

PRACTICE ADVISORY:

No-Plea Conditional Discharge in Oregon Drug Cases and Specialty Courts

Contents

I. Introduction	1
II. How It Works	1
A. Conditional Discharge in Specialty Court	2
B. Conditional Discharge for Drug-Related Charges	2
III. Related Issues For Noncitizens Facing Drug Charges	4
A. Measure 110	4
B. ORS § 475.752 Prohibited Acts Generally	4
C. Pre-July 14, 2011 Expungements of Simple Possession and Paraphernalia.....	6
D. Other Drug-Related Immigration Consequences	7
E. Resources and Assistance.....	9
IV. Addenda.....	10
Addendum 1: Example Conditional Discharge Agreement	11
Addendum 2: List of Specialty Courts.....	13
About the Authors	15

I. Introduction

IN 2019 AND 2021 the Oregon Legislature made significant changes to the procedures for seeking a conditional discharge for enumerated drug-related offenses¹ and certain charges in specialty courts.² Conditional discharge is an alternative criminal disposition similar to diversion, which results in the dismissal of the charge after successful completion of required conditions, or a conviction if not successful. The new conditional discharge statutes for drug-related offenses, under ORS 475.245, and for certain charges in specialty courts, under ORS 137.532, both now expressly prohibit entry of a plea of guilty or no contest as a requirement to receiving a conditional discharge.³

This is an important change for individuals who are not U.S. citizens. Alternative rehabilitative dispositions, such as diversion and expungement, are still “convictions” for immigration purposes if they require entry of a plea of guilt or no contest. See *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999) (en banc). Thus, while a plea of guilty or no contest was required to participate in a conditional discharge program, it remained a “conviction” for immigration purposes, even if the noncitizen successfully met all the conditions and the charge was dismissed for state purposes.⁴ The new conditional discharge statutes should allow noncitizens to enjoy the full benefits of the conditional discharge, since a successfully completed conditional discharge will not be a “conviction” under state law or for federal immigration purposes.

II. How It Works

Under amended ORS §§ 475.245 and 137.532, instead of entering a plea of guilty or no contest, an individual entering a conditional discharge agreement waives the rights to the following:

- A speedy trial and trial by jury;
- Present evidence on the defendant’s behalf;
- Confront and cross-examine witnesses against the defendant;
- Contest evidence presented against the defendant, including the right to object to hearsay; and
- Appeal, unless the appeal is based on an allegation that the sentence exceeds the maximum allowed by law or constitutes cruel and unusual punishment.

This waiver of rights replaces the plea of guilty or no contest, but failure to complete the conditions will have the same result—conviction after a show cause hearing.

1 Enrolled House Bill 3201 (2019) <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB3201/Enrolled>;

2 Enrolled Senate Bill 218 (2021) <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0218/Enrolled>

3 ORS § 475.245(1)(e) (effective Jan. 1, 2020); ORS § 137.532(1)(e) (effective Jan. 1, 2022).

4 8 U.S.C. § 1101(a)(48)(A); INA § 101(a)(48)(A) (“The term ‘conviction’ means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilty has been withheld, where— (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.”).

An example of a conditional discharge agreement that would be effective for avoiding a conviction for immigration purposes is included at Addendum 1. Additionally, avoid the following when drafting the agreement:

- Stipulation to the police report, underlying facts, or a specific controlled substance;
- Admission to facts sufficient to warrant a finding of guilt; and
- Stipulation to or agreement to a finding of guilt.

If you have questions about modifying the example or drafting your own conditional discharge agreement, you can contact IRP directly at irp@ojrc.info.

A. Conditional Discharge in Specialty Court

Senate Bill 218, effective January 1, 2022, expanded the types of charges eligible for no-plea conditional discharge to include any misdemeanor or C felony, other than driving while under the influence of intoxicants if the individual has been accepted into a specialty court. ORS § 137.532.

