



July 17, 2012

TO: Judicial Community and Legal Community

FROM: Merrie Gough, AOC Sr. Legal Analyst

RE: 2012 AMENDMENTS TO CrRLJ 4.2(g)

On June 7, 2012, the Washington State Supreme Court adopted amendments to the CrRLJ 4.2(g) Statement of Defendant on Plea of Guilty and the CrRLJ 4.2(g) "DUI" Attachment. The amendments become effective when they are published in the Official Advance Sheets, Washington Reports, 174 Wn.2d No.5. The anticipated publication date is July 24, 2012. The amendments are based upon:

- Laws of 2012, Ch. 42, (ESHB 2302), driving under the influence - child in vehicle, effective July 7, 2012;
- Laws of 2012, ch. 183, (2SHB 2443), increasing accountability of persons who drive impaired, effective August 1, 2012;
- Laws of 2012, ch. 134, (ESHB 1983), prostitution and trafficking crimes – penalties, effective June 7. 2012.

Detailed descriptions of the amendments follow:

1. CrRLJ 4.2(g)	<p>Statement of Defendant on Plea of Guilty</p> <p>Laws of 2012, ch. 134, §3, amends RCW 9A.88.120 by increasing assessments for:</p> <ul style="list-style-type: none"> • (1)(b) permitting prostitution; • (1)(c) patronizing a prostitute. <p>Under new subsection RCW 9A.88.120(3), the court cannot reduce, waive, or suspend payment of assessments for prostitution, indecent exposure, permitting prostitution and patronizing a prostitute unless:</p> <ul style="list-style-type: none"> • the court finds, on the record; • the offender does not have the ability to pay; then • the court can reduce the fee up to two-thirds the maximum allowable fee. <p>Under new subsection RCW 9A.88.120(4), the new assessed fees are collected by the clerk of the court and remitted to the county treasurer, or to</p>
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	<p>the city treasurer, if the offense occurred in a city or town that provides for its own law enforcement.</p> <p>To implement Laws of 2012, ch. 134, §3, as it amends RCW 9A.88.120, insert a new paragraph 6(h):</p> <p style="padding-left: 40px;">“(h) The crime of prostitution, indecent exposure, permitting prostitution and patronizing a prostitute has a mandatory assessment of \$_____. The court may reduce up to two-thirds of this assessment if the court finds that I am not able to pay the assessment. RCW 9A.88.120.”</p> <p>Renumber the remaining sub-paragraphs of paragraph 6.</p> <p>Modify paragraph 6(j), as follows:</p> <p style="padding-left: 40px;">“This plea of guilty will result in suspension or revocation of my driving license or privilege by the Department of Licensing for a <u>minimum</u> period of _____, <u>or longer based upon my record of conviction</u>. This period may not include suspension or revocation based on other matters.”</p> <p>This change notifies the defendant that the actual period of suspension or revocation may be longer if there is additional conviction history not available to the court, such as an out-of-state conviction. DOL would have those records; but the courts may not.</p> <p>Modify paragraph 6(l) by inserting “under Fish and Wildlife licensing” after “privileges.” This recommended change reinforces that the referenced privileges are those privileges under Fish and Wildlife.</p> <p>In paragraph 11, below the lines for writing and above the check box beginning with “Instead of making a statement,” insert the following new check box:</p> <p style="padding-left: 40px;"><u>“<input type="checkbox"/> I committed this crime against a family or household member as defined in RCW 10.99.020.”</u></p> <p>This change is for purposes of “DV Pled and proven.” For calculating the offender score for a later felony domestic violence conviction, this check box option identifies when a domestic violence allegation is “proven” when the basis for the finding of guilt is the defendant’s statement in a guilty plea form.</p>
<p>2. CrRLJ 4.2(g)</p>	<p>“DUI” Attachment</p> <p>Laws of 2012, Ch. 42, §2 amends RCW 46.61.5055(6). If a person is convicted of DUI or physical control when there is a passenger under age</p>

16 in the vehicle, the court shall order an ignition interlock device for 6 months. The court shall also order a fine. Per RCW 46.61.5055, the fines are:

- (6)(b) no prior offense within 7 years: \$1,000 - \$5,000; \$1,000 not suspended or deferred, unless the offender is indigent.
- (6)(c) 1 prior offense within 7 years: \$2,000- \$5,000; \$1,000 not suspended or deferred unless the offender is indigent.
- (6)(d) 2 or 3 prior offenses within 7 years: \$3,000 - \$10,000; \$1,000 not suspended or deferred unless the offender is indigent.

