

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

**FELONY
PETITION FOR DISMISSAL PACKET
(PENAL CODE § 1203.41)**



FORMS INCLUDED IN THIS PACKET

Petition for Dismissal - General Information (Felony – PC1203.41)	SDSC Form #CRM-264
Petition for Dismissal - Petition (Felony – PC1203.41)	SDSC Form #CRM-265
Information on How to Apply for a Pardon	Info. Sheet from www.cdcr.ca.gov
General Information - Petition for Certificate of Rehabilitation	SDSC Form #CRM-208
General Information for an Application for a Pardon	SDSC Form #CRM-209



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

- CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101
- EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020
- NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081
- SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910

PETITION FOR DISMISSAL - GENERAL INFORMATION (FELONY - PC 1203.41)

Eligibility	Pen. Code § 1203.41	<p>If defendant was sentenced pursuant to Pen. Code § 1170(h)(5), the court may, in its discretion and in the interest of justice, grant relief if:</p> <ul style="list-style-type: none"> ▶ Two years has lapsed since completion of a sentence imposed pursuant to Pen. Code § 1170(h)(5)(A); OR one year has lapsed since completion of a sentence imposed pursuant to Pen. Code § 1170(h)(5)(B). ▶ Defendant is not currently under supervision pursuant to Pen. Code § 1170(h)(5)(B). ▶ Defendant is not currently serving a sentence for, on probation for, or charged with the commission of any offense.
	Ineligibility	A defendant is ineligible for relief under Pen. Code § 1203.41 if probation was granted or state prison was imposed.
	Case Status	<p>The case must be an ADJUDICATED MATTER. This means that defendant has either entered a plea of guilty or no contest, or a guilty verdict was entered, and defendant was sentenced. The following case dispositions are not eligible for relief:</p> <ul style="list-style-type: none"> ▶ The charge(s) were dismissed upon completion of Pen. Code § 1000 diversion. ▶ The case has previously been dismissed.
Application	Location	The petition for dismissal must be filed in the court in which the matter was adjudicated.
	Form	Court policy requires the filing of the "Petition For Dismissal (Pen. Code § 1203.41)" (SDSC Form #CRM-265) for all applications for dismissal. Multiple case numbers for the same defendant must be placed on separate petition(s).
	Supporting Documents	Any documents in support of the petition showing why the court should grant relief in the interest of justice must be submitted with the petition.
	Notice to the Prosecuting Agency	Pursuant to Pen. Code § 1203.41(e), the prosecuting agency must be given 15 calendar days notice of the filing of the petition to allow time for the filing of an optional objection to the petition. It is the defendant's responsibility to serve the prosecuting agency with any petitions filed.
	Records Check	The information provided in the petition will be verified by a records check.
	Processing Time	The processing of the petition may take approximately four to eight weeks from the date it is filed. The hearing date and time will be set by the clerk when the petition is filed.
	Certificate of Rehabilitation and Pardon	If the court grants a petition for dismissal, the defendant may be eligible for a Certificate of Rehabilitation pursuant to Pen. Code § 4852 et seq. An information packet (SDSC Form #PKT-016) may be obtained from the court or found at www.sdcourt.ca.gov .
Granting of the Petition	A notation will be entered on the record that relief was granted, but granting relief does NOT seal, destroy, or remove any entries from the court, law enforcement, or Department of Justice records; nor does it relieve the defendant of obligations/consequences related to possession/control of firearms, driver license revocation, questionnaire/application for or holding public office, state or local licensure, contracting with the California State Lottery Commission or the duty to provide specimens, samples, or print impressions required by DNA and Forensic Identification Database and Data Bank Act. (Pen. Code § 299(f), 1203.41(b); Veh. Code § 13555.)	

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		(FOR COURT USE ONLY)
TELEPHONE NO.:	FAX NO.(Optional):	
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		
<input type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910		
PLAINTIFF PEOPLE OF THE STATE OF CALIFORNIA		
DEFENDANT		SUPERIOR COURT CASE NUMBER
PETITION FOR DISMISSAL - PETITION (FELONY - PC 1203.41)		CITY/DISTRICT ATTORNEY NUMBER

Defendant's date of birth: _____

Defendant was convicted on _____ of the following felony charges: _____.

