

## **How to Apply for a Pardon**

**State of California**

**Office of the Governor**

### **Statement of Philosophy**

A California Governor's pardon is an honor traditionally granted only to individuals who have demonstrated exemplary behavior following conviction for a felony. A pardon will not be granted unless it has been earned. Obtaining a pardon is a distinct achievement based upon proof of a useful, productive, and law-abiding life following conviction. The Governor has complete discretion in deciding whether to grant a pardon. A pardon is a privilege—not a right—and not granted to every person who applies.

Absent extraordinary and compelling circumstances, an application will not be considered unless the applicant has been discharged from probation or parole for at least 10 years without further criminal activity during that period. The 10-year rule may be waived in truly exceptional circumstances (for example, factual innocence), if the applicant can demonstrate such circumstances warranting a specific need for the pardon.

### **Pardons**

Applications may be accepted from any person who has been convicted in California of a felony or certain specified misdemeanor sex offenses. In most cases, the first step in applying is to obtain a Certificate of Rehabilitation from the superior court in the county where the applicant currently resides. All other cases are by way of a direct or "traditional pardon" application. The procedure utilized will depend on the circumstances of each applicant, as explained below.

Once an application is filed under either procedure, the case is referred to the Board of Prison Terms (Board) for investigation. The Board may contact the district attorney, investigating law enforcement agency, and other persons with relevant information on the applicant.

No fee is charged for applying for a pardon.

### **Effect of a Pardon**

*A pardon does not seal the individual's criminal record, and the pardon is itself a public record.* When a pardon is granted, the California Department of Justice and the Federal Bureau of Investigation are notified so that they may update their records on the applicant. The pardon is filed with the Secretary of State, reported to the Legislature, and is a public record.

## **Restoration of Rights**

The most frequent reasons for requesting a pardon are for personal satisfaction and for licensing, bonding, or other employment purposes.

A pardon does not seal or expunge the record of the conviction. (Penal Code sec. 4852.17.) If the person is subsequently convicted of a new offense, the prior conviction may be considered even after a pardon has been granted. A person who has been pardoned cannot say that he or she has no record of arrests or convictions. The person can, however, say that he or she has been convicted and pardoned.

A pardon is not necessary to vote. An individual convicted of a felony becomes eligible to vote in California after successful discharge from probation or parole. (California Constitution, art. II, sec. 4.) A person who receives a pardon may serve on a jury. (Code of Civil Procedure sec. 203(a)(5) and Penal Code sec. 4852.17.)

A person convicted of a felony who receives a full and unconditional pardon may be employed as a state parole officer or as a county probation officer but cannot otherwise be employed as a peace officer. (Gov. Code sec. 1029.)

A person convicted of a felony cannot own or possess firearms. (Penal Code sec. 12021.) If the individual receives a full and unconditional pardon, he or she may own or possess any type of weapon that may lawfully be possessed by others in California, unless the person was convicted of an offense that involved the use of a dangerous weapon. A California pardon does not necessarily permit the possession of weapons under the laws of another state or the federal government. The law governing the right to own or possess firearms can be found in Penal Code section 4854.

The granting of a pardon does not prevent some licensing agencies from still considering the conviction in determining whether a license should be granted to practice certain professions. The law regarding licensing determinations can be found in Penal Code section 4853.

The Governor of California cannot grant a pardon for a conviction suffered in another jurisdiction, such as another state or a federal proceeding. A person convicted in another state must apply for a pardon in that state. Federal pardon information can be obtained from the Pardon Attorney, U.S. Department of Justice, 500 First Street Northwest, Washington, D.C. 20530.

## **Certificate of Rehabilitation**

A Certificate of Rehabilitation is a court order declaring that a person convicted of a felony is now rehabilitated. If a petition for a Certificate of Rehabilitation is granted, it is forwarded to the Governor by the court and constitutes the application for a pardon. The laws pertaining to the Certificate of Rehabilitation can be found in Penal Code sections 4852.01 to 4852.21. Receipt by the Governor of a Certificate of Rehabilitation does not guarantee that a pardon will be granted.

Generally, any person convicted of a felony who still resides in California may apply to the superior court in his or her county of residence for a Certificate of Rehabilitation, provided that he or she meets the requirements of demonstrated rehabilitation required by law. (Penal Code sec. 4852.06.)

