

# ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
House Bill 369\*

AMENDMENT NO. A2  
(to be filled in by  
Principal Clerk)

H369-ASA-79 [v.4]

Page 1 of 7

Comm. Sub. [NO]  
Amends Title [NO]  
Fourth Edition

Date \_\_\_\_\_, 2014

Senator McKissick

1 moves to amend the bill on page 1, line 34 through page 7, line 29  
2 by rewriting those lines to read:

3 **"CONDITIONAL DISCHARGE AUTHORIZED**

4 **SECTION 2.(a)** G.S. 15A-1341 reads as rewritten:

5 **'§ 15A-1341. Probation generally.**

6 (a) Use of Probation. – Unless specifically prohibited, a person who has been convicted  
7 of any criminal offense may be placed on probation as provided by this Article if the class of  
8 offense of which the person is convicted and the person's prior record or conviction level under  
9 Article 81B of this Chapter authorizes a community or intermediate punishment as a type of  
10 sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1.

11 (a1) Deferred Prosecution. – A person who has been charged with a Class H or I felony  
12 or a misdemeanor may be placed on probation as provided in this Article on motion of the  
13 defendant and the prosecutor if the court finds each of the following facts:

- 14 (1) Prosecution has been deferred by the prosecutor pursuant to written  
15 agreement with the defendant, with the approval of the court, for the purpose  
16 of allowing the defendant to demonstrate his good conduct.
- 17 (2) Each known victim of the crime has been notified of the motion for  
18 probation by subpoena or certified mail and has been given an opportunity to  
19 be heard.
- 20 (3) The defendant has not been convicted of any felony or of any misdemeanor  
21 involving moral turpitude.
- 22 (4) The defendant has not previously been placed on probation and so states  
23 under oath.
- 24 (5) The defendant is unlikely to commit another offense other than a Class 3  
25 misdemeanor.

26 (a2) Deferred Prosecution for Purpose of Drug Treatment Court Program. – A defendant  
27 eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the  
28 General Statutes may be placed on probation if the court finds that prosecution has been  
29 deferred by the prosecutor, with the approval of the court, pursuant to a written agreement with  
30 the defendant, for the purpose of allowing the defendant to participate in and successfully  
31 complete the Drug Treatment Court Program.



\* H 3 6 9 - A S A - 7 9 - V - 4 \*

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

House Bill 369\*

**ADOPTED**

AMENDMENT NO. A2

(to be filled in by  
Principal Clerk)

H369-ASA-79 [v.4]

Page 2 of 7

1       (a3) ~~Deferred Prosecution-Conditional Discharge~~ for Prostitution. – A defendant whose  
2 prosecution is deferred pursuant to G.S. 14-204(c) for whom the court orders a conditional  
3 discharge pursuant to G.S. 14-204(b) may be placed on probation as provided in this Article.

4       (a4) Conditional Discharge. – Whenever a person pleads guilty to or is found guilty of a  
5 Class H or I felony or a misdemeanor, the court may, on motion of the defendant and the  
6 prosecutor, and without entering a judgment of guilt and with the consent of the person, defer  
7 further proceedings and place the person on probation as provided in this Article for the  
8 purpose of allowing the defendant to demonstrate the defendant's good conduct, if the court  
9 finds each of the following facts:

10           (1) Each known victim of the crime has been notified of the motion for  
11 probation by subpoena or certified mail and has been given an opportunity to  
12 be heard.

13           (2) The defendant has not been convicted of any felony or of any misdemeanor  
14 involving moral turpitude.

15           (3) The defendant has not previously been placed on probation and so states  
16 under oath.

17           (4) The defendant is unlikely to commit another offense other than a Class 3  
18 misdemeanor.

19       (a5) Conditional Discharge for Purpose of Drug Treatment Court Program. – When a  
20 defendant is eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A  
21 of the General Statutes, the court may, without entering a judgment of guilt and with the  
22 consent of the defendant, defer further proceedings and place the defendant on probation for the  
23 purpose of allowing the defendant to participate in and successfully complete the Drug  
24 Treatment Court Program.

25       (a6) Compliance With Terms of Conditional Discharge. – Upon violation of a term or  
26 condition of a conditional discharge granted pursuant to this section, the court may enter an  
27 adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and  
28 conditions of a conditional discharge granted pursuant to this section, any plea or finding of  
29 guilty previously entered shall be withdrawn and the court shall discharge the person and  
30 dismiss the proceedings against the person.