“Specialty courts” include drug court programs, veterans’ courts, mental health courts or “any other similar court docketing or system.” ORS § 137.680. Specialty courts generally have strict eligibility requirements, court-directed supervision, and mandated treatment to address issues underlying criminal conduct.⁵

The availability of specialty courts depends on the county, as do the eligibility requirements. A list of specialty courts current as of January 2022 can be found at Addendum 2. For immigration purposes, this provision may be most helpful for noncitizens with mental health issues, since there are few noncitizen veterans, and a separate conditional discharge already exists for many controlled substances offenses.

B. Conditional Discharge for Drug-Related Charges

House Bill 3201, effective January 1, 2020, created no-plea conditional discharge for certain drug-related offenses. ORS § 475.245. This is significant for noncitizens because of the severe immigration consequences of drug convictions, including simple possession.

Conviction of a controlled substance offense (CSO) will trigger several grounds of deportability and inadmissibility, and may permanently bar a noncitizen from seeking lawful permanent resident (LPR) status.⁶ While a single offense of simple possession of 30 grams or less of marijuana does not trigger deportability, and may be waived as a ground of inadmissibility, this is the only exception.⁷ A CSO

⁵ Oregon Criminal Justice Commission, What are Specialty Courts? (Feb. 10, 2022), <https://www.oregon.gov/cjc/sc/pages/default.aspx>.

⁶ 8 U.S.C. § 1227(a)(2)(B), INA § 237(a)(2)(B); 8 U.S.C. § 1182(a)(2)(A)(i)(II), INA § 212(a)(2)(A)(i)(II).

⁷ 8 U.S.C. § 1227(a)(2)(B)(i), INA § 237(a)(2)(B)(i); 8 USC 1182(h), INA § 212(h).

also bars a common form of relief from removal for undocumented immigrants, Non-LPR Cancellation of Removal.⁸ Controlled substance offenses that are treated as felonies under the federal controlled substances act (and related provisions), and any offenses involving commercial drug trafficking will also be “aggravated felony drug trafficking” offenses.⁹ Aggravated felonies result in virtually mandatory and permanent deportation.

Conditional discharge is statutorily available for the following types of drug-related offenses:

- Possession of a controlled substance under ORS §§:
 - 475.752(3) [Schedules I-IV]
 - 475.814 [hydrocodone]
 - 475.824 [methadone]
 - 475.834 [oxycodone]
 - 475.854 [heroin]
 - 475.874 [3,4-methylenedioxymethamphetamine/MDMA]
 - 475.884 [cocaine]
 - 475.894 [methamphetamine]¹⁰
- Unlawful possession of a prescription drug under ORS § 689.537(6);
- Unlawful possession of marijuana as described in ORS §§ 475B.337 or 475B.341, if the offense is a misdemeanor or felony;
- Endangering the welfare of a minor under ORS § 163. 575(1)(b);
- Frequenting a place where controlled substances are used under ORS § 167.222; and
- A property offense that is motivated by a dependence on a controlled substance or marijuana as defined in ORS § 475B.015.

Counsel should note the availability of conditional discharge for endangerment and dependence-motivated property crimes. Conditional discharge of these statutes may prevent a noncitizen from being removable for crimes involving moral turpitude or child abuse.

⁸ 8 U.S.C. § 1229b(b)(1), INA § 240A(b)(1).

⁹ 8 U.S.C. § 1101(a)(43)(b), INA § 1101(a)(43)(b).

¹⁰ Many simple possession charges are now E violations after the passage of Measure 110, see below.

