
SUBSTITUTE SENATE BILL 5663

State of Washington

67th Legislature

2022 Regular Session

By Senate Law & Justice (originally sponsored by Senators Dhingra, Hasegawa, Saldaña, Stanford, and C. Wilson)

READ FIRST TIME 01/28/22.

1 AN ACT Relating to establishing streamlined procedures for
2 compliance with the State v. Blake decision in order to improve
3 criminal justice system coordination, create efficiencies, and reduce
4 costs; adding a new chapter to Title 10 RCW; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS. Due to the
8 Washington supreme court's decision in *State v. Blake*, 197 Wn.2d 170,
9 174, 481 P.3d 521 (2021), all convictions since 1971 for simple drug
10 possession are constitutionally void. This decision requires vacation
11 of tens of thousands of convictions entered in the superior,
12 district, and municipal courts. Under due process, a conviction
13 vacated due to *Blake* requires a refund of any legal financial
14 obligations and collection costs paid pursuant to that conviction.
15 Since *Blake* was issued in February 2021, the state's criminal justice
16 system has vacated over 10,000 cases, focusing first on persons
17 currently incarcerated, under active supervision, or on warrant
18 status. Using funds appropriated during the 2020 legislative session,
19 efforts are ongoing to vacate additional cases and refund legal
20 financial obligations and collection costs, but it is likely that the
21 total number of convictions subject to *Blake* over the last 50 years

1 exceed 150,000. As such, the legislature finds it is necessary to
2 implement a concerted and coordinated procedure to vacate these
3 convictions using a proactive and steady workflow that allows for
4 rapid resolution of large numbers of cases over time. Because
5 vacation of these convictions falls within the jurisdiction of the
6 originating court, a procedure that utilizes current court rules and
7 existing mechanisms of the state's criminal justice system is the
8 most efficient way to vacate affected convictions. Once a conviction
9 is vacated and a legal financial obligation refund is determined, a
10 centralized method for disbursing refunds will most efficiently
11 return money to affected people.

12 Additionally, many individuals entered into a deferred
13 prosecution, diversion, or similar program, the successful completion
14 of which resulted in dismissal or nonfiling of an offense that would
15 be constitutionally void under *State v. Blake*. Under due process,
16 these individuals require a refund of legal financial obligations and
17 collection costs.

18 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
19 section apply throughout this chapter unless the context clearly
20 requires otherwise.

21 (1) "Convictions for simple drug possession" includes all
22 convictions or juvenile adjudications since adoption of the uniform
23 controlled substances act of 1971 for possession of any controlled
24 substance, attempted possession of any controlled substance,
25 conspiracy to possess any controlled substance, or solicitation to
26 possess any controlled substance, under the authority of statute, or
27 an ordinance authorized by statute, where the statute or ordinance
28 did not require proof of intentional possession of the controlled
29 substance. It also includes convictions for offenses where a prior
30 conviction for simple drug possession serves as an element of the
31 subsequent offense.

32 (2) "Director" means the director of the department of revenue or
33 the director's designee.

34 (3) "Legal financial obligations and collection costs" means a
35 sum of money that is ordered by court in connection with a conviction
36 for a crime, or assessed as part of a diversion program, deferred
37 sentence, or similar program, and actually paid by the defendant or
38 on the defendant's behalf, which may include restitution to the
39 victim, statutorily imposed crime victims' compensation fees, court

1 costs, county or interlocal drug funds, court-appointed attorneys'
2 fees, and costs of defense, fines, and any other financial obligation
3 that is assessed to the offender as a result of the conviction, or
4 assessed as part of a diversion program, deferred sentence, or
5 similar program which resulted in dismissal or nonfiling of a charge.
6 It also includes penalties, interest, fees, and collection costs
7 authorized by law for the collection or enforcement of legal
8 financial obligations.

9 (4) "Nonconviction" includes all adult and juvenile charges for
10 simple drug possession offenses that were dismissed or not filed
11 following successful completion of a diversion program, deferred
12 sentence, or similar program.

