

December 14, 2015

**TO:** Judicial and Legal Community

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

**RE:** Amendments to the CrRLJ 4.2(g) Statement of Defendant on Plea of Guilty and Attachments

On December 2, 2015, the Washington State Supreme Court adopted amendments to the following:

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| 1. CrRLJ 4.2(g) | Statement of Defendant On Plea of Guilty |
| 2. CrRLJ 4.2(g) | “Offender Registration” Attachment |
| 3. CrRLJ 4.2(g) DUI1 | “DUI” Attachment |
| 4.CrRLJ 4.2(g) DUI2 | Washington State Misdemeanor DUI Sentencing Attachment (single page sample) |

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. 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 proposed amendments:

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| 1. **CrRLJ 4.2(g)** | **Statement of Defendant on Plea of Guilty**  CrRLJ 7.2(b) was amended effective September 1, 2015, by adding the following as the second to last sentence:  “…If this advisement follows a guilty plea, the court shall advise the defendant that the right to appeal is limited…”  Per State v Cater, 186 Wn. App. 384 (2015), failure to advise a defendant of the limited right to appeal upon taking a plea of guilty may be misleading. In courts of limited jurisdiction, most courts enter judgment and sentence immediately after taking a plea of guilty. To ensure the defendant is adequately informed that the right to appeal is limited after a guilty plea, add a new paragraph 6(a):  “(a) My right to appeal is limited.”  Renumber the remaining paragraphs.  To implement Laws of 2015, Ch. 275 §15, insert a new paragraph 6(m):  “[ ] (m) 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. RCW 26.50.110.”  To implement Laws of 2015, 2nd Special Session, Ch. 3 §17, which amends RCW 36.28A.330(1), in paragraph 6(r), in the paragraph beginning with “The judge may waive electronic home monitoring…” change the last sentence as follows:  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~~.  Also, change the paragraph beginning with “I understand that the 24/7 sobriety program…” as follows:  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. Testing must take place at designated location/s. I ~~will~~ may be required to pay the fees and costs for the program.  Below the paragraph describing the 24/7 sobriety program, insert the following paragraph about mandatory conditions of probation:  The judge will order as conditions of probation that I: (i) shall not drive a motor vehicle without a valid license; (ii) shall not drive a motor vehicle without proof of liability insurance or other financial responsibility; (iii) 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; (iv) shall submit to a breath or blood alcohol test upon the reasonable request of a law enforcement officer; (v) shall not drive a motor vehicle without a functioning ignition interlock device as required by the Department of Licensing. 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.  To implement Laws of 2015, 2nd Special Session, Ch. 3 §4, amending RCW 46.20.740(3), add the following new paragraph 6(u):  “(u) If this case involves a conviction for operating a vehicle without an ignition interlock device under RCW 46.20.740, then my sentence will run consecutively to sentences imposed under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055. RCW 46.20.740(3).”  To implement Laws of 2015, 2nd Special Session, Ch. 3, §6, amending RCW 46.20.750, add the following new paragraph 6(v):  “(v) If this case involves a conviction for tampering with or circumventing an ignition interlock device under RCW 46.20.750, then my sentence will run consecutively to sentences imposed under RCW 46.20.740(3), 46.61.502, 46.61.504, 46.61.5055, 46.61.520(1) or 46.61.522(1)(b).” |
| 1. **CrRLJ 4.2(g) ORA** | **“Offender Registration” Attachment**  To implement Laws of 2015, Ch. 261, §3, which amended RCW 9A.44.130(4)(a)(i), change 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), change 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:  “**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).” |
| 1. **CrRLJ 4.2(g) DUI1** | **“DUI” Attachment**  Change all “amended by statute effective” dates to “September 26, 2015.”  To clarify that mandatory minimum fines may be suspended, waived or reduced as allowed by law, make the following changes:  In both tables on page 1, in the far left column, add “\*\*\*” to the end of   * “Mandatory Minimum/Maximum Fine3” * “If Passenger Under 16 Minimum/Maximum4”   Below the second table, insert the following note:  “\*\*\* Mandatory Minimum fines may be reduced, waived, or suspended if defendant is indigent, as provided by law.”  On page 2, to implement Laws of 2015, 2nd Spec. Sess., Ch. 3, §9, which amends the definition of “Prior offense” in RCW 46.61.5055(14), make the following changes to the note titled “Prior Offenses:”  Change “Original Convictions for the following” as follows:  **“Original Convictions for the following** (including equivalent local ordinances): (1) DUI (RCW 46.61.502); (2) Phys. Cont. (RCW 46.61.504); (3) Commercial Vehicle DUI/Phys. Control, RCW 46.25.110; (4) Watercraft DUI, RCW 79A.60.040(2) ; (5) Aircraft DUI, RCW 47.68.220, committed under the influence of intoxicating liquor or any drug; (6) Nonhighway vehicle DUI, RCW 46.09.470(2); (7) Snowmobile DUI, RCW 46.10.490(2); (8) Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) if either committed while under the influence; (9) Equiv. out-of-state statute for any of the above offenses.”  