

CONNECTICUT SENTENCING COMMISSION

**Connecticut Certificates of Employability
Final Program Evaluation
Report
Date, 2018**



FINAL REPORT

DRAFT

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

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Foreword

By law, 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 for 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 (JB-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 required the Connecticut Sentencing Commission to 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 covered the first three years of program implementation with evaluation reports due in 2016, 2017, and 2018. This is the Commission’s final report and is a compilation of the research from all three years.

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 JB-CSSD policies and procedures to implement Public Act 14-27. Descriptive statistics on COE applications processed from October 2015 through December 2017 are set forth in Section Three. Section Four presents the Sentencing Commission researchers’ findings and recommendations regarding the COE program.

It is important to note that following the act’s passage, BOPP and JB-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 adopted this change for the purposes of the evaluation project and, therefore, the term “certificate of employability” is used throughout this report.

Section One: Summary of Public Act 14-27

Certificate of Employability

Objective. A Certificate of Employability may be issued to eligible applicants by the Board of Pardons and Paroles or the Judicial Branch Court Support Services Division. Similar to its precursor the 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, but the crime and conviction may have occurred in any jurisdiction.

Board of Pardons and Paroles	Judicial Branch -CSSD
<ul style="list-style-type: none">• A state resident• Convicted of any crime in Connecticut or other jurisdiction	
<ul style="list-style-type: none">• Released on parole or other early release program• Incarcerated• Discharged from sentence	<ul style="list-style-type: none">• Active probation supervision
Source: Public Act 14-27	

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

COE Application Process. BOPP 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 board’s processes and forms. As discussed later in this report, JB-CSSD did so with minor modifications applicable to its policies, processes and client population. JB-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 applications and issue certificates. Previously, only the board’s pardons panels could issue provisional pardons. JB-CSSD established a review panel, described in the next section, which is responsible for reviewing applications. Both BOPP and JB-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.

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:

- A 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, BOPP and JB-CSSD must submit annual reports, in a form prescribed by the Office of Policy and Management (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 update the data annually.

Provisions Pertaining to Employers

The 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 or discharge from prison/sentence. Public Act 14-27 added the requirement that the state or state agency also consider a COE issued to the applicant when determining suitability for employment or licensure. The issuance of a COE creates an expectation 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 prohibited most private and public employers from denying employment to anyone based solely on the criminal conviction of a person who holds a COE. Employers are also forbidden to discharge or discriminate against a current employee with a COE on the basis of a criminal conviction. 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 COE.

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.

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 JB-CSSD to discuss the development and administration of the new COE policies. Sentencing Commission researchers did not intervene in the development of policies, practices or forms, but did consult with the agencies regarding the applicant and certificate data that should 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 JB-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. Both agencies reported that the staff with direct contact with offenders do most of the education on the program and encourage offenders to apply.

Public Outreach and Education. Public Act 14-27 did not require either BOPP or JB-CSSD to provide public education to eligible applicants, prospective employers 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.

JB-CSSD took initiative initially to do some public education and outreach to community-based programs such as Alternative In the Community programs (AICs), state Department of Labor (DOL) 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. BOPP conducted presentations about the COE program at churches, schools, and other local organizations and provides information about the program to inmates at admission and discharge from a correctional facility as well as during the parole process.

Currently, there is little formal outreach to persons with criminal records who are no longer serving a sentence. However, BOPP reported conducting presentations on the COE program for churches, Capitol Region Education Center, colleges, workforce alliances, etc. It also produced a brochure on the program that is distributed to all persons upon admission and discharge from DOC and released to parole, probation or other early release program. BOPP reported reaching a very limited number who contact the board about applying for a provisional pardon, for which it no longer accepts applications, and recommends these persons to apply for a COE instead.

Applicant Eligibility. State law defines those eligible to receive a COE and an “eligible offender” means someone who is a Connecticut resident who has been convicted of a crime in this state or another jurisdiction. 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 JB-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. JB-CSSD requires applicants to have a demonstrated period not less than six months of “successful” community supervision. Both agencies define “successful” as no technical violations or re-arrests for new offenses, no failed drug testing or drug use, and a positive referral from a supervising parole or probation officer.

COE Application. The existing COE application used by BOPP and JB-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 about 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 COE application requires the following:

- Applicant contact information (e.g., name, date of birth, alias and other names used, address, home and cell phone, email)
- Family information
- Citizenship information
- Education and specialized training (certificates, diplomas, etc)
- Employment history including current employment status and any licenses or certifications held by the applicant (e.g., list of jobs held in past five years, position, employer contact information, supervisor name)
- Military history
- Criminal history and victim information (e.g., list names of all victims and, if known, addresses and contact numbers)
- Essay answers on:
 - reason for applying for the application and its purpose (employment or licensure)
 - how applicant has changed since criminal activity
 - any other information the applicant would like to be considered during the review process

