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**TESTIMONY IN SUPPORT OF S.B. No. 453  
An Act Concerning Certificates of Relief from Barriers  
Resulting from Convictions of a Crime**

**Justice David M. Borden & Mike Lawlor  
Connecticut Sentencing Commission**

**Judiciary Committee**

**March 23, 2012**

Good morning Chairman Coleman, Chairman Fox, and distinguished members of the Judiciary Committee I am Justice David M. Borden, formerly of the Connecticut Supreme Court, and a member of the Connecticut Sentencing Commission, and I am here representing that Commission. With me is Mike Lawlor, OPM Under Secretary for the Criminal Justice Policy and Planning Division and current vice-chair of the Connecticut Sentencing Commission. Thank you for the opportunity to testify in support of **S.B. No. 453, An Act Concerning Certificates of Relief from Barriers Resulting from Convictions of a Crime**. The Sentencing Commission recommends passage of this bill.

Individuals with prior convictions face numerous barriers to successful reintegration into Connecticut communities. In 2006, the Connecticut General Assembly created the provisional pardon program to address this issue. Unlike absolute pardons, provisional pardons do not erase criminal records. Rather, they are intended to remove barriers to licenses and employment for qualified individuals with prior criminal convictions.

After researching and examining this issue over the course of a number of months, the Connecticut Sentencing Commission identified several ways in which the provisional program can be improved to better achieve its purpose of facilitating reentry and reducing recidivism. S.B. No. 453 reflects the Commission's recommendations. In particular, S.B. No. 453 would:

- Rename provisional pardons "Certificates of Relief from Barriers" (CRBs) to better describe their purpose and legal effect.
- Expand the program to remove barriers to public housing in addition to employment and licensing.
- Provide more guidance to public employers and licensing agencies about the legal effect of a Certificate.

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- Expedite the process of obtaining a Certificate by allowing courts in less serious cases to issue Certificates at the time of sentencing or during the offender's probation period, and permitting both pardons panels and parole release panels of the Board of Pardons and Paroles to issue Certificates.
- Give the Sentencing Commission oversight over the evaluation of the Certificate of the Relief from Barriers program for a period of 3 years and require the Commission to report annually to the Judiciary Committee on the efficacy of the program.

Below, we explain the reasons for modifying the existing provisional pardon program and describe S.B. No. 453 in greater detail.

**I. Background**

As has been well-documented, criminal convictions carry with them a wide array of collateral consequences, and individuals with prior records face many barriers to successful reintegration into society. Even after completing a sentence, an individual will continue to be negatively impacted by a prior conviction as he or she seeks employment, licensing, and housing. Significant barriers result from federal, state, and local laws, and exist in the public as well as private sectors. People who are unable to find jobs or a stable place to live are more likely to recidivate. Providing relief from collateral consequences can help reduce recidivism, strengthen the economy, and make communities safer.<sup>1</sup>

In Connecticut, the only process for expunging a conviction or limiting the collateral consequences of the conviction is through obtaining an absolute or provisional pardon from the Board of Pardons and Paroles ("BOPP"). In contrast, many other states, in addition to granting pardons, also have systems in place to seal or expunge convictions through judicial or administrative processes.<sup>2</sup>

<sup>1</sup> See Margaret Colgate Love, *Relief from the Collateral Consequences of a Criminal Conviction: A State by State Resource Guide, Executive Summary*, July 2005, at 7, available at

[http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=115](http://www.sentencingproject.org/detail/publication.cfm?publication_id=115).

<sup>2</sup> See Margaret Love & April Frazier, *Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws*, ABA COMM'N ON EFFECTIVE CRIM. SANCTIONS, Sept. 19, 2006, at 2, 9-11, available at

[http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks\\_files/convictionsurvey.pdf](http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks_files/convictionsurvey.pdf).

