

# HOUSE BILL 635

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By: **Delegates Levi, Anderson, Barnes, Burns, Carr, Carter, Conaway, Dumais, Gutierrez, Healey, Reznik, Riley, Robinson, Ross, Schuler, F. Turner, and Valderrama**

Introduced and read first time: February 6, 2009

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Occupational Licenses or Certificates – Issuance of a**  
3 **Certificate of Employability**

4 FOR the purpose of requiring a certain parole and probation agent, at the request of a  
5 sentencing court, to provide a certain report on granting a certain certificate of  
6 employability to a certain offender; establishing the policy of the State to  
7 encourage the employment of nonviolent ex–offenders and to provide a process  
8 for ex–offenders to demonstrate fitness for occupational licenses or certificates  
9 required by the State; requiring certain State departments, boards, and  
10 commissions that issue certain occupational licenses or certificates to follow  
11 certain procedures in deciding whether to issue a license or certificate to a  
12 certain applicant who presents a certain certificate of employability; providing  
13 that this Act does not apply to certain licenses; authorizing a circuit court, the  
14 District Court, or the Maryland Parole Commission, on the request of a certain  
15 offender, to issue a certain certificate to an offender convicted of a nonviolent  
16 offense; authorizing a court to issue a certain certificate or to order the Division  
17 of Parole and Probation to conduct an investigation and recommend whether  
18 the court should issue a certain certificate to an eligible offender; authorizing  
19 the Commission to issue a certain certificate if an offender is on parole or  
20 mandatory supervision or if the eligible offender was released without  
21 conditions or has satisfied certain conditions of release; authorizing the  
22 Commission, under certain circumstances, to issue a certain certificate of  
23 employability to an offender who is under the supervision of the Commission  
24 through the authority of the Interstate Compact on Adult Offender Supervision;  
25 establishing certain requirements for a court or the Commission to consider in  
26 issuing a certain certificate; authorizing a court or the Commission to limit the  
27 scope of a certain certificate; authorizing a court to issue a new certificate  
28 expanding the scope of a certain certificate; authorizing a court or the  
29 Commission to revoke the certificate under certain conditions; requiring an

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



offender to surrender a revoked certificate on written notification by the issuing court or the Commission; establishing that a certain certificate is a temporary certificate until a certain offender is discharged from parole or mandatory supervision; authorizing the Commission to revoke a temporary certificate for certain violations after providing certain notice and after holding a certain hearing on the violation; requiring the Commission to issue a permanent certificate on discharge of the eligible offender from parole or mandatory supervision under certain conditions; establishing the offense of the knowing use of a revoked certificate; establishing certain penalties; requiring certain State departments, boards, and commissions to follow, notwithstanding any other provision of law, certain procedures in the consideration of an application for an occupational license or certificate of an applicant who has been convicted of a felony or misdemeanor under federal or State law; prohibiting a department, board, or commission from denying an occupational license or certificate to a certain applicant who has a certain certificate of employability, with certain exceptions; authorizing a department, board, or commission to deny an occupational license or certificate to an applicant with a certain certificate under certain circumstances; requiring a department, board, or commission to consider certain factors in making a certain determination; requiring a department, board, or commission to follow certain procedures to give an applicant notice and an opportunity to be heard before the department, board, or commission denies a certain applicant an occupational license or certificate under certain circumstances; defining certain terms; and generally relating to occupational licenses or certificates and the issuance of a certificate of employability.

BY repealing and reenacting, with amendments,  
Article – Correctional Services  
Section 6–112(a)(1)  
Annotated Code of Maryland  
(2008 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, without amendments,  
Article – Criminal Law  
Section 14–101(a)  
Annotated Code of Maryland  
(2002 Volume and 2008 Supplement)

BY adding to  
Article – Criminal Procedure  
Section 6–301 through 6–307 to be under the new subtitle “Subtitle 3.  
Certificate of Employability”  
Annotated Code of Maryland  
(2008 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
MARYLAND, That the Laws of Maryland read as follows:

**Article – Correctional Services**

6–112.

