Conditional Discharges and Expunction

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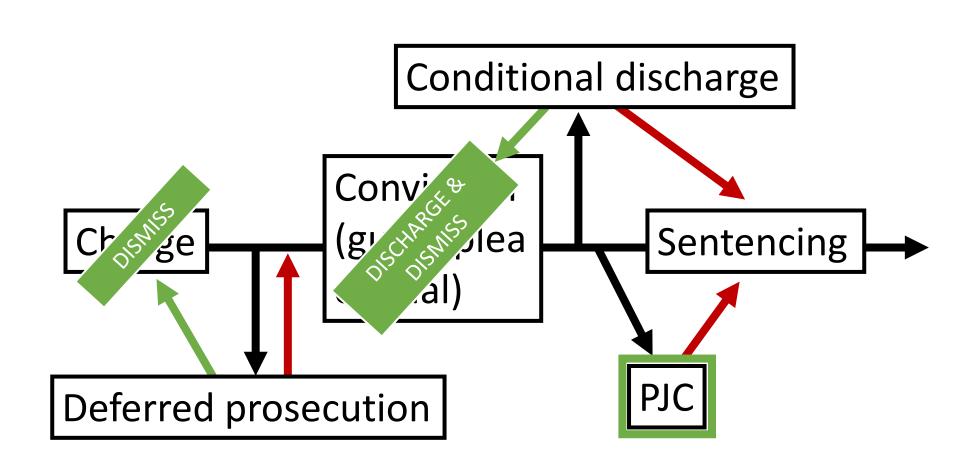
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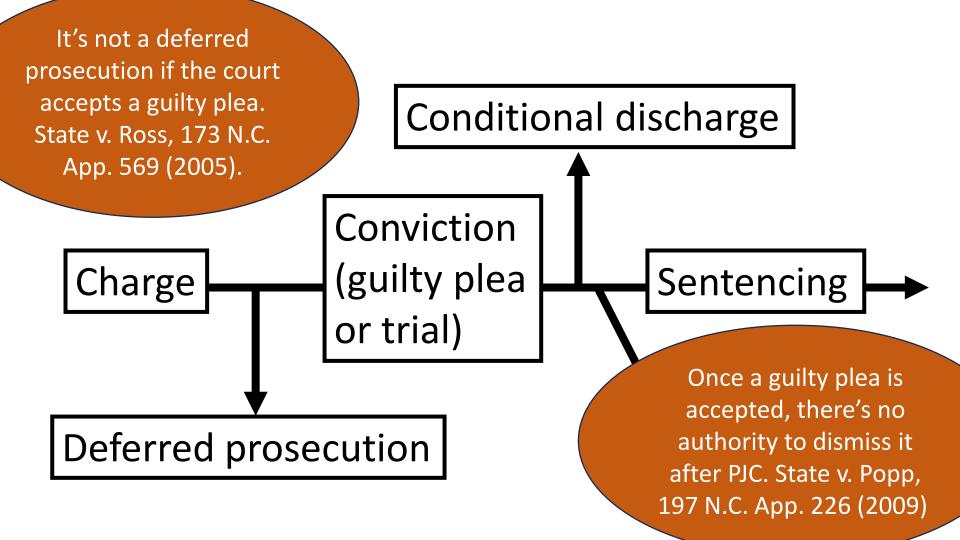


Overview

- What is a conditional discharge?
- All the conditional discharges
- Eligibility
- Conditional discharge probation
- Recurrent issues and FAQs
- Expunctions

Deferrals Generally





Conditional Discharge

All the Conditional Discharges

- G.S. 90-96(a) and (a1)
- G.S. 90-113.14
- G.S. 15A-1341(a4)
- G.S. 15A-1341(a5)
- G.S. 15A-1341(a3)
- G.S. 14-50.29
- G.S. 14-277.8
- G.S. 14-313(f)
- G.S. 14-458.1, -458.2

Drug possession/paraphernalia

Toxic vapor offenses

Misdemeanors and Class H/I felonies

Accountability and recovery court

Prostitution

Gang offenders under age 18

Threats of mass violence under age 20

Tobacco purchase

Cyberbullying under age 18

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AOC Forms (Granting)

- G.S. 90-96(a)
- G.S. 90-96(a1)
- G.S. 15A-1341(a4)
- G.S. 15A-1341(a5)
- G.S. 15A-1341(a3)
- G.S. 14-50.29
- G.S. 14-277.8

