

FILED
SUPREME COURT
STATE OF WASHINGTON
September 2, 2021
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED
AMENDMENTS TO CrRLJ 4.2—PLEAS AND
PRETRIAL DISPOSITION

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ORDER

NO. 25700-A-1368

The Washington Pattern Form Committee, having recommended the adoption of the suggested amendments to CrRLJ 4.2—Pleas and Pretrial Disposition, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;


Now, therefore, it is hereby

ORDERED:

- (a) That the suggested amendments as attached hereto are adopted.
- (b) That pursuant to the emergency provisions of GR 9(j)(1), the suggested amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

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ORDER
IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CrRLJ 4.2—PLEAS AND
PRETRIAL DISPOSITION

DATED at Olympia, Washington this 2nd day of September, 2021.



Johnson, J.



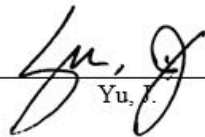
González, C.J.



Gordon McCloud, J.



Madsen, J.



Yu, J.



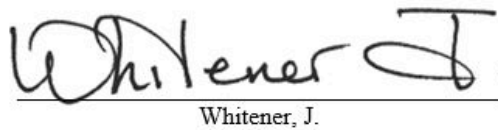
Owens, J.



Montoya-Lewis, J.



Stephens, J.



Whitener, J.

CrRLJ 4.2

STATEMENT ON DEFENDANT ON PLEA OF GUILTY

(a)-(f) [Unchanged.]

(g) **Written Statement.** A written statement of the defendant in substantially the form set forth below shall be filed on a plea of guilty:

<p style="text-align: center;">Court of Washington</p> <p>for</p> <hr style="border: 0; border-top: 1px solid black;"/> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v. v.</p> <hr style="border: 0; border-top: 1px solid black;"/> <p style="text-align: right;">Defendant.</p>	<p>No.</p> <p>Statement of Defendant on Plea of Guilty</p>
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1. My true name is _____.

2. My age is _____.

3. The last level of education I completed was: _____.

4. ***I Have Been Informed and Fully Understand that:***

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.

(b) I am charged with:

Count	Crime	RCW or Ordinance (with subsection)
1.		
2.		
3.		
4.		

[] Count(s) _____ was (were) committed against an intimate partner.

[] Count(s) _____ was (were) committed against a family or household member.

The elements are:

[] as set out in the charging document.

[] as follows: _____

_____.

5. ***I Understand That I Have the Following Important Rights, and I Give Them All Up by Pleading Guilty:***

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. ***In Considering the Consequences of My Guilty Plea, I Understand That:***

- (a) My right to appeal is limited.
- (b) The crime with which I am charged carries a maximum sentence of _____ days in jail and a \$_____ fine.
- (c) The prosecuting authority will make the following recommendation to the judge:

- (d) The judge does not have to follow anyone's recommendation as to sentence. The judge can give me any sentence up to the maximum authorized by law no matter what the prosecuting authority or anyone else recommends.
- (e) The judge may place me on probation for up to ~~five(5)~~ years if I am sentenced for a domestic violence offense or under RCW 46.61.5055, or up to ~~two(2)~~ years for all other offenses and impose conditions of probation. If the court orders me to appear at a hearing regarding my compliance with probation and I fail to attend the hearing, the term of probation will be tolled until I appear before the court on the record.
- (f) The judge may require me to pay costs, fees, and assessments authorized by law. The judge may also order me to make restitution to any victims who lost money or property as a result of crimes I committed. The maximum amount of restitution is double the amount of the loss of all victims or double the amount of my gain.
- (g) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law may be grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

Notification Relating to Specific Crimes: If any of the Following Paragraphs Apply, the Box Should Be Checked and the Paragraph Initialed by the Defendant.

