

Multiple Agency Fiscal Note Summary

Bill Number: 1104 HB	Title: Deferred prosecutions
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Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Licensing	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Total \$	0	0	0	0	0	0	0	0	0

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	.0	8,000	8,000	8,000	.0	0	0	0	.0	0	0	0
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Washington State Health Care Authority	Fiscal note not available											
Department of Licensing	.8	0	0	262,000	1.0	0	0	206,000	1.0	0	0	206,000
Department of Social and Health Services	Fiscal note not available											
Department of Health	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Children, Youth, and Families	.0	0	0	0	.0	0	0	0	.0	0	0	0
Total \$	0.8	8,000	8,000	270,000	1.0	0	0	206,000	1.0	0	0	206,000

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Caseload Forecast Council	.0	0	0	.0	0	0	.0	0	0
Washington State Health Care Authority	Fiscal note not available								
Department of Licensing	.0	0	0	.0	0	0	.0	0	0
Department of Social and Health Services	Fiscal note not available								
Department of Health	.0	0	0	.0	0	0	.0	0	0
Department of Children, Youth, and Families	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

Prepared by: Gaius Horton, OFM	Phone: (360) 819-3112	Date Published: Preliminary
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Judicial Impact Fiscal Note

Bill Number: 1104 HB	Title: Deferred prosecutions	Agency: 055-Administrative Office of the Courts
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

STATE	FY 2024	FY 2025	2023-25	2025-27	2027-29
State FTE Staff Years					
Account					
General Fund-State 001-1	8,000		8,000		
State Subtotal \$	8,000		8,000		
COUNTY	FY 2024	FY 2025	2023-25	2025-27	2027-29
County FTE Staff Years					
Account					
Local - Counties					
Counties Subtotal \$					
CITY	FY 2024	FY 2025	2023-25	2025-27	2027-29
City FTE Staff Years					
Account					
Local - Cities					
Cities Subtotal \$					

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: Martha Wehling	Phone: 360-786-7067	Date: 01/08/2023
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 01/11/2023
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 01/11/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/13/2023

177,864.00

Request # 012-1

Form FN (Rev 1/00)

1

Bill # 1104 HB

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

The proposed legislation changes the eligibility and requirements for deferred prosecutions. The Administrative Office of the Courts would have to update court forms to address changes made by the bill.

II. B - Cash Receipts Impact

II. C - Expenditures

Minimal Fiscal Impact. The form changes are estimated to take 80 hours and cost less than \$8,000.

Part III: Expenditure Detail

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

<i>State</i>	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
Salaries and Wages	4,600		4,600		
Employee Benefits	1,500		1,500		
Professional Service Contracts					
Goods and Other Services	200		200		
Travel	100		100		
Capital Outlays	100		100		
Inter Agency/Fund Transfers					
Grants, Benefits & Client Services					
Debt Service					
Interagency Reimbursements					
Intra-Agency Reimbursements	1,500		1,500		
Total \$	8,000		8,000		

III. B - Expenditure By Object or Purpose (County)

NONE

III. C - Expenditure By Object or Purpose (City)

NONE

III. D - FTE Detail

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Legal Services Senior Analyst	114,400	0.0		0.0		
Total FTEs		0.0		0.0		0.0

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

177,864.00

Form FN (Rev 1/00)

IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

Individual State Agency Fiscal Note

Bill Number: 1104 HB	Title: Deferred prosecutions	Agency: 101-Caseload Forecast Council
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Martha Wehling	Phone: 360-786-7067	Date: 01/08/2023
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 01/10/2023
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 01/10/2023
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 01/11/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

See attached.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

See attached.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

HB 1104

CONCERNING ELIGIBILITY AND REQUIREMENTS FOR DEFERRED PROSECUTIONS

**01 – Caseload Forecast Council
January 9, 2023**

SUMMARY

A brief description of what the measure does that has fiscal impact.

Section 1 Amends RCW 10.05.010 by changing eligibility for deferred prosecutions to allow a person who participated in a deferred prosecution for his or her first violation of RCW 46.61.502 or 46.61.504, to petition the court for a second deferred prosecution for a violation of RCW 46.61.502 or 46.61.504.

Section 16 Amends RCW 9.94A.525 to include prosecution granted under chapter 10.05 RCW for a second or subsequent violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance to count as one point in the offender score.

Section 17 States the act takes effect January 1, 2024.

EXPENDITURES

Assumptions.

None.

Impact on the Caseload Forecast Council.

None.

Impact Summary

This bill:

- Allows certain individuals to participate in a subsequent deferred prosecution program.

