

Multiple Agency Fiscal Note Summary

Bill Number: 5032 SB	Title: DUI lookback & sentencing
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Estimated Cash Receipts

NONE

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	0	0	0	.0	0	0	0	.0	0	0	0
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Licensing	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Health	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Corrections	Fiscal note not available											
Total \$	0.0	0	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			370,475			2,117,000			2,222,850
Local Gov. Other	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.								
Local Gov. Total			370,475			2,117,000			2,222,850

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
Department of Licensing	.0	0	0	.0	0	0	.0	0	0
Department of Health	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	Fiscal note not available								
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 2/ 3/2024
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Judicial Impact Fiscal Note

Bill Number: 5032 SB	Title: DUI lookback & sentencing	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:

NONE

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: Sarian Scott	Phone: 360-786-7729	Date: 01/29/2024
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 02/02/2024
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 02/02/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/03/2024

193,234.00

Request # 159-1

Part II: Narrative Explanation

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

The bill would create a new section under Chapter 9.94A RCW that allows driving under the influence (DUI) offenders to seek special drug offender sentence alternative considerations (DOSA-DUI), in line with current DOSA requirements and enforcement. The would also add a new definition for DOSA-DUI.

II. B - Cash Receipts Impact

None

II. C - Expenditures

The bill would have minimal fiscal impact to the Administrative Office of the Courts to modify the DUI Look Back Report and update forms.

No caseload impacts are expected on the courts.

Part III: Expenditure Detail

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

NONE

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

NONE

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

NONE

III. D - FTE Detail

NONE

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

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

193,234.00

Form FN (Rev 1/00)

None

193,234.00

Form FN (Rev 1/00)

3

Request # 159-1

Bill # 5032 SB

Individual State Agency Fiscal Note

Bill Number: 5032 SB	Title: DUI lookback & sentencing	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: Sarian Scott	Phone: 360-786-7729	Date: 01/29/2024
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 01/31/2024
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 01/31/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 01/31/2024

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.

SB 5032
EXTENDING THE FELONY DUI LOOKBACK TO 15
YEARS AND CREATING DOSA FOR DUI
101 – Caseload Forecast Council
January 30, 2024

SUMMARY

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

- Section 1 Adds a new section to chapter 9.94A RCW that establishes the Drug Offender Sentencing Alternative for Driving under the Influence (DOSA DUI). Eligibility is for DOSA DUI if the offender:
- Does not have a prior conviction under RCW 46.61.520 (Vehicular Homicide), 46.61.522 (Vehicular Assault), 46.61.502(6) (Felony DUI), or 46.61.504(6) (Felony Physical Control); and either
 - Is convicted of felony driving or physical control of a vehicle under the influence of intoxicating liquor, marijuana, or any drug under RCW 46.61.502(6)(a) or felony physical control of a vehicle 46.61.504(6)(a).
- Section 1 Additionally, states if the court determines that the offender is eligible and that the alternative sentence is appropriate, the court shall waive the imposition of a sentence within the standard range and:
- Impose a sentence equivalent to a prison-based DOSA under RCW 9.94A.662 and subject to the same requirements and restrictions in that section if the low end of the standard range is greater than 24 months (Prison DOSA DUI); or
 - Impose a sentence equivalent to a residential treatment-based alternative consistent with this section if the low end of the standard range is 24 months or less (Residential DOSA DUI).
- Section 1 Additionally states the court may order the Department to complete either a risk assessment report or a substance use disorder screening report, or both.
- Section 1 Additionally allows the court to order an examination of the offender by the Department, when considering imposing a sentence under Residential DOSA DUI and states what is required in the examination.
- Section 1 Additionally states that an offender who is eligible for Residential DOSA DUI may be sentenced as follows:
- Indeterminate term of confinement of no more than 30 days (if necessary) in a county facility in order to facilitate direct transfer to a residential substance use disorder treatment program;
 - Treatment in a residential substance use disorder treatment program for a period set by the court of up to 6 months;
 - 24 months of partial confinement consisting of 12 months of work release followed by 12 months of home detention with electronic monitoring; and
 - 12 months of community custody.
- Section 2 Amends RCW 9.94A.030 by adding a definition for “Drug Offender Sentencing Alternative for Driving under the Influence” (DOSA DUI).

