

Introduced by Senator WrightFebruary 21, 2013

An act to amend Section 432.7 of the Labor Code, and to amend Sections 4852.01, 4852.03, 4852.07, and 4852.13 of the Penal Code, relating to criminal offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 530, as introduced, Wright. Criminal offenders: rehabilitation.

Existing law authorizes an individual convicted of a felony or convicted of a misdemeanor violation of a sex offense, as specified, the accusatory pleading of which has been dismissed, to file a petition for a certificate of rehabilitation and a pardon provided that the petitioner has not been incarcerated since the dismissal of the accusatory pleading, is not on probation for the commission of another felony, and presents satisfactory evidence of 5 years' residence in this state prior to the filing of the petition. Existing law authorizes, after the minimum period of rehabilitation has expired, an individual, as specified, to file a petition for ascertainment and declaration of rehabilitation. Existing law then requires the individual to give notice of that filing to specified individuals. Existing law authorizes a court to grant an order known as a certificate of rehabilitation and recommend that the Governor grant a full pardon to certain individuals.

This bill would eliminate the requirement that an individual present satisfactory evidence of 5 years' residence in this state prior to the filing of the petition. This bill would additionally authorize an individual convicted outside the state, as provided, of an offense that would be a felony or a misdemeanor sex offense specified in Section 290 if the conviction had occurred in the state, to file a petition for a certificate of rehabilitation if the petitioner has not been incarcerated, as specified,

since the dismissal of the accusatory pleading and is not on probation for the commission of any other felony, and presents clear and convincing evidence that he or she has been a resident of the United States, its territories, or a military base for the 5 consecutive years prior to filing the petition. The bill would make conforming changes.

Existing law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, or from utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pretrial or posttrial diversion program, except as specified. Existing law makes it a crime to intentionally violate these provisions.

This bill would additionally prohibit an employer, as specified, from asking an applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning a conviction that has been judicially dismissed, as provided, with exceptions. Because this bill would expand the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 432.7 of the Labor Code is amended to
2 read:
3 432.7. (a) No employer, whether a public agency or private
4 individual or corporation, shall ask an applicant for employment
5 to disclose, through any written form or verbally, information
6 concerning an arrest or detention that did not result in conviction,
7 or information concerning a referral to, and participation in, any
8 pretrial or posttrial diversion program, *or concerning a conviction*
9 *that has been judicially dismissed pursuant to Section 1203.4 of*
10 *the Penal Code*, nor shall any employer seek from any source
11 whatsoever, or utilize, as a factor in determining any condition of

1 employment including hiring, promotion, termination, or any
2 apprenticeship training program or any other training program
3 leading to employment, any record of arrest or detention that did
4 not result in conviction, or any record regarding a referral to, and
5 participation in, any pretrial or posttrial diversion ~~program~~
6 *program, or concerning a conviction that has been judicially*
7 *dismissed pursuant to Section 1203.4 of the Penal Code.* As used
8 in this section, a conviction shall include a plea, verdict, or finding
9 of guilt regardless of whether sentence is imposed by the court.
10 Nothing in this section shall prevent an employer from asking an
11 employee or applicant for employment about an arrest for which
12 the employee or applicant is out on bail or on his or her own
13 recognizance pending trial.

14 (b) Nothing in this section shall prohibit the disclosure of the
15 information authorized for release under Sections 13203 and 13300
16 of the Penal Code, to a government agency employing a peace
17 officer. However, the employer shall not determine any condition
18 of employment other than paid administrative leave based solely
19 on an arrest report. The information contained in an arrest report
20 may be used as the starting point for an independent, internal
21 investigation of a peace officer in accordance with Chapter 9.7
22 (commencing with Section 3300) of Division 4 of Title 1 of the
23 Government Code.

24 (c) In any case where a person violates this section, or Article
25 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part
26 4 of the Penal Code, the applicant may bring an action to recover
27 from that person actual damages or two hundred dollars (\$200),
28 whichever is greater, plus costs, and reasonable attorney's fees.
29 An intentional violation of this section shall entitle the applicant
30 to treble actual damages, or five hundred dollars (\$500), whichever
31 is greater, plus costs, and reasonable attorney's fees. An intentional
32 violation of this section is a misdemeanor punishable by a fine not
33 to exceed five hundred dollars (\$500).

34 (d) The remedies under this section shall be in addition to and
35 not in derogation of all other rights and remedies that an applicant
36 may have under any other law.