- (h) The crime of _____ has a mandatory minimum sentence of _____ days in jail and a \$_____ fine, plus costs and assessments.
- (i) The crimes of prostitution, indecent exposure, permitting prostitution, and patronizing a prostitute ~~has~~ have a mandatory assessment of \$_____. The court may reduce up to ~~two-thirds~~ 2/3 of this assessment if the court finds that I am not able to pay the assessment. RCW 9A.88.120.
- (j) If this crime involves patronizing a prostitute, a condition of my sentence will be that I not be subsequently arrested for patronizing a prostitute or commercial sexual abuse of a minor. The court will impose crime-related geographical restrictions on me, unless the court finds they are not feasible. If this is my first offense, the court will order me to attend a program designed to educate me about the negative costs of prostitution.
- (k) 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 _____. The Department of Licensing may impose a longer period of suspension or revocation based upon my record of conviction. This period may not include suspension or revocation based on other matters. RCW 46.61.5055(9).
- (l) I understand that RCW 46.20.265 requires that my driver's license be revoked if (a) the current offense is a violation under chapters 69.41 [legend drug], 69.50 [violation of the Uniform Controlled Substances Act], or 69.52 [imitation drugs] RCW, 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 chapter 66.44 RCW [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 chapters 66.44, 69.41, 69.50, or 69.52 RCW.
- (m) If I am convicted for violating a domestic violence protection order issued under chapter 26.50 RCW, the court shall impose a mandatory fine of \$15. RCW 26.50.110.
- (n) I may not possess, own, or have under my control any firearm, and under federal law, any firearm or ammunition, unless my right to do so is restored by the court of record that ordered the prohibition on possession of a firearm or the superior court in Washington State where I live, and by a federal court if required.
- (o) Concealed Pistol License (CPL):
- My concealed pistol license (CPL) If I am convicted of carrying a weapon apparently capable of producing bodily harm under RCW 9.41.270, my CPL will be revoked until reinstated. RCW 9.41.270
- OR
- If I am convicted of possessing a dangerous weapon on school facilities under RCW 9.41.280, my CPL will be revoked for a period of 3 years, and I will be

prohibited from applying for a CPL for 3 years.

OR

If I am convicted of possessing a dangerous weapon on a child care premises under RCW 9.41.282, My concealed pistol license (CPL) will be revoked for a period of three (3) years from the date of conviction, and, I am will be prohibited from applying for a CPL for three3 years from the date of conviction-, and I must immediately surrender any concealed pistol license. RCW 9.41.282.

- (p) If this crime involves a violation of Title 77 RCW, the Department of Fish and Wildlife may, and in some cases shall, suspend or revoke my privileges under Fish and Wildlife licensing.
- (q) If this crime involves a drug offense, my eligibility for state and federal education benefits will be affected. 20 U.S.C. § 1091(r).
- (r) This plea of guilty is considered a conviction under RCW 46.25.010 and I will be disqualified from driving a commercial motor vehicle. RCW 46.25.090. I am required to notify the Department of Licensing and my employer of this guilty plea within 30 days after the judge signs this document. RCW 46.25.030.
- (s) If this case involves driving while under the influence of alcohol and/or being in actual physical control of a vehicle while under the influence of alcohol and/or drugs, I have been informed and understand that I will be subject to:
- the penalties described in the "DUI" Attachment" or the "Washington State Misdemeanor DUI Sentencing Attachment."

OR

these penalties: Mandatory minimum sentence:

- _____ days in jail.
- _____ days of electronic home monitoring.
- \$ _____ monetary penalty.
- If a 24/7 sobriety program is available, if and I have 2 prior offenses, a 6-month period of 24/7 sobriety program monitoring; or 6 months of ignition interlock device requirement; or both.
- Comply with the rules and requirements of the Department of Licensing regarding the installation and use of a functioning ignition interlock device on all motor vehicles that I operate.
- The Department of Licensing will suspend or revoke my driving privilege for the period of time stated in paragraph 6(l).

If I have no prior offenses: 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.

If I have prior offense(s):

- The judge shall order me to submit to an expanded alcohol assessment and comply with treatment deemed appropriate by that assessment.
- If I have one prior offense, instead of mandatory jail and electronic home monitoring, the judge may order me to serve not less than _____ days in jail, and either _____ days of electronic home monitoring or a 120-day period of

24/7 sobriety program monitoring or a 120-day period of ignition interlock device requirement, or both.

- If I have ~~two~~2 prior offenses, instead of mandatory electronic home monitoring, the judge may order me to serve additional jail time.

If the judge orders me to refrain from consuming any alcohol, the judge may order me to submit to alcohol monitoring. I shall be required to pay for the monitoring unless the judge specifies that the cost will be paid with funds from another source.

The judge may waive electronic home monitoring or order me to obtain an alcohol monitoring device with wireless reporting technology, if that device is reasonably available, if I do not have a dwelling, telephone service, or any other necessity to operate electronic home monitoring. The judge may waive electronic home monitoring if I live out of state, or if the judge determines that I would violate the terms of electronic home monitoring. 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 a 24/7 sobriety program.

