

2010 -- S 2316

LC00327

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Senators Metts, and C Levesque

Date Introduced: February 11, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 1.6

4 REHABILITATION, RE-ENTRY AND PUBLIC SAFETY ACT OF 2010

5 **12-1.6-1. Name.** – This chapter shall be known and may be cited as the “Rehabilitation,
6 Re-entry and Public Safety Act of 2010”.

7 **12-1.6-2. Legislative finds, intent, and purpose of the “Rehabilitation, Re-entry and**
8 **Public Safety Act 2009”.** – (a) When people are convicted of a crime their legal status changes
9 forever. A criminal record can exclude them from jobs, occupational licenses, housing, and other
10 benefits and opportunities. Many restrictions on convicted persons are narrowly tailored and
11 serve to protect society against an identified public safety risk, but others may be arbitrary,
12 overboard, and without regard to any post-conviction rehabilitation achieved by a defendant. In
13 these cases employers and others who control access to opportunities and benefits may hesitate to
14 give this population a second chance thus inhibiting the successful reentry into society of those
15 who have achieved their rehabilitation.

16 (b) Given the current ease of conducting background checks, it is harder and harder for
17 people who have been convicted of a crime to escape their past, no matter how heroic their efforts
18 to turn their lives around. The denial of access to employment, professional licenses, housing,
19 and other benefits and opportunities has serious implications, in terms of fairness to the individual

1 affected and burdens placed on the community and may frustrate the chance of successful re-
2 entry into the community thereby encouraging recidivism.

3 (c) People who have successfully completed their court-imposed sentences need to be
4 able to reestablish themselves as law-abiding members of society. At the same time, employers
5 and other decision-makers need to have some reassurance of a person’s reliability. Therefore, the
6 intent and purpose of this act is to prescribe procedures that would, in select and appropriate
7 cases, allow the issuance of a court ordered instrument, a “certificate of rehabilitation”. Said
8 certificate, if granted by the court, would serve to relieve the petitioner of some, and in
9 appropriate cases, all of the collateral consequences flowing from his or her criminal record. Said
10 certificate would also serve as a judicial determination that the defendant has been successfully
11 rehabilitated and is therefore deserving of re-entry into society.

12 (d) No change to existing law is contemplated by this act as it relates to the following:

13 (1) Destruction or sealing of criminal records pursuant to Rhode Island general laws
14 sections 12-1-12; or

15 (2) Expungement of criminal records pursuant to sections 12-1.3-1 through 4; or

16 (3) The power of the governor to pardon.

17 **12-1.6-3. Definitions.** – As used in this chapter the following definitions shall apply: (1)
18 “Eligible offender” shall mean a person who has been convicted of one or more than one crime or
19 offense. Provided, further, that in the case of a misdemeanor offender said person has ceased to
20 be subject to probation imposed as the result of any misdemeanor conviction and in the case of
21 felony offender more than two (2) years has passed since the most recent imposition of sentence
22 for a felony.

23 (2) “Certificate of rehabilitation” shall mean a legal instrument issued by the court in
24 which the person was convicted. Said instrument shall, consistent with concerns of public safety,
25 have the effect of removing legal impediments to and restrictions upon the person’s ability to
26 obtain employment, professional licenses, housing and other benefits and opportunities.
27 Provided, further, that said instrument shall serve as a judicial determination that the person
28 receiving it has, consistent with the concerns of public safety, successfully achieved his or her
29 rehabilitation and is therefore deserving of re-entry into society.

30 (3) “Conviction” shall mean the imposition of a fine, period of incarceration whether or
31 not suspended, or probation imposed after the entry of a plea of nolo contendere.

32 (4) “Petition” shall mean the motion, pleading, or other legal document or form seeking
33 the issuance of a certificate of rehabilitation from the court.

34 (5) “Petitioner” shall mean the person seeking a certificate of rehabilitation from the

1 court.

2 **12-1.6-4. Procedures for and hearings on the petition for issuance of a certificate**
3 **rehabilitation.** – (a) A person may petition the court in which the person was convicted for an
4 order granting the issuance of a certificate of rehabilitation as prescribed by this chapter. The
5 petitioner shall give notice of the filing of the petition to the attorney general and to each arresting
6 police department together with notice of the time of the hearing of the petition, at least thirty
7 (30) days prior to the date set for such hearing. During the proceedings upon the petition, the
8 petitioner may be represented by counsel of his or her own selection; if he or she has no such
9 counsel he or she shall be represented by the public defender. No filing fee nor court fees of any
10 kind shall be required of a petitioner in proceedings under this chapter.

