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No. 85938-8

SUPREME COURT OF THE STATE  
OF WASHINGTON

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State of Washington,

Respondent,

v.

Snohomish County District Court, Cascade Division,  
The Hon. Paul F. Moon, Commissioner,

Defendants,

Douglas P. Hutchison,  
Petitioner.

Snohomish County Superior Court  
Cause No. 10-2-08562-7

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BRIEF OF PETITIONER

---

Whitney Rivera, WSBA #38139  
Attorney for Douglas P. Hutchison

Snohomish County Public Defender Association  
1721 Hewitt Avenue #200  
Everett, WA 98201  
(425) 339-6300

ORIGINAL

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**A. ASSIGNMENT OF ERROR**

The Superior Court erred when it concluded that the language contained in RCW 10.05.130 is plain and unambiguous and that the term “treatment plan” does not include the course of treatment itself.

**Issue Pertaining to Assignment of Error**

Does RCW 10.05.130 authorize disbursement of funds to pay for an indigent defendant’s deferred prosecution course of treatment?

**B. STATEMENT OF THE CASE**

The State filed a Writ of Certiorari challenging Cascade District Court Commissioner Moon’s Order granting defense counsel’s request for funds to pay for the cost of Douglas P. Hutchison’s investigation, examination, report and treatment plan for a deferred prosecution on Cascade District Court Case Number 596A-10D. CP 6. The primary statute under consideration was RCW 10.05.130, which states in its entirety:

Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment.

On March 10, 2011 parties presented oral argument before The Honorable Judge Ronald Castleberry of Snohomish County Superior

Court with regard to the statutory interpretation of the term “treatment plan” as contained in RCW 10.05.130. CP 23-29.

On March 11, 2011, the Superior Court ruled that the issue before the court was one of first impression and that the term “treatment plan” is unambiguous and refers only to the report and plan of treatment, but not the treatment itself. CP 7-8. The Superior Court concluded that Commissioner Moon acted without lawful authority when ordering that the cost of treatment be paid out of the fees and forfeitures of the court. CP 8. On March 25, 2011 a written order was signed to this effect vacating Commissioner Moon’s order. CP 17-22.

C. ARGUMENT

The issue before the court is one of statutory interpretation and therefore de novo is the appropriate standard of review. State v. J.P., 149 Wn.2d 444, 449 (2003).

1. RCW 10.05.130 UNAMBIGUOUSLY REQUIRES DISTRICT COURTS TO PAY FOR AN INDIGENT DEFENDANT’S DEFERRED PROSECUTION TREATMENT.

When interpreting a statute, the court first looks at the statute’s plain language. State v. Armendariz, 160 Wn.2d 106, 110 (2007). If the plain language is subject to only one interpretation, the court’s inquiry ends because the language does not require construction. Id.; State v. Thornton, 119 Wn.2d 578, 580 (1992). In those instances where the

statutory language is plain and unambiguous, the statute's meaning must be derived from the wording of the statute itself. Wash. State Human Rights Comm'n v. Cheney Sch. Dist. No. 30, 97 Wn.2d 118, 121 (1982). To determine the plain meaning of the language, the court should examine the statute in which the language in question appears as well as related statutes or other provisions of the same act in which the provision is found. Homestreet, Inc. v. State Dept. of Revenue, 166 Wn.2d 444, 457-58 (2009). Appellate courts have not previously engaged in statutory interpretation of RCW 10.05.

RCW 10.05 outlines the requirements and procedures required for a criminal defendant to petition the court for a deferred prosecution. The deferred prosecution program is an alternative to punishment on misdemeanor driving under the influence charges for persons who will benefit from a treatment program, so long as the treatment program is provided under circumstances that do not unreasonably endanger public safety or the traditional goals of the criminal justice system. RCW 10.05.010, Leg. Finding 1985 c.352. To enter into a deferred prosecution, the defendant must stipulate to the admissibility and sufficiency of the facts as contained in the written police report to support a guilty finding should the deferred prosecution be subsequently revoked. RCW 10.05.020(4)(a)-(b).

RCW 10.05.040 requires a treatment facility to conduct an investigation and examination into whether the person meets the prerequisites for a deferred prosecution treatment program (i.e., whether the person suffers from the problem described, whether there is a probability that similar misconduct will occur in the future if not treated, whether extensive and long term treatment is required, whether effective treatment is available, and whether the person is amenable to treatment). RCW 10.05.040. The treatment facility must then make a written report to the court stating its findings and recommendations based on the investigation and examination required under RCW 10.05.040. RCW 10.05.050(1). If the findings and recommendations required under RCW 10.050.050(1) support treatment, the facility shall also recommend a treatment plan setting out the type, nature, length, treatment time schedule, and approximate cost of treatment. RCW 10.50.050(1)(a)-(e).

- a. The plain language throughout RCW 10.05.130 makes clear that the term "treatment plan" refers to the entire course of treatment and not merely the recitation of the recommended treatment.

RCW 10.05.130 provides that "[f]unds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment." RCW 10.05.130. The standard for

determining whether an indigent person is entitled to public funds under RCW 10.05.130 turns on whether the person is unable to pay the cost of any program of treatment. Id. The statute's plain language specifically presumes inclusion of indigent defendants unable to pay for treatment costs in the deferred prosecution program.

The Superior Court wrongly concluded that "treatment plan" means only the narrative report generated by a chemical dependency expert detailing whether a defendant meets the diagnostic criteria for a deferred prosecution. The Superior Court's narrow reading of "treatment plan" would lead to situations where indigent defendants are deemed eligible for the program; however, their inability to pay for the course of treatment prohibits their participation. The Superior Court's interpretation would require the district courts to pay for an indigent defendant's initial evaluation for treatment, but not the treatment itself. The Superior Court's interpretation creates a procedural scenario whereby the district courts pay for the narrative report knowing that the defendant will be unable to pay for the recommended treatment and thus unable to participate in the deferred prosecution program.

The Superior Court's interpretation undermines the plain language of the statute's unmistakable intent to include indigent defendants in the deferred prosecution program. The term "treatment plan" does not refer

only to the report of the recommended treatment, but rather refers to the actual course of treatment.

- b. Other uses of the term “treatment plan” in RCW 10.05 further evidence that the term refers to the entire course of treatment.

Use of the term “treatment plan” in other provisions of RCW 10.05 lends support to the position that the term refers to the actual course of treatment. The plain language of RCW 10.05.060 contradicts the Superior Court’s constricted interpretation of the phrase “treatment plan.” RCW 10.05.060 states:

If the *report* recommends treatment, the court shall examine the *treatment plan*. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person’s court docket showing that the person has been accepted for deferred prosecution.

RCW 10.05.060 (emphasis added).

RCW 10.05.060 makes the clear distinction between the “report” generated by the chemical dependency expert and the “treatment plan” itself. Pursuant to RCW 10.05.060, the court examines “the treatment plan”; if the court approves the plan, it may grant the petition for deferred prosecution if the petitioner agrees to comply with *its* terms and conditions and agrees to pay the cost *thereof* if able to do so. Id. (emphasis added). “Its terms and conditions” refers to the treatment plan’s type, nature, length, schedule and cost. Id. “The costs thereof” refers to the petitioner’s

ability to pay for the course of treatment. Id. RCW 10.05.060 confirms that a petitioner must agree to the terms and conditions of the course of treatment, not merely the recitation of the recommended treatment. Therefore, the phrase “treatment plan” as used in RCW 10.05.060 refers to the entire course of treatment.

Applying the Superior Court’s interpretation of “treatment plan” to RCW 10.05.060 causes it to become nonsensical. The court must review the report if the report recommends treatment and the defendant would have to agree to abide by the diagnostic report. However, if the Superior Court’s interpretation of “treatment plan” is applied to RCW 10.05.060, the defendant would never have to agree to the course of treatment itself, only the report. This is because the Superior Court conflates “report” and “treatment plan”.

The language contained in RCW 10.05.090 further demonstrates that “treatment plan” as used in RCW 10.05.130 means the entire course of treatment for the deferred prosecution program. RCW 10.05.090 states:

If a petitioner who has been accepted for a deferred prosecution fails or neglects to carry out and fulfill any term or condition of the petitioner’s *treatment plan*, the facility administering the treatment shall immediately report such breach to the court.

RCW 10.05.090 (emphasis added).

The court shall then hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. Id. If a petitioner has already been accepted on a deferred prosecution, non-compliance with the “treatment plan” as used in the RCW 10.05.090 plainly means non-compliance with the actual course of treatment.

This provision would have no force if the Superior Court’s interpretation of “treatment plan” is applied. If the Superior Court interprets treatment plan as only the initial report and not the course of treatment itself, then its logical interpretation of RCW 10.05.090 could only provide a remedy if the defendant fails to comply with a diagnostic report rather than failing to comply with the course of treatment. This interpretation makes no sense.

The plain language of the provisions of RCW 10.05 read in conjunction with one another establishes that the term “treatment plan” as used in RCW 10.05.130 refers to the actual course of treatment. Therefore, the statute is unambiguous and no further construction is necessary.

2. EVEN IF THE STATUTE IS DEEMED SUSCEPTIBLE TO MORE THAN ONE REASONABLE INTERPRETATION AND THEREFORE AMBIGUOUS, APPLYING THE TOOLS OF STATUTORY CONSTRUCTION LEADS TO THE CONCLUSION THAT RCW 10.05.130 AUTHORIZES THE DISTRICT COURTS TO DISBURSE FUNDS TO PAY FOR AN

INDIGENT DEFENDANT'S COURSE OF TREATMENT IN A  
DEFERRED PROSECUTION.

A statute is ambiguous if it is susceptible to two or more reasonable interpretations, but a statute is not ambiguous merely because different interpretations are conceivable. State v. Hahn, 83 Wn.App. 825, 831 (1996). If the term "treatment plan" is susceptible to two reasonable interpretations, i.e., that it refers to the document reciting the treatment or alternatively that it refers to the entire course of treatment, then the tools of statutory construction dictate that the latter interpretation is appropriate.

