

# Senate Bill 218

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## 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 types of charges eligible for conditional discharge to include any misdemeanor or Class C felony if defendant has been accepted into specialty court.

## A BILL FOR AN ACT

1  
2 Relating to conditional discharge; creating new provisions; and amending ORS 137.533.

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

4 **SECTION 1. (1)(a) Whenever a person is charged with a misdemeanor or a Class C felony**  
5 **and has been accepted into a specialty court, the court, with the consent of the district at-**  
6 **torney and the person, may defer further proceedings and place the person on probation. The**  
7 **terms of the probation shall be defined by a probation agreement.**

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

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

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

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

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

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

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

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

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

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

29 (g) Police reports or other documents associated with the criminal charges in a court file  
30 other than the probation agreement may not be admitted into evidence, and do not establish

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 a factual basis for finding the defendant guilty, unless the court resumes criminal pro-  
 2 ceedings and enters an adjudication of guilt under subsection (2) of this section.

3 (2) Upon violation of a term or condition of the probation agreement, the court may re-  
 4 sume the criminal proceedings and may find the defendant guilty of the offenses in the  
 5 accusatory instrument in accordance with the waiver of rights in the probation agreement.  
 6 The defendant may not contest the sufficiency of the evidence establishing the defendant's  
 7 guilt of the offenses in the accusatory instrument.

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

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

23 (a) Order a new period of probation to allow the person to fulfill the terms and conditions  
 24 of the probation agreement; or

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

26 (5) As used in this section, "specialty court" has the meaning given that term in ORS  
 27 137.680.

28 **SECTION 2.** ORS 137.533 is amended to read:

29 137.533. (1) Whenever a person pleads guilty to or is found guilty of a misdemeanor other than  
 30 driving while under the influence of intoxicants or other than a misdemeanor involving domestic  
 31 violence as defined in ORS 135.230, the court may defer further proceedings and place the person  
 32 on probation, upon motion of the district attorney and without entering a judgment of guilt, if the  
 33 person:

34 (a) Consents to the disposition;

35 (b) Has not previously been convicted of any offense in any jurisdiction;

36 (c) Has not been placed on probation under ORS 475.245 or section 1 of this 2021 Act;

37 (d) Has not completed a diversion under ORS 135.881 to 135.901; and

38 (e) Agrees to pay a fee equal to \$100. The person must pay the amount within 90 days of impo-  
 39 sition unless the court allows payment at a later time.

40 (2) A district attorney may submit a motion under subsection (1) of this section if, after consid-  
 41 ering the factors listed in subsection (3) of this section, the district attorney finds that disposition  
 42 under this section would be in the interests of justice and of benefit to the person and the commu-  
 43 nity.

44 (3) In determining whether disposition under this section is in the interests of justice and of  
 45 benefit to the person and the community, the district attorney shall consider at least the following

1 factors:

2 (a) The nature of the offense. However, the offense must not have involved injury to another  
3 person.

4 (b) Any special characteristics or difficulties of the person.

5 (c) Whether there is a probability that the person will cooperate with and benefit from alterna-  
6 tive treatment.

7 (d) Whether an available program is appropriate to the needs of the person.

8 (e) The impact of the disposition upon the community.

9 (f) Recommendations, if any, of the involved law enforcement agency.

10 (g) Recommendations, if any, of the victim.

11 (h) Provisions for restitution.

12 (i) Any mitigating circumstances.

13 (4) Upon violation of a term or condition of probation, the court may enter an adjudication of  
14 guilt and proceed as otherwise provided. Upon the person's fulfillment of the terms and conditions  
15 of probation, the court shall discharge the person and dismiss the proceedings against the person.  
16 A discharge and dismissal under this section is without adjudication of guilt and is not a conviction  
17 for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. A person  
18 may be discharged and have proceedings dismissed only once under this section.

19 (5) Subsections (1) to (4) of this section do not affect any domestic violence sentencing programs.

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