

SENATE No. 932

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 providing for certificates of rehabilitation, second chances, increased success, and community prosperity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>4/1/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>4/1/2021</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>4/1/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/1/2021</i>

SENATE No. 932

By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 932) of William N. Brownsberger, Steven Ultrino, Michael J. Barrett, Brendan P. Crighton and others for legislation to provide for certificates of rehabilitation, second chances, increased success, and community prosperity. The Judiciary.

The Commonwealth of Massachusetts

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

An Act providing for certificates of rehabilitation, second chances, increased success, and community prosperity.

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. Section 172 of chapter 6 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking out subsection (e) and inserting in place thereof
3 the following subsection:--

4 (e) No employer or person relying on volunteers shall be liable for negligent hiring
5 practices by reason of relying solely on criminal offender record information received from the
6 department or a certificate of rehabilitation pursuant to chapter 276C and not performing
7 additional criminal history background checks, unless required to do so by law; provided,
8 however, that the employer made an employment decision within 90 days of obtaining criminal
9 offender record information, and maintained and followed policies and procedures for
10 verification of the subject’s identifying information consistent with the requirements set forth in

11 this section and in the department’s regulations. A certificate of rehabilitation, however, may be
12 admitted as evidence of due care in hiring, retention, or selection of an applicant or employee.

13 SECTION 2. Section 172N of said chapter 6, as appearing in the 2018 Official Edition, is
14 hereby amended by inserting after the second sentence, the following sentence and paragraphs:-

15 “Unreasonable risk” shall mean that it is likely that a person may engage in unlawful
16 activity in the workplace similar to the criminal conviction or convictions for which the person
17 was previously convicted, or other offenses made available to the licensing authority pursuant to
18 section 172 of chapter 6.

19 (a) Applications for licenses provided by licensing authorities shall include a statement
20 that a certificate of rehabilitation may relieve the holder of such a certificate from suspension of
21 a license or disqualification for eligibility for a license.

22 (b) Notwithstanding any other provisions in the law to the contrary, a certificate of
23 rehabilitation under chapter 276C shall create a presumption that an individual is rehabilitated
24 and suitable for a license, and remove any disqualification or suspension from licensure imposed
25 by reason of any offense or offenses specified within the certificate of rehabilitation. An offense
26 that ends in a dismissal after a continuance without a finding shall not be deemed a conviction
27 and records related to such an offense shall not be admissible in evidence or used at a licensing
28 proceeding as a basis for denial of a license. The fact that an applicant for a license does not
29 hold or provide a certificate of rehabilitation shall not be a basis for denial of a license.

30 (c) Notwithstanding any other provisions in the law to the contrary, a licensing authority
31 shall not deny a license to a person with one or more past criminal convictions or by reason of a

32 finding of lack of good moral character or lack of suitability if such a finding is based upon the
33 fact that the person was previously convicted of one or more criminal offenses, unless:

34 (i) the nature of criminal conduct for which the person was convicted has a direct bearing
35 on and affects such person's fitness or ability to perform one or more primary duties or
36 responsibilities necessarily related to the license or employment sought; or

37 (ii) the issuance or renewal of the license would involve an unreasonable risk to property
38 or to the safety or welfare of a specific individual or the general public.

39 (d) In making such a determination, the licensing authority shall undertake an
40 individualized assessment and shall consider the following factors:

41 (i) the public policy of the commonwealth, as expressed in this section, to encourage and
42 enhance employment and licensure opportunities for persons previously prosecuted or convicted
43 of one or more criminal offenses;

44 (ii) the type of work to be performed and the nature of the primary duties or
45 responsibilities necessarily related to the license;

46 (iii) whether the offense or offenses were recently committed, and whether the amount of
47 time that has elapsed since the occurrence of the offense or offenses diminishes the relevance of
48 the offense or offenses;

49 (iv) the age of the person at the time of the occurrence of the criminal offense or offenses,
50 including whether youth or lack of maturity related the person's age at the time of the offense is
51 a mitigating circumstance;

52 (v) the seriousness of the offense or offenses;

53 (vi) any evidence that the person performed the same type of work after the offense or
54 offenses with no known incidents of criminal conduct;

55 (vii) any evidence regarding the person’s rehabilitation, including but not limited to civic
56 and community contributions, efforts at self-improvement, sobriety, education or training, and
57 good conduct; and

58 (viii) if the applicant or license holder presents a certificate of rehabilitation, the
59 presumption that the individual is rehabilitated and suitable for a license as related to any offense
60 specified within the certificate of rehabilitation.