Each word of a statute is to be accorded meaning. State ex. rel. Schillberg v. Barnett, 79 Wn.2d 578, 584 (1971). Whenever possible, statutes are to be construed so that no clause, sentence, or word shall be superfluous, void, or insignificant. Kasper v. City of Edmonds, 69 Wn.2d 799, 804 (1966). A court is required to assume the legislature meant exactly what is said and apply the statute as written. Duke v. Boyd, 133 Wn.2d 80, 87 (1997).

- a. Construing "treatment plan" to mean only the recitation of the course of treatment rather than the treatment itself would render language throughout RCW 10.05 superfluous.

The legislature's intent in authorizing the deferred prosecution program was to provide an alternative to punishment for those persons who would benefit from a course of treatment as recommended by a treatment facility. RCW 10.05.010, Leg. Finding 1985 c.352. In reading RCW 10.05 as a whole and in order to harmonize the individual

provisions, the language must be construed to effectuate the Legislature's intent to encourage those in need of treatment to participate in the deferred prosecution program and to include those who may benefit from the program regardless of their ability to pay for the cost of any program of treatment. The Superior Court's interpretation of "treatment plan" conflicts with the legislative intent of RCW 10.05 and renders certain language contained in its provisions superfluous.

The Superior Court's interpretation of "treatment plan" would render the entirety of RCW 10.05.130 superfluous. As previously discussed, the standard for determining if a person qualifies for public funds under RCW 10.05.130 is whether the person is unable to pay the cost of any program of treatment. In construing the words "treatment plan" so narrowly, the Superior Court's interpretation would lead to situations where indigent defendants are deemed by a treatment facility as being in need of treatment and eligible for the program, however, their inability to pay for the course of treatment prohibits their participation.

Additionally, RCW 10.05.060 states that the petitioner must agree to comply with the terms and conditions of the treatment plan and agree to pay for the cost thereof if able to do so. RCW 10.05.060. The Superior Court's constricted interpretation of "treatment plan" would render the words "if able to do so" superfluous as it would lead to the conclusion that all petitioners are required to pay for their course of treatment. The

provisions of RCW 10.05 when read as a whole clearly signal the legislature's intent to include indigent defendants who are unable to pay for the deferred prosecution course of treatment.

- b. The legislative history for Senate Bill 2613, ultimately codified as RCW 10.05, demonstrates an intent on the part of the Senate and House Judiciary Committees to provide deferred prosecution treatment at public expense for indigent defendants, thus avoiding any potential equal protection constitutional challenges.

Additional guidance regarding the legislature's intent may be found in the Senate Bill 2613 legislative history file kept at the Washington State Archives. Senate Bill 2613 was adopted in 1975. Wash. Laws, 1975 1st Ex. Sess., Ch. 244. During its public comment period, a number of individuals from the criminal justice community expressed concern over constitutional issues that may be raised to challenge the law under equal protection grounds. The language contained in RCW 10.05.130 was not contained in the original bill. S.B. 2613 (Wash. 1975). On February 25, 1975, Prosecuting Attorney James E. Carty of Clark County wrote a letter to Senator Dan Marsh and expressed the following concerns:

"I entered a new section, numbered 13 on the enclosed draft. I pointed out to the judge, and he agreed, that we could well run into constitutional problems if the program was limited only to those who could afford it. The section I threw in is certainly not the last word nor am I hung up on it at all. It is my feeling, and I believe the judge agrees, that everybody with a problem should be treated equally."

Letter from James Carty, Prosecuting Attorney (Feb. 25, 1975).

In opposition to Senate Bill 2613, The Honorable Judge James P.

Healy wrote a letter to the Senate Judiciary Committee regarding his concerns with the contents of the bill:

“Section 2 of the proposed bill proposes that as a condition precedent, the defendant agree to pay the costs of a diagnosis of the alleged problem or problems; and in Section 4 of the proposed bill provides that a facility or center shall conduct ‘at the expense of the person (defendant) an investigation and examination to determine (1) whether the person suffers from the problem alleged;’ etc. Those provisions are going to provide an immediate constitutional challenge that the provisions are available only to a person who is not indigent; that the bill is designed only for the protection of the wealthy and not the poor.”

Letter from The Hon. Judge James P. Healy (Mar. 26, 1975).

On April 2, 1975, Senator Marsh submitted a proposed amendment to Senate Bill 2613 that included the language that now comprises RCW 10.05.130:

NEW SECTION. Sec. 13. Funds shall be appropriated from the fines and forfeitures of the court to provide for a treatment program for any person who is indigent or is unable to pay the cost of any program of treatment.

Proposed Amend. S.B. 2613 (Wash. 1975).

On April 2, 1975, the Senate Judiciary Committee convened to discuss S.B. 2613. Testimony on S.B. 2613 – Pre-trial Diversion

Programs, Senate Judiciary Committee, Apr. 2, 1975. The Honorable Judge Lyle Truax, Clark County District Court Judge, addressed concerns voiced by senators after reviewing the originally proposed bill. See id. Senator Fleming expressed unease that problems will arise if the program is limited only to those who can pay for the treatment and Senator Francis directed him to the proposed amendment and the addition of the new language in Section 13. Id. at P.6. Grant County Prosecuting Attorney Paul Clausen also indicated that the proposed Section 13 alleviates one of his objections to the language in the original bill:

“The original act provides that the defendant has to agree to pay the costs. Whoever drafted this, I think that is highly unfair that any person who is going to be allowed should be able to take advantage of whatever the law allows rather than require him to be able to foot the bill. I think this is entirely a violation of due process.”

Id. at P.13.

The bill subsequently passed in the Senate and on April 10, 1975 a senate bill analysis was generated indicating that Section 13 provides for “payment of the cost of the treatment program for indigents out of fines and forfeitures of the court (in other cases costs are payable by the participant).” S.B. 2613 Analysis (Wash. 1975). The bill next moved to the House Judiciary Committee. On May 14, 1975, the house judiciary committee met to consider S.B. 2613. The bill was passed on that date.

On May 19, 1975, a House of Representatives Bill Report was generated indicating that the Judiciary Committee adopted Section 13 for "supplying treatment program to indigents." H.B. Rep. ESB 2613 (Wash. 1975).

The members of the senate and house judiciary committees clearly considered arguments from those in the criminal justice system that equal protection and due process challenges were inevitable should the legislation be limited to only those individuals with an alcohol dependency problem and the funds to pay for their course of treatment. The statute, as interpreted by the Superior Court, would create the constitutional problems RCW 10.05.130 was intended to prevent by stopping the courts from paying for an indigent defendant's treatment. As such, it would render the statute unconstitutional on Equal Protection grounds. It would create a two-tiered system of justice whereby financially endowed defendants could pay for treatment and, assuming successful completion of the deferred prosecution, have their criminal case dismissed while indigent defendants would be forced to either plea or go to trial. Either way, their economic status would preclude them from participating in a deferred prosecution and having their case dismissed upon completion of the program.

The legislative history of S.B. 2613 clearly establishes that the legislature intended to provide for the cost of the treatment program for

indigent defendants out of the fines and forfeitures of the district courts. The legislative intent supports Commissioner Moon's order disbursing funds and therefore his order did not contravene the dictates of RCW 10.05.

3. THE SUPERIOR COURT'S INTERPRETATION OF RCW 10.05 IS INCORRECT AS IT WOULD RENDER THE STATUTE UNCONSTITUTIONAL AS A VIOLATION OF EQUAL PROTECTION AS APPLIED.

The Superior Court's interpretation of "treatment plan" would create a two tiered system of justice that violates Equal Protection. Article 1, § 12 of the Washington Constitution and the Fourteenth Amendment to the United States Constitution "require that persons similarly situated with respect to the legitimate purpose of the law be similarly treated." State v. Shawn P., 122 Wn.2d 553, 560 (1993). In determining whether a classification violates the right to equal protection, reviewing courts analyze the classification under one of three standards of review. Id.

The first standard of review, strict scrutiny, applies when the allegedly discriminatory classification affects a suspect class or threatens a fundamental right. Id. A second standard of review, intermediate or heightened scrutiny, applies in limited circumstances where strict scrutiny is not mandated, but where important rights or semi-suspect classifications

are affected. Id. The third standard of review requires minimal scrutiny and is referred to as the rational basis test. Id.

Wealth discrimination alone is insufficient to require strict judicial scrutiny. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 21 (1973). In the present case there is no suspect class and the appropriate standard of review is rational basis. Under the rational basis test, a classification will be upheld “unless it rests on grounds wholly irrelevant to the achievement of legitimate state objectives.” State v. Coria, 120 Wn.2d 156, 171 (1992) (quoting Omega Nat’l Ins. Co. v. Marquardt, 115 Wn.2d 416, 431 (1990)).

Reviewing courts ask three questions in analyzing equal protection claims under the rational basis test. Harris v. Labor & Indus., 120 Wn.2d 461, 477 (1993); Foley v. Dep’t of Fisheries, 119 Wn.2d 783, 789 (1992). The first inquiry is whether the classification applies alike to all members within the designated class. Id. The second is whether reasonable grounds exist to support a distinction between those within and without each class. Id. The final question is whether the class has a “rational relationship” to the purpose of the legislation. Id. In the present case, only the second and third prongs are at issue as the statute clearly treats all indigent defendants similarly.

In the present case, the state is burdened with articulating a rationale for its differential treatment of indigent and non-indigent defendants. Mr. Hutchison expects the State to argue that the court lacks the financial resources to pay for the treatment. This lack of funding, whether a result of economic recession or the repealed “justice court suspense fund,” cannot justify blatant discrimination. The State cannot articulate a rational basis for the disparate treatment of economically disadvantaged defendants.

