

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 1493 E S HB S5050.2	<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

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts	No fiscal impact					
Loc School dist-SPI						
Local Gov. Other						
Local Gov. Total						

## Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	.0	0	0	0	.0	0	0	0	.0	0	0	0
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Licensing	.0	0	0	159,000	.0	0	0	135,000	.0	0	0	0
Department of Children, Youth, and Families	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Corrections	2.3	578,000	578,000	578,000	4.5	1,500,000	1,500,000	1,500,000	8.5	3,885,000	3,885,000	3,885,000
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>	<b>2.3</b>	<b>578,000</b>	<b>578,000</b>	<b>737,000</b>	<b>4.5</b>	<b>1,500,000</b>	<b>1,500,000</b>	<b>1,635,000</b>	<b>8.5</b>	<b>3,885,000</b>	<b>3,885,000</b>	<b>3,885,000</b>

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	No fiscal impact								
Loc School dist-SPI									
Local Gov. Other						846,800			2,222,850
Local Gov. Other	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.								
Local Gov. Total						846,800			2,222,850

## Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Caseload Forecast Council	.0	0	0	.0	0	0	.0	0	0
Department of Licensing	.0	0	0	.0	0	0	.0	0	0
Department of Children, Youth, and Families	.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	No fiscal impact								
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> Danya Clevenger, OFM	<b>Phone:</b> (360) 688-6413	<b>Date Published:</b> Revised 3/ 1/2024
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# Judicial Impact Fiscal Note

<b>Bill Number:</b> 1493 E S HB S5050.2	<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:**

NONE

**Estimated Capital Budget Impact:**

NONE

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

Check applicable boxes and follow corresponding instructions:

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

Legislative Contact: Bryon Moore	Phone: (360)786-7726	Date: 02/16/2024
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 02/23/2024
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 02/23/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/23/2024

195,401.00

Request # 233-1

## Part II: Narrative Explanation

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

The engrossed substitute bill continues to have no impact to the Administrative Office of the Courts or the courts.

It would change the number of days on the notice the Department of Licensing (DOL) has to issue advising the deferred prosecution petitioner that they must apply for a probationary license. It would also change the number of years that DOL must maintain the record for deferred prosecution from 10 years to "consistent with the requirements of RCW 46.01.260." Neither change has an impact to the Administrative Office of the Courts or the courts.

### II. B - Cash Receipts Impact

None

### II. C - Expenditures

None

## Part III: Expenditure Detail

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

NONE

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

NONE

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

NONE

### III. D - FTE Detail

NONE

### III. E - Expenditures By Program (optional)

NONE

## Part IV: Capital Budget Impact

### IV. A - Capital Budget Expenditures

NONE

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

NONE

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

NONE

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

NONE

### IV. C - Capital Budget Breakout

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

NONE

195,401.00

Form FN (Rev 1/00)

None

195,401.00

Form FN (Rev 1/00)

3

Request # 233-1

Bill # 1493 E S HB S5050.2

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 1493 E S HB S5050.2	<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:**

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: Bryon Moore	Phone: (360)786-7726	Date: 02/16/2024
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 02/20/2024
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 02/20/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 02/21/2024

## Part II: Narrative Explanation

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

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

See attached.

### II. B - Cash receipts Impact

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

None.

### II. C - Expenditures

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

See attached.

## Part III: Expenditure Detail

### III. A - Operating Budget Expenditures

NONE

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

NONE

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

NONE

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

NONE

## Part IV: Capital Budget Impact

### IV. A - Capital Budget Expenditures

NONE

### IV. B - Expenditures by Object Or Purpose

NONE

### IV. C - Capital Budget Breakout

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

NONE

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

NONE

**Part V: New Rule Making Required**

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



**ESHB 1493 (S-5050.2)**  
**CONCERNING IMPAIRED DRIVING**  
**101 – Caseload Forecast Council**  
**February 20, 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 deferred prosecution granted under chapter 10.05 RCW for a second or subsequent violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance to count as one point in the offender score.
- Section 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, 2026.

