

# Statewide Handling of Conditional Discharges

## Question:

Does a conditional discharge count as a conviction?

## Response & Analysis:

Conditional discharge is a form of a deferred sentence with probationary conditions attached. If the probationary conditions set forth are violated, a court is permitted to reinstate a full penalty.<sup>1</sup> Many states have conditional discharge laws and differ on whether a conditional discharge is considered a conviction. Some states have case law that *may* support a finding that a conditional discharge is a conviction; however, it remains unclear within the regulations currently available.<sup>2</sup> States that provide a clear determination on conditional discharges are detailed below.

## CONVICTION

Very few states expressly provide that a conditional discharge is a conviction. Some of these states include Illinois, Arizona, New York, New Hampshire, and Rhode Island.

In **Illinois**, a conditional discharge is considered a conviction.<sup>3</sup> Illinois defines a conditional discharge as a sentence or disposition of conditional and revocable release, without

<sup>1</sup> Conditional Discharge Law and Legal Definition, US LEGAL, <https://definitions.uslegal.com/c/conditional-discharge/>.

<sup>2</sup> See 10 CCR § 2175.2(f) (California Department of Insurance states that “conditional discharges are not convictions” however it is unclear whether the Department’s definition also applies to convictions in a general context, separate from insurance). See RCW 381-80-030 (Washington procedures for conditional discharge state that the provisions apply to offenders “convicted of crimes” within the state, making it reasonable to conclude that a conditional discharge is a conviction).

<sup>3</sup> Although conditional discharge is considered a conviction, Illinois does not consider “supervision” or “1410/710 probation” a conviction. Such charges will be dismissed without a criminal conviction after completing the specified requirements.

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probationary supervision, but under such conditions as may be imposed by the court.<sup>4</sup> Under the Illinois sentencing code, a conditional discharge is a sentencing option only available after a court convicts an individual.<sup>5</sup> <sup>6</sup> Similarly, in [Arizona](#), a conditional discharge is a sentence pronounced by a court after a conviction.<sup>7</sup> An individual is only permitted to apply for discharge from the conviction after completing the conditions set forth.<sup>8</sup> Such conviction will remain on an individual's criminal record until successfully set aside.<sup>9</sup> Further, a conditional discharge may be considered when evaluating an application for a fingerprint clearance card pursuant to section 41-1758.03.<sup>10</sup>

The state of [New York](#) also considers a conditional discharge as a conviction. New York classifies conditional discharge as a “sentence,” allowing an individual to fulfill conditions to be “released with respect to the [already-imposed] conviction.”<sup>11</sup> If an individual violates the conditions set forth in the sentence, the court may “amend the judgment of conviction” and resentence the individual.<sup>12</sup> [New Hampshire](#) enacted a similar sentencing statute, which expressly states that a person “convicted” of certain felonies, misdemeanors, or violations may be “sentenced” to a conditional discharge.<sup>13</sup>

[Rhode Island](#) has a statute that explicitly applies to those seeking employment after being convicted of a crime, with

<sup>4</sup> 730 ILCS 5/5-1-4 (2009).

<sup>5</sup> 730 ILCS 5/5-6-1 (2009).

<sup>6</sup> See *People v. Janovic*, 850 N.E.2d 238 (Ill. App. 2016) (holding plaintiff was sentenced to conditional discharge after receiving DUI misdemeanor conviction); *People ex rel. Madigan v. Baumgartner*, 823 N.E.2d 1144 (Ill. App. 2005) (holding that a defendant can be sentenced to conditional discharge); *Bridgeforth v. City of Glenwood*, 2020 WL 1922907, n.3 (N.D. Ill. April 21, 2020) (holding that although conditional discharge is a light sentence for someone who had been originally charged with a felony, it is not an acquittal or a nolle prosequi; it is a sentence following conviction of a crime.); see also 6A Ill. Prac., Criminal Practice & Procedure § 28:10 (2d ed.) (“A defendant may be placed on probation or conditional discharge after being convicted of an offense. He or she must then follow certain rules and regulations set down by the court as a condition of probation or conditional discharge. If those conditions are violated, the defendant may be resented under the court’s jurisdiction).

<sup>7</sup> AZ Rev. Stat. §13-905 (2019).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> NY Penal Sec. 65.05.

<sup>12</sup> See *People v. Lubrano*, 2013 WL 6097952 (2013).

<sup>13</sup> N.H. Rev. Stat. §651:2 (2017).

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an underlying purpose of “recovery & re-entry.”<sup>14</sup> However, even with this stated purpose, a conditional discharge that is imposed by a court “shall be deemed a conviction.”<sup>15</sup>

## NO CONVICTION

Indiana<sup>16</sup>, South Carolina<sup>17</sup>, and Georgia<sup>18</sup> all have similar conditional discharge laws for those who receive a first time offense involving a controlled substance. These courts will not enter a conviction on an individual’s record unless the conditions set forth by the court are violated.<sup>19</sup> Upon violation, the court may then enter judgment for a conviction.<sup>20</sup> However, if the required conditions are met, an individual will only have a criminal arrest record. In South Carolina, once the conditions imposed are successfully completed, the court will dismiss the charges and the arrest record may be expunged.<sup>21</sup> Additionally, in Georgia, a conditional discharge “may not be used to disqualify a person in any application for employment or appointment to office in either the public or private sector.”<sup>22</sup>

Hawaii<sup>23</sup>, North Carolina<sup>24</sup>, and West Virginia<sup>25</sup> also have similar regulations in place and do not consider conditional discharges as convictions. The states require courts to defer proceedings, without entering a judgment of guilt, and place individuals on probation with conditions implemented. Upon discharge, there shall be no adjudication of guilt and, therefore, the conditional discharge will not be considered a conviction.<sup>26</sup> North Carolina provides for conditional discharge

<sup>14</sup> Gen. Laws 1956, § 13-8.2-1

<sup>15</sup> *Id.* at § 13-8.2-3

<sup>16</sup> IN Code § 35-48-4-12 (2019).

