

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 641\*  
PROPOSED COMMITTEE SUBSTITUTE H641-PCS80246-SA-42

Short Title: Certificate of Relief Act.

(Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A CERTIFICATE OF RELIEF THAT WILL ASSIST INDIVIDUALS CONVICTED OF LESS SERIOUS CRIMES IN DEALING WITH COLLATERAL SANCTIONS AND DISQUALIFICATIONS THAT RESULT FROM A CRIMINAL CONVICTION AND A PROCEDURE FOR ISSUING THAT CERTIFICATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Certificate of Relief.

**§ 15A-173.1. Definitions.**

The following definitions apply in this Article:

- (1) Collateral consequence. – A collateral sanction or a disqualification.
- (2) Collateral sanction. – A penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, post-release supervision, forfeiture, restitution, fine, assessment, or costs of prosecution.
- (3) District attorney. – The office of the district attorney that prosecuted the offense giving rise to the collateral consequence from which relief is sought.
- (4) Disqualification. – A penalty, disability, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding may impose on an individual on grounds relating to the individual's conviction of an offense.

**§ 15A-173.2. Certificate of Relief.**

(a) An individual who is convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation, may petition the court where the individual was convicted for a Certificate of Relief relieving collateral consequences as permitted by this Article. Except as otherwise provided in this subsection, the petition shall be heard by the



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1 senior resident superior court judge if the convictions were in superior court, or the chief  
2 district court judge if the convictions were in district court. The senior resident superior court  
3 judge and chief district court judge in each district may delegate their authority to hold hearings  
4 and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that  
5 district.

6 (b) Except as otherwise provided in G.S. 15A-173.3, the court may issue a Certificate  
7 of Relief if, after reviewing the petition, the individual's criminal history, any information  
8 provided by a victim under G.S. 15A-173.6 or the district attorney, and any other relevant  
9 evidence, it finds the individual has established by a preponderance of the evidence all of the  
10 following:

11 (1) Twelve months have passed since the individual has completed his or her  
12 sentence. For purposes of this subdivision, an individual has not completed  
13 his or her sentence until the individual has served all of the active time, if  
14 any, imposed for each offense and has also completed any period of  
15 probation, post-release supervision, and parole related to the offense that is  
16 required by State law or court order.

17 (2) The individual is engaged in, or seeking to engage in, a lawful occupation or  
18 activity, including employment, training, education, or rehabilitative  
19 programs, or the individual otherwise has a lawful source of support.

20 (3) The individual has complied with all requirements of the individual's  
21 sentence, including any terms of probation, that may include substance abuse  
22 treatment, anger management, and educational requirements.

23 (4) The individual is not in violation of the terms of any criminal sentence, or  
24 that any failure to comply is justified, excused, involuntary, or insubstantial.

25 (5) A criminal charge is not pending against the individual.

26 (6) Granting the petition would not pose an unreasonable risk to the safety or  
27 welfare of the public or any individual.

28 (c) The Certificate of Relief shall specify any restriction imposed and collateral  
29 sanction or disqualification from which relief has not been granted under G.S. 15A-173.4(a).

30 (d) A Certificate of Relief relieves all collateral sanctions, except those listed in  
31 G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law,  
32 and any others specifically excluded in the certificate. A Certificate of Relief does not  
33 automatically relieve a disqualification; however, an administrative agency, governmental  
34 official, or court in a civil proceeding may consider a Certificate of Relief favorably in  
35 determining whether a conviction should result in disqualification.

36 (e) A Certificate of Relief issued under this Article does not result in the expunction of  
37 any criminal history record information, nor does it constitute a pardon.

38 (f) A Certificate of Relief may be revoked pursuant to G.S. 15A-173.4(b) if the  
39 individual is subsequently convicted of a felony or misdemeanor other than a traffic violation  
40 or is found to have made any material misrepresentation in his or her petition.

41 (g) The denial of a petition for a Certificate of Relief shall state the reasons for the  
42 denial, and the petitioner may file a subsequent petition 12 months from the denial and shall  
43 demonstrate that the petitioner has remedied the defects in the previous petition and has  
44 complied with any conditions for reapplication set by the court pursuant to G.S. 15A-173.4(a)  
45 in order to have the petition granted.