When the BOPP grants an absolute pardon, it fully erases a criminal record. Unlike an absolute pardon, a provisional pardon does not erase a criminal record but is intended to remove barriers to employment or licensing. In particular, a provisional pardon "relieve[s] an eligible offender of barriers or forfeitures by reason of such person's conviction of the crime or crimes specified in such provisional pardon." A provisional pardon prevents automatic denial of employment or license based on a criminal conviction, and requires the decisionmaker to consider whether a direct relationship exists between the conviction and the job or license sought.<sup>3</sup>

Under current law, the BOPP may grant a provisional pardon at any time after sentencing.<sup>4</sup> As a practical matter, however, it takes time for applicants to complete the detailed application. In addition, there is a relatively lengthy processing time for applications because the BOPP must do a thorough investigation of the applicant's background before making a decision. Since the provisional pardon program was created in 2006, the BOPP has granted approximately 60 to 70 provisional pardons each year.<sup>5</sup>

Individuals with convictions are often most in need of relief from barriers soon after sentencing if they are put on probation, or soon after release from prison if they have served a term of incarceration. People often reenter communities from prison without housing, jobs, benefits, or even identification, and the risk of recidivism is highest when someone first returns from prison.<sup>6</sup> However, under current law, the provisional pardon program is unlikely to help individuals facing barriers close in time to sentencing or their release from prison.

An additional issue with the existing provisional pardon program is an overall confusion about the actual legal effect of a provisional pardon.

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<sup>3</sup> Conn. Gen. Stat. § 54-130e(a)(1), (b).

<sup>4</sup> *Id.* § 54-130e(c).

<sup>5</sup> See Pardons Counts, CT BOARD OF PARDONS AND PAROLE, available at <http://www.ct.gov/doc/lib/doc/PDF/PDFReport/PardonsCounts.pdf>.

<sup>6</sup> One major study showed that within three years of release, 67.5% of prisoners were rearrested for a felony or serious misdemeanor. Of those released, 29.9% were rearrested within the first six months. See *Recidivism of Prisoners Released in 1994*, U.S. DEPT. OF JUSTICE: BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE: BUREAU OF JUSTICE STATISTICS (June 2002), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf>.

## II. The Commission's Examination of the Provisional Pardon Program

The Sentencing Commission identified collateral consequences and making improvements to the provisional pardon program as a legislative priority for the 2012 Session. The Legislative Committee of the Commission, chaired by Justice David Borden, met seven times during the months of April-November 2011 and undertook a thorough review of:

- Collateral consequences of convictions in Connecticut
- Existing mechanisms for removing collateral consequences in Connecticut, including the provisional pardon program
- Mechanisms for removing collateral consequences available in states nationwide
- Model legislation concerning collateral consequences including the Model Penal Code, the ABA Collateral Sanctions Standards, and the Uniform Collateral Consequences of Conviction Act
- Issues with Connecticut's current provisional pardon system and areas of possible reform

The Legislative Committee reported its findings and recommendations to the full Commission, and the Commission discussed this topic at several meetings. On January 26, 2012, the Commission approved statutory language for a proposed bill. This draft bill was contained in the Commission's Annual Report, and is very similar to S.B. No. 453.<sup>7</sup>

## III. Details Regarding the Proposed Legislation

S.B. No. 453 would make several changes to the existing provisional pardon program aimed at increasing the efficacy of the program. The major changes are described below.

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<sup>7</sup> One difference that bears note is Section 2 of the Raised Bill, which amends Conn. Gen. Stat. § 54-130e. The language of the Raised Bill states in subsection (g): "During the period that such [provisional pardon] certificate is temporary, the board may revoke such [provisional pardon] certificate for violation of the conditions of such person's probation or parole." The Sentencing Commission recommends that the Judiciary Committee substitute the word "board" with the words "issuing authority." This "issuing authority" language was in the proposed bill recommended by the Commission in its Annual Report. Unfortunately, because of an inadvertent error, the modified language was not noted with underlined text. The Commission recommends this change so that the authority issuing a Certificate will be responsible for revocation decisions.

*A. Rename provisional pardons "Certificates of Relief from Barriers"*

The name "provisional pardon" has generated considerable confusion. The word "provisional" implies that the provisional pardon is conditional and may turn into a full pardon at a future time or upon some future event. But this is inaccurate. To eliminate this confusion and better describe their purpose and legal effect, S.B. No. 453 would rename provisional pardons "Certificates of Relief from Barriers." The issuing body can label each Certificate a "Certificate of Employability," "Certificate of Suitability for License," and/or a "Certificate of Suitability for Public Housing," as appropriate.

