

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 530

Introduced by Senator Wright

February 21, 2013

An act to amend Section 432.7 of the Labor Code, and to amend Sections 4852.01, 4852.03, 4852.06, 4852.07, and 4852.13 of the Penal Code, relating to criminal offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 530, as amended, 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 *specified* 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 *other* 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~~: *unless the employer is required by law to obtain that information, the applicant would be required to possess or use a firearm in the course of his or her employment, an individual who has been convicted of a crime is prohibited by law from holding the position sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation, or if the employer is prohibited by law from hiring an applicant who has been convicted of a crime.* 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
12 employment including hiring, promotion, termination, or any
13 apprenticeship training program or any other training program
14 leading to employment, any record of arrest or detention that did
15 not result in conviction, or any record regarding a referral to, and
16 participation in, any pretrial or posttrial diversion program, or
17 concerning a conviction that has been judicially dismissed pursuant
18 to Section 1203.4 of the Penal Code. As used in this section, a
19 conviction shall include a plea, verdict, or finding of guilt
20 regardless of whether sentence is imposed by the court. Nothing
21 in this section shall prevent an employer from asking an employee
22 or applicant for employment about an arrest for which the employee
23 or applicant is out on bail or on his or her own recognizance
24 pending trial.

25 (b) Nothing in this section shall prohibit the disclosure of the
26 information authorized for release under Sections 13203 and 13300
27 of the Penal Code, to a government agency employing a peace
28 officer. However, the employer shall not determine any condition
29 of employment other than paid administrative leave based solely
30 on an arrest report. The information contained in an arrest report
31 may be used as the starting point for an independent, internal
32 investigation of a peace officer in accordance with Chapter 9.7
33 (commencing with Section 3300) of Division 4 of Title 1 of the
34 Government Code.

35 (c) In any case where a person violates this section, or Article
36 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part
37 4 of the Penal Code, the applicant may bring an action to recover
38 from that person actual damages or two hundred dollars (\$200),

1 whichever is greater, plus costs, and reasonable attorney's fees.
2 An intentional violation of this section shall entitle the applicant
3 to treble actual damages, or five hundred dollars (\$500), whichever
4 is greater, plus costs, and reasonable attorney's fees. An intentional
5 violation of this section is a misdemeanor punishable by a fine not
6 to exceed five hundred dollars (\$500).

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

10 (e) Persons seeking employment or persons already employed
11 as peace officers or persons seeking employment for positions in
12 the Department of Justice or other criminal justice agencies as
13 defined in Section 13101 of the Penal Code are not covered by
14 this section.

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

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

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

24 (g) (1) No peace officer or employee of a law enforcement
25 agency with access to criminal offender record information
26 maintained by a local law enforcement criminal justice agency
27 shall knowingly disclose, with intent to affect a person's
28 employment, any information contained therein pertaining to an
29 arrest or detention or proceeding that did not result in a conviction,
30 including information pertaining to a referral to, and participation
31 in, any pretrial or posttrial diversion program, to any person not
32 authorized by law to receive that information.

33 (2) No other person authorized by law to receive criminal
34 offender record information maintained by a local law enforcement
35 criminal justice agency shall knowingly disclose any information
36 received therefrom pertaining to an arrest or detention or
37 proceeding that did not result in a conviction, including information
38 pertaining to a referral to, and participation in, any pretrial or
39 posttrial diversion program, to any person not authorized by law
40 to receive that information.

1 (3) No person, except those specifically referred to in Section
2 1070 of the Evidence Code, who knowing he or she is not
3 authorized by law to receive or possess criminal justice records
4 information maintained by a local law enforcement criminal justice
5 agency, pertaining to an arrest or other proceeding that did not
6 result in a conviction, including information pertaining to a referral
7 to, and participation in, any pretrial or posttrial diversion program,
8 shall receive or possess that information.

