

**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 – PEN. CODE, §§ 1203.41 & 1203.42)

Eligibility	Pen. Code, § 1203.41	<p>If the petitioner was convicted of a felony, relief may be granted in the interest of justice if the petitioner is:</p> <ul style="list-style-type: none"> • Not on parole or mandatory supervision pursuant to Penal Code section 1170(h)(5); • Not currently serving a sentence for, on probation for, or charged with the commission of any offense; • And one of the following: <ul style="list-style-type: none"> ○ If petitioner was sentenced pursuant to Penal Code section 1170(h)(5) with a period of mandatory supervision, at least one year has elapsed since completion of the sentence. ○ If petitioner was sentenced pursuant to Penal Code section 1170(h)(5) without a period of mandatory supervision, at least two years have elapsed since completion of the sentence. ○ If petitioner was sentenced to state prison, at least two years have elapsed since completion of the sentence and petitioner was not convicted of an offense requiring registration as a sex offender pursuant to Penal Code section 290.
	Pen. Code, § 1203.42	<p>If the petitioner was convicted of a felony, relief may be granted in the interest of justice if:</p> <ul style="list-style-type: none"> • The petitioner received a state prison sentence that would have been eligible for a felony county jail sentence under Penal Code section 1170(h) after the California Public Safety Realignment Act of 2011. • The petitioner is not on supervised release and is not currently serving a sentence for or charged with the commission of any offense. • At least two years have elapsed since completion of the prison sentence.
	Case Status	<p>The case must be an adjudicated matter. This means that petitioner has either entered a plea of guilty or no contest, or a guilty verdict was entered, and petitioner was sentenced. Cases which have already been dismissed are not eligible for relief.</p>
Petition	Location	The petition for dismissal must be filed in the court in which the matter was adjudicated.
	Forms	Court policy requires the filing of the Petition for Dismissal – Petition (Felony – Pen. Code, §§ 1203.41 OR 1203.42) (SDSC Form #CRM-265) and the Work Up Sheet – Petition for Dismissal (CONFIDENTIAL) (SDSC Form #CRM-205). A separate petition and work up sheet must be submitted for each case number.
	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. A Declaration form (JC Form #MC-030) may be used.
	Providing Notice	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 petitioner'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 Rehab. and Pardon	The petitioner may be eligible to petition for a certificate of rehabilitation and pardon pursuant to Penal Code section 4852.01 et seq. A Certificate of Rehabilitation & Pardon Instruction Packet (SDSC PKT-016) may be found on the Superior Court's website at www.sdcourt.ca.gov .
Granting of the Petition	<p>If granted under either code section, a notation will be entered on the record. The conviction will be confidential in accord with Penal Code section 1203.425, but granting relief does not prevent disclosure to a criminal justice agency and the conviction may be pled and proved as a prior conviction in a subsequent case. Relief also does not: relieve the petitioner of obligations/consequences related to possession/control of firearms (Penal Code section 29800 et seq) or driver license revocation (Vehicle Code section 13555); remove the obligation to disclose the conviction in a questionnaire/application for holding public office, for licensure by a state or local agency, or for contracting with the California State Lottery Commission; permit a person prohibited from holding office as a result of the conviction to hold public office; relieve petitioner of the duty to register as a sex offender (see Penal Code section 290.5); or remove the duty to provide specimens, samples, or print impressions required by the DNA and Forensic Identification Database and Data Bank Act (Penal Code section 299(f)). Relief under Penal Code section 1203.41 also does not: release the petitioner from the terms and conditions of any unexpired protective order issued under Penal Code sections 136.2(i)(1), 273.5(j), 368(l), or 646.9(k); remove the obligation to disclose the conviction in a questionnaire/application for licensure by a federally recognized tribe or for enrollment as a provider of in-home support services and waiver of personal care services; prohibit receipt of or adverse action on criminal history information in relation to providing services in certain care facilities; or make an ineligible person eligible to provide in-home support services and waiver of personal care services.</p>	

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ EMAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
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 – PEN. CODE, §§ 1203.41 & 1203.42)	CA/DA NUMBER

Petitioner's (the defendant in the above-entitled case) date of birth: _____(date).
 Petitioner was convicted on _____(date) of the following felony charges: _____.

- Felony sentence under Penal Code section 1170(h) or to state prison (Pen. Code, § 1203.41)**
 Petitioner is not on parole or mandatory supervision pursuant to Penal Code section 1170(h)(5); is not currently serving a sentence for, on probation for, or charged with the commission of any offense; relief should be granted in the interest of justice (detailed below); and (check one):
- Petitioner was sentenced pursuant to Penal Code section 1170(h)(5) **with** a period of mandatory supervision and at least one year has elapsed since completion of the sentence.
 - Petitioner was sentenced pursuant to Penal Code section 1170(h)(5) **without** a period of mandatory supervision and at least two years have elapsed since completion of the sentence.
 - Petitioner was sentenced to state prison, at least two years have elapsed since completion of the sentence, and petitioner was not convicted of an offense requiring registration as a sex offender pursuant to Penal Code section 290.
- State prison sentence that would have been eligible for a felony county jail sentence under Penal Code section 1170(h) after the California Public Safety Realignment Act of 2011 (Pen. Code, § 1203.42)**
 Petitioner is not on supervised release and is not currently serving a sentence for or charged with the commission of any offense; at least two years have elapsed since completion of the prison sentence; and relief should be granted in the interest of justice (detailed below).