31       (b) Supervised and Unsupervised Probation. – The court may place a person on  
32 supervised or unsupervised probation. A person on unsupervised probation is subject to all  
33 incidents of probation except supervision by or assignment to a probation officer.

34       (c) Repealed by Session Laws 1995, c. 429, s. 1.

35       (d) Search of Sex Offender Registration Information Required When Placing a  
36 Defendant on Probation. – When the court places a defendant on probation, the probation  
37 officer assigned to the defendant shall conduct a search of the defendant's name or other  
38 identifying information against the registration information regarding sex offenders compiled  
39 by the Division of Criminal Statistics of the Department of Justice in accordance with Article  
40 27A of Chapter 14 of the General Statutes. The probation officer may conduct the search using  
41 the Internet site maintained by the Division of Criminal Statistics.

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

House Bill 369\*

ADOPTED

AMENDMENT NO. A2

(to be filled in by  
Principal Clerk)

H369-ASA-79 [v.4]

Page 3 of 7

1 (e) Review of Defendant's Juvenile Record. – The probation officer assigned to a  
2 defendant may examine and obtain copies of the defendant's juvenile record in a manner  
3 consistent with G.S. 7B-3000(b) and (e1).'

4 **SECTION 2.(b)** G.S. 7A-272 reads as rewritten:

5 '**§ 7A-272. Jurisdiction of district court; concurrent jurisdiction in guilty or no contest**  
6 **pleas for certain felony offenses; appellate and appropriate relief procedures**  
7 **applicable.**

8 ...

9 (e) With the consent of the chief district court judge and the senior resident superior  
10 court judge, the district court has jurisdiction to preside over the supervision of a probation  
11 judgment entered in superior court in which the defendant is required to participate in a drug  
12 treatment court program pursuant to G.S. 15A-1343(b1)(2b) or a therapeutic court as defined in  
13 subsection (f) of this section, or is participating in the drug treatment court pursuant to a  
14 deferred prosecution agreement under ~~G.S. 15A-1341(a2)~~ G.S. 15A-1341(a2) or the terms of a  
15 conditional discharge under G.S. 15A-1341(a5). The district court may modify or extend the  
16 probation judgment, but jurisdiction to revoke probation supervised under this subsection is as  
17 provided in G.S. 7A-271(f).

18 (f) As used in subsection (e) of this section, the term "therapeutic court" refers to a  
19 court, other than drug treatment court established pursuant to Article 62 of Chapter 7A of the  
20 General Statutes, in which a criminal defendant, either as a condition of probation or pursuant  
21 to a deferred prosecution agreement or the terms of a conditional discharge under  
22 G.S. 15A-1341, is ordered to participate in specified activities designed to address underlying  
23 problems of substance abuse and mental illness that contribute to the person's criminal activity.  
24 The ordered activities shall, at a minimum, require the person to participate in treatment and  
25 attend regular court sessions of the therapeutic court over an extended period of time. The  
26 senior resident superior court judge and the chief district court judge shall agree in writing that  
27 the therapeutic court is being established and shall file the written agreement with the  
28 Administrative Office of the Courts before jurisdiction established by subsection (e) of this  
29 section may be exercised by the district court.'

30 **SECTION 2.(c)** G.S. 14-313(f) reads as rewritten:

31 '(f) ~~Deferred prosecution-prosecution or conditional discharge.~~ – Notwithstanding  
32 ~~G.S. 15A-1341(a1)~~ G.S. 15A-1341(a1) or G.S. 15A-1341(a4), any person charged with a  
33 misdemeanor under this section shall be qualified for deferred prosecution or a conditional  
34 discharge pursuant to Article 82 of Chapter 15A of the General Statutes provided the defendant  
35 has not previously been placed on probation for a violation of this section and so states under  
36 oath.'

37 **SECTION 2.(d)** G.S. 15A-146(d) reads as rewritten:

38 '(d) A person charged with a crime that is dismissed pursuant to compliance with a  
39 deferred prosecution agreement or the terms of a conditional discharge and who files a petition  
40 for expunction of a criminal record under this section must pay the clerk of superior court a fee  
41 of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected  
42 under this subsection are payable to the Administrative Office of the Courts. The clerk of  
43 superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

House Bill 369\*

ADOPTED

AMENDMENT NO. A2

(to be filled in by  
Principal Clerk)

H369-ASA-79 [v.4]

Page 4 of 7

1 to the North Carolina Department of Justice for the costs of criminal record checks performed  
2 in connection with processing petitions for expunctions under this section. The remaining  
3 fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative  
4 Office of the Courts and used to pay the costs of processing petitions for expunctions under this  
5 section. This subsection does not apply to petitions filed by an indigent.'