37 (e) Persons seeking employment or persons already employed
38 as peace officers or persons seeking employment for positions in
39 the Department of Justice or other criminal justice agencies as

1 defined in Section 13101 of the Penal Code are not covered by
2 this section.

3 (f) Nothing in this section shall prohibit an employer at a health
4 facility, as defined in Section 1250 of the Health and Safety Code,
5 from asking an applicant for employment either of the following:

6 (1) With regard to an applicant for a position with regular access
7 to patients, to disclose an arrest under any section specified in
8 Section 290 of the Penal Code.

9 (2) With regard to an applicant for a position with access to
10 drugs and medication, to disclose an arrest under any section
11 specified in Section 11590 of the Health and Safety Code.

12 (g) (1) No peace officer or employee of a law enforcement
13 agency with access to criminal offender record information
14 maintained by a local law enforcement criminal justice agency
15 shall knowingly disclose, with intent to affect a person's
16 employment, any information contained therein pertaining to an
17 arrest or detention or proceeding that did not result in a conviction,
18 including information pertaining to a referral to, and participation
19 in, any pretrial or posttrial diversion program, to any person not
20 authorized by law to receive that information.

21 (2) No other person authorized by law to receive criminal
22 offender record information maintained by a local law enforcement
23 criminal justice agency shall knowingly disclose any information
24 received therefrom pertaining to an arrest or detention or
25 proceeding that did not result in a conviction, including information
26 pertaining to a referral to, and participation in, any pretrial or
27 posttrial diversion program, to any person not authorized by law
28 to receive that information.

29 (3) No person, except those specifically referred to in Section
30 1070 of the Evidence Code, who knowing he or she is not
31 authorized by law to receive or possess criminal justice records
32 information maintained by a local law enforcement criminal justice
33 agency, pertaining to an arrest or other proceeding that did not
34 result in a conviction, including information pertaining to a referral
35 to, and participation in, any pretrial or posttrial diversion program,
36 shall receive or possess that information.

37 (h) "A person authorized by law to receive that information,"
38 for purposes of this section, means any person or public agency
39 authorized by a court, statute, or decisional law to receive
40 information contained in criminal offender records maintained by

1 a local law enforcement criminal justice agency, and includes, but
2 is not limited to, those persons set forth in Section 11105 of the
3 Penal Code, and any person employed by a law enforcement
4 criminal justice agency who is required by that employment to
5 receive, analyze, or process criminal offender record information.

6 (i) Nothing in this section shall require the Department of Justice
7 to remove entries relating to an arrest or detention not resulting in
8 conviction from summary criminal history records forwarded to
9 an employer pursuant to law.

10 (j) As used in this section, “pretrial or posttrial diversion
11 program” means any program under Chapter 2.5 (commencing
12 with Section 1000) or Chapter 2.7 (commencing with Section
13 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
14 13352.5 of the Vehicle Code, or any other program expressly
15 authorized and described by statute as a diversion program.

16 (k) (1) Subdivision (a) shall not apply to any city, city and
17 county, county, or district, or any officer or official thereof, in
18 screening a prospective concessionaire, or the affiliates and
19 associates of a prospective concessionaire for purposes of
20 consenting to, or approving of, the prospective concessionaire’s
21 application for, or acquisition of, any beneficial interest in a
22 concession, lease, or other property interest.

23 (2) For purposes of this subdivision the following terms have
24 the following meanings:

25 (A) “Screening” means a written request for criminal history
26 information made to a local law enforcement agency.

27 (B) “Prospective concessionaire” means any individual, general
28 or limited partnership, corporation, trust, association, or other
29 entity that is applying for, or seeking to obtain, a public agency’s
30 consent to, or approval of, the acquisition by that individual or
31 entity of any beneficial ownership interest in any public agency’s
32 concession, lease, or other property right whether directly or
33 indirectly held. However, “prospective concessionaire” does not
34 include any of the following:

35 (i) A lender acquiring an interest solely as security for a bona
36 fide loan made in the ordinary course of the lender’s business and
37 not made for the purpose of acquisition.

38 (ii) A lender upon foreclosure or assignment in lieu of
39 foreclosure of the lender’s security.

1 (C) “Affiliate” means any individual or entity that controls, or
2 is controlled by, the prospective concessionaire, or who is under
3 common control with the prospective concessionaire.

4 (D) “Associate” means any individual or entity that shares a
5 common business purpose with the prospective concessionaire
6 with respect to the beneficial ownership interest that is subject to
7 the consent or approval of the city, county, city and county, or
8 district.

