

RCW 69.50.4017 Alternatives to prosecution—Pretrial diversion.

(1) Nothing in this section prevents the defendant, with the consent of the prosecuting attorney as required by RCW 2.30.030, from seeking to resolve charges under RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) through available therapeutic courts or other alternatives to prosecution including, but not limited to, a stipulated order of continuance or deferred prosecution. Nothing in this section prevents the defendant or the prosecuting attorney from seeking or agreeing to, or the court from ordering, any other resolution of charges or terms of supervision that suit the circumstances of the defendant's situation and advance stabilization, recovery, crime reduction, and justice.

(2) In any jurisdiction with a recovery navigator program established under RCW 71.24.115, an arrest and jail alternative program established under RCW 36.28A.450, or a law enforcement assisted diversion program established under RCW 71.24.589, any defendant charged with a violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) may make a motion to participate in pretrial diversion and agree to waive his or her right to a speedy trial if the motion is granted, subject to the following:

(a) In any case where the defendant is only charged with a violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c), and the defendant has not been convicted of any offenses committed after July 1, 2023, the court shall grant the motion, continue the hearing, and refer the defendant to a recovery navigator program established under RCW 71.24.115, an arrest and jail alternative program established under RCW 36.28A.450, or a law enforcement assisted diversion program established under RCW 71.24.589.

(b) In any case where the defendant does not meet the criteria described in (a) of this subsection, the court may grant the motion, continue the hearing, and refer the defendant to a recovery navigator program established under RCW 71.24.115, an arrest and jail alternative program established under RCW 36.28A.450, or a law enforcement assisted diversion program established under RCW 71.24.589.

(c) In all cases, the court may not grant the motion unless the prosecuting attorney consents to the defendant's participation in pretrial diversion. The prosecuting attorney is strongly encouraged to agree to diversion in any case where the defendant is only charged with a violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c). The prosecuting attorney may divert additional charges related to substance use disorder for nonfelony offenses that are not crimes against persons.

(3) Prior to granting the defendant's motion to participate in pretrial diversion under this section, the court shall provide the defendant and the defendant's counsel with the following information:

(a) A full description of the procedures for pretrial diversion;

(b) A general explanation of the roles and authority of the probation department, the prosecuting attorney, the recovery navigator program under RCW 71.24.115, arrest and jail alternative program under RCW 36.28A.450, or law enforcement assisted diversion program under RCW 71.24.589, and the court in the process;

(c) A clear statement that the court may grant pretrial diversion with respect to any offense under RCW 69.50.4011(1) (b) or (c),

69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) that is charged, provided that the defendant pleads not guilty to the charge or charges and waives his or her right to a speedy trial, and that upon the defendant's successful completion of pretrial diversion, as specified in subsection (11) of this section, and motion of the defendant, prosecuting attorney, court, or probation department, the court must dismiss the charge or charges against the defendant;

(d) A clear statement that if the defendant has not made substantial progress with treatment or services provided that are appropriate to the defendant's circumstances or, if applicable, community service, the prosecuting attorney may make a motion to terminate pretrial diversion and schedule further proceedings as otherwise provided in this section;

(e) An explanation of criminal record retention and disposition resulting from participation in pretrial diversion and the defendant's rights relative to answering questions about his or her arrest and pretrial diversion following successful completion; and

(f) A clear statement that under federal law it is unlawful for any person who is an unlawful user of or addicted to any controlled substance to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(4) If the court grants the defendant's motion to participate in pretrial diversion under this section, the recovery navigator program established under RCW 71.24.115, the arrest and jail alternative program established under RCW 36.28A.450, or the law enforcement assisted diversion program established under RCW 71.24.589, shall provide the court written confirmation of completion of the assessment and a statement indicating the defendant's enrollment or referral to any specific service or program. The confirmation and statement of the recovery navigator program established under RCW 71.24.115, the arrest and jail alternative program established under RCW 36.28A.450, or the law enforcement assisted diversion program established under RCW 71.24.589 shall be filed under seal with the court, and a copy shall be given to the prosecuting attorney, defendant, and defendant's counsel. The confirmation and statement are confidential and exempt from disclosure under chapter 42.56 RCW. The court shall endeavor to avoid public discussion of the circumstances, history, or diagnoses that could stigmatize the defendant.

