

Enrolled House Bill 3201

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, GELSNER, ROBLAN, TAYLOR, WAGNER

CHAPTER

AN ACT

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

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

SECTION 1. ORS 475.245 is amended to read:

475.245. (1)(a) Whenever [*any person pleads guilty to or is found guilty of*] **a person is charged with** an offense listed in subsection (5) of this section, the court, [*without entering a judgment of guilt and*] 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 [*enter an adjudication of guilt and proceed as otherwise provided*] **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 [*previous period of*] **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) Possession of a controlled substance under ORS 475.752 (3), 475.814, 475.824, 475.834, 475.854, 475.874, 475.884 or 475.894;

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

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

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

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

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

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

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

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

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

Passed by House April 23, 2019

Repassed by House June 11, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 3, 2019

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State