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No. 101600-0

**SUPREME COURT
OF THE STATE OF WASHINGTON**

CIVIL SURVIVAL PROJECT, et al.,

Plaintiffs/Appellants,

v.

STATE OF WASHINGTON, KING COUNTY, and
SNOHOMISH COUNTY,

Defendants/Respondents.

**KING COUNTY'S AND SNOHOMISH COUNTY'S
ANSWER TO PETITION FOR REVIEW**

Timothy G. Leyh,
Randall T. Thomsen
Erica R. Iverson
HARRIGAN LEYH
FARMER &
THOMSEN LLP
999 Third Ave.
Suite 4400
Seattle, WA 98104
(206) 623-1700

Attorneys for King
County and
Snohomish County

LEESA MANION
(she/her)
Prosecuting Attorney
David J. Hackett
Senior Deputy
Prosecuting Attorney
1191 Second Ave.
Suite 1700
Seattle, WA 98101
(206) 477-9483

Attorneys for King
County

JASON J.
CUMMINGS
Snohomish County
Prosecuting Attorney
Bridget E. Casey
Deputy Prosecuting
Attorney
3000 Rockefeller
Ave., M/S 504
Everett, WA 98201
(425) 388-6330

Attorneys for
Snohomish County

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I. INTRODUCTION

For the second time, Petitioners ask this Court to interrupt the progress of the government, on state and local levels, to implement *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). In doing so, Petitioners—the Civil Survival Project (“CSP”) and a putative class of plaintiffs—seek to revive a procedurally flawed class action complaint that will not meaningfully facilitate *Blake* relief. Petitioners raise no issue of law or public import that requires this Court’s review. The Court should deny the Petition.

Since February 2021, stakeholders in the State’s criminal justice system—judges, court clerks, prosecutors, public and private defenders, county auditors, the Legislature, the Administrative Office of the Courts (“AOC”), the Department of Corrections (“DOC”), the Office of Public Defense (“OPD”), Governor Inslee, and this Court—have worked to vacate simple drug possession convictions and refund legal financial obligations (“LFOs”) following *Blake*’s invalidation of RCW

69.50.4013. These efforts have been successful. Over \$100 million has been allocated to fund *Blake* relief. *See generally* ESSB 5693, 67th Leg., Reg. Sess. (Wash. 2022). Statewide, over 43,000 *Blake* convictions have been vacated, with more being processed every day.

In short, and as Petitioners recognize, “all parties in this action agree” that *Blake* relief is warranted—and the State’s criminal justice stakeholders diligently continue to provide that relief. Pet. at 2. The “presumption . . . that ‘public officers will properly and legally perform their duties,’” which weighed against direct review, not only remains intact but has been borne out. *Burrowes v. Killian*, 195 Wn.2d 350, 357, 459 P.3d 1082 (2020) (citation omitted). Because the parties still agree on the necessity of implementing *Blake*, and because those implementation efforts are competently underway, the Petition does not raise an “issue of substantial public interest” for review. *See* RAP 13.4(b)(4).

Nor is there any other reason under RAP 13.4(b) for this

Court to review the Court of Appeals’ correct decision (“Decision”). CSP App., Ex. A. The Court of Appeals properly applied this Court’s precedent, *Williams v. City of Spokane*, to hold that CrR 7.8 provides “the exclusive remedy to revisit judgment and sentences.” Decision at 2; 199 Wn.2d 236, 246, 505 P.3d 91 (2022). Nothing in the Decision’s reasoned application of *Williams* conflicts with any other precedent of this Court. RAP 13.4(b)(1). The Decision harmonizes with other opinions of the Court of Appeals interpreting substantially similar provisions of the Rules of Courts of Limited Jurisdiction, including *Doe v. Fife Municipal Court*, 74 Wn. App. 444, 874 P.2d 182 (1994), the only published Court of Appeals opinion directly on point. Decision at 10-12. There is thus no conflict with another published opinion of the Court of Appeals. RAP 13.4(b)(2).

Finally, nothing about the result of the Decision—that LFO refunds must proceed through the existing CrR 7.8 process—raises a significant question of constitutional law.

RAP 13.4(b)(3). As the Court of Appeals correctly held, the CrR 7.8 process “could not easily be more minimal,” requiring nothing more than a simple motion and affidavits stating the facts upon which the motion is made. Decision at 17. This simple process, which in many cases is undertaken on the initiative of prosecutors and other state officials within each county, results in complete relief, including vacation of the conviction, cancellation of debt, and full recovery of all LFOs paid. The efficiency of the refund process will continue to improve when the AOC takes over refund processing from the counties and opens a statewide refund bureau this summer.

By contrast, a civil class action is an inappropriate and incomplete vehicle for effectuating *Blake* relief. A class action may result in “the provision of less individualized advice, the return of less of the class members’ LFO payments, and complications in other *Blake* proceedings. These are not indicia of a process that is definitively more efficient and less likely to cause further constitutional harm than the individualized

approach of CrR 7.8.” Decision at 19.

This case does not implicate any of the RAP 13.4(b) considerations for accepting discretionary review and this Court should decline to do so.

II. STATEMENT OF THE CASE

Petitioners predicate their professed need for this Court’s review on the supposed “plethora of disagreement” surrounding LFO refunds and the “woefully insufficient and inconsistent” efforts by the State and Counties to comply with *Blake*. Pet. at 3, 13. But there is no “disagreement” over *Blake* compliance other than Petitioners’ unfounded and properly dismissed allegations.

Petitioners rely on stale arguments and facts, ignoring the extraordinary, swift progress made to date: the Legislature has allocated over a hundred million dollars toward *Blake* compliance efforts and prosecutors, judges, and clerks throughout the State have secured the vacation of thousands of convictions and refunded many LFOs. These funds are largely

administered by AOC—a State judicial branch agency—which has contracted with each of the 39 counties for *Blake* relief activities. This Court need not be bound by Petitioners’ tired allegations, which were asserted mere weeks after *Blake* issued based on Petitioners’ base *speculation* about the future, not any then-existing facts. *C.f., e.g., Dioxin/Organochlorine Ctr. v. Dep’t of Ecology*, 119 Wn.2d 761, 769-70 & n.42, 837 P.2d 1007 (1992) (noting commissioner’s ruling permitting consideration of affidavit setting forth facts outside the record for “limited purpose of helping this court decide whether to accept direct review”).

A. Stakeholders Throughout the State’s Criminal Justice System Continue to Address the Consequences of the *Blake* Decision.

1. Legislative appropriations and directives enacted since the *Blake* decision.

In 2021, within mere months of the *Blake* decision, the Legislature appropriated \$80 million to facilitate vacations and LFO refunds. S.B. 5092, 67th Leg., Reg. Sess. (Wash. 2021), Laws of 2021, ch. 334 §§ 115(5)-(6), 116(5), 117(8),

223(6)(d), 1221(6). In 2022, the Legislature increased the appropriation to \$140 million to address *Blake* costs, including a \$46.75 million LFO refund pool for use by counties and a \$10 million LFO refund pool for use by cities. ESSB 5693, § 114(6). The Legislature provided \$44.5 million to county coffers to be used for resentencings, vacations, and certification of LFO refunds. ESSB 5693, § 114(5). The Legislature appropriated \$11 million, \$6.2 million, \$2.85 million, and \$2 million to the OPD, DOC, Office of Civil Legal Aid, and AOC respectively to assist them in administering the *Blake* decision. ESSB 5693, §§ 114(29) (AOC), 115(5) (OPD), 116(8) (Office of Civil Legal Aid), 223(6)(c), (d) (DOC).

Beyond appropriations, the Legislature directed various agencies to develop *Blake* outreach mechanisms, to make LFO refund applications and materials even more readily accessible, and to conduct statewide training and oversight efforts to ensure robust and uniform *Blake* compliance. For example, the Legislature directed the AOC to “[e]stablish a process to locate

and notify individuals of available refunds and notify those individuals of the application process necessary to claim the refund and issue payment from the legal financial obligation aid pool” ESSB, § 114(29)(a), (b).

These funding measures and administrative directives have provided and will continue to provide substantial, comprehensive, coordinated *Blake* relief.

2. Additional actions and process improvements implemented.

The legislation described above followed many months of diligent *Blake* relief efforts by State officials housed within the Counties working to administer the State’s criminal justice system. These stakeholders quickly prioritized the most necessary tasks based on impact to the convicted person. *See, e.g.,* B054–B056 & B136–B137 (Board for Judicial Administration), B156–B160 (DOC), B126–B128 (OPD), B124–B125 (law enforcement).¹

¹ References to B001–B369 are to the attached appendix (“Appendix”). To facilitate readability, Appendix page

In addition to addressing these priority needs and establishing programs consistent with the recent legislative appropriations and directives, various State actors have sought to streamline the CrR 7.8 process. Under King County’s approach, which is followed by numerous other counties, the Prosecuting Attorney’s Office began filing motions on behalf of the State to vacate convictions, cancel LFO balances, initiate LFO refunds, and inform the State Patrol of any vacated convictions. *See* B041–B243 at B051. The Snohomish County Prosecuting Attorney’s Office similarly allows individuals with simple possession convictions to expedite vacation of those convictions under CrR 7.8. B331–B369 at B340.