(a) (1) On request of a court, a parole and probation agent of the Division shall:

(i) provide the court with a presentence investigation report **THAT MAY INCLUDE A REPORT ON GRANTING THE DEFENDANT A CERTIFICATE OF EMPLOYABILITY IN ACCORDANCE WITH TITLE 6, SUBTITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE;**

(ii) conduct other investigations; and

(iii) perform other probationary services.

**Article – Criminal Law**

14–101.

(a) In this section, “crime of violence” means:

(1) abduction;

(2) arson in the first degree;

(3) kidnapping;

(4) manslaughter, except involuntary manslaughter;

(5) mayhem;

(6) maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Code;

(7) murder;

(8) rape;

(9) robbery under § 3–402 or § 3–403 of this article;

(10) carjacking;

(11) armed carjacking;

(12) sexual offense in the first degree;

- (13) sexual offense in the second degree;
- (14) use of a handgun in the commission of a felony or other crime of violence;
- (15) child abuse in the first degree under § 3–601 of this article;
- (16) sexual abuse of a minor under § 3–602 of this article if:
- (i) the victim is under the age of 13 years and the offender is an adult at the time of the offense; and
- (ii) the offense involved:
1. vaginal intercourse, as defined in § 3–301 of this article;
2. a sexual act, as defined in § 3–301 of this article;
3. an act in which a part of the offender's body penetrates, however slightly, into the victim's genital opening or anus; or
4. the intentional touching, not through the clothing, of the victim's or the offender's genital, anal, or other intimate area for sexual arousal, gratification, or abuse;
- (17) an attempt to commit any of the crimes described in items (1) through (16) of this subsection;
- (18) continuing course of conduct with a child under § 3–315 of this article;
- (19) assault in the first degree;
- (20) assault with intent to murder;
- (21) assault with intent to rape;
- (22) assault with intent to rob;
- (23) assault with intent to commit a sexual offense in the first degree;
- and
- (24) assault with intent to commit a sexual offense in the second degree.

**SUBTITLE 3. CERTIFICATE OF EMPLOYABILITY.**

**6-301.**

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “COMMISSION” MEANS THE MARYLAND PAROLE COMMISSION.

(C) “CRIME OF VIOLENCE” HAS THE MEANING STATED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.

(D) (1) “DEPARTMENT” MEANS:

(I) THE DEPARTMENT OF AGRICULTURE;

(II) THE DEPARTMENT OF THE ENVIRONMENT;

(III) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

(IV) THE DEPARTMENT OF HUMAN RESOURCES;

(V) THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION;

(VI) THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES; OR

(VII) THE DEPARTMENT OF STATE POLICE.

(2) “DEPARTMENT” INCLUDES ANY UNIT OF A DEPARTMENT SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION.

(E) “ELIGIBLE OFFENDER” MEANS A PERSON WHO HAS BEEN CONVICTED OF A CRIME THAT IS NOT A CRIME OF VIOLENCE.

(F) “EMPLOYABILITY” MEANS THE PERMANENT OR PROVISIONAL REMOVAL OF A BAR TO LICENSURE OR CERTIFICATION FOR AN OCCUPATION REQUIRING A LICENSE OR CERTIFICATE ISSUED BY A DEPARTMENT, BOARD, OR COMMISSION.

**6-302.**

1       **IT IS THE POLICY OF THE STATE TO ENCOURAGE THE EMPLOYMENT OF**  
2 **NONVIOLENT EX-OFFENDERS AND, TOWARD THAT END, TO PROVIDE A PROCESS**  
3 **THROUGH WHICH NONVIOLENT EX-OFFENDERS MAY DEMONSTRATE FITNESS**  
4 **FOR OCCUPATIONAL LICENSES OR CERTIFICATIONS REQUIRED BY THE STATE.**

5 **6-303.**

6       **(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
7 **SUBSECTION, THIS SUBTITLE APPLIES TO AN APPLICATION FOR A LICENSE OR**  
8 **CERTIFICATE TO PRACTICE AN OCCUPATION OR PROFESSION THAT IS ISSUED**  
9 **BY A DEPARTMENT, BOARD, OR COMMISSION.**

