

STATE OF CONNECTICUT
AGENCY LEGISLATIVE PROPOSAL
2012 SESSION

Document Name Connecticut Sentencing Commission, Certificate of Relief from Barriers Recommendation

Agency Connecticut Sentencing Commission	Agency Priority (See instructions)
Contact Person	Telephone
Email Address	
Title of Proposal Certificate of Relief from Barriers	Statutory Reference Proposal Type <input checked="" type="checkbox"/> New <input type="checkbox"/> Resubmittal
<i>ATTACH COPY OF FULLY DRAFTED BILL (Required for review)</i>	

APPROVAL OF OTHER AFFECTED AGENCY (Attach additional approvals if necessary)	
Agency None	Agency Contact (Name and Title)
<i>Attach Summary of Agency Comments</i>	Contact Date

Summary of Proposal (Include background information) This bill would authorize the Board of Pardons and Paroles (BOPP) and state judges to grant Certificates of Relief from Barriers (CRBs). These Certificates would replace the current “provisional pardons,” provide greater clarity to state employers and licensing boards, allow removal of barriers to public housing, and streamline the process for rehabilitated ex-offenders seeking to remove barriers imposed by criminal convictions.

Reason for Proposal (Include significant policy and programmatic impacts) In order to more accurately describe their purpose and legal effect, provisional pardons would be re-named Certificates of Relief from Barriers (CRBs). To streamline the process and expedite the removal of barriers affecting ex-offenders’ state employment prospects and public housing eligibility, both the Board of Pardons and Paroles (BOPP) and sentencing judges would be authorized to grant CRBs after determining that issuance of a CRB would promote the public policy

of rehabilitation of ex-offenders and is consistent with public safety and the protection of property. The proposed bill provides greater guidance to guide state employers, licensing agencies, and public housing authorities in their consideration of applicants with criminal convictions and CRBs.

Significant Fiscal Impacts

Municipal: None

Federal: None

State: The impact of this proposal is unknown at this time.



General
Assembly

Proposed Bill No.

Session, 2012

LCO No.

Referred to: Committee on

Introduced by:

AN ACT CONCERNING CERTIFICATES OF RELIEF FROM BARRIERS
Be it enacted by the Senate and House of Representatives in General Assembly
convened:

Section 1. Section 54-130a of the general statutes is repealed and the following
substituted in lieu thereof:

- (a) Jurisdiction over the granting of, and the authority to grant, commutations of
punishment or releases, conditioned or absolute, in the case of any person convicted of
any offense against the state and commutations from the penalty of death shall be vested
in the Board of Pardons and Paroles.
- (b) The board shall have authority to grant pardons, conditioned[, **provisional**] or
absolute, as well as Certificates of Relief from Barriers, for any offense against the state
at any time after the imposition and before or after the service of any sentence.
- (c) The board may accept an application for a pardon three years after an applicant's
conviction of a misdemeanor or violation and five years after an applicant's conviction of
a felony, except that the board, upon a finding of extraordinary circumstances, may
accept an application for a pardon prior to such dates.
- (d) Whenever the board grants an absolute pardon to any person, the board shall cause
notification of such pardon to be made in writing to the clerk of the court in which such
person was convicted, or the Office of the Chief Court Administrator if such person was
convicted in the Court of Common Pleas, the Circuit Court, a municipal court, or a trial
justice court.
- (e) Whenever the board grants a [**provisional pardon**] Certificate of Relief from Barriers
to any person, the board shall cause notification of such [**pardon**] Certificate to be made

in writing to the clerk of the court in which such person was convicted. The granting of a [provisional pardon] Certificate does not entitle such person to erasure of the record of the conviction of the offense or relieve such person from disclosing the existence of such conviction as may be required.

(f) In the case of any person convicted of a violation for which a sentence to a term of imprisonment may be imposed, the board shall have authority to grant a pardon, conditioned[, provisional] or absolute, as well as Certificates of Relief from Barriers, in the same manner as in the case of any person convicted of an offense against the state.

