

E2SHB 3254 - S AMD TO TRAN COMM AMD (S-5957.1/08) **254**

By Senators Hargrove, Brandland, Haugen, and Fairley

WITHDRAWN 03/07/2008

1 On page 34, after line 7 of the amendment, insert the following:

2 "Sec. 15. RCW 10.05.010 and 2002 c 219 s 6 are each amended to
3 read as follows:

4 (1) In a court of limited jurisdiction a person charged with a
5 misdemeanor or gross misdemeanor may petition the court to be
6 considered for a deferred prosecution program. The petition shall be
7 filed with the court at least seven days before the date set for trial
8 but, upon a written motion and affidavit establishing good cause for
9 the delay and failure to comply with this section, the court may waive
10 this requirement subject to the defendant's reimbursement to the court
11 of the witness fees and expenses due for subpoenaed witnesses who have
12 appeared on the date set for trial.

13 (2) A person charged with a traffic infraction, misdemeanor, or
14 gross misdemeanor under Title 46 RCW shall not be eligible for a
15 deferred prosecution program unless the court makes specific findings
16 pursuant to RCW 10.05.020 or section 18 of this act. Such person shall
17 not be eligible for a deferred prosecution program more than once.
18 Separate offenses committed more than seven days apart may not be
19 consolidated in a single program.

20 (3) A person charged with a misdemeanor or a gross misdemeanor
21 under chapter 9A.42 RCW shall not be eligible for a deferred
22 prosecution program unless the court makes specific findings pursuant
23 to RCW 10.05.020. Such person shall not be eligible for a deferred
24 prosecution program more than once.

25 **Sec. 16.** RCW 10.05.020 and 2002 c 219 s 7 are each amended to read
26 as follows:

27 (1) Except as provided in subsection (2) of this section or section
28 18 of this act, the petitioner shall allege under oath in the petition
29 that the wrongful conduct charged is the result of or caused by

1 alcoholism, drug addiction, or mental problems for which the person is
2 in need of treatment and unless treated the probability of future
3 recurrence is great, along with a statement that the person agrees to
4 pay the cost of a diagnosis and treatment of the alleged problem or
5 problems if financially able to do so. The petition shall also contain
6 a case history and written assessment prepared by an approved
7 alcoholism treatment program as designated in chapter 70.96A RCW if the
8 petition alleges alcoholism, an approved drug program as designated in
9 chapter 71.24 RCW if the petition alleges drug addiction, or by an
10 approved mental health center if the petition alleges a mental problem.

11 (2) In the case of a petitioner charged with a misdemeanor or gross
12 misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under
13 oath in the petition that the petitioner is the natural or adoptive
14 parent of the alleged victim; that the wrongful conduct charged is the
15 result of parenting problems for which the petitioner is in need of
16 services; that the petitioner is in need of child welfare services
17 under chapter 74.13 RCW to improve his or her parenting skills in order
18 to better provide his or her child or children with the basic
19 necessities of life; that the petitioner wants to correct his or her
20 conduct to reduce the likelihood of harm to his or her minor children;
21 that in the absence of child welfare services the petitioner may be
22 unable to reduce the likelihood of harm to his or her minor children;
23 and that the petitioner has cooperated with the department of social
24 and health services to develop a plan to receive appropriate child
25 welfare services; along with a statement that the person agrees to pay
26 the cost of the services if he or she is financially able to do so.
27 The petition shall also contain a case history and a written service
28 plan from the department of social and health services.

29 (3) Before entry of an order deferring prosecution, a petitioner
30 shall be advised of his or her rights as an accused and execute, as a
31 condition of receiving treatment, a statement that contains: (a) An
32 acknowledgment of his or her rights; (b) an acknowledgment and waiver
33 of the right to testify, the right to a speedy trial, the right to call
34 witnesses to testify, the right to present evidence in his or her
35 defense, and the right to a jury trial; (c) a stipulation to the
36 admissibility and sufficiency of the facts contained in the written
37 police report; and (d) an acknowledgment that the statement will be
38 entered and used to support a finding of guilty if the court finds

1 cause to revoke the order granting deferred prosecution. The
2 petitioner shall also be advised that he or she may, if he or she
3 proceeds to trial and is found guilty, be allowed to seek suspension of
4 some or all of the fines and incarceration that may be ordered upon the
5 condition that he or she seek treatment and, further, that he or she
6 may seek treatment from public and private agencies at any time without
7 regard to whether or not he or she is found guilty of the offense
8 charged. He or she shall also be advised that the court will not
9 accept a petition for deferred prosecution from a person who: (i)
10 Sincerely believes that he or she is innocent of the charges ((~~or~~));
11 (ii) sincerely believes that he or she does not, in fact, suffer from
12 alcoholism, drug addiction, or mental problems, unless the petition for
13 deferred prosecution is under section 18 of this act; or (iii) in the
14 case of a petitioner charged under chapter 9A.42 RCW, sincerely
15 believes that he or she does not need child welfare services.

