



WASHINGTON
COURTS

June 18, 2014

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: 2014 Summary of Changes to Misdemeanor Judgment and Sentencing Forms

The Courts of Limited Jurisdiction Forms Subcommittee and the Pattern Forms Committee updated the DUI Sentencing Grid, the Washington State Misdemeanor DUI Sentencing Attachment and the misdemeanor judgment and sentencing forms listed in the table below. The updates are based upon approved recommended changes and

- Laws of 2014, ch. 100, Crimes – DUI – Prior Offenses
- Laws of 2014, ch. 109, Prostitution Convictions – Vacating Convictions
- Laws of 2014, ch. 111, Relating to Surrender of Weapons
- Laws of 2014, ch. 176, Tribal Fishing – Conviction Vacation

Detailed descriptions of the changes follow:

1.		<p>DUI Sentencing Grid</p> <p>Change all effective dates listed in the text to “June 12, 2014.”</p> <p>On page 1, in the “Court – DUI Sentencing Grid,” for “BAC Result < .15 or No Test Result,” in the row “24/7 Sobriety Program,” in the column for “Two or Three Prior Offenses” change “Mandatory” to “As ordered.”</p> <p>Also in the “Court – DUI Sentencing Grid,” for “BAC Result > .15 or Test Refusal,” in the row “24/7 Sobriety Program,” in the column for “Two or Three Prior Offenses” change “Mandatory” to “As ordered.”</p> <p>On page 2, under “Prior Offenses,” change the first section as follows:</p>
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		<p>“Original Convictions for the following (including equivalent local ordinances): (1) DUI (RCW 46.61.502)–(or an equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or an equivalent local ordinance); (3) Commercial Vehicle DUI/Phys. Control, RCW 46.25.110; (4) Watercraft DUI, RCW 79A.60.040; (5) Aircraft DUI, RCW 47.68.220; (6) Nonhighway vehicle DUI; RCW 46.09.470(2); (7) Snowmobile DUI, RCW 46.10.490(2); (38) Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) if either committed while under the influence; (49) Equiv. out-of-state statute for any of the above offenses.”</p> <p>Below the heading “Mandatory Jail, Electronic Home Monitoring (EHM), and 24/7 Sobriety Program,” change the second paragraph, as follows:</p> <p>“(Effective January 1, 2014) If the 24/7 sobriety program is 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, 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 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), (5). RCW 36.28A.330. Laws of 2013, 2d Spec. Sess., ch. 35, §26.”</p>
2.		<p>Washington State Misdemeanor DUI Sentencing Attachment</p> <p>Change Effective Dates in the LiveCycle Adobe Acrobat form to “June 12, 2014.”</p> <p>If the offense selected is “DUI or Phys. Contr 2(a): One Prior Conviction and BAC < .15 (or no BAC), under “Sentence” change the text:</p> <p>“The Court may impose four additional days in jail or a six-month period of 24/7 sobriety program monitoring in lieu of 60 days of EHM.”</p> <p>To:</p>

