

907.3 Deferred judgment, deferred sentence or suspended sentence.

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony or to a violation of chapter 709 committed by a person who is a mandatory reporter of child abuse under section 232.69 in which the victim is a person who is under the age of eighteen.

1. With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon conditions as it may require. However, a civil penalty shall be assessed as provided in section 907.14 upon the entry of a deferred judgment. Upon a showing that the defendant is not cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation and the payment of fees imposed and not waived by the judicial district department of correctional services under section 905.14, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

However, this subsection shall not apply if any of the following is true:

- a. The offense is a violation of section 709.8 and the child is twelve years of age or under.
- b. The defendant previously has been convicted of a felony. "*Felony*" means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which the defendant was convicted at the time of the defendant's conviction.
- c. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.
- d. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.
- e. The defendant committed an assault as defined in section 708.1, against a peace officer in the performance of the peace officer's duty.
- f. The defendant is a corporation.
- g. The offense is a violation of section 321J.2 and the person has been convicted of a violation of that section or the person's driver's license has been revoked under chapter 321J, and any of the following apply:
 - (1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.
 - (2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.
 - (3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

h. Prior to the commission of the offense the defendant had been granted a deferred judgment or deferred sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or was granted similar relief anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A, and the current offense is a violation of section 708.2A.

i. The offense is a conviction for or plea of guilty to a violation of section 664A.7 or a finding of contempt pursuant to section 664A.7.

j. The offense is a violation of section 707.6A, subsection 1; or a violation of section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

k. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

l. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. The court may assign the defendant to supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate. However, the court shall not defer the sentence for a violation of any of the following:

a. Section 708.2A, if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A.

b. Section 664A.7 or for contempt pursuant to section 664A.7.

c. Section 321J.2, subsection 1, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. Section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

f. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility to be followed by a term of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate and the payment of fees imposed under section 905.14. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend any of the following sentences:

a. The minimum term of two days imposed pursuant to section 708.2A, subsection 6, paragraph "a", or a sentence imposed under section 708.2A, subsection 6, paragraph "b".

b. A sentence imposed pursuant to section 664A.7 for contempt.

c. A mandatory minimum sentence of incarceration imposed pursuant to a violation of section 321J.2, subsection 1; furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsection 2, beyond the mandatory minimum if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. A sentence imposed pursuant to section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled

substance is methamphetamine.

f. A mandatory minimum sentence or fine imposed for a violation of section 462A.14.

[S13, § 5447-a; C24, 27, 31, 35, 39, § **3800**; C46, 50, 54, 58, 62, 66, 71, 73, § 247.20; C75, 77, § 789A.1; C79, 81, § 907.3; 81 Acts, ch 206, § 17; 82 Acts, ch 1167, § 28]

86 Acts, ch 1220, § 45; 88 Acts, ch 1168, § 3, 4; 89 Acts, ch 296, § 93; 91 Acts, ch 218, §30; 91 Acts, ch 219, §25, 26; 93 Acts, ch 157, §11, 12; 95 Acts, ch 180, §16, 17; 96 Acts, ch 1131, § 4; 96 Acts, ch 1193, § 1719; 97 Acts, ch 177, § 3133; 97 Acts, ch 189, § 2; 97 Acts, ch 190, § 8, 9; 98 Acts, ch 1138, § 69, 2931, 37; 99 Acts, ch 182, §8; 2000 Acts, ch 1099, §1113; 2000 Acts, ch 1201, §15; 2001 Acts, ch 165, §79; 2002 Acts, ch 1050, §56, 57; 2003 Acts, ch 156, §1719; 2005 Acts, ch 143, §4; 2006 Acts, ch 1101, §1719

Footnotes

Definition of forcible felony, § 702.11

For bail after deferred judgment, see § 811.2, 811.11