

Multiple Agency Fiscal Note Summary

Bill Number: 5032 E SB	Title: Impaired driving
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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

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts	Fiscal note not available					
Loc School dist-SPI						
Local Gov. Other	Fiscal note not available					
Local Gov. Total						

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	Fiscal note not available											
Caseload Forecast Council	.0	1,250	1,250	1,250	.0	0	0	0	.0	0	0	0
Department of Licensing	.0	0	0	294,000	.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	1,250	1,250	295,250	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	Fiscal note not available								
Loc School dist-SPI									
Local Gov. Other	Fiscal note not available								
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	Fiscal note not available								
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	Fiscal note not available								
Loc School dist-SPI									
Local Gov. Other	Fiscal note not available								
Local Gov. Total									

Estimated Capital Budget Breakout

NONE

Prepared by: Gaius Horton, OFM	Phone: (360) 819-3112	Date Published: Preliminary 2/ 9/2024
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Individual State Agency Fiscal Note

Bill Number: 5032 E SB	Title: Impaired driving	Agency: 101-Caseload Forecast Council
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
Account					
General Fund-State 001-1	1,250	0	1,250	0	0
Total \$	1,250	0	1,250	0	0

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: Ryan Giannini	Phone: 3607867285	Date: 02/02/2024
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 02/07/2024
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 02/07/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 02/08/2024

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.

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

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	1,250	0	1,250	0	0
Total \$			1,250	0	1,250	0	0

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts	1,250		1,250		
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	1,250	0	1,250	0	0

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.

ESB 5032
CONCERNING IMPAIRED DRIVING
101 – Caseload Forecast Council
February 5, 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 (DUI) or actual physical control (APC) 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). Additionally, amends the definition for “Serious Traffic Offense” by adding certain offenses of negligent driving and reckless endangerment.

- 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 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. Also makes 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 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 the person's next violation of RCW 46.61.502 or 46.61.504 when the person has no other prior conviction defined as "prior offense" under RCW 46.61.5055. The person's first deferred prosecution shall not be considered as a prior offense for the purpose of granting a second deferred prosecution.
- Section 30 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 31 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 32 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 33 States if any provision of the act is held invalid, the remainder of the act is not affected.

Section 34 States the act take effect January 1, 2025.

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 of January 1, 2025.
- 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 Summary

This bill:

- Expands the definition of serious traffic offense (negligent and reckless driving);
- Creates a DUI DOSA sentencing alternative (Sentencing Alternative);
- Extends the lookback period for felony DUI and APC from 10 years to 15 years (lookback); and
- Allows certain individuals charged with non-felony Driving while under the Influence or non-felony Physical Control of a Vehicle to participate in a subsequent deferred prosecution program (deferred prosecution).

Impact on prison and jail beds and community corrections population:

Sentencing Alternatives

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.

The CFC 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.

Negligent & Reckless Driving

Scoring rules (RCW 9.94A.525(11)) for current convictions of felony traffic offenses include scoring for non-felony offenses defined as a serious traffic offense. By expanding what is considered a serious traffic offense, individuals with prior convictions for the offenses added under the provision of the bill will have an increased offender score, with one point added for each prior conviction. Higher offender scores are likely to result in longer terms of confinement.

The CFC has no information concerning how many of the sentences for felony traffic offenses have a prior conviction for one or more of the offenses added to the offender score. As such, cannot reliably estimate bed impacts resulting from these provisions of the bill. Offenses defined as a felony traffic offense range from Seriousness Level I to Seriousness Level XI. As such, any impact should manifest itself as an increased need for jail beds and an increased need for prison beds.

In addition, higher offender scores could result in a shift for individuals with a presumptive jail sentence to a presumptive prison sentence, resulting in a decreased need for jail beds and an increased need for prison beds.

Deferred Prosecution

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. Under the provisions of the bill, it is assumed a deferred prosecution for a juvenile non-felony DUI or APC would score as one point.

The CFC 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.