III. Related Issues For Noncitizens Facing Drug Charges

A. Measure 110

In 2020, Oregon voters passed Measure 110, which reduced penalties for personal possession of illegal drugs.¹¹ Effective February 1, 2021, Measure 110 reduced personal, non-commercial possession of large amounts from a felony to a Class A misdemeanor, and small amounts from a Class A misdemeanor to a new Class E violation.¹²

Class E violations under Measure 110 should not be considered convictions for immigration purposes. The Board of Immigration Appeals (BIA) has found that violation findings attained through proceedings under ORS § 153.076 are not convictions for immigration purposes because those proceedings fail to provide constitutional protections commensurate with criminal proceedings, including the rights to a jury, appointed counsel, and proof beyond a reasonable doubt. *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004). A Class E violation is subject to proceedings under ORS § 153.076 and therefore would not be considered a conviction for immigration purposes.¹³

If you are dealing with a PCS charge prior to the effective date of Measure 110 that may now be subject to violation treatment, please contact IRP for assistance at irp@ojrc.info.

B. ORS § 475.752 Prohibited Acts Generally

In some cases, you may be able to mitigate the potential adverse immigration consequences of a drug-related charge by pleading to an offense under the non-substance specific statute, ORS § 475.752 (formerly ORS § 475.992). Pleading to an offense under ORS § 475.752 instead of a substance-specific offense may provide arguments that the conviction is not a CSO as defined by the Immigration and Nationality Act (INA). This overbreadth argument is sometimes called the *Paulus* defense, after *Matter of Paulus*, 11 I&N Dec. 274 (BIA 1965), the precedential decision first using this rationale to find someone not deportable for a state drug offense. The *Paulus* defense has been affirmed in several subsequent cases, including by the Supreme Court in *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015).

11 Drug Addiction Treatment and Recovery Act, <http://oregonvotes.org/irr/2020/044text.pdf>.

12 See “Measure 110 (2020) Background Brief” prepared by the Oregon Legislative Policy and Research Office, [https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-\(2020\).pdf](https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-(2020).pdf).

13 Counsel should be wary, however, of ICE attempting to charge a CSO violation as a ground of inadmissibility under 8 U.S.C. § 1182(a)(2)(A)(i)(II), INA § 212(a)(2)(A)(i)(II) (alien convicted of ... a violation of ... any law or regulation of a State ... relating to a controlled substance). The language is somewhat vague, and the BIA has held in at least one unpublished decision that a plea to a “violation” of a controlled substances offense followed by a successful conditional discharge was still sufficient to trigger inadmissibility. *In re: Dean*, A46-642-279, 2006 WL 2008153 (BIA 2006) (unpublished).

“Controlled substance” for immigration purposes is defined by the federal Controlled Substances Act, 21 U.S.C. § 802(6) to mean a drug or other substance, or immediate precursor, included in the federal drug schedules.¹⁴ The federal drug schedules are detailed at 21 CFR § 1308.01-.15. To be deportable or inadmissible for a CSO, the controlled substance must be specifically listed in the federal CS schedules. *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015). To determine whether a state drug offense triggers deportability, including whether the relevant CS is on the federal schedules, the immigration judge or officer is limited to the elements of the statute of conviction. See *Descamps v. United States*, 133 S.Ct. 2276 (2013); *Mathis v. United States*, 136 S.Ct. 2243 (2016). The immigration judge therefore must determine whether the minimum conduct under the state statute is within the scope of the federal CSA and federal CS schedules.

“Controlled substance” under Oregon law is defined by ORS § 475.005(6) to mean a drug or immediate precursor as defined in the federal CS schedules, as modified by ORS § 475.035. ORS § 475.035 gives authority to the Board of Pharmacy to modify the Oregon CS schedules. The Oregon CS schedules are found in the Board of Pharmacy regulations at OAR 855-080-0020 through 855-080-0028, and may include substances not on the federal CS schedules.¹⁵ If it can be shown that the Oregon schedule was broader than the federal schedule at the time of conviction, then one can argue that the conviction is categorically too broad to be a removable offense.¹⁶ A state schedule may be broader than the federal schedule if it includes an entirely different additional substance or if it includes a material or chemical variation of a substance that is excluded from the federal schedule.¹⁷

To strengthen the argument that an offense under ORS § 475.752 does not trigger deportability or inadmissibility as a controlled substance offense, we recommend the following:

- Keep the substance out of the record (especially the plea and judgment)
- In the plea agreement, indicate the plea is to a “controlled substance” as defined by Oregon schedules, including Chapter 855 of the Board of Pharmacy: <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3987>
- It would be best to confirm at the time of plea that at least one of the substances on the relevant Oregon schedule is not also federally listed.