13 NEW SECTION. **Sec. 3.** SUPERIOR AND DISTRICT COURT VACATIONS. (1)
14 In coordination with the superior court clerk or district court
15 administrator within each county, the administrator of the
16 administrative office of the courts shall develop comprehensive,
17 line-item reports for each court of all persons with existing
18 convictions for simple drug possession since 1971. The report will be
19 based on available court records and list convictions and
20 nonconvictions chronologically by cause number in a readily
21 searchable and sortable format. For each cause number subject to the
22 *Blake* decision, the report shall include the person's name, birth
23 date, last known address, date of the judgment and sentence or
24 dismissals pursuant to successful completion of a diversion program,
25 a listing of all conviction counts for simple drug possession in the
26 judgment and sentence or order of dismissal pursuant to successful
27 completion of a diversion program, and a listing of all conviction
28 counts for other offenses in the judgment and sentence. The
29 administrator will indicate any period of time where court records
30 are unavailable. The superior court clerk or district court
31 administrator shall develop a similar report of all sealed cases of
32 persons with convictions and nonconvictions of simple drug possession
33 since 1971. This shall be kept confidential and shall only be shared
34 with the administrator.

35 (2) In compiling the report, the administrator, with the
36 assistance of the department of corrections and the superior court
37 clerk or district court administrator, shall prioritize cases in the
38 following order: (a) The person is incarcerated due to a qualifying
39 conviction; (b) the person is incarcerated with a qualifying

1 conviction in the person's criminal history score; (c) the person is
2 under active or inactive supervision; and (d) the person has a past
3 conviction or nonconviction for a qualifying offense. Within six
4 months of the effective date of this section, the administrator shall
5 complete the report for persons under (a), (b), or (c) of this
6 subsection. For persons under (d) of this subsection, the
7 administrator shall complete the report by January 1, 2023. Reports
8 compiled under this section are exempt from public disclosure.

9 (3) Upon availability, the administrator shall provide completed
10 installments of the report of convictions and nonconvictions to local
11 public defense offices, the Washington state office of public
12 defense, county prosecutors, and the superior court clerk or district
13 court administrator. Local public defense offices shall provide
14 initial review of cause numbers compiled under subsection (2)(a)
15 through (c) of this section to determine whether a person's
16 conviction is subject to vacation under the *Blake* decision and to
17 provide an initial assessment as to case priority, unless the local
18 jurisdiction requests such review from the Washington state office of
19 public defense. Following such review, the local office of public
20 defense or the Washington state office of public defense will provide
21 the appropriate local prosecutor with a list of cause numbers
22 compiled under subsection (2)(a) through (c) of this section to be
23 prioritized for *Blake* relief. Individuals currently under the
24 jurisdiction of the department of corrections, whose possession
25 vacations would result in a shortened sentence, are to be prioritized
26 for resentencing. The county prosecutor shall review each cause
27 number on the report compiled under subsection (2)(d) of this section
28 to determine whether a person's conviction or nonconviction data is
29 subject to vacation under the *Blake* decision. A conviction or
30 nonconviction record is subject to vacation under the *Blake* decision
31 if it was a conviction or charge for simple drug possession. When a
32 person, or his or her legal representative, informs the prosecutor
33 that he or she is facing immigration consequences such as deportation
34 or bars to obtaining lawful status, the prosecutor shall prioritize
35 the case. The prosecutor shall also prioritize cause numbers compiled
36 under reports provided by local public defense offices or the
37 Washington state office of public defense. When the prosecutor
38 determines that a conviction or nonconviction data is subject to
39 vacation, the prosecutor shall prepare an ex parte motion on behalf
40 of the state under CrR 7.8 or CrRLJ 7.8 that asks the court to vacate

1 the person's prior convictions for simple drug possession. Such a
2 motion shall expressly state the motion is pursuant to *State v.*
3 *Blake's* holding that RCW 69.50.4013 is unconstitutional. By filing
4 such a motion, the prosecutor agrees not to file additional or new
5 charges for the acts described in the information. If the prosecutor
6 determines that a conviction or nonconviction data is improperly
7 included on the report due to a clerical error because the actual
8 conviction on the judgment and sentence is not a conviction for
9 simple drug possession, the prosecutor shall file a "Notice of *Blake*
10 *Correction*" with the superior court clerk or the district court
11 administrator and send notice to the affected person at the person's
12 last known address. A copy shall also be sent to the local office of
13 public defense or local defense administrator, or where no local
14 office or local administrator exists, notice shall be sent to the
15 Washington state office of public defense. Defense counsel shall be
16 appointed to a person who has been precluded from obtaining a
17 vacation to assist the person in understanding the person's options
18 for challenging the decision, and to assist the person in bringing a
19 good faith challenge to the decision. If the person is indigent as
20 defined in RCW 10.101.010, the court or the responsible local public
21 defense authority shall appoint counsel. For the purposes of this
22 chapter, incarcerated persons are presumed indigent. Absent vacation
23 of the prior conviction for simple drug possession by *ex parte*
24 motion, nothing in this section precludes the prosecutor from filing
25 additional or new charges where allowed by law.

