

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 5032 E SB	<b>Title:</b> 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.								
<b>Total \$</b>	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	Non-zero but indeterminate cost and/or savings. Please see discussion.											
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	.0	56,000	56,000	56,000	1.1	1,572,000	1,572,000	1,572,000	6.2	3,574,000	3,574,000	3,574,000
Department of Corrections	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
<b>Total \$</b>	0.0	57,250	57,250	351,250	1.1	1,572,000	1,572,000	1,572,000	6.2	3,574,000	3,574,000	3,574,000

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
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
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	.0	0	0	.0	0	0	.0	0	0
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>

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

<b>Prepared by:</b> Gaius Horton, OFM	<b>Phone:</b> (360) 819-3112	<b>Date Published:</b> Final 2/26/2024
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# Judicial Impact Fiscal Note

<b>Bill Number:</b> 5032 E SB	<b>Title:</b> Impaired driving	<b>Agency:</b> 055-Administrative Office of the Courts
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## Part I: Estimates

No Fiscal Impact

### Estimated Cash Receipts to:

NONE

### Estimated Expenditures from:

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

### 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: Ryan Giannini	Phone: 3607867285	Date: 02/02/2024
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 02/26/2024
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 02/26/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/26/2024

194,202.00

Form FN (Rev 1/00)

1

Request # 184-1

Bill # 5032 E SB

## Part II: Narrative Explanation

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

The engrossed bill would have the same, minimal impact as the original version.

It 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). The bill would also add a new definition for DOSA-DUI and extend the look back period for felony DUI from 10 years to 15 Years.

### 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, court education, and bench books.

Indeterminate, but likely minimal increase in court time and case filings.

## Part III: Expenditure Detail

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

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

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

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

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

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

### 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

194,202.00

Form FN (Rev 1/00)

**IV. C - Capital Budget Breakout**

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

NONE

None

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5032 E SB	<b>Title:</b> Impaired driving	<b>Agency:</b> 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
<b>Account</b>					
General Fund-State 001-1	1,250	0	1,250	0	0
<b>Total \$</b>	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
<b>Total \$</b>			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-					
<b>Total \$</b>	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 2<sup>nd</sup> 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
<b>Jail AMP</b>	1	15	21	21	21	21	21	21	21	21
<b>Prison AMP (DOSA)</b>	0	0	0	0	0	0	0	0	0	0
<b>Prison AMP (Non-DOSA)</b>	3	56	111	135	145	146	146	147	147	147
<b>Prison AMP (Total)</b>	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 2<sup>nd</sup> deferred prosecution, rather than a conviction of a gross misdemeanor which can result in maximum confinement of 364 days.

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5032 E SB	<b>Title:</b> Impaired driving	<b>Agency:</b> 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
<b>Account</b>					
Highway Safety Account-State 106 -1	0	294,000	294,000	0	0
<b>Total \$</b>	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
<b>Total \$</b>			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-					
<b>Total \$</b>	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	-	-
<b>Account Totals</b>		-	<b>294,000</b>	<b>294,000</b>	-	-

*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
<b>Totals</b>			-	<b>293,500</b>	-	-	-	-	<b>293,500</b>

### 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	-	-
<b>Account Totals</b>		-	<b>294,000</b>	<b>294,000</b>	-	-

#### 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	-	-
<b>Total By Object Type</b>		-	<b>294,000</b>	<b>294,000</b>	-

#### 3.C – FTE Detail

None.

### Part 4 – Capital Budget Impact

None.

### Part 5 – New Rule Making Required

None.





# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5032 E SB	<b>Title:</b> Impaired driving	<b>Agency:</b> 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.*

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5032 E SB	<b>Title:</b> Impaired driving	<b>Agency:</b> 310-Department of Corrections
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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
FTE Staff Years	0.0	0.0	0.0	1.1	6.2
<b>Account</b>					
General Fund-State 001-1	0	56,000	56,000	1,572,000	3,574,000
<b>Total \$</b>	0	56,000	56,000	1,572,000	3,574,000

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

### 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:

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- 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: Malika Feroz-Ali	Phone: (360) 725-8428	Date: 02/13/2024
Agency Approval: Michael Steenhout	Phone: (360) 789-0480	Date: 02/13/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 02/13/2024

## 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.*

Changes to ESB 5032 as compared to the original bill, includes expanding the definition of serious traffic offense to include nonfelony physical control while under the influence, negligent driving, and reckless driving. It also authorizes a second deferred prosecution for driving under the influence (DUI) or actual physical control of a vehicle under the influence (PC) charges under specific conditions, counting as one point on the offender score. Additionally, the bill adjusts requirements for deferred prosecution based on the petitioner's underlying problem.

The bill amends the following sections and adds new sections, 30, 31, 32 and 34, while maintaining the intent of the original bill.

Section 2 amends RCW 9.94A.030 by adding a definition for "Drug Offender Sentencing Alternative for Driving under the Influence" (DOSA DUI).

Section 2(46) amends the definition for "Serious Traffic Offense" by adding certain offenses of negligent driving and reckless endangerment.

Section 2(46)(a)(iv) states negligent driving in the first degree includes operation of a motor vehicle negligently and that endangers any person or property. The person must exhibit the effects of consuming liquor or drugs. Negligent driving is a misdemeanor.

Section 2(46)(a)(v) states that reckless endangerment is conduct that creates a substantial risk of death or serious physical injury to another person. It is a gross misdemeanor.

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 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.

Section 11(7) states that 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 that if any provision of the act is held invalid, the remainder of the act is not affected.

Section 34 states that the act take effect January 1, 2025.

## 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.*

The fiscal impact of this bill is indeterminate, assumed to be greater than \$50,000 per Fiscal Year (FY).

### 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.

### 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.

#### PRISON IMPACTS

The following are estimated annual impacts for prisons and healthcare direct variable cost (DVC) for ADP impacts below 100 beds and above:

FY2025: 3 ADP X \$7,630 DVC = \$23,000;

FY2026: 56 ADP X \$7,630 DVC = \$427,000;

FY2027: 111 ADP X \$7,630 DVC = \$847,000;

FY2028: 135 ADP X \$7,630 DVC = \$1,030,000; and

FY2029: 145 ADP X \$7,630 DVC = \$1,106,000;

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.

#### COMMUNITY SUPERVISION IMPACTS

Total fiscal impact by FY for this proposed legislation for all community ADP impacts is as follows:

FY2026: 10 ADP, at a cost of \$2,000 and 0.0 FTEs;

FY2027: 61 ADP, at a cost of \$253,000 and 2.0 FTEs;

FY2028: 97 ADP, at a cost of \$561,000 and 5.0 FTEs;

FY2029: 113 ADP, at a cost of \$687,000 and 6.0 FTEs;

#### 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.

#### INFORMATION TECHNOLOGY IMPACTS

Customization of the Offender Management Network Information (OMNI) system is needed to meet the requirements of this legislation. The proposed legislation would require a new Finding Type or repurpose of existing Finding Types in Sentence Information, update to Juvenile Offender Information section of the General Status screen, and update to any policy that references Juvenile Board individuals. Due to the complexity of completing the development, testing, and implementation of the statutory changes, contracted services are necessary in FY2025.

#### FY2025 IT Expense

IT Application Development | \$185 per hour x 80 hours = \$14,800

IT Quality Assurance | \$185 per hour x 40 hours = \$7,400

IT Business Analyst | \$185 per hour x 60 hours = \$11,100

Total One-Time Costs in FY2025 = \$33,000 (Rounded to the nearest thousand)

The DOC requests funding for the indirect costs of agency administration (FY2027 0.2 FTE’s and \$28,000, FY2028 0.6 FTE’s and \$68,000, and FY2029 0.7 and \$84,000) and requests funding for interagency costs of (FY2027 \$15,000, FY2028 \$25,000 and FY2029 \$14,000), for the purpose of implementing this legislation. The approved agency indirect rate and associated cost of administration are calculated based on the salaries and benefits of staff conducting back office administrative functions, divided by all remaining salaries and benefits.

