



Senate

General Assembly

File No. 167

February Session, 2014

Substitute Senate Bill No. 153

Senate, March 27, 2014

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO CERTIFICATES OF REHABILITATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-130a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2014*):

3 (a) Jurisdiction over the granting of, and the authority to grant,
4 commutations of punishment or releases, conditioned or absolute, in
5 the case of any person convicted of any offense against the state and
6 commutations from the penalty of death shall be vested in the Board of
7 Pardons and Paroles.

8 (b) The board shall have authority to grant pardons, conditioned,
9 provisional or absolute, or certificates of rehabilitation for any offense
10 against the state at any time after the imposition and before or after the
11 service of any sentence.

12 (c) The board may accept an application for a pardon three years

13 after an applicant's conviction of a misdemeanor or violation and five
14 years after an applicant's conviction of a felony, except that the board,
15 upon a finding of extraordinary circumstances, may accept an
16 application for a pardon prior to such dates.

17 (d) Whenever the board grants an absolute pardon to any person,
18 the board shall cause notification of such pardon to be made in writing
19 to the clerk of the court in which such person was convicted, or the
20 Office of the Chief Court Administrator if such person was convicted
21 in the Court of Common Pleas, the Circuit Court, a municipal court, or
22 a trial justice court.

23 (e) Whenever the board grants a provisional pardon or a certificate
24 of rehabilitation to any person, the board shall cause notification of
25 such provisional pardon or certificate of rehabilitation to be made in
26 writing to the clerk of the court in which such person was convicted.
27 The granting of a provisional pardon or a certificate of rehabilitation
28 does not entitle such person to erasure of the record of the conviction
29 of the offense or relieve such person from disclosing the existence of
30 such conviction as may be required.

31 (f) In the case of any person convicted of a violation for which a
32 sentence to a term of imprisonment may be imposed, the board shall
33 have authority to grant a pardon, conditioned, provisional or absolute,
34 or a certificate of rehabilitation in the same manner as in the case of
35 any person convicted of an offense against the state.

36 Sec. 2. Section 54-130e of the general statutes is repealed and the
37 following is substituted in lieu thereof (*Effective October 1, 2014*):

38 (a) For the purposes of this section and sections 31-51i, as amended
39 by this act, 46a-80, as amended by this act, [and] 54-130a, as amended
40 by this act, and sections 3 and 4 of this act:

41 (1) "Barrier" means a denial of employment or a license based on an
42 eligible offender's conviction of a crime without due consideration of
43 whether the nature of the crime bears a direct relationship to such

44 employment or license;

45 (2) "Direct relationship" means that the nature of criminal conduct
46 for which a person was convicted has a direct bearing on the person's
47 fitness or ability to perform one or more of the duties or
48 responsibilities necessarily related to the applicable employment or
49 license;

50 (3) "Certificate of rehabilitation" means a form of relief from barriers
51 or forfeitures to employment or the issuance of licenses, other than a
52 provisional pardon, that is granted to an eligible offender by (A) the
53 Board of Pardons and Paroles pursuant to this section, or (B) the Court
54 Support Services Division of the Judicial Branch pursuant to section 3
55 of this act;

56 [(2)] (4) "Eligible offender" means a person who has been convicted
57 of a crime or crimes in this state or another jurisdiction and who is a
58 resident of this state and (A) is applying for a provisional pardon or is
59 under the jurisdiction of the Board of Pardons and Paroles, or (B) with
60 respect to a certificate of rehabilitation under section 3 of this act, is
61 under the supervision of the Court Support Services Division of the
62 Judicial Branch;

63 [(3)] (5) "Employment" means any remunerative work, occupation
64 or vocation or any form of vocational training, but does not include
65 employment with a law enforcement agency;

66 [(4)] (6) "Forfeiture" means a disqualification or ineligibility for
67 employment or a license by reason of law based on an eligible
68 offender's conviction of a crime;

69 [(5)] (7) "License" means any license, permit, certificate or
70 registration that is required to be issued by the state or any of its
71 agencies to pursue, practice or engage in an occupation, trade,
72 vocation, profession or business; and

73 [(6)] (8) "Provisional pardon" means a form of relief from barriers or
74 forfeitures to employment or the issuance of licenses granted to an

75 eligible offender by the Board of Pardons and Paroles pursuant to
76 subsections (b) to (i), inclusive, of this section.

