

Washington State Judicial Branch

2025-2027 Biennial Budget

Blake Response – Correcting Unconstitutional Convictions

Agency: Office of Public Defense

Decision Package Code/Title: 1E – Blake Response

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests funding and 5.75 FTEs to sustain statewide public defense services in response to *State v. Blake*, which made simple drug possession convictions since 1971 unconstitutionally void. Correcting thousands of records is a laborious process, further complicated by Washington’s decentralized court system. OPD is a leader in responding to public inquiries about *Blake* and in collaborating with other state agencies to respond to *Blake*. State funding provides attorneys for resentencing and vacature actions, ensures that eligible individuals’ right to counsel is upheld, and keeps OPD’s Blake Team working to correct unconstitutional drug convictions.

Fiscal Summary: Funding is requested to maintain statewide *Blake* defense services.

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
Staffing						
FTEs	5.75	5.75	5.75	5.75	5.75	5.75
Operating Expenditures						
Fund 16A-1	\$4,305,000	\$4,310,000	\$8,615,000	\$4,310,000	\$4,310,000	\$8,620,000
Total Expenditures						
	\$4,305,000	\$4,310,000	\$8,615,000	\$4,310,000	\$4,310,000	\$8,620,000

Package Description:

Understanding Blake. In 2021 the Washington Supreme Court ruled in *State v. Blake* that all convictions for felony drug possession were unconstitutional, dating back to 1971. Courts also ruled that all previous convictions for marijuana possession were unconstitutional. Impacted people have the right to have these convictions vacated (removed) from their records, and to be refunded any fees or fines paid in relation to those convictions. This process, however, is not automatic. Rather, each person’s record requires individualized review and formal court action. In addition, people with drug convictions in their criminal history who are currently serving criminal sentences may be entitled to a resentencing hearing and a reduced sentence. Resentencing hearings require individualized court proceedings, and impacted people have a right to counsel.

OPD’s Role. Since 2021 the Legislature has appropriated funding to OPD to help manage the statewide public defense work involved in responding to *Blake* cases in county courts. OPD’s role includes:

- Administering grants to counties to fund their local *Blake* public defense work for resentencing and vacature cases, which must return to court in the county where the conviction occurred.
- Contracting directly with attorneys to provide *Blake* defense representation for resentencing in counties that have designated OPD to fulfill this role (as an alternative to receiving grants).
- Training, providing technical assistance, and meeting regularly with defense attorneys statewide to share knowledge, legal research, and representation resources to help ensure quality defense in *Blake* resentencing and vacature cases throughout the state, as the relevant case law continues to evolve.
- Tracking and analyzing data to identify individuals in Department of Corrections (DOC) custody who are still in need of representation for resentencing hearings, and monitoring the progress of *Blake* resentencing hearings statewide.

- Collaborating with civil legal aid and community-based organizations to provide *Blake* education and assistance to community and incarcerated populations.
- Collaborating with other agencies and organizations to coordinate information, resources and services, such as the Governor’s Office, the Administrative Office of the Courts (AOC), the Washington Association of Prosecuting Attorneys (WAPA), the Department of Corrections (DOC), Washington State Patrol (WSP), and the Washington Defender Association (WDA).
- Responding to daily calls from the public to help them navigate the multi-step process of vacating convictions and seeking reimbursement of eligible fees and fines. Between July 1 2023 – July 1, 2024, OPD staff logged and responded to 2,040 phone calls requesting OPD assistance on *Blake* issues.

OPD’s *Blake* work is ongoing. As many as 250,000 individuals may be eligible for legal relief and refund under the *Blake* decision. While thousands of criminal records have been corrected, the work is ongoing. Most remaining work in counties is on older convictions, for which criminal history records are not readily available. Meanwhile, some cities have refused to provide counsel for *Blake* representation and their municipal courts have not vacated any qualifying convictions. The Legislature appropriated funds to AOC to reimburse cities for qualifying *Blake* public defense expenditures. Nonetheless, some cities chose not to participate or appoint counsel for *Blake* work, or pay local public defense counsel for *Blake* representation. OPD seeks to address this service gap by contracting directly with counsel to represent eligible individuals in these communities.