- Section 3 Amends RCW 9.94A.190 by requiring confinement for sentences imposed under the Drug Offender Sentencing Alternative for Driving under the Influence to be served at a state facility, regardless of the length of confinement.
- Section 4 Amends RCW 9.94A.501 by adding the sentencing alternatives established in Section 1 to sentences in which the Department must supervise, regardless of risk.
- Section 5 Amends RCW 9.94A.505(2)(a) to include the DOSA DUI alternatives.
- Section 6 Amends RCW 9.94A.525 by making a technical correction to the scoring rules for Failure to Register as a Sex Offender.
- Section 7 Amends RCW 9.94A.633 to include the DOSA DUI alternatives.
- Section 8 Amends RCW 9.94A.6332 to include the DOSA DUI alternatives.
- Section 9 Amends RCW 9.94A.660 changing eligibility for Prison DOSA by adding the DOSA DUI to the restriction that an individual may not have received a DOSA or DOSA DUI more than once in the ten years prior to the current offense.
- Section 10 Amends RCW 9.94A.701 to include references to the DOSA DUI alternatives in the requirement for community custody ordered by the court.
- Section 11 Amends RCW 46.61.502 by replacing the 10-year lookback limit for including prior offenses for the ranked Class B felony offense of Driving Under the Influence (RCW 46.61.502(6)) with a 15-year limit (ranked at Seriousness Level IV on the Adult Felony Sentencing Grid and as a Category B+ on the Juvenile Offender Sentencing Grid).
- Section 12 Amends RCW 46.61.5055 by replacing the 10-year lookback limit for including prior offenses for the ranked Class B felony offense of Driving Under the Influence (RCW 46.61.502(6)) and the ranked Class C felony offense of Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6)) with a 15-year limit (ranked at Seriousness Level IV on the Adult Felony Sentencing Grid and as a Category B+ on the Juvenile Offender Sentencing Grid).
- Section 13 Amends RCW 46.61.504 by replacing the 10-year lookback limit for including prior offenses for the ranked Class C felony offense of Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6)) with a 15-year limit (ranked at Seriousness Level IV on the Adult Felony Sentencing Grid and as a Category B+ on the Juvenile Offender Sentencing Grid).
- Section 14 States the act take effect July 1, 2023.

EXPENDITURES

Assumptions.

The bed and supervision impacts for this bill were calculated under the following assumptions.

- CFC = Caseload Forecast Council
- AOC = Administrative Office of the Courts
- DOC = Department of Corrections
- FY = Fiscal Year
- CY = Calendar Year
- DUI = felony Driving Under the Influence
- APC = felony Actual Physical Control
- Sentences that shift from jail to prison are based AOC CY22 gross misdemeanor data for the number of sentences and days actually served in jail for DUI/APC with three prior offenses in a lifetime, and assume no changes in crime rates, filings, plea agreement practices or sentencing volumes, *etc.* (*i.e.*, there will be an identical number of sentences each year).
- CFC FY23 felony DUI/APC data used for several of the calculations listed below.
- Sentences are distributed evenly by month.

- Proposed policy sentencing scores for the proposed policy sentences are calculated from an offender score distribution, which is based on CFC FY22 felony DUI/APC data, and it is calculated by the CFC.
- Proposed policy sentences are sentenced to the midpoint of standard range.
- For jail sentences, length of stay in jail is calculated using a figure for average earned release, based on a 2001 survey of local jails by the Sentencing Guidelines Commission, the Office of Community Development and the Washington State Association of Counties.
- For prison sentences, average time spent in jail prior to transfer to the DOC is based on DOC FY23 felony DUI/APC data, and it is calculated by DOC.
- For prison sentences, length of stay in prison is calculated using a figure for average percentage of sentence served in prison, which is based on DOC FY23 release data for felony DUI/APC offenders, and it is calculated by the CFC.
- Jail bed impacts are calculated with a discount factor (jail sentences versus actual offenders).
- Prison bed impacts are calculated with a discount factor (prison sentences versus actual offenders).
- Prison and jail bed impacts are calculated with a phase-in factor that it is calculated by the CFC based on the offense date and sentencing date.
- Community supervision impacts include appropriate discount factors and phase-in factors.

Impact on the Caseload Forecast Council.

