

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:

1 SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section
2 176 the following _____ sections:-

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

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

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

10 (3) “Certificate”, either a certificate or rehabilitation or a certificate of
11 recovery and rehabilitation, whichever is applicable;

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

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

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

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

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

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

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

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

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

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

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

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

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

56 Section 176E. The petitioner shall give notice of the filing of his petition to the district
57 attorney of the county in which the petition is filed, to the district attorney of the county in which
58 the petitioner was convicted of an offense, to the attorney general and to the governor, together
59 with notice of the time of the hearing of the petition, at least 30 days prior to the date set for such
60 hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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