

# HOUSE . . . . . No. 1908

## The Commonwealth of Massachusetts

PRESENTED BY:

*Steven Ultrino*

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 adoption of the accompanying bill:

An Act providing for certificates of rehabilitation, second chances, increased success, and community prosperity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>2/4/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/19/2021</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>2/19/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/22/2021</i>
<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>2/26/2021</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>3/3/2021</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>3/11/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>3/19/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>4/2/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>4/13/2021</i>

**HOUSE . . . . . No. 1908**

By Mr. Ultrino of Malden, a petition (accompanied by bill, House, No. 1908) of Steven Ultrino and others for legislation to encourage and enhance employment and licensure opportunities for persons previously prosecuted or convicted of one or more criminal offenses. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act providing for certificates of rehabilitation, second chances, increased success, and community prosperity.

*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. Section 172 of chapter 6 of the General Laws, as appearing in the 2018  
2 Official Edition, is hereby amended by striking out subsection (e) and inserting in place thereof  
3 the following subsection:--

4 (e) No employer or person relying on volunteers shall be liable for negligent hiring  
5 practices by reason of relying solely on criminal offender record information received from the  
6 department or a certificate of rehabilitation pursuant to chapter 276C and not performing  
7 additional criminal history background checks, unless required to do so by law; provided,  
8 however, that the employer made an employment decision within 90 days of obtaining criminal  
9 offender record information, and maintained and followed policies and procedures for  
10 verification of the subject’s identifying information consistent with the requirements set forth in  
11 this section and in the department’s regulations. A certificate of rehabilitation, however, may be  
12 admitted as evidence of due care in hiring, retention, or selection of an applicant or employee.

13 SECTION 2. Section 172N of said chapter 6, as appearing in the 2018 Official Edition, is  
14 hereby amended by inserting after the second sentence, the following sentence and paragraphs:-

15 “Unreasonable risk” shall mean that it is likely that a person may engage in unlawful  
16 activity in the workplace similar to the criminal conviction or convictions for which the person  
17 was previously convicted, or other offenses made available to the licensing authority pursuant to  
18 section 172 of chapter 6.

19 (a) Applications for licenses provided by licensing authorities shall include a statement  
20 that a certificate of rehabilitation may relieve the holder of such a certificate from suspension of  
21 a license or disqualification for eligibility for a license.

22 (b) Notwithstanding any other provisions in the law to the contrary, a certificate of  
23 rehabilitation under chapter 276C shall create a presumption that an individual is rehabilitated  
24 and suitable for a license, and remove any disqualification or suspension from licensure imposed  
25 by reason of any offense or offenses specified within the certificate of rehabilitation. An offense  
26 that ends in a dismissal after a continuance without a finding shall not be deemed a conviction  
27 and records related to such an offense shall not be admissible in evidence or used at a licensing  
28 proceeding as a basis for denial of a license. The fact that an applicant for a license does not hold  
29 or provide a certificate of rehabilitation shall not be a basis for denial of a license.

30 (c) Notwithstanding any other provisions in the law to the contrary, a licensing authority  
31 shall not deny a license to a person with one or more past criminal convictions or by reason of a  
32 finding of lack of good moral character or lack of suitability if such a finding is based upon the  
33 fact that the person was previously convicted of one or more criminal offenses, unless:

34 (i) the nature of criminal conduct for which the person was convicted has a direct bearing  
35 on and affects such person's fitness or ability to perform one or more primary duties or  
36 responsibilities necessarily related to the license or employment sought; or

37 (ii) the issuance or renewal of the license would involve an unreasonable risk to property  
38 or to the safety or welfare of a specific individual or the general public.

39 (d) In making such a determination, the licensing authority shall undertake an  
40 individualized assessment and shall consider the following factors:

41 (i) the public policy of the commonwealth, as expressed in this section, to encourage and  
42 enhance employment and licensure opportunities for persons previously prosecuted or convicted  
43 of one or more criminal offenses;

44 (ii) the type of work to be performed and the nature of the primary duties or  
45 responsibilities necessarily related to the license;

46 (iii) whether the offense or offenses were recently committed, and whether the amount of  
47 time that has elapsed since the occurrence of the offense or offenses diminishes the relevance of  
48 the offense or offenses;

49 (iv) the age of the person at the time of the occurrence of the criminal offense or offenses,  
50 including whether youth or lack of maturity related the person's age at the time of the offense is  
51 a mitigating circumstance;

52 (v) the seriousness of the offense or offenses;

53 (vi) any evidence that the person performed the same type of work after the offense or  
54 offenses with no known incidents of criminal conduct;

55 (vii) any evidence regarding the person’s rehabilitation, including but not limited to civic  
56 and community contributions, efforts at self-improvement, sobriety, education or training, and  
57 good conduct; and

58 (viii) if the applicant or license holder presents a certificate of rehabilitation, the  
59 presumption that the individual is rehabilitated and suitable for a license as related to any offense  
60 specified within the certificate of rehabilitation.