6 SECTION 2.(e) G.S. 15A-1342 reads as rewritten:

7 '§ 15A-1342. Incidents of probation.

8 (a) Period. – The court may place a convicted offender on probation for the appropriate  
9 period as specified in G.S. 15A-1343.2(d), not to exceed a maximum of five years. The court  
10 may place a defendant as to whom prosecution has been deferred or who receives a conditional  
11 discharge on probation for a maximum of two years. The probation remains conditional and  
12 subject to revocation during the period of probation imposed, unless terminated as provided in  
13 subsection (b) or G.S. 15A-1341(c).

14 Extension. – In addition to G.S. 15A-1344, the court with the consent of the defendant may  
15 extend the period of probation beyond the original period (i) for the purpose of allowing the  
16 defendant to complete a program of restitution, or (ii) to allow the defendant to continue  
17 medical or psychiatric treatment ordered as a condition of the probation. The period of  
18 extension shall not exceed three years beyond the original period of probation. The special  
19 extension authorized herein may be ordered only in the last six months of the original period of  
20 probation. Any probationary judgment form provided to a defendant on supervised probation  
21 shall state that probation may be extended pursuant to this subsection.

22 (a1) Supervision of Defendants on Deferred ~~Prosecution~~ Prosecution or Conditional  
23 Discharge. – The Section of Community Corrections of the Division of Adult Correction of the  
24 Department of Public Safety may be ordered by the court to supervise an offender's compliance  
25 with the terms of a conditional discharge or deferred prosecution agreement entered into under  
26 ~~G.S. 15A-1341(a1) or (a3)~~ G.S. 15A-1341(a1), (a3), (a4), or (a5). Violations of the terms of the  
27 agreement or conditional discharge shall be reported to the court as provided in this Article and  
28 to the district attorney in the district in which the agreement was entered.

29 ...

30 (i) Immunity from Prosecution upon Compliance. – Upon the expiration or early  
31 termination as provided in subsection (b) of a period of probation imposed after deferral of  
32 prosecution and before ~~conviction~~ conviction or a conditional discharge, the defendant shall be  
33 immune from prosecution of the charges ~~deferred~~ deferred or discharged and dismissed.

34 ....'

35 SECTION 2.(f) G.S. 15A-1343 reads as rewritten:

36 '§ 15A-1343. Conditions of probation.

37 ...

38 (c1) Supervision Fee. – Any person placed on supervised probation pursuant to  
39 subsection (a) of this section shall pay a supervision fee of forty dollars (\$40.00) per month,  
40 unless exempted by the court. The court may exempt a person from paying the fee only for  
41 good cause and upon motion of the person placed on supervised probation. No person shall be  
42 required to pay more than one supervision fee per month. The court may require that the fee be  
43 paid in advance or in a lump sum or sums, and a probation officer may require payment by

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

House Bill 369\*

ADOPTED

AMENDMENT NO. A2

(to be filled in by  
Principal Clerk)

H369-ASA-79 [v.4]

Page 5 of 7

1 such methods if he is authorized by subsection (g) to determine the payment schedule.  
2 Supervision fees must be paid to the clerk of court for the county in which the judgment was  
3 ~~entered or entered,~~ the deferred prosecution agreement was ~~filed.~~ filed, or the conditional  
4 discharge was ordered. Fees collected under this subsection shall be transmitted to the State for  
5 deposit into the State's General Fund.

6 (c2) Electronic Monitoring Device Fees. – Any person placed on house arrest with  
7 electronic monitoring under subsection (a1) or (b1) of this section shall pay a fee of ninety  
8 dollars (\$90.00) for the electronic monitoring device and a daily fee in an amount that reflects  
9 the actual cost of providing the electronic monitoring. The court may exempt a person from  
10 paying the fees only for good cause and upon motion of the person placed on house arrest with  
11 electronic monitoring. The court may require that the fees be paid in advance or in a lump sum  
12 or sums, and a probation officer may require payment by those methods if the officer is  
13 authorized by subsection (g) of this section to determine the payment schedule. The fees must  
14 be paid to the clerk of court for the county in which the judgment was ~~entered or entered,~~ the  
15 deferred prosecution agreement was ~~filed.~~ filed, or the conditional discharge was ordered. Fees  
16 collected under this subsection for the electronic monitoring device shall be transmitted to the  
17 State for deposit into the State's General Fund. The daily fees collected under this subsection  
18 shall be remitted to the Department of Public Safety to cover the costs of providing the  
19 electronic monitoring.'

