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CHAPTER 9.45

Sec. 9.45.010. Purpose. Substance abuse is taking an increasing toll on the health and safety of our community. The purpose of this chapter is to help those suffering from addiction find a path to treatment through our municipal court system, and to hold accountable those unwilling to seek treatment for the harm caused to our community. If an individual is charged with a crime under this chapter and they comply with their recommended substance use disorder treatment program, their criminal charge will be dismissed, and no conviction will result. If an individual fails to comply with their treatment program and they are later convicted of the charge after being found noncompliant by the court, they will still have the opportunity to have their conviction vacated if they comply with their recommended treatment program. The North Bend City Council intends that incarceration be utilized as a sanction only when an individual fails to comply with their recommended treatment program or other conditions imposed by the court.

Sec. 9.45.020. Definitions. For purposes of this section, the following terms or words shall be interpreted as follows:

A. *Controlled substance* means any controlled substance classified in Schedule I, II, III, or IV of Chapter 69.50 RCW, excluding cannabis, as it now exists or shall hereafter be added to, deleted from, modified, or amended.

B. *Counterfeit controlled substance* means a controlled substance that is falsely labeled so as to appear to have been legitimately manufactured or distributed.

C. *Drug paraphernalia* has the same meaning as provided for in RCW 69.50.102, which statute is adopted by this reference, as currently enacted and hereafter amended or recodified from time to time.

D. *Legend drug* means any drug which is required by state law or regulation of the pharmacy quality assurance commission to be dispensed on prescription only or is restricted to use by practitioners only.

E. *Public place* means an area generally visible to public view and includes without limitation any place where the public has a right of access, which includes without limitation sidewalks,

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parking lots and parking garages, streets, alleys, highways, or roads; public buildings and grounds, including schools, parks, playgrounds, and meeting halls; establishments to which the public is invited including restaurants, theaters, stores, gas stations, meeting halls, lobbies, halls and dining rooms of hotels, bars, taverns, pubs, or establishments where beer or soft drinks may be sold, and their associated parking lots, parking structures, walkways, doorways, and entrances; railroad trains, light rail facilities, buses, and other public conveyances of all kinds and character, and their associated stations and platforms used in conjunction therewith which are open to unrestricted use and access by the public; and all other places of like or similar nature.

F. *Use* means actual use, or a substantial step taken that evidences an intent to inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.

Sec. 9.45.030. Controlled substances—Possession or use in public—Penalty.

A. *Possession*. It is unlawful for any person to knowingly possess a controlled substance unless the controlled substance has been lawfully prescribed to the person possessing it.

B. *Public use*. It is unlawful for any person to intentionally use a controlled substance in a public place unless the controlled substance has been lawfully prescribed to the person using it.

C. *Exception*. It shall not be a violation of this section if the person possesses a controlled substance prescribed to another person for whom the person is a legal guardian, and the controlled substance is possessed in the container in which it was originally dispensed.

D. *Penalty*. A violation of this section is punishable as a gross misdemeanor.

Sec. 9.45.040. Legend drugs—Possession or use in public—Penalty.

A. *Possession*. It is unlawful for any person to knowingly possess any legend drug unless the legend drug has been lawfully prescribed to the person possessing it.

B. *Public use*. It is unlawful for any person to intentionally use a legend drug in a public place unless the legend drug has been lawfully prescribed to the person using it.

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C. *Exception.* It shall not be a violation of this section if the person possesses a legend drug prescribed to another person for whom the person is a legal guardian, and the legend drug is possessed in the container in which it was originally dispensed.

D. *Penalty.* A violation of this section is punishable as a gross misdemeanor.

Sec. 9.45.050. Counterfeit controlled substances—Possession or use in public—Penalty.

A. *Possession.* It is unlawful for any person to knowingly possess a counterfeit controlled substance.

B. *Public use.* It is unlawful for any person to intentionally use a counterfeit controlled substance in a public place.

C. *Penalty.* A violation of this section is punishable as a gross misdemeanor.

Sec. 9.45.060. Possession of drug paraphernalia. It is unlawful for any person to knowingly possess drug paraphernalia, other than that drug paraphernalia associated with the lawful possession and use of cannabis. A violation of this section is punishable as a misdemeanor.

