

**SENATE . . . . . No. 00905**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Steven A. Tolman*

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*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:

*Steven A. Tolman*

DISTRICT/ADDRESS:

*Second Suffolk and Middlesex*

# SENATE . . . . . No. 00905

By Mr. Tolman, petition (accompanied by bill, Senate, No. 905) of Tolman for legislation relative to providing for certificates of rehabilitation and recovery and rehabilitation for substance abusers [Joint Committee on the Judiciary].

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ SENATE  
□ , NO. 1838 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
\_\_\_\_\_

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  
2 section 176 the following \_\_\_\_\_ sections:-

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

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

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

10 (3) “Certificate”, either a certificate or 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  
13 rehabilitation or a certificate of recovery and rehabilitation.

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

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

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

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

35 Section 176C. (a) The petitioner must demonstrate, by a preponderance of the  
36 evidence, that during his period of rehabilitation or recovery and rehabilitation and thereafter he  
37 has lived an honest and upright life, conducted himself with sobriety and industry, exhibited  
38 good moral character, and conformed to and obeyed the law.

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

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

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

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

47 (4) the court hearing the application for the certificate may, if the defendant was  
48 ordered to serve consecutive sentences, order that his statutory period of rehabilitation be  
49 extended for an additional period of time which, when combined with the time already served,

50 does not exceed the period prescribed by statute for the sum of the maximum penalties for all the  
51 crimes for which the petitioner was sentenced.

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

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

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

64           Section 176G. The court in which the petition is filed may require such testimony as  
65 it deems necessary, and the production, for the use of the court and without expense to the  
66 petitioner, of all records and reports relating to the petitioner and the offense for which he was  
67 charged, including the record of the trial, probation department records, if any, the records of any  
68 facility or penal institution from which the petitioner has been released from custody or from  
69 which the petitioner received substance abuse treatment showing his conduct therein, the records  
70 of such facility, institution or agency doctor, psychiatrist, or substance abuse counselor, parole  
71 records, the records of the department of youth services, and written reports or records of any

72 other law enforcement agency concerning the conduct of the petitioner since his release on  
73 probation or parole or discharge from custody or treatment. All persons having custody of any  
74 such records shall make them available for the use of the court for the proceedings on the  
75 petition.

76           Section 176H. Upon the filing of the application for a certificate, the court may  
77 request from the district attorney in which the petition was filed an investigation relative to: the  
78 place of residence of the petitioner; the criminal record of the petitioner as shown by the records  
79 of the Department of Justice; any representation made to the court by the petitioner; the conduct  
80 of the petitioner during his period of rehabilitation; and any other information the court may  
81 deem necessary in making its determination. If so requested, the district attorney shall provide  
82 the court with a full and complete report of such investigation.

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

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

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

92           Section 176L. If the petitioner files an application for a pardon pursuant to chapter  
93 127, and if requested by the petitioner, the court shall forward the certificate to the advisory  
94 board of pardons with a recommendation that the governor grant the petitioner a pardon.

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

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

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

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

112           (b) Prior to dismissal of a complaint or indictment a defendant shall be informed in  
113 writing by the clerk of the court dismissing the accusatory pleading of the defendant's right, if

114 any, to petition for, and of the procedure for filing a petition for, and obtaining, a certificate  
115 pursuant to this chapter.

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

122           Section 176R. No application to a public or private entity for a benefit to which the  
123 provisions of this chapter are applicable shall be denied by reason of the applicant's having  
124 criminal offender record information or by reason of a finding of lack of living an "honest and  
125 upright life", conducting himself with "sobriety and industry", exhibiting "good moral  
126 character", and conforming to and obeying the law unless: (a) there is a direct relationship  
127 between one or more of the previous criminal offenses and the specific benefit sought; or (b) the  
128 specific benefit sought would involve an unreasonable risk to property or to the safety or welfare  
129 of specific individuals or the general public.

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

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

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



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

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

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

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

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

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

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

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

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

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