Introduced by Senator Wright

February 21, 2013

An act to amend Section 432.7 of the Labor Code, and to amend Sections 4852.01, 4852.03, 4852.07, and 4852.13 of the Penal Code, relating to criminal offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 530, as introduced, 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 felony or a misdemeanor sex offense specified in Section 290 if the conviction had occurred in the state, to file a petition for a certificate of rehabilitation if the petitioner has not been incarcerated, as specified,

 $SB 530 \qquad \qquad -2-$

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 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, with exceptions. 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:
- read:
 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

-3- SB 530

employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion-program program, or concerning a conviction that has been judicially dismissed pursuant to Section 1203.4 of the Penal Code. As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

- (b) Nothing in this section shall prohibit the disclosure of the information authorized for release under Sections 13203 and 13300 of the Penal Code, to a government agency employing a peace officer. However, the employer shall not determine any condition of employment other than paid administrative leave based solely on an arrest report. The information contained in an arrest report may be used as the starting point for an independent, internal investigation of a peace officer in accordance with Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.
- (c) In any case where a person violates this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars (\$200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).
- (d) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.
- (e) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies as

SB 530 —4—

defined in Section 13101 of the Penal Code are not covered by this section.

- (f) Nothing in this section shall prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:
- (1) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in Section 290 of the Penal Code.
- (2) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in Section 11590 of the Health and Safety Code.
- (g) (1) No peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.
- (2) No other person authorized by law to receive criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.
- (3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who knowing he or she is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency, pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, shall receive or possess that information.
- (h) "A person authorized by law to receive that information," for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal offender records maintained by

5 SB 530

a local law enforcement criminal justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal justice agency who is required by that employment to receive, analyze, or process criminal offender record information.

- (i) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.
- (j) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or 13352.5 of the Vehicle Code, or any other program expressly authorized and described by statute as a diversion program.
- (k) (1) Subdivision (a) shall not apply to any city, city and county, county, or district, or any officer or official thereof, in screening a prospective concessionaire, or the affiliates and associates of a prospective concessionaire for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.
- (2) For purposes of this subdivision the following terms have the following meanings:
- (A) "Screening" means a written request for criminal history information made to a local law enforcement agency.
- (B) "Prospective concessionaire" means any individual, general or limited partnership, corporation, trust, association, or other entity that is applying for, or seeking to obtain, a public agency's consent to, or approval of, the acquisition by that individual or entity of any beneficial ownership interest in any public agency's concession, lease, or other property right whether directly or indirectly held. However, "prospective concessionaire" does not include any of the following:
- (i) A lender acquiring an interest solely as security for a bona fide loan made in the ordinary course of the lender's business and not made for the purpose of acquisition.
- (ii) A lender upon foreclosure or assignment in lieu of foreclosure of the lender's security.

SB 530 -6-

(C) "Affiliate" means any individual or entity that controls, or is controlled by, the prospective concessionaire, or who is under common control with the prospective concessionaire.

- (D) "Associate" means any individual or entity that shares a common business purpose with the prospective concessionaire with respect to the beneficial ownership interest that is subject to the consent or approval of the city, county, city and county, or district.
- (E) "Control" means the possession, direct or indirect, of the power to direct, or cause the direction of, the management or policies of the controlled individual or entity.
- (*l*) (1) Nothing in subdivision (a) shall prohibit a public agency, or any officer or official thereof, from denying consent to, or approval of, a prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest based on the criminal history information of the prospective concessionaire or the affiliates or associates of the prospective concessionaire that show any criminal conviction for offenses involving moral turpitude. Criminal history information for purposes of this subdivision includes any criminal history information obtained pursuant to Section 11105 or 13300 of the Penal Code.
- (2) In considering criminal history information, a public agency shall consider the crime for which the prospective concessionaire or the affiliates or associates of the prospective concessionaire was convicted only if that crime relates to the specific business that is proposed to be conducted by the prospective concessionaire.
- (3) Any prospective concessionaire whose application for consent or approval to acquire a beneficial interest in a concession, lease, or other property interest is denied based on criminal history information shall be provided a written statement of the reason for the denial.
- (4) (A) If the prospective concessionaire submits a written request to the public agency within 10 days of the date of the notice of denial, the public agency shall review its decision with regard to any corrected record or other evidence presented by the prospective concessionaire as to the accuracy or incompleteness of the criminal history information utilized by the public agency in making its original decision.

7 SB 530

(B) The prospective concessionaire shall submit the copy or the corrected record of any other evidence to the public agency within 90 days of a request for review. The public agency shall render its decision within 20 days of the submission of evidence by the prospective concessionaire.

