

A-Engrossed
House Bill 2980

Ordered by the House April 23
Including House Amendments dated April 23

Sponsored by Representative BENTZ; Representatives BARKER, KRIEGER, OLSON, Senator FERRIOLI (at the request of Oregon District Attorneys 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.

Authorizes defendant to request district attorney to approve extension of stay of criminal proceedings for district attorney diversion. Requires court to extend stay upon approval of request by district attorney.

Authorizes defendant to request district attorney to approve extension of marijuana possession diversion period. Requires court to order extension of diversion period upon approval of request by district attorney.

A BILL FOR AN ACT

1
2 Relating to district attorney diversion; creating new provisions; and amending ORS 135.896 and
3 135.919.

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

5 **SECTION 1.** ORS 135.896 is amended to read:

6 135.896. **(1)** If the district attorney elects to offer diversion in lieu of further criminal pro-
7 ceedings and the defendant, with the advice of counsel, agrees to the terms of the proposed agree-
8 ment, including a waiver of the right to a speedy trial, the court shall stay further criminal
9 proceedings for a definite period. Except as provided in ORS 135.898 **and subsection (2) of this**
10 **section**, the stay shall not exceed 270 days in the case of a defendant charged with commission of
11 a felony, and shall not exceed 180 days in the case of a defendant charged with the commission of
12 a misdemeanor. If the defendant declines diversion, the court shall resume criminal proceedings.

13 **(2) Prior to the end of the stay of criminal proceedings described in subsection (1) of this**
14 **section, the defendant may request that the district attorney approve an extension of the**
15 **stay for a period up to 270 days in the case of a defendant charged with the commission of**
16 **a felony and up to 180 days in the case of a defendant charged with the commission of a**
17 **misdemeanor. If the district attorney approves the extension, the district attorney shall**
18 **notify the court and the court shall order an extension of the stay of criminal proceedings**
19 **for the approved period of time.**

20 **SECTION 2.** ORS 135.919 is amended to read:

21 135.919. (1) At any time before the court dismisses with prejudice the charge of possession of
22 less than one ounce of marijuana, the court on its own motion or on the motion of the district at-
23 torney may issue an order requiring the defendant to appear and show cause why the court should
24 not terminate the diversion agreement. The order to show cause shall state the reasons for the
25 proposed termination and shall set an appearance date.

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 order to show cause shall be served on the defendant and on the defendant's attorney,
2 if any. Service may be made by first class mail, postage paid, addressed to the defendant at the
3 mailing address shown on the diversion petition and agreement or at any other address that the
4 defendant provides in writing to the court.

5 (3) **At any time after the district attorney makes a motion for an order to show cause,**
6 **and before the hearing on the order, the defendant may request that the district attorney**
7 **approve an extension of the diversion period of up to 180 days. If the district attorney ap-**
8 **proves the extension, the district attorney shall notify the court and the court shall order**
9 **an extension of the diversion period for the approved period of time.**

10 [(3)] (4) The court shall terminate the diversion agreement and continue the offense proceeding
11 if:

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

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

15 [(4)] (5) If the court terminates the diversion agreement and continues the offense proceeding,
16 the court:

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

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

21 [(5)] (6) The court shall terminate a diversion agreement under this subsection for any of the
22 following reasons:

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

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

25 **SECTION 3. The amendments to ORS 135.896 and 135.919 by sections 1 and 2 of this 2015**
26 **Act apply to diversion agreements entered into on or after the effective date of this 2015 Act.**

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