Impact on beds.

The provisions of the bill will not result in a lower criminal history score for individuals who are convicted of either felony Driving while under the Influence (DUI) or felony Physical Control (APC) of a Vehicle under the Influence and have a second deferred prosecution for a non-felony DUI or APC in his or her history. The bill includes a provision that a second deferred prosecution will be included the offender score, resulting in no change for individuals who are granted a deferred prosecution and are later convicted of a felony level DUI or APC.

The Caseload Forecast Council does not collect data on gross misdemeanor offenses and deferred prosecutions, and, therefore, cannot reliably estimate bed savings impacts resulting from the change in the bill to jail beds resulting from the ability for an individual to receive a 2nd deferred prosecution, rather than a conviction of a gross misdemeanor which can result in maximum confinement of 364 days.

Individual State Agency Fiscal Note

Bill Number: 1104 HB	Title: Deferred prosecutions	Agency: 240-Department of Licensing
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5	1.0	0.8	1.0	1.0
Account					
Highway Safety Account-State 106 -1	159,000	103,000	262,000	206,000	206,000
Total \$	159,000	103,000	262,000	206,000	206,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Martha Wehling	Phone: 360-786-7067	Date: 01/08/2023
Agency Preparation: Ellie Gochenouer	Phone: 360-901-0114	Date: 01/12/2023
Agency Approval: Gerrit Eades	Phone: (360)902-3863	Date: 01/12/2023
OFM Review: Kyle Siefering	Phone: (360) 995-3825	Date: 01/13/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

See attached fiscal note

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

See attached fiscal note

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

See attached fiscal note

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
106-1	Highway Safety Account	State	159,000	103,000	262,000	206,000	206,000
Total \$			159,000	103,000	262,000	206,000	206,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5	1.0	0.8	1.0	1.0
A-Salaries and Wages	23,000	47,000	70,000	94,000	94,000
B-Employee Benefits	11,000	22,000	33,000	44,000	44,000
C-Professional Service Contracts					
E-Goods and Other Services	121,000	34,000	155,000	68,000	68,000
G-Travel					
J-Capital Outlays	4,000		4,000		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	159,000	103,000	262,000	206,000	206,000

III. C - Operating FTE Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Customer Service Specialist 2	46,980	0.5	1.0	0.8	1.0	1.0
Total FTEs		0.5	1.0	0.8	1.0	1.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Agency 240 – Department of Licensing

Bill Number: HB 1104

Bill Title: Deferred Prosecutions

Part 1: Estimates

No Fiscal Impact

Estimated Cash Receipts:

INDETERMINATE, PLEASE SEE NARRATIVE

Estimated Expenditures:

		FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
FTE Staff Years		0.5	1.0	0.8	1.0	1.0
Operating Expenditures	Fund	FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
Highway Safety	106	159,000	103,000	262,000	206,000	206,000
Account Totals		159,000	103,000	262,000	206,000	206,000

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions.

- If the fiscal impact is **less than \$50,000** per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- If fiscal impact is **greater than \$50,000** per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Martha Wehling	Phone: (360) 786-7067	Date: 01/09/2023
Agency Preparation: Ellie Gochenouer	Phone: (360) 634-5082	Date: 01/11/2023
Agency Approval: Gerrit Eades	Phone: (360) 902-3931	Date:

Request #	1
Bill #	1104 HB

Part 2 – Explanation

2.A – Brief Description Of What The Measure Does That Has Fiscal Impact

The bill authorizes a person who participates in a deferred prosecution for a first-time gross misdemeanor Driving Under the Influence (DUI) or Physical Control of a Vehicle Under the Influence (PC) charge to participate in a second deferred prosecution for a subsequent gross misdemeanor DUI or PC charge, provided the person otherwise meets eligibility requirements.

Sec. 1 amends RCW 10.05.010 to say that a person charged with a misdemeanor or gross misdemeanor is not eligible for deferred prosecution unless the court makes specific findings pursuant to RCW 10.05.020. A person who participates in a deferred prosecution for a first violation of RCW 46.61.502 or 46.61.504 is eligible to petition for a second deferred prosecution if they:

- Remain eligible
- Specific findings are made pursuant to RCW 10.05.020 Requirements of petition- Rights of petitioner- Court findings
- The person has no prior out-of-state convictions defined as “prior offenses” under RCW 46.61.5055 Alcohol violators- Additional fee- Distribution

A person may petition a court for a second deferred prosecution while still under the jurisdiction of a court for the first deferred prosecution if the first deferred prosecution will be revoked before the entry of the second deferred prosecution. A person may not be on two deferred prosecutions at the same time unless they are separate offenses that were committed within seven days of each other and the person petitions to consolidate them into a single deferred prosecution. A person charged with a misdemeanor or gross misdemeanor for a violation of RCW 46.61.502 or 46.61.504 who does not participate in a deferred prosecution for their first violation remains eligible to petition the court for a deferred prosecution, but they shall not be eligible for a deferred prosecution more than once.

