

Expanded Forgiveness of a Criminal Conviction

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Earlier this year, I had the opportunity to participate in a national roundtable, sponsored by the American Law Institute and National Conference of State Legislatures, on current and possible approaches to relieving the consequences of a criminal conviction. We considered three basic approaches: “forgetting” convictions by expunging them or limiting access to information about them; “forgiving” convictions through, among other things, certificates of relief, also known as certificates of rehabilitation; and “forgoing” convictions by diverting matters before conviction or decriminalizing them altogether. In its recently-completed legislative session, the North Carolina General Assembly expanded the forgiveness approach by making it easier to get a certificate of relief. Read on for more about this relatively new relief mechanism. If you’re interested in approaches elsewhere, the papers submitted by the various scholars and practitioners invited to the roundtable were recently published in the Federal Sentencing Reporter, available [here](#). You can read my paper about North Carolina [here](#).

Effect of a certificate of relief. In 2011, the North Carolina General Assembly enacted its first certificate of relief law. A major effect of a certificate of relief is that it converts mandatory collateral consequences into discretionary ones. See G.S. 15A-173.2. Although the conviction is not expunged, this relief can be significant. For example, some statutes provide for automatic revocation of a person’s occupational license. See, e.g., G.S. 58-71-80 (revocation of bail bond license mandatory for felony conviction at any time and misdemeanor drug conviction in previous 24 months). If the person has obtained a certificate of relief, the licensing authority may but is not required to revoke the person’s license based on the conviction. Further, for the many consequences that are discretionary when a person has a criminal conviction, the licensing authority may consider the certificate favorably in making a licensing decision. Some consequences are unaffected by a certificate of relief, such as sex offender registration requirements and firearm prohibitions. See G.S. 15A-173.3.

A certificate of relief also provides protection against potential liability for a business or person that works with the recipient of a certificate of relief. The law provides that the certificate bars a lawsuit for lack of due care by the business or person. See G.S. 15A-173.5.

Expanded eligibility. The eligibility criteria for obtaining a certificate of relief have been narrow. Until now a person could obtain a certificate of relief only if he or she had two or fewer convictions in a single session of court. G.S. 15A-173.2. If a person had more than two convictions or two convictions from different sessions of court, even for minor offenses many years ago, the person would be ineligible for a certificate of relief.

In [S.L. 2018-79](#) (H 774), the General Assembly expanded eligibility by allowing a person to obtain a certificate of relief if he or she has three or fewer Class H or I felony convictions as well as any misdemeanor convictions. If the felony convictions occurred during the same session of court, the convictions will count as a single conviction. Thus, a person who has been convicted of Class H or I felonies at three or fewer sessions of court is eligible for a certificate of relief, as is a person who is convicted of a misdemeanor at any time. The legislation contracts eligibility in one important respect. A person will no longer be eligible for a certificate of relief if convicted of a Class G (or higher class) felony. The changes apply to petitions filed on or after December 1, 2018, meaning that once the law takes effect a person may obtain a certificate of relief for convictions that occurred before or after that date.

The application process remains largely the same. A judge decides whether the person meets the above criteria as well as other conditions, including that the person is engaged in or seeking to engage in a lawful occupation or activity and does not pose an unreasonable risk to public safety or any person. G.S. 15A-173.2. Under the revised statute, the prosecutor provides the judge with the person's criminal history. Further, the revised statute provides that a certificate of relief is automatically revoked if the person is subsequently convicted of a felony or misdemeanor other than a traffic violation. Because of the broader eligibility criteria, however, a subsequent conviction would not preclude a judge from later issuing another certificate of relief if the person makes a sufficient showing that one is appropriate.

The act makes other small changes to the process. Among other things, it imposes a \$50 filing fee, due on filing of the petition for a certificate of relief unless the person is indigent.

Impact of changes. Little data is currently available on use of the certificate-of-relief procedure in North Carolina. My impression from trainings and consultations with judicial officials and attorneys is that the procedure is not heavily utilized. The narrowness of the eligibility criteria may have limited the number of petitions. Also, the procedure is relatively new and its potential benefits may not be well known.

People also may have concerns that "forgiving" through a certificate of relief is not as effective as "forgetting" through an expunction. While a certificate of relief issued by a judge is a signal of rehabilitation, it does not remove a criminal conviction from public view and does not preclude a public or private entity from denying someone an opportunity because of a criminal conviction. Cf. G.S. 93B-8.1 (with certain exceptions, directing occupational licensing boards to consider specified factors before denying license based on conviction). Many people therefore prefer that a conviction be expunged even if remnants may still be accessible in the information age in which we live.

Still, a certificate of relief may be helpful in some circumstances and, with the expanded eligibility criteria, may be obtainable when an expunction is not. It is one part of an overall strategy by policymakers to help people regain their footing and reintegrate into society. (For a discussion of the employment challenges facing people who have a criminal conviction, see the recent monograph from the North Carolina Sentencing and Policy Advisory Commission, [Study of Employment Collateral Consequences in North Carolina](#) (June 2018).)