



**Testimony of Leland Baxter-Neal, Staff Attorney
In Support of HB 3201 A – Equitable Justice and Accountability Act
Senate Committee on Judiciary
May 7, 2019**

Chair Prozanski and Members of the Committee:

The American Civil Liberties Union of Oregon¹ supports HB 3201 A, which will ensure that *all* defendants in Oregon who successfully complete deferred resolution programs (diversion and conditional discharge), will conclude their case without a criminal conviction. To be clear, this bill ensures only that immigrant defendants simply receive the same intended outcome from deferred resolution programs as U.S. citizen defendants in the same position.

Deferred resolution programs make our society safer by addressing the root causes of conduct that result in societal harm. They do this by offering eligible defendants the chance to avoid a criminal conviction and its collateral consequences by complying with conditions that are meant to address the harm they may have caused and to prevent such harm in the future.² This can include, for example, requiring a defendant to complete drug rehabilitation, alcohol treatment, or other educational and rehabilitative programs.

HB 3201 A impacts procedures for three separate deferred resolution programs:

- (1) Diversion offered by the District Attorney (DA diversion);
- (2) Diversion for driving under the influence of intoxicants (DUII diversion); and
- (3) Conditional discharge for controlled substance offenses.

Under each program, an individual who successfully completes diversion has their criminal charges dismissed, and an individual violates the terms of their program is convicted.

¹ The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 45,000 members and supporters statewide.

² For example, the statute describing conditional discharge, ORS 475.245, states that the dismissal of charges following the successful completion of probation under that program “is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.”

Because of the structure of Oregon’s deferred resolution statutes, immigrants who successfully complete deferred resolution programs still have a “conviction” under federal law. This is because federal law uses a broad definition for what it considers a “conviction” for the purposes of immigration law.³ Under that definition, an immigrant who has executed a guilty plea or made an admission to alleged facts has a “conviction” even after the state has dismissed the relevant charges.

A conviction for even minor state law offenses can have life-changing consequences for immigrants in Oregon. That is because a conviction for even very minor offenses can result in deportation or bar otherwise-eligible immigrants from receiving critical immigration benefits or even citizenship.

These consequences are true for Oregonians with lawful immigration status and undocumented Oregonians. The immigration consequences of a “conviction” can impact individuals at all levels of immigration status. For example, certain criminal convictions can make a lawful permanent resident (a green card holder) or a DACA recipient (“Dreamer”) subject to deportation. They can prevent an asylee or temporary visa holder from adjusting their status to that of a lawful permanent resident. They can also prevent a lawful permanent resident from naturalizing to become a U.S. citizen.

This current system creates a deterrent to individuals participating in these important programs that make our state safer. For an immigrant facing criminal charges in Oregon, the potential immigration consequences of having a “conviction” on one’s record is frequently much more significant and life-altering than the jail time or financial sanctions the criminal charges carry in state court. If deferred resolution does not fulfill its promise of no conviction, otherwise eligible individuals have little incentive to resolve their charges without a trial. That dynamic produces unnecessary strain for an already overburdened court system and keeps individuals from receiving treatment.

³ 8 USC § 1101(a)(48)(A) states that, for the purposes of immigration law:

“(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 guilt 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.

This current system also creates serious inequities in our criminal justice system by failing to provide the same result for similarly situated defendants. A basic tenet of any criminal justice system is fair and equal treatment. Fundamental to any state criminal justice system is the promise that all people are equal in the eyes of the law. We should all strive to build a criminal justice system where a person does not receive a worse outcome in a criminal proceeding based only on the person's race, religion, gender, sexual orientation or immigration status. This aspiration is unfortunately not yet realized by our deferred resolution laws.

HB 3201 A addresses these problems by enacting a simple, procedural change that does not sacrifice any of the goals of deferred resolution. Qualified individuals will still need to meet the same eligibility requirements for the program and be subject to the same requirements. However, instead of executing a guilty plea or making an admission to alleged facts on the record (the very things that result in a "conviction" under federal law), the defendant will waive a series of constitutional rights: the right to a jury trial, the right to present evidence in one's defense, the right to confront witnesses, and the right to make any objections to the introduction of evidence of guilt. In essence, the defendant will agree to present no defense, allowing a conviction to occur if they fail to complete the deferred resolution program.

This bill provides significant improvements for our criminal justice system with no downside. As noted, deferred resolution programs carry significant benefits: fewer cases proceed to trial and, therefore, they consume fewer court resources; more defendants receive treatment for conditions such as drug and alcohol addiction; and successful defendants are able to get on with their lives without the collateral consequences of a criminal conviction. There is simply no reason not to ensure that these programs serve citizen and non-citizen Oregonians equally.

For these reasons, the ACLU of Oregon urges you to support HB 3201 A. Please feel free to contact us if you have any questions, comments, or concerns.