
SENATE BILL 5663

State of Washington

67th Legislature

2022 Regular Session

By Senators Dhingra, Hasegawa, Saldaña, Stanford, and C. Wilson

Prefiled 01/05/22. Read first time 01/10/22. Referred to Committee on Ways & Means.

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

15 (1) "Convictions for simple drug possession" includes all
16 convictions since adoption of the uniform controlled substances act
17 of 1971 for possession of any controlled substance, attempted
18 possession of any controlled substance, conspiracy to possess any
19 controlled substance, or solicitation to possess any controlled
20 substance, under the authority of statute, or an ordinance authorized
21 by statute, where the statute or ordinance did not require proof of
22 intentional possession of the controlled substance. It also includes
23 convictions for offenses where a prior conviction for simple drug
24 possession serves as an element of the subsequent offense.

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

27 (3) "Legal financial obligations and collection costs" means a
28 sum of money that is ordered by court in connection with a conviction
29 for a crime and actually paid by the defendant or on the defendant's
30 behalf, which may include restitution to the victim, statutorily
31 imposed crime victims' compensation fees, court costs, county or
32 interlocal drug funds, court-appointed attorneys' fees, and costs of
33 defense, fines, and any other financial obligation that is assessed
34 to the offender as a result of the conviction. It also includes
35 penalties, interest, fees, and collection costs authorized by law for
36 the collection or enforcement of legal financial obligations.

37 NEW SECTION. **Sec. 3.** SUPERIOR AND DISTRICT COURT VACATIONS. (1)
38 In coordination with the superior court clerk or district court

1 administrator within each county, the administrator of the
2 administrative office of the courts shall develop comprehensive,
3 line-item reports for each court of all persons convicted of simple
4 drug possession since 1971. The report will be based on available
5 court records and list convictions chronologically by cause number in
6 a readily searchable and sortable format. For each cause number that
7 includes a conviction subject to vacation under the *Blake* decision,
8 the report shall include the person's name, birth date, last known
9 address, date of the judgment and sentence, a listing of all
10 conviction counts for simple drug possession in the judgment and
11 sentence, and a listing of all conviction counts for other offenses
12 in the judgment and sentence. The administrator will indicate any
13 period of time where court records are unavailable. The superior
14 court clerk or district court administrator shall develop a similar
15 report of all sealed cases of persons convicted of simple drug
16 possession since 1971. This shall be kept confidential and shall only
17 be shared with the administrator.

18 (2) In compiling the report, the administrator, with the
19 assistance of the department of corrections and the superior court
20 clerk or district court administrator, shall prioritize cases in the
21 following order: (a) The person is incarcerated due to a qualifying
22 conviction; (b) the person is incarcerated with a qualifying
23 conviction in the person's criminal history score; (c) the person is
24 under active or inactive supervision; and (d) the person has a past
25 conviction for a qualifying offense. Within three months of the
26 effective date of this section, the administrator shall complete the
27 report for persons under (a), (b), or (c) of this subsection. For
28 persons under (d) of this subsection, the administrator shall
29 complete the report by January 1, 2023.

30 (3) Upon availability, the administrator shall provide completed
31 installments of the report of convictions to the county prosecutor
32 and the superior court clerk or district court administrator. The
33 county prosecutor shall review each cause number on the report to
34 determine whether a person's conviction is properly subject to
35 vacation under the *Blake* decision. When a person, or his or her legal
36 representative, informs the prosecutor that he or she is facing
37 immigration consequences such as deportation or bars to obtaining
38 lawful status, the prosecutor shall prioritize the case. When the
39 prosecutor determines that a conviction is subject to vacation, the
40 prosecutor shall prepare an ex parte motion on behalf of the state

