms for use in juvenile court. The response is that the comments have been relayed to the Family and Juvenile Law Advisory Committee, which oversees forms for use in juvenile court.

Alternatives considered

In addition to the alternatives suggested in the comments and discussed above, the committee considered the following alternatives.

Mandatory forms

The committee discussed whether to recommend mandatory or optional forms. Under Government Code section 68511, the council’s adoption of a mandatory form as prohibits courts from creating an alternative local form. The committee is recommending the petition, district attorney response form, and court order be adopted as 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 who must serve the petition on multiple law enforcement agencies and district attorney’s offices.

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, and the committee considered the alternative of not including the requirement for these categories. However, the committee recommends that the petition include these requirements for petitioners in the exceptions categories for tiers two and three, 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 DOJ 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.

Reply form

The committee discussed whether to develop a reply form for petitioners, but concluded that it would not develop one at this time. The committee notes that a petitioner should receive a copy of the district attorney's response form and may file a reply by drafting a pleading for the court's consideration.

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 under this new statute by streamlining some of this process and providing thoroughness and consistency in the presentation of the relevant information.

Four superior courts submitted comments regarding this proposal's operational impacts on courts. One superior court noted the cost savings of statewide forms, estimating that they would save at least 120 hours of staff time from preparing, revising, and approving forms. The courts uniformly indicated that they would need to develop new procedures, train staff, and create docket codes in case management systems as a result of the legislation.

Attachments and Links

1. Forms CR-415, CR-415-INFO, CR-416, CR-417, and CR-418, at pages 7–18
2. Chart of comments, at pages 19–125
3. Link A: Senate Bill 384 (Stats. 2017, ch. 541),
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB384
4. Link B: Senate Bill 118 (Stats. 2020, ch. 29),
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB118
5. Link C: 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.

**DRAFT
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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 until a court terminates the registration requirement.
- A copy of the filed petition and proof of current registration (available at the registering law enforcement agency) must be served on the proper law enforcement agencies and district attorney offices. Proof of service must be filed with the court (you may use *Proof of Service* (form CR-416), available at www.courts.ca.gov/forms). The petition may be denied if service is not complete.

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: _____
First Middle Last

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

b. Attorney representing petitioner (if any)

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. Contact the court immediately if your contact information changes**):

Check if attorney's contact information

Street

City State Zip Phone: _____

E-mail (if available): _____ Petitioner or attorney agrees to email communication.

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

2 Registration Status and Information

a. Petitioner is **currently registered** as a sex offender in California in the County of: _____

b. Identify the court in which petitioner was convicted of an offense requiring sex offender registration in California (e.g., specific California superior court, federal district court, military court, other state court). If known, include the case number for the conviction: _____

c. This petition is being filed on or after petitioner's next birthday after July 1, 2021, following the expiration of petitioner's mandated minimum registration period.

d. Proof of current registration is attached (available at the registering law enforcement agency).

3 Termination Request

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



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 through 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;

(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; and

(5) Petitioner is not required to register for a conviction pursuant to Penal Code section 288 or an offense listed in Penal Code section 1192.7(c) (serious felonies).

8 Previous Petition

a. Petitioner (*check one*) has 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.

b. The previous petition was denied in (*case number*): _____, in the Superior Court of California, County of _____, on (*date*): _____

c. The court set ____ (years) ____ (months) as the time period after which petitioner may request termination again.



9 Registration Period

- Petitioner believes that they have met the requirements to register for the time period required by petitioner's tier designation as determined by the Department of Justice.

I declare that the information provided is true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

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 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.
- Do not file evidence that shows proof of rehabilitation unless requested by the court after the petition is filed.
- This petition and proof of current registration must be filed on or after your next birthday after July 1, 2021, following the expiration of your mandated minimum registration period.
- This information sheet is for registration based on convictions in adult criminal court. It does not address registration based on juvenile adjudications.
- Proof of current registration is available at the registering law enforcement agency.
- It is very important that you provide a reliable mailing address in your petition so that the district attorney and court can reach you. Contact the court immediately if your mailing address changes.

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 under Penal Code section 290 et seq.; *and*
- Your tier assignment has been determined by the Department of Justice; *and*
 - 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.
- You have registered for the minimum time period for your assigned tier.

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 you register. Registrants may request a tier notification letter from the registering law enforcement agency after January 1, 2021.
- Upon being convicted of a registrable offense, your minimum required registration period begins on the date you were released from incarceration, placement, or commitment, or released on probation or other supervision.
- Any misdemeanor conviction for failure to register extends the minimum time period by one year, without regard to the actual time served in custody for the conviction. Any felony conviction for failure to register extends the minimum time period by three years, without regard to the actual time served in custody for the conviction.
- If the minimum registration period has not been tolled or extended, you are eligible for relief after you have registered for the following 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 Tier 1 or Tier 2, you are *only* eligible to petition for relief upon 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 that could extend the time to complete the registration requirements of the tier or change the tier status;
- You are not in custody; *and*



- You are not on parole, probation, postconviction supervised release, or any other form of supervised release.

Please see ⑤ for more information about the Tier 2 10-year registration exception.

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;
- 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; and
- You are not required to register for a conviction pursuant to Penal Code section 288 or for an offense listed in Penal Code section 1192.7(c) (“serious felony”).

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 and proof of current registration with the court?**

- On or after your next birthday after July 1, 2021, you may file your petition and proof of current registration as a sex offender, which you can get from the registering law enforcement agency, 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 and proof of current registration in the county of your primary residence.
- Make a copy of the completed petition and proof of current registration 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 and proof of current registration and ask how you can receive proof of filing.
- File the petition and proof of current registration by:
 - Taking them to the court clerk in person;
 - Mailing them to the court; or
 - Depending on the court’s local rules and practices, filing them electronically.

⑦ **Who else gets a copy of the petition and proof of current registration, and how?**

After the petition and proof of current registration are filed with the court, you or someone on your behalf must deliver a copy of the petition and the proof of current registration to:



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

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.

Example: If you were convicted of a registrable offense in Los Angeles County but register in Orange County, you or someone on your behalf must serve the law enforcement agency and the district attorney's office 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 and proof of current registration. 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 delay its decision until it receives this information.

There are three main ways to serve the petition and proof of current registration (use *Proof of Service* (form CR-416) to guide you on the information you need to report back to the court about how and when the petition was served):

- **Personal service:** You may serve the petition and proof of current registration 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 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. Alternatively, you may mail the documents by certified mail with a return receipt requested.

- **Electronic service:** Contact the law enforcement agency and district attorney's office to check if they accept electronic service and, if so, how to confirm receipt of service. The court may require proof of consent and proof of electronic service. You can use *Consent to Electronic Service and Notice of Electronic Service 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.

When service is complete, you or someone who served the documents on your behalf must fill out *Proof of Service* (form CR-416) and file it with the court.

8 Time frame for court's decision

The court will not make a decision until it hears from the law enforcement agency and the district attorney. This may take four months or longer.

- 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 may request more time if it discovers a conviction not previously considered by the Department of Justice.
- The district attorney may request a hearing within 60 days after receiving the eligibility report from law enforcement.

Once you file your petition and proof of current registration and the court gives you a case number, you can see whether the court has received and filed any responses from the law enforcement agency and the district attorney's office by (1) looking up the case online (if the court offers remote electronic access), or (2) going in person to the court to review the case docket at a public access kiosk or on a paper file.



The court may grant your request, deny your request, or set the request for a hearing if one is requested by the district attorney.

9 Hearing

The district attorney in the county where the petition is filed may request a hearing if the district attorney does not believe you have registered for the minimum time period required or if it believes that you should continue registering for community safety. A community safety hearing is required in order for the court to grant a Tier 2 10-year exception or Tier 3 risk-level petition. If the court must decide at the hearing whether you should continue to register for community safety, the court will make its decision by reviewing the facts of your case, your conduct before and after the conviction, and your current risk or sexual or violent re-offense, among other factors.

If the district attorney does not request a hearing, the court must grant the petition for termination if (1) you provided proof of current registration, (2) the registering law enforcement agency reported that you met the requirements for termination, (3) there are no pending charges against you that could extend the time to complete the registration requirements of the tier or change your tier status, and (4) you are not in custody or on parole, probation, or supervised release.

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.

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

Instructions

- This form is for providing proof that a copy of a filed *Petition to Terminate Sex Offender Registration* (form CR-415) and proof of current registration was served (delivered) to the required law enforcement agencies and district attorney’s offices. Read *Information on Filing a Petition to Terminate Sex Offender Registration* (form CR-415-INFO) for more information.
- The person who serves (delivers) a document or form in this case and who fills out this form must be at least 18 years old.
- This form is for proof of service by mail or personal delivery. For proof of electronic service, read and follow rule 2.251 of the California Rules of Court, and use *Proof of Electronic Service* ([form POS-050/EFIS-050](#)).
- File a completed form with the court. Keep a copy of this form for your records.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

- ① At the time I served the *Petition to Terminate Sex Offender Registration* (form CR-415) and proof of current registration, I was at least 18 years old.
- ② My name is: _____
My mailing address is: _____

Street City State Zip

- ③ I served copies of the *Petition to Terminate Sex Offender Registration* and proof of current registration filed (*check one*):
- for myself on behalf of (*name of petitioner*): _____

- ④ I mailed or personally delivered a filed-stamped copy of *Petition to Terminate Sex Offender Registration* (form CR-415) and proof of current registration to the agencies listed below:

a. Registering law enforcement agency

Name of agency: _____
Address: _____
Street City State Zip

Date of service: _____

Method of service (*check one*):

- Mailed the documents to the agency at the address above in a sealed envelope from (*city, state*): _____ by depositing the envelope with the U.S. Postal Service
- Delivered in person to (*name*): _____ at (*time*): _____ at the address above.

b. District attorney (county of registration):

County of: _____
Address: _____
Street City State Zip

Date of service: _____

Method of service (*check one*):

- Mailed the documents to the district attorney’s office at the address above in a sealed envelope from (*city, state*): _____ by depositing the envelope with the U.S. Postal Service or
- Delivered in person to (*name*): _____ at (*time*): _____ at the address above.



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

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

1 Petitioner's Information

This is a response to a petition filed by:

a. Name: _____
First Middle Last

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

CSAR Petition No.: _____

b. Tier (check one):

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

2 Response

a. The district attorney has no objection to this petition.

b. The district attorney objects to granting the petition and requests a hearing because (check all that apply):

- (1) Community safety would be significantly enhanced by the petitioner's continued registration.
- (2) Petitioner has not met the requirements of Penal Code section 290(e).

c. The district attorney requests the petition be summarily denied because (check all that apply and state reasons for summary denial):

(1) Petitioner has not fulfilled the filing and service requirements of Penal Code section 290.5 because:

(2) There are pending charges against petitioner that could extend the time to complete the registration requirements of the tier or change petitioner's tier status: _____

(3) Petitioner is in custody or on parole, probation, or supervised release: _____

(4) Petitioner does not qualify for termination because petitioner is in Tier 3 as a lifetime registrant and does not fall under the risk-level exception.

(5) Petitioner is in Tier 1 or Tier 2 and has not met the mandatory minimum registration period for that tier.

(6) Petitioner is in Tier 2 and has not met the following criteria for a 10-year registration exception in Penal Code section 290.5(b)(1) and (2): _____

(7) Petitioner is in Tier 3 solely on the basis of a risk assessment level and has not met the following criteria for a 20-year registration exception in Penal Code section 290.5(b)(3): _____

(8) Other: _____

d. This response has been served on the petitioner or counsel at the address set forth on the petition.

Date: _____

*Printed name, office address, and phone number of
district attorney/district attorney's representative*

*Signature of district attorney/district attorney's
representative*

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

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

① Petitioner's Name: _____
First Middle Last

Date of birth: _____ CSAR Petition No.: _____
(mm/dd/yyyy)

Name of attorney representing petitioner *(if any)*: _____

Mailing address: _____
Street

City State Zip

E-mail: _____

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 all that apply and state reasons for summary denial)*:

a. Petitioner has not fulfilled the filing and service requirements of Penal Code section 290.5 because:

b. There are pending charges against petitioner that could extend the time to complete the registration requirements of the tier or change petitioner's tier status:

c. Petitioner is in custody or on parole, probation, or supervised release:

d. Petitioner does not qualify for termination because petitioner is in Tier 3 as a lifetime registrant and does not fall under the risk-level exception.

e. Petitioner is in Tier 1 or Tier 2 and has not met the mandatory minimum registration period for that tier.

f. Petitioner is in Tier 2 and has not met the following criteria for a 10-year registration exception in Penal Code section 290.5(b)(1) and (2): _____

g. Petitioner is in Tier 3 solely on the basis of a risk assessment level and has not met the following criteria for a 20-year registration exception in Penal Code section 290.5(b)(3): _____

h. Other: _____

This is a Court Order.



4 After hearing, the court **DENIES** the petition to terminate the adult sex offender registration requirement because the court finds that (*check all that apply*):

a. Petitioner has not met the requirements of Penal Code section 290(e).

b. Community safety would be significantly enhanced by the petitioner’s continued registration. The court’s findings are (*select one*): stated orally on the record set forth below:

(1) **For Tier 1 and Tier 2 denials:** Petitioner may not file another petition for termination for _____ years (*must be between 1 to 5 years*) from the date of denial, for the following reasons:

(2) **For Tier 2 denials (10-year registration exception):** Petitioner may not file another petition for termination for _____ year(s) (*must be at least 1 year*) from the date of denial.

(3) **For Tier 3 denials (based on risk level):** Petitioner may not file another petition for termination for _____ years (*must be at least 3 years*) from the date of denial.

Date: _____

Signature of Judicial Officer

To the court: Notify the Department of Justice, California Sex Offender Registry, when a petition for termination from the registry is granted, denied, or summarily denied. If the petition is denied after hearing, the court must also state the time period after which the person can file a new petition for termination. The court may notify the department through electronic reporting or by mail (California Sex Offender Registry, P.O. Box 903387, Sacramento, CA 94203-3780).

This is a Court Order.

SPR20-16

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
1.	Alliance for Constitutional Sex Offense Laws (ACSOL) by Janice M. Bellucci, Attorney & Executive Director Chance X. Oberstein, President Sacramento	AM	See comments on specific provisions below.	The committee appreciates the comments.
2.	Bruce Bernhart Owatonna, MN	AM	There needs to be some further clarification for out of state registrants, particularly which forms should go to which authorities, either in our home state, or in California, or both. Do we also need to formally petition the office in our current state that oversees registration? County DA's may not even have us on file since court records are in California. And I'm sure there are probably some registrants out there who have relocated more than once during their time on the registry.	The forms reflect the statutory requirements of Penal Code section 290.5, and the statute does not clearly address how a person with a registrable offense in California but who lives out of state would petition to terminate the registration requirement.
3.	California Department of Justice By Linda Schweig, Assistant Director Justice Data and Investigative Services Bureau Sacramento, California	AM	See comments on specific provisions below.	
4.	Ira Mark Ellman Distinguished Affiliated Scholar University of California Berkeley Tara Ellman M.B.A. Consultant	AM	See comments on specific provisions below.	
5.	Louis R. Guevara Pomona, California	AM	I suggest to the committee that the changes be made at the tier 3 level that which will seek relief for a tier 3 designee, if he/she is assigned as a tier 3 offender. He/she may petition the	The comment is beyond the scope of the proposal.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			court for relief from life time sex registration if he/she has been granted a Certificate of rehabilitation by the county court of which he/she was convicted. In addition; however, if he/she meets the mandatory min requirements of 20 years of undisturbed registration requirements and has no relief of life time sex offender registration. Moreover, should the court deny petitioners request for relief the court shall enter in the record a 1 year window for which a petitioner may re-petition the court for termination of life time sex registration.	
6.	Los Angeles County District Attorney's Office By Bradley L. McCart, Deputy-in-Charge	N	See comments on specific provisions below.	
7.	Los Angeles Police Department by Lauren Rauch, Detective/290 Coordinator	AM	See comments on specific provisions below.	
8.	Los Angeles County Sheriff Department by Alex Villanueva, Sheriff	N	See comments on specific provisions below.	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
9.	Orange County Bar Association by Scott B. Garner, President	A	<p>Does the proposal appropriately address the stated purpose? Yes. The proposed forms closely track the required elements of Penal Code section 290.5.</p> <p>Are the forms and information sheet written in a way that would be understandable to most self-represented court users? The procedures contained in Section 290.5 are detailed and probably will appear overly complicated to the average lay person. The legislature used an economy of language when prescribing who may take advantage of the relief and the requisite procedure for termination. The forms and instructions proffered logically and accurately outline the necessary pleadings and service required by 290.5. The instructions appear to be in as plain of language as is possible given the detailed requisite procedures. While it may take more than one reading for a pro per to understand fully the forms and instructions, the proposal language and steps to follow are clear.</p>	The committee appreciates the comments.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
10.	David Payne Detective Sergeant Los Angeles Sheriff's Department Monterey Park, California	N	I AM BAFFLED THAT WE TREAT SEX CRIMES AND EXPLOITATION AGAINST CHILDREN CRIMES LIKE THEY ARE VICTIMLESS CRIMES, AND THE PERPATRATORS SHOULD BE GIVEN CHANCES. THE CHANCES WE GIVE THEM ARE TO RE OFFEND. THESE ARE NOT VICTIMLESS CRIMES. THESE CRIMES AFFECT FAMILIES, NOT JUST THE CHILD VICTIMS. HOW CAN YOU ASSURE ME THAT THESE PEOPLE WILL NOT RE OFFEND IF YOU ARE NOT KEEPING AN EYE ON THEM. JUDGES AND LAWMAKERS ARE NEVER HELD ACCOUNTABLE FOR BAD JUDGEMENTS OR BAD LAWS. SO THEY CONTINUE TO MAKE THEM. THINK ABOUT THE FUTURE VICTIMS FOR ONCE. YOU'VE ALREADY FAILED THE PAST VICTIMS.	The comment is beyond the scope of the proposal.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
11.	Steven Rease Attorney at Law	AM	My main concern with the forms you have included with your proposal is that nowhere in the forms is the registrant informed whether she/he is a Tier 1, Tier 2 or Tier 3 registrant. Form CR-415-INFO has a section 3 that informs the registrant how his/her tier is determined but only says that that determination is made by the Department of Justice. A form needs to be developed that would inform the registrant of what Tier he/she is in, based on the crime(s) triggering registration and how PC 290 divides up the registrable offenses into the 3 tiers. Without accurate knowledge of which Tier designation applies to him/her, the registrant cannot fill out section 7 of CR-415. This would also be necessary in order for the registrant to intelligently question whether DOJ's designation of her/his tier status is correct.	The committee discussed the suggestion but does not recommend adding a list of offenses by tier in the information sheet.
12.	San Diego County District Attorney by Summer Stephan, District Attorney	N	See comments on specific provisions below.	
13.	San Diego County Police Chiefs' and Sheriff's Association by Chief Roxana Kennedy, President Chula Vista, California	N	See comments on specific provisions below.	
14.	San Diego County Office of the Public Defender by Kate Braner, Chief Deputy	AM	The California Department of Justice (DOJ) criminal history records are notoriously inaccurate. Per the DOJ, 60% of their records are incomplete (The California Criminal Justice Data Gap (April 2019), Stanford Law School and Measures for Justice Report). In addition to the 60% incomplete records, a significant number of their records are flat out wrong. As a Chief Deputy with the San Diego County Office	No response necessary.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>of the Public Defender, I have reviewed thousands of DOJ criminal history reports. The errors in the DOJ reports are quite disturbing: convictions reported as felonies, that were only misdemeanors, cases which were later reduced to misdemeanors which have never been updated, entries which appear as only arrests, which were in fact prosecutions, cases showing convictions for charges inconsistent with the official court record (i.e. first degree burglary, when the conviction is for second degree burglary), etc.</p> <p>The DOJ determines Tier placement. Their determination is based on their records. Further, because law enforcement and prosecutorial agencies will rely heavily on the DOJ criminal history records to calculate any tolling or extensions of the minimum registration period, there is a significant chance for error in those calculations as well. I have little faith in the accuracy of Tier placement or calculating tolling or extensions of the minimum reporting period based on DOJ records. The court forms and process should take into consideration the reality of the faulty DOJ records.</p> <ul style="list-style-type: none"> • The petitioner should be afforded the opportunity to challenge the DOJ Tier designation. • The petitioner should be afforded the opportunity to challenge the accuracy of any errors in the tolling period calculations. • The petitioner should be afforded the 	<p>The committee discussed the suggestions but does not recommend incorporating them because the petition for termination is not the proper vehicle for challenging a tier designation by the Department of Justice.</p>

SPR20-16

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			opportunity to challenge the accuracy of any extension calculation. I am particularly concerned that the court may issue a summary denial and set a future date until which the petitioner is barred from petitioning again, without the opportunity to be heard on any of these issues.	Please see the response above.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
15.	Superior Court of Fresno County by Leticia Hernandez, Felony Department Manager	A	<p>Does the proposal appropriately address the stated purpose? Yes</p> <p>Are the forms and information sheet written in a way that would be understandable to most self-represented court users? Yes</p> <p>Specific to Courts:</p> <p>Would the proposal provide cost saving? If so, please quantify? There would be no cost savings to the court as this is not a process that is currently in place.</p> <p>What would the implementation requirements be for courts-for example, training staff (please identify and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems or modifying case management systems? Training – Total of 159 staff which includes 7 Supervisors, 30 Seniors and 122 Office Assistants & Judicial Assistants. Each session would be about 1 hour (estimate 2 weeks in classroom setting; taking scheduling and coverage into consideration). Additionally, 4 Judicial Assistants will each receive 8 hours of more detailed, hands on training.</p> <p>Counter staff that will be taking these forms in will receive an additional 4 hours of detailed training on the different tiers and taking in the forms.</p>	The committee appreciates the comments.