¹⁴ 8 U.S.C. § 1227(a)(2)(B)(i), INA § 237(a)(2)(B)(i); 8 USC 1182(a)(2)(A)(i)(II), 212(a)(2)(A)(i)(II).

¹⁵ It appears that the Board has added several substances to schedule I. See, https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=uq57GjslQxSY-t066TLWoY3PU5Gq3vtN5mniazWs0LnebFhOW-RQs!443389131?selectedDivision=3987. For comparison, the federal controlled substances can be found at <https://www.deadiversion.usdoj.gov/schedules/>.

¹⁶ Since both schedules are regularly revised, there is no guarantee that the substances added by Oregon’s pharmacy board have not later been added to the federal schedules. The adjudicator must look to the schedules as they existed at the time of conviction, not at the time removal proceedings occur. *Medina-Rodriguez v. Barr*, 979 F.3d 738 (9th Cir. 2020). Thus, a fresh comparison would be required in each individual case.

¹⁷ See *United States v. Bautista*, 989 F.3d 698 (9th Cir. Feb. 26, 2021) (Arizona conviction for transportation of marijuana is not a prior controlled substances offense for ACCA purposes, since at the relevant time the Arizona definition of ‘marijuana’ included hemp, while the federal definition did not; the Arizona statute was therefore categorically overbroad) [Note: ‘industrial’ hemp has been legal in Oregon since 2010].

Oregon courts have found that the state is not required to specify the particular substance when a defendant is charged under ORS § 475.992. *State v. Hansz*, 167 Or. App. 147, 5 P.3d 1109 (2000). In *Hansz*, the defendant argued that changing the identity of the controlled substance by interlineation in a charge for possession of a Schedule II controlled substance under ORS § 475.992(4)(b) was impermissible because it changed the essential nature of the charge. The court rejected the defendant's argument that "the [s]tate is required to prove beyond a reasonable doubt the specific controlled substance which the defendant is alleged to have possessed." *Id.* at 1111. The court found that the specific identity of the substance in the charge was "mere surplusage." *Id.* at 1112. Rather, the state was only required to prove "actual possession of a substance, coupled with knowledge that it is a controlled substance of some sort." *Ibid*, quoting *State v. Engen*, 164 Or. App. 591, 604, 993 P.3d 161 (1999). The court found it was, "unnecessary to plead the identity of the substance possessed by name, as long as the charging instrument alleges that it is listed in Schedule II." *Id.* at 1112. See also, *State v. Leachman*, 285 Or. App. 756, 398 P.3d 919 (2017) (differing forms of intoxication are means, rather than elements for purposes of Oregon's DUI statute).¹⁸

If you plan to make this argument before an immigration adjudicator, contact irp@ojrc.info for more information.

C. Pre-July 14, 2011 Expungements of Simple Possession and Paraphernalia

While a rehabilitative expungement generally remains a "conviction" for immigration purposes, a small exception exists for certain older convictions, as long as the noncitizen remains in the Ninth Circuit, and the noncitizen would theoretically have been eligible for a federal expungement under 18 § U.S.C. 3607. See *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011), overruling *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000), prospectively only. Thus, within the Ninth Circuit, an expungement (or similar disposition) should avoid removability if:

- The offense occurred prior to July 14, 2011;
- The offense involved (1) simple possession; (2) possession of paraphernalia; or (3) both;
- The noncitizen either:
 - Did not violate probation on that offense; or
 - Violated probation, but was under the age of 21 when the offense was committed;
- The noncitizen has not gotten a prior possession offense expunged;
- The expungement is applied to the noncitizen's first such offense;

It does not matter when the expungement itself was completed, but this exception does not apply to a person who is still in the *process* of seeking the rehabilitative relief.

