

Judicial Impact Fiscal Note

Bill Number: 1276 E 2S HB AMS LAW S2775.2	Title: Impaired driving	Agency: 055-Admin Office of the Courts
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

Account	FY 2016	FY 2017	2015-17	2017-19	2019-21
State Patrol Highway Account-State 081-1	475,527	475,527	951,054	951,054	951,054
Counties					
Cities					
Total \$	475,527	475,527	951,054	951,054	951,054

Estimated Expenditures from:

STATE	FY 2016	FY 2017	2015-17	2017-19	2019-21
State FTE Staff Years	.1	.1	.1	.1	.1
Account					
General Fund-State 001-1	33,240	33,240	66,480	66,480	66,480
State Subtotal \$	33,240	33,240	66,480	66,480	66,480
COUNTY	FY 2016	FY 2017	2015-17	2017-19	2019-21
County FTE Staff Years	1.5	1.5	1.5	1.5	1.5
Account					
Local - Counties	155,668	155,668	311,336	311,336	311,336
Counties Subtotal \$	155,668	155,668	311,336	311,336	311,336
CITY	FY 2016	FY 2017	2015-17	2017-19	2019-21
City FTE Staff Years					
Account					
Local - Cities	(735)	(735)	(1,470)	(1,470)	(1,470)
Cities Subtotal \$	(735)	(735)	(1,470)	(1,470)	(1,470)
Local Subtotal \$	154,933	154,933	309,866	309,866	309,866
Total Estimated Expenditures \$	188,173	188,173	376,346	376,346	376,346

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projection showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

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.

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Part II: Narrative Explanation

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

E2SHB 1276 (S2.E AMS Law S2775.2) would amend pretrial and post-conviction provisions for crimes involving alcohol and drug impairment, similar to the previous version of the bill. In addition, this version would also change a fourth DUI or Physical Control While Impaired conviction from a gross misdemeanor to a felony, and lower the sentences for the felony.

Sections with potential court impact:

Unless otherwise mentioned, the provisions of E2SHB 1276 (S2.E AMS Law S2775.2) are the same as E2SHB 1276.

Section 2 (formerly section 1) would amend RCW 10.21.055 to require a court to require an ignition interlock device (IID) at (not before) arraignment 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.

Section 4 (formerly 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 5 (formerly 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 6 (formerly 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 7 (formerly 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 8 (formerly 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 9 would amend RCW 46.61.5055, making these changes:

- The 4th offense of DUI or Physical Control While Impaired would be a felony. This is new to this version of the bill.
- 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.
- A provision which would allow courts to include 24/7 monitoring where available in a first-offense sentence for DUI or Physical Control While Impaired has been removed from this version of the bill.

Section 12 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 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.

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Section 14 (formerly section 15) 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 19 (formerly section 21) 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.”

Section 21 (new to this version of the bill) would amend RCW 46.61.502 (DUI) to make the fourth offense a felony (currently, the fifth offense is a felony).

Section 22 (new to this version of the bill) would amend RCW 46.61.504 (Physical Control While Impaired) to make the fourth offense a felony (currently, the fifth offense is a felony).

Section 23 (new to this version of the bill) would amend RCW 9.94A.515 to reduce the seriousness level of the felony versions of DUI and Physical Control While Impaired from Level V to Level IV.

Section 24 (new to this version of the bill) would amend RCW 46.61.5054 to increase the mandatory assessment on applicable convictions and deferred prosecutions from \$200 to \$250 for the Washington State Toxicology Laboratory and the Washington State Patrol. The additional \$50 would be used for funding programs to reduce driving while under the influence of alcohol or drugs.

Sections 26 and 27 (new to this version of the bill) would create new sections to create a new category of persons, called Forensic Phlebotomists, authorized to collect a blood sample.

Section 28 (new to this version of the bill) would amend RCW 46.61.506 to acknowledge blood tests administered pursuant to search warrants, exigent circumstances, or a waiver of the warrant requirement may be used in a trial for DUI and Physical Control While Impaired. [Note: The list of persons in this section who may withdraw the blood is not amended to specifically include Forensic Phlebotomists.]

One section was removed from this version of the bill. Section 8 of the previous version would have amended 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.