Even if the State could articulate a rational basis to discriminate against poor people, there would be no teleological relationship between that unconstitutional purpose and the means provided in RCW 10.05. Where there is no rational basis for the legislation, there can be no rational relationship between the statute’s means and its ends. If this Court were to adopt the Superior Court’s interpretation of RCW 10.05, it would render an otherwise constitutional and meritorious statute unconstitutional. As applied in the present case and based on Judge Castleberry’s reading of the statute, RCW 10.05 violates Equal Protection principles.

#### D. CONCLUSION

The term “treatment plan” as used in RCW 10.05.130 is plain and unambiguous. It refers to the entire course of treatment for an indigent defendant who is unable to pay for the cost of any program of treatment.

Alternatively, even if “treatment plan” was susceptible to more than one reasonable interpretation and therefore ambiguous, the statutory rules of construction dictate the interpretation as set forth by Mr. Hutchison. Construing “treatment plan” to mean only the recitation of recommended treatment renders language in RCW 10.05 superfluous and contradicts the legislative intent as evidenced not only by the legislative history, but also by the Legislature’s clear efforts to include indigent defendants in the deferred prosecution program. Lastly, if this Court were to adopt the Superior Court’s interpretation, it would render the statute unconstitutional on Equal Protection grounds. Accordingly, the Superior Court’s ruling should be reversed and the matter remanded with instructions to reinstate Commissioner Moon’s original order disbursing funds from the fines and forfeitures of the court to pay for the petitioner’s course of deferred prosecution treatment.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of February, 2012.



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WHITNEY RIVERA, WSBA #38139  
Attorney for the Petitioner

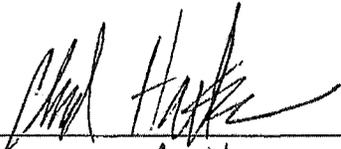
**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on February 17, 2012, I arranged for service of the Brief of Petitioner to the court and counsel for the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-mail
Charlie Blackman Snohomish County Prosecuting Attorney's Office 3000 Rockefeller Everett, WA 98201	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> E-mail

Dated at Everett, Washington this 17<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
Chad Hansen

No. 85938-8

SUPREME COURT OF THE STATE  
OF WASHINGTON

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State of Washington,

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Snohomish County District Court, Cascade Division,  
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Snohomish County Superior Court  
Cause No. 10-2-08562-7

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APPENDICES TO BRIEF OF PETITIONER

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Whitney Rivera, WSBA #38139  
Attorney for Douglas P. Hutchison

Snohomish County Public Defender Association  
1721 Hewitt Avenue #200  
Everett, WA 98201  
(425) 339-6300

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## APPENDIX 1

# BILL REPORT

HOUSE OF REPRESENTATIVES

Olympia, Washington

Bill No.:

ESB  
2613

Pre-trial diversion program  
Brief Title From Status of Bills

Senators Marsh, Francis and Jones  
Sponsor

Reported by Committee on Judiciary

Committee Recommendation: Majority DEA (8)  
Minority \_\_\_\_\_

Majority Report Signed By: \_\_\_\_\_ Minority Report Signed By: \_\_\_\_\_  
(Complete only if a Minority Report is filed)

Companion Measure  
No. \_\_\_\_\_

5-19-75  
Date

Mooney 3-4826  
Staff Contact (Name & Tel. No.)

\*\*\*\*\*

**Purpose of Bill and Effect on Existing Law:** Provides the courts with the alternative of having persons treated in a diversion program if: (1) their misdemeanor is the result of an alcohol or emotional/mental problem; (2) without treatment the probability of future reoccurrence is great, and (3) if the person agrees to pay the cost of diagnosis and treatment.

**Effect of Committee Amendments:** Conforms language to section 4 provision in section 13 for supplying treatment program to indigents; Requires entry of plea to the original charge if defendant is convicted of an offense similar to one for which he is in a diversion program; Specifies arraignment in a court of limited jurisdiction; Provides the courts with the alternative of having persons treated in a diversion program if their misdemeanor is the result of an alcohol, drug or mental problem, **Fiscal Impact** (removes emotional problem). Removes requirement that a copy of the defendant's treatment plan be submitted to D.M.V.  
**Principal Proponents:** \_\_\_\_\_ **Principal Opponents:** \_\_\_\_\_

Pat Straumberg, King Co. Div. of Alcohol Services  
Judge Lyle Truax  
Nick Hughes, Wash. State Council on Alcoholism

Attachments:

Comments: (Continue on Reverse)

MAY 9, 1975

HOUSE JUDICIARY COMMITTEE  
Walter Knowles, Chairman

SENATE BILL 2613 - Authorizing pre-trial diversion programs  
approved by the court

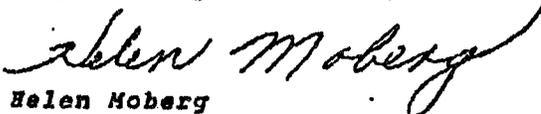
Dear Chairman Knowles and Members of the Committee:

This bill addresses itself to the following human aspects:

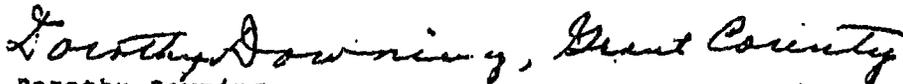
- (1) Motivates the alcoholic to seek help for himself where otherwise he may not;
- (2) Alcoholism is a treatable illness; therefore, it needs positive reinforcement. By removing the charges, the offender does not need to spend a lifetime with an albatross around his neck;
- (3) Since alcoholism does not limit itself to any age group, a growing percentage of alcoholics being young people, this does provide for removing obstacles that could jeopardize their employment;
- (4) Is conducive to removing the stigma of alcoholism and aids the restoration of human dignity.

Senate Bill 2613 does not complicate the judicial system in handling these cases.

Respectfully submitted,



Helen Moberg  
Chairman, Grant County Council on Alcoholism



Dorothy Downing  
Washington State Council on Alcoholism Board of Directors

**APPENDIX 2**

CRIMINAL DEPARTMENT  
GEORGE O. DARMENWALT, CHIEF DEPUTY  
SHARON SWENSON HOWARD  
GREGORY J. TRIPP  
PHILIP "CASEY" MARSHALL

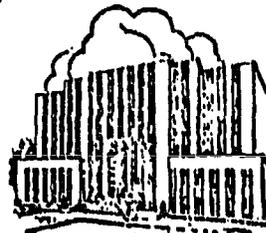
CIVIL DEPARTMENT  
JAMES L. SELLENS, CHIEF DEPUTY  
THOMAS G. DUFFY

INVESTIGATORS  
CARL NEITER

DOMESTIC RELATIONS NON-SUPPORT  
E. R. MEISNER

JAMES E. CARTY  
PROSECUTING ATTORNEY  
CLARK COUNTY, WASHINGTON  
201 COURT HOUSE  
VANCOUVER, WASHINGTON 98660  
TELEPHONE 699-2261

February 25, 1975



Senator Dan Marsh  
Washington State Senate  
Legislative Building  
Olympia, Washington 98504

Re: S.B. 2613

Dear Senator Marsh:

I have gone over the proposed bill very carefully and have discussed it with Judge Truax. The judge agrees with me that the word "diversion" should not appear in the bill and that the words "deferred prosecution" should be used in lieu thereof. Accordingly, there is enclosed herewith a re-draft showing these changes.

The word "diversion" has by custom been limited to prosecutor directed programs in various parts of the United States. Eventually, if we can find funding and personnel, we will also be using diversion in District Court. This will be different than the deferred prosecution which the judge has in mind. Judge Truax is aiming at doing something about a particular class of offenders. This would properly fall under the court's use of deferred prosecution. We would have no objection to this but would have serious objection if the word "diversion" were used in the legislation.

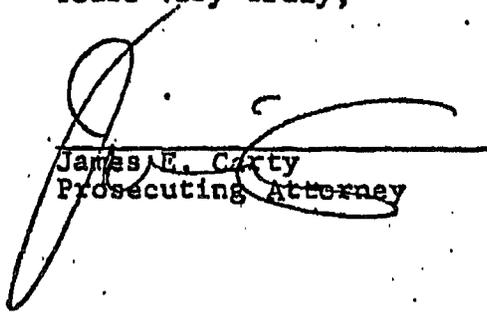
I entered a new section, numbered 13 on the enclosed draft. I pointed out to the judge, and he agreed, that we could well run into constitutional problems if the program was limited only to those who could afford it. The section I threw in is certainly not the last word nor am I hung up on it at all. The district court in this county does generate quite a bit of revenue and there is no reason the funds for those who are indigent or cannot afford a treatment program cannot be paid for from appropriations from this source of revenue. It is my feeling, and I believe the judge agrees, that everybody with a problem should be treated equally.

The judge is agreeable to the changes which I have discussed in this letter. If these changes are made, the legislation will have my support. I would anticipate that you are going to pick

up some flack from law enforcement, both from the local level and the State Patrol. I want to make it clear that I have no objection to the court being given authority to defer prosecution in the cases Judge Truax has in mind. In fact, I would not object if the deferral authority were broadened.

In any event, there is going to have to be funding for those who cannot afford it or we are going to run into some real difficult constitutional questions.

Yours very truly,



James E. Carty  
Prosecuting Attorney

JEC/sd

CC: Senator Pete Francis  
Ron Hendry

**APPENDIX 3**

JAMES F. HEALY, JUDGE  
DEPARTMENT FIVE

The Superior Court  
State of Washington  
Tacoma 98402

March 26, 1975

All Members of the Senate Judiciary Committee  
Washington State Legislature  
44th Regular Session  
434 Public Lands Building  
Olympia, Washington 98504

Re: Senate Bill 2613  
Criminal Procedure - diversion program

Gentlemen:

I am writing to you as an individual judge. The opinions contained in this letter are not intended to be the comments of anyone other than the writer, as an individual who was a practicing lawyer for thirty-three years before I became a Superior Court Judge.

