

**SHB 1104 - H AMD 800**

By Representative Griffey

WITHDRAWN 02/12/2024

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 10.05.010 and 2019 c 263 s 701 are each amended to  
4 read as follows:

5 (1) In a court of limited jurisdiction a person charged with a  
6 misdemeanor or gross misdemeanor may petition the court to be  
7 considered for a deferred prosecution (~~(program)~~). The petition shall  
8 be filed with the court at least seven days before the date set for  
9 trial but, upon a written motion and affidavit establishing good  
10 cause for the delay and failure to comply with this section, the  
11 court may waive this requirement subject to the defendant's  
12 reimbursement to the court of the witness fees and expenses due for  
13 subpoenaed witnesses who have appeared on the date set for trial. A  
14 person charged with a misdemeanor or gross misdemeanor shall not be  
15 eligible for a deferred prosecution unless the court makes specific  
16 findings pursuant to RCW 10.05.020.

17 (2) A person charged with a (~~(traffic infraction, misdemeanor, or~~  
18 ~~gross misdemeanor under Title 46 RCW, or a misdemeanor or gross~~  
19 ~~misdemeanor domestic violence offense,)) violation of RCW 46.61.502~~

20 or 46.61.504 shall not be eligible for a deferred prosecution  
21 (~~(program)~~) unless the court makes specific findings pursuant to RCW  
22 10.05.020. A person (~~(may not participate in a deferred prosecution~~  
23 ~~program for a traffic infraction, misdemeanor, or gross misdemeanor~~  
24 ~~under Title 46 RCW if he or she has participated in a deferred~~  
25 ~~prosecution program for a prior traffic infraction, misdemeanor, or~~  
26 ~~gross misdemeanor under Title 46 RCW, and a person may not~~  
27 ~~participate in a deferred prosecution program for a misdemeanor or~~  
28 ~~gross misdemeanor domestic violence offense if he or she has~~  
29 ~~participated in a deferred prosecution program for a prior domestic~~  
30 ~~violence offense)) who petitions the court for the deferred  
31 prosecution and participates in the deferred prosecution under this  
32 chapter for his or her first violation of RCW 46.61.502 or 46.61.504~~

1 is eligible to petition the court for a second deferred prosecution  
2 for the person's next violation of RCW 46.61.502 or 46.61.504 when  
3 the person has no other prior convictions defined as a "prior  
4 offense" under RCW 46.61.5055. The person's first deferred  
5 prosecution shall not be considered a prior offense for the purpose  
6 of granting a second deferred prosecution. Separate offenses  
7 committed more than seven days apart may not be consolidated in a  
8 single program.

9 (3) A person charged with a misdemeanor or a gross misdemeanor  
10 under chapter 9A.42 RCW shall not be eligible for a deferred  
11 prosecution ((~~program~~)) unless the court makes specific findings  
12 pursuant to RCW 10.05.020. Such person shall not be eligible for a  
13 deferred prosecution ((~~program~~)) more than once.

14 (4) A person is not eligible for a deferred prosecution  
15 ((~~program~~)) if the misdemeanor or gross misdemeanor domestic violence  
16 offense was originally charged as a felony offense in superior court.

17 (5) A person may petition a court for a second deferred  
18 prosecution while still under the jurisdiction of a court for the  
19 person's first deferred prosecution; however, the first deferred  
20 prosecution shall be revoked prior to the entry of the second  
21 deferred prosecution.

22 (6) A person may not be on two deferred prosecutions at the same  
23 time unless separate offenses are committed within seven days of each  
24 other and the person petitions to consolidate each offense into a  
25 single deferred prosecution.

26 (7) A person charged with a misdemeanor or gross misdemeanor for  
27 a violation of RCW 46.61.502 or 46.61.504 who does not participate in  
28 a deferred prosecution for his or her first violation of RCW  
29 46.61.502 or 46.61.504 remains eligible to petition the court for a  
30 deferred prosecution pursuant to the terms of this section and  
31 specific findings made under RCW 10.05.020. Such person shall not be  
32 eligible for a deferred prosecution more than once.

33 **Sec. 2.** RCW 10.05.015 and 2019 c 263 s 702 are each amended to  
34 read as follows:

35 At the time of arraignment a person charged with a violation of  
36 RCW 46.61.502 or 46.61.504 or a misdemeanor or gross misdemeanor  
37 domestic violence offense may be given a statement by the court that  
38 explains the availability, operation, and effects of the deferred  
39 prosecution ((~~program~~)).