9 (h) “A person authorized by law to receive that information,”
10 for purposes of this section, means any person or public agency
11 authorized by a court, statute, or decisional law to receive
12 information contained in criminal offender records maintained by
13 a local law enforcement criminal justice agency, and includes, but
14 is not limited to, those persons set forth in Section 11105 of the
15 Penal Code, and any person employed by a law enforcement
16 criminal justice agency who is required by that employment to
17 receive, analyze, or process criminal offender record information.

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

22 (j) As used in this section, “pretrial or posttrial diversion
23 program” means any program under Chapter 2.5 (commencing
24 with Section 1000) or Chapter 2.7 (commencing with Section
25 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
26 13352.5 of the Vehicle Code, or any other program expressly
27 authorized and described by statute as a diversion program.

28 (k) (1) Subdivision (a) shall not apply to any city, city and
29 county, county, or district, or any officer or official thereof, in
30 screening a prospective concessionaire, or the affiliates and
31 associates of a prospective concessionaire for purposes of
32 consenting to, or approving of, the prospective concessionaire’s
33 application for, or acquisition of, any beneficial interest in a
34 concession, lease, or other property interest.

35 (2) For purposes of this subdivision the following terms have
36 the following meanings:

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

39 (B) “Prospective concessionaire” means any individual, general
40 or limited partnership, corporation, trust, association, or other

1 entity that is applying for, or seeking to obtain, a public agency's
2 consent to, or approval of, the acquisition by that individual or
3 entity of any beneficial ownership interest in any public agency's
4 concession, lease, or other property right whether directly or
5 indirectly held. However, "prospective concessionaire" does not
6 include any of the following:

7 (i) A lender acquiring an interest solely as security for a bona
8 fide loan made in the ordinary course of the lender's business and
9 not made for the purpose of acquisition.

10 (ii) A lender upon foreclosure or assignment in lieu of
11 foreclosure of the lender's security.

12 (C) "Affiliate" means any individual or entity that controls, or
13 is controlled by, the prospective concessionaire, or who is under
14 common control with the prospective concessionaire.

15 (D) "Associate" means any individual or entity that shares a
16 common business purpose with the prospective concessionaire
17 with respect to the beneficial ownership interest that is subject to
18 the consent or approval of the city, county, city and county, or
19 district.

20 (E) "Control" means the possession, direct or indirect, of the
21 power to direct, or cause the direction of, the management or
22 policies of the controlled individual or entity.

23 (f) (1) Nothing in subdivision (a) shall prohibit a public agency,
24 or any officer or official thereof, from denying consent to, or
25 approval of, a prospective concessionaire's application for, or
26 acquisition of, any beneficial interest in a concession, lease, or
27 other property interest based on the criminal history information
28 of the prospective concessionaire or the affiliates or associates of
29 the prospective concessionaire that show any criminal conviction
30 for offenses involving moral turpitude. Criminal history
31 information for purposes of this subdivision includes any criminal
32 history information obtained pursuant to Section 11105 or 13300
33 of the Penal Code.

34 (2) In considering criminal history information, a public agency
35 shall consider the crime for which the prospective concessionaire
36 or the affiliates or associates of the prospective concessionaire was
37 convicted only if that crime relates to the specific business that is
38 proposed to be conducted by the prospective concessionaire.

39 (3) Any prospective concessionaire whose application for
40 consent or approval to acquire a beneficial interest in a concession,

1 lease, or other property interest is denied based on criminal history
2 information shall be provided a written statement of the reason for
3 the denial.

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

11 (B) The prospective concessionaire shall submit the copy or the
12 corrected record of any other evidence to the public agency within
13 90 days of a request for review. The public agency shall render its
14 decision within 20 days of the submission of evidence by the
15 prospective concessionaire.

16 (m) Subdivision (a) does not prohibit an employer from asking
17 an applicant about a criminal conviction or seeking from any source
18 information regarding a criminal conviction of, or entry into a
19 pretrial diversion or similar program by, the applicant if, pursuant
20 to Section 1829 of Title 12 of the United States Code or any other
21 state or federal law, any of the following apply:

22 (1) The employer is required by law to obtain information
23 regarding a conviction of an applicant.

