

What is the 90-96 Program?

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The 90-96 program is a conditional discharge for those who have been charged with certain alcohol and drug offenses, and this is their first charge (with the exception of minor traffic offenses). Upon completion of the program and paying all program fees and court costs, the district attorney will dismiss the charge. The charge will then be eligible for expunction.

The program is authorized by N.C. Gen. Stat. § 90-96. In part, the statute reads:

(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 G.S. 90-113.22A or (ii) a felony under G.S. 90-95(a) (3), the court shall, without entering a judgment of guilt and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable terms and conditions as it may require, unless the court determines with a written finding, and with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.

Program requirements may vary by county. In Wake County, a participant must complete an alcohol and drug screen and then attend fifteen hours of alcohol and drug awareness classes. Generally, the participant has six months to complete the classes and pay all relevant fees, however the district attorney may allow for extra time if needed to complete the program.

This program is often useful for those cited or arrested for

possession of marijuana under a half ounce, possession of drug paraphernalia, or underage drinking. Those charged for the first time with certain drug felonies might also be eligible for 90-96. Because THC cartons fall under felony law in North Carolina, you may have a client charged with possessing a synthetic cannabinoid. In their discretion, the district attorney may offer the person the option to complete the 90-96 program for a dismissal.

Please note this program is not available for those arrested for driving after consuming or driving while impaired.

A participant does not necessarily need an attorney to enter into or complete the program, but many participants prefer to have an attorney. In some counties, if the participant completes the program successfully and pays all fees, the participant will not have to appear for the final court date. Rather, the attorney will appear for the participant and have the case dismissed. Check your local rules for more information.

After dismissal, the case will be eligible for expungement. Currently, a petition must be filed with the Clerk of Court accompanied with a \$175 fee. Starting in December 2021, charges will automatically be expunged upon dismissal.

When considering whether to take a case to trial or enter into the 90-96 program, explain the risks and benefits of both a trial and the program to your client. Some clients would prefer the charge just be disposed of as quickly as possible; some would prefer to fight and do not mind risking a conviction and possible appeal. If the client does choose a bench trial, the judge may offer the 90-96 program as a sentence, therefore still allowing the client to have the charge dismissed and expunged.