		<p>“In lieu of EHM, the court may impose 4 more days in jail or 6 months of 24/7 sobriety program monitoring/IID/or both.”</p> <p>If the offense selected is “DUI or Phys. Contr 2(b): One Prior Conviction and BAC > .15 (or Refusal), under “Sentence” change the text:</p> <p>“The Court may impose six additional days in jail or a six-month period of 24/7 sobriety program monitoring in lieu of 90 days of EHM.”</p> <p>To:</p> <p>“In lieu of EHM, the court may impose six more days in jail or 6 months of 24/7 sobriety program monitoring/IID/or both.”</p> <p>If the offense selected is:</p> <ul style="list-style-type: none"> • DUI or Phys. Contr 3 or 4(a): 2 or 3 Prior Convictions and BAC < 15 (or no BAC); or • DUI or Phys. Contr 3 or 4(a): 2 or 3 Prior Convictions and BAC > 15 (or Refusal); <p>under “Mandatory Conditions of Probation,” change the first sentence from:</p> <p>“If available, the Defendant shall complete a six-month period of 24/7 sobriety program monitoring.”</p> <p>To:</p> <p>“If available, the Defendant shall complete 6 months of 24/7 sobriety program monitoring, or ignition interlock device requirement, or both.”</p>
3.	CrRLJ 07.0100	<p>Judgment and Sentence (DUI/Physical Control)</p> <p>On page two, delete the section that begins with the heading “Additional Conditions of Sentence – Discretionary Ignition Interlock – RCW 46.20.720(1),” and replace the heading and text with:</p> <p>Additional Conditions of Sentence – 24/7 Alcohol Monitoring Program/Discretionary Ignition Interlock</p> <p><input type="checkbox"/> 24/7 Sobriety Program monitoring is available. RCW 46.16.5055(2) – (3). For 6 months:</p> <p><input type="checkbox"/> comply with the 24/7 Alcohol Monitoring Program (1 prior: alternative to EHM; 2 or 3 priors: mandatory.)</p>

		<p> <input type="checkbox"/> do not drive any motor vehicle unless it is equipped with an ignition interlock device (this does not authorize you to drive without a valid license). </p> <p> <input type="checkbox"/> Comply with discretionary ignition interlock device requirements. RCW 46.20.720(1): </p> <p> <input type="checkbox"/> For a period of _____ years following the period of driver’s license suspension, revocation, or denial, drive only a motor vehicle equipped with a functioning ignition interlock device. </p> <p> <input type="checkbox"/> From _____ (date) to _____ (date), <input type="checkbox"/> for 6 months do not drive any motor vehicle unless it is equipped with an ignition interlock device (this does not authorize you to drive without a valid license). </p> <p> Unless otherwise stated, the calibration level for any ignition interlock requirement imposed under this order shall be .025% <input type="checkbox"/> _____. </p> <p> “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. </p> <p> Under “Additional Conditions of Sentence” delete the first check box: </p> <p> <input type="checkbox"/> (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. 35, §§ 13, 23 – 33.) </p>
4.	CrRLJ 07.0970	<p> Sexual Assault Protection Order </p> <p> In the footer delete “Laws of 2006, ch.138 § 16” and replace it with <u>“RCW 7.90.150.”</u> </p> <p> In paragraph 2 after pursuant to, delete Laws of 2006, ch.138 § 16 and replace it with <u>“RCW 7.90.150.”</u> </p> <p> After “Defendant,” delete “is restrained from.” Change lines A. and B. as follows: </p>

		<p>“A. Having Do not any <u>contact with</u> the protected person(s) directly, indirectly, <u>in person or through others regardless of whether or not the others know of the order</u> or through third parties regardless of whether those third parties know of the order.</p> <p>B. Do not knowingly coming <u>come</u> within or knowingly remaining <u>stay</u> within _____ (distance) of the protected person'(s) <input type="checkbox"/> residence <input type="checkbox"/> school <input type="checkbox"/> place of employment <input type="checkbox"/> other.”</p> <p>In the Warning box, change the heading as follows: “Warnings to the Defendant.”</p> <p>Under <i>It Is Further Ordered</i>, and immediately below the paragraph beginning with “These pretrial orders are based on...” insert the following paragraphs:</p> <p>The court finds that the defendant’s relationship to a person protected by this order is: <input type="checkbox"/> spouse or former spouse <input type="checkbox"/> current or former domestic partner <input type="checkbox"/> parent of a child in common <input type="checkbox"/> current or former cohabitant as part of a dating relationship.</p> <p>(It is unclear whether the court can order under RCW 7.90.150 the restraints necessary to qualify for mandatory surrender of weapons under RCW 9.41.800(3). If the court determines it can make the necessary findings, additional findings and orders may be attached.)</p> <p>In the box that begins with “This order is issued . . .” change the first sentence as follows:</p> <p>This order is issued in accordance with Full Faith and Credit provisions of <u>Violence Against Women Act. VAWA: 18 U.S.C. § 2265.</u> <u>Federal penalties may apply.</u></p> <p>Also, delete everything in the box after the changes described above.</p> <p>In the box that begins with “It is further ordered . . .” add a heading “WACIC Data Entry.” In the text delete “in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants,” and replace it with “<u>into the Washington Crime Information Center.</u>”</p>
5.	NC 02.0100	Domestic Violence No-Contact Order

