

House Bill 2324

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

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**.

Grants court discretion to allow persons to enter substance abuse diversion agreement under certain circumstances. Creates Substance Abuse Treatment Fund. Continuously appropriates moneys in fund to Department of Human Services for specified purposes.

A BILL FOR AN ACT

1
2 Relating to substance abuse diversion agreements; creating new provisions; amending ORS 1.525;
3 and appropriating money.

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

5 **SECTION 1. (1) After an accusatory instrument has been filed charging a defendant with**
6 **the commission of a crime other than a person crime or driving while under the influence**
7 **of intoxicants as defined in ORS 813.010, the defendant may file with the court a petition for**
8 **a substance abuse diversion agreement described in sections 1 to 6 of this 2009 Act. Upon**
9 **receipt of the petition, the court shall determine if a substance abuse diversion agreement**
10 **is in the interests of justice and of benefit to the defendant and the community in accordance**
11 **with sections 1 to 6 of this 2009 Act.**

12 (2) As used in this section, "person crime" means a person felony or person Class A
13 misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Com-
14 mission.

15 **SECTION 2. (1) The petition forms for a substance abuse diversion agreement shall be**
16 **available to a defendant at the court.**

17 (2) The form of the petition for a substance abuse diversion agreement and the infor-
18 mation and blanks contained in the petition shall be determined by the Supreme Court under
19 ORS 1.525. The petition forms made available to a defendant by the court shall conform to
20 the requirements adopted by the Supreme Court.

21 (3) In addition to any other information required by the Supreme Court to be contained
22 in a petition for a substance abuse diversion agreement, the petition shall include:

23 (a) A plea of guilty or no contest to the primary charge, signed by the defendant.

24 (b) An agreement by the defendant to complete, at the defendant's own expense based
25 on the defendant's ability to pay, a substance abuse treatment program designated by the
26 court.

27 (c) A notice to the defendant that the diversion agreement will be considered to be vio-
28 lated if the court receives notice that the defendant at any time during the diversion period
29 committed a new criminal offense.

30 (d) An agreement by the defendant to keep the court advised in writing of the defendant's

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 current mailing address at all times during the diversion period.

2 (e) A waiver by the defendant of any former jeopardy and speedy trial rights under the
 3 federal and state Constitutions and ORS 131.505 to 131.525 and 135.745 to 135.757 in any sub-
 4 sequent action upon the charge or any other offenses based upon the same criminal episode.

5 (f) An agreement by the defendant to abide by any additional orders of the court, in-
 6 cluding but not limited to payment of restitution, performance of community service, main-
 7 tenance of gainful employment and participation in programs offering medical, educational,
 8 vocational, social and psychological services, corrective and preventive guidance and other
 9 rehabilitative services.

10 (4) The defendant shall cause a copy of the petition for a substance abuse diversion
 11 agreement to be served upon the district attorney. The district attorney may file with the
 12 court, within 15 days after the date of service, a written objection to the petition and a re-
 13 quest for a hearing.

14 (5) The district attorney shall notify the victim, if any, that the defendant may be eligible
 15 for diversion and that if there is a hearing on a petition for diversion, the victim has a right
 16 to be present and to be heard at the hearing.

17 (6) After the time for requesting a hearing under subsection (4) of this section has ex-
 18 pired with no request for a hearing, or after a hearing if one is requested, the court shall
 19 determine whether to allow or deny a petition for a substance abuse diversion agreement.
 20 In making a determination under this subsection, the court shall consider:

21 (a) The nature of the offense;

22 (b) The relationship between the offense and the defendant's substance abuse addiction;

23 (c) Whether there is a probability that the defendant will cooperate with and benefit from
 24 alternative treatment;

25 (d) The defendant's criminal history or lack thereof, including any previous participation
 26 in a diversion program;

27 (e) Any special characteristics of the defendant;

28 (f) The impact of the diversion on the community;

29 (g) Recommendations, if any, of the involved law enforcement agency and the victim; and

30 (h) Any mitigating circumstances.

31 (7) If, after considering the factors listed in subsection (6) of this section, the court al-
 32 lows the petition for a substance abuse diversion agreement, the court shall:

33 (a) Accept the guilty plea or no contest plea filed as part of the petition for a substance
 34 abuse diversion agreement but withhold entry of judgment of conviction;

35 (b) Sign the petition and indicate thereon the date of allowance of the diversion agree-
 36 ment, the length of the diversion period and the date upon which the offense occurred; and

37 (c)(A) Dismiss any remaining charges against the defendant if the parties have so agreed;
 38 and

39 (B) Stay the remaining charges for the duration of the diversion period.

40 (8) The petition, when signed and dated, becomes the substance abuse diversion agree-
 41 ment between the defendant and the court. The court shall make the diversion agreement a
 42 part of the record of the case.

