

RESOLUTION 02-07-2013

DIGEST

Criminal Law: Availability of Certificates of Rehabilitation Under Sentencing Realignment
Amends Penal Code sections 4852.01 and 4852.03 to clarify that persons sentenced pursuant to Penal Code section 1170, subdivision (h) fall within the ambit of those defendants who are able to petition for certificates of rehabilitation.

RESOLUTIONS COMMITTEE RECOMMENDATION APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code sections 4852.01 and 4852.03 to clarify that persons sentenced pursuant to Penal Code section 1170, subdivision (h) fall within the ambit of those defendants who are able to petition for certificates of rehabilitation. This resolution should be approved in principle because it rectifies an inconsistency in the law that has arisen because of the legislation realigning sentencing to allocate more offenders to county jails.

Defendants seek these certificates, among other reasons, to enable them to seek and obtain various licenses in such areas as foster care and in-home care services. The statutory scheme, Penal Code sections 4852.01 to 4852.21, provides for full completion of sentence and parole, and proof of complete rehabilitation to the satisfaction of the court in comprehensive proceedings.

Under the existing language of sections 4852.01 and 4852.03, persons who are convicted of felonies, serve their sentences in state institutions, and demonstrate no subsequent criminal activity for specific periods may petition for the certificate of rehabilitation and pardon. With realignment, Penal Code section 1170, subdivision (h) now sends some convicted felons who otherwise would go to a state facility to county jail for sentences as long as three years. As the law is now written, persons who qualify who serve sentences in state facilities and are paroled can seek such certificates of rehabilitation, but there is no such provision for those who serve time in county jail instead of state prison.

This resolution would clarify that the certificate process is available to those sentenced to county jail as well as state facilities.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 4852.01 and 4852.03 as follows:

- 1 § 4852.01
- 2 (a) Any person convicted of a felony who has been released from a state prison or other
- 3 state penal institution or agency in California, whether discharged on completion of the term for

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

9 (b) Any person convicted of a felony who, on May 13, 1943, was confined in a state
10 prison or other institution or agency to which he or she was committed and any person convicted
11 of a felony after that date who is committed to a state prison or other institution or agency,
12 including a sentence to a county jail imposed pursuant to Penal Code section 1170, subdivision
13 (h), may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of
14 this chapter.

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

23 (d) This chapter shall not apply to persons serving a mandatory life parole, persons
24 committed under death sentences, persons convicted of a violation of subdivision (c) of Section
25 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section
26 289, or persons in the military service.

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

1 § 4852.03

2 (a) The period of rehabilitation shall begin to run upon the discharge of the petitioner
3 from custody due to his or her completion of the term to which he or she was sentenced or upon
4 his or her release on parole, Postrelease Community Supervision pursuant to Penal Code sections
5 3450 et seq, mandatory supervision pursuant to Penal Code section 1170, subdivision (h), or
6 probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall
7 constitute five years' residence in this state, plus a period of time determined by the following
8 rules:

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

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

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

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

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

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

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

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: The laws governing certificates of rehabilitation and pardon were written prior to the enactment of sentence “realignment.” “Realignment,” for the first time, created felony sentences that are served in County Jail rather than state prison. Inmates released from state prison are no longer all placed on parole; those with less-serious crimes are placed on Postrelease Community Supervision, which is supervised at the local level, rather than by state parole. In addition, inmates who are sentenced to serve their non-probationary sentence in county jail may be given a sentence that is only partially executed, with the unexecuted portion being served out of custody but under formal supervision similar to formal probation. The problem is that rehabilitation/pardon statutes have not been updated to reflect the realignment changes and do not strictly apply to persons with realignment sentences.

This Solution: This resolution updates the laws governing certificates of rehabilitation and pardon to make them consistent with realignment. Failure to make these changes may result in a successful equal protection legal challenge.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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