

1 IN THE KITSAP COUNTY DISTRICT COURT

2  
3  
4 STATE OF WASHINGTON,

)  
) No. **23040401**

5  
6 Plaintiff,

) PRE-TRIAL DIVERSION AGREEMENT,  
) WAIVERS, AND STIPULATED ORDER OF  
) CONTINUANCE

7 v.

8 **GRAHAM, RUFUS T.**

9 Defendant.  
10  
11

12  
13 **PRE-TRIAL DIVERSION AGREEMENT**

14 COMES NOW the Prosecution, by and through its attorney of record below-named, and the  
15 Defendant, by and through his or her attorney of record below-named, and hereby enter the following Pre-  
16 Trial Diversion Agreement (hereafter "Agreement")–

17 **DEFENDANT’S WAIVER OF RIGHTS AND AGREEMENT**

18  
19 1. **Waiver of Speedy Trial.** The Defendant understands that he or she has the right to be tried  
20 within ninety (90) days following the “commencement date” as defined in (CrRLJ 3.3(c)(2)(i)), and that if  
21 the Defendant does not receive a trial within this time period the case may be dismissed with prejudice.  
22 The Defendant understands that he or she has a right to trial by October 9, 2017 (date).  
23 The Defendant gives up that right and agrees to a new commencement date of **December 31, 2025.**  
24 As a result of this waiver, the last allowable date for trial will be **March 31, 2026.**

25 2. **Waiver of Jury Trial.** The Defendant understands that he or she has the right to trial by jury  
26 unless he or she waives the right to a jury trial (CrRLJ 6.1.1(a)). The Defendant hereby waives his or her  
27 jury trial right, and requests that his or her guilt or innocence be decided by a judge.

28 3. **Waiver of Rights, Waiver of Objection to Any Evidence Presented.** The Defendant understands  
29 that he or she has the right to contest and object to evidence presented against the Defendant. Should the  
30 Defendant be found to be in violation of this agreement, the Defendant gives up the right to contest or object  
31 to any evidence presented against the Defendant at any future hearings, whether or not such evidence is a  
part of the Court’s record at the time of entry of this agreement. The Defendant also understands that he or

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1 she has the right to present evidence on the Defendant's own behalf. The Defendant gives up the right to  
2 present evidence on the Defendant's own behalf as to the Defendant's guilt or innocence regarding the  
3 underlying charge(s). The Defendant understands that evidence will be presented against the Defendant at a  
4 future hearing and the Defendant understands that the judge will review that evidence in determining the  
5 Defendant's guilt or innocence.

6 The Defendant understands that, by this process, he or she is giving up the constitutional right to a  
7 jury trial, the right to hear and question witnesses, the right to call witnesses in his or her own behalf, the  
8 right to testify or not to testify, the right to remain silent, the right to challenge the admissibility of  
9 statements the Defendant has made (CrRLJ 3.5), the right to challenge physical, oral or identification  
10 evidence (CrRLJ 3.6), and the right to assert any of the following privileges: both spousal and marital  
11 (RCW 5.60.060), physician-patient (RCW 5.60.060), clergy-penitent (RCW 5.60.060), psychologist-client  
12 (RCW 18.83.110), registered nurse (RCW 5.62.020), counselor (RCW 18.19.180).

13 The Defendant understands that the maximum sentence for the crime(s) charged herein of—  
14 Driving Under the Influence(refusal) is 364 days in jail and/or a \$5,000 fine plus costs and assessments,  
15 \_\_\_\_\_ is 90 days in jail and/or a \$1,000 fine, plus costs and assessments,  
16 and that the judge can impose any sentence up to the maximum, no matter what the prosecutor or the  
17 defense recommends.

18 4. **Defendant's Promise to be Present in Court.** The Defendant understands and agrees that his or  
19 her presence is required at all future court hearings unless that presence is waived in writing by the judge.

20 5. **Additional Conditions.** The Defendant agrees to fully and completely satisfy all of the following  
21 selected conditions—

22  **Criminal Law Violations.** The Defendant shall have no criminal law violations. The Defendant agrees  
23 that this Court may take action on the Prosecution's motion alleging the Defendant's violation of this  
24 condition prior to any resolution of the alleged new criminal law violation. The Defendant specifically  
25 agrees that a "conviction" for a criminal law violation occurring after the signing of this Agreement is  
26 not a prerequisite to this Court taking action on the Prosecution's motion to revoke this Agreement due  
27 to the Defendant's alleged violation of this condition. The Defendant further agrees that the Defendant's  
28 petition or otherwise request of any Washington court to grant the Defendant a deferred prosecution  
29 pursuant to RCW 10.05 et seq. for any criminal law violation occurring after the signing of this  
30 Agreement shall be a violation of this condition. Civil infractions (for example, but not limited to,  
31 speeding tickets) are not considered criminal law violations. Accordingly, the Defendant's commission  
of a civil infraction does not constitute a violation unless otherwise stated in this Agreement.

