

# House Bill 4149

Sponsored by Representative WILLIAMSON, Senator MANNING JR; Representatives GREENLICK, HERNANDEZ, HOLVEY, MALSTROM, MCLAIN, NOSSE, POWER, RAYFIELD, SALINAS, SANCHEZ (Presession filed.)

## 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 **as introduced**.

Prohibits prosecuting attorney from conditioning plea offer or release on defendant's waiver of specified rights, eligibilities and legal challenges. Provides that prohibited provision in plea agreement or release agreement is void and unenforceable.

## A BILL FOR AN ACT

1  
2 Relating to prohibited provisions in criminal action agreements; creating new provisions; and  
3 amending ORS 135.405.

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

5 **SECTION 1. Section 2 of this 2018 Act is added to and made a part of ORS 135.405 to**  
6 **135.445.**

7 **SECTION 2. (1) A prosecuting attorney may not condition a defendant's plea offer on:**

8 **(a) A guilty or no contest plea by a codefendant.**

9 **(b) The defendant's waiver of:**

10 **(A) A preliminary hearing.**

11 **(B) The disclosure obligation of ORS 135.815 (1)(g).**

12 **(C) A determination of the ability to pay restitution.**

13 **(D) Eligibility for earned discharge, alternative incarceration programs, work release,**  
14 **transitional leave under ORS 421.168 or a reduction in the term of incarceration under ORS**  
15 **421.120 or 421.121.**

16 **(E) Administrative or structured probation sanctions.**

17 **(F) Rights under international laws and treaties.**

18 **(c) The defendant's waiver of the right or ability to:**

19 **(A) Receive the audio recording of grand jury proceedings as permitted under ORS**  
20 **132.270, if the indictment has been indorsed "a true bill."**

21 **(B) Confront witnesses during subsequent hearings in the criminal action, including**  
22 **probation violation hearings.**

23 **(C) Object to the use of hearsay in subsequent hearings.**

24 **(D) Raise and determine the issue of the defendant's fitness to proceed.**

25 **(E) Challenge the conviction based on new exculpatory evidence.**

26 **(F) Challenge the sentence as being unconstitutionally cruel and unusual.**

27 **(G) File a writ of habeas corpus.**

28 **(H) File a petition for post-conviction relief pursuant to ORS 138.510 to 138.680.**

29 **(I) File a motion requesting DNA (deoxyribonucleic acid) testing of evidence under ORS**  
30 **138.690.**

**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)(a) A plea agreement may not contain a provision prohibited by subsection (1) of this  
2 section.

3 (b) A prohibited provision described in subsection (1) of this section in a plea agreement  
4 is contrary to public policy and is void and unenforceable.

5 **SECTION 3.** Section 4 of this 2018 Act is added to and made a part of ORS 135.230 to  
6 135.290.

7 **SECTION 4.** (1) A prosecuting attorney may not condition a defendant's release on:

8 (a) A guilty or no contest plea by a codefendant.

9 (b) The defendant's waiver of:

10 (A) A preliminary hearing.

11 (B) The disclosure obligation of ORS 135.815 (1)(g).

12 (C) Appearance in person at trial.

13 (D) A determination of the ability to pay restitution.

14 (E) Eligibility for earned discharge, alternative incarceration programs, work release,  
15 transitional leave under ORS 421.168 or a reduction in the term of incarceration under ORS  
16 421.120 or 421.121.

17 (F) Administrative or structured probation sanctions.

18 (G) Rights under international laws and treaties.

19 (c) The defendant's waiver of the right or ability to:

20 (A) Receive the audio recording of grand jury proceedings as permitted under ORS  
21 132.270, if the indictment has been indorsed "a true bill."

22 (B) Confront witnesses during subsequent hearings in the criminal action, including  
23 probation violation hearings.

24 (C) Object to the use of hearsay in subsequent hearings.

25 (D) Raise and determine the issue of the defendant's fitness to proceed.

26 (E) Challenge the conviction based on new exculpatory evidence.

27 (F) Challenge the sentence as being unconstitutionally cruel and unusual.

28 (G) File a writ of habeas corpus.

29 (H) File a petition for post-conviction relief pursuant to ORS 138.510 to 138.680.

30 (I) File a motion requesting DNA (deoxyribonucleic acid) testing of evidence under ORS  
31 138.690.

32 (2)(a) A release agreement may not contain a provision prohibited by subsection (1) of  
33 this section.

34 (b) A prohibited provision described in subsection (1) of this section in a release agree-  
35 ment is contrary to public policy and is void and unenforceable.

36 **SECTION 5.** ORS 135.405 is amended to read:

37 135.405. (1) In cases in which it appears that the interest of the public in the effective adminis-  
38 tration of criminal justice would thereby be served, and in accordance with the criteria set forth in  
39 ORS 135.415 and the prohibitions set forth in section 2 of this 2018 Act, the district attorney  
40 may engage in plea discussions for the purpose of reaching a plea agreement.

41 (2) The district attorney shall engage in plea discussions or reach a plea agreement with the  
42 defendant only through defense counsel, except when, as a matter of record, the defendant has ef-  
43 fectively waived the right of the defendant to counsel or, if the defendant is not eligible for ap-  
44 pointed counsel, has not retained counsel.

45 (3) The district attorney in reaching a plea agreement may agree to, but is not limited to, one

1 or more of the following, as required by the circumstances of the individual case:

2 (a) To make or not to oppose favorable recommendations as to the sentence which should be  
3 imposed if the defendant enters a plea of guilty or no contest to the offense charged;

4 (b) To seek or not to oppose dismissal of the offense charged if the defendant enters a plea of  
5 guilty or no contest to another offense reasonably related to the defendant's conduct; or

6 (c) To seek or not to oppose dismissal of other charges or to refrain from bringing potential  
7 charges if the defendant enters a plea of guilty or no contest to the offense charged.

8 (4) Similarly situated defendants should be afforded equal plea agreement opportunities.

9 [(5) *The district attorney may not condition a plea offer on a requirement that the defendant*  
10 *wave:*]

11 [(a) *The disclosure obligation of ORS 135.815 (1)(g); or*]

12 [(b) *The ability to receive the audio recording of grand jury proceedings as permitted under ORS*  
13 *132.270, if the indictment has been indorsed "a true bill." ]*

14 [(6)(a)] **(5)(a)** A district attorney may provide a plea offer and agreed disposition recommen-  
15 dation to the defendant at the time of arraignment or first appearance of the defendant for a crime  
16 in open court under an early disposition program established under ORS 135.941.

17 (b) Unless extended by the court, a plea offer and agreed disposition recommendation made un-  
18 der paragraph (a) of this subsection expire upon completion of the arraignment. Except for good  
19 cause, a court may not extend a plea offer and agreed disposition recommendation under this para-  
20 graph for more than seven days for a misdemeanor or 21 days for a felony.

21 **SECTION 6. Sections 2 and 4 of this 2018 Act apply to plea agreements and release**  
22 **agreements entered into on or after the effective date of this 2018 Act.**

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