

# Judicial Impact Fiscal Note

|                                  |                                |   |
|----------------------------------|--------------------------------|---|
| <b>Bill Number:</b> 1276 E 2S HB | <b>Title:</b> Impaired driving | <b>Agency:</b> 055-Admin Office of the Courts |
|----------------------------------|--------------------------------|---|

## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

| Account         | FY 2016 | FY 2017 | 2015-17 | 2017-19 | 2019-21 |
|-----------------|---------|---------|---------|---------|---------|
| Counties        |         |         |         |         |         |
| Cities          |         |         |         |         |         |
| <b>Total \$</b> |         |         |         |         |         |

### Estimated Expenditures from:

| COUNTY                          | FY 2016 | FY 2017 | 2015-17 | 2017-19 | 2019-21 |
|---------------------------------|---------|---------|---------|---------|---------|
| County FTE Staff Years          |         |         |         |         |         |
| Account                         |         |         |         |         |         |
| Local - Counties                |         |         |         |         |         |
| Counties Subtotal \$            |         |         |         |         |         |
| CITY                            | FY 2016 | FY 2017 | 2015-17 | 2017-19 | 2019-21 |
| City FTE Staff Years            |         |         |         |         |         |
| Account                         |         |         |         |         |         |
| Local - Cities                  |         |         |         |         |         |
| Cities Subtotal \$              |         |         |         |         |         |
| Local Subtotal \$               |         |         |         |         |         |
| Total Estimated Expenditures \$ |         |         |         |         |         |

*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 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.

|                                   |                     |                  |
|-----------------------------------|---------------------|------------------|
| Legislative Contact: Paul Ingiosi | Phone: 360-786-7114 | Date: 03/11/2015 |
| Agency Preparation: Susan Arb     | Phone: 509-453-8135 | Date: 03/16/2015 |
| Agency Approval: Ramsey Radwan    | Phone: 360-357-2406 | Date: 03/16/2015 |
| OFM Review:                       | Phone:              | Date:            |

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## Part II: Narrative Explanation

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

This bill would amend pretrial and post-conviction provisions for crimes involving alcohol and drug impairment. Because changes to felony enhancements in PS HB 1276 were removed from E2SHB 1276, the costs of this bill will not be as large, but they are still estimated to be much greater than \$50,000.

Sections with potential court impact:

Unless otherwise mentioned, the provisions of E2SHB 1276 are the same as PS HB 1276.

Section 1 would amend RCW 10.21.055 to require a court to require an ignition interlock device (IID) at arraignment, but not before, of a person charged with DUI, Physical Control While Impaired, Vehicular Homicide, and Vehicular Assault. The court would be required to notify the Department of Licensing (DOL), which would add the requirement to the person's driving record. When the requirement is removed upon acquittal or dismissal of the charges, the court must provide the person with a written order and notify the DOL. Minor changes in section 1 of E2SHB 1276 do not change the fiscal impact of this bill.

Section 3 would amend RCW 46.20.740 to clarify that the crime of driving without an IID when required does not apply if the person's driving record does not reflect the prior release of the condition by the court. The sentence for conviction of this crime must be served consecutively to any sentence under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

Section 4 would amend RCW 46.20.308 (the implied consent statute) to remove authority for a breath test for any substance other than alcohol. The statement that an officer is not precluded from obtaining a search warrant would be deleted. References to THC would be removed from the breath test warning. Refusal of the breath test would preclude further testing, except as otherwise authorized by law (the reference to search warrants is moved to a new subsection).

Section 5 would amend RCW 46.20.750 to expand the crime of tampering with or circumventing an IID to allow a restricted driver to drive the vehicle. The sentence for conviction of this crime must be served consecutively to any sentence under RCW 46.20.740, 46.61.502, 46.61.504, or 46.61.5055, 46.61.520, or 46.61.522.

Section 6 would amend RCW 46.25.120 (the implied consent statute for commercial vehicle drivers) to remove authority for a breath test for any substance other than alcohol, and acknowledges the authority of the officer to obtain a blood test pursuant to law.

Section 7 would create a new section in Chapter 46.61 RCW, which would create a new traffic infraction for the registered owner if present, the driver, or passengers in a vehicle to keep marijuana in the vehicle unless in the trunk, an area not normally accessible, or in a sealed container, or to consume marijuana while the vehicle is upon the public highway.

Section 8 would amend RCW 46.61.140 to provide an affirmative defense that a driver drove outside a clearly marked lane of travel where the violation was minimal and caused by the something or someone other than the driver.

Section 9 would amend RCW 46.61.5055 to allow courts to include 24/7 monitoring where available in a first-offense sentence for DUI or Physical Control While Impaired. Conditions of probation for all sentences for DUI or Physical Control While Impaired would be clarified to require 30 days confinement for each violation of probation: (i) driving with no valid license, (ii) driving with no insurance, (iii) driving or control while impaired, (iv) refusing a breath or blood test, and (v) driving with no IID. Prior offenses would include boating in a reckless manner if originally filed as boating while impaired; and flying an aircraft while impaired, or flying in a reckless manner if originally filed as flying while impaired. Three other crimes added to this list in PS HB 1276 (minor driving while impaired; homicide by watercraft; and assault by watercraft) have been removed from E2SHB 1276.

