II (B)(3)(C) - JUDICIAL CERTIFICATES OF RELIEF

A growing number of states authorize their courts or parole boards to issue orders or “certificates” to convicted individuals with the dual purpose of avoiding or mitigating mandatory bars to employment, licensing, or housing, and providing some reassurance about the person’s rehabilitation to help with discretionary ones.\(^1\) Influenced by the forgiving or dispensing tradition of executive pardon, judicial certificates do not remove information from a person’s criminal history or limit public access to the record.\(^2\) Rather, generally, they relieve mandatory collateral consequences and may influence discretionary decision-making through an official judgment about a person’s reliability and good character. They are frequently available to individuals who may otherwise not qualify for expungement or sealing, or at an earlier point in time.

Judicial certificates of relief have been proposed by the American Law Institute in the revised sentencing articles of the Model Penal Code, by the Uniform Law Commission, and by the American Bar Association.\(^3\) Under the two-step schemes advocated by these national law reform organizations, limited relief is available at sentencing to remove specific economic barriers to promote reentry, while more comprehensive relief to signify rehabilitation is available after a further waiting period. The three model schemes do not propose to seal or otherwise limit public access to the record. Instead, they aim to provide individuals both incentive and reward for law-abiding conduct, and might be said to satisfy the community’s need for a ritual of reconciliation. As Jeremy Travis has

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\(^1\) For ease of reference, we include under the general rubric of “judicial certificates” some that are issued by parole or pardon boards, as in Connecticut, New York, and Rhode Island, so long as they have some specific legal effect, including but not limited to dispensing with legal restrictions. State laws authorizing courts to issue certificates of restoration of rights, variously denominated, are collected and described in § 7:23 of Love et al., COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTION: LAW POLICY AND PRACTICE (West/NACDL, 3d ed. 2018-2019). We have not included certificates issued by prison authorities that signify completion of training or good behavior while incarcerated because these rarely have the force of law.


observed, “[w]e need to find concrete ways to reaccept and embrace offenders who have paid their debt for their offense.”

Some advocates and practitioners are skeptical about the efficacy of a judicial certificate in the hiring process, including the vaunted New York certificates that have provided a model for similar certificate relief in other states. Yet a 2016 study of certificates issued by courts in Ohio found that individuals who had been issued certificates were more likely to get an invitation to interview than those without, and at a rate not far removed from the call-back rate for those without a criminal record. A study of the same certificates the following year in the context of applications for rental housing found a similar result. The authors of these studies theorized that court-issued certificates provide valuable information about work-readiness and/or reliability, and that in addition they may be perceived as protection against lawsuits claiming negligence. Or their value might be less tangible: in a survey of certificate programs published by The Marshall Project in 2015, the chief judge of the Cook County Criminal Court in Illinois called his state’s certificates “a tool for redeeming people,” and a legal aid lawyer in North Carolina noted that a court’s

4 *Invisible Punishment: An Instrument of Social Exclusion*, in INVISIBLE PUNISHMENT: THE SOCIAL COSTS OF MASS IMPRISONMENT 36 (Meda Chesney-Lind & Marc Mauer eds., 2002). See also Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL’Y REV. 153, 162 (1999)(“ex-offenders should have access to a ceremony marking their official reintegration into the community and the end of their exclusion and degradation.”); Bernard Kogon & Donald L. Loughery Jr., *Sealing and Expungement of Criminal Records—The Big Lie*, 61 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 378, 390 (1970)(“We solemnize the offender’s induction into the system. When he successfully concludes the program, though, we fail to institutionalize his departure correspondingly. It’s fun to catch the fish but hard to let him go.”).


6 Peter Leasure & Tia Stevens Andersen, *The Effectiveness of Certificates of Relief as Collateral Consequence Relief Mechanisms: An Experimental Study*, YALE L. & POL’Y REV. Inter Alia, Vol. 35 (2016).

