

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>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/11/2022</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

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

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

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

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

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

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

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

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

(v) the seriousness of the offense or offenses;

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

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

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

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

SECTION 3. Subsection (11) of section 18³/₄ of chapter 6A of the General Laws, as so appearing, is hereby amended by striking out the words "upon their release from a correctional facility" in the first sentence and inserting in place thereof, the following words:-
within 30 days of their entry to a correctional or juvenile facility, and again, 30 days before their expected date of release from a correctional or juvenile facility.

SECTION 4. Subsection (11) of section 18³/₄ of chapter 6A of the General Laws, as so appearing, is hereby amended by striking out the words "and (vi) a list of answers to frequently asked questions about criminal offender record information" in the last sentence and inserting in place thereof, the following words:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) the seriousness of the offense or offenses;

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

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

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

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

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

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

Chapter 276C. Certificates of rehabilitation.

Section 1. Definitions.

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

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

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

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

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

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

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

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

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

“Public agency”, the commonwealth or any local subdivision thereof, or any state, district, county, city, town, or local department, agency, board, or commission within the commonwealth.

“Revocable sentence”, a continuance without a finding, a suspended sentence, a sentence upon which execution was stayed or a sentence to probation.

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

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

Section 2. Eligibility.

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

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

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

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

Section 3. Application for a certificate of rehabilitation.

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

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

Section 4. Procedure.

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

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

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

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

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

Section 5. Standard for granting relief.

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

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

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

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

Section 6. Order and scope of relief.

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

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

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

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

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

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

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

Section 8. Appeal and certificate enlargement.

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

Section 9. Revocation.

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

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

Section 10. Reporting.

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

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