

**CHAPTER 37**

AN ACT

HB 4149

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

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

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

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

(a) The defendant's waiver of:

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

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

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

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

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

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

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

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

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

135.405. (1) In cases in which it appears that the interest of the public in the effective administration of criminal justice would thereby be served, and in accordance with the criteria set forth in ORS 135.415 and the prohibitions set forth in section 2 of this 2018 Act, the district attorney may engage in plea discussions for the purpose of reaching a plea agreement.

(2) The district attorney shall engage in plea discussions or reach a plea agreement with the de-

fendant only through defense counsel, except when, as a matter of record, the defendant has effectively waived the right of the defendant to counsel or, if the defendant is not eligible for appointed counsel, has not retained counsel.

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor March 16, 2018

Filed in the office of Secretary of State March 21, 2018

Effective date January 1, 2019