

May 7, 2019

The Honorable Senator Prozanski, Chair
The Honorable Senator Thatcher, Vice-Chair
Senate Judiciary Committee Members

Re: Testimony in Support of House Bill 3201

Dear Chair Prozanski and Members of the Committee,

On behalf of the Oregon Justice Resource Center, we respectfully request your support for HB 3201.

The Oregon Justice Resource Center (OJRC) is a public interest law firm that represents justice-involved individuals and advocates for criminal justice reform in Oregon. We operate and administer several distinct projects that provide direct legal assistance to Oregonians who would otherwise not have access to legal services.

We have the privilege of co-directing the OJRC's Immigrant Rights Project. The Immigrant Rights Project is funded through the Office of Public Defense Services to assist public defense providers in meeting their constitutional duty, as required by *Padilla v. Kentucky*, to provide noncitizen criminal defendants with accurate advice regarding the immigration consequences of their criminal cases. We seek to ensure that noncitizens' rights are protected, and that they are afforded the same opportunities provided to citizens within the criminal justice system.

We are writing today in support of House Bill 3201, which would allow persons already eligible for a DUI diversion, a conditional discharge for drug offenses, or a diversion under ORS § 135.886, to participate in these programs without first entering a plea of guilty or no contest.

The primary effect of this bill would be to afford noncitizens the same treatment and opportunities for rehabilitation and treatment as U.S. citizens currently receive. When we say 'noncitizen,' we mean anyone who was not born in the United States or has not become a U.S. citizen through naturalization. The term 'noncitizen' includes exchange students, business people on work visas, asylees and refugees and long-time green-card holders.

The Oregon Legislature has determined when, and how, low-level and first-time offenders should be allowed to enter diversion or conditional discharge agreements with the district attorneys and the courts. These agreements allow for offenses to be dismissed if the defendant successfully meets all the requirements placed before them. While these rehabilitative programs provide citizens with rehabilitation and forgiveness, noncitizens do not receive the same benefits under the current statutes.


However, because Oregon's diversion and conditional discharge programs currently require entry of a guilty plea, a noncitizen who enters into a diversion program is treated the same, for immigration purposes, as someone with a final conviction. This means that a noncitizen entering into a diversion program may be arrested by ICE, put into removal proceedings, or held in ICE custody without the possibility of bond. This treatment disrupts their lives, their families' lives and their rehabilitation.

This bill would specifically allow a person to enter into a diversion program without admitting guilt or facts sufficient to warrant a finding of guilt. Without entry of a plea of guilt or no contest, and without admitting to facts sufficient to warrant a finding of guilt or stipulating to a factual basis at the onset, the person entering the diversion program will not be considered "convicted" for immigration purposes. In exchange, the statute requires the defendant to waive several rights and establishes a quick path to conviction if the defendant is unable to complete the diversion successfully.

As currently written, the diversion and conditional discharge statutes inadvertently and disproportionately harm noncitizens and their families. House Bill 3201 will allow noncitizens eligible for diversion or conditional discharge programs the same opportunities for rehabilitation and relief as U.S. citizens.

We urge you to support HB 3201. Thank you for your consideration.

Sincerely,



Joseph Justin Rollin
Attorney and Project Co-Director
Immigrant Rights Project
Oregon Justice Resource Center



Erin L. McKee
Attorney and Project Co-Director
Immigrant Rights Project
Oregon Justice Resource Center