

**Testimony of the Civil Justice Clinic, Quinnipiac University  
School of Law**

Connecticut Sentencing Commission  
November 29, 2012

**Certificates of Rehabilitation Proposal**

Dear Sentencing Commission Members:

The Civil Justice Clinic at Quinnipiac University School of Law submits this testimony regarding the Certificates of Rehabilitation proposal being considered by the Sentencing Commission. The Clinic assists individuals with prior convictions who are trying to reintegrate into communities and lead law-abiding lives, and we have seen the barriers that our clients face in obtaining employment, licenses, and affordable housing. We appreciate the Commission's attention to this issue.

Below, we offer information regarding the various provisions under consideration.

**I. Eliminating Prior Convictions as a Ground for Denying Hairdresser or Barber Licenses**

Under current law in Connecticut, applications for state hairdresser, cosmetician, and barber licenses can be denied based on an applicant's prior felony conviction.<sup>1</sup> Recent legislation in Ohio has removed prior convictions as permissible grounds for denying such licenses.<sup>2</sup> A previous conviction would seem to have little bearing on whether an individual is well-suited to fulfill the obligations of these occupations. Connecticut prisons offer programs where inmates gain the training and skills needed to apply for these state licenses. Eliminating prior convictions as a ground for denying barber, hairdresser, and cosmetician licenses would allow former offenders to take full advantage of the vocational skills they have learned while in prison.

**II. Creating a Certificate of Rehabilitation Program**

In an effort to remove the barriers faced by individuals with prior convictions in obtaining licenses and employment, the General Assembly passed legislation in 2006 creating a program that allows the Board of Pardons and Paroles to grant former offenders "provisional pardons." The legislation currently in force states that provisional pardons are "a form of relief from barriers or forfeitures to employment or the issuance of licenses."<sup>3</sup> Although this provision states the *goal* of a provisional pardon, the legislation does not provide employers or licensing agencies with any guidance on the *effect* of a provisional pardon during the application process. Someone reading this quoted language is not likely to appreciate how a provisional pardon should specifically affect the application he or she is processing.

---

<sup>1</sup> Conn. Gen. Stat. § 19a-14(a)(6).

<sup>2</sup> S.B. 337 (Ohio 2012), [http://www.legislature.state.oh.us/bills.cfm?ID=129\\_SB\\_337](http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_337); Ohio Rev. Code Ann. § 4709.13(B)(2) (2012); *id.* § 4713.28(K) (2012).

<sup>3</sup> Conn. Gen. Stat. § 54-130e.

To address these concerns, the existing provisional pardons program could be renamed the “Certificate of Rehabilitation” program to better describe its purpose and legal effect.<sup>4</sup> In addition, legislation could provide that a Certificate establishes a “presumption of rehabilitation.” State employers and licensing agencies are already required to consider evidence of rehabilitation when evaluating an applicant with a previous criminal conviction.<sup>5</sup> The effect of including a “presumption” in legislation is two-fold. First, it directs the employer or licensing agency as to where the Certificate factors into the hiring process—i.e., when considering whether the applicant has rehabilitated himself. Second, it allows the employer or licensing agency to presume that the applicant has rehabilitated himself. However, the state employer or licensing agency still can conclude that the presumption of rehabilitation is overcome by other relevant evidence. Thus, including a presumption of rehabilitation in legislation would provide guidance to state employers and licensing agencies while still allowing them to retain discretion over the ultimate decision.

Unlike state employers, private employers are not specifically required under Connecticut law to consider whether an applicant with a previous conviction has been rehabilitated. However, under federal law, private employers may reject an applicant based on a prior conviction only if the rejection is “job related and consistent with business necessity.”<sup>6</sup> An applicant’s level of rehabilitation will often be relevant to this inquiry. Connecticut could thus codify this federal standard, and establish that a Certificate of Rehabilitation establishes a “presumption of rehabilitation” in the private employment context as well.

### **III. Certificates of Rehabilitation for Public Housing**

The current provisional pardon system does not address the problem that many former inmates have in securing affordable housing after their release from prison. Without stable housing, the risk of recidivism increases.

The U.S. Department of Housing and Urban Development (“HUD”) recently emphasized that former inmates face “significant barriers to obtaining housing,” and observed that there is a link between housing denials and recidivism.<sup>7</sup> HUD has stressed to local housing authorities the “importance of second chances” and noted “that people who have paid their debt to society deserve the opportunity to become productive citizens.” Indeed, HUD has specifically called for public housing authorities to consider “evidence of rehabilitation” before denying housing, which they describe as “a fundamental building block[] of a stable life.” HUD also emphasized that federal law requires rejection of applicants with criminal records in only limited circumstances.

---

<sup>4</sup> Another option is to retain something called a “provisional pardon” and enact legislation providing that a provisional pardon will convert into a full pardon after a period of time, assuming no further involvement with law enforcement.

