



# Conditional Discharge Basics

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Wake County Bar Association

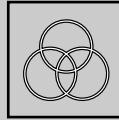
December 3, 2025

Judge Debra Sasser, Retired

# Conditional Discharge Basics



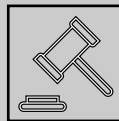
What is a conditional discharge?



How it differs from statutory deferrals and informal diversions



Conditional discharges authorized by statute



Procedure



Frequently Asked Questions



# What is a “Conditional Discharge”?

- Allows an eligible defendant who pleads guilty or is found guilty to be placed on probation with no entry of judgment
- Successful completion of probation = order discharging the defendant from probation and dismissing the charges (and conviction if any)
- Unsuccessful completion of probation = probation is revoked, judgment of guilt is entered, and judge sentences the defendant



# Conditional Discharge vs Statutory Deferrals and Informal Diversions

- What do they have in common?
  - Final outcome of the case is delayed to allow defendant time to “demonstrate good conduct”
    - Conditional discharge: delay of adjudication of guilt and sentencing
    - Statutory deferrals and informal diversions: delay of prosecution of charges
  - Defendant successfully completes terms of probation or agreement = dismissal of the charges
- How are they different
  - Conditional Discharge - Defendant pleads (or has been found) guilty
    - Statutory Deferral – no guilty plea but should include an admission of responsibility
    - Informal diversions – no guilty plea but should include a statement of guilt
  - If Defendant is unsuccessful on probation or fails to timely comply with agreement:
    - Conditional Discharge
      - Probation can be revoked, adjudication of guilt entered, and sentence imposed
      - State has NO authority to dismiss the charges to which the defendant has pled guilty
    - Statutory Deferral - G.S. 15A-1341(a1) – (a2)
      - Probation violation response determined by Judge in accordance with G.S. 15A-1344(d)
        - Includes possibility of revocation followed by an order that the deferred charges be brought to trial
        - State has authority to dismiss charges once deferred charges are ordered to be brought to trial
    - Informal diversions (not pursuant to statute)
      - Defendant not on probation
      - If Defendant does not comply with agreement = prosecution of charge resumes and signed agreement used as evidence of guilt
      - State has authority to dismiss charges at any time



# Most Commonly Used Conditional Discharge Statutes in Wake County

- Conditional discharge pursuant to G.S. 15A-1341(a4): Any H or I felony and any misdemeanor (excluding DWI)
- Conditional discharge pursuant to G.S. 90-96(a) and (a1): Charges related to controlled substances (Chapter 90 Article 5, controlled substances act)



# Discharge Pursuant to G.S. 15A-1341(a4)

- Available for Misdemeanors and H & I Felonies excluding DWI
  - State and defendant jointly move for probation
- Eligibility criteria:
  - All known victims of crime (if any) appropriately notified of this motion and been given an opportunity to be heard
  - Defendant never been on probation before
  - Defendant never been convicted of ANY felony or a misdemeanor involving moral turpitude
  - Judge finds that defendant is unlikely to commit another offense other than a Class 3 misdemeanor
- AOC Forms
  - AOC-CR-632D – Motion for Offenses Committed Dec 1, 2016 – Nov 30, 2023
  - AOC-CR-632E – Motion for Offenses Committed Dec 1, 2023 – Nov 30, 2025
  - AOC-CR-632F – Motion for Offenses Committed On or after Dec 1, 2025
  - AOC-CR-635 – Disposition/Modification of Conditional Discharge



