



WASHINGTON
COURTS

December 3, 2013

TO: Judicial Community and Legal Community
FROM: Merrie Gough, AOC Sr. Legal Analyst
RE: 2013 AMENDMENTS TO CrRLJ 4.2(g) and (i)

On November 6, 2013, the Washington State Supreme Court adopted amendments to the following CrRLJ 4.2(g) and (i) court rule forms:

1. CrRLJ 4.2(g)	Statement of Defendant On Plea of Guilty
2. CrRLJ 4.2(g) DUI1	“DUI” Attachment
3. CrRLJ 4.2(g) DUI 2	Washington State Misdemeanor DUI Sentencing Attachment
4. CrRLJ 4.2(i)	Petition for Deferred Prosecution
5. CrRLJ 4.2(i)	Petition for Deferred Prosecution of Criminal Mistreatment Charge

The amendments become effective when they are published in the Official Advance Sheets, Washington Reports, 178 Wn.2d No.6. The anticipated publication date is December 10, 2013.

The changes implement Laws of 2013, 2d Spec. Sess., Ch. 35, Crimes – DUI, and recommended changes.

Detailed descriptions of the amendments follow:

Laws of 2013, 2d Spec. Sess., Ch. 35, Crimes – DUI, effective 09/28/12 – except for sections 27, 28, and 30 through 32, which become effective 01/01/14	
1. CrRLJ 4.2(g)	<p>Statement of Defendant on Plea of Guilty</p> <p>Insert the following as the new paragraph 6(i):</p> <p style="padding-left: 40px;"><u>“[] (i) If this crime involves patronizing a prostitute, a condition of my sentence will be that I not be subsequently arrested for patronizing a prostitute or commercial sexual abuse of a minor. The court will impose crime-related geographical restrictions on me, unless the court finds they</u></p>

are not feasible. If this is my first offense, the court will order me to attend a program designed to educate me about the negative costs of prostitution.”

Renumber the remaining sub-sections of paragraph 6.

In paragraph 6(p) (relating to DUI/Physical control), change the first check box option as follows:

“[] the penalties described in the “DUI” Attachment or the “Washington State Misdemeanor DUI Sentencing Attachment.”

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, and to clarify the penalties, after “OR,” delete the second check box option and replace it entirely with the following:

“[] these penalties: Mandatory minimum sentence:

- _____ days in jail.
- _____ days of electronic home monitoring.
- \$_____ monetary penalty.
- Effective January 1, 2014, if I have 2 or 3 prior offenses, a 6-month period of 24/7 sobriety program monitoring, if available.
- Comply with the rules and requirements of the Department of Licensing regarding the installation and use of a functioning ignition interlock device on all motor vehicles that I operate.
- The Department of Licensing will suspend or revoke my driving privilege for the period of time stated in paragraph 6(k).

If I have prior offense(s):

- the judge may order me to submit to an expanded alcohol assessment and comply with treatment deemed appropriate by that assessment.
- instead of mandatory electronic home monitoring, the judge may order me to serve additional jail time. Effective January 1, 2014, if I have 1 prior offense, instead of additional jail time, the judge may order a 6-month period of 24/7 sobriety program monitoring.

Instead of the minimum jail term, the judge may order me to serve _____ days in electronic home monitoring.

If the judge orders me to refrain from consuming any alcohol, the judge may order me to submit to alcohol monitoring. I shall be required to pay for the monitoring unless the judge specifies that the cost will be paid with funds from another source.

The judge may waive electronic home monitoring or order me to obtain an alcohol monitoring device with wireless reporting technology, if that device is reasonably available, if I do not have a dwelling, telephone service, or any other necessity to operate electronic home monitoring. The judge may waive electronic home monitoring if I live out of state or if the judge determines I would violate the terms of electronic home monitoring. If the judge waives electronic home monitoring he or she will impose an alternative sentence which may include use of an ignition interlock device, additional jail time, work crew, work camp, or, beginning January 1, 2014, 24/7 sobriety program monitoring.

I understand that the 24/7 sobriety program is a 24 hour and 7 days a week sobriety program which requires tests of my blood, breath, urine or other bodily substances to find out if I have alcohol, marijuana, or any controlled substance in my body. I will be required to pay the fees and costs for the program.”

At the end of paragraph 6(q) insert:

“...or the “Washington State Misdemeanor DUI Sentencing Attachment.”

At the end of paragraph 6(r) insert:

“...or the “Washington State Misdemeanor DUI Sentencing Attachment.”

