

MEMORANDUM

TO: Superior Court Judges, County Clerks, Superior Court Administrators, Prosecuting Attorneys, Defense Attorneys and Law Libraries

FROM: Tom Creekpaum, Sr. Legal Analyst
AOC, Legal Services and Appellate Court Support
Court Services Division (CSD)

DATE: June 11, 2020

RE: Summary of Changes to CrR 4.2(g) Statement of Defendant on Plea of Guilty and Felony Judgment and Sentence Forms.

The Washington Pattern Forms Committee (PFC) made changes to the CrR 4.2(g) Statement of Defendant on Plea of Guilty (non-sex offense and sex offense) and all Felony Judgment and Sentence forms based on recent case law and newly enacted legislation.

The changes are based upon the following:

- Laws of 2018, ch. 269, § 18 (1783);
- *State v. Basset*, 192 Wn.2d 67, 428 P.3d 343 (2018);
- *State v. Gilbert*, 193 Wn.2d 169, 438 P.3d 133 (2019);
- Laws of 2020, ch. 330, § 1 (1504);
- Laws of 2020, ch. 76, § 13 (1551);
- Laws of 2020, ch. 26, § 7 (2318);
- Laws of 2020, ch. 276, § 1 (2394);
- Laws of 2020, ch. 29, § 3 (2473);
- Laws of 2020, ch. 137, § 2 (5291); and
- Laws of 2020, ch. 141, § 1 (5488).

<p>1. CrR 4.2(g) Sex Offense</p>	<p style="text-align: center;"><u>DNA Collection Fee</u></p> <p>Laws of 2018, ch. 269, § 18 amends RCW 43.43.7541 and adds language that says a DNA collection fee can only be imposed once.</p> <p>To implement this change, section 6(q), was amended:</p> <p>I will be required to have a biological sample collected for purposes of DNA identification analysis, unless it is established that the Washington State Patrol crime laboratory already has a sample from me for a qualifying offense. I will be required to pay</p>
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	<p>a \$100.00 DNA collection fee, <u>unless a DNA collection fee has previously been ordered.</u></p>
<p>2. CrR 4.2(g) Sex Offense</p>	<p><u>State v. Basset, 192 Wn.2d 67, 428 P.3d 343 (2018)</u></p> <p>Juvenile offenders cannot be sentenced to life in prison without the possibility of parole or early release.</p> <p>To implement this change section 6(f) was changed amended:</p> <p>(f) If I committed aggravated murder in the first degree and I was under the age of 18 at the time of the offense.</p> <p>(i) If I was under the age of 16 at the time of the offense, the judge will impose a maximum term of life and impose a minimum term of total confinement of 25 years for that crime.</p> <p>(ii) If I was at least 16 but less than 18 years old at the time of the offense, the judge will impose a maximum term of life and will impose a minimum term of total confinement that is at least 25 years and may be as long as life without the possibility of parole or early release for that crime.</p> <p>(iii) During the minimum term, I will not be eligible for earned early release time, home detention, partial confinement, work release, or any form of early release.</p> <p>(iv) After the minimum term, if I am released by the Board, I will be subject to community custody under the supervision of the DOC for a period of time determined by the board, and must comply with conditions imposed.</p> <p>(v) If I violate the conditions of community custody, the Board may return me to confinement.</p>
<p>3. CrR 4.2(g) Sex Offense</p>	<p><u>State v. Gilbert, 193 Wn.2d 169, 438 P.3d 133 (2019)</u></p> <p>A juvenile offender's youth must be considered as a mitigating factor at sentencing.</p> <p>To implement this change section 6(k) was amended:</p> <p>(k) The judge does not have to follow anyone's</p>

	<p>recommendation as to sentence. <u>If I was over the age of 18 when I committed this crime</u> the judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so (except as provided in paragraph 6(i)). <u>If I was under the age of 18 when I committed this crime, the judge has the discretion to impose an exceptional sentence downward.</u> I understand the following regarding exceptional sentences:</p> <ul style="list-style-type: none">(i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.(ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.(iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.(iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.(v) <u>If I committed this crime under the age of 18, the Judge must consider mitigating circumstances related to my youth, including, but not limited to immaturity, impetuosity, and failure to appreciate risks and consequences, the nature of my surrounding environment and family circumstances, the extent of my</u>
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	<p><u>participation in the crime, the way familial and peer pressures may have affected me, how youth impacted any legal defense, and any factors suggesting that I might be successfully rehabilitated.</u></p>
<p>4. CrR 4.2(g) Non-Sex Offense and CrR 4.2(g) Sex Offense</p>	<p style="text-align: center;"><u>Minor Child Enhancements- 1504</u></p> <p>Laws of 2020, ch. 330, § 1 requires child-in-the-vehicle enhancements for impaired driving offenses to run consecutively to each other and to sentences for any other crime under chapter 9.94A RCW.</p> <p>To implement this change, Section 6(ee)/Section 6(z) was amended:</p> <p>_____ (ee)/(z) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, <u>including other minor child enhancements, for all offenses sentenced under chapter 9.94A RCW.</u></p>
<p>5. CrR 4.2(g) Non-Sex Offense and CrR 4.2(g) Sex Offense</p>	<p style="text-align: center;"><u>HIV Testing- 1551</u></p> <p>Laws of 2020, ch. 76, § 13 amends RCW 70.24.340 and removes the authority of local health departments to conduct HIV testing for all persons convicted of a sex offense (under chapter 9A.44 RCW), prostitution related offenses (under chapter 9A.88 RCW), and drug offenses (under chapter 69.50 RCW) that involve the use of hypodermic needles.</p> <p>To implement this change Section 6(v) is removed and subsequent sections are re-lettered:</p> <p>If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for</p>