I do not believe there is any need for the above-referenced legislation. I do believe that, if it is passed, it will do a great deal of harm, will clog the courts, and delay the administration of the criminal courts to such an extent that the general public will become even more disenchanted with the effectiveness of the courts and the entire criminal law system.

There is nothing that is provided for in this bill which could not be worked out under the present law, after the entry of a plea and in the course of a deferred sentence, upon the conditions that are usually imposed by the current practice in the ten departments of the Superior Court of Pierce County.

The bill is undoubtedly designed to prevent people who have committed wrongful conduct either

because of alcohol problems or emotional or mental problems, which constitute a crime, from having a criminal record if they will be properly diagnosed and treated.--In that event the defendant will be entitled to two years grace, and, if they stay clean and on the rehabilitation program for that period of time the case will be dismissed and the records removed from the diversion file in the Clerk's office.

Section 2 of the proposed bill proposes that as a condition precedent, the defendant agree to pay the costs of a diagnosis of the alleged problem or problems; and in Section 4 of the proposed bill provides that a facility or center shall conduct "at the expense of the person (defendant) an investigation and examination to determine (1) whether the person suffers from the problem alleged;" etc.

Those provisions are going to provide an immediate constitutional challenge that the provisions are available only to a person who is not indigent; that the bill is designed for the protection of the wealthy and not the poor.--In fact, the only justification for the bill can be that a person should not be charged for committing a crime if it is the result of, or caused by, either alcohol problems or emotional or mental problems. It is a lowering of the standards required for a plea of insanity.

It is a device that will be used to delay trials so that witnesses will be unavailable, or, memories will be faded and convictions will be that much more difficult.

I have already adverted to the doctrine of equal protection for the poor as well as for the rich. If this bill is passed then the legislature should, in fairness, fund rehabilitation and treatment programs for the poor; but somewhere there is a limit as to

All Members of Senate  
Judiciary Committee

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March 26, 1975

how much money the government can get by taxation to fund these kind of programs.-- Criminal justice can bankrupt the government if you are going to let every person charged with a crime claim by some alleged case history that their problems were caused by alcohol or emotional or mental problems.

If this bill is passed, you are going to destroy the effectiveness of the constitutional provision for a speedy trial. That constitutional provision should be for the benefit of the prosecution, and the general public, as well as for the defendant.

In short, I submit to you that everything you should reasonably desire, including the cancellation of a criminal record for well-deserving people, can be accomplished today under the deferred sentence program that is already on the books with respect to most crimes; without the expense and delay that will be caused by this proposed legislation.

If the bill is passed, I submit that the general public is going to ask you the question: "Is the state becoming an over-indulgent father?" Are we advertising to the general public that everyone who complains that his crime is the result of an alcohol problem, or an emotional or mental problem that shall be free from punishment, or any prosecution for punishment, for a period of two years; and then be released completely free to such an extent that the past act cannot even be brought up in any subsequent criminal proceedings involving another crime.

The time to impress people with the need for a rehabilitation program is after they have admitted they have done wrong, and agreed to follow a plan for rehabilitation, with the knowledge that if they do not follow the plan for rehabilitation that they are going

All Members of Senate  
Judiciary Committee

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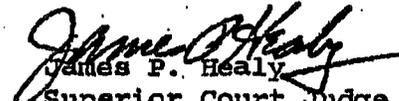
March 26, 1975

to have to go to the Department of Institutions without the need for any other trial except a revocation proceeding, under the deferred sentence procedure already in effect; or under the suspended sentence procedure already in effect.

I readily acknowledge that there are some limitations to the deferred and suspended sentence procedures; but I submit that they are adequate programs, and Senate Bill 2613 is not necessary, and if passed will be bad legislation.

I hope that you do not pass Senate Bill 2613.

Yours very truly,

  
James P. Healy  
Superior Court Judge  
Department 5  
Tacoma, Washington

fr

**APPENDIX 4**

SENATE BILL NO. 2613

State of Washington  
44th Regular Session

By Senators Marsh, Francis and  
Jones

Read first time February 17, 1975, and referred to JUDICIARY  
COMMITTEE.

1 AN ACT Relating to criminal procedure; and adding a new chapter to  
2 Title 10 RCW.

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

4 ~~NEW SECTION.~~ Section 1. Upon arraignment a person charged  
5 with a misdemeanor or gross misdemeanor may petition the court to be  
6 considered for a diversion program.

7 ~~NEW SECTION.~~ Sec. 2. The petition shall allege that the  
8 wrongful conduct charged is the result of or caused by either alcohol  
9 problems or emotional and/or mental problems for which the person is  
10 in need of treatment and unless treated the probability of future  
11 reoccurrence is great, along with a statement that the person agrees  
12 to pay the cost of a diagnosis of the alleged problem or problems.  
13 The petition shall also contain a case history of the person  
14 supporting the allegations.

15 ~~NEW SECTION.~~ Sec. 3. The arraigning judge upon consideration  
16 of the petition may continue the arraignment and refer such person  
17 for a diagnostic investigation and evaluation to an approved  
18 alcoholic treatment facility as designated in chapter 70.96A RCW, if  
19 the petition alleges an alcohol problem or to an approved mental  
20 health center, if the petition alleges a mental or emotional problem.

21 ~~NEW SECTION.~~ Sec. 4. The facility or center shall conduct at  
22 the expense of the person an investigation and examination to  
23 determine:

- 24 (1) whether the person suffers from the problem alleged;  
25 (2) whether the problem is such that if not treated there is  
26 a probability that similar misconduct will occur in the future;  
27 (3) whether extensive and long term treatment is required;  
28 and  
29 (4) whether effective treatment for the person's problem is  
30 available.

1           **NEW SECTION.** Sec. 5. The facility or center shall make a  
2 written report to the court stating its findings and recommendations  
3 after the investigation and examination required by section 4 of this  
4 act. If its findings and recommendations support treatment, it shall  
5 also recommend a treatment plan setting out:

- 6           (1) The types;
- 7           (2) Nature;
- 8           (3) Length;
- 9           (4) A treatment time schedule; and
- 10          (5) Approximate cost of the treatment.

11           The report with the treatment plan shall be filed with the  
12 court and a copy given to the defendant and defendant's counsel.

13           **NEW SECTION.** Sec. 6. If the report recommends treatment, the  
14 court shall examine the treatment plan. If it approves the plan and  
15 the defendant agrees to comply with its terms and conditions and  
16 agrees to pay the cost thereof or arrange for the treatment, an entry  
17 shall be made upon the person's court docket showing that the person  
18 has been accepted for diversion. A copy of the treatment plan shall  
19 be attached to the docket, which shall then be removed from the  
20 regular court dockets and filed in a special court diversion file.  
21 If the charge be one that an abstract is required to be sent to the  
22 department of motor vehicles, an abstract of the docket showing the  
23 charge, the date of defendant's acceptance for diversion, and the  
24 defendant's treatment plan shall be sent to the department of motor  
25 vehicles, which shall make an entry of the charge and of the  
26 defendant's acceptance for diversion on the department's driving  
27 record of the defendant.

28           **NEW SECTION.** Sec. 7. When treatment is either not  
29 recommended or not approved by the judge, or the defendant declines  
30 to accept the treatment plan, the defendant shall be arraigned on the  
31 charge.

32           **NEW SECTION.** Sec. 8. Evidence pertaining to or resulting  
33 from the petition and/or investigation is inadmissible in any trial  
34 on the charges, but shall be available for use after a conviction in  
35 determining a sentence.

36           **NEW SECTION.** Sec. 9. If a defendant, who has been accepted

1 for diversion, fails or neglects to carry out and fulfill any term or  
2 condition of the defendant's treatment plan, the facility, center,  
3 institution, or agency administering the treatment shall immediately  
4 report such breach to the court. The court upon receiving such a  
5 report shall hold a hearing to determine whether the defendant should  
6 be removed from the diversion program. At the hearing, evidence  
7 shall be taken of the defendant's alleged failure to comply with the  
8 treatment plan and the defendant shall have the right to present  
9 evidence on his or her own behalf. The court shall either order that  
10 the defendant continue on the treatment plan or be removed from  
11 diversion. If removed from diversion, the defendant's docket shall  
12 be returned to the regular court files and the defendant shall be  
13 arraigned on the original charge.

14 **NEW SECTION.** Sec. 10. If a defendant is convicted in any  
15 court of an offense similar to the one for which the defendant is in  
16 a diversion program, the court in which the defendant is under  
17 diversion shall upon notice of conviction in another court remove the  
18 defendant's docket from the diversion file and require the defendant  
19 to enter a plea to the original charge.

20 **NEW SECTION.** Sec. 11. Delay in bringing a case to trial  
21 caused by a defendant requesting diversion as provided for in this  
22 chapter shall not be grounds for dismissal.

23 **NEW SECTION.** Sec. 12. Two years from the date of the court's  
24 approval of diversion for an individual defendant, those dockets that  
25 remain in the special court diversion file relating to such defendant  
26 shall be dismissed and the records removed.

27 **NEW SECTION.** Sec. 13. Sections 1 through 12 of this act  
28 shall constitute a new chapter in Title 10 RCW.

**APPENDIX 5**

**Proposed Amendments to Senate Bill 2613**  
**From Senator Marsh**  
**April 2, 1975**

**Strike "diversion" wherever it appears and insert "deferred prosecution"**

**On page 1, line 9, after "problems" and before "or" insert:  
", or drug problems"**

**On page 1, line 19, after "problem" and before "or" insert ", an approved drug treatment center as designated in Chapter 71.24 RCW if the petition alleges a drug problem,"**

**On page 1, line 24 after "conduct" strike "at the expense of the person"**

**On page 3, following section 12, add a new section to read as follows:**

**"NEW SECTION. Sec. 13. Funds shall be appropriated from the fines and forfeitures of the court to provide for a treatment program for any person who is indigent or is unable to pay the cost of any program of treatment." And renumber the following sections accordingly.**

**On page 2 line 15, after "conditions and" add ", if financially able"**

**APPENDIX 6**

**RCW 10.05.010**  
**Petition — Eligibility.**

(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 shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020 or \*section 18 of this act. Such person shall not be eligible for a deferred prosecution program more than once; and cannot receive a deferred prosecution under both RCW 10.05.020 and \*section 18 of this act. 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.