Defendant is not currently serving a sentence for, on probation for, or charged with the commission of any offense; and defendant was sentenced pursuant to:

- Pen. Code § 1170(h)(5)(A) and two years has lapsed since completion of the sentence; or
- Pen. Code § 1170(h)(5)(B), is no longer under mandatory supervision, and one year has lapsed since completion of the sentence.

Relief should be granted in the interest of justice based on the following (if more room is necessary, please attach a supplemental declaration):

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____ at _____ (City) _____ (State) by _____ Petitioner / Attorney for Petitioner

Petition filed must be served on the prosecuting agency.

If the court grants the relief herein requested, defendant may have the right to petition for a Certificate of Rehabilitation and Pardon pursuant to Pen. Code § 4852 et. seq. An information packet (SDSC #PKT-016) regarding this may be obtained from the court or found at www.sdcourt.ca.gov.

NOTICE OF HEARING

Defendant's petition will be heard on _____ at _____ in Dept. _____.

Clerk of the Superior Court

Date: _____ by _____, Deputy

Distribution by: _____ on _____ to Prosecutor – Courtesy Copy Defendant Probation Pre-trial Services

Information on How to Apply for a Pardon (www.cdcr.ca.gov/bph/clemency)

Clemency – Overview

Background

A California Governor's pardon is an acknowledgement from the Governor that a person has been rehabilitated after a conviction. The Governor's authority to grant a pardon is found in Section 8 of Article V of the Constitution of the State of California. In most cases, it relieves the recipient of many, but not all, of the penalties associated with a criminal conviction (Pen. Code, § 4853.). Please visit [Governor's Office Internet website](http://www.gov.ca.gov) (www.gov.ca.gov) for more information on the rights of citizenship that may be restored under a [pardon](http://www.gov.ca.gov/pardons) (www.gov.ca.gov/pardons).

There are three primary methods by which an individual may obtain a pardon. A pardon may be obtained by first receiving a certificate of rehabilitation. Alternatively, if someone is ineligible to receive a certificate of rehabilitation, that person may pursue a direct pardon through the Governor's Office. Finally, there are procedures in place for those currently incarcerated to receive a pardon.

Pardons with Certificates of Rehabilitation

For most people, the first step in applying for a pardon is to obtain a certificate of rehabilitation from the superior court in the county where the applicant currently lives. (Pen. Code, § 4852.01.) Receiving a certificate of rehabilitation serves as an official document to demonstrate an offender's rehabilitation, which may enhance the applicant's employment options, and may be considered by state licensing Boards. It does not erase or seal the applicant's criminal record. Furthermore, it does not prevent the conviction from being considered for later convictions. (Pen. Code, § 4852.17.) There are several eligibility criteria that must be satisfied under Penal Code sections 4852.01, 4852.03, and 4852.05, in order to apply for a certificate of rehabilitation. A certificate of rehabilitation is not an automatic pardon; it is an automatic application for a pardon. In the event that a certificate of rehabilitation is issued by a court, the certificate of rehabilitation shall be reviewed by the Board of Parole Hearings within one year. (Pen. Code, § 4852.16, (b).) Thereafter, the Board shall issue a recommendation as to whether the Governor should pardon that individual. (Pen. Code, § 4852.16, (b).) Penal Code section 4852.18. requires the Board of Parole Hearings to provide the clerk of the superior court of each county a set of sample forms for a [Petition for Certificate of Rehabilitation and Pardon](#), a [Notice Of Filing Of Petition For Certificate Of Rehabilitation And Pardon](#), and a [Certificate Of Rehabilitation](#). For additional information or questions about pardons, please send an email to BPHpardon@cdcr.ca.gov

Pardons without Certificates of Rehabilitation

Those who are ineligible for a certificate of rehabilitation may pursue a pardon directly through the Governor's Office. This procedure is used primarily by people who were convicted of a crime in California and now reside outside the state. The direct pardon procedure is also available to people who are not eligible for a certificate of rehabilitation because they have been convicted of specified sex offenses or misdemeanor offenses. (Pen. Code, § 4852.01, (d).)

