

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1089

Short Title: Deferred Prosecution Program.

(Public)

Sponsors: Representative Privette.

Referred to: Judiciary III.

April 24, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A STATEWIDE DEFERRED PROSECUTION  
3 PROGRAM.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 11 of Chapter 143B is amended by adding a new Part to  
6 read:

7 **"PART 7. DEFERRED PROSECUTION, COMMUNITY SERVICE**  
8 **RESTITUTION,**  
9 **AND VOLUNTEER PROGRAM.**

10 **"§ 143B-510. Definitions.**

11 The terms listed below have the following meanings when used in this Chapter:

12 (1) 'Program' means the deferred prosecution program.

13 (2) 'Noncriminal disposition' means the dismissal of a criminal charge  
14 without prejudice to the State to reinstate criminal proceeding on  
15 motion of the district attorney.

16 **"§ 143B-511. District attorneys to establish deferred prosecution program.**

17 The district attorney of each judicial district shall establish a deferred prosecution  
18 program. The program shall be under the direct supervision and control of the district  
19 attorney; however, the district attorney may contract for services with other State  
20 agencies.

21 **"§ 143B-512. Deferred prosecution coordinator.**

22 There is established within the Department of Crime Control and Public Safety the  
23 Office of Deferred Prosecution Coordinator. The Secretary of Crime Control and  
24 Public Safety shall assign one or more coordinators to each district court district as

1 defined in G.S. 7A-133 to assure and report to the court the offender's compliance with  
2 the requirements of the program. The appointment of each coordinator shall be made in  
3 consultation with and is subject to the approval of the chief district court judge in the  
4 district to which the coordinator is assigned. The Secretary may designate the same  
5 person to serve as coordinator under this Part and under G.S. 20-179.4. Each county  
6 must provide office space in the courthouse or other convenient place for the use of  
7 each coordinator assigned to that county.

8 **"§ 143B-513. Persons who may not be considered for deferred prosecution.**

9 A person shall not be considered for deferred prosecution if he has previously been  
10 accepted into a deferred prosecution program or other diversionary program.

11 **"§ 143B-514. Standards of eligibility for deferred prosecution program.**

12 (a) Deferred prosecution shall be appropriate only in the following  
13 circumstances:

- 14 (1) The offender is 17 years of age or older.
- 15 (2) There is substantial likelihood that justice will be served if the offender  
16 is placed in the program.
- 17 (3) It is determined that the needs of the offender and the State can better  
18 be met outside the traditional criminal justice process.
- 19 (4) It is apparent that the offender poses no threat to the community.
- 20 (5) It appears that the offender is unlikely to be involved in further  
21 criminal activity.
- 22 (6) The offender, in those cases where it is required, is likely to respond  
23 quickly to rehabilitative treatment.
- 24 (7) The offender has no significant history of prior delinquency or  
25 criminal activity.

26 (b) When jurisdiction in a case involving a child 16 years of age or older is  
27 acquired by the criminal court G.S. 143B-514(1) shall not apply.

28 **"§ 143B-515. Information which may be required by the district attorney.**

29 Prior to admitting an offender into a deferred prosecution program, the district  
30 attorney may require the offender to furnish information concerning the offender's past  
31 criminal record, education and work record, family history, medical and psychiatric  
32 treatment records that in the district attorney's opinion have bearing on the decision as  
33 to whether the offender should be admitted. The office records of the district attorney  
34 under this section shall be confidential.

35 **"§ 143B-516. Recommendations of victim and law enforcement agency.**

36 Prior to an offender being admitted to a deferred prosecution program the victim, if  
37 any, of the crime with which the offender is charged and the law enforcement agency  
38 employing the arresting officer shall be asked to comment in writing as to whether or  
39 not the offender should be allowed to enter the program. In each case involving  
40 admission to a deferred prosecution program, the district attorney shall consider the  
41 recommendations of the law enforcement agency and the victim, if any, in making a  
42 decision.

43 **"§ 143B-517. Agreements required of offender in program.**

44 An offender who enters a deferred prosecution program shall:

- 1           (1) Waive, in writing and contingent upon his successful completion of the  
2 program, his or her right to a speedy trial;
- 3           (2) Agree, in writing, to the tolling while in the program of all periods of  
4 limitation established by statutes or rules of court;
- 5           (3) Agree, in writing, to the conditions of the deferred prosecution  
6 program established by the district attorney;
- 7           (4) In the event there is a victim of the crime, agree, in writing, to make  
8 restitution to the victim within a specified period of time and in an  
9 amount to be determined by the district attorney;
- 10          (5) Agree in writing that any record relating to participation in deferred  
11 prosecution or information obtained through deferred prosecution is  
12 not admissible as evidence in subsequent proceedings, criminal or  
13 civil, and that communication between deferred prosecution  
14 counselors and offenders shall remain as privileged communication  
15 unless a court of competent jurisdiction determines that there is a  
16 compelling public interest that such communication be revealed. In no  
17 case shall a written admission of guilt be required of an offender prior  
18 to acceptance nor prior to completion of the deferred prosecution  
19 program.

20 **"§ 143B-518. Time for application to deferred prosecution program.**

21 An offender must make application to a deferred prosecution program no later than  
22 45 days after service of the warrant or within 10 days following appointment of counsel  
23 for the charge for which he makes such application. However, the requirements of this  
24 section may be waived in the discretion of the district attorney.