26 (4) The court shall consider the prosecutor's motion to vacate on
27 paper without the presence of the prosecutor. If the court vacates a
28 conviction for simple drug possession, the fact that the person has
29 been convicted of the offense shall not be included in the person's
30 criminal history for purposes of determining a sentence in any
31 subsequent conviction, and the person shall be released from all
32 penalties and disabilities resulting from the offense. For all
33 purposes, including responding to questions on employment
34 applications, a person whose conviction has been vacated may state
35 that the person has never been convicted of that crime. A conviction
36 that has been vacated under this section may not be disseminated or
37 disclosed by the Washington state patrol or local law enforcement
38 agency to any person.

1 (5) (a) A court vacating a conviction for simple drug possession
2 shall address whether legal financial obligations must be refunded to
3 the person.

4 (i) When the sole crime of conviction under a cause number is
5 simple drug possession, the court shall order a refund of all legal
6 financial obligations and collection costs paid under that cause
7 number. Nothing in this act limits the ability of an affected person
8 to challenge the refund amount as insufficient upon actual notice of
9 the refund amount. The affected person will have a right to the
10 assistance of counsel in reviewing the determination and in bringing
11 a good faith challenge in the court that issued the order.

12 (ii) Where a cause number includes both convictions for simple
13 drug possession and other offenses not subject to vacation under the
14 *Blake* decision, legal financial obligations and collection costs paid
15 under that cause number shall not be refunded except where it is
16 clear on the face of the judgment and sentence that a legal financial
17 obligation arose solely from a vacated simple possession conviction.
18 Nothing in this act limits the ability of an affected person to
19 challenge the refund amount as insufficient upon actual notice of the
20 refund amount. The affected person will have a right to the
21 assistance of counsel in reviewing the determination and in bringing
22 a good faith challenge in the court that issued the order.

23 (iii) Where a cause number includes a nonconviction record, the
24 court shall order a refund of the legal financial obligations
25 assessed to the defendant as part of a diversion program, deferred
26 sentence, or similar program, including drug or other therapeutic
27 court, and actually paid by the defendant or on the defendant's
28 behalf.

29 (b) If the court determines that a refund of legal financial
30 obligations and collection costs is appropriate, the vacation order
31 shall direct the superior court clerk or district court administrator
32 to cancel any unpaid legal financial obligation and collection cost
33 balances. The order shall further direct the superior court clerk or
34 district court administrator to compute all legal financial
35 obligations and collection costs paid by the person that arise from
36 the vacated counts or nonconviction record, which amounts shall be
37 certified by the superior court clerk or the district court
38 administrator, to the refund bureau created in section 5 of this act.
39 Upon filing the certification, the refund obligation is transferred
40 to the refund bureau. Following issuance of a refund under a cause

1 number, the refund bureau shall file notice of the amounts paid with
2 the superior or district court.

3 (6) Where it is necessary to resentence a person or amend the
4 existing sentence in connection with a vacation, the matter will
5 proceed under the court rules with notice to the defendant. Defense
6 counsel shall be appointed where required by law. If the person is
7 indigent as defined in RCW 10.101.010, the court or the responsible
8 local public defense authority shall appoint counsel. For the
9 purposes of this chapter, incarcerated persons are presumed indigent.
10 The court shall notify the local office of public defense or local
11 defense administrator, or where no local office or local
12 administrator exists, notice shall be sent to the Washington state
13 office of public defense. Nothing in this act limits the court's
14 sentencing authority or its authority to resentence.

15 (7) The prosecutor shall take action to quash judicial warrants
16 based solely on underlying charges for simple drug possession or
17 other offenses where a conviction for simple drug possession serves
18 as an element of the crime. Within nine months of the effective date
19 of this section, the prosecutor shall certify to the administrator of
20 the administrative office of the courts that all such warrants have
21 been submitted to a judicial officer for action quashing the warrant.
22 If exceptional circumstances apply, and a prosecutor cannot meet the
23 six-month deadline, the prosecutor shall provide an estimate for a
24 reasonable extension to the administrator of the administrative
25 office of the courts.