Because of inconsistent records management in courts statewide, it is difficult to anticipate when *Blake* work will be completed. However, here is what OPD knows as of July 2024:

- Approximately 81,000 *Blake* vacate and dismissal orders from Superior Courts have been processed thus far by the Washington State Patrol.
- Approximately 126,000 felony *Blake* convictions were entered since 1999. It is unknown how many occurred between 1971 – 1999 because of inconsistent record-keeping processes during that era. Among those convictions, 65,000 are still labeled as “guilty” according to data obtained by AOC.
- It is unknown how many misdemeanor *Blake* convictions occurred, and it is unknown how many have been dismissed/vacated, due to the inconsistent approaches used by municipalities that charge crimes under local ordinances instead of state statutes.
- Courts are not required to use consistent approaches in vacating *Blake* convictions, and many courts still do not post information on their websites. Many people are unaware of the *Blake* decision, and once aware, are confused on what steps to take to clear their records. The lack of uniform processes in the state contributes to confusion.
- Several felony *Blake* legal issues are pending review by the Washington Supreme Court. The results of those cases could result in an even greater number of incarcerated individuals being eligible for resentencing hearings.
- A lot of work remains, and OPD’s *Blake* team is positioned to continue assisting counties and *Blake*-impacted individuals.

Fully describe and quantify expected impacts on state residents.

This decision package ensures continued progress to help impacted residents get resentenced, get *Blake* convictions vacated, and get refunds that are owed to them.

Explain what alternatives were explored by the agency and why this was the best option chosen.

OPD considered leaving other impacted state agencies and the decentralized public defense providers in 39 individual counties to fend for themselves. OPD rejected this alternative because other state agencies, the courts, the counties, and the Legislature asked OPD to take on a coordinating role to facilitate communication and services for *Blake*-related

public defense. OPD also rejects the fend-for-themselves alternative because it perpetuates “justice by geography,” which will delay or deny the right to counsel for some clients who are owed relief under *Blake*.

What are the consequences of not funding this request?

- Counties lack the funding and coordinated resources to fully support necessary *Blake* public defense work. Without state-level funding and OPD coordination of data and resources, *Blake* cases will take longer to process. Some counties might de-prioritize or overlook potential *Blake* cases.
- Many counties struggle to recruit and retain a sufficient number of public defense attorneys for current criminal casework. Counties are in crisis with public defense, and *Blake*-related state assistance through funding, OPD contracts, and OPD triaging helps ease their burden.
- Not funding this request will exacerbate the local inequities that contribute to “justice by geography.” This decision package keeps OPD assisting small and rural counties that lack sufficient resources to proactively review DOC data and identify people in need of representation for time-sensitive resentencing hearings.
- If this request is not funded, individuals with qualifying convictions in some municipal courts will continue to be denied representation to determine eligibility and initiate vacature actions.

Is this an expansion or alteration of a current program or service?

No. This decision package maintains funding needed to correct all unconstitutional *Blake* convictions.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Job Title Classification	#s of FTE Round to Nearest Tenth				Workload Assumptions/Description
	FY 26	FY 27	FY 28	FY 29	
Supervisor	0.25	0.25	0.25	0.25	Supervise and oversee the work of the OPD <i>Blake</i> team.
Managing Attorney	2.0	2.0	2.0	2.0	Oversee distribution and use of state funds by counties, manage contract attorneys, coordinate case-level triage efforts, analyze DOC data and sentencing information, coordinate efforts with other key stakeholders, conduct training for public defenders statewide.
Paralegal	1.0	1.0	1.0	1.0	Support the <i>Blake</i> -related work of the OPD Managing Attorneys.
Data Analyst	0.5	0.5	0.5	0.5	Merge, sort, and organize <i>Blake</i> related data from different state resources to most efficiently manage <i>Blake</i> triaging statewide.
Community Outreach Specialist	1.0	1.0	1.0	1.0	Conduct formal and on-demand communication with incarcerated persons and community groups to

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					provide information and direction on available processes for <i>Blake</i> relief.
Administrative Assistant	1.0	1.0	1.0	1.0	Administrative support for the above-mentioned positions.

