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SENATE BILL 887
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Short Title: Magistrates' & Clerks' Auth/Expunge Records.

(Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR INDIVIDUALS NOMINATED AS MAGISTRATES, TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES AND CLERKS OF COURT, AND TO PROVIDE FOR THE EXPUNCTION OF RECORDS WHEN CHARGES ARE VOLUNTARILY DISMISSED AS A RESULT OF MISIDENTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have at least 12 years' experience as a Clerk of Superior Court in this State, or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2.(a) G.S. 7A-273 reads as rewritten:

"§ 7A-273. **Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars (\$50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors

- 1 specified in subdivision (2) of this ~~section~~subsection, to accept guilty
2 pleas or admissions of responsibility and enter judgment;
- 3 (2) In misdemeanor or infraction cases involving alcohol offenses under
4 Chapter 18B of the General Statutes, traffic offenses, hunting, fishing,
5 State park and recreation area rule offenses under Chapter 113 of the
6 General Statutes, boating offenses under Chapter 75A of the General
7 Statutes, and littering offenses under G.S. 14-399(c), to accept written
8 appearances, waivers of trial or hearing and pleas of guilty or
9 admissions of responsibility, in accordance with the schedule of
10 offenses and fines or penalties promulgated by the Conference of
11 Chief District Judges pursuant to G.S. 7A-148, and in ~~such~~ these cases,
12 to enter judgment and collect the fines or penalties and costs;
- 13 (2a) In misdemeanor cases involving the violation of a county ordinance
14 authorized by law regulating the use of dune or beach buggies or other
15 power-driven vehicles specified by the governing body of the county
16 on the foreshore, beach strand, or the barrier dune system, to accept
17 written appearances, waivers of trial or hearing, and pleas of guilty or
18 admissions of responsibility, in accordance with the schedule of
19 offenses and fines or penalties promulgated by the Conference of
20 Chief District Court Judges pursuant to G.S. 7A-148, and in such
21 cases, to enter judgment and collect the fines or penalties and costs;
- 22 (3) To issue arrest warrants valid throughout the State;
- 23 (4) To issue search warrants valid throughout the county;
- 24 (5) To grant bail before trial for any noncapital offense;
- 25 (6) Notwithstanding the provisions of subdivision (1) of this section, to
26 hear and enter judgment as the chief district judge shall direct in all
27 worthless check cases brought under G.S. 14-107, when the amount of
28 the check is two thousand dollars (\$2,000) or less. Provided, however,
29 that under this section magistrates may not impose a prison sentence
30 longer than 30 days;
- 31 (7) To conduct an initial appearance as provided in G.S. 15A-511; and
- 32 (8) To accept written appearances, waivers of trial and pleas of guilty in
33 violations of G.S. 14-107 when the amount of the check is two
34 thousand dollars (\$2,000) or less, restitution, including service charges
35 and processing fees allowed by G.S. 14-107, is made, and the warrant
36 does not charge a fourth or subsequent violation of this statute, and in
37 these cases to enter judgments as the chief district judge directs.
- 38 (9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s.
39 118(d).
- 40 (b) A magistrate has the additional authority, if so assigned by the chief district
41 court judge and subject to any limitations imposed by the chief district court judge, to
42 hear, decide, and enter judgment in all infractions and Class 3 misdemeanor cases,
43 regardless of penalty or offense. The additional authority granted in this subsection may
44 be assigned to a magistrate only with the consent of the clerk of superior court of the

1 county in which the magistrate is assigned and after consultation with the district
2 attorney."

3 **SECTION 2.(b)** G.S. 15A-1115(a) reads as rewritten:

4 "(a) Appeal of District Court Decision. – A person who denies responsibility and
5 is found responsible for an infraction in the district ~~court~~,court, before a magistrate
6 pursuant to G.S. 7A-273(b), before the clerk of superior court pursuant to G.S.
7 7A-180(10), or before the assistant clerk of superior court pursuant to G.S. 7A-181(b)
8 within 10 days of the hearing, may appeal the decision to the criminal division of the
9 superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury
10 trial unless he consents to have the hearing conducted by the judge. The State must
11 prove beyond a reasonable doubt that the person charged is responsible for the
12 infraction unless the person admits responsibility. Unless otherwise provided by law,
13 the procedures applicable to misdemeanors disposed of in the superior court apply to
14 those infraction hearings. In the superior court, a prosecutor must represent the State.
15 Appeal from the judgment in the superior court is as provided for other criminal actions
16 in superior court, and the Attorney General must represent the State in an appeal of such
17 actions."

18 **SECTION 3.(a)** G.S. 7A-180 is amended by adding a new subdivision to
19 read:

20 "(10) Has the power, upon the mutual consent of the chief district court
21 judge and clerk of superior court and after consultation with the district
22 attorney of the county in which the clerk of superior court serves, to
23 hear, decide, and enter judgment in all infraction and Class 3
24 misdemeanor cases, regardless of penalty or offense."