		<p>In the footer, after RCW 10.99.040, .045, .050 add <u>RCW 9.41.800.</u></p> <p>In Paragraph 3 make the following changes:</p> <p>Firearms, and Weapons, and Concealed Pistol License (CPL), Defendant:</p> <ul style="list-style-type: none"><input type="checkbox"/> <u>do not obtain, own, possess or control a firearm. (RCW 9.41.040.)</u><input type="checkbox"/> do not obtain or possess a firearm, other dangerous weapon, or concealed pistol license. <u>(RCW 9.41.800.) (Pre-Trial, RCW 9.41.800. See findings in paragraph 7, below)</u><input checked="" type="checkbox"/> do not obtain, own, possess or control a firearm. (Post Conviction or Pre-Trial, RCW 9.41.040)<input type="checkbox"/> shall immediately surrender all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license to the following law enforcement agency: _____. (Pre-Trial Order, RCW 9.41.800.) <p>In text box, Warning, after Violation delete of the provisions. In the last sentence change application to <u>request</u>.</p> <p>Under Findings of Fact, paragraph 5, after "domestic violence offense", add <u>"that the defendant represents a credible threat to the physical safety of the protected person . . ."</u></p> <p>In paragraph 6, change the text as follows:</p> <p>The court further finds that the defendant's relationship to a person protected by this order is an</p> <ul style="list-style-type: none"><input type="checkbox"/> Intimate partner (former/current spouse; <u>former/current domestic partner</u>; parent of common <u>a child in common</u>; or former/current cohabitant <u>as part of a dating relationships as intimate partners</u>) or<input type="checkbox"/> Other family member as defined by Ch. 10.99 RCW: _____ <p>In paragraph 7, after "RCW 9.41.800 add <u>(1) and (2)</u>.</p> <p>In the text box "Additional Warnings to Defendant" in the second paragraph after "RCW 9.41.040" add <u>In addition to other state and federal firearm restrictions, if you and the protected person are intimate partners, you cannot obtain or possess a firearm, other dangerous weapon, or concealed pistol license for as long as this order is in effect. A violation is a felony and will subject you to arrest.</u></p>
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		In paragraph 9, make the following changes: “enter it into a computer based criminal intelligence system available in this state used by law enforcement to list outstanding warrants <u>the Washington Crime Information Center.</u> ”
6.	CrRLJ 9.0100	<p>Motion and Declaration for Order Vacating Conviction</p> <p>In the text box under paragraph 2.3, delete “A first prostitution” and add after RCW 9A.88.070, <u>promoting commercial sexual abuse of a minor, RCW 9.68A.101,</u> and change the “act of 200” to “act of 2000.”</p> <p>In paragraph 2.8, make the following changes:</p> <p>2.8 First Conviction for a prostitution offense that was committed while the defendant was a victim of trafficking under state or federal law, or of promoting prostitution in the first degree, or of promoting <u>commercial sexual abuse of a minor:</u></p> <ul style="list-style-type: none"> • The offense listed in paragraph 2.1 is a prostitution offense that I committed as a result of being a victim of trafficking under RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, <u>promoting commercial sexual abuse of a minor, RCW 9.68A.101,</u> or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq; <u>and</u> • There are no criminal charges pending against me <u>for any crime other than prostitution</u> in any court of this state, or another state, or in any federal court. or • I have not been convicted of another crime, <u>except prostitution,</u> in this state, another state, or federal court since the date of conviction. • <u>See the attached Statement about Prostitution Convictions.</u> • I have never had the record of another prostitution conviction vacated.
7.	CrRLJ 9.0120	<p>Prostitution Conviction Attachment</p> <p>This is a new form to implement Laws of 2014, Ch. 109, §2.</p>
8.	CrRLJ 9.0150	<p>Notice of Hearing</p> <p>In the caption and the footer change “Notice of Motion for Order Vacating Conviction” to “<u>Notice of Hearing</u>”. Change the code in the caption and footer from “NT” to “NTHG.”</p> <p>Below the caption, change the first two check boxes as follows:</p>