# Discharge Pursuant to G.S. 90-96(a)

- G.S. 90-96(a): Available for a defendant charged with
  - Misdemeanor possession of a controlled substance, Schedules I–VI
  - Felony possession of a controlled substance
  - Misdemeanor possession of drug paraphernalia under G.S. 90-113.22 or marijuana drug paraphernalia under G.S. 90-113.22A
- Eligibility criteria:
  - Defendant never been convicted of ANY felony offense
  - No prior convictions of
    - Any offense under Article 5 of G.S. Chapter 90
    - Any offense under the law of any other state or federal law relating to substances included in Article 5, 5A, or 5B of G.S. Chapter 90
    - Possession of drug paraphernalia included in Article 5B of G.S. Chapter 90
  - Defendant has never received a prior discharge and dismissal under G.S. 90-96 or G.S. 90-113.14
- MANDATORY if eligible defendant asks for a Conditional Discharge UNLESS Judge makes written findings that a conditional discharge is not appropriate (and the State is in agreement with this finding)
- AOC Forms
  - AOC-CR-619D – Motion for offense date 12/1/2016 – 11/30/2023
  - AOC-CR-619E – Motion for offense date 12/1/2023 – 11/30/2025
  - AOC-CR-619F – Motion for offense date on or after 12/01/2025
  - AOC-CR-635 – Disposition/Modification of Conditional Discharge



# Discharge Pursuant to G.S. 90-96(a1)

- G.S. 90-96(a1): Same charges as for Conditional Discharge under G.S. 90-96(a)
- Not Mandatory
  - Defendant must consent
  - Judicial discretion whether to grant motion for conditional discharge even if defendant is eligible and consents
- Eligibility criteria:
  - Same as for discharge under G.S. 90-96(a) EXCEPT the defendant may have one and only one prior conviction of any offense that qualifies under subsection G.S. 90-96(a)
  - For purposes of determining eligibility under subsection G.S. 90-96 (a1), prior convictions and prior conditional discharges that occurred more than seven years before the date of the current offense do not count
- AOC Forms
  - AOC-CR-627D – Motion for offense date 12/1/2016- 11/30-2023
  - AOC-CR-627E – Motion for offense date 12/01/2023 – 11/30/2025
  - AOC-CR-627F – Motion for offense date on or after 12/01/2025
  - AOC-CR-635 – Disposition/Modification of Conditional Discharge



# Other Conditional Discharge Statutes

- G.S. 90-113.14(a) and a(1): Toxic vapor (huffing) offenses
  - Discretionary [Similar to conditional discharge pursuant to G.S. 90-906(a) & (a1)]
  - AOC Form – none found on AOC website
- G.S. 14-204(b): Mandatory for first time offenders of prostitution
  - AOC-CR-628D – Motion for offense date 12/1/2016 to 11/30/2023
  - AOC-CR-628E – Motion for offense date 12/1/2023 to 11/30/2025
  - AOC-CR-628F – Motion for offense date on or after 12/1/2025
- G.S. 15A-1341(a5): For offenders who are eligible for Recovery Court
  - Defendant's consent required
  - AOC-CR-633D – Motion for offense date 12/1/2016 to 11/30/2023
  - AOC-CR-633E – Motion for offense date 12/1/2023 to 11/30/2025
  - AOC-CR-633F – Motion for offense date on or after 12/1/2025
- G.S. 14-50.29: For first-time gang offenders when the defendant is under the age of 18 at the time of the offense
  - Defendant's consent required
  - AOC-CR-621D – Motion for offense date 12/1/2016 to 11/30/2023
  - AOC-CR-621E – Motion for offense date 12/1/2023 to 11/30/2025
  - AOC-CR-621F – Motion for offense date on or after 12/1/2025



# Other Conditional Discharge Statutes (cont'd)

- G.S. 14-277.8 : For offender who was under the age of 20 on date of offense and is charged with making a false report or threat of mass violence
  - State and Defendant consents are required
  - AOC-CR-636D – Motion for offense date 12/1/2018 through 11/30/2023
  - AOC-CR-636E – Motion for offense date 12/1/2023 to 11/30/2025
  - AOC-CR-636F – Motion for offense date on or after 12/1/2025
- G.S. 14-313(f): Charges related to NC laws prohibiting the sale to minors or purchase by minors of tobacco products, alternative nicotine products, vapor products and cigarette wrapping papers.
  - AOC Form – none found on website
- G.S. 14-458.1(c); G.S. 14-458.2(d): Charges related to cyber-bullying.
  - AOC Form – not found on website

AOC-CR-635 is used for modification and/or disposition of the “other types” of conditional discharge



# Preparation of Motion



## STATE OF NORTH CAROLINA

File No.

