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July 24, 2017

**TO:** Judicial and Legal Communities

**FROM:** Mark DeForrest, AOC Sr. Legal Analyst

**RE:** 2017 Summary of Changes to Misdemeanor judgment and sentencing Forms

The Washington Pattern Forms Committee updated the forms below to implement approved recommended changes and:

* Laws of 2017, ch. 128 (SSB 5272), regarding vacating convictions committed while a person was a victim of trafficking;
* Laws of 2017, ch. 230 (SHB 1079), relating to human trafficking and promoting prostitution – no-contact orders;
* Laws of 2017, ch. 272 (E2SHB 1163), §9, regarding vacating domestic violence convictions;
* Laws of 2017, ch. 336 (E2SHB 1614), § 2, regarding vacating impaired driving convictions;
* Laws of 2017, ch. 336 (E2SHB 1614), regarding impaired driving;
* Laws of 2017, ch. 335 (SB 5037), DUI 4th offense is a felony.

Following are detailed descriptions of the changes:

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| No. | Form No. | Title and Description of Changes |
| **1.** | **CrRLJ 07\_0100** | **Judgment and Sentence DUI Physical Control***Page one changes:*On page 1 of 3, under the heading Mandatory Conditions of Sentence – DUI/Physical Control, change the text after the checkbox to read as follows: The defendant shall not drive a motor vehicle without a valid license. (b) The defendant shall not drive a motor vehicle without proof of liability insurance or other financial responsibility. (c) 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. (d) The defendant shall submit to a breath or blood alcohol test upon the reasonable request of a law enforcement officer. (e) The defendant shall not drive a motor vehicle without a functioning ignition interlock device as required by the Department of Licensing. For each violation of the above mandatory conditions, the court shall order your confinement for a minimum of 30 days, which may not be suspended or deferred. For each incident involving a violation, the court shall suspend your license for 30 days. ~~If you violate any one of these conditions 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.~~*Page two changes:*On page 2 of 3, under the heading Conditions of Sentence – Reckless Driving/Negligent Driving – 1st Degree, add the following material in a checkbox following the first checkbox: The defendant shall submit to a breath or blood alcohol test upon the reasonable request of a law enforcement officer. |
| **2.** |  | **DUI Sentencing Grid**Change all of the statutory effective dates from “June 9, 2016,” to “July 23, 2017.”Laws of 2017, ch. 335 (SB 5037), §§ 1 and 2 amended RCW 46.61.502 and RCW 46.61.504 to make the fourth DUI and the fourth Physical Control a felony. Laws of 2017, ch. 335 (SB 5037), § 3 amended RCW 46.61.5055(3) by changing “Two or Three priors” to “Two priors,” and subsection (4) was amended to provide that a person with three or more priors within 10 years is punished under chapter 9.94A RCW. To implement these changes, “or Three” was removed throughout the Grid.“**BAC Result < .15 or No Test Result**” changes:To implement Laws of 2017, ch. 336 (E2SHB 1614), §6, amending RCW 46.61.5055(2), make the following changes to the third row:

|  |  |  |  |
| --- | --- | --- | --- |
| EHM~~/~~ or Jail Alternative*2* | 15 Days in Lieu of Jail | 60 Days Mandatory~~/ 4 Days Jail Min.~~ | 120 Days Mandatory/8 Days Jail Min. |

Additionally, add the following new row:

|  |  |  |  |
| --- | --- | --- | --- |
| Alternative to Mandatory Jail + EHM | N/A | At least 4 Days Jail+180 Days EHM2 | N/A |

Laws of 2017, ch. 336 (E2SHB 1614), §12 amended RCW 46.61.5054 and changed the alcohol violator’s fee from $200 to $250. To implement this change, the mandatory minimum fines in the fifth row were updated as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Mandatory Minimum /Maximum Fine***3\*\*\**** | $~~940~~990.50/$5,000 | $~~1,195~~1,245.50/$5,000  | $~~2,045~~2,095.50/$5,000  |

Laws of 2017, ch. 336 (E2SHB 1614), §6 amendedRCW 46.61.5055(9)(a)(ii) relating to driver’s license revocation, as follows where there is one prior and BAC of less than 0.15:“(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years or until the person is evaluated by an alcoholism agency or probation department pursuant to RCW 46.20.311 and the person completes or is enrolled in a six-month period of 24/7 sobriety program monitoring. In no circumstances shall the license suspension be for less than one year;…”To implement this change, in the row titled “Driver’s License”, change the column for One Prior as follows:2-Year Revocation5To save space delete the entire row captioned “II Driver’s License\*, II Device.”In the Row titled “24/7 Sobriety Program2,” change the text in each column from “As Ordered,” to “If available.”In the row for “Expanded alcohol assessment/treatment”, in the column for “One Prior,” change the text from “As Ordered,” to “Mandatory/treatment if appropriate.”In between the tables for “BAC Result < .15 or No Test Result” and “BAC Result ≥ .15 or Test Refusal,”add the following new row that applies to both sections:

|  |  |
| --- | --- |
| II Device | DOL imposed in all cases |

 “**BAC Result ≥ .15 or Test Refusal**” changes:To implement Laws of 2017, ch. 336 (E2SHB 1614), §6, amending RCW 46.61.5055(2), make the following changes to the third row:

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| --- | --- | --- | --- |
| EHM~~/~~ or Jail Alternative*2* | 30 Days in Lieu of Jail | 90 Days Mandatory~~/ 6 Days Jail Min.~~ | 150 Days Mandatory/ 10 Days Jail Min. |

Additionally, add the following new row:

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| --- | --- | --- | --- |
| Alternative to Mandatory Jail + EHM | N/A | At least 6 Days Jail + 6 Months EHM2 | N/A |

Laws of 2017, ch. 336 (E2SHB 1614), §12 amended RCW 46.61.5054 and changed the alcohol violator’s fee from $200 to $250. To implement this change, update the mandatory minimum fines in the fifth row as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Mandatory Minimum /Maximum Fine***3\*\*\**** | $~~1,195~~1,245.50/$5,000 | $~~1,620~~1,670.50/$5,000  | $~~2,895~~2,945.50/$5,000  |

To save space, delete the entire row captioned “II Driver’s License\*, II Device.”In the Row titled “24/7 Sobriety Program2,” change the text in each column from “As Ordered” to “If available.”In the row for “Expanded alcohol assessment/treatment”, in the column for “One Prior,” change the text from “As Ordered”, to “Mandatory/treatment if appropriate.”To implement Laws of 2017, ch. 336 (E2SHB 1614), §6, amending RCW 46.61.5055(2), the note for ***2*Mandatory Jail, Electronic Home Monitoring (EHM), and 24/7 Sobriety Program**, reorganize the text and update it with the new alternative sentencing for One Prior, as follows:**No prior offenses**: Where there are no prior offenses with an arrest date within seven years before or after the arrest date of the current offense, the mandatory imprisonment may not be suspended 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 court may grant EHM instead of mandatory minimum jail. 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.**One prior offense**: Where there is one prior offense with an arrest date within seven years before or after the arrest date of the current offense, the mandatory imprisonment and EHM may not be suspended 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. In lieu of the mandatory term of imprisonment and EHM, when alcohol concentration is: 1) less than 0.15, the court may order a minimum of 4 days in jail, and either 180 days of EHM or a 120-day period of 24/7 sobriety program monitoring; 2) at least 0.15, the court may order a minimum of 6 days in jail and either 6 months of EHM or a 120-day period of 24/7 sobriety program monitoring, or a 120-day ignition interlock device requirement, or both.2**Two prior offenses**: If there are two 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 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. If the 24/7 sobriety program is available, the court shall order 6-month 24/7 sobriety program monitoring, or a 6-month ignition interlock device requirement, or both. ~~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 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.~~ ~~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. 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 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 may be required to pay the fees and costs for the program. RCW 46.61.5055(1), (2), (3), (5). RCW 36.28A.330.Under the heading **Mandatory Conditions of Probation for any Suspended Jail Time**, change the second and third to-the-last sentences as follows to implement the text in RCW 46.61.5055(11)(b) and (c):~~Except for ignition interlock driver’s license and device or alcohol monitoring requirements under RCW 46.61.5055(5),~~ For each violation of ~~any~~ the above mandatory conditions, ~~requires a minimum penalty~~ the court shall order a minimum of 30 days’ confinement, which may not be suspended or deferred. For each incident involving a violation, the court shall suspend the license for ~~and an~~ ~~additional~~ 30 days ~~license suspension~~. RCW 46.61.5055(11). To implement Laws of 2017, ch. 336 (E2SHB 1614), §6 amending RCW 46.61.5055(9)(a)(ii) relating to driver’s license revocation, where there is one prior and BAC of less than 0.15, add the following to the end of note “***5*Driver’s License and 24/7 Sobriety Program**:”“*If there is one prior offense* and the person’s alcohol concentration is less than 0.15, the person’s driving privilege is **revoked** for 2 years or until the person is evaluated by an alcoholism agency or probation department **and** the person completes or is enrolled in a 6-month period of 24/7 sobriety program monitoring. In no circumstances shall the license **suspension** be for less than one year.”Laws of 2017, ch. 335 (SB 5037), §§ 1 and 2 amended RCW 46.61.502 and RCW 46.61.504, respectively, to make the fourth DUI and the fourth Physical Control a felony. Laws of 2017, ch. 335 § 3 amended RCW 46.61.5055(4) to state that a person with three or more priors within 10 years is punished under chapter 9.94A RCW. To implement these changes, make the following change to the note “**Felony DUI and Felony Physical Control**:”“A current offense is a Class B felony punished under ch. 9.94A RCW if the defendant has (a) ~~four~~ three prior convictions within ten years, or…”Laws of 2017, ch. 336 (E2SHB 1614), §5 amended RCW 46.20.720(3)(e) relating to tolling, as follows:The period of restriction under (c) and (d) of this subsection based on incidents occurring on or after June 9, 2016, must be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person unless the person receives a determination from the department that the person is unable to operate an ignition interlock device due to a physical disability. The department's determination that a person is unable to operate an ignition interlock device must be reasonable and be based upon good and substantial evidence. This determination is subject to review by a court of competent jurisdiction. The department may charge a person seeking a medical exemption under this subsection a reasonable fee for the assessment.To implement the new tolling provision, under the subheadings “**DOL Ignition Interlock Device (IID) Requirements RCW 46.20.720**” and “**Restriction and duration**”, in the section on ***Tolling,*** add the following to the end of the sentence:“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 unless DOL determines the person is unable to operate an IID due to a physical disability.”Laws of 2017, ch. 336 (E2SHB 1614), §5 amended RCW 46.20.720(4) relating to requirements for removal, as follows:“(4) Requirements for removal. A restriction imposed under subsection (1)(c) or (d) of this section shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that there have been none of the following incidents in the ~~four~~ one hundred eighty consecutive ~~months~~ days prior to the date of release:..”To implement the new time limit, change the section on “**Requirements for removal**,” as follows:“…Restriction effective until IID vendor certifies to DOL that none of the following occurred within ~~four months~~180 days prior to date of release:…” |
| **3.** | **CrRLJ 07\_0980** | **No-Contact Order – Human Trafficking/Promoting Prostitution***This is a new form based upon Laws of 2017, ch. 230 (SHB 1079).* |
| **4.** | **CrRLJ 09\_0100** | **Motion and Declaration for Order Vacating Conviction** *The form has been substantially reorganized and revised. Please see the form for changes made to implement Laws of 2017, ch. 128 (SSB 5272).* |