77 (b) The Board of Pardons and Paroles may issue a provisional
78 pardon or a certificate of rehabilitation to relieve an eligible offender of
79 barriers or forfeitures by reason of such person's conviction of the
80 crime or crimes specified in such provisional pardon or certificate of
81 rehabilitation. Such provisional pardon or certificate of rehabilitation
82 may be limited to one or more enumerated barriers or forfeitures or
83 may relieve the eligible offender of all barriers and forfeitures. Such
84 certificate of rehabilitation shall be labeled by the board as a
85 "Certificate of Employability" or a "Certificate of Suitability for
86 Licensure", or both, as deemed appropriate by the board. No
87 provisional pardon or certificate of rehabilitation shall apply or be
88 construed to apply to the right of such person to retain or be eligible
89 for public office.

90 (c) The Board of Pardons and Paroles may, in its discretion, issue a
91 provisional pardon or a certificate of rehabilitation to an eligible
92 offender upon verified application of such [person] eligible offender.
93 The board may issue a provisional pardon or a certificate of
94 rehabilitation at any time after the sentencing of an eligible offender,
95 including, but not limited to, any time prior to the eligible offender's
96 date of release from the custody of the Commissioner of Correction,
97 probation or parole. Such provisional pardon or certificate of
98 rehabilitation may be issued by a pardon panel of the board or a parole
99 release panel of the board.

100 (d) The board shall not issue a provisional pardon or a certificate of
101 rehabilitation unless the board is satisfied that:

102 (1) The person to whom the provisional pardon or the certificate of
103 rehabilitation is to be issued is an eligible offender;

104 (2) The relief to be granted by the provisional pardon or the
105 certificate of rehabilitation may promote the public policy of
106 rehabilitation of ex-offenders through employment; and

107 (3) The relief to be granted by the provisional pardon or the
108 certificate of rehabilitation is consistent with the public interest in
109 public safety, the safety of any victim of the offense and the protection
110 of property.

111 (e) In accordance with the provisions of subsection (d) of this
112 section, the board may limit the applicability of the provisional pardon
113 or the certificate of rehabilitation to specified types of employment or
114 [licenses] licensure for which the eligible offender is otherwise
115 qualified.

116 (f) The board may, for the purpose of determining whether such
117 provisional pardon or certificate of rehabilitation should be issued,
118 request its staff to conduct an investigation of the applicant and submit
119 to the board a report of the investigation. Any written report
120 submitted to the board pursuant to this subsection shall be confidential
121 and shall not be disclosed except to the applicant and where required
122 or permitted by any provision of the general statutes or upon specific
123 authorization of the board.

124 (g) If a provisional pardon or a certificate of rehabilitation is issued
125 by the board [while an eligible offender is on probation or parole]
126 pursuant to this section before an eligible offender has completed
127 service of the offender's term of incarceration, probation or parole, or
128 any combination thereof, the provisional pardon or the certificate of
129 rehabilitation shall be deemed to be temporary until the [person]
130 eligible offender completes such [person's period of] eligible offender's
131 term of incarceration, probation or parole. During the period that such
132 provisional pardon or certificate of rehabilitation is temporary, the
133 board may revoke such provisional pardon or certificate of
134 rehabilitation for a violation of the conditions of such [person's]
135 eligible offender's probation or parole. After the eligible offender
136 completes such eligible offender's term of incarceration, probation or
137 parole, the temporary provisional pardon or certificate of rehabilitation
138 shall become permanent.

139 (h) The board may at any time issue a new provisional pardon or

140 certificate of rehabilitation to enlarge the relief previously granted, and
141 the provisions of subsections (b) to (f), inclusive, of this section shall
142 apply to the issuance of any new provisional pardon or certificate of
143 rehabilitation.

144 (i) The application for a provisional pardon or a certificate of
145 rehabilitation, the report of an investigation conducted pursuant to
146 subsection (f) of this section, the provisional pardon or the certificate of
147 rehabilitation and the revocation of a provisional pardon or a
148 certificate of rehabilitation shall be in such form and contain such
149 information as the Board of Pardons and Paroles shall prescribe.