[2008 c 282 § 15; 2002 c 219 § 6; 1998 c 208 § 1; 1985 c 352 § 4; 1982 1st ex.s. c 47 § 26; 1975 1st ex.s. c 244 § 1.]

Notes:

**\*Reviser's note:** Section 18 of this act was vetoed by the governor.

**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 § 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 § 3.]

**APPENDIX 7**

**RCW 10.05.020**

**Requirements of petition — Rights of petitioner — Court findings.**

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

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

(3) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgment of his or her rights; (b) an acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the

written police report; and (d) an acknowledgment that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who: (i) Sincerely believes that he or she is innocent of the charges; (ii) sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, or mental problems; or (iii) in the case of a petitioner charged under chapter 9A.42 RCW, sincerely believes that he or she does not need child welfare services.

(4) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

[2010 c 269 § 9; 2008 c 282 § 16; 2002 c 219 § 7; 1996 c 24 § 1; 1985 c 352 § 6; 1975 1st ex.s. c 244 § 2.]

**APPENDIX 8**

**RCW 10.05.040**  
**Investigation and examination.**

The \*facility to which such person is referred, or the department of social and health services if the petition is brought under RCW 10.05.020(2), shall conduct an investigation and examination to determine:

- (1) Whether the person suffers from the problem described;
- (2) Whether the problem is such that if not treated, or if no child welfare services are provided, there is a probability that similar misconduct will occur in the future;
- (3) Whether extensive and long term treatment is required;
- (4) Whether effective treatment or child welfare services for the person's problem are available; and
- (5) Whether the person is amenable to treatment or willing to cooperate with child welfare services.

[2002 c 219 § 9; 1985 c 352 § 7; 1975 1st ex.s. c 244 § 4.]

**APPENDIX 9**

**RCW 10.05.050**

**Report to court — Recommended treatment plan — Commitment to provide treatment.**

(1) The \*facility, or the department of social and health services if the petition is brought under RCW 10.05.020(2), shall make a written report to the court stating its findings and recommendations after the examination required by RCW 10.05.040. If its findings and recommendations support treatment or the implementation of a child welfare service plan, it shall also recommend a treatment or service plan setting out:

- (a) The type;
- (b) Nature;
- (c) Length;
- (d) A treatment or service time schedule; and
- (e) Approximate cost of the treatment or child welfare services.

(2) In the case of a child welfare service plan, the plan shall be designed in a manner so that a parent who successfully completes the plan will not be likely to withhold the basic necessities of life from his or her child.

(3) The report with the treatment or service plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment or service plan shall be given to the prosecutor by petitioner's counsel at the request of the prosecutor. The evaluation facility, or the department of social and health services if the petition is brought under RCW 10.05.020(2), making the written report shall append to the report a commitment by the \*treatment facility or the department of social and health services that it will provide the treatment or child welfare services in accordance with this chapter. The facility or the service provider shall agree to provide the court with a statement every three months for the first year and every six months for the second year regarding (a) the petitioner's cooperation with the treatment or child welfare service plan proposed and (b) the petitioner's progress or failure in treatment or child welfare services. These statements shall be made as a declaration by the person who is personally responsible for providing the treatment or services.

[2002 c 219 § 10; 1985 c 352 § 8; 1975 1st ex.s. c 244 § 5.]

**APPENDIX 10**

**RCW 10.05.060**

**Procedure upon approval of plan.**

If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be filed with the court. If the charge be one that an abstract of the docket showing the charge, the date of the violation for which the charge was made, and the date of petitioner's acceptance is required to be sent to the department of licensing, an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the petitioner's acceptance for deferred prosecution on the department's driving record of the petitioner. The entry is not a conviction for purposes of Title 46 RCW. Upon receipt of the abstract of the docket, the department shall issue the petitioner a probationary license in accordance with RCW 46.20.355, and the petitioner's driver's license shall be on probationary status for five years from the date of the violation that gave rise to the charge. The department shall maintain the record for ten years from date of entry of the order granting deferred prosecution.

[2009 c 135 § 1; 1994 c 275 § 17; 1990 c 250 § 13; 1985 c 352 § 9; 1979 c 158 § 4; 1975 1st ex.s. c 244 § 6.]

**APPENDIX 11**

**RCW 10.05.090**

**Procedure upon breach of treatment plan.**

If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan or any term or condition imposed in connection with the installation of an interlock or other device under RCW 46.20.720, the facility, center, institution, or agency administering the treatment or the entity administering the use of the device, shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan or device installation and the petitioner shall have the right to present evidence on his or her own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to RCW 10.05.020 and, if the charge for which the deferred prosecution was granted was a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the department of licensing of the removal and entry of judgment.

[2010 c 269 § 10; 2008 c 282 § 17; 1997 c 229 § 1; 1994 c 275 § 18; 1985 c 352 § 12; 1975 1st ex.s. c 244 § 9.]

APPENDIX 12

**RCW 10.05.130**

**Services provided for indigent defendants.**

Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment.

[1975 1st ex.s. c 244 § 13.]

APPENDIX 13

SENATE BILL ANALYSIS

BILL NO. S.B. 2613, committee amendment

DATE: 4/10/75

SHORT TITLE: authorizing pre-trial diversion programs approved by the court

SPONSOR: Senators Marsh, Francis and Jones

COMMITTEE: on Judiciary

ANALYZED BY: Bill Gales

Issue: Should a person charged with a misdemeanor or gross misdemeanor which purportedly resulted from alcohol problems, or drug problems, or emotional or mental problems be permitted to have the prosecution of those charges deferred pending successful completion of a treatment program?

Analysis: Present law: There is no state statute establishing a deferred prosecution program where the court and prosecutor share in the decision. A prosecuting attorney himself has the authority to refrain from prosecuting a particular case and after conviction can suspend or defer the sentence pending participation in a treatment program.

The bill: Sec. 1 - Upon arraignment on a misdemeanor or gross misdemeanor a defendant can petition the court for participation in a deferred prosecution program.

Sec. 2 - Requires such a petition to allege alcohol, drug, mental or emotional problems.

Sec. 3 - The judge with the concurrence of the prosecuting attorney can continue the case and order a diagnostic evaluation.

Sec. 4 - States the nature of the diagnosis..

Sec. 5 - States the type of recommendations the diagnosing facility should make.

Sec. 6 - Once the court approves a treatment plan, the file shall be placed in a special deferred prosecution docket.

Sec. 7 - If a treatment plan is not approved, defendant shall be arraigned.

Sec. 8 - Excludes the evidence contained in or stemming from the petition from trial but permits its use at sentencing.

Sec. 9 - Provides for a court hearing before the participant is dropped from a treatment program.

Sec. 10 - Conviction of a similar offense during participation in a treatment program to result in arraignment on the original charge.

**SENATE BILL ANALYSIS**  
**S.B. 2613**

page two

**Sec. 11 - Removes defense of denial of right to a speedy trial based upon a delay caused by participation in this deferred prosecution program.**

**Sec. 12 - Provides for automatic dismissal of the charges two years after approval of participation in the deferred prosecution program.**

**Sec. 13 - Provides for payment of the cost of the treatment program for indigents out of fines and forfeitures of the court (in other cases costs are payable by the participant).**

**Evaluation: The bill establishes a formal deferred prosecution program for individuals with certain types of problems (alcohol, drug, emotional or mental) who commit less serious offenses. This type of program is now being conducted on an informal basis in a few Washington counties as well as in other parts of the country; this bill would make it available state wide.**

**Section 13 does not provide for payment of an indigent's diagnosis which is presumably an oversight and should be added.**

APPENDIX 14

TESTIMONY ON SB 2613 - PRE-TRIAL DIVERSION PROGRAMS

Senate Judiciary Committee meeting on April 2, 1975.

JUDGE LYLE TRUAX - Clark County, District Court Judge

Before I start, there are a number of amendments that have been suggested to this and I assume you have the amendment sheet before you. One of the amendments would change the word "diversion" to some other word and the word suggested in the amendment is "deferred prosecution" and I would like to suggest that you use another word which would be "treatment". The reason for not using the word "diversion" is that confusion can come up with existing diversion programs which I think are entirely different than this program. Deferred prosecution is another type of program that is in the statute which I think would cause more confusion. If we had it just basically a treatment program, using the word "treatment" in place of "diversion" where it occurs throughout the bill, it would clarify that and I would strongly recommend that.

I had a call from some of the treatment facilities and they would like to have a couple of amendments on page 3, line 2, after the word "plan" they would like "or shall have been discharged from treatment" to come before "the". And then on line 10 on the same page (3), after the word "plan" and before the word "or" --  
SENATOR FRANCIS

I would rather go through the bill first, before we start talking about these little amendments.

JUDGE TRUAX

OK. First of all, this is a bill to help get people into voluntary treatment of those types of ~~crimes~~ which are caused basically by a condition such as alcoholism, drug problems or emotional or mental problems. The basic purpose of the bill is to find an avenue by which we can get these people into treatment. I think all the research and surveys that have been done show that these types of people having these types of problems are in all probability,

JUDGE TRUAX (cont.)

unless their problem is treated, are going to be back again into the revolving door of the courts. This is a method by which these people can be taken out and placed into treatment. The way the bill operates is upon arraignment the defendant has the right to file a petition. In this petition he alleges that he has either an alcohol problem or a drug or a mental or emotional problem and that the problem was one of the causes of his misconduct and that he requests that the problem be treated. Upon that being filed at arraignment, the court refers him to a treatment center for diagnosis and the sets out for an alcohol problem would be to those that are proved as treatment centers in the recent act here that we are under now. Drug problems also treatment centers and the mental health center if it is a

SENATOR FRANCIS

Why do you insist on having all this happen at arraignment?