1       **Sec. 3.** RCW 10.05.020 and 2021 c 215 s 115 are each amended to  
2 read as follows:

3       (1) Except as provided in subsection (2) of this section, the  
4 petitioner shall allege under oath in the petition that the wrongful  
5 conduct charged is the result of or caused by substance use disorders  
6 or mental ~~((problems))~~ health disorders or domestic violence behavior  
7 problems for which the person is in need of treatment and unless  
8 treated the probability of future recurrence is great, along with a  
9 statement that the person agrees to pay the cost of a diagnosis and  
10 treatment of the alleged problem or problems if financially able to  
11 do so. The petition shall also contain a case history and written  
12 assessment prepared by an approved ~~((substance use disorder treatment  
13 program))~~ behavioral health agency, approved for mental health  
14 services or substance use disorder services, as designated in chapter  
15 71.24 RCW ~~((if the petition alleges a substance use disorder, by an  
16 approved mental health center if the petition alleges a mental  
17 problem,))~~ or by a state-certified domestic violence treatment  
18 provider pursuant to RCW 43.20A.735 ~~((if the petition alleges a  
19 domestic violence behavior problem)).~~

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

1 (3) Before entry of an order deferring prosecution, a petitioner  
2 shall be advised of his or her rights as an accused and execute, as a  
3 condition of receiving treatment, a statement that contains: (a) An  
4 acknowledgment of his or her rights; (b) an acknowledgment and waiver  
5 of the right to testify, the right to a speedy trial, the right to  
6 call witnesses to testify, the right to present evidence in his or  
7 her defense, and the right to a jury trial; (c) a stipulation to the  
8 admissibility and sufficiency of the facts contained in the written  
9 police report; and (d) an acknowledgment that the statement will be  
10 entered and used to support a finding of guilty if the court finds  
11 cause to revoke the order granting deferred prosecution. The  
12 petitioner shall also be advised that he or she may, if he or she  
13 proceeds to trial and is found guilty, be allowed to seek suspension  
14 of some or all of the fines and incarceration that may be ordered  
15 upon the condition that he or she seek treatment and, further, that  
16 he or she may seek treatment from public and private agencies at any  
17 time without regard to whether or not he or she is found guilty of  
18 the offense charged. He or she shall also be advised that the court  
19 will not accept a petition for deferred prosecution from a person  
20 who: (i) Sincerely believes that he or she is innocent of the  
21 charges; (ii) sincerely believes that he or she does not, in fact,  
22 suffer from ~~((alcoholism, drug addiction, mental problems))~~ a  
23 substance use disorder, a mental health disorder, or domestic  
24 violence behavior problems; or (iii) in the case of a petitioner  
25 charged under chapter 9A.42 RCW, sincerely believes that he or she  
26 does not need child welfare services.

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

1       **Sec. 4.** RCW 10.05.030 and 2023 c 102 s 17 are each amended to  
2 read as follows:

3       The arraignment judge upon consideration of the petition may  
4 continue the arraignment and refer such person for a diagnostic  
5 investigation and evaluation to:

6       (1) (~~An approved substance use disorder treatment program~~) A  
7 state-approved behavioral health agency, approved for substance use  
8 disorder services, as designated in chapter 71.24 RCW if the petition  
9 alleges a substance use disorder;

10       (2) (~~An approved mental health center~~) A state-approved  
11 behavioral health agency, approved for mental health services, as  
12 designated in chapter 71.24 RCW, if the petition alleges a mental  
13 (~~problem~~) health disorder;

14       (3) The department of (~~social and health services~~) children,  
15 youth, and families if the petition is brought under RCW  
16 10.05.020(2); or

17       (4) An approved state-certified domestic violence treatment  
18 provider pursuant to RCW 43.20A.735 if the petition alleges a  
19 domestic violence behavior problem.

20       **Sec. 5.** RCW 10.05.040 and 2018 c 201 s 9005 are each amended to  
21 read as follows:

22       The program to which such person is referred, or the department  
23 of (~~social and health services~~) children, youth, and families if  
24 the petition is brought under RCW 10.05.020(2), shall conduct an  
25 investigation and examination to determine:

26       (1) Whether the person suffers from the problem described;

27       (2) Whether the problem is such that if not treated, or if no  
28 child welfare services are provided, there is a probability that  
29 similar misconduct will occur in the future;

30       (3) Whether extensive and long term treatment is required;

31       (4) Whether effective treatment or child welfare services for the  
32 person's problem are available; and

33       (5) Whether the person is (~~amenable~~): (a) Amenable to treatment  
34 as demonstrated by (i) completion of residential treatment; (ii)  
35 completion of a minimum of 18 hours of intensive outpatient  
36 treatment, for substance use disorder petitions; (iii) completion of  
37 a minimum of six mental health sessions, for mental health disorder  
38 petitions; or (iv) completion of a minimum of six domestic violence  
39 treatment sessions for domestic violence petitions; or (b) willing to

1 cooperate with child welfare services. The requirement for completing  
2 a minimum number of sessions may be waived if the court finds good  
3 cause.

