

July 22, 2017

**TO:** Judicial and Legal Community

**FROM:** Merrie Gough, AOC Sr. Legal Analyst

**RE:** 2017 Amendments to the CrRLJ 4.2(g) Guilty Plea and “DUI” Attachment

On June 28, 2017, the Washington State Supreme Court adopted amendments to the following:

|  |  |
| --- | --- |
| 1. CrRLJ 4.2(g) | Statement of Defendant on Plea of Guilty |
| 2. CrRLJ 4.2(g) DUI1 | “DUI” Attachment |

The amendments become effective when they are published in the Official Advance Sheets, Washington Reports, 188 Wn. 2d No.7. The anticipated publication date is August 1, 2017.

The amendments are based upon recommended changes and:

* Laws of 2017, ch. 336 (E2SHB 1614), Impaired driving – various changes
* Laws of 2017, ch. 335 (SB 5037), Driving Under the Influence – 4th Offense
* Laws of 2017, ch. 272 (E2SHB 1163) Domestic Violence

The following table contains detailed descriptions of the amendments.

|  |  |
| --- | --- |
| 1. **CrRLJ 4.2(g)** | **Statement of Defendant on Plea of Guilty**  In paragraph 6(s) make the following changes:  Under the check box option “[ ] these penalties. Mandatory minimum sentence:” in the last bullet, change the internal paragraph reference from “6(k)” to “6(l).”  Laws of 2017, ch. 336 (E2SHB 1614), §6 amends RCW 46.61.5055(2) relating to alternative sentencing for mandatory jail and mandatory EHM when the person has one prior.  The new alternatives for BAC of less than .15, no test: are:   * 30 days mandatory minimum jail * 60 days mandatory EHM   Or in place of mandatory jail and EHM:   * A minimum of 4 days in jail, and either * 180 days of EHM, or * 120 day period of 24/7 sobriety program monitoring   The new alternatives for BAC equal to or more than .15, refusal, are:   * 45 days mandatory minimum jail * 90 days mandatory EHM   Or in place of mandatory jail and EHM:   * A minimum of 6 days in jail, and either * 6 months of EHM, or * 120 day period of 24/7 sobriety program monitoring   To incorporate these changes and to reorganize the text, make following changes in paragraph 6(s) below the bulleted list of the mandatory minimum sentence:  If I have no prior offenses: instead of the minimum jail term, the judge may order me to serve \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ days in electronic home monitoring or \_\_\_\_\_\_\_\_\_\_\_\_\_\_ days on 24/7 sobriety program monitoring.  If I have prior offense(s):   * ~~the~~ The judge ~~may~~ shall order me to submit to an expanded alcohol assessment and comply with treatment deemed appropriate by that assessment. * If I have one prior offense, instead of mandatory jail and electronic home monitoring, the judge may order me to serve not less than \_\_\_\_ days in jail, and either \_\_\_\_\_ days of electronic home monitoring or a 120-day period of 24/7 sobriety program monitoring or a 120-day period of ignition interlock device requirement, or both.~~instead of mandatory electronic home monitoring, the judge may order me to serve additional jail time. If 24/7 sobriety program is available, if I have one prior offense, instead of additional jail time, the judge may order a 6-month period of 24/7 sobriety program monitoring; or 6 months ignition interlock requirement; or both.~~ * If I have two prior offenses, instead of mandatory electronic home monitoring, the judge may order me to serve additional jail time.   ~~If I have no prior offenses, instead of the minimum jail term, the judge may order me to serve \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ days in electronic home monitoring or \_\_\_\_\_\_\_\_\_\_\_\_\_\_ days on 24/7 sobriety program monitoring.~~  Also in paragraph 6(s), in the last sub-paragraph, make the following changes at the end of the paragraph to implement the text in RCW 46.61.5055(11)(b) and (c):  For each violation of the above mandatory conditions, the court shall order my confinement for a minimum of 30 days, which may not be suspended or deferred. For each incident involving a violation, the court shall suspend my license for 30 days.~~If I violate any one of these conditions, the court shall order me confined for no less than 30 days and my driving privilege will be suspended for 30 days.~~  RCW 43.43.754(1) requires the collection of a biological sample for DNA identification analysis from adults and juveniles who are convicted of specified crimes or equivalent juvenile offenses. Laws of 2017, ch. 272, §4 amended RCW 43.43.754(1)(a) by adding a new crime or juvenile offense:  “…(1)(a)(i) Assault in the fourth degree where domestic violence as defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041, 9.94A.030);…”  To implement Laws of 2017, ch. 272, §4, change paragraph 12(y) as follows:  [ ] (y) Pursuant to RCW 43.43.754, if this crime is an offense which requires sex or kidnapping offender registration, or is one of the following offenses: assault in the fourth degree where domestic violence was pleaded and proved; assault in the fourth degree with sexual motivation, communication with a minor for immoral purposes, custodial sexual misconduct in the second degree, failure to register, harassment, patronizing a prostitute, sexual misconduct with a minor in the second degree, stalking, or violation of a sexual assault protection order granted under chapter 7.90 RCW, 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.  In paragraph 12, change the first sentence as follows:  My lawyer has explained to me, and we have fully discussed, or I have read, all of the above paragraphs.  Below the signature lines, change the first sentence as follows:  The foregoing statement was signed by the defendant in open court in the presence of the defendant’s lawyer, if represented, and the undersigned judge. |