JUDGE TRUAX

This is a time that the person -- the sense of the bill is to give the defendant -- he's the one who is asking for it.

SENATOR FRANCIS

Why can't he ask for it later?

JUDGE TRUAX

I assume he could later if he wants to. I don't think there is anything here that would stop him --

SENATOR FRANCIS

If you need the bill, then it must be because you don't have the jurisdiction to do it without the bill. The bill only authorizes it upon arraignment.

JUDGE TRUAX

If you want to have it other times, that is fine, I don't have any --

SENATOR FRANCIS

Are you doing it now by the way?

JUDGE TRUAX

No. People going to treatment now are going because of the judge's decision. This placement is upon the person who is charged before the court and his counsel as a way of putting this person into treatment and that bypasses the rest of the court.

SENATOR FRANCIS

Isn't it a fact that some prosecutors do this now before --

JUDGE TRUAX

We have in our county a very fine diversion program. This diversion program affects first offender felonies. It doesn't address itself to these people who are problem people. These are the people who have a problem which has to be treated and --

SENATOR FRANCIS

I guess what I am asking -- let's start with the prosecutor. Does not the prosecutor have the discretion as to whether or not to charge someone?

JUDGE TRUAX

No, say a fellow is picked up for drunk driving. The prosecutor has no -- that's already done before the prosecutor gets into the picture.

SENATOR FRANCIS

Alright, where there has been no charge and it is up to the prosecutor to charge, he has the discretion then. If he wants to condition his exercise of discretion upon a person seeking treatment he can do so?

JUDGE TRUAX

That's right.

SENATOR FRANCIS

Now, this would give the judge also some discretion to not go any further in the --

JUDGE TRUAX

It would give the defendant discretion, to seek treatment in place of prosecution.

SENATOR FRANCIS

No, this would give the judge the discretion as to whether to go along with the request of the defendant.

JUDGE TRUAX

Yes. The first discretion is on the defendant.

SENATOR FRANCIS

Well, he has to ask to seek a remedy.

JUDGE TRUAX

And then the judge refers him to a treatment center --

SENATOR FRANCIS

Alright, the judge doesn't have to refer him to a treatment center, does he?

JUDGE TRUAX

I would assume not. The bill doesn't say that. The bill says he shall --

SENATOR FRANCIS

It says the arraigning judge, upon consideration of the petition, may continue the arraignment and refer --

JUDGE TRUAX

The next point of discretion is upon the treatment center as far as their diagnostic evaluation of this person to determine whether or not he has a problem that unless treated there is a probability that there will be a future violation and then they prepare a report back to the court along with a treatment plan which is presented to the defendant. This is the second time the defendant has the right for a decision. He has to decide whether he wants to continue in this program and then the judge has the next decision. He has to approve and if it is finally approved then the charge is removed from the existing

JUDGE TRUAX (cont.)

criminal docket and placed into a special treatment file and then if he goes through the program and there is no further violation within the next two years the charge is removed and dismissed.

SENATOR CLARKE

What would this do to the judges' right to require restitution if the crime, for instance, was destroying property or taking money or something like that, where perhaps normally, at least under a new enactment we have here, the court has a right to require restitution. What happens to that in here?

JUDGE TRUAX

I would imagine that would be something -- I don't know how that would be handled.

SENATOR CLARKE

It seems to me there ought to be some --

JUDGE TRUAX

You maybe could put something in there for that. This is basically -- when you get the person into treatment that is the sum and substance of the bill. An avenue for doing this which is a little bit more voluntary if the judge says either go to treatment or go to jail for 60 days. Also in this --

SENATOR FLEMING

Section 4 says "The facility or center shall conduct at the expense of the person an investigation . . .". When a judge, under present law, recommends treatment for an individual, that cost is bared by the public, isn't it?

JUDGE TRUAX

There are a number of different ways. We have a lot of people going into treatment for alcoholism. Some of them have insurance policies for which that is paid. Some of them are able to pay their own costs of treatment. A lot of them Public Assistance picks up. Also, veterans, you get persons in the Veterans

JUDGE TRUAX (cont.)

treatment for alcoholism for nothing. You have a lot of different avenues that you can work.

SENATOR FLEMING

Are those same avenues going to be open?

JUDGE TRUAX

Oh, yes.

SENATOR FLEMING

Because he or she are asking for this and if you limit it to those who can pay for it you are going to have problems.

JUDGE TRUAX

When this person is sent -- say it is an alcohol problem --

SENATOR FRANCIS

We have a proposed amendment from Senator Marsh on that right after the bill. It says, "NEW SECTION. Sec. 13." It says "providing funds for people who can't pay". I worry more about that section because it mandates what a facility has to do and I am wondering if that is a sensible way of doing it. Wouldn't it be less of an invasion of the functions of the facility if we told the judge what kind of information he should request from the facility?

JUDGE TRUAX

I don't get you --

SENATOR FRANCIS

We are getting into a lot of subject matter in this bill. We are now passing laws about what facilities have to do, what these centers have to do in the way of providing investigations and examinations. I am not sure that everybody that should have received notice has received notice when we start getting off into these areas. We are passing laws about the people who are operating those facilities.

JUDGE TRUAX

The amendment I have to make comes from those who operate one of the facilities and is a suggestion they have. I would like to call your attention to the fact that as far as -- this bill will probably be used largely in drunk driving cases where we get the person, using this bill, so he can go into treatment for alcohol problems. When the person goes under this, this holds back the suspension of a driver's license. It does send the information to DMV so they can have it entered on his driving record and this is pretty much in conformity with the suggestions of the Department of Transportation on this type of method for using treatment where you know the person is an alcoholic and he needs treatment rather than jail time or something like that.

Are there any more questions.

SENATOR MARSH

You will probably want to hear other witnesses but I was going to ask about a couple of those specific things about amendments.

SENATOR FRANCIS

Why don't we get into that now, we have an overview of the bill and now we can find out how the amendments fit in.

JUDGE TRUAX

I have these 2 amendments on page 3, I can give them to the clerk.

SENATOR MARSH

Could you read them again to us slowly please.

JUDGE TRUAX

On page 3, line 2, after "plan" and before "the" insert "or shall have been discharged from treatment". On line 10, the same page, after "plan" and before "or" insert "if acceptable to the treatment facility".

SENATOR FRANCIS

At that point, on line 2 you haven't said wrongfully discharged or you haven't said discharged for failure to be able to carry it out properly, so I

SENATOR FRANCIS (cont.)

would take it that would include a person who had completed the treatment successfully and yet later in that same sentence you say that they 'shall immediately report such breach to the court'.

JUDGE TRUAX

This is asked by the treatment center which felt that they should have a right, say if a person is acting up terribly, just destroying the treatment program --

SENATOR FRANCIS

I see. You are talking about a person who is discharged because they are not --

JUDGE TRUAX

That's right.

SENATOR FRANCIS

Alright, we will have to reword that amendment proposal.

SENATOR MARSH

Judge Truax recommended the substitution of the word "treatment" wherever the word "diversion" is. I went through the bill and on page 2, line 20, if we substitute the word "treatment" there, it will read then ". . . filed in a special court ((diversion)) treatment file."

JUDGE TRUAX

I think that is alright because that is basically what this is. I think we had better call it what it is rather than some other word because I think if you use the same word throughout you are better off. So people will know just exactly what it means.

SENATOR MARSH

In Section 4, the Chairman is concerned about the fact of us ordering a facility or center to do certain things. As far as you are concerned, would it destroy the intent if it said something like this "the arraigning judge shall

SENATOR MARSH (cont.)

require the petitioner to obtain an investigation and examination to determine. . ."

JUDGE TRUAX

No, that would be alright. As long as we have those conditions below that because those are basically what we are seeking to find out. Anything you can do to improve the bill will be appreciated.

RICHARD LEE - Director, District Probation Court, Vancouver

There are a couple of points I wanted to make on why I think the probation officer certainly and also it has been discussed in our State Association of Probation Officers. I think one of the areas is that we see so much in the evolution of a person coming into the system with a drinking problem is the fact that they get a couple of DWI's under their belt until they really get serious about doing something about it and by that time their license situation is in a very precarious position -- they lose their license and with that we see them lose the ability of getting to work and back legally and, as a consequence, they often end up with further legal problems due to driving while suspended so we frequently have people who are doing very well on their sobriety -- they live out in Yacolt, Washington, or someplace like that and they work in Camas or someplace and are in real bad trouble because they are getting this driving while suspended from time to time. I think this is one area that this bill could really impact on. The person would be allowed to get treatment and yet not have a conviction which puts their license in jeopardy.

The second thing is that Judge Truax has mentioned that we have a diversion program in Clark County and have had one for about the last year through our Prosecutor's office and it has proven out very successful and I think the basic reason why is because it allows treatment to become a first alternative rather than a last one. I think the experience we have had in the corrections field is that

RICHARD LEE (cont.)

when people have this motive of getting treatment, of avoiding a conviction, rather than after the damage of a conviction is done, it seems like their attitude in treatment, just the fact that their interest is really -- they can see the interest for them much more than after a conviction is done, really adds to their success in the treatment end of it.

One last point and that is that I am also an ex-police officer and I can see where some of the law enforcement people would come from on first examination of this bill. They would say, "well, this is another bill that is going to allow people to slip out of having to face the responsibility of their actions. Here is a guy driving out there in a drunken condition and now he is not going to be convicted and what a lousy thing that is." One of the things that might be considered is the fact that when a person does go through treatment, generally, if they are paying for it out of their own pocket, it is a much more costly process to them for instance, on a typical DWI which generally will cost the person in fines of about \$300, a great deal more in increased insurance cost, but generally the fines are around \$300. Our local treatment programs that they would be referred to in our community run anywhere from \$625 to about \$1,600 for that treatment. The time involved is a great deal different. The average DWI offender or misdemeanor offender does not spend 21 days in jail, or does not spend 28 days in jail. They do spend that amount of time in treatment. I think that is important to know.