County

Seat Of Court

In The General Court Of Justice

☐ District ☐ Superior Court Division

## STATE VERSUS

Name Of Defendant

Drivers License No.

State

Race

Sex

Date Of Birth

Full Social Security No.

Age At Time Of Offense

## CONDITIONAL DISCHARGE

UNDER G.S. 15A-1341(a4)

(For Offenses Committed On Or After Dec. 1, 2023)

Attorney For State

☐ Def. Found  
Not Indigent☐ Def. Waived  
Attorney

Attorney For Defendant

☐ Appointed  
☐ Retained

Crt Rptr Initials

G.S. 15A-1341(a4)

The defendant was found guilty/responsible, pursuant to ☐ plea ☐ pursuant to Alford ☐ of no contest ☐ trial by judge ☐ trial by jury, of

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.

## MOTION

Now come the State and defendant and jointly move the Court to defer further proceedings in the case(s) above and place defendant on probation pursuant to G.S. 15A-1341(a4) for the purpose of allowing defendant to demonstrate good conduct. In support of said motion, defendant after being duly sworn further states under oath that he/she has not previously been placed on probation.

Date

Signature Of Prosecutor

Signature Of Attorney For Defendant (if represented)

## SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature

Signature Of Defendant (under oath)

☐ Deputy CSC  
☐ District Court Judge☐ Assistant CSC  
☐ Superior Court Judge☐ Clerk Of Superior Court

## FINDINGS AND ORDER

Upon the foregoing Motion and a review of the record, the Court hereby

☐ grants the Motion, based upon the following findings:

- Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and given an opportunity to be heard.
- The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.
- The defendant has not previously been placed on probation.
- The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

☐ denies the Motion. (optional) ☐ in its discretion. ☐ because:

## DEFERRAL OF PROCEEDINGS AND PLACEMENT ON PROBATION

- The Court, without entering a judgment of guilt, Orders that further proceedings in this matter be deferred and places the defendant on ☐ supervised ☐ unsupervised probation for \_\_\_\_\_ months (max. of 2 years, G.S. 15A-1342(a)) as provided for a ☐ community punishment. ☐ intermediate punishment (AOC-CR-603E, Page Two, required).
- The Court finds that it is NOT appropriate to delegate to the Division of Community Supervision and Reentry the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment.
- The Court finds that a ☐ longer ☐ shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).
- The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)
- Upon violation of a term or condition of probation by the defendant, the Court reserves the authority to enter an adjudication of guilt and proceed as otherwise provided against the defendant. Upon fulfillment of the terms and conditions by the defendant, the Court shall discharge the defendant and dismiss the proceedings against the defendant.
- Except as ordered to appear earlier for a hearing on alleged violation(s) or as otherwise ordered by the Court, the defendant shall return to this Court on (date) \_\_\_\_\_ for a hearing to determine fulfillment of the terms and conditions of probation.

## MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule ☐ determined by the probation officer ☐ set out by the court as follows:

Costs	Fine	Restitution*	Attorney's Fees	Comm Serv Fee	EHA Fee	Appt Fee/Misc	Total Amount Due
\$	\$	\$	\$	\$	\$	\$	\$

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

- ☐ The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618. ☐ Other: \_\_\_\_\_
- ☐ Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.

