



# House of Representatives

General Assembly

**File No. 691**

January Session, 2013

Substitute House Bill No. 6582

*House of Representatives, May 2, 2013*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, 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 Section 54-130a of the general statutes is repealed and the  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, 2013*):

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, 2013*):

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) Not later than October 1, 2014, and annually thereafter, the  
158 board shall submit to the Office of Policy and Management, in such  
159 form as the office may prescribe, data on the number of applications  
160 received for provisional pardons and certificates of rehabilitation, the  
161 number of applications denied, the number of applications granted  
162 and the number of provisional pardons and certificates of  
163 rehabilitation revoked.

164 Sec. 3. (NEW) (*Effective October 1, 2013*) (a) The Court Support  
165 Services Division of the Judicial Branch may issue a certificate of  
166 rehabilitation to an eligible offender who is under the supervision of  
167 the division while on probation or other supervised release, or may  
168 issue a new certificate of rehabilitation to enlarge the relief previously  
169 granted under such certificate of rehabilitation or revoke any such  
170 certificate of rehabilitation in accordance with the provisions of section  
171 54-130e of the general statutes, as amended by this act, that are  
172 applicable to certificates of rehabilitation. If the division issues,

173 enlarges the relief previously granted under a certificate of  
174 rehabilitation or revokes a certificate of rehabilitation under this  
175 section, the division shall immediately file written notice of such action  
176 with the Board of Pardons and Paroles.

177 (b) Not later than October 1, 2014, and annually thereafter, the Court  
178 Support Services Division shall submit to the Office of Policy and  
179 Management, in such form as the office may prescribe, data regarding  
180 the administration of certificates of rehabilitation, which shall include  
181 data on the number of certificates issued by the division and the  
182 number of certificates revoked by the division.

183 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) Not later than January 1,  
184 2015, the Connecticut Sentencing Commission shall post data on its  
185 Internet web site that the commission received from the Board of  
186 Pardons and Paroles pursuant to subsection (k) of section 54-130e of  
187 the general statutes, as amended by this act, and the Court Support  
188 Services Division of the Judicial Branch pursuant to section 3 of this  
189 act, and shall update such data on its Internet web site annually  
190 thereafter.

191 (b) The Connecticut Sentencing Commission, or its designee, shall  
192 evaluate the effectiveness of provisional pardons and certificates of  
193 rehabilitation issued pursuant to section 54-130e of the general  
194 statutes, as amended by this act, and certificates of rehabilitation  
195 issued pursuant to section 3 of this act, at promoting the public policy  
196 of rehabilitating ex-offenders consistent with the public interest in  
197 public safety, the safety of crime victims and the protection of  
198 property. Such evaluation shall continue for a period of three years  
199 from October 1, 2014. The commission shall submit a report to the joint  
200 standing committee of the General Assembly having cognizance of  
201 matters relating to the judiciary not later than January 15, 2015,  
202 January 15, 2016, and January 15, 2017, on the effectiveness of such  
203 provisional pardons and certificates of rehabilitation at promoting  
204 such public policy and public interest. Such report shall include  
205 recommendations, if any, for amendments to the general statutes

206 governing such provisional pardons and certificates of rehabilitation in  
207 order to promote such public policy and public interest.

208 Sec. 5. Subsections (d) and (e) of section 31-51i of the general  
209 statutes are repealed and the following is substituted in lieu thereof  
210 (*Effective October 1, 2013*):

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

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

230 Sec. 6. Subsection (c) of section 46a-80 of the general statutes is  
231 repealed and the following is substituted in lieu thereof (*Effective*  
232 *October 1, 2013*):

233 (c) A person may be denied employment by the state or any of its  
234 agencies, or a person may be denied a license, permit, certificate or  
235 registration to pursue, practice or engage in an occupation, trade,  
236 vocation, profession or business by reason of the prior conviction of a  
237 crime if, after considering (1) the nature of the crime and its

