

HB 4149 -1, -6 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Whitney Perez, Counsel

Meeting Dates: 2/13, 2/15

WHAT THE MEASURE DOES:

Prohibits prosecuting attorney from conditioning a plea offer or release agreement on defendant's waiver of certain rights, eligibilities, and legal challenges, such as eligibility for work release or waiver of the right to file a petition for post-conviction relief. Specifies that these prohibited provisions in plea agreements and release agreements are void and unenforceable.

ISSUES DISCUSSED:

- Need to provide safeguards and procedural fairness in criminal cases
- History of plea bargaining in Oregon and existing law
- Concerns that the bill could negatively affect negotiations in criminal cases
- Certain courts requiring defendants to waive appearance and legal representation at trial, if they fail to appear at trial, in order to secure release pretrial

EFFECT OF AMENDMENT:

-1 Prohibits prosecuting attorney from conditioning a plea offer on waiving the prosecutor's obligation to disclose exculpatory evidence; eligibility for earned time, alternative incarceration programs, work release, transitional leave, or good time; or the right to obtain grand jury proceeding recordings. Prohibits court, instead of the prosecutor, from conditioning defendant's release on several matters, such as waiver of preliminary hearing and appearance in person at trial.

-6 Prohibits prosecuting attorney from conditioning a plea offer on waiver of the prosecutor's obligation to disclose exculpatory evidence or the right of the defendant to obtain grand jury proceeding recordings. Prohibits prosecuting attorney from conditioning a plea offer on a stipulation that an existing law is unconstitutional. Specifies that these prohibited provisions in plea agreements are void and unenforceable. Prohibits court from conditioning defendant's release on defendant's waiver of appearance at trial.

BACKGROUND:

A plea agreement is an agreement between the defendant and the prosecutor in a criminal case where a defendant avoids trial and the uncertainty attendant in a trial for the certainty of the plea agreement. A plea agreement often contains dismissal of charges or an agreed sentence in return for a guilty or no contest plea. Sometimes these plea agreements can involve waiver of certain rights, such as the right to Alternative Incarceration Programs or waiver of the right to a preliminary hearing. Oregon law establishes some standards for the use of plea agreements. For instance, currently a district attorney may not condition a plea offer on waiver of the right to exculpatory evidence or to obtain the grand jury recording, when the grand jury resulted in "a true bill."

HB 4149 -1, -6 STAFF MEASURE SUMMARY

Oregon law also governs release agreements in criminal cases. Release means the release of the defendant from custody pre-trial or post-conviction, if the defendant has appealed the conviction. A release agreement is defined as "a sworn writing by the defendant stating the terms of the release and, if applicable, the amount of security." A person can be released under personal recognizance, conditional release, or security release.

House Bill 4149 prohibits prosecuting attorneys from conditioning plea agreements and release agreements on the waiver of certain specified rights.