

PORT ORCHARD MUNICIPAL COURT

UNIFORM POLICY: DEFERRED PROSECUTION TERMINATION/REVOCAION

I. GENERAL STATEMENT

Defendants who are placed on deferred prosecution (DP) are expected to comply with all of the conditions and perform ALL of the terms of the order placing them on DP. Failure of a defendant to so comply may, and in some cases shall, cause the DP to be terminated and the defendant to be convicted of and sentenced for the offense for which the defendant has been granted the DP.

II. NOTICE OF NON-COMPLIANCE

Upon the receipt of information from a reliable source (including, but not limited to, treatment agency, law enforcement, probation clerk, city prosecuting attorney) that the defendant has violated the terms of the DP order, the defendant will be notified by the Court Clerk via a notice sent to the last address recorded in the court file that a hearing will be held to determine the validity or veracity of the alleged violation. The City Prosecuting Attorney and the defendant's attorney of record will also receive notice of the hearing. The defendant has the right to be represented by counsel at the hearing at public expense if eligible.

III. THE HEARING

If the defendant appears at the time scheduled, the hearing will proceed to determine if the defendant has failed to comply with the terms of the order. At the hearing, hearsay information in the form of written reports from the treatment agency approved by the Court, the probation clerk, police reports of new arrests or incidents or any other credible source may be considered. The defendant may present evidence.

IV. THE DECISION

If after the hearing the facts support the claim that the defendant has failed to comply with the DP order, the DP will be terminated, or in certain cases continued, as follows:

- A. If a petitioner is subsequently convicted of a similar offense while in a deferred prosecution program, upon notice the Court shall remove the petitioner's docket from the deferred prosecution file and the Court shall enter judgment pursuant to RCW 10.05.020.

If two or more offenses are listed in the same DP order, conviction of a similar offense after the entry of the DP order requires termination of the "similar" offense, but does not require (but permits) termination of the DP of the "dissimilar" offense(s). [Example: a conviction for a DWLS after the defendant is placed on DP for a DUI and DWLS permits, but does not require, termination on the DUI DP order.]

- B. A violation of the treatment program does not require, but permits termination of the DP. For a DP based on alcoholism or drug addiction, failure to remain abstinent from the use of intoxicants is a violation of the treatment program even if the defendant is otherwise complying with the program (i.e., attending counseling sessions and 12-step meetings). Likewise, failure to attend treatment counseling sessions and/or 12-step meetings is a violation even if the defendant is abstinent from the use of intoxicants.

1. For a minor violation¹ of a treatment program, the DP program will ordinarily continue if (a) the defendant requests it (b) it is recommended that it continue after a determination of the defendant's responsible actions in dealing with the violation; and (c) the defendant agrees to complete any missed sessions (treatment and/or 12-step) and/or complete a modified treatment plan set by the treatment agency.
 2. For a major violation² of a treatment program, the Court may continue the DP program at the defendant's request, but only if (a) the relapse has not resulted in a new similar or same violation of law; (b) a modified treatment program is developed by the treatment agency and is agreed to by the defendant (modification to include reentry and completion of IOP, residential treatment, relapse prevention program and/or antabuse therapy); and (c) the treatment provider agrees that the defendant is still amenable to treatment.
 3. When a defendant has previously committed major or minor violations, but was permitted to remain on the deferred prosecution program, any subsequent violations will result in termination of the DP order.
- C. For the purpose of determining compliance or non-compliance, "successful completion" of the treatment program (RCW 10.05.120) means (a) substantial compliance with all of the requirements of the treatment program outlined and accepted by the Court at the time the DP order is entered, unless modified by subsequent order of the Court; and (b) proof that all financial obligations to the treatment provider and the Court have been met or that the defendant has entered into a specific binding agreement to pay for such obligations in the future, in consideration of the Court closing the case satisfactorily and dismissing the case.
- D. When ordered as part of the DP, failure to comply with any conditions set by the Court may result in termination of the DP. Compliance with the following conditions is mandatory:
1. Carry out and fulfill all terms or conditions of treatment plan.
 2. Obtain and install an ignition interlock device before operating a motor vehicle during any period required to do so.
 3. Maintain liability insurance and show proof as directed to the Court/probation clerk.
 4. Allow or maintain a release of confidentiality statement to allow the probation clerk and the treatment provider to exchange information.
 5. Pay any costs of probation monitoring, restitution, or other costs as allowed the Court by statute.
 6. Pay or make agreement to pay the cost of treatment.

¹ Examples: a first relapse and no resulting violation of law; the first report of missed and unexcused treatment sessions not to exceed four sessions in Phase I, two sessions in Phase II or one session in Phase III; eight or fewer missed 12-step meetings in the two years of the order.

² Examples: a second relapse not resulting in a new law violation; the first relapse resulting in a new law violation; missing and unexcused for more than four treatment sessions in Phase I, more than two in Phase II and more than one in Phase III; missing more than eight 12-step meetings in the two years of the order; failure to maintain auto insurance if authorized by the court to drive during the two years of the order.