II. B - Cash Receipts Impact

Under previous versions of this bill, no revenue changes were expected. Under this version, two changes will impact revenue. The first increases the DUI fee from \$200 to \$250 on every conviction and deferred prosecution for DUI. For the purposes of this judicial impact note, over the last three years, an average of 12,193 cases would have been eligible for the additional \$50 charge. The maximum potential revenue would be \$609,650. However, not all DUI fees are paid. For purposes of this judicial impact note a 78% collection rate (based on traffic infraction data) is used. Therefore, the potential additional revenue that would be collected is \$475,527 (\$609,650 x 78%).

The second new change in this version of the bill would change a fourth DUI from a gross misdemeanor to a felony, which would change judicial revenues. However, there is no judicial data available to estimate the change to revenue which would result if this change were made. And because felony penalties have a lower rate of collection, it is possible that revenue will be reduced if these gross misdemeanor DUIs become felony DUIs.

There is no judicial data available that gives the actual fines imposed for any particular crime. Fine amounts for felony crimes are higher than gross misdemeanor crimes, and therefore there is a potential for an increase in revenue. The bill would raise the possible fines from a maximum of \$5,000 to a maximum of \$10,000. Judicial Information System data indicates that, for RCW 46.61.502 and 46.61.504, the number of DUIs with three prior violations was 276 in 2014. These were charged as gross misdemeanors but would be class C felonies under the changes in the bill. For the purposes of this judicial impact note, we will assume that 275 will be the number of DUIs which will switch from a gross misdemeanor to a felony. The potential increase in fines could be calculated as the number of violations that would qualify for class C felonies multiplied by the difference in the maximum penalties (\$5,000). This would be a

potential revenue increase of \$1,375,000. However, the maximum fine is not always ordered and fines are not always paid in full and can take several years to pay. Judicial information system data for felony fine payment shows that in the first year less than two percent of fines are paid, and in the second year this increases to 5.5 percent. If the total amount was ordered and paid using a payment rate of 2%, the potential maximum revenue increase would be \$27,500.

However, experience shows that revenues may actually decrease if the fourth DUI moves from a gross misdemeanor to a felony. Currently, RCW 46.61.5055(3)(a) requires the sentencing court impose a minimum fine of \$1,000 for a low alcohol content and RCW 46.61.5055(3)(b) requires the court to impose a minimum fine of \$1,500 for a high alcohol content upon conviction for a gross misdemeanor DUI with three prior offenses. Currently, RCW 9.94A.550, which sets forth the penalties for felony DUI, requires no minimum fine. Because felony DUI usually (not always) results in more incarceration time than a gross misdemeanor DUI, courts often impose no fine at all for a felony DUI. While revenue for these DUIs has the potential for increasing because of the maximum fine allowed, the fines actually imposed and collected for these DUIs may actually decrease to \$0.

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 incurred:

- Superior courts – county: \$145,362
- Superior courts – state: \$33,240
- District courts: \$10,306
- Municipal courts: (\$735)
- Total: \$188,173

The sections for which no estimate is possible would greatly increase the costs from E2SHB 1276 S2775.2 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 2: Ignition Interlock Device Requirement

Section 2 of this version of the bill 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 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

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-- Municipal courts: \$3,630
-- Total: \$22,599

Sections 4 and 6: More Ignition Interlock Device Violation Trials

Section 4 would amend RCW 46.20.740 and section 6 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 5: Breath Test Warning Changes

Section 5 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 8: New Infraction – Possession of Marijuana in a Vehicle

Section 8 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 in the district and municipal courts, plus 100 new infractions in superior and juvenile courts, the additional costs would be:

-- Superior courts – county: \$655
-- Superior courts – state: \$150
-- District courts: \$5,708
-- Municipal courts: \$1,092
-- Total: \$7,605

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

Section 9: DUI Sentences (Other than changes to the Class of Crime)

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 9: Fourth DUI Changing from Gross Misdemeanor to Class C Felony

This section is new to the expenditures analysis for E2SHB 1276 S2775.2. Expenditures will change for fourth DUI cases. The first increase is for new codes which must be added to the Judicial Information System. It is estimated to take 83 hours for a total cost of \$4,399. These numbers are not added to the grid because it is assumed the workload will be absorbed.

Court expenditures will be impacted in two ways, an increase in trial rate and associated costs and a transfer of cases from district and municipal courts to superior courts.

Superior courts hear all felony cases while gross misdemeanor cases are heard both in superior courts and in courts of limited jurisdiction (district and municipal courts). Most fourth DUIs will transfer from district and municipal courts to superior courts (some

would have been heard by the superior courts already). Caseload data for 2014 shows that approximately 30 percent of gross misdemeanor DUI cases were heard in municipal courts and the remainder in district court.

