CONNECTICUT SENTENCING COMMISSION

Connecticut Certificates of Employability Program Evaluation 2016 Report

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2016 REPORT

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Report to the Judiciary Committee of
the Connecticut General Assembly
pursuant to C.G.S. §54-301(b)

Alex Tsarkov
Executive Director

Leland J. Moore
Research & Policy Associate

185 Main Street, Room 212
New Britain, Connecticut 06051
Tel: 860-832-1852
Fax: 860-832-0071
http://www.ct.gov/ctsc

PROJECT STAFF

Renee LaMark Muir, Lead Researcher
Adjunct Professor, CCSU Institute of Municipal and Regional Policy

Nolan Esser, Data Analyst
CCSU Institute of Municipal and Regional Policy

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Foreword

By statutory mandate, the Connecticut Sentencing Commission (hereinafter referred to as the Commission), established in 2011, is required to, "review the existing criminal sentencing structure in the state and any proposed changes thereto, including existing statutes, proposed criminal justice legislation and existing and proposed sentencing policies and practices and make recommendations to the Governor, the General Assembly and appropriate criminal justice agencies." (C.G.S. § 54-300(b)).

The Commission recognizes that: (1) the primary purpose of sentencing in the state is to enhance public safety while holding the offender accountable to the community; (2) sentencing should reflect the seriousness of the offense and be proportional to the harm to victims and the community, using the most appropriate sanctions available, including incarceration, community punishment and supervision; (3) sentencing should have as an overriding goal the reduction of criminal activity, the imposition of just punishment and the provision of meaningful and effective rehabilitation and reintegration of the offender; and (4) sentences should be fair, just and equitable while promoting respect for the law.

The Commission consists of 23 members, including judges, prosecutors, criminal defense attorneys, the commissioners of the Departments of Correction, Emergency Services and Public Protection (formerly Public Safety), Mental Health and Addiction Services, the state victim advocate, the executive director of the Judicial Branch Court Support Services Division, the chairperson of the Board of Pardons and Paroles, the undersecretary of the Office of Police and Management Criminal Justice Policy and Planning Division, a municipal police chief and public members appointed by the governor and the leaders of the General Assembly.

The Commission is staffed by an executive director and a research and policy associate. Contracted consultants, academics and subject matter experts provide research, data analysis and public policy review on commission projects. The Institute of Municipal and Regional Policy (IMRP), at Central Connecticut State University, supports the Commission's professional staff and also provides administrative resources as necessary.

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Introduction

In 2013, the Connecticut Sentencing Commission submitted a proposal to increase the effectiveness of the provisional pardon laws to the General Assembly. The proposal was adopted during the 2014 legislative session: Public Act 14-27, *An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Certificates of Rehabilitation.* The new law gave the Board of Pardons and Paroles (BOPP) and the Judicial Branch Court Support Services Division (CSSD) the authority to issue "certificates of rehabilitation" to persons with criminal convictions whose employment prospects would be enhanced by such a certificate.

Public Act 14-27 requires the Connecticut Sentencing Commission evaluate the effectiveness of the certificate of rehabilitation at, "promoting [the] public policy of rehabilitating ex-offenders consistent with the public interest in public safety, the safety of crime victims and the protection of property." The evaluation period began October 1, 2015 and continues for three years with reports due in January of 2016, 2017, and 2018. This first report provides a preliminary evaluation of the certificate of employability (COE) implementation process during the 15 months (from October 1, 2014 through December 31, 2015) rather than the three month period between October 2015 and January 2016 as required by statute.

The report is organized into four sections. Section one summarizes the provisions of Public Act 14-27. Section two provides an overview of BOPP and CSSD policies and procedures to implement Public Act 14-27. Descriptive statistics on COE applicants are set forth in Section three. Section four presents some preliminary conclusions and describes questions for further investigation during the next two years of the project.

It is important to note that following the act's passage, the BOPP and CSSD administratively changed the statutory name of "certificates of rehabilitation" to "certificates of employability" (COE) to better reflect the intent and purpose of the program. The Sentencing Commission approved this change. For the purposes of the evaluation project, the term "certificate of employability" is used.

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Section One: Summary of Public Act 14-27

Provisional Pardon

The Board of Pardons and Paroles[1] currently has the authority to issue three types of pardons:

1. sentence commutation;
2. expungement; and
3. full or provisional pardon.

In 2006, Connecticut authorized the Board of Pardons and Paroles to issue provisional pardons (Public Act 06-187, *An Act Concerning the General Budget and Revenue Implementation Provisions*.) A provisional pardon is intended to specifically address the removal of barriers to employment, but does not erase a person's record. A full pardon completely erases a person's criminal record.

A "barrier" was statutorily defined as the denial of employment or a license based on a criminal conviction without consideration of whether the type of crime committed by the applicant has a direct bearing on the applicant's fitness or ability to perform a duty related to the job or license. Employers were prohibited from denying a job to a prospective employee or discharging/discriminating against an employee solely on the basis of a criminal conviction that occurred prior to employment for which a provisional pardon was granted.

A provisional pardon may be granted at any time after sentencing to applicants who have been convicted of a crime in Connecticut or another jurisdiction and reside in the state. The standards for granting a provisional pardon are as follows:

- a pardon will promote the public policy of rehabilitating ex-offenders through employment; and
- it will be consistent with the public's interest in public safety and protecting property.

[1] The Board of Pardons and Paroles was established as a combined board in 2004. Prior to that, the Parole Board and the Pardons Board were separate entities.

Certificate of Employability (Rehabilitation)

Objective. A new document called a certificate of employability (rehabilitation) may be issued to eligible applicants by the Board of Pardons and Paroles or the Judicial Branch Court Support Services Division. Similar to a provisional pardon, the COE is intended to relieve eligible applicants of certain barriers due to a criminal record to gain employment or obtain an occupational license. The document must be labeled a "certificate of employability," a "certificate of suitability for licensure" or both if appropriate.

Applicant Eligibility. Table 1 lists the COE applicant eligibility criteria. To apply for a COE, the applicant must be a state resident. The crime and conviction may have occurred in any jurisdiction.

Table 1. COE Applicant Eligibility Criteria	
Board of Pardons and Paroles	**Judicial Branch CSSD**
• A state resident • Convicted of any crime in Connecticut or other jurisdiction	
• Released on parole or other early release program • incarcerated • Discharged from sentence	• Active probation supervision
Source: Public Act 14-27	

BPP has jurisdiction over applicants currently supervised on parole or any other Department of Corrections (DOC) early release program (e.g., transitional supervision) or applicants discharged from any criminal sentence including probation. CSSD is authorized to issue certificates only to applicants currently on probation.

COE Application Process. The Board of Pardons and Paroles is the lead agency responsible for developing the COE application, rules, review, and investigation processes and forms. The Judicial Branch is required to adopt the boards' processes and forms. As will be discussed later in this report, the Judicial Branch CSSD did so with minor modifications applicable to its policies, processes and client population. CSSD is required to immediately notify the board in writing when it issues or revokes a COE.

