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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** AB 1924                      **Hearing Date:** June 28, 2022  
**Author:** Gipson  
**Version:** May 19, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Criminal law: certificate of rehabilitation*

## HISTORY

**Source:** Californians for Safety and Justice

**Prior Legislation:** AB 1438 (Linder), Chapter 280, Statutes of 2014

**Support:** Anti-Recidivism Coalition; California Attorneys for Criminal Justice; California Public Defenders Association; Ella Baker Center for Human Rights; National Association of Social Workers, California Chapter; Pillars of The Community; Root & Rebound; Timedone

**Opposition:** California District Attorneys Association; Los Angeles Professional Peace Officers Association

**Assembly Floor Vote:** 48 - 20

## PURPOSE

***The purpose of this bill is to allow a person convicted of a felony, other than a registrable sex offense, to file a petition for a certificate of rehabilitation without certain requirements including, among other requirements, the dismissal of the accusatory pleading and that the person has not been incarcerated since the dismissal.***

*Existing law* authorizes a person convicted of a felony and committed to a state prison, a county jail, or other institution, to file a petition for a certificate of rehabilitation and pardon. (Penal Code § 4852.01 (a).)

*Existing law* authorizes a person convicted of a felony or a person who is convicted of a misdemeanor violation of a registerable sex offense to file a petition for certificate of rehabilitation and pardon if the accusatory pleading has been dismissed and if the petitioner has not been incarcerated in a prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading, 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. (Penal Code § 4852.01 (b).)

*Existing law* provides that the period of rehabilitation commences upon the discharge of the petitioner from custody due to their completion of the term to which he or she was sentenced or

upon his or her release on parole, postrelease community supervision, mandatory supervision, or probation, whichever is sooner. (Penal Code § 4852.03 (a).)

*Existing law* provides that the period of rehabilitation shall constitute five years' residence in this state, plus a period of time determined by the following rules:

- a) An additional four years for specified convictions including murder and aggravated kidnapping;
- b) An additional five years for additional five years for a person convicted of committing an offense or attempted offense for which sex offender registration is required;
- c) An additional two years in the case of a person convicted of committing an offense that did not carry a life sentence. (Penal Code § 4852.03 (a).)

*Existing law* provides that unless and until the period of rehabilitation has passed, the petitioner is ineligible to file their petition for a certificate of rehabilitation with the court. A certificate of rehabilitation that is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void. (Penal Code § 4852.03(b).)

*Existing law* provides that after the expiration of the minimum period of rehabilitation a person may file in the superior court of the county in which he or she then resides or in which he or she was convicted of a felony or of a crime the accusatory pleading of which was dismissed, a petition for ascertainment and declaration of the fact of his or her rehabilitation, and for a certificate of rehabilitation. (Penal Code § 4852.06.)

*Existing law* provides that during the proceedings for a certificate of rehabilitation, the petitioner may be represented by counsel of their choice. If the petitioner does not have counsel, they shall be represented by the county public defender, and if there is none, by the probation department, or if in the opinion of the court the petitioner needs counsel, the court shall assign counsel to represent him or her. (Penal Code § 4852.08.)

*Existing law* provides that in a proceeding for the ascertainment and declaration of the fact of rehabilitation, the court, may ask the district attorney to investigate the petitioner's residence, their criminal record as shown by the records of the Department of Justice (DOJ), any representation made to the court by the applicant, their conduct during the period of rehabilitation, and any other information the court deems necessary in making its determination. The district attorney shall, upon request of the court, provide the court with a full and complete report of the investigations. (Penal Code § 4852.12 (a).)

*Existing law* requires that a successful application for a certificate of rehabilitation be transmitted to the Governor and shall constitute an application for a full pardon. (Penal Code §§ 4852.14 and 4852.16.)

*This bill* eliminates the requirement that the accusatory pleading be dismissed prior to filing a petition for rehabilitation, unless the person was convicted of a misdemeanor violation of any sex offense specified in Penal Code Section 290, or a felony violation of any sex offense specified in Penal Code Section 290 who is granted probation.