Sec. 7 amends RCW 10.05.060 to change the record retention period from the current ten years from the date of entry of the order granting deferred prosecution to consistent with the requirements of RCW 46.01.260 that say DOL must keep such records permanently on file.

Sec. 11 amends RCW 10.05.140 to say that a condition for granting a deferred prosecution petition for a violation of RCW 46.61.502 or 46.61.504, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator’s license and proof of liability insurance. It also changes the wording from alcohol dependency-based case or alcoholism or drugs to substance use disorder.

Sec. 15 amends RCW 10.05.170 to modify the court ordered supervision of the petitioner to require the supervisor to obtain a driving abstract every 3 months if the deferral is related to operation of a motor vehicle. It also requires the supervisor to review the petitioner’s criminal history every 90 days until the end of the deferral period and report any known violations of supervision or law to the court within five business days or as soon as practicable.

Sec. 16 amends RCW 9.9A.525 to change the offender score by adding one point for a deferred prosecution for a second or subsequent violation of RCW 46.61.502 *Driving under the influence* or an equivalent local ordinance.

New Sec. 17 adds an effective date of 01/01/2024

2.B - Cash receipts Impact

Cash receipts impacts are indeterminate. Section 1 of the bill amends RCW 10.05.010 enabling the participation in a second deferred prosecution for a subsequent gross misdemeanor DUI or PC, provided the person otherwise remains eligible while still under the jurisdiction of a court for the first deferred prosecution. Participation in a second deferred prosecution by these individuals could decrease the number of DUI hearing requests for DOL. It is not known how many individuals may be eligible and subsequently participate in a second deferred prosecution. The DUI Hearing fee is \$375 and is distributed to the Highway Safety Fund (106).

2.C – Expenditures

DOL will add one Customer Service Specialist 2 (CSS2) to manage the increased workload for processing requests for Notice of intent to seek deferred prosecution. With the ability to add an additional deferred prosecution and the anticipated increase in requests for first time admin per se, the workload would see an immediate impact after the effective date of the bill. The FTE request is for six months in FY 2024.

This bill may have an impact on DOL's Hearing Unit, however at this time the impact cannot be quantified. Any significant changes in the unit's workload will be addressed in a future budget cycle.

Information Services:

The agency will use appropriated funds to hire contract programmers to accomplish this work or to support current staff implementing this legislation within the required timeline. Appropriated funds may also be used to hire agency temporary staff to support permanent staff assigned to this legislative effort.

Any change requires a process to ensure changes are correctly applied to the system. This involves Project Managers that manage the team that completes the update, business analyst that documents and reviews the system changes, architect services that analyzes how the update could have an effect on other systems or DOL processes, developers who create the change, and testers and quality assurance teams that ensure the update is working correctly.

What DOL will implement:

1. Modify logic for when a user needs to review multiple deferred prosecutions added to the record.
2. Letter changes for changes in rules for deferred prosecution.

Support Services:

Agency Administrative Overhead is included at a rate of 23.4 percent of the direct program costs. This funding received covers agency-wide functions such as vendor payments, contract administration, financial management, mail processing, equipment management, help desk support, and technical assistance to DOL employees.

Part 3 – Expenditure Detail

3.A – Operating Budget Expenditures

Operating Expenditures	Fund	FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
Highway Safety	106	159,000	103,000	262,000	206,000	206,000
Account Totals		159,000	103,000	262,000	206,000	206,000

3.B – Expenditures by Object or Purpose

Object of Expenditure	FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
FTE Staff Years	0.5	1.0	0.8	1.0	1.0
Salaries and Wages	23,000	47,000	70,000	94,000	94,000
Employee Benefits	11,000	22,000	33,000	44,000	44,000
Goods and Services	121,000	34,000	155,000	68,000	68,000
Equipment	4,000	-	4,000	-	-
Total By Object Type	159,000	103,000	262,000	206,000	206,000

3.C – FTE Detail

Staffing	Salary	FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
Customer Service Specialist 2	46,980	0.5	1.0	0.8	1.0	1.0
Total FTE		0.5	1.0	0.8	1.0	1.0

Part 4 – Capital Budget Impact

None.

