

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1260
Senate Judiciary I Committee Substitute Adopted 8/4/09
Proposed Conference Committee Substitute H1260-PCCS80642-SUF-2

Short Title: Amend Felony Firearm Act/Clarify Britt Case.

(Public)

Sponsors:

Referred to:

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A PERSON CONVICTED ONLY OF A SINGLE
3 NONVIOLENT FELONY AND NO VIOLENT MISDEMEANORS AND WHOSE
4 CITIZENSHIP RIGHTS HAVE BEEN RESTORED FOR A PERIOD OF AT LEAST
5 TWENTY YEARS MAY PETITION THE COURT TO RESTORE THE PERSON'S
6 FIREARMS RIGHTS IN THIS STATE SO THAT THE DISENTITLEMENT UNDER
7 THE FELONY FIREARMS ACT DOES NOT APPLY AND ALSO TO AMEND THE
8 FELONY FIREARMS ACT TO ALLOW EXCEPTIONS FOR CERTAIN WHITE
9 COLLAR CRIME CONVICTIONS THAT ARE SIMILAR TO THE EXCEPTIONS
10 ALLOWED UNDER FEDERAL LAW.

11 The General Assembly of North Carolina enacts:

12 SECTION 1. Article 54A of Chapter 14 of the General Statutes is amended by
13 adding a new section to read:

14 "**§ 14-415.4. Restoration of firearms rights.**

15 (a) Definitions. – The following definitions apply in this section:

16 (1) Firearms rights. – The legal right in this State of a person to purchase, own,
17 possess, or have in the person's custody, care, or control any firearm or any
18 weapon of mass death and destruction as those terms are defined in
19 G.S. 14-415.1 and G.S. 14-288.8(c). The term does not include any weapon
20 defined in G.S. 14-409(a).

21 (2) Nonviolent felony. – The term nonviolent felony does not include any felony
22 that is a Class A, Class B1, or Class B2 felony. Also, the term nonviolent
23 felony does not include any Class C through Class I felony that is one of the
24 following:

25 a. An offense that includes assault as an essential element of the
26 offense.

27 b. An offense that includes the possession or use of a firearm or other
28 deadly weapon as an essential or nonessential element of the offense,
29 or the offender was in possession of a firearm or other deadly
30 weapon at the time of the commission of the offense.

31 c. An offense for which the offender was armed with or used a firearm
32 or other deadly weapon.



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1 d. An offense for which the offender must register under Article 27A of
2 Chapter 14 of the General Statutes.

3 (b) Purpose. – It is the purpose of this section to establish a procedure that allows a
4 North Carolina resident who was convicted of a single nonviolent felony and whose citizenship
5 rights have been restored pursuant to Chapter 13 of the General Statutes to petition the court to
6 remove the petitioner's disenfranchisement under G.S. 14-415.1 and to restore the person's firearms
7 rights in this State. If the single nonviolent felony conviction was an out-of-state conviction or
8 a federal conviction, then the North Carolina resident shall show proof of the restoration of his
9 or her civil rights and the right to possess a firearm in the jurisdiction where the conviction
10 occurred. Restoration of a person's firearms rights under this section means that the person may
11 purchase, own, possess, or have in the person's custody, care, or control any firearm or any
12 weapon of mass death and destruction as those terms are defined in G.S. 14-415.1 and
13 G.S. 14-288.8(c) without being in violation of G.S. 14-415.1, if otherwise qualified.

14 (c) Petition for Restoration of Firearms Rights. – A person who was convicted of a
15 nonviolent felony in North Carolina but whose civil rights have been restored pursuant to
16 Chapter 13 of the General Statutes for a period of at least 20 years may petition the district
17 court in the district where the person resides to restore the person's firearms rights pursuant to
18 this section. A person who was convicted of a nonviolent felony in a jurisdiction other than
19 North Carolina may petition the district court in the district where the person resides to restore
20 the person's firearms rights pursuant to this section only if the person's civil rights, including
21 the right to possess a firearm, have been restored, pursuant to the law of the jurisdiction where
22 the conviction occurred, for a period of at least 20 years. The court may restore a petitioner's
23 firearms rights after a hearing in court if the court determines that the petitioner meets the
24 criteria set out in this section and is not otherwise disqualified to have that right restored.