61 (e) The licensing authority shall, at the time of denial of employment, provide the  
62 applicant or license holder with a written statement that sets forth specific reasons for the denial.

63 SECTION 3. Subsection (11) of section 18¾ of chapter 6A of the General Laws, as so  
64 appearing, is hereby amended by striking out the words “upon their release from a correctional  
65 facility” in the first sentence and inserting in place thereof, the following words:- within 30 days  
66 of their entry to a correctional or juvenile facility, and again, 30 days before their expected date  
67 of release from a correctional or juvenile facility.

68 SECTION 4. Subsection (11) of section 18¾ of chapter 6A of the General Laws, as so  
69 appearing, is hereby amended by striking out the words “and (vi) a list of answers to frequently  
70 asked questions about criminal offender record information” in the last sentence and inserting in  
71 place thereof, the following words:-

72 (vi) a summary of how to obtain a certificate of rehabilitation and the effect of such a  
73 certificate; (vii) a summary of how to expunge certain records pursuant to section 100E through  
74 section 100K of chapter 276 and the effect of such expungement; and (viii) a list of answers to  
75 frequently asked questions about criminal offender record information.

76 SECTION 5. Subsection 8 of section 4 of chapter 151B of the General Laws, as so  
77 appearing, is hereby amended by adding the following sentences after the last sentence:- A  
78 certificate of rehabilitation shall create a presumption that an individual is rehabilitated, and  
79 remove any disqualification for housing based on a criminal conviction or other offense if the  
80 conviction or offense is included in a certificate of rehabilitation under chapter 276C. The fact  
81 that an applicant does not hold or provide a certificate of rehabilitation shall not be a basis for  
82 denial of housing.

83 SECTION 6. Subsection 9 of section 4 of chapter 151B of the General Laws, as so  
84 appearing, is hereby amended by inserting the following paragraphs after the last sentence:-

85 Notwithstanding other provisions in the law, a conviction shall not be treated as a  
86 conviction within the meaning of any provision of law that imposes, by reason of the conviction,  
87 a disqualification for employment, if relief from the disqualification for employment related to  
88 the conviction is included in a certificate of rehabilitation pursuant to chapter 276C. A certificate  
89 of rehabilitation under Chapter 276C shall create a presumption that an individual is rehabilitated  
90 and suitable for employment. The fact that a person does not hold or provide a certificate of  
91 rehabilitation shall not be a basis for denial of employment. A criminal offense that ended in a  
92 dismissal after a continuance without a finding shall not be deemed a conviction or a basis for  
93 denial of employment.

94 (a) An employer shall not deny employment to an individual because the person was  
95 convicted of one or more criminal offenses, or by reason of a finding of lack of good moral  
96 character or suitability, when such finding is based upon the fact that the applicant was convicted  
97 of one or more criminal offenses, unless:

98 (i) the nature of criminal conduct for which the person was convicted has a direct bearing  
99 on and affects such person's fitness or ability to perform one or more of primary duties or  
100 responsibilities necessarily related to the employment sought; or

101 (ii) hiring or continued employment of the person would involve an unreasonable risk to  
102 property or to the safety or welfare of a specific individual or the general public.

103 (b) In making this determination, the employer shall undertake an individualized  
104 assessment of the applicant and shall consider the following factors:

105 (i) the public policy of the commonwealth, as expressed in this section, to encourage and  
106 enhance employment and licensure opportunities for persons previously convicted or prosecuted  
107 for one or more criminal offenses

108 (ii) the type of work to be performed and the nature of the primary duties or  
109 responsibilities necessarily related to the employment sought;

110 (iii) whether the offense or offenses were recently committed, and whether the amount of  
111 time that has elapsed since the occurrence of the offense or offenses significantly diminishes the  
112 relevance of the offense or offenses;

113 (iv) the age of the person at the time of the occurrence of the criminal offense or offenses,  
114 including whether youth or lack of maturity related the person's age at the time of the offense is  
115 a mitigating circumstance;

116 (v) the seriousness of the offense or offenses;

117 (vi) any evidence that the person performed the same type of work after the offense or  
118 offences with no known incidents of criminal conduct;

119 (vii) any evidence regarding the person’s rehabilitation, including but not limited to civic  
120 and community contributions, efforts at self-improvement, sobriety, education or training, and  
121 good conduct; and

122 (viii) if the applicant or license holder presents a certificate of rehabilitation, the  
123 presumption that the individual is rehabilitated and suitable for employment as related to any  
124 offense specified within the certificate of rehabilitation.