- AOC-CR-619
- AOC-CR-627
- AOC-CR-632
- AOC-CR-633
- AOC-CR-628
- AOC-CR-621
- AOC-CR-636

Eligibility

Eligible Offenses

- G.S. 90-96
 - Drug possession
 - Possession of drug paraphernalia

Eligible Defendants

- G.S. 90-96(a)
 - No prior felony convictions of any kind
 - A joined conviction for sale of cocaine is not a "previous" conviction. State v. Campbell, 285 N.C. App. 480 (2022)
 - No prior misdemeanor drug convictions
 - No prior discharge and dismissal under
 G.S. 90-96

- G.S. 90-96(a1)
 - Same, but 7-year
 lookback period on
 prior convictions and
 prior conditional
 discharges

 "Whenever any [eligible person] pleads guilty to or is found guilty of [and eligible offense], the court shall, without entering a judgment of guilt and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable terms and conditions as it may require, unless the court determines with a written finding, and with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense."

"[For eligible defendants,] the court shall, without entering a judgment of guilt and with the consent of the person, defer further proceedings... unless the court determines with a written finding, and with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense."



13. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply)

the defendant refused to consent. □ the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.

NOTE: (Use AOC-CR-	310 for DWI offe	ense(s).]					ral Court Of Jo Superior Cour	
	STATE	E VERSUS		JUDO	SMENT SUSP			
Name Of Defendant	PUNISHMENT: COMMUNITY INTERMEDIATI							
Race	Sex	Date Of Bi	rth	/Fa		TURED SEN		2022)
			(For Offenses Committed On Or After Dec. 1, 2023) G.S. 15A-1341, -1342, - 1343, -1343.2					
Attorney For State Def. Found Not Indigent Attorney Attorney For Defendant Retained Crt Retained Crt							Crt Rptr Ir	
The defendant was for	ound quilty/res			ant to Alford)	of no contest) trial by j		y jury, o
	Off.	Offense Desc		,	Offense Date	G.S. I	No. F/M	CL.
*NOTE: Enter punishm	nent class if differ	rent from underlying offense c	lass (punishment o	Jass represents	a status or enhanc	ement).	PRIOR	
The Court 1, has d	etermined, purs	suant to G.S. 15A-1340.14, I el point under G.S. 15A-134	the prior record p	oints of the del	fendant to be		RECORD	
trier	of fact beyond a	a reasonable doubt or the de	efendant's admiss	ion to this issu	mination of this issue.	tue by the	LEVEL:	I
The Court (NOTE: Blo		rd level finding because nor	ne is required.					
 1. makes no writ 	tten findings be	ecause the prison term imp				nces authorized	d under G.S. 15A	-1340.17
		aggravating and mitigating						
3. makes the Fir 4. imposes sente		ordinary Mitigation set fort G.S. 90-95(h)(5), purs				lod substantial	assistance	
G.S. 90-95	5(h)(5a), pursu	ant to its findings on the a	ttached A	OC-CR-618.	Other:			
5. adjudges the	defendant to b	e (check only one) a ha	bitual felon to be	sentenced for	our classes highe	r than the princ	ipal felony (no hig	her than
6. finds enhance	ement pursuan	entering status offender, to t to: G.S. 90-95(e)(3	(drugs).	S.S. 14-3(c) (h	ate crime).	S.S. 50B-4.1 (do	omestic violence).	
G.S. 14-50	22 (gang misd	lemeanor). G.S. 15A-13	340.16F (financia	crime aggrega	tion). Other:			
This finding is	based on the re-designated	determination of this issue offense(s) is a reportable	e by the trier of t	GS 14-208	reasonable doubt 6 and therefore in	or the defenda	ant's admission. ecial conditions of	fornhatic
forth on the at	ttached AOC-0	CR-603E, Page Two, Side	Two, and make	s the addition	al findings and or	ders on the atta	ached AOC-CR-6	15. Side
8. finds the abov	re-captioned of	ffense(s) involve the (checi refore imposes the specia	k all that apply)	physical or	mental sex	ual abuse of	a minor.	
9. finds that a	motor web							ide Two
		icle commercial moti	or vehicle was	s used in the o	commission of the	offense and th	nat it shall be repo	orted to I
10. finds this is an	n offense invol	icle commercial mote ving assault, communication	or vehicle was	s used in the o	commission of the	offense and th	nat it shall be repo	orted to I
as defined by	G.S. 50B-1(b) offense was co	icle commercial mote ving assault, communication) with the victim. committed as part of criminal	or vehicle was ng a threat, or a al gang activity s	s used in the on act defined in 0	ommission of the in G.S. 50B-1(a), 3.S. 14-50.16A(2)	offense and the and the defend	iat it shall be repo fant had a persor	orted to I
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If this box goes unchecked for an otherwise eligible defendant, the defendant could challenge that consequence that the conviction later. State v. Dail, 255 N.C. App. 645 (2017)