25 (d) Criteria. – The court may grant a petition to restore a person's firearms rights under
26 this section if the petitioner satisfies all of the following criteria and is not otherwise
27 disqualified to have that right restored:

28 (1) The petitioner is a resident of North Carolina and has been a resident of the
29 State for one year or longer immediately preceding the filing of the petition.

30 (2) The petitioner has only one felony conviction and that conviction is for a
31 nonviolent felony. For purposes of this subdivision, multiple felony
32 convictions arising out of the same event and consolidated for sentencing
33 shall count as one felony only.

34 (3) The petitioner's rights of citizenship have been restored pursuant to Chapter
35 13 of the General Statutes or, if the conviction was in a jurisdiction other
36 than North Carolina, have been restored, pursuant to the laws of the
37 jurisdiction where the conviction occurred, for a period of at least 20 years
38 before the date of the filing of the petition.

39 (4) The petitioner has not been convicted under the laws of the United States,
40 the laws of this State, or the laws of any other state of any misdemeanor as
41 described in subdivision (6) of subsection (e) of this section since the
42 conviction of the nonviolent felony.

43 (5) The petitioner submits his or her fingerprints to the sheriff of the county in
44 which the petitioner resides for a criminal background check pursuant to
45 G.S. 114-19.28.

46 (6) The petitioner is not disqualified under subsection (e) of this section.

47 (e) Disqualifiers Requiring Denial of Petition. – The court shall deny the petition to
48 restore the firearms rights of any petitioner if the court finds any of the following:

49 (1) The petitioner is ineligible to purchase, own, possess, or have in the person's
50 custody, care, or control a firearm under the provisions of any law in North
51 Carolina other than G.S. 14-415.1.

- 1 (2) The petitioner is under indictment for a felony or a finding of probable cause
2 exists against the petitioner for a felony.
- 3 (3) The petitioner is a fugitive from justice.
- 4 (4) The petitioner is an unlawful user of, or addicted to, marijuana, alcohol, or
5 any depressant, stimulant, or narcotic drug, or any other controlled substance
6 as defined in 21 U.S.C. § 802.
- 7 (5) The petitioner is or has been dishonorably discharged from the armed forces.
- 8 (6) The petitioner is or has been adjudicated guilty of or received a prayer for
9 judgment continued or suspended sentence for one or more crimes of
10 violence constituting a misdemeanor, including a misdemeanor under Article
11 8 of Chapter 14 of the General Statutes, or a misdemeanor under
12 G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6,
13 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283,
14 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13,
15 14-288.14, 14-318.2, 14-415.21(b), or 14-415.26(d), or a substantially
16 similar out-of-state or federal offense.
- 17 (7) The petitioner has had entry of a prayer for judgment continued for a felony,
18 in addition to the nonviolent felony conviction.
- 19 (8) The petitioner is free on bond or personal recognizance pending trial, appeal,
20 or sentencing for a crime which would prohibit the person from having his
21 or her firearms rights restored under this section.
- 22 (9) An emergency order, ex parte order, or protective order has been issued
23 pursuant to Chapter 50 B of the General Statutes or a similar out-of-state or
24 federal order has been issued against the petitioner and the court order issued
25 is still in effect.
- 26 (10) A civil no-contact order has been issued pursuant to Chapter 50C of the
27 General Statutes or a similar out-of-state or federal order has been issued
28 against the petitioner and the court order issued is still in effect.
- 29 (f) Notice of Hearing and Hearing Procedure. – The clerk of court shall provide notice
30 of the hearing to the district attorney in the district in which the petition is filed at least four
31 weeks before the hearing on the matter. The petitioner may present evidence in support of the
32 petition, and the district attorney may present evidence in opposition to the requested
33 restoration of firearms rights or may otherwise demonstrate the reasons why the petition should
34 be denied. The burden is on the petitioner to establish by a preponderance of the evidence that
35 the petitioner is qualified to receive the restoration under subsection (d) of this section and that
36 the petitioner is not disqualified under subsection (e) of this section.
- 37 (g) Right to Petition Again Upon Denial of Petition. – If the court denies the petition,
38 the person may again petition the court for restoration of his or her firearms rights in
39 accordance with this section one year from the date of the denial of the original petition.
40 However, if the sole basis for the denial of the petition are the grounds set out under
41 G.S. 14-415.4(e)(9) or (10), then the person does not have to wait for one year from the date of
42 denial of the original petition but may petition again upon the expiration of the order.
- 43 (h) Certified Copies of Order Granting Petition to Sheriff. – Department of Justice, and
44 national instant background check system index. – If the court grants the petition to restore the
45 petitioner's firearms rights, the clerk of court shall forward within 10 days of the entry of the
46 order a certified copy of the order to the sheriff of the county in which the petitioner resides,
47 the North Carolina Department of Justice, and the denied person's file of the national instant
48 criminal background check system index.
- 49 (i) Restoration is Not an Expunction or Pardon. – A restoration of firearms rights under
50 this section does not result in the expunction of any criminal history record information nor
51 does it constitute a pardon.