The Governor is required to make the application for a pardon available on the [Governor's Office Internet website](#) (www.gov.ca.gov) (Pen. Code, §4802.5.). You may visit the Governor's Office Internet website for more information on how to apply for a direct [pardon](#) (www.gov.ca.gov/pardons).

All applications for a direct pardon received by the Governor shall be promptly forwarded to the Board of Parole Hearings for an investigation and recommendation to the Governor. (Pen. Code, § 4802.5.) The Board shall examine and consider all applications that are referred and all transcripts of judicial proceedings and all affidavits or other documents submitted in connection with the pardon. (Pen. Code, § 4812, (a).)

In the case of a person twice convicted of a felony, the application for pardon or commutation of sentence shall be made directly to the Governor, who shall transmit all papers and documents relied upon in support of and in opposition to the application to the Board. (Pen. Code, § 4802.) Thereafter, and upon completion of investigation, the Board shall transmit its written recommendation to the Governor. (Pen. Code, § 4813.) The Governor may not grant a pardon or commutation to a person twice convicted of a felony except with the approval of the Supreme Court. (Cal. Const., art.V, § 8.)

Commutations and Pardons for Inmates

Persons who are currently incarcerated may be eligible for a Governor's pardon or commutation of sentence. The Board may report to the Governor the names of any person imprisoned in state prison, who in its judgment ought to have a commutation of sentence or be pardoned based on good conduct, unusual term of sentence, or other causes including evidence of intimate partner battering. (Pen. Code, § 4801.) The Board is expressly authorized to make recommendations to the Governor at any time regarding applications for pardon or commutation (Pen. Code, § 4812, (b).) Additionally, upon request of the Governor, the Board is obligated to investigate and report on all applications for reprieves, pardons, and commutations of sentence. (Pen. Code, § 4812, (a).) Under these circumstances, the Board is required to make recommendations to the Governor for each of these cases. (Pen. Code, § 4812, (a).)

In the case of a person twice convicted of a felony, the application for pardon or commutation of sentence shall be made directly to the Governor, who shall transmit all papers and documents relied upon in support of and in opposition to the application to the Board. (Pen. Code, § 4802.) Thereafter, and upon completion of investigation, the Board shall transmit its written recommendation upon such application to the Governor. (Pen. Code, § 4813.) The Governor may not grant a pardon or commutation to a person twice convicted of a felony except with the approval of the Supreme Court (Cal. Const., art.V, § 8.). For more information please visit the Governor's [commutations](http://www.gov.ca.gov/commutations) (www.gov.ca.gov/commutations) web page.



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GENERAL INFORMATION – PETITION FOR CERTIFICATE OF REHABILITATION

The granting of a Certificate of Rehabilitation restores to the applicant some of the rights of citizenship which were forfeited as a result of a conviction. Defendants convicted of a felony, or a misdemeanor sex offense specified in Penal Code § 290, and who were granted probation, must obtain relief pursuant to Penal Code § 1203.4 before a Certificate of Rehabilitation may be granted.

