

July 19, 2016

**TO:** Judicial and Legal Community

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

**RE:** Amendments to CrRLJ 4.2(g) Guilty Plea and “DUI” Attachment; and CrRLJ 4.2(i) Petitions for Deferred Prosecution

On June 29, 2016, 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) DUI1 | “DUI” Attachment |
| 3. CrRLJ 4.2(i) | Petition for Deferred Prosecution |
| 4. CrRLJ 4.2(i) CMC | Petition for Deferred Prosecution of Criminal Mistreatment Charge |

The amendments become effective when they are published in the Official Advance Sheets, Washington Reports, 185 Wn.2d No. 10. The anticipated publication date is August 2, 2016.

The amendments are based upon recommended changes and

* Laws of 2016, Ch. 203 (ESHB 2700), relating to impaired driving
* Laws of 2016, 1st Spec. Session, Ch. 29 (E2SHB 1713), relating to mental health and chemical dependency – treatment systems – integration
* Laws of 2016, Ch. 136 (SHB 2906), relating to juvenile offenders - rehabilitation and integration
* Laws of 2016, Ch. 87 (HB 2280), Felony DUI as Class B felony

The table beginning on the next page contains detailed descriptions of the amendments.

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| 1. **CrRLJ 4.2(g)** | **Statement of Defendant on Plea of Guilty**  To be consistent with the CrR 4.2(g) statements, change paragraph 3 from:  “I went through the \_\_\_\_\_\_\_\_\_\_\_\_ grade.”  To:  “The last level of education I completed was \_\_\_\_\_\_.”  To implement Laws of 2016, Ch. 203, §17, amending  RCW 46.61.5055(9)(a) and (b), change paragraph 6(l) as follows:  This plea of guilty will result in suspension or revocation of my driving license or privilege by the Department of Licensing for a minimum period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. DOL may impose a longer period of suspension or revocation ~~or longer~~ based upon my record of conviction. This period may not include suspension or revocation based on other matters. RCW 46.61.5055(9).  To implement Laws of 2016, Ch. 136, §§ 7- 12, add the following new paragraph 6(m):  (m) I understand that RCW 46.20.265 requires that my driver’s license be revoked if (a) the current offense is a violation under RCW chapter 69.41 [Legend drug], 69.50 [VUCSA] , or 69.52 [Imitation drugs], and I was under the age of 21 at the time of the offense **OR** (b) the current offense is a violation under RCW 9.41.040 (unlawful possession of firearm), and I was under the age of 18 at the time of the offense **OR** (c) the current offense is a violation under RCW chapter 66.44 [Alcohol] and I was under the age of 18 at the time of the offense, **AND** if (a), (b), or (c) applies, the court finds that I previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.  Renumber the remaining sub-sections in paragraph 6.  To implement Laws of 2016, Ch. 203, §17, amending RCW 46.61.5055(1), in paragraph 6(s), change the paragraph beginning with “Instead of the minimum jail term…” as follows:  If I have no prior offenses, ~~I~~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. |
| 1. **CrRLJ 4.2(g) DUI1** | **“DUI” Attachment**  Change all statute effective dates to June 9, 2016.  To implement Laws of 2016, Ch. 203, §17, amending  RCW 46.61.5055(1), make the following changes in the tables on page 1:  In the table for **“BAC Result < .15 or No Test Result”** and in the table for **“BAC Result ≥ .15 or Test Refusal,”** in the column for **“No Prior Offense**,” in the row for “24/7 Sobriety Program,” change “N/A” to “As Ordered.”  In the section on ***2*Mandatory Jail, Electronic Home Monitoring (EHM), and 24/7 Sobriety Program**, but on page 3, add the following text to the beginning of the paragraph beginning with “If the 24/7 sobriety program is available..:”  “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…”  To implement Laws of 2016, Ch. 203, §17, amending RCW 46.61.5055(9), make following changes in the tables on page 1:  In the table for “**BAC Result < .15 or No Test Result**” in the column for “**No Prior Offense**” in the row for “Driver’s License,” add a “5” next to “90-Day Suspension5.”  In the table for “**BAC Result ≥ .15 or Test Refusal**” in the column for “**No Prior Offense**” in the row for “Driver’s License,” add a “5” next to “1-Year Revocation5.”  On page 3, add the following new section:  5**Driver’s License and 24/7 Sobriety Program**: If there are no prior offenses, and the person’s alcohol concentration is:  1) less than 0.15, the person’s driving privilege is suspended for 90-days or until the person is evaluated by an alcoholism agency or probation department and completes or is enrolled in a 90-day period of 24/7 sobriety program monitoring. The license suspension must not be fewer than 2 days.  2) at least 0.15, the person’s driving privilege is revoked for one year or until the person is evaluated by an alcoholism agency or probation department and completes or is enrolled in a 120-day period of 24/7 sobriety program monitoring. The license revocation must not be fewer than 4 days.  Below the Court DUI Sentencing Grid tables, change the note beginning with “\*\*” as follows:  \*\* Driver’s license minimum suspension/revocation. See note 5 for exceptions. DOL may impose more.  To implement Laws of 2016, Ch. 87, amending RCW 46.61.502(6), on page 3, change the note on “Felony DUI and Felony Physical Control, as follows:  **Felony DUI and Felony Physical Control**: A current offense is a Class ~~C~~B felony punished under ch. 9.94A RCW if the defendant has (a) four prior convictions within ten years, or (b) one prior conviction of Veh. Homicide or Veh. Assault, or (c) a prior ~~Class C~~ felony resulting from (a) or (b). “Within ten years” means that the arrest for the prior offense occurred within ten years before or after the arrest for the current offense. RCW 46.61.5055(14)(c).  To implement Laws of 2016, Ch. 203, delete the table titled “**Department of Licensing Required Ignition Interlock Device Requirements, RCW 46.20.720(3),(4) as amended with statutes effective through September 26, 2015\***,” and the note beginning with “\*” immediately below that table. The information was moved to page 5.  