SPR20-16

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Acceptance of petition (Counter Staff) • Processing, calendaring and noticing requested hearings • Processing Orders including after hearings • Noticing applicable parties post decision <p>Processes to create:</p> <ul style="list-style-type: none"> • Creating & testing procedures – by Senior/Supervisor (estimate 1 week) This includes approval by Court administration and judges. • Creating Procedures on acceptance and filing • Creating a desk to process this subject matter • Creating case numbers • Assigning department to hear petitions • Creating docket codes (including tracking and JBSIS and transmitting to DOJ) <p>Expected hours of training</p> <ul style="list-style-type: none"> • Our estimated number of training hours would be a total of 263 hours as reflected above. 	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>Would 9 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, see above answers in implementation requirements for courts</p> <p>How well would this proposal work in courts of different sizes? The volume of petitions will either increase or decrease based upon knowledge of the tier system and number of existing registrations in each city/county.</p>	
16.	Superior Court of Los Angeles County by Bryan Borys	AM	<p>Add and/or keep language “district attorney or prosecuting agency”: staying with PC 290.5 language that solely references “district attorney” will confuse misdemeanor petitioners required to notice/serve city attorney and/or other prosecuting agencies. Adding “or prosecuting agency” to forms will assist with the issue [however true fix would be to amend PC 290.5].</p> <p>See comments on specific provisions below.</p>	The committee decided to use the term “district attorney” to reflect the statutory language of Penal Code section 290.5.
17.	Superior Court of Los Angeles County by Tricia Penrose Director - Juvenile Operations	A	<p>**Commenter provided comments on how the forms could be modified regarding juveniles.</p> <p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Are the forms and information sheet written in a way that would be understandable to most self-represented court users? Yes.</p>	<p>The proposed forms are for adult registrants only. The Judicial Council is not developing forms for juvenile registrants at this time.</p> <p>The committee appreciates the comments.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings? If so, please quantify. No.</p> <p>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?</p> <p>Training Staff: Court Services Assistants < 2 hours Judicial Assistants < 2 hours</p> <p>A procedure should be developed to address the processing of such documents received by the Clerk’s Office via mail, the counter, fax and/or drop box.</p> <p>A procedure should be developed to address the processing of such documents received in the courtroom.</p> <p>Would 9 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>How well would this proposal work in courts</p>	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>of different sizes? This proposal would work well in courts of different sizes.</p> <p>See comments on specific provisions below.</p>	
18.	Superior Court of Orange County (no name provided)	AM	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Are the forms and information sheet written in a way that would be understandable to most self-represented court users? Yes, for the most part.</p> <p>Should the effective dates on the forms be July 1, 2021? Currently all forms have January 1, 2021 date in footer.</p> <p>**See comments on specific forms below.</p> <p>Would the proposal provide cost savings? If so, please quantify. No, these forms are legislation driven; will increase workload.</p> <p>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? These petitions, once filed, require responses from LEA and prosecutors before the court can take further action and will not have “counts” or “charges”.</p> <ul style="list-style-type: none"> Recommend a working group with our justice partners (DA, PD, LEA) to 	<p>The committee appreciates the comments.</p> <p>The committee will revise all forms to have an effective date of July 1, 2021.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
Commenter	Position	Comment	Committee Response	
		<p>ensure expectations are in alignment</p> <ul style="list-style-type: none"> • Workflows needed to outline: <ul style="list-style-type: none"> ○ Where these petitions will be filed ○ What courtrooms will hear them ○ How the cases are tracked to ensure timelines are followed ○ Will the court send correspondence to agencies when timelines are exceeded? ○ How cases will be initiated (manually?) ○ Requirements for acceptance (incomplete forms ok?) ○ New docket codes needed for filing the petition, noting service, filing responses, setting hearing dates, judicial ruling, JBSIS/DOJ reporting ○ How will cases be “closed” in our Case Management System? ○ How re-filed petitions will be handled (same case number?) • New procedure will be required • Training scope will depend on where these cases are filed/heard • <p>Would 9 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Under normal conditions I believe so, but COVID may affect availability of Court Technology and judicial resources, judicial partners, etc.</p>		

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>How well would this proposal work in courts of different sizes? We do not see any issues for courts of different sizes in relation to the forms.</p>	
19.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Are the forms and information sheet written in a way that would be understandable to most self-represented court users? Yes.</p> <p>Would the proposal provide cost savings? If so, please quantify. Yes. Having forms available to all courts, so that forms do not have to be created locally, saves substantial time for court staff, including legal staff and clerical staff. It probably saves at least 120 hours in staff time preparing, revising, and approving forms.</p> <p>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? As of October 28, 2019, there were a total of 4,577 registered sex offenders living in the County of San Diego. It is unclear how many will be entitled to file for termination, as the DOJ has not yet completed its review</p>	The committee appreciates the comments.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>process. However, the court does anticipate a substantial increase in work load.</p> <p>Training Staff: At a minimum, the following staff will need training - Criminal Clerk Operation Manager, Criminal Clerk Operations Supervisors, and designated intake clerks will need to be trained. In addition, courtroom clerks will need to be trained to assist judges who receive such termination requests and hold hearings and clerk’s desk notes will need to be drafted. In addition, at least two staff attorneys will need to be training to field questions from Judges and other court staff. It is unclear at the time how many hours of training would be needed.</p> <p>Changing docketing codes and modifying case management systems: Currently, DOJ has informed that they want to receive information with the DOJ case number not with the court case number and that notifications need to be sent electronically. DOJ notices for cases are usually transmitted automatically electronically through JURIS, but without court case numbers the court has no way of updating JURIS or any other court case management system. Because numerous of these cases will not have underlying case numbers, since the registrations county does not have to be the county of offense, this is a significant operational hurdle. As far as sending notice to DOJ, the court is constantly working with DOJ to try to make this a workable process. As far as updating court files, for now a lot of the work will need to be</p>	

SPR20-16

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>done manually by clerical staff.</p> <p>Would 9 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>How well would this proposal work in courts of different sizes? Unknown.</p> <p>See comments on specific forms below.</p>	
20.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee (JRS)	A	<p>The JRS notes that the proposal is required to conform to a change of law.</p> <p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> • Impact on existing automated systems • Results in additional training, which requires the commitment of staff time and court resources. • Increases court staff workload. • Impact on local or statewide justice partners. <p>See comments on specific provisions below.</p>	The committee appreciates the comments.

SPR20-16

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Service on law enforcement agency and district attorney in county of conviction								
Commenter	Comment	Committee Response						
<p>Alliance for Constitutional Sex Offense Laws (ACSOL) by Janice M. Bellucci, Attorney & Executive Director Chance X. Oberstein, President Sacramento</p>	<ul style="list-style-type: none"> Clarification 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 courts. <p>Forms CR-415-INFO, CR-415, and CR-416 indicate or imply that Registrants with foreign convictions are obligated to serve the petition and proof of current registration upon a law enforcement agency and prosecutorial agency in the non-California jurisdiction where they were convicted. However, Penal Code section 290.5(a)(2) requires service upon a law enforcement agency and District Attorney in the county of conviction only if the county of conviction is a <u>California county</u>, and that California county is different from the county in which the petitioner is currently registered. Penal Code section 290.5(a)(2) does not require Registrants convicted in federal, military, or other non-California courts to notify any law enforcement agency or prosecutorial agency in those foreign jurisdictions. To avoid confusion, ACSOL respectfully suggests revisions of the type proposed below:</p> <table border="1"> <thead> <tr> <th>Form number and section/ location</th> <th>Statement at issue</th> <th>Proposed revision</th> </tr> </thead> <tbody> <tr> <td>CR-415-INFO, § 7</td> <td>None (general suggestion).</td> <td>Consider adding 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.</td> </tr> </tbody> </table>	Form number and section/ location	Statement at issue	Proposed revision	CR-415-INFO, § 7	None (general suggestion).	Consider adding 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.	<p>Penal Code section 290.5(a)(2) requires the petition and proof of current registration to be served on the law enforcement agency and district attorney in the county of conviction. It is not clear what, if any, notice requirement applies for non-California convictions, so the committee declines to specify that the service requirement on the law enforcement agency and district attorney in the county of conviction does not apply to non-California convictions at this time.</p>
Form number and section/ location	Statement at issue	Proposed revision						
CR-415-INFO, § 7	None (general suggestion).	Consider adding 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.						

SPR20-16

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Service on law enforcement agency and district attorney in county of conviction			Committee Response								
Commenter	Comment										
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Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

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CR-416, § 3	Check boxes for “Law enforcement agency (county of conviction)” and “District attorney’s office (county of conviction).”	Consider replacing the parenthetical “(county of conviction)” following “Law enforcement agency” and “District attorney’s office” with “ <u>“(county of conviction, if convicted in a California court, and county of conviction is different from county in which petitioner is currently registered)”</u> ”									

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-415 (petition)		
Commenter	Comment	Committee Response
<p>Alliance for Constitutional Sex Offense Laws (ACSOL) by Janice M. Bellucci, Attorney & Executive Director Chance X. Oberstein, President Sacramento</p>	<ul style="list-style-type: none"> • Minor points of clarification - Some Registrants did not understand that Form CR-415 is the mandatory form for petitions for removal, and wondered if they could submit their own “custom” petitions instead of using Form CR-415. Adding a statement to the introductory sections of Forms CR-415 and CR-415-INFO would help ensure that petitioners use the correct form, omit extraneous information, and include all necessary information. - Section 1(b) of Form CR-415 asks the petitioner to provide “Attorney Information (if applicable).” Some Registrants interpreted this to seek information about their defense attorney in the underlying criminal case, rather than the attorney assisting with the preparation of the petition (if any). - Some Registrants had difficulty reading Forms CR-415 and CR-415-INFO together. This created confusion about when and where to serve copies of Form CR-416, Acknowledgment of Receipt by Law Enforcement/District Attorney, along with copies of the petition and proof of current registration. Although the requirement to serve Form CR-416 is mentioned at the beginning of the petition itself (Form CR-415), the requirement to serve Form CR-416 is nowhere mentioned in Form CR-415-INFO, which contains the “information” that petitioners will consult to determine how the petition should be served. Perhaps Section 7 of Form CR-415-INFO could remind petitioners that they must also serve Form CR-416. 	<p>The committee does not recommend adding a statement to the introductory sections of the petition form and information sheet that use of the petition form is mandatory, but will add a statement to the information sheet that petitioner should not submit evidence that shows proof of rehabilitation unless requested by the court, after the petition is filed.</p> <p>The committee will clarify that attorney information is requested for the attorney assisting with the petition, not former defense counsel.</p> <p>The committee is not recommending that form CR-416 move forward.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-415 (petition)		
Commenter	Comment	Committee Response
<p>Ira Mark Ellman Distinguished Affiliated Scholar University of California, Berkeley Tara Ellman M.B.A. Consultant</p>	<p>B. Adapting petition procedures for registrants with non-California offenses</p> <p>The form itself, CR-415, appears to proceed on the same mistaken assumption that every petitioner’s registration obligation arises from a California state court conviction. Section One of the form asks the petitioner to state the “county or counties where petitioner was convicted of an offense requiring registration.” It asks for the county, but not the state, on the apparent premise that the answer is necessarily a California county. Section 9 requires an affirmation that the petition and proof of registration was served on the District Attorney and law enforcement agency of the country of conviction, as well as (where they differ) the registering county. The references to the county of conviction are inapt for federal convictions, as state counties are not a geographical entity that defines federal prosecutorial jurisdiction. And of course there is no federal “district attorney”. The same references will also be inapt for convictions in the courts of some other states, as the titles and jurisdictional rules relevant to the prosecuting attorney vary. All the questions on the form referencing the county of conviction should thus be labeled to make clear they apply only to petitioners whose registration obligation arises from a California state court conviction.</p> <p>The question, then, is how the form should handle cases of petitioners whose relevant conviction is federal or foreign. The statute itself says nothing about notice or service in these cases. The relevant sentences of § 290.5(a)(2) say:</p> <p style="padding-left: 40px;">The petition shall be served on the registering law enforcement agency and the district attorney in the county where the petition is filed and on the law enforcement agency and the district attorney of the county of conviction of a registerable offense if</p>	<p>The committee’s response is provided to the specific suggestions raised below.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
	<p>different than the county where the petition is filed. The registering law enforcement agency and the law enforcement agency of the county of conviction of a registerable offense if different than the county where the petition is filed shall, within 60 days of receipt of the petition, report to the district attorney and the superior or juvenile court in which the petition is filed regarding whether the person has met the requirements for termination pursuant to subdivision (e) of Section 290.</p> <p>The language in the form understandably tracks the statutory language. Indeed, the reason the form’s sections dealing with service assume the conviction was a California conviction is that this portion of the statute suggests the same assumption when it uses the same language directing service on the “district attorney” of the “county of conviction”. Even more telling is that this same portion of the statute imposes a duty on the law enforcement agency of the county of conviction: it “shall, within 60 days of receipt of the petition, report to the district attorney and the superior or juvenile court in which the petition is filed regarding whether the person has met the requirements for termination pursuant to subdivision (e) of Section 290.” The legislative assumption that the required service was on a California law enforcement agency is obvious, as the legislature has no authority to impose any such reporting duty on a non-California law enforcement agency. Nor can it impose on non-California agencies a duty to acknowledge receipt of the petition, on draft form CR-416, or otherwise, or expect them to report on whether the petitioner has met requirements imposed by California law. One simply cannot read the statute to impose such obligations on non-California agencies beyond the legislature’s authority to regulate through statutory language that does not mention them. The unavoidable conclusion, which the committee apparently</p>	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
	<p>shared, is that the portion of the statute requiring notice to the district attorney and law enforcement agency of the “county of conviction” applies only to convictions in a California state court.</p> <p>In sum, while the statute clearly contemplates petitions from registrants with non-California convictions, it imposes no requirement to notice non-California law enforcement agencies or prosecutors. Perhaps that is an oversight. Or perhaps not. The legislature could have chosen to require petitioners whose registration requirement arises from a state court conviction to file their petition in the county of their conviction. But it instead adopted the more convenient rule, for petitioners, requiring filing in the county where they live, but with notice to authorities in the county of conviction. For non-California convictions, no analogous choice was presented; the legislature could not require filing in another jurisdiction’s courts. The only possibility was to require filing in the petitioner’s home county. Perhaps they therefore thought notice was to the other jurisdiction was also unnecessary, or perhaps they didn’t think of the question at all. One cannot tell.</p> <p>If the legislature contemplated an analogous notice requirement for non-California law enforcement agencies, it would have understood the analogy would necessarily be imperfect. No obligation to respond could be imposed on them. But whether intentionally or by inadvertence, the legislature created no such analogous notice requirement. Whether there should be one is a legislative question. The Judicial Council cannot fashion a notice requirement that the statute itself does not impose. Nor is there any reason to think such a requirement crucial. The essential characteristics of the non-California conviction are necessarily already known to the California Department of Justice, because it could not otherwise have placed the petitioner in the correct California tier, and untiered registrants</p>	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
	<p>are ineligible to petition. And of course, the California law enforcement authorities in the petitioner’s county of residence do not need legislative or administrative authorization to consult with or request information from the petitioner’s jurisdiction of conviction. Indeed, Section 290.5(a)(2) contemplates just such inquiries when it provides that the registering law enforcement agency shall refer any unassessed non-California registerable convictions that it identifies to the Department of Justice to determine their potential impact on the petitioner’s tier classification.¹</p> <p>¹“If an offense which may require registration pursuant to Section 290.005 is identified by the registering law enforcement agency which has not previously been assessed by the Department of Justice, the registering law enforcement agency shall refer that conviction to the department for assessment and determination of whether the conviction changes the tier designation assigned by the department to the offender.”</p> <p>In sum, the following changes should be made in CR-415 to accommodate the reality that some petitioners will have no California conviction requiring registration:</p> <p>a. In Section 1a, the request to identify “the county or counties where petitioner was convicted of an offense requiring registration” should be amended to read: “If the petitioner was convicted by a California court of an offense requiring registration, indicate the county or counties in which the conviction occurred.”</p>	<p>Penal Code section 290.5(a)(2) requires the petition and proof of current registration to be served on the law enforcement agency and district attorney in the county of conviction. It is not clear what, if any, notice requirement applies for non-California convictions, so the committee declines to specify that the service requirement on the law enforcement agency and district attorney in the county of conviction does not apply to non-California convictions at this time.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
	<p>b. For the convenience of the court, district attorney, and law enforcement authorities of the county in which the petition is filed, the Council may wish to add an additional line in Section 1 after the above, such as: “If you are required to register in California because of a judgment of conviction rendered by a federal court, or a court of another state or jurisdiction, please identify that court.” Adding this line is not crucial, however, because this information about the petitioner’s foreign conviction should already be included in the petitioner’s registration file. It had to be part of that file in order for the Department of Justice to determine the petitioner’s equivalent California offense, and thus his appropriate tier classification. If the petitioner has no tier classification, he of course is ineligible to file for relief from registration.</p> <p>c. In Section 9 of the form, language must be added to the third and fourth rows in the box to indicate they do not apply if the petitioner’s registration obligation is based upon a non-California conviction, as indicated by the petitioner’s answer to Question 1.</p> <p>**Some small matters of clarity, etc.</p> <p>a. The third bullet point just before Section 1 of CR-415 tells the petitioner he must provide copies of CR-416 to each agency he serves with the petition. It should make clear this is an unsigned or blank form. A pro se petitioner might think it means he must supply a copy of the form that is already signed.</p> <p>b. Section 7 of CR-415 sets out four of the requirements for a Tier 3 petition, but omits two others which are required by § 290.5(b)(3):</p> <ol style="list-style-type: none"> 1. The petitioner is not required to register for a section 288 offense (lewd or lascivious), and 2. The petitioner is not required to register for a 	<p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.</p> <p>Please see the response above.</p> <p>The committee is not moving forward with form CR-416.</p> <p>The committee agrees with these suggestions and has incorporated them, with minor alterations, into the form that it is recommending for adoption.</p>

SPR20-16

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
	1192.7(c) offense (serious felony).	
San Diego County Office of the Public Defender by Kate Braner, Chief Deputy	<p>Section 1: There is no space for an attorney’s address, phone number, or e-mail address.</p> <p>Section 3: Recommend adding “(REQUIRED)” in bold before or after the statement “Proof of current registration is attached,” so it is clear from the form itself that the proof must be included.</p> <p>Section 7: Please include an option “Petitioner has been classified as Tier __ by the Department of Justice, but Petitioner asserts the designation is erroneous and Petitioner should be classified in Tier __.” This will alert the prosecutorial agencies and the court that there is a dispute over Tier designation.</p> <p>Section 8: Some pro per litigants may misconstrue this section to include any efforts they have made to be removed from the obligation to register (e.g. Certificate of Rehabilitation). To be specific, the sentence could be modified to “previously filed a Penal Code 290.5 petition in California for termination of”</p> <p>Section 10: It seems more appropriate to include this affirmatory statement after Section 7 and before information about previous petitions and proof of service.</p>	<p>The committee will add a box to indicate whether the contact information is for the attorney.</p> <p>The committee discussed the suggestion but believes that the proof of current registration requirement is sufficiently clear.</p> <p>The committee discussed the suggestion but does not recommend incorporating it because the petition for termination is not the proper vehicle for challenging a tier designation by the Department of Justice.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee discussed the suggestion but prefers the current structure.</p>
Superior Court of Los Angeles County by Bryan Borys	(2) Bold the following statement on Form CR-415: “petitioner must continue to register as sex offender unless and until court terminates registration requirement.”	The committee discussed the suggestion but prefers the current structure.
Superior Court of Orange County	<ol style="list-style-type: none"> 1. CR-415: Can lines be added to the Superior Court of California address box to make it fillable? 2. CR-415: There is a box for Court use only to add the 	<p>All forms will be fillable.</p> <p>The committee discussed the suggestion but prefers to</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
	<p>hearing date and time. This information wouldn't be known until the response is received from the District Attorney requesting a hearing. We recommend removing this box.</p> <p>3. CR-415, Section 1, a: Recommend changing "MI" to "Middle" for consistency across the other documents.</p> <p>4. CR-415, Section 1, b: Can we get attorney email as well and agreement to communicate electronically?</p> <p>5. CR-415, Section 1, c: Is this contact information for the Petitioner or for the Attorney? If for the Petitioner, should we add address information to the Attorney Information section in b?</p> <p>6. CR-415, Section 1, c: If an email is submitted, can we have a box for them to check to agree to communicating via email or is that assumed by them adding it?</p> <p>7. CR-415, Section 2: This seems out of place here, should be after #6.</p> <p>8. CR-415, Section 9: Should the "Acknowledgment of Receipt" be added to the list of documents that were served on the agencies?</p> <p>9. CR-415, Section 9: For the Law Enforcement and District Attorney (count of conviction) sections, can you add "if different than county of registration"?</p> <p>10. CR-415, Section 9: Capitalize "Attorney" in District Attorney boxes.</p> <p>11. CR-415, Section 10: Recommend adding the following, "... required by petitioner's tier designation as determined by the Department of Justice."</p>	<p>keep the hearing date box, as some courts may want to set a check-in date and note it on the petition form.</p> <p>The committee discussed the suggestion but prefers the current structure.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee will add a box to indicate whether the contact information is for the attorney.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee discussed the suggestion but prefers the current structure.</p> <p>The committee is not moving forward with form CR-416.</p> <p>The committee discussed the suggestion but prefers the current structure.</p> <p>The committee agrees with this suggestion and will capitalize "Attorney" when appropriate.</p> <p>The committee discussed the suggestion but prefers the current structure.</p>
<p>Superior Court of San Diego County by Michael M. Roddy, Executive Officer</p>	<p># 1 Petitioner's Information: Right below the sentence that reads "The county or counties where petitioner was convicted of an offence requiring registration," it is recommended that another sentences be added to read:</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
	<p>“The county or counties where petitioner is required to register, if different than the county of conviction.”</p> <p>Reason for Recommendation: Because a petition needs to be filed in the county where a person is registered, this language would be useful at the beginning of the form for clerks/judges to be able to identify misfiled petitions. There exists a variation of this language further down the form in #3 under Registration Status, which could be deleted.</p> <p># 3 Registration Status: If the language above is added to #1, #3 could be modified to remove the county of registration and instead add the # of years of registration. In other words, #3, subdivision (a) would read similar to the following: “Petitioner is currently registered and has been so registered for ____ number of years.”</p> <p>Reason for Recommendation: It would be useful for a court to know under “Registration Status” how long a Petitioner has been registered, again, to quickly identify those presumptively ineligible petitioners.</p> <p>#4 Pending Charges: It is recommended that the term “Subsequent Convictions” also be added to #4, so that the title reads “Pending Charges or Subsequent Convictions” and the body read “To my knowledge, there is no pending charges or subsequent convictions...”</p> <p>Reason for recommendation: While Penal Code section 290.5 uses the language that there are “no pending charges,” Penal Code section 290 (e) references a subsequent conviction for a registerable offense, which would also require a new calculation of registration period. So, either a pending charge or subsequent conviction could both take a person out of eligible status.</p>	<p>The committee does not recommend the suggestion, as it is not statutorily required.</p> <p>The committee does not recommend the suggestion, as it is not statutorily required.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
	<p>#7 c. Tier 3 (all of the following apply) Recommend adding a # (5), which Petitioner must also check that says “Petitioner is not a person required to register for a conviction pursuant to Penal Code section 288 or an offense listed in Penal Code section 1192.7(c)” or some variation of such language. Reason for recommendation: Penal Code section 290.5, subdivision (b)(3) expressly states: “except that a person required to register for a conviction pursuant to Section 288 or an offense listed in subdivision (c) of Section 1192.7 who is a tier three offender based on his or her risk level, pursuant to subparagraph (D) of paragraph (3) of subdivision (d) of Section 290, shall not be permitted to petition for removal from the registry.” So, this is also a necessary requirement for eligibility under Tier 3.</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
<p>Alliance for Constitutional Sex Offense Laws (ACSOL) by Janice M. Bellucci, Attorney & Executive Director Chance X. Oberstein, President Sacramento</p>	<ul style="list-style-type: none"> Per Penal Code § 290.005, Registrants with convictions in federal, military, and other non-California courts are eligible to petition for removal from the registry, warranting a revision to Form CR-415-INFO, § 2, bullet 1. <p>Form CR-415-INFO, Section 2, bullet 1, states that Registrants are eligible to petition if they “are required to register as a sex offender as a result of a California state court conviction.” This statement implies that Registrants convicted in federal, military, or other courts outside California (hereinafter, “foreign convictions”) are ineligible to Petition. However, for the reasons described immediately below, Registrants with foreign convictions are eligible to petition for removal from the registry on the same terms as persons convicted in California courts. Specifically, Penal Code section 290.005 requires persons with foreign convictions to “register in accordance with the Act.” The full text of Penal Code section 290.005 is as follows:</p> <p style="padding-left: 40px;">The following persons shall register in accordance with the Act: . . . (a) [] any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, based on the elements of the convicted offense or facts admitted by the person or found true by the trier of fact or stipulated facts in the record of military proceedings, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290[.]</p> <p>Registrants with foreign convictions who “register in accordance with the Act” are assigned a tier pursuant to the terms of Penal Code section 290(d), which provides that “A</p>	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>person described in subdivision (c), or who is otherwise required to register pursuant to the Act shall register for 10 years, 20 years, or life, . . . as follows . . .” (Cal. Penal Code § 290(d), emphasis added. See also id., subd. (e) [discussing tier assignments of persons “required to register pursuant to Section 290.005,” i.e., persons with foreign convictions].)</p> <p>Thus, because Registrants with foreign convictions are required to “register in accordance with the Act,” and are thereafter assigned a tier on the same terms as Registrants convicted under California law, Registrants with foreign convictions are entitled to petition for removal pursuant to Penal Code section 290.5(a), which states that “A person who is required to register pursuant to Section 290 and who is a tier one or tier two offender may file a petition in the superior court in the county in which he or she is registered for termination from the sex offender registry at the expiration of his or her mandated minimum registration period.” (Cal. Penal Code § 290(a).)</p> <p>The fact that Registrants with foreign convictions are eligible to petition for removal on the same terms as persons with convictions in California courts is confirmed by a publication by the Department of Justice, California Justice Information Services division, entitled “Frequently Asked Questions – California Tiered Sex Offender Registration (Senate Bill 384) For Registrants,” attached hereto as Exhibit A. That document explains that Registrants with foreign convictions are eligible to petition for removal, as follows:</p>	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)

