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**Community Safety, Justice, & Reentry  
Committee**

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**HB 1104**

**Brief Description:** Concerning eligibility and requirements for deferred prosecutions.

**Sponsors:** Representative Goodman.

**Brief Summary of Bill**

- Authorizes a person who participates in a deferred prosecution for a gross misdemeanor Driving Under the Influence (DUI) or Physical Control of a Vehicle Under the Influence (PC) charge to participate in a second deferred prosecution.
- Authorizes a person to petition for a second deferred prosecution while under the court's jurisdiction for a first deferred prosecution, but requires revocation of the first deferred prosecution.
- Modifies requirements for participation in a deferred prosecution depending on the nature of the petitioner's underlying problem.
- Provides that a second deferred prosecution for a DUI or PC offense counts as one point on a defendant's offender score for felony traffic offenses.

**Hearing Date:** 1/10/23

**Staff:** Martha Wehling (786-7067).

**Background:**

Eligibility for Deferred Prosecution.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

A person charged with a misdemeanor or gross misdemeanor in district or municipal court may petition the court for a deferred prosecution, subject to certain conditions. For example, a petitioner is not eligible for more than one deferred prosecution for gross misdemeanor Driving Under the Influence or Physical Control of a Vehicle Under the Influence charges.

To qualify for a deferred prosecution, the petitioner must allege that a substance use disorder, mental health problem, or domestic violence behavior problem caused the petitioner to commit the charged offense and that treatment is necessary to prevent reoccurrence. An approved treatment provider, health center, or government agency must prepare a case history and risk assessment. The entity preparing the case history and risk assessment is based on the petitioner's underlying problem. For example, a petitioner seeking a deferred prosecution related to criminal mistreatment must be evaluated by and have a plan developed and facilitated by the Department of Social and Health Services.

#### Requirements for Deferred Prosecution.

The court may refer the petitioner for a diagnostic investigation and evaluation to determine:

- whether the petitioner suffers from the problem described;
- whether the problem, if left untreated, has a probability of causing similar misconduct in the future;
- whether extensive and long-term treatment is required;
- whether effective treatment for the petitioner's problem is available; and
- whether the petitioner is amenable to treatment or willing to cooperate with child welfare services.

The entity conducting the evaluation must make a written report to the court stating its findings and recommendations. If the entity supports treatment, it must also recommend a treatment plan containing the type, nature, length, schedule, and cost of treatment. If the court approves the plan and the petitioner agrees to comply with its terms and conditions, the court must accept the petitioner's request for a deferred prosecution.

A deferred prosecution based on alcoholism must be for a two-year period and require:

- total abstinence from alcohol and all other nonprescribed mind-altering drugs;
- participation in an intensive inpatient or outpatient program in a state-approved substance use disorder treatment program;
- participation in a minimum of two meetings per week of an alcoholism self-help recovery support group for the duration of the treatment program;
- participation in an alcoholism self-help recovery support group from the date of court approval of the plan to entry into intensive treatment;
- weekly outpatient counseling for a minimum of six months following the intensive phase of treatment;
- monthly outpatient contact for the remainder of the two-year deferred prosecution period;
- reservation of the decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment to the treating facility and the participant's physician;
- treatment by a state-approved substance use disorder treatment program; and

- petitioner's signature and agreement to the terms and conditions of the program.

As a condition of granting a deferred prosecution, the court may appoint a probation department or other appropriate person or agency to supervise the petitioner. The supervisor must:

- at least once every six months, request an abstract of the petitioner's driving record if the petitioner's charge relates to operation of a motor vehicle; and
- at least once every month, contact the petitioner or any agency to which the petitioner has been directed for treatment.

#### Felony Offender Scores.

For most felony offenses, the Sentencing Reform Act provides a determinate sentencing system in which sentencing courts generally impose sentences within a standard range. The standard range for a person is determined by reference to a grid, which provides a base sentence according to the person's offender score and the seriousness level of the present offense. The offender score is a point total based on the person's prior dispositions and convictions.

#### **Summary of Bill:**

##### Eligibility for Deferred Prosecution.

A person who participates in a deferred prosecution for a first-time gross misdemeanor Driving Under the Influence (DUI) or Physical Control of a Vehicle Under the Influence (PC) charge may petition the court for a second deferred prosecution for a subsequent charge, provided that the person meets eligibility requirements, the court makes specific findings, and the person has no prior out-of-state convictions that would constitute a prior offense. A person who did not participate in a deferred prosecution for a first-time gross misdemeanor DUI or PC charge is only eligible to petition the court for one deferred prosecution for a subsequent charge.

A person may petition the court for a second deferred prosecution while still under the jurisdiction of the court for a first deferred prosecution; however, the court must revoke the first deferred prosecution. A person may not participate in two deferred prosecutions at the same time unless the separate offenses were committed within seven days of each other and the person petitions to consolidate the offenses into a single deferred prosecution.

A petition for deferred prosecution must include a case history and risk assessment. The entity preparing the case history and risk assessment is based on the petitioner's underlying problem. A substance use disorder or mental health co-occurring disorder requires a state-approved behavioral health agency. Domestic violence requires a state-certified domestic violence intervention treatment provider. Criminal mistreatment crimes require the Department of Children, Youth, and Families.

##### Requirements for Deferred Prosecution.

A program or department performing a diagnostic investigation and evaluation must determine whether the petitioner is either:

- amenable to treatment; demonstrated by completion of residential treatment and additional

- treatment based on the nature of the underlying problem; or
- willing to cooperate with child welfare services.

A deferred prosecution based on either substance use disorder or mental health co-occurring disorder must be for a two-year period and impose the following requirements:

- total abstinence from alcohol and all other nonprescribed mind-altering drugs;
- periodic, random urinalysis or breath analysis;
- treatment within or approved by a state-approved behavioral health agency;
- weekly outpatient counseling for a minimum of six months following the intensive phase of treatment;
- monthly outpatient contact for the remainder of the two-year deferred prosecution period;
- decision whether to include the use of prescribed drugs, including disulfiram, as a condition of treatment, is made by the treating facility and the participant's physician; and
- petitioner's agreement to the program.

A deferred prosecution based on substance use disorder must also impose the following requirements:

- completion of an intensive outpatient or residential inpatient treatment program, depending on the severity of the diagnosis; and
- participation in at least two meetings per week of a self-help recovery support group for the duration of the treatment program.

A deferred prosecution based on mental health co-occurring disorder must also impose the following requirements:

- completion of either the substance use disorder requirements or an outpatient program; and
- completion of individual or group mental health services.

A deferred prosecution based on mental health disorder where the conduct did not involve and was not caused by alcohol, drugs, or substance use, must include treatment recommended by a mental health provider.

As a condition of granting a deferred prosecution, the court may appoint a probation department or other appropriate person or agency to supervise the petitioner. The supervisor must:

- if the petitioner's charge relates to operation of a motor vehicle, request an abstract of the petitioner's driving record at least once every three months;
- contact the petitioner at least once a month until treatment is completed;
- review the petitioner's criminal history at least once every three months until the end of the deferral period; and
- report violations or noncompliance to the court within five business days or as soon as practicable.

#### Felony Offender Scores.

A deferred prosecution for a second or subsequent DUI or PC offense counts as one point on a defendant's offender score for felony traffic offenses.

**Appropriation:** None.

**Fiscal Note:** Requested on January 8, 2023.

**Effective Date:** The bill takes effect on January 1, 2024.