7 Peter Leasure and Tara Martin, *Criminal records and housing: an experimental study*, 13 J. of Experimental Criminology 527 (2017). A collection of social science research into “strategies to improve reentry outcomes” judged court ordered certificates of rehabilitation “promising and worth further study” just based on this study and the one in note 6, along with diversion from incarceration and cognitive therapy. (Ban-the-box, intensive supervision, and transitional jobs were judged among the least effective by researchers). See Jennifer Doleac, *Strategies to productively reincorporate the formerly-incarcerated into communities: A review of the literature*. IZA Discussion Paper No. 11646 (2018).
certification “makes what has happened since the crime a fully official part of that person’s record, for all employers to see.” A dissenting voice about the value of certificates came from a legal aid attorney in Pennsylvania, a state that does not authorize judicial certificates, who considered them a “weak compromise” because they “rely on employers to do the right thing.”

In the recent wave of reform, legislatures have been slow to enact judicial certificate laws, possibly because the advocacy community strongly favors relief that limits public access to the record. But in the 12 states where they are available (California, Colorado, Connecticut, Illinois, New Jersey, New York, North Carolina, Ohio, Rhode Island, Vermont, Washington, and Tennessee), they extend to a broader range of offenses than sealing or expungement, and may be obtained after a shorter waiting period, making them potentially a more valuable aid to reentry.

Eligibility for and effect of certificates vary from state to state, and they should be distinguished from more limited executive or judicial orders restoring voting and other civil rights, including firearms rights. Unlike record-sealing, certificates are frequently available to those with federal and out-of-state convictions who reside or do business in the state. In some states, a variety of certificate is available from correctional authorities when individuals complete a prison term, but these certificates do not have the same legal effect in removing mandatory restrictions as the certificates issued by the 12 states discussed in this section. Certificates have also made a cameo appearance in the federal system.

The certificate schemes in Connecticut and Vermont are the only ones that contemplate the same sort of bifurcation between early and late-stage remedies, or partial and complete relief, as the national law reform proposals described in the first paragraph. Vermont law authorizes the court to issue targeted relief from mandatory collateral consequences at sentencing (Order of Limited Relief), and more thorough relief after five years (Certificate of Restoration of Rights), and these certificates are available for a much greater range of convictions than record-sealing in that state. In Connecticut,


9 See Jane Doe v. United States, 168 F. Supp. 3d 427, 446 (E.D.N.Y. 2016) (Gleeson, J.) (granting a “certificate of rehabilitation” in recognition of “Doe’s good conduct following completion of her sentence”).

I evaluated Doe's character when I sentenced her 13 years ago. I have done so again now, focusing not on her long-ago criminal acts but on her efforts to rebuild herself. Considering those efforts along with her life circumstances generally, I conclude that Doe is fit not only be hired by a nursing agency in need of a qualified employee, but she to also be relieved of the long list of collateral consequences she faces under state and federal law. Doe's only important conviction today is her conviction to abstain from criminal conduct and to be a productive member of society. That conviction is most emblematic of who she is today.
the pardon board or court supervisory agency may issue certificates of rehabilitation in cases that do not yet qualify for a full pardon, to give relief from legal barriers to employment and/or licensure. Late-stage relief in the form of a pardon has the additional benefit of expunging or “erasing” the record. Both states make their certificates available to those with federal and out-of-state convictions (though only those with in-state offenses may qualify for a pardon).

New York’s certificate scheme is the oldest, dating from the 1940s, and its “Certificates of Relief from Disabilities” (CRD) and “Certificates of Good Conduct” (CGC) have far-reaching legal effect when coupled with the state’s nondiscrimination laws. Until the recent enactment of a limited sealing law, these certificates were the only individualized relief New York offered for convictions, and they remain the only mechanism for overriding mandatory legal disabilities, including firearms disabilities, since sealing does not appear to have that effect.10 Unlike sealing with its lengthy eligibility waiting period and limit to a single felony, New York certificates are available to first felony offenders from the court as early as sentencing and to all others from the parole board after a brief waiting period, and they are not limited to people with a single felony conviction.11 They are also offered to anyone with a federal or out-of-state conviction who lives or does business in the state. New Jersey’s certificate scheme also extends relief at sentencing to persons with first felony offenses who are not sentenced to prison, and three years after completion of supervision for those who go to prison and have no other felony conviction within 10 years. It is not clear whether New Jersey’s certificates are available to those with federal and out-of-state convictions, as New York’s are.