43 (9) A substance abuse diversion agreement shall be in effect for a period of 12 months
 44 after the date the court allows the petition. During the diversion period the court shall stay
 45 the criminal proceeding pending completion of the diversion agreement or its termination.

1 (10)(a) The defendant shall pay to the court, at the time of filing a petition for a sub-
2 stance abuse diversion agreement, a filing fee established under section 6 of this 2009 Act.
3 The court may make provision for payment of the filing fee by the defendant on an install-
4 ment basis. The court may waive all or part of the filing fee in cases involving indigent de-
5 fendants.

6 (b) The defendant shall pay to the court any court-appointed attorney fees imposed by
7 the court. Payments shall be made prior to the end of the diversion period on a schedule
8 determined by the court. The court may waive all or part of the court-appointed attorney
9 fees.

10 (11) When the court denies a petition for a substance abuse diversion agreement, the
11 court shall continue the criminal proceeding against the defendant. The plea of guilty or no
12 contest filed as part of the petition for the substance abuse diversion agreement may not be
13 used in the criminal proceeding.

14 (12) As used this section:

15 (a) "Primary charge" means the crime alleged in the accusatory instrument that carries
16 the longest possible term of imprisonment. If there is more than one charge that meets this
17 definition, the district attorney may designate the primary charge.

18 (b) "Victim" has the meaning given that term in ORS 131.007.

19 **SECTION 3.** (1) At the conclusion of the period of a substance abuse diversion agreement,
20 a defendant who has fully complied with and performed the conditions of the diversion
21 agreement may apply by motion to the court in which the diversion agreement was entered
22 for an order dismissing the accusatory instrument with prejudice.

23 (2) The defendant shall cause to be served on the district attorney a copy of the motion
24 for entry of an order dismissing the accusatory instrument with prejudice at the time the
25 motion is filed with the court. The district attorney may contest the motion.

26 (3) If the court finds the defendant has fully complied with and performed the conditions
27 of the substance abuse diversion agreement, the court shall dismiss the accusatory instru-
28 ment with prejudice.

29 (4) If the defendant does not apply as provided in subsection (1) of this section within six
30 months after the conclusion of the diversion period and if the court makes the finding de-
31 scribed in subsection (3) of this section, after notice of that finding is given to the district
32 attorney, the court may on its own motion enter an order dismissing the accusatory in-
33 strument with prejudice.

34 (5) A statement made by the defendant about the offense with which the defendant is
35 charged may not be offered or received in evidence in any criminal or civil action or pro-
36 ceeding arising out of the same conduct that is the basis of the substance abuse diversion
37 agreement if the statement was made during the course of the substance abuse treatment
38 program and to a person employed by the program.

39 (6) At any time before the court dismisses with prejudice the accusatory instrument, the
40 court on its own motion or on motion of the district attorney may issue an order requiring
41 the defendant to appear and show cause why the court should not terminate the substance
42 abuse diversion agreement. The order to show cause shall state the reasons for the proposed
43 termination and shall set an appearance date.

44 (7) The order to show cause shall be served on the defendant and on the defendant's at-
45 torney, if any. Service may be made by first class mail, postage paid, addressed to the de-

1 defendant at the mailing address shown on the petition for a substance abuse diversion
 2 agreement or at any other address that the defendant provides in writing to the court.

3 (8) The court shall terminate the substance abuse diversion agreement if:

4 (a) At the hearing on the order to show cause, the court finds by a preponderance of the
 5 evidence that the defendant has failed to fulfill the terms of the diversion agreement; or

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

7 (9) If the court terminates the substance abuse diversion agreement:

8 (a) The court shall enter the guilty plea or no contest plea, enter a judgment of con-
 9 viction and sentence the defendant. The court may take into account at the time of the
 10 sentencing any partial fulfillment by the defendant of the terms of the diversion agreement.

11 (b) The court shall resume the criminal proceeding if any charges were stayed under
 12 section 2 of this 2009 Act.

13 **SECTION 4.** (1) Within 30 days prior to the conclusion of the period of a substance abuse
 14 diversion agreement, a defendant may apply by motion to the court in which the diversion
 15 agreement was entered for an order extending the diversion period.

16 (2) Petition forms for an application for an extension under this section shall be available
 17 to a defendant at the court.

18 (3) The form of the petition for an extension under this section shall be determined by
 19 the Supreme Court under ORS 1.525. The petition forms made available to a defendant by
 20 any court shall conform to the requirements of the Supreme Court.

21 (4) The court may grant a petition for an extension filed under this section if the court
 22 finds that the defendant made a good faith effort to complete the conditions of the substance
 23 abuse diversion agreement and that the defendant can complete the conditions of the diver-
 24 sion agreement within the requested extended diversion period.

25 (5) An extension granted under this section may be for no more than 180 days.

26 (6) A court may grant a defendant only one extension of a diversion period under this
 27 section.