I understand that the 24/7 sobriety program is a 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 may be required to pay the fees and costs for the program.

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 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within ~~two~~2 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. For each violation of the above mandatory conditions, the court shall order my confinement for a minimum of 30 days, which may not be suspended or deferred. For each incident involving a violation, the court shall suspend my license for 30 days.

- [] (t) If this case involves reckless driving and the original charge was driving while under the influence of alcohol and/or being in actual physical control of a vehicle while under the influence of alcohol and/or drugs, and I have one or more prior offenses as defined in RCW 46.61.5055(14), within 7 years; or if the original charge was vehicular homicide (RCW 46.61.520) or vehicular assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug, I have been informed and understand that I will be subject to the penalties for Reckless Driving described in the "DUI" Attachment or the "Washington State Misdemeanor DUI Sentencing Attachment."
- [] (u) If this case involves negligent driving in the first degree, and I have ~~one~~1 or more prior offenses as defined in RCW 46.61.5055(14) within 7 years, I have been informed and understand that I will be subject to the penalties for Negligent Driving—1st Degree described in the "DUI" Attachment or the "Washington State Misdemeanor DUI Sentencing Attachment."
- [] (v) 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 consecutive to

any sentences imposed under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055. RCW 46.20.740(3).

- (w) 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 consecutive to any 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).
- (x) If this crime involves sexual misconduct with a minor in the second degree, communication with a minor for immoral purposes, or attempt, solicitation, or conspiracy to commit a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.128, or unlawful transmission of HIV to a child or vulnerable adult under chapter 70.24 RCW, I will be required to register with the county sheriff as described in the "Offender Registration" Attachment."
- (y) Pursuant to RCW 43.43.754, if this crime is an offense which requires sex or kidnapping offender registration, or is one of the following offenses: assault in the fourth degree where domestic violence was pleaded and proved, assault in the fourth degree with sexual motivation, communication with a minor for immoral purposes, custodial sexual misconduct in the second degree, failure to register, harassment, patronizing a prostitute, sexual misconduct with a minor in the second degree, stalking, indecent exposure, or violation of a sexual assault protection order granted under chapter 7.90 RCW, or comparable ordinance, I will be required to have a biological sample collected for purposes of DNA identification analysis, unless it is established that the Washington State Patrol crime laboratory already has a sample from me for a qualifying offense.
- (z) **Travel Restrictions:** I will be required to contact my probation officer, the probation director or designee, or the court if there is no probation department, to request permission to travel or transfer to another state if I am placed on probation for ~~one~~ 1 year or more and this crime involves: (i) an offense in which a person has incurred direct or threatened physical or psychological harm; (ii) an offense that involves the use or possession of a firearm; (iii) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol; (iv) a sexual offense that requires the offender to register as a sex offender in the sending state. I understand that I will be required to pay an application fee with my travel or transfer request.

7. I plead guilty to the crime(s) of _____ as charged in the complaint(s) or citation(s) and notice. I have received a copy of that complaint or citation and notice.

The complaint or citation and notice was orally amended and I waive filing of a written amended complaint or citation and notice.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me, or to any other person, to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. **Statement of Facts [by Defendant]:** The judge has asked me to state in my own words what I did that makes me guilty of the crime(s), including domestic violence relationships, if

they apply. This is my statement (state the specific facts that support each element of the crime(s)):

[] The crime(s) was (were) committed against intimate partner(s): (names) _____ (name(s)).

[] The crime(s) was (were) committed against family or household member(s): (names) _____ (name(s)).

[] **[No statement made.]** Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea, including a determination of my relationship to each victim as:

[] intimate partner(s): (names) _____ (name(s)).

[] family or household member(s): (names) _____ (name(s))

12. My lawyer has explained to me, and we have fully discussed, or I have read, all of the above paragraphs. I understand them all. I have been given a copy of this “Statement of Defendant on Plea of Guilty.” I have no further questions to ask the judge.

Date: _____

Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

Prosecuting Authority

Defendant's Lawyer

Type or Print Name WSBA No.

Type or Print Name WSBA No.

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer, if represented, and the undersigned judge. The defendant asserted that (check the appropriate box):

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read ~~to the defendant~~ the entire statement above to the defendant and that the defendant understood it in full.