11 (b) The court in which the petition is filed may require such testimony as it deems
12 necessary, and the production, for the use of the court and without expense of any kind to the
13 petitioner, of all records and reports relating to the petitioner and the crime(s) of which he or she
14 was convicted, including the person’s entire criminal record, record of the trial or, the report of
15 the probation officer, if any, the records of the prison, jail detention facility or other penal
16 institution from which the petitioner has been released showing his or her conduct during the time
17 he was there, the records of the parole officer concerning him/her if he or she was released on
18 parole, and written reports or records of any other law enforcement agency concerning the
19 conduct of the petitioner since his or her release on probation or parole or discharge from
20 custody. All persons having custody of any such records shall make them available for the use of
21 the court in the proceeding.

22 (c) The court may, consistent with its obligation to consider those factors prescribed in
23 the following section, require that the petitioner produce any relevant and material information so
24 that it might make an informed and intelligent decision.

25 (d) The judge, considering the petition, must set forth on the record and in open court the
26 circumstances which he or she has found by a preponderance of the evidence as justification to
27 grant the issuance of a certificate of rehabilitation. If such a certificate is granted under this
28 chapter and the office of the attorney general objects to said issuance it may appeal to the Rhode
29 Island supreme court within seven (7) days of the court’s decision. When taking such an appeal
30 issuance of the certificate of rehabilitation shall be automatically stayed once the state’s appeal is
31 perfected.

32 **12-1.6-5. Factors to be relied upon by the court in considering a petition for issuance**
33 **of a certificate of rehabilitation.** – (a) At the hearing held pursuant to the filing of the petition
34 for the issuance of a certificate of rehabilitation, all relevant evidence, testimony, or other

1 information shall be considered by the court in order to determine if the petitioner's rehabilitation
2 has been attained to the court's satisfaction.

3 (b) In addition to the requirements and procedures set forth in this section a person
4 seeking the issuance of a certificate of rehabilitation shall be required to prove and the court must
5 find by a preponderance of the evidence that the petitioner is an eligible offender as prescribed by
6 this section, has lived an honest and upright life, has conducted himself or herself with sobriety
7 and industry, has exhibited good moral character, and has conformed to and obeyed the laws of
8 the land.

9 **12-1.6-6. Effect of certificate of rehabilitation.** – (a) The certificate of rehabilitation
10 shall serve as judicial determination that the person receiving it has, consistent with concerns of
11 public safety, successfully achieved his or her rehabilitation and is therefore deserving of re-entry
12 into society, has lived an honest and upright life, has conducted himself or herself with sobriety
13 and industry, has exhibited good moral character, and has conformed to and obeyed the laws of
14 the land.

15 (b) A certificate of rehabilitation may be granted as provided in this chapter to relieve an
16 eligible offender of any forfeiture or disability; ineligibility to receive or revocation of any license
17 of permit of employment or franchise; or to remove any bar to his employment automatically
18 imposed by law by reason of his conviction of the crime or of the offense specified therein. Such
19 certificate may be limited to one or more enumerated ineligibilities, revocations, and suspensions,
20 forfeitures, disabilities or bars, or may relieve the eligible offender of all ineligibilities, revocation
21 and suspension, forfeitures, disabilities and bars.

22 (c) A certificate of rehabilitation shall not, however, in any way prevent any judicial,
23 administrative, licensing or other body, board or authority from relying upon the conviction
24 specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse
25 to issue or refuse to renew any license, permit or other authority or privilege in accordance to the
26 provisions of this chapter, when there is a direct relationship between the person's criminal record
27 and the specific license, employment, or benefit; the employment is in the area of law
28 enforcement or corrections; or there would be unreasonable risk to public safety or property.

29 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE

1 This act would allow the issuance of a court ordered certificate of rehabilitation. This
2 certificate would enable those who have successfully completed their court-imposed sentences to
3 more easily gain reentry into society.

4 This act would take effect upon take passage.

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