61 (e) The licensing authority shall, at the time of denial of employment, provide the
62 applicant or license holder with a written statement that sets forth specific reasons for the denial.

63 SECTION 3. Subsection (11) of section 18¾ of chapter 6A of the General Laws, as so
64 appearing, is hereby amended by striking out the words “upon their release from a correctional
65 facility” in the first sentence and inserting in place thereof, the following words:-
66 within 30 days of their entry to a correctional or juvenile facility, and again, 30 days before their
67 expected date of release from a correctional or juvenile facility.

68 SECTION 4. Subsection (11) of section 18¾ of chapter 6A of the General Laws, as so
69 appearing, is hereby amended by striking out the words “and (vi) a list of answers to frequently
70 asked questions about criminal offender record information” in the last sentence and inserting in
71 place thereof, the following words:-

72 (vi) a summary of how to obtain a certificate of rehabilitation and the effect of such a
73 certificate; (vii) a summary of how to expunge certain records pursuant to section 100E through

74 section 100K of chapter 276 and the effect of such expungement; and (viii) a list of answers to
75 frequently asked questions about criminal offender record information.

76 SECTION 5. Subsection 8 of section 4 of chapter 151B of the General Laws, as so
77 appearing, is hereby amended by adding the following sentences after the last sentence:- A
78 certificate of rehabilitation shall create a presumption that an individual is rehabilitated, and
79 remove any disqualification for housing based on a criminal conviction or other offense if the
80 conviction or offense is included in a certificate of rehabilitation under chapter 276C. The fact
81 that an applicant does not hold or provide a certificate of rehabilitation shall not be a basis for
82 denial of housing.

83 SECTION 6. Subsection 9 of section 4 of chapter 151B of the General Laws, as so
84 appearing, is hereby amended by inserting the following paragraphs after the last sentence:-

85 Notwithstanding other provisions in the law, a conviction shall not be treated as a
86 conviction within the meaning of any provision of law that imposes, by reason of the conviction,
87 a disqualification for employment, if relief from the disqualification for employment related to
88 the conviction is included in a certificate of rehabilitation pursuant to chapter 276C. A certificate
89 of rehabilitation under Chapter 276C shall create a presumption that an individual is rehabilitated
90 and suitable for employment. The fact that a person does not hold or provide a certificate of
91 rehabilitation shall not be a basis for denial of employment. A criminal offense that ended in a
92 dismissal after a continuance without a finding shall not be deemed a conviction or a basis for
93 denial of employment.

94 (a) An employer shall not deny employment to an individual because the person was
95 convicted of one or more criminal offenses, or by reason of a finding of lack of good moral

96 character or suitability, when such finding is based upon the fact that the applicant was convicted
97 of one or more criminal offenses, unless:

98 (i) the nature of criminal conduct for which the person was convicted has a direct bearing
99 on and affects such person's fitness or ability to perform one or more of primary duties or
100 responsibilities necessarily related to the employment sought; or

101 (ii) hiring or continued employment of the person would involve an unreasonable risk to
102 property or to the safety or welfare of a specific individual or the general public.

103 (b) In making this determination, the employer shall undertake an individualized
104 assessment of the applicant and shall consider the following factors:

105 (i) the public policy of the commonwealth, as expressed in this section, to encourage and
106 enhance employment and licensure opportunities for persons previously convicted or prosecuted
107 for one or more criminal offenses

108 (ii) the type of work to be performed and the nature of the primary duties or
109 responsibilities necessarily related to the employment sought;

110 (iii) whether the offense or offenses were recently committed, and whether the amount of
111 time that has elapsed since the occurrence of the offense or offenses significantly diminishes the
112 relevance of the offense or offenses;

113 (iv) the age of the person at the time of the occurrence of the criminal offense or offenses,
114 including whether youth or lack of maturity related the person's age at the time of the offense is
115 a mitigating circumstance;

116 (v) the seriousness of the offense or offenses;

117 (vi) any evidence that the person performed the same type of work after the offense or
118 offences with no known incidents of criminal conduct;

119 (vii) any evidence regarding the person's rehabilitation, including but not limited to civic
120 and community contributions, efforts at self-improvement, sobriety, education or training, and
121 good conduct; and

122 (viii) if the applicant or license holder presents a certificate of rehabilitation, the
123 presumption that the individual is rehabilitated and suitable for employment as related to any
124 offense specified within the certificate of rehabilitation.

