

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 273
Committee Substitute Favorable 3/31/15
Senate Judiciary II Committee Substitute Adopted 6/29/15

Short Title: Clarify Cond. Discharge Law/No DWI Expunge.

(Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE PROVISIONS REGARDING DEFERRED PROSECUTION AND CONDITIONAL DISCHARGE FOR CONVICTIONS OF H AND I FELONIES AND MISDEMEANORS UNDER STRUCTURED SENTENCING DO NOT APPLY TO CONVICTIONS OF IMPAIRED DRIVING, TO CLARIFY THAT OFFENSES INVOLVING IMPAIRED DRIVING CANNOT BE EXPUNGED, AND TO MODIFY THE LAW CONCERNING WHEN A NEW SENTENCING HEARING MUST BE HELD IN DISTRICT COURT ON AN IMPLIED CONSENT CONVICTION FOR WHICH THE APPEAL TO SUPERIOR COURT HAS BEEN WITHDRAWN.

The General Assembly of North Carolina enacts:

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

"(a) Use of Probation. – Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of subsections (a1), (a2), (a4), and (a5) of this section do not apply and a person is not eligible for deferred prosecution or a conditional discharge under those subsections if the person is being placed on probation under this Article for a conviction of impaired driving under G.S. 20-138.1."

SECTION 2. G.S. 15A-145 is amended by adding a new subsection to read:

"(a1) Nothing in this section shall be interpreted to allow the expunction of any offense involving impaired driving as defined in G.S. 20-4.01(24a)."

SECTION 3. G.S. 15A-145.4(a) reads as rewritten:

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

- (1) A Class A through G felony.
- (2) A felony that includes assault as an essential element of the offense.
- (3) A felony that is an offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
- (5) Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.



- 1 (6) Any felony offense in Chapter 90 of the General Statutes where the offense
2 involves methamphetamines, heroin, or possession with intent to sell or
3 deliver or sell and deliver cocaine; except that if a prayer for judgment
4 continued has been entered for an offense classified as either a Class G, H,
5 or I felony, the prayer for judgment continued shall be subject to expunction
6 under the procedures in this section.
- 7 (7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any
8 felony offense for which punishment was determined pursuant to
9 G.S. 14-3(c).
- 10 (8) A felony offense under G.S. 14-401.16.
- 11 (9) Any felony offense in which a commercial motor vehicle was used in the
12 commission of the offense.
- 13 (10) Any felony offense involving impaired driving as defined in
14 G.S. 20-4.01(24a)."

15 **SECTION 4.** G.S. 15A-145.5(a) reads as rewritten:

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

- 18 (1) A Class A through G felony or a Class A1 misdemeanor.
- 19 (2) An offense that includes assault as an essential element of the offense.
- 20 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of
21 the General Statutes, whether or not the person is currently required to
22 register.
- 23 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b),
24 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3,
25 14-277.3A, 14-321.1.
- 26 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
27 involves methamphetamines, heroin, or possession with intent to sell or
28 deliver or sell and deliver cocaine.
- 29 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
30 which punishment was determined pursuant to G.S. 14-3(c).
- 31 (7) An offense under G.S. 14-401.16.
- 32 (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
- 33 (8) Any felony offense in which a commercial motor vehicle was used in the
34 commission of the offense.
- 35 (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
- 36 (9) Any offense that is an attempt to commit an offense described in
37 subdivisions (1) through ~~(8)~~(8a) of this subsection."

38 **SECTION 5.** G.S. 20-38.7(c) reads as rewritten:

39 "(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense
40 that is first tried in district court and that is appealed to superior court by the defendant for a
41 trial de novo as a result of a conviction, ~~the sentence imposed by the district court is vacated~~
42 ~~upon giving notice of appeal. The case shall only be remanded back to district court with the~~
43 ~~consent of the prosecutor and the superior court. When when an appeal is withdrawn or a case~~
44 ~~is remanded back to district court, the sentence imposed by the district court is vacated and the~~
45 ~~district court shall hold a new sentencing hearing and shall consider any new~~
46 ~~convictions.~~convictions unless one of the following conditions is met:

- 47 (1) If the appeal is withdrawn pursuant to G.S. 15A-1431(c), the prosecutor has
48 certified to the clerk, in writing, that the prosecutor has no new sentencing
49 factors to offer the court.

- 1 (2) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1431(g), the
2 prosecutor has certified to the clerk, in writing, that the prosecutor has no
3 new sentencing factors to offer the court.
4 (3) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1341(h), the
5 prosecutor has certified to the clerk, in writing, that the prosecutor consents
6 to the withdrawal and remand and has no new sentencing factors to offer the
7 court."

8 **SECTION 6.** Section 1 of this act becomes effective December 1, 2015, and
9 applies to any order placing a person on probation on or after that date. Sections 2 through 4 of
10 this act become effective December 1, 2015, and apply to petitions filed and petitions pending
11 on or after that date. Section 5 of this act becomes effective December 1, 2015, and applies to
12 appeals filed on or after that date. The remainder of this act is effective when it becomes law.