¹⁸ Oregon's treatment of the controlled substance as a "means" of commission rather than an "element" of ORS 475.752 differs from other states, such as Iowa. See *Matter of Gonzalez-Lemus*, 27 I&N Dec. 612 (BIA 2019) (Iowa drug statute is divisible into "elements" in the case of marijuana, methamphetamine, or amphetamine because different penalties are prescribed for each drug). *Matter of Laguerre*, 28 I&N Dec. 437 (BIA 2022) (identity of the controlled substance is an "element" under New Jersey law because defendant can be convicted multiple times for possessing multiple substances during single act regardless of state case law finding that defendant need not know precisely what drug she possessed).

D. Other Drug-Related Immigration Consequences

Even in the absence of a formal conviction, conduct involving controlled substance may have adverse immigration consequences:

1. Admission to Commission of a Controlled Substance Offense

A noncitizen can be found inadmissible if they admit having committed a CSO, or admit committing acts that constitute the essential elements of a commission of a CSO.¹⁹ 8 U.S.C. § 1182(a)(2)(A)(i). To be found inadmissible under this ground, four factors must be met. 1) It must be a crime in the jurisdiction in which it was committed;²⁰ 2) The offense still must meet the definition of a deportable CSO; 3) the person must be provided with an understandable definition of the crime;²¹ and 4) the admission must be free and voluntary.²²

There are limits on when the government can find someone inadmissible for admission to a CSO. A guilty plea or alternative disposition attained through criminal proceedings cannot have any worse or more serious immigration consequences than a formal criminal conviction. *Dillingham v. I.N.S.*, 267 F.3d 996 (9th Cir. 2001); *Matter of Winter*, 12 I&N Dec. 638 (BIA 1986) (“the plea to an indictment or complaint is so much an integral part of the entire criminal proceeding that it cannot be isolated from the final result of that proceeding, and given more force or finality than that result”); *Matter of Seda*, 17 I&N Dec. 550 (BIA 1980) (plea of guilty that results in something less than a conviction is not, without more, tantamount to admission of a crime), overruled in part on other grounds by *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988). This should mean that an individual who successfully completes conditional discharge under ORS § 475.245 cannot later be found inadmissible for admission to committing a CSO based on the same underlying facts of the successfully diverted drug charge.

2. Reason to Believe a Drug Trafficker

A noncitizen can also be found inadmissible if there is “reason to believe” the person “is or has been an illicit trafficker in any controlled substance...or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance” or “is the spouse, son, or daughter” of a noncitizen inadmissible for such activity. 8 U.S.C. § 1182(a)(2)(C), INA § 212(a)(2)(C). To be found inadmissible under this ground, the government has the burden of producing “reasonable, substantial and probative” evidence that demonstrates that the noncitizen was a knowing participant in drug trafficking activities. *Lopez-Molina v. Ashcroft*, 368 F.3d 1206 (9th Cir. 2004).

This is a very harsh ground of inadmissibility; any reference in police reports or charging documents to the sale, delivery, or manufacturing of a controlled substance could trigger application of this ground. Therefore, it is best to keep any reference to similar facts out of the record of conviction entirely.

¹⁹ Note: this is different than the issue of having a conviction for immigration purposes based on admitting facts sufficient to warrant a finding of guilt, as described under 8 U.S.C. § 1101(a)(48)(A).

²⁰ *Matter of M-*, 1 I&N Dec. 229 (BIA 1942).

²¹ *Matter of K-*, 9 I&N Dec. 715 (BIA 1962).

²² *Matter of G-*, 1 I&N Dec. 225 (BIA 1942).

3. Drug Abuser or Addict

Even absent any criminal records involving controlled substances, a noncitizen can be found inadmissible for being a drug abuser or addict. 8 U.S.C. § 1182(a)(1)(A)(iv), INA § 212(a)(1)(A)(iv).

