

December 14, 2015

TO: Judicial and Legal Community

FROM: Merrie Gough, AOC Sr. Legal Analyst

RE: 2015 PROPOSED AMENDMENTS TO CrR 4.2(g) GUILTY PLEAS

On December 2, 2015, the Washington State Supreme Court adopted amendments to the CrR 4.2(g) Statement of Defendant on Plea of Guilty to Non-Sex Offense, the Statement of Defendant on Plea of Guilty to Sex Offense, and the “Offender Registration” Attachment. The amendments become effective when they are published in the Official Advance Sheets, Washington Reports, 184 Wn. 2d No.5. The anticipated publication date is December 22, 2015. The amendments are based upon recommended changes and:

* Laws of 2015, Ch. 134 (SHB 1319), relating to juvenile offenses – sentencing.
* Laws of 2015, Ch. 279 (2SHB 1281), relating to sexual exploitation of minors – child rescue fund.
* Laws of 2015, Ch. 81 (SB 5104), relating to sentencing provisions – use of alcohol or controlled substances.
* Laws of 2015, Ch. 261 (SSB 5154), relating to registered sex or kidnapping offenders.
* Laws of 2015, Ch. 275 (SSB 5631), relating to domestic violence victim services – domestic violence prevention account.
* Laws of 2015, 2nd Special Session, Ch. 3 (2E2SHB 1276), relating to impaired driving.

The following table contains detailed descriptions of the changes:

