

HB 4149 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Judiciary

Action Date: 02/27/18

Action: Do pass the A-Eng bill.

Vote: 7-0-0-0

Yeas: 7 - Bentz, Dembrow, Gelser, Linthicum, Prozanski, Thatcher, Wagner

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Whitney Perez, Counsel

WHAT THE MEASURE DOES:

Prohibits prosecuting attorney from conditioning plea offer on stipulation that an existing law is unconstitutional. Specifies that prohibited provisions in plea agreements are void and unenforceable. Prohibits court from conditioning defendant's release on defendant's waiver of appearance at trial. Makes conforming amendments.

ISSUES DISCUSSED:

- Measure addresses concerns over inappropriate clauses in plea agreements
- Certain counties requiring a defendant to waive right to appear at trial in order to secure release
- Need to continue to work on issue of procedural fairness in plea agreements
- Mechanics of the measure

EFFECT OF AMENDMENT:

No amendment.

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."

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-A prohibits prosecuting attorneys from conditioning plea agreements on a stipulation that an existing law is unconstitutional. It also prohibits a court from conditioning a defendant's release on the defendant's waiver of appearance at trial.