4 **Sec. 6.** RCW 10.05.050 and 2018 c 201 s 9006 are each amended to  
5 read as follows:

6 (1) The program, or the department of (~~social and health~~  
7 ~~services~~) children, youth, and families if the petition is brought  
8 under RCW 10.05.020(2), shall make a written report to the court  
9 stating its findings and recommendations after the examination  
10 required by RCW 10.05.040. If its findings and recommendations  
11 support treatment or the implementation of a child welfare service  
12 plan, it shall also recommend a treatment or service plan setting  
13 out:

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

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

23 (3) The report with the treatment or service plan shall be filed  
24 with the court and a copy given to the petitioner and petitioner's  
25 counsel. A copy of the treatment or service plan shall be given to  
26 the prosecutor by petitioner's counsel at the request of the  
27 prosecutor. The evaluation facility, or the department of (~~social~~  
28 ~~and health services~~) children, youth, and families if the petition  
29 is brought under RCW 10.05.020(2), making the written report shall  
30 append to the report a commitment by the treatment program or the  
31 department of (~~social and health services~~) children, youth, and  
32 families that it will provide the treatment or child welfare services  
33 in accordance with this chapter. The facility or the service provider  
34 shall agree to provide the court with a statement (~~every three~~  
35 ~~months for the first year and every six months for the second year~~)  
36 monthly regarding (a) the petitioner's cooperation with the treatment  
37 or child welfare service plan proposed and (b) the petitioner's  
38 progress or failure in treatment or child welfare services. These

1 statements shall be made as a declaration by the person who is  
2 personally responsible for providing the treatment or services.

3 **Sec. 7.** RCW 10.05.060 and 2009 c 135 s 1 are each amended to  
4 read as follows:

5 If the report recommends treatment, the court shall examine the  
6 treatment plan. If it approves the plan and the petitioner agrees to  
7 comply with its terms and conditions and agrees to pay the cost  
8 thereof, if able to do so, or arrange for the treatment, an entry  
9 shall be made upon the person's court docket showing that the person  
10 has been accepted for deferred prosecution. A copy of the treatment  
11 plan shall be filed with the court. If the charge be one that an  
12 abstract of the docket showing the charge, the date of the violation  
13 for which the charge was made, and the date of petitioner's  
14 acceptance is required to be sent to the department of licensing, an  
15 abstract shall be sent, and the department of licensing shall make an  
16 entry of the charge and of the petitioner's acceptance for deferred  
17 prosecution on the department's driving record of the petitioner. The  
18 entry is not a conviction for purposes of Title 46 RCW. Upon receipt  
19 of the abstract of the docket, the department shall issue the  
20 petitioner a probationary license in accordance with RCW 46.20.355,  
21 and the petitioner's driver's license shall be on probationary status  
22 for five years from the date of the violation that gave rise to the  
23 charge. The department shall maintain the record (~~(for ten years from~~  
24 ~~date of entry of the order granting deferred prosecution)) consistent  
25 with the requirements of RCW 46.01.260.~~

26 **Sec. 8.** RCW 10.05.090 and 2010 c 269 s 10 are each amended to  
27 read as follows:

28 If a petitioner, who has been accepted for a deferred  
29 prosecution, fails or neglects to carry out and fulfill any term or  
30 condition of the petitioner's treatment plan or any term or condition  
31 imposed in connection with the installation of an interlock or other  
32 device under RCW 46.20.720, the facility, center, institution, or  
33 agency administering the treatment or the entity administering the  
34 use of the device, shall immediately report such breach to the court,  
35 the prosecutor, and the petitioner or petitioner's attorney of  
36 record, together with its recommendation. The court upon receiving  
37 such a report shall hold a hearing to determine whether the  
38 petitioner should be removed from the deferred prosecution

1 ((program)). At the hearing, evidence shall be taken of the  
2 petitioner's alleged failure to comply with the treatment plan or  
3 device installation and the petitioner shall have the right to  
4 present evidence on his or her own behalf. The court shall either  
5 order that the petitioner continue on the treatment plan or be  
6 removed from deferred prosecution. If removed from deferred  
7 prosecution, the court shall enter judgment pursuant to RCW 10.05.020  
8 and, if the charge for which the deferred prosecution was granted was  
9 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify  
10 the department of licensing of the removal and entry of judgment.

11 **Sec. 9.** RCW 10.05.100 and 1998 c 208 s 2 are each amended to  
12 read as follows:

13 If a petitioner is subsequently convicted of a similar offense  
14 that was committed while the petitioner was in a deferred prosecution  
15 ((program)), upon notice the court shall remove the petitioner's  
16 docket from the deferred prosecution file and the court shall enter  
17 judgment pursuant to RCW 10.05.020.