3. Rulemaking to address the impacts of *Blake* and facilitate the Criminal Rule 7.8 process.

The judiciary, too, has actively worked to facilitate *Blake* relief. Since Petitioners last sought review, two amendments to the criminal rules have been adopted. *See* Decision at 3 n.4.

references can be found in the top right corner.

The revised rules facilitate access to counsel for individuals serving sentences for simple possession convictions who seek relief under CrR 7.8. *See* CrR 3.1(b)(2)(B); CrR 7.8(c)(2).

Although Petitioners have far-ranging proposals for exercising this Court’s supervisory authority, they have never proposed a rule change for this purpose.

4. Vacation and refund progress in King and Snohomish Counties to date.

Since *Blake* issued, nearly 20,000 convictions have been vacated and dismissed and over \$560,000 in LFO monies have been refunded in King and Snohomish Counties. Other counties across the State have made substantially similar progress.

B. Despite the Substantial Progress Made to Facilitate Comprehensive *Blake* Relief, Plaintiffs Still Seek to Bypass Criminal Rule 7.8 in Favor of a Class Action.

Less than two weeks after the *Blake* decision, Petitioners filed suit to recoup LFOs paid in connection with simple possession convictions. Petitioners’ premature allegations accused the Counties of “wrongfully . . . retain[ing]” LFOs—

even before the government had a chance to begin implementing *Blake* relief. B033 ¶ 6.2. Because *Blake* rendered the simple possession statute void, all simple possession convictions are subject to vacation, and Petitioners are entitled to LFO refunds. But those vacations and refunds must proceed through the CrR 7.8 process because CrR 7.8 “is the mechanism by which the superior courts provide for relief from a criminal judgment or order.” Decision at 8.

CrR 7.8 requires “only a motion and affidavits stating the facts upon which that motion is made.” *Id.* at 17. Yet, prior to filing the complaint, no named plaintiff sought to utilize the CrR 7.8 process for vacating her conviction and obtaining an LFO refund prior to bringing suit. In short, Petitioners’ premature complaint alleged constitutional violations based on speculation about a future that had not yet occurred because the *Blake* decision had just issued.

Petitioners instead seek to bypass CrR 7.8 and substitute an expensive, complex, procedurally improper class action

mechanism that will not offer the widespread relief currently afforded to individuals with simple possession convictions. Now, two years post-*Blake*, after over one hundred million dollars in appropriations, with administrative programs in place to streamline *Blake* relief, and with tens of thousands of individual cases already addressed, Petitioners' grievance that the current process is "inequitable," "arbitrary," and doomed to fail, rings hollow.

C. The Court of Appeals Correctly Affirmed the Trial Court's Dismissal of Petitioners' Flawed Putative Class Action.

The trial court dismissed Petitioners' putative class action, holding that CrR 7.8 is the exclusive remedy for obtaining vacations and LFO refunds. The trial court followed *Doe*, in which the Court of Appeals rejected a similar class action attempt to sidestep the requirements of CrRLJ 7.8. This Court denied direct review shortly after issuing its decision in *Williams*, which affirmed the Court of Appeals' rules interpretation and rejected a class action attempt to vacate

judgments *en masse*. 199 Wn.2d at 238, 244. The Court of Appeals followed *Williams* and held, consistent with *Doe* and two unpublished appellate decisions,² that “Criminal Rule 7.8 and analogous rules provide the exclusive remedy to revisit judgment and sentences and . . . that no dispute exists under the Uniform Declaratory Judgment Act sufficient to permit injunctive relief.” Decision at 2. Petitioners now seek discretionary review.

III. ARGUMENT

A petition for review should be granted only where one of the considerations listed in RAP 13.4(b) applies. None applies here: the Decision is not in conflict with this Court’s precedent or with a published decision of the Court of Appeals; the Decision does not raise any state or federal constitutional issue; and the petition does not involve a question of substantial

² *Karl v. City of Bremerton*, No. 50228-3-II, 2019 WL 720834 (Wash. Ct. App. Feb. 20, 2019); *Boone v. City of Seattle*, No. 76611-2-I, 2018 WL 3344743 (Wash. Ct. App. July 9, 2018).

public interest. RAP 13.4(b)(1)-(4). This Court should deny review.

A. The Decision does not Conflict with this Court’s Precedent or with any Court of Appeals Decision.

Petitioners have not identified a “conflict” between the Decision and a decision of this Court, nor have Petitioners identified a “conflict” between the Decision and any “published decision” of the Court of Appeals, as required for review under RAP 13.4(b)(1) and (2).

1. The Decision does not conflict with *Jennings* or *Ammons*.

Petitioners attempt to manufacture a conflict between this Court’s *Williams* decision and *State v. Jennings*, a case that recites the uncontroverted principle that *Blake* “convictions are constitutionally invalid.” *State v. Jennings*, 199 Wn.2d 53, 67, 502 P.3d 1255 (2022); Pet. at 7-12. There is no conflict. First, *Jennings* merely affirms that *Blake* convictions “cannot be considered in [a defendant’s] offender score,” a point that no party in the *Jennings* case disputed. 199 Wn.2d at 67. The

reason is straightforward: simple possession convictions are based on a constitutionally void statute, so they cannot be used to restrict an individual's liberty. *State v. Ammons*, 105 Wn.2d 175, 187-88, 713 P.2d 719 (1986). The parties in this case agree on this point, *see* B244 at B262–B263, and the Decision does not change the equation.

Ammons and *Jennings* thus act as a shield to protect individuals from the constitutional harm that would result from being restricted by an invalid conviction. This case, however, is not about the “collateral consequences of facially unconstitutional convictions,” Pet. at 10; it is about the mechanism by which Petitioners may obtain the vacations and refunds to which they are entitled. That mechanism is CrR 7.8. *Jennings* and *Ammons* say nothing about the process for removing a constitutionally invalid conviction from an individual's record and are therefore irrelevant to Petitioners' collateral class action attack on their convictions. Petitioners' attempt to use *Ammons* and *Jennings* to sidestep the CrR 7.8

process should be rejected.

Petitioners next argue that because Jennings did not need to bring a CrR 7.8 motion for the resentencing court to disregard his invalid conviction, CrR 7.8 must not be an exclusive remedy. Pet. at 9-10. Petitioners' argument extends *Jennings* and *Ammons* too far. Neither case involved an attempt to collaterally attack a criminal judgment and sentence. *Jennings* was a direct appeal seeking reversal of a conviction imposed prior to *Blake* and, later, resentencing in light of *Blake*—all within the context of the individual criminal case. *Ammons* similarly involved consolidated appeals from defendants challenging their sentences within the procedural context of their criminal cases, not an attempted class action collateral attack on their convictions.

Moreover, *Ammons* in fact *supports* the Counties' position that a collateral class action attack is an inappropriate vehicle for Petitioners to seek vacations and LFO refunds. *Ammons* recognized that requiring a sentencing court to review

“all prior convictions” for constitutional validity before imposing a sentence would “unduly and unjustifiably overburden the sentencing court.” 105 Wn.2d at 727.

Similarly, “individualized vacations in separate courts *serve* the purposes of efficiency.” Decision at 15 (citing *Williams*, 199 Wn.2d at 244); *see also Williams*, 199 Wn.2d at 244 (“It is equally true here as it was in *Doe* ‘that judicial resources are employed more efficiently if the party who asserts a judgment or order as being void is first required to address its concerns to the court that issued the judgment or order.’”).

In short, *Williams* controls. Petitioners may not escape the effects of their simple possession convictions and sentences through a class action; they must proceed through the CrR 7.8 process. This result does not conflict with *Jennings* or *Ammons*, which merely affirm that sentencing courts should not consider invalid convictions during sentencing proceedings.

2. The Decision does not conflict with any published decision of the Court of Appeals.

The Decision harmonizes with the only other published Court of Appeals decision (*Doe*)³ interpreting a procedural rule similar to CrR 7.8. The Court of Appeals agreed with the *Doe* court that CrR 7.8 is an exclusive remedy for seeking vacation and refunds associated with the vacated conviction. Decision at 11, 13 (“We conclude that there is not a sufficient basis to deviate from the reasoning of *Doe*, *Boone*, *Karl*, and *Williams*.”). The Court of Appeals expressly declined to distinguish *Doe* despite Petitioners’ plea that “facially unconstitutional convictions are different” from the traffic fines imposed in the *Doe* case. *Id.* at 14. The Decision does not conflict with *Doe* or any other published decision of the Court of Appeals.⁴

³ Nor is the Decision in conflict with *Boone* or *Karl*, the two unpublished Court of Appeals decisions that similarly rejected class action collateral attacks on prior judgments and sentences.

⁴ Nor do Petitioners raise any other “conflict” necessitating discretionary review by this Court. Petitioners attempt to

B. The Petition Does Not Raise an Issue of Substantial Public Interest.

Under RAP 13.4(b)(4), the Court may accept discretionary review of a petition involving “an issue of substantial public interest that should be determined by the Supreme Court.” *Id.* Petitioners identify no such issue.

