



WASHINGTON
COURTS

October 8, 2013
Revised October 15, 2013

TO: District and Municipal Court Judges and Commissioners, Court Administrators, Prosecuting Attorneys, Defense Attorneys, and Law Libraries

FROM: Merrie Gough, AOC Sr. Legal Analyst

RE: SEPTEMBER, 2013, CHANGES TO DUI SENTENCING FORMS

The Courts of Limited Jurisdiction Forms Subcommittee and the Washington State Pattern Forms Committee updated the documents listed in the table, below:

1.	DUI Sentencing Grid.
2.	Washington State Misdemeanor DUI Sentencing Attachment
3. CrRLJ 07.0100	Judgment and Sentence (DUI/Phys. Control)
4. CrRLJ 07.0500	Standing Order of Requirements for Defendants Prohibited From Operating Any Vehicle That is Not Equipped With a Functioning Ignition Interlock Breath Alcohol Device

The updates include recommended changes and changes to implement Laws of 2013, 2d Spec. Sess., Ch. 35, Crimes – DUI, effective September 28, 2013 – except for sections 27, 28, and 30 through 32, which become effective January 1, 2014.

The DUI Sentencing Grid and the Washington State Misdemeanor DUI Sentencing Attachment are available on the courts' website via:
<http://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.displayContent&theFile=content/duigrid/index>.

The misdemeanor judgment and sentencing forms are available via:
<http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=27>.

The table beginning on the next page contains detailed descriptions of the changes:

1.

DUI Sentencing Grid

Below the document title, 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."

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 Sept. 28, 2013 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.”

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:

“2Mandatory 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~~

	<p>retest <u>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.</u></p> <p>After the row titled “EHM” and above the row titled “II Driver’s License,” insert a new row with the following information:</p> <table border="1" data-bbox="516 709 1455 827"> <tr> <td data-bbox="516 709 922 827"><u>Driver’s License</u></td> <td data-bbox="922 709 1455 827"> <ul style="list-style-type: none"> • <u>30-day suspension.</u> • <u>DOL will give day-for-day credit as allowed by law.</u> </td> </tr> </table> <p>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):</p> <p>“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 <u>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</u> retest <u>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.</u>”</p>	<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>
<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> 		
<p>2. LiveCycle PDF</p>	<p>Washington State Misdemeanor DUI Sentencing Attachment</p> <p>This updated automated PDF will replace the current version on the courts’ DUI Sentencing Grid page: http://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.display</p>		

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Changes:

To facilitate the clerk's accounting data entry, accounting codes are added to some of the "Fines and Fees:"

"Alcohol Violators Fee (RCW 46.61.5054) DUC"

"CJF Penalty Assessment (RCW 46.64.055) TPD"

"Criminal Conviction Fee (RCW 3.62.085) CFD"

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

- If there is a passenger under 16, the application automatically adds the additional jail time required for no priors [24 hours], one prior [five days], or two or three priors [10 days].

- If there is a passenger under 16 in the vehicle, the warning about interpretation of RCW 46.61.5055(6) was changed as follows:

"The interpretation of RCW 46.61.5055(6) is unsettled. If the Court interprets it as setting a new mandatory minimum and maximum fine, thus replacing the fines in RCW 46.61.5055(1)-(3), then adjust the fine set forth in the Mand.Min.Fine box accordingly. If the Court interprets it as a fine that is in addition to the mandatory minimum fine, then add the additional fine to the Passenger field. In either case, the applicable assessments will automatically calculate. Regardless, the finding of a passenger under the age of 16 increases the mandatory minimum jail time as reflected in this form."

- If there is one prior, the application changes the section below "Sentence" as follows:

"The Court may impose four [or six] additional days in jail or a six-month period of 24/7 sobriety program monitoring in lieu of 60 [or 90] Days EHM."

- If there is one prior, the application adds the following as the first sentence under "Mandatory Conditions of Probation:"

	<p><u>“The Court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment.”</u></p> <ul style="list-style-type: none"> • If there is two or three priors, the application adds the following two sentences to the beginning of “Mandatory Conditions of Probation:” <p><u>“If available, the Defendant shall complete a six-month period of 24/7 sobriety program monitoring. The Court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment.”</u></p> <ul style="list-style-type: none"> • For all DUI or Phys. Control convictions, the application updates the conditions of probation application in all cases, as follows: <p>“MANDATORY CONDITIONS OF PROBATION (DUI/Phys. Control Convictions only)</p> <p>“...The individual is not to: (i) drive a motor vehicle without a valid license and proof of <u>liability insurance or other financial responsibility (SR 22)</u>; (ii) drive <u>or be in physical control of a vehicle</u> while having an alcohol concentration of .08 or more <u>or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher</u> within two hours after driving; (iii) refuse to submit to a test of his or her breath or blood to determine alcohol <u>or drug</u> concentration upon request of law enforcement who has reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor <u>or drug</u>. Except for ignition interlock 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.”</p>
<p>3. CrRLJ 07.0100</p>	<p>Judgment and Sentence (DUI/Phys. Control)</p> <p>Change the first paragraph as follows:</p> <p><u>“The defendant is adjudged guilty based upon a pled guilty plea, or pled not guilty and the jury verdict of the jury was</u></p>