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| 1. **CrR 4.2(g), Statement of Defendant on Plea of Guilty to Non Sex Offense** |
| To implement Laws of 2015, Ch. 134, §6, which amended RCW 9.94A.730, make the following changes to paragraph 6(d):  See paragraph 6(d):   1. As long as my conviction is not for aggravated first degree murder or certain sex crimes, and I have not been convicted of any crime committed ~~any crimes~~ after I turned 18 or committed a ~~major violation~~disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, I may petition the Indeterminate Sentence Review Board (Board) for early release after I have served 20 years. 2. If I am released early because my petition was granted or by other action of the Sentence Review Board, I ~~may~~will be subject to community custody under the supervision of the DOC for a period of time determined by the Board, up to the length of the court-imposed term of incarceration. I will be required to comply with any conditions imposed by the Board. 3. If I violate the conditions of community custody, the Board may return me to confinement for up to the remainder of the court-imposed term of incarceration.   To implement RCW 10.95.030 and Laws of 2015, Ch. 134, §5, which amended RCW 10.95.030, add a new paragraph 6(e):  “(e) If I committed aggravated murder in the first degree and I was under the age of 18 at the time of the offense.   1. If I was under the age of 16 at the time of the offense, the judge will impose a minimum term of total confinement of 25 years and a maximum term of life for that crime. 2. If I was at least 16 but less than 18 years old at the time of the offense, the judge 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, and will impose a maximum term of life for that crime. 3. 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. 4. After the minimum term, if I am released by the Sentence Review Board (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. 5. If I violate the conditions of community custody, the Board may return me to confinement.”   Renumber the remaining paragraphs.  To clarify when a defendant who has committed an offense that is not defined as a sex offense in RCW 9.94A.030, but who is required to register under RCW 9A.44.130, change paragraph 6(s) as follows:  “If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, or if this crime is promoting prostitution in the first or second degree and I have at least one prior conviction for promoting prostitution in the first or second degree, or if this crime is (human) trafficking in the first degree under RCW 9A.40.100(1)(a)(i)(A)(III) or (IV) or (1)(a)(i)(B) (relating to sexually explicit acts or commercial sex acts), I will be required to register where I reside, study or work. The specific registration requirements are set forth in the “Offender Registration” Attachment.”  To implement Laws of 2015, Ch. 275, §15, which amends RCW 26.50.110, modify paragraph 6(t) as follows:  “If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to $~~100~~115.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150. If I am convicted under RCW 26.50.110, for a violation of a domestic violence protection order issued under chapter 26.50 RCW, the court shall impose a mandatory fine of $15.00.”  To implement Laws of 2015, Ch. 81, §2, which amends RCW 9.94A.607, change paragraph 6(w) as follows:  If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty. Rehabilitative programs may include an order to obtain an evaluation for alcohol or controlled substance chemical dependency treatment. The court may also prohibit me from possessing or consuming alcohol or controlled substances.  In paragraph 6(aa) change the RCW citation from “RCW 46.61.502” to “RCW 46.61.520.”  To implement Laws of 2015, 2nd Spec. Sess., Ch. 3, §§ 13, 4, and 6, add a new paragraph 6(dd):  “\_\_\_\_\_ (dd) I am pleading guilty to the crime of driving without a required ignition interlock device (RCW 46.20.740), or the crime of circumventing or tampering with a required ignition interlock device (RCW 46.20.750(1)), and the offense occurred on or after September 26, 2015. The sentence for that offense must be served consecutively with any other sentence imposed for violations of either of those statutes and with any sentence imposed under  RCW 46.61.502 (DUI), RCW 46.61.504 (physical control under the influence), or RCW 46.61.5055.  The sentence for violation of RCW 46.20.750(1) also must be served consecutively with any sentence imposed under RCW 46.61.520(1)(a) or 46.61.522(1)(b) (vehicular homicide/assault while under the influence of alcohol/drugs).”  In paragraph 6(ff), change the internal reference at the end of the paragraph from “6[n]” to “6(p).”  In paragraph 6(kk), change the RCW citation from “RCW 9.41.\_\_\_” to “RCW 9.41.330.” |
| 1. **CrR 4.2(g), Statement of Defendant on Plea of Guilty to Sex Offense** |
| To implement Laws of 2015, Ch. 134, §6, which amended RCW 9.94A.730, make the following changes to paragraph 6(d):  See paragraph 6(d):   1. As long as my conviction is not for aggravated first degree murder or certain sex crimes, and I have not been convicted of any crime committed ~~any crimes~~ after I turned 18 or committed a ~~major violation~~disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, I may petition the Indeterminate Sentence Review Board (Board) for early release after I have served 20 years. 2. If I am released early because my petition was granted or by other action of the Sentence Review Board, I ~~may~~will be subject to community custody under the supervision of the DOC for a period of time determined by the Board, up to the length of the court-imposed term of incarceration. I will be required to comply with any conditions imposed by the Board. 3. If I violate the conditions of community custody, the Board may return me to confinement for up to the remainder of the court-imposed term of incarceration.   To implement RCW 10.95.030 and Laws of 2015, Ch. 134, §5, which amended  RCW 10.95.030, add a new paragraph 6(e):  “(e) If I committed aggravated murder in the first degree and I was under the age of 18 at the time of the offense.   1. If I was under the age of 16 at the time of the offense, the judge will impose a minimum term of total confinement of 25 years and a maximum term of life for that crime. 