

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Tolman, Steven (SEN)**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing for certificates of rehabilitation and recovery and rehabilitation for substance abusers.

PETITION OF:

NAME:

Tolman, Steven (SEN)

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01028 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
—————

### AN ACT PROVIDING FOR CERTIFICATES OF REHABILITATION AND RECOVERY AND REHABILITATION FOR SUBSTANCE ABUSERS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority  
of the same, as follows:*

1 SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section 176 the  
2 following \_\_\_\_\_ sections:-

3 Section 176A. (a) As used in this chapter the following words, unless the context requires  
4 otherwise, shall have the following meanings:—

5 (1) “Applicant”, the holder of either a certificate of rehabilitation or recovery and rehabilitation  
6 who has applied for a benefit from a public or private entity;

7 (2) “Benefit”, may include, without limitation, employment or housing whereby the applicant’s  
8 criminal offender record information is accessed and considered as a factor in the award or denial of  
9 such a benefit;

10 (3) “Certificate”, either a certificate of rehabilitation or a certificate of recovery and  
11 rehabilitation, whichever is applicable;

12 (4) “Petitioner”, a person who has petitioned the court for either a certificate of rehabilitation or  
13 a certificate of recovery and rehabilitation.

14 Section 176B. (a) A person convicted of or adjudicated delinquent by reason of any felony or  
15 misdemeanor charges in the Commonwealth or a person who has been charged with a crime in the  
16 Commonwealth but which charges did not result in a conviction may petition the superior court of the  
17 trial court department in the county in which he then resides for a certificate of rehabilitation, or a  
18 certificate of recovery and rehabilitation if the charges were a consequence of substance abuse, for  
19 ascertainment and declaration of the fact of his rehabilitation or recovery and rehabilitation if he: (1)  
20 has not been sentenced to incarceration since being discharged from a felony or misdemeanor or since  
21 the termination of any ancillary proceedings related to such felony or misdemeanor including, but not  
22 limited to, any period of probation, parole or continuation; (2) is not the subject of a probationary or  
23 parole term for the commission of any other felony or misdemeanor; (3) presents satisfactory evidence  
24 of two years residence in the Commonwealth prior to the filing of the petition; (4) has demonstrated a  
25 period of rehabilitation, as provided in section 176C, and (5) in the case of a person seeking a certificate  
26 of recovery and rehabilitation, has completed a substance abuse treatment program approved by the  
27 bureau of substance abuse treatment services.

28 (b) The two year period of residency must be uninterrupted, though a petitioner may have changed his  
29 place of residence within the two years, as long as each residence is located within the Commonwealth.

30 (c) No filing fee or court fees shall be imposed pursuant to this section.

31 (d) This section shall not apply to persons serving a mandatory life parole or to persons in the military  
32 service.

33 Section 176C. (a) The petitioner must demonstrate, by a preponderance of the evidence, that during  
34 his period of rehabilitation or recovery and rehabilitation and thereafter he has lived an honest and

35 upright life, conducted himself with sobriety and industry, exhibited good moral character, and  
36 conformed to and obeyed the law.

37 (b) The period of rehabilitation shall begin to run upon the discharge of the petitioner from custody or  
38 upon his release from parole or probation or upon release from a substance abuse treatment facility, or  
39 at the end of a period of continuance without a finding, whichever last occurs. For purposes of this  
40 chapter, to be eligible for a certificate, the period of rehabilitation or recovery and rehabilitation  
41 required shall be as follows:

42 (1) seven years in the case of a person convicted of a felony;

43 (2) three years in the case of any person convicted of a misdemeanor; or

44 (3) two years in the case of a person charged but not convicted;

45 (4) the court hearing the application for the certificate may, if the defendant was ordered to serve  
46 consecutive sentences, order that his statutory period of rehabilitation be extended for an additional  
47 period of time which, when combined with the time already served, does not exceed the period  
48 prescribed by statute for the sum of the maximum penalties for all the crimes for which the petitioner  
49 was sentenced.

50 Section 176D. Any person eligible to petition the court for a certificate shall be entitled to receive  
51 assistance from all rehabilitative agencies, including the adult probation officer of the county and all  
52 state parole officers, and, in the case of persons under the age of 30 years, from the department of  
53 youth services.

54 Section 176E. The petitioner shall give notice of the filing of his petition to the district attorney of the  
55 county in which the petition is filed, to the district attorney of the county in which the petitioner was  
56 convicted of an offense, to the attorney general and to the governor, together with notice of the time of  
57 the hearing of the petition, at least 30 days prior to the date set for such hearing.

58 Section 176F. During the proceedings upon the petition, the petitioner may be represented by counsel  
59 and if he has no counsel and elects to have legal representation, the court shall appoint counsel.

60 Section 176G. The court in which the petition is filed may require such testimony as it deems  
61 necessary, and the production, for the use of the court and without expense to the petitioner, of all  
62 records and reports relating to the petitioner and the offense for which he was charged, including the  
63 record of the trial, probation department records, if any, the records of any facility or penal institution  
64 from which the petitioner has been released from custody or from which the petitioner received  
65 substance abuse treatment showing his conduct therein, the records of such facility, institution or  
66 agency doctor, psychiatrist, or substance abuse counselor, parole records, the records of the  
67 department of youth services, and written reports or records of any other law enforcement agency  
68 concerning the conduct of the petitioner since his release on probation or parole or discharge from  
69 custody or treatment. All persons having custody of any such records shall make them available for the  
70 use of the court for the proceedings on the petition.

71 Section 176H. Upon the filing of the application for a certificate, the court may request from the district  
72 attorney in which the petition was filed an investigation relative to: the place of residence of the  
73 petitioner; the criminal record of the petitioner as shown by the records of the Department of Justice;  
74 any representation made to the court by the petitioner; the conduct of the petitioner during his period  
75 of rehabilitation; and any other information the court may deem necessary in making its determination.