In contrast to New York and New Jersey, whose certificates differ according to a person’s record, Illinois’ two certificates perform different functions: a “Certificate of Relief from Disabilities” addresses occupational licensing restrictions and creates an enforceable “presumption of rehabilitation” that must be given effect by a licensing board. A “Certificate of Good Conduct” lifts mandatory bars to employment, occupational licensure, and housing. In Illinois, certificates may be issued by the sentencing court, either at the time of sentencing or after completion of sentence, or by the circuit court to those convicted of federal and out-of-state offenses, after a brief waiting period.12

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10 N.Y. Crim. Proc. Law § 160.59(9)(sealed convictions remain available to state entities responsible for issuing firearm licenses).

11 N.Y. Correct. Law §§ 703-b(1), (3).

12 The Illinois certificate scheme was originally proposed by a freshman member of the Illinois legislature named Barack Obama eager to make his mark during his short-lived stint in state office. It is described in Love, Paying Their Debt to Society, note 2 supra, 54 How. L. J. at 761-62, 789-91. See also the Illinois profile from the Restoration of Rights Project,
Certificates generally operate to convert mandatory disqualifications into discretionary ones, extending opportunities and benefits to individuals who would otherwise be barred from them by law. Some states go further to require that certificates be given weight in the discretionary decision-making process. In Ohio, for example, a “Certificate of Qualification for Employment” creates a “rebuttable presumption that the person’s criminal convictions are insufficient evidence that the person is unfit for the license, employment opportunity, or certification in question.”\textsuperscript{13} Certificates in New York and Illinois have a similar weighty influence in connection with discretionary decision-making. Certificates in Ohio and Washington are specifically directed at employment barriers, but certificates in other states have a more general application and effect on any mandatory collateral consequences.

Some certificates carve out exceptions for specific consequences, particularly those that relate to licensing and employment in sensitive occupations. For example, Washington’s “Certificate of Restoration of Opportunity” has a potent effect in many occupational licensing schemes, and is the only way a person with a felony record may be considered for employment by the school system, but it has no effect on licensing relief for nurses and physicians, private investigators, teachers, or law enforcement personnel. Illinois’ “Certificate of Relief from Disabilities” authorizes relief only in specified licensed fields. California’s “Certificate of Rehabilitation” limits consideration of felony convictions by licensing boards, relieves the obligation to register as a sex offender, and constitutes the first step in the executive pardon process.

Certificates may also provide relief from informal consequences imposed by private actors by evidencing rehabilitation or, in the case of New York, creating an enforceable presumption of rehabilitation under the state’s Human Rights Law. Some certificates accomplish this by limiting an employer’s liability in negligent hiring actions. In Ohio, North Carolina, and Vermont, for example, reliance on a certificate creates a presumption of due care in hiring; in Illinois and Tennessee, reliance on a certificate is a complete defense to liability. In Ohio, protections may also extend to other similar forms of liability like negligence in connection with renting or admission to an educational program.