Section 12, formerly section 14 in PS HB 1276, would amend RCW 46.52.130 to allow a court to provide a person's driving record to the attorney for that person. The person's attorney may give the person's driving record to treatment agencies.

Section 13, formerly section 16 in PS HB 1276, would amend RCW 9.94A.589 to provide that all sentences imposed under RCW 46.61.502(6), 46.61.504(6), 46.61.5055(4) be served consecutively to any sentences imposed under RCW 46.20.740 and 46.20.750.

Section 15, formerly section 18 of PSHB 1276, would amend RCW 46.61.503 to create an affirmative defense that the person had moved the vehicle safely off the roadway prior to pursuit by the law enforcement officer.

Section 21, formerly section 24 of PSHB 1276, would amend RCW 36.28A.390 would authorize a general authority peace officer who has probable cause to believe that a participant has violated the terms of participation in the 24/7 sobriety program to immediately take the participant into custody and cause him or her to be held until an appearance before a judge on the next judicial day. Violations would carry minimum imprisonment of 2, 5, or 10 days for the second through fourth violations, or the entire remaining sentence, whichever is lesser. [Note: these punishments apply to pretrial or post-trial participation in the program, and do not mention post-plea participation.] Pretrial participants who have 5 violations would have to “abide by the order of the court.”

Other sections appearing in PSHB 1276 have been removed from E2SHB 1276:

- Section 12 would have amended RCW 9.94A.533 to provide that the enhancement for endangering a person while eluding a police vehicle would be mandatory, must have been served in total confinement, consecutive to all other sentencing provisions.
- Section 13 would have amended RCW 9.94A.729 to remove an early release from confinement for a vehicular homicide enhancement, an eluding enhancement, or a minor child enhancement under RCW 9.94A.533.

## **II. B - Cash Receipts Impact**

No revenue to the courts is expected.

## **II. C - Expenditures**

Summary of Expenditures Where Forecast Is Possible:

Some of the provisions of E2SHB 1267, described in more detail below, would require more time for hearings, trials, and appeals in the superior, district, municipal, and appellate courts of the state, but there is no data available which would allow for estimate of those costs. Therefore, while estimates for some of the changes are possible, it must be remembered that these are minimum expenditure forecasts for just some of the changes required by this bill, and the actual expenditures may be much larger.

This is a summary of the financial expenditures which may be estimated:

- Superior courts – county: \$883
- Superior courts – state: \$202
- District courts: \$68,230
- Municipal courts: \$18,163
- Total: \$87,478

The sections for which no estimate is possible would greatly increase the costs from E2SHB 1276 to the courts.

About the Details Below:

E2SHB 1267 would require substantial changes to the proceedings in many traffic cases, involving both infractions and crimes, in all levels of the state’s trial courts. Where estimates are possible, the calculations are based on data from the state Judicial Information System.

The \$50,000 expenditure level represents approximately 84 hours (0.07 FTE) of superior court judicial officer time, approximately 80 hours (0.08 FTE) of district court judicial officer time, and approximately 47 hours (0.046 FTE) of municipal court judicial officer time annually cumulative for all courts in the state with associated support staff and operational costs. It is assumed, therefore, that this bill would require more than 47-84 hours of judicial officer time statewide on an annual basis.

### **Section 1: Ignition Interlock Device Requirement**

Section 1 would require courts to require an ignition interlock device (IID) at arraignment of a person charged with DUI, Physical Control While Impaired, Vehicular Homicide, and Vehicular Assault, where there is a prior offense. This would lengthen arraignment hearings for these charges by 1-30 minutes for the imposition of the requirement plus potential challenges by the defense. For the purposes of this note, we will assume an additional 2 minutes per hearing.

In the last five years, there have been an average of 35,415 cases filed involving these four crimes. We do not have data on how many

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of those were second or subsequent offenses committed by the person. For the purposes of this note, we will assume at least 5% of the offenses were not first offenses, or 1,771 cases. The increased costs to each court each year would be at least (and could be substantially more):

- Superior courts – county: \$883
- Superior courts – state: \$202
- District courts: \$17,884
- Municipal courts: \$3,630
- Total: \$22,599

#### Sections 3 and 5: More Ignition Interlock Device Violation Trials

Section 3 would amend RCW 46.20.740 and section 5 would amend RCW 46.20.750 to require that the sentence for conviction of an IID violation must be served consecutively to any DUI sentence. We expect that this change would increase the number of trials for this crime. We do not have data on how often those crimes are filed together. There has been an average of 3,677 cases filed and 2,268 convictions for IID violations in each of the last 5 years. It is unknown how many cases which would have been resolved with a guilty plea would result in a trial.

#### Section 4: Breath Test Warning Changes

Section 4 would amend RCW 46.20.308 to clarify the implied consent warning used before breath tests are administered in DUI cases. There is an average of 35,030 DUIs filed each year, with breath tests being requested in approximately 93% of the cases, or 29,139 per year. While the changes in this section are expected to clarify the warning based on current case law, experience with similar prior changes to the breath test warning lead to an expectation of increased challenges in court to the new warning. It is unknown how many challenges there will be, but each could take additional hours of court time.

