

February 26, 2015

**Written Testimony of AOC Legal Counsel Rob Bovett
before the House Judiciary Committee
in favor of House Bill 2326**

Chair Barker, Vice-Chair Williamson, and Members of the Committee,

Thank you for the opportunity to testify briefly in support of House Bill 2326. HB 2326 is necessary to ensure we clear away a disincentive to offering conditional discharges to drug users.

In Oregon we allow low level drug offenders to get clean and earn a dismissal of criminal charges. It is called a conditional discharge (or “CD” for short). CDs are used to get drug abusers into treatment and recovery. Drug court programs are one example of how CDs are used. In 2005, I helped craft legislation that expanded the permissible use of CDs to property crimes fueled by addiction (2005 Senate Bill 907). In 2011, I crafted legislation expanding the permissible use of CDs to drug endangering the welfare of a minor, as well as frequenting a place where controlled substances are used (2011 House Bill 2174). Finally, in 2013, I crafted legislation expanding the permissible use of CDs to misdemeanor unlawful possession of a prescription drug (House Bill 2554). CDs are an effective and powerful tool to help folks get clean, and avoid the negative effects of a criminal conviction. Encouraging the expanded use of CDs is beneficial to drug abusers, their families, and the community.

However, in December of 2013, the Oregon Court of Appeals interpreted the CD statute (ORS 475.245) in a manner that requires dismissal after the expiration of the CD probation, in the absence of a probation violation, even if the defendant has not successfully completed the CD and earned the dismissal. *State v Granberry*, 260 Or App 15, 316 P3d 363 (2013) <http://www.publications.ojd.state.or.us/docs/A146638.pdf>.

This is problematic. This essentially amounts to a disincentive for District Attorney’s to offer CDs and take the risk that a docketing error will result in dismissal even in the face of noncompliance. This needs to be remedied. The statute needs to be amended to clarify that the charge is not dismissed until the defendant successfully completes the CD probation, or the CD is revoked and a conviction entered. Hence House Bill 2326. Please support HB 2326 and ensure that we continue to encourage the use of CDs.