\textsuperscript{13} A person who has fully discharged the sentence after a short eligibility waiting period (one year after completion of sentence for felonies, six months for misdemeanors) from the court of common pleas in the county of his residence (if a state resident), or in the court where he was convicted (if not a resident), for a “certificate of qualification for employment” (CEQ) that will provide relief from mandatory legal bars and allow him to be considered on the merits. See \textit{Ohio Rev. Code Ann. § 2953.25}. See also \textit{Ohio Rev. Code Ann. §§ 2961.21 through 2961.24}, authorizing the corrections authority and parole board to issue “certificates of achievement and employability” for certain DRC prisoners and parolees to be used by the recipient to generally obtain relief from “mandatory civil impacts” that would affect a potential job for which the person trained while in prison.
Certificates are typically available for a broader range of offenses than sealing or expungement and may be granted earlier. Of the 12 states that offer certificates, seven (California, Connecticut, New Jersey, New York, Ohio, Tennessee, and Vermont) impose no categorical limits on who can approach the court for relief. Illinois excludes from eligibility individuals convicted of specified crimes involving serious violence, and Washington makes CROP certificates available only to individuals who have not been convicted at any time of a Class A felony, certain sex offenses, and a handful of other serious felonies. Colorado initially limited its “collateral relief” to individuals sentenced to community corrections, but later extended this relief to all but convictions involving serious violence or a requirement of registration. Only North Carolina and Rhode Island extend certificate relief only to those convicted of minor nonviolent crimes, and only Rhode Island and New Jersey limit eligibility to persons with no more than one felony conviction.

Individuals may apply for certificates as early as sentencing in seven states (Colorado, Connecticut, Illinois, New Jersey, New York, Tennessee, and Vermont). In North Carolina, a certificate is available for more felony offenses after a significantly shorter waiting period than expungement (one year for a certificate vs. five to ten years for expungement). In Ohio, Certificates of Qualification for Employment are also available one year after completion of sentence.

In some of these states, certificates somewhat anomalously purport to evidence rehabilitation even when issued as early as sentencing, which anecdotally has sometimes made courts wary of issuing them. But in other states (notably Connecticut and Vermont) beneficiaries of an early order are required to return for more complete relief after a further waiting period. The Vermont scheme is modeled on the Uniform Act, including an early “Order of Limited Relief” and a later “Certificate of Restoration of Rights.” Connecticut also offers an early Certificate of Employability and a later full pardon. In Tennessee, individuals may regain their civil rights from the sentencing court upon completion of their sentence, and simultaneously petition the court for a “certificate of employability” that lifts most licensing barriers and protects employers from negligent hiring liability. At this second stage, the court makes findings after a hearing about character, need for relief (including for employment or licensing) and public safety. People with federal and out-of-state convictions are eligible for this more potent certificate and may obtain it from the court in their county of residence.

State residents with federal and out-of-state convictions are eligible for certificates in Connecticut, Illinois, New York, Rhode Island, Tennessee, Vermont, and perhaps New Jersey, but not in California, Colorado, North Carolina, Ohio, or Washington. Some states require applicants convicted

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14 See articles cited at note 4.
in more than one county to file multiple applications, but others (notably Ohio) permit consolidation of all convictions in one court.

Issuance of a certificate is entirely discretionary in all states except Washington, and an otherwise eligible petitioner may be denied relief if the court is unable to make the necessary findings, sometimes weighing the applicant’s need for relief against the public welfare. Moreover, the scope of relief granted in any specific case is generally up to the court: a certificate may be unlimited in scope (subject only to legally established limits), or it may provide relief only from those consequences specified in the certificate itself. This allows the court to tailor the scope of relief to each petitioner and his or her specific circumstances, including employment, licensing, or other objectives. Most states authorize revocation of the certificate if the person has a subsequent conviction.

It remains to be seen if judicial certificates of relief or restoration of rights will grow in popularity. Certainly, most of the advocacy around relieving collateral consequences has been in support of record-sealing, not the more transparent certificates that rely on the good will of employers, licensing boards, and landlords to give them effect. Like a pardon, a certificate “makes what has happened since the crime a fully official part of that person’s record, for all employers to see.”¹⁵ As it becomes apparent that record relief must explore a variety of forms particularly where felony convictions are concerned, and as certificates are given broader eligibility and more specific and substantial legal effect, this form of relief may become more popular than some of the other tools in the arsenal.

¹⁵ See notes 7 and 8, supra.