Material opposite unmarked squares is to be disregarded as surplusage.  
(Over)



REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)			
<p><b>NOTE:</b> Any probationary judgment may be extended pursuant to G.S. 15A-1342. The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, firearm ammunition, explosive device, or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) Satisfy child support and family obligations, as required by the Court. (5) Submit to the taking of digitized photographs, including photographs of the defendant's face, scars, marks, and tattoos, to be included in the defendant's records. <u>If the defendant is on supervised probation, the defendant shall also:</u> (6) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer. (7) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (8) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (9) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (10) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful. (11) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (12) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used. (13) Submit to drug and alcohol screening for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Community Supervision and Reentry of the Department of Adult Correction for the actual costs of drug or alcohol screening and testing. (14) <i>(applies only if judgment deferred for felony)</i> Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court.</p>			
SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1)			
<p>The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:</p> <p><input type="checkbox"/> 15. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of _____ or until relicensed by the Division of Motor Vehicles, whichever is later.</p> <p><input type="checkbox"/> 16. Successfully pass the General Education Development Test (G.E.D.) during the first _____ months of the period of probation.</p> <p><input type="checkbox"/> 17. Complete _____ hours of community service during the first _____ days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-1483 is <input type="checkbox"/> not due because it is assessed in a case adjudicated during the same term of court. <input type="checkbox"/> to be paid <input type="checkbox"/> pursuant to the schedule set out under Monetary Conditions on the reverse. <input type="checkbox"/> within _____ days of this Conditional Discharge and before beginning service.</p> <p><input type="checkbox"/> 18. Report for initial evaluation by _____, participate in all further evaluation, counseling, treatment, or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.</p> <p><input type="checkbox"/> 19. Not assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with _____. "Contact" includes any defendant-initiated contact, direct or indirect, by any means, including, but not limited to, telephone, personal contact, e-mail, pager, gift-giving, telefacsimile machine or through any other person, except _____.</p> <p><input type="checkbox"/> 20. Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of _____ days, <input type="checkbox"/> months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.</p> <p><input checked="" type="checkbox"/> 21. Other: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p><input checked="" type="checkbox"/> 22. Comply with the Special Conditions Of Probation which are set forth on AOC-CR-603E, Page Two.</p>			
SIGNATURE OF JUDGE			
Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge	
CERTIFICATION BY CLERK			
<p>I certify that this Conditional Discharge Under G.S. 15A-1341(a4) and the attachment(s) marked below is a true and complete copy of the original which is on file in this case.</p> <p><input type="checkbox"/> 1. Judgment Suspending Sentence (AOC-CR-603E, Page Two) (additional conditions of probation)</p> <p><input type="checkbox"/> 2. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)</p> <p><input type="checkbox"/> 3. Additional File No. (s) And Offense(s) (AOC-CR-626)</p> <p><input type="checkbox"/> 4. Other: _____</p>			
Date	Name (type or print)	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
			SEAL
<p><b>NOTE TO CLERK:</b> Upon entry of a final order discharging the defendant and dismissing the charge(s) against him/her, forward a certified copy of this Conditional Discharge and the dismissal order (AOC-CR-635 or other order) to the Administrative Office of the Courts at <b>NCAOC, Records Officer, PO Box 2448, Raleigh, NC 27602.</b></p>			
<p>Material opposite unmarked squares is to be disregarded as surplusage.</p>			
<p>AOC-CR-632E, Side Two, New 12/23 © 2023 Administrative Office of the Courts</p>			

Remit probation supervision fees; review dates: mm/dd/yy and mm/dd/yy



Name Of Defendant
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**COMMUNITY AND INTERMEDIATE PROBATION CONDITIONS - G.S. 15A-1343(a1)**

☐ 7. Submit to satellite-based monitoring, if required on the attached AOC-CR-615, Side Two.

## INTERMEDIATE PUNISHMENTS

☐ 2. Local Judicially Managed Accountability and Recovery Court - G.S. 15A-1340.11

INTERMEDIATE CONDITIONS OF PROBATION - G.S. 15A-1343(b4)

Material opposite unmarked squares is to be disregarded as surplusage.  
(Over)



**MANDATORY SPECIAL CONDITIONS FOR SEX OFFENDERS AND PERSONS CONVICTED OF  
OFFENSES INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF A MINOR - G.S. 15A-1343(b2)**

**NOTE:** The following are not defined as intermediate punishments under G.S. 15A-1340.11(6).

**NOTE:** Select only one of the three sets of conditions below.

☐ **1. Special Conditions For Reportable Convictions - G.S. 15A-1343(b2)**

**NOTE:** Impose only for a reportable conviction under G.S. 14-208.6.

The defendant has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4) and must