## **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  
ESHB 1493 (S-5050.2) DUI Lookback Period and DUI DOSA  
Caseload Forecast Council  
February 20, 2024**

	Fiscal Year									
	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34
<b>Jail AMP</b>	0	1	15	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>	0	3	56	111	135	145	146	146	147	147
<b>Prison AMP (Total)</b>	0	3	56	111	135	145	146	146	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  
ESHB 1493 (S-5050.2) DUI Lookback Period and DUI DOSA  
Caseload Forecast Council  
February 20, 2024**

	Fiscal Year									
	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34
Supervision AMP	0	0	10	61	97	113	121	122	122	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> 1493 E S HB S5050.2	<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	159,000	159,000	135,000	0
<b>Total \$</b>	0	159,000	159,000	135,000	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: Bryon Moore	Phone: (360)786-7726	Date: 02/16/2024
Agency Preparation: Don Arlow	Phone: (360) 902-3736	Date: 02/20/2024
Agency Approval: Don Arlow	Phone: (360) 902-3736	Date: 02/20/2024
OFM Review: Kyle Siefering	Phone: (360) 995-3825	Date: 02/21/2024



## 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.*

Section 1 is a new section added to Chapter 9.94A RCW that establishes eligibility and criteria for a drug offender sentencing alternative (DOSA) for DUI.

Section 11 amends RCW 10.05.010 to provide that a person charged with a misdemeanor or gross misdemeanor is not eligible for deferred prosecution unless the court makes specific findings pursuant to RCW 10.05.020. A person who participates in a deferred prosecution for a first violation of RCW 46.61.502 or 46.61.504 is eligible to petition for a second deferred prosecution if they:

- Remain eligible.
- Specific findings are made pursuant to RCW 10.05.020.
- The person has no prior out-of-state convictions defined as “prior offenses” under RCW 46.61.5055.

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

Section 17 amends RCW 10.05.060 to state that the Department of Licensing (DOL) must issue notice that 45 days after receipt, the petitioner must apply for a probationary license in accordance with RCW 46.20.355. In addition, DOL must maintain records consistent with the requirements of RCW 46.01.260.

Section 21 amends RCW 10.05.140 to state that a condition for granting a deferred prosecution petition for a violation of RCW 46.61.502 or 46.61.504, the court must order that the petitioner must not operate a motor vehicle upon the public highways without a valid operator’s license and proof of liability insurance. It also changes the wording from alcohol dependency-based case or alcoholism or drugs to substance use disorder.

Section 25 amends RCW 10.05.170 to modify the court ordered supervision of the petitioner to require the supervisor to obtain a driving abstract every 80 days if the deferral is related to operation of a motor vehicle. It also requires the supervisor to review the petitioner’s criminal history every 90 days until the end of the deferral period and report any known violations of supervision or law to the court within five business days or as soon as practicable.

Section 26 amends RCW 46.20.355 to state that DOL must issue notice that 45 days after receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502 or RCW 46.61.504, the petitioner must apply for a probationary license.

Section 27 amends RCW 46.20.385 to include that a person who has had their license suspended, revoked, or denied under RCW 46.61.5055(11)(c)(i) may submit to DOL an application for an IID license.

Section 28 amends RCW 46.20.720 to include language which stipulates 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.”

- Allows drivers 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 IID due to a physical disability.
- Adds under the “Employer exemption” (subsection 6) that said 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 29 amends RCW 46.20.740 to add that it’s an affirmative defense, which the defendant must prove by a preponderance of evidence, that the employer exemption applies to them.

Section 30 amends RCW 46.61.502 to extend lookback period for prior offenses to 15 years as defined in RCW 46.61.5055.

Section 31 amends RCW 46.61.5055 to add that a person may apply for an ignition interlock driver's license under RCW 46.20.385 during the suspension period. For each incident involving a violation of RCW 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 32 amends RCW 46.61.504 to extend lookback period for prior offenses to 15 years as defined in RCW 46.61.5055.

**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	159,000	159,000	135,000	0
<b>Total \$</b>			0	159,000	159,000	135,000	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		159,000	159,000	135,000	
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	159,000	159,000	135,000	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: 1493 ESHB      Bill Title: Impaired driving  
S5050.2

**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	-	159,000	159,000	135,000	-
<b>Account Totals</b>		-	<b>159,000</b>	<b>159,000</b>	<b>135,000</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: 2/16/2024
Agency Preparation: Don Arlow	Phone: (360) 902-3736	Date: 2/20/2024
Agency Approval: Collin Ashley	Phone: (360) 634-5384	Date: 2/20/2024

Request #	1
Bill #	1493 ESHB S5050.2

## **Part 2 – Explanation**

This bill modifies provisions related to impaired driving.

