

House Bill 3201

Sponsored by Representative HERNANDEZ, Senator MANNING JR, Representatives WILLIAMSON, POWER, Senator DEMBROW; Representatives ALONSO LEON, BARKER, BYNUM, GORSEK, GREENLICK, KENY-GUYER, MCLAIN, NOSSE, PILUSO, REARDON, SALINAS, SANCHEZ, SMITH WARNER, Senators FAGAN, FREDERICK, GELSER, ROBLAN, TAYLOR, WAGNER

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**.

Provides that agreement for deferred resolution of criminal cases may not contain requirement that defendant enter plea of guilty or no contest. Applies to diversion offered by district attorney, conditional discharge for controlled substance offenses and diversion for driving while under the influence of intoxicants. Requires that agreement contain waiver of rights by defendant. Provides that agreement does not constitute admission of guilt and is not sufficient to warrant finding of guilty by court. Authorizes court to find defendant guilty of offense based on waiver of rights if defendant violates agreement.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to deferred resolution of criminal charges; creating new provisions; amending ORS 135.891,
3 135.896, 135.898, 135.901, 475.245, 813.200, 813.225, 813.230 and 813.255; and declaring an emer-
4 gency.

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

6 **SECTION 1.** ORS 135.891 is amended to read:

7 135.891. (1)(a) A diversion agreement carries the understanding that if the defendant fulfills the
8 obligations of the program described therein, the criminal charges filed against the defendant will
9 be dismissed with prejudice. [*It shall include specifically the waiver of the right to a speedy trial. It*]
10 **The agreement** may include, but is not limited to, [*admissions by the defendant, stipulation of*
11 *facts,*] stipulation that depositions of witnesses may be taken pursuant to ORS 136.080 to 136.100,
12 payment of costs as defined in ORS 135.705 **and fees for court-appointed counsel ordered by the**
13 **court under ORS 135.050**, restitution, performance of community service, residence in a halfway
14 house or similar facility, maintenance of gainful employment, and participation in programs offering
15 medical, educational, vocational, social and psychological services, corrective and preventive guid-
16 ance and other rehabilitative services.

17 **(b) The agreement must contain a waiver of the following rights of the defendant with**
18 **respect to each criminal charge:**

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

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

21 **(C) The right to confront witnesses against the defendant; and**

22 **(D) The right to contest evidence presented against the defendant, including the right to**
23 **object to hearsay evidence.**

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

26 (2) As a condition of entering into a diversion agreement under ORS 135.881 to 135.901, the de-

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 fendant must pay a program fee of \$100. The court may waive all or part of the fee in cases in-
 2 volving indigent defendants, or may provide for payment of the fee on an installment basis. A fee
 3 collected under this subsection in the circuit court shall be deposited by the clerk of the court in
 4 the Criminal Fine Account. If the fee is collected in a municipal or justice court, \$35 of the fee shall
 5 be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Account,
 6 and the remainder of the fee shall be paid to the city or county treasurer.

7 **SECTION 2.** ORS 135.896 is amended to read:

8 135.896. (1)(a) If the district attorney elects to offer diversion in lieu of further criminal pro-
 9 ceedings and the defendant, with the advice of counsel, agrees to the terms of the proposed agree-
 10 ment, including a waiver of [*the right to a speedy trial*] **rights as required by ORS 135.891 (1)**, the
 11 court shall stay further criminal proceedings for a definite period. Except as provided in ORS
 12 135.898 and subsection (2) of this section, the stay shall not exceed 270 days in the case of a de-
 13 fendant charged with commission of a felony, and shall not exceed 180 days in the case of a de-
 14 fendant charged with the commission of a misdemeanor. [*If the defendant declines diversion, the*
 15 *court shall resume criminal proceedings.*]

16 **(b) The defendant's agreement to the terms of the diversion under this subsection does**
 17 **not constitute an admission of guilt and is not sufficient to warrant a finding of guilty by a**
 18 **court.**

19 **(c) Police reports or other documents associated with the criminal charges in a court file**
 20 **other than the diversion agreement may not be admitted into evidence and do not establish**
 21 **a factual basis for finding the defendant guilty.**

22 (2) Prior to the end of the stay of criminal proceedings described in subsection (1) of this sec-
 23 tion, the defendant may request that the district attorney approve an extension of the stay for a
 24 period up to 270 days in the case of a defendant charged with the commission of a felony and up to
 25 180 days in the case of a defendant charged with the commission of a misdemeanor. If the district
 26 attorney approves the extension, the district attorney shall notify the court and the court shall or-
 27 der an extension of the stay of criminal proceedings for the approved period of time.

