

E2SHB 3254 - S AMD TO TRAN COMM AMD (S-5957.1/08) **287**

By Senators Hargrove, Brandland, Haugen, and Fairley

ADOPTED 03/07/2008

1 On page 23, line 14 of the amendment, after "46.61.5055," insert
2 "10.05.020, or section 18 of this act"

3 On page 23, line 16 of the amendment, after "ordinance" insert "or
4 participating in a deferred prosecution program under RCW 10.05.020 or
5 section 18 of this act for an alcohol-related violation of RCW
6 46.61.502 or 46.61.504 or an equivalent local ordinance"

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

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

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

19 (2) A person charged with a traffic infraction, misdemeanor, or
20 gross misdemeanor under Title 46 RCW shall not be eligible for a
21 deferred prosecution program unless the court makes specific findings
22 pursuant to RCW 10.05.020 or section 18 of this act. Such person shall
23 not be eligible for a deferred prosecution program more than once; and
24 cannot receive a deferred prosecution under both RCW 10.05.020 and
25 section 18 of this act. Separate offenses committed more than seven
26 days apart may not be consolidated in a single program.

27 (3) A person charged with a misdemeanor or a gross misdemeanor
28 under chapter 9A.42 RCW shall not be eligible for a deferred

1 prosecution program unless the court makes specific findings pursuant
2 to RCW 10.05.020. Such person shall not be eligible for a deferred
3 prosecution program more than once.

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

6 (1) Except as provided in subsection (2) of this section or section
7 18 of this act, the petitioner shall allege under oath in the petition
8 that the wrongful conduct charged is the result of or caused by
9 alcoholism, drug addiction, or mental problems for which the person is
10 in need of treatment and unless treated the probability of future
11 recurrence is great, along with a statement that the person agrees to
12 pay the cost of a diagnosis and treatment of the alleged problem or
13 problems if financially able to do so. The petition shall also contain
14 a case history and written assessment prepared by an approved
15 alcoholism treatment program as designated in chapter 70.96A RCW if the
16 petition alleges alcoholism, an approved drug program as designated in
17 chapter 71.24 RCW if the petition alleges drug addiction, or by an
18 approved mental health center if the petition alleges a mental problem.

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

1 (3) Before entry of an order deferring prosecution, a petitioner
2 shall be advised of his or her rights as an accused and execute, as a
3 condition of receiving treatment, a statement that contains: (a) An
4 acknowledgment of his or her rights; (b) an acknowledgment and waiver
5 of the right to testify, the right to a speedy trial, the right to call
6 witnesses to testify, the right to present evidence in his or her
7 defense, and the right to a jury trial; (c) a stipulation to the
8 admissibility and sufficiency of the facts contained in the written
9 police report; and (d) an acknowledgment that the statement will be
10 entered and used to support a finding of guilty if the court finds
11 cause to revoke the order granting deferred prosecution. The
12 petitioner shall also be advised that he or she may, if he or she
13 proceeds to trial and is found guilty, be allowed to seek suspension of
14 some or all of the fines and incarceration that may be ordered upon the
15 condition that he or she seek treatment and, further, that he or she
16 may seek treatment from public and private agencies at any time without
17 regard to whether or not he or she is found guilty of the offense
18 charged. He or she shall also be advised that the court will not
19 accept a petition for deferred prosecution from a person who: (i)
20 Sincerely believes that he or she is innocent of the charges ((~~or~~));
21 (ii) sincerely believes that he or she does not, in fact, suffer from
22 alcoholism, drug addiction, or mental problems, unless the petition for
23 deferred prosecution is under section 18 of this act; or (iii) in the
24 case of a petitioner charged under chapter 9A.42 RCW, sincerely
25 believes that he or she does not need child welfare services.

26 (4) Before entering an order deferring prosecution, the court shall
27 make specific findings that: (a) The petitioner has stipulated to the
28 admissibility and sufficiency of the facts as contained in the written
29 police report; (b) the petitioner has acknowledged the admissibility of
30 the stipulated facts in any criminal hearing on the underlying offense
31 or offenses held subsequent to revocation of the order granting
32 deferred prosecution; (c) the petitioner has acknowledged and waived
33 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; and (d) the petitioner's
36 statements were made knowingly and voluntarily. Such findings shall be
37 included in the order granting deferred prosecution.

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

3 If a petitioner, who has been accepted for a deferred prosecution,
4 fails or neglects to carry out and fulfill any term or condition of the
5 petitioner's treatment plan or any term or condition imposed in
6 connection with the installation of an interlock or other device under
7 RCW 46.20.720 or section 9 of this act, the facility, center,
8 institution, or agency administering the treatment or the entity
9 administering the use of the device, shall immediately report such
10 breach to the court, the prosecutor, and the petitioner or petitioner's
11 attorney of record, together with its recommendation. The court upon
12 receiving such a report shall hold a hearing to determine whether the
13 petitioner should be removed from the deferred prosecution program. At
14 the hearing, evidence shall be taken of the petitioner's alleged
15 failure to comply with the treatment plan or device installation and
16 the petitioner shall have the right to present evidence on his or her
17 own behalf. The court shall either order that the petitioner continue
18 on the treatment plan or be removed from deferred prosecution. If the
19 petitioner's noncompliance is based on a violation of a term or
20 condition imposed in connection with the installation of an ignition
21 interlock device under section 9 of this act, the court shall either
22 order that the petitioner comply with the term or condition or be
23 removed from deferred prosecution. If removed from deferred
24 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
25 and, if the charge for which the deferred prosecution was granted was
26 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the
27 department of licensing of the removal and entry of judgment.

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

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

34 (2) Before entering an order deferring prosecution under this
35 section, the court shall make a specific finding that the petitioner
36 has no prior offenses as defined in RCW 46.61.5055 and has been
37 assessed by a certified chemical dependency counselor and a licensed

1 mental health professional, and found not to need treatment for
2 alcoholism, drug addiction, or mental problems. As a condition of
3 granting a deferral prosecution petition, the court shall order the
4 petitioner to satisfy the conditions in RCW 10.05.140 and shall order
5 the petitioner to apply for an ignition interlock driver's license from
6 the department of licensing and have a functioning ignition interlock
7 device installed on all motor vehicles operated by the person. The
8 required period of use of the ignition interlock device shall be one
9 year. The court may order supervision of the petitioner during the
10 period of deferral pursuant to RCW 10.05.170.

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

16 **Sec. 19.** RCW 10.05.160 and 1999 c 143 s 44 are each amended to
17 read as follows:

18 The prosecutor may appeal an order granting deferred prosecution on
19 any or all of the following grounds:

20 (1) Prior deferred prosecution has been granted to the defendant;

21 (2) Failure of the court to obtain proof of insurance or a
22 treatment plan conforming to the requirements of this chapter;

23 (3) Failure of the court to comply with the requirements of RCW
24 10.05.100;

25 (4) Failure of the evaluation facility to provide the information
26 required in RCW 10.05.040 and 10.05.050, if the defendant has been
27 referred to the facility for treatment. If an appeal on such basis is
28 successful, the trial court may consider the use of another treatment
29 program;

30 (5) Failure of the court to order the installation of an ignition
31 interlock or other device under RCW 46.20.720 or section 9 of this
32 act."

33 Renumber the remaining sections consecutively and correct any
34 internal references accordingly.

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1 On page 34, line 16 of the title amendment, after "46.20.740,"
2 strike "and" and after "46.61.5055" insert ", 10.05.010, 10.05.020,
3 10.05.090, and 10.05.160"

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

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