	<p>the human immunodeficiency (HIV/AIDS) virus.</p> <p>To implement this change Section 6(r) is removed and subsequent sections are re-lettered:</p> <p>I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.</p>
<p>6. CR 84.0400 FTO, CR 84.0400 J, CR 84.0400 JSKO, CR 84.0400 P, CR 84.0400 PO, CR 84.0400 PSA, CR 84.0400 PSKO, CR 84.0400 SOSA, CR 84.0400 DOSA</p>	<p style="text-align: center;"><u>HIV Testing-1551</u></p> <p>Laws of 2020, ch. 76, § 13 amends RCW 70.24.340 and removes the authority of local health departments to conduct HIV testing for all persons convicted of a sex offense (under chapter 9A.44 RCW), prostitution related offenses (under chapter 9A.88 RCW), and drug offenses (under chapter 69.50 RCW) that involve the use of hypodermic needles.</p> <p>To implement this change the last paragraph of Section 4.4 should be removed:</p> <p>[] HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.</p>
<p>7. CR 84.0400 FTO, CR 84.0400 J, CR 84.0400 JSKO, CR 84.0400 PSA, CR 84.0400 SOSA, CR 84.0400 TMV, CR 84.0400 DOSA</p>	<p style="text-align: center;"><u>DNA Collection Procedure- 2318</u></p> <p>Laws of 2020, ch. 26, § 7 amends RCW 43.43.754 and adds language that says the court may order DNA collection to occur in the presence of the court if there is a protocol established with the local police department or sheriff's office.</p> <p>To implement this change, section 4.4 was amended:</p> <p>4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.</p> <p>[] The facility where the defendant serves the term of confinement shall be responsible for obtaining the sample as part of the defendant's intake process or as soon as practicable.</p> <p>[] If further confinement is not ordered,</p>

	<p><input type="checkbox"/> the defendant shall report to _____ (law enforcement agency) by _____ (date/time) to provide a biological sample.</p> <p><u><input type="checkbox"/> The defendant shall immediately provide a biological sample to the local police department or sheriff's office before leaving the courtroom.</u></p> <p>Failure to provide a biological sample is a gross misdemeanor.</p>
<p>8. CR 84.0400 P and CR 84.0400 PSKO</p>	<p style="text-align: center;"><u>Community Custody- 2394</u></p> <p>Laws of 2020, ch. 276, § 1, amends RCW 9.94A.589 and creates a presumption that terms of community custody are to be served concurrently, unless the court specifically orders consecutive terms.</p> <p>To implement this change, section 4.2(A) of the Felony Judgment and Sentence Prison (sex and non-sex) was amended:</p> <p>(A) The defendant shall be on community custody for:</p> <p>Count(s) _____ 36 months for Serious Violent Offenses Count(s) _____ 18 months for Violent Offenses Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)</p> <p><u>Community custody on all counts shall be served concurrently, except for the following counts which shall be served consecutively:</u></p> <p>_____.</p> <p><u>The community custody terms of this sentence shall run consecutively with the community custody term in the following cause number(s) (see RCW 9.94A.589(2)(a)):</u></p> <p>_____.</p>
<p>9. CR 84.0400 J and CR 84.0400 JSKO.</p>	<p style="text-align: center;"><u>Community Custody- 2394</u></p> <p>Laws of 2020, ch. 276, § 1, amends RCW 9.94A.589 and creates a presumption that terms of community custody are to be served concurrently, unless the court specifically orders consecutive terms.</p>

	<p>To implement this change, section 4.2(A) of the Felony Judgment and Sentence Jail for one Year or Less (sex and non-sex) was amended:</p> <p>(A) The defendant shall serve _____ months in community custody.</p> <p><u>Community custody on all counts shall be served concurrently, except for the following counts which shall be served consecutively:</u></p> <p>_____.</p> <p><u>The community custody terms of this sentence shall run consecutively with the community custody term in the following cause number(s) (see RCW 9.94A.589(2)(a)):</u></p> <p>_____.</p>
<p>10. CR 84.0400 FTO, CR 84.0400 J, CR 84.0400 JSKO, CR 84.0400 P, CR 84.0400 PO, CR 84.0400 PSA, CR 84.0400 PSKO, CR 84.0400 SOSA, CR 84.0400 TMV, and CR 84.0400 DOSA.</p>	<p style="text-align: center;"><u>Intimate Partner Definition- 2473</u></p> <p>Laws of 2020, ch. 29, § 3 amends RCW 9.41.010 and creates a single source for the definition of intimate partner.</p> <p>To implement this a change each felony J&S form was amended.</p> <p>GV [] For the crime(s) charged in Count _____, domestic violence – intimate partner as defined in RCW 9A.36.041(4) and RCW 26.50.010(7) was pled and proved.</p> <p>GV [] For the crime(s) charged in Count _____, domestic violence - family or household member was pled and proved. RCW 26.50.010(6).</p>
<p>11. CrR 4.2(g) Non-Sex Offense</p>	<p style="text-align: center;"><u>Adjustment to Parenting Sentencing Alt.- 5291</u></p> <p>Laws of 2020, ch. 137, § 2 amends RCW 9.94A.655 and allows the court to order a family impact statement when considering whether or not to order a parenting sentencing alternative. If the court brings the offender back to court to evaluate the offender’s progress in treatment, the judge must advise the offender of the right to a lawyer and the judge can extend the conditions of community custody by no more than six months.</p>