10       **(2) THIS SUBTITLE DOES NOT APPLY TO AN APPLICATION FOR A**  
11 **LICENSE ISSUED UNDER TITLE 11, SUBTITLE 5 OR SUBTITLE 6 OF THE**  
12 **FINANCIAL INSTITUTIONS ARTICLE.**

13       **(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF AN**  
14 **APPLICANT FOR A LICENSE OR CERTIFICATE PRESENTS TO A DEPARTMENT,**  
15 **BOARD, OR COMMISSION A CERTIFICATE OF EMPLOYABILITY, THE**  
16 **DEPARTMENT, BOARD, OR COMMISSION SHALL FOLLOW THE PROCEDURES SET**  
17 **FORTH IN § 6-307 OF THIS SUBTITLE IN DECIDING WHETHER TO GRANT THE**  
18 **LICENSE OR CERTIFICATE TO THE APPLICANT.**

19 **6-304.**

20       **(A) (1) ON REQUEST OF AN ELIGIBLE OFFENDER AND SUBJECT TO**  
21 **SUBSECTION (B) OF THIS SECTION, A CERTIFICATE OF EMPLOYABILITY MAY BE**  
22 **ISSUED TO THE ELIGIBLE OFFENDER BY:**

23               **(I) A CIRCUIT COURT OR THE DISTRICT COURT; OR**

24               **(II) THE COMMISSION.**

25       **(2) (I) THE COURT MAY ISSUE THE CERTIFICATE OF**  
26 **EMPLOYABILITY TO AN ELIGIBLE OFFENDER:**

27               **1. AT THE TIME SENTENCE IS PRONOUNCED;**

28               **2. AT THE TIME OF THE REVIEW OF A SENTENCE; OR**

29               **3. AT ANY TIME AFTER AN EVENT SPECIFIED IN ITEM**  
30 **1 OR 2 OF THIS PARAGRAPH.**

1                   (II) A COURT MAY ORDER THE DIVISION OF PAROLE AND  
2 PROBATION TO CONDUCT AN INVESTIGATION OF AN ELIGIBLE OFFENDER IN  
3 ACCORDANCE WITH § 6-112 OF THE CORRECTIONAL SERVICES ARTICLE AND  
4 RECOMMEND, BASED ON THE RESULTS OF THE INVESTIGATION, WHETHER A  
5 CERTIFICATE OF EMPLOYABILITY SHOULD BE ISSUED.

6                   (3) SUBJECT TO § 6-305 OF THIS SUBTITLE, THE COMMISSION  
7 MAY ISSUE A CERTIFICATE OF EMPLOYABILITY TO AN ELIGIBLE OFFENDER:

8                   (I) WHO HAS BEEN COMMITTED TO THE JURISDICTION OF  
9 THE DIVISION OF CORRECTION AT THE TIME THE ELIGIBLE OFFENDER IS  
10 RELEASED FROM A CORRECTIONAL INSTITUTION UNDER CONDITIONS OF:

11                               1. PAROLE; OR

12                               2. MANDATORY SUPERVISED RELEASE;

13                   (II) WHO IS RELEASED WITHOUT CONDITIONS OR WHOSE  
14 CONDITIONS OF RELEASE HAVE BEEN SATISFIED; OR

15                   (III) WHOSE JUDGMENT OF CONVICTION WAS RENDERED BY  
16 A COURT OF ANOTHER JURISDICTION BUT WHO NOW RESIDES IN THIS STATE  
17 UNDER THE SUPERVISION OF THE COMMISSION IN ACCORDANCE WITH TITLE 6,  
18 SUBTITLE 2 OF THE CORRECTIONAL SERVICES ARTICLE.

19                   (B) A COURT OR THE COMMISSION MAY NOT ISSUE A CERTIFICATE OF  
20 EMPLOYABILITY UNLESS IT IS SATISFIED THAT:

21                               (1) THE PERSON REQUESTING THE CERTIFICATE IS AN ELIGIBLE  
22 OFFENDER AND HAS NOT BEEN CONVICTED OF A CRIME OF VIOLENCE; AND

23                               (2) THE RELIEF GRANTED BY THE CERTIFICATE IS CONSISTENT  
24 WITH:

25                                       (I) THE REHABILITATION OF THE ELIGIBLE OFFENDER;  
26 AND

27                                       (II) THE PUBLIC INTEREST.