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1  **Address and Telephone Information.** The Defendant agrees to notify the Court in person or in writing  
2 of any change of residence or mailing address and of any change of telephone number, and the Defendant  
3 agrees that such notification must be made within 10 days of the change.

4  **Failure to File Proof of Compliance With the Court.** The Defendant agrees that failure to file with the  
5 Court Clerk written proof of compliance with any condition in this Agreement, when such proof of  
6 compliance is required herein, shall be a material violation of this Agreement.

7  **Court Order(s) Prohibiting Contact.** The Defendant agrees to strictly comply with all provisions of  
8 any court order entered in this case or any other case if such order restrains the Defendant and was issued  
9 pursuant to any of the following chapters of the Revised Code of Washington: 7.92, 7.9, 9A.46, 10.99,  
10 26.09, 26.10, 26.26, or 74.34, or any temporary order for protection granted under chapter 7.40 pursuant  
11 to chapter 74.34., or any valid foreign protection order as defined in RCW 26.52.020.

12  **Seized Property.** The Defendant today agrees to forfeit all property seized by law enforcement pursuant  
13 to an investigation into the crime(s) charged under the above listed cause number.

14  **Probation Monitoring Assessment.** The Defendant shall pay a misdemeanor probation department  
15 assessment of [\$400] [ \$\_\_\_\_\_] at \$20 per month by the 5th of each month  
16 beginning October 2017. Payments shall be made to–

17 **Kitsap County District Court, 614 Division Street, MS-25, Port Orchard, WA 98366**

18 Any amounts paid by check should include the Defendant's full name and case number. If payment is  
19 made by check, then 30 days will be required for the payment to process and post.

20  **Monitoring of Conditions by District Court.** The Defendant agrees that compliance with this  
21 Agreement shall be monitored by the Kitsap County District Court. The Defendant agrees to contact  
22 District Court Probation within one judicial day of the signing of this Agreement and keep all  
23 appointments with District Court Probation or the District Court staff.

24  **Emergency Responder Restitution.** The Defendant shall pay restitution in the amount of \$150.00  
25 directly to the primary investigative agency in this case, the Washington State Patrol . The Defendant shall,  
26 within 90 days of entering into this Agreement, file proof of such full payment with the Court Clerk.

27  **Valid License and Insurance.** The Defendant shall not drive a motor vehicle without possessing both a  
28 valid driver license and current proof of automobile personal liability insurance.

29  **DUI Victim Impact Panel.** The Defendant shall attend a DUI victim impact panel and within 90 days  
30 of entering into this Agreement file written proof thereof with the Court Clerk. In order to satisfy this  
31 condition, the panel must comport with the requirements set out in RCW 10.01.230.

**Chemical Dependency Treatment.** The Defendant shall obtain a chemical dependency evaluation from  
a state-certified agency, within 90 days of entering into this Agreement file written proof thereof with

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1 the Court Clerk, successfully comply with all treatment recommendations, and provide proof of such  
2 compliance within a reasonable period of time.

3  **Drinking and Driving.** The Defendant shall not drive or be in actual physical control of a motor vehicle  
4 while having a blood alcohol concentration of 0.03 or more within two hours after driving or being in  
5 physical control. The Defendant shall not refuse to submit to a test of his/her breath or blood to determine  
6 alcohol and/or drug concentration upon request of a law enforcement officer who has reasonable grounds  
7 to believe that the Defendant was driving or in actual physical control of a motor vehicle while under the  
8 influence of an intoxicating liquor and/or drugs.

9  **Defensive Driving Course.** The Defendant shall attend and successfully complete either a six (6) hour  
10 live defensive driving course or the eight (8) hour online defensive driving course, and within 90 days  
11 of entering into this Agreement file written proof thereof with the Court Clerk.

