

SENATE BILL REPORT

SB 6049

AS OF JANUARY 18, 1994

Brief Description: Revising procedures for deferred prosecutions.

SPONSORS: Senators A. Smith and McAuliffe

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Lidia Mori (786-7755)

Hearing Dates: January 19, 1994

BACKGROUND:

Deferred prosecution under Chapter 10.05 RCW allows a person who has been charged with a DWI to enter a treatment program in lieu of being prosecuted for the charge. A person is not eligible for a deferred prosecution program more than once in five years. In return for being able to enter deferred prosecution the petitioner must execute a statement containing an acknowledgement of rights, a stipulation to the admissibility of the facts in the police report, and an acknowledgement that the statement will be used to support a finding of guilt if the deferred prosecution were to be revoked.

Currently, the Department of Licensing (DOL) maintains a record for each petitioner for five years showing the charge and acceptance into deferred prosecution.

If a person on deferred prosecution fails to fulfill any term of the treatment plan, the agency administering the treatment is required to notify the court, the prosecutor and the person's attorney. The court is required to hold a hearing to determine whether the petitioner should be removed from deferred prosecution.

It is believed that the accountability of the deferred prosecution system needs to be enhanced. There is concern that violations of treatment plans occur and are not reported in a timely manner or the court does not take action promptly.

SUMMARY:

A person is not eligible for a deferred prosecution program more than once in a ten-year period. Before the court enters an order granting entry into a deferred prosecution program, the petitioner must execute a statement that contains an acknowledgment of rights, a stipulation to the admissibility of facts in the police report, a waiver of the right to testify, to call witnesses to testify and to present evidence

in the petitioner's defense, a waiver of the right to a jury trial and an acknowledgement that the statement will be used to support a finding of guilt should the deferred prosecution be revoked.

The petitioner must disclose whether he or she intends to use the treatment program to obtain a separate deferred prosecution for any other offenses or cases.

If the petitioner commits or is convicted of a similar offense while in deferred prosecution, the court is required to hold a hearing in an effort to confirm the commission or conviction. If the court, based on a preponderance of the evidence, confirms the commission or conviction it will remove the petitioner from deferred prosecution. The Department of Licensing is directed to send a monthly abstract of the petitioner's driving record to the court that granted the deferred prosecution. The court must remove the petitioner from deferred prosecution if the record shows commission or conviction of a similar offense.

Appropriation: none

Revenue: none

Fiscal Note: requested