

April 9, 2009

H 1445. REFORM BILL OF 2009. Filed 4/9/09. *TO RECLASSIFY STATUTORY RAPE OR SEXUAL OFFENSE OF A PERSON WHO IS THIRTEEN, FOURTEEN, OR FIFTEEN YEARS OLD BY A DEFENDANT WHO IS MORE THAN FOUR YEARS BUT LESS THAN SIX YEARS OLDER; TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES, TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES, AND TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS; TO RESTRUCTURE THE PRIOR RECORD LEVEL POINT RANGES IN STRUCTURED SENTENCING IN ORDER TO EXPAND THE POINTS IN PRIOR RECORD LEVEL I AND TO EVEN OUT THE REMAINING RANGES; TO MAKE THE INCREASE IN SENTENCE LENGTHS BETWEEN PRIOR RECORD LEVELS MORE PROPORTIONATE USING A SET PERCENTAGE INCREMENT; TO INCREASE THE PERIOD OF POST-RELEASE SUPERVISION FROM NINE MONTHS TO TWELVE MONTHS; AND TO DIRECT THE DEPARTMENT OF CORRECTION TO MAKE VARIOUS MODIFICATIONS TO THE RULES REGARDING "EARNED TIME."*

To be summarized in Monday's *Daily Bulletin*.

Intro. by Haire.

GS 14, 15A, 90

April 13, 2009

H 1445. REFORM BILL OF 2009. Filed 4/9/09. *TO RECLASSIFY STATUTORY RAPE OR SEXUAL OFFENSE OF A PERSON WHO IS THIRTEEN, FOURTEEN, OR FIFTEEN YEARS OLD BY A DEFENDANT WHO IS MORE THAN FOUR YEARS BUT LESS THAN SIX YEARS OLDER; TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES, TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES, AND TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS; TO RESTRUCTURE THE PRIOR RECORD LEVEL POINT RANGES IN STRUCTURED SENTENCING IN ORDER TO EXPAND THE POINTS IN PRIOR RECORD LEVEL I AND TO EVEN OUT THE REMAINING RANGES; TO MAKE THE INCREASE IN SENTENCE LENGTHS BETWEEN PRIOR RECORD LEVELS MORE PROPORTIONATE USING A SET PERCENTAGE INCREMENT; TO INCREASE THE PERIOD OF POST-RELEASE SUPERVISION FROM NINE MONTHS TO TWELVE MONTHS; AND TO DIRECT THE DEPARTMENT OF CORRECTION TO MAKE VARIOUS MODIFICATIONS TO THE RULES REGARDING "EARNED TIME."*

Amends a number of statutes as the title indicates.

Amends GS 14-27.7A(b) to reclassify statutory rape or sexual offense of a person who is 13, 14, or 15 years old by a defendant who is more than four but less than six years older than that person, and not married to that person, as a Class F felony (was, Class C felony).

Enacts new GS 15A-150 providing for the expunction of conviction records of certain nonviolent criminal offenses if (1) prior to the offense for which the person is seeking expunction, the person had not previously been convicted of any felony or misdemeanor other than a traffic violation and (2) there have been no subsequent criminal convictions for at least 10 years. Defines *nonviolent criminal offense* to mean a misdemeanor or a Class H or I felony. Specifies that nonviolent criminal offense does not include (1) an offense that includes assault as an essential element; (2) an offense that requires the offender to register under GS Chapter 14, Article 27A (sex offender and public protection registration programs); (3) an offense that includes the possession or use of a firearm as an essential element; (4) an offense for which the offender was armed or used a firearm; or (5) an offense that is trafficking under GS 90-95(h) (trafficking in controlled substances).

Provides that a petition for expunction of the nonviolent criminal offense cannot be filed earlier than 10 years after the date of conviction or completion of active time, post-release supervision, or probation, whichever is later. Limits a person to one expunction of the person's records. Requires the petitioner to submit an expunction fee of \$100, with \$50 remitted to the Department of Justice and \$50 remitted to the Administrative Office of the Courts. Specifies the content that must be contained in the petition for expunction. Requires the petition to be served on the district attorney of the court where the case was tried resulting in conviction, and allows 10

days for the district attorney to file any objection to the petition. Requires supplying the district attorney with notice of the hearing of the petition. Requires that the court order that the petitioner be restored if the court makes a list of specified findings, including a determination that the petitioner has remained of good moral character for ten years from the date of the conviction of the felony in question and there are no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner. Directs the court to order that the conviction be expunged from the records of the court and directs all law enforcement agencies to expunge any records of the conviction. Requires applicable state or local government agencies to expunge their records accordingly. Directs the AOC to maintain a confidential file of the names of persons granted expunctions and other information, which may be disclosed only to trial judges to determine if a person charged with an offense has been previously granted an expunction.