	<p>To implement this change, section 6(s) was amended:</p> <p>_____(s) The judge may sentence me under the Parenting Sentencing Alternative if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report, <u>including a family impact statement</u>, or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. <u>I have the right to assistance of counsel at this hearing and the court will appoint counsel if I am indigent.</u> The court may modify the conditions of community custody or impose sanctions, <u>including extending the length of participation in the alternative program by no more than six months.</u> If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.</p>
<p>12.CR 84.0400 PSA.</p>	<p style="text-align: center;"><u>Adjustment to Parenting Sentencing Alt.-5291</u></p> <p>Laws of 2020, ch. 137, § 2 amends RCW 9.94A.655 and allows the court to order a family impact statement when considering whether or not to order a parenting sentencing alternative. If the court brings the offender back to court to evaluate the offender's progress in treatment, the judge must advise the offender of the right to a lawyer and the judge can extend the conditions of community custody by no more than six months.</p> <p>To implement this change, section 5.4 was amended:</p> <p>5.4 Parental Sentencing Alternative Sanctions</p> <p>At any time during the period of community custody, the court may bring you back into court to evaluate your progress in treatment, or to determine if you have violated the conditions of the sentence. <u>You have the right to assistance of counsel at this hearing and the court will appoint counsel if you are indigent.</u> The court may modify the conditions of community custody or impose sanctions, <u>including extension of the length of participation in the alternative program by no more than six months.</u></p>

<p>13. CrR 4.2(g) Non-Sex Offense and CrR 4.2(g) Sex Offense</p>	<p style="text-align: center;"><u>Judicial Discretion to Depart from Mandatory Sentencing Enhancements- 5488</u></p> <p>Laws of 2020, ch. 141, § 1 amends RCW 9.94A.533 and gives the judge discretion to depart from mandatory sentencing enhancements when the offender is under 18 and sentenced in adult court.</p> <p>To implement this change, section 6(k)(v) of the sex offense form and non sex offense form was amended:</p> <p>(v) If I committed this crime under the age of 18, the judge must consider mitigating circumstances related to my youth, including, but not limited to immaturity, impetuosity, and failure to appreciate risks and consequences, the nature of my surrounding environment and family circumstances, the extent of my participation in the crime, the way familial and peer pressures may have affected me, how youth impacted any legal defense, and any factors suggesting that I might be successfully rehabilitated. <u>If I am convicted of a sentencing enhancement, the court has full discretion to depart from mandatory sentencing enhancements and to take the particular circumstances surrounding my youth into account.</u></p>
<p>14. CR 84.0400 FTO, CR 84.0400 J, CR 84.0400 JSKO, CR 84.0400 P, CR 84.0400 PO, CR 84.0400 PSA, CR 84.0400 PSKO, CR 84.0400 SOSA, CR 84.0400 TMV, CR 84.0400 DOSA</p>	<p style="text-align: center;"><u>FD 258 to WSP Provision</u></p> <p>On the last page of every judgment and sentence form, Section VI- Identification of Defendant has a parenthetical that appears as follows: (If no SID complete a separate Applicant card (Form FD-258) for State Patrol). The committee removed the parenthetical from each judgment and sentence form.</p>
<p>15. CR 84.0460</p>	<p style="text-align: center;">Title Change to Order to Surrender and Prohibit Weapons</p>

	<p>These changes are based on the Order to Surrender and Prohibit Weapons title change:</p> <p>Under 4. Firearms, Dangerous Weapons, and Concealed Pistol License, in the second bracket option: Comply with the Order to Surrender <u>and Prohibit</u> Weapons filed separately. (RCW 9.41.800).</p> <p>Under 5. Findings of Fact: Pretrial surrender <u>and prohibition</u> of weapons. The court makes the following mandatory findings pursuant to RCW 9.41.800:</p>
16.NC 02.0100	<p>Title Change to Order to Surrender and Prohibit Weapons</p> <p>This change is based on the Order to Surrender and Prohibit Weapons title change:</p> <p>Under 3. Firearms, Weapons, and Concealed Pistol License, Defendant, in the third bracket option: shall immediately surrender all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license. Comply with the Order to Surrender <u>and Prohibit</u> Weapons filed separately. (RCW 9.41.800.)</p>