Interpreter Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have translated this document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter

Print Name

I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: _____

Judge/Commissioner/Judge Pro Tempore

"DUI" ATTACHMENT

Case Name: _____ **Cause No.:** _____

"DUI" Attachment: Driving under the influence of alcohol and/or actual physical control of a vehicle while under the influence of alcohol and/or drugs. (If required, attach to "Statement of Defendant on Plea of Guilty.")

Court – DUI Sentencing Grid (RCW 46.61.5055 as amended by statute effective June 7, 2018)

BAC Result < .15 or No Test Result	No Prior Offense ¹	One Prior Offense ¹	Two Prior Offenses ¹
Mandatory Minimum/ Maximum Jail Time ²	24 Consecutive Hours/364 Days	30/364 Days	90/364 Days

If Passenger Under 16 Mandatory Jail	Additional 24 Hours	Additional 5 Days	Additional 10 Days
EHM/ or Jail Alternative ²	15 Days in Lieu of Jail	60 Days Mandatory	120 Days Mandatory/8 Days Jail Min.
Alternative to Mandatory Jail + EHM	N/A	At least 4 Days Jail+180 Days EHM ²	N/A
Mandatory Minimum/ Maximum Fine ^{3***}	\$990.50/\$5,000	\$1,245.50/\$5,000	\$2,095.50/\$5,000
If Passenger Under 16 Minimum/Maximum Range ^{4***}	\$1,000/\$1,000- \$5,000 + assessments	\$1,000/\$2,000- \$5,000 + assessments	\$1,000/\$3,000- \$10,000 + assessments
Driver's License ^{**}	90-Day Suspension ⁵	2-Year Revocation ⁵	3-Year Revocation
If Passenger Under 16 II Device	Additional 6 Months	Additional 6 Months	Additional 6 Months
24/7 Sobriety Program ²	If available	If available	If available
Alcohol/Drug Ed./Victim Impact or Treatment	As Ordered	As Ordered	As Ordered
Expanded alcohol assessment/treatment	N/A	Mandatory/treatment if appropriate	Mandatory/treatment if appropriate
II Device	DOL imposed in all cases.		
BAC Result ≥ .15 or Test Refusal	No Prior Offense¹	One Prior Offense¹	Two Prior Offenses¹
Mandatory Minimum/ Maximum Jail Time ²	48 Consecutive Hours/364 Days	45/364 Days	120/364 Days
If passenger under 16 Mandatory Jail	Additional 24 Hours	Additional 5 Days	Additional 10 Days
EHM/ or Jail Alternative ²	30 Days in Lieu of Jail	90 Days Mandatory	150 Days Mandatory/ 10 Days Jail Min.
Alternative to Mandatory Jail + EHM	N/A	At least 6 Days Jail + 6 Months EHM ²	N/A
Mandatory Minimum/ Maximum Fine ^{3***}	\$1,245.50/\$5,000	\$1,670.50/\$5,000	\$2,945.50/\$5,000
If Passenger Under 16 Minimum/Maximum ^{4***}	\$1,000/\$1,000- \$5,000 + assessments	\$1,000/\$2,000- \$5,000 + assessments	\$1,000/\$3,000- \$10,000 + assessments
Driver's License ^{**}	1-Year Revocation ⁵ 2 Years if BAC refused	900-Days Revocation 3 Years if BAC refused	4-Year Revocation
If Passenger Under 16 II Device	Additional 6 Months	Additional 6 Months	Additional 6 Months
24/7 Sobriety Program ²	If available	If available	If available

Alcohol/Drug Ed./Victim Impact or Treatment	As Ordered	As Ordered	As Ordered
Expanded alcohol assessment/treatment	N/A	Mandatory/treatment if appropriate	Mandatory/treatment if appropriate

* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 5.

