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**SENATE BILL 6049**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senators A. Smith and McAuliffe

Read first time 01/10/94. Referred to Committee on Law & Justice.

1 AN ACT Relating to deferred prosecution; amending RCW 10.05.010,  
2 10.05.020, 10.05.060, 10.05.100, 10.05.120, 10.05.140, and 10.05.160;  
3 creating a new section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the deferred  
6 prosecution program under chapter 10.05 RCW is a privilege created by  
7 the legislature. This privilege, when granted by a court, permits a  
8 person to avoid the risk and consequences of successful prosecution if  
9 the person successfully completes the requirements of the program. The  
10 legislature finds that because of this nature of the deferred  
11 prosecution, a court has the right to request the person to waive  
12 certain rights otherwise available in criminal cases, before a person  
13 may receive the benefits that accrue from the deferral of prosecution.  
14 The legislature further finds that because the deferred prosecution  
15 permits persons to avoid punishment, a court should make certain  
16 findings prior to granting a deferred prosecution, to ensure that the  
17 program is provided under circumstances that do not unreasonably  
18 endanger or compromise public safety or the traditional goals of the  
19 criminal justice system. The legislature further finds that some

1 courts have inconsistently interpreted some provisions of chapter 10.05  
2 RCW. The purpose of this act is to provide further clarification and  
3 to provide specific standards and procedures for judges and prosecutors  
4 to use in carrying out the original intent of the deferred prosecution  
5 statutes.

6 **Sec. 2.** RCW 10.05.010 and 1985 c 352 s 4 are each amended to read  
7 as follows:

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

17 A person charged with a traffic infraction, misdemeanor, or gross  
18 misdemeanor under Title 46 RCW shall not be eligible for a deferred  
19 prosecution program unless the court makes specific findings pursuant  
20 to RCW 10.05.020. Such person shall not be eligible for a deferred  
21 prosecution program more than once in any ((five-year)) ten-year  
22 period. This ten-year period shall run from the last date on which a  
23 petitioner's previous case or cases were dismissed under the provisions  
24 of this chapter. In the event that a previous deferred prosecution was  
25 revoked, the ten-year period is to run from the date that the previous  
26 deferred prosecution was revoked. New offenses committed within this  
27 ten-year period are not eligible for a deferred prosecution. Separate  
28 offenses committed more than seven days apart may not be consolidated  
29 in a single program.

30 **Sec. 3.** RCW 10.05.020 and 1985 c 352 s 6 are each amended to read  
31 as follows:

32 (1) The petitioner shall allege under oath in the petition that the  
33 wrongful conduct charged is the result of or caused by alcoholism, drug  
34 addiction, or mental problems for which the person is in need of  
35 treatment and unless treated the probability of future reoccurrence is  
36 great, along with a statement that the person agrees to pay the cost of  
37 a diagnosis and treatment of the alleged problem or problems if

1 financially able to do so. The petition shall also contain a case  
2 history and written assessment prepared by an approved alcoholism  
3 treatment ((facility)) program as designated in chapter 70.96A RCW if  
4 the petition alleges alcoholism, an approved drug program as designated  
5 in chapter 71.24 RCW if the petition alleges drug addiction, or by an  
6 approved mental health center if the petition alleges a mental problem.

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

29 (3) The defendant shall state in his or her petition any other  
30 offenses or cases that the petitioner has used or intends to use under  
31 the proposed treatment program for a separate deferred prosecution.  
32 The court shall inquire before entering an order deferring prosecution  
33 whether the petitioner intends to use or has used the petition's  
34 proposed treatment program for a separate deferred prosecution for any  
35 other separate offenses or cases not mentioned in the petition. If  
36 other offenses or cases have been or will be included under the same  
37 proposed treatment program, the court shall not grant the deferred  
38 treatment program for any offenses committed more than seven days  
39 apart, pursuant to RCW 10.05.010. The court shall advise the

1 petitioner that any attempt to consolidate additional offenses not  
2 disclosed under this section, in violation of RCW 10.05.010, shall be  
3 a breach of the conditions of the deferred prosecution. The court  
4 shall further advise the petitioner that proof of such violation shall  
5 result in the petitioner's removal from deferred prosecution and the  
6 court shall enter judgment pursuant to this section. Such  
7 representations by the petitioner, and findings and advisements by the  
8 court shall be included in the order granting the deferred prosecution.

9 (4) Before entering an order deferring prosecution, the court shall  
10 make specific findings that: (a) The petitioner has stipulated to the  
11 admissibility of the facts as contained in the written police report;  
12 (b) the petitioner has acknowledged the admissibility of the stipulated  
13 facts in any criminal hearing or trial on the underlying offense or  
14 offenses held subsequent to revocation of the order granting deferred  
15 prosecution; ~~((and))~~ (c) the petitioner has acknowledged and waived the  
16 right to testify, to call witnesses to testify, and to present evidence  
17 in his or her defense; (d) the petitioner has acknowledged and waived  
18 the right to a jury trial; (e) the petitioner's statements,  
19 stipulations, acknowledgements, and waivers were made knowingly and  
20 voluntarily; (f) the petitioner qualifies for deferred prosecution; and  
21 (g) the proposed treatment program includes, at a minimum: (i)  
22 Frequency and type of contact between offenders and therapist; (ii)  
23 specific issues to be addressed in the treatment and description of  
24 planned treatment modalities; (iii) monitoring plans, including any  
25 requirements regarding living conditions, lifestyle requirements, and  
26 monitoring by family members and others; (iv) anticipated length of  
27 treatment; and (v) recommended prohibitions relating to use of alcohol  
28 or drugs. Such findings shall be included in the order granting  
29 deferred prosecution.