1 (j) Automatic Revocation Upon Conviction of a Subsequent Felony. – If a person's
2 firearms rights are restored under this section and the person is convicted of a second or
3 subsequent felony, then the person's firearms rights are automatically revoked and shall not be
4 restored under this section.

5 (k) Fee. – A person who files a petition for restoration of firearms rights under this
6 section shall pay the clerk of court a fee of two hundred dollars (\$200.00) at the time the
7 petition is filed. Fees collected under this subsection shall be deposited in the General Fund.
8 This subsection does not apply to petitions filed by an indigent.

9 (l) Criminal Offense to Submit False Information. – A person who knowingly and
10 willfully submits false information under this section is guilty of a Class 1 misdemeanor. In
11 addition, a person who is convicted of an offense under this subsection is permanently
12 prohibited from petitioning to restore his or her firearms rights under this section."

13 **SECTION 2.** Chapter 114 of the General Statutes is amended by adding a new
14 section to read:

15 **"§ 114-19.28. Criminal record checks of petitioners for restoration of firearms rights.**

16 (a) A person who petitions the court to have the person's firearms rights restored shall
17 submit a full set of the petitioner's fingerprints, to be administered by the sheriff. The petitioner
18 shall also submit to the sheriff a form signed by the petitioner consenting to the criminal record
19 check and use of fingerprints and other identifying information required by the State and
20 National Repositories, and any additional information required by the State Bureau of
21 Investigation or the Federal Bureau of Investigation. The sheriff shall forward the set of
22 fingerprints and the signed consent form to the State Bureau of Investigation for a records
23 check of State and national databases.

24 (b) Upon receipt of the fingerprints and consent form forwarded by the sheriff pursuant
25 to subsection (a) of this section, the State Bureau of Investigation shall conduct a search of the
26 State criminal history record file and shall forward a set of the fingerprints and a copy of the
27 signed consent form to the Federal Bureau of Investigation for a national criminal history
28 record check.

29 (c) The State Bureau of Investigation shall provide a copy of the information obtained
30 pursuant to this section to the clerk of superior court to be placed in a separate confidential
31 court file for the petition for restoration of firearms rights.

32 (d) The Department of Justice may charge a fee to offset the cost incurred by it to
33 conduct a criminal record check under this section. The fee shall not exceed the actual cost of
34 locating, editing, researching, and retrieving the information."