Relief should be granted in the interest of justice based on the following (if more room is necessary, attach a Declaration form (JC Form #MC-030)):

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

Date: _____

Signature of Petitioner / Attorney for Petitioner

Petition filed must be served on the prosecuting agency.

Petitioner may be eligible to petition for a certificate of rehabilitation and pardon pursuant to Penal Code section 4852.01 et. seq. A Certificate of Rehabilitation & Pardon Instruction Packet (SDSC PKT-016) may be found on the Superior Court's website at www.sdcourt.ca.gov.

NOTICE OF HEARING

Hearing on the petition is scheduled on _____(date) at _____ a.m. p.m. in Dept. _____ of the _____ Division of the San Diego Superior Court.

Clerk of the Superior Court

Date: _____ by _____, Deputy

Distribution by: _____ on _____ to: Pet. Atty. Pros. Prob.

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](http://www.gov.ca.gov) (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](http://www.gov.ca.gov/pardons) (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

Purpose	Does	<ul style="list-style-type: none"> • Serves as an automatic recommendation and application to the Governor for a pardon to accelerate potential pardon relief without requiring involvement and recommendation from the Board of Parole Hearings or further investigation. For information about a pardon, see General Information – Application for Pardon (SDSC Form #CRM-209). • Enhances a person’s potential for becoming licensed by state boards and serve as an official document to demonstrate a person’s rehabilitation, which could improve employment possibilities.
	Does not	<ul style="list-style-type: none"> • Seal or erase the record of conviction. • 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 the person has no record of conviction. • Relieve a person of the obligation to register as a sex offender unless the person is granted relief under Penal Code section 290.5. • Restore “all the rights, privileges, and franchises” lost due to a conviction, unless a pardon is also granted.
Eligibility Criteria	<p>Since conviction, a person has lived an honest and upright life, conducted oneself with sobriety and industry, exhibited good moral character, conformed to and obeyed the laws of the land, and satisfies either (1) or (2) below:</p> <p>(1) Was convicted of a felony (excluding a felony sex offense specified in (2) below) and the person presents satisfactory evidence of five years’ residence in California immediately prior to the filing of the petition, plus one of the following:</p> <ul style="list-style-type: none"> • An additional four years if convicted of violating Penal Code sections 187, 209, 219, 4500, or 18755; Military and Veterans Code section 1672(a); or any offense which carries a life sentence. • An additional two years if convicted of any other offense that does not carry a life sentence. <p>(2) Was convicted of a misdemeanor sex offense specified in Penal Code section 290, or a felony sex offense specified in Penal Code section 290 and granted probation, and all of the following apply:</p> <ul style="list-style-type: none"> • The accusatory pleading has been dismissed pursuant to Penal Code section 1203.4. • The person has not been incarcerated in any penal institution or agency since the pleading was dismissed pursuant to Penal Code section 1203.4. • The person is not on probation for the commission of any other felony. • The person presents satisfactory evidence of five years’ residence in California immediately prior to filing the petition, plus an additional five years required for the Penal Code section 290 offense. 	
Ineligibility Criteria	<p>A person is ineligible to apply for a certificate of rehabilitation if the person does not meet the above eligibility criteria, or if the person is/was:</p> <ul style="list-style-type: none"> • Convicted only of misdemeanors (except those convicted of a misdemeanor sex offense, as noted above). • Convicted of Penal Code sections 269, 286(c), 287(c), 288, former 288a(c), 288.5, 288.7 or 289(j) (although the Governor has the right to pardon someone convicted of these offenses if there are extraordinary circumstances). • Serving mandatory life parole. • Sentenced to death. • In military service. 	
How to Apply	<p>A Certificate of Rehabilitation & Pardon Instruction Packet (SDSC PKT-016) may be found on the Superior Court’s website at www.sdcourt.ca.gov.</p>	



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GENERAL INFORMATION – APPLICATION FOR PARDON

Any person who has been convicted of a criminal offense in California may apply directly to the Governor for a pardon (direct 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 section 4852.01 et seq. automatically serves as a recommendation and application to the Governor for a pardon.

Purpose	Does	<ul style="list-style-type: none"> • Restore “all the rights, privileges, and franchises” of which the person has been deprived due to a conviction, with exceptions. • Allow restoration of firearm right to specified offenders if granted a full and unconditional pardon, unless the conviction was for a felony involving the use of a dangerous weapon (see also, Pen. Code, § 4852.17). • Allow certain ex-felons to be considered for appointment as a county probation officer or state parole officer, but not for any other peace officer positions (Gov. Code, § 1029).
	Does not	<ul style="list-style-type: none"> • Seal or erase the record of conviction (see 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. • Affect any of the provisions of the Medical Practice Act (Bus. & Prof. Code, § 2000 et seq.) or the power or authority of the Board of Medical Examiners, or the power or authority of any board that issues a certificate permitting application of one’s art or profession on the person of another. (See also, Pen. Code, § 4852.15.) • Allow a pardoned person to answer on employment applications that the person has no record of conviction. • Automatically restore the ability to own or possess a firearm. • Pardon convictions from another state or federal court. • Necessarily prevent deportation.
Direct Pardon	The direct pardon procedure is available to 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 direct pardon procedure is also available to individuals who have convictions of Penal Code sections 269, 286(c), 287(c), 288, former 288a(c), 288.5, 288.7, and 289(j), with the exception of those serving mandatory life parole or a death sentence for those offenses, or persons in military service.	
How to Apply	A Certificate of Rehabilitation & Pardon Instruction Packet (SDSC PKT-016) may be found on the Superior Court’s website at www.sdcourt.ca.gov .	