Use Standard Costs?

No

If No, Explain Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 26	FY 27	FY 28	FY 29	
Contracts and Pass-Thru Funding*	\$3,500,000	\$3,500,000	\$3,500,000	\$3,500,000	Public defense representation costs in county courts for people eligible for <i>Blake</i> relief.
Goods and Services	\$50,000	\$50,000	\$50,000	\$50,000	Funding for additional communication strategies, training events, and other initiatives associated with <i>Blake</i> defense.
Travel	\$8,000	\$8,000	\$8,000	\$8,000	Travel for purposes of grant monitoring and training events.
Equipment/SW	\$2,000	\$2,000	\$2,000	\$2,000	Updated hardware and software costs for <i>Blake</i> team members.

*The Contracts amount assumes a combination of both pass-through grant funding to counties, and OPD direct contracts with attorneys. The Legislature gave counties the option to either accept pass-through funding from OPD, or to designate OPD to use those funds to directly contract with attorneys to provide *Blake* defense representation in their jurisdictions. It is impossible for OPD to know in advance which counties will choose one option over the other.

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25-27 Biennium													
				FY26							FY27		
Staff	FTE	Range	Step	Salary	Benefits	TOTAL	Staff	FTE	Range	Step	Salary	Benefits	TOTAL
Supervising Attorney	0.25	79	M	\$36,384	\$9,999	\$46,383	Supervising Attorney	0.25	79	M	\$36,384	\$9,999	\$46,383
Program Assistant	1	50	E	\$60,900	\$25,278	\$86,178	Program Assistant	1	50	G	\$63,934	\$25,806	\$89,740
Managing Attorney	1	74	M	\$128,676	\$37,065	\$165,741	Managing Attorney	1	74	M	\$128,676	\$37,065	\$165,741
Managing Attorney	1	74	M	\$128,676	\$36,885	\$165,561	Managing Attorney	1	74	M	\$128,676	\$36,885	\$165,561
Paralegal	1	58	K	\$84,439	\$29,356	\$113,795	Paralegal	1	58	L	\$84,516	\$29,385	\$113,901
Data Analyst	0.5	69	J	\$54,804	\$23,944	\$78,748	Data Analyst	0.5	69	L	\$55,470	\$25,058	\$80,528
Community Outreach	1	53	L	\$74,724	\$13,390	\$88,114	Community Outreach	1	53	L	\$74,724	\$13,390	\$88,114
TOTAL	5.75			\$568,603	\$175,917	\$744,520	TOTAL	5.75			\$572,380	\$177,588	\$749,968

How does the package relate to the Judicial Branch principal policy objectives?

Accessibility

Current law requires *Blake*-impacted individuals to petition the court to request the relief due to them. This decision package ensures active outreach efforts and assistance of defense counsel to help people with communication disabilities and limited English proficiency access their rightful *Blake* relief.

Access to Necessary Representation

People need legal representation to seek *Blake* relief. Filing motions, seeking resentencing hearings, vacating prior convictions, and receiving reimbursement of LFOs are not simple or readily accessible procedures. Undoing convictions is complex technical work requiring experienced legal review and analysis, and this decision package provides legal representation to protect the rights of impacted people.

Sufficient Staffing and Support

This decision package maintains 5.75 FTEs of experienced attorney and support staff at OPD to administer a coordinated statewide approach to public defense services for *Blake* cases. Without state funding, counties have insufficient resources to provide local staffing and support for *Blake* response work. The backlog of cases and jury trials from COVID continues to have a lasting impact, draining local resources.

How does the package impact equity in the state?

Address any target populations or communities that will benefit from this proposal.

