

# D R A F T

## SUMMARY

Digest: The Act lets people do pre-plea conditional discharge in more types of cases. (Flesch Readability Score: 63.4).

Expands eligibility for pre-plea conditional discharge to all offenses except Ballot Measure 11 (1994) crimes and driving under the influence of intoxicants. Removes the requirements of specialty court acceptance and district attorney consent. Allows a defendant to have more than one discharge and dismissal after fulfilling the probation agreement.

## A BILL FOR AN ACT

1  
2 Relating to conditional discharge; amending ORS 137.532.

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

4 **SECTION 1.** ORS 137.532 is amended to read:

5 137.532. (1)(a) Whenever a person is charged with [*a misdemeanor or a*  
6 *Class C felony,*] **an offense** other than driving while under the influence of  
7 intoxicants **or a crime listed in ORS 137.700**, [*and has been formally ac-*  
8 *cepted into a specialty court,*] the court, with the consent of [*the district at-*  
9 *torney and*] the person **and after determining that proceeding under this**  
10 **section is in the interest of justice and a benefit to the defendant and**  
11 **the community**, may defer further proceedings and place the person on  
12 probation. The terms of the probation shall be defined by a probation  
13 agreement.

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

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

**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) The right to a speedy trial and trial by jury;
- 2 (B) The right to present evidence on the defendant's behalf;
- 3 (C) The right to confront and cross-examine witnesses against the de-  
4 fendant;
- 5 (D) The right to contest evidence presented against the defendant, in-  
6 cluding the right to object to hearsay evidence; and
- 7 (E) The right to appeal from a judgment of conviction resulting from an  
8 adjudication of guilt entered under subsection (2) of this section, unless the  
9 appeal is based on an allegation that the sentence exceeds the maximum al-  
10 lowed by law or constitutes cruel and unusual punishment.
- 11 (d) The agreement must include a requirement that the defendant pay any  
12 restitution owed to the victim as determined by the court, and any fees for  
13 court-appointed counsel ordered by the court under ORS 135.050.
- 14 (e) The agreement may not contain a requirement that the defendant enter  
15 a plea of guilty or no contest on any charge in the accusatory instrument.
- 16 (f) Entering into a probation agreement does not constitute an admission  
17 of guilt and is not sufficient to warrant a finding or adjudication of guilt  
18 by a court.
- 19 (g) Police reports or other documents associated with the criminal  
20 charges in a court file other than the probation agreement may not be ad-  
21 mitted into evidence, and do not establish a factual basis for finding the  
22 defendant guilty, unless the court resumes criminal proceedings and enters  
23 an adjudication of guilt under subsection (2) of this section.
- 24 **(h) With the agreement of the defendant and the approval of an**  
25 **appropriate specialty court, the defendant may participate in the spe-**  
26 **cialty court as part of the probation agreement.**
- 27 (2) Upon violation of a term or condition of the probation agreement, the  
28 court may resume the criminal proceedings and [*may find the defendant*  
29 *guilty*] **a hearing shall be held to determine the defendant's guilt** of the  
30 offenses in the accusatory instrument in accordance with the waiver of  
31 rights in the probation agreement. The defendant may not contest the suffi-

1 ciency of the evidence establishing the defendant's guilt of the offenses in  
2 the accusatory instrument.

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

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

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

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

25 **(5) In determining whether proceeding under this section is in the**  
26 **interest of justice and a benefit to the defendant and the community**  
27 **under subsection (1) of this section, the court shall consider at least**  
28 **the following factors:**

29 **(a) The nature of the offense;**

30 **(b) Any special characteristics of or difficulties experienced by the**  
31 **defendant;**

1       **(c) Whether there is a program that is appropriate and available for**  
2 **the needs of the defendant;**

3       **(d) The impact on the community of proceeding under this section;**

4       **(e) Any recommendation of the victim, if applicable; and**

5       **(f) Any mitigating circumstances, including the impact of a con-**  
6 **viction on the defendant.**

7       [(5)] **(6)** Nothing in this section is intended to restrict a person's partic-  
8 ipation in a specialty court or conditional discharge under ORS 475.245.

9       [(6)] **(7)** As used in this section, "specialty court" has the meaning given  
10 that term in ORS 137.680.

11

---