<p>Purpose</p>	<p>Does</p> <ul style="list-style-type: none"> ➤ Enhance a person’s potential for becoming licensed by state boards (Pen. Code, § 4853). ➤ Serve as an official document to demonstrate a person’s rehabilitation, which could enhance employment possibilities. ➤ Serve as an automatic recommendation and application to the Governor for a pardon. <p>Does not</p> <ul style="list-style-type: none"> ➤ Erase the felony conviction or seal the criminal record (Pen. Code, § 4852.17). ➤ Prevent the offense from being considered as a prior conviction if the person is later convicted of a new offense. ➤ Allow a person to answer on employment applications that he/she has no record of conviction. ➤ Restore the right to vote (this right is automatically restored after the person is no longer imprisoned or on parole). ➤ Relieve a person of the obligation to register as a sex offender unless the person obtains relief granted under Penal Code § 290.5 (Pen. Code, § 4852.03(a)(2)(B)).
<p>Eligibility Criteria</p>	<p>A person is eligible to apply for a Certificate of Rehabilitation if he/she:</p> <ul style="list-style-type: none"> ➤ Has been convicted of a felony and served a sentence in a California prison or other state penal institution or agency; ➤ Was discharged on completion of the sentence or released on parole prior to May 13, 1943; ➤ Has not been incarcerated in a state prison or other state penal institution or agency since being released; and ➤ Presents satisfactory evidence of three years’ residence in California immediately prior to the filing of the petition. <p>OR</p> <ul style="list-style-type: none"> ➤ Was convicted of a felony or a misdemeanor sex offense specified in Penal Code § 290, the accusatory pleading of which was dismissed pursuant to Penal Code § 1203.4; ➤ Has not been incarcerated in any penal institution or agency since the dismissal of the accusatory pleading; ➤ Is not on probation for the commission of any other felony; and ➤ Presents satisfactory evidence of five years’ residence in California immediately prior to the filing of the petition. <p>OR</p> <ul style="list-style-type: none"> ➤ Was convicted of a felony and, on May 13, 1943, was confined in a state prison or other institution or agency to which he/she was committed, or was convicted of a felony after May 13, 1943, and committed to a state prison or other institution or agency.
<p>Ineligibility Criteria</p>	<p>Persons who are ineligible to apply for a Certificate of Rehabilitation include those who do not meet the above eligibility criteria and those who were/are:</p> <ul style="list-style-type: none"> ➤ Convicted only of misdemeanors (except those convicted of a misdemeanor sex offense specified in Penal Code § 290, which was dismissed pursuant to Penal Code § 1203.4). ➤ Convicted of Penal Code §§ 286(c), 288, 287(c) or former 288a, 288.5, or 289(j). ➤ Serving mandatory life parole. ➤ Committed to prison under a death sentence. ➤ In the military service.
<p>How to apply</p>	<p>A Certificate of Rehabilitation and Pardon Instruction Packet (SDSC Form #PKT-016) may be obtained from this court and may be found at www.sdscourt.ca.gov.</p>



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GENERAL INFORMATION FOR AN APPLICATION FOR A PARDON

Any person who has been convicted of a criminal offense in California may apply directly to the Governor for a pardon. The granting of a pardon restores to the applicant some of the rights of citizenship which were forfeited as a result of the conviction. The granting of a Certificate of Rehabilitation pursuant to Penal Code § 4852.01 automatically serves as a recommendation and application to the Governor for a pardon.

Purpose	Does	<ul style="list-style-type: none"> ➤ Allow restoration of firearm right, with federal approval, to specified offenders if granted a full and unconditional pardon, unless the conviction was for a felony involving the use of a dangerous weapon (Pen. Code, § 4854). ➤ Allow certain ex-felons to be considered for appointment as a county probation officer or state parole agent, but not to any other peace officer positions (Gov. Code, § 1029).
	Does not	<ul style="list-style-type: none"> ➤ Seal or erase the record of conviction (Pen. Code, § 4852.17). ➤ Prevent the pardoned offense from being considered as a prior conviction if the person is later convicted of a new offense. ➤ Allow a pardoned person to answer on employment applications that he/she has no record of conviction. ➤ Restore ability to own a firearm to ex-felons convicted of any offense involving the use of a dangerous weapon (Pen. Code, § 4854). ➤ Pardon convictions from another state or federal convictions. ➤ Necessarily prevent deportation.
Traditional Pardon	The traditional pardon procedure (see Pen. Code, §§ 4800-4813) is available to those persons who are ineligible to petition for a Certificate of Rehabilitation. This procedure is used primarily, although not exclusively, by California ex-felons who reside out-of-state and are therefore unable to satisfy the residency requirement. The traditional pardon procedure is also available to those individuals who have convictions for Penal Code §§ 286(c), 288, 287(c) or former 288a, 288.5 and 289(j).	
How to apply	A Certificate of Rehabilitation and Pardon Instruction Packet (SDSC #PKT-016) may be obtained from this court and is available at www.sdcourt.ca.gov .	