Section 2. Section 54-130e of the general statutes is repealed and the following substituted in lieu thereof:

(a) For the purposes of this section and sections 8-45a, 31-51i, 46a-80, and 54-130a:

(1) “Barrier” means a denial of employment, ~~[or]~~ a license, or public housing based on an eligible offender’s conviction of a crime without due consideration of whether the nature of the crime bears a direct relationship to such employment, ~~[or]~~ license, or public housing;

(2) “Direct relationship” means that the nature of criminal conduct for which the person was convicted has a direct bearing on his or her fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license, housing, opportunity, or job in question.

~~(3) [(2)]~~ “Eligible offender” means a person who has been convicted of a crime or crimes in this state or another jurisdiction and who is a resident of this state and is applying for a ~~[provisional pardon]~~ Certificate of Relief from Barriers or is under the jurisdiction of the Board of Pardons and Paroles;

~~(4) [(3)]~~ “Employment” means any remunerative work, occupation or vocation or any form of vocational training, but does not include employment with a law enforcement agency;

~~(5) [(4)]~~ “Forfeiture” means a disqualification or ineligibility for employment, ~~[or]~~ a license, or public housing by reason of law based on an eligible offender’s conviction of a crime;

~~(6) [(5)]~~ “License” means any license, permit, certificate or registration that is required to be issued by the state or any of its agencies to pursue, practice or engage in an occupation, trade, vocation, profession or business; and

~~(7) [(6)]~~ ~~[“Provisional pardon”]~~ “Certificate of Relief from Barriers” means a form of relief from barriers or forfeitures to employment, public housing, or the issuance of licenses granted to an eligible offender by the Board of Pardons and Paroles or the Superior Court of this state pursuant to subsections (b) to ~~[i](q)~~, inclusive, of this section. Such Certificate shall be labeled by the issuing authority a “Certificate of Employability,” “Certificate of Suitability for License,” or “Certificate of Suitability for Public Housing,” or any combination thereof deemed appropriate.

~~(8)~~ “Public agency” means the state, or any state or local department, agency, board or commission.

~~(9)~~ “Public housing” means housing corporations created by section 8-40 and defined in section 8-39(b).

(b) The Board of Pardons and Paroles may issue a [provisional pardon] Certificate of Relief from Barriers to relieve an eligible offender of barriers or forfeitures by reason of such person's conviction of the crime or crimes specified in such [provisional pardon] Certificate. Such [provisional pardon] Certificate may be limited to one or more enumerated barriers or forfeitures or may relieve the eligible offender of all barriers and forfeitures. No [provisional pardon] Certificate shall apply or be construed to apply to the right of such person to retain or be eligible for public office.

(c) The Board of Pardons and Paroles may, in its discretion, issue a [provisional pardon] Certificate of Relief from Barriers to an eligible offender upon verified application of such person. The board may issue a [provisional pardon] Certificate at any time after the sentencing of an eligible offender. Certificates may be issued by both pardons panels and parole release panels of the board. When an eligible offender applies for a Certificate at or before a parole hearing, the board may, if feasible, determine before the offender's release date whether to issue a Certificate.

(d) The board shall not issue a [provisional pardon] Certificate of Relief from Barriers unless the board is satisfied that:

(1) The person to whom the [provisional pardon] Certificate is to be issued is an eligible offender;

(2) The relief to be granted by the [provisional pardon] Certificate may promote the public policy of rehabilitation of ex-offenders; and

(3) The relief to be granted by the [provisional pardon] Certificate is consistent with the public interest in public safety, the safety of any victim of the offense, and the protection of property.

(e) In accordance with the provisions of subsection (d) of this section, the board may limit the applicability of the [provisional pardon] Certificate of Relief from Barriers to specified types of employment, [or] licenses, or public housing for which the eligible offender is otherwise qualified.

