

Petitioning for a Certificate of Relief

January 1, 2012

The following is a brief and general overview of eligibility and procedures for petitioning for a certificate of relief. The following is not legal advice. For legal advice, please contact your local Legal Aid office. If you have more general questions, please contact the NC Justice Center at (919) 861-2061.

Benefits of obtaining a Certificate of Relief

- Relieves most collateral sanctions (§15A-173.2d)
 - ✦ A collateral sanction is an automatic bar to a benefit or opportunity
 - Ex. Medical Doctor/Physicians Assistant- sanction for “conviction of a felony”
- Considered favorably in disqualification decisions (§15A-173.2d)
 - ✦ A collateral disqualification is statutory language which allows another group of decision makers (ex. an occupational licensing board) to deny an individual a benefit or opportunity based on the criminal record.
 - Ex. Medical Doctor/ Physicians Assistant- disqualification for “crime involving moral turpitude”
- Protects employers from negligent hiring lawsuits (§15A-173.5)
- Evidence of rehabilitation persuasive to employers, landlords, etc.
- NOT an expunction or pardon
 - ✦ Conviction still occurred and has not been sealed—so if you obtain a certificate of relief and are asked in an employment application whether you have ever been convicted of a crime, it would be lying to say “no” (whereas if you had a conviction expunged you could truthfully say “no”)

Eligibility

- 1 misdemeanor or 1 Class G, H, or I felony= eligible
- 2 misdemeanors or Class G, H, or I felonies (convicted in same session)= eligible
- 2 or more convictions in different sessions= NOT ELIGIBLE

- Any Class A, B, C, D, E felony= NOT ELIGIBLE
 - ✦ [NC Felony Classifications](#)
 - ✦ Examples of G, H, and I felonies-
 - G: Felony death by vehicle, common law robbery, financial identity fraud, trafficking in marijuana
 - H: larceny, possessing stolen goods, embezzlement < \$100k
 - I: bigamy, cruelty to animals, abandonment of a child

Collateral Sanctions NOT subject to relief (NCGS §15A-173.3):

- Sex offender registration (NCGS §14-208.5)
- Possession of a firearm by a felon (NCGS §14-415.1)
 - ✦ But see Restoration of Firearm Rights (NCGS §14-415.4)
- Motor vehicle license, revocation, or ineligibility (NCGS §20)
- Criminal Justice Officer and Sheriffs certification (NCGS §§17C, E)
- Employment as corrections or probation officer
- Employment as prosecutor or investigator in NCDOJ or District Attorneys Office
- Any sanction enacted by federal law or in the NC Constitution

Petition Procedures

- The NC Justice Center is currently working with courts around the state to establish fair procedures for reviewing petitions for certificates of relief. This process is ongoing—so there is still much left undetermined in many counties.
 - What we know (as of January 2012)
 - ✦ Petition and Order for Certificate of Relief is Form AOC-CR-273. You can obtain a copy from your clerk of court or at <http://www.nccourts.org/Forms/FormSearch.asp>.
 - ✦ The petition for a certificate of relief must be made in the county in which the conviction(s) occurred.
 - ✦ A district attorney may appear at the hearing

- ✦ The victim of the underlying offense has the right to appear or submit a statement for consideration in a proceeding for issuance of the Certificate of Relief.
- BUT...there is plenty we don't know (as of January 2012)
 - ✦ This is a brand new process and each county has the discretion to establish its own procedures for petitions for Certificate of Relief.
 - ✦ There is a distinct possibility that you may be the first person to petition for a certificate of relief in your county.
 - ✦ So, be prepared for anything.
 - ✦ You should be prepared to appear before a judge for a hearing. Or it might be the case that the Clerk of Court issues the order without having a formal hearing.
 - ✦ At the time you submit your petition, you should submit supporting documentation.
 - Supporting documentation could be:
 - Affidavit from petitioner explaining why granting the Certificate of Relief does not pose an unreasonable risk to the safety or welfare of the public or to any individual.
 - Affidavit(s) from person(s) familiar with the character and reputation of the petitioner in the community in which he lives explaining that petitioner's character and reputation are good.
 - Affidavit from petitioner or employer of petitioner explaining the petitioner is engaged in or seeking to engage in a lawful occupation or activity.
 - ✦ If there is a hearing, you should be prepared to have any person who provided you with an affidavit to appear as a witness.

You must prove

- Petitioner must establish certain matters by a preponderance of the evidence (more likely than not = 51%):
 - twelve months have passed since the person completed his or her sentence;

- the person is engaged in or is seeking to engage in a lawful occupation or activity;
- the person has no criminal charges pending;
- the person has complied with all requirements of the person's sentence;
- **Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.**
 - ✦ Be prepared to do three things:
 - ✦ **Describe your motivations for applying for the certificate of relief**
 - ✦ **Describe the circumstances in which the underlying crime was committed**
 - Be prepared to acknowledge the conviction and, because the court may ask, provide details of the circumstances of the crime
 - ✦ **Explain why, despite the past conviction, you can now be trusted not to commit another crime.**
 - Length of period between commission of crime and petition
 - Age of the individual at the time of commission might be relevant if the person was young (narrative of maturity)
 - The prison, jail, probation, parole, rehabilitation, and employment records of the individual since the date the crime was committed. (ex. if drugs were a factor in the commission of the crime then completion of rehab would likely be essential; if you obtained your GED, etc)
 - Nexus between the criminal conduct and the motivations for seeking a certificate of relief (ex. prior conviction was for bigamy and the individual is seeking certificate of relief in order to get license to be a locksmith)
 - General character (comm. involvement, family support, etc)

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