#### AGENCYWIDE TOTAL IMPACT

Total fiscal impact of this proposed legislation prison and community impacts combined follows (rounded):

FY2025: 3 ADP, \$56,000 and 0.0 FTEs;

FY2026: 66 ADP, \$429,000 and 0.0 FTEs;

FY2027: 172 ADP, \$1,143,000 and 2.2 FTEs;

FY2028: 232 ADP, \$1,684,000 and 5.6 FTEs;

FY2029: 258 ADP, \$1,890,000 and 6.7 FTEs;

#### Assumptions.

The estimated ADP impact to DOC prison facilities/institutions and/or community supervision/violator caseloads is based on projections from CFC.

We assume a Direct Variable Cost (DVC) of \$7,630 per incarcerated individual per FY to facilitate cost discussions during



legislative session for bills. This cost estimate includes prison and health services' direct variable costs. It does not include staffing or dollars necessary for staffing needed at the facility outside of the living/housing units. The DVC is calculated by DOC and reviewed and approved with the Office of Financial Management, Senate, and House staff each legislative session.

For illustration purposes only, the average annual Community Supervision caseload model is \$6,101 per ADP (not including startup costs), regardless of the supervised risk level based on the workload model. If ADP impacts are applicable to this fiscal note, the calculated rate per community supervision ADP includes direct supervision and ancillary units, such as Hearings, Records, and Training, that are directly affected by supervision population changes. The estimate will vary based on the risk level of the supervised individuals, which requires different staffing levels. The population trend data used is based on the Risk Level Classification tool and provides a risk level of 42.8% high violent, 27.3% high non-violent, 21% moderate, 7.9% low, and 1.0% unclassified. (June – November 2017)

The DOC assumes that any increase in community supervision caseload will result in an increased need for violator beds. For illustration, the FY2023 average percentage of supervised individuals who served jail time and were billed by the local jurisdictions for violating their conditions of supervision was a rate of 2.0%. The current average daily cost for jail beds is \$114.43 per day, inclusive of all risk levels and healthcare costs. The rate is an average, and actual rates vary by local correctional facilities.

We assume additional impacts will result when ADP caseload changes in either prison or community and resources will be necessary. The DOC will “true up” our fiscal impact in subsequent budget submittals should the legislation be enacted into session law.

**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	0	56,000	56,000	1,572,000	3,574,000
<b>Total \$</b>			0	56,000	56,000	1,572,000	3,574,000

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

**III. B - Expenditures by Object Or Purpose**

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years				1.1	6.2
A-Salaries and Wages				153,000	798,000
B-Employee Benefits				61,000	319,000
C-Professional Service Contracts		33,000	33,000		
E-Goods and Other Services		17,000	17,000	997,000	1,735,000
G-Travel				2,000	7,000
J-Capital Outlays				3,000	
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services		6,000	6,000	328,000	563,000
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements				28,000	152,000
9-					
<b>Total \$</b>	0	56,000	56,000	1,572,000	3,574,000

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

**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
Administrative Assistant 2	50,000					1.0
Community Corrections Officer 2	74,000				0.5	3.0
Community Corrections Officer 3	79,000				0.5	1.0
Field Supervisor	97,000					0.5
Management Analyst 5	98,000				0.1	0.7
<b>Total FTEs</b>					1.1	6.2

**III. D - Expenditures By Program (optional)**

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Administration & Support Svcs (100)		33,000	33,000	28,000	152,000
Correctional Operations (200)		11,000	11,000	621,000	1,041,000
Community Supervision (300)				255,000	1,247,000
Healthcare Services (500)		12,000	12,000	653,000	1,095,000
Interagency Payments (600)				15,000	39,000
<b>Total \$</b>		56,000	56,000	1,572,000	3,574,000