To implement Laws of 2012, Ch. 42, §2, and to make room on the first page, make the following changes:

Below the first three tables, delete “* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 4.”

In the last table, change the first sentence as follows:

“Restriction ~~remains in effective~~, until IID vendor certifies to DOL that none of the following ~~incidents~~ occurred within four months ~~before~~ prior to date of release:...”

To add the new fines:

Add a new row to the DUI Sentencing Grid, in both sections, “BAC Result <.15 or No Test Result,” and BAC Result ≥ .15 or Test Refusal.” The new row provisions are:

Row heading: “If Passenger Under 16
Minimum/Maximum⁴

No Prior Offense: \$1,000/\$1,000-\$5,000 + assessments

One Prior Offense: \$1,000/\$2,000-\$5,000 + assessments

Two or Three Prior Offenses: \$1,000/\$3,000-\$10,000 + assessments

To add the new ignition interlock requirement:

Add a new row to the DUI Sentencing Grid, in both sections, “BAC Result <.15 or No Test Result,” and BAC Result ≥ .15 or Test Refusal.” Below the rows for “II Driver’s License, II Device.” The new row provisions are:

Row heading: “If Passenger Under 16
II Device”

No Prior Offense: 6 Months

One Prior Offense: 6 Months

Two or Three Prior Offenses: 6 Months

On page 2, below “Mandatory Monetary Penalty,” add a new section:

“**4If Passenger Under 16:** The interpretation of RCW 46.61.5055(6) is unsettled. Some interpret it as setting a new mandatory minimum and maximum fine, replacing a fine in RCW 46.61.5055(1) – (3). Some interpret it as a fine that is in addition to one of those fines. Apply applicable assessments.”

On page 4, in Court Ordered Discretionary Ignition Interlock (II) Device, insert the following at the end of the paragraph; but before the RCW citation:

“...and after any DOL mandated II device restriction. The court sets the calibration level.”

Also on page 4, in Passenger Under Age 16,” after “The Court shall order the installation and use of an II device for” insert “an additional six months,” and delete the rest of the sentence.

Laws of 2012, ch. 183, §12, amends RCW 46.61.5055 as follows:

RCW 46.61.5055(2)(a)(i): a person with one prior, with a BAC of less than .15, “in lieu of the mandatory minimum term of 60 days of EHM, the court may order at least an additional 4 days in jail.”

RCW 46.61.5055(2)(b)(i): a person with one prior, with a BAC of more than .15, “in lieu of mandatory minimum term of 90 days EHM, the court may order at least an additional 6 days in jail.”

RCW 46.61.5055(3)(a)(i): person with two or three priors, and BAC of less than .15, “in lieu of mandatory minimum term of 120 days of EHM, the court may order at least an additional 8 days in jail.”

RCW 46.61.5055(3)(b)(i): person with two or three priors, and BAC of more than .15, “in lieu of mandatory minimum term of 150 days of EHM, the court may order at least an additional 10 days in jail.”

