

AMENDED IN ASSEMBLY MAY 5, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 729

Introduced by Assembly Member Bowler

February 26, 1997

An act to amend Sections 1203.4 and 4852.01 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 729, as amended, Bowler. Probation and parole.

Existing law provides that a person who has successfully completed probation shall have the accusations or information dismissed and shall be released from all penalties and disabilities resulting from the offense, except as specified. A person who has successfully completed parole may petition for a certificate of rehabilitation and pardon, except as specified.

This bill would provide that these provisions *as they relate to a certificate of rehabilitation* shall not apply to persons convicted of specified sex offenses.

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

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

1 SECTION 1. Section 1203.4 of the Penal Code is
2 amended to read:

1 1203.4. (a) In any case in which a defendant has
2 fulfilled the conditions of probation for the entire period
3 of probation, or has been discharged prior to the
4 termination of the period of probation, or in any other
5 case in which a court, in its discretion and the interests of
6 justice, determines that a defendant should be granted
7 the relief available under this section, the defendant shall,
8 at any time after the termination of the period of
9 probation, if he or she is not then serving a sentence for
10 any offense, on probation for any offense, or charged with
11 the commission of any offense, be permitted by the court
12 to withdraw his or her plea of guilty or plea of nolo
13 contendere and enter a plea of not guilty; or, if he or she
14 has been convicted after a plea of not guilty, the court
15 shall set aside the verdict of guilty; and, in either case, the
16 court shall thereupon dismiss the accusations or
17 information against the defendant and except as noted
18 below, he or she shall thereafter be released from all
19 penalties and disabilities resulting from the offense of
20 which he or she has been convicted, except as provided
21 in Section 13555 of the Vehicle Code. The probationer
22 shall be informed, in his or her probation papers, of this
23 right and privilege and his or her right, if any, to petition
24 for a certificate of rehabilitation and pardon. The
25 probationer may make the application and change of plea
26 in person or by attorney, or by the probation officer
27 authorized in writing. However, in any subsequent
28 prosecution of the defendant for any other offense, the
29 prior conviction may be pleaded and proved and shall
30 have the same effect as if probation had not been granted
31 or the accusation or information dismissed. The order
32 shall state, and the probationer shall be informed, that the
33 order does not relieve him or her of the obligation to
34 disclose the conviction in response to any direct question
35 contained in any questionnaire or application for public
36 office, for licensure by any state or local agency, or for
37 contracting with the California State Lottery.

38 Dismissal of an accusation or information pursuant to
39 this section does not permit a person to own, possess, or
40 have in his or her custody or control any firearm capable



1 of being concealed upon the person or prevent his or her
2 conviction under Section 12021.

3 This subdivision shall apply to all applications for relief
4 under this section which are filed on or after November
5 23, 1970.

6 (b) Subdivision (a) of this section does not apply to any
7 misdemeanor which is within the provisions of
8 subdivision (b) of Section 42001 of the Vehicle Code, to
9 any violation of subdivision (c) of Section 286, Section 288,
10 subdivision (c) of Section 288a, Section 288.5, or
11 subdivision (j) of Section 289, or to any infraction.

12 (c) A person who petitions for a change of plea or
13 setting aside of a verdict under this section may be
14 required to reimburse the county for the actual cost of
15 services rendered, whether or not the petition is granted
16 and the records are sealed or expunged, at a rate to be
17 determined by the county board of supervisors not to
18 exceed one hundred twenty dollars (\$120), and to
19 reimburse any city for the actual cost of services
20 rendered, whether or not the petition is granted and the
21 records are sealed or expunged, at a rate to be
22 determined by the city council not to exceed one
23 hundred twenty dollars (\$120). Ability to make this
24 reimbursement shall be determined by the court using
25 the standards set forth in paragraph (2) of subdivision (g)
26 of Section 987.8 and shall not be a prerequisite to a
27 person's eligibility under this section. The court may
28 order reimbursement in any case in which the petitioner
29 appears to have the ability to pay, without undue
30 hardship, all or any portion of the cost for services
31 established pursuant to this subdivision.

32 (d) No relief shall be granted under this section unless
33 the prosecuting attorney has been given 15 days' notice
34 of the petition for relief. The probation officer shall notify
35 the prosecuting attorney when a petition is filed,
36 pursuant to this section.

37 It shall be presumed that the prosecuting attorney has
38 received notice if proof of service is filed with the court.

39 (e) If, after receiving notice pursuant to subdivision
40 (d), the prosecuting attorney fails to appear and object to



1 a petition for dismissal, the prosecuting attorney may not
2 move to set aside or otherwise appeal the grant of that
3 petition.

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

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

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

24 (b) Any person convicted of a felony who, on May 13,
25 1943, was confined in a state prison or other institution or
26 agency to which he or she was committed and any person
27 convicted of a felony after that date who is committed to
28 a state prison or other institution or agency may file a
29 petition for a certificate of rehabilitation and pardon
30 pursuant to the provisions of this chapter.

31 (c) Any person convicted of a felony or any person
32 who is convicted of a misdemeanor violation of any sex
33 offense specified in Section 290, the accusatory pleading
34 of which has been dismissed pursuant to Section 1203.4,
35 may file a petition for certificate of rehabilitation and
36 pardon pursuant to the provisions of this chapter if the
37 petitioner has not been incarcerated in any prison, jail,
38 detention facility, or other penal institution or agency
39 since the dismissal of the accusatory pleading and is not
40 on probation for the commission of any other felony, and



1 the petitioner presents satisfactory evidence of five years
2 residence in this state prior to the filing of the petition.

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

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