30 **Sec. 4.** RCW 10.05.060 and 1990 c 250 s 13 are each amended to read  
31 as follows:

32 If the report recommends treatment, the court shall examine the  
33 treatment plan. If it approves the plan and the petitioner agrees to  
34 comply with its terms and conditions and agrees to pay the cost  
35 thereof, if able to do so, or arrange for the treatment, an entry shall  
36 be made upon the person's court docket showing that the person has been  
37 accepted for deferred prosecution. A copy of the treatment plan shall  
38 be attached to the docket, which shall then be removed from the regular

1 court dockets and filed in a special court deferred prosecution file.  
2 If the charge be one that an abstract of the docket showing the charge  
3 and the date of petitioner's acceptance is required to be sent to the  
4 department of licensing, an abstract shall be sent, and the department  
5 of licensing shall make an entry of the charge and of the petitioner's  
6 acceptance for deferred prosecution on the department's driving record  
7 of the petitioner. The entry is not a conviction for purposes of Title  
8 46 RCW. The department shall maintain the record for ~~((five))~~ fifteen  
9 years from date of entry of the order granting deferred prosecution.

10 **Sec. 5.** RCW 10.05.100 and 1985 c 352 s 13 are each amended to read  
11 as follows:

12 If a petitioner ~~((is))~~ subsequently commits or is convicted of a  
13 similar offense while in a deferred prosecution program, ((upon  
14 notice)) the court shall hold a hearing to confirm the commission or  
15 conviction. If the court finds: (1) By a preponderance of the  
16 evidence and regardless of the prosecution status of the similar  
17 offense, that the petitioner has committed a similar offense while in  
18 the deferred prosecution program, or (2) that the petitioner has been  
19 convicted of a similar offense that was committed while in a deferred  
20 prosecution program, the court shall remove the petitioner's docket  
21 from the deferred prosecution file and the court shall enter judgment  
22 pursuant to RCW 10.05.020.

23 Once each month the department of licensing shall send to the court  
24 granting the deferred prosecution an abstract of the petitioner's  
25 driving record. If such record indicates that the petitioner has  
26 committed or is convicted of a similar offense while in a deferred  
27 prosecution program, the court shall remove the petitioner's docket  
28 from the deferred prosecution file and the court shall enter judgment  
29 pursuant to RCW 10.05.020.

30 **Sec. 6.** RCW 10.05.120 and 1985 c 352 s 15 are each amended to read  
31 as follows:

32 Upon proof of successful completion of the two-year treatment  
33 program, the court shall dismiss the charges pending against the  
34 petitioner. If the charge is one that requires an abstract of the  
35 docket showing the charge and the date of the petitioner's acceptance  
36 to be sent to the department of licensing, the court shall send notice

1 to the department of licensing indicating that the charge has been  
2 dismissed pursuant to this chapter.

3 ((Five)) Fifteen years from the date of the court's approval of a  
4 deferred prosecution program for an individual petitioner, those  
5 entries that remain in the department of licensing records relating to  
6 such petitioner shall be removed if the department of licensing has  
7 previously received notice by the court that the charge has been  
8 dismissed pursuant to this chapter. A deferred prosecution may be  
9 considered for enhancement purposes when imposing mandatory penalties  
10 and suspensions under RCW 46.61.515 for subsequent offenses within a  
11 five-year period.

12 **Sec. 7.** RCW 10.05.140 and 1991 c 247 s 1 are each amended to read  
13 as follows:

14 As a condition of granting a deferred prosecution petition, the  
15 court shall order that the petitioner shall not operate a motor vehicle  
16 upon the public highways without a valid operator's license and proof  
17 of liability insurance. The amount of liability insurance shall be  
18 established by the court at not less than that established by RCW  
19 46.29.490. The court shall not grant a deferred prosecution unless the  
20 defendant has executed all acknowledgements, stipulations, and waivers  
21 as specified in RCW 10.05.020 (2), (3), and (4). As a condition of  
22 granting a deferred prosecution petition, the court may order the  
23 petitioner to make restitution and to pay costs as defined in RCW  
24 10.01.160. The court may terminate the deferred prosecution program  
25 upon violation of this section.

26 **Sec. 8.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to read  
27 as follows:

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

30 (1) Prior participation in a deferred prosecution (~~has been~~  
31 ~~granted to~~) program by the defendant within ((five)) ten years  
32 pursuant to RCW 10.05.010;

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

35 (3) Failure of the court to comply with the requirements of RCW  
36 10.05.020;

1        (4) Failure of the court to comply with the requirements of RCW  
2 10.05.100;

3        (~~(4)~~) (5) Failure of the evaluation facility to provide the  
4 information required in RCW 10.05.040 and 10.05.050, if the defendant  
5 has been referred to the facility for treatment. If an appeal on such  
6 basis is successful, the trial court may consider the use of another  
7 treatment (~~(facility)~~) program.

8        NEW SECTION.    **Sec. 9.**    If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

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