Commenter	Form CR-415-INFO (information sheet)			Committee Response
	<p>If the CA DOJ determines that their non-California conviction is equivalent to a registrable offense listed in Penal Code section 290(c), they will be required to meet the mandatory minimum registration requirements for the applicable tier for that offense before petitioning for termination from the requirement to register as a sex offender in California. (Exh. A, at p. 4, emphasis added.)</p> <p>Accordingly, ACSOL suggests the following revision to Form CR-415-INFO:</p>			<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>
	<p>Form number and section/ location</p>	<p>Statement at issue</p>	<p>Proposed revision</p>	
<p>CR-415-INFO, § 2</p>	<p>Eligibility requirement which states: “you are required to register as a sex offender as a result of a California state court conviction.”</p>	<p>“You are required to register as a sex offender <u>under California Penal Code section 290, et seq.</u>”</p>		
	<ul style="list-style-type: none"> Clarify that: (a) petitions by persons who meet the eligibility requirements of Penal Code § 290.5(a) will be granted as a matter of right if no hearing is requested; and (b) petitioners should not submit evidence of rehabilitation with petition. 			<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>Feedback obtained by ACSOL confirms that some Registrants mistakenly believe that proof of rehabilitation or other evidence in support of the petition must be filed with Form CR-415. This is likely because some Registrants do not understand that, pursuant to Penal Code section 290.5(a)(2), granting of the petition is mandatory if service of the petition is properly made, if the eligibility requirements of Penal Code section 290.5(a)(2) are satisfied, and if the District Attorney in the county where the petition is filed does not request a hearing. (See Cal Penal Code § 290.5(a)(2) [“If no hearing is requested, the petition for termination shall be granted . . .” (emphasis added)].)</p> <p>For this same reason, and pursuant to the process outlined in Penal Code section 290.5(a), Registrants need only provide evidence of rehabilitation at a hearing, if a hearing is requested and held. However, because the Forms do not indicate that eligible petitions can be granted as a matter of right without this evidence, Registrants may be tempted to attach potentially voluminous, extraneous material to the Petition, unnecessarily burdening the courts and District Attorneys. To avoid this, ACSOL suggests revising Form CR-415-INFO to confirm that granting of the petition is mandatory if the requirements of Penal Code section 290.5(a) are satisfied, and no hearing is requested. In addition, Form 415-INFO could also confirm that evidence of rehabilitation must not be submitted with the petition. Some logical places for these additions are Sections 1 and 8 of Form CR-415-INFO (“Time frame for court’s decision” and “Hearing”). The Judicial Council may also consider adding the clarification to Section 1 of Form CR-415-INFO (“General Information”) so that Registrants can read the entire petition with this information in mind. and 8 of Form CR-415-INFO (“Time frame for court’s decision” and “Hearing”). The Judicial Council may also consider adding the clarification to Section 1 of Form CR-415-INFO (“General</p>	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>Information”) so that Registrants can read the entire petition with this information in mind.</p> <p>Clarity regarding the precise documents that qualify as “proof of the person’s current registration as a sex offender” to be submitted with the petition</p> <p>Penal Code section 290.5(a)(1) states that “The petition shall contain proof of the person’s current registration as a sex offender.” This requirement is referenced in several locations throughout the Forms. However, in two locations, Form CR-415-INFO uses the phrase “proof that you are current with your registration” instead of “proof of current registration.” (See Sections 6, bullet 1; and Section 7.) The difference in language could imply that the petitioner must submit two separate items, that is, proof that the petitioner is “currently registered,” as well as separate proof that the petitioner is “current with his/her registration.” This risk of confusion is especially acute in Section 6 of Form CR-415-INFO because the two different phrases are used in neighboring bullet points (1 and 2) when describing the process of filing the petition. To avoid this risk of confusion, and to uniformly employ the language used in Penal Code section 290.5, ACSOL suggests replacing the phrase “proof that you are current with your registration” with “proof of current registration” in both Section 6 and Section 7 of Form CR-415-INFO.</p> <p>Relatedly, Registrants surveyed by ACSOL expressed confusion about the precise documents that qualify as “proof of current registration” for the purposes of the petition. If appropriate, the Forms could confirm that “proof of current registration” includes the DOJ Form CJS 8102S, “Sex Offender Registration Change of Address / Annual or Other Update,” which all Registrants fill out when they register, as well as any other form, cards, or confirmatory documents</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>It is the committee’s understanding that the proof of current registration for the termination process will be provided to the petitioner by the registering law enforcement agency via the California Sex and Arson Registry. There is no formal name for this form at this time.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>the court’s decision” on the petition by stating that “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.” To reduce the number of potential inquiries to courts by Registrants who are waiting for a decision on their petition, perhaps Section 8 of Form CR-415-INFO could be expanded to include a comprehensive summary of the timeline and deadlines spelled out in Penal Code section 290.5(a)(2), including the fact that the granting of the petition is mandatory if the petitioner is eligible and no hearing is requested by the District Attorney in the county where the petition is filed.</p> <p>Minor points of clarification Section 4, bullet I of Form CR-415-INFO states that, for Tier 1 and Tier 2 Registrants, one of the criteria for eligibility to petition is that "you are not the subject of pending criminal charges." ACSOL suggest revising this statement to conform with Penal Code section 290.5(a)(2), which states that the only " pending criminal charges" that will disqualify a petition are "pending charges...which could extend the time to complete the registration requirements of the tier or change the person ' s tier status ," i.e., pending charges for failure to register as a sex offender, or a new offense that would itself require registration. (See Cal. Penal Code § 290(e).)</p>	<p>incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>
<p>Ira Mark Ellman Distinguished Affiliated Scholar University of California Berkeley Tara Ellman M.B.A. Consultant</p>	<p>1. Registrants with non-California registerable convictions</p> <p>A. Error in eligibility statement on the information form, CR-415-INFO.</p> <p>This form states in Section 2 that to be eligible to petition for relief under Section 290.5 you must be “required to register...as a result of a California state court conviction.” This statement is incorrect.</p>	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>Section 290.5(a)(1) allows petitions on behalf of Tier One and Tier Two registrants "required to register pursuant to Section 290". There are two groups required to register under Section 290. Subdivision (c) imposes a registration requirement on those with California convictions. Subdivision (d) explains these registration rules apply to a "person described in subdivision (c), <i>or who is otherwise required to register pursuant to the Act</i>" (emphasis added). Both groups, subdivision (d) says, shall register "for 10 years, 20 years, or life", depending upon their tier classification. The only way those in either group who are placed in Tiers One or Two can register for 10 or 20 years is through the petition process established by Section 290.5. Both Subdivisions (d) and (c) are thus necessarily referenced by the language in Section 290.5(a)(1) allowing petitions on behalf of those "required to register pursuant to Section 290".</p> <p>The rest of Section 290 points the same way. Section 290(a) defines "the Act" as "Sections 290 to 290.024, inclusive". It thus includes Section 290.005, the section addressing individuals with non-California sexual convictions equivalent to California registerable offenses. They are thus among those to whom Section 290(d) refers when it references individuals "otherwise required to register under the Act". Section 290(d)(4)(A) references Section 290.005 explicitly, directing that individuals with non-California convictions be placed in the same tier as those with the equivalent California convictions "described in subdivision (c)". If there is no equivalent California registerable offense, subdivision (d)(4)(B) places them in Tier Two. The section's careful directions explaining how each registrant with a non-California conviction should be classified into a California tier has the obvious purpose of identifying those entitled to petition for removal after either ten or twenty years.</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>A rule limiting petitions to those whose triggering conviction was in California state court would exclude all California residents prosecuted in federal court for an offense committed in California, including a registrable offense committed on Indian land or on federal land such as national parks. It would exclude all Californians convicted in the court of another state in which they resided temporarily to attend school, or for their work. These exclusions would violate the policy adopted by the legislature, which is to treat all similar offenses similarly, without regard to where they were committed or the court in which they were prosecuted. They are inconsistent with the core policy purpose of the Act, which was to allow relief from California registration for all those in Tier One or Two who live here.</p> <p><i>For these reasons, Section 2 of CR-415-INFO should be amended to delete, in the first bullet point, the words “as a result of a California state court conviction.”</i></p> <p>Other mistakes of law</p> <p>a. Section 4 of the INFO form, in the first bullet point, tells the petitioner he is only eligible if “you are not subject to pending criminal charges”. This is wrong. You are ineligible if there are pending criminal charges that could affect your tier designation, but other criminal charges do not affect eligibility. See Section 290.5(a)(2).</p> <p>b. Page 9 of the INFO form helpfully distinguishes the four different kinds of petitions: Tier 1 (adult) Tier 2 (adult) Tier 2 (10 year registration exception) Tier 3 (20-year exception when tier 3 is based solely on risk</p>	<p>The committee agrees with this suggestion and has incorporated it into the amendments that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>assessment) There is, however, a difficulty with the two exception categories. These difficulties may be beyond the Council’s ability to fix, but they should at least be noted. The law is clear that petitions on behalf of tier 1 and 2 petitioners filed under Section 290.5(a)(2) trigger a hearing only when the DA of the county in which the petition is filed requests it within the 60-day period allowed. If there is no request, the petition will normally be granted. But there are no similar provisions in Section 290.5(b), which governs the two “exception” petitions. Section 290.5(b) mentions neither the DA nor the law enforcement agency, and contains no statement that the petition must be served on them, that they must act within any particular time period, or that the DA may request a hearing. The statute just says that “the court shall determine whether community safety would be significantly enhanced.”</p> <p>The forms do not reflect these procedural distinctions between the two regular petitions, and the two exception petitions. four categories of petition. Section 3 of the INFO form does contain a table setting forth the minimum registration period required, for each of the four petition categories, before a petition is filed. Section 7 of the petition form asks the petitioner to identify which of the four categories the petition falls into. But there is nothing to suggest any difference in the petition process. Apparently, the Council interprets the statute as importing the procedural provisions set out in subdivision 290.5(a) into subdivision § 290.5(b), so that they apply to petitions filed under both subdivisions. It is not clear to us that the section can be read this way. But if the Council chooses to go forward with this interpretation, we have two observations. First, the forms must somewhere explain this interpretation of the statute, for the benefit of attorneys assisting petitioners as well as <i>pro se</i> petitioners. Second, if the Council’s position is that the procedural provisions set out in § 290.5(a) also apply to</p>	<p>The committee discussed the suggestion but does not recommend including any statutory interpretation.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>petitions filed under § 290.5(b), then surely all of these procedural provisions must apply. There is no basis for importing some of them into subdivision (b), but not others. This means § 290.5(b) petitions also trigger time limits within which the district attorney must file a hearing request, and the rule that the petition is normally granted if he files no request within that 60-day time period.</p> <p>Additional information that should be provided to petitioners.</p> <p>1. Section 6 tells registrants their petition must include “proof that you are current with your registration.” Petitioners need more guidance to know exactly what’s needed to satisfy this requirement. Presumably, a receipt from the petitioner’s registering agency acknowledging completion of his most recent required registration would suffice; if so, Section 6 should state that explicitly. But as the statute does not establish any exclusive method of proof, other documents may also suffice. The form should include any practical alternatives to a receipt that the committee believes acceptable.</p> <p>We also note that the wording on the draft form in the first sentence of Section 6 (“proof you are current with your registration”) departs from the statutory language. Section §290.5(a)(1) requires “proof of the person’s current registration as a sex offender”. It seems clear the statutory requirement is met by a receipt from the registering agency showing petitioner is currently registered, as it would establish the petitioner’s “current registration.” The different phrasing on the draft form, however, could be mistakenly read to require the petitioner to prove every item of his registration is “current”, even though California law does not require such continuous updating of every item included in a registrant’s periodic registration renewals. (Section 290.12(a), only requires most registrants “to</p>	<p>The committee recommends replacing “proof that you are current with your registration” with “proof of current registration.”</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>register annually, within five working days of his or her birthday, to update his or her registration”; Subdivisions (b) and (c) do require transients and those adjudicated “sexually violent predators” to update at 30 or 90 day intervals, respectively.) We therefore suggest the language of the form, here and in Section 7, be revised to conform it to the language of the statute.</p> <p>2. Section 8 offers a single sentence on the time frame for the court’s decision, saying only it “may take four months or longer”. We believe this section should provide petitioners a more complete explanation of the specific deadlines set forth in § 290.5(a)(2). In particular, the form should explain that</p> <p style="padding-left: 40px;">a. the law enforcement agency has 60 days to report, to the court and the district attorney, whether the registrant is eligible to petition, unless it discovers a conviction not previously considered by the Department of Justice. In that case it may delay while the Department of Justice considers whether the newly-identified conviction requires placing petitioner in a different tier.</p> <p style="padding-left: 40px;">b. If the district attorney desires a hearing on the petition, it must request it within 60 days after receiving law enforcement’s eligibility report.</p> <p style="padding-left: 40px;">c. The statute states that if the district attorney does not request a hearing, “the petition for termination shall be granted”, so long as the petitioner provided the required proof of current registration, and the registering agency reported the petitioner is eligible to petition. This important fact should be stated here.</p> <p>3. The initial 60-day period within which the law enforcement agency must ordinarily report to the court and the district attorney as to petitioner’s eligibility starts running when it receives the petition. It might be useful if CR-416, the form</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee is not moving forward with form CR-416.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>which service was made and the method of service. It would probably also be useful if a cross reference to this material on the INFO sheet was included at the beginning of Section 9 of the petition, something like “See Section 7 of CR-415 INFO for an explanation of how and to whom service must be made.” Perhaps Section 9 should also remind the petitioner that a copy of CR-416 be included with the petition when it is served.</p> <p>d. INFO sheet section 3: Perhaps it’s best to avoid the use of the word “toll”, which non- lawyers are unlikely to understand. E.g., one could replace the current second sentence of this section with this sentence: “Time spent in incarceration, placement, or commitment does not count toward the minimum required registration period, unless it was the result of an arrest that did not result in a conviction, adjudication, or revocation of probation or parole.”</p> <p>e. INFO sheet section 4. This could be made clearer if it were divided into two sections, separating out the two exception provisions from the others. As it stands, the first word “only” in the first bolded sentence is wrong, because you do not have the reach the end of your registration period to apply under either of the exception categories. But the phrase would be correct if it were clear it applied only to the petitions referenced in the first two rows of the table in Section 3. If section 4 is limited to the two regular petition categories, then a new Section 5 could deal with the two exception categories.</p> <p>A new Section 5 would contain the second bolded paragraph in current section 4. This paragraph needs to be corrected, which will make it a bit longer anyway. The paragraph mistakenly omits two additional attributes that would disqualify a Tier 3 applicant: the petitioner is also disqualified if required to register for a section 288 offense (lewd or lascivious) or a</p>	<p>The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>1192.7(c) offense (serious felony).</p> <p>f. INFO section 9. It may be clearer and more accurate to replace “Prosecuting agency” with “district attorney in the county where the petition is filed.” The current language might be read to suggest, erroneously, that the D.A. of the county of conviction can request a hearing.</p> <p>The section should also make clear that there is no hearing if the DA does not request one, and that in such a case, the court must grant the petition if it finds “the required proof of current registration is presented in the petition, provided that the registering agency reported that the person met the requirement for termination pursuant to subdivision (e) of Section 290, there are no pending charges against the person which could extend the time to complete the registration requirements of the tier or change the person’s tier status, and the person is not in custody or on parole, probation, or supervised release.”</p>	<p>The committee discussed the suggestion but prefers to use the term “district attorney” to reflect the statutory language of Penal Code section 290.5.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>
<p>San Diego County Office of the Public Defender by Kate Braner, Chief Deputy</p>	<p>Section 2: The information sheet suggests only individuals required to register as a result of a California state court conviction are eligible to petition. Pursuant to Penal Code sections 290 and 290.5 registrants may also be eligible to petition for relief if they are required to register in California for convictions from other states, federal convictions, and military convictions.</p> <p>Section 4:</p> <ul style="list-style-type: none"> • The information sheet incorrectly states the petitioner “cannot be the subject of pending criminal charges.” That is an oversimplification. By statute, the petitioner cannot be pending charges which could extend the minimum registration period or could change the Tier status. • The second bullet point is “you are not in custody.” Pro-per 	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>litigants will probably understand better “you are not currently in jail or prison.”</p> <p>Section 7: Instructing petitioner to contact every agency that must be served to check if there is a specific person or mailing address may be good advice, but the way it is written makes it appear such action is required. The individual agencies who receive petitions should be responsible for making sure the petition delivered to the appropriate individual within the agency. It should not be incumbent upon the petitioner to track down that information.</p>	<p>The committee does not recommend changes to this section.</p>
Superior Court of Orange County	<ol style="list-style-type: none"> 1. CR-415-INFO, Section 3: Starts by stating “your tier” and later says “where they” register. Needs to be consistent. 2. CR-415-INFO, Section 3: Should something be added about where they can go to get their Tier information? For example: “The Department of Justice will determine tier placement for all current registrants. Once you have been tiered, you can obtain this information directly from the law enforcement agency where you register...” 3. CR-415-INFO, Section 3: Should Tier 3 – Lifetime be added to the chart? 4. CR-415-INFO, Section 4: Recommend removing “coming within” – “If you are assessed as Tier 1 or Tier 2...” 5. CR-415-INFO, Section 7: Recommend changing “on” to “to” in first paragraph. “...must deliver a copy of the petition and proof that you are current with your registration to:” 	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee does not recommend adding the lifetime tier to the chart since registrants in that tier are generally ineligible to petition to terminate.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>6. CR-415-INFO, Section 7: Recommend rewording second paragraph to “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 must also be delivered to...”</p> <p>7. CR-415-INFO, Section 7: Should the “Acknowledgment of Receipt” be added to the list of documents that must be delivered? If so, should there be something that tells the defendant they should fill out the form or should it be completed by the agency?</p> <p>8. CR-415-INFO, Section 8: Does not mention if the petitioner has a right to attend the hearing.</p> <p>9. CR-415-INFO, Section 8: Should something be added that the decision could take longer if DOJ requires more time to determine or reassess the tier level (TBD designation)?</p>	<p>The committee agrees with this suggestion and has incorporated it into the amendments that it is recommending for form.</p> <p>The committee is not moving forward with form CR-416.</p> <p>The committee discussed this suggestion but concluded that it did not need to be included in the information sheet. The committee notes that individual courts will be setting up the procedures for how and when the hearings will be held and will communicate that to the petitioners as needed.</p> <p>The committee does not recommend additional language regarding tier assessments.</p>
<p>Superior Court of San Diego County by Michael M. Roddy, Executive Officer</p>	<p>#4 Are there any requirements besides registering for my tier’s minimum time period? In the first bullet point, for the same reason as stated above, perhaps consider adding the following italicized language “You are not subject to pending criminal charges nor <i>suffered a subsequent conviction that extends your registration period</i>” The top of page 2 which lists the criteria in bullets that would exclude a Tier 3 offender from registering, it is recommended that an additional bullet be added that says, something along the lines of: <input type="checkbox"/> You were not required to register for a conviction pursuant to Penal Code section 288 or an offense listed in Penal</p>	<p>The committee does not recommend the suggestion, as it requests information that many petitioners may not accurately know.</p> <p>The committee agrees with this suggestion and has incorporated it, with modifications, into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>Code section 1192.7 (c).</p> <p>#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? The last two bullet points could be consolidated into one to read: “You were not convicted of a new offense requiring sex offender registration nor an 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.”</p> <p>#6 At the end of my minimum period of registration, where and how do I file my petition with the court? The third bullet says “contact the clerk or check the court’s website to see if any local rules exist regarding filing and/or service of the petition.” It is recommended that the language saying “contact the clerk” be deleted to avoid an influx of calls to court clerks.</p> <p>#7 Who else gets a copy of the petition and how? It is recommended that the word “also” be added to the paragraph right after the bullets to make it clear that both the county of offense and county of registration need to be served. The paragraph would read: “If your registerable offense is from a different county than the one you register in, the petition and proof of current registration must <i>also</i> be delivered to the law enforcement agency and the district attorney of the county of conviction of the registrable offense.”</p> <p>#9 Hearing The last sentence currently reads: “At the hearing, the court will make its decision about whether</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee prefers to keep the existing language.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>you should continue registering for community safety by reviewing the facts of your case and your conduct since the conviction.”</p> <p>It is recommended that this be modified to read: “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, your conduct <i>before and after</i> the conviction, and your current risk of sexual or violent reoffense, <i>among other factors.</i>”</p> <p>The modification is recommended in order to conform with the language in Penal Code section 290.5 which reads: “the court shall consider: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of the offense (known to the offender for less than 24 hours); criminal and relevant noncriminal behavior <i>before and after conviction</i> for the registerable offense; the time period during which the person has not reoffended; successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program; and <i>the person’s current risk of sexual or violent reoffense</i>, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if available.” (emphasis added).</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-416 (Acknowledgment of receipt)		
Commenter	Comment	Committee Response
<p>Los Angeles County District Attorney's Office By Bradley L. McCartt, Deputy-in-Charge</p>	<p>The Los Angeles County District Attorney’s Office sponsored SB 384 (Tiered Sex Offender Registration). There are over 140,000 sex registrants statewide who may be petitioning the court for relief from the duty to register beginning July 1, 2021. According to Department of Justice estimates, Los Angeles County will bear the burden of the largest number of petitions for removal from the sex offender registry. Form CR-416 places an additional non-statutory burden on law enforcement and the District Attorney which was not included in SB 384.</p> <p>This form requires acknowledgement of proof of service of the petition for removal from the registry and must be filed with the court within 10 days of the receipt of a petition. This transfers the burden regarding “proof of service” from the petitioner to the District Attorney’s Office and Law Enforcement Agency. In other post-conviction criminal petitions, such as 1170(d), Proposition 47 and Proposition 64, the respondent (District Attorney) is not tasked with the responsibility of submitting proof that they were properly served with the petition. That responsibility is on the moving party.</p> <p>This additional deadline and work are overly burdensome. District Attorneys are already required to file form CR-417 “Response by District Attorney to Petition to Terminate Sex Offender Registration “ with the court in response to each petition (following receipt of a petition, law enforcement has 60 days to complete their analysis and then once provided to the District Attorney, they have another 60 days to file form CR-417 with the court). District Attorneys and Law Enforcement Agencies will be forced to divert resources from processing petitions in order to meet this redundant task and arbitrary deadline.</p> <p>Even more disconcerting, because SB 384 requires additional</p>	<p>Based on these and other comments, the committee has decided not to move forward with the Acknowledgement of Receipt form.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-416 (Acknowledgment of receipt)		
Commenter	Comment	Committee Response
	<p>service of the petition on the District Attorney and Law Enforcement Agency in the county of original conviction, these agencies will now have the added burden of filing paperwork in other jurisdictions on petitions which would not be heard in their county. This was never anticipated.</p> <p>District Attorney’s Offices and Law Enforcement Agencies will already be tasked with responding to petitions under the strict deadlines actually proscribed by SB384. Due to COVID-19 and statewide budgetary cuts, the personnel and resources at these agencies will already be strained in order to meet the statutory deadlines imposed by SB384.</p> <p>For the above stated reasons, the Los Angeles County District Attorney’s Office objects to the use of Judicial Council Form CR-416.</p>	
<p>Los Angeles Police Department by Lauren Rauch, Detective/290 Coordinator</p>	<p>Form CR-416 is burdensome and creates unnecessary redundancy. Law enforcement will already be entering information from termination petitions into the California Sex and Arson Registry. In addition to evaluating and responding to each of these petitions, LAPD would also be required to complete and file CR-416 Forms with the court for every petition received.</p> <p>Comparatively speaking, completing and filing the form is similar to completing a search warrant return for every petition received. It is anticipated that 1,500 – 1,800 sex offenders within the jurisdiction of the Los Angeles Police Department (LAPD) will be eligible to file registration termination petitions beginning on July 1, 2022. Add to that the CR-416 Forms that LAPD will also be required to complete and file for petitioners residing outside of LAPD’s jurisdiction. These are petitions that LAPD is not even handling, but was the investigating agency for the petitioner's qualifying conviction.</p>	<p>Based on these and other comments, the committee has decided not to move forward with the Acknowledgement of Receipt form.</p>