125 (c) An employer shall, at the time of denial of employment, provide the applicant or
126 employee with a written statement that sets forth specific reasons for the denial.

127 SECTION 7. Section 100A of chapter 276, as appearing in the 2018 Official Edition, is
128 hereby further amended by inserting after the last sentence in the first paragraph, the following
129 sentence- Notwithstanding this provision, a person who obtains a certificate of rehabilitation
130 pursuant to chapter 276C, shall be permitted to seal any conviction for violation of sections 121
131 to 131H, inclusive, of chapter 140 or for violation of chapter 268, if relief from ineligibility for
132 sealing of the conviction or convictions, is included in the certificate of rehabilitation.

133 SECTION 8. Chapter 276B, as appearing in the 2018 Official Edition, is hereby further
134 amended by inserting after the last sentence in chapter 276B, the following chapter-

135 Chapter 276C. Certificates of rehabilitation.

136 Section 1. Definitions.

137 As used in this chapter, the following words shall have the following meanings:-

138 “Certificate of rehabilitation”, a certificate issued to an eligible applicant pursuant to this
139 chapter to: (i) preserve and enhance the person’s prospects for employment, housing,
140 occupational licensing, commissions, appointments, permits, and other opportunities; (ii) to
141 increase the likelihood of a person’s success in society; and (iii) to remove any disqualification,
142 ineligibility, bar, or forfeiture related to employment, housing, occupational licensing,
143 commissions, permits, or any other right or privilege caused by a conviction or offense that is
144 covered by a certificate of rehabilitation.

145 “Disqualification” or “disqualified”, an ineligibility, exclusion, penalty, prohibition, bar,
146 or other disadvantage that results from a conviction or other offense eligible for inclusion in a
147 certificate of rehabilitation, but not including imprisonment, probation, parole, restitution,
148 restraint on an individual’s driving privilege, registration for a sex offense conviction and
149 restrictions related to individuals registered as sex offenders, terms of a sentence related to a
150 criminal conviction or other offense, and not including any license or permit to own, possess,
151 carry, or fire any explosive, ammunition, pistol, handgun, rifle, shotgun, or other firearm.

152 “Eligible applicant”, a person convicted of one or more offenses by a department of the
153 trial court within the commonwealth, a person with revocable sentence, including but not limited
154 to a continuance without a finding by a department of the trial court within the commonwealth, a
155 person with a juvenile adjudication or adjudications within the commonwealth; or a person
156 convicted of one or more offenses in another jurisdiction or by a federal court and who resides in
157 the commonwealth.

158 “Employment”, an occupation, vocation, job, or employment including, but not limited to
159 work on commission, contract work, or any form of vocational or employment training or

160 education conducted within the commonwealth, provided, however, that "employment" shall not,
161 for the purposes of this section, include membership in a law enforcement agency.

162 "Housing", lease, rental or occupancy of an apartment, condominium, building,
163 land, or other real property in the commonwealth, or an application for the same by an applicant,
164 tenant, or other lessee.

165 "License", a certificate, license, permit or grant of permission required by the
166 commonwealth, its political subdivisions, or a board of licensure as a condition for the lawful
167 practice of an occupation, employment, trade, vocation, business, or profession; provided,
168 however, that "license" shall not, for the purposes of this section, include any license or permit
169 related an individual's driving privilege, or any license or permit to own, possess, carry, or fire
170 any explosive, ammunition, pistol, handgun, rifle, shotgun or other firearm.

171 "Employer", a person, company, partnership, corporation, labor organization or
172 association, employment agency, or other similar entity with six or more employees.

173 "Public agency", the commonwealth or any local subdivision thereof, or any state,
174 district, county, city, town, or local department, agency, board, or commission within the
175 commonwealth.

176 "Revocable sentence", a continuance without a finding, a suspended sentence, a sentence
177 upon which execution was stayed or a sentence to probation.