the offender is inappropriate for a conditional discharge for factors related to the offense.

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Superior Court Division

Defendant must consent . . .

- But, that does <u>not</u> mean the defendant must initiate the request for conditional discharge
- The court must consider any eligible defendant for conditional discharge, and grant it unless both judge and State agree the person is inappropriate
- State v. Verdi, ____ N.C. App. ____ (Oct. 1, 2025)

Eligible Defendants

- G.S. 90-96(a)
 - No prior felony convictions of any kind
 - A joined conviction for sale of cocaine is not a "previous" conviction. State v. Campbell, 285 N.C. App. 480 (2022)
 - No prior misdemeanor drug convictions
 - No prior discharge and dismissal under
 G.S. 90-96

• G.S. 90-96(a1)

 Same, but 7-year lookback period on prior convictions and prior conditional discharges

Query of Confidential AOC File

• G.S. 15A-151(a)(9). For disclosure of records of previous dismissal pursuant to conditional discharge, upon joint request of the district attorney and the defendant in a pending proceeding for the purpose of determining eligibility for a conditional discharge. Any report disclosed in response to the joint request shall be delivered only to the clerk of superior court of the county in which the matter is pending. Upon receipt of the report from the Administrative Office of the Courts, the clerk shall provide a copy to the district attorney and to the defendant.

STATE OF	NORTH	I CARO	LINA		File No.		
County					In The General Court Of Justice District Superior Court Division		
	STAT	E VERSUS					
Name Of Defendant					REQUEST F	OR REPORT OF	
Drivers License No.		State	Race	Sex	CONDITION	AL DISCHARGE	
Date Of Birth	Full Socia	al Security No.	Age At Time	e Of Offense		G.S. 15A-151	
Attorney For State	'		Def. Found Not Indigent	Def. Waived Attorney	Attorney For Defendant	Appointed Crt Rptr Initials Retained	
Request Type: (red	quired)	Reg	ular Ex	pedited for defe	endant's court appearance on <i>(date)</i>		
Required For Expedited Reques	sts:	Name/Title Of P	erson Transmit	ting Request	Fax No. For Returning Report*	Phone No. Of Clerk To Receive Fax	
*NOTE: The NCAOC	will fax an exp	pedited report <u>on</u>	ly to a fax num	ber in the office of	the clerk. NCAOC will call the clerk at the	number provided above when faxing the report	
			COUR	T'S FINDING	SS AND REQUEST		
The Court hereby fi							
						scharge under: (one of the following	
,	_		_		_ _	G.S. 14-313. G.S. 15A-1341.	
In the absence of	oi a prior co	multional disc	marge or bia	acement on pr	obation that would disqualify the	delendant, ne/sne is otherwise	

Prosecutor Access to Records

• **G.S. 15A-151(d).** Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all records of dismissals pursuant to conditional discharge maintained under G.S. 15A-151 electronically available to all prosecutors of this State.

Eligibility

G.S. 15A-1341(a4)

- Misdemeanors and Class H and I felonies
- Requires joint motion of State and defendant
- Each known victim must be notified and given an opportunity to be heard
- No prior convictions for felonies or misdemeanors involving moral turpitude
- No previous probation (supervised or unsupervised, but <u>not</u> juvenile)
- Defendant unlikely to commit another offense other than Class 3 misdemeanor

Eligibility

- Crime of moral turpitude (CMT)
 - Classic CMT:
 - Fraud, false pretenses, obstruction of justice, sex crimes
 - Generally not considered CMT:
 - Traffic offenses, drug possession, simple assault, trespass
 - No case law in conditional discharge context (previous probation probably disqualifies)