Both the board's pardons panels and parole release panels may review and issue certificates. Previously, only the board's pardons panels could issue provisional pardons. CSSD established a review panel, described in the next section, which is responsible for reviewing applications.
Both BPP and CSSD staff conduct investigations and generate reports for the decision-making panels. The investigation reports are confidential and may not be disclosed to anyone except the applicant without specific authorization by the issuing agency.

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The statutory criteria to determine COE applicants' suitability are the same as that for provisional pardon applicants. The suitability criteria are that the certificate will:

1. provide relief to promote the public policy of rehabilitating offenders through employment;
2. ensure public safety and protection of property; and
3. protect victim safety.

Public Act 14-27 set out the following requirements governing the process to grant or revoke a COE:

- Certificate's applicability may be limited to specific types of employment or licensures. The only specific statutory restriction is that COE cannot apply to eligibility for public office.
- The same procedures to issue a new certificate must be followed to expand the relief granted on an existing COE.
- Revocation of a temporary COE reinstates the barriers or forfeitures listed on the certificate as of the date the certificate holder received written notice of revocation. The person must surrender the certificate to issuing authority.
- Both agencies must notify the clerk of the court where an applicant was convicted that a COE was granted.
- COE does not entitle the holder to erasure of criminal record or relieve the holder from disclosing a criminal record as may be required by a job or license application.
- Both agencies must revoke a COE if the certificate-holder is arrested after a certificate is issued.

Agency Reporting Requirements

As required by statute, by October 1, 2015, BPP and CSSD must submit annual reports, in a form prescribed by OPM, to OPM and the Connecticut Sentencing Commission. Both agencies are required to report on the number of certificate applications received, granted or denied and revoked. The Sentencing Commission is required to post the agencies data and to update the data annually.

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Provisions Pertaining to Employers

Existing state law (C.G.S. §46a-80) allows the state or a state agency to deny employment or a professional license to any person found to be "unsuitable" based on a prior criminal conviction. In determining suitability, the state or state agency must consider: (1) the nature of the crime and its relationship to the job; (2) information pertaining to the person's rehabilitation; and (3) the time elapsed since the conviction or release from prison/sentence. Public Act 14-27 now requires the state or state agency to also consider a COE issued to the applicant when determining suitability for employment or licensure. The issuance of a COE creates a presumption of rehabilitation and if employment or licensure is denied it must be done so in writing and include the reason for denial.

Public Act 14-27 prohibits most private and public employers from denying anyone employment based solely on a criminal conviction for which that person received a certificate of employability. Employers are also forbidden to discharge or discriminate against a current on the basis of a criminal conviction for which a COE was issued. With some exceptions, State agencies are generally prohibited from refusing to issue an occupational license, permit or other credential to an applicant solely on the basis of a conviction for which the applicant received a certificate of employability.

Additionally, the act protects employers against liability in negligence by establishing a rebuttable presumption that evidence of a certificate holder's criminal conviction will be inadmissible.

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Section Two: COE Program Administration

During the first year of the program implementation, Sentencing Commission researchers met several times with program administrators from the BOPP and CSSD to discuss the development and administration of the new COE policies. The Commission researchers did not intervene in the development of policies, practices or forms, but did consult with the agencies on the applicant and certificate data to be collected to allow for review of the program.

The following is a description of the COE application process including investigation of applicants, panel reviews and decision-making protocols. BOPP and CSSD collaborated in establishing the COE application and review processes and provided detailed information about the administration of the program. For the most part, the COE processes implemented by each agency are similar and have only minor differences.

Public Outreach and Education. Public Act 14-27 did not require either BOPP or CSSD to provide public education to eligible applicants, prospective employers and/or the public on the new certificate of employability program. Parole officers, correctional counselors and officers, and probation supervisors and officers were educated on the intent of the COE program and the application and review process. Both agencies reported that the staff with direct contact with offenders do most of the education on the program and encourage offenders to apply.

CSSD took initiative to do some public education and outreach to community-based programs such as Alternative In the Community programs (AICs), Department of Labor Job Centers, and local business groups. Both agencies distribute informational pamphlets and post flyers in probation and parole offices, correctional facilities, halfway houses, and community-based centers and programs serving offenders.

Currently, there is little formal outreach to persons with criminal records who are no longer serving a sentence. The parole board reported reaching a very limited number when they contact the board about applying for a provisional pardon, for which it no longer accepts applications. The parole board instructs these persons to apply for a certificate of employability and provides information on the program.

Applicant Eligibility. BOPP may issue certificates to persons who are currently incarcerated, on parole or other forms of early release, and to persons previously convicted of a crime but have been discharged from their sentence, whereas CSSD may issue certificates only to persons currently on probation. Both agencies have administratively established additional eligibility criteria. The board requires applicants currently supervised on parole or other DOC early release program to have at least 90 days of "successful" supervision in the community. CSSD requires

applicants to have a demonstrated period of "successful" community supervision (preferable not less than six months) without having a technical violation or re-arrest for a new offense.

COE Application. The existing COE application used by BOPP and CSSD was developed using the existing provisional pardon application as a template. The agencies developed instructions for completing the application and an informational brochure to educate applicants on the program. These documents are available online through both agencies' websites, probation and parole offices, DOC facilities, AICs and other community-based offender programs and local job centers.

The application requires the COE applicant to provide basic information such as name, date of birth, Social Security number, citizenship status, marital status, aliases, address and contact information and information on family members residing with the applicant. Applicants provide information on their education and specialized training, employment history including serving in the military, criminal history and victim information. Applicants also provide brief narratives on the reason for applying for a certificate and the ways in which the applicant has changed since their criminal conviction. The application must be notarized and be accompanied by any supporting documentation (e.g., military discharge papers, certifications of training and/or treatment, diplomas, etc.).

Attached to the application is an optional Statistical and Research Information Sheet. The form requests the applicant's race and ethnicity information. Finally, the applicant may agree to participate in future research project.

The final part of the application is a questionnaire completed by the parole officer or probation officer supervising the applicant. The parole or probation officer provides information on the applicant's adjustment in the community, record of misconduct reports or technical violations, program participation, the applicant's employment status and any other information concerning the applicant that may assist the review panel determine suitability for a certificate.

Administrative Suitability Criteria. Both agencies reported beginning the review process with the presumption that the applicant deserves to be granted a COE. However, since the COE reflect the applicant has been "rehabilitated", the agencies assess whether the applicant has demonstrated rehabilitation.