** Driver's license minimum suspension/revocation. See note 5 for exceptions. DOL may impose more.

*** Mandatory Minimum fines may be reduced, waived, or suspended if defendant is indigent, as provided by law.

¹Prior Offenses: Count all prior offenses where the arrest date of the prior offense occurred within ~~seven~~ 7 years before or after the arrest date ~~of~~ the current offense. RCW 46.61.5055(14)(b,c). "Prior offense" is defined by RCW 46.61.5055(14)(a) to include—

- **Original Convictions for the following** (including equivalent local ordinances) for: (1) Driving Under the Influence (DUI) (RCW 46.61.502) or an equivalent out-of-state conviction; (2) Physical Control of a Vehicle under the Influence (Physical Control) (RCW 46.61.504) or an equivalent out-of-state conviction; (3) Commercial Vehicle DUI/Physical 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)); and (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.
- **Deferred Prosecution Granted for the following**: (1) DUI (RCW 46.61.502) (or equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or equiv. local ordinance); (3) Neg. Driving 1st (RCW 46.61.5249, or equiv. local ord.), if the person was originally charged with DUI or Phys. Cont. (or an equiv. local ord.), or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522). An equivalent out-of-state deferred prosecution for DUI or Phys. Cont., including a chemical dependency treatment program. If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in RCW 46.61.5055(14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing.
- **Amended Convictions for the following for**: ~~#(1) originally charged with DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504) or an equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522); but convicted of~~ (1) Negligent Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), or (3) Reckless Endangerment (RCW 9A.36.050), or (4) Equiv. out-of-state or an equivalent local ordinance for the above offenses. This section also applies for equivalent out-of-state convictions; (2) ~~# originally charged with Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug; but convicted of Vehicular Homicide or Vehicular Assault committed in a reckless manner or with the disregard for the safety of others;~~ (3) ~~# originally charged with Watercraft DUI (RCW 79A.60.040(2) or an equivalent local ordinance; but convicted of Operating a Watercraft in a reckless manner, (RCW 79A.60.040(1)); or an equivalent local ordinance;~~ (4) ~~# originally charged with Aircraft DUI (RCW 47.68.220) or an equivalent local ordinance, but convicted of Operating an Aircraft in a careless or reckless manner, (RCW 47.68.220); or an equivalent local ordinance.~~
- **Deferred Prosecution Granted for**: (1) Driving Under the Influence (DUI) (RCW 46.61.502), including local and out-of-state equivalents; (2) Physical Control of a Vehicle under the influence (Physical Control) (RCW 46.61.504), including local and out-of-state equivalents; (3) Negligent Driving 1st (RCW 46.61.5249) or equivalent local ordinance if the charge under which the deferred prosecution was granted was originally filed as a violation of DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504), or an equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522); and (4) An equivalent out-of-state deferred prosecution for DUI or Physical

Control, including a substance use disorder treatment program (RCW 46.61.5055(14)(a)(xvi)).

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in RCW 46.61.5055(14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing.

- ➔ **Deferred Sentences for the following:** ~~#~~Originally charged with DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504) or an equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522); but deferred sentence was imposed for: (1) Negligent Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), (3) Reckless Endangerment (RCW 9A.36.050), or (4) ~~Equiv. out of state or an equivalent local ordinance for the above offenses.~~

2 Mandatory Jail, Electronic Home Monitoring (EHM), and 24/7 Sobriety

Program:

No prior offenses: Where there are no prior offenses with an arrest date within ~~seven~~7 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 or (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~~1 prior offense with an arrest date within ~~seven~~7 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 or (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.

Two prior offenses: If there are ~~two~~2 prior offenses with an arrest date within ~~seven~~7 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 ~~six~~6-month 24/7 sobriety program monitoring, or a ~~six~~6-month ignition interlock device requirement, or both.

IID Device: A sentence imposed for driving without an ignition interlock device (IID) installed as required or for circumventing an IID must be consecutive to any sentence imposed for DUI or Physical Control. RCW 46.20.740; RCW 46.20.750.

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~~their 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.

Mandatory Conditions of Probation for any Suspended Jail Time: The individual is not to: (i) drive a motor vehicle without a valid license to drive, (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~~ 2 hours after driving, (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. For each violation of the above mandatory conditions, 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 30 days. 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.

³**Mandatory Monetary Penalty:** Criminal Conviction Fee, RCW 3.62.085, shall not be imposed if the defendant is indigent as defined in RCW 10.101.010(3)(a)-(c). Fine, RCW 46.61.5055(1)-(3), mandatory minimum may not be suspended unless the 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 the 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.)

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.

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~~ 1 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.

If there is ~~one~~ 1 prior offense and the person's alcohol concentration is less than 0.15, the person's driving privilege is **revoked** for ~~two~~ 2 years or until the person is evaluated by an alcoholism agency or probation department **and** the person completes or is enrolled in a ~~six~~ 6-month period of 24/7 sobriety program monitoring. In no circumstances shall the license **suspension** be for less than ~~one~~ 1 year.

