

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

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**HOUSE BILL 641**

Short Title: Amend Deferred Prosecution/1st Drug Offense. (Public)

Sponsors: Representatives Davis and Daughtry (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Judiciary Subcommittee C.

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COURT HAS THE DISCRETION TO DETERMINE WHETHER TO DEFER PROSECUTION FOR A FIRST OFFENSE OF CERTAIN DRUG OFFENSES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 90-96(a) reads as rewritten:

"(a) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this Article; or (iii) an offense under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules I through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90-113.22, or (ii) a felony under G.S. 90-95(a)(3), the court ~~shall~~, may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services or in the Treatment for Effective Community Supervision Program under Article 6B of Chapter 143B of the General Statutes. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions as provided in this subsection."

**SECTION 2.** This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