The last area, I think, is the emotional commitment they have to make. It is easier for a person to sit in jail and feel sorry for himself with a lot of other losers who are sitting in there feeling sorry for themselves than it is to get into a treatment program. To get into some group sessions and individual counseling sessions which really have the main thrust of making the person face their responsibility for their actions. That is the first step toward recovery

RICHARD LEE (cont.)

that any treatment program is about -- helping that person face that responsibility. The commitment all along the line: financial; emotional; and certainly the time, is much greater under this bill than if we just treat the person in the traditional way.

I think it is a good bill and I hope that it will be supported. I would like to make one suggestion and that is that in the bill regarding your comments Senator (Clarke) about restitution, you will notice that in section 6 it says "If the report recommends treatment, the court shall examine the treatment plan." I was wondering, while you were making your comments, why the court couldn't have input into that treatment plan also and include restitution when necessary.

I feel that this bill allows a person to help themselves. It allows them to take their money and their time and their emotional resources and spend it to the benefit of themselves and to their family and, in the consequence, to all of us.

PAUL CLAUSEN, Grant County Prosecuting Attorney

I am against this bill. I am not particularly against the theory, the idea of treatment of DWI's or people with alcohol problems. My primary objection is I think that the bill is possibly constitutionally wrong in that it gives the judge discretionary powers with regards to who shall be prosecuted. You have the judge wearing the same hat, the same as the prosecutor, the same as the judge and I think this is wrong. From my studies and research on diversionary programs, and this is really what it is regardless of what you call it, that the success of the programs are dependent to a large extent on the prosecuting attorney's office. Screening the cases as to which one should be put on and, of course, determining what the facts are as far as the crime, and then saying what the problems may be with regards to the subject of prosecution. What is going to happen to the case if the person is put on a diversionary program, and

PAUL CLAUSEN (cont.)

say he falls off the ladder 23 months afterwards. Is it the same? Is the case finished? For all practical purposes there may not even be a case. I think that the success of any diversionary program should be dependent upon involving the prosecuting attorney. I would have no objection if any diversionary has to have the approval of the court but, from the way this bill is written, the prosecuting attorney may never even show up in court and it is all handled without any input at all from the prosecuting attorney's office.

My next objection --

SENATOR FRANCIS

Wait a minute. I have a little trouble grasping that last idea. In Section 3 it says "The arraignment judge upon consideration of the petition may continue the arraignment. . .". Now, I see nothing in there that would lead me to believe that the prosecutor and the defense counsel haven't argued that thing pretty thoroughly before the judge reaches his conclusion.

PAUL CLAUSEN

There is nothing in there that says that the judge has to consider any position or anything from the prosecuting attorney's office.

SENATOR FRANCIS

Why would you need it written down? Isn't it obvious, unless it's forbidden to argue it they are going to listen.

PAUL CLAUSEN

Are they? Why shouldn't it, for a practical matter, be handled by the people who are in charge of prosecuting the case?

SENATOR FRANCIS

That is a different thing. I am asking you how you can justify your statement that he is not going to listen to the prosecutor?

PAUL CLAUSEN

He is not going to but I said there is nothing in there to require it. There is nothing to require any input or any consideration to it.

SENATOR MARSH

If on line 16, after "petition" you inserted the following "and after listening to arguments of the prosecutor's office and counsel for the petitioner" would that satisfy you?

SENATOR FRANCIS

Well, it wouldn't satisfy me, I will tell you that. I can't see writing something like that in every paragraph that we are going to write. It is obvious that you listen to the arguments of counsel and I think it is ridiculous to state that you have to put it down in writing every time what a judge obviously does. I just think it is ridiculous to even suggest that.

PAUL CLAUSEN

Well, it is my experience with judges in some of these cases that the prosecuting attorney might as well not even appear.

SENATOR FRANCIS

Well, I certainly hope you go out and let the voters know that the next time.

PAUL CLAUSEN

My second objection seems to be taken care of. The original act provides that the defendant has to agree to pay the costs. Whoever drafted this, I think that is highly unfair that any person who is going to be allowed should be able to take advantage of whatever the law allows rather than require him to be able to foot the bill. I think this is entirely a violation of due process. I guess that has been sort of taken care of in the form of amendment. Then, of course, is the question of supervision of this person after he has gone through the treatment program. Now, the treatment program lasts for how long? Some six weeks, maybe several months. The diversionary program as put in there lasts for two years. There is nothing, it appears, of who is going to keep track of them after they get out of the treatment center. It does say that the terms of condition of a

PAUL CLAUSEN (cont.)

defendant's treatment plan, and I think it should be more specific. Then it goes back to the judge, the judge decides what to do, and again there is no rules of procedure or how the prosecuting attorney is going to be brought into the situation or how --

SENATOR FRANCIS

That is a good point. How do you go about doing it now where it is the prosecutor who exercises that discretion?

PAUL CLAUSEN

We do not have a diversionary program set up in my county because we do not have the funds to operate a probation department which I think is necessary to keep track of these people, or even to screen them before they are put into the diversionary program.

SENATOR FRANCIS

Couldn't you, for example, a guy comes in and you finally work out an agreement with him or his attorney that you are going to let him see a psychiatrist for six months and you are going to hold the thing in your desk drawer during that period and you want a monthly letter from him or a monthly letter from his psychiatrist during that six months. You have got control and you don't need a probation department for that. He is reporting directly to you as prosecutor.

PAUL CLAUSEN

I have done that in cases of mental illness type situations and so far as I know we have had several programs work out that way. But the program is strictly on the basis of a continuing treatment to a psychiatrist.

SENATOR FRANCIS

And continuing contact so you can make sure that they are doing it. And, that is really what you are saying we need here is some means of assuring that the judge or whoever it is who is exercising this discretion knows what is going on.

PAUL CLAUSEN

I think that provision should be made for every county to be able to do this or some financial situation set up so that this can be done because one of the problems I can see in this thing is maybe there should be limited to DWI cases. I can see where if this thing passes, every, I can't remember, either first or second offense, is going to be a DWI case and every defense counsel is going to say "go in there and ask for diversion from the court". And, really, I think that if something like that should happen that every county should be set up to do it and I think that the Legislature should put some guidelines that everybody should be entitled to do this. These DWI cases are quite involved. You have one judge in one county throughout the state say "I really believe in the treatment" and you get another judge someplace else that thinks "No sir, this isn't worth a darn" and you really don't get equal treatment and that is one of the things that we hear about the criminal law, that people are treated differently in other persons and are given different sentences.

SENATOR FRANCIS

This is one thing that struck me about the part where it has to be done at arraignment. It struck me two ways: (1) That it is a trap to the unwary for those who are either without an attorney or get an attorney that they used in the business or something else and (2) on the other end of it, the professional criminal defense attorney is going to be pushing for this every single case and there you are.

PAUL CLAUSEN

I really think we should have a program and everybody is entitled to it and more or less directing that if they think they can be treated, put them on it. Put them on it rather than leaving too much discretion to the court. If we are trying to get the DWI's off, maybe that is one of the ways of doing it, requiring them to go to take treatment. You can't require it with discretion, but make it available to everybody.

SENATOR MARSH

Mr. Chairman, do you think the word "may" on page 1, line 16, should be "shall"?

SENATOR FRANCIS

No. I was thinking that, well I am not sure what the solution would be. It seems to me that that ought to be available at any point and not just at the arraignment level. Let's just keep listening. Maybe it's fine the way it is.

PAUL CLAUSEN

I think really this is a DWI bill for most practical situations. I can't perceive of many cases where it is going to come up otherwise and I think I would suggest that the bill be limited strictly to DWI and give everybody an opportunity to take advantage of it and maybe it might have a better effect on people.

I really think that the prosecuting attorney or somebody who is going to be gum shoeing the prosecution of this thing, when the guy falls off the ladder or something, should have some input into this situation to keep track of it. I think that if it is a matter of discretion of the prosecution it probably belongs in the office of the prosecuting attorney and not with the judge wearing both hats.

DAVE BOERNER - King County Prosecuting Attorney's Office

(end of tape) . . . diversion programs exist both at the precharging level and after charging.

SENATOR FRANCIS

Are you getting at the same thing that Paul was, that only in DWI cases is the deferred sentence really not sufficient to solve the problem and therefore we might need this for DWI?

DAVE BOERNER

I think the deferred sentence solves the problem in all cases. If the problem is that drunk drivers shouldn't have their license taken away from them then I suggest that that be done directly. if the problem is the insurance premiums are too high their insurance should not go up,

DAVE BOERNER (cont.)

insurance companies should not consider the fact that people have driven while intoxicated, then I think the bill should be addressed to that point. My concern here is that the bill attempts to do by indirection what apparently there is no willingness to do directly.

SENATOR FRANCIS

It may be that if we -- I understand what you are saying and I follow that reasoning all the way through -- but on the other hand if you have this big stick out here that we now have of saying "no matter what happens, if you are convicted you lose your license" that certainly is a pretty good motivating factor for the person who has the opportunity to not go through the trial, knowing that if he goes through trial he is going to lose his license, that's a pretty good motivating factor to work pretty hard on the treatment program.

DAVE BOERNER

That person can do the same thing without this bill. My point is the bill must -- the only thing I can see that the bill does, the only authority the bill grants that isn't existing presently, is to do this over the objection of the prosecuting attorney. We can have Ron Hendry -- in Pierce County they have a program that involves stipulating continuance with treatment. There are a number of programs around the state. I think the intent here is to, in effect, give the judicial branch the power to determine who should be tried and who should not be tried. I am not saying the prosecutor should have all the role but the executive branch, the way the system works, decides who is prosecuted and who is not. This is an attempt to exclude that. As I said before, all of the things that can be done under the present law with the various diversion programs around the state is contradictory to other legislation dealing with DWI and the habitual traffic offender law. Under this bill, no one will be convicted of anything. With regard to the non-DWI, we can mention lots of things that are gross misdemeanors that are covered by this bill. The bill includes mental health. I suppose under some definitions everyone who steals has a problem and thus is entitled to treatment. I question

DAVE BOERNER (cont.)

that is the public policy statement

DAVE GEHRT

I understand what you are saying about it being possible to do a lot of these things that are done in this bill without a change in the law. It's been a while since I have been in to talk to your office but I have tried a couple of times to talk to your people, particularly your office because that is what I am experienced with, about similar types of programs and got nowhere.