Special laws apply to those convicted of sex offenses. Persons convicted of misdemeanor sex offenses specified in Penal Code section 290 may apply if the conviction has been dismissed under Penal Code section 1203.4. Persons convicted of felony offenses under Penal Code section 286(c), 288, 288a(c), 288.5, or 289(j) are not eligible for a Certificate of Rehabilitation. A Certificate of Rehabilitation may relieve some offenders from having to register as a sex offender under Penal Code section 290. For more information on 290 registration requirements, contact the California Department of Justice, Sexual Registration Unit.

### **Who May Apply**

You are eligible to apply for a Certificate of Rehabilitation if you:

1. were convicted of a felony and served your sentence in a California prison; and
  - were discharged or released on parole prior to May 13, 1943; and
  - have not been incarcerated in a state penal institution since release; and
  - have resided for three years in California immediately prior to filing the petition.

**OR**

2. were convicted of a felony, or a misdemeanor sex offense specified in Penal Code section 290 that was dismissed under Penal Code section 1203.4; and
  - have been discharged from custody, parole, or probation; and
  - have not been incarcerated in any penal institution, jail, or agency since release; and
  - are not on probation for the commission of any other felony; and
  - have resided for five years in California immediately prior to filing the petition.

**OR**

3. were convicted of a felony after May 13, 1943; and
  - were sentenced to state prison; and
  - were discharged from custody or released on parole; and
  - have resided for five years in California immediately prior to filing the petition.

Persons who are not eligible to apply for a Certificate of Rehabilitation include:

1. those who do not meet the above requirements; or
2. those who were convicted of misdemeanors, except those convicted of a misdemeanor sex offense as discussed above; or

3. those who were convicted of sex offenses under Penal Code sections 286(c), 288, 288a(c), 288.5, or 289(j); or
4. those who are serving a mandatory life parole; or
5. those committed to prison under a death sentence; or
6. those persons in the military service.

### **When to Apply**

Persons eligible for a Certificate of Rehabilitation may file a petition with the superior court in their county of residence once they have completed the period of rehabilitation. The period of rehabilitation begins to run upon discharge from incarceration or upon release on probation or parole. The period of rehabilitation requires five years residence in California, **PLUS**:

1. four years for persons convicted of Penal Code sections 187, 209, 219, 4500, or 12310, or Military and Veterans Code section 1672(a), or any other offense that carries a life sentence; or
2. five years for any person convicted of any offense for which sex offender registration is required under Penal Code section 290, except for convictions for violations of subdivision (b), (c), or (d) of section 311.2 or of section 311.3, 311.10, or 314 (these convictions require an additional two years); or
3. two years for any persons convicted of any offense not listed above and that does not carry a life sentence; or
4. any additional years ordered by the court if the person served consecutive sentences.

### **Procedure for Applying**

The petition for Certificate of Rehabilitation must be filed in the superior court of the applicant's current county of residence. (Penal Code sec. 4852.06.) The Petition for Certificate of Rehabilitation can usually be obtained from the court clerk, probation department, or public defender's office. The petitioner is required to notify the district attorney in their county of residence and the district attorney of each county in which the petitioner was convicted of a felony. The notice must identify all crimes for which the person is requesting a Certificate of Rehabilitation. The form for sending these notices can also be obtained from the court clerk, probation department, or public defender.

Persons applying for the Certificate of Rehabilitation are entitled to assistance in processing their petitions from the county probation office(s), state parole office(s), and for persons under the age of 30, from the California Youth Authority. The person may also be represented by counsel of his or her own selection. If the person does not have counsel, he or she may be represented by the public defender, the probation department, or the court may assign counsel. (Penal Code section 4852.08.)

Once a petition is filed, the court will schedule a hearing. Before the hearing, the court may require an investigation by the district attorney. At the hearing, the court may require testimony and records pertaining to the petitioner, including information about the conviction offense and the person's conduct while incarcerated and since release.

If the court finds that the petitioner has demonstrated rehabilitation, the court may declare that the petitioner is rehabilitated. A certified copy of the Certificate of Rehabilitation issued by the court is transmitted to the Governor and becomes the application for a pardon.

Upon receipt of the application, the Governor may request that the Board of Prison Terms conduct its own investigation and prepare a report. If the petitioner has been convicted of more than one felony in separate proceedings, the California Supreme Court must approve granting a pardon before the Governor may do so.