This is a factual issue, meaning that no conviction is necessary. However, the substance must be listed in the federal schedules.²³ This ground is most likely to arise when the noncitizen applies for lawful status, especially if the application requires a medical examination. The Centers for Disease Control and Prevention (CDC) sets the guidelines to determine whether a noncitizen is a drug abuser or addict.²⁴ A civil surgeon may determine whether a noncitizen is a drug abuser or addict, or is in sustained remission, according to the Diagnostic and Statistical Manual of Mental Disorders (DSM).²⁵ The DSM defines sustained remission to include at least 12 months without use. However, that is not the only factor.²⁶ Taking prescription drugs in accordance with a doctor's instruction is not considered a substance use disorder. However, abuse of prescription drugs can trigger inadmissibility.²⁷

Similarly, a noncitizen can be found deportable if, at any time after admission, the person has been a drug abuser or addict. 8 U.S.C. § 1227(a)(2)(B)(ii), INA § 237(a)(2)(B)(ii). In practice, it is rare for a noncitizen to be charged as deportable solely on the basis of being a drug abuser or addict.

4. Marijuana

Despite the legalization of marijuana (with restrictions) in Oregon, marijuana is still illegal under federal law. Therefore, marijuana-related conduct that may be legal under Oregon law can still trigger inadmissibility and deportability under immigration law. This includes if a noncitizen works in the marijuana industry, in which case they may be found inadmissible for “reason to believe” they are a drug trafficker. The Immigrant Legal Resource Center has created a comprehensive practice advisory on the risks of legalized marijuana for noncitizens: <https://www.ilrc.org/warning-immigrants-about-medical-and-legalized-marijuana>.

23 USCIS Policy Manual, Volume 8 – Admissibility, Part B – Health Related Grounds of Inadmissibility, Chapter 8 – Drug Abuse or Drug Addiction (July 26, 2018), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume8-PartB-Chapter8.html>, *Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-related Disorders for Panel Physicians*, Centers for Disease Control and Prevention, November 2017, <https://www.cdc.gov/immigrantrefugeehealth/exams/ti/panel/mental-panel-technical-instructions.html>

24 8 U.S.C. § 1182(a)(1)(A)(iv), INA § 212(a)(1)(A)(iv); 42 C.F.R. § 34.2(h).

25 USCIS Policy Manual, Volume 8 – Admissibility, Part B – Health Related Grounds of Inadmissibility, Chapter 8 – Drug Abuse or Drug Addiction.

26 Hasin, Deborah S. et al., DSM-5 Criteria for Substance Use Disorders: Recommendations and Rationale, *The American Journal of Psychiatry* 170.8, 834–851 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3767415/>

27 *Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-related Disorders for Panel Physicians*, Centers for Disease Control and Prevention, November 2017, <https://www.cdc.gov/immigrant-refugeehealth/exams/ti/panel/mental-panel-technical-instructions.html>

5. Discretion

Even if a noncitizen avoids triggering drug-related statutory grounds of inadmissibility or deportability, any such conduct or related criminal history will be a negative factor as a matter of discretion. Most immigration benefits and forms of relief from removal are discretionary. Maintaining good records of participation in substance abuse treatment, evidence of sobriety or staying clean, and evidence of positive factors in the person's case can all help mitigate the negative discretionary effect of controlled substance activity.

E. Resources and Assistance

A model conditional discharge agreement is included in this advisory as Addendum 1, and a list of Oregon specialty courts is included as Addendum 2. Even if your client is eligible for a no-plea conditional discharge, it is always advisable for criminal defense counsel to obtain competent assistance to identify the immigration needs and goals of noncitizen clients. Defense providers representing indigent defendants in Oregon may contact the Oregon Justice Resource Center Immigrant Rights Project for assistance. Other defense providers should encourage their clients to seek similar advice from immigration counsel. A general directory of immigration counsel can be found at www.aialawyer.com.

