

# SENATE . . . . . No. 1908

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Jason M. Lewis*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to reducing recidivism and employment discrimination against released prisoners.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>3/10/2021</i>

# SENATE . . . . . No. 1908

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By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1908) of Jason M. Lewis and David Henry Argosky LeBoeuf for legislation to reduce recidivism and employment discrimination against released prisoners. Revenue.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1710 OF 2019-2020.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

An Act relative to reducing recidivism and employment discrimination against released prisoners.

*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 62 of the General Laws is hereby amended by inserting after  
2   section 64 the following section:-

3           Section 65. (a)For each taxable year beginning on or after January 1, 2022, there shall be  
4   allowed a credit against the net excise tax, as defined in section 2 of chapter 63, to a qualified  
5   taxpayer who employs a qualified employee in a targeted tax area during the taxable year. The  
6   credit shall be equal to the sum of each of the following:

7           (1) 50 per cent of qualified wages in the first year of employment.

8           (2) 40 per cent of qualified wages in the second year of employment.

(3) 30 per cent of qualified wages in the third year of employment.

(4) 20 per cent of qualified wages in the fourth year of employment.

(5) 10 per cent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) “Qualified wages”, (i) Portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified employees that does not exceed 150 per cent of the minimum wage; (ii) Wages received during the 60-month period beginning with the first day the employee commences employment with the qualified taxpayer; or (iii) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the targeted tax credit expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the targeted tax area within the 60-month period prior to the targeted tax area expiration date shall continue to qualify for the credit under this section after the targeted tax area expiration date, in accordance with all provisions of this section applied as if the targeted tax area designation were still in existence and binding.

(2) “Minimum wage”, as defined in chapter 151.

(3) Targeted tax credit expiration date means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(4) A “targeted tax area”, Construction, food service or warehouse labor employment sectors.

(5) “Qualified employee”, an individual who meets all of the following requirements:

(i) At least 90 per cent of the employee's services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayers trade or business located in a targeted tax area;

(ii) the employee performs at least 50 per cent of his or her services for the qualified taxpayer during the taxable year in a targeted tax area;

(iii) the employee was hired by the qualified taxpayer after the date of original designation of the area in which services were performed as a targeted tax area; and

(iv) the employee is an ex-offender immediately preceding the qualified employee's commencement of employment with the qualified taxpayer. An individual shall be treated as an ex-offender if they were placed on probation by a commonwealth court without a finding of guilty.

(6) "Qualified taxpayer", a person or entity that is engaged in a trade or business within a targeted tax area.

(c) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part. For purposes of this subdivision, the term pass-through entity means any partnership or S corporation.

(d) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(e) The qualified taxpayer shall do both of the following:

(1) obtain from the department of career services, as permitted by federal law, the local county or city entity, or social services agency, or the local government administering the targeted tax area, a certification that provides that a qualified employee meets the eligibility requirements specified in paragraph (5) of subdivision (b). The department may provide preliminary screening and referral to a certifying agency. The executive office of labor and workforce development shall develop regulations governing the issuance of certificates and shall develop forms for this purpose; and

(2) retain a copy of the certification and provide it upon request to the department of revenue.

(f) For purposes of this section:

(1) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(2) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(3) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the predecessor) or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (g)) for any calendar year ending after that acquisition, the employment relationship

between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(g) If the employment of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(h) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(1) a termination of employment of a qualified employee who voluntarily leaves the employment of the qualified taxpayer'

(2) a termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (1) of paragraph (a), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that employee;

(3) a termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct of that employee; or

(4) a termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the qualified taxpayer.

91 (i) For purposes of paragraph (a), the employment relationship between the qualified  
92 taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change  
93 in the form of conducting the trade or business of the qualified taxpayer, if the qualified  
94 employee continues to be employed in that trade or business and the qualified taxpayer retains a  
95 substantial interest in that trade or business.

96 (j) Any increase in tax under paragraph (a) shall not be treated as tax imposed by this part  
97 for purposes of determining the amount of any credit allowable under this part. In the case where  
98 the credit otherwise allowed under this section exceeds the net tax for the taxable year, that  
99 portion of the credit that exceeds the net tax may be carried over and added to the credit, if any,  
100 in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the  
101 earliest taxable years possible.

102 SECTION 2. (a) There shall be a Massachusetts released prisoner reentry commission  
103 which shall consist of the following: 2 persons who shall be appointed by the governor, 1 of  
104 whom shall have a background in labor and economics, and 1 of whom shall have a background  
105 in criminal justice reform policy; 2 persons who shall be appointed by the attorney general, 1 of  
106 whom shall have a background in criminal justice reform and 1 of whom shall have a  
107 background with the National Association for the Advancement of Colored People in criminal  
108 justice policy; the secretary of the executive office of labor and workforce development, or a  
109 designee; the commissioner of the department of corrections, or a designee; the president of the  
110 Massachusetts Sheriffs' Association or a designee; the president of the Massachusetts District  
111 Attorney Association or a designee; the commissioner of higher education or a designee; and the  
112 secretary of human health services or a designee the secretary of the executive office of housing  
113 and economic development or a designee. The governor shall designate the chair of the

commission. The chair shall serve in that capacity throughout the term of appointment and until a successor is appointed. Prior to appointment to the commission, a background investigation shall be conducted into the financial stability, integrity and responsibility of a candidate, including the candidate's reputation for good character, and honesty. A prior felony conviction shall not automatically result in ineligibility to serve on the commission.