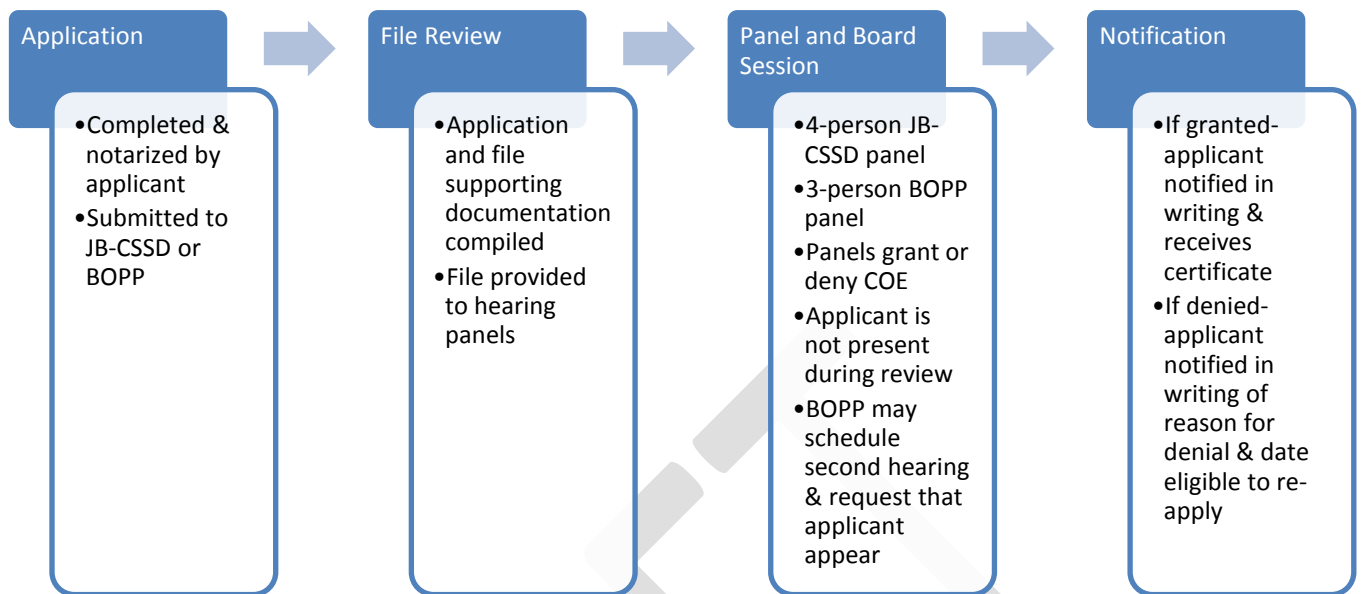
The application must be notarized and be accompanied by any supporting documentation (e.g., military discharge papers, certifications of training and/or treatment, diplomas, etc.). Attached to the application is an optional Statistical and Research Information Sheet. The form requests the applicant's race and ethnicity information. Finally, the applicant may agree to participate in a future research project. However, completing this form is voluntary and most COE applicants do not complete it.

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, any 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 indicates the applicant has been "employable," the agencies assess whether the applicant has demonstrated the need for a certificate.

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 assault crimes or crimes in which the identified victim was the offender's employer. The agencies also take into consideration the applicant's 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 JB-CSSD and within 24 hours are entered into the agencies' tracking system as active files. JB-CSSD sends a form letter to each applicant informing them that the process has begun and that a final decision will be made within 90 days of receipt of the completed application. BOPP does not send applicants a similar letter.

The probation officer or parole officer supervising the applicant is notified that the person has applied for a COE and the officer completes 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. The questionnaire is submitted with the application.

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. JB-CSSD reported that, to date, contacted victims have not generally opposed the applicant obtaining a COE or being employed. Although both agencies reported receiving victim opposition in a few cases.

BOPP and JB-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 JB-CSSD. There has not been any cross-agency data and information sharing issues.

During 2015 and 2016, BOPP held panel sessions every two months (6 sessions per year), but in 2017 panel sessions were held every month (12 per year.) The board chairperson and two board members, assigned from among the 10 full-time and part-time board members, comprise each panel. Currently, applicants are assigned a hearing date in the order in which they were received and applications are reviewed generally within 60 days of receipt.

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.

During 2015 and 2016, JB-CSSD held panel sessions on the first Tuesday of every month. However, due to a lack of staffing resources, JB-CSSD now holds hearings quarterly (every three months). Applicants are scheduled so that a final decision is reached within 90 days of the receipt of a completed application, which is a standard established internally by JB-CSSD. JB-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.

JB-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, 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 or not working in banking or any business that handles cash. BOPP and JB-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. The conditions are listed on the COE and a new COE is issued if the conditions are modified or removed.

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 he or she 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.

BOPP maintains an online central registry of active certificates issued by the board and JB-CSSD. JB-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 JB-CSSD) and lists any restrictions.

Revocation. Public Act 14-27 required that the BOPP and JB-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 compromise a 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 from the BOPP 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 JB-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 has the time or the resources to do this.