IV. Addenda

Addendum 1: Example Conditional Discharge Agreement

Addendum 2: List of Specialty Courts

EXAMPLE CONDITIONAL DISCHARGE AGREEMENT¹

Defendant: _____ Case # _____

Defendant DOB: _____ SID # _____

The defendant understands and agrees to the following:

1. I have been charged with the following:

Count	Charge	Grid Block (OAR or STIP)	Max Jail/Prison	Max Fine	ODL Sanction

2. I will be placed on a ____ month period of probation as ordered by the court. The terms of the probation include the requirements outlined in Section (6) of this agreement, and any additional special condition(s) imposed by the court (if applicable).
3. My lawyer has advised me of the nature of the charge(s), the defenses, if any, and any legal challenges that I have in this case. I am satisfied with the advice and help I received from my lawyer.
4. I understand that if I fulfill the terms and conditions of this agreement, the criminal charge(s) against me listed above in Section (1) will be dismissed with prejudice.
5. I understand that I may plead “not guilty” to any charge against me. I understand that I have the following rights, and I am freely and voluntarily waiving these rights with respect to each criminal charge:
- The right to a speedy trial and trial by jury;
 - The right to present evidence on my behalf;
 - The right to confront and cross-examine witnesses against the myself;
 - The right to contest evidence presented against me, including the right to object to hearsay evidence;
 - The right to appeal from a judgment of conviction resulting from an adjudication of guilt entered under [ORS 475.245(2)/ORS 137.532], unless the appeal is based on an allegation that the sentence exceeds the maximum allowed by law or constitutes cruel and unusual punishment.

¹ Special thanks to Kacy Jones for providing the template for this example and to Kristina Kayl for additional review.

6. Participation in [applicable specialty court or conditional discharge program] requires defendant to:
- a) Comply with the general terms of probation, and any special conditions imposed by the court, the probation officer, or any treatment program to which defendant has been assigned.
 - b) [other program- or defendant-specific requirements listed here];
7. I am required to pay any restitution owed to the victim as determined by the court, and any fees for court-appointed counsel as ordered by the court under ORS 135.050.
8. I have notice, pursuant to ORS 135.385, that if am not a United States citizen, then failure to successfully complete the conditions of this agreement and a finding of guilt may result in removal proceedings, deportation, exclusion from admission to the United States, or denial of naturalization. I understand that removal and other immigration consequences are the subject of a separate proceeding and that no one, including my attorney or the court, can predict to a certainty the effect of a conviction or other criminal disposition on my immigration status.
9. Any failure in [applicable treatment program] (such as being absent from treatment activities, or violation of the terms of this agreement, or the commission of a new crime) could result in termination from the program, modification of the treatment or supervision requirements, or the imposition of sanctions, including days in jail. If I am terminated from the program, then the court may resume the criminal proceedings and may find me guilty of the offenses in the accusatory statement in accordance with the waiver of rights in Section (4) of this agreement. I may not contest the sufficiency of the evidence establishing guilt in the accusatory statement.