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) ~~three~~ 3 prior convictions within ~~ten~~ 10 years, or (b) ~~one~~ 1 prior conviction of Veh. Homicide or Veh. Assault, or (c) a prior felony resulting from (a) or (b). "Within ~~ten~~ 10 years" means that the arrest for the prior offense occurred within ~~ten~~ 10 years before or after the arrest for the current offense. RCW 46.61.5055(14)(c).

Jurisdiction: Court has ~~five~~ 5 years jurisdiction.

Court and Department of Licensing (DOL) Ignition Interlock Requirements, RCW 46.20.720 (as amended by statute effective June 7, 2018)

Court Order to Comply with Rules and Requirements of DOL: The court orders the person to comply with the rules and requirements of DOL regarding the installation and use of a

functioning ignition interlock device on all motor vehicles operated by the person. If the court orders the person to refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring and to pay for the monitoring unless the court specifies the cost will be paid with funds available from an alternative source identified by the court. RCW 46.61.5055(5).

DOL Ignition Interlock Device (IID) Requirements RCW 46.20.720:

Restriction and duration:

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~~6 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 unless DOL determines the person is unable to operate an IID due to a physical disability.

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~~5 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 180 days 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 than ~~at~~ .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 is used solely for commuting to and from employment.

**Court – Reckless Driving/Negligent Driving – 1st Degree Sentencing Grid
(RCW 46.61.500, RCW 46.61.5249, RCW 46.20.720 as amended through
June 7, 2018)**

Reckless Driving	
Conviction	Qualifications
Reckless Driving (RCW 46.61.500(3)(a))	<ul style="list-style-type: none"> • Original charge: Violation of DUI (RCW 46.61.502) or Phys. Control (RCW 46.61.504) or equivalent local ordinance. • One or More Prior Offenses within 7 years as defined above.
Reckless Driving (RCW 46.61.500(3)(b))	<ul style="list-style-type: none"> • Original charge; Violation of Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug.
Consequences	
IID Device	<ul style="list-style-type: none"> • 6 Months. • Restriction remains in effect, until IID vendor certifies to DOL that none of the following incidents occurred within four4 months before date of release: any attempt to start the vehicle with a BAC of <u>0.04</u> or more, unless another test performed within 10 minutes registers a breath alcohol concentration lower than <u>0.04</u> 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. • 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. • DOL will give day-for-day credit as allowed by law. • Costs associated with the use of the ignition interlock device, and \$20 fee per month.
Maximum Jail Time	<ul style="list-style-type: none"> • 364 Ddays, if convicted of reckless driving.
Maximum Fine	<ul style="list-style-type: none"> • \$5,000, if convicted of reckless driving.
EHM	<ul style="list-style-type: none"> • As ordered.
Driver's License	<ul style="list-style-type: none"> • 30-day suspension. • DOL will give day-for-day credit as allowed by law.
Ignition Interlock (II) Driver's License	<ul style="list-style-type: none"> • As imposed by DOL. May apply for II driver's license if original charge was violation of DUI (RCW 46.61.502) or Phys. Control (RCW 46.61.504) or equivalent local ordinance. If the Defendant is eligible to apply, but does not have a Washington driver's license, the defendant may apply for an II license. DOL may require the defendant to

	<p>take a licensing examination and apply and qualify for a temporary restricted driver's license.</p> <ul style="list-style-type: none"> • During any period of suspension, revocation, or denial, a person who has obtained an II driver's license under RCW 46.20.385 may continue to drive without getting a separate, temporary restricted driver's license.
Alcohol/Drug Ed./Victim Impact or Treatment	<ul style="list-style-type: none"> • As ordered.
24/7 Sobriety Program	<ul style="list-style-type: none"> • As ordered by the court, if use of alcohol or drugs was a contributing factor in the commission of the crime.

