

Marijuana Possession Diversion Form 2 (for use after 01/01/12)

EXPLANATION OF RIGHTS AND DIVERSION AGREEMENT

You have been charged with the offense of possession of less than one ounce of marijuana. Oregon law classifies this offense as a "violation," which means that the court cannot sentence a person convicted of this charge to jail. The penalty for possession of less than one ounce of marijuana is a presumptive fine of \$650. A judge may decide to sentence a person convicted of this offense to do community service work instead of a fine.

You have three choices on how to handle this charge. If you have questions about these choices, ask your attorney, if you have one, or the judge. Here are the choices and their possible consequences:

- 1 You may plead "not guilty." You will have a trial at a later date or you may change your plea to "no contest." At trial, a judge will listen to the state's evidence against you and to any relevant information or witnesses you wish to present. The judge will decide whether you are "guilty" or "not guilty." You have no right to a jury trial or to state-paid counsel for a violation charge.
- 2 You may plead "no contest" and not apply for diversion. This means you do not want to contest the charge by having a trial but do not admit you are guilty. The judge will review the police officer's report to determine whether there is enough evidence to find you "guilty." If you plead "no contest," you cannot give the judge evidence to show your innocence.
- 3 You may apply for the Marijuana Diversion Program. You must be eligible (explained below) to be allowed in the diversion program. If eligible, you may file the petition on the other side of this document with the court and then must serve a copy on the prosecuting attorney. The petition is an agreement between you and the court that you will complete the Marijuana Diversion Program. If you complete the one-year program, you may file a motion to ask the court to dismiss the charge. If you fail to fulfill the agreement, the court will allow the state to prosecute you. The rest of this document describes the diversion program. Before you choose this option, read the entire document.

ELIGIBILITY FOR DIVERSION PROGRAM. You are eligible to participate in the "diversion program" if:

- a. you meet **all** the requirements described in the attached "Petitioner Sworn Statement of Eligibility"; **and**
- b. you have not already pled "no contest" to the present marijuana possession charge, and no trial on that charge has yet begun; **and**
- c. you appeared in court on the date scheduled for your first appearance on the charge or the court finds you had good reason for not appearing; **and**
- d. you file this petition with the court within thirty (30) days of your first appearance in court, unless the court finds you have a good reason for the delay.

LEGAL RIGHTS WAIVED. To enter the diversion program, you must waive the following rights:

- a. The right to speedy trial and sentencing, should the court terminate the diversion agreement.
- b. Former jeopardy rights under the federal and state constitutions and ORS 131.505 to 131.525 in any subsequent action on the charge or on any other offenses based on the same criminal episode.
- c. The right to have the marijuana possession charge decided at the same time as certain other charges (former jeopardy). **This paragraph applies to you only if you are charged with other offenses in addition to marijuana possession and the additional charges are from the same alleged episode.** All offenses alleged to have been committed at the same time must be prosecuted at the same time. The diversion agreement between you and the court applies only to the marijuana possession charge. Prosecution of this charge **only** will be delayed during the diversion program period. Other charges will be prosecuted separately from the marijuana possession charge and will not be delayed by the diversion agreement.

AGREEMENT WITH THE COURT. To have the court dismiss the marijuana possession charge after you complete the diversion program, you agree to do the following:

- a. Pay the court a filing fee of \$335, and pay a diagnostic assessment fee of \$90 to the diagnostic agency. If you cannot afford to pay these fees, tell the judge. Some or all of these fees may be waived, depending on your financial situation. The court may allow you to make payments over time.
- b. Contact the diagnostic agency as the court directs and have it evaluate to determine the extent of any drug abuse problem you may have. You will be referred to a treatment program if the agency finds treatment to be necessary. The cost of the evaluation is \$90. You must pay this amount directly to the agency that performs the diagnostic assessment.
- c. Complete any required treatment and to pay for it. If you cannot pay the cost of treatment, be sure to tell the counselor at your first meeting. The treatment facility may find that you are qualified to have some portion or all of the treatment cost waived and may allow payments overtime.
- d. Comply fully with the laws of this state regarding controlled substances.
- e. **Keep the court and treatment program advised at all times of your current mailing and residential addresses during the diversion period.** This is extremely important, because the court and treatment program will send notices to the address you provide.
- f. **Ask the court to dismiss the charge at the end of the diversion period by filing a motion to dismiss with the court if you want the court to dismiss the charge.**
- g. Attend any "show cause" hearing that the court orders you to attend. If the court believes you have violated this agreement or that you were not eligible for diversion when you filed your petition, the court will offer you a hearing. At that hearing you can "show cause" why the court should not remove you from the diversion program. If you show the court why the court should let you continue diversion, the judge may allow you to continue. The court will send notice of the hearing by regular mail. If you fail to appear at that hearing, the court can terminate the diversion agreement, and the prosecutor will prosecute the charge.