125 (c) An employer shall, at the time of denial of employment, provide the applicant or  
126 employee with a written statement that sets forth specific reasons for the denial.

127 SECTION 7. Section 100A of chapter 276, as appearing in the 2018 Official Edition, is  
128 hereby further amended by inserting after the last sentence in the first paragraph, the following  
129 sentence- Notwithstanding this provision, a person who obtains a certificate of rehabilitation  
130 pursuant to chapter 276C, shall be permitted to seal any conviction for violation of sections 121  
131 to 131H, inclusive, of chapter 140 or for violation of chapter 268, if relief from ineligibility for  
132 sealing of the conviction or convictions, is included in the certificate of rehabilitation.

133 SECTION 8. Chapter 276B, as appearing in the 2018 Official Edition, is hereby further  
134 amended by inserting after the last sentence in chapter 276B, the following chapter-

135 Chapter 276C. Certificates of rehabilitation.

136 Section 1. Definitions.

137 As used in this chapter, the following words shall have the following meanings:-

138 “Certificate of rehabilitation”, a certificate issued to an eligible applicant pursuant to this  
139 chapter to: (i) preserve and enhance the person’s prospects for employment, housing,



140 occupational licensing, commissions, appointments, permits, and other opportunities; (ii) to  
141 increase the likelihood of a person's success in society; and (iii) to remove any disqualification,  
142 ineligibility, bar, or forfeiture related to employment, housing, occupational licensing,  
143 commissions, permits, or any other right or privilege caused by a conviction or offense that is  
144 covered by a certificate of rehabilitation.

145 "Disqualification" or "disqualified", an ineligibility, exclusion, penalty, prohibition, bar,  
146 or other disadvantage that results from a conviction or other offense eligible for inclusion in a  
147 certificate of rehabilitation, but not including imprisonment, probation, parole, restitution,  
148 restraint on an individual's driving privilege, registration for a sex offense conviction and  
149 restrictions related to individuals registered as sex offenders, terms of a sentence related to a  
150 criminal conviction or other offense, and not including any license or permit to own, possess,  
151 carry, or fire any explosive, ammunition, pistol, handgun, rifle, shotgun, or other firearm.

152 "Eligible applicant", a person convicted of one or more offenses by a department of the  
153 trial court within the commonwealth, a person with revocable sentence, including but not limited  
154 to a continuance without a finding by a department of the trial court within the commonwealth, a  
155 person with a juvenile adjudication or adjudications within the commonwealth; or a person  
156 convicted of one or more offenses in another jurisdiction or by a federal court and who resides in  
157 the commonwealth.

158 "Employment", an occupation, vocation, job, or employment including, but not limited to  
159 work on commission, contract work, or any form of vocational or employment training or  
160 education conducted within the commonwealth, provided, however, that "employment" shall not,  
161 for the purposes of this section, include membership in a law enforcement agency.

162           “Housing”, lease, rental or occupancy of an apartment, condominium, building, land, or  
163 other real property in the commonwealth, or an application for the same by an applicant, tenant,  
164 or other lessee.

165           “License”, a certificate, license, permit or grant of permission required by the  
166 commonwealth, its political subdivisions, or a board of licensure as a condition for the lawful  
167 practice of an occupation, employment, trade, vocation, business, or profession; provided,  
168 however, that “license” shall not, for the purposes of this section, include any license or permit  
169 related an individual’s driving privilege, or any license or permit to own, possess, carry, or fire  
170 any explosive, ammunition, pistol, handgun, rifle, shotgun or other firearm.

171           “Employer”, a person, company, partnership, corporation, labor organization or  
172 association, employment agency, or other similar entity with six or more employees.

173           “Public agency”, the commonwealth or any local subdivision thereof, or any state,  
174 district, county, city, town, or local department, agency, board, or commission within the  
175 commonwealth.

