

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 570
Judiciary II Committee Substitute Adopted 4/21/15
Judiciary II Committee Substitute Adopted 4/28/15
House Committee Substitute Favorable 6/25/15
House Committee Substitute #2 Favorable 6/22/16

Short Title: Expand Certificate of Relief & Expunction.

(Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AVAILABILITY OF CERTIFICATES OF RELIEF TO CERTAIN
OFFENDERS AND FOR EXPUNCTIONS OF FINDINGS OF NOT GUILTY OR NOT
RESPONSIBLE.

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,~~ criminal offenses no higher than a Class G felony may petition the court where the individual was convicted of the most serious offense for a Certificate of Relief relieving collateral consequences as permitted by this Article. If the individual has more than one conviction in the same class of offense as the most serious offense and the convictions are in more than one court, the individual shall petition the court of the most recent conviction. 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, 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~~ If the individual has been convicted of five or fewer eligible offenses, 12 months have passed since the individual has completed his or her sentence. If the individual has been convicted of more than five eligible offenses, 36 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.



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- 1 (2) The individual is engaged in, or seeking to engage in, a lawful occupation or
2 activity, including employment, training, education, or rehabilitative programs,
3 or the individual otherwise has a lawful source of support.
4 (3) The individual has complied with all requirements of the individual's sentence,
5 including any terms of probation, that may include substance abuse treatment,
6 anger management, and educational requirements.
7 (4) The individual is not in violation of the terms of any criminal sentence, or that
8 any failure to comply is justified, excused, involuntary, or insubstantial.
9 (5) A criminal charge is not pending against the individual.
10 (6) Granting the petition would not pose an unreasonable risk to the safety or
11 welfare of the public or any individual.

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

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

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

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

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

30 (h) A person who files a petition for a certificate of relief under this section shall pay a fee
31 of fifty dollars (\$50.00) to the clerk of superior court at the time the petition is filed. Fees collected
32 under this subsection shall be deposited in the General Fund. This subsection shall not apply to a
33 petition filed by an indigent."

34 **SECTION 2.** G.S. 15A-146 is amended by adding a new subsection to read:

35 "(a2) Notwithstanding subsection (a) of this section, a person who has previously been
36 granted an expunction under this section and is subsequently charged with a crime, either a
37 misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to
38 December 1, 1999, and a finding of not guilty or not responsible is entered, may apply to have the
39 subsequent finding expunged. The court shall hold a hearing on the application. If the court finds
40 (i) that the person had not previously received an expungement under G.S. 15A-145, 15A-145.1,
41 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5 and (ii) that the person had not previously been
42 convicted of any felony under the laws of the United States, this State, or any other state, the court
43 shall order the expunction of the finding of not guilty or not responsible. No person as to whom
44 such an order has been entered shall be held thereafter under any provision of any law to be guilty
45 of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for
46 any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning
47 apprehension or trial."

48 **SECTION 3.** This act becomes effective October 1, 2016, and applies to petitions for
49 expunction and certificates of relief filed on or after that date.