*B. Expand the program to remove barriers to public housing*

Under current law, provisional pardons remove barriers to employment and licensing, but not to public housing. However, access to housing is a major challenge for individuals with criminal convictions, and lack of stable housing can contribute to recidivism. Public housing authorities often deny applications from individuals with criminal convictions. Yet some individuals, despite their criminal histories, may be good tenants who present no risk to public safety. S.B. No. 453 would allow the grant of a Certificate to remove automatic barriers to public housing. An individual with a Certificate would be "presumed eligible" for public housing. The housing authority would nonetheless have discretion to deny an application if this presumption is overcome. In addition, the bill would not impact public housing disqualifications required by federal law.

*C. Provide more guidance to public employers and licensing agencies about the legal effect of a Certificate*

Current law provides that a provisional pardon removes "barriers" to state licenses and to employment by the state, but does not describe the specific impact that a provisional pardon should have on decisionmaking by the state or its agencies.

Under existing law, the state and its agencies may not deny a license or employment "solely because of a prior conviction of a crime."<sup>8</sup> Instead, a license or employment may be denied if the state or a state agency determines that "the applicant is not

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<sup>8</sup> Conn. Gen. Stat. § 46a-80(a).



suitable” after considering “(1) the nature of the crime and its relationship to the job for which the person has applied; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release.”<sup>9</sup> Existing law does not describe the relevance of a provisional pardon to this analysis.

S.B. No. 453 provides that a Certificate will create a “presumption of suitability” for the employment or license sought from the state or state agency. The state or state agency may deny a job or license to someone with a Certificate only where this presumption is overcome. S.B. No. 453 would not impact the effect of a Certificate on decisionmaking by private employers.

*D. Allow courts and parole release panels of BOPP to issue Certificates*

S.B. No. 453 would allow the Superior Court to issue a Certificate in less serious cases at the time of sentencing or during an offender’s probation period. The court would have discretion to issue a Certificate to an individual only if the person was not sentenced to immediate incarceration, or was sentenced to less than two years’ incarceration.

The court would apply the same standard used by BOPP under existing law in granting a Certificate. Thus, the court could grant a Certificate if (1) “[t]he relief to be granted by the Certificate may promote the public policy of rehabilitation of ex-offenders,” and (2) “[t]he relief to be granted by the Certificate is consistent with the public interest in public safety, the safety of any victim of the offense, and the protection of property.” For purposes of determining whether a Certificate should be issued, the court may request probation to conduct an investigation and submit a report.

Allowing courts to issue Certificates follows the approach of New York and Illinois. In both states, courts may issue certificates in certain circumstances to remove some collateral consequences of convictions as soon as the time of sentencing. In addition, the Uniform Collateral Consequences of Conviction Act, the Model Penal Code, and the ABA Collateral Sanctions Standards, all recommend giving sentencing courts the power to remove some barriers resulting from convictions.

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<sup>9</sup> *Id.* § 46a-80(c).

The benefit of allowing courts to issue Certificates is that relief from barriers may be granted to individuals when they are most in need of assistance. In many cases, the circumstances may not warrant issuance of relief by the court. In some cases, however, it will be plainly apparent even at the time of sentencing based on information already known to the court and probation that an individual should not be prevented from returning to a job or keeping a license as a result of a conviction. In these cases, it is much more efficient for the court to issue a Certificate, rather than requiring the person to apply to BOPP. Upon receipt of the application, BOPP would need to conduct an investigation, which takes considerable resources and time. By the time a Certificate issues, the individual may have lost good job opportunities. In these circumstances, the court is better situated to determine suitability for a Certificate because the court and probation already have knowledge of the person's background and the circumstances of the offense.

S.B. No. 453 would also allow both the pardons panels and the parole release panels of the BOPP to issue Certificates. Under current law, only pardons panels of the BOPP may issue Certificates. This modification would allow BOPP to issue Certificates as part of the parole release process, if the agency deemed this appropriate. Recently, the New York parole board has begun granting similar certificates when individuals are released on parole.<sup>10</sup>

*E. Evaluation and Report from the Sentencing Commission*

Finally, S.B. No. 453 would give the Sentencing Commission or its designee oversight over the evaluation of the Certificate of the Relief from Barriers program for a period of 3 years. The bill would also require the Commission to report to the Judiciary Committee annually during this period on the efficacy of the program. This evaluation and report will help ensure that the Certificate program achieves its intended effect of facilitating reintegration of individuals with prior convictions and reducing recidivism.

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<sup>10</sup> Joy Radice, *Administering Justice: Removing Statutory Barriers to Reentry*, 83 U. Colorado L. Rev. (forthcoming 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1864917](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1864917).

