

Enrolled
House Bill 2980

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

CHAPTER

AN ACT

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

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

SECTION 1. ORS 135.896 is amended to read:

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

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

SECTION 2. ORS 135.919 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by House April 29, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 26, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2015

Approved:

.....M.,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State