Negligent Driving – 1st Degree	
Conviction	Qualifications
Negligent Driving - 1st Degree (RCW 46.61.5249)	<ul style="list-style-type: none"> • One or More Prior Offenses within 7 years as defined above.
Consequences	
II Device	<ul style="list-style-type: none"> • 6 Months. • Restriction remains in effect, until IID vendor certifies to DOL that none of the following incidents occurred within four4 months before date of release: any attempt to start the vehicle with a BAC of <u>0.04</u> or more unless another test performed within 10 minutes registers a breath alcohol concentration lower than <u>0.04</u> 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. • 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.
Maximum Jail Time	<ul style="list-style-type: none"> • 90 Ddays, if convicted of negligent driving in the 1st degree.
Maximum Fine	<ul style="list-style-type: none"> • \$1,000, if convicted of negligent driving in the 1st degree.
EHM	<ul style="list-style-type: none"> • As ordered.
Driver's License	<ul style="list-style-type: none"> • As imposed by DOL.
Alcohol/Drug Ed./Victim Impact or Treatment	<ul style="list-style-type: none"> • As ordered.
24/7 Sobriety Program	<ul style="list-style-type: none"> • As ordered by the court, if use of alcohol or drugs was a contributing factor in the commission of the crime.

**“Offender Registration” Attachment
[Unchanged.]**

(i) Deferred Prosecution. A written petition shall be filed at the time a defendant moves the court to grant a deferred prosecution under chapter 10.05 RCW. The petition shall be insubstantially the following form:

<p align="center">Court of Washington</p> <p>For _____</p> <hr/> <p align="right">Plaintiff,</p> <p align="center">vs.</p> <hr/> <p align="right">Defendant.</p>	<p>No: _____</p> <p>Petition for Deferred Prosecution (DPPF)</p> <p>Charges: _____</p> <p>Violation Date: _____</p>
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I am the defendant in this case and I petition the court for deferred prosecution under RCW Chapter ch. 10.05 RCW. I make the following statement in support of my petition:

1. The wrongful conduct charged is the result of or caused by [] substance use disorders [] mental problems [] domestic violence behavior, for which I need treatment.
2. Unless I receive treatment for my problem, the probability is great that I will offend again.
3. I agree to pay the cost of diagnosis and treatment, if I am financially able to do so, subject to RCW 10.05.130.
4. I understand that the court will not accept a petition for deferred prosecution from a person who sincerely believes that ~~he or she is~~ they are innocent of the crime(s) charged or ~~does not~~ suffer from alcoholism, drug addiction, ~~or~~ mental problems, or domestic violence behavior problems.
5. If this charge is a violation of Title 46 RCW or similar municipal ordinance, I have not previously been placed on a deferred prosecution for a Title 46 or similar municipal ordinance violation.
6. If this charge is a domestic violence offense, I have not previously been placed on a deferred prosecution for a domestic violence offense, this charge was not originally charged in superior court as a felony offense, and a prior stipulated order of continuance was not previously granted. RCW 10.05.010; RCW 10.05.160.
- ~~6.7.~~ I have filed a case history and assessment with this petition as required by RCW 10.05.020.
- ~~7.~~ 8. I have the following rights: (a) to have a lawyer represent me at all hearings; (b) to have a lawyer appointed at public expense if I cannot afford one; (c) to have a speedy, public jury trial; (d) to appeal any conviction; (e) to remain silent and not testify; (f) to question witnesses who testify against me; (g) to call witnesses to testify for me, at no cost; (h) to be presumed innocent unless the charge(s) against me is (are) proved beyond a reasonable doubt; and (i) to present evidence and a defense. By deferring prosecution on these charges, I give up my right to: (a) a speedy trial; (b) a jury; (c) testimony on my

own behalf; an opportunity to (d) call and (e) question witnesses; and (f) present evidence or a defense.

