

RCW 10.05.010 Petition—Eligibility. (Effective until January 1, 2026.) (1) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

(2) A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW, or a misdemeanor or gross misdemeanor domestic violence offense, shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. A person may not participate in a deferred prosecution program for a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW if he or she has participated in a deferred prosecution program for a prior traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW, and a person may not participate in a deferred prosecution program for a misdemeanor or gross misdemeanor domestic violence offense if he or she has participated in a deferred prosecution program for a prior domestic violence offense. Separate offenses committed more than seven days apart may not be consolidated in a single program.

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

(4) A person is not eligible for a deferred prosecution program if the misdemeanor or gross misdemeanor domestic violence offense was originally charged as a felony offense in superior court. [2019 c 263 s 701; 2008 c 282 s 15; 2002 c 219 s 6; 1998 c 208 s 1; 1985 c 352 s 4; 1982 1st ex.s. c 47 s 26; 1975 1st ex.s. c 244 s 1.]

Findings—Intent—2019 c 263 ss 202-803: See note following RCW 10.01.240.

Effective date—2019 c 263 ss 501-504, 601, 602, and 701-708: See note following RCW 9.94A.500.

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

Effective date—1998 c 208: "This act takes effect January 1, 1999." [1998 c 208 s 7.]

Legislative finding—1985 c 352: "The legislature finds that the deferred prosecution program is an alternative to punishment for persons who will benefit from a treatment program if the treatment program is provided under circumstances that do not unreasonably endanger public safety or the traditional goals of the criminal justice system. This alternative to punishment is dependent for success upon appropriate treatment and the willingness and ability of the person receiving treatment to cooperate fully with the treatment program. The legislature finds that some persons have sought deferred prosecution but have been unable or unwilling to cooperate with

treatment requirements and escaped punishment because of the difficulties in resuming prosecution after significant delay due to the absence of witnesses at a later date and the congestion in courts at a later date. The legislature further finds that the deferred prosecution statutes require clarification. The purpose of sections 4 through 19 of this act is to provide specific standards and procedures for judges and prosecutors to use in carrying out the original intent of the deferred prosecution statutes." [1985 c 352 s 3.]

Severability—1985 c 352: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 352 s 22.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

RCW 10.05.010 Petition—Eligibility. (Effective January 1, 2026.) (1) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial. A person charged with a misdemeanor or gross misdemeanor shall not be eligible for a deferred prosecution unless the court makes specific findings pursuant to RCW 10.05.020.

(2) A person charged with a violation of RCW 46.61.502 or 46.61.504 shall not be eligible for a deferred prosecution unless the court makes specific findings pursuant to RCW 10.05.020. A person who petitions the court for the deferred prosecution and participates in the deferred prosecution under this chapter for his or her first violation of RCW 46.61.502 or 46.61.504 is eligible to petition the court for a second deferred prosecution for the person's next violation of RCW 46.61.502 or 46.61.504 when the person has no other prior convictions defined as a "prior offense" under RCW 46.61.5055. The person's first deferred prosecution shall not be considered a prior offense for the purpose of granting a second deferred prosecution. Separate offenses committed more than seven days apart may not be consolidated in a single program.

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

(4) A person is not eligible for a deferred prosecution if the misdemeanor or gross misdemeanor domestic violence offense was originally charged as a felony offense in superior court.

(5) A person may petition a court for a second deferred prosecution while still under the jurisdiction of a court for the person's first deferred prosecution; however, the first deferred

prosecution shall be revoked prior to the entry of the second deferred prosecution.

(6) A person may not be on two deferred prosecutions at the same time unless separate offenses are committed within seven days of each other and the person petitions to consolidate each offense into a single deferred prosecution.

(7) A person charged with a misdemeanor or gross misdemeanor for a violation of RCW 46.61.502 or 46.61.504 who does not participate in a deferred prosecution for his or her first violation of RCW 46.61.502 or 46.61.504 remains eligible to petition the court for a deferred prosecution pursuant to the terms of this section and specific findings made under RCW 10.05.020. Such person shall not be eligible for a deferred prosecution more than once. [2024 c 306 s 11; 2019 c 263 s 701; 2008 c 282 s 15; 2002 c 219 s 6; 1998 c 208 s 1; 1985 c 352 s 4; 1982 1st ex.s. c 47 s 26; 1975 1st ex.s. c 244 s 1.]

Effective date—2024 c 306: See note following RCW 9.94A.661.

Findings—Intent—2019 c 263 ss 202-803: See note following RCW 10.01.240.

Effective date—2019 c 263 ss 501-504, 601, 602, and 701-708: See note following RCW 9.94A.500.

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Legislative finding—1985 c 352: "The legislature finds that the deferred prosecution program is an alternative to punishment for persons who will benefit from a treatment program if the treatment program is provided under circumstances that do not unreasonably endanger public safety or the traditional goals of the criminal justice system. This alternative to punishment is dependent for success upon appropriate treatment and the willingness and ability of the person receiving treatment to cooperate fully with the treatment program. The legislature finds that some persons have sought deferred prosecution but have been unable or unwilling to cooperate with treatment requirements and escaped punishment because of the difficulties in resuming prosecution after significant delay due to the absence of witnesses at a later date and the congestion in courts at a later date. The legislature further finds that the deferred prosecution statutes require clarification. The purpose of sections 4 through 19 of this act is to provide specific standards and procedures for judges and prosecutors to use in carrying out the original intent of the deferred prosecution statutes." [1985 c 352 s 3.]

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