Sec. 9.45.070. Minor in possession of alcohol. It is unlawful for any person under the age of twenty-one years to knowingly possess, consume, or otherwise acquire any liquor. A violation of this subsection is punishable as a gross misdemeanor.

Sec. 9.45.080. Unlawful deposit of dangerous drugs and drug paraphernalia. It shall be unlawful for any person to knowingly dump, throw, deposit, or discharge onto the ground or into any body of water any controlled substance, counterfeit controlled substance, or legend drug, or any drug paraphernalia. A violation of this section is punishable as a misdemeanor.

Sec. 9.45.090. Alternative deferred prosecution program. In lieu of the process provided for under Ch. 10.05 RCW, an individual charged with a crime under this chapter may petition the court to have that charge considered under the alternative deferred prosecution program provided for by this section.

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A. Petition—Eligibility. An individual charged with a crime under this chapter may petition the court to be considered for this alternative deferred prosecution program. The petition may include, upon agreement of the parties, multiple charges that are pending at the time the petition is filed, which may be consolidated into a single program. However, this alternative deferred prosecution program is not available for any offense under Title 46 RCW, any domestic violence offense, or any offense under Chapter 9A.42 RCW, which offenses may only be petitioned for under the deferred prosecution program procedures provided for in Ch. 10.05 RCW. Misdemeanor charges that result from the county declining to file felony charges for the sale, delivery, or possession with an intent to deliver controlled substances, counterfeit controlled substances, or legend drugs, are not eligible for this alternative deferred prosecution program, unless the parties otherwise agree.

The petition shall be filed with the court at least three court days prior to the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

B. Statement of availability. At the time of arraignment an individual charged with an offense under this chapter may be given a statement by the court that explains the availability, operation, and effects of this alternative deferred prosecution program.

C. Requirements of petition—Rights of petitioner—Court findings.

1. In the petition, the petitioner shall allege under oath that the wrongful conduct charged is the result of or was caused by a substance use disorder for which the individual is in need of treatment and unless treated the probability of future recurrence is great, along with a statement that the individual 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 an approved substance use disorder treatment program as designated in chapter 71.24 RCW.

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2. Before entry of an order deferring prosecution, a petitioner shall be advised of their right as an accused and execute, as a condition of receiving treatment, a statement that contains the following:

- a. An acknowledgment of their 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 their 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;
- d. An acknowledgment that the statement will be entered and used to support a finding of guilty, if the court finds cause to revoke the order granting deferred prosecution;
- e. An agreement to sign a release of information allowing the program provider to share information with the court, defense counsel, and the prosecutor, subject to the condition that information learned shall be used only to determine the individual's compliance with treatment approved through this alternative deferred prosecution program and not for prosecution of a criminal offense; and
- f. An acknowledgment that the individual may opt out of this alternative deferred prosecution program at their first review hearing and have their criminal case sent back to pre-trial status. The petitioner shall also be advised that they may, if they proceed to trial and are found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that they seek treatment and, further, that they may seek treatment from public and private agencies at any time without regard to whether or not they are found guilty of the offense charged. They shall also be advised that the court will not accept a petition for deferred prosecution from an individual who: (i) sincerely believes that they are innocent of the charges; or (ii) sincerely believes that they did not, in fact, suffer from a substance use disorder.

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;

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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 their 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.

D. Investigation and examination. The program to which such individual is referred shall conduct an investigation and examination to determine:

1. Whether the individual suffers from the problem described;
2. Whether the problem is such that if not treated there is a probability that similar misconduct will occur in the future;
3. Whether extensive and long term treatment is required;
4. Whether effective treatment for the individual's problem is available; and
5. Whether the individual is amenable to treatment.

E. Report to court—Recommended treatment plan—Commitment to provide treatment.

1. The program shall make a written report to the court stating its findings and recommendations after the examination required by NBMC 9.45.090(E). If its findings and recommendations support treatment, it shall also recommend a treatment or service plan setting out:

- a. The type;
- b. Nature;
- c. Length;
- d. A treatment or service time schedule; and
- e. Approximate cost of the treatment.

2. The report with the treatment or service plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment or service plan shall be given to the prosecutor by petitioner's counsel. The evaluation facility making the written report

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shall append to the report a commitment by the treatment program that it will provide the treatment in accordance with this section. If the individual is monitored by the court's probation department, the facility or the service provider 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 treatment proposed, and (b) the petitioner's progress or failure in treatment. If the individual is not monitored by the court's probation department, such statements must be filed with the court, along with a copy sent to the prosecutor and defense attorney, every month or as the court may otherwise order. These statements shall be made as a declaration by the individual who is personally responsible for providing the treatment or services.

