

House Bill 2298

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary)

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**.

Creates crime of possession of controlled substance by consumption. Punishes by maximum of six months' imprisonment, \$2,500 fine, or both. Expands possession of marijuana diversion program to include persons charged with possession of controlled substance by consumption.

A BILL FOR AN ACT

1
2 Relating to controlled substances; creating new provisions; and amending ORS 135.907, 135.909,
3 135.911, 135.913, 135.915, 135.917, 135.919 and 135.921.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 475.840 to**
6 **475.980.**

7 **SECTION 2. (1) As used in this section, "consume" means to introduce into the body of**
8 **a person by any means.**

9 **(2) A person commits the crime of possession of a controlled substance by consumption**
10 **if the person knowingly consumes a controlled substance and the controlled substance ad-**
11 **versely affects the person's mental or physical abilities to a perceptible degree.**

12 **(3) Possession of a controlled substance by consumption, for a controlled substance other**
13 **than marijuana, is a Class B misdemeanor.**

14 **(4) Notwithstanding ORS 475.864, possession of a controlled substance by consumption,**
15 **for marijuana, is a violation.**

16 **(5) Subsection (2) of this section does not apply if the controlled substance:**

17 **(a) Has been prescribed by a practitioner and is used in the manner prescribed by the**
18 **practitioner;**

19 **(b) Is administered or used under the supervision of a practitioner; or**

20 **(c) Is marijuana and was consumed by a person authorized to engage in the medical use**
21 **of marijuana under ORS 475.306.**

22 **SECTION 3. ORS 135.907 is amended to read:**

23 135.907. (1) The court shall inform a **defendant** at arraignment [*a defendant charged with the*
24 *offense of possession of less than one ounce of marijuana,*] that a diversion agreement may be avail-
25 able if:

26 **(a) The offense for which the defendant is before the court is the defendant's first offense of:**

27 **(A) Possession of less than one ounce of marijuana; or [and]**

28 **(B) Possession of a controlled substance by consumption; and**

29 **(b) The defendant files with the court a petition for a possession of [*marijuana*] a controlled**
30 **substance diversion agreement.**

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 (2) The petition form for a possession of [*marijuana*] **a controlled substance** diversion agree-
 2 ment shall be available to a defendant at the court.

3 (3) The form of the petition for a possession of [*marijuana*] **a controlled substance** diversion
 4 agreement and the information and blanks contained therein shall be determined by the Supreme
 5 Court under ORS 1.525. The petition form made available to a defendant by any state court shall
 6 conform to the requirements adopted by the Supreme Court.

7 (4) In addition to any other information required by the Supreme Court to be contained in a
 8 petition for a possession of [*marijuana*] **a controlled substance** diversion agreement, the petition
 9 shall include:

10 (a) A waiver by the defendant of the right to speedy trial or sentencing in any subsequent action
 11 upon the charge;

12 (b) An agreement by the defendant to complete at an agency or organization designated by the
 13 state court a diagnostic assessment to determine the possible existence and degree of a drug abuse
 14 problem;

15 (c) An agreement by the defendant to complete, at defendant's own expense based on defendant's
 16 ability to pay, the program of treatment indicated as necessary by the diagnostic assessment;

17 (d) An agreement by the defendant to comply fully with the laws of this state regarding con-
 18 trolled substances;

19 (e) A notice to the defendant that the diversion agreement will be considered to be violated if
 20 the court receives notice that the defendant at any time during the diversion period committed a
 21 violation of the controlled substances laws of this state;

22 (f) An agreement by the defendant to keep the court advised of the defendant's current mailing
 23 address at all times during the diversion period; and

24 (g) A waiver by the defendant of any former jeopardy rights under the federal and state consti-
 25 tutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other offenses
 26 based upon the same criminal episode.

27 **SECTION 4.** ORS 135.909 is amended to read:

28 135.909. (1) After an accusatory instrument has been filed charging the defendant with the of-
 29 fense of possession of less than one ounce of marijuana **or of possession of a controlled substance**
 30 **by consumption**, a defendant may file with the court a petition for a possession of [*marijuana*] **a**
 31 **controlled substance** diversion agreement described in ORS 135.907. The petition:

32 (a) Must be filed within 30 days after the date of the defendant's first appearance on the sum-
 33 mons, unless a later filing date is allowed by the court upon a showing of good cause.