Differences from 1493 SHB AMH GOOD LANG 061 to 1493 ESHB S5050.2

1493 ESHB S5050.2:

- Establishes eligibility and criteria for a drug offender sentencing alternative for driving under the influence (DUI).
- Authorizes a second deferred prosecution on a person's subsequent DUI or physical control charge if the person has no other prior convictions defined as “prior offense” under RCW 46.61.5055.
- Modifies requirements for participation in a deferred prosecution depending on the nature of the petitioner's underlying problem.
- Changes the lookback period for reviewing prior convictions of impaired driving from a 10-year period to a 15-year period for determining whether the current offense of impaired driving is a felony.
- Changes the effective date to January 1, 2026.

The changes increase expenditures for information technology systems modifications. Due to the modified effective date programming costs are distributed across FY 2025 and FY 2026.

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

Section 1 is a new section added to Chapter 9.94A RCW that establishes eligibility and criteria for a drug offender sentencing alternative (DOSA) for DUI.

Section 11 amends RCW 10.05.010 to provide that a person charged with a misdemeanor or gross misdemeanor is not eligible for deferred prosecution unless the court makes specific findings pursuant to RCW 10.05.020. A person who participates in a deferred prosecution for a first violation of RCW 46.61.502 or 46.61.504 is eligible to petition for a second deferred prosecution if they:

- Remain eligible.
- Specific findings are made pursuant to RCW 10.05.020.
- The person has no prior out-of-state convictions defined as “prior offenses” under RCW 46.61.5055.

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

Section 17 amends RCW 10.05.060 to state that the Department of Licensing (DOL) must issue notice that 45 days after receipt, the petitioner must apply for a probationary license in accordance with RCW 46.20.355. In addition, DOL must maintain records consistent with the requirements of RCW 46.01.260.

Section 21 amends RCW 10.05.140 to state that a condition for granting a deferred prosecution petition for a violation of RCW 46.61.502 or 46.61.504, the court must order that the petitioner must not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. It also changes the wording from alcohol dependency-based case or alcoholism or drugs to substance use disorder.

Section 25 amends RCW 10.05.170 to modify the court ordered supervision of the petitioner to require the supervisor to obtain a driving abstract every 80 days if the deferral is related to operation of a motor vehicle. It also requires the supervisor to review the petitioner's criminal history every 90 days until the end of the deferral period and report any known violations of supervision or law to the court within five business days or as soon as practicable.

Section 26 amends RCW 46.20.355 to state that DOL must issue notice that 45 days after receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502 or RCW 46.61.504, the petitioner must apply for a probationary license.

Section 27 amends RCW 46.20.385 to include that a person who has had their license suspended, revoked, or denied under RCW 46.61.5055(11)(c)(i) may submit to DOL an application for an IID license.

Section 28 amends RCW 46.20.720 to include language which stipulates 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."

- Allows drivers 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 IID due to a physical disability.
- Adds under the "Employer exemption" (subsection 6) that said 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 29 amends RCW 46.20.740 to add that it's an affirmative defense, which the defendant must prove by a preponderance of evidence, that the employer exemption applies to them.

Section 30 amends RCW 46.61.502 to extend lookback period for prior offenses to 15 years as defined in RCW 46.61.5055.

Section 31 amends RCW 46.61.5055 to add that a person may apply for an ignition interlock driver's license under RCW 46.20.385 during the suspension period. For each incident involving a violation of RCW 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 32 amends RCW 46.61.504 to extend lookback period for prior offenses to 15 years as defined in RCW 46.61.5055.

Section 34 establishes an effective date of January 1, 2026.

**2.B - Cash receipts Impact**

Cash receipts impacts are indeterminate but not expected to be significant. The bill updates the 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 2023 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	684	8,651	\$865,100	\$0
FY 2026	9,158	\$915,800	727	787	9,218	\$921,800	\$6,000
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.