DAVE BOERNER

We don't have diversion programs and do not believe in them and I would be happy to discuss it with you but others may differ from that. I think if the matter is serious enough to warrant criminal prosecution it is serious enough to warrant a determination of that prosecution. I don't believe in using criminal charges as a club to coerce people into treatment.

SENATOR FRANCIS

That makes a very good statement for why we might need this bill.

DAVE BOERNER

If you want to exclude the executive branch, yes.

SENATOR FRANCIS

Or if we want to over ride the discretion of a particularly obstinate prosecutor.

SENATOR MARSH

Mr. Chairman, obviously there is a split among prosecuting attorneys because our prosecuting attorney endorses the bill. I am wondering, if you (Boerner) were to work with Judge Truax who is here today and one of our deputy prosecutors, Jim Sellars, do you think it is possible that you and Paul could maybe work out some of these concerns or do you think you are just totally opposed to the bill

SENATOR MARSH (cont.)

and it wouldn't do you any good?

DAVE BOERNER

No. There are a number of problems that could be solved and I think the bill could be a much better bill if you gave the prosecuting attorney a role and provide for -- there are a number of practical problems on proof. This doesn't give the prosecutor a voice if he can't prove the case a year from now. The remedy here is to go ahead and re prosecute but that is impossible until deal with those kinds of things. But my real question is I don't know if it is necessary to accomplish the purposes that all of us and there is a role for treatment I think can be accomplished rather than that

SENATOR FRANCIS

The problem of proof is an important one which is usually solved by a contractual arrangement if the prosecutor --

DAVE BOERNER

There is no requirement here that the defendant in any way indicate guilt or responsibility for the act.

SENATOR MARSH

But if he goes through treatment and his problem is solved and he makes restitution, hasn't society been served?

DAVE BOERNER

Yes, if it always worked we would have no objections but it doesn't always work. The problem is the remedy proposed in the bill is re prosecution. Re prosecution a year or 18 months later may be quite a different thing than prosecution now. Witnesses have forgotten, a whole variety of problems.

SENATOR FRANCIS

We will certainly want to deal with those specifics and we may want to -- we may end up on your side philosophically -- at least we want to get it all out

SENATOR FRANCIS (cont.)

in front of us now.

DAVE KIRK - Department of Motor Vehicles

I would like to briefly comment there is no question but that the intent of the bill is certainly meritorious. My comments, however, will be a little more of a technical nature from the point of view of DMV. I would suggest a couple of minor changes -- if this goes they are going to be important.

On page 3, line 15, after "an" and before "offense" insert "subsequent". Lots of times the chronology of these events does not always fall into place. A person might be convicted of an offense which actually was committed prior to the one which got the person into the diversion program. It is a technicality but it is kind of important.

In the section just above that, it speaks to the removal of a person from the diversion program if he 'falls off' so to speak. There is no provision for notifying our department that we ought to remove the entry. There ought to be a way to clean up the record. Again, it might be sort of understood but it might be kind of good to have it in there too.

One eventuality that might occur frequently is the situation that we very, very often see in driver's records where a person is going through some kind of a traumatic period in his life and he is charged "bang, bang, bang" with two or three DWI's. Some of them could be in different courts. You might have 2 of these diversion programs going on at the same time, neither court being aware of the other one. There ought to be some way to deal with that. This, of course, assumes I think that the purpose of putting this on the person's record is that the court is going to get a copy of the record so that they can find out what is going on but again that might be a pretty broad assumption that you can't always understand, or anticipate. The other thing I would suggest is that if (this is merely a recommendation) it is the point where the bill is being considered for possible amendment or redoing, it might be a good idea to involve the Department

DAVE KIRK (Cont.)

of Social and Health Services. I think we all agree that alcoholism is a very serious problem and we all have ideas of ways to go about it. In fact, that is what is happening and in our work with the treatment facilities around the state and DSHS we become aware that everybody has their own program and there are many, many kinds and the problem is that we are all sort of going off in different directions and I really think that involving DSHS would help get a uniform system that would operate effectively statewide rather than all these little center's programs.

LOIS PARKER - Executive Director, Thurston-Mason Alcoholism Recovery Council

I am in agreement with the Council about this bill. One thing I do want to comment on -- The Department of Social and Health Services is involved to a certain degree already, inasmuch as the community alcoholism centers, which every county in the state I believe does contain, are approved centers and they would be the people who did write the treatment program for the person involved in the DWI and the Department of Social and Health Services does have a tracking system whereby they can keep track of who is there and who is in what treatment program. So, DSHS has already been involved.

As far as the matter of supervision is concerned, in the community alcoholism centers which fall under my jurisdiction, we do provide supervision at the present time and do provide information to the courts relating to the progress, or if the person is not making progress, of each individual. It is not unusual for us, even though we do have a certain amount of compassion and certainly expertise in this matter of alcoholism, it is also not unusual for us to sometimes pick up the phone and call the probation department and suggest that this person's probation be revoked because they are not following through.

We do, in fact, provide written follow up to our courts regarding the progress of each client.

JIM SELLARS - Deputy Prosecuting Attorney, Clark County

Jim Carty wanted to be here today but he was unavoidably detained and sent me instead.

JIM SELLARS (cont.)

We have a principal objection to the use of the word "diversion". We have a diversion program which, to us, means that the entire criminal justice system is diverted and we are afraid that some kind of confusion might arise with the word "diversion" in this bill since the persons handled via the procedure set up in this bill --

SENATOR FRANCIS

Other than that you support the bill?

JIM SELLARS

That is my understanding.

SENATOR MARSH

I have a letter from Jim Clarty dated February 25, 1975, did you take a look at that Jim?

JIM SELLARS

I am aware of that.

GEORGE WOLFE - Director, Clark County Council on Alcoholism

We simply want to go on record as concurring with the basic tenants of this bill. We feel that there is no jeopardy to any the defendants. In many cases as it is now the defendant coming in front of the court at arraignment time doesn't get to see the prosecutor anyway because he pleads guilty. This would give us the basic tool to deal with his driver's license situation on behalf of his illness rather than a person who is basically a criminal at heart.

SENATOR FRANCIS

That concludes the list of people we had to testify on that bill. I appreciate your help very much.

TESTIMONY SIGN-UP SHEET

SENATE JUDICIARY COMMITTEE MEETING

BILL NO. S B 2613

DATE: 4-2-75

SHORT TITLE: Pre-trial diversion programs.

LOCATION: 433 PLR

Name	Address	Telephone	Affiliation	Would Like To Testify	Pro/Con
Judge Lyle Travis	Vancouver	299-2424	District Court	Yes	Pro
Richard A. Lee	Vancouver	699-2342	District Court Probation	Yes	Pro
George O. Wolf	Vancouver	696-1631	Clark Co. Courthouse	Yes	Pro
Lucy Parker	Olympia	943-8510	Thurston/Mason Alcaldeon Etc. Dir.	Yes	Pro
Taul Klassen	Ephrata	954-2011	Grant Co. Proc.	Yes	Again
JIM SELLERS	Vancouver	699 2261	Clark County Prosecutor's Office	Yes	
DAVE KIRK	OLYMPIA	6472	DMV	Yes	PRO
David Boerner	Seattle	344-2580	King Co. Pros. Atty	Yes	Again

**APPENDIX 15**

prosecution shall upon notice of conviction in another court remove the defendant's docket from the deferred prosecution file and require the defendant to enter a plea to the original charge.

**NEW SECTION, Sec. 11.** Delay in bringing a case to trial caused by a defendant requesting deferred prosecution as provided for in this chapter shall not be grounds for dismissal.

**NEW SECTION, Sec. 12.** Two years from the date of the court's approval of deferred prosecution for an individual defendant, those dockets that remain in the special court deferred prosecution file relating to such defendant shall be dismissed and the records removed.

**NEW SECTION, Sec. 13.** Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment.

**NEW SECTION, Sec. 14.** Sections 1 through 13 of this act shall constitute a new chapter in Title 10 RCW.

Passed the Senate June 8, 1975.

Passed the House June 7, 1975.

Approved by the Governor June 26, 1975.

Filed in Office of Secretary of State June 27, 1975.

**CHAPTER 245**

[Engrossed Senate Bill No. 2670]

**ALCOHOLIC BEVERAGE CONTROL—  
INTERSTATE PASSENGER CARRIERS**

AN ACT Relating to liquor licenses and taxes; amending section 2, chapter 13, Laws of 1970 ex. sess. as amended by section 2, chapter 208, Laws of 1971 ex. sess. and RCW 66.24.420; adding a new section to chapter 66.24 RCW; and repealing section 23L added to chapter 62, Laws of 1933 ex. sess. by section 1, chapter 217, Laws of 1937 and RCW 66.24.390.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 13, Laws of 1970 ex. sess. as amended by section 2, chapter 208, Laws of 1971 ex. sess. and RCW 66.24.420 are each amended to read as follows:

(1) The class H license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for said license, if issued to a club, whether inside or outside of incorporated cities and towns, shall be three hundred thirty dollars.

(b) The annual fee for said license, if issued to any other class H licensee in incorporated cities and towns, shall be graduated according to the population thereof as follows:

Incorporated cities and towns of less than 10,000 population; fee \$550.00;  
Incorporated cities and towns of 10,000 and less than 100,000 population; fee \$825.00;

Incorporated cities and towns of 100,000 population and over; fee \$1,100.00.

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