34 (b) Notwithstanding paragraph (a) of this subsection, may not be filed after entry of a guilty plea
 35 or a no contest plea or after commencement of any trial on the charge whether or not a new trial
 36 or retrial is ordered for any reason.

37 (2) The defendant shall pay to the court, at the time of filing a petition for a possession of
 38 [*marijuana*] **a controlled substance** diversion agreement, a filing fee as specified in ORS 135.921.
 39 The court may make provision for payment of the filing fee by the defendant on an installment basis.
 40 The court may waive all or part of the filing fee in cases involving indigent defendants. The filing
 41 fee paid to the court under this subsection shall be retained by the court if the petition is allowed.
 42 The filing fee shall be distributed as provided in ORS 135.921.

43 (3) The defendant shall pay to the agency or organization providing the diagnostic assessment,
 44 at the time the petition is allowed, the fee required by ORS 135.921 (3).

45 (4) The defendant shall cause a copy of the petition for a possession of [*marijuana*] **a controlled**

1 **substance** diversion agreement to be served upon the district attorney or city attorney. The district
 2 attorney may file with the court, within 15 days after the date of service, a written objection to the
 3 petition and a request for a hearing.

4 **SECTION 5.** ORS 135.911 is amended to read:

5 135.911. After the time for requesting a hearing under ORS 135.909 has expired with no request
 6 for a hearing, or after a hearing requested under ORS 135.909, the court shall allow the petition for
 7 a possession of [*marijuana*] **a controlled substance** diversion agreement if the court finds that the
 8 offense for which the defendant is before the court is the defendant's first offense of:

- 9 (1) Possession of less than one ounce of marijuana; **or**
- 10 (2) **Possession of a controlled substance by consumption.**

11 **SECTION 6.** ORS 135.913 is amended to read:

12 135.913. (1) When the court allows a petition for a possession of [*marijuana*] **a controlled sub-**
 13 **stance** diversion agreement filed as provided in ORS 135.909, the judge taking that action shall sign
 14 the petition and indicate thereon the date of allowance of the diversion period, the length of the
 15 diversion period and the date upon which the possession of less than one ounce of marijuana offense
 16 **or possession of a controlled substance by consumption offense** occurred. The petition when
 17 signed and dated becomes the diversion agreement between the defendant and the court. The court
 18 shall make the **diversion** agreement a part of the record of the case.

19 (2) A possession of [*marijuana*] **a controlled substance** diversion agreement shall be for a pe-
 20 riod of one year after the date the court allows the petition. During the diversion period, the court
 21 shall stay the **proceeding on the** possession of less than one ounce of marijuana offense
 22 [*proceeding*] **or the possession of a controlled substance by consumption offense** pending com-
 23 pletion of the diversion agreement or its termination.

24 (3) When the court denies a petition for a possession of [*marijuana*] **a controlled substance**
 25 diversion agreement, [*it*] **the court** shall continue the offense proceeding against the defendant.

26 **SECTION 7.** ORS 135.915 is amended to read:

27 135.915. (1) At any time after the conclusion of the period of a possession of [*marijuana*] **a**
 28 **controlled substance** diversion agreement described in ORS 135.913, a defendant who has fully
 29 complied with and performed the conditions of the diversion agreement may apply by motion to the
 30 court wherein the diversion agreement was entered for an order dismissing the charge with preju-
 31 dice.

32 (2) The defendant shall cause to be served on the district attorney a copy of the motion for entry
 33 of an order dismissing with prejudice the charge of possession of less than one ounce of marijuana
 34 **or of possession of a controlled substance by consumption.** The motion shall be served on the
 35 district attorney at the time [*it*] **the motion** is filed with the court. The district attorney may con-
 36 test the motion.

37 (3) If the defendant does not appear as provided by subsection (1) of this section within six
 38 months after the conclusion of the diversion period, and if the court finds that the defendant fully
 39 complied with and performed the conditions of the diversion agreement[,] and [*if it*] gives notice of
 40 that finding to the district attorney, the court may on its own motion enter an order dismissing **with**
 41 **prejudice** the charge of possession of less than one ounce of marijuana [*with prejudice*] **or of pos-**
 42 **session of a controlled substance by consumption.**

43 (4) No statement made by the defendant about the offense with which the defendant is charged
 44 shall be offered or received in evidence in any criminal or civil action or proceeding arising out of
 45 the same conduct [*which*] **that** is the basis of the charge of possession of less than one ounce of

1 marijuana **or of possession of a controlled substance by consumption**, if the statement was made
 2 during the course of the diagnostic assessment or the rehabilitation program and to a person em-
 3 ployed by the program.