28 **SECTION 3.** ORS 135.898 is amended to read:

29 135.898. When a diversion agreement authorized under ORS 135.886 (3) involves domestic vi-
 30 olence as defined in ORS 135.230, [*in addition to a waiver of the right to a speedy trial, the agreement*
 31 *must require the servicemember to enter a plea of guilty or no contest to each domestic violence offense*
 32 *charged in the accusatory instrument.*] if the servicemember, with the advice of counsel, agrees to the
 33 terms of the agreement [*and enters a plea of guilty or no contest to each domestic violence offense*
 34 *charged in the accusatory instrument*], the court shall stay further criminal proceedings involving the
 35 domestic violence offenses for a definite period not to exceed two years.

36 **SECTION 4.** ORS 135.901 is amended to read:

37 135.901. (1) If the district attorney finds at the termination of the diversion period or any time
 38 prior thereto that the [*divertee*] **defendant** has failed to fulfill the terms of the diversion agreement,
 39 the district attorney shall terminate diversion. [*and*] The court shall resume criminal proceedings
 40 **and may find the defendant guilty of the offenses in the accusatory instrument in accordance**
 41 **with the waiver of rights in the diversion agreement.** However, if the [*former divertee*] **defend-**
 42 **ant** is adjudicated guilty as a result thereof, the court may take into consideration at the time of
 43 the sentencing any partially successful fulfillment by such person of the terms of agreement.

44 (2) If the district attorney informs the court at the termination of the diversion period that the
 45 defendant has fulfilled the terms of the diversion agreement, the court shall dismiss with prejudice

1 the criminal charges filed against the defendant.

2 (3) A record of the fact that an individual has participated in diversion shall be forwarded to
 3 and kept by the Department of Justice, and shall be made available upon request to any district
 4 attorney who subsequently considers diversion of such person.

5 **SECTION 5.** ORS 475.245 is amended to read:

6 475.245. (1)(a) Whenever [*any person pleads guilty to or is found guilty of*] **a person is charged**
 7 **with** an offense listed in subsection (5) of this section, the court, [*without entering a judgment of guilt*
 8 *and*] with the consent of the district attorney and the person, may defer further proceedings and
 9 place the person on probation. **The terms of the probation shall be defined by a probation**
 10 **agreement.**

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

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

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

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

18 (C) **The right to confront witnesses against the defendant; and**

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

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

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

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

28 (g) **Police reports or other documents associated with the criminal charges in a court file**
 29 **other than the probation agreement may not be admitted into evidence and do not establish**
 30 **a factual basis for finding the defendant guilty.**

31 (2) Upon violation of a term or condition of **the probation agreement**, the court may [*enter an*
 32 *adjudication of guilt and proceed as otherwise provided*] **resume the criminal proceedings and may**
 33 **find the defendant guilty of the offenses in the accusatory instrument in accordance with the**
 34 **waiver of rights in the probation agreement.**

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

40 (4) In the event that the period of probation under this section expires, but the terms and con-
 41 ditions of **the probation agreement** have not been fulfilled and no probation violation proceeding
 42 was initiated prior to the expiration of the period of probation, the court may not discharge the
 43 person and dismiss the proceedings against the person. The court shall instead issue an order re-
 44 quiring the person to appear and to show cause why the court should not enter an adjudication of
 45 guilt as described in subsection (2) of this section due to the failure of the person to fulfill the terms

1 and conditions of **the** probation **agreement** prior to expiration of the period of probation. At the
 2 hearing on the order to show cause, after considering any evidence or argument from the district
 3 attorney and the person, the court may:

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

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

7 (5) This section applies to the following offenses:

8 (a) Possession of a controlled substance under ORS 475.752 (3), 475.814, 475.824, 475.834, 475.854,
 9 475.874, 475.884 or 475.894;

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

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

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

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

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

18 **SECTION 6.** ORS 813.200 is amended to read:

19 813.200. (1) The court shall inform at arraignment a defendant charged with the offense of
 20 driving while under the influence of intoxicants as defined in ORS 813.010 or a city ordinance con-
 21 forming thereto that a diversion agreement may be available if the defendant meets the criteria set
 22 out in ORS 813.215 and files with the court a petition for a driving while under the influence of
 23 intoxicants diversion agreement.

