

Senate Bill 817

Sponsored by Senator GORSEK

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 **as introduced**.

Expands eligibility for pre-plea probation. Modifies procedures when person violates term or condition of probation or does not fulfill probation conditions.

A BILL FOR AN ACT

1
2 Relating to pre-plea probation; creating new provisions; and amending ORS 137.532.

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

4 **SECTION 1.** ORS 137.532 is amended to read:

5 137.532. (1)(a) Whenever a person is charged with a misdemeanor or a Class C felony, other than
6 **a person felony or** driving while under the influence of intoxicants, [*and has been formally accepted*
7 *into a specialty court,*] the court, with the consent of [*the district attorney and*] the person, may defer
8 further proceedings and place the person on probation. The terms of the probation shall be defined
9 by a probation agreement.

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

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

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

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

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

17 (D) The right to contest evidence presented against the defendant, including the right to object
18 to hearsay evidence; and

19 (E) The right to appeal from a judgment of conviction resulting from an adjudication of guilt
20 entered under subsection (2) of this section, unless the appeal is based on an allegation that the
21 sentence exceeds the maximum allowed by law or constitutes cruel and unusual punishment.

22 (d) The agreement must include a requirement that the defendant pay any restitution owed to
23 the victim as determined by the court, and any fees for court-appointed counsel ordered by the court
24 under ORS 135.050. **If the defendant is accepted into and consents to participation in a spe-**
25 **cialty court, the agreement may include a requirement that the defendant participate in the**
26 **specialty court.**

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

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

31 (g) Police reports or other documents associated with the criminal charges in a court file other

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 than the probation agreement may not be admitted into evidence, and do not establish a factual
 2 basis for finding the defendant guilty, unless the court resumes criminal proceedings and enters an
 3 adjudication of guilt under subsection (2) of this section.

4 (2) Upon violation of a term or condition of the probation agreement, the court may resume the
 5 criminal proceedings. *[and may find the defendant guilty]* **The court shall hold a hearing to de-**
 6 **termine whether the defendant is guilty** of the offenses in the accusatory instrument in accord-
 7 ance with the waiver of rights in the probation agreement. The defendant may not *[contest the*
 8 *sufficiency of the evidence establishing]* **argue against the admissibility of evidence, but may ar-**
 9 **gue that the evidence is insufficient to establish** the defendant’s guilt of the offenses in the
 10 accusatory instrument.

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

16 (4)(a) **If, prior to the period of probation expiring, the conditions of the probation agree-**
 17 **ment have not been fulfilled, upon request of the probation officer or the defendant or upon**
 18 **the court’s own motion, the court may issue an order extending the period of probation.**

19 (b) In the event that the period of probation under this section expires, but the terms and con-
 20 ditions of the probation agreement have not been fulfilled and no probation violation proceeding was
 21 initiated prior to the expiration of the period of probation, the court may *[not]* discharge the person
 22 and dismiss the proceedings against the person. *[The court shall instead issue an order requiring the*
 23 *person to appear and to show cause why the court should not enter an adjudication of guilt as de-*
 24 *scribed in subsection (2) of this section due to the failure of the person to fulfill the terms and condi-*
 25 *tions of the probation agreement prior to expiration of the period of probation. At the hearing on the*
 26 *order to show cause, after considering any evidence or argument from the district attorney and the*
 27 *person, the court may:]*

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

30 *[(b) Enter an adjudication of guilt as described in subsection (2) of this section.]*

31 (5) Nothing in this section is intended to restrict a person’s participation in a specialty court
 32 or conditional discharge under ORS 475.245.

33 (6) As used in this section[,]:

34 (a) **“Person felony” has the meaning given that term in the rules of the Oregon Criminal**
 35 **Justice Commission.**

36 (b) “Specialty court” has the meaning given that term in ORS 137.680.

37 **SECTION 2. The amendments to ORS 137.532 by section 1 of this 2023 Act apply to pro-**
 38 **bation agreements entered into on or after the effective date of this 2023 Act.**