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Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-416 (Acknowledgment of receipt)		
Commenter	Comment	Committee Response
Los Angeles County Sheriff Department by Alex Villanueva, Sheriff	<p>On behalf of the Los Angeles County Sheriff's Department, we strongly oppose the proposed rule relating to the implementation of SB384, Sex Offender Registration Act, specifically the adoption of Form CR-416.</p> <p>The Proof of Service requirement of Form CR-416, is redundant and would put an unnecessary burden on law enforcement agencies statewide. The Los Angeles County Sheriff's Department currently supervises more than 4000 registered sex offenders. Based on the California Department of Justice 's estimate that at a minimum 30 percent of registered sex offenders would be eligible or petition for termination of sex offender requirements, Detectives at the Department's 23 patrol stations would be responsible for more than 1200 petitions on July 1, 2021.</p> <p>Adoption of Form CR-416 would immediately overwhelm those tasked with monitoring the state's registered sex offender population and take precious time away from completing the investigations required for each petition received. Additionally, the cost associated with ensuring this newform is received by the appropriate station, processed, filed in the appropriate counties, in the prescribed timeframe would be excessive.</p>	Based on these and other comments, the committee has decided not to move forward with the Acknowledgement of Receipt form.
San Diego County District Attorney by Summer Stephan, District Attorney	<p>Thank you for the opportunity to provide public comment regarding proposed Judicial Council Form CR-416. For almost three years, my office has been helping lead the statewide charge with respect to the roll-out of SB384. We've hosted statewide stakeholders to get prepared and train law enforcement up and down the state. We've engaged our local law enforcement partners to develop strategic planning to meet this transformational shift in the tiering of sex registrants. We are working tirelessly behind the scenes with our law enforcement agencies to get ready for the sea change in</p>	Based on these and other comments, the committee has decided not to move forward with the Acknowledgement of Receipt form.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-416 (Acknowledgment of receipt)		
Commenter	Comment	Committee Response
	<p>process, workloads, and logistics. Although we are never known to shy away from more work, I respectfully oppose the proposed Form CR-416 as it creates an undue burden while also shifting responsibility from the petitioner to law enforcement agencies and prosecuting agencies to generate and provide proof of service to the court.</p> <p>There are over 140,000 sex registrants in our 58 counties who may be petitioning the court for termination of the duty to register beginning on July 1, 2021. Law enforcement agencies and prosecutor’s offices are tasked with responding to petitions under the strict turnaround deadlines proscribed by SB384. Form CR-416 adds an undue burden by requiring our agencies to generate and return this additional form to the court within 10 days of being served with a petition for termination by a sex registrant.</p> <p>In San Diego County, there are over 4,600 sex offenders who could potentially file a petition for termination and for whom our agencies, law enforcement and prosecutors, would be required to file Form CR-416. In addition, consistent with SB384, law enforcement agencies and prosecuting agencies would also be responsible for filing Form CR-416, for any petition served by a sex registrant previously convicted in San Diego but who now resides in a different county in California. In that scenario, Form CR-416 would require our local agencies to file Form CR- 416 with the Superior Court in the county in which the sex registrant currently resides, at the time of filing of the petition. This adds yet an addition burden for our agencies to figure out both the correct Superior Court and manner, in which to file Form CR-416. This responsibility would carry on in perpetuity in light of the new tiered sex offender registry schema.</p> <p>Form CR-416 creates an additional, non-statutory,</p>	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-416 (Acknowledgment of receipt)		
Commenter	Comment	Committee Response
	<p>responsibility for law enforcement and prosecuting agencies who will have to divert time and resources from the processing and responding of the actual termination petitions in order to process and meet this additional deadline. Pre-COVID, our agencies were already facing a challenge to meet the tight deadlines and mandates of SB384. Post-COVID budgetary cuts, our personnel and resources will be hard- pressed to meet the requirements of SB384 in addition to the requirements created by Form CR- 416.</p> <p>Finally, Form CR-416 shifts the responsibility to verify that a petition was properly served from the petitioner (sex offender) to the responding party (law enforcement and prosecuting agencies). The responsibility of returning a proof of service to the court lies with the moving party who is seeking relief from the court, not the respondent. In other post-conviction criminal petitions, such as 1170(d), Proposition 47, and Proposition 64, the respondent (District Attorney) is not tasked with the responsibility of submitting proof that they were properly served with the petition.</p> <p>That responsibility falls on the moving party. My office is well-equipped at maintaining databases, accurately tracking petitions received, record-keeping on all criminal matters from misdemeanor to homicide cases, and managing other complex pleadings and petitions electronically. For almost 15 years my office has enjoyed a sound electronic case management system and is able to quickly retrieve data and properly document any developments on a particular case or petition.</p> <p>For the reasons delineated above I respectfully oppose to an additional Form CR-416. Our law enforcement community resources are tapped as thin as they can be during this pandemic and during this budget crisis. Law enforcement agencies are expert at record-keeping, tracking, and documenting what information comes as intake. Time is better</p>	

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Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-416 (Acknowledgment of receipt)		
Commenter	Comment	Committee Response
	spent focused on processing the requests themselves and doing the complex “tolling” analysis required by SB384. The responsibility to file a proof of service with the court should rest solely upon the moving party – in this case the petitioner seeking termination from his/her sex registration duty.	
San Diego County Police Chiefs’ and Sheriff’s Association by Chief Roxana Kennedy, President Chula Vista, California	<p>The San Diego County Police Chiefs’ and Sheriff’s Association, which includes the San Diego County District Attorney respectfully objects to the requirement of Judicial Council Form CR-416. Form CR-416 creates an undue burden while also shifting responsibility from the petitioner to law enforcement agencies and prosecuting agencies to generate and provide proof of service to the court.</p> <p>There are over 140,000 sex registrants in our 58 counties who may be petitioning the court for termination of the duty to register beginning on July 1, 2021. Law enforcement agencies and prosecutor’s offices are tasked with responding to petitions under the strict turnaround deadlines proscribed by SB384. Form CR-416 adds an undue burden by requiring our agencies to generate and return this additional form to the court within 10 days of being served with a petition for termination by a sex registrant.</p> <p>In San Diego County, there are over 4,600 sex offenders who could potentially file a petition for termination and for whom our agencies, law enforcement and prosecutors, would be required to file Form CR-416. In addition, consistent with SB384, law enforcement agencies and prosecuting agencies would also be responsible for filing Form CR-416, for any petition served by a sex registrant previously convicted in San Diego but who now resides in a different county in California. In that scenario, Form CR-416 would require our local agencies to file Form CR-416 with the Superior Court in the county in which the sex registrant currently resides, at the time of filing</p>	Based on these and other comments, the committee has decided not to move forward with the Acknowledgement of Receipt form.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-416 (Acknowledgment of receipt)		
Commenter	Comment	Committee Response
	<p>of the petition. This adds yet an additional burden for our agencies to figure out both the correct Superior Court and manner, in which to file Form CR-416. This responsibility would carry on in perpetuity in light of the new tiered sex offender registry schema.</p> <p>Form CR-416 creates an additional, non-statutory, responsibility for law enforcement and prosecuting agencies who will have to divert time and resources from the processing and responding of the actual termination petitions in order to process and meet this additional deadline.</p> <p>Pre-COVID, our agencies were already facing a challenge to meet the tight deadlines and mandates of SB384. Post-COVID budgetary cuts, our personnel and resources will be hard-pressed to meet the requirements of SB384 in addition to the requirements created by Form CR-416.</p> <p>Finally, Form CR-416 shifts the responsibility to verify that a petition was properly served from the petitioner (sex offender) to the responding party (law enforcement and prosecuting agencies). The responsibility of returning a proof of service to the court lies with the moving party who is seeking relief from the court, not the respondent. In other post-conviction criminal petitions, such as 1170(d), Proposition 47, Proposition 64, etc., the respondent (District Attorney) is not tasked with the responsibility of submitting proof that they were properly served with the petition. That responsibility falls on the moving party.</p> <p>For the reasons delineated above, the San Diego County Police Chiefs' and Sheriffs' Association respectfully objects to this additional form CR-416. Our police agencies are expert at keeping records, tracking, and documenting information as intake. Our time should be focused on processing the requests</p>	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-416 (Acknowledgment of receipt)		
Commenter	Comment	Committee Response
	<p>themselves and completing the complex “tolling” analysis that SB 384 requires. The responsibility to file a proof of service with the court rests solely upon the moving party, i.e. the petitioner seeking termination from his/her registration duty.</p>	
<p>San Diego County Office of the Public Defender by Kate Braner, Chief Deputy</p>	<p>The simple proof of service filed by petitioner as shown in Section 9 of CR-415 should be sufficient to establish the law enforcement agencies and prosecutorial agencies received the petition and proof of current registration. Requiring law enforcement and the District Attorney to complete and return a form creates extra work for those agencies and for the court clerks who would need to file between two to four additional forms per petitioner.</p> <p>Further, what is the consequence if the law enforcement or prosecutorial agencies fail to return the form? It is the receipt of the petition with proof of registration which triggers the statutory timelines. If the court does not receive the CR-416 form, does that mean the court will consider the petition inappropriately served? If the date of service in the proof of service on CR-415 and the date of receipt on CR-416 differ, which controls? What does the form add to the petition process that is not already contemplated by proof of service?</p>	<p>Based on these and other comments, the committee has decided not to move forward with the Acknowledgement of Receipt form.</p>
<p>Superior Court of Orange County</p>	<ol style="list-style-type: none"> 1. Can lines be added to the Superior Court of California address box to make it fillable? 2. Section 3: Since the registering and law enforcement agency county of conviction be the same as the county of registration? Can the form state "if different than county of registration"? 3. Section 3: Capitalize “Attorney” in District Attorney boxes. 	<p>The committee is not moving forward with form CR-416.</p>
<p>Trial Court Presiding Judges Advisory Committee/Court</p>	<p>One technical change on Form CR 416. While there is a section to add a “date” where the individual acknowledges receipt of</p>	<p>The committee is not moving forward with form CR-416.</p>

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Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-416 (Acknowledgment of receipt)		
Commenter	Comment	Committee Response
Executives Advisory Committee Joint Rules Subcommittee (JRS)	the copy of a petition to terminate sex offender registration and proof of current sex offender registration, there is no signature date for the agency representative when signing the document. The "signed date" will be important to the court in determining if the document was appropriately returned to the court within the stated time frame.	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-417 (district attorney response form)		
Commenter	Comment	Committee Response
Alliance for Constitutional Sex Offense Laws (ACSOL) by Janice M. Bellucci, Attorney & Executive Director Chance X. Oberstein, President Sacramento	Section 2(c) of Form CR-417 and Section 3 of Form CR-418 provide check boxes for some, but not all, of the grounds on which the petition could be denied. ACSOL suggests adding check boxes that correspond to the other grounds for denial, such as “required proof of registration is missing from the petition.”	The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.
California Department of Justice by Linda Schweig, Assistant Director Justice Data and Investigative Services Bureau Sacramento, California	**The Department of Justice requests adding a line for the district attorney to write the petitioner’s CSAR petition number on the response form.	The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.
San Diego County Office of the Public Defender by Kate Braner, Chief Deputy	Per the instruction sheet, “the prosecution 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.” The response form only suggests a hearing is requested for the later prong (the community safety prong.) The way this form is drafted suggests no hearing is required if the prosecutor believes the petitioner has not registered for the minimum time period. Clearer drafting would be: o The district attorney has no objection to this petition. o The district attorney objects to granting the petition and requests a hearing because: o Community safety would be significantly enhanced . . . o Petitioner has not met the minimum time period for registration o Petitioner does not qualify for termination because:	The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.
Superior Court of Orange County	1. Can lines be added to the Superior Court of California address box to make it fillable?	All forms will be fillable.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-417 (district attorney response form)		
Commenter	Comment	Committee Response
	2. Would the court fill out the hearing date after this form is filed and use it to give notice to the Petitioner and DA about the hearing date? 3. Section 2, c: Should (c)(1) be a reason under (b)? PC 290.5(a)(2) states the DA can request a hearing on the petition if the petitioner has not fulfilled the requirement as described in PC 290(e) or if community safety would be significantly enhanced. 4. Section 2: Can DA requests petition to be denied because petitioner is in custody or under supervision, etc. Or would this fall under "Other"? 5. Should the Name and Signature lines have a title? Like Printed Name of DA, signature of DA	The court may, but it not required, to use the form to notify parties of the hearing date. The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption. The committee prefers the existing format.

Forms CR-417 (district attorney response form) and CR-418 (order)		
Commenter	Comment	Committee Response
Ira Mark Ellman Distinguished Affiliated Scholar University of California Berkeley Tara Ellman M.B.A. Consultant	Section 3 of CR-418 provides a form for summary denial. It contains 2 checkboxes identifying specific reasons for the summary denial, and a third that simply states "other" with a single blank line for further explanation. The statute provides for more than two bases for summary denial. We believe the order should identify the basis for the summary denial as explicitly as possible, especially as petitioners may reapply, and more guidance as to when they can reapply would help relieve the petitioner and the court of the burdens of unripe re-applications. An expanded set of checkboxes would make it easy for the court to do this. We suggest below a revised version of this portion of the form to do this. If the petition is rejected summarily because it is filed before the end of the mandatory minimum registration period, the order should include the date on which the petitioner will be eligible to apply, a date the court will necessarily have determined in order to conclude the petition was filed prematurely. If the	The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Forms CR-417 (district attorney response form) and CR-418 (order)		
Commenter	Comment	Committee Response
	<p>court’s calculation included an extension of the mandatory minimum period because of either a statutory tolling requirement or additional period triggered by a conviction for failure to register, that fact should also be noted, to help forestall mistaken appeals by petitioners unaware of these extension rules.</p> <p>Our suggested revision of this portion of the form is set forth here. (The italicized language in this suggested revision would be included if the Council chooses to import provisions of § 290.5(a) into the criteria for granting a petition under § 290.5(b).)</p> <p>The court summarily denies the petition because it finds petitioner is ineligible because he or she is</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. Registered in tier 1 or tier 2, and <input type="checkbox"/> has not met the mandatory minimum registration period for that tier. Unless petitioner is convicted of a new offense extending it, the mandatory minimum registration period will be met as of _____ [Insert date] <input type="checkbox"/> The mandatory minimum period that would otherwise have applied was extended to the above date as a result of petitioner’s incarceration between _____ and _____ [Insert dates] <input type="checkbox"/> The mandatory minimum period was extended because of the petitioner’s conviction for failure to register. <input type="checkbox"/> has not met one or more of the other criteria listed in Section 290.5(a)(2): <ul style="list-style-type: none"> <input type="checkbox"/> required proof of current registration is missing from the petition <input type="checkbox"/> there are pending charges against petitioner which could extend the time to complete the registration requirements of the tier or change petitioner’s tier status 	

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Forms CR-417 (district attorney response form) and CR-418 (order)		
Commenter	Comment	Committee Response
	<p><input type="checkbox"/> petitioner is in custody, or on parole, probation, or supervised release.</p> <p><input type="checkbox"/> 2. Registered in tier 2, and</p> <p><input type="checkbox"/> has not met all the criteria for a 10-year registration exception in section 290.5(b)(1) and (2)</p> <p><input type="checkbox"/> has not met one or more of the other criteria listed in Section 290.5(a)(2):</p> <ul style="list-style-type: none"> <input type="checkbox"/> required proof of current registration is missing from the petition <input type="checkbox"/> there are pending charges against petitioner which could extend the time to complete the registration requirements of the tier or change petitioner’s tier status <input type="checkbox"/> petitioner is in custody, or on parole, probation, or supervised release. <p><input type="checkbox"/> 3. Registered in tier 3 solely on the basis of a risk assessment score, and</p> <p><input type="checkbox"/> has not met all criteria for a 20-year registration exception in section 290.5(b)(3).</p> <p><input type="checkbox"/> has not met one or more of the other criteria listed in Section 290.5(a)(2):</p> <ul style="list-style-type: none"> <input type="checkbox"/> required proof of current registration is missing from the petition <input type="checkbox"/> there are pending charges against petitioner which could extend the time to complete the registration requirements of the tier or change petitioner’s tier status <input type="checkbox"/> petitioner is in custody, or on parole, probation, or supervised release. <p>The same changes should be made to the checkboxes in Section 2(c) of CR-417, the form for response by the district attorney. Changes to CR-417 should also include the presumptive</p>	