Lookback Period

Based on other provisions of the bill, the CFC is unable to provide determinate impacts for ESB 5032. Below is information provided as to give a sense of the impacts of extending the Lookback period to 15 years:

This bill 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.

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 147 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 or for potential increased offender scores based on the inclusion of Negligent & Reckless Driving offenses.

**Average Monthly Population Jail and Prison Impacts
ESB 5032 DUI Lookback Period and DUI DOSA
Caseload Forecast Council
February 1, 2024**

	Fiscal Year									
	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34
Jail AMP	1	15	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)	3	56	111	135	145	146	146	147	147	147
Prison AMP (Total)	3	56	111	135	145	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
ESB 5032 DUI Lookback Period and DUI DOSA
Caseload Forecast Council
February 5, 2024

	Fiscal Year									
	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34
Supervision AMP	0	10	61	97	113	121	122	122	123	123

Supervision: 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.

Lookback Period

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

Sentencing Alternatives

No juvenile impact.

Negligent & Reckless Driving

There may also be an additional increased need for Juvenile Rehabilitation (JR) beds. Current statutes require individuals sentenced in adult court for an offense committed before the age of 18 to serve to their confinement at a JR facility until age 25, or until release if occurring prior to age 25. For anyone committing an offense while under the age of 18 and sentenced as an adult for a felony traffic offense who has a prior conviction for a specified Negligent Driving or Reckless Endangerment offense may serve a longer sentence under the provisions of the bill. As less than 1% of all sentences in the adult system are committed by those less than age 18, it assumed any impacts to JR would be minimal.

Deferred Prosecution

The CFC 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 local detention 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: 5032 E SB	Title: Impaired driving	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
Account					
Highway Safety Account-State 106 -1	0	294,000	294,000	0	0
Total \$	0	294,000	294,000	0	0

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: Ryan Giannini	Phone: 3607867285	Date: 02/02/2024
Agency Preparation: Don Arlow	Phone: (360) 902-3736	Date: 02/07/2024
Agency Approval: Collin Ashley	Phone: (564) 669-9190	Date: 02/07/2024
OFM Review: Kyle Siefering	Phone: (360) 995-3825	Date: 02/08/2024

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.

Differences between SB 5032 and ESB 5032: ESB 5032 modifies provisions for deferred prosecutions. These changes will require information technology systems programming. In addition, ESB 5032 will have state revenue impacts that are indeterminate for this fiscal note. A revenue scenario is provided for illustrative purposes.

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. In addition, the engrossed bill modifies provisions related to certain gross misdemeanor offenses, and amends the definition of serious traffic offense.

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.

Please 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.

Please 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	0	294,000	294,000	0	0
Total \$			0	294,000	294,000	0	0

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts					
E-Goods and Other Services		294,000	294,000		
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	0	294,000	294,000	0	0

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

Agency 240 – Department of Licensing

Bill Number: ESB 5032

Bill Title: Impaired driving

Part 1: Estimates

No Fiscal Impact

Estimated Cash Receipts:

INDETERMINATE; PLEASE SEE NARRATIVE

Estimated Expenditures:

Operating Expenditures	Fund	FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
Highway Safety	106	-	294,000	294,000	-	-
Account Totals		-	294,000	294,000	-	-

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: Ryan Giannini	Phone: (360) 786-7285	Date: 2/2/2024
Agency Preparation: Don Arlow	Phone: (360) 902-3736	Date: 2/7/2024
Agency Approval: Collin Ashley	Phone: (360) 634-5384	Date: 2/7/2024

Request #	1
Bill #	5032 ESB

Part 2 – Explanation

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. In addition, the engrossed bill modifies provisions related to certain gross misdemeanor offenses, and amends the definition of serious traffic offense.

Differences between SB 5032 and ESB 5032: ESB 5032 modifies provisions for deferred prosecutions. These changes will require information technology systems programming. In addition, ESB 5032 will have state revenue impacts that are indeterminate for this fiscal note. A revenue scenario is provided for illustrative purposes.

