

GUBERNATORIAL PARDONS IN CALIFORNIA

What is a pardon?

A gubernatorial pardon is a public document that legally acknowledges that a person has been rehabilitated. In California, a pardon restores certain rights people lose (like the ability to serve on a jury or to obtain certain professional licenses) due to a conviction. A pardon acknowledges that the crime happened, as well as the positive growth the individual who committed a crime has made. Pardons are an extraordinary remedy, particularly because of the legal impact they have to restore legal rights. Because California gubernatorial pardons are full and unconditional, they can help noncitizens by eliminating certain criminal grounds of deportation or bar to citizenship.

How does the California pardon process work?

Under the California Constitution, the Governor has the power to pardon persons convicted of California state crimes. (California Constitution, art. V, § 8(a).)

There are two routes toward obtaining a pardon from the Governor.

The first route is to first obtain a Certificate of Rehabilitation from the California Superior Court. To qualify for a Certificate of Rehabilitation, an applicant must reside continuously in California for a minimum of five years prior to applying. When the Certificate of Rehabilitation is granted by the Superior Court judge, it automatically converts to a pardon application that is submitted to the Governor. The applicant may still want to provide supplemental documentation to the Governor for consideration.

The second route to a pardon in California is to apply directly to the Governor for a pardon without first pursuing a Certificate of Rehabilitation. Persons living outside of California and persons seeking a pardon of a misdemeanor must apply directly. Others may wish to apply directly because their situation is too urgent to wait for the Certificate of Rehabilitation process. To apply directly, applicants should submit the Pardon Application available on the Governor of California's webpage.

What if I have more than one felony conviction?

If you have more than one felony conviction occurring in two or more separate prosecutions, you must apply directly to the Governor for a pardon. The Governor will provide all papers and documents relied upon in your petition to the Board of Parole Hearings. (California Penal Code § 4802.) After the Board of Parole Hearings completes an investigation, they will provide their written recommendation to the Governor. (California Penal Code § 4813.) The Governor must then seek approval from the California Supreme Court before moving forward with granting the pardon. (California Constitution, art. V, § 8(a); California Penal Code § 4850.) Four judges must concur in order for the Governor to grant your pardon.

What is a pardon's impact on immigration proceedings?

The Immigration and Nationality Act (INA) makes clear that a gubernatorial pardon may alleviate a noncitizen's risk of removal by removing certain conviction-based grounds of removal. A pardon may allow noncitizens to reopen an old removal case, to terminate a pending removal case, to become eligible for certain types of relief from removal, and to become eligible to naturalize. Under Section 237(a)(2)(A)(i-iv) of the INA, a full and unconditional gubernatorial pardon expressly waives deportability for four categories of offenses:

- (1) crimes involving moral turpitude ("CIMTs");
- (2) two or more CIMTs not arising out of the same scheme of misconduct;

- (3) aggravated felonies; and
- (4) high-speed flight from an immigration checkpoint.

People with convictions for these types of offenses may be most helped by a pardon, as a pardon for these offenses can completely eliminate the grounds for deportation and remove the bar to citizenship.

For noncitizens with convictions outside these four categories, a gubernatorial pardon can still be beneficial. In these cases, a pardon may prevent mandatory deportation and make someone eligible for discretionary relief from an immigration judge. If your conviction is outside the above four categories, it may be particularly important to talk to an advocate about how the pardon would impact your case before getting started.

What can I include in my pardon application?

For both the Certificate of Rehabilitation and the gubernatorial pardon, applicants should demonstrate that in the time following their offense they have lived an honest and upright life, obeyed the law, and exhibited good moral character. (California Penal Code § 4852.05.) This means that applicants must show that they have been a productive, law-abiding citizens with good moral character and strong ties to the community since their release.

The Certificate of Rehabilitation generally requires that seven years have passed since being released from custody, probation, or parole, but specific offenses have different guidelines. (California Penal Code § 4852.03.) In addition, the Superior Court always has the option of granting a Certificate of Rehabilitation in the interest of justice before that period has elapsed. (California Penal Code § 4852.22.)

Applicants for a pardon or Certificate of Rehabilitation should support their application with letters from a range of family members, friends, employers, community leaders, immigration experts, and/or politicians who can speak to why the applicant deserves a pardon. For pardon applicants facing possible deportation, the application should explain how the pardon would help to alleviate the threat of deportation. Documents showing rehabilitation and community ties – like employment records, prison records, academic transcripts, photographs, and family records – should be included with the pardon application. Applicants for pardons and Certificates of Rehabilitation also must follow the rules requiring giving notice to the District Attorney. (California Penal Code §§ 4804, 4805, 4852.07.)

How does California's Pardon and Commutation Reform Act help pardon applicants?

California's Pardon and Commutation Reform Act of 2018 (AB 2845) requires the Board of Parole Hearings to consider expediting the review of pardon applications facing urgent circumstances, such as a pending deportation. The Act also promises to improve transparency by requiring that pardon applicants be notified when their pardon application is received and when a recommendation is issued to the Governor.

What can I do if I am interested in applying for a pardon?

If you are considering applying for a pardon, you should also explore other forms of post-conviction relief that could apply to your situation. For more information on post-conviction relief vehicles in California, see <https://www.ilrc.org/infographic-about-california-post-conviction-relief-vehicles>.

You may seek a Certificate of Rehabilitation either in the county where you reside currently or where you were convicted. The Certificate of Rehabilitation application forms should be available on your county's Superior Court website. Some public defender offices will assist individuals to apply for a Certificate of Rehabilitation.

For more information on the pardon process, you may obtain the current application form on the webpage for Governor Gavin Newsom: <https://www.gov.ca.gov/wp-content/uploads/2019/03/Pardon-Application.pdf>.