SENATE DOCKET, NO. 33 FILED ON: 1/10/2009

SENATE . . . . . No. 1838

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act providing for certificates of rehabilitation and recovery and rehabilitation for substance abusers..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section 176 the following _____ sections:-

Section 176A. (a) As used in this chapter the following words, unless the context requires otherwise, shall have the following meanings:—

(1) "Applicant", the holder of either a certificate of rehabilitation or recovery and rehabilitation who has applied for a benefit from a public or private entity;

(2) "Benefit", may include, without limitation, employment or housing whereby the applicant's criminal offender record information is accessed and considered as a factor in the award or denial of such a benefit;

(3) "Certificate", either a certificate or rehabilitation or a certificate of recovery and rehabilitation, whichever is applicable;

(4) "Petitioner", a person who has petitioned the court for either a certificate of rehabilitation or a certificate of recovery and rehabilitation.

Section 176B. (a) A person convicted of or adjudicated delinquent by reason of any felony or misdemeanor charges in the Commonwealth or a person who has been charged with a crime in the Commonwealth but which charges did not result in a conviction may petition the superior court of the trial court department in the county in which he then resides for a certificate of rehabilitation, or a certificate of recovery and rehabilitation if the charges were a consequence of substance abuse, for ascertainment and declaration of the fact of his rehabilitation or recovery and rehabilitation if he: (1) has not been sentenced to incarceration since being discharged from a felony or misdemeanor or since the termination of any ancillary proceedings related to such felony or misdemeanor including, but not limited to, any period of probation, parole or continuation; (2) is not the subject of a probationary or parole term for the commission of any other felony or misdemeanor; (3) presents satisfactory evidence of two years residence in the Commonwealth prior to the filing of the petition; (4) has demonstrated a period of rehabilitation, as provided in section 176C, and (5) in the case of a person seeking a certificate of recovery and rehabilitation, has completed a substance abuse treatment program approved by the bureau of substance abuse treatment services.

(b) The two year period of residency must be uninterrupted, though a petitioner may have changed his place of residence within the two years, as long as each residence is located within the Commonwealth.

(c) No filing fee or court fees shall be imposed pursuant to this section.

(d) This section shall not apply to persons serving a mandatory life parole or to persons in the military service.

Section 176C. (a) The petitioner must demonstrate, by a preponderance of the evidence, that during his period of rehabilitation or recovery and rehabilitation and thereafter he has lived an honest and upright life, conducted himself with sobriety and industry, exhibited good moral character, and conformed to and obeyed the law.

(b) The period of rehabilitation shall begin to run upon the discharge of the petitioner from custody or upon his release from parole or probation or upon release from a substance abuse treatment facility, or at the end of a period of continuance without a finding, whichever last occurs. For purposes of this chapter, to be eligible for a certificate, the period of rehabilitation or recovery and rehabilitation required shall be as follows:

(1) seven years in the case of a person convicted of a felony;

(2) three years in the case of any person convicted of a misdemeanor; or

(3) two years in the case of a person charged but not convicted;

(4) the court hearing the application for the certificate may, if the defendant was ordered to serve consecutive sentences, order that his statutory period of rehabilitation be extended for an additional period of time which, when combined with the time already served, does not exceed the period prescribed by statute for the sum of the maximum penalties for all the crimes for which the petitioner was sentenced.

Section 176D. Any person eligible to petition the court for a certificate shall be entitled to receive assistance from all rehabilitative agencies, including the adult probation officer of the

county and all state parole officers, and, in the case of persons under the age of 30 years, from the department of youth services.

Section 176E. The petitioner shall give notice of the filing of his petition to the district attorney of the county in which the petition is filed, to the district attorney of the county in which the petitioner was convicted of an offense, to the attorney general and to 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 hearing.

Section 176F. During the proceedings upon the petition, the petitioner may be represented by counsel and if he has no counsel and elects to have legal representation, the court shall appoint counsel.

Section 176G. The court in which the petition is filed may require such testimony as it deems necessary, and the production, for the use of the court and without expense to the petitioner, of all records and reports relating to the petitioner and the offense for which he was charged, including the record of the trial, probation department records, if any, the records of any facility or penal institution from which the petitioner has been released from custody or from which the petitioner received substance abuse treatment showing his conduct therein, the records of such facility, institution or agency doctor, psychiatrist, or substance abuse counselor, parole records, the records of the department of youth services, and written reports or records of any other law enforcement agency concerning the conduct of the petitioner since his release on probation or parole or discharge from custody or treatment. All persons having custody of any such records shall make them available for the use of the court for the proceedings on the petition.

Section 176H. Upon the filing of the application for a certificate, the court may request from the district attorney in which the petition was filed an investigation relative to: the place of residence of the petitioner; the criminal record of the petitioner as shown by the records of the Department of Justice; any representation made to the court by the petitioner; the conduct of the petitioner during his period of rehabilitation; and any other information the court may deem necessary in making its determination. If so requested, the district attorney shall provide the court with a full and complete report of such investigation.