- Register as a sex offender and enroll in satellite-based monitoring if required on the attached AOC-CR-615, Side Two.
- Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- ☐ (if the Court finds physical, mental, or sexual abuse of a minor) Not reside in a household with
  - ☐ (for sexual abuse) any minor child.
  - ☐ (for physical or mental abuse) any minor child ☐ other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. (Name minor child(ren) with whom the probationer may reside in the same household): \_\_\_\_\_
- Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: ☐ child pornography ☐
- Other: \_\_\_\_\_

☐ **2. Special Conditions For Offenses Involving The Sexual Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** Impose if offense involved sexual abuse of a minor but is *not* a reportable conviction.

The defendant has been convicted of an offense involving the sexual abuse of a minor and must

- Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- Not reside in a household with any minor child. (G.S. 15A-1343(b2)(4))
- Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: ☐ child pornography ☐
- Other: \_\_\_\_\_

☐ **3. Special Conditions For Offenses Involving The Physical Or Mental Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** Impose if offense involved physical or mental abuse of a minor but is *not* a reportable conviction and did *not* involve sexual abuse.

The defendant has been convicted of an offense involving the physical or mental abuse of a minor and must

- Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- Not reside in a household with
  - ☐ any minor child.
  - ☐ any minor child other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. (Name minor child(ren) with whom the probationer may reside in the same household): \_\_\_\_\_
- Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: ☐ child pornography ☐
- Other: \_\_\_\_\_

**ADDITIONAL CONDITIONS FOR DOMESTIC VIOLENCE**

- ☐ 1. Pursuant to its finding that the defendant is responsible for acts of domestic violence, the Court further finds that:
- ☐ there is an abuser treatment program, approved by the Domestic Violence Commission, reasonably available to the defendant, who shall:
    - ☐ (for supervised probation) attend and complete (check one) ☐ (program name) \_\_\_\_\_  
☐ a program to be identified by the probation officer, and abide by the program's rules. The probation officer shall send a copy of this judgment to the program, which shall notify the officer if the defendant fails to participate or is discharged for violating any of its rules.
    - ☐ (for unsupervised probation) attend and complete (check one) ☐ (program name) \_\_\_\_\_  
☐ a program chosen by the defendant, who shall notify the program and the district attorney of that choice within ten (10) days of the entry of this judgment, and abide by the program's rules. The district attorney shall send a copy of this judgment to the program, which shall notify the district attorney if the defendant fails to participate or is discharged for failure to comply with the program or its rules.
  - ☐ there is no approved abuser treatment program reasonably available. ☐ c. it would not be in the best interests of justice to order the defendant to complete an abuser treatment program because \_\_\_\_\_
- ☐ 2. As additional Special Conditions of Probation, the defendant shall:
- ☐ a. not come within \_\_\_\_\_ feet of \_\_\_\_\_ at any time.
  - ☐ b. comply fully with any G.S. Chapter 50B Domestic Violence Protective Order in effect.
- The above conditions are incorporated in the "Judgment Suspending Sentence" in the above case(s) and made a part thereof.

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge

Material opposite unmarked squares is to be disregarded as surplusage.



# Procedure

- For felony conditional discharge: Proceedings must be recorded.
- Defendant **MUST** be under oath
- Defendant is arraigned and asked how they plead
  - Defendant pleads GUILTY (or has previously been found GUILTY)
- ADA and/or Def counsel presents a factual basis that is sufficient for Judge to accept the plea.
- Judge should ask the “eligibility” questions of the ADA and/or Defendant so that Judge can make required findings for a conditional discharge
- Judge considers the motion for conditional discharge
- If motion is granted
  - Judge determines the “reasonable terms and conditions” of probation including any probation terms and conditions required by the specific conditional discharge statute at play
  - Judge should review the conditions of probation with the defendant
- Judge signs the Order



