

Arguments against California SB-1081 (2024)

(proposal to automatically register draft-age male applicants for California driver's licenses with the U.S. Selective Service System for a possible military draft)

Text and status of SB-1081:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB1081

Legal analysis of SB-1081 by the Military Law Task Force of the National Lawyers Guild:

<https://hasbrouck.org/draft/NLG-MLTF-California-SB1081-STRANS.pdf>

Advocacy portal to submit statements of opposition (letters from individuals must include name and address; letters from organizations must name a contact person in the letter; to be considered, letters must reference "SB-1081" and explicitly state that they "oppose" or "support" this bill):

<https://calegislation.lc.ca.gov/Advocates/>

1. Draft registration is a failure. Linking it to California drivers' licenses won't salvage it.
 - (a) An actual draft requires a complete and accurate database of names and current addresses for provable delivery of induction notices. Men ages 18-26 are required to notify the Selective Service System (SSS) within 10 days of any change of address, but few do. Most induction notices sent to addresses in the SSS database would be returned as undeliverable: <https://hasbrouck.org/draft/compliance.html>
 - (b) The SSS exaggerates compliance with by counting as "in compliance" anyone who ever registers, even if they register years late and/or move without notifying the SSS.
 - (c) Dr. Bernard Rostker, Director of the Selective Service System from 1979-1981, testified in 2019 to the Military, National, and Public Service that the database is so incomplete and inaccurate as to be "less than useless" for a draft, and that registration should be repealed.
 - (d) Registration proved unenforceable, and an actual draft would be similarly unenforceable.
 - i. Federal criminal prosecutions of nonregistrants (including in California) didn't work, and were abandoned in 1988 after only a handful of test cases were brought.
 - ii. Too many young people don't comply for more than a handful to be prosecuted. The U.S. Department of Justice (DOJ) has no plan or budget for enforcement of draft registration. In FY 2021 (the most recent year reported), the SSS referred 238,679 names of nonregistrants to the DOJ. None were investigated or prosecuted.
 - iii. Nonregistration is only a crime if it was "knowing and willful". This requires labor-intensive personal notice before each prosecution. Most nonregistrants didn't know they were supposed to register, have committed no crime, and couldn't be prosecuted.
2. The negative consequences of nonregistration have been exaggerated and don't justify this bill.
 - (a) Congress repealed the requirement to register with the SSS for Federal student aid in 2020.
 - (b) California repealed the requirement to register with the SSS for Cal Grants in 2021.
 - (c) Legislation has been proposed in Congress to end registration and abolish the SSS.
 - (d) Denial of Federal jobs or naturalization requires evidence that nonregistration was "knowing and willful". In most cases, there is no such evidence, and nonregistrants are eligible for Federal jobs if they swear they didn't know they were supposed to register. According to the Federal Office of Personnel Management, only 1% of cases of nonregistrants adjudicated by OPM result in denial of Federal employment.

3. California should not be using state resources to enforce the Military Selective Service Act.
 - (a) Federal laws should be enforced by the Federal government, at Federal expense.
 - (b) If the Federal government chooses not to enforce the provisions of Federal criminal laws, California should not try to take over enforcement of those Federal laws. This would set a dangerous precedent for claims of “states rights” and overreach of state authority.
 - (c) Registration for a military draft is irrelevant to the purpose of driver licensing: road safety.
 - (d) The only reason to use drivers’ licenses as the primary mechanism for enforcement of draft registration is as a short-cut to evade Federal court proceedings and due process rights.
 - (e) Selective Service registration data is given automatically to military recruiters. The Department of Motor Vehicles shouldn’t be used as a military recruiting agency.
 - (f) California is not alone in choosing not to use its state Vehicle Code to enforce the Military Selective Service Act. Other states that don’t link driver’s licenses to Selective Service registration include Oregon, Pennsylvania, New Jersey, Massachusetts, etc.
 - (g) The California Constitution prohibits using vehicle funds for unrelated purposes. SB-1081 would require startup funding from the Federal government, but no such funds are available, and the bill makes no provision for ongoing funding after the startup.
4. Extrajudicial state sanctions for nonregistration with the SSS deny due process and other rights.
 - (a) No opportunity for judicial review of Constitutionality of registration requirement or preparation for military draft for undeclared wars.
 - (b) No presumption of innocence or day in court for nonregistrants denied driver’s licenses.
5. The “opt-out” provision in SB-1081 is deceptive and entrapment.
 - (a) Opting out of registration with the SSS would require signing a written admission of notice of the registration requirement. This would amount to a written confession of a Federal crime, obtained by the DMV without providing legal counsel or Miranda warnings. The DMV should not be interrogating driver’s license applicants about unrelated Federal crimes.
 - (b) SB-1081 purports to restrict access to records of who opt out, but this provision could be overridden by a Federal subpoena for evidence of knowing and willful nonregistration.
6. Selective Service registration is a bad policy choice.
 - (a) Constitutional objections to peacetime draft and draft for undeclared wars.
 - (b) Pacifist and anti-war objections to preparation and planning for war.
 - (c) Draft registration is not needed. There’s no realistic scenario for a war the U.S. should be preparing to fight, but for which there wouldn’t be enough volunteers.
 - (d) Many people have sincere religious objections to registering for the draft. (There’s no provision in Federal law or SB-1081 for conscientious objection to registration.)
 - (e) Draft registration promotes the illusion that a draft is available as a “fallback”, which:
 - i. leads to unrealistic mobilization planning
 - ii. enables planning for endless, unlimited wars that people would not volunteer to fight
7. Only males (as assigned at birth) are currently required to register with the SSS.
 - (a) California should not use state resources in support of a program that is explicitly anti-trans and explicitly discriminates on the basis of gender.
 - (b) Even if requiring only males (as assigned at birth) to register with the SSS is permitted under Federal law, using California state resources in support of such a discriminatory program would violate the California Constitution. Defending this bill against the inevitable lawsuits would require the state of California to argue in favor of sex discrimination and set dangerous precedents rolling back protections against sex discrimination in California.