Section Three: COE Applications

During each year of the evaluation project, Sentencing Commission researchers collected statistics on the administrative application and review processes from BOPP, DOC and JB-CSSD. General descriptive statistics on COE applicants were also gathered to develop a basic profile of the applicants during the three-year period under review.

Analysis of descriptive statistics can show patterns in the data on the agencies' discretionary decision-making practices or applicants' profiles. Sentencing Commission researchers 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 larger offender population. These data are simply describe the administrative process to review the applications and the COE applicants.

Due to the low number of COE applicants the significance of the statistics is limited. As will be discussed, less than half of one percent of eligible incarcerated or supervised offenders applied for a COE during the three years under review. This group is not representative of the total offender population and, therefore, comparisons and correlations cannot be made. These data describe only the number of applications processed and the persons who applied.

It is important to note the effect, if any, of Public Act 14-27 on the rates of employment and recidivism among persons with criminal records could not be meaningfully determined using the descriptive statistics set forth in this report.

COE Applicant Population. JB-CSSD, BOPP and DOC maintain accurate counts of persons under a criminal sentence whether incarcerated or on probation, parole or other early release program. However, the number of persons with criminal records who are no longer under sentence is not tracked by any of these agencies nor any other state agency. At this point, no suitable proxy measure for this population exists. It is estimated that this population, which is eligible to apply for a COE, is far greater than the number of persons currently under sentence.

Table 2 shows the average daily population in December of each year under review (2015, 2016 and 2017) for each of the applicant eligibility under sentence statuses. Because there can be month-to-month and year-to-year fluctuation in these totals, a snapshot of the population under sentence that are eligible to apply for a COE is provided for December in each year. As shown in Table 2, there were approximately 60,120 persons under sentence eligible to apply for a COE in 2015. Due to various factors including policy initiatives aimed at reducing the prison population and reducing recidivism, the total population under sentence dropped to 59,153 in 2016 and 56,574 in 2017 (a 6% decrease from 2015 to 2017).

There are caveats to this population estimate. The COE 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, JB-CSSD and BOPP administratively establish time-served standards for probation and parole as eligibility criteria. JB-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 the percentage) of persons on probation and parole in a given year that meet the time-served criteria.

Eligibility Status	2015*	2016	2017
Probation	41,448	41,331	39,480
Parole or DOC Early Release	2,647	3,007	3,150
Incarcerated	16,025	14,815	13,944
TOTAL	60,120	59,153	56,574

*Includes data from October through December 2014. COE program’s first year is a 15-month period.
Sources of Data: JB-JB-CSSD, BOPP and DOC

COE Applications Processed. During the first three years of implementation, 8441 COE applications were received by both agencies. As shown in Table 3, JB-CSSD received 323 (38%) and BOPP 518 (62%).¹

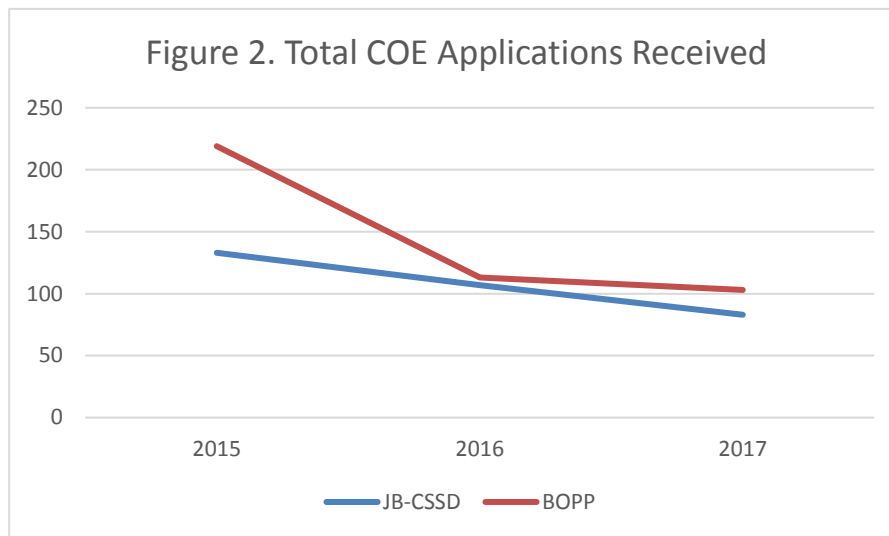
COE Applications	2015*	2016	2017
JB-CSSD			
Total Received	133	107	83
Granted	71	63	44
Denied	51	29	21
Pending at end of year	11	15	18
BOPP			
Total Received	219	113	103
Granted	76	83	75
Denied	22	20	28
Pending at end of year	121	10	3
No action taken**	0	162	83

*Also includes data from October through December 2014. COE program’s first year is a 15-month period.
**BOPP returns and takes no action on applications that are incomplete or ineligible.
Sources of Data: JB-CSSD and BOPP

Thus, during the three years under review, less than one half of one percent of the total eligible persons under sentence applied for a certificate of employability. This percentage would be even

¹ BOPP received an additional 308 applications in 2016 and 2017, that were not processed due to incomplete or ineligible information. These applications will not be included in any further statistics in this report.

lower if the total eligible population included persons with a criminal record who are no longer under sentence.