150 (j) If a temporary certificate of rehabilitation issued under this
151 section or section 3 of this act is revoked, barriers and forfeitures
152 thereby relieved shall be reinstated as of the date the person to whom
153 the temporary certificate of rehabilitation was issued receives written
154 notice of the revocation. Any such person shall surrender the
155 temporary certificate of rehabilitation to the issuing board or division
156 upon receipt of the notice.

157 (k) The board shall revoke a provisional pardon or certificate of
158 rehabilitation if the person to whom it was issued is convicted of a
159 crime, as defined in section 53a-24, after the issuance of the provisional
160 pardon or certificate of rehabilitation.

161 (l) Not later than October 1, 2015, and annually thereafter, the board
162 shall submit to the Office of Policy and Management and the
163 Connecticut Sentencing Commission, in such form as the office may
164 prescribe, data on the number of applications received for provisional
165 pardons and certificates of rehabilitation, the number of applications
166 denied, the number of applications granted and the number of
167 provisional pardons and certificates of rehabilitation revoked.

168 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) The Court Support
169 Services Division of the Judicial Branch may issue a certificate of
170 rehabilitation to an eligible offender who is under the supervision of
171 the division while on probation or other supervised release, or may

172 issue a new certificate of rehabilitation to enlarge the relief previously
173 granted under such certificate of rehabilitation or revoke any such
174 certificate of rehabilitation in accordance with the provisions of section
175 54-130e of the general statutes, as amended by this act, that are
176 applicable to certificates of rehabilitation. If the division issues,
177 enlarges the relief previously granted under a certificate of
178 rehabilitation or revokes a certificate of rehabilitation under this
179 section, the division shall immediately file written notice of such action
180 with the Board of Pardons and Paroles.

181 (b) Not later than October 1, 2015, and annually thereafter, the Court
182 Support Services Division shall submit to the Office of Policy and
183 Management and the Connecticut Sentencing Commission, in such
184 form as the office may prescribe, data regarding the administration of
185 certificates of rehabilitation, which shall include data on the number of
186 certificates issued by the division and the number of certificates
187 revoked by the division.

188 Sec. 4. (NEW) (*Effective October 1, 2014*) (a) Not later than January 1,
189 2016, the Connecticut Sentencing Commission shall post data on its
190 Internet web site that the commission received from the Board of
191 Pardons and Paroles pursuant to subsection (l) of section 54-130e of the
192 general statutes, as amended by this act, and the Court Support
193 Services Division of the Judicial Branch pursuant to section 3 of this
194 act, and shall update such data on its Internet web site annually
195 thereafter.

196 (b) The Connecticut Sentencing Commission, or its designee, shall
197 evaluate the effectiveness of provisional pardons and certificates of
198 rehabilitation issued pursuant to section 54-130e of the general
199 statutes, as amended by this act, and certificates of rehabilitation
200 issued pursuant to section 3 of this act, at promoting the public policy
201 of rehabilitating ex-offenders consistent with the public interest in
202 public safety, the safety of crime victims and the protection of
203 property. Such evaluation shall continue for a period of three years
204 from October 1, 2015. The commission shall submit a report to the joint

205 standing committee of the General Assembly having cognizance of
206 matters relating to the judiciary not later than January 15, 2016,
207 January 15, 2017, and January 15, 2018, on the effectiveness of such
208 provisional pardons and certificates of rehabilitation at promoting
209 such public policy and public interest. Such report shall include
210 recommendations, if any, for amendments to the general statutes
211 governing such provisional pardons and certificates of rehabilitation in
212 order to promote such public policy and public interest.

213 Sec. 5. Subsections (d) and (e) of section 31-51i of the general
214 statutes are repealed and the following is substituted in lieu thereof
215 (*Effective October 1, 2014*):

216 (d) No employer or [an] employer's agent, representative or
217 designee shall deny employment to a prospective employee solely on
218 the basis that the prospective employee had a prior arrest, criminal
219 charge or conviction, the records of which have been erased pursuant
220 to section 46b-146, 54-76o or 54-142a or that the prospective employee
221 had a prior conviction for which the prospective employee has
222 received a provisional pardon or certificate of rehabilitation pursuant
223 to section 54-130a, as amended by this act, or a certificate of
224 rehabilitation pursuant to section 3 of this act.