### **Traditional Pardon**

The traditional pardon procedure is available to those who are not eligible for a Certificate of Rehabilitation. This procedure is used primarily by those who were convicted of felonies in California and now reside outside the state. The traditional pardon procedure is also available to individuals who are not eligible for a Certificate of Rehabilitation because they have been convicted of sex offenses under Penal Code sections 286(c), 288, 288a(c), 288.5, or 289(j), and those convicted of misdemeanor offenses. The traditional pardon procedure is covered by Penal Code sections 4800-4813.

Applicants for a traditional pardon must write directly to the Governor's Office to request an application at the following address:

**Governor's Office  
State Capitol  
Attention: Legal Affairs Secretary  
Sacramento, CA 95814**

The applicant should complete the Application for Clemency and return it to the Governor's Office. In addition, the applicant must send Notice of Intention to Apply for a Traditional Pardon to the District Attorney of each county in which the applicant was convicted of a felony.

Applications may be forwarded by the Governor's Office to the Board of Prison Terms for investigation and recommendation.

If the applicant has been convicted of more than one felony in separate proceedings, the California Supreme Court must approve granting a pardon before the Governor may do so.

As with those who apply via a Certificate of Rehabilitation, there is no requirement that the Governor entertain granting a pardon, and the length of time needed to complete the pardon process cannot be accurately predicted.

*Revised September 14, 2004*

# CERTIFICATE OF REHABILITATION AND PARDON

## QUICK REFERENCE FOR RESTORATION OF RIGHTS

In California, the granting of a Certificate of Rehabilitation or a Governor's pardon restores to the applicant some rights of citizenship that were forfeited as a result of a conviction.

CERTIFICATE OF REHABILITATION	GOVERNOR'S PARDON
<p style="text-align: center;"><b>DOES:</b></p> <ul style="list-style-type: none"> <li>• Relieve <u>some</u> sex offenders, as specified, of further duty to register. (Pen. Code, § 290.5.)</li> <li>• Enhance a felon's potential for licensing consideration by a State board. (Pen. Code, § 4853.)</li> <li>• Serve as an official document to demonstrate a felon's rehabilitation, which could enhance employment possibilities.</li> <li>• Serve as an automatic application for a gubernatorial pardon.</li> </ul> <p style="text-align: center;"><b>DOES NOT:</b></p> <ul style="list-style-type: none"> <li>• Erase the felony conviction or seal the criminal record. (Pen. Code, § 4852.17.)</li> <li>• Prevent the offense from being considered as a prior conviction if the person is later convicted of a new offense.</li> <li>• Allow a felon to answer on employment applications that he/she has no record of conviction.</li> <li>• Give a felon the right to vote, because this right is automatically restored after discharge from parole.</li> <li>• Restore the right to own or possess firearms.</li> </ul>	<p style="text-align: center;"><b>DOES:</b></p> <ul style="list-style-type: none"> <li>• Allow a felon to serve on a jury trial. (Code Civ. Proc., § 203 subd. (a)(5).)</li> <li>• Allow restoration of firearms rights, upon federal approval, to specified offenders who have obtained a certificate of rehabilitation if granted a full and unconditional pardon, <i>unless</i> the conviction was for a felony involving the use of a dangerous weapon. (Pen. Code, §4852.17.)</li> <li>• Allow a felon to be considered for appointment as a county probation officer or a state parole agent, but not to any other peace officer positions. (Gov. Code, § 1029, subd. (c).)</li> <li>• Allow specified sex offenders still required to register after obtaining a Certificate of Rehabilitation to be relieved of their duty to register if granted a full and unconditional pardon. (Pen. Code, § 290.5.)</li> </ul> <p style="text-align: center;"><b>DOES NOT:</b></p> <ul style="list-style-type: none"> <li>• Seal or erase the record of conviction. (Pen. Code, § 4852.17.)</li> <li>• Prevent the pardoned offense from being considered as a prior conviction if the person is later convicted of a new offense.</li> <li>• Allow a pardoned person to answer on employment applications that he/she has no record of conviction.</li> <li>• Restore ability to own a firearm to felons convicted of any offense involving the use of a dangerous weapon. (Pen. Code, § 4854.)</li> <li>• Pardon convictions from another state, or federal convictions.</li> <li>• Necessarily prevent deportation.</li> </ul>