176           “Revocable sentence”, a continuance without a finding, a suspended sentence, a sentence  
177 upon which execution was stayed or a sentence to probation.

178           “Unreasonable risk”, it is likely that a person may engage in unlawful activity in the  
179 workplace similar to the criminal conviction or convictions for which the person was previously  
180 convicted, or as related to any other opportunity or offense that the applicant seeks to be included  
181 for inclusion in a certificate of rehabilitation.

182           Section 2. Eligibility.

183 (a) A person convicted of one or more criminal convictions within the commonwealth  
184 may seek a certificate of rehabilitation at the time of sentencing by a trial court of the  
185 commonwealth or at any time thereafter related to said offense or offenses.

186 (b) A person who received a revocable sentence or whose offense or offenses were  
187 continued without a finding by a department of the trial court within the commonwealth may  
188 seek a certificate of rehabilitation at the time of entry of such a deposition or at a later time,  
189 including, but not limited to the time of dismissal of the charge or charges.

190 (c) A person with one or more juvenile court adjudications within the commonwealth  
191 may seek a certificate of rehabilitation related to the offense or offenses at the time of sentencing  
192 or at any time thereafter.

193 (d) A person who has one or more convictions from outside of the commonwealth or  
194 from a federal court, and is a resident of the commonwealth, may seek a certificate of  
195 rehabilitation related to said offenses or offenses.

196 Section 3. Application for a certificate of rehabilitation.

197 All applications, certificates, and orders necessary for the purposes of this chapter shall  
198 be upon forms promulgated by the administrator of the trial court. The application provided to a  
199 person applying for a certificate under this section shall use language that permits the person to  
200 prepare the form pro se and shall include a check-off format that permits the person to specify  
201 the disqualifications from which the person is seeking relief, including but not limited to  
202 employment, housing, education and training, occupational licensing, loans, notary public  
203 appointments, other commissions and appointments, holding of public office, sealing of any  
204 conviction entered pursuant to sections 121 to 131H, inclusive, of chapter 140 or for violations

205 of chapter 268, or removal of other disqualifications as specified by the applicant. Applications  
206 for certificates of rehabilitation shall be made available to the public, including individuals who  
207 are incarcerated within the commonwealth, by the trial court departments, the probation  
208 department, the parole board, the department of corrections, any prison, house of correction, or  
209 juvenile facility within the commonwealth, the department of youth services, the sheriffs, and  
210 any office of community corrections.

211 Section 4. Procedure.

212 (a) There shall be no filing fee or other fees required to obtain a certificate of  
213 rehabilitation. The clerk's office of a trial court, upon receipt of an application under this section,  
214 shall provide a copy of the application and any documents filed in support of the application to  
215 the district attorney for the county where the court is located.

216 (b) A person seeking a certificate of rehabilitation shall file the application in the same  
217 trial court within the commonwealth that entered the conviction or convictions, juvenile  
218 adjudication or adjudications, revocable sentence, or continuance without a finding. A person  
219 with eligible offenses in more than one division of the same trial court department may file an  
220 application pertaining to all the charges in said court department, but the application shall be  
221 filed in the court division where the last offense occurred and the applicant must file attested or  
222 certified copies of the docket sheets for the cases from the other court divisions along with the  
223 application. The district attorney shall have the right to object to venue and a judge in the court  
224 division where the application was filed may, for good cause, decline to rule on or hear the  
225 applicant's request for a certificate of rehabilitation for any conviction or offense from another

226 court division, without prejudice to the applicant's request for a certificate of rehabilitation in the  
227 court division where the other conviction, convictions offense or offenses originated.

228 (c) A person residing in the commonwealth with one or more convictions from outside of  
229 the commonwealth, or from a federal court, may seek a certificate of rehabilitation by filing the  
230 application along with an attested or certified copy of the court docket sheets pertaining to the  
231 conviction or convictions in a trial court within the commonwealth having territorial jurisdiction  
232 over the person's residence.

233 (d) An eligible applicant, an attorney for the applicant, or the district attorney may  
234 request a hearing on the application and the court shall schedule a hearing on the application for  
235 a certificate of rehabilitation upon such a request. Otherwise, the court may enter an order  
236 granting or denying a certificate of rehabilitation without a hearing, or schedule a hearing as it  
237 deems appropriate.

