SENATE DOCKET, NO. 383 FILED ON: 1/19/2011

SENATE . . . . . No. 905

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

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 and recovery and rehabilitation for substance abusers..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Steven A. Tolman	

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SENATE . . . . . No. 905

By Mr. Tolman, a petition (accompanied by bill, Senate, No. 905) of Steven A. Tolman for legislation relative to providing for certificates of rehabilitation and recovery and rehabilitation for substance abusers. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1838* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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;

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

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

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

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

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

39 (b) The period of rehabilitation shall begin to run upon the discharge of the
40 petitioner from custody or upon his release from parole or probation or upon release from a
41 substance abuse treatment facility, or at the end of a period of continuance without a finding,
42 whichever 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
48 was ordered to serve consecutive sentences, order that his statutory period of rehabilitation be
49 extended for an additional period of time which, when combined with the time already served,
50 does not exceed the period prescribed by statute for the sum of the maximum penalties for all the
51 crimes for which the petitioner was sentenced.

52 Section 176D. Any person eligible to petition the court for a certificate shall be
53 entitled to receive assistance from all rehabilitative agencies, including the adult probation
54 officer of the county and all state parole officers, and, in the case of persons under the age of 30
55 years, from the department of youth services.

56 Section 176E. The petitioner shall give notice of the filing of his petition to
57 the district attorney of the county in which the petition is filed, to the district attorney of the
58 county in which the petitioner was convicted of an offense, to the attorney general and to the
59 governor, together with notice of the time of the hearing of the petition, at least 30 days prior to
60 the date set for such 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
65 testimony as it deems necessary, and the production, for the use of the court and without expense
66 to the petitioner, of all records and reports relating to the petitioner and the offense for which he
67 was charged, including the record of the trial, probation department records, if any, the records
68 of any facility or penal institution from which the petitioner has been released from custody or
69 from which the petitioner received substance abuse treatment showing his conduct therein, the
70 records of such facility, institution or agency doctor, psychiatrist, or substance abuse counselor,
71 parole records, the records of the department of youth services, and written reports or records of
72 any 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
77 request from the district attorney in which the petition was filed an investigation relative to: the
78 place of residence of the petitioner; the criminal record of the petitioner as shown by the records
79 of the Department of Justice; any representation made to the court by the petitioner; the conduct
80 of the petitioner during his period of rehabilitation; and any other information the court may
81 deem necessary in making its determination. If so requested, the district attorney shall provide
82 the court with a full and complete report of such investigation.

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

86 Section 176J. If, after a hearing, the court finds that the petitioner has satisfied
87 the 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
91 fulfilled the requirements of sections 176B and 176C shall be void.

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

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

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

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

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

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

117 Section 176Q. Nothing in this chapter shall be construed to abridge or impair
118 the power or authority conferred by law or regulation on any officer, board, or agency to revoke
119 or suspend any right, privilege, or franchise for any act or omission unrelated to an offense for
120 which a person has been issued a certificate, or to require the reinstatement of the right or
121 privilege to practice or carry on any profession or occupation the practice or conduct of which
122 requires the possession or obtaining of a license, permit or certificate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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