

SENATE BILL NO. 238

INTRODUCED BY B. HOVEN

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A PROCESS TO OBTAIN A REHABILITATION CERTIFICATE FOR A PERSON WHO HAS A CRIMINAL CONVICTION; PROVIDING REQUIREMENTS; CREATING A REBUTTABLE PRESUMPTION; AMENDING SECTION 38-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, research conducted in the last 60 years has shown that offenders who find gainful employment and enter career fields have significantly reduced recidivism rates; and

WHEREAS, research and national data have shown that offenders who complete a vocational program or postsecondary education have a recidivism rate of 4% or less; and

WHEREAS, reducing the recidivism rate among ex-offenders increases community safety and productivity and reduces incarceration rates and the impact of incarceration rates on future generations; and

WHEREAS, based on longstanding court decisions, national data, and existing federal guidance, the United States Equal Employment Opportunity Commission has determined that criminal record exclusions in employment, education, and housing have disparate impacts based on race and national origin.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Rehabilitation certificate -- conditions -- presumption.** (1) A person with a criminal record may file a petition with the sentencing judge or the district court for the judicial district in which the person resides requesting a rehabilitation certificate. The petition must be served on the county attorney in the county in which the petition is filed. The court shall issue the person a rehabilitation certificate if the person has met the conditions contained in subsection (2) and:

- (a) (i) has received a conditional discharge under 46-23-1011 or 46-23-1021;
- (ii) has completed 36 months of parole or probation or a combination of parole and probation; or
- (iii) discharged their sentence and has lived in the community for 36 months; and
- (b) provides evidence of attaining two or more of the achievements listed in 46-23-1027 while:
  - (i) in a community corrections program;

- 1 (ii) on parole;  
2 (iii) on probation; or  
3 (iv) living in the community following discharge of a sentence.

4 (2) To be eligible for a rehabilitation certificate, a person with a criminal record:

5 (a) may not have been convicted while under conditional discharge, parole, or probation of a  
6 misdemeanor or felony offense that may have resulted in a term of incarceration exceeding 6 months within 36  
7 months of the filing of the petition; and

8 (b) must have held gainful employment of an average of 20 hours a week or more for a period of 36  
9 months or maintained continued enrollment in a vocational, postsecondary educational institution or program for  
10 24 months or the equivalent and successfully completed the program as set forth by the program or institution,  
11 followed by 12 months of gainful employment averaging 20 hours per week. Periods of involuntary unemployment  
12 do not count against the individual.

13 (3) The rehabilitation certificate creates a presumption of rehabilitation and successful reentry into the  
14 community. The presumption is a bar against the use of the individual's criminal record against the individual in:

15 (a) applications for admission to a postsecondary educational institution or vocational training program  
16 or school; or

17 (b) applications for employment, housing, or professional and occupational licensure.

18 (4) (a) The presumption provided for in subsection (3) may be overcome if, after the person received the  
19 rehabilitation certificate, the board of pardons and parole revoked the conditional discharge issued under  
20 46-23-1011 or 46-23-1021, the board revoked the person's parole, or the person was convicted of a misdemeanor  
21 which may have resulted in incarceration for more than 6 months.

22 (b) The presumption does not overcome federal or state employment limitations for which criminal  
23 background checks are required by law.

24 (5) (a) The rehabilitation certificate is automatically revoked if the individual with the rehabilitation  
25 certificate is convicted of a subsequent felony.

26 (b) A new rehabilitation certificate may be issued after revocation if the individual achieved the  
27 requirements of subsections (1) and (2) without considering any achievements or requirements credited to the  
28 prior certificate.

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30 **Section 2.** Section 37-1-203, MCA, is amended to read:

1           **"37-1-203. Conviction not a sole basis for denial.** (1) Criminal convictions shall not operate as an  
2 automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall  
3 refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a  
4 license applicant has been convicted of a criminal offense and such criminal offense relates to the public health,  
5 welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after  
6 investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public  
7 trust and deny the issuance of a license.

8           (2) Except as provided in [section 1(4) and (5)], a rehabilitation certificate provided for in [section 1] is  
9 presumptive evidence of rehabilitation."

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11           NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an  
12 integral part of Title 37, chapter 1, part 2, and the provisions of Title 37, chapter 1, part 2, apply to [section 1].

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14           NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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16           NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the  
17 meaning of 1-2-109, to individuals with criminal records who petition for a rehabilitation certificate to the  
18 sentencing court or the district court for the judicial district in which the individual resides.

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