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| **5.** | **CrRLJ 09\_0120** | **Prostitution Conviction Attachment***To implement Laws of 2017, ch. 128 (SSB 5272), make the following changes.* In paragraph 1 after the checkbox, change the text to read: If you were convicted for a prostitution offense as a result of being a victim of trafficking as defined in, RCW 9A.40.100.In paragraph 1.c. change the text to read: c. Did your prostitution conviction record and record for other applicable convictions under RCW 9.96.060(3)(b) result from that person’s acts? [ ] No [ ] Yes. If yes, please explain: .In paragraph 2 after the checkbox, change the text to read: If you were convicted for a prostitution offense as a result of being a victim of promoting prostitution in the first degree, as defined in RCW 9A.88.070:In paragraph 2.c. change the text to read: c. Did your prostitution conviction record and record for other applicable convictions under RCW 9 .96.060(3)(b) result from being compelled by threat or force by that person? [ ] No [ ] Yes. If yes, please explain: .In paragraph 3 change the text after the checkbox to read: If you were convicted for a prostitution offense as a result of being a victim of promoting commercial sexual abuse of a minor, as defined in RCW 9.68A.101:In paragraph 3.d. change the text to read: d. Did your prostitution conviction record and record for other applicable convictions under RCW 9 .96.060(3)(b) result from that person’s actions? [ ] No [ ] Yes. If yes, please explain: .In paragraph 4.a. change the text to read: a. Were you induced by force, fraud, or coercion to engage in a commercial sex act, and was your prostitution conviction record and record for other applicable convictions under RCW 9.96.060(3)(b) a result? [ ] No [ ] Yes. If yes, please explain: .In paragraph 4.b. change the text to read: b. Were you induced to engage in a commercial sex act while you were under age 18, and your prostitution conviction record and record for other applicable convictions under RCW 9.96.060(3)(b) was a result? [ ] No [ ] Yes. If yes, please explain: . |
| **6.** | **CrRLJ 09\_0200** | **Order on Motion Re: Vacating Conviction***The form has been substantially reorganized and revised. Please see the form for changes made to implement Laws of 2017, ch. 128 (SSB 5272).* |
| **7.** | **CrRLJ 09\_0300** | **Instructions for Vacating Misdemeanor and Gross Misdemeanor Convictions***This document has been substantially reorganized and revised. Please see the document for changes made to implement Laws of 2017, ch. 128 (SSB 5272).* |
| **8.** | **CrRLJ 07\_0500** | **Standing Order of Requirements for Defendants Prohibited from Operating a Vehicle that is Not Equipped with a Functioning Ignition Interlock Device Under RCW 46.20.720(1) or 46.61.5055(6), (11)***Form deleted.* |