Date

Petitioner's Signature

Date

Petitioner's Attorney

Bar Number

Date

Deputy District Attorney

Bar Number

Addendum 2: List of Specialty Courts

County	Program Name	Program Type
Baker	Mental Health Court	Mental Health Court
Benton	Adult Drug Court	Adult Drug Court
Clackamas	Adult Drug Court	Adult Drug Court
Clackamas	DUII Treatment Court	DWI/DUI Court
Clackamas	Mental Health Court	Mental Health Court
Clatsop	Adult Drug Court	Adult Drug Court
Clatsop	Mental Health Treatment Court	Mental Health Court
Columbia	Adult Drug Court	Adult Drug Court
Columbia	Family Drug Court	Family Dependency Court
Columbia	Mental Health Court	Mental Health Court
Columbia	Veteran & Behavior Health Court	Veterans Treatment Court
Coos	Family Treatment Court	Family Dependency Court
Coos	Mental Health Court	Mental Health Court
Crook	Adult Drug Court	Adult Drug Court
Crook	Mental Health	Mental Health Court
Deschutes	Adult Drug Court	Adult Drug Court
Douglas	Adult Drug Court	Adult Drug Court
Douglas	Mental Health Court	Mental Health Court
Harney	Adult Treatment Court	Adult Drug Court
Harney/Grant	Family Treatment Court	Family Dependency Court
Hood River	Adult Drug Court	Adult Drug Court
Jackson	Mental Health Court	Mental Health Court
Jackson	Recovery Opportunity Court	Adult Drug Court
Jefferson	Adult Drug Court	Adult Drug Court
Jefferson	Mental Health Court	Mental Health Court
Josephine	Adult Drug Court	Adult Drug Court
Josephine	Adult Mental Health Court	Mental Health Court
Klamath	Behavioral Intervention Court	Mental Health Court
Klamath	Adult Drug Court Program	Adult Drug Court
Klamath	Family Court	Family Dependency Court
Klamath	Veterans Treatment Court	Veterans Treatment Court
Lake	TESC(Treatment and Enhanced Supervision Court)	Adult Drug Court
Lane	Adult Treatment Court	Adult Drug Court
Lane	County Mental Health Court	Mental Health Court
Lane	County Veterans Treatment Court	Veterans Treatment Court
Lane	RAP Juvenile Treatment Court	Juvenile Drug Court
Lincoln	Adult Drug Court	Adult Drug Court
Lincoln	County Mental and Wellness Health Court	Mental Health Court
Lincoln	County Family Treatment Court	Family Dependency Court
Lincoln	Measure 57 Court	Adult Drug Court
Linn	Adult Drug Court	Adult Drug Court
Linn	Family Dependency Treatment Court	Family Dependency Court
Malhuer	S.A.F.E	Adult Drug Court

Marion	Adult Drug Court	Adult Drug Court
Marion	Fostering Attachment Treatment Court	Family Dependency Court
Marion	Mental Health Court	Mental Health Court
Marion	STAR Juvenile Treatment Court	Juvenile Drug Court
Marion	Veterans Treatment Court	Veterans Treatment Court
Multnomah	Mental Health Court	Mental Health Court
Multnomah	DISP (DUII)	DWI/DUI Court
Multnomah	M57 START (Drug)	Adult Drug Court
Multnomah	STEP (Drug)	Adult Drug Court
Polk	Polk County Drug Court	Adult Drug Court
Tillamook	Mental Health Court	Mental Health Court
Umatilla	6th Judicial Treatment Court	Adult Drug Court
Union	Behavioral Health Court	Mental Health Court
Union	Treatment Court	Hybrid DWI/Drug Court
Wallowa	Adult Drug/DUII Court	Hybrid DWI/Drug Court
Wasco	Adult Drug Court	Adult Drug Court
Wasco	Family Dependency Court	Family Dependency Court
Washington	Veterans Court	Veterans Treatment Court
Washington	Adult Drug Court	Adult Drug Court
Washington	Keys to Success	Juvenile Drug Court
Washington	Mental Health Court	Mental Health Court
Yamhill	Adult Recovery Court	Adult Drug Court
Yamhill	Court Coordinated Services	Mental Health Court
Yamhill	Yamhill Juvenile Drug Court	Juvenile Drug Court

About the Authors

THE OJRC IMMIGRANT RIGHTS PROJECT

provides individual consultations with public defense providers representing indigent clients. This practice advisory is based on legal research and may contain potential arguments and opinions of the authors. This practice advisory does not replace independent legal advice provided by an attorney familiar with a client's case or an individual evaluation by the OJRC Immigrant Rights Project. IRP welcomes suggestions for corrections or additional information.

Authors: Erin McKee
Joseph Justin Rollin

Layout: Todd Davilla

Published December 2022

