

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2018-79
HOUSE BILL 774**

AN ACT TO AMEND THE LAW REGARDING A CERTIFICATE OF RELIEF FOR
CRIMINAL CONVICTIONS.

The General Assembly of North Carolina enacts:

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

"§ 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,~~ no more than (i) three Class H or I felonies and (ii) any misdemeanors may petition the court where the individual was convicted for a Certificate of Relief relieving collateral consequences as permitted by this Article. If the person is convicted of more than one Class H or I felony in the same session of court, then the multiple felony convictions shall be treated as one felony conviction under this section. Except as otherwise provided in this subsection, the petition shall be heard by the senior resident superior court judge if the convictions were in superior court, or the chief district court judge if the convictions were in district court. The senior resident superior court judge and chief district court judge in each district may delegate their authority to hold hearings and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that district.

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

- (1) Twelve months have passed since the individual has completed his or her sentence. For purposes of this subdivision, an individual has not completed his or her sentence until the individual has served all of the active time, if any, imposed for each offense and has also completed any period of probation, post-release supervision, and parole related to the offense that is required by State law or court order.
- (2) The individual is engaged in, or seeking to engage in, a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support.
- (3) The individual has complied with all requirements of the individual's sentence, including any terms of probation, that may include substance abuse treatment, anger management, and educational requirements.
- (4) The individual is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial.
- (5) A criminal charge is not pending against the individual.
- (6) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.



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

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

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

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

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

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

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

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

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

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

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

on the matter. ~~A hearing on the motion shall be held if requested by either the individual for whom the Certificate of Relief has been issued, or the district attorney.~~

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 15th day of June, 2018.

s/ Bill Rabon
Presiding Officer of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 10:44 a.m. this 25th day of June, 2018