

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

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SENATE BILL 457

Short Title: Amend Deferred Prosecution Statute. (Public)

Sponsors: Senators McKissick, Daniel, Britt (Primary Sponsors); Bryant and Smith-Ingram.

Referred to: Rules and Operations of the Senate

March 29, 2017

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFERRED PROSECUTION STATUTES TO ALLOW DISTRICT ATTORNEYS THE DISCRETION TO WAIVE PRIOR DEFERRED PROSECUTION AND ALLOW CERTAIN DEFENDANTS TO ENTER THE PROGRAM AND TO PROVIDE FOR AUTOMATIC EXPUNCTION UPON COMPLETION OF THE DEFERRED PROSECUTION AND DISMISSAL OF THE CHARGES.

The General Assembly of North Carolina enacts:

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

"§ 15A-1341. Probation generally.

...

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

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

...

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

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



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.