178 "Unreasonable risk", it is likely that a person may engage in unlawful activity in the
179 workplace similar to the criminal conviction or convictions for which the person was previously

180 convicted, or as related to any other opportunity or offense that the applicant seeks to be included
181 for inclusion in a certificate of rehabilitation.

182 Section 2. Eligibility.

183 (a) A person convicted of one or more criminal convictions within the
184 commonwealth may seek a certificate of rehabilitation at the time of sentencing by a trial court
185 of the commonwealth or at any time thereafter related to said offense or offenses.

186 (b) A person who received a revocable sentence or whose offense or offenses were
187 continued without a finding by a department of the trial court within the commonwealth may
188 seek a certificate of rehabilitation at the time of entry of such a deposition or at a later time,
189 including, but not limited to the time of dismissal of the charge or charges.

190 (c) A person with one or more juvenile court adjudications within the commonwealth
191 may seek a certificate of rehabilitation related to the offense or offenses at the time of sentencing
192 or at any time thereafter.

193 (d) A person who has one or more convictions from outside of the commonwealth or
194 from a federal court, and is a resident of the commonwealth, may seek a certificate of
195 rehabilitation related to said offenses or offenses.

196 Section 3. Application for a certificate of rehabilitation.

197 All applications, certificates, and orders necessary for the purposes of this chapter shall
198 be upon forms promulgated by the administrator of the trial court. The application provided to a
199 person applying for a certificate under this section shall use language that permits the person to
200 prepare the form pro se and shall include a check-off format that permits the person to specify

201 the disqualifications from which the person is seeking relief, including but not limited to
202 employment, housing, education and training, occupational licensing, loans, notary public
203 appointments, other commissions and appointments, holding of public office, sealing of any
204 conviction entered pursuant to sections 121 to 131H, inclusive, of chapter 140 or for violations
205 of chapter 268, or removal of other disqualifications as specified by the applicant. Applications
206 for certificates of rehabilitation shall be made available to the public, including individuals who
207 are incarcerated within the commonwealth, by the trial court departments, the probation
208 department, the parole board, the department of corrections, any prison, house of correction, or
209 juvenile facility within the commonwealth, the department of youth services, the sheriffs, and
210 any office of community corrections.

211 Section 4. Procedure.

212 (a) There shall be no filing fee or other fees required to obtain a certificate of
213 rehabilitation. The clerk's office of a trial court, upon receipt of an application under this
214 section, shall provide a copy of the application and any documents filed in support of the
215 application to the district attorney for the county where the court is located.

216 (b) A person seeking a certificate of rehabilitation shall file the application in the same
217 trial court within the commonwealth that entered the conviction or convictions, juvenile
218 adjudication or adjudications, revocable sentence, or continuance without a finding. A person
219 with eligible offenses in more than one division of the same trial court department may file an
220 application pertaining to all the charges in said court department, but the application shall be
221 filed in the court division where the last offense occurred and the applicant must file attested or
222 certified copies of the docket sheets for the cases from the other court divisions along with the

223 application. The district attorney shall have the right to object to venue and a judge in the court
224 division where the application was filed may, for good cause, decline to rule on or hear the
225 applicant's request for a certificate of rehabilitation for any conviction or offense from another
226 court division, without prejudice to the applicant's request for a certificate of rehabilitation in the
227 court division where the other conviction, convictions offense or offenses originated.

228 (c) A person residing in the commonwealth with one or more convictions from outside of
229 the commonwealth, or from a federal court, may seek a certificate of rehabilitation by filing the
230 application along with an attested or certified copy of the court docket sheets pertaining to the
231 conviction or convictions in a trial court within the commonwealth having territorial jurisdiction
232 over the person's residence.

233 (d) An eligible applicant, an attorney for the applicant, or the district attorney may
234 request a hearing on the application and the court shall schedule a hearing on the application for
235 a certificate of rehabilitation upon such a request. Otherwise, the court may enter an order
236 granting or denying a certificate of rehabilitation without a hearing, or schedule a hearing as it
237 deems appropriate.