Part 5 – New Rule Making Required

None.

Individual State Agency Fiscal Note

Bill Number: 1104 HB	Title: Deferred prosecutions	Agency: 303-Department of Health
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Martha Wehling	Phone: 360-786-7067	Date: 01/08/2023
Agency Preparation: Donna Compton	Phone: 360-236-4538	Date: 01/09/2023
Agency Approval: Kristin Bettridge	Phone: 3607911657	Date: 01/09/2023
OFM Review: Breann Boggs	Phone: (360) 485-5716	Date: 01/11/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

This bill amends RCW 10.05.010 (Petition - Eligibility) to update criteria for deferred prosecution and specifies when a second deferred prosecution may be considered.

Section 12: Amends RCW 10.05.150 (Alcoholism Program Requirements) to add requirements for behavioral health agencies to conduct random urinalysis or breath analysis as a requirement of the deferred prosecution program, and a requirement for mental health counseling if the individual has a mental health co-occurring disorder.

Section 14: Adds a new section to 10.05 RCW (Deferred Prosecution – Courts of Limited Jurisdiction) requiring treatment recommended by a state-approved mental health provider if a deferred prosecution is for mental health disorder where the wrongful conduct did not involve, or was not caused by, substance use disorder.

For the purpose of this fiscal note, the Department of Health (department) expects rulemaking associated with this bill to be accomplished during previously scheduled rulemaking meetings. No fiscal impact to the department.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

None

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

None

Individual State Agency Fiscal Note

Bill Number: 1104 HB	Title: Deferred prosecutions	Agency: 307-Department of Children, Youth, and Families
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Martha Wehling	Phone: 360-786-7067	Date: 01/08/2023
Agency Preparation: Melissa Jones	Phone: (360) 688-0134	Date: 01/12/2023
Agency Approval: James Smith	Phone: 360-764-9492	Date: 01/12/2023
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 01/12/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Section 1(1) allows a person who receives a deferred prosecution for a gross misdemeanor Driving Under the Influence (DUI) or Physical Control of a Vehicle Under the Influence (PC) charge to participate in a second deferred prosecution.

Section 1(2-7) allows a person to petition for a second deferred prosecution while under the court's jurisdiction for a first deferred prosecution, but requires revocation of the first deferred prosecution.

Section 3 changes requirements for participating in a deferred prosecution depending on the nature of the petitioner's underlying problem.

Section 16(11) changes the counts for a second deferred prosecution for a DUI or PC offense to one point on a defendant's offender score for felony traffic offenses.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

No impact to Department of Children, Youth, and Families (DCYF). – currently DCYF occurs no cost for this program, thus the expansion of this program has no fiscal impact.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

None.

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 1104 HB

Title: Deferred prosecutions

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities: Indeterminate cost savings for jails
- Counties: Indeterminate cost savings for jails, prosecutors and public defenders; indeterminate, but likely de minimis expenditure impact on probation departments
- Special Districts:
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: Number of additional deferred prosecutions that may be granted; number of petitioners ordered to be supervised by probation departments

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: James Vogl	Phone: 360-480-9429	Date: 01/11/2023
Leg. Committee Contact: Martha Wehling	Phone: 360-786-7067	Date: 01/08/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 01/11/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/16/2023

Part IV: Analysis

A. SUMMARY OF BILL

Description of the bill with an emphasis on how it impacts local government.

The proposed legislation would amend several RCW sections related to eligibility and requirements for deferred prosecutions.

Section 1 would amend RCW 10.05.010, specifying that a person who petitions the court for the deferred prosecution and participates in the deferred prosecution under this chapter for their first violation of RCW 46.61.502 or 46.61.504 (DUI or physical control while intoxicated) is eligible to petition the court for a second deferred prosecution for DUI or physical control if the person remains eligible, and other specific conditions are met.

Section 1 would also add the following subsections to RCW 10.05.010:

1. A person may petition a court for a second deferred prosecution while still under the jurisdiction of a court for the person's first deferred prosecution; however, the first deferred prosecution shall be revoked prior to the entry of the second deferred prosecution.

2. A person may not be on two deferred prosecutions at the same time unless separate offenses are committed within seven days of each other and the person petitions to consolidate each offense into a single deferred prosecution.

3. A person charged with a misdemeanor or gross misdemeanor for a violation of RCW 46.61.502 or 46.61.504 who does not participate in a deferred prosecution for his or her first violation of RCW 46.61.502 or 46.61.504 remains eligible to petition the court for a deferred prosecution pursuant to the terms of this section and specific findings made under RCW 10.05.020. Such person shall not be eligible for a deferred prosecution more than once.