		<p>TO: <u>the court clerk of</u> <input type="checkbox"/> _____ County Superior Court Clerk's Office TO: <input type="checkbox"/> _____ District/Municipal Court Clerk's Office</p> <p>In the paragraph beginning with "PLEASE TAKE NOTICE," delete the last sentence: "A copy of the motion is attached."</p> <p>Delete the bracketed sentence "[Attach the Motion and Declaration for Order Vacating Conviction]."</p>
9.	CrRLJ 9.0200	<p>Order on Motion re: Vacating Conviction</p> <p>In the text box under paragraph 2.2, change the text in the first row as follows:</p> <p style="padding-left: 40px;">A first prostitution offense that the defendant committed as a result of being a victim of trafficking under RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, <u>promoting commercial sexual abuse of a minor, RCW 9.68A.101</u>, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq. If it is, skip to paragraph 2.4.</p> <p>Change paragraph 2.4 as follows:</p> <p style="padding-left: 40px;">2.4 First<u>C</u>onviction for a prostitution offense that was committed while the defendant was a victim of trafficking under state or federal law, or <u>of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor:</u></p> <ul style="list-style-type: none"> • The defendant committed a prostitution offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, <u>promoting commercial sexual abuse of a minor, RCW 9.68A.101</u>, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq. • There are no criminal charges pending against the defendant <u>for any crime other than prostitution</u> in any court of this state, or another state, or in any federal court. • The defendant has not been convicted of another crime, <u>except prostitution</u>, in this state, another state, or federal court since the date of conviction. • The defendant has never had the record of another prostitution conviction vacated.

		<ul style="list-style-type: none"> • <u>The defendant <input type="checkbox"/> has <input type="checkbox"/> has not proved by a preponderance of the evidence the elements required under Laws of 2014, Ch. 109, §2.</u> <p>In the signature area below JUDGE/COMMISSIONER, add the following text for a Deputy Prosecuting Attorney's signature:</p> <p>Approved:</p> <p>_____</p> <p>Deputy Prosecuting Attorney/WSBA #</p> <p>_____</p> <p>Print Name</p>
10.	CrRLJ 9.0300	<p>Instructions for Vacating Misdemeanor and Gross Misdemeanor Convictions</p> <p>In the text box under the fifth bullet, change the text in the first row as follows:</p> <p>A first prostitution offense that you committed as a result of being a victim of trafficking under RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, <u>promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq.</u> If it is, skip to the symbol "➤," below.</p> <p>Change the text after the symbol "➤," as follows:</p> <ul style="list-style-type: none"> ➤ First <u>Conviction</u> for a prostitution offense that was committed while you were a victim of trafficking under state or federal law, or <u>of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor:</u> ❖ If the crime you are seeking to have vacated is a prostitution offense that you committed as a result of being a victim of: <ul style="list-style-type: none"> ❖ trafficking, RCW 9A.40.100, ❖ promoting prostitution in the first degree, RCW 9A.88.070, or ❖ <u>promoting commercial sexual abuse of a minor, RCW 9.68A.101, or</u> ❖ trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq.