1. Petitioners’ desire to collaterally attack their convictions and sentences is not an issue of substantial public interest.

Petitioners’ request to revive their putative class action ignores the monetary, policy, and rulemaking efforts the government already has implemented to address *Blake*. To the extent Petitioners disagree with the government’s policy

assign multiple errors of law to this Court—including that the Decision failed to apply the proper pleading standard, improperly addressed CSP’s organizational standing, opined prematurely on the requirements of CR 23, and improperly dismissed Petitioners’ equitable claims. Petitioners do not identify any “conflicts” between these issues as discussed in the Decision and a precedent of this Court or a published decision of the Court of Appeals. Petitioners’ complaint is that the Court of Appeals wrongly analyzed these issues, which is not a basis for discretionary review under RAP 13.4(b).

decision to address *Blake* through funding and rulemaking, that disagreement is not a basis for discretionary review.

Petitioners correctly identify the Legislature’s passage of a fatally flawed criminal statute. But they ignore the Legislature’s passage of a systemic solution to the problem it created. Petitioners cannot explain how funding and programming administered through agencies like AOC, DOC, OPD, and others will create any “disparities” in administering *Blake* relief. Pet. at 12-13. Instead, Petitioners continue to press an outdated reality, alleging that vacating the *Blake* convictions of the “more than 100,000 impacted individuals . . . could take 4,000 years.” Pet. at 15.

Petitioners’ fears are unfounded. In just two years, over 43,000 convictions have been vacated statewide. Jan. 25, 2023 Hr’g on HB 1492 (remarks by Rep. Tara Simmons) at 1:20:45-1:21:20, *available at* <https://tvw.org/video/house-civil-rights->

judiciary-2023011515/?eventID=2023011515.⁵ The Court should not accept Petitioners’ now-falsified prospective worries as truth for purposes of deciding whether to accept review. *C.f.*, *Dioxin/Organochlorine Ctr.*, 119 Wn.2d at 769-70 & n.42, 837; *c.f. also Snohomish County v. State*, 69 Wn. App. 655, 661, 850 P.2d 546 (Wash. Ct. App. 1993) (accepting review of legal issues in moot case but rejecting review of fact issues that “relate only to this particular case”).

Nor can Petitioners manufacture an issue of substantial public interest merely because they seek to avoid CrR 7.8 as a class. A putative class action will not avoid disparate “access to justice” any better than the existing CrR 7.8 process. Pet. at 13-15. To the contrary, the Decision closely scrutinizes the inefficiencies and process concerns inherent in Petitioners’

⁵ In her remarks, Representative Simmons estimated approximately 262,000 total *Blake* convictions requiring vacation. With roughly 16% of those convictions (43,000) now vacated, the State’s progress clearly is proceeding far more rapidly than Petitioners’ claim.

proposed class action approach. Decision at 18-20. A class action is rife with potentially disparate impacts, including with respect to class notice, inadvertent waiver for opt-in class members, offset of counsel fees from any class settlement, and delays associated with class fund payouts. Plaintiffs' proposed mechanism is inefficient and a poor substitute for the existing efforts underway.⁶

Petitioners continue—wrongly—to invoke the Massachusetts high court, which was impelled to address the widespread impact of deliberate misconduct by DNA sample analysts. Pet. at 26-27. Despite implicating 21,000 judgments, *Commonwealth v. Martinez*, 109 N.E.3d 459, 479 (Mass. 2018),

⁶ Nor is the possibility of “county-by-county disparities” alone sufficient to warrant this Court’s review of the Court of Appeals’ decision. Different counties may treat criminal procedures differently. Even in the death penalty context, one county’s agreement not to seek a particular punishment was not binding on another county. *See State v. Yates*, 161 Wn.2d 714, 738-39, 168 P.3d 359 (2007), *abrogated by State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018) (*Yates* was abrogated insofar as *Gregory* held the death penalty unconstitutional).

the Massachusetts court held that motion practice within each criminal cause number “satisfies the due process clause of the Fourteenth Amendment,” *id.* at 477, and would suffice to address the impact of the misconduct.

Petitioners nonetheless continue to mischaracterize *Martinez* to urge this Court to exercise its “superintendence authority”—an authority that does not exist in Washington and, in any case, would not assist Petitioners. Petitioners still ignore that this Court exercises its supervisory authority through the legislative process of rulemaking, not appellate review. There is no “universal decision” for this Court to make because it cannot (and need not) direct the courts and coordinate branches to do anything outside the rulemaking context. To the extent Petitioners require urgent relief from their convictions and sentences, they can move pursuant to CrR 7.8. In any event, the government already is carrying out a coordinated, systemic approach to *Blake* compliance. Pet. at 25. This Court’s intervention is unnecessary.

2. Petitioners’ erroneous interpretation of CrR 7.8 does not create an issue of substantial public interest.

Petitioners’ disagreement with the Decision’s interpretation of CrR 7.8 does not convert this issue into one of substantial public interest. The Decision’s adherence to this Court’s precedent in *Williams* and its alignment with *Doe* does not alter the status quo or create any inequities. To the contrary, the Decision carefully considered the inefficiencies of proceeding via a class action and concluded that Petitioners’ suit could “cause further constitutional harm than the individualized approach of CrR 7.8.” Decision at 19. Petitioners should not be permitted to transform a disagreement on the merits into an issue of substantial public interest.

C. Petitioners Raise No Constitutional Issue Requiring this Court’s Review.

Petitioners urge this Court to review the Decision because they claim that the “mandated application of CrR 7.8 to *Blake* violates due process.” Pet. at 20. First, Petitioners lack standing to mount a facial or as-applied challenge to CrR 7.8

because none of them sought to utilize CrR 7.8 prior to filing the complaint. *See Utter v. Bldg. Indus. Ass’n of Washington*, 182 Wn.2d 398, 430, 341 P.3d 953 (2015) (“constitutional issue is . . . not ripe for review” until the litigant has been subject to the procedure); *Carlisle v. Columbia Irr. Dist.*, 168 Wn.2d 555, 567-68, 229 P.3d 761 (2010) (“due process does not apply if an actual deprivation is contingent on a subsequent action”); *Kadoranian by Peach v. Bellingham Police Dep’t*, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992) (citation omitted) (“[a] litigant does not have standing to challenge a statute on constitutional grounds unless the litigant is harmed by the particular feature of the statute which is claimed to be unconstitutional,” meaning “actual damage or injury” rather than “general dissatisfaction”).⁷ But even if Petitioners had standing, the

⁷ Since filing the complaint, at least two named plaintiffs (Irene Slagle and Deighton Boyce) have also had their simple possession convictions vacated and one (Slagle) has had \$2628.11 refunded. These post-filing vacations and refunds raise questions about the continued viability of Petitioners’ claims. *Orwick v. City of Seattle*, 103 Wn.2d 249, 252-53, 692

Decision does not implicate due process.

Petitioners’ continued reliance on *Nelson v. Colorado*, 581 U.S. 128 (2017), does not transform their flawed constitutional argument into a serious constitutional question. Pet. at 20-24. As the Court of Appeals properly recognized, CrR 7.8 is nothing like the constitutionally deficient procedure underlying *Nelson*. Decision at 16-17. The Colorado legislation at issue in *Nelson* required defendants to “institute a discrete civil proceeding” and “*prove [their] innocence by clear and convincing evidence* to obtain the refund of costs, fees, and restitution” to which they were entitled. 581 U.S. at 134 (emphasis added). CrR 7.8 movants seeking vacations and refunds for *Blake* convictions “do not place such a burden on defendants . . . and could not easily be more minimal.”

P.2d 793 (“A case is moot if a court can no longer provide effective relief.”). For the reasons discussed in Section III.B, there is no “matter[] of continuing and substantial public interest” that would justify this Court’s review of Petitioners’ claims, assuming they all have secured their originally requested relief (vacations and refunds). *Id.* at 253.

Decision at 17. Simply put, a mere inconvenience is not an unconstitutional burden; *Nelson* is not to the contrary.

To the extent Petitioners claim this Court must determine whether CrR 7.8's burden of proof is unconstitutionally high, Petitioners miss the mark yet again. Crucially, Petitioners have not articulated what burden of proof currently rests with CrR 7.8 movants seeking *Blake* vacations and refunds. That is because there is none. The only "burden" is an administrative burden, not a proof burden: to obtain relief, an individual simply must come forward and identify herself as seeking that relief. She need not prove her innocence by *any* standard. CrR 7.8(b)(4) (vacation permitted where judgment is void); *State v. LaBounty*, 17 Wn. App. 2d 576, 581, 487 P.3d 221 (2021) ("A conviction based on an unconstitutional statute must be vacated."); *State v. A.L.R.H.*, 20 Wn. App. 384, 386, 500 P.3d 188, 189 (Wash. Ct. App. 2021) (same); *State v. Gouley*, 19 Wn. App. 2d 185, 205, 494 P.3d 458 (2021), *review denied*, 198 Wash. 2d 1041, 502 P.3d 854 (2022) (same).

