



TO: Senate Committee on Judiciary and Ballot Measure 110 Implementation
FROM: Mae Lee Browning, Oregon Criminal Defense Lawyers Association
DATE: February 2, 2021
RE: Opposition to SB 218 – Expands Conditional Discharge But Is Too Limiting As Written

Chair Prozanski, Vice Chair Thatcher, and Members of the Committee:

The Oregon Criminal Defense Lawyers Association is an organization of experts, private investigators, and attorneys who represent Oregon’s children and parents in juvenile dependency proceedings, youth in juvenile delinquency proceedings, Oregon citizens in criminal prosecutions at the trial and appellate level, as well as civil commitment proceedings throughout the state of Oregon.

We urge a NO vote on SB 218 as written with the ODAA amendment and respectfully request to be able to work with this committee to propose an amendment.

The conditional discharge statute should be expanded. Many crimes arise from addiction or mental health crisis. Limiting the opportunity to earn dismissal upon completion of a treatment program to the current slate of charges excludes a broad swath of defendants who would benefit from treatment and the opportunity to have a fresh start without criminal convictions.

However, the current bill proposed by ODAA does not expand the statute in a way that will confer that benefit on many people who need it most. Research shows that meaningful treatment can reduce recidivism and protect community safety when the underlying cause of criminal behavior is related to substance use or mental illness. The goal of the expansion should be to promote treatment and invest resources intelligently to allow for reasonable resolution of charges and the most effective treatment course for each defendant.

We are concerned with the following aspects of the proposed bill:

The bill limits expanded conditional discharge to treatment court participation.

Treatment court resources are limited and are best directed to the most high-risk and high-needs individuals. Low-risk and low-level offenders should be afforded an opportunity to dismiss their charges with treatment conditions that can be met with existing community resources outside the criminal justice system. These defendants should be able to complete a treatment program and abide by the conditions of their probation agreement and still achieve a dismissal of their charges. Additionally, some counties offer more treatment courts than others. Defendants in areas that do not offer a particular treatment court should not be treated differently just because of where they live.

The bill excludes defendants who may benefit most from the program.

As written, the bill would exclude anyone charged with a Class A or Class B felony from participation in conditional discharge through treatment courts. This prevents a case-by-case determination based on the facts of the case and the needs of the offender and would exclude some of the most high-needs individuals with mental illness or addiction issues. Research supports investing resources into high- risk/high-needs populations in order to reduce recidivism and improve community safety. Oregon judges are well-suited to examine each case individually and determine whether treatment court - and the benefit of a conditional discharge- can reasonably be conferred in any case, regardless of the technical and arbitrary crime severity designation.

The bill leaves the decision-making authority with the DA rather than the court.

As written, the bill requires agreement from the DA in order to allow for conditional discharge. Treatment court teams are cooperative, with each voice at the table given an opportunity to be heard. No member of the treatment court team should have veto power over another. The judge is in the best position to hear arguments from each party - defense, DA, and treatment staff - and decide whether a conditional discharge is appropriate. Team decisions are usually reached by consensus, and while one party's objection will always be carefully considered by the Court, the ultimate decision to confer a conditional discharge should be left up to the judge.

The bill could create a "zero tolerance" policy.

As written, this bill would function as a "zero tolerance" policy, even for participants engaging in a specialty treatment court program. Any technical violation - from a dilute urine test, to missing one appointment - could result in the resumption of proceedings against the participant, and their ultimate conviction. Recovery - from addiction or mental illness - is a non-linear process. Mistakes and relapses and backsliding will happen, and treatment courts are set up to meet people where they're at and help them create new habits. Conditioning the benefit of a dismissal on zero tolerance creates an insurmountable barrier and undermines the legitimate recovery occurring despite a participant's mistakes.

The bill does not give adequate guidance on time limitations for probation terms.

Individuals with mental illness spend longer caught up in criminal justice than individuals without mental illness. Probation and participation in a treatment court - while intended to be useful - is still a restriction of liberty. Although the goal of treatment court is to assist the participants in recovery, it is important to make sure the time spent on probation and going through the program is proportionate to the underlying offense and related to the goals of the treatment program. As written, probation terms of several years could be imposed and required on a B- or C-misdemeanor. Defendants without mental illness or addiction would not face such a lengthy term of probation. Defendants with mental illness should not be unreasonably penalized due to their condition.

The bill does not allow for more than one charge to be conditionally discharged.

Although we would like to think that treatment court will offer a lifetime cure for all ailments that would lead an individual to participate, it is unrealistic to expect graduates will never again experience a relapse of addiction or a decompensation of mental health. There is no reason to exclude someone who historically has responded to treatment court very well from the benefit of the program a second time. Further, it is common for a defendant to pick up another charge or case while waiting for a resolution on the initial case. These defendants could be clearly eligible for treatment court, but not yet have gotten through the steps required to begin the program. They could also be brand new participants who are still in the throes of addiction or a mental health crisis and have yet to see any benefit from their nascent treatment. Dismissing the first charge but not the subsequent charges upon graduation defeats the purpose of the conditional discharge bill. If the legislature wants to give people a clean start after graduating a rigorous treatment court program, we should aim to truly provide the clean start.

Conclusion

We support the responsible expansion of the conditional discharge statute. We urge you to vote no on the current bill, and to support a task force of stakeholders who can address our concerns and those of others who were not consulted in the drafting and proffering of this bill.

Respectfully submitted by,
Mae Lee Browning
Oregon Criminal Defense Lawyers Association