The provisions of this bill will require modifications to the Caseload Forecast Council’s adult felony sentencing database. This will require work from a contractor of an estimated 10 hours at a rate of \$125 per hour for a total cost to the Caseload Forecast Council of \$1,250.

Impact on prison and jail beds and community corrections population:

This bill creates two new sentencing alternatives for courts to consider when sentencing individuals convicted of felony driving or physical control of a vehicle under the influence of intoxicating liquor, marijuana, or any drug, and extends the time period that can be considered for the counting of prior offenses when determining the felony-level offenses of Driving Under the Influence and Physical Control of a Vehicle While Under the Influence from 10 years to 15 years.

The Caseload Forecast Council cannot reliably predict bed impacts resulting from the bill as it is unknown how often the court will waive imposition of a standard range sentence and impose either the established Prison DOSA DUI or Residential DOSA DUI in the bill, nor how many will receive a Mental Health Sentencing Alternative or Parenting Sentencing Alternative. Nor is it known how much supervision compliance credits would be awarded towards supervision terms.

However, below is information provided as to give a sense of the impacts.

Lookback Period

Counting “prior offenses” (as defined in RCW 46.61.5055(14)) for determining the classification (gross misdemeanor or felony) of driving under the influence/actual physical control offenses will now be increased to 15 years, rather than 10 years, resulting in more felony level offenses.

Prison and Jail Bed Impacts – Lookback Period:

Data below is based on Calendar Year 2022 data from the Administrative Office of the Courts.

It is estimated that extending the lookback period will result in a maximum jail bed impact of 21 beds. Additionally, the bill will result in a maximum Prison bed impact of 146 beds (approximately 16.3% female and 83.7% male), first reached at 84 months after implementation.

However, the estimates below are most likely overstated as they do not include any savings that would be achieved if any of the sentences for this additional population would serve a reduced prison sentence under Prison DOSA DUI or be diverted from prison through the Residential DOSA DUI and other alternatives.

Average Monthly Population Jail and Prison Impacts
SB 5032 DUI Lookback Period and DUI DOSA
Caseload Forecast Council
January 30, 2024

	Fiscal Year									
	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34
Jail AMP	7	19	21	21	21	21	21	21	21	21
Prison AMP (DOSA)	0	0	0	0	0	0	0	0	0	0
Prison AMP (Non-DOSA)	22	88	125	142	146	146	146	147	147	147
Prison AMP (Total)	22	88	125	142	146	146	146	147	147	147

Supervision – Lookback Period:

Individuals convicted of Felony DUI/APC offenses have 12 months of community supervision after release, regardless of their level of risk to reoffend.

The use of the Residential DOSA DUI alternative would not impact the estimates below as the community custody term is the same under the alternatives as it is following a standard range sentence (12 months).

The use of Prison DOSA DUI alternative may increase the need for community supervision because an individual is supervised for ½ the midpoint of the standard range. As the eligibility for Prison DOSA DUI is limited to those with a low end of the standard range that exceeds 24 months, ½ the midpoint of the standard range would result in a term of supervision exceeding 12 months.

In addition, in 2020, SHB 2393 passed, allowing for supervision compliance credits (RCW 9.94A.717). As eligible individuals may reduce a portion of the supervision term based on programming, the CFC is unable to calculate an estimated length of stay for community custody. The provisions of the bill do not exclude individuals convicted of felony DUI or felony Physical Control or an alternative sentence for such an offense. Therefore, the increased ADP estimate may be overstated as they do not include calculations for supervision compliance credits allowed.

Average Monthly Population Supervision Impacts
SB 5032 DUI Lookback Period and DUI DOSA
Caseload Forecast Council
January 30, 2024

	Fiscal Year									
	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34
Supervision AMP	1	33	84	106	118	122	122	122	123	123

New Alternatives – Existing Population

Under the alternatives established in the bill, the court may either impose a sentence under prison DOSA requirements (½ the midpoint of the standard range in confinement and ½ the midpoint in community custody) if the low end of the standard range exceeds 24 months; or, if the low end of the range is 24 months or less, to a residential treatment option which includes up to 6 months of treatment, 12 months of work release, 12 months of electronic home monitoring, followed by 12 months of community custody.

