

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE APRIL 15, 2013

**SENATE BILL**

**No. 530**

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**Introduced by Senator Wright**

February 21, 2013

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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 if the conviction had occurred in the state, to file a petition for a certificate of rehabilitation if the petitioner has not been incarcerated 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, 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 (I) (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 of~~, seeking from any  
18 source information regarding a criminal conviction of, *utilizing as*  
19 *a factor in determining any condition of employment of*, or entry  
20 into a pretrial diversion or similar program by, the applicant if,  
21 pursuant to Section 1829 of Title 12 of the United States Code or  
22 any other state or federal law, any of the following apply:

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

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

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

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

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

35 ~~4852.01. (a) Any person convicted of a felony who has been~~  
36 ~~released from a state prison or other state penal institution or~~  
37 ~~agency in California, whether discharged on completion of the~~  
38 ~~term for which he or she was sentenced or released on parole prior~~  
39 ~~to May 13, 1943, who has not been incarcerated in a state prison~~  
40 ~~or other state penal institution or agency since his or her release~~

1 and who presents satisfactory evidence of a three-year residence  
2 in this state immediately prior to the filing of the petition for a  
3 certificate of rehabilitation and pardon provided for by this chapter,  
4 may file the petition pursuant to the provisions of this chapter.

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

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

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

32 (d) ~~This chapter shall not apply to persons serving a mandatory~~  
33 ~~life parole, persons committed under death sentences, persons~~  
34 ~~convicted of a violation of subdivision (e) of Section 286, Section~~  
35 ~~288, subdivision (e) of Section 288a, Section 288.5, or subdivision~~  
36 ~~(j) of Section 289, or persons in the military service.~~

37 (e) ~~Notwithstanding the above provisions or any other provision~~  
38 ~~of law, the Governor shall have the right to pardon a person~~  
39 ~~convicted of a violation of subdivision (e) of Section 286, Section~~

1 288, subdivision (c) of Section 288a, Section 288.5, or subdivision  
2 (j) of Section 289, if there are extraordinary circumstances.

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

4 4852.03. (a) The period of rehabilitation shall begin to run  
5 upon the discharge of the petitioner from custody due to his or her  
6 completion of the term to which he or she was sentenced or upon  
7 his or her release on parole or probation, whichever is sooner. For  
8 purposes of this chapter, the period of rehabilitation shall constitute  
9 five years, plus a period of time determined by the following rules:

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

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

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

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

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

36 (b) Except in a case requiring registration pursuant to Section  
37 290, a trial court hearing an application for a certificate of  
38 rehabilitation before the applicable period of rehabilitation has  
39 elapsed may grant the application if the court, in its discretion,  
40 believes relief serves the interests of justice.

1 ~~(e) A change of residence within this state does not interrupt~~  
2 ~~the period of rehabilitation prescribed by this section.~~

3 ~~SEC. 4. Section 4852.06 of the Penal Code is amended to read:~~

4 ~~4852.06. Except as provided in subdivision (a) of Section~~  
5 ~~4852.01 and subdivision (b) of Section 4852.03, after the expiration~~  
6 ~~of the minimum period of rehabilitation applicable to him or her~~  
7 ~~(and, in the case of persons released upon parole or probation, after~~  
8 ~~the termination of parole or probation), each person who has~~  
9 ~~complied with the requirements of Section 4852.05 may file in the~~  
10 ~~superior court of the county in which he or she then resides a~~  
11 ~~petition for ascertainment and declaration of the fact of his or her~~  
12 ~~rehabilitation and of matters incident thereto, and for a certificate~~  
13 ~~of rehabilitation under this chapter.~~

14 ~~SEC. 5. Section 4852.07 of the Penal Code is amended to read:~~

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

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

30 ~~SEC. 6. Section 4852.13 of the Penal Code is amended to read:~~

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

1 shall be filed with the clerk of the court, and shall be known as a  
2 certificate of rehabilitation.

3 (2) If an individual has filed the petition pursuant to paragraph  
4 (2) of subdivision (c) of Section 4852.01, and the court finds that  
5 the petitioner has demonstrated the fitness and rehabilitation  
6 requirements of paragraph (1) by clear and convincing evidence,  
7 the court may make an order declaring that the petitioner has been  
8 rehabilitated. The order shall be filed with the clerk of the court,  
9 and shall be known as a certificate of rehabilitation.

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

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

26 SEC. 7.

27 SEC. 2. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.