

A-Engrossed
House Bill 4149

Ordered by the House February 19
Including House Amendments dated February 19

Sponsored by Representative WILLIAMSON, Senator MANNING JR; Representatives BYNUM, GREENLICK, HERNANDEZ, HOLVEY, MALSTROM, MCLAIN, NOSSE, POWER, RAYFIELD, SALINAS, SANCHEZ (Pre-session filed.)

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.

Prohibits prosecuting attorney from conditioning plea offer [*or release on defendant's waiver of specified rights, eligibilities and legal challenges*] **on requirement that defendant or defense attorney stipulate to unconstitutionality of existing law**. Provides that prohibited provision in plea agreement [*or release agreement*] is void and unenforceable.

Prohibits court from conditioning defendant's release on waiver of defendant's appearance in person at trial.

A BILL FOR AN ACT

1
2 Relating to prohibited provisions in criminal action agreements; creating new provisions; and
3 amending ORS 135.405.

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

5 **SECTION 1. Section 2 of this 2018 Act is added to and made a part of ORS 135.405 to**
6 **135.445.**

7 **SECTION 2. (1) A prosecuting attorney may not condition a defendant's plea offer on:**

8 **(a) The defendant's waiver of:**

9 **(A) The disclosure obligation of ORS 135.815 (1)(g).**

10 **(B) The ability to receive the audio recording of grand jury proceedings as permitted**
11 **under ORS 132.270, if the indictment has been indorsed "a true bill."**

12 **(b) A requirement that the defendant or the defense attorney stipulate to the**
13 **unconstitutionality of an existing law.**

14 **(2)(a) A plea agreement may not contain a provision prohibited by subsection (1) of this**
15 **section.**

16 **(b) A prohibited provision described in subsection (1) of this section in a plea agreement**
17 **is contrary to public policy and is void and unenforceable.**

18 **SECTION 3. Section 4 of this 2018 Act is added to and made a part of ORS 135.230 to**
19 **135.290.**

20 **SECTION 4. (1) The court may not condition a defendant's release on the defendant's**
21 **waiver of appearance in person at trial.**

22 **(2) A release agreement may not contain a provision prohibited by subsection (1) of this**
23 **section.**

24 **SECTION 5. ORS 135.405 is amended to read:**

25 **135.405. (1) In cases in which it appears that the interest of the public in the effective adminis-**

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 tration of criminal justice would thereby be served, and in accordance with the criteria set forth in
2 **ORS 135.415 and the prohibitions set forth in section 2 of this 2018 Act**, the district attorney
3 may engage in plea discussions for the purpose of reaching a plea agreement.

4 (2) The district attorney shall engage in plea discussions or reach a plea agreement with the
5 defendant only through defense counsel, except when, as a matter of record, the defendant has ef-
6 fectively waived the right of the defendant to counsel or, if the defendant is not eligible for ap-
7 pointed counsel, has not retained counsel.

8 (3) The district attorney in reaching a plea agreement may agree to, but is not limited to, one
9 or more of the following, as required by the circumstances of the individual case:

10 (a) To make or not to oppose favorable recommendations as to the sentence which should be
11 imposed if the defendant enters a plea of guilty or no contest to the offense charged;

12 (b) To seek or not to oppose dismissal of the offense charged if the defendant enters a plea of
13 guilty or no contest to another offense reasonably related to the defendant's conduct; or

14 (c) To seek or not to oppose dismissal of other charges or to refrain from bringing potential
15 charges if the defendant enters a plea of guilty or no contest to the offense charged.

16 (4) Similarly situated defendants should be afforded equal plea agreement opportunities.

17 [(5) *The district attorney may not condition a plea offer on a requirement that the defendant*
18 *wave:*]

19 [(a) *The disclosure obligation of ORS 135.815 (1)(g); or*]

20 [(b) *The ability to receive the audio recording of grand jury proceedings as permitted under ORS*
21 *132.270, if the indictment has been indorsed "a true bill."*]

22 [(6)(a)] **(5)(a)** A district attorney may provide a plea offer and agreed disposition recommen-
23 dation to the defendant at the time of arraignment or first appearance of the defendant for a crime
24 in open court under an early disposition program established under ORS 135.941.

25 (b) Unless extended by the court, a plea offer and agreed disposition recommendation made un-
26 der paragraph (a) of this subsection expire upon completion of the arraignment. Except for good
27 cause, a court may not extend a plea offer and agreed disposition recommendation under this para-
28 graph for more than seven days for a misdemeanor or 21 days for a felony.

29 **SECTION 6. Sections 2 and 4 of this 2018 Act apply to plea agreements and release**
30 **agreements entered into on or after the effective date of this 2018 Act.**

31