Overall, as shown in Figure 2, the most notable trend is the total number of COE applications received by JB-CSSD and BOPP declined. It may have been assumed with a new program that enrollment would increase, but the number of applications received each year did not.

Applications Submitted	2015	2016	2017	Totals by Agency
JB-CSSD	133	107	83	323
BOPP	219	113	103	521
TOTALS by year	352	220	207	779

BOPP reported that it has granted a COE as an alternative to an Absolute Pardon in case where a pardon applicant has been found ineligible for a provisional or absolute pardon. BOPP issued 18 COEs to pardon applications, which increased the total number of COEs issued to 93 in 2017. However, the 18 COEs are not included in Table 3 or Figure 2 because they were not issued through the COE application process.

COE Grant Rate. As shown in Table 3, JB-CSSD consistently granted slightly more than half of the COE applications and denied approximately 30 percent. The remainder of applications were pending at the end of each year under review and processed during the next year. The number of pending applications increased (57%) from 2016 to 2017, most likely due to the change in procedure from monthly hearings in 2016 to hearing held quarterly in 2017. There is no other notable trends or changes in the outcomes of the COE applications processed by JB-CSSD.

During the three-years under review, the BOPP grant rate for COEs increased from 35 percent in 2015 to 73 percent and 71 percent in 2016 and 2017 respectively. The boards’ denial rate is approximately 20 percent and only a small number (and percentage) of applications were held over into the next year. However, in 2016 and 2017, the board took no action on the majority of

applications (162 and 146 respectively) submitted that were deemed to be incomplete or ineligible.²

JB-CSSD reported COEs are denied primarily due to the applicant's criminal history, victim opposition, the applicant has poor performance on probation supervision or the applicant has not had sufficient time under supervision. BOPP reported the common grounds for denial are applicant has not been compliant with program or parole supervision, applicant has used drugs, or applicant has not had sufficient time under supervision.

COE Process

During 2015, JB-CSSD reported making decisions on applications on average within 41 days of the date the application was submitted, which is well within its administratively set policy of reaching a decision within 60 days of the date the application was submitted. By 2017, due to fiscal and staffing constraints, the average number from application to decision is about 120 days.

BOPP reported, during 2015 and 2016, the time between receipt of the application to the panel session reviewing the application was on average three months (approximately 90 days). However, in 2017, BOPP conducted panel sessions each month and the average time from receipt to review was two months (approximately 60 days).

² It should be noted JB-CSSD and BOPP calculate grant rate only on reviewed applications, not all submitted applications. Based on that method of calculation, the agencies report a higher grant rate. JB-CSSD reported a grant rate of 67% and BOPP 73%.

Section Four: Findings and Recommendations

Rework intro after recommendations are finalized. At the end of the evaluation period for the certificate of employability program, several questions have arisen about the fundamental public policy intent. The issues range in topic from public policy, administrative procedures, evaluation methodology, and technical changes. Sentencing Commission researchers worked with JB-CSSD and BOPP to develop recommendations. In this final report, Sentencing Commission researchers set forth findings and recommendations regarding the identified issues of the COE law and program

I. Certificate of Employability: Current Law, Program Design and Procedures

FINDINGS

The purpose of the certificate program is to provide persons with criminal records a method of relief from the barriers or forfeitures to employment or professional licensure. The legislation is based on three core concepts. First, employment is an important factor in reducing recidivism among persons with criminal records. Second, a criminal record is often a barrier to obtaining employment or professional licensure. Third, a state-issued certificate of employability is intended to provide relief from the barrier to employment or professional licensure. (See Appendix A for research on core concepts.)

The program's purpose is in line with Governor Dannel P. Malloy's Second Chance Society initiatives designed to continue the progress made in further reducing the state's crime rate and ensuring nonviolent offenders are successfully reintegrated in their communities and become productive workers in the state economy.

Since 2015, Connecticut has implemented a series of legislative initiatives and reforms that:

- reduce the penalty for possession of drugs from a felony to misdemeanor
- establish expedited parole and pardon processes for nonviolent offenders
- fund job-based adult education and employment training for offenders
- establish and fund the Connecticut Collaboration on Re-Entry, which is a partnership among several state agencies and community providers focused on providing supportive housing options to persons who cycle between prison and homeless shelters
- eliminate cash-only bail
- restrict the setting of bail for misdemeanor crimes in most circumstances
- accelerate bail redetermination hearings in misdemeanor cases

- operate the T.R.U.E program (Truthful, Respectful, Understanding and Elevating) for young adult inmates mentored by older inmates
- close prisons due to a decline in the pre-trial and sentenced incarcerated populations

At the same time these initiatives and reforms were being implemented, the state experienced a serious fiscal crisis. This resulted in reductions in appropriations and further cuts by the state agencies' management of the state budget. State criminal justice agencies were constrained by reductions in staff, programs and services, and other resources. Community-based reentry and rehabilitation programs were also impacted by budget reductions, some even closed, at a time when more offenders were being diverted or released early from prison to the community under Second Chance Society reentry initiatives.