28                   (C) (1) A COURT OR THE COMMISSION MAY LIMIT THE SCOPE OF  
29 APPLICABILITY OF A CERTIFICATE OF EMPLOYABILITY TO ONE OR MORE  
30 OCCUPATIONS OR MAY RELIEVE AN ELIGIBLE OFFENDER OF ALL BARS TO  
31 OCCUPATIONAL LICENSES OR CERTIFICATES.

1           (2) AT ANY TIME, THE COURT OR THE COMMISSION THAT HAS  
2 ISSUED A CERTIFICATE OF EMPLOYABILITY, ON REQUEST OF AN ELIGIBLE  
3 OFFENDER, MAY ISSUE A NEW CERTIFICATE TO EXPAND THE SCOPE OF THE  
4 RELIEF PREVIOUSLY GRANTED IF THE COURT OR THE COMMISSION IS  
5 SATISFIED THAT THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION  
6 HAVE BEEN MET.

7           (D) (1) A COURT OR THE COMMISSION MAY REVOKE A PREVIOUSLY  
8 ISSUED CERTIFICATE OF EMPLOYABILITY AND SHALL NOTIFY AN ELIGIBLE  
9 OFFENDER IN WRITING OF THE REVOCATION IF:

10                       (I) THE ELIGIBLE OFFENDER COMMITS A CRIME OF  
11 VIOLENCE; OR

12                       (II) THE COURT OR THE COMMISSION NO LONGER IS  
13 SATISFIED THAT THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION ARE  
14 BEING MET.

15           (2) ON WRITTEN NOTIFICATION OF THE REVOCATION OF A  
16 CERTIFICATE OF EMPLOYABILITY, THE ELIGIBLE OFFENDER SHALL SURRENDER  
17 THE CERTIFICATE TO THE COURT OR THE COMMISSION.

18 **6-305.**

19           (A) IF THE COMMISSION ISSUES A CERTIFICATE OF EMPLOYABILITY TO  
20 AN ELIGIBLE OFFENDER IN ACCORDANCE WITH § 6-304 OF THIS SUBTITLE, THE  
21 CERTIFICATE OF EMPLOYABILITY:

22                       (1) IS A TEMPORARY CERTIFICATE UNTIL THE COMMISSION  
23 DISCHARGES THE ELIGIBLE OFFENDER FROM PAROLE OR MANDATORY  
24 SUPERVISION; AND

25                       (2) MAY BE REVOKED BY THE COMMISSION FOR VIOLATIONS OF  
26 THE CONDITIONS OF PAROLE OR MANDATORY SUPERVISION IF, AFTER GIVING  
27 THE ELIGIBLE OFFENDER NOTICE OF THE HEARING, A HEARING EXAMINER  
28 CONDUCTS A HEARING AT WHICH THE ELIGIBLE OFFENDER IS GIVEN AN  
29 OPPORTUNITY TO EXPLAIN THE VIOLATION.

30           (B) IF THE COMMISSION DOES NOT REVOKE THE CERTIFICATE OF  
31 EMPLOYABILITY UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSION  
32 SHALL REISSUE THE CERTIFICATE AS A PERMANENT CERTIFICATE ON  
33 DISCHARGE OF THE ELIGIBLE OFFENDER FROM PAROLE OR MANDATORY  
34 SUPERVISION.



1   **6-306.**

2           **AN ELIGIBLE OFFENDER WHO KNOWINGLY USES OR ATTEMPTS TO USE A**  
3   **REVOKED CERTIFICATE OF EMPLOYABILITY IS GUILTY OF A MISDEMEANOR AND**  
4   **ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A**  
5   **FINE NOT EXCEEDING \$500 OR BOTH.**

6   **6-307.**

7           **(A) THIS SECTION APPLIES ONLY TO THE AUTHORITY OF A**  
8   **DEPARTMENT, BOARD, OR COMMISSION TO DENY A LICENSE OR CERTIFICATE**  
9   **TO AN APPLICANT BECAUSE OF A CONVICTION OF A FELONY OR MISDEMEANOR**  
10   **UNDER FEDERAL OR STATE LAW.**