<sup>17</sup> SC Code § 44-53-450 (2019).

<sup>18</sup> O.C.G.A. 16-13-2 (2010).

<sup>19</sup> *Id.* Georgia Code states that “discharge and dismissal under the Georgia Code shall be without adjudication of guilt and shall not be deemed a conviction for the purposes of this Code section or for purposes of disqualifications or disabilities imposed by law upon a conviction of a crime.”

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> HI Rev. Stat. § 712-1255 (2019).

<sup>24</sup> N.C.G.S.A. § 90-96 (2010).

<sup>25</sup> WV Code § 60A-4-407 (2019).

<sup>26</sup> See also *State v. Frazer* 375 P.3d 267 (Haw. Ct. App. 2016); *State v. Clark*, 769 S.E.2d 423 (N.C. App. 2015); *State v. Gaskins*, 558 S.E.2d 579 (W. Va. App. 2001).

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for specific crimes, “without entering a judgment of guilt.”<sup>27</sup> This conclusion is further supported by the fourth circuit, where the court held that a defendant who was conditionally discharged for a prior felony was not convicted because the probationary terms were satisfied and judgment was not entered.<sup>28</sup>

In [New Mexico](#), a conditional discharge is also not considered a conviction.<sup>29</sup> If a deferred or suspended sentence is authorized by law, a court is able to “enter a conditional discharge order” and place the individual on probationary terms as permitted under Sections 31-20-5 and 31-20-6 NMSA 1978. Similarly, in [Oregon](#), upon the fulfillment of the terms and conditions of the agreement, the court will discharge the person and dismiss the proceedings against the person.<sup>30</sup> Discharge and dismissal is without adjudication of guilt and “is not considered a conviction for... purposes of disqualifications or disabilities imposed by law upon conviction of a crime.”<sup>31</sup> Case law further supports the conclusion that a conditional discharge does not result in a conviction.<sup>32</sup>

[Connecticut](#) is unique in that a conditional discharge is considered a “sentence;” however such a sentence is not considered a conviction unless the conditions set forth by a court are violated.<sup>33</sup> After a court sentences an individual to a conditional discharge, “the defendant shall be released with respect to the conviction for which the sentence is imposed.”<sup>34</sup> The regulations provide the court with specific durations to impose a conditional discharge depending on the classification of the crime.<sup>35</sup>

<sup>27</sup> G.S. § 15A-1341(a4)

<sup>28</sup> *United States v. Smith*, 939 F.3d 612 (4th Cir. 2019).

<sup>29</sup> NM Stat. § 31-20-13 (2018); *see also State v. Harris*, 2013- NMCA- 031(2013) (holding that a conditional discharge entered without an adjudication of guilt is not considered a conviction).

<sup>30</sup> OR Rev. Stat. § 475.245 (2019).

<sup>31</sup> *Id.*

<sup>32</sup> *See Velasco v. State*, 426 P.3d 114 (Or. Ct. App. 2018) (holding no entry of conviction because petitioner completed conditional discharge requirements); *see also Chaffee v. Shaffer Trucking, Inc.* 948 P.2d 760 (Or. Ct. App. 1997) (same).

<sup>33</sup> C.G.S.A. § 53a-29(c) (2019).

<sup>34</sup> *Id.*

<sup>35</sup> C.G.S.A. § 53a-29 (d) (2019).


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**Pennsylvania** created a conditional discharge program known as the Accelerated Rehabilitative Disposition (ARD) for first time offenders. It offers participants a possibility of dismissal of charges and expungement of the offender's arrest record upon completion of the program.<sup>36</sup> The records will be expunged upon successful completion, unless the Commonwealth has a compelling reason that supports retention of the record.<sup>37</sup> **New Jersey** also created conditional dismissal programs (known as diversionary programs) to help first time offenders for minor crimes avoid the consequences of a criminal record.<sup>38</sup> If the individual satisfies the conditions imposed by the court over the probationary period, such charge will not result in a conviction requiring disclosure.<sup>39</sup> However, while a conditional discharge is not considered a conviction, the sentence may still be used in determining an applicant's qualifications for certain positions, such as a police officer.<sup>40</sup> Further, the arrest for the crime charged will still appear on an individual's record.<sup>41</sup>

Overall, it is important to be aware of your state's law and understand its application. Employers should also ensure compliance with Title VII of the Civil Rights Act and EEOC guidelines relating to the discrimination of individuals with criminal records. ■

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<sup>36</sup> PA. OFFICE OF VICTIM SERVICES, *County Sentence Walk Through*, <https://pcv.pccd.pa.gov/available-services/Pages/Flow%20County/ARD.aspx>.

<sup>37</sup> PA Code. § 234- 3 (2019), <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/234/chapter3/chap3toc.html>.

<sup>38</sup> N.J.S.A. 2C:36A-1 (2019).

<sup>39</sup> *Id.* (stating that "the termination of supervisory treatment and dismissal will be with adjudication of guilt and not deemed a conviction for the purposes of disqualification or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files").

<sup>40</sup> See *Tharpe v. City of Newark Police Dept.*, 619 A.2d 228 (N.J. Supp. 1992) (plaintiff's conditional discharge was not a conviction but could be used to determine eligibility as a police officer).

<sup>41</sup> N.J.S.A. 2C:36A-1 (2019).