Amends GS 15A-145(a) providing expunction provisions for persons less than 18 years old who are guilty of certain misdemeanors and to persons less than 21 years old who are guilty of a misdemeanor possession of alcohol to modify the form of the petition for expunction. Amends the expunction provision in GS 90-96 for first drug offenses to modify the form of the petition and makes parallel changes to GS 90-113.14 for first offenses under the Toxic Vapors Act.

Amends GS 15A-145 and GS 15A-146 to add new subsections requiring any other applicable state or local government agency to expunge the records of a person who has a charge or conviction expunged from the person's record.

Amends GS 15A-1340.14(c) to restructure prior criminal record points and sentence lengths for structured sentencing as follows:

- (1) Level I-not more than 1 point (was, 0).
- (2) Level II-at least 2 (was, 1), but not more than 5 points (was, 4).
- (3) Level III-at least 6 (was, 5), but not more than 9 points (was, 8).
- (4) Level IV-at least 10 (was, 9), but not more than 13 points (was, 14).
- (5) Level V-at least 14 (was, 15), but not more than 17 points (was, 18).
- (6) Level VI-at least 18 points (was, 19).

Amends GS 15A-1340.17(c) to modify the authorized punishment for each class of offense and prior record level in the punishment chart.

Amends GS 15A-1368(a)(5) to provide that for a prisoner serving consecutive prison terms, the maximum imposed term is the sum of all maximum terms imposed less 12 months (was, nine) for each of the second and subsequent sentences imposed for Class B through Class E felonies. Amends GS 15A-1368.2 to increase a supervisee's post-release supervision period to 12 months (was, nine). Also provides that a prisoner is to be released from prison for post-release supervision on the date that is equivalent to the prisoner's maximum imposed prison term less 12 months (was, nine) and, if the prisoner has not been awarded any earned time, the prisoner is to be released for post-release supervision on the date equivalent to the prisoner's maximum prison term less 12 months (was, nine).

Directs the Department of Correction to modify rules regarding *earned time* to make it possible for every category of currently incarcerated offender to earn time at each *earned time* level at a rate that will allow the offenders to be released at their minimum sentence, but no earlier than their minimum sentence. Specifies acceptable methods for achieving this objective. Provides that all new rules and regulations apply to currently incarcerated offenders and future offenders.

Effective December 1, 2009, and applies to offenses committed on or after that date and to applications for expunction of records made on or after that date.

Intro. by Haire.

GS 14, 15A, 90

July 13, 2009

H 1445. REFORM BILL OF 2009. Filed 4/9/09. House committee substitute makes the following changes to 1st edition. Reorders several sections of the bill.

Amends GS 15A-1340.17(c) to: (1) modify punishment chart, (2) modify maximum sentences specified for Class B1 through E felonies for minimum terms up to 339 months, (3) modify calculation for maximum sentences specified for Class B1 and E felonies for minimum

terms of 340 months or more by requiring the addition of 12 (was, 9) months and (4) make technical changes.

Amends GS 14-27.7A to specify that a defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13 or 14 years old, and a Class F felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 15 years old, if the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person.

