

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 369*

Committee Substitute Favorable 4/9/13

PROPOSED SENATE COMMITTEE SUBSTITUTE H369-CSSA-66 [v.4]

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Short Title: Criminal Law Changes/WC Illegal Aliens.

(Public)

Sponsors:

Referred to:

March 21, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO VARIOUS CRIMINAL LAWS AND TO AMEND THE
3 WORKERS' COMPENSATION ACT TO EXCLUDE FROM BENEFITS UNDER
4 G.S. 97-29 AND G.S. 97-30, AND FROM VOCATIONAL REHABILITATION,
5 ILLEGAL ALIEN INJURED WORKERS WHO OBTAINED EMPLOYMENT
6 THROUGH MISREPRESENTATION OF EMPLOYMENT STATUS.

7 The General Assembly of North Carolina enacts:

8 **ALLOW EXPUNCTION OF CERTAIN DRUG OFFENSES**

9 **SECTION 1.** G.S. 15A-145.5(a)(5) reads as rewritten:

10 **"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

11 (a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent
12 felony" means any misdemeanor or felony except the following:

13 ...

14 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
15 involves ~~methamphetamines, heroin, or~~ possession with intent to sell or
16 deliver or sell and deliver cocaine.

17"

18 **CONDITIONAL DISCHARGE IN LIEU OF DEFERRED PROSECUTION**

19 **SECTION 2.(a)** G.S. 15A-1341 reads as rewritten:

20 **"§ 15A-1341. Probation generally.**

21 (a) Use of Probation. – Unless specifically prohibited, a person who has been convicted
22 of any criminal offense may be placed on probation as provided by this Article if the class of
23 offense of which the person is convicted and the person's prior record or conviction level under
24 Article 81B of this Chapter authorizes a community or intermediate punishment as a type of
25 sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1.

26 (a1) ~~Deferred Prosecution. Conditional discharge. – A person who has been charged with~~
27 Whenever a person pleads guilty to or is found guilty of a Class H or I felony or a misdemeanor
28 may be placed ~~misdemeanor, the court may, on motion of the defendant and the prosecutor ,~~
29 and without entering a judgment of guilt and with the consent of the person, defer further
30 proceedings and place the person on probation as provided in this Article on motion of the
31 defendant and the prosecutor for the purpose of allowing the defendant to demonstrate the
32 defendant's good conduct, if the court finds each of the following facts:

33 (1) ~~Prosecution has been deferred by the prosecutor pursuant to written~~
34 ~~agreement with the defendant, with the approval of the court, for the purpose~~
35 ~~of allowing the defendant to demonstrate his good conduct.~~



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- (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.
- (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.

(a2) ~~Deferred Prosecution Conditional Discharge~~ for Purpose of Drug Treatment Court Program. — ~~A When a defendant is eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes may be placed on probation if the court finds that prosecution has been deferred by the prosecutor, with the approval of the court, pursuant to a written agreement with the defendant, Statutes, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation for the purpose of allowing the defendant to participate in and successfully complete the Drug Treatment Court Program.~~

(a3) ~~Deferred Prosecution Conditional Discharge~~ for Prostitution. — A defendant ~~whose prosecution is deferred pursuant to G.S. 14-204(e) for whom the court orders a conditional discharge pursuant to G.S. 14-204(b) may be placed on probation as provided in this Article.~~

(a4) Compliance with terms of conditional discharge. — Upon violation of a term or condition of a conditional discharge granted pursuant to this section, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions of a conditional discharge granted pursuant to this section, the court shall discharge the person and dismiss the proceedings against the person.

(b) Supervised and Unsupervised Probation. — The court may place a person on supervised or unsupervised probation. A person on unsupervised probation is subject to all incidents of probation except supervision by or assignment to a probation officer.

(c) Repealed by Session Laws 1995, c. 429, s. 1.

