

From: Judge Robert Devlin, Jr
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To: Connecticut Sentencing Commission

Re: Sex Offender Registry Removal Mechanism

Date: September 9, 2021

Introduction

Special Act 15-2 charged the Connecticut Sentencing Commission to research and develop proposals for reforming Connecticut's policies for sexual offenders, including sentencing, registration, the collateral consequences of registration, and the utility of the sex offender registry to law enforcement and the public.

In 2017, the Commission published a comprehensive [report](#) on sex offender registration and management. The Commission also introduced legislation to reform the registry from a charge-based system to a risk-based system.

The current registry does not incentivize registrants who comply with all requirements. Moreover, aside from imposing a Class D felony for failing to report a change of address, the current system does not sanction registrants for inappropriate behavior. Registration requirements also fail to differentiate between high- and low-risk offenders, subjecting all registrants to the same penalties and stigma while making it difficult for the public to understand the level of risk an individual poses.

The Commission recognizes that placement on the public registry can impede the registrant's successful reentry into society by making it more difficult to find housing or employment. The Commission further recognizes a need to reform the sex offender registry to focus on high-risk individuals and provide long-term benefits to victims, law enforcement, low-risk offenders, and the general public.

From 2018 through 2021, the Commission introduced a comprehensive reform proposal addressing most of the problems identified above. The General Assembly's Judiciary Committee did not raise the bill in 2020 or 2021. In light of this, Commission members have discussed introducing a narrower proposal comprising a subset of the Commission's recommendations, including a possible removal mechanism from the registry. Connecticut is among a small minority of jurisdictions that do not provide a removal process.

This memo provides two options for the Commission to consider. Both penalize a registrant's inappropriate behavior and incentivize appropriate behavior. All registrants will have an opportunity to petition for removal from the public registry. To successfully petition, registrants must show by their conduct that they have reduced their risk to the community.

Current Law

Under current state law, judges have limited ability to exempt people convicted of sexual offenses from the public registry. In a small subset of cases, if a court finds that public dissemination of an offender's registration information is not required for public safety, the court can limit the dissemination of that information to law enforcement. This option is only available to two categories of individuals: (1) persons who committed second-degree sexual assault in a spousal or cohabiting relationship, CGS § 54-255(a), and (2) persons who committed sexual offenses against a minor who is a relative. CGS § 54-255(b).

Select categories of sex offenders are exempt from registration entirely. Specifically, a court may order an exemption if registration is not required for public safety and the person was (1) convicted of having sexual intercourse with a victim aged 13 to 15 (second-degree sexual assault) and (2) under age 19 at the time of the offense. CGS § 54-251(b).

A court may also exempt registration requirements for a person convicted of sexual contact with another person without consent or nonconsensual voyeuristic recording of a person. In both cases, the court must find registration of the person is not required for public safety. CGS § 54-251(c).

Removal Mechanisms in Other States

Thirty-five states provide a mechanism for removal from the state's registry. These include nearby states in the region, such as Massachusetts, New York, New Jersey, and New Hampshire. In these states, certain registrants — typically those individuals convicted of less serious offenses or those classified at a lower risk tier — may petition for removal from the registry. Usually, registrants must have spent a certain number of years on the registry to be eligible to petition, and courts may only grant the petition upon evidence showing the registrant is not likely to reoffend. Some states additionally require the registrant to complete any required behavioral programming or supervised release terms before a court may grant a petition.

While nearly all states' removal mechanisms are established by statute, in Alaska, the removal mechanism exists by virtue of the Alaska Supreme Court's interpretation of the state's due process clause. Pursuant to *Doe v. Alaska Department of Public Safety*, registrants in Alaska may seek removal by filing a civil action in the state superior court. 444 P.3d 116, 135 (Alaska 2019). While there are no time or offense criteria established for this action, petitioners must show that they “no longer pose[] a risk to the public that justifies continued registration” to be removed. *Id.*

Connecticut is one of only 15 states to provide no early termination or pathway to removal from the sex offender registry.¹

¹ The other fourteen states are Arizona (except for juvenile registrants, who may petition for removal), Indiana, Illinois, Kansas, Kentucky, Maine, Minnesota, New Mexico, North Dakota, Pennsylvania, Rhode Island, South Carolina, Vermont, and West Virginia. Though Rhode Island does not allow for removal from the registry, registrants may petition to modify their community notification requirements.

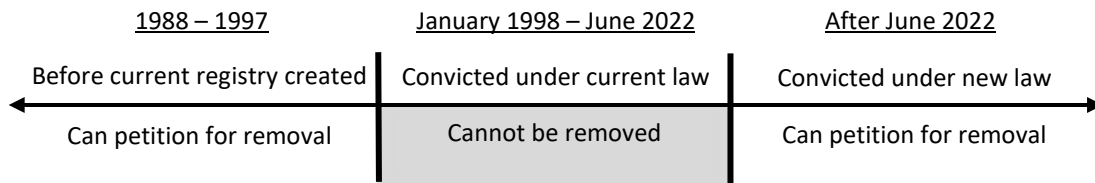
Proposal # 1: Fully retroactive removal mechanism; expanded ability for judges to issue exemptions.

