

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3201**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” delete the
2 rest of the line and delete lines 3 and 4 and insert “475.245; and declaring
3 an emergency.”.

4 Delete lines 6 through 23 and delete pages 2 through 8 and insert:

5 **“SECTION 1.** ORS 475.245 is amended to read:

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

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

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

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

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

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

21 **“(D) The right to contest evidence presented against the defendant,**

1 including the right to object to hearsay evidence; and

2 “(E) The right to appeal from a judgment of conviction resulting
3 from an adjudication of guilt entered under subsection (2) of this sec-
4 tion, unless the appeal is based on an allegation that the sentence
5 exceeds the maximum allowed by law or constitutes cruel and unusual
6 punishment.

7 “(d) The agreement must include a requirement that the defendant
8 pay any restitution owed to the victim as determined by the court, and
9 any fees for court-appointed counsel ordered by the court under ORS
10 135.050.

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

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

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

23 “(2) Upon violation of a term or condition of **the** probation agreement,
24 the court may [*enter an adjudication of guilt and proceed as otherwise pro-*
25 *vided*] **resume the criminal proceedings and may find the defendant**
26 **guilty of the offenses in the accusatory instrument in accordance with**
27 **the waiver of rights in the probation agreement. The defendant may**
28 **not contest the sufficiency of the evidence establishing the defendant’s**
29 **guilt of the offenses in the accusatory instrument.**

30 “(3) Upon fulfillment of the terms and conditions of **the** probation

1 **agreement**, the court shall discharge the person and dismiss the proceedings
2 against the person. Discharge and dismissal under this section shall be
3 without adjudication of guilt and is not a conviction for purposes of this
4 section or for purposes of disqualifications or disabilities imposed by law
5 upon conviction of a crime. There may be only one discharge and dismissal
6 under this section with respect to any person.

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

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

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

23 “(5) This section applies to the following offenses:

24 “(a) Possession of a controlled substance under ORS 475.752 (3), 475.814,
25 475.824, 475.834, 475.854, 475.874, 475.884 or 475.894;

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

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

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

2 “(e) Frequenting a place where controlled substances are used under ORS
3 167.222; and

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

6 **“SECTION 2. (1) The amendments to ORS 475.245 by section 1 of this
7 2019 Act become operative on January 1, 2020.**

8 **“(2) The Judicial Department may take any action before the oper-
9 ative date specified in subsection (1) of this section that is necessary
10 to enable the department to exercise, on and after the operative date
11 specified in subsection (1) of this section, all of the duties, functions
12 and powers conferred on the department by the amendments to ORS
13 475.245 by section 1 of this 2019 Act.**

14 **“SECTION 3. The amendments to ORS 475.245 by section 1 of this
15 2019 Act apply to criminal proceedings initiated on or after January
16 1, 2020.**

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

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