Petitioners' argument is further undermined by the fact that many prosecutors are filing unopposed CrR 7.8 motions on behalf of individuals with simple possession convictions, alleviating even the administrative burden those individuals may face. In short, *some* procedure must exist to allow the State to administer robust *Blake* relief to all who are entitled to it. CrR 7.8 is that procedure. CrR 7.8 facilitates due process; it does not hinder it. Decision at 19. Petitioners have not raised an issue of constitutional concern necessitating this Court's review.⁸

IV. CONCLUSION

Because this case does not implicate any of the considerations set forth in RAP 13.4(b), the Court should deny review.

I certify that this answer contains 4,482 words, in compliance with RAP 18.17(b).

⁸ To the extent errors occur, Petitioners fail to explain why the standard appeals process is insufficient to address them.

SUBMITTED this 27th day of February, 2023.

HARRIGAN LEYH FARMER &
THOMSEN LLP

By s/ Erica R. Iverson
Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
Erica R. Iverson, WSBA # 59627
999 Third Avenue, Suite 4400
Seattle, WA 98104
Tel: (206) 623-1700
Fax: (206) 623-8717
Email: timl@harriganleyh.com
Email: randallt@harriganleyh.com
Email: ericai@harriganley.com

*Attorneys for King County and
Snohomish County*

LEESA MANION (she/her)
Prosecuting Attorney

David J. Hackett, WSBA #21236
Senior Deputy Prosecuting Attorneys
1191 Second Ave., Suite 1700
Seattle, WA 98104
Tel: (206) 477-1120
Fax: (206) 296-0191
Email: david.hackett@kingcounty.gov

Attorneys for King County

JASON J. CUMMINGS
Snohomish County Prosecuting Attorney

Bridget E. Casey, WSBA #30459
Deputy Prosecuting Attorney
3000 Rockefeller Avenue, M/S 504
Everett, WA 98201
Tel: (425) 388-6330
Fax: (425) 388-6333
Email: bcasey@snoco.org

Attorneys for Snohomish County

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3	King County’s and Snohomish County’s Answer to Statement of Grounds for Direct Review filed in Supreme Court of State of Washington, Case No. 100331-5	11/30/2021	B041–B243
4	Brief of Respondents King County and Snohomish County filed in Supreme Court of State of Washington, Case No. 100331-5	04/07/2022	B244–B330
5	Answer of King County and Snohomish County to Briefs of <i>Amicus Curiae</i> filed in Court of Appeals, Division I of the State of Washington, Case No. 840151	07/29/2022	B331–B369

THE HONORABLE MICHAEL SCOTT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

THE CIVIL SURVIVAL PROJECT,
individually and on behalf of its Members and
Clients, and Irene Slagle, Christina Zawaideh,
Julia Reardon, Adam Kravitz, Laura
Yarbrough, and Deighton Boyce, individually
and on behalf of the Proposed Plaintiff Class,

Plaintiffs,

v.

STATE OF WASHINGTON, individually, and
KING COUNTY and SNOHOMISH
COUNTY, individually and on behalf of the
Proposed Defendant Class, and ADAMS
COUNTY, ASOTIN COUNTY, BENTON
COUNTY, CHELAN COUNTY, CLALLAM
COUNTY, CLARK COUNTY, COLUMBIA
COUNTY, COWLITZ COUNTY, DOUGLAS
COUNTY, FERRY COUNTY, FRANKLIN
COUNTY, GARFIELD COUNTY, GRANT
COUNTY, GRAYS HARBOR COUNTY,
ISLAND COUNTY, JEFFERSON COUNTY,
KITSAP COUNTY, KITTITAS COUNTY,
KLICKITAT COUNTY, LEWIS COUNTY,
LINCOLN COUNTY, MASON COUNTY,
OKANOGAN COUNTY, PACIFIC
COUNTY, PEND OREILLE COUNTY,
PIERCE COUNTY, SAN JUAN COUNTY,
SKAGIT COUNTY, SKAMANIA COUNTY,
SPOKANE COUNTY, STEVENS COUNTY,
THURSTON COUNTY, WAHKIAKUM
COUNTY, WALLA WALLA COUNTY,
WHATCOM COUNTY, WHITMAN
COUNTY, and YAKIMA COUNTY,

No. 21-2-03266-1 SEA

**SECOND AMENDED
CLASS ACTION COMPLAINT**

1 individually and as putative Defendant Class
2 Members,

3 Defendants.

4 Plaintiff The Civil Survival Project ("CSP"), on behalf its members and clients, and
5 Plaintiffs Irene Slagle, Christina Zawaideh, Julia Reardon, Adam Kravitz, Laura Yarbrough, and
6 Deighton Boyce, on behalf of themselves and all others similarly situated ("Class Plaintiffs")
7 (together, with CSP, "Plaintiffs"), allege as follows:

8 I. INTRODUCTION

9 1.1 Nature of Action. This Action seeks to restore to thousands of Washington
10 Residents Legal Financial Obligations ("LFOs")¹ collected, received, and retained by – and
11 cancel LFOs still claimed by – Defendants State of Washington ("Washington" or "State"), King
12 County, Snohomish County, and all 37 of the other Washington Counties² (collectively,

14 _____
15 ¹ Under Washington law, "'Legal financial obligation' means a sum of money that is
16 ordered by a superior court of the state of Washington for legal financial obligations which may
17 include . . . court costs, county or interlocal drug funds, court-appointed attorneys' fees, and
18 costs of defense, fines, and any other financial obligation that is assessed to the offender as a
19 result of a felony conviction." RCW 9.94A.030. In this complaint, "Legal financial
obligations" or "LFO" further refers to all interest, collection fees, clerk's collection fees or
other imposed costs of collections, costs of supervision or sentence-related treatment, and other
fees or costs assessed against Plaintiff Class Members, or that Plaintiff Class Members were
compelled to pay, based on their *Blake* and *Blake-Related* Convictions, as defined below.

20 ² The other Washington Counties are Adams County, Asotin County, Benton County,
21 Chelan County, Clallam County, Clark County, Columbia County, Cowlitz County, Douglas
County, Ferry County, Franklin County, Garfield County, Grant County, Grays Harbor County,
22 Island County, Jefferson County, Kitsap County, Kittitas County, Klickitat County, Lewis
County, Lincoln County, Mason County, Okanogan County, Pacific County, Pend Oreille
County, Pierce County, San Juan County, Skagit County, Skamania County, Spokane County,
23 Stevens County, Thurston County, Wahkiakum County, Walla Walla County, Whatcom
County, Whitman County, and Yakima County.

24 ³ King and Snohomish Counties are referred to as "Defendant Class Representatives". All
other Washington Counties are referred to as "Defendant Class Members".

“Defendants”³) as a result of convictions under Washington’s voided strict liability drug possession statute, RCW 69.50.4013, and other related convictions as described further below, and for further monetary, equitable and injunctive relief necessary to make impacted individuals whole with respect to the harms they suffered.

1.2 Background. For a generation, the State and County Defendants were aggressive participants in a misguided “War on Drugs”⁴ that supercharged mass incarceration in Washington and around the United States, leaving just as many Americans with criminal records as college diplomas.⁵

1.3 The United States incarcerates more than two million of its own people at any given time, nearly one percent of its total adult population,⁶ at a rate of approximately 716 people for every 100,000 residents – by far the highest in the world, and more than five times higher

³ The other Washington Counties are Adams County, Asotin County, Benton County, Chelan County, Clallam County, Clark County, Columbia County, Cowlitz County, Douglas County, Ferry County, Franklin County, Garfield County, Grant County, Grays Harbor County, Island County, Jefferson County, Kitsap County, Kittitas County, Klickitat County, Lewis County, Lincoln County, Mason County, Okanogan County, Pacific County, Pend Oreille County, Pierce County, San Juan County, Skagit County, Skamania County, Spokane County, Stevens County, Thurston County, Wahkiakum County, Walla Walla County, Whatcom County, Whitman County, and Yakima County.

³ King and Snohomish Counties are referred to as “Defendant Class Representatives.” All other Washington Counties are referred to as “Defendant Class Members.”

⁴ See generally “A Brief History of the Drug War,” Drug Policy Alliance, available at <https://drugpolicy.org/issues/brief-history-drug-war> (last accessed Aug. 4, 2021).

⁵ “Just Facts: As Many Americans Have Criminal Records as College Diplomas,” Brennan Center for Justice, available at <https://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas> (last accessed Aug. 4, 2021).

⁶ “United States Profile,” Prison Policy Initiative, available at <https://www.prisonpolicy.org/profiles/US.html> (last accessed Aug. 4, 2021).