46 **"§ 15A-173.3. Collateral sanctions not subject to order of limited relief or Certificate of**  
47 **Relief.**

48 A Certificate of Relief shall not be issued to relieve any of the following collateral  
49 sanctions:

- 1           (1) Requirements imposed by, and any statutory requirements or prohibitions  
2 imposed as a result of registration pursuant to, Article 27A of Chapter 14 of  
3 the General Statutes.
- 4           (2) Prohibitions on possession of firearms imposed by Articles 54A and 54B of  
5 Chapter 14 of the General Statutes.
- 6           (3) A motor vehicle license suspension, revocation, limitation, or ineligibility  
7 imposed pursuant to Chapter 20 of the General Statutes.
- 8           (4) Ineligibility for certification pursuant to Chapter 17C or 17E of the General  
9 Statutes.
- 10          (5) Ineligibility for employment as any of the following if the ineligibility is a  
11 sanction imposed by a statute or session law of North Carolina.
- 12           a. A corrections or probation officer.
- 13           b. A prosecutor or investigator in either the Department of Justice or in  
14 the office of a district attorney. For purposes of this subdivision, the  
15 term district attorney shall include any district attorney authorized  
16 pursuant to G.S. 7A-60.

17 **"§ 15A-173.4. Issuance, modification, and revocation of Certificate of Relief.**

18          (a) When a petition is filed under G.S. 15A-173.2, including a petition for enlargement  
19 of an existing Certificate of Relief, the court shall notify the district attorney at least three  
20 weeks before the hearing on the matter. The court may issue a Certificate of Relief subject to  
21 restriction, condition, or additional requirement. When issuing, denying, modifying, or  
22 revoking a Certificate of Relief, the court may impose conditions for reapplication.

23          (b) The court may modify or revoke a Certificate of Relief it issued if it finds just cause  
24 by a preponderance of the evidence. Just cause includes subsequent conviction of a felony or  
25 misdemeanor other than a traffic violation in this State, or of an offense in another jurisdiction  
26 that is deemed a felony or misdemeanor other than a traffic violation in this State, or material  
27 misrepresentation by the petitioner in the petition for Certificate of Relief. A motion for  
28 modification or revocation of a Certificate of Relief may be initiated by the court on its own  
29 motion, or upon motion of the district attorney. The individual for whom the Certificate of  
30 Relief has been issued, and the district attorney, shall be given notice of the motion at least  
31 three weeks before any hearing on the matter. A hearing on the motion shall be held if  
32 requested by either the individual for whom the Certificate of Relief has been issued, or the  
33 district attorney.

34          (c) The district attorney shall have the right to appear and be heard at any proceeding  
35 relating to the issuance, modification, or revocation of the Certificate of Relief.

36          (d) The court is authorized to call upon a probation officer for any additional  
37 investigation or verification of the individual's conduct it reasonably believes necessary to its  
38 decision to issue, modify, or revoke a Certificate of Relief. If there are material disputed issues  
39 of fact or law, the individual and the district attorney may submit evidence and be heard on  
40 those issues.

41          (e) The issuance, modification, and revocation of Certificates of Relief shall be a public  
42 record.

43 **"§ 15A-173.5. Reliance on order or Certificate of Relief as evidence of due care.**

44          In a judicial or administrative proceeding alleging negligence, a Certificate of Relief is a  
45 bar to any action alleging lack of due care in hiring, retaining, licensing, leasing to, admitting to  
46 a school or program, or otherwise transacting business or engaging in activity with the  
47 individual to whom the Certificate of Relief was issued, if the person against whom the judicial  
48 or administrative proceeding is brought knew of the Certificate of Relief at the time of the  
49 alleged negligence.

50 **"§ 15A-173.6. Victim's rights.**

1       The victim of the underlying offense for which a Certificate of Relief is sought may appear  
2 and be heard, or may file a statement for consideration by the court, in a proceeding for  
3 issuance, modification, or revocation of the Certificate of Relief. Notification to the victim shall  
4 be made through the Victim Witness Coordinator in the office of the district attorney."

5               **SECTION 2.** This act becomes effective December 1, 2011.