**2. CrRLJ 4.2(g)
DUI**

“DUI” Attachment

After “Court – DUI Sentencing Grid,” change the sentence in parentheses as follows:

“(RCW 46.61.5055 as amended through ~~by statutes effective September 28, 2013, and August 1, 2012 January 1, 2014)~~”

DUI Sentencing Grid, page 1, BAC Result < .15 or No Test Result:

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(6):

- in the left column, add a new row below the row for “Mandatory Minimum/Maximum Jail Time” and above “EHM/Jail Alternative,” and add entries for the three rows as follows:

Row title:	<u>“If Passenger Under 16 Mandatory Jail”</u>
No Prior Offense:	<u>“Additional 24 hours”</u>
One Prior Offense:	<u>“Additional 5 days”</u>
Two or Three Prior Offenses:	<u>“Additional 10 days”</u>

- in the row titled “If Passenger under 16, II Device,” add “Additional” before “6 Months” in all of the columns:

No Prior Offense:	<u>“Additional 6 Months”</u>
One Prior Offense:	<u>“Additional 6 Months”</u>
Two or Three Prior Offenses:	<u>“Additional 6 Months”</u>

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1) – (3):

- Below the row heading “If Passenger Under 16, II Device” and above “Alcohol/Drug Ed./Victim Impact or Treatment,” add a new row:

Row title:	<u>“24/7 Sobriety Program²”</u>
No Prior Offense:	<u>“N/A”</u>
One Prior Offense:	<u>“As Ordered”</u>
Two or Three Prior Offenses:	<u>“Mandatory”</u>

- Below the row heading “Alcohol/Drug Ed./Victim Impact or

Treatment,” add a new row:

Row title:	<u>“Expanded alcohol Assessment/treatment”</u>
No Prior Offense:	<u>“N/A”</u>
One Prior Offense:	<u>“As Ordered”</u>
Two or Three Prior Offenses:	<u>“Mandatory/treatment if appropriate”</u>

Below the table, delete ~~“**Driver’s License minimum suspension/revocation. DOL may impose more.”~~

DUI Sentencing Grid, page 1, BAC Result \geq .15 or Test Refusal:

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1)(b):

- In the first row “Mandatory Minimum/Maximum Jail time,” and the column for “No Prior Offense,” change “2 Consecutive/364 Days” to “48 Consecutive hours/364 Days.”

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(6):

- in the left column, add a new row below the row for “Mandatory Minimum/Maximum Jail Time” and above “EHM/Jail Alternative,” and add entries for the three rows as follows:

Row title:	<u>“If Passenger Under 16 Mandatory Jail”</u>
No Prior Offense:	<u>“Additional 24 hours”</u>
One Prior Offense:	<u>“Additional 5 days”</u>
Two or Three Prior Offenses:	<u>“Additional 10 days”</u>

- in the row titled “If Passenger under 16, II Device,” add “Additional” before “6 Months” in all of the columns:

No Prior Offense:	<u>“Additional 6 Months”</u>
One Prior Offense:	<u>“Additional 6 Months”</u>
Two or Three Prior Offenses:	<u>“Additional 6 Months”</u>

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1) – (3):

- below the row heading “If Passenger Under 16, II Device” and above “Alcohol/Drug Ed./Victim Impact or Treatment,” add a new row:

Row title: “24/7 Sobriety Program²”
No Prior Offense: “N/A”
One Prior Offense: “As Ordered”
Two or Three Prior Offenses: “Mandatory”

- below the row heading “Alcohol/Drug Ed./Victim Impact or Treatment,” add a new row:

Row title: “Expanded alcohol Assessment/treatment”
No Prior Offense: “N/A”
One Prior Offense: “As Ordered”
Two or Three Prior Offenses: “Mandatory/treatment if appropriate”

Below the table, add:

“*See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 5.
** Driver’s license minimum suspension/revocation. DOL may impose more.”

Page 2, **change the title of the table relating to Department of Licensing required ignition interlock requirements as follows:**

“Department of Licensing Required Ignition Interlock Device Requirements, RCW 46.20.720(3), (4) as amended through August 1, 2012 with statutes effective through January 1, 2014.*”

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(4), change the text below the heading as follows:

“Restriction effective, until IID vendor certifies to DOL that none of the following occurred within four months prior to date of release: any attempt to start the vehicle with a BAC of .04 or more unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person

provided both samples; failure to take or pass any required retest random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test; failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; failure of the person to appear at the IID vendor when required.

In the note below the table, change the page number from 4 to 5.

Page 2, **Prior Offenses:**

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(14), add the following new prior offense:

- ⇒ “Deferred Sentences for the following: If originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522); but deferred sentence was imposed for (1) Neg. Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), (3) Reckless Endangerment (RCW 9A.36.050), (4) Equiv. out-of-state or local ordinance for the above offenses.”

