

AMENDMENT FOR CONSIDERATION:

SB 218 PURPOSE: Specialty Courts are problem solving courts that operate under a specialized model to provide supervision and treatment to individuals struggling with behavioral health challenges. They allow justice system partners to collaborate and develop innovative ways to address root causes of problematic behavior in order to hold individuals accountable for their actions while helping them avoid future criminal justice involvement.

Oregon law allows specialty courts focused on addiction to offer a “conditional discharge” to successful participants pursuant to ORS 475.245. Under this statute, a person who successfully completes a specialty court supervision can have their case dismissed, ultimately without a criminal conviction on their record. However, this benefit is limited to only certain drug and property crimes.

This bill is intended to expand this benefit to participants in other specialty courts such as mental health specialty courts, veterans treatment specialty courts, domestic violence specialty courts, etc. This would allow individuals the potential to engage in treatment services, and successfully graduate from a program without a criminal conviction. A modification to ORS 137.533 will not successfully expand this opportunity as it is limited in duration (6 months-1 year), which is a much shorter time period than specialty court programs.

NEW ORS: Specialty Court Probation Agreements; conditional discharge

(1)(a) Whenever a person is charged with an offense listed in subsection (5) of this section, other than driving while under the influence of intoxicants, 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, including the right to object to hearsay evidence; and

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

exceeds the maximum allowed by law or constitutes cruel and unusual punishment.

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

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

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

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

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

(3) Upon fulfillment of the terms and conditions of the probation agreement, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section 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) This section applies to the following offenses:

(a) A misdemeanor or C felony crime where the defendant has been formally accepted into a specialty court.

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