Section 176I. Upon receiving proof of a violation of law committed since the petitioner's release from custody or discharge from probation or parole or substance abuse treatment, the court shall deny the petition.

Section 176J. If, after a hearing, the court finds that the petitioner has satisfied the requirements of sections 176B and 176C, the court shall issue a certificate declaring that the petitioner has been rehabilitated or has recovered and been rehabilitated and such certificate shall become a part of the petitioner's criminal offender record information.

Section 176K. Any certificate issued and under which the petitioner has not fulfilled the requirements of sections 176B and 176C shall be void.

Section 176L. If the petitioner files an application for a pardon pursuant to chapter 127, and if requested by the petitioner, the court shall forward the certificate to the advisory board of pardons with a recommendation that the governor grant the petitioner a pardon.

Section 176M. The clerk of the court shall immediately transmit certified copies of the certificate to the governor, to the commissioner of probation, the criminal history systems board, the Department of Justice and the Federal Bureau of Investigation.

Section 176N. Upon receipt of a certificate, the department of probation and the criminal history systems board in receipt of such certificate, if not voided, shall provide such certificate to any person or entity lawfully seeking information relative to the offense for which a person has received a certificate.

Section 176O. The trial court department shall cause standardized forms for filing a petition for a certificate and to provide notice of filing thereof to be printed and made available to the public in the district and superior court clerks office's of the trial court department, which forms shall be available at no charge to persons requesting them.

Section 176P. (a) All persons, prior to release from custody or discharge from probation or parole or prior to the conclusion of substance abuse treatment, or prior to having a case continued without a finding, shall be informed, in writing, by the official in charge of the place of confinement or by his probation or parole officer or by his substance abuse counselor or by the official in charge of the substance abuse treatment facility of his right to petition for, and of the procedure for filing the petition for, and obtaining, a certificate pursuant to this chapter.

(b) Prior to dismissal of a complaint or indictment a defendant shall be informed in writing by the clerk of the court dismissing the accusatory pleading of the defendant's right, if any, to petition for, and of the procedure for filing a petition for, and obtaining, a certificate pursuant to this chapter.

Section 176Q. Nothing in this chapter shall be construed to abridge or impair the power or authority conferred by law or regulation on any officer, board, or agency to revoke or suspend any right, privilege, or franchise for any act or omission unrelated to an offense for which a person has been issued a certificate, or to require the reinstatement of the right or

privilege to practice or carry on any profession or occupation the practice or conduct of which requires the possession or obtaining of a license, permit or certificate.

Section 176R. No application to a public or private entity for a benefit to which the provisions of this chapter are applicable shall be denied by reason of the applicant's having criminal offender record information or by reason of a finding of lack of living an “honest and upright life”, conducting himself with “sobriety and industry”, exhibiting “good moral character”, and conforming to and obeying the law unless: (a) there is a direct relationship between one or more of the previous criminal offenses and the specific benefit sought; or (b) the specific benefit sought would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Section 176S. (a) In making a determination pursuant to section 176R of this chapter, the public or private entity shall consider the following factors:

(1) The public policy of the Commonwealth, as expressed in this act, to encourage the continued rehabilitation or recovery and rehabilitation of persons previously charged with or convicted of one or more offenses.

(2) The specific duties and responsibilities necessarily related to the benefit sought.

(3) The bearing, if any, the charge or charges or criminal offense or offenses of the applicant will have on his fitness or ability to perform one or more such duties or responsibilities.

(4) The time which has elapsed since the occurrence of the charge or charges or criminal offense or offenses.

(5) The age of the person at the time of occurrence of the charge or charges or criminal offense or offenses.

(6) The seriousness of the charge or charges or offense or offenses.

(7) Any information produced by the person, or produced on his behalf, in regard to his good conduct and rehabilitation or recovery and rehabilitation.

(8) The legitimate interest of the public or private entity in protecting property, and the safety and welfare of specific individuals or the general public.

(b) In making a determination pursuant to section 176R of this chapter, the public or private entity shall also give consideration to a certificate of rehabilitation or recovery and rehabilitation if held by the applicant which certificate shall create a presumption of rehabilitation or recovery and rehabilitation in regard to the charge or charges or criminal offense or offenses specified therein.

Section 176T. At the request of any certificate holder who has been denied a benefit, a public or private entity shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

Section 176U. In relation to the denial of benefits by public or private entities, the provisions of this article shall be enforceable by a proceeding brought by the Civil Rights Division of the Attorney General's office.

Section 176V. Any person who knowingly uses or attempts to use a revoked certificate in order to obtain or to exercise any right or privilege that he would not be entitled to obtain or to exercise without a valid certificate shall be guilty of a misdemeanor.