What DOL will implement:

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.
  - Allow submission of medical waivers no matter the incident.
4. 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.
5. Modify system to allow a check box for "no valid license" when courts report violation of probation.
6. New logic to give a driver 30 days to obtain license or the department will suspend.
7. Letter updates:
  - Modify letter for the 45 days to get a probationary license.
  - New letter for 30 days to obtain that license or the department will suspend license.
  - Letter changes for change in rules for deferred prosecution.
8. Modify logic for when a user needs to review multiple deferred prosecutions added to the record.
9. 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	-	19,500	61,900	-	-	-	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	-	11,100	4,800	-	-	-	15,900
PROJECT MANAGER	Manage schedule and contracts	\$ 34,452	-	10,300	10,400	-	-	-	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	-	4,000	4,000	-	-	-	8,000
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	-	95,300	23,800	-	-	-	119,100
Trainer	Trains business partners and employees in new system processes and capabilities.	\$ 27,144	-	4,300	17,400	-	-	-	21,700
Project Contingency	Office of the Chief Information Officer designated rate of 10%	\$ 29,824	-	14,500	12,200	-	-	-	26,700
<b>Totals</b>			-	<b>159,000</b>	<b>134,500</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	-	159,000	159,000	135,000	-
<b>Account Totals</b>		-	<b>159,000</b>	<b>159,000</b>	<b>135,000</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	-	159,000	159,000	135,000	-
<b>Total By Object Type</b>	-	<b>159,000</b>	<b>159,000</b>	<b>135,000</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> 1493 E S HB S5050.2	<b>Title:</b> Impaired driving	<b>Agency:</b> 307-Department of Children, Youth, and Families
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## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Operating Expenditures from:**

NONE

**Estimated Capital Budget Impact:**

NONE

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

Check applicable boxes and follow corresponding instructions:

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

Legislative Contact: Bryon Moore	Phone: (360)786-7726	Date: 02/16/2024
Agency Preparation: Wendy Polzin	Phone: 2066702667	Date: 02/22/2024
Agency Approval: Crystal Lester	Phone: 360-628-3960	Date: 02/22/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 02/23/2024

## 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.*

ESHB 1493 compared to SHB 1493

New language is added to specify that the definition used is only for personal drivers' licenses and does not apply to commercial licenses.

SHB 1493

Proposes changes related to impaired driving, and ignition interlock devices.

### 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 bill as written has no fiscal impact on the Department of Children, Youth and Families.

## 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> 1493 E S HB S5050.2	<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	4.5	2.3	4.5	8.5
<b>Account</b>					
General Fund-State      001-1	0	578,000	578,000	1,500,000	3,885,000
<b>Total \$</b>	0	578,000	578,000	1,500,000	3,885,000

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.*

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- 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: Bryon Moore	Phone: (360)786-7726	Date: 02/16/2024
Agency Preparation: Malika Feroz-Ali	Phone: (360) 725-8428	Date: 03/01/2024
Agency Approval: Michael Steenhout	Phone: (360) 789-0480	Date: 03/01/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 03/01/2024

## 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.*

ESHB 1493 S5050.2 is relating to impaired driving; amending RCW 9.94A.030, 10.05.060, 46.20.355, 46.20.385, 46.20.720, 46.20.740, 46.52.130, and 46.61.5055; and prescribing penalties.

Section 1(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:

- a) 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.
- b) 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(3) 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:

- a) 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
- b) 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(4)(a) 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(4)(b) 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(5) additionally states that an offender who is eligible for Residential DOSA DUI may be sentenced as follows:

- a) 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;
- b) Treatment in a residential substance use disorder treatment program for a period set by the court of up to 6 months;
- c) 24 months of partial confinement consisting of 12 months of work release followed by 12 months of home detention with electronic monitoring; and
- d) 12 months of community custody.

Section 2(22) amends RCW 9.94A.030 by adding a definition for “Drug Offender Sentencing Alternative for Driving under the Influence” (DOSA DUI). Additionally, it amends the definition of “Serious Traffic Offense” by adding certain offenses of negligent driving and reckless endangerment.

Section 3(4) 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(f) 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(2)(a)(vii) amends RCW 9.94A.505(2)(a) to include the DOSA DUI alternatives.

Section 6(11) 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. It also makes a technical correction to the scoring rules for Failure to Register as a Sex Offender.

Section 7(2)(c) amends RCW 9.94A.633 to include the DOSA DUI alternatives.

Section 8(2) amends RCW 9.94A.6332 to include the DOSA DUI alternatives.

Section 9(g) 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(4) 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(2) 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 subsequent 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 is not affected.

Section 34 states the act takes effect January 1, 2026.

## **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.*

We assume this bill will have a fiscal impact to DOC 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 bill's provision 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 offenses added to the offender score. As such, we 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 bill's provisions, it is assumed that a deferred prosecution for a juvenile non-felony DUI or APC would score as one point.