16 (4) Before entering an order deferring prosecution, the court shall
17 make specific findings that: (a) The petitioner has stipulated to the
18 admissibility and sufficiency of the facts as contained in the written
19 police report; (b) the petitioner has acknowledged the admissibility of
20 the stipulated facts in any criminal hearing on the underlying offense
21 or offenses held subsequent to revocation of the order granting
22 deferred prosecution; (c) the petitioner has acknowledged and waived
23 the right to testify, the right to a speedy trial, the right to call
24 witnesses to testify, the right to present evidence in his or her
25 defense, and the right to a jury trial; and (d) the petitioner's
26 statements were made knowingly and voluntarily. Such findings shall be
27 included in the order granting deferred prosecution.

28 **Sec. 17.** RCW 10.05.090 and 1997 c 229 s 1 are each amended to read
29 as follows:

30 If a petitioner, who has been accepted for a deferred prosecution,
31 fails or neglects to carry out and fulfill any term or condition of the
32 petitioner's treatment plan or any term or condition imposed in
33 connection with the installation of an interlock or other device under
34 RCW 46.20.720 or section 9 of this act, the facility, center,
35 institution, or agency administering the treatment or the entity
36 administering the use of the device, shall immediately report such
37 breach to the court, the prosecutor, and the petitioner or petitioner's

1 attorney of record, together with its recommendation. The court upon
2 receiving such a report shall hold a hearing to determine whether the
3 petitioner should be removed from the deferred prosecution program. At
4 the hearing, evidence shall be taken of the petitioner's alleged
5 failure to comply with the treatment plan or device installation and
6 the petitioner shall have the right to present evidence on his or her
7 own behalf. The court shall either order that the petitioner continue
8 on the treatment plan or be removed from deferred prosecution. If the
9 petitioner's noncompliance is based on a violation of a term or
10 condition imposed in connection with the installation of an ignition
11 interlock device under section 9 of this act, the court shall either
12 order that the petitioner comply with the term or condition or be
13 removed from deferred prosecution. If removed from deferred
14 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
15 and, if the charge for which the deferred prosecution was granted was
16 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the
17 department of licensing of the removal and entry of judgment.

18 NEW SECTION. **Sec. 18.** A new section is added to chapter 10.05 RCW
19 to read as follows:

20 (1) A person charged with a misdemeanor or gross misdemeanor under
21 RCW 46.61.502 or 46.61.504 who has had no prior offenses as defined in
22 RCW 46.61.5055 and has been assessed pursuant to subsection (3) of this
23 section shall be eligible for a one-time deferred prosecution program.

24 (2) Before entering an order deferring prosecution under this
25 section, the court shall make a specific finding that the petitioner
26 has no prior offenses as defined in RCW 46.61.5055 and has been
27 assessed by a certified chemical dependency counselor and a licensed
28 mental health professional, and found not to need treatment for
29 alcoholism, drug addiction, or mental problems. As a condition of
30 granting a deferral prosecution petition, the court shall order the
31 petitioner to satisfy the conditions in RCW 10.05.140 and shall order
32 the petitioner to apply for an ignition interlock driver's license from
33 the department of licensing and have a functioning ignition interlock
34 device installed on all motor vehicles operated by the person. The
35 required period of use of the ignition interlock device shall be one
36 year. The court may order supervision of the petitioner during the
37 period of deferral pursuant to RCW 10.05.170.

1 (3) A petitioner seeking a deferral of prosecution under this
2 section shall undergo an assessment by a certified chemical dependency
3 counselor and a licensed mental health professional to determine
4 whether the petitioner is or is not in need of treatment for
5 alcoholism, drug addiction, or mental problems."

6 Renumber the remaining sections consecutively and correct any
7 internal references accordingly.

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8 On page 34, line 16 of the title amendment, after "46.20.740,"
9 strike "and" and after "46.61.5055" insert ", 10.05.010, 10.05.020, and
10 10.05.090"

11 On page 34, line 19 of the title amendment, after "RCW;" insert
12 "adding a new section to chapter 10.05 RCW;"

EFFECT: A one-time deferred prosecution for a first time DUI
offender who does not need alcohol or drug treatment is allowed under
certain circumstances. The defendant must: (1) Be evaluated to
determine that he or she does not need treatment; (2) have no prior
offenses; (3) apply for an ignition interlock driver's license and have
an ignition interlock device installed in his or her car for a period
of one year; and (4) satisfy conditions in RCW 10.05.140, including
having proof of insurance. The court may order supervision during
deferral.

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