

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 3201

By COMMITTEE ON JUDICIARY

May 28

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” delete the rest of the line and
2 delete lines 3 and 4 and insert “475.245; and declaring an emergency.”.

3 Delete lines 6 through 23 and delete pages 2 through 8 and insert:

4 “**SECTION 1.** ORS 475.245 is amended to read:

5 “475.245. (1)(a) Whenever [*any person pleads guilty to or is found guilty of*] **a person is charged**
6 **with** an offense listed in subsection (5) of this section, the court, [*without entering a judgment of guilt*
7 *and*] with the consent of the district attorney and the person, may defer further proceedings and
8 place the person on probation. **The terms of the probation shall be defined by a probation**
9 **agreement.**

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

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

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

16 “(B) The right to present evidence on the defendant’s behalf;

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

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

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

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

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

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

31 “(g) Police reports or other documents associated with the criminal charges in a court
32 file other than the probation agreement may not be admitted into evidence, and do not es-
33 tablish a factual basis for finding the defendant guilty, unless the court resumes criminal
34 proceedings and enters an adjudication of guilt under subsection (2) of this section.

35 “(2) Upon violation of a term or condition of **the probation agreement**, the court may [*enter*

1 *an adjudication of guilt and proceed as otherwise provided]* **resume the criminal proceedings and**
2 **may find the defendant guilty of the offenses in the accusatory instrument in accordance**
3 **with the waiver of rights in the probation agreement. The defendant may not contest the**
4 **sufficiency of the evidence establishing the defendant’s guilt of the offenses in the accusatory**
5 **instrument.**

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

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

20 “(a) Order a new period of probation to allow the person to fulfill the terms and conditions of
21 the [*previous period of*] **probation agreement**; or

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

23 “(5) This section applies to the following offenses:

24 “(a) Possession of a controlled substance under ORS 475.752 (3), 475.814, 475.824, 475.834,
25 475.854, 475.874, 475.884 or 475.894;

26 “(b) Unlawfully possessing a prescription drug under ORS 689.527 (6);

27 “(c) Unlawfully possessing marijuana plants, usable marijuana, cannabinoid products,
28 cannabinoid concentrates or cannabinoid extracts as described in ORS 475B.337 or 475B.341, if the
29 offense is a misdemeanor or felony;

30 “(d) Endangering the welfare of a minor under ORS 163.575 (1)(b);

31 “(e) Frequenting a place where controlled substances are used under ORS 167.222; and

32 “(f) A property offense that is motivated by a dependence on a controlled substance or a
33 marijuana item as defined in ORS 475B.015.

34 “**SECTION 2. (1) The amendments to ORS 475.245 by section 1 of this 2019 Act become**
35 **operative on January 1, 2020.**

36 “**(2) The Judicial Department may take any action before the operative date specified in**
37 **subsection (1) of this section that is necessary to enable the department to exercise, on and**
38 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
39 **and powers conferred on the department by the amendments to ORS 475.245 by section 1 of**
40 **this 2019 Act.**

41 “**SECTION 3. The amendments to ORS 475.245 by section 1 of this 2019 Act apply to**
42 **criminal proceedings initiated on or after January 1, 2020.**

43 “**SECTION 4. This 2019 Act being necessary for the immediate preservation of the public**
44 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
45 **on its passage.”.**