#### Section 7: New Infraction – Possession of Marijuana in a Vehicle

Section 7 would create a new section in Chapter 46.61 RCW, which would create a new traffic infraction for improper possession of marijuana in a vehicle. We have no data to estimate how many new infractions might be filed. In 2014, a total of 32,375 non-traffic infractions and 824,729 traffic infractions were filed in the district and municipal courts of the state. If 1,000 new infractions were filed, the additional costs would be:

- District courts: \$5,053
- Municipal courts: \$1,092
- Total: \$6,145

The true cost may be higher or lower than this estimate.

#### Section 8: Affirmative Lane of Travel Defense

Section 8 would amend RCW 46.61.140 to provide an affirmative defense that a driver drove outside a clearly marked lane of travel where the violation was minimal and caused by the something or someone other than the driver. This section would not only apply to those infractions filed for a violation of this statute, but in many other cases (such as DUI or Reckless Driving) where a lane travel violation was involved in the crime. The change in this section would most likely result in more hearings and trials, or lengthier hearings and trials. We do not have data which would allow an estimate of the number of hearings and trials affected, nor their cost to the courts.

#### Section 9: DUI Sentences

Section 9 would amend RCW 46.61.5055 to modify provisions of sentences for DUI and Physical Control. Some of the changes are expected to result in lengthier sentencing hearings and additional probation violation hearings. We do not have data which would allow an estimate of the number of hearings affected, nor their cost to the courts.

## Section 12: Provide Driving Record to Attorney

Section 12, formerly section 14 in PS HB 1276, would amend RCW 46.52.130 to allow a court to provide a person's driving record to the attorney for that person. Current law allows the court to provide the driving record directly to the person. This is a change that would only take a minute or two per case, but well over one million traffic cases were filed in the district and municipal courts of the state on average per year. This may be done in court or in clerk's offices, and would take both time and paper. We do not have data regarding how often judges or clerks currently give the driving record to the defendants, nor how much more often the attorneys would be requesting it. Assuming the courts spend one additional minute per case in half of the traffic cases filed each year would require 8,700 additional hours of court and clerk time. Not including the cost of the paper provided, this would result in expenditures of:

-- District courts: \$45,293  
-- Municipal courts: \$13,441  
-- Total: \$58,734

## Section 21: Violations of 24/7 Sobriety Programs

Section 21, formerly section 24 in PS HB 1276, would amend RCW 36.28A.390 mandate jail sentences for those who violate 24/7 sobriety program pretrial or post-conviction requirements. Currently, few persons are placed in 24/7 sobriety programs – JIS shows only 21 persons over the each of the last 3 years have been ordered to participate in a 24/7 sobriety program. However, as the programs become available in more areas of the state, and with the laws requiring participation in more situations, that number will only climb. Every person in one of these programs increases the number of probation violation hearings held throughout the state. With mandatory jail time if the person is found in violation, the hearings take more court time. We have no data which would provide an estimate of the number of additional hearings resulting from this change.

## Part III: Expenditure Detail

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

| <i>State</i>                       | FY 2016 | FY 2017 | 2015-17 | 2017-19 | 2019-21 |
|------------------------------------|---------|---------|---------|---------|---------|
| FTE Staff Years                    |         |         |         |         |         |
|                                    |         |         |         |         |         |
| Salaries and Wages                 |         |         |         |         |         |
| Employee Benefits                  |         |         |         |         |         |
| Professional Service Contracts     |         |         |         |         |         |
| Goods and Other Services           |         |         |         |         |         |
| Travel                             |         |         |         |         |         |
| Capital Outlays                    |         |         |         |         |         |
| Inter Agency/Fund Transfers        |         |         |         |         |         |
| Grants, Benefits & Client Services |         |         |         |         |         |
| Debt Service                       |         |         |         |         |         |
| Interagency Reimbursements         |         |         |         |         |         |
| Intra-Agency Reimbursements        |         |         |         |         |         |
| <b>Total \$</b>                    |         |         |         |         |         |

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

| <i>County</i>         | FY 2016 | FY 2017 | 2015-17 | 2017-19 | 2019-21 |
|-----------------------|---------|---------|---------|---------|---------|
| FTE Staff Years       |         |         |         |         |         |
| Salaries and Benefits |         |         |         |         |         |
| Capital               |         |         |         |         |         |
| Other                 |         |         |         |         |         |
|                       |         |         |         |         |         |
| <b>Total \$</b>       |         |         |         |         |         |

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

| <i>City</i>           | FY 2016 | FY 2017 | 2015-17 | 2017-19 | 2019-21 |
|-----------------------|---------|---------|---------|---------|---------|
| FTE Staff Years       |         |         |         |         |         |
| Salaries and Benefits |         |         |         |         |         |
| Capital               |         |         |         |         |         |
| Other                 |         |         |         |         |         |
|                       |         |         |         |         |         |
| <b>Total \$</b>       |         |         |         |         |         |

**Part IV: Capital Budget Impact**

No capital budget impact to the courts is expected.