

SECTION 16-5

DEFERRED PROSECUTIONS

16-5.01. Eligibility; Time for Petition

The Spokane Tribal Court shall have the authority and discretion to grant Deferred Prosecutions to defendants charged with alcohol, drug, or mental problem related traffic (except for vehicular homicide or vehicular assault) or domestic violence related Assault & Battery in the 2nd Degree offenses. Petitions for Deferred Prosecutions shall be filed with the Court not later than the time set for the pre-trial conference. The pre-trial conference may, in the Court's discretion, be continued in order for the defendant to obtain the appropriate drug, alcohol, or domestic violence evaluations and treatment recommendations.

A defendant charged with an alcohol, drug, or mental problem related traffic (other than vehicular homicide or vehicular assault) or domestic violence offense (Assault & Battery in the 2nd Degree) shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to Section 16-5.02 of this chapter. Such defendant shall not be eligible for a deferred prosecution program more than once in any three year period. Separate offenses committed more than seven days apart may not be consolidated into a single program.

16-5.02. Requirements of Petition; Rights of Petitioner; Court's Findings

(1) The petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental problems for which the petitioner is in need of treatment and, unless treated, the probability of future reoccurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by a Court approved alcoholism treatment program

if the petition alleges alcoholism, a Court approved drug rehabilitation program if the petition alleges drug addiction, or a Court approved mental health center if the petition alleges a mental problem.

(2) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and shall execute, as a condition of receiving a deferred prosecution, a statement that contains: (a) An acknowledgment of his or her rights; (b) an acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her own defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report; and (d) an acknowledgment that the statement will be entered and used to support a finding of guilty if the court later finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from tribal, public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be 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.

(3) Before entering an order deferring prosecution, the Court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation

of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

(4) Petitioner shall execute the necessary authorizations to allow the treatment facilities to report to the Court and counsel.

16-5.03. Investigation and Examination by Treatment Facility

The facility to which such person is referred shall conduct an investigation and examination to determine:

- (4) Whether the person suffers from the problem described;
- (5) Whether the problem is such that, if not treated, there is a probability that similar misconduct will occur in the future;
- (6) Whether extensive and long term treatment is required;
- (7) Whether effective treatment for the person's problem is available; and
- (8) Whether the person is amenable to treatment.

16-5.04. Report to Court by Treatment Facility; Recommended Treatment Plan; Commitment to Provide Treatment

The facility shall make a written report to the court stating its findings and recommendations after the examination referred to in 16-5.03. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

- (1) The type;
- (2) Nature;
- (3) Length;

- (4) A treatment time schedule; and
- (5) Approximate cost, if any, to the defendant for the treatment.

The report with the treatment plan shall be filed with the Court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment plan shall be given to the prosecutor by petitioner's counsel at the request of the prosecutor. The facility making the written report shall append to the report a commitment by the facility that it will provide the treatment in accordance with this section. The facility shall agree to provide the Court with a statement every three months for the first year and every six months for the second year regarding: (a) the petitioner's cooperation with the proposed treatment plan, and (b) the petitioner's progress or failure in treatment. These statements shall be made as a declaration or in letter format by the person who is personally responsible for providing the treatment.

16-5.05. Docket Procedure Upon Granting of Deferred Prosecution

If the report recommends treatment, the Court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the defendant's court file showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be included in the file, which shall then be removed from the regular court files and placed in a special court deferred prosecution file.

16-5.06. Evidence, Uses and Admissibility

If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition and/or treatment facility investigation/examination/evaluation is

inadmissible in any trial on the charges, but shall be available for use after a conviction in determining a sentence.

16-5.07. Procedure Upon Breach of Treatment Plan

If a petitioner who has been accepted for a deferred prosecution fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan, the treatment facility administering the treatment shall immediately report such breach to the Court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The Court, upon receiving such a report, shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan and the petitioner shall have the right to confront witnesses and to present evidence in his or her own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from the deferred prosecution program. If removed from the deferred prosecution program, the court shall make a finding of guilt or innocence and enter the appropriate judgment in accordance with the rights and waivers mentioned above in 16-5.02. If the petitioner is found guilty, sentence shall be imposed in a manner consistent with the Spokane Tribe Law and Order Code.

16-5.08. Conviction of Similar Offense

If the petitioner is subsequently convicted of a similar offense while in a deferred prosecution program, upon notice, the court shall remove the petitioner's file from the deferred prosecution file and the court shall conduct a hearing and make a finding of guilt or innocence and enter the appropriate judgment in accordance with the rights and waivers mentioned above in 16-

5.02. and 16-5.07 above.

16-5.09. Dismissal of Charges

Upon proof of successful completion of the treatment program, the court shall dismiss, with prejudice, the charges pending against the petitioner.

16-5.10. Services Provided for Indigent Defendants

The Health and Human Services shall provide evaluations, treatment and reports for those petitioners unable to afford private treatment programs.

16-5.11. Alcoholism Program Requirements

A deferred prosecution program for alcoholism shall be for a period of not less than one year and not more than two years. The program shall include, but not be limited to, the following requirements:

- (1) Total abstinence from alcohol and all illegal or controlled substances;
- (2) Participation in an intensive inpatient or intensive outpatient program in a Court approved alcoholism treatment facility;
- (3) Participation in a minimum of two meeting per week of an alcoholism self-help recovery support group, as determined by the treatment provider, for the duration of the treatment program;
- (4) Participation in an alcoholism self-help recovery group, as determined by the treatment provider, from the date of court approval of the plan to entry into

intensive treatment;

- (5) Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of the treatment;
- (6) Not less than monthly outpatient contact, group or individual, for the remainder of the deferred prosecution program;
- (7) The decision to include the use of prescribed drugs as a condition of treatment shall be reserved to the treating facility, the petitioner, and the petitioner's physician;
- (8) All treatment within the purview of this section shall occur within or be approved by a Court approved alcoholism treatment facility. Any facility approved by the State of Washington Departments of Licensing or Corrections shall be deemed to be approved by the Tribal Court;
- (9) Signature of the petitioner agreeing to the terms and conditions of the treatment program; and
- (10) A waiver of confidentiality for purposes of reporting to the Court and counsel.

16-5.12 Appeal of Order Granting Deferred Prosecution

The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

- (1) Prior deferred prosecution has been granted to the defendant within three years;
- (2) Failure of the court to obtain proof of insurance (for traffic related offenses) or a treatment plan conforming to the requirements of this section; or
- (3) Failure of the court to comply with the requirements of 16-5.08.

Should the treatment facility fail to conform to the requirements of this section, the Court shall notify the defendant and, at a hearing, allow the defendant to find an alternate treatment facility or to withdraw from the deferred prosecution program. If the defendant opts to withdraw, he or she shall be tried on the original charge within 60 days of the withdrawal. At a trial on the charge, subsection 16-5.06 shall apply.