1 under CrR 7.8 or CrRLJ 7.8 that asks the court to vacate the person's
2 prior convictions for simple drug possession. Such a motion shall
3 expressly state the motion is pursuant to *State v. Blake's* holding
4 that RCW 69.50.4013 is unconstitutional. By filing such a motion, the
5 prosecutor agrees not to file additional or new charges for the acts
6 described in the information. If the prosecutor determines that a
7 conviction is improperly included on the report because the
8 conviction is not a conviction for simple drug possession, the
9 prosecutor shall file a "Notice of *Blake Disposition*" that contains a
10 short written explanation with the superior court clerk or the
11 district court administrator and send notice to the affected
12 individual at his or her last known address. A copy shall also be
13 sent to the local office of public defense or proper appointing
14 authority, or, where no defense office is listed for the
15 jurisdiction, notice shall be sent to the Washington state office of
16 public defense. Defense counsel shall be appointed to a person who
17 has been precluded from obtaining vacation to assist the person in
18 challenging the decision if the person so elects. Absent vacation of
19 the prior conviction for simple drug possession by ex parte motion,
20 nothing in this section precludes the prosecutor from filing
21 additional or new charges where allowed by law.

22 (4) The court shall consider the prosecutor's motion to vacate on
23 paper without the presence of the prosecutor. If the court vacates a
24 conviction for simple drug possession, the fact that the person has
25 been convicted of the offense shall not be included in the person's
26 criminal history for purposes of determining a sentence in any
27 subsequent conviction, and the person shall be released from all
28 penalties and disabilities resulting from the offense. For all
29 purposes, including responding to questions on employment
30 applications, a person whose conviction has been vacated may state
31 that the person has never been convicted of that crime. A conviction
32 that has been vacated under this section may not be disseminated or
33 disclosed by the Washington state patrol or local law enforcement
34 agency to any person. Nothing in this section affects the
35 requirements for restoring a right to possess a firearm under RCW
36 9.41.040.

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

1 (i) When the sole crime of conviction under a cause number is
2 simple drug possession, the court shall order a refund of all legal
3 financial obligations and collection costs paid under that cause
4 number.

5 (ii) Where a cause number includes both convictions for simple
6 drug possession and other offenses not subject to vacation under the
7 *Blake* decision, the court shall determine whether any nonvacated
8 convictions independently support the court's imposition of legal
9 financial obligations. When legal financial obligations previously
10 imposed are independently supported by a nonvacated conviction, no
11 refund of legal financial obligations and collection costs may be
12 ordered by the court.

13 (iii) Where a cause number includes both convictions for simple
14 drug possession and other offenses not subject to vacation, but
15 imposition of legal financial obligations for those offenses is
16 discretionary with the court, the court shall set a hearing with
17 notice to the defendant and an opportunity to be heard on whether any
18 nonvacated conviction supports imposition of legal financial
19 obligations. In the interests of justice, the prosecutor may waive
20 this hearing, and, if so, the court shall order a refund of all legal
21 financial obligations and collection costs paid under that cause
22 number.

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

36 (6) Where it is necessary to resentence a person or amend the
37 existing sentence in connection with a vacation, the matter will
38 proceed under the court rules with notice to the defendant. Defense
39 counsel shall be appointed where required by law. The court shall
40 notify the local office of public defense or proper appointing

1 authority, appoint local defense counsel from the list published by
2 the Washington state office of public defense, or, where no defense
3 counsel is listed for the jurisdiction, contact the Washington state
4 office of public defense. Nothing in this act limits the court's
5 sentencing authority or its authority to resentence.

6 (7) The prosecutor shall take action to quash judicial warrants
7 based solely on underlying charges for simple drug possession or
8 other offenses where a conviction for simple drug possession serves
9 as an element of the crime. Within six months of the effective date
10 of this section, the prosecutor shall certify to the director that
11 all such warrants have been submitted to a judicial officer for
12 action quashing the warrant. If exceptional circumstances apply, and
13 a prosecutor cannot meet the six-month deadline, the prosecutor shall
14 provide an estimate for a reasonable extension to the director.

