

# SENATE BILL REPORT

## SB 5663

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As of January 24, 2022

**Title:** An act relating to establishing streamlined procedures for compliance with the State v. Blake decision in order to improve criminal justice system coordination, create efficiencies, and reduce costs.

**Brief Description:** Establishing streamlined procedures for compliance with the State v. Blake decision in order to improve criminal justice system coordination, create efficiencies, and reduce costs.

**Sponsors:** Senators Dhingra, Hasegawa, Saldaña, Stanford and Wilson, C..

**Brief History:**

**Committee Activity:** Ways & Means: 1/13/22 [w/oRec-LAW].  
Law & Justice: 1/25/22.

**Brief Summary of Bill**

- Requires the Administrative Office of the Courts to prepare a report of all individuals convicted of simple drug possession since 1971.
- Establishes rules for vacating convictions pursuant to *State v. Blake*, resentencing individuals if necessary, and refunding legal financial obligations.
- Establishes a refund bureau under the Department of Revenue for processing refunded legal financial obligations.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Joe McKittrick (786-7287)

**Background:** Prior to 2021, Washington's statute prohibiting possession of controlled substances created a strict liability crime, meaning an individual could be found guilty of

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

possession of a controlled substance without proof the person knew they possessed the prohibited substance. In 2021, the Washington State Supreme Court decided the case of *State v. Blake*, and in doing so, found this statute to be unconstitutional. The Court reasoned that the Legislature's criminalization of passive conduct, with no requirement to prove criminal intent, violated due process.

Due to the *Blake* decision, the courts must now vacate tens of thousands of convictions entered in superior, district, and municipal courts. Due process also requires the courts to refund any fines, fees, costs, and accrued interest, known as legal financial obligations, paid pursuant to convictions now subject to vacation under *Blake*.

While prosecutors, defenders, and courts have been taking steps to vacate a substantial number of convictions because of the *Blake* decision, and refund the associated legal financial obligations, it is likely the total number of convictions now subject to *Blake* exceed 150,000.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Report of Convictions to be Vacated. The administrator of the Administrative Office of the Courts (AOC), in coordination with relevant superior and district court clerks and municipal court administrators, must develop comprehensive, line-item reports of all persons with existing convictions for simple drug possession since 1971. For sealed cases, the court clerks must develop a confidential report which will only be shared with the AOC as necessary to effectuate vacation and refunding legal financial obligations.

When compiling these reports, the relevant court clerks or administrators must prioritize cases in the following order:

- individuals currently incarcerated due to a qualifying conviction;
- individuals currently incarcerated with a qualifying conviction on the person's criminal history score;
- individuals under active or inactive supervision; and
- individuals with a prior conviction for a qualifying offense.

The AOC must complete the report, for individuals currently incarcerated and those currently on active or inactive supervision within three months of the effective date of this section. The AOC must complete the report within six months for individuals with prior qualifying convictions. When available, the AOC must provide completed installments of the report to the relevant county prosecutor and respective court clerk or administrator. Once received, the prosecutor must review the report to determine whether each person's conviction is properly subject to vacation.

Vacating Convictions. After receiving the report, if the prosecutor determines a conviction is subject to vacation pursuant to *Blake*, the prosecutor's office must file a motion on its own

asking the court to vacate the individual's prior convictions for simple drug possession. By doing so, the prosecutor agrees not to file additional or new charges for the acts described in the information. The court must consider the prosecutor's motion on paper without the presence of the prosecutor.

If the court vacates a conviction for simple drug possession, the fact that the person has been convicted of the offense must not be included in the person's criminal history, and the person must be released from all penalties resulting from the offense. A person whose conviction has been vacated may state they have never been convicted of that crime, and the vacated conviction may not be disseminated or disclosed by the Washington State Patrol or local law enforcement to any person.

If the prosecutor determines that a conviction is improperly included on the report due to a clerical error because the actual conviction on the judgment and sentence is not a conviction for simply drug possession, the prosecutor must file a "Notice of *Blake* Correction " with the respective court clerk or administrator.

The prosecutor must take action to quash any judicial warrants based solely on underlying charges for simple drug possession or other offenses where a conviction for simple drug possession serves as an element of the crime.

Resentencing. If it is necessary to resentence an individual or amend the existing sentence in connection with a vacation, the matter will proceed under the court rules with notice to the defendant, and defense counsel shall be appointed where required by law.

Legal Financial Obligations. If the court vacates a conviction, the court must address whether legal financial obligations (LFOs) must be refunded. When the sole crime for which the individual was convicted is simple drug possession, the court must order a refund of all LFOs paid under that cause number. If a cause number includes convictions for simple drug possession and other convictions not subject to vacation, the court must determine whether any non-vacated convictions support the imposition of LFOs. If the court makes this determination, no refund may be ordered.

If the cause number includes both convictions for simple drug possession and other offenses not subject to vacation, the court must not refund LFOs unless they arose solely from the vacated simple possession conviction.

If the court determines LFOs must be refunded, the vacation order must direct the respective superior or district court clerk or municipal court administrator to cancel any unpaid LFOs. The order must further direct the respective clerk or administrator to compute all LFOs paid and certify the amount to the refund bureau discussed below. Once the certification is filed with the bureau, the refund obligation is transferred to the bureau. Once the bureau issues the refund under a cause number, the bureau must file notice of the amounts paid with the relevant court clerk or administrator.

Refund Bureau. The director of the Department of Revenue must establish a refund bureau for the purposes of refunding LFOs paid by individuals. Prior to the establishment of the bureau, the superior or district court clerk or municipal court administrator may initiate payments out of funds appropriated by the state for this purpose.

Once the director establishes the refund bureau, the bureau is the exclusive means to obtain a refund of any LFOs. No civil action may be filed against the state, counties, or cities that have requested assistance. No such action may be filed against any officials, employees, or agents of those entities seeking a refund, other damages, or any other type of relief in connection with a prior or vacated conviction.

The director must publicize the availability of refunds and the process for obtaining those refunds. Additionally, the director must provide specific notice to individuals whom the respective court clerk or administrator has certified are due refunds.

Any person seeking a refund will have ten years from the effective date to complete an application to the refund bureau. Any refund not claimed within this period will revert to the state. The refund bureau must terminate operation ten years and 1 month after the effective date.

**Appropriation:** None.

**Fiscal Note:** Requested on January 6, 2022.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.