

**SENATE BILL REPORT**

**SB 6139**

**AS REPORTED BY COMMITTEE ON LAW & JUSTICE, JANUARY 23, 1992**

**Brief Description:** Allowing jury waiver for granting deferred prosecution.

**SPONSORS:** Senators Nelson and Erwin

**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** That Substitute Senate Bill No. 6139 be substituted therefor, and the substitute bill do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Newhouse, Rasmussen, and A. Smith.

**Staff:** Lidia Mori (786-7755)

**Hearing Dates:** January 23, 1992

**BACKGROUND:**

A deferred prosecution petition is a request to the court to dismiss a traffic infraction, misdemeanor, or gross misdemeanor if the petitioner successfully completes a qualified alcohol or mental health treatment program. The petitioner must allege 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. As a condition to having the deferred prosecution approved, the petitioner must stipulate to the admission in evidence of the facts as contained in the police officer's report. The petitioner must also acknowledge that the police officer's report will be used to support a finding of guilty in the event the court finds cause to revoke the deferred prosecution. The petitioner is advised that the court will not accept a petition for deferred prosecution from a person who sincerely believes that he or she is innocent of the charges or sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, or mental problems.

In some jurisdictions, defense attorneys argue that stipulation by the petitioner to allow the police report in evidence and acknowledgment that the report will be used to support a finding of guilty in the event of revocation does not mean that the petitioner has waived the right to a jury trial. However, concern exists that procedural challenges in making a determination of guilt or innocence when a deferred prosecution is revoked are both unnecessary and expensive.

**SUMMARY:**

A court may require a petitioner seeking a deferred prosecution order to waive his or her right to a trial by jury as a condition of granting the deferred prosecution.

**EFFECT OF PROPOSED SUBSTITUTE:**

As a condition of having a deferred prosecution approved, a petitioner must execute a statement acknowledging and waiving the right to a jury trial and the court must make a specific finding to that effect.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

Deferred prosecutions are a voluntary endeavor on the part of the defendant. The defendant must stipulate to the admission in evidence of the facts contained in the police report. To require the defendant to waive the right to a jury trial is in keeping with the intent of the deferred prosecution statute.

**TESTIMONY AGAINST:** None

**TESTIFIED:** Robert McBeth, District and Municipal Court Judges Association (pro); Mark Thompson, Washington Association of Prosecuting Attorneys and the Thurston County Prosecutor's office (pro); Charlie Blackman, WAPA and Snohomish County Prosecutor's office (pro)