15 (8) Within appropriated funds, the director shall contract with
16 each county to ensure sufficient availability of clerks, prosecutors,
17 defenders, judicial officers, and courtroom space to complete all
18 work required by this section within three years of the effective
19 date of this section. Contracts to complete resentencing, vacation,
20 and refund work under this act may be based on actual time or upon
21 the average time necessary to complete a task. The work required by
22 this section is deemed complete when all warrants have been quashed
23 and all cause numbers on the report have been dismissed, vacated,
24 resentenced, or otherwise addressed through a "Notice of *Blake*
25 *Disposition*." The superior court clerk or district court
26 administrator shall track resolution of all cause numbers on the
27 report. On a quarterly basis, the superior court clerk and the
28 district court administrator shall report the following to the
29 director: (a) Vacated cause numbers; (b) resentenced cause numbers;
30 (c) cases where the prosecutor has filed a "Notice of *Blake*
31 *Disposition*"; and (d) the number of cases on the report awaiting
32 action.

33 (9) Nothing in this section precludes a person from filing a
34 motion under his or her own criminal cause number to vacate a prior
35 conviction for simple drug possession or be resentenced pursuant to
36 *Blake*. Defense counsel shall be appointed where required by law. The
37 court shall notify the local office of public defense or proper
38 appointing authority, appoint local defense counsel from the list
39 published by the Washington state office of public defense, or, where
40 no defense counsel is listed for the jurisdiction, contact the

1 Washington state office of public defense. A motion for resentencing
2 or vacation under *Blake* does not constitute a collateral attack as
3 set forth in chapter 10.73 RCW.

4 NEW SECTION. **Sec. 4.** MUNICIPAL COURT VACATIONS. (1) Within
5 three months of the effective date of this section, each city with a
6 municipal court shall determine whether the *Blake* decision applies to
7 any municipal convictions for simple drug possession since 1971. If
8 requested by the city, the administrator of the administrative office
9 of the courts shall coordinate with the municipal court administrator
10 to develop a comprehensive report for each city of all persons
11 convicted of simple drug possession. The report will be based on
12 available court records and list convictions chronologically by cause
13 number in a readily searchable and sortable format. For each cause
14 number that includes a conviction subject to vacation under the *Blake*
15 decision, the report shall include the person's name, birth date,
16 last known address, date of the judgment and sentence, a listing of
17 all conviction counts for simple drug possession in the judgment and
18 sentence, and a listing of all conviction counts for other offenses
19 in the judgment and sentence. The administrator will indicate any
20 period of time where court records are unavailable.

21 (2) In compiling the report, the administrator, with the
22 assistance of the department of corrections and the municipal court
23 administrator, shall prioritize cases in the following order: (a) The
24 person is incarcerated due to a qualifying conviction; (b) the person
25 is incarcerated with a qualifying conviction in the person's criminal
26 history score; (c) the person is under active or inactive
27 supervision; and (d) the person has a past conviction for a
28 qualifying offense. Within three months of the city's request under
29 subsection (1) of this section, the administrator shall complete the
30 report for persons under (a), (b), or (c) of this subsection. For
31 persons under (d) of this subsection, the administrator shall
32 complete the report within six months of the city's request under
33 subsection (1) of this section.

34 (3) Upon availability, the administrator shall provide completed
35 installments of the report of convictions to the city prosecutor and
36 the municipal court administrator. The city prosecutor shall review
37 each cause number on the report to determine whether a person's
38 convictions for simple drug possession are properly subject to
39 vacation under the *Blake* decision. When the city prosecutor

1 determines that a conviction is subject to vacation, the prosecutor
2 shall prepare an ex parte motion under CrRLJ 7.8 asking the court to
3 vacate the person's prior conviction or convictions for simple drug
4 possession. Such a motion shall expressly state the motion is
5 pursuant to *State v. Blake's* holding that RCW 69.50.4013 is
6 unconstitutional. By filing such a motion, the prosecutor agrees not
7 to file additional charges for the acts described in the information.
8 If the prosecutor determines that a conviction is improperly included
9 on the report, the prosecutor shall file a "Notice of *Blake*
10 Disposition" that contains a short written explanation with the
11 municipal court administrator.