The COE program was implemented as part of the state's efforts to reform the criminal justice system and improve reentry of offenders into their communities. However, during the program's first three years, less than half of one percent of the approximately 60,000 persons under sentence each year submitted applications for a COE. As stated above, this percentage is even smaller when the total number of eligible persons with criminal records no longer under sentence is considered.

Sentencing Commission researchers find there are several factors that may account for the low participation in the COE program. First, the low demand for the program can be a function of mobilization or promotion (e.g., public information and education), agency infrastructure (which appears to be adequate), or simply little demand for or interest in the program by either persons with criminal records or potential employers. If the certificates have no meaning employers, offenders will not value them and vice versa. Also, if offenders do not value employment or are uninterested in looking for a job, they will not need certificates. The COE program cannot address offenders limited or sparse work histories or lack of marketable skills.

Second, the COE law (Public Act 14-27) did not amend or repeal existing laws or administrative policies shown to result in unintended consequences that created barriers to employment due to a criminal record. Nor did it eliminate the unintended consequences of the state's existing policies such as a lack of access to transportation, education, mental health services, substance abuse treatment, and housing.

Third, the current application process is onerous and out of proportion with any positive impact that may result from having a certificate. The application form (see Appendix B) is lengthy (five pages plus the voluntary Statistical and Research Information Sheet) and must be notarized. Applicants must 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 as well as detailed information on education and specialized training, employment history including service in the military, criminal history and

victim information. Applicants also must provide brief narratives on the reason for applying for a certificate and the ways in which the applicant has changed since their criminal conviction. Applicants also submit certificates, diplomas, resumes, evaluations and any other documentation for consideration by the issuing agency and a copy of the applicant's driver's license or state identification card. While the application may be completed online, a notarized paper copy must be mailed to the issuing agency for review.

JB-CSSD and BOPP staff then compile a review packet containing additional information on the applicant's criminal record and supervision compliance and verification of the information provided by the applicant. A complete packet on each applicant is compiled for the hearing panels. Both JB-CSSD and BOPP hold hearings conducted by three-member panels to review and deliberate on COE applications.

The application and hearing process is a staff and resource intensive, especially given the state's current fiscal constraints. The application and hearing process appears to be excessive and panel decisions seems to be unnecessarily conservative (see Table 3 above). It presumes a COE has more value than it appears to have in the business community or among offenders.

JB-CSSD and BOPP reported this process evaluates whether COE applicants have made changes toward rehabilitation. The agencies described it as a vetting process that has nothing to do with applicants' suitability to be employed. This is incongruous with JB-CSSD and BOPP decision to administratively change the name from Certificate of Rehabilitation to Certificate of Employability during the initial implementation of the program. At that time, both agencies argued the name Certificate of Rehabilitation did not reflect the intent and purpose of the program and the agencies were not comfortable endorsing or declaring an offender as having been "rehabilitated." Yet, the standard to assess and the basis for awarding the now-named Certificate of Employability is whether the applicant has been rehabilitated.

Finally and fundamentally, it is not clear exactly what the COE certifies. Currently, the COE does not directly certify or validate the holder has any specific skill, training, education or other suitability criteria (e.g., attendance, responsibility, determination, or compliance with workplace requirements.) This is the type of information that employers consider when making determinations to hire a prospective employee.

RECOMMENDATIONS

IA. Therefore, Sentencing Commission researchers recommend the COE should be linked to those factors that employers consider and value when hiring. Similarly, the COE should certify the holder's skill or suitability that he or she presents to employers when seeking a job.

A. It is recommended that an administrative procedure for issuing Certificates of Employability replace the current discretionary process. The Judicial Branch Court Support Services Division and the Department of Correction should automatically issue a COE to any person under supervision or incarcerated who successfully completes any:

- **vocational training program**
- **job readiness program**
- **education program and received a high school or General Equivalency Diploma (GED) or post-secondary diploma**
- **T.R.U.E. program or other reentry readiness program**
- **maintains a period of employment through DOC Correctional Enterprise Division (e.g., inmates work for companies producing and selling textiles, laundry, printing, embroidery, wood furniture, upholstery, license plates, graphic arts signage, plastic bags)**
- **is employed part- or full-time or**
- **any other similar program**

Sentencing Commission researchers believe this sets the stage for the COE program to benefit offenders reentering the workforce and become more familiar to employers. The administrative issuance process may enhance the value of a COE among offenders and employers. The more offenders with COEs seeking a job would itself educate employers about the program. This process is not intended to be conservative or onerous on the agencies or offenders, but rather to issue more COEs than under the current discretionary review, in line with the state's Second Chance Society initiatives. Under this recommendation, successful completion of any of the identified programs would automatically result in issuance of a COE.