While the impacts of the establishing the new alternatives are unknown, it is assumed under the Prison DOSA DUI alternative, there would be reduced confinement and added community custody, resulting in prison bed reductions and increases to the Department’s community custody population. For sentences under Residential DOSA DUI there may be reductions to confinement, added electronic monitoring, and no impact to community custody as the bill requires 12 months of community custody, which is the same as currently required.

The following tables shows the number of sentences that have been imposed in FY 2019 through FY 2023 for Felony DUI and Felony Physical Control. This is provided to show the population that could be considered for the alternatives. In addition, extending the lookback period from 10 years to 15 years will result in additional sentences that could be considered for the alternatives.

Felony DUI Sentences:

Fiscal Year	Prison Sentences		Non-prison Sentences*		Total
	# of Sentences	% Prison	# of Sentences	%Non- Prison	
FY23	80	65%	43	35%	123
FY22	72	56%	57	44%	129
FY21	77	67%	38	33%	115
FY20	101	75%	33	25%	134
FY19	119	74%	42	26%	161

Felony Physical Control Sentences:

Fiscal Year	Prison Sentences		Non-prison Sentences*		Total
	# of Sentences	% Prison	# of Sentences	%Non- Prison	
FY23	4	67%	2	33%	6
FY22	2	33%	4	67%	6
FY21	1	50%	1	50%	2
FY20	5	83%	1	17%	6
FY19	4	100%	0	0%	4

*Non-prison sentences may be a result of an alternative sentence, a mitigated exceptional sentence, or other factor.

Juvenile Impact.

There is no juvenile impact, as there has not been a case of felony DUI/APC.

Individual State Agency Fiscal Note

Bill Number: 5032 SB	Title: DUI lookback & sentencing	Agency: 240-Department of Licensing
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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: Sarian Scott	Phone: 360-786-7729	Date: 01/29/2024
Agency Preparation: Don Arlow	Phone: (360) 902-3736	Date: 01/29/2024
Agency Approval: Collin Ashley	Phone: (564) 669-9190	Date: 01/29/2024
OFM Review: Kyle Siefering	Phone: (360) 995-3825	Date: 01/31/2024

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 current impaired driving statutes to change the look back period to 15 years for certain class B and class C felonies for three or more prior impaired driving offenses. The bill also creates a new Drug Offender Sentencing Alternative (DOSA) for eligible individuals convicted of felony impaired driving offenses.

This bill is not expected to have an impact on operational or information systems expenditures for the Department of Licensing. The bill may increase penalties for some persons, but it is not expected to increase the volume of impaired driving arrests that could lead to a department hearing. Call center impact is expected to be minimal and could be managed within existing resources.

There are no cash receipts associated with implementation of this bill. Any increased monetary penalties for persons subject to the provisions of this bill will be collected by the courts.

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.

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.

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.

Individual State Agency Fiscal Note

Bill Number: 5032 SB	Title: DUI lookback & sentencing	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: Sarian Scott	Phone: 360-786-7729	Date: 01/29/2024
Agency Preparation: Donna Compton	Phone: 360-236-4538	Date: 01/31/2024
Agency Approval: Kristin Bettridge	Phone: 3607911657	Date: 01/31/2024
OFM Review: Breann Boggs	Phone: (360) 485-5716	Date: 01/31/2024

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 adds a new section to chapter 9.94A RCW (Sentencing Reform Act of 1981) creating a drug offender sentencing alternative for driving under the influence and outlines an offender's eligibility requirements. Additionally, this bill directs the Department of Health (department) to establish rules, considering criteria established by the American Society of Addiction Medicine, for treatment provided in a residential substance use disorder treatment facility. The department currently has rules established that would be used to implement this bill, therefore no fiscal impact.

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.

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.

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.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5032 SB

Title: DUI lookback & sentencing

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

Legislation Impacts:

- Cities: Indeterminate increased law enforcement costs as a result of processing additional felony-level DUI and physical control of vehicle cases.
- Counties: \$4,710,325 in jail expenditures through fiscal year 2029 as a result of new sentencing alternative, increased lookback period; indeterminate expenditure impact on prosecutors and public defenders from processing DOSA DUI cases and potential increase in accepted pleas; indeterminate expenditure impact on behavioral health administrative service organizations as result of potential sentences of involuntary treatment at secure detox level; indeterminate increased law enforcement, prosecution and public defense expenditures as a result of increased lookback period.
- 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: Change in demand for jail beds; number of DOSA sentences handed down in felony DUI/physical control cases; number of potential involuntary treatment sentences