**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 E SB

**Title:** Impaired driving

## 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; indeterminate decreased jail expenditures as a result of additional deferred prosecutions
- Counties:** Indeterminate jail expenditure impact as a result of increased lookback period, DOSA DUI, second deferred prosecution option, change in definition of serious traffic offenses; indeterminate expenditure impact on prosecutors and public defenders from processing DOSA DUI cases and potential increase in accepted pleas, as well as availability of second deferred prosecution; 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; indeterminate but likely de minimis impact on probation departments and approved behavioral health agencies as a result of modified deferred prosecution requirements
- 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; change in length of presumptive sentences for felony traffic convictions; number of additional deferred prosecutions granted

### 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: 02/09/2024
Leg. Committee Contact: Ryan Giannini	Phone: 3607867285	Date: 02/02/2024
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 02/09/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/09/2024

## **Part IV: Analysis**

### **A. SUMMARY OF BILL**

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

This fiscal note analyzes the local government impact of ESB 5032, comparing it to the impact of SB 5032.

#### **CHANGES BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:**

The proposed engrossed substitute bill would include provisions allowing a person who participated in a deferred prosecution for their first violation of RCW 46.61.502 (driving while under the influence) or RCW 46.61.504 (physical control of a vehicle while under the influence) to petition the court for a second deferred prosecution for their next violation of these statutes, provided they do not have certain prior convictions. The engrossed substitute would also modify the definition of serious traffic offense for the purposes of chapter 9.94A RCW.

The engrossed substitute would take effect on January 1, 2025.

#### **SUMMARY OF CURRENT BILL:**

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, provide the ability to petition for a second deferred prosecution for these offenses under certain circumstances, 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 2 would amend RCW 9.94A.030, adding negligent driving and reckless endangerment under certain circumstances to the definition of serious traffic offense for the purposes of chapter 9.94A RCW.

Section 3 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 6 would amend RCW 9.94A.525, specifying that a deferred prosecution for a second or subsequent violation of RCW 46.61.502 or 46.61.504 would count as one point toward a person's criminal history score when convicted for a felony traffic offense.

Section 11 would amend RCW 10.05.010, specifying that a person who participated in a deferred prosecution for their first violation of RCW 46.61.502 (driving while under the influence) or RCW 46.61.504 (physical control of a vehicle while under the influence) could petition the court for a second deferred prosecution for their next violation of these statutes, provided they do not have any other prior convictions that are defined as a prior offense under RCW 46.61.5055.

This section would also specify that a person charged with a misdemeanor or gross misdemeanor would not be eligible for a deferred prosecution unless the court makes specific findings pursuant to RCW 10.05.020.

Section 13 would amend RCW 10.05.020, specifying the requirements for deferred prosecution petitions, including a requirement 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 14 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 of a petitioner for a deferred prosecution when necessary, depending on the details of the petition.

Section 15 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 22 would amend RCW 10.05.150, updating the treatment requirements for petitioners who are granted deferred prosecutions.

Section 25 would amend RCW 10.05.170, modifying 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 30 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 31 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 32 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 34 would specify that the bill would take effect on January 1, 2025.

## **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.*

### **CHANGE IN EXPENDITURE IMPACT BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:**

Creating the option for certain people to participate in a second deferred prosecution for a second driving under the influence (DUI) or physical control while under the influence offense, changing the definition of serious traffic offense for the purposes of chapter 9.94A RCW, and changing the effective date of the proposed legislation would all affect the expenditure impact that the original bill would have had.