(d) Search of Sex Offender Registration Information Required When Placing a Defendant on Probation. — When the court places a defendant on probation, the probation officer assigned to the defendant shall conduct a search of the defendant's name or other identifying information against the registration information regarding sex offenders compiled by the Division of Criminal Statistics of the Department of Justice in accordance with Article 27A of Chapter 14 of the General Statutes. The probation officer may conduct the search using the Internet site maintained by the Division of Criminal Statistics.

(e) Review of Defendant's Juvenile Record. — The probation officer assigned to a defendant may examine and obtain copies of the defendant's juvenile record in a manner consistent with G.S. 7B-3000(b) and (e1)."

SECTION 2.(b) G.S. 7A-49.4(b) reads as rewritten:

"(b) Administrative Settings. — An administrative setting shall be calendared for each felony within 60 days of indictment or service of notice of indictment if required by law, or at the next regularly scheduled session of superior court if later than 60 days from indictment or service if required. At an administrative setting:

- (1) The court shall determine the status of the defendant's representation by counsel;
- (2) After hearing from the parties, the court shall set deadlines for the delivery of discovery, arraignment if necessary, and filing of motions;
- (3) If the district attorney has made a determination regarding a plea arrangement, the district attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea

arrangement, and the court may conduct a plea conference if supported by the interest of justice;

(4) The court may hear pending pretrial motions, set such motions for hearing on a date certain, or defer ruling on motions until the trial of the case; and

(5) The court may schedule more than one administrative setting if requested by the parties or if it is found to be necessary to promote the fair administration of justice in a timely manner.

Whenever practical, administrative settings shall be held by a superior court judge residing within the district, but may otherwise be held by any superior court judge.

If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final administrative setting, the district attorney shall announce a proposed trial date. The court shall set that date as the tentative trial date unless, after providing the parties an opportunity to be heard, the court determines that the interests of justice require the setting of a different date. In that event, the district attorney shall set another tentative trial date during the final administrative setting. The trial shall occur no sooner than 30 days after the final administrative setting, except by agreement of the State and the defendant.

Nothing in this section precludes the disposition of a criminal case by ~~plea, deferred prosecution, plea~~ or dismissal prior to an administrative setting."

SECTION 2.(c) G.S. 7A-272 reads as rewritten:

"§ 7A-272. Jurisdiction of district court; concurrent jurisdiction in guilty or no contest pleas for certain felony offenses; appellate and appropriate relief procedures applicable.

...

(e) With the consent of the chief district court judge and the senior resident superior court judge, the district court has jurisdiction to preside over the supervision of a probation judgment entered in superior court in which the defendant is required to participate in a drug treatment court program pursuant to G.S. 15A-1343(b1)(2b) or a therapeutic court as defined in subsection (f) of this section, or is participating in the drug treatment court pursuant to a ~~deferred prosecution agreement under the terms of a conditional discharge under~~ G.S. 15A-1341(a2). The district court may modify or extend the probation judgment, but jurisdiction to revoke probation supervised under this subsection is as provided in G.S. 7A-271(f).

(f) As used in subsection (e) of this section, the term "therapeutic court" refers to a court, other than drug treatment court established pursuant to Article 62 of Chapter 7A of the General Statutes, in which a criminal defendant, either as a condition of probation or pursuant to a ~~deferred prosecution agreement under the terms of a conditional discharge under~~ G.S. 15A-1341, is ordered to participate in specified activities designed to address underlying problems of substance abuse and mental illness that contribute to the person's criminal activity. The ordered activities shall, at a minimum, require the person to participate in treatment and attend regular court sessions of the therapeutic court over an extended period of time. The senior resident superior court judge and the chief district court judge shall agree in writing that the therapeutic court is being established and shall file the written agreement with the Administrative Office of the Courts before jurisdiction established by subsection (e) of this section may be exercised by the district court."

SECTION 2.(d) G.S. 14-313(f) reads as rewritten:

"(f) ~~Deferred prosecution-Conditional discharge.~~ – Notwithstanding G.S. 15A-1341(a1), any person charged with a misdemeanor under this section shall be qualified for ~~deferred prosecution~~ a conditional discharge pursuant to Article 82 of Chapter 15A of the General Statutes provided the defendant has not previously been placed on probation for a violation of this section and so states under oath."