2. If I was at least 16 but less than 18 years old at the time of the offense, the judge 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, and will impose a maximum term of life for that crime. 3. 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. 4. After the minimum term, if I am released by the Sentence Review Board (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. 5. If I violate the conditions of community custody, the Board may return me to confinement.”   To consolidate similar language, in paragraph 6(h), delete the first sub-paragraph beginning with “**For sex offenses committed prior to July 1, 2000**” and change the heading for the second sub-paragraph graph by deleting “on or after July 1, 2000 but,” as follows:  ~~For sex offenses committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months.  If the period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release, whichever is longer.  During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.~~  For sex offenses committed ~~on or after July 1, 2000 but~~ prior to September 1, 2001: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months.  If the period of confinement is over one year, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer.  During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.  Also in paragraph 6(h) in subsection “(ii),” change the internal cross-reference at beginning of the paragraph as follows:  “(ii) If this offense is a sex offense that is not listed in paragraph ~~6(f)(i)~~6(h)(i), then in addition to sentencing me to a term of confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months...”  To implement Laws of 2015, Ch. 275, §15, which amends RCW 26.50.110, modify paragraph 6(t) as follows:  “If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to $~~100~~115.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150. If I am convicted under RCW 26.50.110, for a violation of a domestic violence protection order issued under chapter 26.50 RCW, the court shall impose a mandatory fine of $15.00.”  To implement Laws of 2015, Ch. 81, §2, which amends RCW 9.94A.607, change paragraph 6(u) as follows:  If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty. Rehabilitative programs may include an order to obtain an evaluation for alcohol or controlled substance chemical dependency treatment. The court may also prohibit me from possessing or consuming alcohol or controlled substances.  To implement Laws of 2015, 2nd Spec. Sess., Ch. 3, §§ 13, 4, and 6, add a new paragraph 6(y):  “\_\_\_\_\_ (y) I am pleading guilty to the crime of driving without a required ignition interlock device (RCW 46.20.740), or the crime of circumventing or tampering with a required ignition interlock device (RCW 46.20.750(1)), and the offense occurred on or after September 26, 2015. The sentence for that offense must be served consecutively with any other sentence imposed for violations of either of those statutes and with any sentence imposed under  RCW 46.61.502 (DUI), RCW 46.61.504 (physical control under the influence), or RCW 46.61.5055.  The sentence for violation of RCW 46.20.750(1) also must be served consecutively with any sentence imposed under RCW 46.61.520(1)(a) or 46.61.522(1)(b) (vehicular homicide/assault while under the influence of alcohol/drugs).”  In paragraph 6(aa), change the internal reference at the end of the paragraph from “6[p]” to “6(r).”  In paragraph 6(cc), change the RCW citation from “RCW 9.41.\_\_\_” to “RCW 9.41.330.”  To implement Laws of 2015, Ch.279, §2, which added a new section to chapter 9.68A RCW, add a new paragraph 6(gg):  “\_\_\_\_\_ (gg) If I am pleading guilty to possession of depictions of a minor engaged in sexually explicit conduct in the first or second degree, the court will impose a fee of $1,000 for each depiction or image that is a separate conviction.” |
| 1. **CrR 4.2(g), “Offender Registration” Attachment** |
| To implement Laws of 2015, Ch. 261, §3, which amended RCW 9A.44.130(4)(a)(i) amend paragraph 1 by adding the following as the third sub-paragraph:  “While in custody, if I am approved for partial confinement, I must register when I transfer to partial confinement with the person designated by the agency that has jurisdiction over me. I must also register within three business days from the end of partial confinement or release from confinement with the sheriff of the county where I reside.”  To implement Laws of 2015, Ch. 261, §3, which amended RCW 9A.44.130(4)(a)(iv) amend paragraph 2 as follows:  “**2. Offenders Who are New Residents, Temporary Residents, or Returning Washington Residents**: If I move to Washington or if I leave this state following my sentencing or release from custody but later move back to Washington, I must register within three business days after moving to this state. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry on a vocation in Washington, or attend school in Washington, I must register within three business days after attending school in this state or becoming employed or carrying out a vocation in this state. If I am visiting and intend to reside or be present 10 or more days in Washington, then I must register the location where I plan to stay or my temporary address with the sheriff of each county where I will be staying within three business days of my arrival.”  To implement Laws of 2015, Ch. 261, §3, which amended RCW 9A.44.130 by adding a new subsection (3), add a new paragraph 5, as follows:  “**5. Travel Outside the United States:** If I intend to travel outside the United States, I must provide, signed written notice of the details of my plan to travel out of the country to the sheriff of the county where I am registered. Notice must be provided at least 21 days before I travel. Notice may be provided to the sheriff by certified mail, with return receipt requested, or in person.  If I cancel or postpone this travel, I must notify the sheriff within three days of canceling or postponing my travel or on the departure date I provide in my notice, whichever is earlier.  If I travel routinely across international borders for work, or if I must travel unexpectedly due to a family or work emergency, I must personally notify the sheriff at least 24 hours before I travel. I must explain to the sheriff in writing why it is impractical for me to comply with the notice required by RCW 9A.44.130(3).” |