Both agencies consider an applicant's compliance with conditions of release and supervision, the nature of the offense, and the length of the applicant's criminal history. There are no automatic exclusions based on the type of crime, but both agencies reported carefully deliberating on applications submitted by persons convicted of sex crimes or crimes in which the identified victim was the offender's employer. The agencies also take into consideration the applicant's

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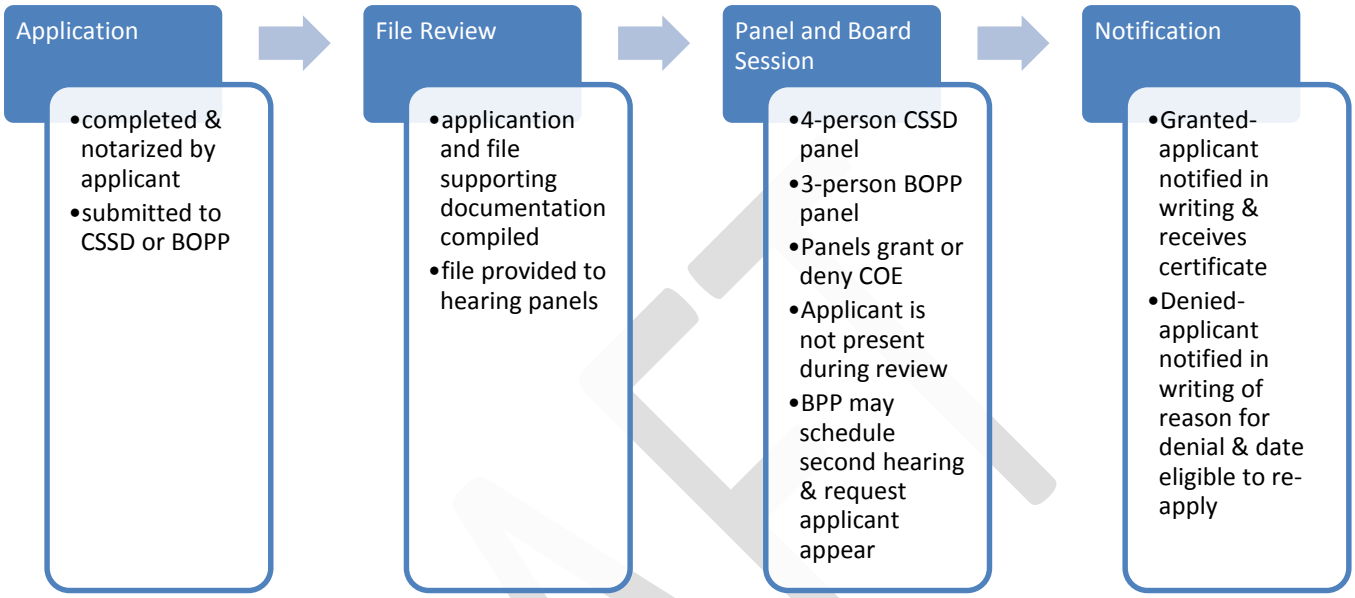
accomplishments in the community such as completion of training and rehabilitative programs, participation in prosocial activities, family engagement and employment.

Figure 1. COE Application and Review Process



Application Review. As shown in Figure 1, completed applications are submitted to either the BOPP or CSSD and within 24 hours are entered into the agencies' tracking system as active files. CSSD sends a form letter to each applicant informing them that the process has begun and that a final decision on the application will be made within 60 days of receipt of the completed application. BOPP does not send applicants a letter.

The probation officer or parole officer supervising the applicant is notified that the person has applied for a COE and submits the questionnaire. Typically, the probation officer or parole officer has discussed and even encouraged the person to apply for a COE and is already aware that the application was submitted, but they receive formal notification to submit the questionnaire.

Both agencies notify the Office of Victim Services that the person has applied for a COE and give the victim(s) an opportunity to comment on the applicant and the impact of the crime. In addition, the parole board contacts any victims who have registered to be notified of changes in an offender's status and provides them with an opportunity to comment on the applicant's suitability. CSSD reported that to date contacted victims have not generally opposed the applicant obtaining a COE or being employed.

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BOPP and CSSD panel members are provided a master file on each applicant prior to the panel hearing date. The master file includes the completed application and the applicant's criminal history, institutional history, classification and assessment scores, program and treatment record, institutional and community supervision misconduct record and any other information that may assist the panels in evaluating the suitability of the applicant for a COE. The parole board obtains much of the applicant information from the Department of Correction. For applicants who had been sentenced to and discharged from probation, the parole board must request the probation supervision background information from CSSD. There does not appear to be any cross-agency data and information sharing issue.

BOPP holds panel sessions every two months. The board chairperson and two board members, assigned from among the 10 full-time and part-time board members, comprise each panel. Currently, the board has not set a timeframe in which to act on completed applications. Applicants are assigned a hearing date based on the board's schedule and in the order they were received.

The parole officer who compiled the file on the applicant presents the case to the panel and makes a recommendation to grant or deny the certificate. Typically the applicant is not present at the panel hearing. However, if the parole officer is not able to fully answer the panel's questions and the panel decides to hear from the applicant, the hearing will be postponed and rescheduled. The applicant will then be invited to attend the new hearing to answer the board's questions.

CSSD holds panel sessions on the first Tuesday of every month. Applicants are scheduled so that a final decision is reached within 60 days of the receipt of a completed application, which is a standard established internally by CSSD. CSSD panels are comprised of a minimum of three persons, but typically have four participating. A probation supervisor and a court planner specializing in employment services sit on every panel and four probation supervisors rotate in pairs to sit on each panel. A recorder attends to keep the minutes of the sessions.

CSSD panels do not have direct contact with applicants, but are provided with a comprehensive application and background investigation packet on each applicant prior to the hearing. In the event the panel requires additional information from the applicant, the probation officer supervising the applicant will be directed to contact the person and clarify or obtain additional information.

In each agency, hearing panels decide, by majority vote, whether to grant or deny the certificate. When a certificate is granted, both agencies identify any employment restrictions based on the applicant's criminal history, court-imposed sentence, and/or supervision conditions. Examples of court-ordered conditions that have been listed as restrictions on a COE include sex offender registration prohibitions, no contact with minors, prohibitions on driving or obtaining a driver's license and not working in banking or any business that handles cash. BOPP and CSSD enforce

these restrictions as long as the court-ordered sentence is in effect. When the person is discharged from the sentence, the certificate may be modified and the restrictions lifted.

When a certificate is denied, both agencies provide the reason in writing. The applicant is also given a new date, set by the panel, at which s/he may re-apply.

Applicants are notified in writing of the decision on their application. Approved applicants receive their certificate via the mail. There is no expiration date on the certificates.

The parole board maintains an online central registry of active certificates issued by BOPP and CSSD. CSSD forwards its data to the board for inclusion on the website. The website can be accessed by the public and provides the applicant's name, COE issuance date, issuing authority (BOPP or CSSD) and lists any restrictions.

Revocation. Public Act 14-27 requires that the BOPP and CSSD automatically revoke certificates based on any new arrest of the certificate holder after the certificate issuance date. The agencies have also established a discretionary process to revoke a COE based on information other than a new arrest that may comprise person's continued suitability. In these cases, a review panel must consider the case and vote to revoke the certificate.

The revocation process established by both agencies requires that the certificate holder be notified in writing that the COE has been revoked. The certificate holder's name and information on an active certificate is removed by the parole board from the website. There is currently no policy or process to reinstate a COE that has been revoked.

Tracking new arrests of persons currently under probation, parole or other DOC early release supervision is part of the traditional community supervision protocol. All new arrests are logged into the state's automated criminal justice information system that is accessed by probation and parole officers. The agencies then take the statutorily required action of revoking the certificate. However, the agencies reported that tracking new arrests of certificate holders who are no longer under an active sentence (e.g., probation, parole, DOC early release program) is problematic. The existing criminal justice information management system does not automatically flag the re-arrest of certificate holders who were not under sentence at the time of arrest. BOPP and CSSD would have to conduct a criminal record check daily on all active certificate holders to determine if they had been re-arrested. Neither agency currently does this as it is time consuming and resource intensive.

