

**TESTIMONY ON SB 218
BEFORE THE SENATE COMMITTEE ON JUDICIARY
FEBRUARY 1, 2021**

**PRESENTED BY: HONORABLE NAN WALLER, MULTNOMAH COUNTY CIRCUIT
COURT JUDGE, OREGON JUDICIAL DEPARTMENT**

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

I am here today to speak to SB 218 on behalf of the Oregon Judicial Department. We are neutral on the bill, as we believe it includes some positive elements, and is a good start, but there is more that could be done to expand opportunities for conditional discharge in specialty courts and other non-specialty court cases. We would welcome the opportunity to discuss the concept with all justice system stakeholders at the table.

Including a conditional discharge section in ORS Chapter 137 makes very clear that the opportunity to achieve a dismissal upon successful completion of a probation term and its conditions has application in case types other than drug offenses.

The Oregon Judicial Department's Strategic Campaign has two initiatives specifically focused on these issues, guided by our Commitment to join with community partners to improve services and outcomes for people who are underserved, vulnerable, or marginalized with a goal of developing effective, supportive, and creative solutions to respond to their legal needs (Commitment One).

Initiative 1.1: *We will participate in statewide efforts to examine how to best meet the needs of Oregonians with mental and behavioral health challenges and develop best practices for courts to use in cases where those challenges must be addressed.*

Initiative 1.5: *We will continue efforts to expand problem-solving courts, such as veteran, family, and mental health treatment courts.*

Our efforts related to specialty courts include admitting higher risk and higher need people without limitation to drug offenses. This can be done safely, and the community achieves the highest "return on investment" by getting treatment and services to people with behavioral health and substance use disorders in a structured environment with appropriate incentives and sanctions. Research backs up the approach of focusing resources on the high risk/high need population.

Oregon specialty courts are currently admitting persons with charges higher than C felony. Some of these are part of county Justice Reinvestment (JRI) programs diverting otherwise prison bound offenders to treatment and services in the community. The local specialty court team (made up of all actors in the criminal justice system as well as

treatment providers) establishes eligibility requirements and the conditions of successful compliance, with regular judicial oversight. These courts are a valuable community resource which we hope to expand. The limitation to offenses no higher than C felonies would exclude otherwise good candidates from specialty courts.

Eligibility criteria for specialty courts are established cooperatively by the specialty court team. No one member of the specialty court team should have veto authority over admission, and generally admissions into specialty court are by consensus. This allows all parties to trust the decision. On some infrequent occasions entrance into a specialty court program, and the opportunity for conditional discharge, may need to be a judicial decision.

Outside of the specialty court context there are times when a defendant might seek a conditional discharge opportunity. In those situations, the parties present to the court their arguments for and against, and the court can decide based upon the facts and circumstances in the case. This process creates transparency in the justice system, allowing everyone to understand the rationale behind decisions that impact members of the public. The bill as drafted would prevent such opportunities.

This bill offers a good step toward achieving the goals related to expanding the success of specialty courts and making wise use of state and community resources. We believe there are a few amendments that will make it better. The OJD would be pleased to work with the committee and the proponents.