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

26 (3) An individual who has been convicted of a crime is
27 prohibited by law from holding the position sought by the
28 applicant, regardless of whether that conviction has been expunged,
29 judicially ordered sealed, statutorily eradicated, or judicially
30 dismissed following probation.

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

33 ~~(5) (A) In a case that was dismissed pursuant to Section 1203.4~~
34 ~~of the Penal Code, a crime for which the applicant was convicted~~
35 ~~directly relates to the position of employment sought.~~

36 ~~(B) In determining if a conviction directly relates to the position~~
37 ~~of employment sought, the employer shall consider all of the~~
38 ~~following:~~

39 ~~(i) The nature and seriousness of the crime or crimes of which~~
40 ~~the individual was convicted.~~

1 ~~(ii) The relationship of the crime or crimes to the purposes of~~
2 ~~the position for which employment is sought.~~

3 ~~(iii) The relationship of the crime or crimes to the ability,~~
4 ~~capacity, and fitness required to perform the duties and discharge~~
5 ~~the responsibilities of the position of employment.~~

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

7 4852.01. (a) Any person convicted of a felony who has been
8 released from a state prison or other state penal institution or
9 agency in California, whether discharged on completion of the
10 term for which he or she was sentenced or released on parole prior
11 to May 13, 1943, who has not been incarcerated in a state prison
12 or other state penal institution or agency since his or her release
13 and who presents satisfactory evidence of a three-year residence
14 in this state immediately prior to the filing of the petition for a
15 certificate of rehabilitation and pardon provided for by this chapter,
16 may file the petition pursuant to the provisions of this chapter.

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

23 (c) (1) Any person convicted of a felony or any person who is
24 convicted of a misdemeanor violation of any sex offense specified
25 in Section 290, the accusatory pleading of which has been
26 dismissed pursuant to Section 1203.4, may file a petition for
27 certificate of rehabilitation and pardon pursuant to the provisions
28 of this chapter if the petitioner has not been incarcerated in any
29 prison, jail, detention facility, or other penal institution or agency
30 since the dismissal of the accusatory pleading and is not on
31 probation for the commission of any other felony.

32 (2) Any individual convicted outside the state, but in the United
33 States or one of its territories, of an offense that would be a felony
34 or a misdemeanor sex offense specified in Section 290 if the
35 conviction had occurred in the state, may file a petition for a
36 certificate of rehabilitation pursuant to the provisions of this chapter
37 if the petitioner has not been incarcerated in any prison, jail,
38 detention facility, or other penal institution or agency since the
39 dismissal of the accusatory pleading and is not on probation for
40 the commission of any other felony, and the petitioner presents

1 clear and convincing evidence that he or she has been a resident
2 of the United States, its territories, or a military base for the five
3 consecutive years prior to filing the petition.

4 (d) This chapter shall not apply to persons serving a mandatory
5 life parole, persons committed under death sentences, persons
6 convicted of a violation of subdivision (c) of Section 286, Section
7 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
8 (j) of Section 289, or persons in the military service.

9 (e) Notwithstanding the above provisions or any other provision
10 of law, the Governor shall have the right to pardon a person
11 convicted of a violation of subdivision (c) of Section 286, Section
12 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
13 (j) of Section 289, if there are extraordinary circumstances.

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

15 4852.03. (a) The period of rehabilitation shall begin to run
16 upon the discharge of the petitioner from custody due to his or her
17 completion of the term to which he or she was sentenced or upon
18 his or her release on parole or probation, whichever is sooner. For
19 purposes of this chapter, the period of rehabilitation shall constitute
20 five years, plus a period of time determined by the following rules:

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

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

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

37 (4) The trial court hearing the application for the certificate of
38 rehabilitation may, if the defendant was ordered to serve
39 consecutive sentences, order that his or her statutory period of
40 rehabilitation be extended for an additional period of time which

1 when combined with the time already served will not exceed the
 2 period prescribed by statute for the sum of the maximum penalties
 3 for all the crimes.

