

## SENATE AMENDMENTS TO SENATE BILL 218

By COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

April 26

1 On page 1 of the printed bill, delete lines 4 through 30.

2 On page 2, delete lines 1 through 27 and insert:

3 **“SECTION 1. (1)(a) Whenever a person is charged with a misdemeanor or a Class C fel-**  
4 **ony, other than driving while under the influence of intoxicants, and has been formally ac-**  
5 **cepted into a specialty court, the court, with the consent of the district attorney and the**  
6 **person, may defer further proceedings and place the person on probation. The terms of the**  
7 **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**  
17 **to object to hearsay evidence; and**

18 **“(E) The right to appeal from a judgment of conviction resulting from an adjudication**  
19 **of guilt entered under subsection (2) of this section, unless the appeal is based on an**  
20 **allegation that the sentence exceeds the maximum allowed by law or constitutes cruel and**  
21 **unusual 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**  
28 **is 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**  
30 **file other than the probation agreement may not be admitted into evidence, and do not es-**  
31 **tablish a factual basis for finding the defendant guilty, unless the court resumes criminal**  
32 **proceedings and enters an adjudication of guilt under subsection (2) of this section.**

33 **“(2) Upon violation of a term or condition of the probation agreement, the court may**  
34 **resume the criminal proceedings and may find the defendant guilty of the offenses in the**  
35 **accusatory instrument in accordance with the waiver of rights in the probation agreement.**

1 The defendant may not contest the sufficiency of the evidence establishing the defendant's  
2 guilt of the offenses in the accusatory instrument.

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

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

18 “(a) Order a new period of probation to allow the person to fulfill the terms and condi-  
19 tions of the probation agreement; or

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

21 “(5) Nothing in this section is intended to restrict a person's participation in a specialty  
22 court or conditional discharge under ORS 475.245.

23 “(6) As used in this section, ‘specialty court’ has the meaning given that term in ORS  
24 137.680.”