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Section Three: Profile of COE Applicant

During the first year of the evaluation, Sentencing Commission researchers collected basic descriptive statistics on COE applicants to develop a basic profile. Statistics on the administrative application and review processes were also gathered. Data were obtained from the BOPP, DOC and CSSD.

Descriptive statistics describe, show or summarize data in a meaningful ways such that, for example, patterns might emerge from the data on the agencies' discretionary decision-making practices, or an understanding of the subjects can be attained. The Commission researchers would like to emphasize that these descriptive statistics do not allow for rigorous conclusions to be drawn regarding the causal impact of the COE program on employment or recidivism among certificate holders or the offender population. These data are simply a way to describe COE applicants and the administrative process to review the applications. It is important to note that, at this early stage of the tracking and data collection process, the effect of Public Act 14-27 on employment, recidivism and re-entry cannot yet be meaningfully determined.

Applicant Population. The CSSD, BOPP and DOC maintain accurate counts of persons currently incarcerated and on probation or parole. However, the number of persons with criminal records who are no longer under sentence is not known to any of these agencies. At this point, no suitable proxy measure for this population exists. It is estimated that this population is greater than the number of persons currently under sentence.

Table 2 shows the average daily population (December 2015) for each of the applicant eligibility statuses. As of that date, 61,560 persons under sentence were eligible to apply for a COE.

Table 2. COE Application Population

Eligibility Status	Total*
Probation	41,448
Parole or Early Release Program	4,087
Incarcerated	16,025
TOTAL	61,560

*Average daily populations in December 2015

Sources of Data: CSSD, BOPP, DOC

There are caveats to this population estimate. The new law requires applicants be state residents. For the purposes of this report, it can be assumed that most offenders under sentence in Connecticut are state residents. In addition, CSSD and BOPP administratively establish time-served standards for probation and parole as eligibility criteria. CSSD requires applicants have at least six months of "successful" community supervision including time on probation. BOPP requires applicants have at least 90 days of "successful" parole supervision or be within 90 days of sentence discharge.

It is not known how many (or percentage) of the 45,500 persons on probation and parole meet the time-served criteria.

During the first 15 months of implementation (October 2, 2014 through December 31, 2015,) 297 offenders and ex-offenders applied for COEs: 133 applied to CSSD and 297 to the BOPP. Thus, during the first year, less than one percent (approximately 0.48 percent) of the total eligible persons under sentence applied for a certificate of employability. This percentage would be even lower if the total eligible population included persons with a criminal record who are no longer under sentence.

Applicant Profile. The following is a profile of COE applicants based on the data provided by CSSD, BOPP and DOC. Two-thirds of the applicants were male. The average age of the applicants was 37. Most have at least a high school/GED education level. Almost all applicants reported being United States citizens. Almost all applicants applied for a general COE; only one applied for a certificate for licensure.

Figure 2. CSSD: Grant Rates by Applicant Gender
October 2, 2014-December 31, 2015

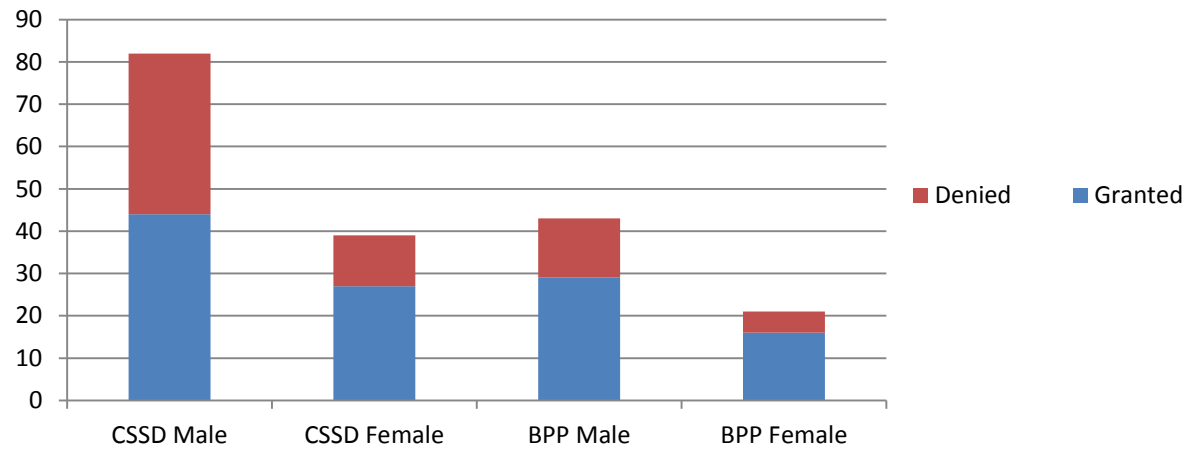


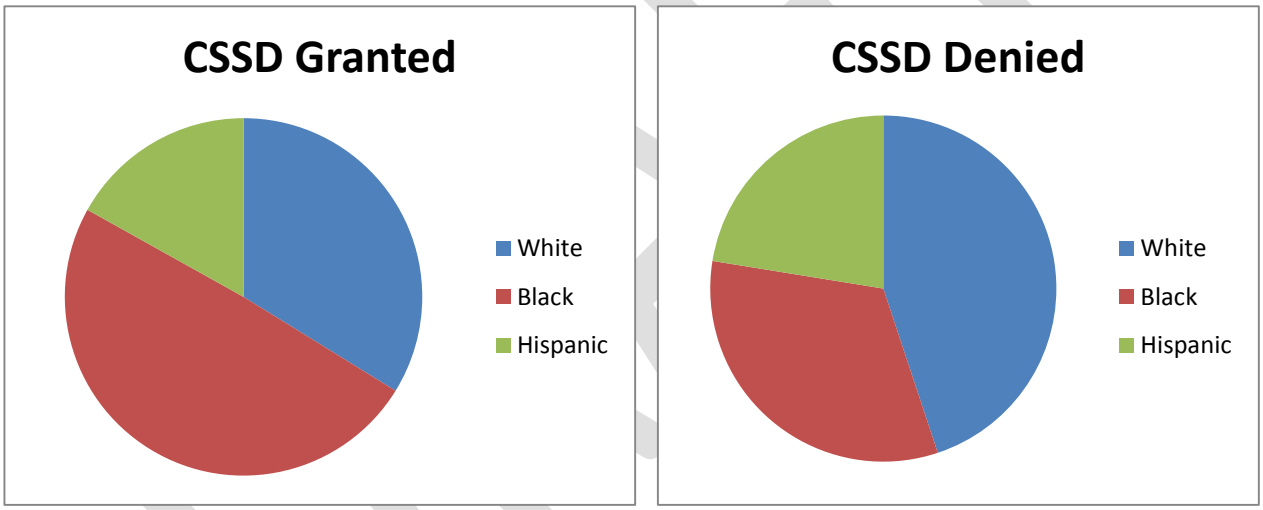
Figure 2 shows the rate of COE applications granted and denied by BPP and CSSD. CSSD reviewed and made a decision on a total of 121 applications: 82 applicants were male and 39 female. The grant rate among males is 54 percent (44) while the grant rate among females is 69 percent (27.) Female applicants have a higher grant rate. The denial rate is higher among male applicants (46 percent) than females (31 percent.)

