

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 774
Senate Judiciary Committee Substitute Adopted 6/13/18
PROPOSED SENATE COMMITTEE SUBSTITUTE H774-PCS40768-TT-51

Short Title: Amend Certificates of Relief.

(Public)

Sponsors:

Referred to:

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW REGARDING A CERTIFICATE OF RELIEF FOR
3 CRIMINAL CONVICTIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 15A-173.2 reads as rewritten:

6 "§ 15A-173.2. Certificate of Relief.

7 (a) An individual who is convicted of ~~no more than two Class G, H, or I felonies or~~
8 ~~misdemeanors in one session of court, and who has no other convictions for a felony or~~
9 ~~misdemeanor other than a traffic violation,~~ no more than (i) five Class H or I felonies and (ii) any
10 misdemeanors may petition the court where the individual was convicted for a Certificate of
11 Relief relieving collateral consequences as permitted by this Article. If the person is convicted
12 of more than one Class H or I felony in the same session of court, then the multiple felony
13 convictions shall be treated as one felony conviction under this section. Except as otherwise
14 provided in this subsection, the petition shall be heard by the senior resident superior court judge
15 if the convictions were in superior court, or the chief district court judge if the convictions were
16 in district court. The senior resident superior court judge and chief district court judge in each
17 district may delegate their authority to hold hearings and issue, modify, or revoke Certificates of
18 Relief to judges, clerks, or magistrates in that district.

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

- 24 (1) Twelve months have passed since the individual has completed his or her
25 sentence. For purposes of this subdivision, an individual has not completed
26 his or her sentence until the individual has served all of the active time, if any,
27 imposed for each offense and has also completed any period of probation,
28 post-release supervision, and parole related to the offense that is required by
29 State law or court order.
- 30 (2) The individual is engaged in, or seeking to engage in, a lawful occupation or
31 activity, including employment, training, education, or rehabilitative
32 programs, or the individual otherwise has a lawful source of support.
- 33 (3) The individual has complied with all requirements of the individual's
34 sentence, including any terms of probation, that may include substance abuse
35 treatment, anger management, and educational requirements.



* H 7 7 4 - P C S 4 0 7 6 8 - T T - 5 1 *

- 1 (4) The individual is not in violation of the terms of any criminal sentence, or that
2 any failure to comply is justified, excused, involuntary, or insubstantial.
3 (5) A criminal charge is not pending against the individual.
4 (6) Granting the petition would not pose an unreasonable risk to the safety or
5 welfare of the public or any individual.

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

8 (d) ~~A~~Unless modified or revoked, a Certificate of Relief relieves all collateral sanctions,
9 except those listed in G.S. 15A-173.3, those sanctions imposed by the North Carolina
10 Constitution or federal law, and any others specifically excluded in the certificate. A Certificate
11 of Relief does not automatically relieve a disqualification; however, an administrative agency,
12 governmental official, or court in a civil proceeding may consider a Certificate of Relief
13 favorably in determining whether a conviction should result in disqualification.

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

16 (f) A Certificate of Relief ~~may be~~is automatically revoked pursuant to
17 G.S. 15A-173.4(b) if the individual is subsequently convicted of a felony or misdemeanor other
18 than a traffic violation ~~or is found to have made any material misrepresentation in his or her~~
19 ~~petition-violation.~~ The Administrative Office of the Courts shall provide the following
20 declaration on the forms that record criminal judgments: "Any Certificate of Relief is
21 automatically revoked for a subsequent conviction of a felony or misdemeanor other than a traffic
22 violation in this State."

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

28 (h) A petitioner who files a petition under this section shall pay a one-time fee of fifty
29 dollars (\$50.00) to the clerk of superior court at the time of filing. Fees collected under this
30 subsection shall be deposited in the General Fund. This subsection shall not apply to a petition
31 filed by an indigent. The fee shall be waived by the clerk of superior court on a showing by the
32 petitioner that the one-time fee was previously paid, even if in another county.

33 (i) Any person who is granted a Certificate of Relief under this Article shall notify any
34 employer, landlord, or other party who has relied on the Certificate of Relief of any conviction,
35 modification, or revocation subsequent to the Certificate of Relief within 10 days of the
36 conviction, modification, or revocation."

37 **SECTION 2.** G.S. 15A-173.4 reads as rewritten:

38 **"§ 15A-173.4. Issuance, modification, and revocation of Certificate of Relief.**Relief, by the
39 court.

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

45 (b) The court ~~may modify or shall~~ revoke a Certificate of Relief it issued if it ~~finds just~~
46 ~~cause~~finds by a preponderance of the evidence. ~~Just cause includes evidence that the individual~~
47 ~~has a subsequent conviction of a felony or misdemeanor other than a traffic violation in this State,~~
48 ~~or of for an offense in another jurisdiction that is deemed a felony or misdemeanor other than a~~
49 ~~traffic violation in this State, or State.~~ The court may modify or revoke a Certificate of Relief it
50 issued if it finds by a preponderance of the evidence that the petitioner made a material
51 misrepresentation by the petitioner in the petition for Certificate of Relief. A motion for

1 modification or revocation of a Certificate of Relief may be initiated by the court on its own
2 motion, or upon motion of the district ~~attorney~~ attorney or the individual for whom the Certificate
3 of Relief has been issued. The individual for whom the Certificate of Relief has been issued, and
4 the district attorney, shall be given notice of the motion at least three weeks before any hearing
5 on the matter. ~~A hearing on the motion shall be held if requested by either the individual for~~
6 ~~whom the Certificate of Relief has been issued, or the district attorney.~~

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

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

13 (e) The issuance, modification, and revocation of Certificates of Relief shall be a public
14 record."

15 **SECTION 3.** G.S. 15A-173.5 reads as rewritten:

16 "**§ 15A-173.5. Reliance on order or Certificate of Relief as evidence of due care.**

17 In a judicial or administrative proceeding alleging negligence, a Certificate of Relief is a bar
18 to any action alleging lack of due care in hiring, retaining, licensing, leasing to, admitting to a
19 school or program, or otherwise transacting business or engaging in activity with the individual
20 to whom the Certificate of Relief was issued, if the person against whom the judicial or
21 administrative proceeding is ~~brought knew of the~~ brought relied on the Certificate of Relief at
22 the time of the alleged negligence."

23 **SECTION 4.** This act becomes effective December 1, 2018, and applies to petitions
24 filed on or after that date.