238 Section 5. Standard for granting relief.

239 A court may grant a certificate of rehabilitation if the court finds that:

240 (i) the person is eligible for relief under this chapter;

241 (ii) the relief granted by the certificate is consistent with the person's rehabilitation;

242 (iii) the issuance of the certificate would promote the person's access to employment,
243 housing, occupational licensing, or another opportunity or opportunities, but not pose an
244 unreasonable risk to the safety of a specific individual or the general public.

245 Section 6. Order and scope of relief.

246 (a) A court granting a certificate of rehabilitation may relieve an eligible applicant of all
247 disqualifications imposed by laws of the commonwealth due to the applicant's conviction,
248 convictions, or other offenses as permitted by this chapter, or limit relief to one or more
249 enumerated disqualifications. The court shall provide a written ruling setting forth the reasons for
250 allowance or denial of the application within seven days of the hearing to the applicant and the
251 district attorney, or within 30 days of the applicant's filing of an application if there is no
252 hearing.

253 (b) The court shall provide certified copies of the certificate of rehabilitation at no cost
254 upon request of a person granted such a certificate.

255 Section 7. Effect of allowance of a certificate of rehabilitation.

256 (a) Nothing contained in this chapter shall be deemed to limit, delay, or affect the
257 procedural process for applying for pardons to the governor, and no certificate issued hereunder
258 shall be deemed or construed to be an executive pardon.

259 (b) A certificate of rehabilitation under this chapter shall remove any disqualification as
260 set forth in any statute, regulation or policy promulgated by the commonwealth or a public
261 agency related to the person's past offense or offenses as provided in the certificate of
262 rehabilitation. A certificate of rehabilitation shall create a presumption that an individual is

263 rehabilitated and suitable for employment, housing, a license, and other opportunities as
264 provided by the certificate of rehabilitation. Notwithstanding this provision, the fact that an
265 applicant does not hold or provide a certificate of rehabilitation shall not be a basis for denial of
266 employment, housing, licenses, or other opportunities.

267 (c) A person who obtains a certificate of rehabilitation pursuant to section 6 of chapter
268 276B, shall be permitted to seal any conviction for violation of sections 121 to 131H, inclusive,
269 of chapter 140 or for violations of chapter 268, as specified and provided in the certificate of
270 rehabilitation.

271 Section 8. Appeal and certificate enlargement.

272 Any applicant whose application for a certificate of rehabilitation is denied shall have the
273 right to appeal the denial within 30 days of receipt of written notice of the decision. Any court
274 that issued a certificate of rehabilitation may also issue a new certificate at any time that enlarges
275 the relief previously granted if an eligible applicant files another application under this chapter.
276 An applicant whose application was denied by a court shall not be barred from filing another
277 application, including submission of additional evidence at a future time.

278 Section 9. Revocation.

279 Where the court has imposed a continuance without a finding or other revocable sentence
280 and the certificate of rehabilitation is issued prior to the expiration or termination of the time
281 when the court may revoke such sentence, the certificate shall be deemed to be a temporary
282 certificate until such time as the court's authority to revoke the sentence has expired or is
283 terminated. While temporary, such certificate: (i) may be revoked by the court for violation of
284 the conditions of the sentence; and (ii) shall be revoked by the court if it revokes the sentence

285 and commits the person to a correctional facility. Any such revocation shall be upon notice and
286 an opportunity to be heard by the person who was granted a temporary certificate. A hearing on
287 the revocation shall be held if the person requests a hearing. If the certificate is not so revoked, it
288 shall become a permanent certificate upon expiration or termination of the court's authority to
289 revoke the sentence. Upon motion of the district attorney or the commissioner of probation, a
290 court may revoke a certificate of rehabilitation upon evidence of a subsequent conviction or
291 juvenile adjudication.

292 Section 10. Reporting.

293 All licensing authorities shall report to the General Court annually beginning one
294 year from the effective date of this act the number of licensure applicants who presented
295 certificates of rehabilitation, the number of licenses awarded to applicants with conviction
296 histories, the number of applicants with criminal histories denied licenses, the number of licenses
297 awarded to applicants with certificates of rehabilitation, and the number of applicants with
298 certificates of rehabilitation denied licenses.

299 All trial courts issuing certificates of rehabilitation shall report to the General Court
300 beginning one year from the effective date of this act the number of applications made, the
301 number of applications that are denied, and the number of applications that are granted.