26 (8) Within appropriated funds, the administrator of the
27 administrative office of the courts shall contract with each county
28 to ensure sufficient availability of clerks, prosecutors, defenders,
29 judicial officers, and courtroom space. The director of the state
30 office of public defense shall contract with each county to ensure
31 sufficient availability of defenders to complete all work required by
32 this section within five years of the effective date of this section.
33 Contracts to complete resentencing, vacation, and refund work under
34 this act may be based on actual time or upon the average time
35 necessary to complete a task. The work required by this section is
36 deemed complete when all warrants have been quashed and all cause
37 numbers on the report have been dismissed, vacated, resentenced, or
38 otherwise addressed through a "Notice of *Blake Correction*." The
39 superior court clerk or district court administrator shall track
40 resolution of all cause numbers on the report. On a quarterly basis,

1 the superior court clerk and the district court administrator shall
2 report the following to the administrator of the administrative
3 office of the courts: (a) Vacated cause numbers; (b) resentenced
4 cause numbers; (c) cases where the prosecutor has filed a "Notice of
5 *Blake* Correction"; and (d) the number of cases on the report awaiting
6 action.

7 (9) Nothing in this section precludes a person from filing a
8 motion under his or her own criminal cause number to vacate a prior
9 conviction for simple drug possession or be resentenced pursuant to
10 *Blake*. Defense counsel shall be appointed where required by law. If
11 the person is indigent as defined in RCW 10.101.010, the court or the
12 responsible local public defense authority shall appoint counsel. For
13 the purposes of this chapter, incarcerated persons are presumed
14 indigent. The court shall notify the local office of public defense
15 or local defense administrator, or where no local office or local
16 administrator exists, notice shall be sent to the Washington state
17 office of public defense. A motion for resentencing or vacation under
18 *Blake* is not subject to the restrictions in chapter 10.73 RCW and
19 does not adversely impact the defendant's ability to bring subsequent
20 collateral attacks on different grounds. Nothing in this section
21 precludes a person from appealing any order entered under this
22 section.

23 NEW SECTION. **Sec. 4.** MUNICIPAL COURT VACATIONS. (1) Within six
24 months of the effective date of this section, each city with a
25 municipal court shall determine whether the *Blake* decision applies to
26 any municipal convictions for simple drug possession since 1971. If
27 requested by the city, the administrator of the administrative office
28 of the courts shall coordinate with the municipal court administrator
29 to develop a comprehensive report for each city of all persons with
30 existing convictions for simple drug possession since 1971. The
31 report will be based on available court records and list convictions
32 and nonconvictions chronologically by cause number in a readily
33 searchable and sortable format. For each cause number subject to the
34 *Blake* decision, the report shall include the person's name, birth
35 date, last known address, date of the judgment and sentence or
36 dismissals pursuant to successful completion of a diversion program,
37 a listing of all conviction counts for simple drug possession in the
38 judgment and sentence or dismissal, and a listing of all counts for
39 other offenses in the judgment and sentence. The administrator will

1 indicate any period of time where court records are unavailable. The
2 municipal court administrator shall develop a similar report of all
3 sealed cases of persons convicted of simple drug possession since
4 1971.

5 (2) In compiling the report, the administrator, with the
6 assistance of the department of corrections and the municipal court
7 administrator, shall prioritize cases in the following order: (a) The
8 person is incarcerated due to a qualifying conviction; (b) the person
9 is incarcerated with a qualifying conviction in the person's criminal
10 history score; (c) the person is under active or inactive
11 supervision; and (d) the person has a past conviction or
12 nonconviction for a qualifying offense. Within six months of the
13 city's request under subsection (1) of this section, the
14 administrator shall complete the report for persons under (a), (b),
15 or (c) of this subsection. For persons under (d) of this subsection,
16 the administrator shall complete the report within nine months of the
17 city's request under subsection (1) of this section. Reports compiled
18 under this section are exempt from public disclosure.

