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**Civil Rights & Judiciary Committee**

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**HB 1492**

**Brief Description:** Providing relief for persons affected by State v. Blake.

**Sponsors:** Representatives Simmons, Peterson, Santos, Doglio, Pollet, Macri and Reed.

**Brief Summary of Bill**

- Establishes procedures and requirements for vacating convictions, resentencing, and refunding legal financial obligations (LFOs) pursuant to the decision in *State v. Blake*.
- Requires the Administrative Office of the Courts (AOC) to develop lists for each court of all qualifying convictions subject to vacation and qualifying nonconvictions eligible for a refund of LFOs.
- Requires prosecutors to review the lists and take certain actions, including bringing ex parte motions to vacate qualifying convictions and to refund LFOs for all qualifying convictions and qualifying nonconvictions, and to file status reports on all filed motions.
- Sets forth required contents in a vacation order and the effect of the vacation.
- Defines LFOs that are entitled to be reimbursed, establishes standards for determining refund amounts, and requires the AOC to establish a refund bureau to provide direct refunds to persons entitled to LFO refunds.
- Allows persons to challenge the amount of any LFO refund, or to bring their own motion to vacate a qualifying conviction or seek refund of LFOs for a qualifying nonconviction.

**Hearing Date:** 1/25/23

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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.*

**Staff:** Edie Adams (786-7180).

**Background:**

Prior to 2021, possession of a controlled substance under the Uniform Controlled Substances Act was a strict liability offense, meaning that no mens rea (guilty state of mind) element had to be proven in order to convict a person of the offense. In *State v. Blake*, the Washington Supreme Court held that the strict liability nature of the offense exceeds the state's police power and violates the due process clauses of the state and federal constitutions. The Court invalidated the portion of the statute creating the simple possession crime.

The ruling in *State v. Blake* applies retroactively, and as a result, all convictions under the statute are void going back to the law's original enactment in 1971. Persons convicted of the offense are entitled to have their convictions vacated. There is no automatic process for vacating the convictions; for each void conviction a motion must be brought in the sentencing court to vacate the conviction and refund legal financial obligations (LFOs) paid as a result of the conviction. Vacation of a conviction record releases the person from all penalties and disabilities resulting from the offense, and the person may state that they have never been convicted of the offense. A vacated conviction is not included in the person's criminal history when calculating an offender score for any subsequent conviction.

The Legislature has provided funding to the Administrative Office of the Courts (AOC) and other entities to assist with implementation of the *State v. Blake* decision. The AOC received funding to assist cities and counties with the costs of resentencing and vacating the sentences of defendants whose convictions or sentences are affected by *State v. Blake*. The AOC must work with superior court clerks and district and municipal court administrators to prepare comprehensive reports, based on available court records, of all cause numbers impacted by *State v. Blake* going back to 1971. Funding was also provided to create a pool to refund LFOs previously paid by defendants whose convictions or sentences are affected by *State v. Blake*, and to establish a centralized process for refunding LFOs, including a process to locate and notify individuals of available refunds and how to apply for refunds. The AOC is in the process of establishing a refund bureau to provide direct refunds to persons certified by courts as entitled to a refund of LFOs.

The Office of Public Defense (OPD) received funding to assist with public defense services for clients whose convictions or sentences are affected by the *State v. Blake* decision, and to create a *Blake* triage team to provide statewide support to the management and flow of hearings for individuals impacted by *Blake*. In addition, the Office of Civil Legal Aid (OCLA) received funding to assist clients in resolving civil matters surrounding LFOs and vacate sentences that are a result of the *State v. Blake* decision.

**Summary of Bill:**

As a result of the Washington Supreme Court decision in *State v. Blake*, a person with a

qualifying conviction is eligible to have the conviction vacated by the sentencing court, and a person with a qualifying conviction or qualifying nonconviction is eligible for a refund of all LFOs paid as a result of the qualifying conviction or qualifying nonconviction.