12  **Alcohol and Marijuana Prohibited.** The Defendant shall not possess or consume alcohol or marijuana  
13 [ for the duration of this agreement] [ until the Defendant files written proof with the Court Clerk  
14 of an evaluation indicating no significant alcohol or drug problem (screening of substance abuse reveals  
15 insufficient symptoms to indicate abuse or addiction to any substance, including but not limited to  
16 alcohol or marijuana) and files written proof with the Court Clerk of successful completion of  
17 alcohol/drug information school] [ until the Defendant becomes twenty-one years of age].

18  **Non-Prescribed Drugs Prohibited.** The Defendant shall not possess or consume any controlled  
19 substances or any narcotic pain medications unless prescribed by a physician.

20  **Ignition Interlock Device.** The Defendant shall not operate any vehicle that is not equipped with a  
21 functioning ignition interlock alcohol device. Unless otherwise noted in this agreement, there is no  
22 exception for vehicles used by the Defendant in the course of his/her occupation or employment.  
23 This condition may be rescinded by the Court one year from the date of entry of this agreement if the  
24 Defendant is in strict compliance with this Agreement, and if the Defendant possesses a valid driver  
25 license and automobile liability insurance at the time that the Defendant makes such a request.

26  **DV Perpetrator's Program.** The Defendant shall successfully complete a state-certified one-year  
27 Domestic Violence Perpetrator's Treatment program (or an equivalent military program), and shall file  
28 proof thereof with the Court Clerk within a reasonable period of time. The defendant shall file proof of  
29 enrollment in the program with the Court Clerk within 90 days of entering this Agreement.

30  **Firearms.** The Defendant shall not possess or own any firearm for the duration of this Agreement.

31  **DV Parenting Class.** The Defendant shall attend and successfully complete a parenting class for a  
minimum twenty-four (24) hours that includes a discussion of the effects of domestic violence on  
children, and within 90 days of entering this Agreement file written proof thereof with the Court Clerk.

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1  **Anger Management Course.** The Defendant shall successfully complete an anger management course,  
2 and within 90 days of entering this Agreement file written proof thereof with the Court Clerk.  
3 Completion of online courses shall not satisfy this condition.

4  **Psycho-Sexual Evaluation.** The Defendant shall obtain a psycho-sexual evaluation from a state-certified  
5 agency, within 90 days of entering this Agreement file proof thereof with the Court Clerk, successfully  
6 comply with all treatment recommendations, and provide proof of such compliance to the Court Clerk  
7 within a reasonable period of time.

8  **Mental Health Evaluation.** The Defendant shall obtain a mental health evaluation from a state-certified  
9 agency, within 90 days of entering this Agreement file proof thereof with the Court Clerk, successfully  
10 comply with all treatment recommendations, and provide proof of such compliance to the Court Clerk  
11 within a reasonable period of time.

12  **Entry Prohibited.** The Defendant shall not enter upon the premises of the following location(s):  
13 \_\_\_\_\_.

14  **No Contact [Non-DV Cases Only].** The Defendant shall not make any attempt to contact the following  
15 person(s): \_\_\_\_\_.  
16 This no contact provision specifically includes, as a non-exhaustive list, contact in person, in writing, by  
17 telephone, by electronic communication, or through third parties.

18  **10.99 Protection Order/Sexual Assault Protection Order/Harassment No Contact Order.**  
19 Defendant agrees to join the Prosecutor's recommendation to the court that the protection order issued  
20 under the above listed cause number shall remain in full force and effect, until such later time as the  
21 order expires or is rescinded by the court.

22  **Restitution.** The Defendant agrees to pay the following restitution to the named party or parties in the  
23 amount(s) shown below. Restitution shall be paid directly to the recipient, unless contact with that  
24 recipient is prohibited by this Agreement or by other order of the court, in which case restitution shall  
25 be paid through the Court Clerk. The Defendant agrees that the below listed amount of restitution must  
26 be paid in full before the expiration of this Agreement.

Amount	Name	Address
<u>\$350.82</u>	<u>City of Bremerton</u>	<u>345 6<sup>th</sup> Street Suite 600</u> <u>Bremerton, WA 98337</u>
_____	_____	_____

31 \$350.82 Total

**Other.** \_\_\_\_\_

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1 6. **Defendant's Promise to Fully Satisfy Conditions.** The Defendant understands and agrees that  
2 he or she shall fully and completely satisfy all of the conditions of this Agreement, and that failure or  
3 neglect to carry out and fulfill any term or condition of this Agreement shall constitute a material violation  
4 of this Agreement. The Defendant specifically agrees that substantial compliance with this contract  
5 constitutes insufficient performance on the part of the Defendant, and that part, partial or substantial  
6 performance does not entitle the Defendant to the benefit of his or her bargain under this Agreement.