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

Section 11 amends RCW 10.05.010 to stipulate that a person charged with a misdemeanor or gross misdemeanor must not be eligible for deferred prosecution unless the court makes specific findings pursuant to RCW 10.05.020. In addition, this section:

- Permits a person charged with a violation of RCW 46.61.502 or RCW 46.61.504 and who participates in a deferred prosecution to petition the court to participate in a second deferred prosecution if the person has no other prior convictions defined as prior offenses, or while under the court's jurisdiction for a first deferred prosecution if the first deferred prosecution is revoked.
- Clarifies a person's first deferred prosecution is not considered a prior offense for purposes of granting a second deferred prosecution.
- Allows 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. A person is not eligible for a deferred prosecution more than once.
- Stipulates that 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 these offenses into one deferred prosecution.

Section 21 amends RCW 10.05.140 for technical clean-up and clarifies that a person in deferred prosecution for violation of RCW 46.61.502 or 46.61.504 must not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance.

Section 26 amends RCW 46.20.355 to stipulate that upon receipt of abstract indicating deferred prosecution or notice of conviction under RCW 46.61.502 or 46.61.504, the department must issue notice that a person must apply for a probationary license 45 days after receipt.

Section 27 amends RCW 46.20.385 that a person whose license is suspended, revoked, or denied under RCW 46.61.5055(11)(c) – Violation of condition of probation - may submit an application for an ignition interlock driver's license.

Section 28 amends RCW 46.20.720 to clarify that for purposes of determining a period of restriction for a person restricted pursuant to a conviction under (d) of this subsection, a restriction based on a

deferred prosecution under subsection (1)(c) of this section arising out of the same incident is not considered a prior restriction for purposes of this subsection. In addition. This section:

- Additionally, enables drivers restricted under this section with incidents and restriction start dates prior to June 9, 2016 to apply to waive the restriction by applying for a determination from the department that the person is unable to operate an ignition interlock device due to a physical disability.
- Clarifies that the employer exemption does not apply to a person who is self-employed unless the person's vehicle is used exclusively for the person's employment.

Section 31 amends RCW 46.61.5055 by modifying Conditions for Probation to allow a person to apply for an ignition interlock driver’s license under RCW 46.20.385 during the period of suspension. This section adds that for each incident involving a violation of RCW 30 46.20.342(1)(c), the court has discretion not to impose a suspension when the person provides the court with proof that the violation has been cured within 30 days. The court is not required to notify the department of the violation unless it is not cured within 30 days.

Section 33 states that if any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 34 establishes an effective date of January 1, 2025.

2.B - Cash receipts Impact

Cash receipts impacts are indeterminate but not expected to be significant. The bill updates process as it relates to notification and the issuance of driver probationary licenses. There are no anticipated changes to revenue or workload for probationary licenses. However, the bill expands the potential for restricted licenses. The impact is not known but is not anticipated to result in many new restricted license applications overall. For demonstration purposes only a scenario estimate of 10 additional restricted license applications per month based on the November 2022 forecast is provided below.

FY	RL Applications Nov-2023 Fcst	RL Revenue 106-02-54-000005 Nov-2023 Fcst	Probation Violations (PV) Estimate	Probation Violations (PV) w Proposed Leg Est	RL Applications w Proposed Leg Est	RL Revenue 106-02-54-000005 w Proposed Leg Est	Proposed Leg Revenue Scenario Impact @10 per Mo
FY 2025	8,651	\$865,100	684	744	8,711	\$871,100	\$6,000
FY 2026	9,158	\$915,800	727	847	9,278	\$927,800	\$12,000
FY 2027	9,322	\$932,200	739	859	9,442	\$944,200	\$12,000
FY 2028	9,680	\$968,000	766	886	9,800	\$980,000	\$12,000
FY 2029	9,719	\$971,900	770	890	9,839	\$983,900	\$12,000

Components of the bill enable 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

This bill will have an impact on the Driver and Vehicle Records unit, due to the ability to add an additional deferred prosecution. This bill may also have an impact on DOL's Hearing unit, however at this time the impacts to these units cannot be quantified. Workloads are expected to be manageable within existing appropriated resources. Any significant changes in the department's workload will be monitored and 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.