24 (2) The petition forms for a driving while under the influence of intoxicants diversion agreement
 25 shall be available to a defendant at the court.

26 (3) The form of the petition for a driving while under the influence of intoxicants diversion
 27 agreement and the information and blanks contained therein shall be determined by the Supreme
 28 Court under ORS 1.525. The petition forms made available to a defendant by any city or state court
 29 shall conform to the requirements adopted by the Supreme Court.

30 (4) In addition to any other information required by the Supreme Court to be contained in a
 31 petition for a driving while under the influence of intoxicants diversion agreement, the petition shall
 32 include:

33 (a) [*A plea of guilty or no contest to the charge of driving while under the influence of intoxicants*
 34 *signed by the defendant*] **A waiver of the following rights of the defendant with respect to the**
 35 **charge of driving while under the influence of intoxicants:**

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

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

38 **(C) The right to confront witnesses against the defendant; and**

39 **(D) The right to contest evidence presented against the defendant, including the right to**
 40 **object to hearsay evidence;**

41 (b) An agreement by the defendant to complete at an agency or organization designated by the
 42 city or state court a screening interview to determine the possible existence and degree of an al-
 43 cohol or drug abuse problem;

44 (c) An agreement by the defendant to complete, at defendant's own expense based on defendant's
 45 ability to pay, the program of treatment:

1 (A) Indicated as necessary by the screening interview; or

2 (B) If ordered by the court under ORS 813.640 after the court receives at least two negative
3 reports;

4 (d) Except as provided in subsection [(5)] (6) of this section, an agreement by the defendant to
5 not use intoxicants during the diversion period and to comply fully with the laws of this state de-
6 signed to discourage the use of intoxicants;

7 (e) A notice to the defendant that the diversion agreement will be considered to be violated if
8 the court receives notice that the defendant at any time during the diversion period committed the
9 offense of driving while under the influence of intoxicants or committed a violation of ORS 811.170;

10 (f) An agreement by the defendant to keep the court advised of the defendant's current mailing
11 address at all times during the diversion period;

12 (g) A waiver by the defendant of any former jeopardy rights under the federal and state Con-
13 stitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other of-
14 fenses based upon the same criminal episode;

15 (h) A sworn statement, as defined in ORS 162.055, by the defendant certifying that the defendant
16 meets the criteria set out in ORS 813.215 to be eligible to enter into the driving while under the
17 influence of intoxicants diversion agreement;

18 (i) An agreement by the defendant to pay court-appointed attorney fees as determined by the
19 court; and

20 (j) An agreement by the defendant to pay restitution if ordered by the court under ORS 137.108.

21 **(5) The petition may not include a requirement that the defendant enter a plea of guilty**
22 **or no contest to the charge of driving while under the influence of intoxicants.**

23 [(5)] (6) A person may use intoxicants during the diversion period if:

24 (a) The person consumes sacramental wine given or provided as part of a religious rite or ser-
25 vice;

26 (b) The person has a valid prescription for a substance and the person takes the substance as
27 directed; or

28 (c) The person is using a nonprescription drug, as defined in ORS 689.005, in accordance with
29 the directions for use that are printed on the label for that nonprescription drug.

30 **SECTION 7.** ORS 813.225 is amended to read:

31 813.225. (1) A defendant may apply by motion to the court in which a driving while under the
32 influence of intoxicants diversion agreement described in ORS 813.230 was entered for an order ex-
33 tending the diversion period:

34 (a) Within 30 days prior to the end of the diversion period; or

35 (b) If the defendant is serving on active duty as a member of the Armed Forces of the United
36 States, or is a member of the reserve components of the Armed Forces of the United States or the
37 National Guard, at any time prior to the end of the diversion period.

38 (2) Petition forms for an application for an extension under this section shall be available to a
39 defendant at the court.

40 (3) The form of the petition for an extension under this section shall be determined by the Su-
41 preme Court under ORS 1.525. The petition forms made available to a defendant by any city or state
42 court shall conform to the requirements of the Supreme Court.