Change “Amended Convictions for the following,” as follows:  “**Amended Convictions 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 convicted of (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. *If originally charged with Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug*;but convicted of Veh.Hom. or Veh. Assault committed in a reckless manner or with the disregard for the safety of others. *If originally charged with Watercraft DUI (RCW 79A.60.040(2);* but convicted of Operating a Watercraft in a reckless manner, RCW 79A.60.040(1), or an equivalent local ordinance. *If originally charged with Aircraft DUI (RCW 47.68.220);* but convicted of Operating an Aircraft in a careless or reckless manner, RCW 47.68.220, or an equivalent local ordinance.”  Laws of 2015, 2nd Spec. Sess., Ch. 3, §17, amends RCW 36.28A.330(1) by changing the name of the “24/7 Sobriety Program,” and by adding the definition of the program to subsection (1). Laws of 2015, 2nd Spec. Sess., Ch. 3, §17, also deletes 36.28A.330(5), which contained a prior definition of the program.  On page 3, to implement Laws of 2015, 2nd Spec. Sess., Ch. 3, §17, make the following changes to the second paragraph below the note heading “Mandatory Jail, Electronic Home Monitoring (EHM), and 24/7 Sobriety Program:”  “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. Testing must take place at designated location/s. The defendant ~~will~~ may be required to pay the fees and costs for the program. RCW 46.61.5055(1), (2), (3), (5). RCW 36.28A.330.”  On page 3, to implement Laws of 2015, 2nd Spec. Sess., Ch. 3, §9, which amends RCW 46.61.5055(11), change the note “Mandatory Conditions of Probation for any Suspended Jail Time” as follows:  The individual is not to: (i) drive a motor vehicle without a valid license to drive; (ii) drive a motor vehicle without ~~and~~ proof of liability insurance or other financial responsibility (SR 22), (iii) 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~~iv) 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, (v) drive a motor vehicle without a functioning ignition interlock device as required by DOL. 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.  On page 3, change the sections on “Mandatory Monetary Penalty” and “If Passenger Under 16,” as follows, to clarify when penalties may be suspended, waived, or reduced:  ***“3*Mandatory Monetary Penalty**: Criminal Conviction Fee, RCW 3.62.085. Fine, RCW 46.61.5055(1) – (3), mandatory minimum may not be suspended unless defendant is indigent. PSEA 1, RCW 3.62.090(1) if applicable, shall not be suspended or waived; Alcohol Violators Fee, RCW 46.61.5054, may suspend all or part of fee if defendant does not have ability to pay; Criminal Justice Funding (CJF) Penalty, RCW 46.64.055, may not be reduced, waived, or suspended unless the defendant is indigent. (Note: RCW 3.62.090(1) and (2) apply to CJF penalty. If applicable, shall not be suspended or waived.)~~; Criminal Conviction Fee, RCW 3.62.085~~.”  ***“4*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. The court may not suspend the minimum fine unless defendant is indigent.”  On page 5, to implement Laws of 2015, 2nd Spec. Sess., Ch. 3, §3, which amends RCW 46.20.385, below the heading “Court and Department of Licensing (DOL) Ignition Interlock Requirements,  RCW 46.20.380, 46.20.385, in the table “Ignition Interlock Driver’s License, RCW 46.20.380, 46.30.385,” change the text in the first bullet for row “Eligible to Apply,” as follows:  “Conviction of violation of RCW 46.61.502, 46.61.504, or an equivalent local or out-of-state statute or ordinance~~,~~; or RCW 46.61.520(1)(a), or an equivalent local or out-of-state statute or ordinance; or a conviction for a violation of RCW 46.61.520(1)(b) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520(1)(a); or  RCW 46.61.522(1)(b) or an equivalent local or out-of-state statute or ordinance; or RCW 64.61.522(1) (a) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522(1)(b) committed while under the influence of intoxicating liquor or any drug ~~involving alcohol~~.”  In the same table, in the row for “Operation with Other Requirements,” change the text as follows:  “The time period during which the person is licensed under RCW 46.20.385, shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720, 46.61.5055, 10.05.140, 46.61.500(3), and 46.61.5249(4).”  Laws of 2015, 2nd Spec. Sess., Ch. 3, §17, amends RCW 36.28A.330(2) which defines a participant [in the 24/7 sobriety program] as a person charged with or convicted of an offense listed as a “prior offense” in RCW 46.61.5055(14).  On pages 6 and 7, to implement the new provisions, make the following changes in the table “Court – Reckless Driving/Negligent Driving – 1st Degree Sentencing Grid:  In the “Reckless Driving” table, add the following as the last row of the table:  “24/7 Sobriety Program As ordered by the court, if use of alcohol or drugs was a contributing factor in the commission of the crime.”  In the “Negligent Driving – 1st Degree” table, add the following as the last row of the table:  “24/7 Sobriety Program As ordered by the court, if use of alcohol or drugs was a contributing factor in the commission of the crime.” |
| 1. **CrRLJ 4.2(g) DUI2** | **Misdemeanor DUI Sentencing Attachment** (single page sample for court rules book)  To implement Laws of 2015, 2nd Spec. Sess., Ch. 3, §9, which amends RCW 46.61.5055(11) relating to mandatory conditions of probation, change the “Mandatory Conditions of Probation” section as indicated below:  “The individual is not to: (i) drive a motor vehicle without a valid license; (ii) drive a motor vehicle without proof of liability insurance or other financial responsibility (SR 22); (iii) 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; (i~~ii~~v) refuse to submit to a test of his or her breath or blood to determine alcohol or drug 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 or drug; (v) drive a motor vehicle without a functioning ignition interlock device as required by DOL. Except for the 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.” |

Enclosures