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Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Forms CR-417 (district attorney response form) and CR-418 (order)		
Commenter	Comment	Committee Response
	ripeness date, as well as the same items identifying the reason for extending the period, tolling or a failure-to-register conviction, that the district attorney relies upon in calculating that date.	
Superior Court of San Diego County by Michael M. Roddy, Executive Officer	<p>CR-417, #2 Response and CR 418 # 3 Summary Denial</p> <p>There are other reasons that a court may be able to summarily deny a petition, other than those currently listed. Having an “Other” box is helpful, but it would also be useful to have a few additional bases for denials in check boxes listed. It would save time to be able to check a box rather than routinely having to write in the reason in the “Other” box. Also, this would also give Judges a “check list.” The additional check boxes requested are as follows:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Petitioner has not provided proof of current registration <input type="checkbox"/> There exist pending charges against Petitioner that extend or alter the registration period <input type="checkbox"/> Petitioner suffered a subsequent conviction, which extend or alter the registration period <input type="checkbox"/> Petitioner is currently in custody, on parole, probation, or supervised release 	The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-418 (order)		
Commenter	Comment	Committee Response
<p>Alliance for Constitutional Sex Offense Laws (ACSOL) by Janice M. Bellucci, Attorney & Executive Director Chance X. Oberstein, President Sacramento</p>	<p>Addition of blank line for “reasons” in Sections 4(a) and 4(b) of Form CR-418</p> <p>Section 4 of Form CR-418 concerns the court’s denial of a petition based upon a finding that community safety would be significantly enhanced by the petitioner’s continued registration. Section 4(a) provides a check box to indicate the denial of a petition brought under Penal Code section 290.5(a)(1) [i.e., “generic” Tier 1 and Tier 2 Registrants], along with a blank line for the court to describe its findings in connection with that denial.</p> <p>In contrast, Sections 4(b) and (4)(c) provide a check box to indicate the denial of a petition brought under the provisions of Penal Code section 290.5(b)(1) [i.e., Tier 2 Registrant petitioning after 10 years] and Penal Code section 290.5(b)(3) [i.e., Registrant placed on Tier 3 based solely on risk level], but do not provide blank lines for the court to describe its findings in connection with those denials. The addition of a blank line similar to that in Section 4(a) to Sections 4(b) and 4(c) of Form CR-418 would allow the court to describe its reasons for the denial, as well as provide guidance to petitioners when preparing a subsequent petition.</p>	<p>Penal Code section 290.5(a)(4) requires the court to state on the record the reason for its determination setting the time period after which a person under Tier 1 or Tier 2 may file a subsequent petition. Under Penal Code section 290.5(b), which governs the Tier 2 and Tier 3 exceptions, the court is required to set a time period after which a person may file a subsequent petition, but the section does not require the court to state its reasons. For this reason, the committee does not recommend including a line for the court to state its reasons for the determination of time on the order.</p>
<p>California Department of Justice by Linda Schweig, Assistant Director Justice Data and Investigative Services Bureau Sacramento, California</p>	<p>** The Department of Justice requests adding the petitioner’s birthdate and CSAR petition number on the order. The department also requests adding a reminder for the court to notify the department about its decision on the petition.</p>	<p>The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.</p>
<p>Ira Mark Ellman Distinguished Affiliated Scholar University of California Berkeley Tara Ellman</p>	<p>Section 4 of CR-418 is the checkbox for denying the petition after a hearing. Under § 290.5 the petition of an eligible petitioner can be denied only if the court finds “the community safety would be significantly enhanced by the petitioner’s</p>	<p>The committee does not recommend the suggestion, as it is goes beyond the statutory language.</p>

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Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-418 (order)		
Commenter	Comment	Committee Response
M.B.A. Consultant	continued registration. That means that the court must find both that the petitioner is a significant danger to those in his or her community, and also that continued registration will significantly reduce that danger. We would urge the Council to include this clarification of the standard, either here, or, perhaps more aptly, in Section 9 of the CR-415 INFO form.	
San Diego County Office of the Public Defender by Kate Braner, Chief Deputy	<p>Summary denial without providing the petitioner an opportunity to be heard on the issues of Tier designation, tolling, or extensions is problematic. Because of incomplete or inaccurate DOJ criminal history data, there are going to be disputes in some cases on these factual/legal issues. Petitioners should be afforded an opportunity to respond and present evidence.</p> <p>Further, if the court denies the petition, the petitioner should have an opportunity to address the court regarding the order for when they may file a subsequent petition. The court has broad discretion to set the time frame for filing a subsequent petition with very little information to make the decision.</p>	The committee agrees that petitioner should receive a copy of the district attorney’s response form and may file a reply for the court’s consideration. To ensure that petitioner receives a copy of the district attorney’s response, the committee recommends adding a line to the district attorney’s response form indicating service of the form to the petitioner.
Superior Court of Orange County	<ol style="list-style-type: none"> 1. Recommend changing title to “Order to Terminate Sex Offender Registration” 2. Is this order form to be prepared by the Court? If so, I don’t think there is a need for instructions above the file stamp section, court address box, or case number field. 3. Can lines be added to the Superior Court of California address box to make it fillable? 4. Section 1: If petitioner has attorney, do they list their name and address or is it still the petitioner? 5. Section 1: Add a line for email if provided. 	<p>The committee prefers the existing title.</p> <p>The instructions are included so petitioner is aware of the purpose behind the various boxes. In addition, this conforms to the style and format of Judicial Council forms.</p> <p>All forms will be fillable.</p> <p>The order should list the name of the petitioner and the preferred mailing address as reflected in the petition.</p> <p>The committee agrees with this suggestion and has</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-418 (order)		
Commenter	Comment	Committee Response
	<p>6. Section 3: The denial options should match the options listed in the DA response form. If the form is modified to include denial options because defendant is in custody or under supervision, then this should also be included here.</p> <p>7. Section 3: If petition was denied for improper service, where does that go? Under “Other”?</p> <p>8. Section 4: Add lines under findings for fillable form.</p> <p>9. Section 4, a: If petition is denied for lack of service does the re-petition date still have to be a year out?</p> <p>10. Section 4, a: Should this also be a time period similar to b and c? If so, recommend changing to read, "The court has set the time period after which the petitioner may file another petition for termination to _____ (months/years), which is at least one year from the date of denial, but not to exceed five years. The reason for the determination is as follows:"</p> <p>11. Section 4, a: Recommend adding more space to allow the court to fill in the reason.</p> <p>12. Section 4, b and c: Need clarity if this is the denial date or the new filing date? Recommend changing to read, "The court has set the time period after which the petitioner may file another petition for termination to</p>	<p>incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee has included an option to deny for incomplete or improper service.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>It is the committee’s position that a one-year waiting period would not apply.</p> <p>The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.</p>

Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, CR-417, and CR-418; approve form CR-415-INFO)

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Form CR-418 (order)		
Commenter	Comment	Committee Response
	<p>_____ (months/years), which is at least one year from the date of denial.</p> <p>13. Capitalize Judicial Officer in signature line.</p>	<p>The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.</p>
<p>Superior Court of San Diego County by Michael M. Roddy, Executive Officer</p>	<p>#4 Time Frame for Re-Petitioning Subdivision (a)-(c) as currently written to have the court setting a date in which a person may re-petition. Instead of actually setting a date, which may confuse some pro per petitioners who may think they <i>must</i> re-petition that day, it may be a better approach to simply list the numbers of years a person is prohibited from re-petitioning. This approach would also minimize the risk of the court potentially miscalculating the date. As an example, it could read something along the lines of:</p> <ul style="list-style-type: none"> a. For Tier 1 and Tier 2 denials: Petitioner is prohibited from re-petitioning for termination for ____ years (must be between 1 - 5 years) from the date of denial, for the following reasons: _____. b. For Tier 2 (10-year registration exception) denials: Petitioner is prohibited from re—petitioning for termination for _____ (must be at least 1 year) from the date of denial. c. For Tier 3 (based on risk level) denials: Petitioner is prohibited from re-petitioning for termination for ____ years (must be at least 3 years) from the date of denial. 	<p>The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.</p>
<p>Tricia Penrose Director - Juvenile Operations Superior Court of Los Angeles County</p>	<p>It appears on the face of the form that the only option after a hearing is to deny the petition. If there is a going to be a distinction about a hearing, then there should be an option for granting or denying after hearing.</p>	<p>An option to grant the petition, whether with or without a hearing, is in item 2 of the order.</p>

SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
1.	<p>Alliance for Constitutional Sex Offense Laws, Inc. (ACSOL) by Chance Oberstein, ACSOL President Janice M. Bellucci ACSOL Executive Director Sacramento, CA</p> <p>Bay Area Legal Aid by Brie Frank, Attorney Oakland, CA</p> <p>Community Legal Services in East Palo Alto by Katrina Logan, Directing Attorney—Economic Advancement Program Vinuta Naik, Senior Attorney—Economic Advancement Program</p>	AM	<p>Provide examples of what constitutes “proof of current registration”</p> <p>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.</p> <p>See comments on specific provisions below.</p>	<p>The committee will update the petition and information sheet to clearly state that the proof of current registration is available at the registering law enforcement agency.</p> <p>It is the committee’s understanding that the proof of current registration for the termination process will be provided to the petitioner by the registering law enforcement agency via the California Sex and Arson Registry. There is no formal name for this form at this time.</p>
2.	<p>Maria Alway Communications Supervisor- CLETS Coordinator Folsom Police Department</p>	A	No specific comment.	The committee appreciates the comment.
3.	<p>California Department of Justice by Arturo Rodriguez, Staff Services Manager III Sacramento, CA</p>	AM	<p>See comments on specific provisions below.</p> <p>General Comments: Will any direction be provided to the petitioners, district attorney’s offices or courts regarding transient statuses? For example, the district attorney’s office is required in draft form CR-416 to serve their response on the petition at the</p>	The committee will add a statement to the petition and information sheet reminding the petitioner of the importance of listing a

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List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>address set forth on the petition. How will this requirement be met if the petitioner does not maintain a mailing address?</p> <p>Also, how will any registrant address changes during the pendency of the petition be communicated to the district attorney's office so that the office does not serve their response on a non-current address? Will the district attorney's office be permitted to serve their response to the petitioner's email address if no mailing address is provided on the petition?</p>	reliable mailing address and updating the court with any changes.
4.	Eric Dela Pena San Francisco, CA	A	No specific comment.	The committee appreciates the comment.
5.	El Cajon Police by Rita Yako, Records Supervisor El Cajon, CA	A	No comment provided.	The committee appreciates the comment.
6.	Ira Mark Ellman Center for the Study of Law and Society, University of California, Berkeley and Tara Ellman, M.B.A., consultant	N/I	<p>See comments on specific provisions below.</p> <p>The meaning of "Supervised release".</p> <p>Penal Code section 290.5(a)(2) disallows applications from anyone "in custody or on parole, probation, or supervised release." There is some ambiguity in the statutory use of "supervised release". It is not clear whether it refers only to California supervised release, or is meant to also refer to federal supervised release. This is potentially important because federal supervised release typically continues for far longer period than does California parole or supervised release. For example, federal courts may impose up to lifetime supervision for possession of child pornography, an offense that is often a misdemeanor in California.</p>	The committee discussed the suggestion but does not recommend revising the existing language, as it more clearly communicates the exclusion categories to registrants.

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			These forms cannot resolve that ambiguity, but they should not add to it. We therefore suggest the forms consistently employ the statutory language in any references, as they now do in section 9 of the Info sheet, in section 2(c)(3) of the District Attorney response form, and in section 3(c) of the court order form. They depart from the statutory language in the introduction (on pg 3), in section 6 of the petition form, and in Section 4 of the Info form, where they refer to “parole, probation, postconviction supervised release, or any other form of supervised release.” The nonstatutory phrase “any other form of supervised release” may suggest more strongly that federal supervision is included. There is no reason to employ it.	
7.	San Diego County District Attorney’s Office by Ana A. De Santiago Deputy District Attorney San Diego	AM	See comments on specific provisions below.	
8.	San Diego County Office of the Public Defender by Katherine Braner, Chief Deputy, Development & Training	AM	See comments on specific provisions below.	
9.	San Luis Obispo District Attorney’s Office by Rosa Clark, Deputy District Attorney	AM	See comments on specific provisions below.	
10.	Superior Court of Fresno County by Tiffany Alvarado, Criminal Courtroom Support Manager	A	Does the proposal appropriately address the stated purpose? Yes Would the proposal provide cost saving? If so, please quantify? There would be no cost savings to the court as	The committee appreciates the comments.

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		<p>this is not a process that is currently in place. There would be a onetime implementation cost and continued incurred cost.</p> <p>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?</p> <p>Training – Total of 159 staff which includes 7 Supervisors, 30 Seniors and 122 Office Assistants & Judicial Assistants. Each session would be about 1 hour. (estimate 2 weeks in classroom setting; taking scheduling and coverage into consideration.) Additionally, 4 Judicial Assistants will each receive 8 hours of more detailed, hands on training. Counter staff that will be taking these forms in will receive an additional 4 hours of detailed training on the different tiers and taking in the forms.</p> <ul style="list-style-type: none"> • Training Judicial Assistants/Office Assistants/Managements/Seniors/Judges on implementation of new process. • Acceptance of petition (Counter staff) • Processing, calendaring and noticing requested hearings • Processing Orders including after hearings • Noticing applicable parties post decision <p>Processes to create: Creating & testing procedures – by Senior/Supervisor (estimate 1 week) This includes approval by Court administration and judges.</p> <ul style="list-style-type: none"> • Creating Procedures on acceptance and filing • Creating a desk to process this subject matter • Creating case numbers • Assigning department to hear petitions 		

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			<ul style="list-style-type: none"> Creating docket codes (including tracking and JBSIS and transmitting to DOJ) <p>Expected hours of training Our estimated number of training hours would be a total of 263 hours as reflected above.</p> <p>Would 6 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, see above answers in implementation requirements for courts.</p> <p>How well would this proposal work in courts of different sizes? The volume of petitions will either increase or decrease based upon knowledge of the tier system and number of existing registrations in each city/county.</p>	
11.	Superior Court of Orange County by Cherry Ward, Administrative Analyst IMPACT Team – Criminal / Traffic Operations	N/I	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings? If so, please quantify. No, these forms are legislation driven; will increase workload.</p> <p>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?</p>	The committee appreciates the comments.

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			<p>These petitions, once filed, require responses from LEA and prosecutors before the court can take further action and will not have “counts” or “charges”.</p> <ul style="list-style-type: none"> • Recommend a working group with our justice partners (DA, PD, LEA) to ensure expectations are in alignment • Workflows needed to outline: <ul style="list-style-type: none"> ○ Where these petitions will be filed ○ What courtrooms will hear them ○ How the cases are tracked to ensure timelines are followed ○ Will the court send correspondence to agencies when timelines are exceeded? ○ How cases will be initiated (manually?) ○ Requirements for acceptance (incomplete forms ok?) ○ New docket codes needed for filing the petition, noting service, filing responses, setting hearing dates, judicial ruling, JBSIS/DOJ reporting ○ How will cases be “closed” in our Case Management System? ○ How re-filed petitions will be handled (same case number?) • New procedure will be required • Training scope will depend on where these cases are filed/heard <p>Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Under normal conditions I believe so, but COVID may affect availability of Court Technology and judicial resources, judicial partners, etc.</p>	

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			<p>How well would this proposal work in courts of different sizes? We do not see any issues for courts of different sizes in relation to the forms.</p> <p>See comments on specific provisions below.</p>	

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
<p>Alliance for Constitutional Sex Offense Laws (ACSOL) by Janice M. Bellucci, Attorney & Executive Director Chance X. Oberstein, President Sacramento</p> <p>Bay Area Legal Aid by Brie Frank, Attorney Oakland, CA</p> <p>Community Legal Services in East Palo Alto by Katrina Logan, Directing Attorney—Economic Advancement Program Vinuta Naik, Senior Attorney—Economic Advancement Program</p>	<p>1. Add the language “to my knowledge” in Question 4 to Questions 6 and 8(a)</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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:</p>	<p>Responses to these comments are addressed below, in response to the charted comments.</p>

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SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

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Form CR-415 (petition)				
Commenter	Comment			Committee Response
	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.”	The committee discussed the suggestion, but does not recommend incorporating it. While a petitioner may not be aware of a pending charge from a prosecuting agency, a petitioner’s supervision status or a previously filed petition is information accessible to the petitioner.
	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.”	

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
<p>California Department of Justice by Arturo Rodriguez, Staff Services Manager III Sacramento, CA</p>	<p>CR-415: Item 4, Pending Charges It is noted that the third person is used throughout this draft form. For consistency, it is respectfully recommended that “To my knowledge, there are no pending charges...” be revised to read “To petitioner’s knowledge, there are no pending charges...”, replacing “my” with “petitioner’s”.</p> <p>CR-415: Item 10, Registration Period It is respectfully recommended that the language in Item 10 be revised so that “register for the time period required” is not misinterpreted as a requirement for consecutive or accrued registration time. The following language or a variation of the following may help clarify the requirements for petitioners: “Petitioner believes that they have met the requirements to fulfill the minimum time period for the completion of the required registration period required by petitioner’s tier designation.”</p>	<p>The committee does not recommend a revision, as “my” is used to accommodate both petitioner and counsel. There may be instances where counsel is also attesting that to counsel’s knowledge, there are no pending charges.</p> <p>The committee believes the existing language communicates the requirement clearly and does not recommend a revision.</p>

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
Ira Mark Ellman Center for the Study of Law and Society, University of California, Berkeley and Tara Ellman, M.B.A., consultant	Section 7 b(2)(c)(1) of the petition form says “one victim 14 to 17 years of age”, which is ambiguous as to whether 17 year olds are included. It would be better to say “...14 through 17 years...” or to use the language of the statute, “14 to 17 years of age, inclusive.”	The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.
San Diego County District Attorney’s Office by Ana A. De Santiago Deputy District Attorney San Diego	Regarding CR-415 Petition Form. Under section 2 b. “Identify the court in which petitioner was convicted of an offense requiring sex offender registration in California...” It would be very helpful to add language asking the petitioner to include the sex conviction court case number (if known). Including this information, will facilitate the courts, law enforcement agencies and District Attorney's office to more quickly identify the conviction for which the petitioner is required to register. Including the court case number (if known) will decrease work hours from the court's, law enforcement and DA's will have to do in order to “marry up” the petition with the old case file.	The committee agrees with this suggestion, with modifications, and has incorporated it into the form that it is recommending for adoption.
San Luis Obispo District Attorney’s Office by Rosa Clark, Deputy District Attorney	This portion of the petition is extremely vague and confusing. CR 415 Section titled: Registration Status and Information, subsection (c): This petition is being filed on or after petitioner’s next birthday after July 1, 2021, following the expiration of petitioner’s mandated minimum registration period.	The committee does not recommend any changes to the language since it mirrors the statutory language in Penal Code section 290.5(a)(1).

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Form CR-415 (petition)		
Commenter	Comment	Committee Response
<p>Superior Court of Orange County by Cherry Ward, Administrative Analyst IMPACT Team – Criminal / Traffic Operations</p>	<ol style="list-style-type: none"> 1. CR-415: There is a box for Court use only to add the hearing date and time. This information wouldn't be known until the response is received from the District Attorney requesting a hearing. We recommend removing this box. 2. CR-415, 3rd bullet point: Because a city attorney can be the prosecutor on a PC 290 case with sex offender registration ordered, recommend changing district attorney to prosecutor or prosecuting agency. 3. CR-415, Section 9: Because a city attorney can be the prosecutor on a PC 290 case with sex offender registration ordered, recommend changing district attorney to Prosecutor or Prosecuting Agency. 4. CR-415, Section 9: If not changed to prosecutor, recommend capitalizing "Attorney" in District Attorney boxes. 5. CR-415, Section 10: Recommend adding the following, "... required by petitioner's tier designation as determined by the Department of Justice." 	<p>The committee discussed the suggestion but prefers to keep the hearing date box, as some courts may want to set a check-in date and note it on the petition form.</p> <p>The committee discussed the suggestion but prefers to use the term "district attorney" to reflect the statutory language of Penal Code section 290.5.</p> <p>See response above.</p> <p>The committee discussed the suggestion and will capitalize "Attorney" when appropriate.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
<p>Alliance for Constitutional Sex Offense Laws (ACSOL) by Janice M. Bellucci, Attorney & Executive Director Chance X. Oberstein, President Sacramento</p>	<ol style="list-style-type: none"> 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 	
<p>Bay Area Legal Aid by Brie Frank, Attorney Oakland, CA</p>	<p>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</p>	<p>The committee discussed the suggestion, but does not recommend incorporating the suggestion. Penal Code section 290.5(a)(2) requires the petition and proof of</p>

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
<p>Katrina Logan, Directing Attorney—Economic Advancement Program Vinuta Naik, Senior Attorney—Economic Advancement Program Community Legal Services in East Palo Alto</p>	<p>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,¹ 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.</p> <p>¹ See Cal. Penal Code § 290.5(a)(2), eff. Jan. 1, 2021.</p> <p>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:</p> <ol style="list-style-type: none"> 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 	<p>current registration to be served on the law enforcement agency and district attorney in the county of conviction. It is not clear what, if any, notice requirement applies for non-California convictions, so the committee declines to specify that the service requirement on the law enforcement agency and district attorney in the county of conviction does not apply to non-California convictions at this time.</p>

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>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</p> <p>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</p> <p>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)</p> <p>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</p> <p>Based on the above reasons, ACSOL and BayLegal believe it necessary that the following changes are made to the corresponding section of the Forms:</p>	

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Form CR-415 (petition) and CR-415-INFO (information sheet)				
Commenter	Comment			Committee Response
	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	

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Form CR-415 (petition) and CR-415-INFO (information sheet)			
Commenter	Comment		Committee Response
	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.”