12 (4) The court shall consider the prosecutor's motion to vacate on
13 paper without the presence of the prosecutor. If the court vacates a
14 conviction for simple drug possession, the fact that the person has
15 been convicted of the offense shall not be included in the person's
16 criminal history for purposes of determining a sentence in any
17 subsequent conviction, and the person shall be released from all
18 penalties and disabilities resulting from the offense. For all
19 purposes, including responding to questions on employment
20 applications, a person whose conviction has been vacated may state
21 that the person has never been convicted of that crime. A conviction
22 that has been vacated under this section may not be disseminated or
23 disclosed by the Washington state patrol or local law enforcement
24 agency to any person. Nothing in this section affects the
25 requirements for restoring a right to possess a firearm under RCW
26 9.41.040.

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

30 (i) When the sole crime of conviction under a cause number is
31 simple drug possession, the court shall order a refund of all legal
32 financial obligations and collection costs paid under that cause
33 number.

34 (ii) Where a cause number includes both convictions for simple
35 drug possession and other offenses not subject to vacation under the
36 *Blake* decision, the court shall determine whether any nonvacated
37 convictions independently support the court's imposition of legal
38 financial obligations. When legal financial obligations previously
39 imposed are independently supported by a nonvacated conviction, no

1 refund of legal financial obligations and collection costs may be
2 ordered by the court.

3 (iii) Where a cause number includes both convictions for simple
4 drug possession and other offenses not subject to vacation, but
5 imposition of legal financial obligations for those offenses is
6 discretionary with the court, the court shall set a hearing with
7 notice to the defendant and an opportunity to be heard on whether any
8 nonvacated conviction supports imposition of legal financial
9 obligations. In the interests of justice, the prosecutor may waive
10 this hearing, and, if so, the court shall order a refund of all legal
11 financial obligations and collection costs paid under that cause
12 number.

13 (b) If the court determines that a refund of legal financial
14 obligations and collection costs is appropriate, the vacation order
15 shall direct the municipal court administrator to cancel any unpaid
16 legal financial obligation and collection cost balances. The order
17 shall further direct the municipal court administrator to compute all
18 legal financial obligations and collection costs paid by the person
19 that arise from the vacated counts, which amounts shall be certified
20 by the municipal court administrator, to the refund bureau created in
21 section 5 of this act. Upon filing the certification, the refund
22 obligation is transferred to the refund bureau. Following issuance of
23 a refund under a cause number, the refund bureau shall file notice of
24 the amounts paid with the municipal court.

25 (6) Where it is necessary to resentence a person or amend the
26 existing sentence in connection with a vacation, the matter will
27 proceed under the court rules with notice to the defendant. Defense
28 counsel shall be appointed where required by law. The court shall
29 notify the local office of public defense or proper appointing
30 authority, appoint local defense counsel from the list published by
31 the Washington state office of public defense, or, where no defense
32 counsel is listed for the jurisdiction, contact the Washington state
33 office of public defense. Nothing in this act limits the court's
34 sentencing authority or its authority to resentence.

35 (7) The prosecutor shall take action to quash any judicial
36 warrants based solely on underlying charges for simple drug
37 possession or other offenses where a conviction for simple drug
38 possession is an element of the crime. Within six months of the
39 effective date of this section, the prosecutor shall certify to the
40 director that all such warrants have been submitted to a judicial

1 officer for action quashing the warrant. If exceptional circumstances
2 apply, and a prosecutor cannot meet the six-month deadline, the
3 prosecutor shall provide an estimate for a reasonable extension to
4 the director.