19 (3) Upon availability, the administrator shall provide completed
20 installments of the report of convictions and nonconvictions to the
21 local public defense offices, the Washington state office of public
22 defense, city prosecutors, and the municipal court administrator.
23 Local public defense offices shall provide initial review of cause
24 numbers compiled under subsection (2)(a) through (c) of this section
25 to determine whether a person's conviction is subject to vacation
26 under the *Blake* decision and to provide an initial assessment as to
27 case priority, unless the local jurisdiction requests such review
28 from the Washington state office of public defense. Following such
29 review, the local office of public defense or the Washington state
30 office of public defense will provide the appropriate local
31 prosecutor with a list of cause numbers compiled under subsection
32 (2)(a) through (c) of this section to be prioritized for *Blake*
33 relief. Individuals currently under the jurisdiction of the
34 department of corrections, whose possession vacations would result in
35 a shortened sentence, are to be prioritized for resentencing. The
36 city prosecutor shall review each cause number on the report compiled
37 under subsection (2)(d) of this section to determine whether a
38 person's convictions or nonconviction data is subject to vacation
39 under the *Blake* decision. A conviction or nonconviction is subject to
40 vacation under the *Blake* decision if it was a conviction or charge

1 for simple drug possession. When a person, or the person's legal
2 representative, informs the prosecutor that the person is facing
3 immigration consequences, such as deportation or bars to obtaining
4 lawful status, the prosecutor shall prioritize the case. The
5 prosecutor shall also prioritize cause numbers compiled under reports
6 provided by local public defense offices or the Washington state
7 office of public defense. When the city prosecutor determines that a
8 conviction or nonconviction data is subject to vacation, the
9 prosecutor shall prepare an ex parte motion under CrRLJ 7.8 asking
10 the court to vacate the person's prior conviction or convictions for
11 simple drug possession. Such a motion shall expressly state the
12 motion is pursuant to *State v. Blake's* holding that RCW 69.50.4013 is
13 unconstitutional. By filing such a motion, the prosecutor agrees not
14 to file additional charges for the acts described in the information.
15 If the prosecutor determines that a conviction or nonconviction data
16 is improperly included on the report due to a clerical error because
17 the actual conviction on the judgment and sentence is not a
18 conviction for simple drug possession, the prosecutor shall file a
19 "Notice of *Blake* Correction" with the municipal court administrator
20 and send notice to the affected person at the person's last known
21 address. A copy shall also be sent to the local office of public
22 defense or local defense administrator, or where no local office or
23 local administrator exists, notice shall be sent to the Washington
24 state office of public defense. Defense counsel shall be appointed to
25 a person who has been precluded from obtaining a vacation to assist
26 the person in understanding the person's options for challenging the
27 decision, and to assist the person in bringing a good faith challenge
28 to the decision. If the person is indigent as defined in RCW
29 10.101.010, the court or the responsible local public defense
30 authority shall appoint counsel. For the purposes of this chapter,
31 incarcerated persons are presumed indigent.

32 (4) The court shall consider the prosecutor's motion to vacate on
33 paper without the presence of the prosecutor. If the court vacates a
34 conviction for simple drug possession, the fact that the person has
35 been convicted of the offense shall not be included in the person's
36 criminal history for purposes of determining a sentence in any
37 subsequent conviction, and the person shall be released from all
38 penalties and disabilities resulting from the offense. For all
39 purposes, including responding to questions on employment
40 applications, a person whose conviction has been vacated may state

1 that the person has never been convicted of that crime. A conviction
2 that has been vacated under this section may not be disseminated or
3 disclosed by the Washington state patrol or local law enforcement
4 agency to any person. Nothing in this section affects the
5 requirements for restoring a right to possess a firearm under RCW
6 9.41.040.

7 (5) (a) A court vacating a conviction for simple drug possession
8 shall address whether legal financial obligations must be refunded to
9 the person.

10 (i) When the sole crime of conviction under a cause number is
11 simple drug possession, the court shall order a refund of all legal
12 financial obligations and collection costs paid under that cause
13 number. Nothing in this act limits the ability of an affected person
14 to challenge the refund amount as insufficient upon actual notice of
15 the refund amount. The affected person will have a right to the
16 assistance of counsel in reviewing the determination and in bringing
17 a good faith challenge in the court that issued the order.

18 (ii) Where a cause number includes both convictions for simple
19 drug possession and other offenses not subject to vacation under the
20 *Blake* decision, legal financial obligations and collection costs paid
21 under that cause number shall not be refunded except where it is
22 clear on the face of the judgment and sentence that a legal financial
23 obligation arises solely from a vacated simple possession conviction.
24 Nothing in this act limits the ability of an affected person to
25 challenge the refund amount as insufficient upon actual notice of the
26 refund amount. The affected person will have a right to the
27 assistance of counsel in reviewing the determination and in bringing
28 a good faith challenge in the court that issued the order.