SECTION 2.(e) G.S. 15A-146(d) reads as rewritten:

"(d) A person charged with a crime that is dismissed pursuant to compliance with a deferred prosecution agreement or the terms of a conditional discharge and who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Justice for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent."

SECTION 2.(f) G.S. 15A-932 reads as rewritten:

"§ 15A-932. Dismissal with leave when defendant fails to appear and cannot be readily found ~~or pursuant to a deferred prosecution agreement.~~found.

(a) The prosecutor may enter a dismissal with leave for nonappearance when a defendant:

- (1) Cannot be readily found to be served with an order for arrest after the grand jury had indicted him; or
- (2) Fails to appear at a criminal proceeding at which his attendance is required, and the prosecutor believes the defendant cannot be readily found.

~~(a1) The prosecutor may enter a dismissal with leave pursuant to a deferred prosecution agreement entered into in accordance with the provisions of Article 82 of this Chapter.~~

(b) Dismissal with leave for nonappearance ~~or pursuant to a deferred prosecution agreement~~ results in removal of the case from the docket of the court, but all process outstanding retains its validity, and all necessary actions to apprehend the defendant, investigate the case, or otherwise further its prosecution may be taken, including the issuance of nontestimonial identification orders, search warrants, new process, initiation of extradition proceedings, and the like.

(c) The prosecutor may enter the dismissal with leave for nonappearance ~~or pursuant to a deferred prosecution agreement~~ orally in open court or by filing the dismissal in writing with the clerk. If the dismissal for nonappearance ~~or pursuant to a deferred prosecution agreement~~ is entered orally, the clerk must note the nature of the dismissal in the case records.

(d) Upon apprehension of the defendant, or in the discretion of the prosecutor when he believes apprehension is imminent, the prosecutor may reinstitute the proceedings by filing written notice with the clerk.

(d1) If the proceeding was dismissed pursuant to subdivision (2) of subsection (a) of this section and charged only offenses for which written appearance, waiver of trial or hearing, and plea of guilty or admission of responsibility are permitted pursuant to G.S. 7A-148(a), and the defendant later tenders to the court that waiver and payment in full of all applicable fines, costs, and fees, the clerk shall accept said waiver and payment without need for a written reinstatement from the prosecutor. Upon disposition of the case pursuant to this subsection, the clerk shall recall any outstanding criminal process in the case pursuant to G.S. 15A-301(g)(2)b.

(e) If the defendant fails to comply with the terms of a deferred prosecution agreement, the prosecutor may reinstitute the proceedings by filing written notice with the clerk."

SECTION 2.(g) G.S. 15A-1342 reads as rewritten:

"§ 15A-1342. Incidents of probation.

(a) Period. – The court may place a convicted offender on probation for the appropriate period as specified in G.S. 15A-1343.2(d), not to exceed a maximum of five years. The court may place a defendant as to whom prosecution has been deferred or who receives a conditional discharge on probation for a maximum of two years. The probation remains conditional and

subject to revocation during the period of probation imposed, unless terminated as provided in subsection (b) or G.S. 15A-1341(c).

Extension. – In addition to G.S. 15A-1344, the court with the consent of the defendant may extend the period of probation beyond the original period (i) for the purpose of allowing the defendant to complete a program of restitution, or (ii) to allow the defendant to continue medical or psychiatric treatment ordered as a condition of the probation. The period of extension shall not exceed three years beyond the original period of probation. The special extension authorized herein may be ordered only in the last six months of the original period of probation. Any probationary judgment form provided to a defendant on supervised probation shall state that probation may be extended pursuant to this subsection.

(a1) Supervision of Defendants on Deferred Prosecution or Conditional Discharge. – The Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may be ordered by the court to supervise an offender's compliance with the terms of a conditional discharge or deferred prosecution agreement entered into under G.S. 15A-1341(a1) or (a3). Violations of the terms of the agreement shall be reported to the court as provided in this Article and to the district attorney in the district in which the agreement was entered.