		<p>And if you meet the following criteria, a court may, in its discretion, vacate the conviction:</p> <ul style="list-style-type: none">❖ There are no criminal charges pending against you <u>for any crime other than prostitution</u> in any court of this state, or another state, or in any federal court; <u>or-</u>❖ You have not been convicted of another crime, <u>except prostitution</u>, in this state, another state, or federal court since the date of conviction.❖ You <u>prove that it is more likely than not that the following occurred in your case (more than one section may apply);</u>have never had the record of another prostitution conviction vacated. <p>Then insert the following new text:</p> <ul style="list-style-type: none">❖ If you were convicted for a prostitution offense as a result of being a victim of trafficking, RCW 9A.40.100, you must prove:<ul style="list-style-type: none">a. Someone harbored, transported, provided, obtained, bought, purchased, or received you.b. That person acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause you to engage in a sexually explicit act or commercial sex act.c. Your prostitution conviction record resulted from that person's acts.❖ If you were convicted for a prostitution offense as a result of being a victim of promoting prostitution in the first degree, RCW 9A.88.070:<p>If you were compelled by threat or force, you must prove;</p><ul style="list-style-type: none">a. You were compelled by threat or force to engage in prostitution.
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		<p>b. The person knowingly used threat or force to compel you to engage in prostitution.</p> <p>c. Your prostitution conviction record resulted from being compelled by threat or force by that person.</p> <p>If you were compelled, you must prove;</p> <p>a. You have a mental incapacity or developmental disability that renders you incapable of consent.</p> <p>b. You were compelled to engage in prostitution.</p> <p>c. The person knowingly compelled you to engage in prostitution.</p> <p>d. Your prostitution conviction record resulted from being compelled by that person.</p> <p>❖ If you were convicted for a prostitution offense as a result of being a victim of promoting commercial sexual abuse of a minor, RCW 9.68A.101, you must prove:</p> <p>a. You were under the age of 18 at the time of the prostitution offense.</p> <p>b. While you were under the age of 18, someone:</p> <ul style="list-style-type: none">• caused or aided someone else to commit commercial sexual abuse of you; or• asked for or got customers for commercial sexual abuse of you; or• provided persons or places for the purpose of commercial sexual abuse of you; or• operated or assisted in operating a house or enterprise for the purpose of commercial sexual abuse of you; or• did anything else designed to result in commercial sexual abuse of you; or
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		<ul style="list-style-type: none">• caused or aided someone else to commit a sexually explicit act with you; or• asked for or got customers for a sexually explicit act with you; or• provided persons or places for the purpose of a sexually explicit act with you; or• did anything else designed to result in a sexually explicit act with you. <p>c. That person acted knowingly.</p> <p>d. Your prostitution conviction record resulted from that person's actions.</p> <p>❖ If you were convicted for a prostitution offense as a result of being a victim of trafficking under the trafficking victims protection act of 2000, 22 U.S.C. §:7101 et seq., you must prove either that:</p> <ul style="list-style-type: none">a. You were induced by force, fraud, or coercion to engage in a commercial sex act and your prostitution conviction record is a result; orb. You were induced to engage in a commercial sex act while you were under age 18 and your prostitution conviction record is a result. <p>In the paragraph beginning with "If you can satisfy each of the requirements..." add the following text at the end of the paragraph:</p> <p style="padding-left: 40px;">If you are asking the court to vacate your prostitution conviction/s, and you were a victim of trafficking under state or federal law, of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor, you must also complete form CrRLJ 09.0120, Prostitution Conviction Attachment, and attach it to the motion.</p> <p>In the paragraph beginning with "You may want to review..." change the last sentence as follows:</p> <p style="padding-left: 40px;">Once you have completed and signed the motion and declaration form, <u>and the attachment, if it applies</u>, make at least two copies</p>
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11.	CrRLJ CR 09.0500	<p>Motion and Declaration for an Order Vacating Conviction - Treaty Indian Fishing Rights</p> <p>This is a new form based upon Laws of 2014, Ch. 176.</p>
12.	CrRLJ CR 09.0600	<p>Notice of Hearing</p> <p>This is a new form based upon Laws of 2014, Ch. 176.</p>
13.	CrRLJ CR 09.0700	<p>Order on Motion re: Vacating Conviction - Treaty Indian Fishing Rights</p> <p>This is a new form based upon Laws of 2014, Ch. 176.</p>