~~guilty, or the finding of the court was guilty bench trial; and~~
~~‡The court verified the defendant's criminal history and~~
driving record and made findings as follows: (check all that
apply):”

Change the line that begins with “therefore” as follows:

“therefore, the defendant is ~~adjudged guilty and~~**sentenced**
as follows:”

In the section beginning with “**Pay**,” make the following two
changes:

- Change “BAC fee” to “Alcohol violator fee DUC.”
- Change “Passenger under 16 penalty” to “Passenger under
16 fine.”

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §13,
amending RCW 46.61.5055(11)(a), under “**Mandatory**
Conditions of Sentence – DUI/Physical Control,” change the
first pre-checked condition as follows:

“(a) The defendant shall not drive a motor vehicle without a
valid license and proof of liability insurance or other
financial responsibility insurance. (b) The defendant shall
not drive or be in physical control of a motor vehicle with 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. (c) The
defendant shall submit to a breath or blood alcohol test
upon the reasonable request of a law enforcement officer. If
you violate (a), (b), or (c) within this state, the court shall
order you confined for no less than 30 days and your
driving privilege will be suspended for 30 days.”

In the heading “**Mandatory Conditions of Sentence – Reckless
Driving/Negligent Driving – 1st Degree**,” delete “Mandatory” in
the heading.

In that section, uncheck the first two boxes and change the first
check box option as follows:

“(a) The defendant shall not drive a motor vehicle without a
valid license and proof of liability insurance or other
financial responsibility. (b) The defendant shall not drive or
be in physical control of a motor vehicle with 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.”

To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(3), below the section “**Additional Conditions of Sentence – Discretionary Ignition Interlock – RCW 46.20.720(1),**” make the following changes:

- In the first check box, after “Comply with discretionary ignition interlock device requirements,” delete the information in parentheses about the employer exemption.
- After the third check box option, insert the following new text regarding the employer exemption:

“**Employer exemption:**’ When the defendant provides an employer affidavit to the Department of Licensing, this order shall not apply to vehicles owned, leased, or rented by defendant’s employer or to those vehicles whose care and/or maintenance is the temporary responsibility of the employer and driven at the direction of the defendant’s employer as a requirement of employment during working hours. **Except that,** the employer exemption does not apply for the first _____ days after the ignition interlock device has been installed; or when the employer’s vehicle is assigned exclusively to the defendant and used solely to commute to and from employment.”

To implement Laws of 2013, 2d Spec. Sess, ch. 34, §§ 13, and 23 33, below the heading “**Additional Conditions of Sentence,**” insert the following as the first check box option:

“ (If available, effective January 1, 2014) Serve a 6-month period of 24/7 Sobriety Program monitoring (1 prior: alternative to EHM; 2 or 3 priors: mandatory, RCW 46.61.5055(2) and(3). Laws of 2013, 2d Spec. Sess, ch. 34, §§ 23 33.)”

To implement Laws of 2013, 2d Spec. Sess, ch. 34, § 13(2) and (3), under the heading “**Additional Conditions of Sentence,**” change the third check box option, as followings:

“Obtain an alcohol/drug evaluation expanded alcohol assessment from a Washington State-approved agency and file a copy of the evaluation/assessment within

	<p>_____ days. Begin any recommended/ <u>appropriate</u> treatment or education within _____ days and file proof of timely enrollment and completion.”</p>
<p>4. CrRLJ 07.0500</p>	<p>Standing Order of Requirements for Defendants Prohibited From Operating Any Vehicle That is Not Equipped With a Functioning Ignition Interlock Breath Alcohol Device</p> <p>To implement Laws of 2013, 2d Spec. Sess., Ch. 35, §19, amending RCW 46.20.720(3), change paragraph 8, as follows:</p> <p><u>8.</u> “This order shall not apply to vehicles owned, leased, or rented by defendant’s employer, and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer and driven at the direction of the defendant’s employer as a requirement of employment during working hours. However, the employer exemption does not apply:</p> <p><u>A. (First conviction): for the first 30 days after the ignition interlock device has been installed.</u></p> <p><u>B. (Second or subsequent): for the first 365 days after the ignition interlock device has been installed.</u></p> <p><u>C. if the employer’s vehicle is assigned exclusively to the defendant and used solely for commuting to and from employment.”</u></p>