43 (4) The court may grant a petition for an extension filed under this section if the court finds that
44 the defendant made a good faith effort to complete the conditions of the diversion agreement and
45 that the defendant can complete the conditions of the diversion agreement within the requested ex-

1 tended diversion period.

2 (5) An extension granted under this section may be for no more than 180 days from the ending
 3 date of the original diversion period or for another time period the court allows under subsection
 4 (7) of this section.

5 (6) Except as provided in subsection (7) of this section, a court may grant a defendant only one
 6 extension of a diversion period under this section.

7 (7) The court may extend the diversion period as necessary to allow the defendant sufficient
 8 time to complete the conditions of the diversion agreement if the defendant:

9 (a) Is a member of the Armed Forces of the United States, the reserve components of the Armed
 10 Forces of the United States or the National Guard;

11 (b) Is on active duty or has received orders that the defendant will be called to active duty; and

12 (c) Demonstrates that the military service will impair the defendant's ability to complete the
 13 conditions of the diversion agreement and no comparable treatment program described in ORS
 14 813.233 is available.

15 (8) If the court grants the petition for an extension under this section, the following apply:

16 (a) If the defendant fully complies with the conditions of the diversion agreement within the
 17 extended diversion period, the court may dismiss the charge with prejudice under ORS 813.250.

18 (b) If the court finds that the defendant failed to comply with the diversion agreement within
 19 the extended diversion period, the court shall *[enter the guilty plea or no contest plea filed as part*
 20 *of]* **find the defendant guilty of driving under the influence of intoxicants in accordance with**
 21 **the waiver of rights in** the petition for a diversion agreement, shall enter a judgment of conviction
 22 and shall sentence the defendant.

23 (9) If the court denies the petition for an extension under this section, the court shall *[enter the*
 24 *guilty plea or no contest plea filed as part of]* **find the defendant guilty of driving under the in-**
 25 **fluence of intoxicants in accordance with the waiver of rights in** the petition for a diversion
 26 agreement, shall enter a judgment of conviction and shall sentence the defendant.

27 **SECTION 8.** ORS 813.230 is amended to read:

28 813.230. (1) When the court allows a petition for a driving while under the influence of
 29 intoxicants diversion agreement filed as provided in ORS 813.210, the judge taking that action shall:

30 (a) Accept the *[guilty plea or no contest plea filed as part of]* **waiver of rights in** the petition for
 31 a diversion agreement *[but withhold entry of a judgment of conviction];* and

32 (b) Sign the petition and indicate thereon the date of allowance of the diversion period, the
 33 length of the diversion period and the date upon which the driving while under the influence offense
 34 occurred.

35 (2)(a) The petition when signed and dated becomes the diversion agreement between the de-
 36 fendant and the court. The court shall make the agreement a part of the record of the case. The
 37 court shall notify the Department of Transportation of the diversion agreement in a form agreed to
 38 by the department and the State Court Administrator within 48 hours after allowing the petition.
 39 The department shall make the fact of the diversion agreement a part of the defendant's operating
 40 record.

41 (b) **Entering into a diversion agreement under this section does not constitute an ad-**
 42 **mission of guilt and is not sufficient to warrant a finding or adjudication of guilt by a court.**

43 (c) **Police reports or other documents associated with the criminal charges in a court file**
 44 **other than the diversion agreement may not be admitted into evidence and do not establish**
 45 **a factual basis for finding the defendant guilty.**

1 (3) A driving while under the influence of intoxicants diversion agreement shall be for a period
 2 of one year after the date the court allows the petition. During the diversion period the court shall
 3 stay the driving while under the influence of intoxicants offense proceeding pending completion of
 4 the diversion agreement or its termination.

5 (4) When the court denies a petition for a driving while under the influence of intoxicants di-
 6 version agreement, it shall continue the offense proceeding against the defendant. The *[guilty plea*
 7 *or no contest plea filed as part of]* **waiver of rights in** the petition for the diversion agreement may
 8 not be used in the offense proceeding under this subsection.