25 **"§ 143B-519. Fees for application and acceptance; waiver.**

26 (a) An applicant to a program shall pay a nonrefundable application fee of fifty  
27 dollars (\$50.00) and, if accepted into the program, a nonrefundable acceptance fee of  
28 one hundred fifty dollars (\$150.00) prior to admission. The fee shall be paid to the clerk  
29 of court in the county in which the agreement is filed. The fee shall be paid in full  
30 within two weeks from the date the person is ordered to perform community service and  
31 before the person begins community service, unless an extension of the payment time is  
32 agreed to by the district attorney. The district attorney may allow scheduling of  
33 payments in lieu of a lump sum payment. All fees paid shall be deposited into the  
34 General Fund.

35 (b) All fees or costs of supervision may be waived partially or totally by the  
36 district attorney in cases of indigency. The district attorney may also, if he determines  
37 necessary, in situations other than indigency allow scheduling of payments in lieu of  
38 lump sum payment. In no case shall aggregate fees for application and participation in a  
39 program exceed two hundred dollars (\$200.00). However, in cases where the district  
40 attorney determines that referral to another agency or program is needed to achieve  
41 rehabilitation for a problem directly related to the charge, the offender may be required  
42 to pay for his participation in that special program. However, no rehabilitative services  
43 to which the offender is referred as part of the deferred prosecution program will be  
44 denied due to inability to pay.

1 **"§ 143B-520. Individual agreement between offender and district attorney.**

2 In any case in which an offender agrees to a program, a specific agreement shall be  
3 made between the district attorney and the offender. This agreement shall include the  
4 terms of the deferred prosecution program, the length of the program, and the period of  
5 time after which the district attorney will either dismiss the charge or seek a conviction  
6 based upon that charge. The agreement shall be signed by the offender and his counsel,  
7 if the offender is represented by counsel, and filed in the district attorney's office.

8 **"§ 143B-521. Reports and identification as to offenders accepted for programs.**

9 In all cases in which an offender is accepted for deferred prosecution a written report  
10 shall be made and retained on file in the district attorney's office, regardless of whether  
11 or not the offender successfully completes the program. The district attorney shall  
12 furnish to the State Bureau of Investigation personal identification information on each  
13 person who is accepted into the program. This information shall be released by the  
14 State Bureau of Investigation only to a district attorney who inquires as to whether a  
15 person has previously been accepted in a deferred prosecution program and to the  
16 Office of Deferred Prosecution Coordinator to assist in compiling annual reports. The  
17 identification information on any offender shall be confidential and shall not under any  
18 circumstances be released for public knowledge.

19 **"§ 143B-522. Restitution to victim.**

20 Prior to the completion of the deferred prosecution program the offender shall make  
21 restitution, as determined by the district attorney, to the victim, if any.

22 **"§ 132B-523. Disposition of charges against offenders accepted for deferred**  
23 **prosecution.**

24 (a) In the event an offender successfully completes a deferred prosecution  
25 program, the district attorney shall effect a noncriminal disposition of the charge or  
26 charges pending against the offender. Upon such disposition, the offender may apply to  
27 the court for an order to destroy all official records relating to his arrest and no evidence  
28 of such records pertaining to such charge shall be retained by any municipal, county, or  
29 State agency, except as otherwise provided in G.S. 143B-521. The effect of such order  
30 shall be to restore such person, in the contemplation of the law, to the status he occupied  
31 before such arrest. No person as to whom such order has been entered shall be held  
32 thereafter under any provision of any law to be guilty of perjury or otherwise giving a  
33 false statement by reason of his failure to recite or acknowledge such arrest in response  
34 to any inquiry made of him for any purpose.

35 (b) In the event the offender violates the conditions of the program agreement:

- 36 (1) The district attorney may terminate the offender's participation in the  
37 program;  
38 (2) The waiver executed pursuant to G.S. 143B-517 shall be void on the  
39 date the offender is removed from the program for the violation and;  
40 (3) The prosecution of pending criminal charges against the offender shall  
41 be resumed by the district attorney.

42 **"§ 143B-524. Time for establishment of programs.**

1 All district attorneys shall have a deferred prosecution program in effect by July 1,  
2 1993, and no criminal defendant shall have a right to apply to such program until such  
3 program has been established."

4 Sec. 2. G.S. 143B-475.1(b) reads as rewritten:

5 "(b) Unless a fee is assessed pursuant to G.S. 143B-519, G.S. 20-179.4 or G.S.  
6 15A-1371(i), a fee of one hundred dollars (\$100.00) shall be paid by all persons who  
7 participate in the program or receive services from the program staff. If the person is  
8 convicted in a court in this State, the fee must be paid to the clerk of court in the county  
9 in which he is convicted. If the person is participating in the program as a result of a  
10 deferred prosecution or similar program, the fee must be paid to the clerk of court in the  
11 county in which the agreement is filed. Persons participating in the program for any  
12 other reason must pay the fee to the clerk of court in the county in which the services  
13 are provided by the program staff. The fee must be paid in full within two weeks from  
14 the date the person is ordered to perform the community service, and before he begins  
15 his community service, except that:

- 16 (1) A person convicted in a court in this State may be given an extension  
17 of time or allowed to begin the community service before he pays the  
18 fee by the court in which he is convicted; or  
19 (2) A person performing community service pursuant to a deferred  
20 prosecution or similar agreement may be given an extension of time or  
21 allowed to begin his community service before the fee is paid by the  
22 official or agency representing the State in the agreement.

23 Fees collected pursuant to this subsection shall be deposited in the General Fund."

24 Sec. 3. This act is effective upon ratification.