35 **SECTION 3.** G.S. 14-415.1 is amended by adding the following new subsections
36 to read:

37 "(d) This section does not apply to a person whose firearms rights have been restored
38 under G.S. 14-415.4, unless the person is convicted of a subsequent felony after the petition to
39 restore the person's firearms rights is granted.

40 "(e) This section does not apply and there is no disentitlement under this section if the
41 felony conviction is a violation under the laws of North Carolina, another state, or the United
42 States that pertains to antitrust violations, unfair trade practices, or restraints of trade."

43 **SECTION 4.** G.S. 14-404(c) reads as rewritten:

44 "(c) A permit may not be issued to the following persons:

- 45 (1) One who is under an indictment or information for or has been convicted in
46 any state, or in any court of the United States, of a felony (other than an
47 offense pertaining to antitrust violations, unfair trade practices, or restraints
48 of trade). However, a person who has been convicted of a felony in a court
49 of any state or in a court of the United States and (i) who is later ~~pardoned~~
50 pardoned, or (ii) whose firearms rights have been restored pursuant to
51 G.S. 14-415.4, may obtain a permit, if the purchase or receipt of a pistol or

crossbow permitted in this Article does not violate a condition of the ~~pardon~~ pardon or restoration of firearms rights.

- (2) One who is a fugitive from justice.
- (3) One who is an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug (as defined in 21 U.S.C. § 802).
- (4) One who has been adjudicated mentally incompetent or has been committed to any mental institution.
- (5) One who is an alien illegally or unlawfully in the United States.
- (6) One who has been discharged from the armed forces under dishonorable conditions.
- (7) One who, having been a citizen of the United States, has renounced his or her citizenship.
- (8) One who is subject to a court order that:
 - a. Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;
 - b. Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner of the person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - c. Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury."

SECTION 5. G.S. 14-415.12(b) reads as rewritten:

"(b) The sheriff shall deny a permit to an applicant who:

- (1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.
- (2) Is under indictment or against whom a finding of probable cause exists for a felony.
- (3) Has been adjudicated guilty in any court of a ~~felony~~ felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.
- (4) Is a fugitive from justice.
- (5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.
- (6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.
- (7) Is or has been discharged from the armed forces under conditions other than honorable.
- (8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1,

- 1 14-277.2, 14-277.3A, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2),
2 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2,
3 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3.
- 4 (9) Has had entry of a prayer for judgment continued for a criminal offense
5 which would disqualify the person from obtaining a concealed handgun
6 permit.
- 7 (10) Is free on bond or personal recognizance pending trial, appeal, or sentencing
8 for a crime which would disqualify him from obtaining a concealed handgun
9 permit.
- 10 (11) Has been convicted of an impaired driving offense under G.S. 20-138.1,
11 20-138.2, or 20-138.3 within three years prior to the date on which the
12 application is submitted."

13 **SECTION 6.** The Attorney General shall send a copy of this act to the United
14 States Attorney General, the United States Department of Justice, and the federal Bureau of
15 Alcohol, Tobacco, and Firearms for review and shall ask for a determination of the following:
16 (i) whether a person who has his or her firearms rights restored pursuant to this act can legally
17 purchase and possess a firearm under federal law, and (ii) whether a person who falls under the
18 exception to the State Felony Firearms Act regarding antitrust violations, unfair trade practices,
19 or restraints of trade as enacted by this act can legally purchase and possess a firearm under
20 federal law. The Attorney General shall report the response to the Joint Legislative
21 Corrections, Crime Control and Juvenile Justice Oversight Committee.

22 **SECTION 7.** Sec. 6 of this act is effective when it becomes law. The remainder of
23 the act becomes effective February 1, 2011, and applies to offenses committed on or after that
24 date. Prosecutions for offenses committed before the effective date of this act are not abated or
25 affected by this act, and the statutes that would be applicable but for this act remain applicable
26 to those prosecutions.