F. Procedure upon approval of plan. If the report recommends treatment, the court shall examine the treatment plan. If the court 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 individual's court docket showing that the individual has been accepted for deferred prosecution under this alternative program. A copy of the treatment plan shall be filed with the court.

G. When treatment rejected. When treatment is either not recommended or not approved by the judge, or the petitioner declines to accept the treatment plan, the charge shall proceed through the criminal justice system in regular course.

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

I. 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 facility, center, institution, or agency 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

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the treatment plan and the petitioner shall have the right to present evidence on their own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to NBMC 9.45.090(C).

J. Conviction of similar offense. If a petitioner is subsequently convicted of a similar offense that was committed while the petitioner was in a deferred prosecution program, upon notice the court may remove the petitioner's docket from the deferred prosecution file, and if removed, shall enter judgment pursuant to NBMC 9.45.090(C).

K. Trial delay not grounds for dismissal. Delay in bringing a case to trial caused by a petitioner requesting deferred prosecution as provided for in this section shall not be grounds for dismissal.

L. Dismissal of charges. Following proof to the court that the petitioner has complied with the conditions imposed by the court following successful completion of the recommended treatment program, but not before two years following entry of the order of deferred prosecution pursuant to a petition brought under NBMC 9.45.090, or earlier upon agreement of the parties, the court shall dismiss the charges pending against the petitioner.

M. Services provided for indigent defendants. If an individual is indigent and has sufficiently demonstrated to the court that they are unable to pay the cost of any program of treatment, including costs to provide investigation, examination, report and a treatment plan, those costs may be eligible for payment using available funds appropriated by the City or the state for that purpose.

N. Conditions of granting.

1. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160.

2. To help ensure continued sobriety and reduce the likelihood of re-offense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for substance use disorders, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of any term or condition provided for in the deferred prosecution order.

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O. Minimum program requirements. A deferred prosecution program shall be for a two-year period and shall include, but not be limited to, the following requirements:

1. Total abstinence from alcohol and all other nonprescribed mind-altering drugs;
2. Participation in an intensive inpatient or intensive outpatient program in a state-approved substance use disorder treatment program;
3. Participation in a minimum of two meetings per week of a self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;
4. Participation in a self-help recovery support group, as determined by the assessing agency, 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 treatment;
6. Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;
7. The decision to include the use of prescribed drugs to treat a substance use disorder, including but not limited to disulfiram, methadone, buprenorphine, and naltrexone, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;
8. All treatment within the purview of this section shall occur within or be approved by a state-approved substance use disorder treatment program as described in Chapter 71.24 RCW;
9. Signature of the petitioner agreeing to the terms and conditions of the treatment program.

P. Appeal of deferred prosecution order. The prosecutor may appeal an order granting deferred prosecution if the evaluation facility fails to provide the information required in NBMC 9.45.090(E) and NBMC 9.45.090(F), if the petitioner has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another treatment program.

Q. Supervision as condition—Levy of assessment. As a condition of granting a deferred prosecution, the court may order supervision of the petitioner by the probation department during the period of deferral and may levy a monthly assessment upon the petitioner as provided in NBMC 9.45.090(M), to the extent the petitioner is able to pay the assessment.

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~~**Sec. 9.45.100. No objection to deferred sentence following revoked deferred prosecution.**~~ If an individual declines the alternative deferred prosecution program created through this chapter, a deferred prosecution program as provided for in Chapter 10.05 RCW, or a deferred prosecution program under this chapter or Chapter 10.05 RCW is revoked due to noncompliance, the city will not object to the individual being granted a deferred sentence conditioned on compliance with a state approved substance use disorder treatment program.

~~**Sec. 9.45.110. Vacation of conviction.**~~ If a person convicted of an offense under this chapter is ordered by the court to complete a substance use disorder treatment program, the city will not object to the court vacating the individual's conviction(s) if the person successfully completes the court approved treatment program and they file proof of such completion with the court. Vacation shall include all convictions for offenses under this chapter that were entered at the time the individual completed the court approved substance use disorder treatment program.