(f) The board may, for the purpose of determining whether such [provisional pardon] Certificate of Relief from Barriers should be issued, request its staff to conduct an investigation of the applicant and submit to the board a report of the investigation. Any written report submitted to the board pursuant to this subsection shall be confidential and not disclosed except to the applicant and where required or permitted by any provision of the general statutes or upon specific authorization of the board.

(g) If a [provisional pardon] Certificate of Relief from Barriers is issued by the board or the Superior Court before an eligible offender has completed his or her sentence of incarceration, probation, or parole, or any combination thereof, the [while an eligible offender is on probation or parole, the provisional pardon] Certificate shall be deemed to be temporary until the person completes such person's period of incarceration, probation or parole. During the period that such [provisional pardon] Certificate is temporary, the

issuing authority may revoke such [provisional pardon] Certificate for violation of the conditions of such person's probation or parole. After the sentence is complete, the Certificate shall be permanent.

(h) The board may at any time issue a new [provisional pardon] Certificate of Relief from Barriers to enlarge the relief previously granted, and the provisions of subsections (b) to (f), inclusive, of this section shall apply to the issuance of any new [provisional pardon] Certificate.

[(i) The application for a provisional pardon, the report of an investigation conducted pursuant to subsection (f) of this section, the provisional pardon and the revocation of a provisional pardon shall be in such form and contain such information as the Board of Pardons and Paroles shall prescribe.]

(i) The Superior Court of this state may, in its discretion, issue a Certificate of Relief from Barriers to an eligible offender for a conviction that occurred in such court, if the court either (1) imposed a sentence not requiring immediate incarceration or (2) imposed a sentence of incarceration of less than two years. The court may issue the certificate at the time of sentencing or thereafter during an offender's period of probation.

(j) A Certificate of Relief from Barriers shall not be issued by the court unless the court is satisfied that

(1) The relief to be granted by the Certificate may promote the public policy of rehabilitation of ex-offenders; and

(2) The relief to be granted by the Certificate is consistent with the public interest in public safety, the safety of any victim of the offense, and the protection of property.

(k) The court may, for the purpose of determining whether such Certificate should be issued, request its probation service to conduct an investigation of the applicant and submit to the court a report of the investigation. In conducting the investigation, probation services shall seek input from any victim of the offense. Any written report submitted to the court pursuant to this subsection shall be confidential and not disclosed except to the applicant and where required or permitted by any provision of the general statutes or upon specific authorization of the court.

(l) Upon application from an eligible offender, any court that has issued a Certificate of Relief from Barriers may at any time enlarge the relief previously granted, and the provisions of subdivision (i) to (k) shall apply to the issuance of any such new Certificate.

(m) If a Certificate of Relief from Barriers is deemed to be temporary and the Certificate is revoked, barriers and forfeitures thereby relieved shall be reinstated as of the date upon which the person to whom the Certificate was issued receives written notice of the revocation. Any such person shall upon receipt of the notice surrender the Certificate to the issuing court or the Board of Pardons and Paroles.

(n) The application for a Certificate of Relief from Barriers, the report of an investigation conducted pursuant to subsections (f) and (k) of this section, and the Certificate and the revocation of a Certificate, shall be in such form and contain such information as the Board of Pardons and Paroles shall prescribe.

(o) Any court issuing a Certificate under this section shall immediately file a copy of the Certificate with the Board of Pardons and Paroles. All bodies issuing Certificates of Relief from Barriers shall post on the Sentencing Commission website biannually beginning one year from the effective date of this section the number of applications that are made, the number of applications that are denied, and the number of applications that are granted by each issuing authority.

(p) The Sentencing Commission or its designee shall have oversight over the evaluation of the Certificate of the Relief from Barriers program for a period of 3 years from the effective date of this section. The Commission shall report to the Judiciary Committee of the General Assembly annually during this period on the efficacy of the Certificate of Relief from Barriers program. This report shall include recommendations for program enhancement.