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Form CR-415 (petition) and CR-415-INFO (information sheet)				
Commenter	Comment			Committee Response
	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> ”	

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Form CR-415 (petition) and CR-415-INFO (information sheet)			
Commenter	Comment		Committee Response
	CR-415, § 9	<p>“Law enforcement agency (county of conviction):”</p> <p>AND</p> <p>“District attorney (county of conviction):”</p>	<p>“Law enforcement agency (county of conviction), <u>if convicted in a California court and county of conviction is different from county of registration:</u>”</p> <p>AND</p> <p>“District attorney (county of conviction), <u>if convicted in a California court and county of conviction is different from county of registration:</u>”</p>
California Department of Justice by Arturo Rodriguez, Staff Services Manager III Sacramento, CA	<p>CR-415: Item 7, Tier Designation and Eligibility; CR-415-INFO, Items 3, 5:</p> <p>The use of “has registered for at least” may lead some petitioners to incorrectly believe that registration for each year or consecutive registration for the period of their tier’s duration is required to allow for the granting of a petition. It is respectfully recommended that “has been subject to registration for at least” replace “has registered for at least”, or that the language be otherwise modified to clarify that consecutive registration or registration for any number of years is not required for a petition to be granted. Consider, for example, an individual convicted of a sex offense in State A who then moves to State B. State B does not require registration for the</p>	<p>The committee declines the recommendation. “Subject to registration” does not plainly convey the requirement that applies to most registrants - that a person must have registered for the minimum time period as required by their tier to qualify for termination (“A person. . . required to register pursuant to the Act shall register for 10 years, 20 years, or life. . .” (Pen. Code, § 290(d)).</p> <p>For registrants under Penal Code section 290.005, the statutory requirements under Penal Code section 290(d)(4) do not clearly anticipate the example provided</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>State A offense. The individual then moves to California, is required to register for the State A offense, and meets the minimum eligibility requirements to petition shortly after moving to California. That individual will be currently registered and will have been in the community offense-free for the required time period, but will not have registered for that entire time period.</p> <p>CR-415: Item 9, Service*</p> <p>It is noted in Item 6 of draft form CR-415-INFO that “Most courts will require you to serve the law enforcement agency and the district attorney’s office before filing the petition with the court.” It appears that Item 9 of draft form CR-415 was structured to permit this action. However, existing language and recent amendments to Penal Code section 290.5 do not support the filing of a petition following service.</p> <p>Please note that Senate Bill 118 (Stats. 2020, ch. 29) amended Penal Code section 290.5(a)(2) to add the following language: “The registering law enforcement agency shall report receipt of service of a filed petition to the Department of Justice in a manner prescribed by the department.” The added language contemplates the filing of petition will take place prior to service upon the registering law enforcement agency. The existing language in the first sentence of Penal Code section 290.5(a)(2) also supports this position, in that the petition is required to be served upon the registering law enforcement agency and the district attorney in the county in which the petition is filed—in other words, the proper district attorney’s office and registering law enforcement agency to serve are dependent upon the county in which the petition is first filed. This language also supports that filing is required prior to service. Should a petitioner serve a copy of an unfiled petition on a registering agency, such agency will not be mandated to report service of such a petition.</p>	<p>by the commenter. Section 290(d)(4), which addresses tiering of non-California offenses, does not state that the person would be credited time from out of state residency toward the tier’s minimum registration period.</p> <p>The committee agrees with this suggestion and has developed a separate proof of service and updated the petition and information sheet to reflect service after filing.</p>

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SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>Pursuant to Penal Code section 290.5(a)(2), as amended effective July 1, 2021, law enforcement agencies are required, within 60 days of receipt of the petition, to report to the district attorney and the superior court in which the petition is filed whether the petitioner has met the minimum eligibility requirements for petitioning. If the registrant serves an unfiled petition on law enforcement, such agency may complete their review of the petition prior to the registrant filing the petition in court, if the petitioner even does file the petition, which they may not. Because the registering law enforcement agency is required by statute to report eligibility within 60 days of receipt of the petition, it would seem illogical to permit service of an unfiled petition on the agency and to require processing of a petition which may never be filed or may not be filed in a timely manner.</p> <p>It is respectfully recommended that the Committee consider alternative methods of confirming service. One alternative is to remove Item 9 from draft form CR-415 and create a new declaration of service form to identify the filed petition information and to verify service of the filed petition to the proper parties. If such an alternative is adopted, timelines may be created upon which courts may hold status hearings to confirm service.</p> <p>*This comment and any resulting conforming changes also apply to draft form CR-415-INFO, Item 6 and Item 7</p>	

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SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
<p>Ira Mark Ellman Center for the Study of Law and Society, University of California, Berkeley and Tara Ellman, M.B.A., consultant</p>	<p>1. Registrants whose registration obligation arises from a non-California conviction.</p> <p>A. The Problem</p> <p>Section 7 of the proposed information form, CR-415-INFO, correctly advises registrants that they must deliver a copy of the petition and proof of current registration to the law enforcement agency where they currently register, and to the District Attorney of that county. It then goes on to explain that a registrant who was “convicted of a registerable offense in a different county than where” he registers¹ must also “deliver” a copy to the “law enforcement agency and the district attorney of his county of conviction of the registerable offense”. This sentence is obviously correct with respect to registrations based on California convictions, and mirrors the statutory language applicable to them. But the statute contains no comparable language addressing such service on non-California agencies because (as detailed below) none is required. But because the forms are ambiguous on whether or how service must be made on non- California agencies, it will leave registrants with non-California convictions perplexed about their obligation. A registrant unsure of whether or how these directions apply to him will be unable to certify his compliance with them, as required in Section 9 of the proposed petition form, CR-415. It is thus critical for the instructions to address directly the cases in which the registrable offense was not a California offense.</p> <p>¹ It actually says “where you currently <i>reside and/or</i> register”. It should probably say “the county where you register and have your primary residence”. The statute requires the registrant to file the petition in “the county in which he or she is registered”. While a registrant who has more than one residence must register at each of them (§ 290.010), the form later sensibly instructs the registrants to</p>	<p>The committee discussed the suggestion but does not recommend it. Penal Code section 290.5(a)(2) requires the petition and proof of current registration to be served on the law enforcement agency and district attorney in the county of conviction. It is not clear what, if any, notice requirement applies for non-California convictions, so the committee declines to specify that the service requirement on the law enforcement agency and district attorney in the county of conviction does not apply to non-California convictions at this time.</p> <p>The committee discussed the suggestion but prefers to keep the language.</p>

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SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>file in the county of their primary residence.</p> <p>A petitioner whose registration obligation is based on a federal conviction offers a good example of the problem. He will have no idea how to follow this direction to notice the district attorney and law enforcement agency of the county of conviction. For federal convictions there obviously is no “district attorney”. Nor is there usually any “county of conviction” because most federal judicial districts encompass multiple state counties. That means the direction to notice the “county law enforcement agency” is also entirely unclear. (Indeed, there may not have been any state or local law enforcement agency involved in the registrant’s apprehension or prosecution.) Similar problems can arise for those whose registration is based on a conviction in another state, which, for example, may not employ the title “district attorney”.</p> <p>The solution to the problem is to make clear that registrants whose registrable offense is not a California offense are required to notice the law enforcement agency and district attorney in the county in which they register, only. The forms employ the language of the statute, which does not fit non-California agencies for the simple reason that the statutory notice provisions are not intended to apply to them. Service upon California prosecutors and law enforcement personnel is necessary because that service is what triggers obligations that apply to them. No corresponding obligations apply to non-California agencies. Section 290.5(a)(2) gives the registering law enforcement agency, and the “the law enforcement agency of the county of conviction”, 60 days from receipt of the petition to “report to the district attorney and the superior or juvenile court in which the petition is filed regarding whether the person has met the requirements for termination pursuant to subdivision (e) of Section 290.” This reporting</p>	

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SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>requirement necessarily applies to California agencies only. The legislature has no authority to require a report from a non-California agency. Nor could it expect a non-California agency to address the registrant's eligibility to file a petition under a California statute for which the non-California agency has no administrative or law enforcement responsibility, and no expertise.</p> <p>Service upon the California District Attorney of the county in which the petitioner registers is necessary to alert the District Attorney to expect the required report from the law enforcement agency. The report is not sent to non-California prosecutors. The District Attorney has 60 days after the report's receipt to request a hearing to present evidence of why the court should not grant the petition. Only this California prosecutor can request a hearing, and only his or her failure to request one within the statutory 60 days can trigger an order granting the petition.</p> <p>The purpose of a statutory notice requirement is to alert the recipient to a matter requiring action within a designated time period to avoid loss of the opportunity to participate in the noticed process. Non-California agencies have no obligation and no right to participate in the California petition process, which is why the statute does not require notice to them. As is clear from both the context of the statutory notice requirement, and the statute's use of language that fits only California agencies, it applies to California agencies only.</p> <p>Of course, the non-California authorities may have information relevant to the appropriate tiering of the petitioner's offense under California. But that information will already be in the petitioner's registration file, because the Department of Justice needed it to fulfill its duty under</p>	

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SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>Section 290.005(a) to assign a tier to the petitioner’s non-California offense. It does so, under that section, by identifying the California offense equivalent to the registrant’s non- California crime of conviction. A registrant with no California tier classification is ineligible to petition for relief from registration. A registering law enforcement with questions about the tier assigned to a petitioner with a non-California offense is provided a remedy under Section 290.5(a)(2). If it believes the petitioner committed an unassessed offense in another jurisdiction that could trigger a California registration obligation it “shall refer that conviction to the department [of justice] for assessment and determination of whether the conviction changes the tier designation assigned by the department to the offender.” The same paragraph also provides for an extension of time in the petition process, if necessary “to obtain the documents needed to make the assessment.”</p> <p>B. The Solution</p> <p>In CR-415-INFO, revise Section 7 by amending the first paragraph that follows the second bullet point, to read as follows:</p> <p>If you were convicted of a registerable <u>California</u> offense in a different California county other than the one in which <u>where</u> you currently reside and/or register, 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 registerable offense. <u>This requirement does not apply to federal, tribal, or military convictions, or convictions in courts of another state.</u></p> <p>In Section 9 of CR-415, the word “California” need be added to the first line in the third and fourth box in the left hand</p>	<p>Please see response above.</p>

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>column. Box 3: “Law enforcement agency (<u>California</u> county of conviction). Box 4: “District attorney (<u>California</u> county of conviction). In addition, a new first line should be added in each box that says simply “Where applicable”.</p> <p>2. Clarity in explaining the service requirements.</p> <p>Two different questions arise with respect to the petitioner’s service of the petition on law enforcement agencies and district attorneys: proof of service, and notice of the date of its receipt.</p> <p style="padding-left: 40px;">a. Proof of service.</p> <p>Service of the petition on the relevant district attorneys and law enforcement agencies is required by Penal Code § 290.5(a)(2). Section 9 of revised Form CR-415 requires petitioner to state that service was made on law enforcement agencies and district attorneys listed on the dates indicated and by the method indicated. The petition is then of course signed by the petitioner or his attorney. We read the final bullet point on page 3 of the committee’s introductory comments to the revised forms as suggesting submission of the signed form constitutes proof of service in compliance with the statutory requirement, much like the proof of service statement typically found at the end of a brief submitted to a court. We hope this understanding is correct. If it is, we believe either Form CR-415 itself, or perhaps Form CR-415-INFO, should state that explicitly. If it is not correct, the forms then need to explain what else the petitioner must do to prove service. We note in particular the third bullet point preceding</p>	<p>Senate Bill 118 (Stats. 2020, ch. 29) amended Penal Code section 290.5(a)(2) to add the following language: “The registering law enforcement agency shall report</p>

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SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>Section 1 of CR-415, which says the “petition may be denied if service is not complete”. The word “complete” is ambiguous. This sentence might be revised to say the “petition will be denied if it does not include the completed statement in Section 9 affirming that service of the petition and proof of current registration was made as required.”</p> <p>If the committee means to suggest that service is not “complete” without proof of receipt by the necessary law enforcement agencies and district attorneys, considerably more explanation is required. In that case, the forms need to explain how the petitioner establishes such receipt, now that the Acknowledgment of Receipt form in the original proposal has been omitted. See the next section of these comments.</p> <p style="padding-left: 40px;">b. Establishing that service was received and the date of service.</p> <p>Even if petitioners do not need proof of receipt of service to avoid dismissal of the petition, they still need confirmation of the date on which service was received because that date establishes the deadline for the law enforcement agency’s report to the District Attorney, and thus also the deadline that follows for the District Attorney to object to the petition. The date of receipt is known to the petitioner when service is made electronically or in person, but could be subject to dispute in the absence of a written or electronic acknowledgment by the recipient. The date of receipt is not necessarily known to the petitioner when service is made by mail. The Acknowledgment of Receipt form contained in the original proposal solved these problems. Its elimination from the revised forms requires the committee to provide a different</p>	<p>receipt of service of a filed petition to the Department of Justice in a manner prescribed by the department.” The added language contemplates the filing of petition will take place prior to service upon the registering law enforcement agency. Accordingly, the committee has developed a separate proof of service form and updated the petition and information sheet to refer to the proof of service.</p> <p>The proof of service form is designed to show to the court that service to the necessary law enforcement agencies and district attorney offices occurred.</p> <p>Please see response above.</p>

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>solution.</p> <p>The instructions currently suggest that the petitioner or someone on his behalf hand deliver the petition directly because it is “the most reliable form” of service. It then makes the mild observation that “you may want to ask the representative for a written acknowledgment of the receipt.” We see no reason why that statement should not be stronger. E.g., “You should ask the agency representative to whom you deliver the form to sign an acknowledgment of having received it.” It would be best if the committee provided an acknowledgment of receipt form for the petitioner to employ when serving by hand, as an unrepresented petitioner may not know how to compose such a form. We do not suggest reviving the requirement in the committee’s initial proposal that the law enforcement agency file the form with the court within some time period. We assume it was that filing requirement which in particular prompted objections to the form by law enforcement agencies. But there surely is no reason for them to object to signing an acknowledgment at the time of delivery to allow the petitioner to prove the fact and date of receipt. Petitioner otherwise has no way to do that.</p> <p>Hand delivery will not always be practical for petitioners, especially those who must serve law enforcement personnel in another county. Electronic delivery, or delivery by mail, then become the only options. We note that Form CR-415-INFO offers petitioners some helpful guidance on using electronic service and obtaining proof of it. But that process will likely be daunting for many unrepresented petitioners, for whom mail will be the only real alternative. There is no method by which petitioners can establish the fact and date of receipt of mailed service other than by using certified mail with a return receipt.</p>	<p>It is anticipated that the proof of service form would diminish the need for a signed acknowledgment of receipt.</p> <p>The committee declines the recommendation because the existing language is sufficient.</p>

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Form CR-415 (petition) and CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>We therefore urge the committee to strengthen the statement in Section 7 of the current version of CR-415 INFO, which now says “Alternatively, you may mail the document by certified mail with return receipt requested.” Here’s an example of what you might say: <i>If you mail the document, you should use certified mail with a return receipt requested. Keep the return receipt when you receive it, as it will establish both the fact and the date of receipt.</i></p> <p>The committee may also wish to suggest the petitioner file a copy of the proof of receipt with the court (either the written acknowledgment for hand delivery, or the mailed return receipt), to replace the filing of the Acknowledgment of Receipt form that the committee previously required of the law enforcement agency. The INFO form could explain that by filing this information with court and establishing the date on which the law enforcement agencies received their copies, the petitioner starts the clock running on the time periods within which they must act on the petition.</p>	<p>The petitioner must file the proof of service with the court.</p>

Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
<p>Alliance for Constitutional Sex Offense Laws (ACSOL) by Janice M. Bellucci, Attorney & Executive Director Chance X. Oberstein, President Sacramento</p> <p>Bay Area Legal Aid by Brie Frank, Attorney Oakland, CA</p>	<p>Modification or elimination of the circled numbers that designate individual sections on Form CR-415-INFO</p> <p>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</p>	<p>The committee declines the suggestion.</p>

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
<p>Katrina Logan, Directing Attorney—Economic Advancement Program Vinuta Naik, Senior Attorney—Economic Advancement Program Community Legal Services in East Palo Alto</p>	<p>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.</p> <p>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</p> <p>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.”</p> <p>Clarify in Section 3 of Form CR-415-INFO that registrants can obtain their tier assignment from their local registering agency</p> <p>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</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for approval.</p> <p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the form that it is recommending for approval.</p>

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	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.”	
California Department of Justice by Arturo Rodriguez, Staff Services Manager III Sacramento, CA	<p>CR-415-INFO: Item 1, General Information It is respectfully recommended that an additional bullet be added with the following information: “If you are registering for a juvenile adjudication of a sex offense and an adult conviction of a sex offense, file your petition with the superior court.” As there are a number of individuals registering for juvenile adjudications and adult convictions of sex offenses, this information may help reduce inquiries to the courts and improper additional filings with the juvenile courts.</p> <p>CR-415-INFO: Item 3, Which tier am I? How is my tier determined? Bullet 3: It is respectfully recommended that “without regard to the actual time served in custody for the conviction” be added to the end of each sentence to conform with the language of Penal Code section 290(e), as added effective January 1, 2021.</p> <p>Bullet 4: It is respectfully recommended that “no pauses” be deleted, as “pauses” may be misconstrued by petitioners to mean pauses in registration or pauses created by noncompliant registration statuses throughout their tier periods.</p> <p>CR-415-INFO: Item 9, Hearing It is respectfully recommended that it be noted that a community safety hearing is required in order for the court to grant a Tier 2 exception or Tier 3 – Risk Level petition, and that neither petition may be granted without a community safety hearing.</p>	<p>The committee discussed this suggestion but does not recommend incorporating it at this time in order to better gauge additional considerations and guidance in this area.</p> <p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the form that it is recommending for approval.</p> <p>The committee will replace “pauses” with “tolling,” as described in the statutory language, and rephrase for clarity.</p> <p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the form that it is recommending for approval.</p>

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
Ira Mark Ellman Center for the Study of Law and Society, University of California, Berkeley and Tara Ellman, M.B.A., consultant	The last sentence on page 11 of the Info Form says “The court...may set the request for a hearing”. It presumably is meant to say “set the date for a hearing”.	The committee discussed the suggestion but prefers the existing language.
San Diego County Office of the Public Defender by Katherine Braner, Chief Deputy, Development & Training	<p>Section 9 of the information sheet, labeled “hearing”, may give the false impression that community safety is a live issue at every hearing, regardless of whether the DA has placed it at issue. The statute provides that the DA may request a hearing on one of two bases: “if the petitioner has not fulfilled the requirement described in subdivision (e) of Section 290, or if community safety would be significantly enhanced by the person's continued registration.” (PC 290.5(a)(2)). If the DA requests a hearing on the former basis only, community safety has not been put at issue. In such cases, it is neither necessary nor proper for the Court to weigh community safety considerations. In contrast, if the DA chooses to “present evidence regarding whether community safety would be significantly enhanced by requiring continued registration,” then, and only then, shall the Court weigh the community safety factors in reaching its decision. (PC 290.5(a)(3)). The upshot is clear: the Court may weigh the community safety factors listed in PC 290.5(a)(3) only if the DA raises a community safety objection at the hearing.</p> <p>As presently written, however, Section 9 incorrectly implies that every hearing will involve a weighing of the community safety factors, regardless of whether the DA has raised a community safety objection. In particular, this false impression is created by the second sentence of the first paragraph of Section 9 and the third paragraph of Section 9, both of which commence “At the hearing, the Court will . . .”. This misimpression could be avoided by modifying Section 9 to read in its entirety:</p>	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the form that it is recommending for approval.

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	<p>The district attorney in the county where the petition is filed may request a hearing if the attorney does not believe you have registered for the minimum time period required or if the attorney believes that you should continue registering for community safety. If the court must decide at the hearing whether you should continue to register for community safety, the court will make its decision by reviewing the facts of your case, your conduct before and after the conviction, and your current risk of sexual or violent re-offense, among other factors.</p> <p>If the district attorney does not request a hearing, the court must grant the petition for termination if (1) you provided proof of current registration, (2) the registering law enforcement agency reported that you met the requirements for termination, (3) there are no pending charges against you that could extend the time to complete the registration requirements of the tier or change your tier status, and (4) you are not in custody or on parole, probation, or supervised release.</p> <p>Making this modification is necessary both to preserve alignment with the statutory language and to ensure that petitioners receive proper notice of the issues at stake in their hearings.</p>	
<p>Superior Court of Orange County by Cherry Ward, Administrative Analyst IMPACT Team – Criminal / Traffic Operations</p>	<ol style="list-style-type: none"> 1. CR-415-INFO, Section 3: Should the chart title be changed from “If you are...” to “If you are assessed as...” for consistency with the language used in other sections of this form? 2. CR-415-INFO, Sections 6, 7, 8, 9: Because a city attorney can be the prosecutor on a PC 290 case with sex offender registration ordered, recommend changing district attorney to prosecutor or prosecuting agency. 	<p>The committee discussed the suggestion but prefers the existing language.</p> <p>The committee discussed the suggestion but prefers to use the term “district attorney” to reflect the statutory language of Penal Code section 290.5.</p>

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Form CR-415-INFO (information sheet)		
Commenter	Comment	Committee Response
	3. CR-415-INFO, Section 8: Does not mention if the petitioner has a right to attend the hearing.	The committee discussed this suggestion but concluded that it did not need to be included in the information sheet. The committee notes that individual courts will be setting up the procedures for how and when the hearings will be held and will communicate that to the petitioners as needed.