...
(i) Immunity from Prosecution upon Compliance. – Upon the expiration or early termination as provided in subsection (b) of a period of probation imposed after deferral of prosecution and before ~~conviction~~, conviction or a conditional discharge, the defendant shall be immune from prosecution of the charges ~~deferred~~, deferred or discharged and dismissed.

...."

SECTION 2.(h) G.S. 15A-1343 reads as rewritten:

"§ 15A-1343. Conditions of probation.

...
(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of forty dollars (\$40.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was ~~entered or entered~~, the deferred prosecution agreement was filed, filed, or the conditional discharge was ordered. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.

(c2) Electronic Monitoring Device Fees. – Any person placed on house arrest with electronic monitoring under subsection (a1) or (b1) of this section shall pay a fee of ninety dollars (\$90.00) for the electronic monitoring device and a daily fee in an amount that reflects the actual cost of providing the electronic monitoring. The court may exempt a person from paying the fees only for good cause and upon motion of the person placed on house arrest with electronic monitoring. The court may require that the fees be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (g) of this section to determine the payment schedule. The fees must be paid to the clerk of court for the county in which the judgment was ~~entered or entered~~, the deferred prosecution agreement was filed, filed, or the conditional discharge was ordered. Fees collected under this subsection for the electronic monitoring device shall be transmitted to the State for deposit into the State's General Fund. The daily fees collected under this subsection shall be remitted to the Department of Public Safety to cover the costs of providing the electronic monitoring."

SECTION 2.(i) G.S. 143B-708 reads as rewritten:

"§ 143B-708. Community service program.

...

(c) A fee of two hundred fifty dollars (\$250.00) shall be paid by all persons who participate in the program or receive services from the program staff. Only one fee may be assessed for each sentencing transaction, even if the person is assigned to the program on more than one occasion, or while on deferred prosecution, a conditional discharge, or ~~while~~ serving a sentence for the offense. A sentencing transaction shall include all offenses considered and adjudicated during the same term of court. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which the person is convicted, regardless of whether the person is participating in the program as a condition of parole, of probation imposed by the court, or pursuant to the exercise of authority delegated to the probation officer pursuant to G.S. 15A-1343.2(e) or (f). If the person is participating in the program as a result of a conditional discharge or a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full before the person may participate in the community service program, except that:

- (1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before the person pays the fee by the court in which the person is convicted; or
- (2) A person performing community service pursuant to a conditional discharge, deferred prosecution or similar agreement may be given an extension of time or allowed to begin community service before the fee is paid by the official or agency representing the State in the agreement.
- (3) A person performing community service as a condition of parole may be given an extension of time to pay the fee by the Post-Release Supervision and Parole Commission. No person shall be required to pay the fee before beginning the community service unless the Commission orders the person to do so in writing.
- (4) A person performing community service as ordered by a probation officer pursuant to authority delegated by G.S. 15A-1343.2 may be given an extension of time to pay the fee by the probation officer exercising the delegated authority.

...

(e) The community service staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service, including a willful failure to pay any moneys due the State under any court order or payment schedule adopted by the Section of Community Corrections of the Division of Adult Correction. The community service staff shall give notice of the hearing to determine if there is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the last known address available to the preparer of the notice and reasonably believed to provide actual notice to the person. The notice shall be mailed at least 10 days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. The hearing may be held in the county in which the ~~probation judgment or deferred prosecution~~ order requiring

the performance of community service was imposed, the county in which the violation occurred, or the county of residence of the person. If the court determines there is a willful failure to comply, it shall revoke any drivers license issued to the person and notify the Division of Motor Vehicles to revoke any drivers license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

SECTION 2.(j) This section becomes effective December 1, 2014. Deferred prosecution agreements filed before the effective date of this section are not abated or affected by this section, and the statutes that would be applicable but for this section remain applicable to those deferred prosecutions.

