

# House Bill 2135

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires reinstatement of charges that, as part of plea agreement, district attorney agreed to dismiss or reduce when defendant agreed to enter guilty or no contest plea to other charges and is subsequently allowed to withdraw guilty or no contest plea, has judgment of conviction reversed or obtains post-conviction relief.

## A BILL FOR AN ACT

Relating to plea agreements; amending ORS 131.145, 131.525, 135.365, 138.240 and 138.520.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 135.365 is amended to read:

135.365. (1) The court may at any time before judgment, upon a plea of guilty or no contest, permit it to be withdrawn and a plea of not guilty substituted therefor.

**(2) If, following a plea based on a plea agreement, the court allows withdrawal of a plea of guilty or no contest, the court shall reinstate charges that were dismissed because, as part of the plea agreement:**

**(a) The district attorney sought or did not oppose dismissal; or**

**(b) The district attorney agreed to a plea to another offense reasonably related to the defendant's conduct.**

**SECTION 2.** ORS 138.240 is amended to read:

138.240. (1) The appellate court may reverse, affirm or modify the judgment or order appealed from and shall, if necessary or proper, order a new trial.

**(2) If the appellate court reverses a judgment of conviction in which the plea is based on a plea agreement, unless precluded by the appellate court decision, the trial court shall reinstate charges that were dismissed because, as part of the plea agreement:**

**(a) The district attorney sought or did not oppose dismissal; or**

**(b) The district attorney agreed to a plea to another offense reasonably related to the defendant's conduct.**

**SECTION 3.** ORS 138.520 is amended to read:

138.520. (1) The relief [*which*] **that** a court may grant or order under ORS 138.510 to 138.680 [*shall include*] **includes** release, new trial, modification of sentence, and such other relief as may be proper and just. The court may also make supplementary orders to the relief granted, concerning such matters as arraignment, retrial, custody and release on security.

**(2) If the court grants relief to the petitioner in a matter in which the plea is based on a plea agreement, unless precluded by the court's decision, the trial court shall, upon remand, reinstate charges that were dismissed because, as part of the plea agreement:**

**(a) The district attorney sought or did not oppose dismissal; or**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1       **(b) The district attorney agreed to a plea to another offense reasonably related to the**  
 2 **defendant's conduct.**

3       **SECTION 4.** ORS 131.525 is amended to read:

4       131.525. (1) A previous prosecution is not a bar to a subsequent prosecution when the previous  
 5 prosecution was properly terminated under any of the following circumstances:

6       (a) The defendant consents to the termination or waives, by motion, by an appeal upon judgment  
 7 of conviction, or otherwise, the right to object to termination.

8       (b) The trial court finds that a termination, other than by judgment of acquittal, is necessary  
 9 because:

10       (A) It is physically impossible to proceed with the trial in conformity with law; [or]

11       (B) There is a legal defect in the proceeding that would make any judgment entered upon a  
 12 verdict reversible as a matter of law; [or]

13       (C) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the  
 14 trial without injustice to either the defendant or the state; [or]

15       (D) The jury is unable to agree upon a verdict; or

16       (E) False statements of a juror on voir dire prevent a fair trial.

17       (c) When the former prosecution occurred in a court [which] **that** lacked jurisdiction over the  
 18 defendant or the offense.

19       (d) When the subsequent prosecution was for an offense [which] **that** was not consummated  
 20 when the former prosecution began.

21       **(e) When the former prosecution resulted in charges being dismissed as described in ORS**  
 22 **135.365 (2), 138.240 (2) or 138.520 (2).**

23       (2) A plea of guilty or resulting judgment is not a bar under ORS 131.515 (2) to a subsequent  
 24 prosecution under an accusatory instrument [which] **that** is filed no later than 30 days after entry  
 25 of the guilty plea. The defendant's prior plea of guilty or resulting judgment, notwithstanding ORS  
 26 135.365, shall be vacated upon motion by the defendant if made within 30 days after defendant's  
 27 arraignment for the subsequent prosecution. The provisions of ORS 135.445 apply to such a vacated  
 28 plea or resulting judgment and any statements made in relation to those proceedings.

29       **SECTION 5.** ORS 131.145 is amended to read:

30       131.145. (1) For the purposes of ORS 131.125, time starts to run on the day after the offense is  
 31 committed.

32       (2) Except as provided in ORS 131.155, the period of limitation does not run during:

33       (a) Any time when the accused is not an inhabitant of or usually resident within this state;  
 34 [or]

35       (b) Any time when the accused hides within the state so as to prevent process being served upon  
 36 the accused[.]; or

37       **(c) Any time between the entry of a plea of guilty or no contest pursuant to a plea**  
 38 **agreement and:**

39       **(A) Withdrawal of the plea of guilty or no contest under ORS 135.365;**

40       **(B) Reversal of the judgment of conviction by the appellate court under ORS 138.240; or**

41       **(C) A grant of relief under ORS 34.310 or 138.520 or 28 U.S.C. 2241.**

42       (3) If, when the offense is committed, the accused is out of the state, the action may be com-  
 43 menced within the time provided in ORS 131.125 after the coming of the accused into the state.