Also shown in Figure 2, BOPP reviewed a total of 116 applications: 83 percent were males and 17 percent female. The grant rate among males is 67 percent and the grant rate among females is 76 percent. The grant rate is higher among females than males, which is similar to the CSSD rate.

However, the board's denial rate among male and female applicants is about the same (about 23 percent).

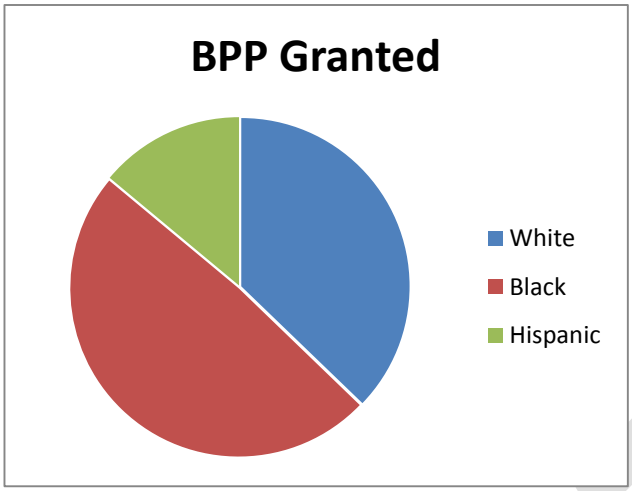
As of December 31, 2015, CSSD reported 11 pending applications (8 male and 3 female applicants.) Most applicants do not complete the Statistical and Research Information Sheet self-reporting their race and ethnicity. CSSD provided the race/ethnicity data from the probation database. A total of 46 applications submitted by white applicants received a final decision, 51 for black applicants and 23 for Hispanic applicants. Figure 2 shows the COE grant and denial rates by applicant race. For this graphic, granted and granted with restrictions are reported as a total number. CSSD granted 69 percent (35) of the COE applications submitted by black applicants, 52 percent (24) to white applicants, and 52 percent (12) to Hispanic applicants. Denial rates were highest for white and Hispanic applicants (each at 48 percent) than black applicants (31 percent.)

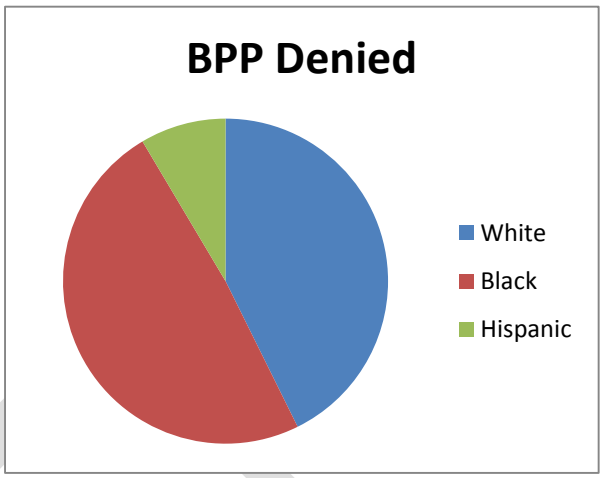
Figure 3. CSSD Certificate Grant and Denial Rate by Race/Ethnicity



BOPP acted on 147 applications, but most applicants did not complete the Statistical and Research Information sheet. Therefore, race and ethnicity data is available for less than half of the applications (42 percent.) Figure 4 shows there is no real difference in the race/ethnicity breakdown in the grant or denial rate by the board.

Figure 4. BOPP Certificate Grant and Denial Rate by Race/Ethnicity





An applicant's employment status and history are reported on the COE application. Based on the self-reported data, 79 of applicants (65 percent) were not employed at the time of application and 46 applicants (35 percent) reported being employed either part- or full-time. Table 3 shows the breakdown of COE outcome by the applicant employment status. Ironically, applicants who reported being unemployed had a higher denial rate: 48 percent unemployed versus 29 percent employed. The COE program was designed to help unemployed persons with a criminal record obtain employment, but they are the ones most likely to be denied a certificate. It is possible that other factors might make these applicants less suitable for a COE.

Table 3. CSSD: Grant Rate by Applicant Employment Status
October 1, 2014-December 31, 2015

Outcome	Employed	Not Employed	Totals
Granted	26 (62%)	37 (47%)	63
Granted with Restriction	4 (9%)	4 (5%)	8
Denied	12 (29%)	38 (48%)	50
Subtotals	42	79	121

Source of Data: Judicial Branch Court Support Services Division

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COE Process

The Commission researchers reviewed BOPP and CSSD application process data. CSSD reported as of December 31, 2015, it had acted on 121 completed applications and 11 applications were pending for panel review. CSSD reported revoking one certificate. CSSD reached a decision on applications on average within 41 days, which is well within its administratively set policy of reaching a decision within 60 days of the date the application was submitted.

BOPP reported as of December 31, 2015, it had acted on 113 completed applications. BOPP reached a decision on applications on average within 95 days, which is more than twice the length of time in which CSSD reaches a decision.

Comparison to Provisional Pardons

Many factors can affect employment and recidivism rates. The status and impact of such factors on these outcomes was not comprehensively understood prior to implementation of the COE program. In determining effectiveness of a program, it is helpful to know if there was a program or process in place with a similar objective and whether certain benchmarks were realized: reduce recidivism and increase employment. Comparisons could then be made between the programs or processes, the affected populations and the identified outcomes to determine effectiveness.

The certificate of employability program was intended to expand the provisional pardon program, which has similar statutory objectives and eligibility criteria. The Institute of Municipal and Regional Policy (IMRP) at Central Connecticut State University, published *Provisional Pardon: Understanding the Impact and Usefulness for Recipients in Connecticut* (March 2011) which is the most recent research on provisional pardons in the state. The measure of effectiveness used in the research was employment attainment and retention. IMRP encountered the same methodological issues in determining the casual effect of the provisional pardon program that arises in the COE evaluation project. The IMRP conducted a survey of persons who received a provisional pardon in the years 2007 through 2010. There was a 36 percent response rate (48 completed surveys received). The following is a summary of the descriptive statistics of the IMRP's 2011 evaluation of provisional pardons.

While IMRP reported that thousands of ex-offenders applied for a provisional pardon since the program's inception in 2007, as of February 2010, only 134 applicants had received a provisional pardon. The majority of recipients were male (73 percent) and 27 percent female. Most recipients were black (44 percent) and 35 percent white, 8 percent Hispanic and the remaining 13 percent including other race/ethnicity or did not reply to this question. The recipients ranged in age from 25 to 65 and older and the more than half (52 percent) were between 35 and 50.

