

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

FILED SENATE
Mar 28, 2017
S.B. 457
PRINCIPAL CLERK

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SENATE BILL DRS35192-MSa-113 (03/16)

Short Title: Amend Deferred Prosecution Statute. (Public)

Sponsors: Senators McKissick, Daniel, and Britt (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE DEFERRED PROSECUTION STATUTES TO ALLOW
3 DISTRICT ATTORNEYS THE DISCRETION TO WAIVE PRIOR DEFERRED
4 PROSECUTION AND ALLOW CERTAIN DEFENDANTS TO ENTER THE
5 PROGRAM AND TO PROVIDE FOR AUTOMATIC EXPUNCTION UPON
6 COMPLETION OF THE DEFERRED PROSECUTION AND DISMISSAL OF THE
7 CHARGES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 15A-1341 reads as rewritten:

10 "§ 15A-1341. Probation generally.

11 ...

12 (a1) Deferred Prosecution. – A person who has been charged with a Class H or I felony
13 or a misdemeanor may be placed on probation as provided in this Article on motion of the
14 defendant and the prosecutor if the court finds each of the following facts:

- 15 (1) Prosecution has been deferred by the prosecutor pursuant to written
16 agreement with the defendant, with the approval of the court, for the purpose
17 of allowing the defendant to demonstrate his good conduct.
18 (2) Each known victim of the crime has been notified of the motion for
19 probation by subpoena or certified mail and has been given an opportunity to
20 be heard.
21 (3) The defendant has not been convicted of any felony or of any misdemeanor
22 involving moral turpitude. The district attorney shall have discretion to
23 waive a prior conviction not involving moral turpitude and place a defendant
24 on deferred prosecution.
25 (4) The defendant has not previously been placed on probation and so states
26 under oath.
27 (5) The defendant is unlikely to commit another offense other than a Class 3
28 misdemeanor.

29 ...

30 (a7) Misdemeanor Deferred Prosecutions for Defendant 18 Years Old or Younger. – A
31 defendant who otherwise qualifies for deferred prosecution under subsection (a1) of this section
32 and is 18 years old or younger at the time the offense is committed shall be entitled to:

- 33 (1) Automatic placement on deferred prosecution. Automatic deferral shall not
34 apply to misdemeanors committed between persons who have a personal
35 relationship as defined under G.S. 50B-1(b). Nothing in this section shall be



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1 construed as precluding a district attorney from allowing a defendant to enter
2 into a deferred prosecution.

3 (2) Automatic expunction pursuant to G.S. 15A-146(d) at the conclusion of a
4 successful deferred prosecution and a dismissal of the charges. Nothing in
5 this section shall be construed as precluding an otherwise eligible defendant
6 from receiving an expunction under any other statute.

7"

8 **SECTION 2.** G.S. 15A-146 is amended by adding a new subsection to read:

9 "(e) For misdemeanors dismissed pursuant to G.S. 15A-1341(a1), a petition shall be
10 filed on the defendant's behalf by the clerk of superior court automatically upon dismissal of
11 the charges and payment of one hundred seventy-five dollars (\$175.00) by the defendant."

12 **SECTION 3.** There is appropriated from the General Fund to the Administrative
13 Office of the Courts the sum of one thousand dollars (\$1,000) in nonrecurring funds for the
14 2017-2018 fiscal year to be utilized for the implementation of this act.

15 **SECTION 4.** This act becomes effective December 1, 2017, and applies to all
16 offenses committed on or after that date.