18 **Sec. 10.** RCW 10.05.120 and 2019 c 263 s 705 are each amended to  
19 read as follows:

20 (1) Three years after receiving proof of successful completion of  
21 the ((two-year)) approved treatment ((program)) plan, and following  
22 proof to the court that the petitioner has complied with the  
23 conditions imposed by the court following successful completion of  
24 the ((two-year)) approved treatment ((program)) plan, but not before  
25 five years following entry of the order of deferred prosecution  
26 pursuant to a petition brought under RCW 10.05.020(1), the court  
27 shall dismiss the charges pending against the petitioner.

28 (2) When a deferred prosecution is ordered pursuant to a petition  
29 brought under RCW 10.05.020(2) and the court has received proof that  
30 the petitioner has successfully completed the child welfare service  
31 plan, or the plan has been terminated because the alleged victim has  
32 reached his or her majority and there are no other minor children in  
33 the home, the court shall dismiss the charges pending against the  
34 petitioner: PROVIDED, That in any case where the petitioner's  
35 parental rights have been terminated with regard to the alleged  
36 victim due to abuse or neglect that occurred during the pendency of  
37 the deferred prosecution, the termination shall be per se evidence



1 that the petitioner did not successfully complete the child welfare  
2 service plan.

3 ~~((3) When a deferred prosecution is ordered for a petition  
4 brought under RCW 10.05.020(1) involving a domestic violence behavior  
5 problem and the court has received proof that the petitioner has  
6 successfully completed the domestic violence treatment plan, the  
7 court shall dismiss the charges pending against the petitioner.))~~

8 **Sec. 11.** RCW 10.05.140 and 2019 c 263 s 706 are each amended to  
9 read as follows:

10 (1) As a condition of granting a deferred prosecution petition  
11 for a violation of RCW 46.61.502 or 46.61.504, the court shall order  
12 that the petitioner shall not operate a motor vehicle upon the public  
13 highways without a valid operator's license and proof of liability  
14 insurance. The amount of liability insurance shall be established by  
15 the court at not less than that established by RCW 46.29.490. As a  
16 condition of granting a deferred prosecution petition on any  
17 ~~((alcohol-dependency))~~ substance use disorder-based case, the court  
18 shall also order the installation of an ignition interlock under RCW  
19 46.20.720. The required periods of use of the interlock shall be not  
20 less than the periods provided for in RCW 46.20.720. As a condition  
21 of granting a deferred prosecution petition, the court may order the  
22 petitioner to make restitution and to pay costs as defined in RCW  
23 10.01.160. To help ensure continued sobriety and reduce the  
24 likelihood of reoffense, the court may order reasonable conditions  
25 during the period of the deferred prosecution including, but not  
26 limited to, attendance at self-help recovery support groups for  
27 ~~((alcoholism or drugs))~~ substance use disorder, complete abstinence  
28 from alcohol and all nonprescribed mind-altering drugs, periodic  
29 urinalysis or breath analysis, and maintaining law-abiding behavior.  
30 The court may terminate the deferred prosecution ~~((program))~~ upon  
31 violation of the deferred prosecution order.

32 (2) As a condition of granting a deferred prosecution petition  
33 for a case involving a domestic violence behavior problem:

34 (a) The court shall order the petitioner not to possess firearms  
35 and order the petitioner to surrender firearms under RCW 9.41.800;  
36 and

37 (b) The court may order the petitioner to make restitution and to  
38 pay costs as defined in RCW 10.01.160. In addition, to help ensure  
39 continued sobriety and reduce the likelihood of reoffense in co-

1 occurring domestic violence and substance ((abuse)) use disorder or  
2 mental health disorder cases, the court may order reasonable  
3 conditions during the period of the deferred prosecution including,  
4 but not limited to, attendance at self-help recovery support groups  
5 for ((alcoholism—~~or—~~drugs)) substance use disorder, complete  
6 abstinence from alcohol and all nonprescribed mind-altering drugs,  
7 periodic urinalysis or breath analysis, and maintaining law-abiding  
8 behavior. The court may terminate the deferred prosecution  
9 ((program)) upon violation of the deferred prosecution order.