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

#### Lookback Period

Based on other provisions of the bill, the CFC is unable to provide determinate impacts for ESB 5032. Below is information provided 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:

The 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:

FY2026: 3 ADP X \$7,630 DVC = \$23,000;

FY2027: 56 ADP X \$7,630 DVC = \$427,000;

FY2028: 111 ADP X \$7,630 DVC = \$847,000; and

FY2029: 135 ADP X \$7,630 DVC = \$1,030,000;

#### Supervision – Lookback Period:

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

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 follows 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:

FY2025: A cost of \$545,000 and 4.5 FTEs;

FY2026: A cost of \$525,000 and 4.5 FTEs;

FY2027: 10 ADP, at a cost of \$525,000 and 4.5 FTEs;

FY2028: 61 ADP, at a cost of \$822,000 and 6.8 FTEs;

FY2029: 97 ADP, at a cost of \$1,186,000 and 10.1 FTEs

This bill develops new program requirements specific to those individuals who are sentenced and convicted for DUI. This

legislation implies treatment programming similar to DOSA convicted individuals. It differs in the treatment component and community supervision related components. Said components are specific for a population of individuals who have DUI as a condition of their functionality in the community, whereby they are accessing vehicles, and therefore are causing devastating harm to the citizens of Washington and to themselves.

This new function of work must develop a single focus towards helping those with alcohol and drug behaviors that lead them to drive. The Department of Correction (DOC)'s program under this bill focuses on the needs, circumstances, and unique supervision of this population. DOC does not have existing policy related to programming and treatment of DUI individuals under supervision with the type of requirements outlined in the law, monitoring requirements, or use of technologies to assist with monitoring.

Under this bill, DOC would develop and operationalize processes to ensure the work is completed accurately and efficiently. Through this, the program administrator would be lead coordinator of efforts between the Department and other entities, including the Courts, the Prosecutor's office, the Administrative Office of the Court, Health Care Authority, and contracted vendors.

#### 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 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, an update to the Juvenile Offender Information section of the General Status screen, and an 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 (FY2025 0.5 FTEs and \$59,000, FY2026 0.5 FTEs and \$60,000, FY2027 0.5 FTEs and \$60,000, FY2028 0.8 FTEs and \$89,000 and FY2029 1.1 FTEs and \$127,000) and requests funding for interagency costs of (FY2028 \$15,000 and FY2029 \$25,000), for the purpose of implementing this legislation. The approved agency indirect rate and associated administration cost 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

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

FY2025: 0 ADP, \$578,000 and 4.5 FTEs;

FY2026: 3 ADP, \$548,000 and 4.5 FTEs;  
 FY2027: 172 ADP, \$952,000 and 4.5 FTEs;  
 FY2028: 232 ADP, \$1,669,000 and 6.8 FTEs;  
 FY2029: 258 ADP, \$2,216,000 and 10.1 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	578,000	578,000	1,500,000	3,885,000
<b>Total \$</b>			0	578,000	578,000	1,500,000	3,885,000

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		4.5	2.3	4.5	8.5
A-Salaries and Wages		319,000	319,000	648,000	1,152,000
B-Employee Benefits		113,000	113,000	229,000	435,000
C-Professional Service Contracts		33,000	33,000		
E-Goods and Other Services		13,000	13,000	363,000	1,501,000
G-Travel		11,000	11,000	22,000	68,000
J-Capital Outlays		3,000	3,000	6,000	12,000
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services		27,000	27,000	112,000	501,000
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements		59,000	59,000	120,000	216,000
9-					
<b>Total \$</b>	0	578,000	578,000	1,500,000	3,885,000

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	49,000					0.5
ADMINISTRATIVE ASSISTANT 4	61,000		1.0	0.5	1.0	1.0
COMMUNITY CORRECTIONS OFFICER 2	72,000					2.0
COMMUNITY CORRECTIONS OFFICER 3	79,000		1.0	0.5	1.0	2.0
CORRECTIONS PROGRAM ADMINISTRATOR	129,700		1.0	0.5	1.0	1.0
Management Analyst 5	98,000		0.5	0.3	0.5	1.0
OFFICE ASSISTANT 3	51,000		1.0	0.5	1.0	1.0
<b>Total FTEs</b>			4.5	2.3	4.5	8.5

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

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Administration & Support Svcs (100)		92,000	92,000	120,000	216,000
Correctional Operations (200)				219,000	915,000
Community Supervision (300)		486,000	486,000	930,000	1,752,000
Healthcare Services (500)				231,000	962,000
Interagency Payments (600)					40,000
<b>Total \$</b>		578,000	578,000	1,500,000	3,885,000

**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

<b>Bill Number:</b> 1493 E S HB S5050.2	<b>Title:</b> Impaired driving
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**Part I: Jurisdiction**-Location, type or status of political subdivision defines range of fiscal impacts.