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Jurisdiction	FY 2024	FY 2025	2023-25	2025-27	2027-29
County		370,475	370,475	2,117,000	2,222,850
TOTAL \$		370,475	370,475	2,117,000	2,222,850
GRAND TOTAL \$					4,710,325

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: James Vogl	Phone: 360-480-9429	Date: 02/02/2024
Leg. Committee Contact: Sarian Scott	Phone: 360-786-7729	Date: 01/29/2024
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 02/02/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/03/2024

Part IV: Analysis

A. SUMMARY OF BILL

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

The proposed legislation would provide a drug offender sentencing alternative for offenders convicted of felony driving or control of a vehicle while under the influence and increase the lookback period for felony DUI or physical control from 10 to 15 years.

Section 1 would add a new section to chapter 9.94A RCW, establishing the drug offender sentencing alternative for driving under the influence (DOSA DUI). Offenders would be eligible for DOSA DUI if they have no prior convictions for vehicular homicide, vehicular assault, felony DUI, or felony physical control while intoxicated, and are convicted of felony DUI or physical control.

If the sentencing court was to determine that the offender is eligible for DOSA DUI and the alternative sentence is appropriate, the court would waive the imposition of a sentence in the standard range and impose a sentence equivalent to a prison-based alternative (RCW 9.94A.662) if the low end of the standard sentence range is greater than 24 months. If the low end of the standard sentence range is 24 months or less, the court would impose a sentence consisting of a residential treatment-based alternative.

Subsection 1 (5) provides sentencing details for offenders eligible for a residential treatment-based alternative, who shall be sentenced as follows:

- (a) If necessary, an indeterminate term of confinement of no more than 30 days in a facility operated, licensed, or utilized under contract, by the county in order to facilitate direct transfer to a residential substance use disorder treatment facility.
- (b) Treatment in a residential substance use disorder treatment program for a period set by the court up to six months;
- (c) Twenty-four months of partial confinement to consist of 12 months of work release followed by 12 months of home detention with electronic monitoring; and
- (d) Twelve months of community custody.

Section 3 of this bill would amend RCW 9.94A.190, adding the requirement that a confinement term resulting from a sentence imposed under DOSA DUI which has a standard sentence range of over one year, regardless of length, shall be served in a state facility.

Section 11 would amend RCW 46.61.502, increasing the lookback period for counting prior DUI convictions towards a DUI conviction at the felony level from 10 to 15 years.

Section 12 would amend RCW 46.61.5055, updating the penalties for driving or control of a vehicle while under the influence to include the increased lookback period of 15 years.

Section 13 would amend RCW 46.61.504, increasing the lookback period for counting prior physical control of a vehicle while under the influence convictions towards a conviction for this offense at the felony level from 10 to 15 years.

Section 14 would specify that the bill would take effect on July 1, 2023.

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.

For the assumptions used to create the average daily population (ADP) data used in this note's calculation, please refer to the fiscal note completed by the Washington State Caseload Forecast Council (CFC) for this bill.

Increasing the lookback period for felony DUI and physical control offenses would increase the number of convictions for these offenses, leading to an increased need for jail beds in terms of ADP. The 2024 Local Government Fiscal Note

Program Criminal Justice Cost Model estimates that the average daily cost for a jail bed is \$145. Given the increased jail ADP estimates provided by CFC, the local government expenditures due to increasing the lookback period for felony DUI and physical control convictions are estimated to be \$4,710,325 through fiscal year 2029.

Fiscal year 2025:

7 ADP Increase X 365 days X \$145 average daily bed rate = \$370,475

Fiscal year 2026:

19 ADP Increase X 365 days X \$145 average daily bed rate = \$1,005,575

Fiscal year 2027:

21 ADP Increase X 365 days X \$145 average daily bed rate = \$1,111,425

Fiscal year 2028:

21 ADP Increase X 365 days X \$145 average daily bed rate = \$1,111,425

Fiscal year 2029:

21 ADP Increase X 365 days X \$145 average daily bed rate = \$1,111,425

Total:

$\$370,475 + \$1,005,575 + (\$1,111,425 \times 3 \text{ years}) = \$4,710,325$

Per the CFC fiscal note for this bill, however, these cost estimates for additional jail beds do not account for any bed impacts that may result from a drug offender sentencing alternative for felony driving or physical control of a vehicle while under the influence, since it is unknown how many people might be sentenced under DOSA DUI. As noted below, if some people who would have received non-prison sentences are instead sentenced under DOSA DUI, local jurisdictions may see a reduction in the demand for jail beds, so the potential ADP impacts detailed here may overestimate the costs of increasing the lookback period for felony driving or physical control while under the influence.