10 **Sec. 12.** RCW 10.05.150 and 2016 sp.s. c 29 s 527 are each  
11 amended to read as follows:

12 (1) A deferred prosecution ((program)) for ((alcoholism)) either  
13 substance use disorder or mental health co-occurring disorder shall  
14 be for a two-year period and shall include, but not be limited to,  
15 the following requirements:

16 ((1)) (a) Total abstinence from alcohol and all other  
17 nonprescribed mind-altering drugs;

18 ((2) Participation in an intensive inpatient or intensive  
19 outpatient program in a state-approved substance use disorder  
20 treatment program;

21 ((3) Participation in a minimum of two meetings per week of an  
22 alcoholism self-help recovery support group, as determined by the  
23 assessing agency, for the duration of the treatment program;

24 ((4) Participation in an alcoholism self-help recovery support  
25 group, as determined by the assessing agency, from the date of court  
26 approval of the plan to entry into intensive treatment;

27 ((5) Not less than weekly approved outpatient counseling, group or  
28 individual, for a minimum of six months following the intensive phase  
29 of treatment;

30 ((6) Not less than monthly outpatient contact, group or  
31 individual, for the remainder of the two-year deferred prosecution  
32 period;

33 ((7) The decision to include the use of prescribed drugs,  
34 including disulfiram, as a condition of treatment shall be reserved  
35 to the treating facility and the petitioner's physician;

36 ((8)) (b) All treatment within the purview of this section shall  
37 occur within or be approved by a state-approved ((substance use  
38 disorder treatment program)) behavioral health agency as described in  
39 chapter ((70.96A)) 71.24 RCW;

1        ~~((9))~~ (c) Signature of the petitioner agreeing to the terms and  
2 conditions of the treatment program;

3        (d) Periodic, random urinalysis or breath analysis;

4        (e) If the petitioner fails to remain abstinent, a full substance  
5 use disorder reassessment and recommended treatment;

6        (f) No less than weekly approved outpatient counseling, whether  
7 group or individual, for a minimum of six months following the  
8 intensive phase of treatment;

9        (g) No less than monthly outpatient contact, whether group or  
10 individual, for the remainder of the two-year deferred prosecution  
11 period; and

12        (h) The decision to include the use of prescribed drugs,  
13 including disulfiram, as a condition of treatment shall be reserved  
14 to the treating facility and the petitioner's physician.

15        (2) A deferred prosecution for substance use disorder shall  
16 include the following requirements:

17        (a) Completion of an intensive outpatient treatment program or  
18 residential inpatient treatment program, depending on the severity of  
19 the diagnosis; and

20        (b) Participation in a minimum of two meetings per week of a  
21 substance use disorder self-help recovery support group, as  
22 determined by the assessing agency, for the duration of the treatment  
23 program.

24        (3) A deferred prosecution for mental health co-occurring  
25 disorder shall include the following requirements:

26        (a) Completion of the requirements described in subsection (2) of  
27 this section, or completion of an outpatient program as determined by  
28 the petitioner's diagnostic evaluation; and

29        (b) Completion of individual or group mental health services.

30        **Sec. 13.** RCW 10.05.155 and 2019 c 263 s 708 are each amended to  
31 read as follows:

32        A deferred prosecution ~~((program))~~ for domestic violence  
33 behavior, or domestic violence co-occurring with substance abuse or  
34 mental health, must include, but is not limited to, the following  
35 requirements:

36        (1) Completion of a risk assessment;

37        (2) Participation in the level of treatment recommended by the  
38 program as outlined in the current treatment plan;

39        (3) Compliance with the contract for treatment;

1 (4) Participation in any ancillary or co-occurring treatments  
2 that are determined to be necessary for the successful completion of  
3 the domestic violence intervention treatment including, but not  
4 limited to, mental health or substance use treatment;

5 (5) Domestic violence intervention treatment within the purview  
6 of this section to be completed with a state-certified domestic  
7 violence intervention treatment program;

8 (6) Signature of the petitioner agreeing to the terms and  
9 conditions of the treatment program;

10 (7) Proof of compliance with any active order to surrender  
11 weapons issued in this program or related civil protection orders or  
12 no-contact orders.

13 NEW SECTION. **Sec. 14.** A new section is added to chapter 10.05  
14 RCW to read as follows:

15 A deferred prosecution for mental health disorder where the  
16 wrongful conduct did not involve, and was not caused by, alcohol,  
17 drugs, or a substance use disorder, shall include treatment  
18 recommended by a state-approved mental health provider.

19 **Sec. 15.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to  
20 read as follows:

21 As a condition of granting deferred prosecution, the court may  
22 order supervision of the petitioner during the period of deferral and  
23 may levy a monthly assessment upon the petitioner as provided in RCW  
24 10.64.120. In a jurisdiction with a probation department, the court  
25 may appoint the probation department to supervise the petitioner. In  
26 a jurisdiction without a probation department, the court may appoint  
27 an appropriate person or agency to supervise the petitioner. A  
28 supervisor appointed under this section shall be required to do at  
29 least the following:

30 (1) If the charge for which deferral is granted relates to  
31 operation of a motor vehicle, at least once every (~~six~~) three  
32 months request (~~from the department of licensing~~) an abstract of  
33 the petitioner's driving record; (~~and~~)

34 (2) At least once every month make contact with the petitioner  
35 (~~or with any agency to which the petitioner has been directed for~~  
36 ~~treatment as a part of the deferral~~) until treatment is completed;

37 (3) Review the petitioner's criminal history at a minimum of  
38 every 90 days until the end of the deferral period; and

1       (4) Report known violations of supervision or law and  
2 noncompliance with conditions of the deferred prosecution to the  
3 court within five business days or as soon as practicable.

