

B-Engrossed
House Bill 3201

Ordered by the Senate May 28
Including House Amendments dated April 17 and Senate Amendments
dated May 28

Sponsored by Representative HERNANDEZ, Senator MANNING JR, Representatives WILLIAMSON, POWER, Senator DEMBROW; Representatives ALONSO LEON, BYNUM, FAHEY, GORSEK, GREENLICK, KENY-GUYER, MCLAIN, NOSSE, PILUSO, REARDON, SALINAS, SANCHEZ, SMITH WARNER, Senators FAGAN, FREDERICK, GELSER, ROBLAN, TAYLOR, WAGNER

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.

Provides that agreement for [*deferred resolution of criminal cases*] **conditional discharge for controlled substance offenses** may not contain requirement that defendant enter plea of guilty or no contest. [*Applies to diversion offered by district attorney, conditional discharge for controlled substance offenses and diversion for driving while under the influence of intoxicants.*] Requires that agreement contain waiver of rights by defendant. Provides that agreement does not constitute admission of guilt and is not sufficient to warrant finding of guilty by court. Authorizes court to find defendant guilty of offense based on waiver of rights if defendant violates agreement.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to deferred resolution of criminal charges; creating new provisions; amending ORS 475.245;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 475.245 is amended to read:

6 475.245. (1)(a) Whenever [*any person pleads guilty to or is found guilty of*] **a person is charged**
7 **with** an offense listed in subsection (5) of this section, the court, [*without entering a judgment of guilt*
8 *and*] with the consent of the district attorney and the person, may defer further proceedings and
9 place the person on probation. **The terms of the probation shall be defined by a probation**
10 **agreement.**

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

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

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

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

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

19 **(D) The right to contest evidence presented against the defendant, including the right to**
20 **object to hearsay evidence; and**

21 **(E) The right to appeal from a judgment of conviction resulting from an adjudication of**
22 **guilt entered under subsection (2) of this section, unless the appeal is based on an allegation**

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 **that the sentence exceeds the maximum allowed by law or constitutes cruel and unusual**
2 **punishment.**

3 **(d) The agreement must include a requirement that the defendant pay any restitution**
4 **owed to the victim as determined by the court, and any fees for court-appointed counsel or-**
5 **dered by the court under ORS 135.050.**

6 **(e) The agreement may not contain a requirement that the defendant enter a plea of**
7 **guilty or no contest on any charge in the accusatory instrument.**

8 **(f) Entering into a probation agreement does not constitute an admission of guilt and is**
9 **not sufficient to warrant a finding or adjudication of guilt by a court.**

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

14 (2) Upon violation of a term or condition of **the probation agreement**, the court may [*enter an*
15 *adjudication of guilt and proceed as otherwise provided*] **resume the criminal proceedings and may**
16 **find the defendant guilty of the offenses in the accusatory instrument in accordance with the**
17 **waiver of rights in the probation agreement. The defendant may not contest the sufficiency**
18 **of the evidence establishing the defendant's guilt of the offenses in the accusatory instru-**
19 **ment.**

20 (3) Upon fulfillment of the terms and conditions of **the probation agreement**, the court shall
21 discharge the person and dismiss the proceedings against the person. Discharge and dismissal under
22 this section shall be without adjudication of guilt and is not a conviction for purposes of this section
23 or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There
24 may be only one discharge and dismissal under this section with respect to any person.

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

34 (a) Order a new period of probation to allow the person to fulfill the terms and conditions of the
35 [*previous period of*] **probation agreement**; or

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

37 (5) This section applies to the following offenses:

38 (a) Possession of a controlled substance under ORS 475.752 (3), 475.814, 475.824, 475.834, 475.854,
39 475.874, 475.884 or 475.894;

40 (b) Unlawfully possessing a prescription drug under ORS 689.527 (6);

41 (c) Unlawfully possessing marijuana plants, usable marijuana, cannabinoid products, cannabinoid
42 concentrates or cannabinoid extracts as described in ORS 475B.337 or 475B.341, if the offense is a
43 misdemeanor or felony;

44 (d) Endangering the welfare of a minor under ORS 163.575 (1)(b);

45 (e) Frequenting a place where controlled substances are used under ORS 167.222; and

1 (f) A property offense that is motivated by a dependence on a controlled substance or a
2 marijuana item as defined in ORS 475B.015.

3 **SECTION 2. (1) The amendments to ORS 475.245 by section 1 of this 2019 Act become**
4 **operative on January 1, 2020.**

5 **(2) The Judicial Department may take any action before the operative date specified in**
6 **subsection (1) of this section that is necessary to enable the department to exercise, on and**
7 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
8 **and powers conferred on the department by the amendments to ORS 475.245 by section 1 of**
9 **this 2019 Act.**

10 **SECTION 3. The amendments to ORS 475.245 by section 1 of this 2019 Act apply to**
11 **criminal proceedings initiated on or after January 1, 2020.**

12 **SECTION 4. This 2019 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
14 **on its passage.**

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