

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 1078
HOUSE BILL 1440

AN ACT TO PROVIDE FOR CONDITIONAL DISCHARGE AND EXPUNCTION OF RECORDS IN CASE OF FIRST OFFENSE VIOLATORS OF THE PROVISIONS OF ARTICLES 5 AND 5A OF CHAPTER 90 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is hereby amended by inserting at the end of Article 5A thereof a new section, G.S. 90-113.14, to read as follows:

"§ 90-113.14. **Conditional discharge and expunction of records for first offense.** — (a) Whenever any person who has not previously been convicted of any offense under Article 5 or 5A of Chapter 90, or under any statute of the United States, or any state relating to those substances included in Article 5 or 5A of Chapter 90 pleads guilty to or is found guilty of violating Article 5 or 5A by possessing Cannabis as prohibited thereunder, the court 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. 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 of such Articles. Discharge and dismissal under this section may occur only once with respect to any person.

(b) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (a) of this subsection, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the North Carolina Department of Justice under paragraph (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the North Carolina Department of Justice, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the North Carolina Department of Justice the names of those persons granted a conditional discharge under the provisions of this act, and the North Carolina Department of Justice shall maintain a

confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 21st day of July, 1971.