4       **Sec. 16.** RCW 9.94A.525 and 2023 c 415 s 2 are each amended to  
5 read as follows:

6       The offender score is measured on the horizontal axis of the  
7 sentencing grid. The offender score rules are as follows:

8       The offender score is the sum of points accrued under this  
9 section rounded down to the nearest whole number.

10       (1)(a) A prior conviction is a conviction which exists before the  
11 date of sentencing for the offense for which the offender score is  
12 being computed. Convictions entered or sentenced on the same date as  
13 the conviction for which the offender score is being computed shall  
14 be deemed "other current offenses" within the meaning of RCW  
15 9.94A.589.

16       (b) For the purposes of this section, adjudications of guilt  
17 pursuant to Title 13 RCW which are not murder in the first or second  
18 degree or class A felony sex offenses may not be included in the  
19 offender score.

20       (2)(a) Class A and sex prior felony convictions shall always be  
21 included in the offender score.

22       (b) Class B prior felony convictions other than sex offenses  
23 shall not be included in the offender score, if since the last date  
24 of release from confinement (including full-time residential  
25 treatment) pursuant to a felony conviction, if any, or entry of  
26 judgment and sentence, the offender had spent (~~ten~~) 10 consecutive  
27 years in the community without committing any crime that subsequently  
28 results in a conviction.

29       (c) Except as provided in (e) of this subsection, class C prior  
30 felony convictions other than sex offenses shall not be included in  
31 the offender score if, since the last date of release from  
32 confinement (including full-time residential treatment) pursuant to a  
33 felony conviction, if any, or entry of judgment and sentence, the  
34 offender had spent five consecutive years in the community without  
35 committing any crime that subsequently results in a conviction.

36       (d) Except as provided in (e) of this subsection, serious traffic  
37 convictions shall not be included in the offender score if, since the  
38 last date of release from confinement (including full-time  
39 residential treatment) pursuant to a conviction, if any, or entry of

1 judgment and sentence, the offender spent five years in the community  
2 without committing any crime that subsequently results in a  
3 conviction.

4 (e) If the present conviction is felony driving while under the  
5 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
6 felony physical control of a vehicle while under the influence of  
7 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate  
8 crimes for the offense as defined by RCW 46.61.5055(14) shall be  
9 included in the offender score, and prior convictions for felony  
10 driving while under the influence of intoxicating liquor or any drug  
11 (RCW 46.61.502(6)) or felony physical control of a vehicle while  
12 under the influence of intoxicating liquor or any drug (RCW  
13 46.61.504(6)) shall always be included in the offender score. All  
14 other convictions of the defendant shall be scored according to this  
15 section.

16 (f) Prior convictions for a repetitive domestic violence offense,  
17 as defined in RCW 9.94A.030, shall not be included in the offender  
18 score if, since the last date of release from confinement or entry of  
19 judgment and sentence, the offender had spent (~~ten~~) 10 consecutive  
20 years in the community without committing any crime that subsequently  
21 results in a conviction.

22 (g) This subsection applies to both prior adult convictions and  
23 prior juvenile adjudications.

24 (3) Out-of-state convictions for offenses shall be classified  
25 according to the comparable offense definitions and sentences  
26 provided by Washington law. Federal convictions for offenses shall be  
27 classified according to the comparable offense definitions and  
28 sentences provided by Washington law. Neither out-of-state or federal  
29 convictions which would have been presumptively adjudicated in  
30 juvenile court under Washington law may be included in the offender  
31 score unless they are comparable to murder in the first or second  
32 degree or a class A felony sex offense. If there is no clearly  
33 comparable offense under Washington law or the offense is one that is  
34 usually considered subject to exclusive federal jurisdiction, the  
35 offense shall be scored as a class C felony equivalent if it was a  
36 felony under the relevant federal statute.

37 (4) Score prior convictions for felony anticipatory offenses  
38 (attempts, criminal solicitations, and criminal conspiracies) the  
39 same as if they were convictions for completed offenses.

