**1994-S AMH FARI H3231.1 - NOT FOR FLOOR USE**

**SHB 1994** - H AMD **910**

By Representative Farivar

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  (1) In a court of limited jurisdiction, the court may, in its discretion, or upon motion of either party, offer to dismiss a defendant's simple misdemeanor or gross misdemeanor charge pursuant to the following:

(a) The court may continue a case pursuant to a defendant's agreement to waive speedy trial in anticipation of dismissal following court-ordered conditions for a period not to exceed 12 months and order the defendant to comply with terms, conditions, or programs that the court deems appropriate based on the defendant's specific situation. The court shall hear from both parties and rule on the motion in open court.

(b)(i) If the defendant has substantially complied with the imposed terms and conditions, either at the end of or at any point during the continuance period, the court shall dismiss the charges pending against the defendant.

(ii) Full restitution must be a required condition for the dismissal of charges. However, a defendant's inability to pay restitution due to indigence may not be grounds for denial of this dismissal following progress towards complying with court-ordered conditions or as a basis for finding that the defendant has failed to substantially comply with the court's conditions.

(c) If it appears to the prosecuting attorney that the defendant is not substantially complying with the terms and conditions, after providing the defendant with written notice of the alleged violations and disclosure of all evidence to be offered against the defendant, the court shall hold a hearing to determine whether the defendant has, by a preponderance of the evidence, willfully failed to substantially comply with the terms and conditions set by the court. At that hearing:

(i) The rules of evidence do not apply, but the defendant must be afforded the due process rights required for the revocation of probation, including the right to confront and cross-examine all witnesses;

(ii) The defendant must have the opportunity to be heard in person and to present evidence; and

(iii) If the court finds by a preponderance of the evidence that the defendant is willfully failing to substantially comply with the terms and conditions, the court may continue the hearing to provide additional time for substantial compliance or may end the period of continuance pending dismissal.

(d) If the court offers to dismiss a defendant's simple misdemeanor or gross misdemeanor charge, any written confirmation of completion of an assessment or statement indicating the defendant's enrollment or referral to a specific service or program, or any written updates regarding treatment or services, must be considered a treatment evaluation or compliance form ordered by the court.

(e) Admissions made by the defendant in the course of receiving treatment or services pursuant to the offer to dismiss may not be used against the defendant in the prosecution's case in chief.

(2)(a) A charge may not be dismissed with court-ordered conditions pursuant to this section if the person has any pending charges in this state or any other state for any offense that would constitute a prior offense as defined in RCW 46.61.5055, regardless of conviction.

(b) A charge may not be dismissed pursuant to this section for any of the following offenses or any violations of equivalent local ordinances:

(i) Any offense that would constitute a prior offense as defined in RCW 46.61.5055 upon conviction;

(ii) Reckless driving under RCW 46.61.500;

(iii) Racing under RCW 46.61.530;

(iv) Reckless endangerment of roadway workers under RCW 46.61.527(4);

(v) Negligent driving in the first degree under RCW 46.61.5249;

(vi) Negligent driving in the second degree under RCW 46.61.525;

(vii) Negligent driving in the second degree with a vulnerable user victim under RCW 46.61.526;

(viii) Hit and run (unattended vehicle or property) under RCW 46.52.010;

(ix) Hit and run (attended vehicle or property) under RCW 46.52.020(5);

(x) Hit and run (striking a deceased person) under RCW 46.52.020(4)(c);

(xi) A domestic violence offense involving an intimate partner as defined in RCW 7.105.010;

(xii) Stalking under RCW 9A.46.110(5)(a);

(xiii) Violation of a domestic violence protection order, sexual assault protection order, stalking protection order, or vulnerable adult protection order; an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW; a valid foreign protection order as described in RCW 26.52.020; or a Canadian domestic violence protection order as defined in RCW 26.55.010;

(xiv) Aiming or discharging firearms under RCW 9.41.230;

(xv) Hazing under RCW 28B.10.901(2)(a);

(xvi) Animal cruelty in the second degree committed under the circumstances described in RCW 16.52.207(1);

(xvii) Assault in the fourth degree under RCW 9A.36.041;

(xviii) Any offense with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135;

(xix) Communication with a minor or someone believed to be a minor for immoral purposes under RCW 9.68A.090(1);

(xx) Any traffic offense involving a commercial driver's license or a commercial learner's permit, or involving the operation of a commercial motor vehicle; or

(xxi) Any offense that was originally filed as a felony charge and subsequently amended to, or refiled as, a gross misdemeanor or misdemeanor charge.

**Sec.**  RCW 46.20.270 and 2015 c 189 s 1 are each amended to read as follows:

(1) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in this title which occur on federal installations within this state, shall immediately forward to the department a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, a payment of a fine, penalty, or court cost, a plea of guilty or nolo contendere or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a traffic infraction in said court for a violation of any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses.

(2) Every state agency or municipality having jurisdiction over offenses committed under this chapter, or under any other act of this state or municipal ordinance adopted by a state or local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, parking, or civil penalties issued under RCW 46.63.160 has been committed, or failure to appear at a hearing to explain mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that two or more violations of laws governing standing, stopping, and parking or one or more civil penalties issued under RCW 46.63.160 have been committed and indicating the nature of the defendant's failure to act. Such violations or infractions may not have occurred while the vehicle is stolen from the registered owner. The department may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(3) For the purposes of this title and except as defined in RCW 46.25.010, "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in this title which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine or court cost, a plea of guilty or nolo contendere, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence or sanctions are deferred or the penalty is suspended, but not including entry into a deferred prosecution agreement under chapter 10.05 RCW or entry into a judicially authorized dismissal of a misdemeanor or gross misdemeanor following substantial compliance with court-ordered conditions under section 1 of this act.

(4) Perfection of a notice of appeal shall stay the execution of the sentence pertaining to the withholding of the driving privilege.

(5) For the purposes of this title, "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding.

NEW SECTION. **Sec.**  Section 1 of this act constitutes a new chapter in Title 10 RCW."

Correct the title.

EFFECT: (1) Requires the court to hear from both parties in open court when ruling on a motion to dismiss the defendant's misdemeanor or gross misdemeanor charge pursuant to compliance with court-ordered conditions through the process established in the bill.

(2) Prohibits the dismissal of a charge through the process established in the bill if the defendant has pending charges in any state for an offense that would constitute a prior offense for purposes of determining penalties for Driving Under the Influence or Physical Control offenses, regardless of conviction.

(3) Expands the list of offenses that may not be dismissed through the process established in the bill to include Reckless Driving; Racing; Reckless Endangerment of Roadway Workers; certain Negligent Driving offenses; certain Hit and Run offenses; violation of certain protection orders; Hazing; any offense that would constitute a prior offense for purposes of determining penalties for Driving Under the Influence or Physical Control offenses; and any violation of a local ordinance that is equivalent to an enumerated misdemeanor or gross misdemeanor.