

**Certificate of Rehabilitation  
Model Legislation**

DISCRETIONARY RELIEF FROM FORFEITURES AND DISABILITIES  
AUTOMATICALLY IMPOSED BY LAW

- A. Definitions and rules of construction.
- B. Certificate of Rehabilitation.
- C. Applicability of certificate.
- D. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.
- E. Factors to be considered.
- F. Written statement upon denial of license or employment.
- G. Certificates of Rehabilitation issued by courts.
- H. Certificates of Rehabilitation issued by the board of parole.
- I. Effect of revocation; use of revoked certificate.
- J. Forms and filing.
- K. Certificate not to be deemed to be a pardon.
- L. Report.

Section (A). Definitions and rules of construction.

1. As used in this article the following terms have the following meanings:
  - (a) "Eligible offender" shall mean a person who has been convicted of one or more than one crime or offense and has not been sentenced to an institution under the jurisdiction of the state department of correctional services.
  - (b) "Eligible serious offender" shall mean a person who has a conviction(s) of a felony in this state and was committed to an institution under the jurisdiction of the state department of correctional services, or a person who has been convicted of a crime or offense in any other jurisdiction and is a resident of this state.
  - (c) "Revocable sentence" means a suspended sentence or a sentence upon which execution was suspended; or a sentence of probation or of conditional discharge.
2. For the purposes of this article the following rule of construction shall apply:
  - (a) A plea or a verdict of guilty upon which sentence or the execution of sentence has been suspended or upon which a sentence of probation, conditional discharge, or unconditional discharge has been imposed shall be deemed to be a conviction.
3. "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.
4. "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.
5. "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought.

6. "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.
7. "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

Section (B). Certificate of Rehabilitation.

1. A certificate of rehabilitation may be granted as provided in this article to relieve an eligible offender or eligible serious offender of any forfeiture or disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated forfeitures, disabilities or bars, or may relieve the eligible offender or eligible serious offender of all forfeitures, disabilities and bars. Provided, however, that no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office.
2. Notwithstanding any other provision of law, a conviction of a crime or of an offense specified in a certificate of rehabilitation shall not cause automatic forfeiture of any license, permit, employment or franchise, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate.
3. A certificate of rehabilitation shall not, however, in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege in accordance to the provisions set out in section (D) of this article.

Section (C). Applicability of certificates. The provisions of this article shall apply to any application by any person who has previously been convicted of one or more criminal offenses, in this state or in any other jurisdiction, to any public agency or private employer for a license or employment, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon or certificate of rehabilitation.

Section (D). Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.

No application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

1. there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or
2. the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Section (E). Factors to be considered concerning a previous criminal conviction; presumption.

1. In making a determination pursuant to section (D) of this chapter, the public agency or private employer shall consider the following factors:
  - (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
  - (b) The specific duties and responsibilities necessarily related to the license or employment sought.
  - (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
  - (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
  - (e) The age of the person at the time of occurrence of the criminal offense or offenses.
  - (f) The seriousness of the offense or offenses.
  - (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
  - (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.
2. In making a determination pursuant to section (D) of this chapter, the public agency or private employer shall also give consideration to a certificate of rehabilitation issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

Section (F). Written statement upon denial of license or employment.

At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer

shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

Section (G). Certificates of Rehabilitation issued by courts.

1. Any court of this state may, in its discretion, issue a certificate of rehabilitation to an eligible offender for a conviction that occurred in such court, if the court either (a) imposed a revocable sentence or (b) imposed a sentence other than one executed by commitment to an institution under the jurisdiction of the state department of correctional services. Such certificate may be issued (i) at the time sentence is pronounced, in which case it may grant relief from forfeitures as well as from disabilities, or (ii) at any time thereafter, in which case it shall apply only to disabilities.
2. Such certificate shall not be issued by the court unless the court is satisfied that:
  - (a) The person to whom it is to be granted is an eligible offender, as defined in section A-1(a);
  - (b) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible offender; and
  - (c) The relief to be granted by the certificate is consistent with the public interest.
3. Where a certificate of rehabilitation is not issued at the time sentence is pronounced, it shall only be issued thereafter upon verified application to the court. The court may, for the purpose of determining whether such certificate shall be issued, request its probation service to conduct an investigation of the applicant, or if the court has no probation service it may request the probation service of the county court for the county in which the court is located to conduct such investigation, or if there be no such probation service the court may request the state director of probation and correctional alternatives to arrange for such investigation. Any probation officer requested to make an investigation pursuant to this section shall prepare and submit to the court a written report in accordance with such request.
4. Where the court has imposed a revocable sentence and the certificate of rehabilitation is issued prior to the expiration or termination of the time which the court may revoke such sentence, the certificate shall be deemed to be a temporary certificate until such time as the court's authority to revoke the sentence has expired or is terminated. While temporary, such certificate (a) may be revoked by the court for violation of the conditions of the sentence, and (b) shall be revoked by the court if it revokes the sentence and commits the person to an institution under the jurisdiction of the state department of correctional services. Any such revocation shall be upon notice and after an opportunity to be heard. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the court's authority to revoke the sentence.