29 (iii) Where a cause number includes a nonconviction record, the
30 court shall order a refund of the fees assessed to the defendant as
31 part of a diversion program, deferred sentence, or similar program,
32 and actually paid by the defendant or on the defendant's behalf.

33 (b) If the court determines that a refund of legal financial
34 obligations and collection costs is appropriate, the vacation order
35 shall direct the municipal court administrator to cancel any unpaid
36 legal financial obligation and collection cost balances. The order
37 shall further direct the municipal court administrator to compute all
38 legal financial obligations and collection costs paid by the person
39 that arise from the vacated counts or nonconviction record, which
40 amounts shall be certified by the municipal court administrator, to

1 the refund bureau created in section 5 of this act. Upon filing the
2 certification, the refund obligation is transferred to the refund
3 bureau. Following issuance of a refund under a cause number, the
4 refund bureau shall file notice of the amounts paid with the
5 municipal court.

6 (6) Where it is necessary to resentence a person or amend the
7 existing sentence in connection with a vacation, the matter will
8 proceed under the court rules with notice to the defendant. Defense
9 counsel shall be appointed where required by law. If the person is
10 indigent as defined in RCW 10.101.010, the court or the responsible
11 local public defense authority shall appoint counsel. For the
12 purposes of this chapter, incarcerated persons are presumed indigent.
13 The court shall notify the local office of public defense or local
14 defense administrator, or where no local office or local
15 administrator exists, notice shall be sent to the Washington state
16 office of public defense. Nothing in this act limits the court's
17 sentencing authority or its authority to resentence.

18 (7) The prosecutor shall take action to quash any judicial
19 warrants based solely on underlying charges for simple drug
20 possession or other offenses where a conviction for simple drug
21 possession is an element of the crime. Within nine months of the
22 effective date of this section, the prosecutor shall certify to the
23 administrator of the administrative office of the courts that all
24 such warrants have been submitted to a judicial officer for action
25 quashing the warrant. If exceptional circumstances apply, and a
26 prosecutor cannot meet the nine-month deadline, the prosecutor shall
27 provide an estimate for a reasonable extension to the administrator
28 of the administrative office of the courts.

29 (8) Within appropriated funds, the administrator of the
30 administrative office of the courts shall contract with each city to
31 ensure sufficient availability of clerks, prosecutors, defenders,
32 judicial officers, and courtroom space to complete all work required
33 by this section within five years of the effective date of this
34 section. Contracts to complete resentencing, vacation, and refund
35 work under this act may be based on actual time or upon the average
36 time necessary to complete a task. The work required by this section
37 is deemed complete when all warrants have been quashed and all cause
38 numbers on the report have been dismissed, vacated, resentenced, or
39 otherwise addressed through a "Notice of *Blake Correction*." The
40 municipal court administrator shall track resolution of all cause

1 numbers on the report. On a quarterly basis, the municipal court
2 administrator shall report the following to the administrator of the
3 administrative office of the courts: (a) Vacated cause numbers; (b)
4 resentenced cause numbers; (c) cases where the prosecutor has filed a
5 "Notice of *Blake* Correction"; and (d) the number of cases on the
6 report awaiting action.

7 (9) Nothing in this section precludes a person from filing a
8 motion under his or her own criminal cause number to vacate a prior
9 conviction for simple drug possession or be resentenced pursuant to
10 *Blake*. Defense counsel shall be appointed where required by law. If
11 the person is indigent as defined in RCW 10.101.010, the court or the
12 responsible local public defense authority shall appoint counsel. For
13 the purposes of this chapter, incarcerated persons are presumed
14 indigent. The court shall notify the local office of public defense
15 or local defense administrator, or where no local office or local
16 administrator exists, notice shall be sent to the Washington state
17 office of public defense. A motion for resentencing or vacation under
18 *Blake* is not subject to the restrictions in chapter 10.73 RCW and
19 does not adversely impact the defendant's ability to bring a
20 subsequent collateral attack on different grounds. Nothing in this
21 section precludes a person from appealing any order entered under
22 this section.

23 NEW SECTION. **Sec. 5.** REFUND BUREAU. (1) The director shall
24 establish a refund bureau for the purpose of refunding legal
25 financial obligations and collection costs paid by persons that arise
26 from the vacation of convictions for simple drug possession in the
27 superior, district, or municipal courts. The director may adopt rules
28 to establish bureau operations and refund procedures. Prior to
29 establishment of the refund bureau, the superior court clerk, the
30 district court administrator, or the municipal court administrator
31 may initiate payment of legal financial obligations out of funds
32 appropriated by the state for this purpose. If state funds are
33 unavailable, the superior court clerk, the district court
34 administrator, or the municipal court administrator shall certify the
35 amount of the refund due for payment by the refund bureau.