1 (5) (a) In the case of multiple prior convictions, for the purpose  
2 of computing the offender score, count all convictions separately,  
3 except:

4 (i) Prior offenses which were found, under RCW 9.94A.589(1) (a),  
5 to encompass the same criminal conduct, shall be counted as one  
6 offense, the offense that yields the highest offender score. The  
7 current sentencing court shall determine with respect to other prior  
8 adult offenses for which sentences were served concurrently or prior  
9 juvenile offenses for which sentences were served consecutively,  
10 whether those offenses shall be counted as one offense or as separate  
11 offenses using the "same criminal conduct" analysis found in RCW  
12 9.94A.589(1) (a), and if the court finds that they shall be counted as  
13 one offense, then the offense that yields the highest offender score  
14 shall be used. The current sentencing court may presume that such  
15 other prior offenses were not the same criminal conduct from  
16 sentences imposed on separate dates, or in separate counties or  
17 jurisdictions, or in separate complaints, indictments, or  
18 informations;

19 (ii) In the case of multiple prior convictions for offenses  
20 committed before July 1, 1986, for the purpose of computing the  
21 offender score, count all convictions or adjudications served  
22 concurrently as one offense. Use the conviction for the offense that  
23 yields the highest offender score.

24 (b) As used in this subsection (5), "served concurrently" means  
25 that: (i) The latter sentence was imposed with specific reference to  
26 the former; (ii) the concurrent relationship of the sentences was  
27 judicially imposed; and (iii) the concurrent timing of the sentences  
28 was not the result of a probation or parole revocation on the former  
29 offense.

30 (6) If the present conviction is one of the anticipatory offenses  
31 of criminal attempt, solicitation, or conspiracy, count each prior  
32 conviction as if the present conviction were for a completed offense.  
33 When these convictions are used as criminal history, score them the  
34 same as a completed crime.

35 (7) If the present conviction is for a nonviolent offense and not  
36 covered by subsection (11), (12), or (13) of this section, count one  
37 point for each adult prior felony conviction and one point for each  
38 juvenile prior violent felony conviction which is scorable under  
39 subsection (1) (b) of this section.

1 (8) If the present conviction is for a violent offense and not  
2 covered in subsection (9), (10), (11), (12), or (13) of this section,  
3 count two points for each prior adult violent felony conviction and  
4 juvenile violent felony conviction which is scorable under subsection  
5 (1)(b) of this section, and one point for each prior adult nonviolent  
6 felony conviction.

7 (9) If the present conviction is for a serious violent offense,  
8 count three points for prior adult convictions and juvenile  
9 convictions which are scorable under subsection (1)(b) of this  
10 section for crimes in this category, two points for each prior adult  
11 and scorable juvenile violent conviction (not already counted), and  
12 one point for each prior adult nonviolent felony conviction.

13 (10) If the present conviction is for Burglary 1, count prior  
14 convictions as in subsection (8) of this section; however count two  
15 points for each prior Burglary 2 or residential burglary conviction.

16 (11) If the present conviction is for a felony traffic offense  
17 count two points for each prior conviction for Vehicular Homicide or  
18 Vehicular Assault; for each felony offense count one point for each  
19 adult prior conviction and 1/2 point for each juvenile prior  
20 conviction which is scorable under subsection (1)(b) of this section;  
21 for each serious traffic offense, other than those used for an  
22 enhancement pursuant to RCW 46.61.520(2), count one point for each  
23 adult prior conviction and 1/2 point for each juvenile prior  
24 conviction which is scorable under subsection (1)(b) of this section;  
25 count one point for each adult prior conviction for operation of a  
26 vessel while under the influence of intoxicating liquor or any drug;  
27 count one point for a deferred prosecution granted under chapter  
28 10.05 RCW for a second or subsequent violation of RCW 46.61.502 or  
29 46.61.504, or an equivalent local ordinance.

30 (12) If the present conviction is for homicide by watercraft or  
31 assault by watercraft count two points for each adult prior  
32 conviction for homicide by watercraft or assault by watercraft; for  
33 each felony offense count one point for each adult prior conviction  
34 and 1/2 point for each juvenile prior conviction which would be  
35 scorable under subsection (1)(b) of this section; count one point for  
36 each adult prior conviction for driving under the influence of  
37 intoxicating liquor or any drug, actual physical control of a motor  
38 vehicle while under the influence of intoxicating liquor or any drug,  
39 or operation of a vessel while under the influence of intoxicating  
40 liquor or any drug.



1 (13) If the present conviction is for manufacture of  
2 methamphetamine count three points for each adult prior manufacture  
3 of methamphetamine conviction. If the present conviction is for a  
4 drug offense and the offender has a criminal history that includes a  
5 sex offense or serious violent offense, count three points for each  
6 adult prior felony drug offense conviction. All other felonies are  
7 scored as in subsection (8) of this section if the current drug  
8 offense is violent, or as in subsection (7) of this section if the  
9 current drug offense is nonviolent.

