

D R A F T

SUMMARY

Expands types of charges eligible for conditional discharge to include any misdemeanor or Class C felony if defendant has been accepted into specialty court.

A BILL FOR AN ACT

Relating to conditional discharge; creating new provisions; and amending
ORS 137.533.

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

SECTION 1. (1)(a) Whenever a person is charged with a misdemeanor or a Class C felony and has been accepted into a specialty court, the court, with the consent of the district attorney and the person, may defer further proceedings and place the person on probation. The terms of the probation shall be defined by a probation agreement.

(b) A probation agreement carries the understanding that if the defendant fulfills the terms of the agreement, the criminal charges filed against the defendant will be dismissed with prejudice.

(c) The agreement must contain a waiver of the following rights of the defendant with respect to each criminal charge:

(A) The right to a speedy trial and trial by jury;

(B) The right to present evidence on the defendant's behalf;

(C) The right to confront and cross-examine witnesses against the defendant;

(D) The right to contest evidence presented against the defendant,

1 including the right to object to hearsay evidence; and

2 (E) The right to appeal from a judgment of conviction resulting
3 from an adjudication of guilt entered under subsection (2) of this sec-
4 tion, unless the appeal is based on an allegation that the sentence
5 exceeds the maximum allowed by law or constitutes cruel and unusual
6 punishment.

7 (d) The agreement must include a requirement that the defendant
8 pay any restitution owed to the victim as determined by the court, and
9 any fees for court-appointed counsel ordered by the court under ORS
10 135.050.

11 (e) The agreement may not contain a requirement that the defend-
12 ant enter a plea of guilty or no contest on any charge in the
13 accusatory instrument.

14 (f) Entering into a probation agreement does not constitute an ad-
15 mission of guilt and is not sufficient to warrant a finding or adjudi-
16 cation of guilt by a court.

17 (g) Police reports or other documents associated with the criminal
18 charges in a court file other than the probation agreement may not
19 be admitted into evidence, and do not establish a factual basis for
20 finding the defendant guilty, unless the court resumes criminal pro-
21 ceedings and enters an adjudication of guilt under subsection (2) of
22 this section.

23 (2) Upon violation of a term or condition of the probation agree-
24 ment, the court may resume the criminal proceedings and may find
25 the defendant guilty of the offenses in the accusatory instrument in
26 accordance with the waiver of rights in the probation agreement. The
27 defendant may not contest the sufficiency of the evidence establishing
28 the defendant's guilt of the offenses in the accusatory instrument.

29 (3) Upon fulfillment of the terms and conditions of the probation
30 agreement, the court shall discharge the person and dismiss the pro-
31 ceedings against the person. Discharge and dismissal under this sec-

tion shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this section with respect to any person.

(4) In the event that the period of probation under this section expires, but the terms and conditions of the probation agreement have not been fulfilled and no probation violation proceeding was initiated prior to the expiration of the period of probation, the court may not discharge the person and dismiss the proceedings against the person. The court shall instead issue an order requiring the person to appear and to show cause why the court should not enter an adjudication of guilt as described in subsection (2) of this section due to the failure of the person to fulfill the terms and conditions of the probation agreement prior to expiration of the period of probation. At the hearing on the order to show cause, after considering any evidence or argument from the district attorney and the person, the court may:

(a) Order a new period of probation to allow the person to fulfill the terms and conditions of the probation agreement; or

(b) Enter an adjudication of guilt as described in subsection (2) of this section.

(5) As used in this section, “specialty court” has the meaning given that term in ORS 137.680.

SECTION 2. ORS 137.533 is amended to read:

137.533. (1) Whenever a person pleads guilty to or is found guilty of a misdemeanor other than driving while under the influence of intoxicants or other than a misdemeanor involving domestic violence as defined in ORS 135.230, the court may defer further proceedings and place the person on probation, upon motion of the district attorney and without entering a judgment of guilt, if the person:

(a) Consents to the disposition;

(b) Has not previously been convicted of any offense in any jurisdiction;

(c) Has not been placed on probation under ORS 475.245 **or section 1 of this 2021 Act**;

(d) Has not completed a diversion under ORS 135.881 to 135.901; and

(e) Agrees to pay a fee equal to \$100. The person must pay the amount within 90 days of imposition unless the court allows payment at a later time.

(2) A district attorney may submit a motion under subsection (1) of this section if, after considering the factors listed in subsection (3) of this section, the district attorney finds that disposition under this section would be in the interests of justice and of benefit to the person and the community.

(3) In determining whether disposition under this section is in the interests of justice and of benefit to the person and the community, the district attorney shall consider at least the following factors:

(a) The nature of the offense. However, the offense must not have involved injury to another person.

(b) Any special characteristics or difficulties of the person.

(c) Whether there is a probability that the person will cooperate with and benefit from alternative treatment.

(d) Whether an available program is appropriate to the needs of the person.

(e) The impact of the disposition upon the community.

(f) Recommendations, if any, of the involved law enforcement agency.

(g) Recommendations, if any, of the victim.

(h) Provisions for restitution.

(i) Any mitigating circumstances.

(4) Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon the person's fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against the person. A discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed

1 by law upon conviction of a crime. A person may be discharged and have
2 proceedings dismissed only once under this section.

3 (5) Subsections (1) to (4) of this section do not affect any domestic vi-
4 olence sentencing programs.

5 _____