(5) Subject to the availability of funds appropriated for this specific purpose, the assessment and recommended treatment or services must be provided at no cost for defendants who have been found to be indigent by the court.

(6) If the assessment conducted by the recovery navigator program established under RCW 71.24.115, the arrest and jail alternative program established under RCW 36.28A.450, or the law enforcement assisted diversion program established under RCW 71.24.589 includes a referral to any treatment or services, the recovery navigator program established under RCW 71.24.115, the arrest and jail alternative program established under RCW 36.28A.450, the law enforcement assisted diversion program established under RCW 71.24.589, or service provider shall provide the court with regular written status updates on the defendant's progress on a schedule acceptable to the court. The updates must be provided at least monthly and be filed under seal with the court, with copies given to the prosecuting attorney, defendant, and defendant's counsel. The updates and their copies are confidential

and exempt from disclosure under chapter 42.56 RCW. The court shall endeavor to avoid public discussion of the circumstances, history, or diagnoses that could stigmatize the defendant.

(7) If the assessment conducted by the recovery navigator program established under RCW 71.24.115, the arrest and jail alternative program established under RCW 36.28A.450, or the law enforcement assisted diversion program established under RCW 71.24.589 does not recommend any treatment or services, the defendant must instead complete an amount of community service as determined by the court, but not to exceed 120 hours of community service, in order to complete pretrial diversion.

(8) Admissions made by the individual in the course of receiving services from the recovery navigator program established under RCW 71.24.115, the arrest and jail alternative program established under RCW 36.28A.450, or the law enforcement assisted diversion program established under RCW 71.24.589 may not be used against the individual in the prosecution's case in chief.

(9) A defendant's participation in pretrial diversion under this section does not constitute a conviction, a stipulation to facts, or an admission of guilt for any purpose.

(10) If it appears to the prosecuting attorney that the defendant is not substantially complying with the recommended treatment or services as reflected by a written status update, the prosecuting attorney may make a motion for termination from pretrial diversion.

(a) After notice to the defendant, the court must hold a hearing to determine whether pretrial diversion shall be terminated.

(b) Before the hearing, the defendant and the defendant's counsel shall be advised of the nature of the alleged noncompliance and provided discovery of evidence supporting the allegation, including names and contact information of witnesses.

(c) At the hearing, the court must consider the following factors:

(i) The nature of the alleged noncompliance; and

(ii) Any other mitigating circumstances, including, but not limited to, the defendant's efforts and due diligence, the availability of services in the geographic area, and the treatment and services offered to the defendant.

(d) If the court finds the defendant is not substantially complying with the recommended treatment or services and thereafter terminates pretrial diversion, it shall state the grounds for its decision succinctly in the record and provide the prosecuting attorney, the defendant, and the defendant's counsel with a written order.

(11) If the defendant successfully completes pretrial diversion, including in one of the following ways, the charge or charges under RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) must be dismissed:

(a) If the assessment prepared by the recovery navigator program, arrest and jail alternative program, or law enforcement assisted diversion program included a recommendation for treatment or services, the defendant successfully completes pretrial diversion either by having 12 months of substantial compliance with the assessment and recommended treatment or services and progress toward recovery goals as reflected by the written status updates or by successfully completing the recommended treatment or services, whichever occurs first; or

(b) If the assessment prepared by the recovery navigator program, arrest and jail alternative program, or law enforcement assisted diversion program did not include a recommendation for treatment or services, the defendant successfully completes pretrial diversion by completing the community service described in subsection (7) of this section and submitting proof of completion to the court.

(12) Beginning January 1, 2025, the recovery navigator programs established under RCW 71.24.115, arrest and jail alternative programs established under RCW 36.28A.450, and law enforcement assisted diversion programs established under RCW 71.24.589 shall input data and information in the data integration platform under RCW 71.24.908 for each case where the defendant participates in pretrial diversion under this section, including but not limited to the following:

(a) Whether the pretrial diversion was terminated or was successfully completed and resulted in a dismissal;

(b) The race, ethnicity, gender, gender expression or identity, disability status, and age of the defendant; and

(c) Any other appropriate data and information as determined by the health care authority. [2023 sp.s. c 1 § 9.]

Effective date—2023 sp.s. c 1 §§ 1-5, 7-11, and 41: See note following RCW 69.50.4011.