POSSESSION OF MARIJUANA PARAPHERNALIA/CLASS 3 MISDEMEANOR

SECTION 3.(a) G.S. 90-113.22 reads as rewritten:

"§ 90-113.22. Possession of drug paraphernalia.

(a) It is unlawful for any person to knowingly use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal a controlled substance other than marijuana which it would be unlawful to possess, or to inject, ingest, inhale, or otherwise introduce into the body a controlled substance other than marijuana which it would be unlawful to possess.

(b) ~~Violation~~ Except as provided in G.S. 90-113.22A, a violation of this section is a Class 1 misdemeanor.

(c) Prior to searching a person, a person's premises, or a person's vehicle, an officer may ask the person whether the person is in possession of a hypodermic needle or other sharp object that may cut or puncture the officer or whether such a hypodermic needle or other sharp object is on the premises or in the vehicle to be searched. If there is a hypodermic needle or other sharp object on the person, on the person's premises, or in the person's vehicle and the person alerts the officer of that fact prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object. The exemption under this subsection does not apply to any other drug paraphernalia that may be present and found during the search. For purposes of this subsection, the term "officer" includes "criminal justice officers" as defined in G.S. 17C-2(3) and a "justice officer" as defined in G.S. 17E-2(3)."

SECTION 3.(b) Article 5B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 90-113.22A. Possession of marijuana drug paraphernalia.

(a) It is unlawful for any person to knowingly use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal marijuana, or to inject, ingest, inhale, or otherwise introduce marijuana into the body.

(b) A violation of this section is a Class 3 misdemeanor."

SECTION 3.(c) This section becomes effective December 1, 2014, and applies to offenses committed on or after that date."

HUMAN TRAFFICKING COMMISSION STUDY ERIN'S LAW

SECTION 4.(a) The Human Trafficking Commission established by G.S. 114-70 shall study the prevention of sexual abuse of children. As part of this study, the Commission shall do the following:

- (1) Gather information concerning the occurrence of child sexual abuse throughout the State.
- (2) Identify statewide goals to prevent child sexual abuse.

(3) Examine an age-appropriate curriculum on the subject of sexual abuse for students in kindergarten through grade six that could be included as part of the Basic Education Program for the public schools.

(4) Identify methods for increasing teacher, student, and parent awareness of issues regarding sexual abuse of children, including the warning signs indicating that a child may be a victim of sexual abuse, actions that a child who is a victim of sexual abuse may take to obtain assistance and intervention, and available counseling options for children affected by sexual abuse.

(5) Study any other issue the Commission considers relevant to this topic.

SECTION 4.(b) The Human Trafficking Commission shall submit a final report of the results of its study and its recommendations, including any proposed legislation, to the 2015 General Assembly.

LIMIT WORKERS' COMPENSATION FOR ILLEGAL ALIENS

SECTION 5.(a) Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-12.2. Illegal alien injured workers.

(a) No compensation shall be allowed under this Article for injury by accident or occupational disease if the employer proves that at the time of hire or in the course of entering into employment that:

(1) The worker was not lawfully employable in the United States and knowingly made a false representation to the employer as to his or her legal work status;
and

(2) The employer relied upon the worker's false representations, and the reliance was a substantial factor in the employer's decision to hire the employee.

(b) Any worker not lawfully employable in the United States who is not excluded under subsection (a) of this section from receiving benefits shall receive the same benefits under this Chapter as any lawful employee, except that a worker not lawfully employable in the United States shall not be entitled to any of the following:

(1) Vocational rehabilitation.

(2) Benefits under G.S. 97-29 and G.S. 97-30 if a duly qualified physician who is licensed and practicing in North Carolina has indicated that the worker is able to work in any capacity."

SECTION 5.(b) This section is effective when it becomes law and applies to injuries arising on or after that date.

EFFECTIVE DATE

SECTION 6. Except as otherwise provided in this act, this act is effective when it becomes law.