More than half (54 percent) of recipients reported being employed prior to receiving a provisional pardon. IMRP reported that recipients who did not answer this question were assumed to be unemployed.

For the purposes of this report, provisional pardon recipients are not dissimilar to certificate holders. In 2007, the first year the provisional pardon program was implemented, 158 persons applied for a full or provisional pardon, compared to the first year of the COE program implementation in which 297 applications were submitted, despite a smaller population of persons under sentence in 2014-2015 compared to 2007. BOPP reported most of the applications were for a full pardon.

BOPP further reported 4,628 persons applied for a full or provisional pardon between 2007 and 2013. Less than 10 percent of the total applications granted each year were provisional pardons, which was significantly less than the COE grant rate during the first year of implementation. As stated, BOPP no longer accepts applications for provisional pardons; all applicants are steered to the COE program.

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Section Four: First Year Conclusions and Areas for Further Review

At the end of the first year of implementation of the certificate of employability program, several questions have arisen about the fundamental public policy intent. Other issues may affect the current feasibility of a comprehensive evaluation of the program's impact and effectiveness. The issues range in topic from public policy, administrative procedures, evaluation methodology, and technical changes. Given that it is only the first year of implementation and evaluation project, the Commission researchers acknowledge that solutions may be developed by the issuing authorities as the program evolves. The Commission researchers make no recommendations to substantially change the law or the process at this early juncture in COE program. Some suggestions and options are set forth for consideration regarding the identified issues during the next two years of the evaluation project. The final report, due in January 2018, will include recommendations.

Premise of Public Act 14-27

The certificate of employability legislation (Public Act 14-27) is based on three core concepts. First, employment is an important factor in reducing recidivism. Second, a criminal record is often a barrier to obtaining employment. Third, a state-issued certificate of employability is intended to provide relief from the barriers to employment.

There is broad consensus among academics and criminal justice administrators that employment can reduce recidivism and the repeated cycle through the criminal justice system. Employment is identified as one of the important inputs in the offender risk assessments used by state criminal justice agencies and is often a condition of community supervision (e.g., probation, parole.) State criminal justice agencies maintain a basic network of job readiness, training and education program to assist offenders to prepare for employment upon release.

In its report *Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness* (September 2013) the Council of State Governments (CSG) Justice Center reported that employment can make a strong contribution to recidivism-reduction efforts because it refocuses individuals' time and efforts on prosocial activities, enables individuals to contribute income to their families and/or personal support, enhances self-esteem and improves mental health. For these reasons, employment is often seen as a gateway to becoming and remaining a law-abiding and contributing member of a community. Employment also has important societal benefits, including reduced strain on social service resources, contributions to the tax base, and safer, more stable communities. However, jobs that pay enough to afford even the most basic necessities such as housing, food and transportation are not often available to many persons with a criminal record.

Although anecdotal evidence suggests that holding a job plays an important role in reducing recidivism, evidence of a link between employment and reduced recidivism is mixed. There is some evidence that people released from prison and jail who hold jobs are less likely to reoffend, especially when their earnings are above minimum wage. There is some support for the concept that the sooner offenders are employed after release from prison, the less likely they are to commit new crimes that may result in a return to prison. Research also shows that job stability, especially over an extended period of time, can reduce the likelihood that an individual will reoffend. However, various studies suggest that to reduce criminal behaviors and recidivism, offenders' antisocial attitudes and beliefs associated with crime, many of which also impact an individual's ability to succeed in the workplace, must also be addressed. Offenders must also be motivated to change their behavior (an individual's grit and drive); this is especially true of young males. A person's decision to live a more prosocial lifestyle is integral to the success of employment and to other factors in his/her life.

There is a body of research that suggests mass incarceration has had a particularly negative impact on young people. Imprisoning young people, especially males, removes them from the workforce during a period when they should be completing their education and/or job training and having their first, formative work experiences, which are critical in preparing them for a life of gainful employment and a successful career.

The second underlying concept is that the stigma of a criminal record impedes an offender's search for employment. The barriers to employment faced by persons with criminal records include prospective employers' attitudes, legal barriers, education and financial obstacles, substance abuse and/or mental illness, and difficulties in finding stable housing and reliable transportation. In recent decades, the consequences of conviction have become more numerous, more severe, more public and more permanent, affecting most aspects of everyday life including employment and licensing, housing, education, public benefits, credit and loans, immigration status, parental rights and even volunteer opportunities. In many cases, the collateral consequences of conviction can be more severe and longer-lasting than the court-imposed punishment.

Employers' access to information and background checking online has made it all but impossible for a person with a criminal record to leave the past behind. The legal mechanisms relied on in the past to restore rights and status such as full or partial pardons and expungements appear to be largely ineffective. In Connecticut, the Board of Pardons and Paroles has historically been very conservative in its discretionary decision-making, which has resulted in very low pardon grant rates.

The third fundamental concept for the new law is that the state can provide some form of relief to the barriers to employment faced by persons with a criminal record in the form of the COE. Through this document, the issuing authorities (parole board and Judicial Branch) endorse that

certificate holders have been found to be suitable for employment or licensure. While there are criteria to determine an applicant's suitability for a certificate, it is not clear what specifically the employers understand the COE to represent about the certificate holder. The primary reason the name of the certificate was changed from certificate of rehabilitation to certificate of employability is that the issuing agencies were uncomfortable endorsing a person had been "rehabilitated." It appears there is the same conflict with a certificate of employability in that the state is endorsing a certificate holder to be ready or prepared to be hired. CSSD and BOPP administrators clearly expressed some concern over this issue.

The value of the COE to employers has not been statutorily or administratively defined or communicated publicly. It is important to note Public Act 14-27 did not require notification or public education of employers about the COE program. CSSD and BOPP make efforts to notify the business community and advocate and community-based groups that assist with job searches and training, but neither agency was tasked with or funded to perform this public education role. The Commission researchers found it surprising that the state Department of Labor has no role in implementation of this COE program.

The statute embodies an assumption that state-issued certification will have automatic value to prospective employers to encourage them to consider and hire persons with criminal records thus improving certificate holder's opportunities for employment. There is some research that found the knowledge of a potential employee's criminal record almost immediately lessens the employer's perceived value of the applicant. Employers may hesitate to hire an ex-offender for fear of future criminal behavior. A 2004 study, *How Willing Are Employers to Hire Ex-Offenders* (H.J. Holzer, University of Wisconsin) found almost half of employers surveyed would not hire an applicant with a criminal record. In marked contrast, almost all (90 percent) indicated that they would hire disadvantaged workers from other groups, such as former or current welfare recipients or workers with a GED but no high school diploma. As reported in *Rights, Restoration and the Court Community: New York's Certificates of Relief* (A. Ewald, University of Vermont, 2014) applicants most often sought a certificate of relief not for employment purposes, but to restore other rights including hunting licenses and firearm permits.

