

**Attorney General's Advisory Committee Meeting
Legislation Update**

Chaptered Legislation

1) Senate Bill (SB) 384 – Chapter 541, Statutes of 2017 – Sex Offender Tiering

SB 384 will, commencing January 1, 2021, establish three tiers of registration for sex offenders, based on specified criteria, for periods of at least 10 years, at least 20 years, and life.

SB 384 will, effective July 1, 2021, establish procedures for termination from the sex offender registry for a registered sex offender who is a tier one or tier two offender and who completes his or her mandated minimum registration period under specified conditions. The bill will require the offender to file a petition at the expiration of his or her minimum registration period, as specified.

SB 384 will require the court to notify the Department of Justice (DOJ) when a petition for termination from the registry is granted or denied.

SB 384 will also revise the criteria for exclusion from the Megan's Law Internet Web site, effective January 1, 2022.

2) SB 393 – Chapter 680, Statutes of 2017 – Arrests: Sealing

SB 393 authorizes the sealing of a record of any arrest that did not result in a conviction, with specified exceptions. It provides that a person who is eligible to have his or her arrest sealed is entitled to the seal as a matter of right, except in specific circumstances.

Upon granting a petition, the bill requires the court to, among other things, furnish a disposition report indicating that relief has been ordered and the section under which it was granted, to the DOJ pursuant to Penal Code (PC) section 13151. It further stipulates that orders to seal the applicable record(s) do not apply to the DOJ and the DOJ should not process them if received.

SB 393 goes on to require that the state summary criminal history information be updated to include a note stating "arrest relief granted" along with the date the order was issued and the section under which it was granted.

Lastly, SB 393 amended PC section 11105 to prohibit the dissemination of arrests for which relief has been granted pursuant to the bill except to law enforcement agencies.

3) SB 54 – Chapter 495, Statutes of 2017 – Immigration Data Sharing

SB 54 limits state agencies, among others, from using any resources to assist or engage in immigration enforcement activities, as defined. It requires a California law enforcement agency that chooses to participate in a joint law enforcement task force to submit an annual report to the DOJ pertaining to task force operations. It requires the Attorney General (AG), by March 1, 2019 and annually thereafter, to report on the number of arrests made by joint law enforcement task forces and the total number of arrests made for the purpose of immigration enforcement by participants.

The bill requires the AG, by October 1, 2018, to publish model policies limiting assistance with immigration enforcement for use by public schools, public libraries, health facilities, as specified,

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and courthouses, among others. It also requires the AG, by October 1, 2018, to publish guidance, audit criteria, and training recommendations to ensure that databases operated by state and local law enforcement agencies are governed in a manner that limits the availability of information to anyone for the purpose of immigration enforcement.

Active Legislation

Criminal Offender Record Information (CORI) Dissemination

4) SB 1298 – The Increasing Access to Employment Act

Introduced on 2/16/18

SB 1298 would limit the CORI that is disseminated to authorized entities for the purposes of employment, licensing, and certification to “more recent” misdemeanor and felony convictions, arrests for which the person is released on bail or on his or her own recognizance pending trial, and/or offenses for which registration as a sex offender is required, as specified. In some cases, “more recent” would be limited to misdemeanor convictions occurring within two years of the request for CORI and felony convictions occurring within five years. In other cases, “more recent” would be limited to misdemeanor and felony convictions occurring within five years of the request for CORI.

The bill would require that the subject undergoing the fingerprint background check be provided a copy of his or her CORI prior to it being furnished to the employing, licensing, or certifying agency. It would also require the DOJ to allow the subject “a reasonable opportunity of not less than five days” to challenge anything on the record prior to the information being furnished to the requesting agency.

When the source document is questioned in those instances when a person questions the accuracy or completeness of a record, the bill would require the DOJ to verify the accuracy of the source document within 5 days. If the DOJ is unable to verify the accuracy of the source document, then SB 1298 would require the DOJ to correct its record, destroy and purge the information, and notify the agency that provided the information. SB 1298 would require the DOJ to inform the applicant of the correction and destruction of the record within 10 days, and would require a person or agency to whom the incorrect record has been disseminated to, upon notification, correct the record, and destroy and purge the incorrect information within 30 days.

SB 1298 would remove the requirement that a person submit fingerprints to the DOJ in order to obtain his or her CORI and instead require that the person “submit a form, furnished by the department, that includes information the department deems necessary.” It would require the form to be available from the DOJ and any state or local law enforcement agency.

Sex Offender Registration

5) Assembly Bill (AB) 1738 – Sex Offenses: Prostitution: Registration

Introduced on 1/3/18

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AB 1738 would add PC section 647(b)(3) to the list of offenses that require registration as a sex offender. Specifically, registration would now be required for an individual who is convicted of the commission, or the attempted commission, of soliciting, or agreeing to engage in, or engaging in, an act of prostitution with another person who is a minor. Furthermore, this bill would classify that individual as a tier two offender, commencing January 1, 2021.

6) SB 757 – Prostitution: Sex Offender Registration and DNA Collection

Amended on 1/23/18

SB 757 would require persons over 18 years old convicted of PC section 647(b)(3) to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis.

SB 757, commencing January 1, 2021, would add PC 647(b)(3) to the list of offenses that require registration as a sex offender. Specifically, registration as a tier-one offender would now be required for an individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for compensation, money, or anything of value to the minor, unless the court finds that the defendant had reason to believe the victim was not a minor, was misled about the victim's age, or was less than three years older than the victim at the time of the solicitation.

Custody Incarceration and Release Information

7) AB 1994 - Sex Offenders: County or Local Custodial Facilities

Amended on 2/13/18

AB 1994 would amend PC section 290.013 to require a Department of Corrections and Rehabilitation (CDCR) facility or mental institution to inform the DOJ within *15 working days* of a sex offender registrant being brought into or released from custody, as specified. The bill also adds this reporting requirement for a county or local custodial facility.

Existing law requires a CDCR facility and mental institution to inform the DOJ of the above within 90 days, and does not have this reporting requirement of a county or local custodial facility

8) AB 2080 – Criminal Offender Record Information: Reporting

Introduced on 2/7/18

AB 2080 would clarify the Penal Code section 13152 requirement that both admission and release from detention facilities be reported by the detention agency to the DOJ within 30 days.

Miscellaneous

9) AB 1511 – Sentencing Enhancements: Property Loss

Amended on 1/3/18

As of January 1, 2018, a section of the PC that imposed an “excessive taking” sentencing enhancement if a person took, damaged, or destroyed property in the commission or attempted

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commission of a felony, with the intent to do so, was repealed. The section allowed losses to be aggregated so that a defendant was accountable for the total harm caused to a victim.

AB 1511 would reinstate the sentence enhancement and increase the threshold for which it would apply.

DOJ 2018 Legislative Concept

10) Amend PC to Address Conflicting Sealing and Firearm Prohibition Subsections

Under current law, a defendant who has a criminal record due to a mental health disorder stemming from service in the United States military may request to have his or her record sealed by the court. This is meant to provide relief to veterans for employment and housing purposes. A separate subsection of the same statute states that the sealing of a record pursuant to that section does not authorize a defendant to own, possess, or have in his or her custody any firearm.

Once a record is sealed at the state level, however, the offense and conviction no longer appear on the individual's criminal history. Subsequently, any firearms prohibition associated with the conviction disappears.

This proposal would clarify that the right to seal a record would only apply at the local level. At the state level, the offense would be dismissed and would only be disseminated to law enforcement and criminal justice agencies.