**Legislation Impacts:**

- Cities:** Indeterminate expenditure impact as a result of change in demand for jail beds due to deferred prosecution, DOSA DUI, serious traffic offense changes; indeterminate increased law enforcement costs as a result of processing additional felony-level DUI and physical control of a vehicle cases.
- Counties:** Approximately \$3,069,650 in additional expenditures as a result of increased demand for jail beds due to increased lookback period; indeterminate expenditure impact as a result of change in demand for jail beds due to deferred prosecution, DOSA DUI, serious traffic offense changes; indeterminate expenditure impact on prosecutors and public defenders from processing DOSA DUI cases and potential increase in accepted pleas; indeterminate expenditure impact on behavioral health administrative service organizations as result of potential sentences of involuntary treatment at secure detox level; indeterminate increased law enforcement, prosecution and public defense expenditures as a result of increased lookback period; likely de minimis expenditure impact on probation departments.
- Special Districts:**
- Specific jurisdictions only:**
- Variance occurs due to:**

**Part II: Estimates**

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time:** Change in length of presumptive sentences for felony traffic offenses in the cases of people with prior convictions for negligent driving or reckless endangerment that would qualify as serious traffic offenses as a result of the proposed legislation; number of DOSA sentences handed down in felony DUI/physical control cases; number of potential involuntary treatment sentences; number of additional deferred prosecutions that may be granted; number of petitioners ordered to be supervised by probation departments.

**Estimated revenue impacts to:**

None

**Estimated expenditure impacts to:**

Jurisdiction	FY 2024	FY 2025	2023-25	2025-27	2027-29
County				846,800	2,222,850
<b>TOTAL \$</b>				846,800	2,222,850
<b>GRAND TOTAL \$</b>					<b>3,069,650</b>

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

### **Part III: Preparation and Approval**

Fiscal Note Analyst: Kate Fernald	Phone: 564-200-3519	Date: 02/16/2024
Leg. Committee Contact: Bryon Moore	Phone: (360)786-7726	Date: 02/16/2024
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 02/16/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 02/21/2024



## **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 impact of ESHB 1493, comparing it to the impact of SHB 1493.

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

ESHB 1493 would add provisions providing a drug offender sentencing alternative (DOSA) for people convicted of driving while under the influence (DUI) or actual physical control of a vehicle while intoxicated (APC) at the felony level, would allow people to take a second deferred prosecution for DUI or APC at the gross misdemeanor level, and would increase the lookback period for felony DUI from ten to 15 years.

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

The proposed legislation would add certain offenses to the definition of serious traffic offenses, in addition to making changes related to driving and license restrictions, and DUI and APC offenses.

Section 1 would add a new section to chapter 9.94A RCW, establishing DOSA DUI. People 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 convictions resulting from certain originally filed charges to the list of serious traffic offenses, and adding a definition for DOSA DUI.

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

Section 11 would amend RCW 10.05.010, specifying that a person who petitions the court for the deferred prosecution and participates in the deferred prosecution under this chapter for their first violation of RCW 46.61.502 or 46.61.504 (DUI or physical control while intoxicated) is eligible to petition the court for a second deferred prosecution for their next DUI or physical control offense when the person has no other prior convictions defined as a prior offense under RCW 46.61.5055.

Section 11 would also add the following subsections to RCW 10.05.010:

1. A person may petition a court for a second deferred prosecution while still under the jurisdiction of a court for the person's first deferred prosecution; however, the first deferred prosecution shall be revoked prior to the entry of the second deferred prosecution.
2. A person may not be on two deferred prosecutions at the same time unless separate offenses are committed within seven days of each other and the person petitions to consolidate each offense into a single deferred prosecution.
3. A person charged with a misdemeanor or gross misdemeanor for a violation of RCW 46.61.502 or 46.61.504 who does not participate in a deferred prosecution for his or her first violation of RCW 46.61.502 or 46.61.504 remains eligible to petition the court for a deferred prosecution pursuant to the terms of this section and specific findings made under RCW 10.05.020. Such person shall not be eligible for a deferred prosecution more than once.