"Qualifying conviction" means a conviction or juvenile adjudication of:

- any of the following offenses where possession of a substance is criminalized without proof of knowing possession: possession of a controlled substance; possession of narcotics; possession of less than 40 grams of marijuana; possession of legend drugs; possession of counterfeit substances; and possession of drug paraphernalia;
- any municipal code offense that criminalizes possession of a controlled substance, legend drug, or counterfeit substance or drug paraphernalia without proof of knowing possession;
- any attempt, conspiracy, or solicitation to commit any of the above offenses;
- unlawful possession of a firearm predicated on a conviction for any of the above offenses, or any of the following offenses when predicated upon an arrest, charge, conviction, or sentence for any of the above offenses: bail jumping; bail jumping for trial; failure to appear or surrender; escape; resisting public officer; resisting arrest; and community custody violator; and
- any offense that Washington courts rule unconstitutional in light of *State v. Blake*.

"Qualifying nonconviction" means a charge for a qualifying offense that was dismissed or not filed following successful completion of a diversion program, deferred prosecution, therapeutic court, or similar program.

"Legal financial obligation" means any financial obligation a person is required to pay as a result of a charge or conviction for the offense, including: restitution; fines, penalties, and assessments for the criminal offense; costs including court costs, and costs of incarceration or supervision; costs assessed in connection with a diversion, deferred prosecution, deferred sentence, or participation in a therapeutic court; costs assessed for court-ordered electronic monitoring or treatment; and fees, interest, or other moneys for the collection or enforcement of LFOs.

#### Reports of Qualifying Convictions and Qualifying Nonconvictions.

The AOC must work with clerks in superior, district, and municipal courts to develop reports of all persons with qualifying convictions or qualifying nonconvictions. The reports must be based on available court records and list qualifying convictions and nonconvictions chronologically by cause number in a searchable and sortable format, and must include specified information for each cause number. The clerk must develop a similar report for sealed cases, which is confidential and may only be shared with the AOC, except as otherwise provided.

The AOC must prioritize cases in the following order: (a) the person is incarcerated due to a qualifying conviction; (b) the person is incarcerated and has a qualifying conviction in the person's criminal history score; (c) the person is under active or inactive supervision due to a qualifying conviction; and (d) the person has a past qualifying conviction or qualifying nonconviction. Reports covering the first three categories must be completed by January 1, 2024, and for the fourth category reports must be completed by July 1, 2024.

The AOC must provide completed installments of the report to clerks, the OPD, and OCLA. Upon receipt, clerks must send the reports to local prosecutors, and the OPD and OCLA may provide the reports to local public defense entities. The reports are exempt from disclosure under the Public Records Act.

#### Duties of Prosecuting Attorneys.

Upon receipt of a report from the clerk, the prosecuting attorney must review the qualifying convictions and qualifying nonconvictions within the jurisdiction and must:

- coordinate with the clerk and other appropriate entities to develop a list of all LFO amounts paid as a result of the qualifying conviction or qualifying nonconviction; and
- determine whether the person is serving a sentence for any offense under the supervision of the Department of Corrections (DOC), and if so, notify the OPD that the person may be eligible for resentencing.

For each qualifying conviction the prosecuting attorney must file an ex parte motion with the applicable sentencing court to dismiss and vacate the conviction, and for each qualifying nonconviction where LFOs were paid the prosecuting attorney must file an ex parte motion with the applicable sentencing court to refund the LFOs. A motion must include documentation of the amount of LFOs paid by the person as a result of the qualifying conviction or qualifying nonconviction. The prosecuting attorney is not required to notify the defendant of the motion, and the court must consider the motion without requiring the presence of the prosecuting attorney or defendant. These motions must be filed by January 1, 2026.

By July 1, 2023, prosecuting attorneys must submit to clerks in their jurisdictions a report on the status of all filed motions, including all motions to vacate pursuant to *State v. Blake* since the decision was issued. Beginning October 1, 2023, through January 1, 2026, prosecuting attorneys must submit a quarterly report to the clerk on the status of the required motions. Clerks must forward these reports to the AOC, which must share the reports with the OPD and OCLA.

Whether or not a prosecuting attorney is expected to file a motion, a person may apply to the court for a vacation of a qualifying conviction or for a refund of LFOs paid pursuant to a qualifying nonconviction. The prosecutor must respond within 30 days and may object to the application only on the grounds that the conviction or nonconviction is not a qualifying conviction or qualifying nonconviction.