225 (e) No employer or [an] employer's agent, representative or
226 designee shall discharge, or cause to be discharged, or in any manner
227 discriminate against, any employee solely on the basis that the
228 employee had, prior to being employed by such employer, an arrest,
229 criminal charge or conviction, the records of which have been erased
230 pursuant to section 46b-146, 54-76o or 54-142a or that the employee
231 had, prior to being employed by such employer, a prior conviction for
232 which the employee has received a provisional pardon or certificate of
233 rehabilitation pursuant to section 54-130a, as amended by this act, or a
234 certificate of rehabilitation pursuant to section 3 of this act.

235 Sec. 6. Subsection (c) of section 46a-80 of the general statutes is
236 repealed and the following is substituted in lieu thereof (*Effective*
237 *October 1, 2014*):

238 (c) A person may be denied employment by the state or any of its
239 agencies, or a person may be denied a license, permit, certificate or
240 registration to pursue, practice or engage in an occupation, trade,
241 vocation, profession or business by reason of the prior conviction of a
242 crime if, after considering (1) the nature of the crime and its
243 relationship to the job for which the person has applied; (2)
244 information pertaining to the degree of rehabilitation of the convicted
245 person; and (3) the time elapsed since the conviction or release, the
246 state [] or any of its agencies determines that the applicant is not
247 suitable for the position of employment sought or the specific
248 occupation, trade, vocation, profession or business for which the
249 license, permit, certificate or registration is sought. In making a
250 determination under this subsection, the state or any of its agencies
251 shall give consideration to a provisional pardon issued pursuant to
252 section 54-130e, as amended by this act, or a certificate of rehabilitation
253 issued pursuant to section 54-130e, as amended by this act, or section 3
254 of this act, and such provisional pardon or certificate of rehabilitation
255 shall establish a presumption that such applicant has been
256 rehabilitated. If an application is denied based on a conviction for
257 which the applicant has received a provisional pardon or certificate of
258 rehabilitation, the state or any of its agencies, as the case may be, shall
259 provide a written statement to the applicant of its reasons for such
260 denial.

261 Sec. 7. (NEW) (*Effective October 1, 2014*) There shall be a rebuttable
262 presumption against admission of evidence of the prior criminal
263 conviction of an applicant or employee in an action alleging that an
264 employer has been negligent in hiring an applicant or retaining an
265 employee, or in supervising the employer's agent, representative or
266 designee with respect to hiring an applicant or retaining an employee,
267 if the applicant or employee held a valid provisional pardon or
268 certificate of rehabilitation at the time such alleged negligence occurred
269 and a party establishes, by a preponderance of the evidence, that the
270 employer knew that the applicant or employee held a valid provisional
271 pardon or certificate of rehabilitation at the time such alleged
272 negligence occurred. For the purposes of this section, "employer" has

273 the same meaning as provided in section 31-51i of the general statutes,
274 as amended by this act.

275 Sec. 8. Subsection (d) of section 54-124a of the general statutes is
276 repealed and the following is substituted in lieu thereof (*Effective*
277 *October 1, 2014*):

278 (d) The chairperson shall be the executive and administrative head
279 of said board and shall have the authority and responsibility for (1)
280 overseeing all administrative affairs of the board, (2) assigning
281 members to panels, (3) establishing procedural rules for members to
282 follow when conducting hearings, reviewing recommendations made
283 by employees of the board and making decisions, (4) adopting policies
284 in all areas of pardons and paroles including, but not limited to,
285 granting pardons, commutations of punishments or releases,
286 conditioned or absolute, in the case of any person convicted of any
287 offense against the state and commutations from the penalty of death,
288 risk-based structured decision making and release criteria, (5)
289 consulting with the Department of Correction on shared issues
290 including, but not limited to, prison overcrowding, (6) consulting with
291 the Judicial [Department] Branch on shared issues of community
292 supervision, and (7) signing and issuing subpoenas to compel the
293 attendance and testimony of witnesses at parole proceedings. Any
294 such subpoena shall be enforceable to the same extent as subpoenas
295 issued pursuant to section 52-143.