Makes several changes to proposed new GS 15A-150, including reordering several subsections, and making conforming changes to title. Amends GS 15A-150(a) to: (1) specify that criminal offense does not include an offense that includes assault as an essential element of the offenses, other than a violation of GS 14-33(a) or (b); (2) exclude from the definition of criminal offense an offense that is a breaking or entering offense that involves a residence or dwelling; and (3) specify that the term *traffic violation* does not include felony speeding to elude arrest or misdemeanor or felony vehicular homicide. Amends GS 15A-150(b) to add a new provision specifying certain criteria that must be met before a person who was convicted of a criminal offense (was, person pleads guilty to or is guilty of a nonviolent offense) may petition the court to expunge the criminal offense from the person's criminal record. Amends GS 15-150(c) [was 15-150(b)] to require that an expunction petition not be filed earlier than 10 years after the person's citizenship rights have been restored (was, after the date of conviction, period of active sentence, period of post-release supervision, or period of probation has been completed, whichever is later). Also adds to the list of items that must be included in a petition to expunge a criminal offense the following: (1) an affidavit by the petitioner that the petitioner's citizenship rights have been restored pursuant to GS Chapter 13 and that the petitioner has been of good behavior for the 10-year period since the restoration of the petitioner's citizenship rights and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this state or any other state and (2) a list of the occupational licensing boards to be notified of the expunction on behalf of the petitioner, limited to those boards that have denied the petitioner an occupational license based on the petitioner's conviction of the criminal offense. Specifies that the district attorney has 30 days (was, 10 days) to file any objection to a petition (was, 10 days). Amends GS 15-150(d) to add a new provision requiring the court to conduct a hearing to determine whether the petition for expunction should be granted. Specifies what information a court may consider and under what circumstances a court may order an expunction. Amends GS 15-501(e) [was, part of GS 15-501(c)] to specify that persons pursuing certification under the provisions of GS Chapter 17C or GS Chapter 17E must disclose any and all felony convictions to the certifying commission regardless of whether or not the felony convictions were expunged. Amends GS 15-501(h) [was GS 15-501(f)] to expand the list of persons and entities to whom or to which the clerk of superior court may disclose the confidential file containing the names of the persons granted expunctions. Amends GS 15-501(i) [was, GS 15-501(g)] to increase the filing fee for the petition from \$100 to \$150, and direct that \$75 of the fee be remitted to the Administrative Office of the Courts to pay the costs associated with implementing GS 15-501 and \$75 of the fee be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. Adds new GS 15-501(j) to provide that a court must include the expunged offense in the calculation of prior record points when imposing the sentence for the subsequent felony or misdemeanor if a person's record is expunged and the person is convicted of a subsequent felony or misdemeanor, other than a traffic violation. Makes other technical changes.

Amends GS 15A-145 to specify that the age used to determine eligibility for expunctions is the age at the time of the commission of the offense. Provides for expunction of a person's record if the person either is (1) convicted of a misdemeanor offense committed before the person is 18 or (2) convicted of a misdemeanor possession of alcohol committed before the person is 21. Makes other technical changes.

Amends GS 17C-13 and GS 17E-12 to allow the North Carolina Criminal Justice Education and Training Standards Commission (NCCJETSC) and the North Carolina Sheriffs' Education and Training Standards Commission (NCSETSC), respectively, access to a person's felony conviction records, including expunction records. Specifies that the records remain confidential.

Authorizes the NCCJETSC and NCSETSC to make denial, suspension, or revocation of certification decisions based on felony convictions, whether expunged or not.

Deletes Section 12 in 1st edition [requiring the Department of Correction (DOC) to adjust rules and regulations governing earned time, and authorizing the DOC to add days onto the minimum sentence for infractions]).

Provides that Sections 1 through 5 of the act apply to offenses committed on or after the effective date of December 1, 2009, and Sections 6 through 12 of the act apply to applications for expunction of records made on or after that date.

August 6, 2009

H 1445. REFORM BILL OF 2009. Filed 4/9/09. House committee substitute makes the following changes to 2nd edition. Amends GS 15A-1340.17(c) to modify minimum and maximum sentences specified for Class B1 through E felonies for minimum terms up to 339 months. Creates minimum terms of 12, 13, and 14 months and corresponding maximum terms. Amends the maximum terms for minimum terms of 15, 16, 17, 18, and 19 years.

Deletes proposed GS 15A-150 which permitted the expunction of records for certain criminal offenses if the petitioner met specified criteria that included (1) the restoration of the petitioner's citizenship rights and (2) no subsequent criminal convictions.

Amends GS 15A-145 to change the term "national criminal record check" to read "national criminal *history* record check." Provides that an administrative action taken against a person whose record is expunged is not required to be reversed as a condition of the expunction when the administrative actions were related to an employment action or decision by a law enforcement agency. Amends GS 90-96 and GS 90-113.14 to conform with changes in GS 15A-145.

Changes the effective date of the act to June 1, 2010 (was, December 1, 2009). Provides that Sections 1 through 5 of the act apply to offenses committed on or after June 1, 2010 and Sections 6 through 11 (was, 6 through 12) of the act apply to applications for expunction of records made on or after the effective date. Makes additional conforming and technical changes. Makes a conforming change to the title.