36 (2) Within appropriated funds, the refund bureau shall issue
37 refunds of legal financial obligations and collection costs to
38 eligible persons with vacated convictions for simple drug possession
39 in the amounts certified by the superior court clerk, the district

1 court administrator, or the municipal court administrator pursuant to
2 a court vacation order.

3 (3) The director shall publicize the availability of refunds to
4 persons with vacated convictions for simple drug possession and the
5 process for obtaining those refunds. In addition, the director shall
6 provide specific notice to persons still living whom the superior
7 court clerk, district court administrator, or municipal court
8 administrator has certified under section 3 or 4 of this act are due
9 refunds of legal financial obligations and collection costs. Such
10 notice shall be accomplished by first-class mail to the person's last
11 known address. To determine the last known address, the director may
12 consult databases maintained by the department of corrections, the
13 courts, and the department of licensing.

14 (4) The refund bureau established by the director is the
15 exclusive means to obtain a refund of any legal financial obligations
16 and collection costs paid by a person with a prior or vacated
17 conviction for simple drug possession. No civil action may be filed
18 against the state, counties, or cities that have requested assistance
19 under section 4(1) of this act, nor may such an action be filed
20 against any officials, employees, or agents of those entities seeking
21 a refund of legal financial obligations and collection costs, other
22 damages, or any other type of relief in connection with a prior or
23 vacated conviction for simple drug possession.

24 (5) Any person seeking a refund of legal financial obligations
25 and collection costs arising from a vacated conviction for simple
26 drug possession shall have seven years from the effective date of
27 this section to complete his or her application to the refund bureau.
28 Any legal financial obligations and collection costs that have not
29 been claimed within this seven-year period will escheat to the state.
30 The refund bureau established in this section will terminate
31 operation seven years and one month after the effective date of this
32 section.

33 NEW SECTION. **Sec. 6.** UNAVAILABLE COURT RECORDS. (1) Except
34 where court records are no longer available, court records showing
35 crimes of conviction and legal financial obligation and collection
36 cost payments are presumptively correct. A person seeking to rebut
37 this presumption may do so only by clear and convincing evidence.

38 (2) A person seeking vacation of a conviction within the time
39 period where court records are unavailable may prove the existence of

1 the conviction through a declaration accompanied by copies of a
2 judgment and sentence, or official records reporting the conviction.
3 Upon proof deemed adequate by the court, such a conviction is subject
4 to potential vacation under section 3 or 4 of this act.

5 (3) A person seeking a refund of legal financial obligations and
6 collection costs within the time period where court records are
7 unavailable may prove the existence of payments by declaration
8 accompanied by direct or secondary sources demonstrating payment.

9 (4) Any person contesting the existence of a conviction for
10 simple drug possession or the amounts due for refund shall bring the
11 matter before the court of conviction.

12 NEW SECTION. **Sec. 7.** WASHINGTON STATE PATROL. When presented
13 with an order vacating a prior conviction for simple drug possession,
14 the Washington state patrol shall remove any convictions covered by
15 the vacation order from all criminal record information systems
16 maintained by the Washington state patrol. In addition, the
17 Washington state patrol shall report the vacated convictions to
18 relevant federal authorities.

19 NEW SECTION. **Sec. 8.** LIMITATION ON LIABILITY. The state, its
20 agencies, and its municipal subdivisions, as well as officials,
21 employees, and agents of those entities, shall not be civilly liable
22 for performing any duties pursuant to this act: PROVIDED, That such
23 duties were performed in good faith and without gross negligence.
24 Nothing in this section limits any statutory or common law immunity
25 otherwise applicable to the state, its agencies, and its municipal
26 subdivisions, as well as officials, employees, and agents of those
27 entities.

28 NEW SECTION. **Sec. 9.** EMERGENCY CLAUSE. This act is necessary
29 for the immediate preservation of the public peace, health, or
30 safety, or support of the state government and its existing public
31 institutions, and takes effect immediately.

32 NEW SECTION. **Sec. 10.** CODIFICATION DIRECTIVE. Sections 1
33 through 9 of this act constitute a new chapter in Title 10 RCW.

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