“People of color experience discrimination at every stage of the judicial system and are more likely to be stopped, searched, arrested, convicted, harshly sentenced and saddled with a lifelong criminal record. This is particularly the case for drug law violations.” (*The Drug War, Mass Incarceration and Race*; Drug Policy Alliance, June 2015, found at:

https://www.unodc.org/documents/ungass2016/Contributions/Civil/DrugPolicyAlliance/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_Race_June2015.pdf)

Significant literature exists on the disproportionate impact of drug policing and prosecution on communities of color. Correspondingly, vacating drug convictions and refunding related fees and fines helps remedy some of the harm done to people convicted of drug offenses in Washington.

Describe the how the agency conducted community outreach and engagement.

OPD’s *Blake* Team conducts significant community outreach and engagement. OPD manages a “*Blake* Line” which receives phone calls from individuals seeking help about navigating the legal system for *Blake* assistance. Between July 1, 2023 – July 1, 2024, OPD staff logged and responded to 2,040 phone calls.

In addition, OPD engages in community outreach events, such as ones focused on reentry services, to bring information and resources to potentially impacted populations.

Consider which target populations or communities would be disproportionately impacted by this proposal.

Explain why and how these equity impacts will be mitigated.

This decision package mitigates longstanding disproportionate impacts of the criminal legal system. Drug convictions present innumerable negative consequences. Convictions for felony simple drug possession can bar people from certain professions and licensures. It can limit their ability to qualify for government housing assistance. People with felonies are often banned from volunteering at their children’s schools or related programming. Conviction history is publicly available, and easily accessible by potential or actual employers, landlords, neighbors, and the general public. The easy availability of conviction data coupled with racially

disproportionate drug conviction rates exacerbate the punitive impact on communities of color. This decision package helps people remove unconstitutional convictions from their records.

Are there impacts to other governmental entities?

Yes. Since the *Blake* decision, other state partners have come to rely on OPD to be a centralized conduit of communications for public defense statewide. With Washington's non-unified courts and decentralized approach to public defense, it is crucial to have a state-level public defense partner join discussions and coordinate with DOC, AOC, WSP, county clerks, the Superior Court Judges Association, and other impacted organizations and state agencies.

Stakeholder response:

At its September 12, 2024 meeting, the OPD Advisory Committee voted to approve this decision package. It is anticipated that community groups advocating for justice and equity will support OPD's continued role in bringing representation to all individuals impacted by the *Blake* decision. In addition, courts, local governments, and other state agencies likely will support this decision package.

Are there legal or administrative mandates that require this package to be funded?

State v. Blake, 197 Wn.2d.170 (2021), holds that Washington's drug possession law violated due process. Any convictions under the statute are void, retroactive to the law's inception in 1971. To remedy this injustice, impacted persons require public defense services for resentencing and vacating convictions.

Does current law need to be changed to successfully implement this package?

Statutory amendment is not required. However, successful implementation of this decision package requires updating the existing budget proviso to allow OPD to provide counsel for *Blake* work in municipal courts as well as county courts.

Are there impacts to state facilities?

No

Are there other supporting materials that strengthen the case for this request?

- New Portal to Reimburse Fines of Overturned WA Drug Cases, MyNorthwest, June 15, 2023. <https://mynorthwest.com/3900526/new-portal-to-reimburse-fines-of-overturned-washington-drug-cases/>
- In Wake of 'Blake,' Washington Courts Clear Drug Convictions and Refund Fines, KUOW, May 26, 2022. <https://www.kuow.org/stories/washington-courts-move-to-clear-old-drug-convictions-and-refund-fines>
- Clear Your Record of Simple Possession? Not That Easy but You Should Try, Northwest Public Broadcasting, December 21, 2021. <https://www.nwpb.org/2021/12/21/clear-your-record-of-simple-possession-not-that-easy-but-you-should-try-2/>
- New Data Analysis Shows the Astonishing Breadth of the Racial Disparity in Washington's Drug Possession Convictions, Rich Smith, The Stranger, March 17, 2021. <https://www.thestranger.com/slog/2021/03/17/55910514/new-data-analysis-exposes-wide-racial-disparities-in-drug-possession-convictions-across-washington>

Are there information technology impacts?

No

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