The issuing agencies may also establish other criteria in addition to completion of the above listed programs, such as compliance with probation, parole or early release supervision or no serious disciplinary actions while incarcerated. Sentence Commission researchers, however, believe any eligibility criteria should not be onerous and should focus on "employability" rather than solely on "rehabilitation".

The administrative issuance process might also promote improved and more rigorous vocational program offerings in DOC and contracted for by JB-CSSD. It would better utilize limited state resources and be more cost effective than the current labor-intensive application packet and hearing review process.

B. It is recommended the name of the program be statutorily changed from Certificate of Rehabilitation to Certificate of Employability.

Administratively changing the name to Certificate of Employability better reflected the goal of reducing barriers to employment. Changing the name would also reflect automatically issuing a COE for successful completion of training, education or other employment related program. The difference between the statutory and administrative names of the certificate may result in confusion among offenders and potential employers attempting to verify or obtain information on the certificates.

There has been almost no formal promotion or mobilization (e.g., public information and education) of the COE program. JB-CSSD, BOPP and DOC have marketed the program within their internal agency infrastructures, supervised populations, and community-based service networks. However, criminal justice agencies do not develop expertise in job development and do not track, interact with and research employment issues and sources or emerging trends in the business community. That is the responsibility of the state Department of Labor (DOL). DOL (1) assists workers and employers to become competitive in the global economy; (2) takes a comprehensive approach to meeting the needs of workers and employers and the other agencies that serve them; and (3) ensures the supply of high-quality integrated services for workers and employers.

C. It is recommended the state Department of Labor develop and provide education and outreach (mobilization) regarding the Certificate of Employability program to employers, specifically targeting certain industries or professions for which of offenders receive vocational training or education or have marketable skills.

JB-CSSD, DOC and BOPP should collaborate with DOL to provide information on institutional and community-based vocational and educational programs and information on offenders' skills and needs when reentering the workforce. Dedicated and established coordination between JB-CSSD, DOC, BOPP and DOL should facilitate job placement for offenders reentering the workforce.

IB. Alternative Recommendations for COE Program

If the recommended redesign of the COE program in IA above is not adopted, there are other changes to the existing process that should be considered as alternative recommendations. The findings remain the same, but the Sentencing Commission researchers make these suggestions to resolve some of the identified issues.

A. It is recommended that the current COE application be a simplified, non-notarized version submitted online.

Based on the finding described above, the application form is overly cumbersome. The application should focus only on the applicant's training, education, skills and work history. The COE would then assert the holder has provided sufficient evidence that he or she has completed a vocational training or educational program or programs or has demonstrated specific skill(s) or other factors that may be attested to a prospective employer.

The application and hearing process should not focus on the applicant's criminal history, family, citizenship or other areas: criteria that a prospective employer may or may not consider during the hiring process. It is up to the employer to discuss these areas and determine if they are relevant to the job and applicant. Personal background information is widely available, which is one of the barriers faced by those with criminal records. The COE program should minimize rather than further emphasize that, since it was specifically designed to remove this barrier.

JB-CSSD and BOPP reported the requirement to notarize an application ensures the applicant is telling the truth and prevents someone other than the applicant from submitted the application. Sentencing Commission researchers believe the probability of either of these happening is fairly low and should not outweigh the need for the system to be less onerous on the applicant and more cost-efficient for the state.

It should be noted, BOPP is dependent upon the DOC for its automated systems. DOC has a myriad of security concerns and has established a system of "firewalls" the prevent the board from receiving application online.

B. With a simplified online application, it is recommended JB-CSSD and BOPP administratively review and grant COEs.

There should be no need for a comprehensive packet to be compiled on each applicant. Therefore, a formal hearing would not be needed. BOPP now administratively reviews certain parole and pardon applications, which have greater impact than a COE. Sentencing Commission researchers found no evidence that a COE was meant to be as encompassing as a pardon. The COE program is narrowly construed to apply to employment and if it certifies the applicant has completed a vocational training or education program or has a work history or set of skills then there should be no discretion in granting the certificate. An administrative review would also improve the application grant rate and be a more efficient use of limited staff and other resources.

C. Consistent with the state's current reforms and initiatives to improve reentry, DOC and JB-CSSD should review and, if necessary, enhance vocational and educational

programs to develop and encourage the attitude among inmates and supervised offenders that employment is a post-release expectation and is in the offender's and their community's best interests.

Sentencing Commission researchers acknowledge that DOC has implemented programs such as the T.R.U.E. and Reentry Center and operates the Correctional Enterprise Division³ that employs inmates and offers an array of vocational and education programs intended to give inmates the skills necessary to improve their reentry prospects. JB-CSSD funds a network of community-based programs and services that assist with employment as well as the other issues that assist its clients to seek and obtain employment. Under the Second Chance Society initiatives, the state has funded reentry centers that also assist clients in seeking and maintaining employment once they are discharged from prison or supervised in the community. It is clear that employment is recognized as an integral component of Connecticut's reentry strategy.

Sentencing Commission researchers acknowledge that existing programs may be sufficient and effective. It is also recognized that agencies are working within severe fiscal constraints and expansion or significant changes to the existing network of programs may not be feasible. Given the lack of state resources, it is important to determine whether the currently funded network of programs and services is effective and efficient.

