

HOUSE BILL REPORT

SHB 1189

As Passed Legislature

Title: An act relating to misdemeanors.

Brief Description: Allowing courts to award costs for probation or deferred prosecution.

Sponsor(s): By House Committee on Judiciary (originally sponsored by Representatives Ludwig, Locke, Padden, Riley, Inslee, Paris, Mielke, Scott, H. Myers, R. Meyers and Orr).

Brief History:

Reported by House Committee on:
Judiciary, February 15, 1991, DPS;
Passed House, March 6, 1991, 97-0;
Passed Legislature, 97-0.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1189 be substituted therefor, and the substitute bill do pass.*
Signed by 18 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Riley; Scott; Tate; Vance; and Wineberry.

Staff: Bill Perry (786-7123).

Background: A person charged with a misdemeanor crime may, under certain circumstances, seek a deferred prosecution. The vast majority of deferred prosecutions occur in driving while intoxicated (DWI) cases. In order to get a deferral a defendant must show, among other things, that his or her conduct was the result of alcoholism or drug addiction. A person who is granted a deferral is not prosecuted for the crime if he or she successfully completes the required program of treatment.

As part of a deferred prosecution, the court is expressly authorized by a statute to impose probation in order to supervise the conduct of the defendant. In another statute, courts are authorized to impose on "misdemeanants" a monthly assessment of up to \$50 for probationary supervision. A

person granted a deferred prosecution is not literally a "misdemeanant."

In misdemeanor cases generally, courts are also authorized to impose "costs" on a defendant. These costs may include only expenses "specially incurred by the state in prosecuting the defendant." These costs may not include expenses of providing a constitutionally guaranteed jury trial, or the general overhead of the criminal justice system. These costs may include such things as expenses for service of warrants for failure to appear.

The Washington Court of Appeals recently upheld a lower court ruling that the trial court may not impose administrative costs in deferred prosecutions as a condition of granting a deferral. The opinion also casts some doubt on whether the trial court may impose probation fees as part of a deferral.

Summary of Bill: Trial courts are explicitly authorized to impose an administrative fee of up to \$150 as a condition of granting a deferred prosecution. Imposition of a monthly fee of up to \$50 for probation is also authorized.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill will allow the continued use of deferrals, which have proved very successful. Failure to pass this bill will cost counties considerable money.

Testimony Against: None.

Witnesses: Judge Kip Stilz, Thurston County District Court (in favor); Judge Robert McBeth, Washington District and Municipal Court Judges Association (in favor); and Gary Riesen, Washington Association of Prosecuting Attorneys (in favor).