

To: Connecticut Sentencing Commission  
Date: December 18, 2012  
Re: Proposal regarding provisional pardons/certificates of rehabilitation

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In 2006, the Connecticut Legislature created the provisional pardon program, which provides a mechanism for removing barriers to employment and licensing that individuals face based on their prior criminal convictions. In 2012, the Connecticut Sentencing Commission, recognizing that the two most significant barriers to successful reentry are employment and housing, recommended legislation to amend the statutes governing provisional pardons. The legislation received a favorable report from the Judiciary Committee, but was ultimately not enacted.

After consideration of last year's legislation, the testimony received at the Commission's November 29, 2012 public hearing, and other conversations with those who would be affected by the proposed changes, the Legislative Committee recommends the following proposal be considered by the Full Commission for submission to the Judiciary Committee.

**Proposal:**

- Retain the authority of the Board of Pardons and Paroles to issue provisional pardons. Revise current law so that both pardons panels and parole release panels may issue provisional pardons, so as to increase BOPP's flexibility and efficiency in issuing provisional pardons.
- Revise current law to allow probation to issue "certificates of rehabilitation" subject to the approved criteria of the Chief Court Administrator during an offender's probation period. Certificates of rehabilitation would be issued pursuant to the same standards used for granting provisional pardons, and they would have the same legal effect as provisional pardons.
- Ensure the safety of victims by providing that both provisional pardons and certificates of rehabilitation shall be granted only if consistent with the safety of any victim of the offense.
- Afford employers limited protection in negligent hiring suits. In an effort to provide an incentive for employers to hire individuals who have obtained certificates comparable to provisional pardons, at least three states—New York, Illinois, and Ohio—have enacted legislation that offers employers some form of legal protection in relation to these employees. Following New York's approach,<sup>1</sup> Connecticut could create, in cases alleging that the employer has been negligent in hiring or retaining an employee with a prior conviction, a "rebuttable presumption" in favor of excluding from evidence the prior conviction if a provisional pardon/certificate of rehabilitation was issued to the employee and the employer knew about the provisional pardon/certificate at the time of the alleged negligence or other fault.

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<sup>1</sup> N.Y. Executive Law § 296(15) (Consol. 2012).

- Provide that a provisional pardon/certificate of rehabilitation establishes a rebuttable “presumption of rehabilitation” in the state employment and licensing context. Under current law, in most instances, state employers and licensing agencies in assessing the suitability of an applicant with a prior conviction must consider the age of the conviction, its relationship to the employment or license sought, and evidence of the applicant’s rehabilitation. The certificate would establish a presumption that the applicant had rehabilitated. The state employer or licensing agency would retain discretion to deny the employment or license based on the conviction and would be required to provide a statement of reasons in support of a denial decision.
- The Legislative Committee recommends that the Judiciary Committee consider whether legislation should be enacted preventing the denial of certain licenses based on prior felony convictions. Ohio recently enacted legislation that prevents the denial of applicants for hairdresser, cosmetician, and barber licenses based on prior criminal convictions.