9 (E) “Control” means the possession, direct or indirect, of the
10 power to direct, or cause the direction of, the management or
11 policies of the controlled individual or entity.

12 (l) (1) Nothing in subdivision (a) shall prohibit a public agency,
13 or any officer or official thereof, from denying consent to, or
14 approval of, a prospective concessionaire’s application for, or
15 acquisition of, any beneficial interest in a concession, lease, or
16 other property interest based on the criminal history information
17 of the prospective concessionaire or the affiliates or associates of
18 the prospective concessionaire that show any criminal conviction
19 for offenses involving moral turpitude. Criminal history
20 information for purposes of this subdivision includes any criminal
21 history information obtained pursuant to Section 11105 or 13300
22 of the Penal Code.

23 (2) In considering criminal history information, a public agency
24 shall consider the crime for which the prospective concessionaire
25 or the affiliates or associates of the prospective concessionaire was
26 convicted only if that crime relates to the specific business that is
27 proposed to be conducted by the prospective concessionaire.

28 (3) Any prospective concessionaire whose application for
29 consent or approval to acquire a beneficial interest in a concession,
30 lease, or other property interest is denied based on criminal history
31 information shall be provided a written statement of the reason for
32 the denial.

33 (4) (A) If the prospective concessionaire submits a written
34 request to the public agency within 10 days of the date of the notice
35 of denial, the public agency shall review its decision with regard
36 to any corrected record or other evidence presented by the
37 prospective concessionaire as to the accuracy or incompleteness
38 of the criminal history information utilized by the public agency
39 in making its original decision.

1 (B) The prospective concessionaire shall submit the copy or the
2 corrected record of any other evidence to the public agency within
3 90 days of a request for review. The public agency shall render its
4 decision within 20 days of the submission of evidence by the
5 prospective concessionaire.

6 (m) *Subdivision (a) does not prohibit an employer from asking*
7 *an applicant about a criminal conviction or seeking from any*
8 *source information regarding a criminal conviction of, or entry*
9 *into a pretrial diversion or similar program by, the applicant if,*
10 *pursuant to Section 1829 of Title 12 of the United States Code or*
11 *any other state or federal law, any of the following apply:*

12 (1) *The employer is required by law to obtain information*
13 *regarding a conviction of an applicant.*

14 (2) *The applicant would be required to possess or use a firearm*
15 *in the course of his or her employment.*

16 (3) *An individual who has been convicted of a crime is*
17 *prohibited by law from holding the position sought by the*
18 *applicant, regardless of whether that conviction has been*
19 *expunged, judicially ordered sealed, statutorily eradicated, or*
20 *judicially dismissed following probation.*

21 (4) *The employer is prohibited by law from hiring an applicant*
22 *who has been convicted of a crime.*

23 (5) (A) *In a case that was dismissed pursuant to Section 1203.4*
24 *of the Penal Code, a crime for which the applicant was convicted*
25 *directly relates to the position of employment sought.*

26 (B) *In determining if a conviction directly relates to the position*
27 *of employment sought, the employer shall consider all of the*
28 *following:*

29 (i) *The nature and seriousness of the crime or crimes of which*
30 *the individual was convicted.*

31 (ii) *The relationship of the crime or crimes to the purposes of*
32 *the position for which employment is sought.*

33 (iii) *The relationship of the crime or crimes to the ability,*
34 *capacity, and fitness required to perform the duties and discharge*
35 *the responsibilities of the position of employment.*

36 SEC. 2. Section 4852.01 of the Penal Code is amended to read:

37 4852.01. (a) Any person convicted of a felony who has been
38 released from a state prison or other state penal institution or
39 agency in California, whether discharged on completion of the
40 term for which he or she was sentenced or released on parole prior

1 to May 13, 1943, who has not been incarcerated in a state prison
2 or other state penal institution or agency since his or her release
3 and who presents satisfactory evidence of a three-year residence
4 in this state immediately prior to the filing of the petition for a
5 certificate of rehabilitation and pardon provided for by this chapter,
6 may file the petition pursuant to the provisions of this chapter.