II. Agency Reporting Requirements

FINDINGS

Public Act 14-27 requires BOPP and JB-CSSD to submit annual reports to OPM, by October 1, on the number of certificate applications received, granted or denied and revoked. OPM is required to prescribe the format for reporting the data and produce an annual report on the COE program. To date, OPM has not established a process to transfer and report the data online.

The agencies are also statutorily required to submit COE data annually to the Connecticut Sentencing Commission. The Sentencing Commission had to conduct the evaluation of the COE program and post the agencies' COE data online. JB-CSSD and BOPP provided data necessary

³ DOC Correctional Enterprises Division is comprised of 12 individual production shops and a central office. The production shops are located within Correctional Institutions and revenue generated is roughly \$8 million dollars annually. Production shops include: Textile, Laundry, Print, Embroidery, Wood Furniture, Upholstery, License Plate, Graphic Arts Sign, and Plastic Bags. In fiscal year 2016, Correctional Enterprises provided goods and services to over 200 customers, including 42 state agencies, municipalities and nonprofit organizations while offering inmates an opportunity to develop vocational, occupational and soft skills to help prepare them for successful reentry into society.

to complete this report, which serves to fulfill the commission's requirement to post the COE data online.

BOPP reported it met the statutory reporting requirement by submitting its Annual Digest of Administrative Report to the Governor's Office. The board was not directed by OPM to provide COE data in any other format.

Sentencing Commission researchers find the requirement for JB-CSSD and BOPP to provide data on the COE program to OPM and the Sentencing Commission is a duplication of efforts and state resources as it is reported in two places, OPM and the Governor's Digest.

The Sentencing Commission has fulfilled its requirement to evaluate the COE program by issuing this final report. Continuing to collect COE data is not essential to the overall mission of the Sentencing Commission and, when the data are needed, the agencies can provide the data upon request. Similarly, OPM's Criminal Justice Policy and Planning Division has access to these data when needed for budget or policy purposes. Due to the low number of COEs and apparent lack of participation in the program, there is no overriding need for OPM to simply report descriptive statistics.

RECOMMENDATION

It is recommended the requirements for JB-CSSD and BOPP to report data to OPM and the Sentencing Commission and for OPM to collect and report annually on COE data be repealed.

If the redesign of the COE program (as recommended in IA) is adopted, it is recommended the certificate include the reason for issuance (e.g., successful completing of a vocational or education program, employment at Correctional Enterprises Division, or other reason) and contact information necessary for an employer or interested party to verify the certificate. The issuing agency should maintain a list of certificates in a way that best meets its requirement to respond to all requests for verification.

If the current COE program is maintained, BOPP should continue to post the list of COEs online.

III. Automatic Revocation of COE

FINDINGS

State law requires JB-CSSD and BOPP to automatically revoke a COE for any new arrest of a certificate holder after the certificate issuance date. There is currently no policy or process to reinstate a COE that has been revoked. There are three issues with this requirement.

First, it is a foundation of our legal system that arrested persons are presumed innocent until convicted. The existing COE process administered by JB-CSSD and BOPP does not have a system in place, and are not required by law, to automatically reinstate a previously issued certificate if the person subsequently re-arrested is found not guilty or the criminal charges are otherwise dismissed. Revoking a COE based on solely on an arrest is inappropriate and contrary to the intent of the program, which is to remove, not create barriers to employment for persons with criminal records.

Second, as stated earlier in the report, tracking new arrests of persons currently under sentence is part of the community supervision protocol. State criminal justice agencies do not, however, routinely track new arrests for persons no longer under sentence. The existing criminal justice information management system does not automatically flag re-arrest of COE holders who are not under sentence at the time of arrest. To comply with this requirement, JB-CSSD and BOP would have to conduct a criminal record check daily on all active certificate holders, which is an inefficient use of limited staff and budget resources.

State agencies running regularly criminal record checks for COE holders no longer under sentence may raise privacy issues. Entering COE holders in the automated criminal justice information database may have unintended consequences that establish further barriers or obstacles for persons with criminal records.

Finally, an arrest or conviction of a crime does not necessarily make a COE holder ineligible or no longer suitable to work. Most arrested persons remain in their communities on bail pending disposition of the charges against them. Most convicted persons are placed on probation in their communities rather than incarcerated. Most inmates are eligible for parole or other early release programs that allow them to leave prison and return to their communities. Seeking or maintaining employment or participating in job skills or vocational training is often one of the conditions of release and supervision and an integral part of rehabilitation.

Sentencing Commission researchers find, therefore, the requirement to automatically revoke a COE based on arrest (or conviction) is constitutional and is inappropriate given the tenants of our legal system and contrary to Connecticut's investment in reentry strategies.