The research concluded the reluctance to hire ex-offenders may reflect problems in both the supply of labor and the demand for it. Incarcerated persons do not generally accumulate work experience and the skills they have may erode while they are serving time. Ties to legitimate employers and to labor market networks in general are likely to be severed by arrest and imprisonment. Employers' unwillingness to hire ex-offenders persists even in a tight labor market, perhaps reflecting a shrinking pool of manufacturing and blue collar jobs, such as machine operators and unskilled laborers, for which less educated ex-offenders were more likely to be qualified. Employers may perceive a person with a criminal history as an untrustworthy employee who will break rules, steal, or deal poorly with customers. Employers' reluctance to hire ex-offenders may

be prompted by fear of being held liable for crimes their employees might commit. Further, persons with a criminal record are legally prohibited from being employed in some occupations, such as those involving contact with children.

Public Act 14-27 aims to assist persons with criminal records obtain employment, but it did not amend existing laws or administrative policies that establish employment restrictions for persons with a criminal record. Nor does it attempt to eliminate the unintended consequences of existing policies such as lack access to transportation, education, mental health services, substance abuse treatment, and housing, nor can it address ex-offenders' limited or sparse work history.

As previously stated, during the first year, less than one percent of the estimated 61,650 persons under sentence submitted an application for a certificate. The percentage is even smaller when the total number of eligible persons with criminal records no longer under sentence is considered. Neither BPP nor CSSD were able to provide reasons for the low program enrollment rate, but the agencies agreed the slow start up enabled them to fully implement the administrative processes and address any issues that arose. Sentencing Commission researchers recognize the low demand for the program can be function of mobilization (e.g., public information and education), agency infrastructure, or simply no demand for the program by persons with a criminal record. If the certificates do not hold value to employers, offenders will not value the certificate. Also, if offenders do not value employment, they will not seek the certificates.

Sentencing Commission researchers conclude there is not a clear understanding of the problems faced by Connecticut residents with a criminal record attaining and maintaining employment. There is a critical need for a more systematic understanding of the factors that may lead employers to consider and hire ex-offenders, and of how ex-offenders can realistically overcome the stigma and practical barriers to reentry (e.g., housing, transportation, health care, reuniting with family, accessing services and treatment).

Public Act 14-27 is a well-intended public policy, but lacks a comprehensive understanding of the dynamics between offenders' motivation to work, employers' attitudes toward hiring them, and of legally-created barriers to employment. The Sentencing Commission must understand the applicant and employer communities much better. Furthermore, there is no research specific to Connecticut about persons after discharge from criminal sentences and their work histories. Public policy development without a data-driven, comprehensive understanding of the problem can lead to unintended consequences, as we have already seen in Connecticut and elsewhere in the United States.

It is important to note that in July 2015, Governor Dannel P. Malloy signed the "Second Chance Society" legislation into law. The package of initiatives is designed to continue the progress being made in reducing the state's dropping crime rate, which is at a 48-year low. The initiatives aim to

ensure that nonviolent offenders are successfully reintegrated into their communities and become productive workers in Connecticut's economy. The provisions of the Second Chance Society legislation include: reducing the penalty for possession of drugs from a felony to a misdemeanor; establishing an expedited parole process for nonviolent, no-victim offenses; and establishing an expedited pardons process for ex-offenders in nonviolent, no-victim cases after a period of time following the end of their full sentence. In addition, the state budget Fiscal Year 14/15 included funding for: intensive, job-based adult education and employment training for ex-offenders in the Hartford area that will lead to actual subsidized employment; an expansion of the existing School-Based Diversion Initiative (SBDI) to reduce suspensions, expulsions, and school-based arrests in K-12 schools; and the Connecticut Collaboration on Re-Entry, a successful housing initiative targeting frequent users of substance abuse, mental health, and corrections programs. The certificate of employability program may benefit from promotion and implementation of the Second Chance Society initiatives.

Applicant Population

At this point, the total eligible COE applicant population in Connecticut is not known. On any given day in 2015, there were over 61,000 persons who were incarcerated or supervised in the community on probation, parole or other early release program.

The Sentencing Project reported in *Half in Ten: Americans with Criminal Records* (2014) that approximately one in three United States adults have some type of criminal record. Persons of color, people with histories of abuse or mental illness and other groups such as the gay, lesbian, bisexual and transgender community are disproportionately affected and have an even higher rate of conviction. According to census data for Connecticut, there are approximately 3.5 million residents. Based on that estimate, there may be up to one million state residents with a criminal record living in Connecticut.

There is a dearth of data about the work histories of persons with criminal records whether they are under sentence or discharged. The minimal information that is collected by the agencies is self-reported and not confirmed. Often the data is simply whether a person is employed or unemployed. There is no information as to the type of industry, the length of employment, the name of the employer or salary. The Office of Policy and Management (OPM) Criminal Justice Policy and Planning Division found the state lacks solid, empirical information on the circumstances of most offenders once they leave prison.[2] As a result, state policymakers are unable to speak with certainty about the factors driving employment or recidivism in the state. Although significant resources are expended on reentry, the failure to collect critical information on

[2] Office of Policy and Management Criminal Justice Policy and Planning Division, *2011 Annual Recidivism in Connecticut.*

offenders once they leave prison makes it almost impossible to measure the quality and effectiveness of state-funded prisoner re-entry initiatives.

The state Department of Labor (DOL) reported the unemployment rate in Connecticut was 6.3 percent in 2015. It is not known if the unemployment rate is higher among persons with a criminal record compared to workers without a criminal record. It is also not know how many of the state's residents work within a "black market" or "off the books." Research suggests that persons with criminal records may work in "black market" jobs in their communities where they are known rather than deal with the barriers to seeking legitimate employment. DOL can provide limited employment data, but must have an accurate Social Security number, which is not regularly collected by state criminal justice agencies.

Data-Driven Evaluation

Public Act 14-27 required the effectiveness of the certificate of employability program be evaluated during the first three years of the program's administration. Because the COE program was implemented with a "one-shot" rollout across the state at the same time, the Commission researchers are only able to give descriptive statistics regarding employment and criminal behavior before and after the program implementation date (October 1, 2014). Because numerous factors unrelated to the COE have an effect on the outcomes of employment and recidivism, the Commission researchers are also unable to make any definitive statements about the casual impact of the COE program on these outcomes. The Commission researchers thus urge legislators and others reading this report to use extreme caution in interpreting the reported descriptive data as resulting from the implementation of the COE program.

Sentencing Commission researchers are working collaboratively with the Board of Pardons and Paroles and the Judicial Branch to collect data that may allow for a more detailed description of the applicants during the next two years of the evaluation project. However, employment data is critical to this project and is not readily available. Department of Labor (DOL) maintains data on persons who have been reported as working full-time or part-time (and paying state taxes) each quarter. There are significant limitations to DOL collecting data including the fact that a person must work a certain number of hours to be tracked by the agency. In addition, DOL tracks working persons by their Social Security number, so those with casual temporary employment may not be counted. As stated, the criminal justice system does not systematically record offenders' Social Security numbers, which are self-reported and not confirmed. Furthermore, DOL cannot track persons who work "off the books" or "under the table."

Sentencing Commission researchers have developed a data reporting form for the state licensing boards and commissions. In 2016, the automated reporting form will be provided to all the boards and commission to enable monthly or quarterly reporting to the Commission on certificate holders

applying for a license or permit. In 2015, only one COE was issued for the specific purpose of applying for a license; all other were general COEs.