# Frequently Asked Questions

## *Length of Term of Probation, Modification of Terms of Probation, Supervised/Unsupervised*

- Are there limits on the length of the term of probation on a conditional discharge?
  - Yes. G.S. 15A-1342(a) provides that “[t]he 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”
    - **Read the law.** Some conditional discharge statutes specify a minimum and/or maximum term of probation.
      - E.g., G.S. 90-96(a1) – probation must be at least one year
- Can the conditions of probation, including the term of probation, be modified?
  - Yes. But see note above regarding mandatory length of probation for some types of conditional discharges. Also be aware that some conditional discharge statutes have required conditions of probation that arguably cannot be modified
    - E.g., G.S. 90-96(a1) – requires enroll in and complete specific drug education unless judge makes written findings excusing this
    - **CAUTION:** If the term of probation has expired and no probation violation has been filed prior to the expiration of the term of probation, the Court does not have jurisdiction to modify the conditions or terms of probation
- Will Probation supervise a defendant placed on a conditional discharge?
  - Yes. In fact, some conditional discharge statutes require that probation be SUPERVISED
  - Unless otherwise specified in the statute, probation can be supervised or unsupervised
  - Violations of the terms of probation shall be reported to the court as provided by law and to the district attorney in the district in which the agreement was entered. G. S. 15A-1342(a1)



# Frequently Asked Questions

## *Probation Violation Hearings and Review/Compliance Hearings - Conditional Discharge*

- What happens if a probation violation report (supervised) or notice of violation of probation (unsupervised) is filed before the expiration of the term of probation?
  - As with all probation violation hearings, the defendant either admits the violation or there is a hearing to determine whether the defendant has willfully violated a condition of probation as alleged in the report/notice
- What happens if the defendant admits or is found to have willfully violated a condition of probation?
  - The Judge can enter an order finding the defendant violated a condition of probation but continue the defendant on probation (and even modify conditions of probation or add special conditions) so long as the Judge finds that continuation or modification is an appropriate response to the violation. Judge enters an order regarding the PV hearing. AOC-CR-635
  - If the Judge concludes that **any response to the violation other than revocation is not appropriate**, then Judge REVOKES the defendant's probation and enters judgment as to the charges to which the defendant pled (or was found) guilty. **The Judge determines the sentence. The time for a plea agreement ended when the motion for CD was granted**
    - In addition to entering an order from the probation violation hearing, the Judge must also sentence the defendant and prepare a written judgment
- What happens if the defendant is successful on probation, timely completing the conditions of probation?
  - Judge enters an order discharging the defendant from probation and dismissing the charges



# Frequently Asked Questions

## *Probation Expired with No Violation Report or Notice of Violation Pending*

- What happens if at the time defendant's term of probation expires, the defendant has not successfully completed all terms and conditions of probation within the time allowed (including any court ordered extensions of term of probation) **BUT** no violation report (or notice of violation of unsupervised probation) was filed prior to expiration of the term of probation?
  - The charges that are the subject of the Conditional Discharge are in "limbo". What does this mean and why?
    - Defendant is immune from prosecution of the charges that were deferred or discharged and dismissed. G.S. 15A-1342(i)
    - Judge has **no jurisdiction** to extend a term of probation once it has expired.
    - Judge has **no jurisdiction** to modify any terms and conditions of probation once it has expired.
    - Judge may discharge a defendant only "[u]pon fulfillment of the terms and conditions of a conditional discharge." G.S. 15A-1341(a6)
  - If Defendant has not timely fulfilled all of their conditions of probation:
    - Defendant cannot be prosecuted on these charges AND the Court cannot discharge the defendant because they did not timely complete the conditions of probation See State v. Hilgert, 866 S.E.2d 532 (2021) (unpublished)
- It is incumbent on the State – **before** the expiration of the term of probation- to either file a violation report (or notice of violation of unsupervised probation) or file a motion to extend or modify the conditions of probation. *Id.*



# Frequently Asked Questions

## *Expungement*

- Can charges that were dismissed by the Court as a result of the defendant successfully completing probation be expunged?
  - Yes, Maybe?