11          **(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A**  
12   **DEPARTMENT, BOARD, OR COMMISSION MAY NOT DENY AN OCCUPATIONAL**  
13   **LICENSE OR CERTIFICATE TO AN ELIGIBLE OFFENDER WHO PRESENTS TO THE**  
14   **DEPARTMENT, BOARD, OR COMMISSION A CERTIFICATE OF EMPLOYABILITY**  
15   **ISSUED TO THE ELIGIBLE OFFENDER UNDER THIS SUBTITLE UNLESS THE**  
16   **DEPARTMENT, BOARD, OR COMMISSION DETERMINES THAT:**

17           **(1) THERE IS A DIRECT RELATIONSHIP BETWEEN ONE OR MORE**  
18   **OF THE ELIGIBLE OFFENDER'S PREVIOUS CONVICTIONS AND THE SPECIFIC**  
19   **OCCUPATIONAL LICENSE OR CERTIFICATE SOUGHT; OR**

20           **(2) THE ISSUANCE OF THE LICENSE OR CERTIFICATE WOULD**  
21   **INVOLVE AN UNREASONABLE RISK TO PROPERTY OR TO THE SAFETY OR**  
22   **WELFARE OF SPECIFIC INDIVIDUALS OR THE GENERAL PUBLIC.**

23          **(C) IN MAKING THE DETERMINATION UNDER SUBSECTION (B) OF THIS**  
24   **SECTION, THE DEPARTMENT, BOARD, OR COMMISSION SHALL CONSIDER:**

25           **(1) THE POLICY OF THE STATE EXPRESSED IN § 6-302 OF THIS**  
26   **SUBTITLE;**

27           **(2) THE SPECIFIC DUTIES AND RESPONSIBILITIES REQUIRED OF A**  
28   **LICENSEE OR CERTIFICATE HOLDER;**

29           **(3) WHETHER THE ELIGIBLE OFFENDER'S PREVIOUS**  
30   **CONVICTIONS HAVE ANY IMPACT ON THE ELIGIBLE OFFENDER'S FITNESS OR**  
31   **ABILITY TO PERFORM THE DUTIES AND RESPONSIBILITIES AUTHORIZED BY THE**  
32   **LICENSE OR CERTIFICATE;**

1                   (4)    THE AGE OF THE ELIGIBLE OFFENDER AT THE TIME OF THE  
2 LAST CONVICTION AND THE AMOUNT OF TIME THAT HAS ELAPSED SINCE THE  
3 LAST CONVICTION;

4                   (5)    THE SERIOUSNESS OF ANY PREVIOUS OFFENSES FOR WHICH  
5 THE ELIGIBLE OFFENDER WAS CONVICTED;

6                   (6)    THE CIRCUMSTANCES AND FACTORS CONSIDERED  
7 CONCERNING THE ISSUANCE OF THE CERTIFICATE OF EMPLOYABILITY BY A  
8 COURT OR THE COMMISSION;

9                   (7)    OTHER INFORMATION PROVIDED BY THE ELIGIBLE OFFENDER  
10 OR ON THE ELIGIBLE OFFENDER'S BEHALF WITH REGARD TO THE ELIGIBLE  
11 OFFENDER'S REHABILITATION AND GOOD CONDUCT; AND

12                  (8)    THE LEGITIMATE INTEREST OF THE DEPARTMENT, BOARD, OR  
13 COMMISSION IN PROTECTING PROPERTY AND THE SAFETY AND WELFARE OF  
14 SPECIFIC INDIVIDUALS OR THE GENERAL PUBLIC.

15                  (D)    IN ACCORDANCE WITH ITS PROCEDURES, A DEPARTMENT, BOARD,  
16 OR COMMISSION SHALL PROVIDE TO AN ELIGIBLE OFFENDER REASONABLE  
17 NOTICE AND AN OPPORTUNITY FOR A HEARING BEFORE AN APPLICATION FOR  
18 AN OCCUPATIONAL LICENSE OR CERTIFICATE IS DENIED UNDER THIS SECTION.

19                  SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 2009.