RECOMMENDATION

It is recommended the existing statute be amended to repeal the requirement to automatically revoke a COE based on any new arrest of the holder after the issuance of the certificate. The issuing agencies should develop administrative standards to discretionarily suspended a COE when the holder is convicted of (rather than arrested for) a crime for which there is a direct link to the holder’s employment. The suspension should not exceed any sentence of imprisonment or parole or period of probation and the COE becomes active one the suspension period ends. The issuing agencies should only revoke a COE when a conviction is egregious and there is a direct link between the holder’s offense and employment.

IV. Provisional Pardon

FINDINGS

“Pardon is a broad term that refers specifically to the public forgiveness of a crime and remission of its penalty, but generally also encompasses the power to ‘commute’ (mitigate a sentence), power to ‘exonerate’ (recognize a public injustice or legal mistake), and power to ‘expunge’ (forget or erase the record of a crime.)” (*Pardon System in Connecticut*, Quinnipiac School of Law, June 2011)

BOPP⁴ has the authority to issue:

- sentence commutation
- absolute pardon (sometimes referred to an expungement or erasure)
- Certificate of Employability (previously referred to as a provisional pardon)

A sentence commutation is a change to a court-imposed sentence to a lesser term after all judicial remedies (e.g., sentencing modification, habeas, application for early parole or probation discharge) have been exhausted. An absolute pardon (also referred to as a full pardon) completely erases a person’s criminal record. A COE (or provisional pardon) provides relief from certain barriers⁵ to employment or forfeiture of professional licensure due to a criminal record but does not erase the criminal record.

Enacted in 2006, the provisional pardon (Public Act 06-187) is the predecessor to the Certificate of Employability. Prior to the implementation of Public Act 14-27, there was recognition that

⁴ 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.

⁵ A “barrier” is 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 are 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 or Certificate of Employability was granted.

persons with criminal records faced certain barriers to employment and forfeitures to licensure. In 2006 (Public Act 06-187), the Board of Pardons and Paroles was authorized to grant provisional pardons as a relief to those barriers and forfeitures and to facilitate employability for persons with criminal records. The objective of provisional pardons was to:

- promote the public policy of rehabilitating ex-offenders through employment
- be consistent with the public's interest in public safety and protecting property

The statutory eligibility and suitability criteria for a provisional pardon and COE 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 JB-CSSD. After implementation of the COE program, BOPP no longer accepted applications for provisional pardon and recommends interested parties apply for a COE.⁶

Many factors can affect employment and recidivism rates. The status and impact of such factors on these outcomes were 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 Institute for 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 causal effect of the provisional pardon program that arose in the COE evaluation project. Therefore, no evidence of an effect was found between issuance of a provisional parole and employment.

The word “pardon”, however, has a much broader, publicly accepted connotation than “certificate of employability,” which results in more value to the offender and the public. There may 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.

There is no evidence yet to suggest the little-known COE program has any significant value to the public, employers or offender population. And, there is no empirical evidence on the causal effect

⁶ If BOPP finds an applicant for an absolute pardon is not qualified, the board reserves the right to grant a COE in lieu of an absolute pardon without requiring the applicant reapply for the COE.

of a COE on a certificate holders' employment or recidivism. It is also not known if previously issued provisional pardons have the same or different effect on the stated outcomes as COEs.

Given that lack of empirical evidence, there may be reasons why a person with a criminal record would prefer a provisional pardon over a COE. For example, a person convicted of a crime many years ago who has been working and has lived a crime-free life may simply want the relief of a pardon, but not be qualified for an absolute pardon. Or an offender who cannot work due to disability or other limitations may seek relief through a provisional pardon rather than a COE.

Sentencing Commission researchers find that in line with Connecticut's current reentry strategies and Second Chance Society initiatives there may be an opportunity to restructure the provisional pardon as another relief option available to persons with a criminal record.

A provisional pardon may be found to be a suitable alternative to a COE or absolute pardon or as a legitimate first step to an absolute pardon. Recommendations to restructure the relief and establish new eligibility criteria for a provisional pardon are beyond the scope of this report, but may be an area for further study by the Sentencing Commission, perhaps as the as it continues to examine remedies to the array of other collateral consequences faced by persons with criminal records.

Appendix A

Public Act 14-27 Underlying Core Concepts

The COE 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.

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 persons 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 a person 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 work history.

The second underlying concept is that the stigma of a criminal record impedes a person'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 professional or occupational 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 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. JB-CSSD and BOPP administrators initially and 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. JB-CSSD and BOPP made efforts to notify the business community and advocate and community-based groups that assist with job searches and training, but neither agency was tasked specifically with or funded to perform this public education role. The Sentencing Commission researchers found it surprising that the state Department of Labor has no role in implementation of the 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 in New York 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 their work skills may erode while they are incarcerated. 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 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 offenders may be prompted by fear of being held liable for crimes those 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 or handling/access to cash.

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 three years under review, less than half of one percent of the approximately 60,000 persons under sentence each year submit 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 BOPP nor JB-CSSD were able to provide reasons for the low program enrollment rate, but the agencies agreed the slow start up during the first year 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.

DRAFT

COE Application

INSERT COE APPLICATION

DRAFT