Delete the page titled “**Department of Licensing - DUI Administrative Sanctions and Reinstatement Provisions**”. Administrative sanctions are no longer a consequence of conviction. They are imposed separately.  On the page titled “**Court and Department of Licensing (DOL) Ignition Interlock Requirements, ~~RCW 46.20.380, 46.20.385,~~ RCW 46.20.720**,” delete the citations to “RCW 46.20.380 and 46.20.385,” and add the citation to “RCW 46.20.720” to the title as indicated.  Delete the table titled “**Ignition Interlock Driver’s License, RCW 46.20.380, 46.20.385**”. The ignition Interlock Driver’s License is no longer a consequence of conviction. It is imposed administratively.  Laws of 2016, Ch. 203, organized and consolidated information about DOL imposed ignition interlock device requirements into RCW 46.20.720. To be consistent, all provisions relating to RCW 46.20.720 that are imposed upon conviction were moved to the fifth page after the section titled “**Court Order to Comply with Rules and Requirements of DOL**” as indicated below:  Delete the headings and the text beginning with the following headings:   * **Court Ordered Discretionary Ignition Interlock (II) Device** * **Passenger Under Age 16** * **Deferred Prosecution** * **DOL Imposed Ignition Interlock (II) Device - RCW 46.20.720**   Replace the deleted text with:  **“DOL Ignition Interlock Device (IID) Requirements RCW 46.20.720**:  **Restriction and duration**:  ***IID Driver’s License***: As required for issuance and while the IID Driver’s License is valid.  ***Post Conviction***: After any applicable period of suspension, revocation, or denial of driving privilege due to conviction for DUI, Phys. Control, or an equivalent local or out-of-state statute or ordinance.   |  |  |  | | --- | --- | --- | | No Previous Restriction: | Previous 1-Year Restriction: | Previous 5-Year Restriction: | | 1 Year | 5 Years | 10 Years |   ***Passenger Under Age 16***: DOL shall extend the ignition interlock restriction an additional six months as required by RCW 46.61.5055(6)(a).  ***Tolling:*** 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.  ***Court Order***: If the court orders that a person may drive only a motor vehicle equipped with a functioning IID, the court sets the duration of the restriction, up to the five years jurisdictional limit of the court, and the calibration level. RCW 46.20.720(1)(e).  **Calibration**: Unless otherwise ordered, the calibration level for any IID shall be .025%.  **IID Costs**: $20 fee per month and any other costs associated with the use of an IID. DOL may waive the monthly fee if the person is indigent under RCW 10.101.010.  **Requirements for removal**: 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 that .04 and the digital image confirms the same person provided both samples; failure to take any 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.  **Day-for-Day credit**: All time during which a required IID is installed applies on a day-for-day basis toward a post-conviction IID requirement for the same incident. If day-for-day credit exceeds the post-conviction requirement, DOL may waive requirements.  **Employer Exemption**: The installation of an IID is not necessary on vehicles owned, leased, or rented by a person’s employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer and driven at the direction of a person’s employer as a requirement of employment during business hours upon providing an Employer Exemption declaration to DOL. However, the employer exemption does not apply when the employer’s vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment.”  To implement Laws of 2016, Ch. 203, below the heading “**Court – Reckless Driving/Negligent Driving – 1st Degree Sentencing Grid**,” in the table titled “Reckless Driving”, below the subheading “Consequences,” and in the row titled “II Device,” add the following as the third bullet:   * “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.”   In the same row, change the last bullet as follows:  “Costs ~~to install, remove, and lease~~associated with the use of the ignition interlock device, and $20 fee per month.”  To implement Laws of 2016, Ch. 203, in the table titled “**Negligent Driving – 1st Degree**”, below the subheading “Consequences,” and in the row titled “II Device,” add the following as the third bullet:   * “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.” |
| 1. **CrRLJ 4.2(i)** | **Petition for Deferred Prosecution**  To implement Laws of 2016, 1st Spec. Session, Ch. 29, §525 amending RCW 10.05.020, change paragraph 1 as follows:  1. The wrongful conduct charged is the result of or caused by [ ] ***~~Alcoholism~~*** ~~[ ]~~ ***~~Drug Addiction~~*** ***substance use disorders*** [ ] ***mental problems***, for which I need treatment.  In paragraph 12, in the second to last line, change “Alcoholism programs” to “Substance use disorder treatment programs.”  To implement Laws of 2016, Ch. 203, §11, amending RCW 10.05.140, revise the middle of paragraph 12 as follows:  “…The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720~~(3)~~, and subject to certification from the ignition interlock device vendor. RCW 46.20.720(4).”  Recommendation: Review paragraphs 12 and 14 of the form used in your court to ensure they are consistent with the same paragraphs as published in the court rules. |
| 1. **CrRLJ 4.2(i)** | **Petition for Deferred Prosecution of Criminal Mistreatment Charge**  To implement Laws of 2016, Ch. 203, §11, amending RCW 10.05.140, revise the middle of paragraph 14 as follows:  “…The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720~~(3)~~, and subject to certification from the ignition interlock device vendor. RCW 46.20.720(4).”  To implement Laws of 2016, 1st Spec. Session, Ch. 29, §525 amending RCW 10.05.020, in paragraph 14, in the second to last line, change “Alcoholism programs” to “Substance use disorder treatment programs.”  Recommendation: Review paragraphs 14 and 16 of the form used in your court to ensure they are consistent with the same paragraphs as published in the court rules. |