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

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

13 *(b) Except in a case requiring registration pursuant to Section*
 14 *290, a trial court hearing an application for a certificate of*
 15 *rehabilitation before the applicable period of rehabilitation has*
 16 *elapsed may grant the application if the court, in its discretion,*
 17 *believes relief serves the interests of justice.*

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

20 *SEC. 4. Section 4852.06 of the Penal Code is amended to read:*

21 4852.06. Except as provided in subdivision (a) of Section
 22 ~~4852.01, 4852.01 and subdivision (b) of Section 4852.03~~, after the
 23 expiration of the minimum period of rehabilitation applicable to
 24 him or her (and, in the case of persons released upon parole or
 25 probation, after the termination of parole or probation), each person
 26 who has complied with the requirements of Section 4852.05 may
 27 file in the superior court of the county in which he or she then
 28 resides a petition for ascertainment and declaration of the fact of
 29 his or her rehabilitation and of matters incident thereto, and for a
 30 certificate of rehabilitation under this chapter. ~~No petition shall be~~
 31 ~~filed until and unless the petitioner has continuously resided in~~
 32 ~~this state, after leaving prison, for a period of not less than five~~
 33 ~~years immediately preceding the date of filing the petition.~~

34 ~~SEC. 4.~~

35 *SEC. 5. Section 4852.07 of the Penal Code is amended to read:*

36 4852.07. (a) The petitioner, except for those applying pursuant
 37 to paragraph (2) of subdivision (c) of Section 4852.01, shall give
 38 notice of the filing of the petition to the district attorney of the
 39 county in which the petition is filed, to the district attorney of each
 40 county in which the petitioner was convicted of a felony or of a

1 crime the accusatory pleading of which was dismissed pursuant
2 to Section 1203.4, and to the office of the Governor, together with
3 notice of the time of the hearing of the petition, at least 30 days
4 prior to the date set for that hearing.

5 (b) A petitioner filing pursuant to paragraph (2) of subdivision
6 (c) of Section 4852.01 shall give notice of the filing of the petition
7 to the district attorney in each county, or the equivalent jurisdiction,
8 where a felony or misdemeanor offense occurred, and in each
9 county where the petitioner resided for the previous five years, at
10 least 90 days prior to the date set for a hearing.

11 ~~SEC. 5.~~

12 *SEC. 6.* Section 4852.13 of the Penal Code is amended to read:

13 4852.13. (a) (1) Except as otherwise provided in subdivision
14 (b), if after hearing, the court finds that the petitioner has
15 demonstrated by his or her course of conduct his or her
16 rehabilitation and his or her fitness to exercise all of the civil and
17 political rights of citizenship, the court may make an order
18 declaring that the petitioner has been rehabilitated, and
19 recommending that the Governor grant a full pardon to the
20 petitioner, unless the petitioner has filed the petition pursuant to
21 paragraph (2) of subdivision (c) of Section 4852.01. This order
22 shall be filed with the clerk of the court, and shall be known as a
23 certificate of rehabilitation.

24 (2) If an individual has filed the petition pursuant to paragraph
25 (2) of subdivision (c) of Section 4852.01, and the court finds that
26 the petitioner has demonstrated the fitness and rehabilitation
27 requirements of paragraph (1) by clear and convincing evidence,
28 the court may make an order declaring that the petitioner has been
29 rehabilitated. The order shall be filed with the clerk of the court,
30 and shall be known as a certificate of rehabilitation.

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

35 (c) A district attorney in either the county where the conviction
36 was obtained or the county of residence of the recipient of the
37 certificate of rehabilitation may petition the superior court to
38 rescind a certificate if it was granted for any offense specified in
39 Section 290. The petition shall be filed in either the county in
40 which the person who has received the certificate of rehabilitation

1 resides or the county in which the conviction was obtained. If the
2 superior court finds that petitioner has demonstrated by a
3 preponderance of the evidence that the person who has received
4 the certificate presents a continuing threat to minors of committing
5 any of the offenses specified in Section 290, the court shall rescind
6 the certificate.

7 ~~SEC. 6.~~

8 *SEC. 7.* No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.