76 If so requested, the district attorney shall provide the court with a full and complete report of such  
77 investigation.

78 Section 176I. Upon receiving proof of a violation of law committed since the petitioner's release from  
79 custody or discharge from probation or parole or substance abuse treatment, the court shall deny the  
80 petition.

81 Section 176J. If, after a hearing, the court finds that the petitioner has satisfied the requirements of  
82 sections 176B and 176C, the court shall issue a certificate declaring that the petitioner has been  
83 rehabilitated or has recovered and been rehabilitated and such certificate shall become a part of the  
84 petitioner's criminal offender record information.

85 Section 176K. Any certificate issued and under which the petitioner has not fulfilled the requirements of  
86 sections 176B and 176C shall be void.

87 Section 176L. If the petitioner files an application for a pardon pursuant to chapter 127, and if  
88 requested by the petitioner, the court shall forward the certificate to the advisory board of pardons with  
89 a recommendation that the governor grant the petitioner a pardon.

90 Section 176M. The clerk of the court shall immediately transmit certified copies of the certificate to the  
91 governor, to the commissioner of probation, the criminal history systems board, the Department of  
92 Justice and the Federal Bureau of Investigation.

93 Section 176N. Upon receipt of a certificate, the department of probation and the criminal history  
94 systems board in receipt of such certificate, if not voided, shall provide such certificate to any person or  
95 entity lawfully seeking information relative to the offense for which a person has received a certificate.

96 Section 176O. The trial court department shall cause standardized forms for filing a petition for a  
97 certificate and to provide notice of filing thereof to be printed and made available to the public in the  
98 district and superior court clerks office's of the trial court department, which forms shall be available at  
99 no charge to persons requesting them.

100 Section 176P. (a) All persons, prior to release from custody or discharge from probation or parole or  
101 prior to the conclusion of substance abuse treatment, or prior to having a case continued without a  
102 finding, shall be informed, in writing, by the official in charge of the place of confinement or by his  
103 probation or parole officer or by his substance abuse counselor or by the official in charge of the  
104 substance abuse treatment facility of his right to petition for, and of the procedure for filing the petition  
105 for, and obtaining, a certificate pursuant to this chapter.

106 (b) Prior to dismissal of a complaint or indictment a defendant shall be informed in writing by the clerk  
107 of the court dismissing the accusatory pleading of the defendant's right, if any, to petition for, and of the  
108 procedure for filing a petition for, and obtaining, a certificate pursuant to this chapter.

109 Section 176Q. Nothing in this chapter shall be construed to abridge or impair the power or  
110 authority conferred by law or regulation on any officer, board, or agency to revoke or suspend any right,  
111 privilege, or franchise for any act or omission unrelated to an offense for which a person has been issued  
112 a certificate, or to require the reinstatement of the right or privilege to practice or carry on any  
113 profession or occupation the practice or conduct of which requires the possession or obtaining of a  
114 license, permit or certificate.

115 Section 176R. No application to a public or private entity for a benefit to which the provisions of this  
116 chapter are applicable shall be denied by reason of the applicant's having criminal offender record  
117 information or by reason of a finding of lack of living an "honest and upright life", conducting himself

118 with “sobriety and industry”, exhibiting “good moral character”, and conforming to and obeying the law  
119 unless: (a) there is a direct relationship between one or more of the previous criminal offenses and the  
120 specific benefit sought; or (b) the specific benefit sought would involve an unreasonable risk to property  
121 or to the safety or welfare of specific individuals or the general public.

122 Section 176S. (a) In making a determination pursuant to section 176R of this chapter, the public or  
123 private entity shall consider the following factors:

124 (1) The public policy of the Commonwealth, as expressed in this act, to encourage the continued  
125 rehabilitation or recovery and rehabilitation of persons previously charged with or convicted of one or  
126 more offenses.

127 (2) The specific duties and responsibilities necessarily related to the benefit sought.

128 (3) The bearing, if any, the charge or charges or criminal offense or offenses of the applicant will have on  
129 his fitness or ability to perform one or more such duties or responsibilities.

130 (4) The time which has elapsed since the occurrence of the charge or charges or criminal offense or  
131 offenses.

132 (5) The age of the person at the time of occurrence of the charge or charges or criminal offense or  
133 offenses.

134 (6) The seriousness of the charge or charges or offense or offenses.

135 (7) Any information produced by the person, or produced on his behalf, in regard to his good conduct  
136 and rehabilitation or recovery and rehabilitation.



137 (8) The legitimate interest of the public or private entity in protecting property, and the safety and  
138 welfare of specific individuals or the general public.

139 (b) In making a determination pursuant to section 176R of this chapter, the public or private entity shall  
140 also give consideration to a certificate of rehabilitation or recovery and rehabilitation if held by the  
141 applicant which certificate shall create a presumption of rehabilitation or recovery and rehabilitation in  
142 regard to the charge or charges or criminal offense or offenses specified therein.

143 Section 176T. At the request of any certificate holder who has been denied a benefit, a public  
144 or private entity shall provide, within thirty days of a request, a written statement setting forth the  
145 reasons for such denial.

146 Section 176U. In relation to the denial of benefits by public or private entities, the provisions of  
147 this article shall be enforceable by a proceeding brought by the Civil Rights Division of the Attorney  
148 General's office.

149 Section 176V. Any person who knowingly uses or attempts to use a revoked certificate in order to  
150 obtain or to exercise any right or privilege that he would not be entitled to obtain or to exercise without  
151 a valid certificate shall be guilty of a misdemeanor.