Section 13 would amend RCW 10.05.020, specifying that, depending on the stated cause of the wrongful conduct, petitions for deferred prosecution must contain a written assessment prepared by an approved behavioral health agency, approved for mental health services or substance use disorder services.

Section 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 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 31 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 32 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 33 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 35 specifies that this act would take effect on January 1, 2026.

## **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.*

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

ESHB 1493 would add approximately \$3,069,650 in determinate local government expenditures through fiscal year 2029, as well as additional indeterminate expenditures. These additional expenditures, detailed below, would result from the provisions of the amendment creating a drug offender sentencing alternative (DOSA) for people convicted of felony driving while under the influence (DUI) or actual physical control of a vehicle while intoxicated (APC), increasing the lookback period for felony DUI and APC, and allowing for a second deferred prosecution for DUI or APC.

#### EXPENDITURE IMPACT OF CURRENT BILL:

The proposed legislation would have both indeterminate and determinate impacts on local government expenditures.

#### IMPACT OF NEW SERIOUS TRAFFIC OFFENSES:

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 adult convictions would count as one additional point, while qualifying juvenile adjudications would count as an additional half 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.

#### IMPACT OF INCREASED LOOKBACK PERIOD:

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

Increasing the lookback period for felony DUI and physical control offenses would increase the number of convictions for these offenses, leading to an increased need for jail beds in terms of ADP. The 2024 Local Government Fiscal Note Program Criminal Justice Cost Model estimates that the average daily cost for a jail bed is \$145. Given the increased jail ADP estimates provided by CFC, the local government expenditures due to increasing the lookback period for felony DUI and physical control convictions are estimated to be \$3,069,650 through fiscal year 2029.

Fiscal year 2026:

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

Fiscal year 2027:

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

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:

\$3,069,650 (\$52,925 + \$793,875 + \$1,111,425 + \$1,111,425)

Per the CFC fiscal note for this bill, however, these cost estimates for additional jail beds do not account for any bed

impacts that may result from a drug offender sentencing alternative for felony driving or physical control of a vehicle while under the influence, since it is unknown how many people might be sentenced under DOSA DUI. As noted below, if some people who would have received non-prison sentences are instead sentenced under DOSA DUI, local jurisdictions may see a reduction in the demand for jail beds, so the potential ADP impacts detailed here may overestimate the costs of increasing the lookback period for felony driving or physical control while under the influence.

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

#### IMPACT OF DOSA DUI:

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 2022 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, and that 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.

#### IMPACT OF AVAILABILITY OF SECOND DEFERRED PROSECUTION FOR DUI/APC:

According to the Washington State Caseload Forecast Council's (CFC) fiscal note for this bill, the ability of an individual to receive a second deferred prosecution for DUI or physical control could reduce the number of people convicted of gross misdemeanors for these offenses, in turn reducing demand for jail beds. It is unknown, however, how many people who would have been convicted of these offenses at the gross misdemeanor level, punishable by a confinement term of up to 364 days in jail, would be granted deferred prosecutions instead, and CFC does not collect data on gross misdemeanors or deferred prosecutions. Therefore the cost savings of any decreased demand for jail 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.

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 this bill due to fewer DUI or physical control cases proceeding to trial. The Washington Defender Association indicates that many gross misdemeanor DUI cases currently go to trial, which can require a significant amount of attorney time from both prosecutors and defenders. The 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.*

### CHANGES IN REVENUE IMPACT BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

ESHB 1493 would not change the local government revenue impact below.

### REVENUE IMPACT OF CURRENT BILL:

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

### SOURCES:

Local Government Fiscal Note Program Criminal Justice Cost Model, 2023

King County Behavioral Health and Recovery Division

Local government fiscal note for SB 5032, 2023

Local government fiscal note for SHB 1104, 2023

Thurston Mason Behavioral Health Administrative Service Organization

Washington Adult Sentencing Guidelines Manual, 2022

Washington Association of Prosecuting Attorneys

Washington Defender Association

Washington State Administrative Office of the Courts

Washington State Caseload Forecast Council