296 Sec. 9. Subsection (b) of section 31-51i of the general statutes is
297 repealed and the following is substituted in lieu thereof (*Effective*
298 *October 1, 2014*):

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	54-130a
Sec. 2	<i>October 1, 2014</i>	54-130e
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>October 1, 2014</i>	New section
Sec. 5	<i>October 1, 2014</i>	31-51i(d) and (e)
Sec. 6	<i>October 1, 2014</i>	46a-80(c)
Sec. 7	<i>October 1, 2014</i>	New section
Sec. 8	<i>October 1, 2014</i>	54-124a(d)
Sec. 9	<i>October 1, 2014</i>	31-51i(b)

Statement of Legislative Commissioners:

In Sections 2(l) and 3(b), a reference to the Connecticut Sentencing Commission was added for consistency with Section 4(a), and in section 4(a), the reference was changed to subsection (l) of section 54-130e for accuracy.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill allows the Judicial Department Court Support Services Division (CSSD) to issue certificates of rehabilitation for offenders under its supervision. As these certificates would only be issued to probationers under the supervision of CSSD probation officers, it is anticipated that Judicial will be able to fulfil provisions of this bill without additional resources.

In addition, the bill requires the Board of Pardons and Paroles and CSSD to begin submitting annual reports to the Office of Policy and Management, effective October 1, 2015. As the agencies will be able to comply with this provision without any additional resources, there is no fiscal impact associated with this provision.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sSB 153*****AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO CERTIFICATES OF REHABILITATION.*****SUMMARY:**

Currently, the Board of Pardons and Paroles can issue a provisional pardon to an eligible offender to relieve him or her of certain barriers to employment or obtaining a credential, such as an occupational license, resulting from a criminal conviction.

This bill allows the board or the Judicial Branch's Court Support Services Division (CSSD) to issue certificates of rehabilitation for the same reasons, but CSSD may only issue them to offenders under its supervision. It:

1. requires the board and CSSD to generally follow the same procedures and use the same criteria to issue a certificate as the board does for a provisional pardon;
2. provides that a provisional pardon or certificate shows presumed rehabilitation when the state or a state agency is considering a prior conviction to determine eligibility for employment or a credential;
3. as with people who hold provisional pardons, prohibits public and private employers from denying employment to an applicant or discharging or discriminating against an employee based solely on a conviction for which the person received a certificate;
4. limits the admissibility of an applicant's or employee's prior conviction in negligence actions against an employer under

certain circumstances when the person has a provisional pardon or certificate;

5. allows a provisional pardon or certificate applicant to obtain an investigative report prepared for the board about the applicant (currently, reports related to provisional pardons are confidential unless disclosure is required or permitted by statute or specifically authorized by the board);
6. requires the (a) board and CSSD to report to the Office of Policy and Management (OPM) on certificate applications and petitions and (b) Sentencing Commission to post the data and evaluate the effectiveness of certificates in promoting the public policy of rehabilitating ex-offenders consistent with the public interest in public safety, crime victim safety, and protecting property; and
7. makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014

BARRIERS AND FORFEITURES

A provisional pardon, or a certificate of rehabilitation under the bill, can relieve an offender of certain barriers or forfeitures when applying for employment or a license. It can specify the barriers or forfeitures to which it applies.

By law, a “barrier” is a denial of employment or a license based on a criminal conviction without considering whether the nature of the offense bears a direct relationship to the employment or license. The bill specifies that a “direct relationship” is one in which the nature of the criminal conduct has a direct bearing on the person’s fitness or ability to perform a duty or responsibility necessarily related to the employment or license.

By law, a “forfeiture” is disqualification or ineligibility for employment or a license that is based on a conviction.

Under the bill, a certificate of rehabilitation must be labeled

“certificate of employability,” “certificate of suitability for licensure,” or an appropriate combination of the two.

PROVISIONAL PARDONS OR CERTIFICATES ISSUED BY THE BOARD

Current law allows the board to issue a provisional pardon, and the bill allows it to issue a certificate, any time after sentencing. The bill specifies that this includes issuing one before the offender’s release from Department of Correction custody, probation, or parole and allows issuance of a certificate under the same circumstances.

The bill allows a pardons panel or parole release panel of the board to issue a provisional pardon or certificate. Under current law, only pardons panels can issue provisional pardons.

Currently, the board can issue a provisional pardon if (1) an offender was convicted of a crime in this state or another jurisdiction and is a Connecticut resident, (2) the relief may promote the public policy of rehabilitating offenders through employment, and (3) the relief is consistent with public safety and protection of property. The bill also requires that the relief be consistent with victim safety. It applies the same criteria to issuance of certificates.