4 **SECTION 8.** ORS 135.917 is amended to read:

5 135.917. (1) Courts having jurisdiction over the offense of possession of less than one ounce of
 6 marijuana **or of possession of a controlled substance by consumption** shall designate agencies
 7 or organizations to perform the diagnostic assessment and treatment required under possession of
 8 [*marijuana*] **a controlled substance** diversion agreements described in ORS 135.907. The designated
 9 agencies or organizations must meet the standards set by the Department of Human Services to
 10 perform the diagnostic assessment and treatment of drug dependency and must be certified by the
 11 department [*of Human Services*]. Wherever possible, a court shall designate agencies or organiza-
 12 tions to perform the diagnostic assessment that are separate from those that may be designated to
 13 carry out a program of treatment for drug dependency.

14 (2) Monitoring of a defendant's progress under a diversion agreement shall be the responsibility
 15 of the diagnostic assessment agency or organization. [*It*] **The diagnostic assessment agency or**
 16 **organization** shall make a report to the court stating the defendant's successful completion or
 17 failure to complete all or any part of the treatment program specified by the diagnostic assessment.
 18 The form of the report shall be determined by agreement between the court and the diagnostic as-
 19 sessment agency or organization. The court shall make the report of the diagnostic assessment
 20 agency or organization that is required by this subsection a part of the record of the case.

21 **SECTION 9.** ORS 135.919 is amended to read:

22 135.919. (1) At any time before the court dismisses with prejudice the charge of possession of
 23 less than one ounce of marijuana **or of possession of a controlled substance by consumption**, the
 24 court on its own motion or on the motion of the district attorney may issue an order requiring the
 25 defendant to appear and show cause why the court should not terminate the **possession of a con-**
 26 **trolled substance** diversion agreement. The order to show cause shall state the reasons for the
 27 proposed termination and shall set an appearance date.

28 (2) The order to show cause shall be served on the defendant and on the defendant's attorney,
 29 if any. Service may be made by first class mail, postage paid, addressed to the defendant at the
 30 mailing address shown on the diversion [*petition and*] agreement or at any other address that the
 31 defendant provides in writing to the court.

32 (3) The court shall terminate the diversion agreement and continue the offense proceeding if:

33 (a) At the hearing on the order to show cause, the court finds by a preponderance of the evi-
 34 dence that any of the reasons for termination described in this section exist; or

35 (b) The defendant fails to appear at the hearing on the order to show cause.

36 (4) If the court terminates the diversion agreement and continues the offense proceeding, the
 37 court:

38 (a) On the defendant's motion and for good cause shown, may reinstate the diversion agreement
 39 at any time before conviction, acquittal or dismissal with prejudice.

40 (b) If the defendant is convicted, may take into account at time of sentencing any partial ful-
 41 fillment by the defendant of the terms of the diversion agreement.

42 (5) The court shall terminate a diversion agreement under this subsection for any of the fol-
 43 lowing reasons:

44 (a) If the defendant has failed to fulfill the terms of the diversion agreement.

45 (b) If the defendant did not qualify for the diversion agreement.

1 **SECTION 10.** ORS 135.921, as amended by section 75, chapter 702, Oregon Laws 2005, is
2 amended to read:

3 135.921. (1) The filing fee paid by a defendant at the time of filing a petition for a possession
4 of [*marijuana*] **a controlled substance** diversion agreement as provided in ORS 135.909 [*shall be*]
5 **is \$233** and shall be ordered paid as follows if the petition is allowed:

6 (a) \$123 to the Department of Revenue for deposit in the Criminal Fine and Assessment Account;
7 and

8 (b) \$110 to be distributed as provided for the disposition of costs under ORS 153.630.

9 (2) If less than the \$233 filing fee is paid to the court by the defendant under subsection (1) of
10 this section, the [*money*] **moneys** actually received shall be allocated in the amounts provided first
11 to the State Treasurer and the remainder as provided for the disposition of costs under ORS 153.630.

12 (3) In addition to the filing fee under subsection (1) of this section, the court shall order the
13 defendant to pay \$90 directly to the agency or organization [*providing*] **performing** the diagnostic
14 assessment.

15 (4) The Chief Justice of the Oregon Supreme Court may require that any or all fees distributed
16 by circuit courts under this section be distributed through the offices of the State Court Adminis-
17 trator.

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