9 **SECTION 9.** ORS 813.255 is amended to read:

10 813.255. (1) At any time before the court dismisses with prejudice the charge of driving while
 11 under the influence of intoxicants, the court on its own motion or on the motion of the district at-
 12 torney or city attorney may issue an order requiring the defendant to appear and show cause why
 13 the court should not terminate the diversion agreement. The order to show cause must:

14 (a) State the reasons for the proposed termination;

15 (b) Specify the amount of any fees owed and, if the amount owed is \$500 or less, inform the de-
 16 fendant that the court may dismiss with prejudice the charge of driving while under the influence
 17 of intoxicants if the person has complied with and performed all of the conditions of the diversion
 18 agreement and pays the remaining amount before or on the date of the hearing; and

19 (c) Set an appearance date.

20 (2) The order to show cause shall be served on the defendant and on the defendant's attorney,
 21 if any. Service may be made by first class mail, postage paid, addressed to the defendant at the
 22 mailing address shown on the diversion petition and agreement or at any other address that the
 23 defendant provides in writing to the court.

24 (3) Except as provided in subsections (4), (5) and (6) of this section, the court shall terminate the
 25 diversion agreement and *[enter the guilty plea or no contest plea that was filed as part of]* **find the**
 26 **defendant guilty of driving under the influence of intoxicants in accordance with the waiver**
 27 **of rights in** the petition for the diversion agreement if the defendant fails to appear at the hearing
 28 on the order to show cause or if, at the hearing on the order to show cause, the court finds by a
 29 preponderance of the evidence that:

30 (a) The defendant no longer qualifies for the diversion agreement under the conditions described
 31 in ORS 813.215; or

32 (b) The defendant failed to fulfill all of the terms of the diversion agreement.

33 (4) If a defendant is a member of the Armed Forces of the United States, the reserve components
 34 of the Armed Forces of the United States or the National Guard and is on active duty, the court
 35 shall:

36 (a) Allow the defendant to appear at the hearing by telephone or other communication device
 37 approved by the court, if the defendant's military service permits such an appearance; or

38 (b) Stay the termination proceeding if the defendant's military service prohibits the defendant's
 39 appearance by telephone or other communication device and prohibits the defendant from aiding and
 40 assisting the attorney who would appear on the defendant's behalf.

41 (5) If the defendant appears at the hearing on the order to show cause, the court shall dismiss
 42 with prejudice the charge of driving while under the influence of intoxicants if:

43 (a) The defendant has complied with and performed all of the conditions of the diversion agree-
 44 ment except that the defendant owes \$500 or less of the fees required under ORS 813.200, 813.210,
 45 813.235 and 813.240; and

1 (b) The defendant pays the balance of the fees owed by 5 p.m. on the day the hearing is held.
2 The defendant may also pay the balance of the fees owed before the day the hearing is held.

3 (6) A court may not terminate a diversion agreement under this section for failure to pay
4 restitution under ORS 137.108 if the defendant has otherwise complied with and performed all of the
5 conditions of the diversion agreement.

6 (7) Before the court dismisses with prejudice the charge of driving while under the influence of
7 intoxicants under this section, the court shall enter a judgment containing a money award, as de-
8 fined in ORS 18.005, for any remaining amount of restitution owed by the defendant.

9 (8) If the court terminates the diversion agreement and [*enters the guilty plea or no contest*
10 *plea*] **finds the defendant guilty of driving under the influence of intoxicants in accordance**
11 **with the waiver of rights in the petition for the diversion agreement**, the court may take into
12 account at time of sentencing any partial fulfillment by the defendant of the terms of the diversion
13 agreement.

14 **SECTION 10. (1) The amendments to ORS 135.891, 135.896, 135.898, 135.901, 475.245,**
15 **813.200, 813.225, 813.230 and 813.255 by sections 1 to 9 of this 2019 Act become operative Jan-**
16 **uary 1, 2020.**

17 **(2) The Judicial Department may take any action before the operative date specified in**
18 **subsection (1) of this section that is necessary to enable the department to exercise, on and**
19 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
20 **and powers conferred on the department by the amendments to ORS 135.891, 135.896, 135.898,**
21 **135.901, 475.245, 813.200, 813.225, 813.230 and 813.255 by sections 1 to 9 of this 2019 Act.**

22 **SECTION 11. The amendments to ORS 135.891, 135.896, 135.898, 135.901, 475.245, 813.200,**
23 **813.225, 813.230 and 813.255 by sections 1 to 9 of this 2019 Act apply to criminal proceedings**
24 **initiated on or after January 1, 2020.**

25 **SECTION 12. This 2019 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
27 **on its passage.**

28