

Enrolled
Senate Bill 999

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CHAPTER

AN ACT

Relating to diversion; creating new provisions; amending ORS 135.881, 135.886 and 135.896; and declaring an emergency.

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

SECTION 1. ORS 135.881 is amended to read:

135.881. As used in ORS 135.881 to 135.901:

(1) "District attorney" has the meaning given that term [by] in ORS 131.005 [(8)].

(2) "Diversion" means referral of a defendant in a criminal case to a supervised performance program prior to adjudication.

(3) "Diversion agreement" means the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against the defendant dismissed.

(4) "**Servicemember**" means a person who:

(a) **Is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard; or**

(b)(A) **Served as a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard; and**

(B) **Received an honorable discharge, a general discharge under honorable conditions or a discharge under other than honorable conditions.**

SECTION 2. ORS 135.886 is amended to read:

135.886. (1) After an accusatory instrument has been filed charging a defendant with commission of a crime other than driving while under the influence of intoxicants as defined in ORS 813.010, and after the district attorney has considered the factors listed in subsection (2) of this section, if it appears to the district attorney that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the district attorney may propose a diversion agreement to the defendant the terms of which are established by the district attorney in conformance with ORS 135.891. A diversion agreement under this section is not available to a defendant charged with the crime of driving while under the influence of intoxicants as defined in ORS 813.010.

(2) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the district attorney shall consider at least the following factors:

(a) The nature of the offense; however, **except as provided in subsection (3) of this section**, the offense must not have involved **physical** injury to another person;

(b) Any special characteristics or difficulties of the offender;

(c) Whether the defendant is a first-time offender; if the offender has previously participated in diversion, according to the certification of the Department of Justice, diversion [*shall*] **may** not be offered;

(d) Whether there is a probability that the defendant will cooperate with and benefit from alternative treatment;

(e) Whether the available program is appropriate to the needs of the offender;

(f) The impact of diversion upon the community;

(g) Recommendations, if any, of the involved law enforcement agency;

(h) Recommendations, if any, of the victim;

(i) Provisions for restitution; and

(j) Any mitigating circumstances.

(3) In determining whether diversion of a defendant who is a servicemember is in the interests of justice and of benefit to the defendant and the community, the district attorney shall consider all of the factors listed in subsection (2) of this section, including the nature of the offense, except that diversion may not be offered if the offense:

(a) Involved serious physical injury to another person;

(b) Is classified as a Class A or B felony and involved physical injury to another person;

(c) Is described in ORS 163.365, 163.375, 163.395, 163.405, 163.408, 163.411 or 163.427; or

(d) Involved domestic violence as defined in ORS 135.230 and, at the time the offense was committed, the defendant was subject to a protective order in favor of the victim of the offense.

(4) As used in this section:

(a) "Physical injury" and "serious physical injury" have the meanings given those terms in ORS 161.015.

(b) "Protective order" means:

(A) An order issued under ORS 30.866, 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750; or

(B) A condition of probation, parole or post-prison supervision, or a release agreement under ORS 135.250, that prohibits the defendant from contacting the victim.

SECTION 3. ORS 135.896 is amended to read:

135.896. If the district attorney elects to offer diversion in lieu of further criminal proceedings and the defendant, with the advice of counsel, agrees to the terms of the proposed agreement, including a waiver of the right to a speedy trial, the court shall stay further criminal proceedings for a definite period. **Except as provided in section 5 of this 2010 Act**, the stay shall not exceed 270 days in the case of a defendant charged with commission of a felony, and shall not exceed 180 days in the case of a defendant charged with the commission of a misdemeanor. If the defendant declines diversion, the court shall resume criminal proceedings.

SECTION 4. Section 5 of this 2010 Act is added to and made a part of ORS 135.881 to 135.901.

SECTION 5. When a diversion agreement authorized under ORS 135.886 (3) involves domestic violence as defined in ORS 135.230, in addition to a waiver of the right to a speedy trial, the agreement must require the servicemember to enter a plea of guilty or no contest to each domestic violence offense charged in the accusatory instrument. If the servicemember, with the advice of counsel, agrees to the terms of the agreement and enters a plea of guilty or no contest to each domestic violence offense charged in the accusatory instrument, the court shall stay further criminal proceedings involving the domestic violence offenses for a definite period not to exceed two years.

SECTION 6. Section 5 of this 2010 Act and the amendments to ORS 135.881 and 135.886 by sections 1 and 2 of this 2010 Act apply to offenses for which there has not been an adjudication of guilt on or before the effective date of this 2010 Act.

SECTION 7. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by Senate February 16, 2010

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Secretary of Senate

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President of Senate

Passed by House February 23, 2010

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Speaker of House

Received by Governor:

.....M,....., 2010

Approved:

.....M,....., 2010

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Governor

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.....M,....., 2010

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Secretary of State