| 1. **CrRLJ 4.2(g) DUI1** | **“DUI” Attachment**  Change all of the statutory effective dates from “June 9, 2016,” to “July 23, 2017.”  Laws of 2017, ch. 335 (SB 5037), §§ 1 and 2 amended RCW 46.61.502 and RCW 46.61.504 to make the fourth DUI and the fourth Physical Control a felony. Laws of 2017, ch. 335 (SB 5037), § 3 amended RCW 46.61.5055(3) by changing “Two or Three priors” to “Two priors,” and subsection (4) was amended to provide that a person with three or more priors within 10 years is punished under chapter 9.94A RCW. To implement these changes, “or Three” is removed throughout the Grid.  “**BAC Result < .15 or No Test Result**” changes:  To implement Laws of 2017, ch. 336 (E2SHB 1614), §6, amending RCW 46.61.5055(2), make the following changes to the third row:   |  |  |  |  | | --- | --- | --- | --- | | EHM/ or Jail Alternative*2* | 15 Days in Lieu of Jail | 60 Days Mandatory~~/ 4 Days Jail Min.~~ | 120 Days Mandatory/ 8 Days Jail Min. |   Additionally, add the following new row:   |  |  |  |  | | --- | --- | --- | --- | | Alternative to Mandatory Jail + EHM | N/A | At least 4 Days Jail+180 Days EHM2 | N/A |   Laws of 2017, ch. 336 (E2SHB 1614), §12 amends RCW 46.61.5054 and changes the alcohol violator’s fee from $200 to $250. To implement this change, update the mandatory minimum fines in the fifth row as follows:   |  |  |  |  | | --- | --- | --- | --- | | Mandatory Minimum /Maximum Fine***3\*\*\**** | $~~940~~990.50/$5,000 | $~~1,195~~1,245.50/$5,000 | $~~2,045~~2,095.50/$5,000 |   Laws of 2017, ch. 336 (E2SHB 1614), §6 amended RCW 46.61.5055(9)(a)(ii) relating to driver’s license revocation, as follows where there is one prior and BAC of less than 0.15:  “(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years or until the person is evaluated by an alcoholism agency or probation department pursuant to RCW 46.20.311 and the person completes or is enrolled in a six-month period of 24/7 sobriety program monitoring. In no circumstances shall the license suspension be for less than one year;…”  To implement the new provision, in the row titled “Driver’s License”, change the column for One Prior as follows:  2-Year Revocation5  To save space delete the entire row captioned “II Driver’s License\*, II Device.”  In the Row titled “24/7 Sobriety Program2,” change the text in each column from “As Ordered,” to “If available.”  In the row for “Expanded alcohol assessment/treatment, in the column for “One Prior,” change the text from “As Ordered,” to “Mandatory/treatment if appropriate.”  In between the tables for “BAC Result < .15 or No Test Result” and “BAC Result ≥ .15 or Test Refusal,”add the following new row that applies to both sections:   |  |  | | --- | --- | | II Device | DOL imposed in all cases. |   “**BAC Result ≥ .15 or Test Refusal**” changes:  To implement Laws of 2017, ch. 336 (E2SHB 1614), §6, amending RCW 46.61.5055(2), make the following changes to the third row:   |  |  |  |  | | --- | --- | --- | --- | | EHM/ or Jail Alternative*2* | 30 Days in Lieu of Jail | 90 Days Mandatory~~/ 6 Days Jail Min.~~ | 150 Days Mandatory/ 10 Days Jail Min. |   Additionally, add the following new row:   |  |  |  |  | | --- | --- | --- | --- | | Alternative to Mandatory Jail + EHM | N/A | At least 6 Days Jail + 6 Months EHM2 | N/A |   Laws of 2017, ch. 336 (E2SHB 1614), §12 amends RCW 46.61.5054 and changes the alcohol violator’s fee from $200 to $250. To implement this change, update the mandatory minimum fines in the fifth row as follows:   |  |  |  |  | | --- | --- | --- | --- | | Mandatory Minimum /Maximum Fine***3\*\*\**** | $~~1,195~~1,245.50/$5,000 | $~~1,620~~1,670.50/$5,000 | $~~2,895~~2,945.50/$5,000 |   To save space, delete the entire row captioned “II Driver’s License\*, II Device.”  In the Row titled “24/7 Sobriety Program2,” change the text in each column from “As Ordered,” to “If available.”  In the row for “Expanded alcohol assessment/treatment, in the column for “One Prior,” the text should be changed from “As Ordered,” to “Mandatory/treatment if appropriate.”  To implement Laws of 2017, ch. 336 (E2SHB 1614), §6, amending RCW 46.61.5055(2), in the note for ***2*Mandatory Jail, Electronic Home Monitoring (EHM), and 24/7 Sobriety Program**, reorganize and update the text with the new alternative sentencing for One Prior, as follows:  **No prior offenses**: Where there are no prior offenses with an arrest date within seven years before or after the arrest date of the current offense, the mandatory imprisonment may not be suspended 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 court may grant EHM instead of mandatory minimum jail. Instead of jail time or EHM in lieu of jail time, and when the alcohol concentration is (1) less than 0.15, the court may order a 90-day period of 24/7 sobriety program monitoring or (2) at least 0.15, the court may order a 120-day period of 24/7 sobriety program monitoring.  **One prior offense**: Where there is one prior offense with an arrest date within seven years before or after the arrest date of the current offense, the mandatory imprisonment and EHM may not be suspended 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. In lieu of the mandatory term of imprisonment and EHM, when alcohol concentration is (1) less than 0.15, the court may order a minimum of 4 days in jail, and either 180 days of EHM or a 120-day period of 24/7 sobriety program monitoring or (2) at least 0.15, the court may order a minimum of 6 days in jail and either 6 months of EHM or a 120-day period of 24/7 sobriety program monitoring, or a 120-day ignition interlock device requirement, or both.2  **Two prior offenses**: If there are two 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 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. If the 24/7 sobriety program is available, the court shall order six-month 24/7 sobriety program monitoring, or a six-month ignition interlock device requirement, or both.  ~~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 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.~~  ~~If the 24/7 sobriety program is available: Where there is no prior offense, instead of jail time or EHM in lieu of jail time, and when the alcohol concentration is: 1) less than 0.15, the court may order a 90-day period of 24/7 sobriety program monitoring; 2) at least 0.15, the court may order a 120-day period of 24/7 sobriety program monitoring. 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, or a 6-month ignition interlock device requirement, or both. Where there are two or three prior offenses, the court shall order 6-month 24/7 sobriety program monitoring, or a 6-month ignition interlock device requirement, or both.~~  The 24/7 sobriety program is a 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. Testing must take place at designated location/s. The defendant may be required to pay the fees and costs for the program. RCW 46.61.5055(1), (2), (3), (5). RCW 36.28A.330.  Under the heading **Mandatory Conditions of Probation for any Suspended Jail Time**, change the second and third to the last sentence as following to implement the text in RCW 46.61.5055(11)(b) and (c):  ~~Except for ignition interlock driver’s license and device or alcohol monitoring requirements under RCW 46.61.5055(5),~~ For each violation of ~~any~~ the above mandatory conditions, ~~requires a minimum penalty~~the court shall order a minimum of 30 days confinement, which may not be suspended or deferred. For each incident involving a violation, the court shall suspend the license for ~~and an~~ ~~additional~~ 30 days ~~license suspension~~. RCW 46.61.5055(11).  To implement Laws of 2017, ch. 336 (E2SHB 1614), §6 amending RCW 46.61.5055(9)(a)(ii) relating to driver’s license revocation, where there is one prior and BAC of less than 0.15, add the following to the end of note “***5*Driver’s License and 24/7 Sobriety Program**:”  “*If there is one prior offense* and the person’s alcohol concentration is less than 0.15, the person’s driving privilege is **revoked** for two years or until the person is evaluated by an alcoholism agency or probation department **and** the person completes or is enrolled in a six-month period of 24/7 sobriety program monitoring. In no circumstances shall the license **suspension** be for less than one year.”  Laws of 2017, ch. 336 (E2SHB 1614), §5 amends RCW 46.20.720(3)(e) relating to tolling, as follows:  The period of restriction under (c) and (d) of this subsection based on incidents occurring on or after June 9, 2016, must be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person unless the person receives a determination from the department that the person is unable to operate an ignition interlock device due to a physical disability. The department's determination that a person is unable to operate an ignition interlock device must be reasonable and be based upon good and substantial evidence. This determination is subject to review by a court of competent jurisdiction. The department may charge a person seeking a medical exemption under this subsection a reasonable fee for the assessment.  To implement the new tolling provision, under the subheadings “**DOL Ignition Interlock Device (IID) Requirements RCW 46.20.720**” and “**Restriction and duration**”, in the section on ***Tolling,***  add the following to the end of the sentence:  “For incidents occurring on or after June 9, 2016, the restriction is tolled for any period in which the person does not have an IID installed on a vehicle owned or operated by the person unless DOL determines the person is unable to operate an IID due to a physical disability.”  Laws of 2017, ch. 336 (E2SHB 1614), §5 amends RCW 46.20.720(4) relating to requirements for removal, as follows:  “(4) Requirements for removal. A restriction imposed under subsection (1)(c) or (d) of this section shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that there have been none of the following incidents in the ~~four~~ one hundred eighty consecutive ~~months~~ days prior to the date of release:..”  To implement the new time limit, change the section on “**Requirements for removal**,” as follows:  “…Restriction effective until IID vendor certifies to DOL that none of the following occurred within ~~four months~~180 days prior to date of release:…” |