28 (7) If the court grants the petition for an extension under this section and the defendant
 29 fully complies with the conditions of the substance abuse diversion agreement within the
 30 extended diversion period, the court may dismiss the accusatory instrument with prejudice
 31 under section 3 of this 2009 Act.

32 (8) If the court denies the petition for an extension under this section:

33 (a) The court shall enter the guilty plea or no contest plea, enter a judgment of con-
 34 viction and sentence the defendant. The court may take into account at the time of the
 35 sentencing any partial fulfillment by the defendant of the terms of the diversion agreement.

36 (b) The court shall resume the criminal proceeding if any charges were stayed under
 37 section 2 of this 2009 Act.

38 **SECTION 5.** (1) Each judicial district in this state shall designate agencies or organiza-
 39 tions to administer the substance abuse treatment program required under the substance
 40 abuse diversion agreement.

41 (2) Monitoring of a defendant's progress under a substance abuse diversion agreement
 42 shall be the responsibility of the substance abuse treatment provider. The provider shall
 43 make a report to the court stating the defendant's successful completion or failure to com-
 44 plete all or any part of the substance abuse treatment program. The form of the report shall
 45 be determined by agreement between the court and the substance abuse treatment provider.

1 The court shall make the report that is required by this subsection a part of the record of
 2 the case.

3 **SECTION 6.** (1) The filing fee paid by a defendant at the time of filing a petition for a
 4 substance abuse diversion agreement under sections 1 to 6 of this 2009 Act shall be \$261 and
 5 shall be ordered paid as follows if the petition is allowed:

6 (a) \$100 to be credited and distributed under ORS 137.295 as an obligation payable to the
 7 state; and

8 (b) \$161 to be paid to the Director of Human Services for deposit in the Substance Abuse
 9 Treatment Fund established under subsection (3) of this section, to be used for the purposes
 10 of the fund.

11 (2) In addition to the filing fee under subsection (1) of this section, the court shall order
 12 the defendant to pay \$150 directly to the substance abuse treatment provider.

13 (3) The Substance Abuse Treatment Fund is established, separate and distinct from the
 14 General Fund, to consist of moneys deposited in the Substance Abuse Treatment Fund under
 15 subsection (1) of this section, or as otherwise provided by law, and of gifts and grants made
 16 to the fund for carrying out the purposes of the fund. All moneys credited to the fund are
 17 continuously appropriated to the Department of Human Services and may be used only for
 18 the following purposes:

19 (a) To pay for providing treatment to individuals who enter substance abuse diversion
 20 agreements and who are found to be indigent. Payment shall be made as provided by the di-
 21 rector by rule to agencies or organizations providing treatment.

22 (b) To pay for evaluation, as provided by law, of programs used for diversion agreements.

23 (c) To pay the director's cost of administering the fund.

24 (d) To pay for materials, resources and training supplied by the director to agencies or
 25 organizations providing treatment to individuals participating in diversion agreements.

26 (e) To pay for special services required to enable an individual with disabilities, or an
 27 individual whose proficiency in the use of English is limited, to participate in a substance
 28 abuse treatment program. This paragraph applies:

29 (A) Whether or not the person is indigent; and

30 (B) Only to special services required solely because of the individual's disability or limited
 31 proficiency in the use of English.

32 **SECTION 7.** ORS 1.525 is amended to read:

33 1.525. (1) The Supreme Court shall adopt one or more forms for the following purposes:

34 (a) A form of uniform violation citation for the purposes of ORS 153.045;

35 (b) A form of uniform criminal citation without complaint for the purposes of ORS 133.068;

36 (c) A form of uniform criminal citation with complaint for the purposes of ORS 133.069;

37 (d) Any form of uniform citation for categories of offenses as the court finds necessary or con-
 38 venient; [and]

39 (e) A uniform petition for a driving while under the influence of intoxicants diversion agreement
 40 for the purposes of ORS 813.210[.]; and

41 (f) A uniform petition for a substance abuse diversion agreement and a uniform petition
 42 for an extension of the diversion period for the purposes of sections 1 to 6 of this 2009 Act.

43 (2) If changes are made to a uniform citation form under this section, the Supreme Court shall
 44 make a reasonable effort to minimize the financial impact of the changes on the state agencies and
 45 political subdivisions of this state that use the uniform citation form. Where possible, the effort to

1 minimize the financial impact shall include a reasonable time for the state agencies and political
2 subdivisions to exhaust their existing supplies of the citation form before the changes become ef-
3 fective.

4 (3) Except as provided in subsection (4) of this section, the uniform citation forms adopted by
5 the Supreme Court under this section must be used by all enforcement officers, as defined in ORS
6 153.005, when issuing a violation citation or criminal citation.

7 (4) The uniform citation forms adopted by the Supreme Court under this section need not be
8 used for:

- 9 (a) Offenses created by ordinance or agency rule governing parking of vehicles; or
- 10 (b) Offenses created by the ordinances of political subdivisions.

11