According to the 2024 Local Government Fiscal Note Program Criminal Justice Cost Model, the law enforcement, prosecution and defense costs related to processing a gross misdemeanor DUI can often be similar to those related to processing felonies, so there would not necessarily be cost increases from increasing the number of felony DUI and physical control offenses. It is unknown, however, how many such incidents may occur or what the costs in a given case may be, so impacts to law enforcement, prosecution and defense costs are indeterminate.

The creation of a drug offender sentencing alternative for people convicted of felony-level driving or physical control while under the influence would have indeterminate impacts on local government expenditures. These impacts, however, have the potential to affect a wide range of local government entities.

According to the 2023 Washington State Adult Sentencing Guidelines Manual, the minimum sentence for someone convicted of felony DUI or physical control who meets the requirements for DOSA DUI is 13 months, a confinement term required by statute to be served in a state facility. In combination with the requirement laid out in section 3 of the proposed bill, these sentencing guidelines suggest that all people sentenced under DOSA DUI would be in the custody of the Department of Corrections.

However, the CFC fiscal note for this bill identifies that 35% of felony DUI sentences and 33% of felony physical control sentences were served in jails in fiscal year 2023. These non-prison sentences may be the result of an alternative sentence, a mitigated exceptional sentence, or other factor. If some people who would have received non-prison

sentences are instead sentenced under DOSA DUI, local jurisdictions may see a reduction in the number of people occupying jail beds while serving sentences for felony DUI or physical control, and an associated cost savings.

It is unknown, however, how many people may be sentenced under DOSA DUI as opposed to receiving a non-prison sentence. The 2024 Local Government Fiscal Note Program Criminal Justice Cost Model estimates the average daily cost of a jail bed is \$145.

Both the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Defender Association (WDA) anticipate no additional costs for prosecutors and public defenders to process a DOSA DUI compared to a felony DUI case. WAPA indicates, however that there may be additional costs incurred if a case has follow-up issues or if a person fails to comply with the terms of their sentence.

WDA indicates that there may be cost savings from having a sentencing alternative, as people are more likely to accept a plea when they have such an alternative, eliminating the labor hours required of prosecutors and public defenders to take a case to trial. It is unknown, however, how many people may accept a plea as a result of an available sentencing alternative who would have otherwise decided to go to trial, or how many people may fail to comply with the terms of their DOSA DUI sentence, so any cost impacts resulting from these factors are indeterminate.

The Thurston Mason Behavioral Health Administrative Service Organization (TMBH-ASO) and the King County Behavioral Health and Recovery Division indicate that the sentencing option detailed in subsection 1 (5) (a) of this bill may result in people being sentenced to involuntary treatment at the secure detox level, which would result in increased costs for behavioral health administrative services organizations (BH-ASOs). Some of these administrative service organizations are run by counties or associations of counties, and others are privately operated.

BH-ASOs are required to reimburse Involuntary Treatment Act (ITA) courts for the costs of each filing, which average around \$1,600 per filing, according to TMBH-ASO. In addition, a bed at the secure detox level of care costs BH-ASOs \$663 per day. It is unknown, however, how many people may be sentenced to this option under DOSA DUI or if such sentences may involve ITA courts, so the fiscal impact to BH-ASOs 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:

King County Behavioral Health and Recovery Division

Local government fiscal note for ESB 5054, 2022

Local government fiscal note for SSB 5573, 2022

Local government fiscal note for SB 5032, 2023

Local Government Fiscal Note Program Criminal Justice Cost Model, 2024

Thurston Mason Behavioral Health Administrative Service Organization

Washington Adult Sentencing Guidelines Manual, 2023

Washington Association of Prosecuting Attorneys

Washington Defender Association

Washington State Caseload Forecast Council