

CALIFORNIA

California Codes Penal Code § 4852.01-4852.21

4852.01. (a) Any person convicted of a felony who has been released from a state prison or other state penal institution or agency in California, whether discharged on completion of the term for which he or she was sentenced or released on parole prior to May 13, 1943, who has not been incarcerated in a state prison or other state penal institution or agency since his or her release and who presents satisfactory evidence of a three-year residence in this state immediately prior to the filing of the petition for a certificate of rehabilitation and pardon provided for by this chapter, may file the petition pursuant to the provisions of this chapter.

(b) Any person convicted of a felony who, on May 13, 1943, was confined in a state prison or other institution or agency to which he or she was committed and any person convicted of a felony after that date who is committed to a state prison or other institution or agency may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of this chapter.

(c) Any person convicted of a felony or any person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in any prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading and is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years residence in this state prior to the filing of the petition.

(d) This chapter shall not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, or persons in the military service.

(e) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

4852.03. (a) The period of rehabilitation shall begin to run upon the discharge of the petitioner from custody due to his or her completion of the term to which he or she was sentenced or upon his or her release on parole or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute five years' residence in this state, plus a period of time determined by the following rules:

(1) To the five years there shall be added four years in the case of any person convicted of violating Section 187, 209, 219, 4500 or 12310 of this code, or subdivision (a) of

Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.

(2) To the five years there shall be added five years in the case of any person convicted of committing any offense or attempted offense for which sex offender registration is required pursuant to Section 290, except for convictions for violations of subdivision (b), (c), or (d) of Section 311.2, or of Section 311.3, 311.10, or 314. For those convictions, two years shall be added to the five years imposed by this section.

(3) To the five years there shall be added two years in the case of any person convicted of committing any offense that is not listed in paragraph (1) or paragraph (2) and that does not carry a life sentence.

(4) The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that his or her statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all the crimes.

(5) Any person who was discharged after completion of his or her term or was released on parole before May 13, 1943, is not subject to the periods of rehabilitation set forth in these rules.

(b) Unless and until the period of rehabilitation, as stipulated in this section, has passed, the petitioner shall be ineligible to file his or her petition for a certificate of rehabilitation with the court. Any certificate of rehabilitation that is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void.

(c) A change of residence within this state does not interrupt the period of rehabilitation prescribed by this section.

4852.04. Each person who may initiate the proceedings provided for in this chapter shall be entitled to receive counsel and assistance from all rehabilitative agencies, including the adult probation officer of the county and all state parole officers, and, in the case of persons under the age of 30 years, from the Youth Authority.

4852.05. The person shall live an honest and upright life, shall conduct himself or herself with sobriety and industry, shall exhibit a good moral character, and shall conform to and obey the laws of the land.

4852.06. Except as provided in subdivision (a) of Section 4852.01, after the expiration of the minimum period of rehabilitation applicable to him or her (and, in the case of persons released upon parole or probation, after the termination of parole or probation), each person who has complied with the requirements of Section 4852.05 may file in the superior court of the county in which he or she then resides a petition for ascertainment and declaration of the fact of his or her rehabilitation and of matters incident thereto, and for a certificate of rehabilitation under this

chapter. No petition shall be filed until and unless the petitioner has continuously resided in this state, after leaving prison, for a period of not less than five years immediately preceding the date of filing the petition.

4852.07. The petitioner shall give notice of the filing of the petition to the district attorney of the county in which the petition is filed, to the district attorney of each county in which the petitioner was convicted of a felony or of a crime the accusatory pleading of which was dismissed pursuant to Section 1203.4, and to the office of the Governor, together with notice of the time of the hearing of the petition, at least 30 days prior to the date set for such hearing.

4852.08. During the proceedings upon the petition, the petitioner may be represented by counsel of his own selection; if he has no such counsel he shall be represented by the public defender, if there is one in the county, and if there is none, by the adult probation officer of the county or if in the opinion of the court the petitioner needs counsel, the court shall assign counsel to represent him.

4852.09. No filing fee nor court fees of any kind shall be required of a petitioner in proceedings under this chapter.

4852.1. The court in which the petition is filed may require such testimony as it deems necessary, and the production, for the use of the court and without expense of any kind to the petitioner, of all records and reports relating to the petitioner and the crime of which he was convicted, including the record of the trial, the report of the probation officer, if any, the records of the prison, jail, detention facility or other penal institution from which the petitioner has been released showing his conduct during the time he was there, the records of the penal institution or agency doctor and psychiatrist, the records of the parole officer concerning him if he was released on parole, the records of the Youth Authority concerning him if he has been committed to the authority, and written reports or records of any other law enforcement agency concerning the conduct of the petitioner since his release on probation or parole or discharge from custody. All persons having custody of any such records shall make them available for the use of the court in the proceeding.

4852.11. Any peace officer shall report to the court, upon receiving a request as provided in Section 4852.1, all violations of law committed by said petitioner which may come to his knowledge. Upon receiving satisfactory proof of such violation the court may deny the petition and determine a new period of rehabilitation not to exceed the original period of rehabilitation for the same crime. In that event, before granting the petition, the court may thereafter require the petitioner to fulfill all the requirements provided to be fulfilled before the granting of the certificate under the original petition.