Section 3. Section 31-51i of the general statutes is repealed and the following substituted in lieu thereof:

(a) For the purposes of this section “employer” means any person engaged in business who has one or more employees, including the state or any political subdivision of the state.

(b) No employer or an employer's agent, representative or designee may require an employee or prospective employee to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142a.

(c) An employment application form that contains any question concerning the criminal history of the applicant shall contain a notice, in clear and conspicuous language:

(1) That the applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142a,

(2) that criminal records subject to erasure pursuant to section 46b-146, 54-76o or 54-142a are records pertaining to a finding of delinquency or that a child was a member of a family with service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or nolle, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon, and

(3) that any person whose criminal records have been erased pursuant to section 46b-146, 54-76o or 54-142a shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

(d) No employer or an employer's agent, representative or designee shall deny employment to a prospective employee solely on the basis that the prospective employee had a prior arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142a or that the prospective employee had a prior conviction for which the prospective employee has received a [\[provisional pardon\] Certificate of Relief from Barriers](#) pursuant to section 54-130a.

(e) No employer or an employer's agent, representative or designee shall discharge, or cause to be discharged, or in any manner discriminate against, any employee solely on the basis that the employee had, prior to being employed by such employer, an arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142a or that the employee had, prior to being employed by such employer, a prior conviction for which the employee has received a [\[provisional pardon\] Certificate of Relief from Barriers](#) pursuant to section 54-130a.

(f) The portion of an employment application form which contains information concerning the criminal history record of an applicant or employee shall only be available to the members of the personnel department of the company, firm or corporation or, if the company, firm or corporation does not have a personnel department, the person in charge of employment, and to any employee or member of the company, firm or corporation, or an agent of such employee or member, involved in the interviewing of the applicant.

(g) Notwithstanding the provisions of subsection (f) of this section, the portion of an employment application form which contains information concerning the criminal history record of an applicant or employee may be made available as necessary to persons other than those specified in said subsection (f) by:

(1) A broker-dealer or investment adviser registered under chapter 672a in connection with (A) the possible or actual filing of, or the collection or retention of information contained in, a form U-4 Uniform Application for Securities Industry Registration or Transfer, (B) the compliance responsibilities of such broker-dealer or investment adviser under state or federal law, or (C) the applicable rules of self-regulatory organizations promulgated in accordance with federal law;

(2) An insured depository institution in connection with (A) the management of risks related to safety and soundness, security or privacy of such institution, (B) any waiver that may possibly or actually be sought by such institution pursuant to section 19 of the Federal Deposit Insurance Act, 12 USC 1829(a) (C) the possible or actual obtaining by such institution of any security or fidelity bond, or (D) the compliance responsibilities of such institution under state or federal law; and

(3) An insurance producer licensed under chapter 701a in connection with (A) the management of risks related to security or privacy of such insurance producer, or (B) the compliance responsibilities of such insurance producer under state or federal law.

(h) (1) For the purposes of this subsection: (A) “Consumer reporting agency” means any person who regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a fee, which reports compile and report items of information on consumers that are matters of public record and are likely to have an adverse effect on a consumer's ability to obtain employment, but does not include any public agency; (B) “consumer report” means any written, oral or other communication of information bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living; and (C) “criminal matters of public record” means information obtained from the Judicial Department relating to arrests, indictments, convictions, outstanding judgments, and any other conviction information, as defined in section 54-142g.

(2) Each consumer reporting agency that issues a consumer report that is used or is expected to be used for employment purposes and that includes in such report criminal matters of public record concerning the consumer shall:

(A) At the time the consumer reporting agency issues such consumer report to a person other than the consumer who is the subject of the report, provide the consumer who is the subject of the consumer report (i) notice that the consumer reporting agency is reporting criminal matters of public record, and (ii) the name and address of the person to whom such consumer report is being issued;

(B) Maintain procedures designed to ensure that any criminal matter of public record reported is complete and up-to-date as of the date the consumer report is issued, which procedures shall, at a minimum, conform to the requirements set forth in section 54-142e.