238 Section 5. Standard for granting relief.

239 A court may grant a certificate of rehabilitation if the court finds that:

240 (i) the person is eligible for relief under this chapter;

241 (ii) the relief granted by the certificate is consistent with the person's rehabilitation;

242 (iii) the issuance of the certificate would promote the person's access to employment,  
243 housing, occupational licensing, or another opportunity or opportunities, but not pose an  
244 unreasonable risk to the safety of a specific individual or the general public.

245 Section 6. Order and scope of relief.

246 (a) A court granting a certificate of rehabilitation may relieve an eligible applicant of all  
247 disqualifications imposed by laws of the commonwealth due to the applicant's conviction,  
248 convictions, or other offenses as permitted by this chapter, or limit relief to one or more  
249 enumerated disqualifications. The court shall provide a written ruling setting forth the reasons for  
250 allowance or denial of the application within seven days of the hearing to the applicant and the  
251 district attorney, or within 30 days of the applicant's filing of an application if there is no  
252 hearing.

253 (b) The court shall provide certified copies of the certificate of rehabilitation at no cost  
254 upon request of a person granted such a certificate.

255 Section 7. Effect of allowance of a certificate of rehabilitation.

256 (a) Nothing contained in this chapter shall be deemed to limit, delay, or affect the  
257 procedural process for applying for pardons to the governor, and no certificate issued hereunder  
258 shall be deemed or construed to be an executive pardon.

259 (b) A certificate of rehabilitation under this chapter shall remove any disqualification as  
260 set forth in any statute, regulation or policy promulgated by the commonwealth or a public  
261 agency related to the person's past offense or offenses as provided in the certificate of  
262 rehabilitation. A certificate of rehabilitation shall create a presumption that an individual is  
263 rehabilitated and suitable for employment, housing, a license, and other opportunities as  
264 provided by the certificate of rehabilitation. Notwithstanding this provision, the fact that an  
265 applicant does not hold or provide a certificate of rehabilitation shall not be a basis for denial of  
266 employment, housing, licenses, or other opportunities.

267 (c) A person who obtains a certificate of rehabilitation pursuant to section 6 of chapter  
268 276B, shall be permitted to seal any conviction for violation of sections 121 to 131H, inclusive,  
269 of chapter 140 or for violations of chapter 268, as specified and provided in the certificate of  
270 rehabilitation.

271 Section 8. Appeal and certificate enlargement.

272 Any applicant whose application for a certificate of rehabilitation is denied shall have the  
273 right to appeal the denial within 30 days of receipt of written notice of the decision. Any court  
274 that issued a certificate of rehabilitation may also issue a new certificate at any time that enlarges  
275 the relief previously granted if an eligible applicant files another application under this chapter.  
276 An applicant whose application was denied by a court shall not be barred from filing another  
277 application, including submission of additional evidence at a future time.

278 Section 9. Revocation.

279 Where the court has imposed a continuance without a finding or other revocable sentence  
280 and the certificate of rehabilitation is issued prior to the expiration or termination of the time  
281 when the court may revoke such sentence, the certificate shall be deemed to be a temporary  
282 certificate until such time as the court's authority to revoke the sentence has expired or is  
283 terminated. While temporary, such certificate: (i) may be revoked by the court for violation of  
284 the conditions of the sentence; and (ii) shall be revoked by the court if it revokes the sentence  
285 and commits the person to a correctional facility. Any such revocation shall be upon notice and  
286 an opportunity to be heard by the person who was granted a temporary certificate. A hearing on  
287 the revocation shall be held if the person requests a hearing. If the certificate is not so revoked, it  
288 shall become a permanent certificate upon expiration or termination of the court's authority to

289 revoke the sentence. Upon motion of the district attorney or the commissioner of probation, a  
290 court may revoke a certificate of rehabilitation upon evidence of a subsequent conviction or  
291 juvenile adjudication.

292 Section 10. Reporting.

293 All licensing authorities shall report to the General Court annually beginning one year  
294 from the effective date of this act the number of licensure applicants who presented certificates  
295 of rehabilitation, the number of licenses awarded to applicants with conviction histories, the  
296 number of applicants with criminal histories denied licenses, the number of licenses awarded to  
297 applicants with certificates of rehabilitation, and the number of applicants with certificates of  
298 rehabilitation denied licenses.

299 All trial courts issuing certificates of rehabilitation shall report to the General Court  
300 beginning one year from the effective date of this act the number of applications made, the  
301 number of applications that are denied, and the number of applications that are granted.