

SB 218-1
(LC 3059)
4/5/21 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 218**

1 On page 1 of the printed bill, delete lines 4 through 30.

2 On page 2, delete lines 1 through 27 and insert:

3 **“SECTION 1. (1)(a) Whenever a person is charged with a**
4 **misdemeanor or a Class C felony, other than driving while under the**
5 **influence of intoxicants, and has been formally accepted into a spe-**
6 **cialty court, the court, with the consent of the district attorney and**
7 **the person, may defer further proceedings and place the person on**
8 **probation. The terms of the probation shall be defined by a probation**
9 **agreement.**

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

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

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

16 **“(B) The right to present evidence on the defendant’s behalf;**

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

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

21 **“(E) The right to appeal from a judgment of conviction resulting**

1 from an adjudication of guilt entered under subsection (2) of this sec-
2 tion, unless the appeal is based on an allegation that the sentence
3 exceeds the maximum allowed by law or constitutes cruel and unusual
4 punishment.

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

9 “(e) The agreement may not contain a requirement that the de-
10 fendant enter a plea of guilty or no contest on any charge in the
11 accusatory instrument.

12 “(f) Entering into a probation agreement does not constitute an
13 admission of guilt and is not sufficient to warrant a finding or adju-
14 dication of guilt by a court.

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

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

27 “(3) Upon fulfillment of the terms and conditions of the probation
28 agreement, the court shall discharge the person and dismiss the pro-
29 ceedings against the person. Discharge and dismissal under this sec-
30 tion shall be without adjudication of guilt and is not a conviction for

1 purposes of this section or for purposes of disqualifications or disabil-
2 ities imposed by law upon conviction of a crime. There may be only
3 one discharge and dismissal under this section with respect to any
4 person.

5 “(4) In the event that the period of probation under this section
6 expires, but the terms and conditions of the probation agreement have
7 not been fulfilled and no probation violation proceeding was initiated
8 prior to the expiration of the period of probation, the court may not
9 discharge the person and dismiss the proceedings against the person.
10 The court shall instead issue an order requiring the person to appear
11 and to show cause why the court should not enter an adjudication of
12 guilt as described in subsection (2) of this section due to the failure
13 of the person to fulfill the terms and conditions of the probation
14 agreement prior to expiration of the period of probation. At the hear-
15 ing on the order to show cause, after considering any evidence or ar-
16 gument from the district attorney and the person, the court may:

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

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

21 “(5) Nothing in this section is intended to restrict a person’s par-
22 ticipation in a specialty court or conditional discharge under ORS
23 475.245.

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

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