- All registrants can petition the Superior Court for removal from the public registry after being on the public registry for 10 years.
- The Superior Court shall hold a hearing for a petitioner eligible for removal. The court shall notify the Office of Victim Services and the Court Support Services Division (if applicable) within the Judicial Branch, the Victim Services Unit within the Department of Correction, the Office of the Chief Public Defender, and the appropriate state's attorney of the hearing date.
- The Office of the Chief Public Defender shall assign counsel for an indigent petitioner.
- If the petitioner is under the supervision of the Judicial Branch's Court Support Services Division, the division shall submit a supervision progress report to the court before the hearing.
- At the hearing, the court shall permit the registrant and the state's attorney to present evidence and allow the victim to make a statement. The victim shall also be permitted to submit a statement in writing.
- The court may order an offender's removal from the registry if, in the court's opinion, such removal shall assist the offender in reintegration into the community and shall be consistent with public safety. In making this determination, the court shall consider the nature of the offense and the petitioner's conduct since the offense, including (1) the offender's history of sex offender or behavioral health treatment; (2) the results of any relevant evaluations by behavioral health professionals; (3) the offender's history of employment and education; (4) the offender's compliance with the terms of parole, probation, and the requirements of the sex offender registry; and (5) any other factors bearing on the offender's reintegration into the community. The registrant shall have the burden of proof by a preponderance of the evidence. Instead of removing the petitioner from the registry entirely, the court may also move the individual to the law enforcement registry for the remainder of the registration period.
- If the court orders an offender removed from the registry, the court shall notify DESPP; the Judicial Branch's Court Support Services Division (if applicable); the Office of Victim Services within the Judicial Branch; the Parole and Community Services Division, if applicable; the Victim Services Unit within the Department of Correction; and the police department or the state police troop having jurisdiction over the registrant's address.
- The registrant and the state's attorney shall have the right to appeal the decision of the Superior Court. The decision of the court shall be subject to review for abuse of discretion.

- The proposal would also expand eligibility for courts to exempt registration requirements for people convicted of misdemeanors.

Proposal # 2: Prospective removal mechanism; removal mechanism for the “grandfathered” registrants; transfer to law enforcement registry; expanded ability for judges to issue exemptions.

- Under this proposal, courts can grant a petition to remove certain registrants from the registry. Only the “grandfathered” registrants and future registrants will be eligible for removal after serving 10 years on the registry. Current registrants (who were not “grandfathered”) will not be eligible for removal but could petition the court to be moved to the law enforcement registry.



“Grandfathered” Registrants

- Those who were retroactively placed on the registry when the registry went into effect (i.e., offenders convicted before January 1, 1998, without knowing that they would be subject to a registry) shall be eligible to petition the Superior Court for removal.
- The Superior Court shall hold a hearing according to the procedures and criteria for removal set forth above. After the hearing, the court may (1) completely remove an offender from the registry or (2) move the offender to the law enforcement registry.
- If a removal request is denied after a hearing, subsequent petitions may be filed 10 years after such a decision. For good cause shown, the Superior Court may permit a subsequent petition to be filed before the 10-year period.

Registrants convicted under current law (post-1998 to the implementation of the bill)

- These individuals would not be eligible for removal but could petition the Superior Court to be moved to the law enforcement registry after serving 10 years on the public registry.

Prospective registrants

- These individuals would be eligible for removal or transfer to the law enforcement registry after registering on the public registry for 10 years.

The hearing

- The Superior Court shall hold a hearing for a petitioner eligible for removal. The court shall notify the Office of Victim Services and the Court Support Services Division (if applicable) within the Judicial Branch, the Victim Services Unit within the Department of Correction, the Office of the Chief Public Defender, and the appropriate state's attorney of the hearing date.
- The Office of the Chief Public Defender shall assign counsel for an indigent petitioner.
- If the petitioner is under the supervision of the Judicial Branch's Court Support Services Division, the division shall submit a supervision progress report to the court before the hearing.
- At the hearing, the court shall permit the registrant and the state's attorney to present evidence and allow the victim to make a statement. The victim shall also be permitted to submit a statement in writing.
- The court may order an offender's removal from the registry if, in the court's opinion, such removal shall assist the offender in reintegration into the community and shall be consistent with public safety. In making this determination, the court shall consider the nature of the offense and the petitioner's conduct since the offense, including (1) the offender's history of sex offender or behavioral health treatment; (2) the results of any relevant evaluations by behavioral health professionals; (3) the offender's history of employment and education; (4) the offender's compliance with the terms of parole, probation, and the requirements of the sex offender registry; and (5) any other factors bearing on the offender's reintegration into the community. The registrant shall have the burden of proof by a preponderance of the evidence. The court may also place the petitioner on the law enforcement registry for the remainder of their registration period.
- If the court orders an offender removed from the registry, the court shall notify DESPP; the Judicial Branch's Court Support Services Division, if applicable; the Office of Victim Services within the Judicial Branch; the Parole and Community Services Division, if applicable; the Victim Services Unit within the Department of Correction; and the police department or the state police troop having jurisdiction over the registrant's address.
- The registrant and the state's attorney shall have the right to appeal the decision of the Superior Court. The decision of the court shall be subject to review for abuse of discretion.

Exemption from the Registry

- The proposal would expand eligibility for courts to exempt registration requirements for people convicted of misdemeanors.