25 **SECTION 3.(b)** G.S. 7A-181 reads as rewritten:

26 "**§ 7A-181. Functions of assistant and deputy clerks of superior court in district**
27 **court matters.**

28 (a) Assistant and deputy clerks of superior court:

- 29 (1) Have the same powers and duties with respect to matters in the district
30 court division as they have in the superior court division;
31 (2) Have the same powers as the clerk of superior court with respect to the
32 issuance of warrants and acceptance of written appearances, waivers of
33 trial and pleas of guilty; and
34 (3) Have the same power as the clerk of superior court to fix conditions of
35 release in accordance with Chapter 15A, Article 26, Bail, and the same
36 power as the clerk of superior court to conduct an initial appearance in
37 accordance with Chapter 15A, Article 24, Initial Appearance.

38 (b) An assistant clerk of superior court also has the power, upon the mutual
39 consent of the chief district court judge and clerk of superior court and after consultation
40 with the district attorney of the county in which the assistant clerk of superior court
41 serves, to hear, decide, and enter judgment in all infraction and Class 3 misdemeanor
42 cases, regardless of penalty or offense."

43 **SECTION 3.(c)** G.S. 15A-1431 reads as rewritten:

1 **"§ 15A-1431. Appeals by defendants from ~~magistrate~~magistrate, clerk of superior**
2 **court, assistant clerk of superior court, and district court judge; trial de**
3 **nov.**

4 (a) A defendant convicted before a magistrate pursuant to G.S. 7A-273(a) may
5 appeal for trial de novo before a district court judge without a jury. A defendant
6 convicted before a magistrate pursuant to G.S. 7A-273(b), before a clerk of superior
7 court pursuant to G.S. 7A-180(10), or before an assistant clerk of superior court
8 pursuant to G.S. 7A-181(b) may appeal the decision to the criminal division of the
9 superior court for a hearing de novo.

10 (b) A defendant convicted in the district court before the judge may appeal to the
11 superior court for trial de novo with a jury as provided by law. Upon the docketing in
12 the superior court of an appeal from a judgment imposed pursuant to a plea arrangement
13 between the State and the defendant, the jurisdiction of the superior court over any
14 misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall be
15 the same as was had by the district court prior to the plea arrangement.

16 (c) Within 10 days of entry of judgment, notice of appeal may be given orally in
17 open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant
18 may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day
19 period, if an appeal has been entered and not withdrawn, the clerk ~~must~~ shall transfer
20 the case to the appropriate court.

21 (d) A defendant convicted by a ~~magistrate~~ magistrate, clerk of superior court
22 pursuant to G.S. 7A-180(10), assistant clerk of superior court pursuant to G.S.
23 7A-181(b), or district court judge is not barred from appeal because of compliance with
24 the judgment, but notice of appeal after compliance ~~must~~ shall be given by the
25 defendant in person to the ~~magistrate or judge~~ judicial official who heard the case or, if
26 he ~~that official~~ is not available, notice ~~must~~ shall be given in one of the following ways:

27 (1) Before a magistrate in the county, in the case of appeals from the
28 ~~magistrate; or~~ magistrate.

29 (1a) Before an assistant clerk of superior court in the county, in the case of
30 appeals from the clerk or assistant clerk of superior court.

31 (2) During an open session of district court in the district court district as
32 defined in G.S. 7A-133, in the case of appeals from district court.

33 The ~~magistrate~~ magistrate, clerk, assistant clerk, or district court judge ~~must~~ shall
34 review the case and fix conditions of pretrial release as appropriate. If a defendant has
35 paid a fine or costs and then appeals, the amount paid ~~must~~ shall be remitted to the
36 defendant, but the judge, ~~clerk~~ clerk, assistant clerk, or magistrate to whom notice of
37 appeal is given may order the remission delayed pending the determination of the
38 appeal.

39 (e) Any order of pretrial release remains in effect pending appeal by the
40 defendant unless the judge modifies the order.

41 (f) Appeal pursuant to this section stays the execution of portions of the
42 judgment relating to fine and costs. Appeal stays portions of the judgment relating to
43 confinement when the defendant has complied with conditions of pretrial release. If the

1 defendant cannot comply with conditions of pretrial release, the judge may order
2 confinement in a local confinement facility pending the trial de novo in superior court.

3 (g) The defendant may withdraw his appeal at any time prior to calendaring of
4 the case for trial de novo. The case is then automatically remanded to the court from
5 which the appeal was taken, for execution of the judgment.

6 (h) The defendant may withdraw his appeal after the calendaring of the case for
7 trial de novo only by consent of the court, and with the attachment of costs of that court,
8 unless the costs or any part of the costs are remitted by the court. The case may then be
9 remanded by order of the court to the court from which the appeal was taken for
10 execution of the judgment with any additional court costs that attached and that have not
11 been remitted."

