

# Senate Bill 1169

Sponsored by COMMITTEE ON JUDICIARY

## 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**. The statement includes a measure digest written in compliance with applicable readability standards.

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 Class C felony,*] **an of-**  
6 **fense** other than driving while under the influence of intoxicants **or a crime listed in ORS**  
7 **137.700,** [*and has been formally accepted into a specialty court,*] the court, with the consent of [*the*  
8 *district attorney and*] the person **and after determining that proceeding under this section is in**  
9 **the interest of justice and a benefit to the defendant and the community,** may defer further  
10 proceedings and place the person on probation. The terms of the probation shall be defined by a  
11 probation agreement.

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

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

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

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

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

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

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

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

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

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

3 (g) Police reports or other documents associated with the criminal charges in a court file other  
4 than the probation agreement may not be admitted into evidence, and do not establish a factual  
5 basis for finding the defendant guilty, unless the court resumes criminal proceedings and enters an  
6 adjudication of guilt under subsection (2) of this section.

7 **(h) With the agreement of the defendant and the approval of an appropriate specialty**  
8 **court, the defendant may participate in the specialty court as part of the probation agree-**  
9 **ment.**

10 (2) Upon violation of a term or condition of the probation agreement, the court may resume the  
11 criminal proceedings and [*may find the defendant guilty*] **a hearing shall be held to determine the**  
12 **defendant's guilt** of the offenses in the accusatory instrument in accordance with the waiver of  
13 rights in the probation agreement. The defendant may not contest the sufficiency of the evidence  
14 establishing the defendant's guilt of the offenses in the accusatory instrument.

15 (3) Upon fulfillment of the terms and conditions of the probation agreement, the court shall  
16 discharge the person and dismiss the proceedings against the person. Discharge and dismissal under  
17 this section shall be without adjudication of guilt and is not a conviction for purposes of this section  
18 or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. [*There*  
19 *may be only one discharge and dismissal under this section with respect to any person.*]

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

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

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

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

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

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

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

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

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

41 **(f) Any mitigating circumstances, including the impact of a conviction on the defendant.**

42 [(5)] (6) Nothing in this section is intended to restrict a person's participation in a specialty  
43 court or conditional discharge under ORS 475.245.

44 [(6)] (7) As used in this section, "specialty court" has the meaning given that term in ORS  
45 137.680.