There is also no reliable source of data on employers' hiring practices of and attitudes towards persons with criminal records. For example, researchers would need to know why certain employers refused to hire a person with a criminal record versus why an employer did hire that person. Without empirical evidence on the business community's hiring and retention practices, it will be difficult to make conclusions about the impact of the COE program on the hiring of persons with criminal records. Commission researchers are considering surveying employers to assess their attitudes and opinions. A survey will not provide empirical evidence the COE program is effective, but can provide a basic structure for analyzing what may need to be done to make the program actually help applicants find work. The survey may provide information on the concerns employers have when hiring persons with criminal records.

Public Act 14-27 requires the Connecticut Sentencing Commission evaluate the effectiveness of the COE program. It appears there was an assumption the data existed or could be readily collected to conduct a rigorous analysis. However, given the availability of data and the one-shot roll out of the program, this project can only describe process and applicant population. Without a comprehensive understanding of the pre-COE baseline, the Commission researchers cannot state with any degree of certainty what changed as a result of the program.

Provisional Pardons

The statutory eligibility and suitability criteria for issuing a provisional pardon and certificate of employability are substantially similar and intended to serve much the same purpose. The application and panel review processes administered by the parole board are basically the same and, in fact, the provisional pardon application form was only slightly amended for COE purposes and later adopted by CSSD.

However, there is no empirical evidence on the causal effect of provisional pardon on employment or recidivism. The Commission researchers have yet to complete the evaluation project on the COE program. It is not known if provisional pardons or COEs have the same or different effect on the stated outcomes.

As previously stated, the word "pardon" has a much broader, publically accepted connotation than "certificate of employability." There may also be legitimate reasons why an applicant would prefer a provisional pardon over a COE. There may be unknown benefits or relief available through a provisional pardon that are not attainable through a COE. For example, a pardon has may have more meaning than a COE in terms of the stigma of a criminal record. There is no evidence yet to

suggest the little-known certificate of employability program has any significant value to the public, employers or offender population.

One option might be to amend state law (CGS §54-130a) to reflect the administrative practices, repealing the provisional pardon option in favor of the certificate of employability. This would limit applicants to only the COE program, which is current parole board practice. The other option is to make both the provisional pardon and certificate of employability program available to persons with a criminal record. The applicant would select which program would better suit his/her needs.

In considering these options, it is first incumbent upon the Board of Pardons and Paroles to show why it administratively eliminated provisional pardon as an option of relief available to persons with criminal records. If the eligibility and suitability criteria and the investigation and decision-making processes are basically the same, the board should show why it should not be left to the applicant to decide which form of relief is best. The board can expand its data collection efforts to include COE and provisional pardon applicants.

Tracking Certificate Holders

Neither agency checks the arrest status of certificate holders discharged from sentence. Possible solutions can include entering COE holders in the automated criminal justice information database, which raises privacy issues for persons no longer under sentence. The agencies could also conduct regularly checks of the database for new arrests of all COE holders, which is an inefficient use of staff resources.

Public Act 14-27 requires a COE be automatically revoked if a person is arrested after the date the certificate was issued. It is a foundation of our legal system that arrested persons are presumed innocent until convicted. The existing COE process administered by CSSD and BOPP does not have a system in place to automatically reinstate a certificate if the arrested person is found not guilty or the criminal charges are otherwise dismissed. One option is to amend the statutes so that a COE will be revoked only if the holder is ***convicted*** on new charges.

CSSD and BOPP should establish a process to track COE holders (under sentence or discharged) who are arrested and the subsequent disposition of the new charges. Such a process should be feasible, given the low number of current COE applicants and holders.

Technical Changes

Certificate Title. The Commission researchers find the difference in the statutory name of the certificate of rehabilitation program and the administrative name on the certificates may result in

confusion among eligible persons attempting to apply for a certificate and potential employers attempting to verify or obtain information on the certificates. Therefore, it is recommended that the state statutes be amended to codify the name change from "Certificate of Rehabilitation" to "Certificate of Employability". This is the only recommendation made at this point in the project.

Agency Reporting Requirements. Public Act 14-27 requires the parole board and CSSD submit annual reports to OPM, beginning on October 1, 2015, on the number of certificate applications received, granted or denied and revoked. OPM is required to prescribe the form the data are reported. To date, OPM, CSSD and BOPP have not established a process to transfer and report the data.

The agencies are also required to submit the data annually to the Connecticut Sentencing Commission. This report serves to satisfy the agencies requirement to provide COE data to the Sentencing Commission. The Commission will post this report on its website in compliance with the mandate to post the agencies' data online.

The state criminal justice system has adopted a data-driven and evidence-based approach to policy and budget development, program administration and evaluation using identified outcomes and identifying the needs, rates, trends and patterns of the key indicators among offender populations. State criminal justice agencies and OPM Criminal Justice Policy and Planning Division collect, share and analyze a myriad of data.

It is necessary to understand caseload or basic descriptive information such as how many COEs are applied for and subsequently granted, denied or revoked. It is, however, more useful to use data to understand the impact of the COE program on reducing the barriers and stigma faced by persons with a criminal record in obtaining employment and perhaps other factors such as housing and family functioning. The Commission researchers believe data should be collected, analyzed and reported, but not limited to the following outcomes:

- Social Security number of COE applicants;
- number of certificate holders who obtain or maintain employment including length of employment, rate of promotion or raises in salary, reasons for terminating employment;
- types of employment and salary ranges;
- types of training and education programs completed by certificate holders;
- rate at which certificate holders are arrested and convicted of new crimes including types of offenses and sentences;
- certificate holders' opinions on the value of the COE;
- employers' opinions on value of the COE; and
- recruitment, job interview, hiring and management practices of employers regarding employees with COEs.

The Commission researchers found there is currently no methodology to determine the number of eligible applicants who have a criminal record, but are not under a sentence. It would be interesting to determine how many of these persons are working and in what types of jobs, how long has it been since their last arrest and what factors have helped or limited their abilities to be employed and crime-free. Since it is difficult to count how many people in Connecticut have criminal records and are living outside of criminal supervision, proxy measures will have to be identified.

One option is to temporarily suspend the requirement for the Judicial Branch and Board of Pardons and Paroles to report specific data to the Office of Policy and Management pending the completion of Sentencing Commission's three-year evaluation project (in January 2018). The type of data to be reported by the issuing agencies may be amended to better assess the effectiveness of the certificate of employability program.

Next Steps

The following are next steps being considered for the next two years of the COE evaluation project:

1. Improving the collection of data on COE applicants by CSSD, BOPP and DOC to include elements that provide the necessary information to assess the impact of the program on recidivism and employment rates.
2. Understanding the attitudes, opinions, experience and hiring practices of employers with respect to potential employees who have criminal records and employers' acceptance of the COE program.
3. Tracking employment histories of COE applicants using state DOL data.
4. Understanding why the COE program has low enrollment rates and if eligible applicants place value on the program.
5. Determining whether the COE program is a real solution to the barriers to employment faced by persons with criminal records and if the program results is a measurable impact to recidivism and employment rates among applicants.

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