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(1)-(3), change the section titled “Mandatory Jail and Electronic Home Monitoring (EHM)” as follows:

“**Mandatory Jail and, Electronic Home Monitoring (EHM), and 24/7 Sobriety Program:** If there are prior offenses with an arrest date within seven years before or after the arrest date of the current offense, the mandatory jail shall be served by imprisonment for the minimum statutory term and may not be suspended or deferred unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender’s physical or mental well-being. The mandatory statutory term may not be converted to EHM. Where there are no prior offenses within seven years, the court may grant EHM instead of mandatory minimum jail. If there are

prior offenses, the mandatory EHM may not be suspended or ~~deferred~~ unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Instead of mandatory EHM, the court may order additional jail time. (Effective January 1, 2014) If available: Where there is one prior offense, instead of mandatory EHM or additional jail time, the court may order 6-month 24/7 sobriety program monitoring. Where there are two or three prior offenses, the court shall order 6-month 24/7 sobriety program monitoring. The 24/7 sobriety program is a 24 hour and 7 days a week sobriety program which requires tests of the defendant's blood, breath, urine or other bodily substances to find out if there is alcohol, marijuana, or any controlled substance in his/her body. The defendant will be required to pay the fees and costs for the program.
RCW 46.61.5055(1), (2), (3). Laws of 2013, 2d Spec. Sess., ch. 35, §26."

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13, amending RCW 46.61.5055(11)(a), change the section titled "Mandatory Conditions of Probation for any Suspended Jail Time" as follows:

"Mandatory Conditions of Probation for any Suspended Jail Time: The individual is not to: (i) drive a motor vehicle without a valid license to drive and proof of liability insurance or other financial responsibility (SR 22), (ii) drive or be in physical control of a vehicle while having an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher within two hours after driving, (iii) refuse to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug. Except for ignition interlock driver's license and device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of **any** mandatory condition requires a minimum penalty of 30 days' confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW

46.61.5055.”

Under Laws of 2013, 2d Spec. Sess., Ch. 35, §13, the interpretation of fines under RCW 46.61.5055(6) remains unsettled. However, it is clear that ignition interlock device and jail time is additional. Therefore, the section “If Passenger Under 16,” is revised to clarify that interpretation of RCW 46.61.5055(6) regarding fines is unsettled:

“If Passenger Under 16”: The interpretation of RCW 46.61.5055(6), regarding the fines, 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 setting a fine that is in addition to one of those fines. Apply applicable assessments.”

Page 5, to implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(3), under the heading “DOL Imposed Ignition Interlock (II) Device – RCW 46.20.720, change the sentence:

“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.”

As follows:

“However, the employer exemption does not apply:

A. (First conviction): for the first 30 days after the ignition interlock device has been installed.

B. (Second or subsequent conviction): for the first 365 days after the ignition interlock device has been installed.

C. ~~When~~ 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.~~”

On page 6, below the heading “Court – Reckless Driving/Negligent Driving – 1st Degree, Sentencing Grid,” make the following changes to the “Reckless Driving” Table:

In the row titled “II Device”, change the second bullet as follows to implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(4):

“Restriction remains in effect, until IID vendor certifies to DOL that none of the following occurred within four months before date of release: any attempt to start the vehicle with a BAC of .04 or more unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both samples; failure to take or pass any required retest random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test; failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; failure of the person to appear at the IID vendor when required.”

After the row titled “EHM” and above the row titled “II Driver’s License,” insert a new row with the following information:

<u>Driver’s License</u>	<ul style="list-style-type: none">• <u>30-day suspension.</u>• <u>DOL will give day-for-day credit as allowed by law.</u>
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On page 7, in “Negligent Driving – 1st Degree” table in the row titled “II Device”, change the second bullet as follows to implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(4):

“Restriction remains in effect, until IID vendor certifies to DOL that none of the following occurred within four months before date of release: any attempt to start the vehicle with a BAC of .04 or more unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both samples; failure to take or pass any required retest random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test; failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless another test performed within 10 minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; failure of the person to appear at the IID vendor when required.”

3. CrRLJ 4.2(g) DUI 2	<p>“Washington State Misdemeanor DUI Sentencing Attachment”</p> <p>Judges, attorneys, defendants, and others may use the “Washington State Misdemeanor DUI Sentencing Attachment” as an alternative to the “DUI” Attachment. The attachment is a sample page of the automated Washington State Misdemeanor DUI Sentencing Attachment available on the Washington Courts’ web page: http://www.courts.wa.gov/, under the links “Resources, Publications, and Reports” and “DUI Sentencing Grids.”</p> <p>In the automated attachment, after selecting the court level, the offense, whether or not a passenger under 16 was in the vehicle or whether there has been a prior offense within 7 years, and making any edits, the application generates a 1-page print out that may be attached to the statement on plea of guilty.</p>
4. CrRLJ 04.1100	<p>Petition for Deferred Prosecution</p> <p>To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §21, amending RCW 10.05.140, in paragraph 12, change the citation “RCW 46.20.720(3)(a), (b) and (c)” to “RCW 46.20.720(3).”</p>
5. CrRLJ 04.1110	<p>Petition for Deferred Prosecution of Criminal Mistreatment Charge</p> <p>To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §21, amending RCW 10.05.140, in paragraph 12, change the citation “RCW 46.20.720(3)(a), (b) and (c)” to “RCW 46.20.720(3).”</p>