

Overtaken drug law is in Legislature's court

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Paul Tong / Op-Art

By [The Seattle Times editorial board](#)

The state Supreme Court threw Washington's legal system into upheaval by tossing out the drug possession statute. Instantly, on Feb. 25, anyone in Washington could legally have cocaine, methamphetamine and heroin under state law — even children.

The consequences of [the 5-4 Blake decision](#) are enormous and far-reaching. Lawmakers should act now to keep drugs out of the hands of children and the vulnerable but ensure thoughtful, compassionate longer-term solutions, ranging from helping those with addiction problems and keeping local jurisdictions financially whole.

Counties face a sudden demand for refunds to those convicted under what is now an unconstitutional law and expanded court resources to wipe away every drug possession conviction since 1971. And substance-abuse help must be provided for people formerly receiving court-ordered treatment for offenses that are no longer illegal.

Because the Legislature passed this defunct law, the onus is on the Legislature to solve this puzzle and pay for all of it. First, it must provide the money — at least \$100 million, perhaps twice that, lawmakers estimated — to help cities and counties address the decision without going bankrupt.

Courts will need to refund fines going back five decades, vacate convictions and recalculate sentences for offenders serving time for other crimes. Besides footing the bill, state lawmakers should increase public-health resources, including behavioral health, for people with substance-dependency problems.

The hard part comes with determining the next step for Washington drug law. Until the ruling, people in possession of prohibited drugs could be convicted even if they didn't know they were carrying. It was the strictest standard in the country — unconstitutionally strict, the justices ruled.

Some lawmakers have proposed the simple fix of criminalizing possession with the word “knowingly” appended. But this would create a two-tier legal system: New offenders would face prosecution while others were having their records wiped clean. It would also restart drug prosecutions that historically punish Black people disproportionately. Black defendants are 62% more likely than white defendants to go to prison for felony drug charges, the King County Public Defender's office [said](#).

The Washington legal system has spent decades transitioning away from standard prosecution of people caught with illegal substances. Washington's [63 courts](#) devoted to drug treatment and related therapeutic interventions are proven successes at reducing recidivism and addiction, while reducing jail time. They also save the public an estimated \$9,438 per offender, the Washington State Institute for Public Policy [found in 2019](#). In Seattle and King County, the Law Enforcement Assisted Diversion program is a national model for getting people into treatment. But therapeutic courts and LEAD get participants from drug laws being enforced.

The Legislature's task of writing a new law giving courts meaningful powers without rekindling drug-war failures will require careful work. The Legislature should set up a two-step process immediately.

This year, the Legislature should enact temporary laws to cover the basics: keeping drugs out of minors' hands, empowering police to confiscate harmful drugs, curtailing public use and requiring behavioral interventions. And the Legislature should begin a focused study of situations including Oregon's new decriminalization of small amounts and the best practices of intervention. A thoroughly informed permanent law should be a top priority when the Legislature reconvenes in 2022.

The pandemic, the economy and policing reforms are rightly priority measures this year. The Legislature must not make hasty decisions about drug laws when the decisions come with immense personal and societal consequences.

The Seattle Times editorial board members are editorial page editor Kate Riley, Frank A. Blethen, Jennifer Hemmingsen, Mark Higgins, Derrick Nunnally and William K. Blethen (emeritus).