20 SECTION 2.(g) G.S. 143B-708 reads as rewritten:

21 '§ 143B-708. Community service program.

22 ...

23 (c) A fee of two hundred fifty dollars (\$250.00) shall be paid by all persons who  
24 participate in the program or receive services from the program staff. Only one fee may be  
25 assessed for each sentencing transaction, even if the person is assigned to the program on more  
26 than one occasion, or while on deferred prosecution, under a conditional discharge, or ~~while~~  
27 serving a sentence for the offense. A sentencing transaction shall include all offenses  
28 considered and adjudicated during the same term of court. Fees collected pursuant to this  
29 subsection shall be deposited in the General Fund. If the person is convicted in a court in this  
30 State, the fee shall be paid to the clerk of court in the county in which the person is convicted,  
31 regardless of whether the person is participating in the program as a condition of parole, of  
32 probation imposed by the court, or pursuant to the exercise of authority delegated to the  
33 probation officer pursuant to G.S. 15A-1343.2(e) or (f). If the person is participating in the  
34 program as a result of a conditional discharge or a deferred prosecution or similar program, the  
35 fee shall be paid to the clerk of court in the county in which the agreement is filed. Persons  
36 participating in the program for any other reason shall pay the fee to the clerk of court in the  
37 county in which the services are provided by the program staff. The fee shall be paid in full  
38 before the person may participate in the community service program, except that:

- 39 (1) A person convicted in a court in this State may be given an extension of time  
40 or allowed to begin the community service before the person pays the fee by  
41 the court in which the person is convicted; or  
42 (2) A person performing community service pursuant to a conditional discharge,  
43 deferred prosecution or similar agreement may be given an extension of time



ADOPTED

AMENDMENT NO. A2

(to be filled in by  
Principal Clerk)

H369-ASA-79 [v.4]

Page 6 of 7

- 1 or allowed to begin community service before the fee is paid by the official
- 2 or agency representing the State in the agreement.
- 3 (3) A person performing community service as a condition of parole may be
- 4 given an extension of time to pay the fee by the Post-Release Supervision
- 5 and Parole Commission. No person shall be required to pay the fee before
- 6 beginning the community service unless the Commission orders the person
- 7 to do so in writing.
- 8 (4) A person performing community service as ordered by a probation officer
- 9 pursuant to authority delegated by G.S. 15A-1343.2 may be given an
- 10 extension of time to pay the fee by the probation officer exercising the
- 11 delegated authority.

12 ...

13 (e) The community service staff shall report to the court in which the community

14 service was ordered, a significant violation of the terms of the probation, ~~or deferred~~

15 prosecution, or conditional discharge related to community service, including a willful failure

16 to pay any moneys due the State under any court order or payment schedule adopted by the

17 Section of Community Corrections of the Division of Adult Correction. The community service

18 staff shall give notice of the hearing to determine if there is a willful failure to comply to the

19 person who was ordered to perform the community service. This notice shall be given by either

20 personal delivery to the person to be notified or by depositing the notice in the United States

21 mail in an envelope with postage prepaid, addressed to the person at the last known address

22 available to the preparer of the notice and reasonably believed to provide actual notice to the

23 person. The notice shall be mailed at least 10 days prior to any hearing and shall state the basis

24 of the alleged willful failure to comply. The court shall then conduct a hearing, even if the

25 person ordered to perform the community service fails to appear, to determine if there is a

26 willful failure to complete the work as ordered by the community service staff within the

27 applicable time limits. The hearing may be held in the county in which the ~~probation judgment~~

28 ~~or deferred prosecution order~~ requiring the performance of community service was imposed,

29 the county in which the violation occurred, or the county of residence of the person. If the court

30 determines there is a willful failure to comply, it shall revoke any drivers license issued to the

31 person and notify the Division of Motor Vehicles to revoke any drivers license issued to the

32 person until the community service requirement has been met. In addition, if the person is

33 present, the court may take any further action authorized by Article 82 of Chapter 15A of the

34 General Statutes for violation of a condition of probation.'

35 SECTION 2.(h) This section becomes effective December 1, 2014."

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

House Bill 369\*

**ADOPTED**

AMENDMENT NO. A2

(to be filled in by  
Principal Clerk)

H369-ASA-79 [v.4]

Page 7 of 7

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

**The official copy of this document, with signatures  
and vote information, is available in the  
Senate Principal Clerk's Office**