(3) This subsection shall not apply in the case of an agency or department of the United States government seeking to obtain and use a consumer report for employment purposes if the head of the agency or department makes a written finding pursuant to 15 USC 1681b(b)(4)(A).

Section 4. Section 46a-80 of the general statutes is repealed and the following substituted in lieu thereof:

(a) Except as provided in subsection (c) of this section, subsection (b) of section 46a-81 and section 36a-489, and notwithstanding any other provisions of law to the contrary, a person shall not be disqualified from employment by the state or any of its agencies, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business for which a license, permit, certificate or registration is required to be issued by the state or any of its agencies solely because of a prior conviction of a crime.

(b) Except for a position for which any provision of the general statutes specifically disqualifies a person from employment by the state or any of its agencies because of a prior conviction of a crime, no employer, as defined in section 5-270, shall inquire about a prospective employee's past convictions until such prospective employee has been deemed otherwise qualified for the position.

(c) A person may be denied employment by the state or any of its agencies, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, profession or business by reason of the prior conviction of a crime if after considering (1) the nature of the crime and its relationship to the job for which the person has applied; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release, the state, or any of its agencies determines that the applicant is not suitable for the position of employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit, certificate or registration is sought. In making a determination pursuant to this subsection, the state and any of its agencies shall also give consideration to a Certificate of Relief from Barriers, which shall demonstrate presumed suitability for employment or licensing, as specified in the Certificate. An application shall not be rejected under this subsection based on a prior conviction for which a person has received a Certificate of Relief from Barriers unless there is a direct relationship between the conviction and the specific employment, license, permit, certificate or registration sought by the individual.

(d) If a conviction of a crime is used as a basis for rejection of an applicant, such rejection shall be in writing and specifically state the evidence presented and reasons for rejection. A copy of such rejection shall be sent by registered mail to the applicant.

(e) In no case may records of arrest, which are not followed by a conviction, or records of convictions, which have been erased, be used, distributed or disseminated by the state or any of its agencies in connection with an application for employment or for a permit, license, certificate or registration.

Section 5. Section 8-45a of the general statutes is repealed and the following substituted in lieu thereof:

A housing authority, as defined in subsection (b) of section 8-39, in determining eligibility for the rental of public housing units may establish criteria and consider relevant information concerning (1) an applicant's or any proposed occupant's history of criminal activity involving: (A) Crimes of physical violence to persons or property, (B) crimes involving the illegal manufacture, sale, distribution or use of, or possession with intent to manufacture, sell, use or distribute, a controlled substance, as defined in section 21a-240, or (C) other criminal acts which would adversely affect the health, safety or welfare of other tenants, (2) an applicant's or any proposed occupant's abuse, or pattern of abuse, of alcohol when the housing authority has reasonable cause to believe that such applicant's or proposed occupant's abuse, or pattern of abuse, of alcohol may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents, and (3) an applicant or any proposed occupant who is subject to a lifetime registration requirement under section 54-252 on account of being convicted or found not guilty by reason of mental disease or defect of a sexually violent offense.

In evaluating any such information, the housing authority shall give consideration to the time, nature and extent of the applicant's or proposed occupant's conduct and to factors which might indicate a reasonable probability of favorable future conduct such as evidence of rehabilitation and evidence of the willingness of the applicant, the applicant's family or the proposed occupant to participate in social service or other appropriate counseling programs and the availability of such programs. The housing authority shall also give consideration to a Certificate of Relief from Barriers issued regarding housing, which shall demonstrate presumed eligibility for public housing; provided, however, that if an applicant is ineligible for public housing under federal law as a result of his or her prior criminal history, the Certificate shall not affect the applicant's eligibility.