Form CR-416 (District Attorney Response Form, now form CR-417)		
Commenter	Comment	Committee Response
California Department of Justice by Arturo Rodriguez, Staff Services Manager III Sacramento, CA	Item 2(a) Because a community safety hearing is required for any Tier 2 exception or Tier 3 – Risk Level petition to be granted, it is respectfully recommended that an additional subsection of Item 2(a) be created to indicate that (i) the district attorney has no objection to the petition and (ii) that a community safety hearing is required due to the petitioner identifying and petitioning as a Tier 2 exception or petitioning as a Tier 3 – Risk Level tier designation.	The committee declines this recommendation because it would likely affect a very small number of petitions.
Superior Court of Orange County by Cherry Ward, Administrative Analyst IMPACT Team – Criminal / Traffic Operations	<ol style="list-style-type: none"> 1. Because a city attorney can be the prosecutor on a PC 290 case with sex offender registration ordered, recommend changing the title and footer to “Response by Prosecuting Agency to Petition to Terminate Sex Offender Registration”. 2. There is a box for Court use only to add the hearing date and time. Can this be moved to Section 2- Response under subsection b2 so that it is clear that the hearing is being requested in conjunction with a response in subsection b? 3. Section 2: Should the numbered bullets be formatted in the same manner for consistency? Subsection b 	<p>The committee discussed the suggestion but prefers to use the term “district attorney” to reflect the statutory language of Penal Code section 290.5.</p> <p>The committee discussed the suggestion but prefers the existing format.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-416 (District Attorney Response Form, now form CR-417)		
Commenter	Comment	Committee Response
	<p>shows the numbered bullets with a period, while subsection c shows the numbered bullets in parentheses.</p> <p>4. Section 2: Because a city attorney can be the prosecutor on a PC 290 case with sex offender registration ordered, recommend changing district attorney to prosecutor or prosecuting agency.</p> <p>5. Should the Name and Signature lines have a title? Like Printed Name of prosecutor, signature of prosecutor.</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee discussed the suggestion but prefers to use the term “district attorney” to reflect the statutory language of Penal Code section 290.5.</p> <p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.</p>

Form CR-416 (District Attorney Response Form, now CR-417) and Form CR-417 (Court Order, now CR-418)		
Commenter	Comment	Committee Response
<p>California Department of Justice by Arturo Rodriguez, Staff Services Manager III Sacramento, CA</p>	<p>DA Response Form: Item 2(c)(5)* It is respectfully recommended that the following language be deleted: “Unless petitioner is convicted of a new offense extending it, the mandatory minimum registration period will be met as of (date): _____”. While there is a clear need to inform the petitioner so they understand where their petition is deficient, there are concerns with asking the district attorney’s office to establish the eligibility date and to record it. By statute, the required determination is whether the individual has met their mandatory minimum registration period, not to establish when that date will be met.</p> <p>Recording the specific future eligibility date may also be problematic. The recording of a specific date is subject to transcription errors and may be miscalculated even if the statement that the petitioner has not met their mandatory minimum registration period at the time of petitioning is factually correct. District attorney’s offices may be hesitant to</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption by eliminating that sentence.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-416 (District Attorney Response Form, now CR-417) and Form CR-417 (Court Order, now CR-418)		
Commenter	Comment	Committee Response
	<p>record a specific date at the level of day, month, or even year which will be relied upon by the courts and the petitioner.</p> <p>Relatedly, the same concerns exist for draft form CR-417. Judicial officers may rely on the district attorney’s report regarding eligibility date and may record an incorrect date provided in form CR-416 or may transcribe a correctly recorded date incorrectly. With two separate items on this draft form requiring the eligibility date, if there are any errors in transcription and the two dates on the CR-417 differ, the petitioner will not be able to reconcile the dates. Petitioners are also likely to rely on the recorded dates on form CR-416 and CR-417. The court similarly is under no mandate or obligation to report to the petitioner the exact date when the petitioner may be eligible to re-petition when a petition is summarily denied.</p> <p>*This comment also applies to draft form CR-417, Item 3(e) and Item 4(a)</p> <p>DA Response Form: Item 2(c)(7)* It is respectfully recommended that “risk assessment score” be revised to “risk assessment level” to conform with the language of Penal Code section 290(d)(3)(D), as added effective January 1, 2021.</p> <p>*This comment also applies to draft order, Item 3(g)</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Form CR-417 (Court order, now CR-418)		
Commenter	Comment	Committee Response
<p>Superior Court of Orange County by Cherry Ward, Administrative Analyst IMPACT Team – Criminal / Traffic Operations</p>	<p>1. Section 1: If the petition was filed by an attorney, does the order list their name and address or the petitioner’s? If the petitioner’s address, there is no place to enter that information on CR-415 form as you can only designate an address for the attorney or petitioner, does not allow for both.</p>	<p>The petition allows the petitioner or counsel to list one mailing address, which would be reflected in the order.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-03 Criminal Forms: Sex Offender Registration Termination (Adopt forms CR-415, CR-416, and CR-417; approve form CR-415-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Form CR-417 (Court order, now CR-418)		
Commenter	Comment	Committee Response
	<p>2. Section 3: Can the word summarily be in bold to make the distinction clear between Sections 3 and 4?</p> <p>3. Section 4: Can additional lines be added under subsection b(1) for the reasons?</p>	<p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p> <p>The committee agrees with this suggestion and has incorporated it into the form that it is recommending for adoption.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-11

Proof of Service for Sex Offender Registration Termination (Form CR-416)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Scott Garner, President	A	No specific comment.	The committee appreciates the comment.
2.	Superior Court of Orange County by Cherry Ward, Criminal Administrative Analyst	AM	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Orange County Superior Court notes/recommends the following:</p> <ol style="list-style-type: none"> 1. CR-416, Instructions: Align bullet points with corresponding statement. 2. CR-416, Instructions, 1st bullet point: Because a city attorney can be the prosecutor on a PC 290 case with sex offender registration ordered, recommend changing district attorney to prosecutor or prosecuting agency. 3. CR-416, 4(b): Because a city attorney can be the prosecutor on a PC 290 case with sex offender registration ordered, recommend changing district attorney to prosecutor or prosecuting agency. 4. CR-416, 4(d): Because a city attorney can be the prosecutor on a PC 290 case with sex offender registration ordered, recommend changing district attorney to prosecutor or prosecuting agency. <p>The advisory committee also seeks comments from <i>courts</i> on the following cost and implementation matters:</p>	<p>The committee appreciates the comments.</p> <p>The committee agrees with this suggestion and has incorporated it into the form.</p> <p>The committee discussed the suggestion but prefers to use the term “district attorney” to reflect the statutory language of Penal Code section 290.5.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-11

Proof of Service for Sex Offender Registration Termination (Form CR-416)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Would the proposal provide cost savings? If so, please quantify. No, these forms are legislation driven; will increase workload.</p> <p>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? The proof of service form would be included in the petition process. The petitions, once filed, require responses from LEA and prosecutors before the court can take further action and will not have “counts” or “charges”.</p> <ul style="list-style-type: none"> • Recommend a working group with our justice partners (DA, PD, LEA) to ensure expectations are in alignment • Workflows needed to outline: <ul style="list-style-type: none"> ○ Where these petitions will be filed ○ What courtrooms will hear them ○ How the cases are tracked to ensure timelines are followed ○ Will the court send correspondence to agencies when timelines are exceeded? ○ How cases will be initiated (manually?) ○ Requirements for acceptance (incomplete forms ok?) 	<p>No response required.</p> <p>No response required.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-11

Proof of Service for Sex Offender Registration Termination (Form CR-416)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> ○ New docket codes needed for filing the petition, noting service, filing responses, setting hearing dates, judicial ruling, JBSIS/DOJ reporting ○ How will cases be “closed” in our Case Management System? ○ How re-filed petitions will be handled (same case number?) <ul style="list-style-type: none"> ● New procedure will be required ● Training scope will depend on where these cases are filed/heard <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Under normal conditions I believe so, but COVID may affect availability of Court Technology and judicial resources, judicial partners, etc.</p> <p>How well would this proposal work in courts of different sizes? We do not see any issues for courts of different sizes in relation to the forms.</p>	<p>No response required.</p> <p>No response required.</p>
3.	Superior Court of Orange County, Juvenile Division by Vivian Tran, Administrative Analyst	NI	Juvenile Court is proposing Juvenile forms be created for Sex Offender Registration Termination matters. The Criminal forms that have been created do not meet the needs of the Juvenile departments (e.g. references to defendants vs. Youth, etc.). It would be helpful and beneficial for the Juvenile and Family Law	The committee appreciates the comments. The comments have been relayed to the Family and Juvenile Law Advisory Committee, which oversees forms for use in juvenile court.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-11

Proof of Service for Sex Offender Registration Termination (Form CR-416)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Committee to develop a similar form for Juvenile.</p> <p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Would the proposal provide cost savings? If so, please quantify. No.</p> <p>What would the implementation requirements be for courts-for example, training staff (please identify position and expected hours of training), revised processes and procedures (please describe), changing docket code in case management systems, or modifying case management systems? Juvenile court would have to create a procedure for the process of petitioning to terminate sex offender registration and train clerk’s office staff. New events codes and macros would also need to be created in Odyssey if a Juvenile form is created for this process. It is recommended that a form specific to Juvenile be created.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-11**Proof of Service for Sex Offender Registration Termination (Form CR-416)**

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			How well would this proposal work in courts of different sizes? This proposal would meet the need in all courts of different sizes because it would assist in tracking of when the petition was served. It would also assist the law enforcement agencies and District Attorney agencies to determine the time-frame permitted to file a response/opposition.	No response required.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]:
Submit to JC (without circulating for comment)

Rules Committee Meeting Date: Feb 3, 2021

Title of proposal: Rules and Forms: Technical Form Changes to Reflect Federal Poverty Guidelines

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Revise forms FW-001, FW-001-GC, APP 015/FW-015-INFO, and JV-132

Committee or other entity submitting the proposal:
JC Staff

Staff contact (name, phone and e-mail): Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov
Christy Simons, 415-865-7694 christy.simons@jud.ca.gov
Corby Sturges, 415-865-4507 corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: Not on annual agenda--Technical change to conform forms to change in law
Project description from annual agenda:

If requesting July 1 or out of cycle, explain:

Technical change to conform forms to changed eligibility figures, based on changes to federal poverty level

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

This report does not yet contain the Federal Register cite for the change dollar amounts, which have been posted on the Health and Human Services website as effective January 15, but not yet published in the Federal Register. The cite will be added, along with a link, when published (expected the first week of February), and the final date of the report will be added at the same time.



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on March 12, 2021

Title

Rules and Forms: Technical Form Changes to Reflect Federal Poverty Guidelines

Rules, Forms, Standards, or Statutes Affected

Revise forms FW-001, FW-001-GC, APP-015/FW-015-INFO, and JV-132

Recommended by

Judicial Council staff
Anne M. Ronan, Supervising Attorney
Legal Services

Agenda Item Type

Action Required

Effective Date

March 15, 2021

Date of Report

February 03, 2021

Contact

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Executive Summary

Judicial Council staff recommend the revision of four Judicial Council forms containing figures based on the federal poverty guidelines to reflect the changes in those guidelines recently published by the federal government.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective March 15, 2021, revise the following documents to reflect 2021 increases in the federal poverty guidelines:

- *Request to Waive Court Fees* (form FW-001)
- *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC)
- *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO); and
- *Financial Declaration—Juvenile Dependency* (form JV-132).

The revised forms are attached at pages 4–14.

Relevant Previous Council Action

The council last revised these forms on March 24, 2020, to reflect the last change in the federal poverty guidelines.

Analysis/Rationale

Judicial Council forms containing figures based on the federal poverty guidelines need to be revised to reflect the changes in those guidelines recently published by the federal government.

Fee waiver forms

The eligibility of indigent litigants to proceed without paying filing fees or other court costs is determined by California Government Code section 68632. Among other things, section 68632(b) provides that a fee waiver will be granted to litigants whose household monthly income is 125 percent or less of the current poverty guidelines established by the U.S. Department of Health and Human Services (HHS).

The Judicial Council has adopted rules of court and forms for litigants to obtain fee waivers. Three of the forms—*Request to Waive Court Fees* (form FW-001), *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC), and *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO)—contain figures based on the monthly poverty guidelines. The tables in item 5b on the general fee waiver application form, in item 8(b) on the probate fee waiver form, and on page 1 of the appellate court information sheet provide monthly income figures on which a court may base a decision to grant a fee waiver in accordance with Government Code section 68632.

Juvenile form

The Judicial Council administers a program under Welfare and Institutions Code section 903.47 to collect reimbursement of the cost of court-appointed counsel in dependency proceedings from liable persons found able to pay. Under the statewide standard adopted by the council, an otherwise liable person is presumed to be unable to pay reimbursement if that person's monthly household income is 125 percent or less of the current federal poverty guidelines established by the HHS.

Financial Declaration—Juvenile Dependency (form JV-132) contains figures based on the poverty guidelines. The table in item 3 provides monthly income levels below which an individual is presumed to be unable to pay reimbursement for the cost of court-appointed counsel.

Revisions required

The monthly income figures currently on the four forms reflect 125 percent of the 2020 poverty guidelines established by the HHS. The HHS released revised federal poverty guidelines on

January 15, 2021.¹ As a result, these items on the Judicial Council forms must be revised to reflect the 2021 federal poverty guideline revisions.

To determine the new monthly income figures for the forms, the federal poverty guidelines must be multiplied by 125 percent and divided by 12.² The new figures are reflected in the revised tables on the attached forms.

Policy implications

Staff monitors revisions to the poverty guidelines and ensures that the forms are revised as necessary and submitted to the council. Revised forms FW-001, FW-001-GC, APP-015/FW-015-INFO, and JV-132 should take effect immediately to ensure that litigants and courts are provided with accurate monthly income guidelines on which a court may base a decision regarding fee waivers or financial liability. This rapid change is necessary because the revised poverty guidelines take effect immediately on release. Once adopted, the revised forms will be distributed to the courts and forms publishers and posted to the California Courts website.

Comments

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

The alternative to updating the income tables using the 2021 federal poverty guidelines would be *not* to update them. Staff did not consider this option because of the provisions in Government Code section 68632 and in the Judicial Council standard on financial liability.

Fiscal and Operational Impacts

If a court provides free copies of these forms to parties, it will incur costs to print or duplicate the forms. However, the revisions are required to make the forms consistent with current law.

Attachments and Links

1. Forms FW-001, FW-001-GC, APP-015/FW-015-INFO, and JV-132, at pages 4–14.
2. Attachment A: Computation Sheet
3. Link A: Annual Update of the HHS Poverty Guidelines, <https://www.federalregister.gov/index/2021>

¹ The 2021 figures have been published in the Federal Register. See U.S. Department of Health and Human Services, Annual Update of the HHS Poverty Guidelines, 86 FR 7732 <https://www.federalregister.gov/index/2021>.

² See Attachment A for the Computation Sheet. The monthly income figures in the tables on the forms slightly exceed 125 percent of the poverty guidelines because they are rounded up to the nearest cent. The language on the forms reflects this slight excess in stating that the item should be checked if the household income is “less than” the amount in the chart.

Clerk stamps date here when form is filed.

If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs and your court fees, you may use this form to ask the court to waive your court fees. The court may order you to answer questions about your finances. If the court waives the fees, you may still have to pay later if:

- You cannot give the court proof of your eligibility,
Your financial situation improves during this case, or
You settle your civil case for \$10,000 or more. The trial court that waives your fees will have a lien on any such settlement in the amount of the waived fees and costs. The court may also charge you any collection costs.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

1 Your Information (person asking the court to waive the fees):

Name:
Street or mailing address:
City: State: Zip:
Phone:

2 Your Job, if you have one (job title):

Name of employer:
Employer's address:

3 Your Lawyer, if you have one (name, firm or affiliation, address, phone number, and State Bar number):

a. The lawyer has agreed to advance all or a portion of your fees or costs (check one): Yes No

b. (If yes, your lawyer must sign here) Lawyer's signature:

If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

4 What court's fees or costs are you asking to be waived?

- Superior Court (See Information Sheet on Waiver of Superior Court Fees and Costs (form FW-001-INFO).)
Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See Information Sheet on Waiver of Appellate Court Fees (form APP-015/FW-015-INFO).)

5 Why are you asking the court to waive your court fees?

- I receive (check all that apply; see form FW-001-INFO for definitions): Food Stamps Supp. Sec. Inc. SSP Medi-Cal County Relief/Gen. Assist. IHSS CalWORKS or Tribal TANF CAPI
My gross monthly household income (before deductions for taxes) is less than the amount listed below. (If you check 5b, you must fill out 7, 8, and 9 on page 2 of this form.)

Table with 6 columns: Family Size, Family Income, Family Size, Family Income, Family Size, Family Income. Includes a note: If more than 6 people at home, add \$472.92 for each extra person.

c. I do not have enough income to pay for my household's basic needs and the court fees. I ask the court to: (check one and you must fill out page 2):

- wave all court fees and costs wave some of the court fees
let me make payments over time

6 Check here if you asked the court to waive your court fees for this case in the last six months. (If your previous request is reasonably available, please attach it to this form and check here):

I declare under penalty of perjury under the laws of the State of California that the information I have provided on this form and all attachments is true and correct.

Date:

Print your name here

Sign here

Case Number: _____

Your name: _____

If you checked 5a on page 1, do not fill out below. If you checked 5b, fill out questions 7, 8, and 9 only. If you checked 5c, you **must** fill out this entire page. If you need more space, attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

7 Check here if your income changes a lot from month to month. If it does, complete the form based on your average income for the past 12 months.

8 Your Gross Monthly Income

a. List the source and amount of any income you get each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.

- (1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____
(4) _____ \$ _____

b. Your total monthly income: \$ _____

9 Household Income

a. List the income of all other persons living in your home who depend in whole or in part on you for support, or on whom you depend in whole or in part for support.

Table with columns: Name, Age, Relationship, Gross Monthly Income. Rows (1) through (4) with blank lines for entry.

b. Total monthly income of persons above: \$ _____

Total monthly income and household income (8b plus 9b): \$ _____

10 Your Money and Property

- a. Cash \$ _____
b. All financial accounts (List bank name and amount):
(1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____

Table for cars, boats, and other vehicles with columns: Make / Year, Fair Market Value, How Much You Still Owe. Rows (1) through (3).

Table for real estate with columns: Address, Fair Market Value, How Much You Still Owe. Rows (1) through (2).

Table for other personal property with columns: Describe, Fair Market Value, How Much You Still Owe. Rows (1) through (2).

11 Your Monthly Deductions and Expenses

- a. List any payroll deductions and the monthly amount below:
(1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____
(4) _____ \$ _____
b. Rent or house payment & maintenance \$ _____
c. Food and household supplies \$ _____
d. Utilities and telephone \$ _____
e. Clothing \$ _____
f. Laundry and cleaning \$ _____
g. Medical and dental expenses \$ _____
h. Insurance (life, health, accident, etc.) \$ _____
i. School, child care \$ _____
j. Child, spousal support (another marriage) \$ _____
k. Transportation, gas, auto repair and insurance \$ _____

Table for installment payments with columns: Paid to, How Much? Rows (1) through (3).

m. Wages/earnings withheld by court order \$ _____

Table for other monthly expenses with columns: Paid to, How Much? Rows (1) through (3).

Total monthly expenses (add 11a - 11n above): \$ _____

To list any other facts you want the court to know, such as unusual medical expenses, etc., attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top. Check here if you attach another page. Important! If your financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010.

Clerk stamps date here when form is filed.

This form must be used by a guardian or conservator, or by a petitioner for the appointment of a guardian or conservator, to request a waiver of court fees in the guardianship or conservatorship court proceeding or in any other civil action in which the guardian or conservator represents the interests of the ward or conservatee as a plaintiff or defendant.

If the ward or conservatee (including a proposed ward or conservatee if a petition for appointment of a guardian or conservator has been filed but has not yet been decided by the court) directly receives public benefits or is supported by public benefits received by another for his or her support, is a low-income person, or does not have enough income to pay for his or her household's basic needs and the court fees, you may use this form to ask the court to waive the court fees. The court may order you to answer questions about the finances of the ward or conservatee. If the court waives the fees, the ward or conservatee, his or her estate, or someone with a duty to support the ward or conservatee, may still have to pay later if:

- You cannot give the court proof of the ward's or conservatee's eligibility,
- The ward's or conservatee's financial situation improves during this case, or
- You settle the civil case on behalf of the ward or conservatee for **\$10,000** or more. The trial court that waives fees will have a lien on any such settlement in the amount of the waived fees and costs. The court may also charge the ward or conservatee, or his or her estate, any collection costs.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

1 Your Information (*guardian or conservator, or person asking the court to appoint a guardian or conservator*):

Name: _____ Phone: _____

Street or mailing address: _____

City: _____ State: ____ Zip: _____

2 Your Lawyer (*if you have one*): Name: _____

Firm or Affiliation: _____ State Bar No.: _____

Address: _____ Phone: _____

City: _____ State: ____ Zip: _____ E-mail: _____

a. The lawyer has agreed to advance all or a portion of court fees or costs (*check one*): Yes No

b. (*If yes, your lawyer must sign here.*) Lawyer's signature: _____

If your lawyer is not providing legal-aid type services based on your or the ward's or conservatee's low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

3 Ward's or Conservatee's Information (*file a separate Request for each ward in a multiward case*):

Name: _____ Age and date of birth (*ward only*): _____

Street or mailing address: _____

City: _____ State: ____ Zip: _____

Phone: _____

4 Ward's or Conservatee's Lawyer, if any: Name: _____

Firm or Affiliation: _____ State Bar No.: _____

Address: _____ Phone: _____

City: _____ State: ____ Zip: _____ E-mail: _____

5 Ward or Conservatee's Job (*job title; if not employed, so state*): _____

Name of employer: _____

Employer's address: _____ State: ____ Zip: _____



Name of (Proposed) Ward or Conservatee: _____

Case Number: _____

6 What court's fees or costs are you asking to be waived?

- Superior Court (See *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).)
- Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See *Information Sheet on Waiver of Appellate Court Fees* (form APP-015/FW-015-INFO).)

7 Check here if you asked the court to waive court fees for this case in the last six months. (If your previous request is reasonably available, please attach it to this form and check here):

8 Why are you asking the court to waive the ward's or conservatee's court fees?

- a. The ward or one or both of the ward's parents, or the conservatee or the conservatee's spouse or registered domestic partner, receive (check all that apply):
- Supplemental Security Income (SSI) State Supplemental Payment (SSP) SNAP (Food Stamps)
 - IHSS (In-Home Supportive Services) CalWORKS or Tribal TANF Medi-Cal
 - County Relief/General Assistance CAPI (Cash Assistance Program for Aged, Blind, and Disabled)
- (Names and relationships to ward or conservatee of persons who receive the public benefits listed above):
- _____
- _____

b. The gross monthly income of the ward's or conservatee's household (before deductions for taxes) is less than the amount listed below. (If you check 8b, you **must** fill out items 14, 15, and 16 on page 4 of this form.)*

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	If more than 6 people at home, add \$472.92 for each extra person.
1	\$1,341.67	3	\$2,287.50	5	\$3,233.34	
2	\$1,814.59	4	\$2,760.42	6	\$3,706.25	

- c. The ward's or conservatee's household does not have enough income to pay for its basic needs and the court fees. I ask the court to (check one, and you **must** fill out items 14, 15, 16, 17, and 18 on page 4):*
- (1) Waive all court fees and costs. (2) Waive some court fees and costs.
- (3) Let the (proposed) guardian or conservator, on behalf of the (proposed) ward or conservatee, make payments over time.

* (Do not include income of guardian or conservator living in the household in 8b or 8c or count him or her in family size in 8b. unless he or she is a parent of the ward or the spouse or registered domestic partner of the conservatee.)

Guardians or petitioners for their appointment must complete items 9 and 10.

9 Ward's Estate: Person only, no estate. Inventory or petition estimated value:

Source (e.g., gift, inheritance, settlement, judgment, insurance): _____ Est. collection date: _____

10 Ward's Parents' Information:

- a. Name of ward's father: _____ Deceased (date of death): _____
 Street or mailing address: _____
 City: _____ State: ____ Zip: _____
 Phone: _____
- b. Name of ward's mother: _____ Deceased (date of death): _____
 Street or mailing address: _____
 City: _____ State: ____ Zip: _____
 Phone: _____
- c. Ward's parents are (check all that apply): married living together separated divorced
 Support order for ward? No Yes Payable to (name): _____
 Payor (name): _____
 Court: _____ Case Number: _____
 Date of order (if multiple, date of latest): _____ Monthly amount: _____



Name of (Proposed) Ward or Conservatee: _____

Case Number: _____

Conservators or petitioners for their appointment must complete items 11–13.

11 Conservatee's Estate: Person only, no estate.

Inventory or petition estimated value: _____ Est. collection date: _____

12 Conservatee's Spouse's or Registered Domestic Partner's Information:

Name of conservatee's spouse or registered domestic partner: _____ Spouse Partner

Date of marriage or partnership: _____ Deceased (date of death): _____

Street or mailing address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Name of employer (if none, so state): _____

Employer's address: _____ State: _____ Zip: _____

The conservatee's spouse or partner is is not managing, or following appointment of a conservator is planning to manage, some or all of the couple's community property outside the conservatorship estate.

If you selected "is" above: The income, money, and property shown on page 4 includes does not include the income and property managed, or expected to be managed, by the spouse/partner outside the estate.

Divorced (date of final judgment or decree): _____

Court: _____

Case Number: _____ Support order for conservatee? No Yes

Date of support order (if multiple, date of latest): _____ Monthly amount: _____

13 The Conservatee and Trusts:

The conservatee:

a. is is not a trustor or settlor of a trust.

b. is is not a beneficiary of a trust.