The bill applies the same provisions to certificates as currently apply to provisional pardons. Under these provisions:

1. the board must notify the clerk of the court where a person was convicted when a certificate is issued,
2. the certificate does not entitle a person to erasure of his or her record or relieve him or her of the obligation to disclose the conviction,
3. a certificate cannot apply to eligibility for public office,
4. the board can request its staff to investigate and report on an applicant, and

5. the board must follow the same procedures when issuing a new certificate to enlarge relief granted as when issuing an initial certificate.

The bill requires the board to revoke a provisional pardon or certificate of rehabilitation from anyone later convicted of a crime.

CERTIFICATES ISSUED BY CSSD

The bill allows CSSD to issue a certificate of rehabilitation to a state resident convicted of a crime in Connecticut or another jurisdiction who is under CSSD's supervision while on probation or other supervised release. It also allows CSSD to enlarge the relief granted by, or revoke, a certificate.

The bill requires CSSD to follow the rules that apply to certificates from the board, including requirements for issuing, modifying, and revoking them. CSSD must immediately notify the board in writing if it issues, enlarges, or revokes a certificate.

TEMPORARY PROVISIONAL PARDONS AND CERTIFICATES

Under current law, a provisional pardon issued by the board to an offender on probation or parole is deemed temporary until the offender completes probation or parole. The bill makes those provisional pardons or certificates issued while an offender is incarcerated temporary. It makes certificates temporary under the same conditions. It also specifies that temporary provisional pardons or certificates become permanent when the offender completes his or her incarceration, probation, or parole.

The bill allows CSSD to issue temporary certificates and, as with the board under current law, allows the court to revoke a temporary certificate for violating the conditions of probation or parole. The bill specifies that revocation of a temporary certificate by either the CSSD or board reinstates the barriers or forfeitures listed in the certificate as of the date the certificate-holder receives written notice of revocation. The person must surrender the revoked certificate to the issuing authority.

REPORTS AND EVALUATIONS

By October 1, 2015, the bill requires the board and CSSD to begin submitting annual reports to OPM and the Sentencing Commission, in a form prescribed by OPM. The (1) board must submit data on the number of provisional pardon or certificate applications received, denied, and granted, as well as the number revoked and (2) CSSD must submit data on the administration of certificates including the number issued or revoked. By January 1, 2016, the Sentencing Commission must post the data on its website and update it every year.

The bill requires the Sentencing Commission, or its designee, to evaluate the effectiveness of provisional pardons and certificates in promoting the public policy of rehabilitating ex-offenders consistent with the public interest in public safety, crime victim safety, and protecting property. The evaluations must cover the three years beginning October 1, 2015. The commission must report to the Judiciary Committee by January 15 of 2016, 2017, and 2018 on the provisional pardons' and certificates' effectiveness and recommendations for statutory changes.

EMPLOYMENT

The law allows the state or a state agency to deny employment or a credential (such as a professional license or permit) to someone because of a prior criminal conviction if the state or a state agency finds the person unsuitable after considering (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.

The bill requires the state or agency to consider any provisional pardon or certificate issued to the applicant when making this determination. Under the bill, a provisional pardon or certificate creates a presumption of rehabilitation. The bill requires the state or an agency that denies employment or a credential based on a conviction for which the person received a provisional pardon or

certificate to give the applicant, in writing, the reasons for the denial.

The bill extends to people with certificates certain protections currently granted to people with provisional pardons. It bars public and private employers from (1) denying employment based solely on a conviction for which the applicant received a provisional pardon or (2) discharging or discriminating against someone based solely on a conviction prior to being employed for which the employee received a provisional pardon.

LIMITS ON USING EVIDENCE OF PRIOR CONVICTIONS IN NEGLIGENCE CLAIMS

The bill creates a rebuttable presumption against admitting evidence of an applicant's or employee's prior conviction in certain lawsuits when (1) the person had a valid provisional pardon or certificate when the alleged negligence occurred and (2) a party establishes by a preponderance of the evidence that the employer knew of the provisional pardon or certificate at the time of the alleged conduct. This applies to any action alleging an employer's negligence in (1) hiring or retaining an applicant or employee or (2) supervising an agent, representative, or designee related to the hiring or retention of the applicant or employee.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 38 Nay 4 (03/10/2014)