1 than most other countries.⁷ This represents a nearly 500% increase in the number of people living
 2 behind bars since the War on Drugs began in 1970s.⁸ While the United States accounts for less
 3 than five percent of the world's total population, it accounts for roughly 25 percent of the world's
 4 imprisoned population.⁹ And "scholars have shown that the poor, people of color, sexual
 5 minorities, and other marginalized populations have borne the brunt of criminal punishment and
 6 police intervention."¹⁰

7 1.4 In Washington, nearly 475 people per 100,000 are incarcerated – a rate that is
 8 roughly equal to the world's second highest jailer, the Russian Federation.¹¹ In line with the War
 9 on Drugs, the rate of incarceration in Washington has exploded from the 1970s, when the State
 10 incarcerated less than 200 people per 100,000.¹² Washington also disproportionately
 11 incarcerates Black, Indigenous, and People of Color – incarcerating Latinos at a rate of roughly
 12 601 people per 100,000, American Indians at a rate of nearly 1,427 per 100,000, and Black
 13 people at a rate of nearly 2,372 per 100,000.¹³

14
 15 ⁷ "States of Incarceration: The Global Context." Prison Policy Initiative, available at
<https://www.prisonpolicy.org/global/> (last accessed Aug. 4, 2021).

16 ⁸ Alexes Harris, "After Blake, will Washington state repay victims of the war on drugs?"
 17 Crosscut, Apr. 8, 2021, available at <https://crosscut.com/opinion/2021/04/after-blake-will-washington-state-repay-victims-war-drugs>.

18 ⁹ "Does the United States really have 5 percent of the world's population and one quarter
 19 of the world's prisoners?" April 30, 2015, Washington Post, available at
<https://www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/>.

20 ¹⁰ Benjamin Levin, *Mens Rea Reform and Its Discontents*, 109 J. Crim. L. & Criminology
 491, 530 (2019).

21 ¹¹ "States of Incarceration: The Global Context." Prison Policy Initiative, available at
 22 <https://www.prisonpolicy.org/global/> (last accessed Aug. 4, 2021).

23 ¹² "Washington State profile," Prison Policy Initiative, available at
<https://www.prisonpolicy.org/profiles/WA.html> (last accessed Aug. 4, 2021).

24 ¹³ "Washington State profile," Prison Policy Initiative, available at
<https://www.prisonpolicy.org/profiles/WA.html> (last accessed Aug. 4, 2021).

1 1.5 Alongside the explosion in rates of incarceration, the criminal legal system has
 2 also increased its reliance on LFOs like fines, fees, restitution and related costs associated with
 3 citations, court processing, convictions and punishments. In just the past 15 years, it is estimated
 4 that Washington has imposed roughly \$343 million in “mandator[y]” costs alone.¹⁴ In
 5 Washington, mandatory LFOs “shall be imposed in every case or for every conviction . . .
 6 regardless of the defendant’s ability to pay”¹⁵ and further LFOs may also be imposed at the
 7 sentencing judge’s discretion.¹⁶ This means that in “Washington state, simple possession of a
 8 small amount of cocaine [has even] result[ed] in a \$10,000 fine.”¹⁷

9 1.6 Defendants have aggressively attempted to collect these LFOs, contracting with
 10 private debt collection companies, which can impose additional collection costs of up to 50%,
 11 and garnishing employment earnings and request bench warrants for arrests related to
 12 nonpayment.¹⁸ According to research from University of Washington Professor Alexes Harris,
 13 and consistent with Plaintiffs’ experiences as detailed below, some Defendant Counties have
 14 regularly incarcerated people for up to 60 days when they failed to make payments on their legal
 15

16
 17 ¹⁴ Alexes Harris, “After Blake, will Washington state repay victims of the war on drugs?”
 Crosscut, Apr. 8, 2021, available at <https://crosscut.com/opinion/2021/04/after-blake-will-washington-state-repay-victims-war-drugs>.

18 ¹⁵ Washington Courts, WA State Superior Courts: 2018 Reference Guide on Legal
 19 Financial Obligations (LFOs), available at
<https://www.courts.wa.gov/content/manuals/Superior%20Court%20LFOs.pdf>.

20 ¹⁶ See, e.g., RCW 10.01.160; RCW 69.50.430(1) (fines for VUCSA offenses mandatory
 21 unless court finds indigency); RCW 69.50.401(2)(b) (court may impose fines for convictions
 22 for manufacture, possession, or delivery of amphetamines, \$3,000 of which may not be
 suspended).

23 ¹⁷ Alexes Harris, “After Blake, will Washington state repay victims of the war on drugs?”
 Crosscut, Apr. 8, 2021, available at <https://crosscut.com/opinion/2021/04/after-blake-will-washington-state-repay-victims-war-drugs>.

24 ¹⁸ *Id.*

debts, “including those who were unemployed or homeless.”¹⁹

1.7 The criminalization of recreational drug possession has been one of the most pernicious weapons in the War on Drugs, and for the past 50 years, perhaps no state in the country criminalized drug possession as broadly as Washington.

1.8 State v. Blake. Until this year, Washington law was so overbroad that it even sought to punish the “entirely innocent, unknowing possession” of drugs as a felony offense, in violation of the due process protections of both the United States and Washington Constitutions. *State of Washington v. Blake*, 197 Wn.2d 170, 173, 183 & 186 (2021).

1.9 As the Supreme Court explained over five months ago in *Blake*, Washington’s voided former drug possession statute, RCW 69.50.4013, was “unique in the nation” in that it imposed strict criminal liability on virtually all drug possession, even that which was “entirely innocent, unknowing possession.” *Id.* The statute made “possession of a controlled substance a felony punishable by up to five years in prison, plus a hefty fine [of up to \$10,000]; le[d] to the deprivation of numerous other rights and opportunities; and [did] all this without proof that the defendant even knew they possessed [a controlled] substance.” *Id.* at 173.

1.10 The law was so overbroad that it would result in felony acts even in the following absurd circumstances: “a letter carrier who delivers a package containing unprescribed Adderall; a roommate who is unaware that the person who shares his apartment has hidden illegal drugs in the common areas of the home; a mother who carries a prescription pill bottle in her purse, unaware that the pills have been substituted for illegally obtained drugs by her teenage daughter, who placed them in the bottle to avoid detection.” *Id.* at 183.

¹⁹ *Id.*

1 1.11 Explaining Washington’s law in a national context, the *Blake* Court noted that the
2 “North Dakota legislature, the last other state to criminalize passive unknowing possession,
3 amended its drug possession statute by adding a ‘willfulness’ mens rea element in 1989” and the
4 last state court to strike down a similar drug possession statute was 40 years ago. *Id.* at 185
5 (citing *State v. Brown*, 389 So. 2d 48 (La. 1980) (finding unconstitutional unknowing drug
6 possession statute)).

7 1.12 The Court in *Blake* found Washington’s uniquely “harsh penalties for such
8 innocent passivity” unconstitutional, *id.*, and struck down the drug possession statute in its
9 entirety, resulting in void convictions for thousands of Washingtonians.

10 1.13 The *Blake* Court also explained that “drug offenders in particular are subject to
11 countless harsh collateral consequences affecting all aspects of their lives.” *Id.* at 184-85 (citing,
12 e.g., Gabriel J. Chin, Race, *The War on Drugs, and the Collateral Consequences of Criminal*
13 *Conviction*, 6 J. Gender, Race & Just. 253, 259-60 (“Those convicted of drug offenses are subject
14 to a number of additional penalties,” including denial of more than 750 federal benefits,
15 consequences for health care, education, employment, housing, parenting, professional licenses,
16 and others.)); *id.* at n.11 (summarizing ineligibility for student aid, grants, contracts, loans,
17 professional and commercial licenses, federally assisted housing, assistance under state programs
18 funded by part A of title IV of the Social Security Act, benefits under the supplemental nutrition
19 assistance program, passports, job opportunities, and adoption opportunities).

20 1.14 Consistent with the now well-understood fact that aggressive drug enforcement
21 has disproportionately targeted communities of color, the *Blake* Court highlighted that the
22 “impact” of drug enforcement “has hit young men of color especially hard.” *Id.* at 192. (citing
23 *Research Working Grp. of Task Force on Race & Criminal Justice Sys., Preliminary Report on*
24 *Race and Washington’s Criminal Justice System*, 35 Seattle U.L. Rev. 623, 651-56 (2012))

(attributing Washington’s racially disproportionate criminal justice system to disparity in drug law enforcement and drug-related asset forfeiture, among many other causes)); *see also id.* at 208 (Stephens, J.) (concurring in part and dissenting in part) (“[S]cholars have shown that the poor, people of color, sexual minorities, and other marginalized populations have borne the brunt of criminal punishment and police intervention.”) (quoting Benjamin Levin, *Mens Rea Reform and Its Discontents*, 109 J. CRIM. L. & CRIMINOLOGY 491, 530 (2019)).

1.15 The failed response to *Blake* and the necessity of this lawsuit. In *Blake*, the Washington Supreme Court underscored the sheer scope of Defendants’ drug prosecutions, noting that the “drug statute that they interpreted has affected thousands upon thousands of lives[.]” *Blake*, 197 Wn.2d at 192.

1.16 Indeed, the “astonishing breadth” of the negative impacts of LFOs, and Washington’s drug possession convictions more broadly, especially on communities of color, is well documented and largely undisputed.²⁰

1.17 Plaintiffs estimate that the number of individuals affected by the *Blake* decision involves at least tens of thousands of individuals – and likely well above 100,000 individuals – throughout Washington.