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

13 (c) (1) Any person convicted of a felony or any person who is
14 convicted of a misdemeanor violation of any sex offense specified
15 in Section 290, the accusatory pleading of which has been
16 dismissed pursuant to Section 1203.4, may file a petition for
17 certificate of rehabilitation and pardon pursuant to the provisions
18 of this chapter if the petitioner has not been incarcerated in any
19 prison, jail, detention facility, or other penal institution or agency
20 since the dismissal of the accusatory pleading and is not on
21 probation for the commission of any other felony, and the petitioner
22 presents satisfactory evidence of five years residence in this state
23 prior to the filing of the petition. ~~felony.~~

24 (2) *Any individual convicted outside the state, but in the United*
25 *States or one of its territories, of an offense that would be a felony*
26 *or a misdemeanor sex offense specified in Section 290 if the*
27 *conviction had occurred in the state, may file a petition for a*
28 *certificate of rehabilitation pursuant to the provisions of this*
29 *chapter if the petitioner has not been incarcerated in any prison,*
30 *jail, detention facility, or other penal institution or agency since*
31 *the dismissal of the accusatory pleading and is not on probation*
32 *for the commission of any other felony, and the petitioner presents*
33 *clear and convincing evidence that he or she has been a resident*
34 *of the United States, its territories, or a military base for the five*
35 *consecutive years prior to filing the petition.*

36 (d) This chapter shall not apply to persons serving a mandatory
37 life parole, persons committed under death sentences, persons
38 convicted of a violation of subdivision (c) of Section 286, Section
39 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
40 (j) of Section 289, or persons in the military service.

1 (e) Notwithstanding the above provisions or any other provision
2 of law, the Governor shall have the right to pardon a person
3 convicted of a violation of subdivision (c) of Section 286, Section
4 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
5 (j) of Section 289, if there are extraordinary circumstances.

6 SEC. 3. Section 4852.03 of the Penal Code is amended to read:

7 4852.03. (a) The period of rehabilitation shall begin to run
8 upon the discharge of the petitioner from custody due to his or her
9 completion of the term to which he or she was sentenced or upon
10 his or her release on parole or probation, whichever is sooner. For
11 purposes of this chapter, the period of rehabilitation shall constitute
12 ~~five years' residence in this state~~ *years*, plus a period of time
13 determined by the following rules:

14 (1) To the five years there shall be added four years in the case
15 of any person convicted of violating Section 187, 209, 219, 4500,
16 or 18755 of this code, or subdivision (a) of Section 1672 of the
17 Military and Veterans Code, or of committing any other offense
18 which carries a life sentence.

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

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

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

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

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

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

9 SEC. 4. Section 4852.07 of the Penal Code is amended to read:

10 4852.07. (a) The petitioner, *except for those applying pursuant*
11 *to paragraph (2) of subdivision (c) of Section 4852.01*, shall give
12 notice of the filing of the petition to the district attorney of the
13 county in which the petition is filed, to the district attorney of each
14 county in which the petitioner was convicted of a felony or of a
15 crime the accusatory pleading of which was dismissed pursuant
16 to Section 1203.4, and to the office of the Governor, together with
17 notice of the time of the hearing of the petition, at least 30 days
18 prior to the date set for ~~such~~ *that* hearing.

19 (b) *A petitioner filing pursuant to paragraph (2) of subdivision*
20 *(c) of Section 4852.01 shall give notice of the filing of the petition*
21 *to the district attorney in each county, or the equivalent*
22 *jurisdiction, where a felony or misdemeanor offense occurred, and*
23 *in each county where the petitioner resided for the previous five*
24 *years, at least 90 days prior to the date set for a hearing.*

25 SEC. 5. Section 4852.13 of the Penal Code is amended to read:

26 4852.13. (a) (1) Except as otherwise provided in subdivision
27 (b), if after hearing, the court finds that the petitioner has
28 demonstrated by his or her course of conduct his or her
29 rehabilitation and his or her fitness to exercise all of the civil and
30 political rights of citizenship, the court may make an order
31 declaring that the petitioner has been rehabilitated, and
32 recommending that the Governor grant a full pardon to the
33 ~~petitioner~~ *petitioner, unless the petitioner has filed the petition*
34 *pursuant to paragraph (2) of subdivision (c) of Section 4852.01.*
35 This order shall be filed with the clerk of the court, and shall be
36 known as a certificate of rehabilitation.

37 (2) *If an individual has filed the petition pursuant to paragraph*
38 *(2) of subdivision (c) of Section 4852.01, and the court finds that*
39 *the petitioner has demonstrated the fitness and rehabilitation*
40 *requirements of paragraph (1) by clear and convincing evidence,*

1 *the court may make an order declaring that the petitioner has been*
2 *rehabilitated. The order shall be filed with the clerk of the court,*
3 *and shall be known as a certificate of rehabilitation.*

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

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

20 SEC. 6. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.