7 The Defendant also understands and agrees that any allegation by the Prosecution that the  
8 Defendant has violated this Agreement will result in a hearing by this Court to determine whether a  
9 violation has been proven, and that the Prosecution will not be required to comply with its obligations in  
10 the section entitled "Prosecution's Agreement" until this Court has determined that the Defendant did not  
11 violate this Agreement and that the Defendant is in full compliance with this Agreement.

### 12 13 PROSECUTION'S AGREEMENT

14  
15  **DISMISSAL OF CHARGE(S)**

16 If the Defendant successfully complies with the promises he or she has made herein, the  
17 Prosecution agrees to move to dismiss with prejudice the charge(s) of \_\_\_\_\_ at a hearing to be  
18 scheduled **not before \_\_\_\_\_ years** following entry of this Agreement.

19  
20  **AMENDMENT OF CHARGE TO FIRST DEGREE NEGLIGENT DRIVING OR RECKLESS DRIVING**

21 If the Defendant successfully complies with the promises he or she has made herein, the  
22 Prosecution agrees to move to amend the charge of Driving Under the Influence to the lesser  
23 charge of Negligent Driving in the First Degree, and the Defendant agrees to the Court's entry of a  
24 guilty finding to the amended charge at a hearing to be scheduled **not before three years**  
25 following entry of this Agreement. The defendant agrees to entry of a guilty finding on the  
26 amended lesser charge pursuant to *In re Personal Restraint of Barr*, 102 Wn.2d 265-71, (1984).

27  
28 RCW 46.61.5249, Negligent Driving in the First Degree, has a maximum penalty of 90 days in jail and a  
29 \$1,000 fine, plus costs and assessments. RCW 46.61.500, Reckless Driving, has a maximum penalty of 364  
30 days in jail and a \$5,000 fine, plus costs and assessments. The court may impose up to the maximum  
31 penalty on any crime regardless of anything in this Agreement and regardless of the parties'  
recommendations to the court.

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1 Upon entry of a conviction for the amended charge the Prosecution will make the following sentencing  
2 recommendation to the Judge–

- 3 1) That the Court impose zero (0) days of confinement,
- 4 2) That the Court impose only non-discretionary legal financial obligations,
- 5 3) That the Court impose no probation.

6  
7 **PROCEDURE ON ALLEGED VIOLATION OF AGREEMENT**

8 The Defendant and Prosecution agree that the prompt resolution of a party’s allegation of violation  
9 of this Agreement by the other party is desirable. Accordingly, the parties request this Court to set a hearing  
10 date within approximately 30 days of any party’s motion on this matter, so that this Court may promptly  
11 determine whether a violation of this Agreement has occurred.

12 The parties further agree that a Prosecution motion alleging a violation of this Agreement by the  
13 Defendant will be handled in accordance with the procedures set forth in *State v. Marino*, 100 Wn.2d 719,  
14 674 P.2d 171 (1984), and *State v. Kessler*, 75 Wn.App. 634, 879 P.2d 333 (1994). The parties also agree  
15 that, when determining guilt or innocence, the Court may look beyond the confines of the Defendant’s  
16 court file and may consider evidence found in the Defendant’s Washington State Department of Licensing  
17 driving abstract, in the Washington State Judicial Information System (including access through the  
18 Judicial Access Browser System), and in the Statewide Electronic Collision and Ticket Online Records.

19  
20 DATED AND FILED August 23, 2017 .

  
08/22/17 10:27:00 am

21  
22 **Note to Defendant–This Agreement is a contract**  
23 **between you and the Kitsap County Prosecutor’s**  
24 **Office. In order to receive the benefit of the**  
25 **contract (a dismissal or an amendment of the**  
26 **current charge to a lesser charge), you must**  
27 **comply with all terms of this Agreement. If you**  
28 **fail to satisfy any of these requirements, you can**  
29 **be found guilty without a trial by jury.**

\_\_\_\_\_  
DEFENDANT

30  
31  
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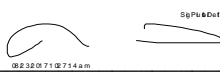
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PRESENTED BY—

APPROVED FOR ENTRY—



093207107144m



093207107144m

Jeter, WSBA No. 45407  
Deputy Prosecuting Attorney

morrison, WSBA No. 31153  
Attorney for Defendant

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