Probation

Conditional Discharge Probation

- General rule: Unless otherwise provided, ordinary probation rules apply. State v. Burns, 171 N.C. App. 759 (2005)
 - Probation officer powers
 - Regular conditions

Distinctions

- Probation period: 2 years max (instead of 5)
 - May be extended by up to 3 more years under G.S. 15A-1342(a)
- **Hearing venue:** Must be reported to "to the district attorney in the district in which the agreement was entered." G.S. 15A-1342(a1)
- No confinement-based sanctions: Special probation (split), CRV, quick dip.
 - Perhaps contempt (although ultimately counts for jail credit)

Special Conditions

- G.S. 90-96(a1) (not subsection (a))
 - Probation period must be at least 12 months
 - Must include Drug Education School (unless it's unavailable)



Conditional Discharge Violations

- General rule: Unless otherwise provided, ordinary probation violation process applies. State v. Burns, 171 N.C. App. 759 (2005)
 - Counsel, notice, and hearing
 - Violation reports must be timely filed
 - "Good cause" findings required to revoke after expiration

AOC Form (Disposition/Modification)

AOC-CR-635

STATE OF NORTH O		INA	0	and of Count	File No.		
NOTE: Use this form for all modifications, completion for probation imposed For probation imposed pursuant to	, revocations, pursuant to c	conditional disch	discharge upon s	In The General Court Of Justice District Superior Court Division			
STATE	VERSUS						
Name Of Defendant					SPOSITION/MODIFICATION OF		
Drivers License No.	State	Race	Sex		CONDITIONAL DISCHARGE esitions/Modifications On Or After Dec. 1, 2017)		
Date Of Birth	Full Social S	Security No.					
				G.S. 14-50	.29, -204, -277.8, -458.1, -458.2; 15A-1341; 90-96, -113.14		
Attorney For State		Def. Found Not Indigent	Def. Waived Attorney	Attorney For Defenda	Appointed Crt Rptr Initials Retained		
The defendant was placed on probation pursuant to conditional discharge under: G.S. 90-96, G.S. 90-113.14, G.S. 14-50.29, G.S. 14-204, G.S. 14-277.8, G.S. 14-458.1, G.S. 14-458.2, G.S. 15A-1341, by Order of the Court in:							

Distinctions

- Basis of revocation: Probably any violation
 - G.S. 15A-1341(a6) 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.
 - Probably not limited to new crimes and absconding

Conditional Discharge Violations

Jurisdiction

- If Class H/I felony guilty plea is accepted in district court,
 violation hearings are in superior court by default
- May be heard in district court with consent of the State and the defendant
- If heard in superior court, superior court enters
 adjudication of guilt with no requirement to remand

Accountability/Recovery Courts

- Special rule for Superior Court accountability/recovery court cases
 - With the consent of the chief DCJ and senior resident, district court may <u>supervise</u> a conditional discharge under G.S. 15A-1341(a5)
 - District court judge may <u>modify or extend</u> probation
 - Superior court has exclusive jurisdiction to <u>revoke</u>, except the district court may do so with when the chief district court judge and the senior resident superior court judge agree that it is in the interest of justice that the proceedings be conducted by the district court.
 - Appeal is to the appellate division. G.S. 7A-271(f)

Recurrent Issues and FAQ

Failure and Success

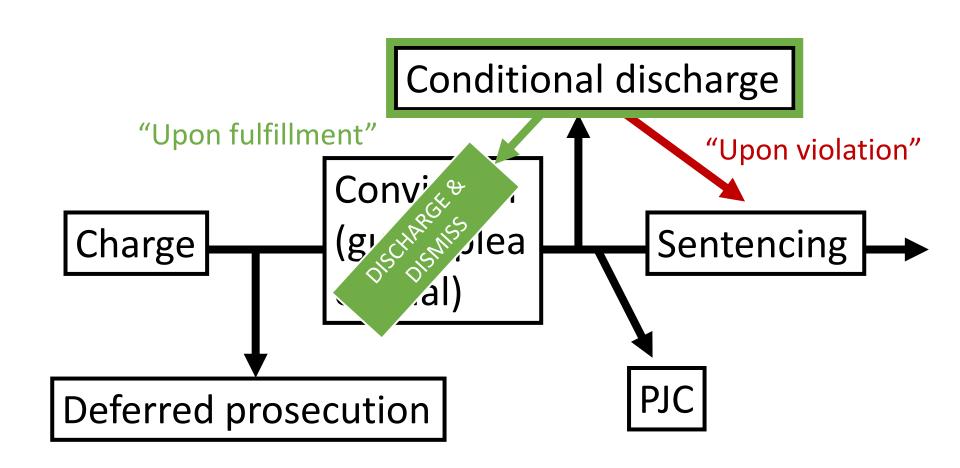
- Failure: "Upon violation . . . the court may enter adjudication of guilt and proceed as otherwise provided."
- Success: "Upon fulfillment of the terms and conditions of a conditional discharge granted pursuant to this section, any plea or finding of guilty previously entered shall be withdrawn and the court shall discharge the person and dismiss the proceedings against the person."