- ~~8-9.~~ I agree that the facts as reported in the attached police reports are admissible evidence and are sufficient to support a conviction. I acknowledge that the above items will be used to support a finding of guilty if the deferred prosecution is revoked.
- ~~9-10.~~ If my deferred prosecution is revoked and I am found guilty, I may be sentenced up to the maximum penalty allowed by law.
- ~~10-11.~~ If I proceed to trial and I am found guilty, I may be allowed to seek suspension of some or all fines and incarceration if I seek treatment. I understand that I may seek treatment from a public or private agency at any time, whether or not I have been found guilty or placed on deferred prosecution.
- ~~11-12.~~ For some crimes, a deferred prosecution will enhance mandatory penalties for subsequent offenses committed within a ~~seven~~⁷-year period. I understand that a deferred prosecution will be a prior offense under RCW 46.61.5055 (driving under the influence, physical control of a vehicle under the influence, negligent driving if originally charged as driving under the influence or physical control of a vehicle under the influence, vehicular homicide, or vehicular assault).
- ~~12-13.~~ If the court defers prosecution on any crime that would be a violation of state law or local ordinance relating to motor vehicle traffic control, I will be disqualified from driving a commercial motor vehicle for the period specified in RCW 46.25.090 and, if I drive a commercial motor vehicle holding a license issued by Washington State, I will be required to notify the Department of Licensing and my employer of this deferred prosecution within 30 days of the judge granting this petition. RCW 46.25.030. If the court grants this Petition, I may not operate a motor vehicle on the public highways without a valid operator's license and proof of liability insurance pursuant to RCW 46.29.490. If my wrongful conduct is the result of or caused by alcohol dependency, I shall also be required to install an ignition interlock device under RCW 46.20.720. The required periods of interlock use shall be not less than the periods provided for in RCW 46.20.720, and subject to certification from the ignition interlock device vendor. RCW 46.20.720(4). I may also be required to pay restitution to victims, pay court costs, and pay probation costs authorized by law. To help ensure continued sobriety and reduce the likelihood of ~~reoffense~~re-offense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. Substance use disorder treatment programs shall require a minimum of ~~two~~² self-help recovery groups per week for the duration of the treatment program. The court may terminate the deferred prosecution program if I violate this paragraph.
14. If the court defers prosecution for any crime involving domestic violence behavior, I will be ordered not to possess firearms and I will be ordered to surrender firearms in my possession under RCW 9.41.800. The court may order me to make restitution and to pay costs under RCW 10.01.160. The court may also order reasonable conditions during the deferred prosecution to ensure continued sobriety and reduce the likelihood of re-offense in co-occurring domestic violence and substance abuse or mental health cases. These conditions include, but are not limited to, attendance at a self-help recovery support group for alcoholism or drugs, complete abstinence from alcohol and all non-prescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining

law abiding behavior. The court may terminate the deferred prosecution program if I violate the deferred prosecution order.

15. A deferred prosecution program for domestic violence behavior, or domestic violence co-occurring with substance abuse or mental health, must include, but is not limited to, the following requirements: (1) Completion of a risk assessment; (2) Participation in the level of treatment recommended by the program as outlined in the current treatment plan; (3) Compliance with the contract for treatment; (4) Participation in any ancillary or co-occurring treatments that are determined to be necessary for the successful completion of the domestic violence intervention treatment including, but not limited to, mental health or substance use treatment; (5) Domestic violence intervention treatment within the purview of this section to be completed with a state-certified domestic violence intervention treatment program; (6) Signature of the petitioner agreeing to the terms and conditions of the treatment program; (7) Proof of compliance with any active order to surrender weapons issued in this program or related civil protection orders or no-contact orders.

13:16. If the court grants this petition, during the period of deferred prosecution I will be required to contact my probation officer, the probation director or designee, or the court if there is no probation department, to request permission to travel or transfer to another state if my wrongful conduct involves: (i) an offense in which a person has incurred direct or threatened physical or psychological harm; (ii) an offense that involves the use or possession of a firearm; (iii) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol; or (iv) a sexual offense that requires me to register as a sex offender in Washington state. I understand that I will be required to pay an application fee with my travel or transfer request.

44:17. If I fail or neglect to comply with any part of my treatment plan or with any ignition interlock device requirements, then the court will hold a hearing to determine whether I should be removed from the deferred prosecution program. After the hearing, the court will either order that I continue with treatment or be removed from deferred prosecution and enter judgment. If I am convicted of a similar offense during the deferred prosecution, the court will revoke the deferred prosecution and enter judgment.

45:18. The court will dismiss the charge(s) against me in this case ~~three~~³ years from the end of the ~~two~~²-year treatment program and following proof to the court that I have complied with the conditions imposed by the court following successful completion of the ~~two~~²-year treatment program, but no less than ~~five~~⁵ years from the date the deferred prosecution is granted, if the court grants this petition and if I fully comply with all the terms of the court order placing me on deferred prosecution.

I certify under penalty of perjury under the laws of the state of Washington that I have read the foregoing and agree with all of its provisions and that all statements made are true and correct.

Dated at _____, Washington this ____ day of _____, _____.

Petitioner-Defendant

Defense Attorney/WSBA No.

**Petition for Deferred Prosecution of Criminal Mistreatment Charge
[Unchanged.]**