

PORT ORCHARD MUNICIPAL COURT

DEFERRED PROSECUTION -- POLICIES & PROCEDURES

RCW 10.05 has been amended by the Washington State legislature and now requires:

- (1) *That a person charged with a traffic infraction, misdemeanor or gross misdemeanor under Title 46 is not eligible for more than one (1) deferred prosecution in the person's lifetime.*
- (2) *That a defendant's criminal case on deferred prosecution may not be dismissed before at least five (5) years from the entry of the deferred prosecution.*
- (3) *That a defendant's criminal case on deferred prosecution may not be dismissed until at least three (3) years after proof of successful completion of the two (2) year program.*
- (4) *That a defendant's deferred prosecution may not be entered or eventually dismissed unless a current driving abstract and criminal history records check ("III" or "NCIC" and "JIS") has been reviewed in open court.*

I. DEFERRED PROSECUTION -- POLICIES:

The court shall review the proposed plan and Order under the guidelines of RCW Chapter 10.05 and the following policies:

- A. Defendants shall show compliance with their Deferred Prosecution to the probation clerk as ordered, and abide by all rules and regulations of probation, including no new alcohol-related offenses or the same or similar law violations. The period of probation will be for five (5) years. Any failure to show compliance shall result in the revocation or modification of the Order as appropriate. The costs of such a court hearing shall be reviewed and imposed by the court. The court's "Termination/Revocation Policy" is available for review and will be referred to in all such hearings.
- B. The probation assessment of \$750.00 and the BAC assessment of \$125.00 (for Title 46 charges only) will be paid as set forth in the Order. Additionally, there is a \$150 administrative cost due and owing at the time of the filing of the Order Pending Acceptance for Deferred Prosecution. Persons deemed to be indigent may be allowed community service in lieu of paying the probation assessment and administrative cost. Such assessment will cover all monitoring by probation.

- C. Twice per week attendance at AA/NA (or other approved 12-step program) is required. A schedule of AA/ NA meetings in Kitsap County and reporting forms may be obtained at the Court office or a schedule is available at AA's web site www.dist10.org.
- D. Restitution, including the costs of emergency response, must be made, if appropriate.
- E. A current mailing address and phone contact shall be furnished to the probation clerk and any changes submitted in writing.
- F. The Defendant shall not leave the State of Washington permanently or change treatment provider without the prior approval of the Court. A revised treatment plan and commitment to provide treatment for the new area of residence or provider must be presented to the city prosecuting attorney and probation clerk for review no less than seven (7) days prior to the hearing on the defendant's motion to leave the State or to change treatment provider. In addition, the Defendant must apply for Interstate Transfer, if appropriate.
- G. The Defendant, if eligible, shall be licensed and insured at all times and report to the probation clerk any changes in status. Attachment A "Notice of Insurance Coverage" and a copy of the Defendant's insurance card is required to be submitted with the Order and further to show proof of insurance each 6 months thereafter. Defendants who are not eligible and therefore not insured or who do not have proof of ignition interlock on file, will be required to sign Attachment B, "Declaration of Non-Driving Status."
- H. Defendants shall appear in court after six (6) months and at twenty-five (25) months to show program compliance and at thirty-six (36) months after filing proof of the completion of treatment to request dismissal of the charge(s), and any other time as directed.
- I. If the offense is alcohol/drug related, the Defendant shall not consume any alcoholic beverages and/or mood/mind altering drugs. The Defendant shall comply with all rules and regulations of probation and the treatment agency, which might include breath and/or urine tests.
- J. The Defendant shall participate in a two (2) year treatment program as recommended in the evaluation and monthly progress reports will be submitted by the treatment provider to the probation clerk for the two (2) year period of the treatment plan.

- K. The Defendant will be required to apply for an ignition interlock driver's license and to drive only a vehicle in which an ignition interlock device has been installed. The Court may modify the ignition interlock device restriction only if permitted by State law.

II. DEFERRED PROSECUTION -- PROCEDURES:

- A. File with the Court and the City Prosecuting Attorney's office the "Petition for Deferred Prosecution" at least twenty-one (21) days before the trial date.
- B. Obtain an evaluation:
 - 1. If the Defendant alleges an alcoholism or drug addiction problem, the Defendant is required to have a chemical dependency evaluation with a Washington State certified agency. The assessor must be provided copies of the police report, the defendant's case history (DCH) and abstract of driving record from the Department of Licensing.
 - 2. If the Defendant alleges a mental health problem, arrange for an assessment by an approved mental health center. If alcohol or drug usage was involved in the underlying offense, then the defendant shall comply with (1) above and complete a mental health evaluation.
- C. An Order Pending Acceptance for Deferred Prosecution requiring the Defendant to attend AA meetings, a DUI Victims Panel, and abstain from consumption of alcohol and/or drugs unless prescribed by a physician will be required before scheduling a hearing to be set in approximately 45 days for entry of order accepting deferred prosecution.
- D. File with the probation monitoring clerk and the city prosecuting attorney's office a copy of the proposed Order Granting Deferred Prosecution including the evaluation, treatment plan and verification of the Defendant's acceptance into treatment, proof of insurance and ignition interlock license and installation for review no later than seven (7) days before the hearing date.