<sup>5</sup> Conn. Gen. Stat. § 46a-80.

<sup>6</sup> The Equal Employment Opportunity Commission (“EEOC”) recently reaffirmed this standard in its Enforcement Guidance under Title VII of the Civil Rights Act of 1964, available at [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

<sup>7</sup> Letter from Shaun Donovan, Sec’y of the Dep’t of Hous. and Urban Dev., and Sandra B. Henriquez, Assistant Sec’y for Pub. and Indian Hous., to the Pub. Hous. Auth. Exec. Dir. (June 16, 2011), *available at* [https://docs.google.com/document/d/1P2k1hE--ZKYceL0UJTy2vBzP4s3JBV3rkfvDQP9LQS4/edit?hl=en\\_US&pli=1](https://docs.google.com/document/d/1P2k1hE--ZKYceL0UJTy2vBzP4s3JBV3rkfvDQP9LQS4/edit?hl=en_US&pli=1)).

The Civil Justice Clinic has successfully advocated for a number of clients who were initially denied public housing because of their previous criminal convictions. We have found that many housing authorities reverse their initial decisions after we present specific evidence of an applicant's efforts at rehabilitation. However, most applicants do not have legal counsel to assist with such matters, many have difficulty advocating for themselves, and some are unaware of their right to challenge initial housing denials.

Allowing Certificates of Rehabilitation to create a "presumption of rehabilitation" in the public housing context could assist housing authorities in assessing applicants and expedite the application process. Under Connecticut law, public housing authorities are already required to consider the rehabilitation of applicants with criminal records.<sup>8</sup> If an applicant presented a Certificate, the housing authority could then presume rehabilitation without committing significant time and resources to an investigation of the issue. The presumption could be overcome by other relevant evidence, and the housing authority would ultimately retain discretion to deny the applicant.

#### **IV. Allowing the Board of Pardons and Paroles and Superior Court Judges to Issue "Certificates of Rehabilitation"**

The need for former inmates to find housing and employment is greatest when individuals have been recently released from prison or placed on probation. Providing additional avenues for initiating the application process for Certificates of Rehabilitation would likely result in more individuals receiving assistance during a critical time in their lives.

Under current law, only a pardons panel of the Board of Pardons and Paroles can grant former inmates a provisional pardon. Allowing parole release panels—in addition to pardons panels—to issue Certificates could ease the pardon panel's caseload. Moreover, the parole panels will already have considerable information about the prisoner and would be well-situated to make a decision about whether to grant a Certificate.

In addition, Connecticut could follow the approaches of New York, Illinois, and Ohio and allow Superior Court judges to grant Certificates to remove barriers to reentry. An applicant could first be required to obtain a recommendation from probation before applying to the court. It seems that this process would not impose significant investigative or administrative burdens on the court, and the judge would retain ultimate discretion over whether to follow probation's recommendation.

#### **V. Afford Employers 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, three states have enacted legislation that offer employers some form of legal protection in relation to these applicants. Ohio provides the broadest protection, affording an employer complete immunity in a negligent hiring suit if the employee in question was hired based in part on a "Certificate of Qualification."<sup>9</sup> Illinois also provides an employer with immunity in a negligent hiring suit, except where the employer acted

---

<sup>8</sup> Conn. Gen. Stat. § 8-45a.

<sup>9</sup> Ohio Rev. Code Ann. § 2953.25(G)(2) (2012) (effective Sept. 28, 2012). The Ohio law also provides that the Certificate may be entered into evidence in a case alleging negligence or other fault as proof of an employer's due care in hiring. *Id.* § 2953.25(G)(1).

“willfully or wantonly” in hiring the employee.<sup>10</sup> New York takes a different approach and offers employers the benefit of an evidentiary rule. When an employer in New York hires an individual with a previous criminal conviction, there is a “rebuttable presumption” that evidence of the prior conviction should be excluded in a negligent hiring suit so long as the employer considered the past criminal history during the application process in accordance with New York’s requirements and made a good faith determination that the applicant should be hired.<sup>11</sup> The New York presumption is rebuttable and ultimately leaves admissibility of the evidence to the court’s discretion. We recommend New York’s approach, as it provides an incentive to employers yet allows courts to exercise their discretion based on the facts of individual cases.

In sum, simple amendments to the current provisional pardons program could have significant positive effects in the lives of former inmates and their families. These reforms could help assure employers that applicants have been rehabilitated, allow families to apply for or remain in public housing, and encourage former inmates to pursue worthy goals that reduce the chance of recidivism.

Thank you very much for your attention to this issue.

Respectfully submitted,

Civil Justice Clinic, Quinnipiac University School of Law

Sarah Russell

David Goshdigian

Joseph Giberman

---

<sup>10</sup> 730 Ill. Comp. Stat. Ann. § 5/5-5.5-15(f) (2012).

<sup>11</sup> N.Y. Executive Law § 296(15) (Consol. 2012).