*This bill* eliminates the requirement that the person not have been incarcerated in a prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading, unless the person was convicted of a misdemeanor violation of any sex offense specified in Penal Code Section 290, or a felony violation of any sex offense specified in Penal Code Section 290 who is granted probation

## COMMENTS

### 1. Need for This Bill

According to the author:

Under current law, the process for petitioning for a certificate of rehabilitation is more burdensome for people convicted of less serious offenses (those resulting in sentences of probation) than those resulting in prison sentences. Today, someone convicted of a felony that resulted in a prison sentence may petition for a certificate of rehabilitation following a period 7 years (or longer for more serious offenses) after the person completes their sentence. Someone convicted of an offense that results in a probation sentence must meet the same 7 year (or more) waiting period, but must also first secure a PC 1203.4 expungement for the conviction. Crucially, the person must also *never* become subsequently incarcerated for any amount of time. Any period of incarceration after securing the 1203.4 expungement will permanently foreclose the possibility of a certificate of rehabilitation for the rest of that person's life.

### 2. Certificate of Rehabilitation

A Certificate of Rehabilitation (COR) is a court order declaring that a person convicted of a crime is now rehabilitated. A COR does not expunge an underlying conviction, but it does represent an official acknowledgement that the person has changed their ways. A successful petition for a certificate of rehabilitation provides a number of benefits: it can enhance a felon's potential for licensing consideration by a State board; serve as an official document to demonstrate a person's rehabilitation to enhance employment possibilities; and it serves as an application for a full pardon, complete with a recommendation for such from the issuing court. In some cases, a COR can even relieve the requirement that a person register as a sex offender.

This bill would make it easier for certain persons to begin the process of applying for a COR. Specifically, those individuals who were not sentenced to prison or county jail, but instead given a probationary sentence would be alleviated from having to obtain a dismissal of the accusatory pleading against them prior to filing a petition for a COR. It is important to point out that this bill would not make the possibility of the court actually granting the COR more likely, it would simply remove a procedural barrier that is imposed on the filing of a petition for a COR. Courts could still refuse to grant a COR if they were troubled by the lack of dismissal of the accusatory pleading, in their discretion.

Supporters note that this change in the law would make things more equitable for COR petitioners because, under existing law, petitioners who served a state prison or county jail sentence are not required to obtain a dismissal of their accusatory pleading. It doesn't make sense that the petition process more difficult for the person who received the more

lenient sentence (*i.e.* the probationer) and simpler for the person who received the harsher sentence (*i.e.* a state prison commitment).

### 3. Argument in Support

The California Public Defenders Association supports this bill stating:

AB 1924 would delete an unnecessary prerequisite for a person convicted of a felony, other than an offense for which registration is required as a convicted sex offender (Pen. Code § 290), to receive a Certificate of Rehabilitation (Pen. Code §§ 4852.01). For individuals who received probation, it requires that the person receive rehabilitative relief twice, instead of once: first under Penal Code section 1203.4, and second under Penal Code section 4852.01 et seq. There is no need for the first layer, relief under Penal Code section 1203.4, because the second layer, showing entitlement to a certificate of rehabilitation, is much more stringent. This unnecessary first step is duplicative and a waste of taxpayer dollars.

Perhaps more importantly, AB 1924 would make it easier and more efficient for an individual who is truly rehabilitated, to obtain a Certificate of Rehabilitation so that they can become a productive member of society. If a judge found that they met the criteria for a Certificate of Rehabilitation, then that achievement would receive recognition in law providing them with the opportunities to access better jobs, education, and housing.

### 4. Argument in Opposition

The Los Angeles Professional Peace Officers Association opposes this bill stating:

Specifically, PPOA is concerned with the elimination of the requirement that a petitioner obtain a dismissal of the accusatory pleading and that a petitioner has remained out of custody since the dismissal was obtained prior to filing a petition for rehabilitation. This is a minimal requirement to demonstrate a petitioner's commitment to rehabilitation and recovery. Reducing the need for a petitioner to demonstrate fulfillment of the conditions of probation and to remain crime free during the process runs counter to the rehabilitative process.

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