#### Vacation of Qualifying Convictions.

Upon determining there is a valid motion to vacate a qualifying conviction, the court must vacate the conviction. The person is released from all penalties and disabilities resulting from the qualifying conviction, and the conviction may not be included in the person's criminal history. A person whose qualifying conviction is vacated may state for all purposes that the person was never convicted of the crime, and the vacated conviction may not be disclosed by the Washington State Patrol, prosecutor, or local law enforcement agency.

The prosecuting attorney may not refile any charges for acts alleged in the original indictment, information, or affidavit of probable cause filed in relation to the qualifying conviction, and may not file new or additional charges based on acts alleged in any law enforcement report from which the qualifying conviction arose.

The court must: direct the clerk to cancel any unpaid LFO balances; provide the clerk with an approved itemized and totaled amount of LFOs to be refunded and direct the clerk to certify the itemized and totaled amounts; and order the AOC to refund any LFOs paid as a result of the qualifying conviction. The clerk must transmit the order, certification, and documentation regarding the certified amount to the AOC refund bureau.

The vacation order must include a statement informing the person of the right to challenge the amount of LFOs refunded and the right to the assistance of counsel in reviewing and bringing a motion to amend the refund amount.

A person may file a motion to be resentenced if the vacation of a qualifying conviction affects a sentence imposed for a separate conviction. A person who is currently serving a sentence under the supervision of the DOC has a right to the assistance of counsel for resentencing proceedings. A prosecutor may not file or refile previously dismissed charges contained in any indictment, information, or affidavit of probable cause filed in relation to the conviction for which the person qualifies for resentencing, and may not file new or additional charges based on acts alleged in any law enforcement report from which the resentenced conviction arose.

#### Qualifying Nonconvictions.

Upon determination of a valid motion to refund LFOs for a qualifying nonconviction, the court must: direct the clerk to cancel any unpaid LFO balances; provide the clerk with an itemized and totaled amount of LFOs to be refunded and direct the clerk to certify the itemized and totaled amounts; and order the AOC to refund any LFOs paid as a result of the qualifying nonconviction. The clerk must transmit the order and certification to the AOC refund bureau.

#### Legal Financial Obligations.

A person has the right to challenge any LFO refund amount ordered by a court for a vacated qualifying conviction or for a qualifying nonconviction, and has a right to the assistance of counsel in reviewing and bringing a motion to amend the refund amount.

Legal financial obligations ordered refunded as a result of a vacated qualifying conviction must not be reallocated to any other LFOs the person is required to pay under other cause numbers or for other convictions under the same cause number. The clerk must identify all LFOs from qualifying convictions that have been paid and previously reallocated to other counts or cause numbers and the amount reallocated. This information must be provided to the prosecuting attorney's office and the AOC, and the previously reallocated amount must be refunded.

When the only crime of conviction under a cause number is a qualifying conviction, the court must vacate all LFOs imposed under the conviction and order the refund of any LFO amounts

paid. If the person has multiple convictions under the cause number, standards are provided for determining the allocation of LFOs and the amount to be refunded under the vacated qualifying conviction. Where chemical dependency evaluation or treatment was ordered, the amount of \$250 must be refunded, except if the person presents proof of payment exceeding this amount, in which case the court must order a refund amount equaling the proof of payment.

Clerks must identify all LFO refund amounts that have been ordered by the court as a result of *State v. Blake* up to the effective date of the act, and determine whether there are any additional LFOs that were not ordered to be refunded, but are entitled to be refunded under the act. The clerk must provide this information to the prosecuting attorney and the AOC, and the prosecuting attorney must seek amended orders for the refund of the additional LFOs.

The AOC must establish and administer a refund bureau to provide direct refunds to persons entitled to a refund of LFOs paid under a qualifying conviction or qualifying nonconviction. The AOC must notify persons of their right to the refund, the process for applying for the refund, the right to bring a motion to amend a refund amount they believe is inaccurate, and the right to assistance of counsel in reviewing and bringing a motion to amend the refund amount. The AOC must also create a searchable online database to allow persons to determine whether they have had a qualifying conviction vacated and whether they are entitled to an LFO refund.

Legal financial obligations reimbursed to a defendant who is in custody in a correctional facility are exempt from provisions requiring mandatory inmate deductions from the inmate's funds.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.