

SHB 1994 - H AMD 910

By Representative Farivar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (ii) Reckless driving under RCW 46.61.500;

32 (iii) Racing under RCW 46.61.530;

33 (iv) Reckless endangerment of roadway workers under RCW
34 46.61.527(4);

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

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

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

39 (viii) Hit and run (unattended vehicle or property) under RCW
40 46.52.010;

- 1 (ix) Hit and run (attended vehicle or property) under RCW
2 46.52.020(5);
- 3 (x) Hit and run (striking a deceased person) under RCW
4 46.52.020(4)(c);
- 5 (xi) A domestic violence offense involving an intimate partner as
6 defined in RCW 7.105.010;
- 7 (xii) Stalking under RCW 9A.46.110(5)(a);
- 8 (xiii) Violation of a domestic violence protection order, sexual
9 assault protection order, stalking protection order, or vulnerable
10 adult protection order; an order issued under chapter 9A.40, 9A.44,
11 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW; a valid
12 foreign protection order as described in RCW 26.52.020; or a Canadian
13 domestic violence protection order as defined in RCW 26.55.010;
- 14 (xiv) Aiming or discharging firearms under RCW 9.41.230;
- 15 (xv) Hazing under RCW 28B.10.901(2)(a);
- 16 (xvi) Animal cruelty in the second degree committed under the
17 circumstances described in RCW 16.52.207(1);
- 18 (xvii) Assault in the fourth degree under RCW 9A.36.041;
- 19 (xviii) Any offense with a finding of sexual motivation under RCW
20 9.94A.835 or 13.40.135;
- 21 (xix) Communication with a minor or someone believed to be a
22 minor for immoral purposes under RCW 9.68A.090(1);
- 23 (xx) Any traffic offense involving a commercial driver's license
24 or a commercial learner's permit, or involving the operation of a
25 commercial motor vehicle; or
- 26 (xxi) Any offense that was originally filed as a felony charge
27 and subsequently amended to, or refiled as, a gross misdemeanor or
28 misdemeanor charge.

29 **Sec. 2.** RCW 46.20.270 and 2015 c 189 s 1 are each amended to
30 read as follows:

31 (1) Every court having jurisdiction over offenses committed under
32 this chapter, or any other act of this state or municipal ordinance
33 adopted by a local authority regulating the operation of motor
34 vehicles on highways, or any federal authority having jurisdiction
35 over offenses substantially the same as those set forth in this title
36 which occur on federal installations within this state, shall
37 immediately forward to the department a forfeiture of bail or
38 collateral deposited to secure the defendant's appearance in court, a
39 payment of a fine, penalty, or court cost, a plea of guilty or nolo

1 contendere or a finding of guilt, or a finding that any person has
2 committed a traffic infraction an abstract of the court record in the
3 form prescribed by rule of the supreme court, showing the conviction
4 of any person or the finding that any person has committed a traffic
5 infraction in said court for a violation of any said laws other than
6 regulations governing standing, stopping, parking, and pedestrian
7 offenses.

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

28 (3) For the purposes of this title and except as defined in RCW
29 46.25.010, "conviction" means a final conviction in a state or
30 municipal court or by any federal authority having jurisdiction over
31 offenses substantially the same as those set forth in this title
32 which occur on federal installations in this state, an unvacated
33 forfeiture of bail or collateral deposited to secure a defendant's
34 appearance in court, the payment of a fine or court cost, a plea of
35 guilty or nolo contendere, or a finding of guilt on a traffic law
36 violation charge, regardless of whether the imposition of sentence or
37 sanctions are deferred or the penalty is suspended, but not including
38 entry into a deferred prosecution agreement under chapter 10.05 RCW
39 or entry into a judicially authorized dismissal of a misdemeanor or

1 gross misdemeanor following substantial compliance with court-ordered
2 conditions under section 1 of this act.

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

5 (5) For the purposes of this title, "finding that a traffic
6 infraction has been committed" means a failure to respond to a notice
7 of infraction or a determination made by a court pursuant to this
8 chapter. Payment of a monetary penalty made pursuant to RCW
9 46.63.070(2) is deemed equivalent to such a finding.

10 NEW SECTION. **Sec. 3.** Section 1 of this act constitutes a new
11 chapter in Title 10 RCW."

12 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.

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