- (m) Subdivision (a) does not prohibit an employer from asking an applicant about a criminal conviction or seeking from any source information regarding a criminal conviction of, or entry into a pretrial diversion or similar program by, the applicant if, pursuant to Section 1829 of Title 12 of the United States Code or any other state or federal law, any of the following apply:
- (1) The employer is required by law to obtain information regarding a conviction of an applicant.
- (2) The applicant would be required to possess or use a firearm in the course of his or her employment.
- (3) 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.
- (4) The employer is prohibited by law from hiring an applicant who has been convicted of a crime.
- (5) (A) In a case that was dismissed pursuant to Section 1203.4 of the Penal Code, a crime for which the applicant was convicted directly relates to the position of employment sought.
- (B) In determining if a conviction directly relates to the position of employment sought, the employer shall consider all of the following:
- (i) The nature and seriousness of the crime or crimes of which the individual was convicted.
- (ii) The relationship of the crime or crimes to the purposes of the position for which employment is sought.
- (iii) The relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment.
- SEC. 2. Section 4852.01 of the Penal Code is amended to read: 4852.01. (a) Any person convicted of a felony who has been released from a state prison or other state penal institution or agency in California, whether discharged on completion of the term for which he or she was sentenced or released on parole prior

SB 530 —8—

1 2

to May 13, 1943, who has not been incarcerated in a state prison or other state penal institution or agency since his or her release and who presents satisfactory evidence of a three-year residence in this state immediately prior to the filing of the petition for a certificate of rehabilitation and pardon provided for by this chapter, may file the petition pursuant to the provisions of this chapter.

- (b) Any person convicted of a felony who, on May 13, 1943, was confined in a state prison or other institution or agency to which he or she was committed and any person convicted of a felony after that date who is committed to a state prison or other institution or agency may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of this chapter.
- (c) (1) Any person convicted of a felony or any person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in any prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading and 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. felony.
- (2) Any individual convicted outside the state, but in the United States or one of its territories, of an offense that would be a felony or a misdemeanor sex offense specified in Section 290 if the conviction had occurred in the state, may file a petition for a certificate of rehabilitation pursuant to the provisions of this chapter if the petitioner has not been incarcerated in any prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading and is not on probation for the commission of any other felony, and the petitioner 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 five consecutive years prior to filing the petition.
- (d) This chapter shall not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, or persons in the military service.

-9- SB 530

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

- SEC. 3. Section 4852.03 of the Penal Code is amended to read: 4852.03. (a) The period of rehabilitation shall begin to run upon the discharge of the petitioner from custody due to his or her completion of the term to which he or she was sentenced or upon his or her release on parole or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute five years' residence in this state years, plus a period of time determined by the following rules:
- (1) To the five years there shall be added four years in the case of any person convicted of violating Section 187, 209, 219, 4500, or 18755 of this code, or subdivision (a) of Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.
- (2) To the five years there shall be added five years in the case of any person convicted of committing any offense or attempted offense for which sex offender registration is required pursuant to 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. For those convictions, two years shall be added to the five years imposed by this section.
- (3) To the five years there shall be added two years in the case of any person convicted of committing any offense that is not listed in paragraph (1) or paragraph (2) and that does not carry a life sentence.
- (4) The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that his or her statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all the crimes.
- (5) Any person who was discharged after completion of his or her term or was released on parole before May 13, 1943, is not subject to the periods of rehabilitation set forth in these rules.

SB 530 — 10 —

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

- (c) A change of residence within this state does not interrupt the period of rehabilitation prescribed by this section.
- SEC. 4. Section 4852.07 of the Penal Code is amended to read: 4852.07. (a) The petitioner, except for those applying pursuant to paragraph (2) of subdivision (c) of Section 4852.01, shall give notice of the filing of the petition to the district attorney of the county in which the petition is filed, to the district attorney of each county in which the petitioner was convicted of a felony or of a crime the accusatory pleading of which was dismissed pursuant to Section 1203.4, and to the office of the Governor, together with notice of the time of the hearing of the petition, at least 30 days prior to the date set for such that hearing.
- (b) A petitioner filing pursuant to paragraph (2) of subdivision (c) of Section 4852.01 shall give notice of the filing of the petition to the district attorney in each county, or the equivalent jurisdiction, where a felony or misdemeanor offense occurred, and in each county where the petitioner resided for the previous five years, at least 90 days prior to the date set for a hearing.
- SEC. 5. Section 4852.13 of the Penal Code is amended to read: 4852.13. (a) (1) Except as otherwise provided in subdivision (b), if after hearing, the court finds that the petitioner has demonstrated by his or her course of conduct his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship, the court may make an order declaring that the petitioner has been rehabilitated, and recommending that the Governor grant a full pardon to the petitioner petitioner, unless the petitioner has filed the petition pursuant to paragraph (2) of subdivision (c) of Section 4852.01. This order shall be filed with the clerk of the court, and shall be known as a certificate of rehabilitation.
- (2) If an individual has filed the petition pursuant to paragraph (2) of subdivision (c) of Section 4852.01, and the court finds that the petitioner has demonstrated the fitness and rehabilitation requirements of paragraph (1) by clear and convincing evidence,

-11- SB 530

the court may make an order declaring that the petitioner has been rehabilitated. The order shall be filed with the clerk of the court, and shall be known as a certificate of rehabilitation.

- (b) No certificate of rehabilitation shall be granted to a person convicted of any offense specified in Section 290 if the court determines that the petitioner presents a continuing threat to minors of committing any of the offenses specified in Section 290.
- (c) A district attorney in either the county where the conviction was obtained or the county of residence of the recipient of the certificate of rehabilitation may petition the superior court to rescind a certificate if it was granted for any offense specified in Section 290. The petition shall be filed in either the county in which the person who has received the certificate of rehabilitation resides or the county in which the conviction was obtained. If the superior court finds that petitioner has demonstrated by a preponderance of the evidence that the person who has received the certificate presents a continuing threat to minors of committing any of the offenses specified in Section 290, the court shall rescind the certificate.
- SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.