1.18 In addition to those convicted under the pre-May 13, 2021 version of RCW 69.50.4013, the Court’s reasoning in *Blake* also voids convictions for (1) Washington residents prosecuted under the predecessor simple possession statute, RCW 69.50.401(c) (enacted in 1971), (collectively, “*Blake* Convictions”²¹); (2) “inchoate” offenses predicated on *Blake*

²⁰ See, e.g., Rich Smith, “New Data Analysis Shows the Astonishing Breadth of the Racial Disparity in Washington’s Drug Possession Convictions,” *The Stranger*, Mar 17, 2021, available at <https://www.thestranger.com/slog/2021/03/17/55910514/new-data-analysis-exposes-wide-racial-disparities-in-drug-possession-convictions-across-washington>.

²¹ Although previous simple drug possession statutes imposed unconstitutional strict liability for drug possession back at least to 1951, *see* RCW 69.33.020 (enacted in 1951), later

1 Convictions, such as conspiring to, attempting to, or soliciting possession of a controlled
 2 substance (RCW 69.50.407; RCW 9A.28.020; RCW 9A.28.030; RCW 9A.28.040); (3) crimes
 3 that require a predicate criminal conviction or charge as an element when the predicate conviction
 4 or charge was simple drug possession, such as those where a *Blake* Conviction or charge was the
 5 predicate for an unlawful possession of a firearm (RCW 9A.41.040), resisting arrest (RCW
 6 9A.76.040), bail-jumping (RCW 9A.76.170), or escape (RCW 9A.76.110, RCW 9A.76.120,
 7 RCW 9A.76.130) charge; and/or (4) other parallel simple drug possession statutes, including
 8 possession of 40g or less of marijuana (pre-May 13, 2021 RCW 69.50.4014), possession of
 9 legend (i.e., prescription) drugs without prescription (pre-May 13, 2021 RCW 69.41.030(1),
 10 (2)(b)), and possession of counterfeit substances (pre-May 13, 2021 RCW 69.50.4011) (“*Blake-*
 11 *Related Convictions*,” and together with *Blake* Convictions, “*Blake* and *Blake-Related*
 12 *Convictions*”).²²

13
 14
 15 recodified as RCW 69.33.230 (1959), Plaintiffs seek relief only for convictions beginning
 under RCW 69.50.401(c) (enacted in 1971) onward in this matter.

16 ²² The statutes referenced herein are intended to provide an illustrative, but not exhaustive
 17 list, of the convictions that have been rendered void in light of *Blake*. Affected simple
 18 possession statutes include RCW 69.50.4013 (simple possession of a controlled substance,
 19 2003-2021), RCW 69.50.401(d) (simple possession of a controlled substance, 1971-2003),
 20 RCW 69.50.401(e) (Possession of less than 40g marijuana, 1971-2003) RCW 69.50.4014
 21 (Possession of less than 40g marijuana, 2003-2021) RCW 69.41.030 and 69.41.070(3)
 22 (Possession of legend drugs, 1973-2003) RCW 69.41.030(1)(2)(b) (Possession of legend drugs
 23 2003-2021); other affected inchoate crimes include RCW 9.01.070 (general criminal attempt,
 24 1901-1975); RCW 9.01.080 (general criminal attempt while armed, 1927-1975);
 RCW 9.22.010 (general criminal conspiracy, 1909-1975); RCW 9.22.010 (general criminal
 conspiracy, 1909-1975); other affected predicate crimes include RCW 9A.41.040(2)(a) (unlawful
 possession of a firearm, 2003 on), RCW 9A.41.040(1)(b) (unlawful possession of a firearm,
 1994-2003), RCW 9A.76.170 (bail jumping, 1975-2020), RCW 9A.76.170 (bail jumping for
 trial, 2020 to present), RCW 9A.76.190 (failure to appear or surrender, 2020 to present), RCW
 9.31.010 (Escape, 1909-1975), RCW 9A.76.110 (First degree escape, 1975 to present), RCW
 9A.76.120 (Second degree escape, 1975 to present), RCW 9A.76.130 (Third degree escape
 1975 to present), RCW 9.69.040 (Resisting public officer, 1909-1975), RCW 9A.76.040
 (Resisting arrest, 1975 to present).

1.19 Judicial intervention is especially crucial to resolve this matter for the thousands of people affected. As the Washington Department of Corrections (“DOC”) noted shortly after the *Blake* decision, in order to address the impact of *Blake*, “further direction from the courts continues to be necessary in the process of determining next steps.”²³

1.20 The DOC’s statement has proven even more accurate in light of the State and County Defendants’ response to *Blake*. Following *Blake*, the State of Washington appropriated \$23.5 million for a central pool to assist Counties in refunding LFOs that were wrongly collected from *Blake* Convictions. See Laws of 2021, Ch. 334, § 115(6). But this money is utterly insufficient to address the problem, as representatives from Defendant King County, among others, have publicly remarked.²⁴ The fund will not come close to fully remedying the injuries suffered statewide by the thousands of affected Washingtonians, particularly when considering *Blake*-Related Convictions.

1.21 It also has created a chaotic landscape where the Counties are each left to craft their own response to provide – or fail to provide – effective relief to impacted individuals, leading to greatly disparate results absent Court intervention. For example, Defendant Franklin County has stated on its website that: “There are still many unknowns at present time. *There has been no guidance or determination* as to how the State of Washington intends to process refunds

²³ Washington Department of Corrections, “Update on Supreme Court Ruling That Voids Statute Has Potential Implications for Sentences Imposed by Courts,” March 12, 2021, available at <https://www.doc.wa.gov/news/2021/03122021p.htm>.

²⁴ “King County taxpayers will have to cover costs for drug possession cases that were tossed,” KOMO News, May 12, 2021, available at <https://komonews.com/news-brief-newsletter/king-county-will-have-to-cover-costs-for-drug-possession-cases-that-were-tossed> (last accessed Aug. 4, 2021) (King County Executive explaining that state funds are “not nearly” enough to address consequences of *Blake*).

1 for any applicable court costs, fines, and fees. . . . Our focus at present time will be to assist with
2 vacating the eligible offenses from conviction history.”²⁵

3 1.22 Defendants King²⁶ and Snohomish Counties²⁷ have created similar processes, and
4 they have taken the litigation position that every one of the estimated thousands upon thousands
5 of individuals affected by *Blake* must *individually* seek relief under their original criminal cause
6 numbers. See King and Snohomish County’s April 23, 2021 Motion to Dismiss at n. 1. Such a
7 position is legally erroneous and also impractical. As Defendant King County has stated, *Blake*
8 has resulted “in an unprecedented number of post-conviction motions for relief” and “due to the
9 extreme volume” of inquiries it is receiving, cannot even promise a response to individuals with
10 “less time-sensitive requests” such as LFO inquiries.²⁸ Defendant Snohomish County even
11 appears to concede that this lawsuit is necessary to address the issue of *Blake* and *Blake*-Related
12 LFOs, and the Criminal Division of its Prosecutor’s Office has told Snohomish County’s Public
13 Defender’s Office that it has no plans to address refunds “at this time[.]”²⁹

14 1.23 The already-existing “expungement gap” or “second chance gap” in Washington
15 demonstrates the limited ability of individual claims for relief to actually address the
16

17 ²⁵ Franklin County Prosecutor’s Office, “*State v. Blake*,” available at
18 <http://www.co.franklin.wa.us/prosecutor/statevblake.php> (last accessed Aug. 4, 2021)
(emphasis added).

19 ²⁶ See “*Blake* Requests,” King County, available at
20 <https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx> (last accessed Aug. 10,
2021).

21 ²⁷ See “*State v. Blake*,” Snohomish County Public Defender, available at
<https://www.snocopda.org/blake/> (last accessed Aug. 10, 2021).

22 ²⁸ See “*Blake* Requests,” King County, available at
23 <https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx> (last accessed Aug. 10,
2021).

24 ²⁹ See “*State v. Blake*,” Snohomish County Public Defender Association, available at
<https://www.snocopda.org/blake/> (last accessed Aug. 10, 2021).

consequences of *Blake*. For example, in 2020, before *Blake*, “60% of those who live burdened with criminal conviction records, or as many as 1 million Washingtonians, [were] potentially eligible” to make use of Washington’s statutory and rule-based process to vacate or seal eligible past convictions. “But less than 3% of individuals eligible for relief, and less than 1% of the charges eligible for relief” had actually received the relief to which they were entitled.³⁰ In fact, at the “current rates of vacation” under the existing process, it is estimated “that it would take over 4,000 years to clear the backlog of charges alone, based on the gap and the actual number of charges that were vacated last year[.]”³¹ *Id.*

1.24 Similar processes from county-to-county that require the thousands of people harmed by *Blake* and *Blake*-Related Convictions to try to vindicate their rights one-by-one, frequently without a lawyer, cannot possibly be expected to yield better results. Indeed, Defendant King County has stated that it will not even respond to “pro-se requests for resentencing at this time” because issues such as re-sentencing are too complex to discuss with individuals who are representing themselves.³² While prosecutors should not be discussing resentencing with unrepresented defendants, King County’s position on the issue further illustrates the ineffectiveness of the one-off approach to addressing the many consequences of *Blake*.