12 **SECTION 3.(d)** Article 5 of Chapter 45 of the General Statutes is amended
13 to add a new section to read:

14 **"§ 45-45.3. Clerk of superior court as trustee in a mortgage or deed of trust.**

15 (a) When the clerk of superior court is named trustee in any mortgage or deed of
16 trust, it shall be sufficient to identify the office and county only. The name of the clerk
17 may be omitted.

18 (b) Whenever a clerk of superior court is named, whether by name or office, as
19 trustee in any deed of trust or mortgage in which the State is named as beneficiary and
20 that is given to secure the appearance of the grantor or mortgagor in a case pending in
21 the General Court of Justice, the authority of the trustee shall be vested in the office of
22 the clerk of superior court of the county in which the subject property is located. This
23 authority shall include the authority to discharge and release the deed of trust or
24 mortgage of record."

25 **SECTION 4.** G.S. 15A-147 reads as rewritten:

26 **"§ 15A-147. Expunction of records when charges are dismissed or there are**
27 **findings of not guilty as a result of identity ~~fraud~~fraud or**
28 **misidentification.**

29 (a) If any person is named in a charge for an infraction or a crime, either a
30 misdemeanor or a felony, as a result of another person using the identifying information
31 of the named person to commit an infraction or crime and the charge against the named
32 person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the
33 named person may apply by petition or written motion to the court where the charge
34 was last pending on a form approved by the Administrative Office of the Courts
35 supplied by the clerk of court for an order to expunge from all official records any
36 entries relating to the person's apprehension, charge, or trial. The court, after notice to
37 the district attorney, shall hold a hearing on the motion or petition and, upon finding that
38 the person's identity was used without permission and the charges were dismissed or the
39 person was found not guilty, the court shall order the expunction.

40 (a1) If any person is named in a charge for an infraction or a crime, either a
41 misdemeanor or a felony, as a result of misidentification and the charge against the
42 named person is voluntarily dismissed, the named person may apply by petition or
43 written motion to the court where the charge was last pending on a form approved by
44 the Administrative Office of the Courts supplied by the clerk of court for an order to

1 expunge from all official records any entries relating to the person's apprehension, or
2 charge. The court, after notice to the district attorney, shall hold a hearing on the motion
3 or petition and, upon finding that the person was mistakenly identified and the charges
4 were voluntarily dismissed, the court shall order the expunction.

5 (b) No person as to whom such an order has been entered under this section shall
6 be held thereafter under any provision of any law to be guilty of perjury, or to be guilty
7 of otherwise giving a false statement or response to any inquiry made for any purpose,
8 by reason of the person's failure to recite or acknowledge any expunged entries
9 concerning apprehension, charge, or trial.

10 (c) The court shall also order that the said entries shall be expunged from the
11 records of the court and direct all law enforcement agencies, the Division of Motor
12 Vehicles, or any other State or local government agencies bearing record of the same to
13 expunge their records of the entries. The clerk shall forward a certified copy of the order
14 to the sheriff, chief of police, or other charging agency; and, when applicable, to the
15 Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or
16 head of such other charging agency shall then transmit the copy of the order with the
17 form supplied by the State Bureau of Investigation to the State Bureau of Investigation,
18 and the State Bureau of Investigation shall forward the order to the Federal Bureau of
19 Investigation. Upon receipt of a certified copy of the order, the agency must purge its
20 records as required by this section. The costs of expunging these records shall not be
21 taxed against the petitioner.

22 (d) The Division of Motor Vehicles shall expunge from its records entries made
23 as a result of the charge or conviction ordered expunged under this section. The
24 Division of Motor Vehicles shall also reverse any administrative actions taken against a
25 person whose record is expunged under this section as a result of the charges or
26 convictions expunged, including the assessment of drivers license points and drivers
27 license suspension or revocation. Notwithstanding any other provision of this Chapter,
28 the Division of Motor Vehicles shall provide to the person whose motor vehicle record
29 is expunged under this section a certified corrected driver history at no cost and shall
30 reinstate at no cost any drivers license suspended or revoked as a result of a charge or
31 conviction expunged under this section.

32 (e) Any other applicable State or local government agency shall expunge from its
33 records entries made as a result of the charge or conviction ordered expunged under this
34 section. The agency shall also reverse any administrative actions taken against a person
35 whose record is expunged under this section as a result of the charges or convictions
36 expunged. Notwithstanding any other provision of law, the normal fee for any
37 reinstatement of a license or privilege resulting under this section shall be waived.

38 (f) Any insurance company that charged any additional premium based on
39 insurance points assessed against a policyholder as a result of a charge or conviction
40 that was expunged under this section shall refund those additional premiums to the
41 policyholder upon notification of the expungement."

42 **SECTION 5.** Sections 1, 2, 3(a), 3(b), and 3(c) of this act become effective
43 December 1, 2002, and apply to cases pending or filed on or after that date. Section

- 1 3(d) is effective when it becomes law and applies to all mortgages or deeds of trust of
- 2 record on or after that date. The remainder of this act is effective when it becomes law.