To implement these changes, on page 1, in the table for offenses with “BAC Result < .15 or No Test Result” and in the table for offenses with “BAC Result > .15 or Test Refusal,” change the row head “EHM” to “EHN/Jail Alternative.” Change the “One Prior Offense,” and “Two or Three Prior Offenses,” provisions as follows:

“BAC Result < .15 or No Test Result

One Prior Offense: 60 Days Mandatory/4 Days Jail

Two or Three Prior Offenses: 120 Days Mandatory/8 Days Jail

BAC Result > .15 or Test Refusal

One Prior Offense: 90 Days Mandatory/6 Days Jail

Two or Three Prior Offenses: 150 Days Mandatory/10 Days Jail”

Laws of 2012, ch. 183, §12, amends RCW 46.61.5055(5) by deleting provisions requiring the court to order a person to apply for an ignition interlock driver's license and use an ignition interlock device or to comply with alcohol monitoring if the person does not operate a vehicle for a specified period of time.

RCW 46.61.5055(5) now states that:

- the court shall order a person to “comply with the rules and requirements of the department regarding the installation and use of a functioning ignition interlock device.
- If the court orders a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring and require the person to pay for monitoring unless the court specifies another source of the funds to pay the cost.

To implement these changes, on page 1, in the table for offenses with “BAC Result < .15 or No Test Result” and in the table for offenses with “BAC Result > .15 or Test Refusal,” in the rows with the heading “II Driver's License, II Device,” delete “required” and replace it with “DOL imposed.”

Also, delete the table “Court Ordered Ignition Interlock Driver's License and Device Requirements, RCW 46.20.720(2), 46.61.5055, 46.20.385, effective January 1, 2009*” and the note beginning with “+” immediately below that table.

That table should also be deleted because of Laws of 2012, ch. 183, §9 which amended RCW 46.20.720(2) as follows:

“(2) Under RCW 46.61.5055 and subject to the exceptions listed in that statute, the court shall order any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to ~~apply for an ignition interlock driver's license from the department under RCW 46.20.385 and to have~~ comply with the rules and requirements of the department regarding the installation and use of a functioning ignition interlock device installed on all motor vehicles operated by the person...”

Laws of 2012, ch. 183, §12, amends RCW 46.61.5055(14)(a)(ix) by adding to the definition of “prior offense” a deferred prosecution granted in another state for DUI/physical control or equivalent, when deferred prosecution is equivalent to deferred under chapter 10.05 RCW including requirement that defendant participate in chem. dependency treatment.

To implement the new provision, on page 2, below “Prior Offenses,” and below “Deferred Prosecution Granted for the following,” after “(RCW 46.61.522) and before “If a deferred prosecution is revoked...” insert the following abbreviated description:

“An equivalent out-of-state deferred prosecution for DUI or Phys. Contr., including a chemical dependency treatment program.”

On page 2, to implement the changes to RCW 46.61.5055(2)(a)(i), (2)(b)(i), (3)(a)(i), and (3)(b)(i), in the section “Mandatory Jail and Electronic Home Monitoring (EHM),” add the following new sentence to the end of the paragraph:

“Instead of mandatory, EHM the court may order additional jail time. RCW 46.61.5055(1)(a)(i), (2)(a)(i), (3)(a)(i).”

Since RCW 46.61.5055(5) and RCW 46.20.720(2) no longer require the court to order ignition interlock driver’s license requirements, in the table “Ignition Interlock Driver’s License, RCW 46.20.380, 46.20.385” on page 4, in the last row, delete “and 46.61.5055.”

To implement the changes to RCW 46.61.5055(5), on page 4, change the first heading below the table as follows: “Court Order to Comply with Rules and Requirements of DOLed Ignition Interlock (II) Driver’s License and Device,”

Change the section below that heading as follows:

“(A) The court orders the person to comply with the rules and requirements of DOL regarding the installation and use of a functioning II device on all motor vehicles operated by the person. If the court orders a person to refrain from consuming any alcohol, and requires the person to apply for an II driver’s license, and the person states that he or she does not operate a motor vehicle, or the person is ineligible to obtain an II driver’s license, then the court shall the court may order the person to submit to alcohol monitoring for the period of mandatory license suspension or revocation, and to pay for the monitoring unless the court specifies the cost will be paid with funds available from an alternative source identified by the court. RCW 46.61.5055(5). ~~(B) The court may waive requirements to apply for an II Driver’s License upon written findings of fact when: (i) the person lives out-of-state and the devices are not reasonably available in the person’s local area, (ii) the person does not operate a motor vehicle, (iii) the person is not eligible to receive the driver’s license under RCW 46.20.385 because the person is not a resident of Washington, is a habitual traffic offender, has already applied for or is already in possession of an II driver’s license; has never had a driver’s license, has been certified under Ch. 74.20A RCW as noncompliant with a child support order, or is subject to any other condition or circumstance that makes the person ineligible to obtain an II driver’s license. (C) II device is not required on vehicles owned, leased, or rented by a person’s employer or on those vehicles whose care and/or maintenance is the temporary responsibility of the employer and driven at the direction of a~~

~~person's employer as a requirement of employment during business hours upon proof to DOL of employment affidavit. The court sets the calibration level."~~

Laws of 2012, ch. 183, §9 amended RCW 46.30.720(3) relating to DOL imposed II device requirements. When the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment, the employer exemption does not apply.

To implement this change, on page 4, below "DOL Imposed Ignition Interlock (II) Device – RCW 46.20.720," after "employment affidavit" and before "DOL may waive requirement.." insert:

"However, when the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment, the employer exemption does not apply."

Laws of 2012, ch. 183, §9 also amended RCW 46.30.720 by adding a new subsection (6). In addition to other costs of using an IID, the restricted person shall pay an additional fee of \$20 per month, paid directly to the company (who will deposit it in an IID revolving account).

To implement this change, on page 5, below "DOL Imposed Ignition Interlock (II) Device – RCW 46.20.720," and immediately after the new sentence beginning with "However," insert:

"The person must pay a \$20 fee per month in addition to costs to install, remove, and lease the ignition interlock device."

Court – Reckless Driving/Negligent Driving – 1st Degree Sentencing Grid

Laws of 2012, ch. 183, §8 also amends RCW 46.20.385 by adding a new subsection (8): A person licensed under Chapter 46.20 RCW who is convicted of violating RCW 46.61.500 (reckless driving) when the original charge was DUI or physical control, may apply for an II driver's license. A person who is eligible to apply under RCW 46.20.385; but does not have a driver's license, may apply for an II license. The department may require the person to take a licensing examination and apply and qualify for a temporary restricted driver's license.

To implement these provisions, create separate sections in the Grid for Reckless Driving and for Negligent Driving in the 1st degree.

In the new Grid for Reckless Driving, change the row heading "Driver's License" to "II Driver's License, and change the text as follows:

- "As imposed by DOL. May apply for II driver's license if original charge was violation of DUI (RCW 46.61.502) or Phys. Control

(RCW 46.61.504) or equivalent local ordinance. If the Defendant is eligible to apply; but does not have a Washington driver's license, the defendant may apply for an II license. DOL may require the defendant to take a licensing examination and apply and qualify for a temporary restricted driver's license."

Laws of 2012, ch. 183, §11 amends RCW 46.61.500(2) by adding a new subsection (2)(b). When a reckless driving conviction was for a crime originally charged as DUI/physical control, DOL shall grant credit on a day-for-day basis for any portion of suspension, revocation, or denial already served under administrative sanctions arising out of the same incident.

During any period of suspension, revocation or denial, a person who has obtained an II driver's license under RCW 46.20.385 may continue to drive without getting a separate temporary restricted driver's license.

Also, under RCW 46.20.385(6), a person who applies for a II driver's license must pay the cost to install, remove, and lease the II device and pay an additional fee of \$20.00.

To implement these changes, in the Reckless Driving section, under "II Device," insert new bullet points:

- "DOL will give day-for-day credit as allowed by law.
- Costs to install, remove, and lease the ignition interlock device, and \$20 fee per month."

Under "II Driver's License," insert the following bullet point:

- "During any period of suspension, revocation or denial, a person who has obtained an II driver' license under RCW 46.20.385 may continue to drive without getting a separate temporary restricted driver's license."