1.25 In other words, absent a binding, statewide judicial resolution of this case, the State of Washington and more than three dozen Defendant Counties will never adequately

³⁰ Colleen Chien, Zuyan Huang, Jacob Kuykendall, & Katie Rabago, *The Washington State Second Chance Expungement Gap*, 1 (Santa Clara University, School of Law, 2020), available at <https://digitalcommons.law.scu.edu/facpubs/971>.

³¹ *Id.*

³² See “*Blake* Requests,” King County, available at <https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx> (last accessed Aug. 10, 2021).

1 address the consequences of *Blake* in a systematic or equitable fashion, leaving tens of thousands
2 of Washingtonians who were deprived of significant sums of money as a result of Defendants'
3 unconstitutional actions subject to varying levels of relief based on where they happen to live or
4 whether they have access to a lawyer and the court system.

5 1.26 While Defendants have understandably prioritized releasing individuals
6 wrongfully incarcerated for *Blake* Convictions, they have failed to address the monetary
7 consequences of their undisputedly unconstitutional drug prosecutions. In the wake of *Blake*,
8 Defendants must now account for their past actions, including by returning money wrongly taken
9 and cancelling outstanding debts wrongfully imposed.

10 1.27 Accordingly, Plaintiff CSP brings claims on its own behalf, and on behalf of its
11 members and clients, and Class Plaintiffs bring claims on their own behalf and on behalf of a
12 class of Washington residents pursuant to Civil Rule ("CR") 23(a) and (b)(2), (b)(3) and (c)(4),
13 to recover LFOs wrongfully collected, received, and retained by – or claimed as debts owed to
14 – the Defendants and Defendant Class Members, and for further monetary, equitable and
15 injunctive relief necessary to make impacted individuals whole with respect to the harms they
16 suffered.

17 II. JURISDICTION AND VENUE

18 2.1 The Superior Court of Washington has jurisdiction over Plaintiff's claims
19 pursuant to RCW 2.08.010.

20 2.2 Pursuant to RCW 4.12.025(1), venue in King County is appropriate because
21 Defendant Washington State and Defendant King County reside in this county. Pursuant to RCW
22 36.01.050, venue in King County is further appropriate because this action is brought against
23 King County. Pursuant to RCW 36.01.050, venue is also appropriate as to Snohomish County
24 because, King County is one of the two nearest judicial districts. Pursuant to RCW 4.92.010(1)

and (2), venue is further appropriate as to Washington because CSP's principal place of business is in King County and a substantial part of the cause of action arose in King County.

2.3 Venue is proper to the remaining Counties and Defendant Class Members because if venue is proper as to one defendant, it is proper to all. Wn. Rev. Code Ann. § 4.12.025(1); *see, e.g., Five Corners Family Farm v. State*, 173 Wn.2d 296, 314, 268 P.3d 892 (2011) (“When an action is filed against more than one defendant, venue is proper in any county where at least one defendant resides”).

III. PARTIES

3.1 Plaintiff CSP is a statewide project in Washington dedicated to advancing the rights and interests of formerly incarcerated people. CSP is a project at the Public Defender Association, a not-for-profit organization that advances alternative approaches to public safety, health and order that reduce reliance on punitive systems and foster healing and stabilization of both individuals and communities. CSP provides direct service and support to people rebuilding their lives after criminal convictions. And CSP collects, shares, and creates resources to educate people on the processes to seek relief from the impact of past criminal convictions (for example, to vacate convictions, reduce LFOs, restore voting rights).

3.1.1 CSP works with Washington residents with criminal convictions to remove financial, political and legal barriers to reentry, and to alleviate the collateral consequences of mass incarceration – expending substantial resources on these efforts.

3.1.2 CSP is led by and for formerly incarcerated individuals. It organizes across the State to help justice-involved individuals escape the cycles of substance use, poverty, and incarceration. CSP houses the Reentry Legal Aid Project, a statewide project that serves clients with LFO relief, record vacates, and other housing and employment barriers related to a past criminal record. The work is performed through mass relief events, in which hundreds of people

1 have been able to obtain relief from their LFOs, as well as through provision of limited legal
2 services. Further, CSP's model, an organizing model, incorporates "Gamechanger" groups,
3 which bring formerly incarcerated individuals from across the state into one space to receive
4 support and education about the impacts of their prior criminal history.

5 3.1.3 Further, CSP organizes an "Impacted Caucus" during legislative sessions as a
6 gathering space for people who have been impacted by the criminal legal system to come together
7 and learn about reentry-related developments in the legislature. These meetings serve as an
8 educational and organizing tool for formerly incarcerated people across the State of Washington.

9 3.1.4 CSP members and clients in at least 15 Counties throughout the State have
10 contacted CSP about the impact of their *Blake* and *Blake-Related* Convictions. CSP's ability to
11 provide individual assistance to clients has been hampered by shifting and inconsistent responses
12 to the *Blake* decision by county. And the Counties' and State's chaotic and inadequate processes
13 for relief have left CSP unable to educate or actively assist its statewide membership and clients
14 with respect to the processes to vacate and receive restitution for *Blake* and *Blake-Related*
15 Convictions.

16 3.2 Class Plaintiff Irene Slagle ("Plaintiff Slagle" or "Ms. Slagle") is a citizen of
17 Washington, and a resident of Snohomish County. Until 2003, she was a resident of King
18 County. On or about August 12, 2002, she sustained a *Blake* Conviction, and was forced to pay
19 substantial fees, penalties, and other fines, including LFOs, to Defendants, in King County. She
20 last paid LFOs to King County on or around February 9, 2011.

21 3.2.1 After her last criminal conviction in 2002, Ms. Slagle underwent treatment for her
22 drug addiction and later secured employment as an intake case manager at Evergreen Manor
23 Treatment Center (now Evergreen Recovery Center) in Everett. For nearly eight years, Ms.
24 Slagle worked in this role to serve others in recovery, often as the first person with whom those

1 individuals would come into contact at the recovery center. After her tenure at Evergreen Manor
2 Treatment Center, Ms. Slagle worked as a Behavioral Health Navigator at Catholic Community
3 Services, where she assisted individuals experiencing homelessness, addiction, and mental health
4 issues access important social services.

5 3.2.2 For approximately the last four years, Ms. Slagle has worked for Snohomish
6 County Human Services as a Community Services Counselor supporting the County's law-
7 enforcement embedded social worker team, which similarly assists individuals experiencing
8 homelessness, addiction, and mental health issues to access social services.

9 3.3 Class Plaintiff Christine Zawaideh ("Plaintiff Zawaideh" or "Ms. Zawaideh") is a
10 citizen of Washington, and a resident of Snohomish County. In 2013, 2014, and in or around
11 September 2015, she sustained *Blake* Convictions, and was forced to pay substantial fees,
12 penalties, and other fines, including LFOs, to Defendants, in Snohomish County. Ms. Zawaideh
13 is currently making payments on her LFO balances, including significant accumulated interest.

14 3.3.1 Since her release from custody on or about October 31, 2016, Ms. Zawaideh
15 sought treatment for her addiction and has sustained no further criminal charges. Ms. Zawaideh
16 maintained steady employment for three years – in fact continuing in a position at MOD Pizza
17 that she began while on work-release – and then, in October 2019, transitioned into a role as a
18 Certified Peer Counselor at a non-profit organization in King County. Ms. Zawaideh uses her
19 past experiences to help give back to those struggling with addiction and entanglement in the
20 justice system, and she specializes in working with at-risk youth. Ms. Zawaideh also engages in
21 broader advocacy efforts on behalf at-risk communities and individuals impacted by drugs in
22 both King and Snohomish Counties, including participating in a panel event relating to addiction
23 and recovery in 2019 with the Mayor of Lynwood, representatives from area police and fire
24 departments, and a State Representative.

1 3.3.2 Ms. Zawaideh has two children – an infant and a toddler – and her outstanding
2 LFOs place a significant financial burden on her and her family.

3 3.4 Class Plaintiff Julia Reardon (“Plaintiff Reardon” or “Ms. Reardon”) is a citizen
4 of Washington, and a resident of Snohomish County. On or about September 26, 2014, she
5 sustained a *Blake* Conviction, and was forced to pay substantial fees, penalties, and other fines,
6 including LFOs, to Defendants, in Snohomish County. When the LFOs were imposed on Ms.
7 Reardon, she was homeless, suffering from drug addiction, and unemployed. Over the life of the
8 debt, the interest on Ms. Reardon’s debt reached roughly double the amount of her principal
9 balance. She last paid LFOs to Snohomish County on or about June 2, 2020.

10 3.4.1 Since her last release from custody in 2014, Ms. Reardon sought treatment for her
11 addiction and has sustained no further criminal charges. After her release from custody, Ms.
12 Reardon was homeless yet was still required to pay a monthly fee for her LFOs. Fortunately,
13 Ms. Reardon participated in the Snohomish County Sheriff’s “Office of Neighborhoods”
14 program, which helped her address her drug addiction and find recovery housing in the
15 Snohomish County Diversion Center.