(b) Each commissioner shall be a resident of the commonwealth within 90 days of appointment and, while serving on the commission, shall not: (i) hold, or be a candidate for, federal, state or local elected office; (ii) hold an appointed office in a federal, state or local government; or (iii) serve as an official in a political party.

(c) Each commissioner shall serve for a term of 5 years or until a successor is appointed and shall be eligible for reappointment. A person appointed to fill a vacancy in the office of a commissioner shall be appointed in a like manner and shall serve for only the unexpired term of that commissioner.

(d) 3 commissioners shall constitute a quorum and the affirmative vote of 3 commissioners shall be required for an action of the commission. The chair or 3 members of the commission may call a meeting; provided, however, that notice of all meetings shall be given to each commissioner and to other persons who request such notice. The commission shall adopt regulations establishing procedures, which may include electronic communications, by which a request to receive notice shall be made and the method by which timely notice may be given.

(e) Commissioners shall receive salaries not greater than three fourths of the salary of the secretary of administration and finance under section 4 of chapter 7; provided, however, that the



135 chair shall receive a salary equal to the salary of the secretary of administration and finance.

136 Commissioners shall devote their full time and attention to the duties of their office.

137 (f) The commission shall annually elect 1 of its members to serve as secretary and 1 of its  
138 members to serve as treasurer. The secretary shall keep a record of the proceedings of the  
139 commission and shall be the custodian and keeper of the records of all books, documents and  
140 papers filed by the commission and of its minute book. The secretary shall cause copies to be  
141 made of all minutes and other records and documents of the commission and shall certify that  
142 such copies are true copies and all persons dealing with the commission may rely upon such  
143 certification.

144 (g) The chair shall have and exercise supervision and control over all the affairs of the  
145 commission. The chair shall preside at all hearings at which the chair is present and shall  
146 designate a commissioner to act as chair in the chair's absence. To promote efficiency in  
147 administration, the chair shall make such division or re-division of the work of the commission  
148 among the commissioners as the chair deems expedient.

149 (h) The commissioners shall, if so directed by the chair, participate in the hearing and  
150 decision of any matter before the commission; provided, however, that at least 2 commissioners  
151 shall participate in the hearing and decision of matters other than those of formal or  
152 administrative character coming before the commission; and provided further, that any such  
153 matter may be heard, examined and investigated by an employee of the commission designated  
154 and assigned by the chair, with the concurrence of 1 other commissioner. Such employee shall  
155 make a report in writing relative to the hearing, examination and investigation of every such  
156 matter to the commission for its decision. For the purposes of hearing, examining and

investigating any such matter, such employee shall have all of the powers conferred upon a commissioner by this section. For each hearing, the concurrence of a majority of the commissioners participating in the decision shall be necessary.

(i) The commission shall develop and implement programs in order to assist adult offenders with reentry into society. Such programs shall be made available to inmates at least six months prior to the inmate's release and after the offender's release from prison. In addition to educational and vocational programs, reentry programs may include social and behavioral programs, substance abuse counseling, mentoring programs, financial planning, physical and mental health programs, and housing and federal assistance programs.

(1) Programs shall include resources for Spanish-speaking offenders, including but not limited to translators, Spanish-speaking coordinators, Spanish language materials, and post-release job coordination aimed towards Spanish-speaking communities/industries.

(2) If the commission determines there is a sufficient need for more language options, the Commission should act to expand program offerings with more diverse language resources.

(j) The commission shall issue a Certificate of Readiness and Completion to released offenders who successfully complete the reentry programs. Successful completion is based on ratings from program coordinators and educators. The components of the Completion Rating system will be drafted and submitted to the governor's office by the commission upon the establishment of the reentry programs.

(k) The reentry programs established by the commission shall only be implemented at MCI-Framingham and MCI-Norfolk, unless the commission chooses to widen the scope of the

178 programs. Each decision to implement additional programs shall be left to the governor but the  
179 governor must choose the institution from a list of three commission-recommended institutions.

180 (l) The commission shall, not later than January 1, 2028, file a report with the house and  
181 senate committees on ways and means, the joint committee on revenue, and the joint committee  
182 on labor and workforce development, identifying the following: (i) total amount of tax credits  
183 claimed pursuant to this subsection; (ii) the number of participating apprentices and relevant  
184 wage information; (iii) the number of applications received and the number of participating  
185 employers; (iv) the areas of occupation by qualifying tax credit beneficiaries; (v) program  
186 outcomes for apprentices, including job retention and further employment opportunities; and (vi)  
187 whether the tax credit program is achieving its public policy purpose to reduce employer bias,  
188 decrease recidivism, and provide career pathways toward high demand occupations for  
189 unemployed and underemployed released prisoners of the commonwealth.