

SENATE BILL REPORT

SHB 1189

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, APRIL 2, 1991

Brief Description: Allowing courts to award costs for probation or deferred prosecution.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Ludwig, Locke, Padden, Riley, Inslee, Paris, Mielke, Scott, H. Myers, R. Meyers and Orr).

HOUSE JUDICIARY COMMITTEE

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, L. Kreidler, Madsen, Newhouse, Rasmussen, and A. Smith.

Staff: Richard Rodger (786-7461)

Hearing Dates: March 26, 1991; April 2, 1991

BACKGROUND:

A person charged with a misdemeanor crime may, under certain circumstances, seek a deferred prosecution. The vast majority of deferred prosecutions occur in driving while intoxicated (DWI) cases. In order to get a deferral a defendant must show, among other things, that his or her conduct was the result of alcoholism or drug addiction. A person who is granted a deferral is not prosecuted for the crime if he or she successfully completes the required program of treatment.

As part of a deferred prosecution, the court is expressly authorized by a statute to impose probation in order to supervise the conduct of the defendant. In another statute, courts are authorized to impose on "misdemeanants" a monthly assessment of up to \$50 for probationary supervision. A person granted a deferred prosecution is not literally a "misdemeanant."

In misdemeanor cases generally, courts are also authorized to impose "costs" on a defendant. These costs may include only expenses "specially incurred by the state in prosecuting the defendant." These costs may not include expenses of providing a constitutionally guaranteed jury trial, or the general overhead of the criminal justice system. These costs may include such things as expenses for service of warrants for failure to appear.

The Washington Court of Appeals recently upheld a lower court ruling that the trial court may not impose administrative

costs in deferred prosecutions as a condition of granting a deferral. The opinion also casts some doubt on whether the trial court may impose probation fees as part of a deferral.

SUMMARY:

Trial courts are explicitly authorized to impose an administrative fee of up to \$150 as a condition of granting a deferred prosecution. Imposition of a monthly fee of up to \$50 for probation is also authorized.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

This bill will allow the continued use of deferred prosecutions which have proved to be successful. Failure to pass this bill will impose considerable costs on the counties.

TESTIMONY AGAINST:

The \$150 administrative fee is too high; the fee should be \$50. Language should be included to waive the fee for indigent persons.

TESTIFIED: Judge Robert McBeth, Washington State Association of District and Municipal Court Judges (pro); Judge Thomas Wynne, Washington State Association of District and Municipal Court Judges (pro); Kurt Sharar, Washington State Association of Counties (pro); John S. Abolofia, Tacoma lawyer (con); Linda Grant, Association of Alcoholism and Addiction Programs (pro); Mark Thompson, Thurston County Prosecutor's Office (pro)