5 (8) Within appropriated funds, the director shall contract with
6 each city to ensure sufficient availability of clerks, prosecutors,
7 defenders, judicial officers, and courtroom space to complete all
8 work required by this section within three years of the effective
9 date of this section. Contracts to complete resentencing, vacation,
10 and refund work under this act may be based on actual time or upon
11 the average time necessary to complete a task. The work required by
12 this section is deemed complete when all warrants have been quashed
13 and all cause numbers on the report have been dismissed, vacated,
14 resentenced, or otherwise addressed through a "Notice of *Blake*
15 *Disposition*." The municipal court administrator shall track
16 resolution of all cause numbers on the report. On a quarterly basis,
17 the municipal court administrator shall report the following to the
18 director: (a) Vacated cause numbers; (b) resentenced cause numbers;
19 (c) cases where the prosecutor has filed a "Notice of *Blake*
20 *Disposition*"; and (d) the number of cases on the report awaiting
21 action.

22 (9) Nothing in this section precludes a person from filing a
23 motion under his or her own criminal cause number to vacate a prior
24 conviction for simple drug possession or be resentenced pursuant to
25 *Blake*. Defense counsel shall be appointed where required by law. The
26 court shall notify the local office of public defense or proper
27 appointing authority, appoint local defense counsel from the list
28 published by the Washington state office of public defense, or, where
29 no defense counsel is listed for the jurisdiction, contact the
30 Washington state office of public defense.

31 NEW SECTION. **Sec. 5.** REFUND BUREAU. (1) The director shall
32 establish a refund bureau for the purpose of refunding legal
33 financial obligations and collection costs paid by persons that arise
34 from the vacation of convictions for simple drug possession in the
35 superior, district, or municipal courts. The director may adopt rules
36 to establish bureau operations and refund procedures. Prior to
37 establishment of the refund bureau, the superior court clerk, the
38 district court administrator, or the municipal court administrator
39 may initiate payment of legal financial obligations out of funds

1 appropriated by the state for this purpose. If state funds are
2 unavailable, the superior court clerk, the district court
3 administrator, or the municipal court administrator shall certify the
4 amount of the refund due for payment by the refund bureau.

5 (2) Within appropriated funds, the refund bureau shall issue
6 refunds of legal financial obligations and collection costs to
7 eligible persons with vacated convictions for simple drug possession
8 in the amounts certified by the superior court clerk, the district
9 court administrator, or the municipal court administrator pursuant to
10 a court vacation order.

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

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

32 (5) Any person seeking a refund of legal financial obligations
33 and collection costs arising from a vacated conviction for simple
34 drug possession shall have 10 years from the effective date of this
35 section to complete his or her application to the refund bureau. Any
36 legal financial obligations and collection costs that have not been
37 claimed within this 10-year period will escheat to the state. The
38 refund bureau established in this section will terminate operation 10
39 years and one month after the effective date of this section.

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

6 (2) A person seeking vacation of a conviction within the time
7 period where court records are unavailable may prove the existence of
8 the conviction through a declaration accompanied by copies of a
9 judgment and sentence, or official records reporting the conviction.
10 Upon proof deemed adequate by the court, such a conviction is subject
11 to potential vacation under section 3 or 4 of this act.

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

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

19 NEW SECTION. **Sec. 7.** WASHINGTON STATE PATROL. When presented
20 with an order vacating a prior conviction for simple drug possession,
21 the Washington state patrol shall remove any convictions covered by
22 the vacation order from all criminal record information systems
23 maintained by the Washington state patrol. In addition, the
24 Washington state patrol shall report the vacated convictions to
25 relevant federal authorities.

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

35 NEW SECTION. **Sec. 9.** EMERGENCY CLAUSE. This act is necessary
36 for the immediate preservation of the public peace, health, or

1 safety, or support of the state government and its existing public
2 institutions, and takes effect immediately.

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

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