4852.12. (a) In any proceeding for the ascertainment and declaration of the fact of rehabilitation under this chapter, the court, upon the filing of the application for petition of rehabilitation, may request from the district attorney an investigation of the residence of the petitioner, the criminal record of the petitioner as shown by the records of the Department of Justice, any representation made to the court by the applicant, the conduct of the petitioner during his period of rehabilitation, including all matters mentioned in Section 4852.11, and any other information the

court may deem necessary in making its determination. If so requested, the district attorney shall provide the court with a full and complete report of such investigations.

b) In any proceeding for the ascertainment and declaration of the fact of rehabilitation under this chapter of a person convicted of a crime the accusatory pleading of which has been dismissed pursuant to Section 1203.4, the district attorney, upon request of the court, shall deliver to the court the criminal record of petitioner as shown by the records of the Department of Justice. The district attorney may investigate any representation made to the court by petitioner and may file with the court a report of the investigation including all matters known to the district attorney relating to the conduct and place and duration of residence of the petitioner during the period of rehabilitation and all known violations of law committed by petitioner.

4852.13. (a) Except as otherwise provided in subdivision (b), if after hearing, the court finds that the petitioner has demonstrated by his or her course of conduct his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship, the court may make an order declaring that the petitioner has been rehabilitated, and recommending that the Governor grant a full pardon to the petitioner. This order shall be filed with the clerk of the court, and shall be known as a certificate of rehabilitation.

(b) No certificate of rehabilitation shall be granted to a person convicted of any offense specified in Section 290 if the court determines that the petitioner presents a continuing threat to minors of committing any of the offenses specified in Section 290.

(c) A district attorney in either the county where the conviction was obtained or the county of residence of the recipient of the certificate of rehabilitation may petition the superior court to rescind a certificate if it was granted for any offense specified in Section 290. The petition shall be filed in either the county in which the person who has received the certificate of rehabilitation resides or the county in which the conviction was obtained. If the superior court finds that petitioner has demonstrated by a preponderance of the evidence that the person who has received the certificate presents a continuing threat to minors of committing any of the offenses specified in Section 290, the court shall rescind the certificate.

4852.14. The clerk of the court shall immediately transmit certified copies of the certificate of rehabilitation to the Governor, to the Board of Prison Terms and the Department of Justice, and, in the case of persons twice convicted of a felony, to the Supreme Court.

4852.15. Nothing in this chapter shall be construed to abridge or impair the power or authority conferred by law on any officer, board, or tribunal to revoke or suspend any right, privilege, or franchise for any act or omission not involved in his or her conviction, or to require the reinstatement of the right or privilege to practice or carry on any profession or occupation the practice or conduct of which requires the possession or obtaining of a license, permit, or certificate. Nothing in this chapter shall affect any provision of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the power or authority conferred by law on the Board of Medical Examiners therein, or the power or authority conferred by law upon any board that issues a certificate permitting any person to practice or apply his or her art or profession on the person of another. Nothing in this chapter shall affect any provision

of Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code or the power or authority in relation to attorneys at law and the practice of the law in the State of California conferred by law upon or otherwise possessed by the courts, or the power or authority conferred by law upon the State Bar of California or any board or committee thereof.

4852.16. The certified copy of a certificate of rehabilitation transmitted to the Governor shall constitute an application for a full pardon upon receipt of which the Governor may, without any further investigation, issue a pardon to the person named therein, except that, pursuant to Section 8 of Article V of the Constitution, the Governor shall not grant a pardon to any person twice convicted of felony, except upon the written recommendation of a majority of the judges of the Supreme Court.

4852.17. Whenever a person is issued a certificate of rehabilitation or granted a pardon from the Governor under this chapter, the fact shall be immediately reported to the Department of Justice by the court, Governor, officer, or governmental agency by whose official action the certificate is issued or the pardon granted. The Department of Justice shall immediately record the facts so reported on the former criminal record of the person, and transmit those facts to the Federal Bureau of Investigation at Washington, D.C. When the criminal record is thereafter reported by the department, it shall also report the fact that the person has received a certificate of rehabilitation, or pardon, or both. Whenever a person is granted a full and unconditional pardon by the Governor, based upon a certificate of rehabilitation, the pardon shall entitle the person to exercise thereafter all civil and political rights of citizenship, including but not limited to: (1) the right to vote; (2) the right to own, possess, and keep any type of firearm that may lawfully be owned and possessed by other citizens; except that this right shall not be restored, and Sections 12001 and 12021 shall apply, if the person was ever convicted of a felony involving the use of a dangerous weapon.

4852.18. The Board of Prison Terms shall furnish to the clerk of the superior court of each county a set of sample forms for a petition for certificate of rehabilitation and pardon, a notice of filing of petition for certificate of rehabilitation and pardon, and a certificate of rehabilitation. The clerk of the court shall have a sufficient number of these forms printed to meet the needs of the people of the county, and shall make these forms available at no charge to persons requesting them.

4852.19. This chapter shall be construed as providing an additional, but not an exclusive, procedure for the restoration of rights and application for pardon. Nothing in this chapter shall be construed as repealing any other provision of law providing for restoration of rights or application for pardon.

4852.2. Every person, other than an individual who is licensed to practice law in the State of California, pursuant to Article 4 (commencing with Section 6060) of Chapter 4 of Division 3 of the Business and Professions Code and who is acting in that capacity, who solicits or accepts any fee, money, or anything of value for his or her services, or his or her purported services, in representing a petitioner in any proceeding under this chapter, or in any application to the Governor for a pardon under this chapter, is guilty of a misdemeanor.

4852.21. (a) Any person to whom this chapter applies shall, prior to his discharge or release on parole from a state prison or other state penal institution or agency, be informed in writing by the official in charge of the place of confinement of his right to petition for, and of the procedure for filing the petition for, and obtaining, a certificate of rehabilitation and pardon pursuant to this chapter.

(b) Prior to dismissal of the accusatory pleading pursuant to Section 1203.4, the defendant shall be informed in writing by the clerk of the court dismissing the accusatory pleading of the defendant's right, if any, to petition for, and of the procedure for filing a petition for, and obtaining, a certificate of rehabilitation and pardon pursuant to this chapter.