If you selected "Is" to complete any of the above statements, identify and provide, in an attachment to this Request, the current address and telephone number of the current trustee(s) of each trust, describe the general terms of and value of each trust and the nature and value of the conservatee's interest in each trust, and the amount(s) and frequency of any distributions to or for the benefit of the conservatee prior to your appointment as conservator of which you are aware. (You may use Judicial Council form MC-025 for this purpose.)

All applicants who checked item 8b or item 8c on page 2 must continue to and follow the instructions for completion of items 14–16 or items 14–18 on page 4, before signing below.

The information I have provided on this form and all attachments about the (proposed) ward or conservatee is true and correct to the best of my information and belief. The information I have provided on this form and all attachments concerning myself is true and correct. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Print your name here

▶ _____
Sign here



Name of (Proposed) Ward or Conservatee:

Case Number:

If you checked 8a on page 2, do not fill out below. If you checked 8b, you must answer questions 14-16. If you checked 8c, you must answer questions 14-18. If you need more space, attach form MC-025 or attach a sheet of paper, and write "Financial Information" and the ward's or conservatee's name and case number at the top.

14 Check here if the ward's or conservatee's income changes a lot from month to month. If it does, complete the form based on his or her average income for the past 12 months.

15 Ward's or Conservatee's Gross Monthly Income
a. List the source and amount of any income the ward or conservatee gets each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.
(1) \$
(2) \$
(3) \$
(4) \$
(5) \$
b. Total monthly income: \$

16 Ward's or Conservatee's Household's Income
a. List the income of all other persons living in the ward's or conservatee's home who depend in whole or in part on him or her for support, or on whom he or she depends in whole or in part for support.
Table with columns: Name, Age, Relationship, Gross Monthly Income
(1) \$
(2) \$
(3) \$
(4) \$
(5) \$
(6) \$
(7) \$
(8) \$
(9) \$
(10) \$
b. Total monthly income of persons above: \$
Total monthly income and household income (15b plus 16b): \$

17 Ward's or Conservatee's Household's Money and Property
a. Cash \$
b. All financial accounts (list bank name and amount):
(1) \$
(2) \$
(3) \$
c. Cars, boats, and other vehicles
Table with columns: Make / Year, Fair Market Value, How Much You Still Owe
(1) \$ \$
(2) \$ \$
(3) \$ \$
d. Real estate
Table with columns: Address, Fair Market Value, How Much You Still Owe
(1) \$ \$
(2) \$ \$
e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.):
Table with columns: Describe, Fair Market Value, How Much You Still Owe
(1) \$ \$
(2) \$ \$

18 Ward's or Conservatee's Household's Monthly Deductions and Expenses
a. List any payroll deductions and the monthly amount below:
(1) \$
(2) \$
(3) \$
(4) \$
b. Rent or house payment and maintenance \$
c. Food and household supplies \$
d. Utilities and telephone \$
e. Clothing \$
f. Laundry and cleaning \$
g. Medical and dental expenses \$
h. Insurance (life, health, accident, etc.) \$
i. School, child care \$
j. Child, spousal support (another marriage) \$
k. Transportation, gas, auto repair and insurance \$
l. Installment payments (list each below):
Paid to:
(1) \$
(2) \$
(3) \$
m. Wages/earnings withheld by court order \$
n. Any other monthly expenses (list each below):
Paid to: How Much?
(1) \$
(2) \$
(3) \$
Total monthly expenses (add 18a-18n above): \$

To list any other facts you want the court to know, such as the (proposed) ward's or conservatee's unusual medical expenses, etc, attach form MC-025 or attach a sheet of paper and write "Financial Information" and the (proposed) ward's or conservatee's name and case number at the top.
Check here if you attach another page.
Important! If the ward's or conservatee's financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010-GC.

Do not include income of guardian or conservator living in the household in item 16, his or her money and property in item 17, or his or her deductions and expenses in item 18 unless he or she is a parent of the ward or the spouse or registered domestic partner of the conservatee.

INFORMATION SHEET ON WAIVER OF APPELLATE COURT FEES— SUPREME COURT, COURT OF APPEAL, APPELLATE DIVISION

If you file an appeal, a petition for a writ, or a petition for review in a civil case, such as a family law case or a case in which you sued someone or someone sued you, you must generally pay a filing fee to the court. If you are a party other than the party who filed the appeal or the petition, you must also generally pay a fee when you file your first document in a case in the Court of Appeal or Supreme Court. You and the other parties in the case may also have to pay other court fees in these proceedings, such as fees to prepare or get a copy of a clerk’s transcript in an appeal. However, if you cannot afford to pay these court fees and costs, you may ask the court to issue an order saying you do not have to pay these fees (this is called “waiving” these fees).

1. Who can get their court fees waived? The court will waive your court fees and costs if:

- **You are getting public assistance**, such as Medi-Cal, Food Stamps, Supplemental Security Income (not Social Security), State Supplemental Payment, County Relief/General Assistance, In-Home Supportive Services, CalWORKS, Tribal Temporary Assistance for Needy Families, or Cash Assistance Program for Aged, Blind, and Disabled.
- **You have a low income level.** Under the law you are considered a low-income person if the gross monthly income (before deductions for taxes) of your household is less than the amount listed below:

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income
1	\$1,341.67	3	\$2,287.50	5	\$3,233.34
2	\$1,814.59	4	\$2,760.42	6	\$3,706.25

If more than 6 people at home, add \$472.92 for each extra person.

- **You do not have enough income to pay for your household’s basic needs *and* your court fees.**

2. What fees and costs will the court waive? If you qualify for a fee waiver, the Supreme Court, Court of Appeal, or Appellate Division will waive the filing fee for the notice of appeal, a petition for a writ, a petition for review, or the first document filed by a party other than the party who filed the appeal or petition, and any court fee for participating in oral argument by telephone. The trial court will also waive costs related to the clerk’s transcript on appeal, the fee for the court to hold in trust the deposit for a reporter’s transcript on appeal under rule 8.130(b) or rule 8.834(b) of the California Rules of Court, and the fees for making a transcript or copy of an official electronic recording under rule 8.835. If you are the appellant (the person who is appealing the trial court decision), the fees waived include the deposit required under Government Code section 68926.1 and the costs for preparing and certifying the clerk’s transcript and sending the original to the reviewing court and one copy to you. If you are the respondent (a party other than the appellant in a case that is being appealed), the fees waived include the costs for sending you a copy of the clerk’s transcript. You can also ask the trial court to waive other necessary court fees and costs.

The court **cannot** waive the fees for preparing a reporter’s transcript in a civil case. A special fund, called the Transcript Reimbursement Fund, may help pay for the transcript. (See www.courtreportersboard.ca.gov/consumers/index.shtml#trf and Business and Professions Code sections 8030.2 and following for more information about this fund.) If you are unable to pay the cost of a reporter’s transcript, a record of the oral proceedings can be prepared in other ways, by preparing an agreed statement or, in some circumstances, a statement on appeal or settled statement.

3. How do I ask the court to waive my fees?

- **Appeal in Limited Civil Case (civil case in which the amount of money claimed is \$25,000 or less).** In a limited civil case, if the trial court already issued an order waiving your court fees *and that fee waiver has not ended* (fee waivers automatically end 60 days after the judgment), the fees and costs identified in item 2 above are already waived; just give the court a copy of your current fee waiver. If you do not already have an order waiving your fees or you had a fee waiver but it has ended, you must complete and file a *Request to Waive Court Fees* (form FW-001). If you are the appellant (the party who is appealing), you should check both boxes in item 4 on FW-001 and file the completed form with your notice of appeal. If you are the respondent (a party other than the appellant in a case that is being appealed), the completed form should be filed in the court when the fees you are requesting to be waived, such as the fee for the clerk’s transcript or telephonic oral argument, are due.

- **Writ Proceeding in Limited Civil Case (civil case in which the amount of money claimed is \$25,000 or less).** If you want the Superior Court to waive the fees in a writ proceeding in a limited civil case, you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box. The completed form should be filed with your petition for a writ.
- **If You Are a Guardian or Conservator.** If you are a guardian or conservator or a petitioner for the appointment of a guardian or conservator, special rules apply to your request for a fee waiver on an appeal from an order in the guardianship or conservatorship proceeding or in a civil action in which you are a party acting on behalf of your ward or conservatee. Complete and submit a *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC) to request a fee waiver. See California Rules of Court, rule 7.5.
- **Appeal in Other Civil Cases.** If you want the court to waive fees and costs in an appeal in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than \$25,000), you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box to ask the Court of Appeal to waive the fee for filing the notice of appeal or, if you are a respondent (a party other than the one who filed the appeal), the fee for the first document you file in the Court of Appeal. Check both boxes if you also want the trial court to waive your costs for the clerk's transcript (if the trial court already issued an order waiving your fees *and that fee waiver has not ended*, you do not need to check the first box; the fees and costs identified in item 2 above are already waived, just give the court a copy of your current fee waiver). If you are the appellant, the completed form should be submitted with your notice of appeal (if you check both boxes in item 4, the court may ask for two signed copies of this form). If you are the respondent, the completed form should be submitted at the time the fee you are asking the court to waive is due. For example, file the form in the trial court with your request for a copy of the clerk's transcript if you are asking the court to waive the transcript fee or file the form in the Court of Appeal with the first document you file in that court if you are asking the court to waive the fee for filing that document. To request waiver of a court fee for telephonic oral argument, you should file the completed form in the Court of Appeal when the fee for telephonic oral argument is due.
- **Writ Proceeding in Other Civil Cases.** If you want the Supreme Court or Court of Appeal to waive the fees and costs in a writ proceeding in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than \$25,000), you must complete a *Request to Waive Court Fees* (form FW-001). If you are the petitioner (the party filing the petition), the completed form should be submitted with your petition for a writ in the Supreme Court or Court of Appeal clerk's office. If you are a party other than the petitioner, the completed form should be filed with the first document you file in the Supreme Court or Court of Appeal.
- **Petition for Review.** If you want to request that the Supreme Court waive the fees in a petition for review proceeding, you must complete a *Request to Waive Court Fees* (form FW-001) or a *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC). If you are the petitioner, you should submit the completed form with your petition for review. If you are a party other than the petitioner, the completed form should be filed with the first document you file in the Supreme Court.

IMPORTANT INFORMATION!

- **Fill out your request completely and truthfully.** When you sign your request for a fee waiver, you are declaring under penalty of perjury that the information you have provided is true and correct.
- **The court may ask you for information and evidence.** You may be ordered to go to court to answer questions about your ability to pay court fees and costs and to provide proof of eligibility. Any initial fee waiver you are granted may be ended if you do not go to court when asked. You may be ordered to repay amounts that were waived if the court finds you were not eligible for the fee waiver.
- **If you receive a fee waiver, you must tell the court if there is a change in your finances.** You must tell the court immediately if your finances improve or if you become able to pay court fees or costs during this case (file form FW-010 with the court). You may be ordered to repay any amounts that were waived after your eligibility ended. If the trial court waived your fees and costs and you settle your case for \$10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees.
- **The fee waiver ends.** The fee waiver expires 60 days after the judgment, dismissal, or other final disposition of the case or when the court finds that you are not eligible for a fee waiver.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILDREN'S NAMES:	
FINANCIAL DECLARATION—JUVENILE DEPENDENCY	CASE NUMBER:

1. Personal Information:

Name:		Social Security Number:	
Other names used:			
I.D. or Driver's License Number:		Date of Birth:	Age:
Relationship to Child: <input type="checkbox"/> Parent <input type="checkbox"/> Other Responsible Person (specify):			
Street or Mailing Address:			
City:	State:	Zip:	Phone: Alternate Phone:
Marital Status: <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Domestic partner <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			
Name of Spouse/Partner:		Number of dependents living with you:	
Names and ages of dependents:			

2. I receive (check all that apply): Medi-Cal SNAP (food stamps) SSI SSP
 County Relief/General Assistance CalWORKS or Tribal TANF (Temporary Assistance to Needy Families)
 IHSS (In-Home Supportive Services) CAPI (Case Assistance Program for Aged, Blind, and Disabled)

3. My gross monthly household income (before deductions for taxes) is less than the amount listed below:

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	If more than 6 people at home, add \$472.92 for each extra person.
1	\$1,341.67	3	\$2,287.50	5	\$3,233.34	
2	\$1,814.59	4	\$2,760.42	6	\$3,706.25	

4. I have been reunified with my child(ren) under a court order (attached).

5. I am receiving court-ordered reunification services.

CHILDREN'S NAMES:	CASE NUMBER:
RESPONSIBLE PERSON'S NAME:	

6. Employment:

Your Employment				Your Spouse/Partner's Employment			
Employer:				Employer:			
Address:				Address:			
City and Zip Code:		Phone:		City and Zip Code:		Phone:	
Type of Job:				Type of Job:			
How long employed:	Working now?	Monthly salary:	Take home pay:	How long employed:	Working now?	Monthly salary:	Take home pay:
If not now employed, who was your last employer? <i>(Name, Address, City, and Zip Code):</i>				If not now employed, who was this person's last employer? <i>(Name, Address, City, and Zip Code):</i>			
Phone number of last employer:				Phone number of last employer:			

7. Other Monthly Income and Assets:

Other Income	Assets: What Do You Own?
Unemployment\$	Cash \$
Disability \$	Real Property/Equity \$
Social Security \$	Cars and Other Vehicles \$
Workers' Compensation \$	Life Insurance \$
Child Support Payments \$	Bank Accounts (<i>list below</i>)..... \$
Foster Care Payments \$	Stocks and Bonds \$
Other Income \$	Business Interest \$
Total \$	Other Assets \$
	Total \$
	Name and branch of bank:
	Account numbers:

CHILDREN'S NAMES:	CASE NUMBER:
RESPONSIBLE PERSON'S NAME:	

8. Expenses:

Monthly Household Expenses	Reunification Plan: Monthly Cost of Required Services
Rent or Mortgage Payment \$	Parenting Classes \$
Car Payment \$	Substance Abuse Treatment \$
Gas and Car Insurance \$	Therapy/Counseling \$
Public Transportation \$	Medical Care/Medications \$
Utilities (Gas, Electric, Phone, Water, etc.)... \$	Domestic Violence Counseling \$
Food \$	Batterers' Intervention \$
Clothing and Laundry \$	Victim Support \$
Child Care \$	Regional Center Programs \$
Child Support Payments \$	Transportation \$
Medical Payments \$	In-Home Services \$
Other Necessary Monthly Expenses	Other \$
Total \$	Total \$

9. Loan/Expense Payments (other than mortgage or car loan):

Name of lender and type of loan/expense	Monthly payment	Balance owed
	\$	\$
	\$	\$
	\$	\$
	\$	\$

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF DECLARANT)

FOR FINANCIAL EVALUATION OFFICER USE ONLY

TOTAL INCOME	\$	COST OF LEGAL SERVICES	\$
TOTAL EXPENSES	\$	MONTHLY PAYMENT	\$
NET DISPOSABLE INCOME	\$	TOTAL COST ASSESSED	\$

The above-named responsible person is presumed unable to pay reimbursement for the cost of legal services in this proceeding and is eligible for a waiver of liability because

- he or she receives qualifying public benefits
- his or her household income falls below 125% of the current federal poverty guidelines
- he or she has been reunified with the child(ren) under a court order and payment of reimbursement would harm his or her ability to support the child(ren).

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF FINANCIAL EVALUATION OFFICER)

Computation Sheet

Number in Family	2021 Federal Poverty Guidelines (A)	125% of Poverty Guidelines (B) (B = A x 125%)	2021 California Monthly Income (C) (C = B / 12)*
1	\$12,880.00	\$16,100.00	\$1,341.67
2	17,420.00	21,775.00	1,814.59
3	21,960.00	27,450.00	2,287.50
4	26,500.00	33,125.00	2,760.42
5	31,040.00	38,800.00	3,233.34
6	35,580.00	44,475.00	3,706.25
7	40,120.00	50,150.00	4,179.17
8	44,660.00	55,825.00	4,652.09
For each additional person, add:	4,540.00	5,675.00	472.92

*These amounts have been rounded up to the nearest whole cent. Language on the forms reflects this slight excess by stating that the household income is “less than” the amounts in the chart.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]:
Submit to JC (without circulating for comment)

Rules Committee Meeting Date: Feb 3, 2021

Title of proposal: Rules and Forms: Technical Change to Elder Abuse Form

Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):
Revise EA-120

Committee or other entity submitting the proposal:
JC Staff

Staff contact (name, phone and e-mail): Anne M. Ronan 415-865-8933 anne.ronan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by Rules Committee date: Technical change, not on annual agenda

Project description from annual agenda: Judicial Council staff have identified an erroneous cross-reference in a recently revised Elder Abuse form that should be revised to avoid confusion for parties and judicial officers.

If requesting July 1 or out of cycle, explain:

Erroneous cross-reference on form should be corrected as soon as possible to avoid confusion; technical change so no circulation for comments required.

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-071

For business meeting on March 12, 2021

Title

Rules and Forms: Technical Change to Elder Abuse Form

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise form EA-120

Effective Date

March 15, 2021

Recommended by

Judicial Council staff
Anne M. Ronan, Supervising Attorney
Legal Services

Date of Report

January 29, 2021

Contact

Anne M. Ronan, 415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

Judicial Council staff have identified an erroneous cross-reference in a recently revised Elder Abuse form that should be revised to avoid confusion for parties and judicial officers.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective March 15, 2021, revise *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-120) to correct the cross-reference in item 11.

The revised form is attached at page 3.

Relevant Previous Council Action

The Judicial Council recently revised form EA-120 and *Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-100) to implement legislative changes in elder abuse law. This proposal recommends only a minor correction unrelated to the prior substantive revision.

Analysis/Rationale

The revision to form EA-120 is a correction to a cross-reference in item 11, so that it now refers to item 8 in *Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-100). Items in form EA-100 were recently renumbered.

Policy implications

There are no policy implications to this proposal.

Comments

This proposal was not circulated for public comment because the changes are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

None.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of the form. Because the proposed revision is a technical correction to a form completed by the parties, case management systems are unlikely to need updating to implement it.

Attachments and Links

1. Form EA-120 at pages 3-6.

Response to Request for Elder or Dependent Adult Abuse Restraining Orders

Clerk stamps date here when form is filed.

DRAFT

01.14.21

Not approved by JC

Use this form to respond to the Request (form EA-100)

- Read *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?* (form EA-120-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—serve the person requesting protection in ① by mail with a copy of this form and any attached pages. (Use form EA-250, Proof of Service of Response by Mail.)

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

① Elder or Dependent Adult Seeking Protection

Name: _____

Name of person asking for the protection, if different (This is the person named in item ③ of the request (form EA-100).)

② Person From Whom Protection Is Sought

a. Your Name: _____

Your Lawyer (if you have one for this case)

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Present your response and any opposition at the hearing. Write your hearing date, time, and place from form EA-109, item ③, here:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

If you were served with a Temporary Restraining Order, you must obey it until the hearing. At the hearing, the court may make orders against you that last for up to five years.

③ Personal Conduct Orders

- a. I agree to the orders requested.
- b. I do not agree to the orders requested. (Specify why you disagree in item ⑬ on page 4.)
- c. I agree to the following orders (specify below or in item ⑬ on page 4):

④ Stay-Away Orders

- a. I agree to the orders requested.
- b. I do not agree to the orders requested. (Specify why you disagree in item ⑬ on page 4.)
- c. I agree to the following orders (specify below or in item ⑬ on page 4):



5 **Move-Out Orders**

- a. I agree to the orders requested.
- b. I do not agree to the orders requested. *(Specify why you disagree in item 13 on page 4.)*
- c. I agree to the following orders *(specify below or in item 13 on page 4):*
-
-

6 **Additional Protected Persons**

- a. I agree that the persons listed in item 6 of form EA-100 may be protected by the order requested.
- b. I do not agree that the persons listed in item 6 of form EA-100 may be protected by the order requested.

7 **Order for Counseling or Anger Management Courses**

i This item is only available in instances of alleged physical abuse or deprivation of care, not in cases with only alleged financial abuse.

- a. I agree to the orders requested.
- b. I do not agree to the orders requested. *(Specify why you disagree in item 13 on page 4.)*
- c. I agree to the following orders *(specify below or in item 13 on page 4):*
-
-

8 **Guns or Other Firearms and Ammunition**

If you were served with form EA-110, *Temporary Restraining Order*, you cannot own or possess any guns, other firearms, or ammunition. (See item 8 of form EA-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control within 24 hours of being served with form EA-110. You must file a receipt with the court. You may use form EA-800, *Proof of Firearms Turned In, Sold, or Stored*, for the receipt.

- a. I do not own or control any guns, firearms, magazines or ammunition.
- b. I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. *(Explain):*
- Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 8b—Firearms Surrender Exemption" as a title. You may use form MC-025, Attachment.*
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- c. I have turned in my guns and firearms to the police or sold them to or stored them with a licensed gun dealer.

A copy of the receipt is attached. has already been filed with the court.



9 **Possession and Protection of Animals**

- a. I agree to the orders requested.
- b. I do not agree to the orders requested. *(Specify why you disagree in item 13 on page 4.)*
- c. I agree to the following orders *(specify below or in item 13 on page 4):*

10 **Other Orders**

- a. I agree to the orders requested.
- b. I do not agree to the orders requested. *(Specify why you disagree in item 13 on page 4.)*
- c. I agree to the following orders *(specify below or in item 13 on page 4):*

11 **Denial**

I did not do anything described in item 8 of form EA-100. *(Skip to 13.)*

12 **Justification or Excuse**

If I did some or all of the things that the person in 1 has accused me of, my actions were justified or excused for the following reasons *(explain)*:

Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 12–Justification or Excuse" as a title. You may use form MC-025, Attachment.

13 **Reasons I Do Not Agree to the Orders Requested**

Explain your answers to each order requested that you do not agree with.

Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 13—Reasons I Disagree" as a title. You may use form MC-025, Attachment.

14 **Lawyer's Fees and Costs**

a. I ask the court to order payment of my lawyer's fees court costs. The amounts requested are:

<u>Item</u>	<u>Amount</u>	<u>Item</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

Check here if there are more items. Put the items and amounts on the attached sheet of paper and write "Attachment 14—Lawyer's Fees and Costs" for a title. You may use form MC-025, Attachment.

b. I ask the court to deny the request of the person asking for protection named in **1** that I pay his or her lawyer's fees and costs.

15 Number of pages attached to this form, if any: _____

Date: _____

Lawyer's name (if any)

Lawyer's signature

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

Type or print your name

Sign your name