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## 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)