1. Modify system to no longer take immediate withdrawal action when deferred prosecution is added, change to 45 days to get a probationary license.
2. Modify system to allow new system code to be issued for an ignition interlock license only, changes the restricted license to allow mandatory court probation.
3. Modify system to no longer count ignition interlock driver's restrictions as priors on a deferred prosecution when a violation of deferred prosecution is received.
 - o Allow submission of medical waivers no matter the incident.
4. Modify system to no longer allow an employer exemption for self-employed drivers.
5. Modify system to provide an assessment abstract driving record (ADR) to display a full driving record and show more than 10 years of alcohol related offenses. Includes, that the ADR will display limit a full lifetime record.
6. Modify system to allow a check box for "no valid license" when courts report violation of probation.
7. New logic to give a driver 30 days to obtain license or the department will suspend.
8. Letter updates:
 - a. Modify letter for the 45 days to get a probationary license.
 - b. New letter for 30 days to obtain that license or the department will suspend license.
 - c. Letter changes for change in rules for deferred prosecution.
9. Modify logic for when a user needs to review multiple deferred prosecutions added to the record.
10. Change online system used by courts to require the first deferred prosecutions to be revoked, not dismissed.

Cost Category	Description	Rate	2024	2025	2026	2027	2028	2029	Total Cost
TESTER	Test to verify individual components meet requirements; ensure that other business transactions have not been impacted.	\$ 27,144	-	81,400	-	-	-	-	81,400
BUSINESS ANALYST	Determine business requirements; translate requirements into what changes are needed to various systems including account codes, inventory codes, testing considerations, etc.	\$ 19,836	-	15,900	-	-	-	-	15,900
PROJECT MANAGER	Manage schedule and contracts	\$ 34,452	-	20,700	-	-	-	-	20,700
SECURITY AND ARCHITECT SERVICES	Create the conceptual model that defines the structure, behavior and framework of a computerized system including a breakdown of the system into components, the component interactions and interfaces (including with the environment, especially the user), and the technologies and resources to be used in the design.	\$ 19,836	-	7,900	-	-	-	-	7,900
CONTRACTED FAST DEVELOPER / TESTER	Updates to the DRIVES system will require additional vendor hours outside of the contracted maintenance to make system updates to implement this bill.	\$ 37,236	-	119,200	-	-	-	-	119,200
Trainer	Trains business partners and employees in new system processes and capabilities.	\$ 27,144	-	21,700	-	-	-	-	21,700
Project Contingency	Office of the Chief Information Officer designated rate of 10%	\$ 29,824	-	26,700	-	-	-	-	26,700
Totals			-	293,500	-	-	-	-	293,500

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	-	294,000	294,000	-	-
Account Totals		-	294,000	294,000	-	-

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	0.0	0.0	0.0	0.0	0.0
Goods and Services	-	294,000	294,000	-	-
Total By Object Type		-	294,000	294,000	-

3.C – FTE Detail

None.

Part 4 – Capital Budget Impact

None.

Part 5 – New Rule Making Required

None.

Individual State Agency Fiscal Note

Bill Number: 5032 E SB	Title: Impaired driving	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: Ryan Giannini	Phone: 3607867285	Date: 02/02/2024
Agency Preparation: Donna Compton	Phone: 360-236-4538	Date: 02/06/2024
Agency Approval: Kristin Bettridge	Phone: 3607911657	Date: 02/06/2024
OFM Review: Breann Boggs	Phone: (360) 485-5716	Date: 02/07/2024

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.

The fiscal impact has not changed from the previous fiscal note on Senate Bill 5032. This engrossed bill removes any reference to the department of health (department) and required rulemaking, therefore no fiscal impact to the department.

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.

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.