5. Any court that has issued a certificate of rehabilitation may at any time issue a new certificate to enlarge the relief previously granted, provided, however, that the provisions of subdivisions one through four of this section shall apply to the issuance of any such new certificate.
6. Any applicant whose application for a certificate of rehabilitation has been denied shall have the right to appeal to the issuing body if applicant initiates appeal within thirty days of written receipt of initial decision.
7. Any written report submitted to the court pursuant to this section is confidential and may not be made available to any person or public or private agency except where specifically required or permitted by statute or upon specific authorization of the court. However, it shall be made available by the court for examination by the applicant's attorney, or the applicant himself, if he has no attorney. In its discretion, the court may except from disclosure a part or parts of the report which are not relevant to the granting of a certificate, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. The action of the court excepting information from disclosure shall be subject to appellate review. The court, in its discretion, may hold a conference in open court or in chambers to afford an applicant an opportunity to controvert or to comment upon any portions of the report. The court may also conduct a summary hearing at the conference on any matter relevant to the granting of the application and may take testimony under oath.

Section (H). Certificates of Rehabilitation issued by the board of parole.

1. The state board of parole shall have the power to issue a certificate of rehabilitation to:
  - (a) any serious offender who has been committed to an institution under jurisdiction of the state department of correctional services. Such certificate may be issued by the board at the time the offender is released from such institution under the board's supervision or otherwise or at any time thereafter;
  - (b) any eligible offender or serious offender who resides within this state and whose judgment of conviction was rendered by a court in any other jurisdiction.
2. Where the board of parole has issued a certificate of rehabilitation, the board may at any time issue a new certificate enlarging the relief previously granted.
3. The board of parole shall not issue any certificate of rehabilitation pursuant to subdivisions one or two, unless the board is satisfied that:
  - (a) The person to whom it is to be granted is an eligible serious offender, as defined in section A-1(b);

- (b) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible felony offender; and
  - (c) The relief to be granted by the certificate is consistent with the public interest.
4. Any certificate of rehabilitation issued by the board of parole to an eligible felony offender who at time of the issuance of the certificate is under the board's supervision, shall be deemed to be a temporary certificate until such time as the eligible felony offender is discharged from the board's supervision, and, while temporary, such certificate may be revoked by the board for violation of the conditions of parole or release. Revocation shall be upon notice to the parolee, who shall be accorded an opportunity to explain the violation prior to decision thereon. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the board's jurisdiction over the offender.
  5. In granting or revoking a certificate of rehabilitation the action of the board of parole shall be by unanimous vote of the members authorized to grant or revoke parole.
  6. For the purpose of determining whether such certificate shall be issued, the board may conduct an investigation of the applicant.
  7. Any applicant whose application for a certificate of rehabilitation has been denied shall have the right to appeal to the issuing body if applicant initiates appeal within thirty days of written receipt of initial decision.

Section (I). Effect of revocation; use of revoked certificate.

1. Where a certificate of rehabilitation is deemed to be temporary and such certificate is revoked, disabilities and forfeitures thereby relieved shall be reinstated as of the date upon which the person to whom the certificate was issued receives written notice of such revocation. Any such person shall upon receipt of such notice surrender the certificate to the issuing court or board.
2. A person who knowingly uses or attempts to use, a revoked certificate of rehabilitation in order to obtain or to exercise any right or privilege that he would not be entitled to obtain or to exercise without a valid certificate shall be guilty of a misdemeanor.

Section (J). Forms and filing.

1. All applications, certificates and orders of revocation necessary for the purposes of this article shall be upon forms prescribed pursuant to agreement among the state commissioner of correctional services, the chairman of the state board of parole and the administrator of the state judicial conference. Such forms

relating to certificates of rehabilitation shall be distributed by the state court system, probation and parole departments.

2. Any court or board issuing or revoking any certificate pursuant to this article shall immediately file a copy of the certificate, or of the order of revocation, with the state identification and intelligence system.

Section (K). Certificate not to be deemed to be a pardon.

1. Nothing contained in this article shall be deemed to alter or limit or affect the manner of applying for pardons to the governor, and no certificate issued hereunder shall be deemed or construed to be a pardon.

Section (L). Report.

1. All licensing authorities must report to the State Legislature annually beginning one year from the effective date of this article the number of licensure applicants who presented certificates of rehabilitation, the number of licenses awarded to applicants with conviction histories, the number of licenses awarded to applicants with certificates of rehabilitation, the number of applicants with criminal histories denied licenses, and the number of applicants with certificates of rehabilitation denied licenses.
2. All bodies issuing certificates of rehabilitation must report to the State Legislature annually beginning one year from the effective date of this article the number of applications made, the number of applications that are denied, and the number of applications that are granted.