10 (14) If the present conviction is for Escape from Community  
11 Custody, RCW 72.09.310, count only adult prior escape convictions in  
12 the offender score. Count prior escape convictions as one point.

13 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or  
14 Escape 2, RCW 9A.76.120, count adult prior convictions as one point  
15 and juvenile prior convictions which are scorable under subsection  
16 (1)(b) of this section as 1/2 point.

17 (16) If the present conviction is for Burglary 2 or residential  
18 burglary, count priors as in subsection (7) of this section; however,  
19 count two points for each prior Burglary 1 conviction, and two points  
20 for each prior Burglary 2 or residential burglary conviction.

21 (17) If the present conviction is for a sex offense, count priors  
22 as in subsections (7) through (11) and (13) through (16) of this  
23 section; however, count three points for each adult prior sex offense  
24 conviction and juvenile prior class A felony sex offense  
25 adjudication.

26 (18) If the present conviction is for failure to register as a  
27 sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in  
28 subsections (7) through (11) and (13) through (16) of this section;  
29 however count three points for each adult prior sex offense  
30 conviction and juvenile prior sex offense conviction which is  
31 scorable under subsection (1)(b) of this section, excluding adult  
32 prior convictions for failure to register as a sex offender under RCW  
33 9A.44.130 or 9A.44.132, which shall count as one point.

34 (19) If the present conviction is for an offense committed while  
35 the offender was under community custody, add one point. For purposes  
36 of this subsection, community custody includes community placement or  
37 postrelease supervision, as defined in chapter 9.94B RCW.

38 (20) If the present conviction is for Theft of a Motor Vehicle,  
39 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
40 Permission 1, or Taking a Motor Vehicle Without Permission 2, count

1 priors as in subsections (7) through (18) of this section; however  
2 count one point for prior convictions of Vehicle Prowling 2, and  
3 three points for each adult prior Theft 1 (of a motor vehicle), Theft  
4 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor  
5 vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft  
6 of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor  
7 Vehicle Without Permission 1, or Taking a Motor Vehicle Without  
8 Permission 2 conviction.

9 (21) If the present conviction is for a felony domestic violence  
10 offense where domestic violence as defined in RCW 9.94A.030 was  
11 pleaded and proven, count priors as in subsections (7) through (20)  
12 of this section; however, count points as follows:

13 (a) Count two points for each adult prior conviction where  
14 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
15 after August 1, 2011, for any of the following offenses: A felony  
16 violation of a no-contact or protection order (RCW 7.105.450 or  
17 former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)),  
18 felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020),  
19 Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful  
20 imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2  
21 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW  
22 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or  
23 Arson 2 (RCW 9A.48.030);

24 (b) Count two points for each adult prior conviction where  
25 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
26 after July 23, 2017, for any of the following offenses: Assault of a  
27 child in the first degree, RCW 9A.36.120; Assault of a child in the  
28 second degree, RCW 9A.36.130; Assault of a child in the third degree,  
29 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW  
30 9A.42.020; or Criminal Mistreatment in the second degree, RCW  
31 9A.42.030; and

32 (c) Count one point for each adult prior conviction for a  
33 repetitive domestic violence offense as defined in RCW 9.94A.030,  
34 where domestic violence as defined in RCW 9.94A.030, was pleaded and  
35 proven after August 1, 2011.

36 (22) The fact that a prior conviction was not included in an  
37 offender's offender score or criminal history at a previous  
38 sentencing shall have no bearing on whether it is included in the  
39 criminal history or offender score for the current offense. Prior  
40 convictions that were not counted in the offender score or included

1 in criminal history under repealed or previous versions of the  
2 sentencing reform act shall be included in criminal history and shall  
3 count in the offender score if the current version of the sentencing  
4 reform act requires including or counting those convictions. Prior  
5 convictions that were not included in criminal history or in the  
6 offender score shall be included upon any resentencing to ensure  
7 imposition of an accurate sentence.

8 NEW SECTION. **Sec. 17.** This act takes effect January 1, 2025."

9 Correct the title.

EFFECT: (1) Permits a person who participates in a deferred prosecution for his or her first driving under the influence or physical control offense to petition the court for a second deferred prosecution for the person's next driving under the influence or physical control offense if the person has no other disqualifying prior offenses, rather than if the person is assessed as eligible for treatment, specific findings are made, and the person has no disqualifying out-of-state convictions.

(2) Provides that a person's first deferred prosecution does not constitute a disqualifying prior offense for the purpose of granting a second deferred prosecution.

(3) Changes the effective date of the bill to January 1, 2025, rather than January 1, 2024.

(4) Updates the underlying statutory language related to certain offender score calculations and diagnostic investigations and evaluations for deferred prosecutions to reflect changes enacted during the 2023 legislative session.

--- END ---