Judicial Information System data shows an expected change in 276 cases from gross misdemeanor to felony per year. If none of those cases were previously in the superior courts, municipal courts would experience a reduction of 81 cases per year, district courts would see a reduction of 195 cases per year, and superior courts would see an increased caseload of 276 cases.

Reduced expenditure for municipal courts statewide is estimated at \$1,564 per year for reduced judicial officer time and support staff time. This equates to a reduction of 0.002 judicial officer and .02 municipal staff FTE spread through all of the cities.

Reduced district court expenditure is estimated at \$17,161 per year for reduced judicial officer time and support staff time. This equates to a reduction of 0.024 judicial officer and 0.20 district court staff FTE spread through all of the counties.

The 275 new felony cases heard at superior courts is expected to increase expenditure for judicial officers, and support staff by \$175,777 (\$32,714 for the state and \$143,063 for counties) per year. This equates to 0.28 of judicial officer, 0.68 superior court staff and 0.89 clerk staff FTE spread through all the counties.

The increased and decreased costs to each court each year would be:

- Superior courts – county: \$143,063
- Superior courts – state: \$32,714
- District courts: (\$16,823)
- Municipal courts: (\$6,221)
- Total: \$152,733

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 additional hours of court and clerk time. Not including the cost of the paper provided, this would result in expenditures of:

- Superior courts – county: \$761
- Superior courts – state: \$174
- District courts: \$3,537
- Municipal courts: \$764
- Total: \$5,236

Section 19: Violations of 24/7 Sobriety Programs

Section 19 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	.1	.1	.1	.1	.1
Salaries and Wages	22,037	22,037	44,074	44,074	44,074
Employee Benefits	11,203	11,203	22,406	22,406	22,406
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					
Total \$	33,240	33,240	66,480	66,480	66,480

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

<i>County</i>	FY 2016	FY 2017	2015-17	2017-19	2019-21
FTE Staff Years	1.5	1.5	1.5	1.5	1.5
Salaries and Benefits	155,668	155,668	311,336	311,336	311,336
Capital					
Other					
Total \$	155,668	155,668	311,336	311,336	311,336

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	(753)	(753)	(1,506)	(1,506)	(1,506)
Capital					
Other					
Total \$	(753)	(753)	(1,506)	(1,506)	(1,506)

III. D - FTE Detail

<i>Job Classification</i>	Salary	FY 2016	FY 2017	2015-17	2017-19	2019-21
Clerk staff		0.9	0.9	0.9	0.9	0.9
District court judge		0.0	0.0	0.0	0.0	0.0
District court staff		(0.2)	(0.2)	(0.2)	(0.2)	(0.2)
Municipal court judge						
Municipal court staff		0.0	0.0	0.0	0.0	0.0
Superior court judge		0.3	0.3	0.3	0.3	0.3
Superior court staff		0.7	0.7	0.7	0.7	0.7
Total FTE's		1.6	1.6	1.6	1.6	1.6

Part IV: Capital Budget Impact

No capital budget impact to the courts is expected.



Ten-Year Analysis

Bill Number 1276 E 2S HB AMS LAW S2775.2	Title Impaired driving	Agency 055 Admin Office of the Courts
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

☐ **No Cash Receipts** ☐ **Indeterminate Cash Receipts**

Estimated Cash Receipts

Name of Tax or Fee	Acct Code	Fiscal Year 2016	Fiscal Year 2017	Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023	Fiscal Year 2024	Fiscal Year 2025	2016-25 TOTAL
DUI fee	081	475,527	475,527	475,527	475,527	475,527	475,527	475,527	475,527	475,527	475,527	4,755,270
Total		475,527	475,527	475,527	475,527	475,527	475,527	475,527	475,527	475,527	475,527	4,755,270
Biennial Totals		951,054	951,054	951,054	951,054	951,054	951,054	951,054	951,054	951,054	951,054	4,755,270

Narrative Explanation (Required for Indeterminate Cash Receipts)

For the purposes of this judicial impact note, over the last three years, an average of 12,193 cases would have been eligible for the additional \$50 charge. The maximum potential revenue would be \$609,650. However, not all DUI fees are paid. For purposes of this judicial impact note a 78% collection rate (based on traffic infraction data) is used. Therefore, the potential additional revenue that would be collected is \$475,527 (\$609,650 x 78%).

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