Section 3 would amend RCW 10.05.020, specifying that, depending on the stated cause of the wrongful conduct, petitions for deferred prosecution must contain a written assessment prepared by an approved behavioral health agency, approved for mental health services or substance use disorder services.

Section 4 would amend RCW 10.05.030, specifying that an approved behavioral health agency, approved for mental health services and/or substance use disorder services shall conduct diagnostic investigations and evaluations when necessary, depending on the details of the petition.

Section 5 would amend RCW 10.05.040, creating a definition for “amenable to treatment” that programs that petitioners are referred to for investigation and evaluation must use in the course of their assessment. Being amenable to treatment would be demonstrated by completing a specified number and type of treatment sessions.

Section 12 would amend RCW 10.05.150, updating the treatment requirements for petitioners who are granted deferred prosecutions.

Section 15 would modify the requirements a probation department must meet if supervision of a petitioner is ordered by the court, including requesting an abstract of the petitioner’s driving record twice as often as is currently required, and reviewing the petitioner’s criminal history a minimum of every 90 days.

Section 16 would amend RCW 9.94A.525, adding a provision counting one point toward the offender score of a person convicted of a felony traffic offense for a deferred prosecution granted under chapter 10.05 RCW for a second or subsequent driving or physical control while intoxicated offense.

Section 17 states that this bill would take effect on January 1, 2024.

B. SUMMARY OF EXPENDITURE IMPACTS

Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.

The proposed legislation would have an indeterminate impact on local government expenditures.

According to the Washington State Caseload Forecast Council's fiscal note for this bill, the ability of an individual to receive a second deferred prosecution for DUI or physical control could reduce the number of people convicted of gross misdemeanors for these offenses, in turn reducing demand for jail beds. It is unknown, however, how many people who would have been convicted of these offenses at the gross misdemeanor level, punishable by a confinement term of up to 364 days in jail, would be granted deferred prosecutions instead. Therefore the cost savings of any decreased demand for jail beds is also indeterminate. The 2023 Local Government Fiscal Note Program Criminal Justice Cost Model estimates that the average daily jail bed rate is \$145 per day.

Sections 5 and 12 of this bill would create some new requirements for approved behavioral health agencies, including requiring petitioners to complete a specified number and type of treatment sessions before being granted a deferred prosecution.

The Department of Health's list of approved behavioral health agencies contains mostly privately run programs, but includes some county programs, although the Administrative Office of the Courts (AOC) indicates that the approved agency a petitioner is actually referred to may vary. Furthermore, per RCW 10.05.020, petitioners are required to agree to pay the costs of diagnosis and treatment if financially able to do so, and AOC indicates that many people who are unable to pay these costs would likely be covered by Medicaid at eligible facilities. Behavioral health agencies may absorb some costs, however, if a petitioner stops paying for diagnosis or treatment per their agreement with the court.

Given those considerations, there is likely to be little to no impact on local government expenditures as a result of the provisions in sections 5 and 12 of this bill.

While the provisions of section 15 of this bill may introduce additional costs for county probation departments supervising petitioners, the new requirements would likely require little additional staff time, and per RCW 10.64.120, the court may order petitioners to pay a monthly fee to be collected by the probation department.

It is unknown how many additional petitioners may be granted deferred prosecution, then ordered to be supervised by probation departments, however, so the expenditure impact of the provisions in section 15 is indeterminate, but likely de minimis.

There may be a savings in prosecution and public defense costs as a result of this bill due to fewer DUI or physical control cases proceeding to trial. The Washington Defender Association indicates that many gross misdemeanor DUI cases currently go to trial, which can require a significant amount of attorney time from both prosecutors and defenders. The 2023 Local Government Fiscal Note Program Criminal Justice Cost Model estimates that the combined law enforcement, prosecution and public defense costs of an alcohol-related gross misdemeanor offense are approximately \$6,470.

It is unknown, however, how many people may be granted a second deferred prosecution, or how much attorney time may be saved by avoiding a trial in a particular case, so the total cost savings of fewer cases proceeding to trial as a result of the availability of a second deferred prosecution for DUI or physical control is indeterminate.

C. SUMMARY OF REVENUE IMPACTS

Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.

The proposed legislation would have no impact on local government revenues.

SOURCES:

Local government fiscal note for SHB 1817, 2022

Local Government Fiscal Note Program Criminal Justice Cost Model, 2023

Washington Defender Association

Washington State Administrative Office of the Courts
Washington State Caseload Forecast Council
Washington State Department of Health