Immunity upon Success

• G.S. 15A-1342(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 or a conditional discharge, the defendant shall be immune from prosecution of the charges deferred or discharged and dismissed.

The Limbo Problem

- Failure: "Upon violation . . . the court may enter adjudication of guilt and proceed as otherwise provided."
- Success: "Upon fulfillment of the terms and conditions of a conditional discharge granted pursuant to this section, any plea or finding of guilty previously entered shall be withdrawn and the court shall discharge the person and dismiss the proceedings against the person."



State v. Hilgert, 281 N.C. App. 215 (2021) (unpublished)

The State argues Defendant's charge cannot be discharged and dismissed because he entered a contract of conditional discharge with the State, and Defendant did not fulfill the obligations of his side of the contract. The State contends this Court giving Defendant the benefit of the bargain without Defendant fulfilling his obligations would be an "outrageous ... abuse of the conditional discharge procedure."

We disagree. In this case, the State and Defendant agreed to twelve months of probation as part of a conditional discharge. If the State wanted to extend, modify, or revoke Defendant's probation, it needed to do so either in the last six months of Defendant's probationary period or in accordance with G.S. 15A-1344(f). The State did neither of these things. Thus, G.S. 15A-1342(i) controls. Because the term of probation expired, and the trial court did not re-obtain or extend its jurisdiction, Defendant "shall be immune from prosecution of the charges deferred or discharged and dismissed." G.S.15A-1342(i).

Since the probationary period for Defendant ended on 20 May 2019 without a conviction or proper extension, modification, or revocation, the order revoking Defendant's probation should be vacated, and the charge against Defendant should be discharged and dismissed.

- Hilgert is unpublished
- Best to avoid this issue in the first place
 - Schedule review well before expiration
 - Extend as needed to preserve jurisdiction

Collateral consequences

- Prior record level: Conditionally discharged crime counts as a prior conviction (until it is dismissed)
 - State v. Hasty, 133 N.C. App. 563 (1999)
- Sex offender registration: Probably not a "final conviction" that triggers registration
 - See Walters v. Cooper, 367 N.C. 117 (2013) (no registration for PJC for sexual battery)
- Firearm prohibition: Conditionally discharged felony larceny not a felony "conviction" for federal firearm prohibition
 - United States v. Smith, 939 F.3d 612 (4th Cir. 2019)

Other FAQ

- Must a violation come before the same judge?
- Can other convictions be "consolidated" into a conditional discharge?

Expunging a Discharge and Dismissal

15A-146 Expunctions

By petition

• If the charge is "dismissed," the court shall order an expunction. 15A-146(a)

Automatically

 If the charge is "dismissed without leave" or "dismissed by the court," the charges are expunged by operation of law

Expunctions of Discharges and Dismissals

No process specified

- Misdemeanors, H and I felonies (15A-1341(a4))
- Drug treatment court cases (15A-1341(a5))
- Tobacco offenses (14-313)

Additional process specified

- Drug and paraphernalia offenses (90-96(a), (a1))
- Toxic vapor offenses (90-113.4(a), (a1))
- Prostitution offenses (14-204)
- Gang offenses (14-50.29, -50.30)
- Threats of mass violence (14-277.8)

15A-146 specified

Cyberbullying (14-458.1(c), -458.2(d))



MICROSITE

Relief from a Criminal Conviction (2025 Edition)

ABOUT THE GUIDE

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EXPUNCTIONS

Overview

General Considerations for Expunctions

Types of Expunctions and Their Requirements

Procedure to Obtain an Expunction

Effect of Expunction