Providing the option for a second deferred prosecution could result in an indeterminate decrease in jail expenditures, as well as an indeterminate but likely de minimis increase in expenditures by probation departments and county-run approved behavioral health agencies. Expanding the definition of serious traffic offense for the purposes of chapter 9.94A RCW could result in an indeterminate increase in jail expenditures. Changing the effective date of the bill would result in a

change in estimated ADP impacts from the increased lookback period for felony DUI or physical control offenses, resulting in an estimated increase of one in fiscal year 2025 and 15 in fiscal year 2026. Under the effective date of the original bill, these ADP increases were estimated at seven and 19 in fiscal years 2025 and 2026, respectively.

All of the above modified expenditure impacts are discussed in more detail below.

#### EXPENDITURE IMPACT OF CURRENT BILL:

The proposed legislation would have an indeterminate expenditure impact on a wide variety of local government entities, and these impacts are discussed by major bill action below.

#### INCREASED LOOKBACK PERIOD:

For the assumptions used to create the average daily population (ADP) data used in this note's illustrative calculation, please refer to the fiscal note completed by the Washington State Caseload Forecast Council (CFC) for this bill. Please note that the illustrative expenditure impacts below do not account for the effects of the new drug offender sentencing alternative this bill would create, the ability for people to participate in a second deferred prosecution for DUI or physical control offenses, or the expanded definition of serious traffic offense for the purposes of chapter 9.94A RCW. It is unknown what impact these additional provisions might have on demand for jail beds, so the net effect of the proposed legislation on jail expenditures is indeterminate.

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, for illustrative purposes, the local government expenditures due to increasing the lookback period for felony DUI and physical control convictions are estimated to be \$4,181,075 through fiscal year 2029.

Fiscal year 2025:

1 ADP Increase X 365 days X \$145 average daily bed rate = \$52,925

Fiscal year 2026:

15 ADP Increase X 365 days X \$145 average daily bed rate = \$793,875

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:

$\$52,925 + \$793,875 + (\$1,111,425 \times 3 \text{ years}) = \$4,181,075$

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.

#### DRUG OFFENDER SENTENCING ALTERNATIVE:

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.

#### SERIOUS TRAFFIC OFFENSE:

According to the Caseload Forecast Council's (CFC) fiscal note for this bill, expanding the definition of what qualifies as a serious traffic offense would result in increased criminal history scores for people convicted of felony traffic offenses who have prior convictions for negligent driving or reckless endangerment under the circumstances that the bill specifies.

Qualifying convictions would count as one additional point.

Generally, higher criminal history scores would result in longer standard sentence ranges and longer resulting terms of confinement. According to CFC, this could increase demand for jail beds in some cases, but in other cases, a presumptive sentence may shift from jail to prison as a result of a higher criminal history score, reducing demand for jail beds.

CFC does not, however, have any information on how many sentences for felony traffic offenses have a prior conviction for negligent driving or reckless endangerment under the conditions the bill would specify, so it cannot predict what jail bed impacts may result from the proposed legislation. Accordingly, the expenditure impacts on local governments stemming from a change in demand for jail beds as a result of this bill's provisions is indeterminate.

The 2024 Local Government Fiscal Note Program Criminal Justice Cost Model estimates that the average daily rate for a jail bed is approximately \$145.

#### SECOND DEFERRED PROSECUTION:

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 and juvenile detention 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 or up to 30 days in local juvenile detention if a person is under the age of 18, would be granted deferred prosecutions instead. Therefore the cost savings of any decreased demand for jail or juvenile detention beds is also indeterminate. The 2024 Local Government Fiscal Note Program Criminal Justice Cost Model estimates that the average daily jail bed rate is \$145 per day. The Local Government Fiscal Note Program does not have detailed information on the costs of juvenile detention, however the average daily rate for juvenile detention beds is generally higher than the same figure for a jail bed.

Sections 15 and 22 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 15 and 22 of this bill.

While the provisions of section 25 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 25 is indeterminate, but likely de minimis.



There may be a savings in prosecution and public defense costs as a result of additional deferred prosecutions 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 2024 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 \$6,649.

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:**

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 HB 1104, 2023

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 Administrative Office of the Courts

Washington State Caseload Forecast Council

Washington State Department of Health