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

256       Sec. 7. (NEW) (*Effective October 1, 2013*) There shall be a rebuttable  
257 presumption against admission of evidence of the prior criminal  
258 conviction of an applicant or employee in an action alleging that an  
259 employer has been negligent in hiring an applicant or retaining an  
260 employee, or in supervising the employer's agent, representative or  
261 designee with respect to hiring an applicant or retaining an employee,  
262 if the applicant or employee held a valid provisional pardon or  
263 certificate of rehabilitation at the time such alleged negligence occurred  
264 and a party establishes, by a preponderance of the evidence, that the  
265 employer knew that the applicant or employee held a valid provisional  
266 pardon or certificate of rehabilitation at the time such alleged  
267 negligence occurred. For the purposes of this section, "employer" has  
268 the same meaning as provided in section 31-51i of the general statutes,  
269 as amended by this act.

270       Sec. 8. Subsection (d) of section 54-124a of the general statutes is  
271 repealed and the following is substituted in lieu thereof (*Effective*

272 *October 1, 2013*):

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

291 Sec. 9. Subsection (b) of section 31-51i of the general statutes is  
 292 repealed and the following is substituted in lieu thereof (*Effective*  
 293 *October 1, 2013*):

294 (b) No employer or [an] employer's agent, representative or  
 295 designee may require an employee or prospective employee to disclose  
 296 the existence of any arrest, criminal charge or conviction, the records of  
 297 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, 2013</i>	54-130a
Sec. 2	<i>October 1, 2013</i>	54-130e
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	31-51i(d) and (e)

Sec. 6	<i>October 1, 2013</i>	46a-80(c)
Sec. 7	<i>October 1, 2013</i>	New section
Sec. 8	<i>October 1, 2013</i>	54-124a(d)
Sec. 9	<i>October 1, 2013</i>	31-51i(b)

**JUD**      *Joint Favorable Subst.*

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.

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>
Judicial Dept.	GF - Potential Cost	Up to 120,000	Up to 150,000

**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. This may result in a potential cost to the Judicial Department, dependent on how many such certificates they are required to issue and the resources available in the Adult Probation office at CSSD. In the event that CSSD must process a substantial volume of certificates, this bill may result in a cost to the Judicial Department of \$120,000 in FY 14 and \$150,00 FY 15 to fund additional probation officers.

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, 2014. 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**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 6582*****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 except where required or permitted by statute or the board specifically authorizes disclosure);
6. requires the board and CSSD to report to the Office of Policy and Management (OPM) on certificate applications and petitions and the Sentencing Commission to post the data and evaluate the effectiveness of certificates; and
7. makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2013

## **BARRIERS AND FORFEITURES**

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

By law, a “barrier” is a denial of employment or a license based on a criminal conviction without consideration of whether the nature of the offense bears a direct relationship to the employment or license. The bill specifies that a “direct relationship” is when 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.

The bill specifies that the certificate issued by the board must be labeled “certificate of employability,” “certificate of suitability of licensure,” or an appropriate combination of them.

**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 adds that the relief must 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 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.

**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. The bill allows CSSD to enlarge the relief granted by, or revoke, a certificate.

The bill requires CSSD to follow the same rules for issuing certificates as the board, including making the same findings before issuing a certificate. 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 while an offender is 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 court or board reinstates the barriers or forfeitures listed in the certificate as of the date the certificate-holder receives written notice of revocation, and the person must surrender the certificate to the issuing authority.

**REPORTS AND EVALUATIONS**

By October 1, 2014, the bill requires the board and CSSD to begin submitting annual reports to OPM in a form prescribed by OPM. The (1) board must submit data on the number of provisional pardon or certificate applications received, denied, granted, and revoked and (2) CSSD must submit data on the number of certificates issued or

revoked. By January 1, 2015, the Sentencing Commission must post the data on its website and update it every year. (The bill does not require OPM to provide the data to the Sentencing Commission but the commission is administratively part of OPM.)

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, 2014. The commission must report to the Judiciary Committee by January 15 of 2015, 2016, and 2017 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 the following protections currently granted to people with provisional pardons: public and private employers cannot (1) deny employment based solely on a conviction for which the applicant received a provisional pardon or (2)

discharge or discriminate 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 at the time 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 Substitute

Yea 30 Nay 10 (04/16/2013)