16 3.4.2 Ms. Reardon then, like other Plaintiffs, began using her past experiences to give
17 back and help others who have struggled with drug addiction and entanglement in the criminal
18 legal system to overcome those challenges, working first at the Diversion Center and then as a
19 Case Manager and Social Services Coordinator for Pioneer Human Services in Everett. In her
20 current role, Ms. Reardon coordinates partnerships for Pioneer Human Services with allied non-
21 profit and government agencies, including organizations and agencies that assist with housing,
22 employment, credit and other social services. She also is an active leader in her church and a
23 State Director for Oxford House, a national non-profit organization that supports recovery
24 housing for people battling addiction and homelessness.

1 3.5 Class Plaintiff Adam Kravitz is a citizen of Washington, and a resident of Clark
2 County. Mr. Kravitz has sustained numerous *Blake* and *Blake-Related* Convictions, and has been
3 forced to pay substantial fees, penalties, and other fines, including LFOs, to Defendants, in Clark
4 County. Mr. Kravitz's initial *Blake* Conviction began a vicious cycle of incarceration, LFO debt,
5 and then re-incarceration based on an inability to pay.

6 3.5.1 Like other Plaintiffs, when Defendants prosecuted Mr. Kravitz for these crimes
7 and later subjected him to LFOs for them, he was experiencing homelessness, suffering from
8 addiction, unemployed, and unable to make any meaningful payments. In 2011, a court imposed
9 roughly \$3,000 in LFOs on Mr. Kravitz, making a finding that he had an ability to pay, despite
10 the fact that his public defender eligibility form listed his address as "homeless." In a subsequent
11 case, a court imposed a further \$4,200 in LFOs for two additional drug possession convictions,
12 and in a following case he received another \$4,200 LFO for a single possession conviction – with
13 the court again finding an ability to pay despite Mr. Kravitz's status as a person experiencing
14 homelessness. Then a court imposed \$3,200 in LFOs for an attempted possession conviction in
15 2013. Also, in 2013, another court found that Mr. Kravitz was indigent, but nevertheless made
16 a finding that he could have an ability to pay "in the future" and imposed \$1,100 in LFOs for a
17 drug possession conviction. On at least two occasions, Mr. Kravitz was actually jailed for failure
18 to pay LFOs while he was experiencing homelessness.

19 3.5.2 After his last conviction in 2015, Mr. Kravitz successfully completed a drug court
20 program and has not sustained another criminal conviction. In the drug court program, Mr.
21 Kravitz learned about peer support services and sought out a career as a peer counselor. Mr.
22 Kravitz secured a position as a counselor with a non-profit agency in the Vancouver area and
23 spent the next roughly six years in that role with two different organizations. Most recently, Mr.
24 Kravitz worked with a crisis "co-responder" team which assisted law enforcement on emergency

1 and other calls relating to mental health or homelessness issues, the goal of which is to reduce
2 the burden on police in interacting with vulnerable populations and ultimately reduce the use of
3 force in such interactions.

4 3.5.3 In 2016, Mr. Kravitz and his partner helped found a non-profit organization
5 focused on advocacy for people experiencing homelessness and addiction called Outsiders Inn.
6 The organization has grown significantly in the last five years, and in 2020 received grant funding
7 to provide shelter services to individuals in Clark County. Recently, Mr. Kravitz assumed a
8 fulltime role as Executive Director of Outsiders Inn.

9 3.5.4 Despite his extraordinary efforts to turn his own life around and also to uplift the
10 community around him – to the overall benefit of Clark County, its residents and law
11 enforcement, and the State – Mr. Kravitz continues to struggle with the crushing burden of LFOs
12 imposed on him from his *Blake* and *Blake-Related* Convictions. Mr. Kravitz estimates that his
13 total LFO balances range in the tens of thousands, much or most of which is comprised of accrued
14 interest.

15 3.5.5. Mr. Kravitz has also suffered from significant additional collateral consequences
16 from Defendants' actions and his unconstitutional convictions. For example, Mr. Kravitz
17 struggled for years to find employment and stable housing because his criminal history –
18 comprised almost entirely of drug charges – caused employers and housing providers to reject
19 his applications. Indeed, even when Mr. Kravitz sought to acquire an Agency Affiliated
20 Counselor Credential to pursue his career as a peer counselor, the Washington State Department
21 of Health (“DOH”), because of his past convictions, required him to undergo a drug recovery
22 program (which included regular drug testing) which was duplicative of drug court at his own
23 costs of roughly \$150 per month. To make matters worse, the DOH program was *five years* long,
24

1 while the drug court program, which Mr. Kravitz had already successfully completed, was only
2 one year in duration.

3 3.6 Class Plaintiff Laura Yarbrough is a citizen of Washington, and a resident of
4 Spokane County. In or around May 2005, Ms. Yarbrough was convicted of a *Blake* Conviction
5 and misdemeanor possession of a legend drug in Spokane County, a *Blake*-Related Conviction.
6 As a result of these convictions, Ms. Yarbrough was forced to pay substantial fees, penalties, and
7 other fines, including LFOs, to Defendants in Spokane County.

8 3.6.1 Ms. Yarbrough sustained these convictions when she was in a troubled marriage
9 with an individual who struggled with drug addiction. While she was initially referred to drug
10 court, Ms. Yarbrough failed to complete the program because she was focused on separating
11 from her ex-spouse and it proved too difficult to attend the program's required activities. In
12 particular, Ms. Yarbrough was placed in an out-patient facility that was located approximately
13 one block from her ex-spouse's residence and therefore would see him when entering and exiting
14 the building. When she requested a change of location, the director of the out-patient program
15 denied her request, and Mr. Yarbrough decided to leave the program altogether to avoid any
16 encounters with her ex-spouse.

17 3.6.2 Thereafter, however, Ms. Yarbrough continued to live a drug-free lifestyle and
18 secured steady employment as a cosmetologist. She later completed a paralegal certificate
19 program. Since 2005, she has not sustained any further convictions and, after 22 years as a
20 cosmetologist, retired to help with childcare duties for her grandchildren.

21 3.6.3 The LFOs imposed on Ms. Yarbrough caused significant hardship. Ms.
22 Yarbrough estimates that she spent hundreds or thousands of dollars on her LFOs and accrued
23 interest while struggling to stay afloat as a single working mom for many years. Like countless
24 Plaintiff Class Members, Ms. Yarbrough's LFOs and related financial harms were an especially

1 significant burden because of her status at the economic margins, working day to day and
2 paycheck to paycheck to support herself and her family.

3 3.7 Class Plaintiff Deighton Boyce is a citizen of Washington and a current resident
4 of Kitsap County. Mr. Boyce has sustained numerous *Blake* and *Blake-Related* Convictions, all
5 with accompanying LFOs, across King County, Snohomish County, and Pierce County.

6 3.7.1 Mr. Boyce is an African-American man, and his conviction record suggests he
7 was the target of racial profiling and over-charging by multiple law enforcement and prosecutors'
8 offices. As a teenager, Mr. Boyce was harassed by the police and was overcharged instead of
9 shown leniency for his infractions. Once in King County, the police harassed Mr. Boyce and an
10 officer told him that if he saw Mr. Boyce again, the officer would plant drugs on Mr. Boyce and
11 arrest him. In his early 20s, the police stopped Mr. Boyce while he was driving in Pierce County
12 and gave no reason for doing so. Because Mr. Boyce had lost his license, he was arrested and
13 searched for driving without a license. The police even profiled and harassed Mr. Boyce while
14 he was riding his bicycle past a car accident scene, where numerous other onlookers had gathered,
15 eventually chasing Mr. Boyce, searching him, and arresting him for drug possession.

16 3.7.2 Mr. Boyce's experiences as a young Black man in the greater Seattle area are
17 consistent with studies documenting the selective enforcement of drug laws against African
18 Americans in the region: "Although racial disproportionality in drug arrests is a concern across
19 the nation, the over-representation of blacks among drug arrestees is especially pronounced in
20 Seattle. Indeed, only one of the other 39 mid-sized cities for which data are available has a higher
21 black-to-white drug arrest rate ratio than that found in Seattle."³³

23 ³³ See Katherine Beckett, *Race and Drug Law Enforcement in Seattle*, Report Prepared
24 for the ACLU Drug Law Reform Project and the Defender Association, September 2008,
available at

1 3.7.3 Like other Plaintiffs and Class Members, Mr. Boyce previously struggled with
2 drug addiction and the problems that frequently accompany the disease – including substance
3 abuse, poverty, and homelessness. It was in this context that Mr. Boyce sustained all his criminal
4 convictions. Mr. Boyce’s struggles were intergenerational, as he grew up in a poor household
5 and his father also struggled with addiction issues.

6 3.7.4 The LFOs imposed on Mr. Boyce made conditions even worse for him. While
7 Mr. Boyce was struggling to keep a roof over his head and pay for basic amenities, he was
8 threatened with incarceration for non-payment of his LFO balances. Indeed, at one point Mr.
9 Boyce believes he was incarcerated for failure to stay current on his LFO payments. When Mr.
10 Boyce was incarcerated in Pierce County, the Department of Corrections also garnished the
11 meager wages he earned for work performed in jail, and the money given to him by friends or
12 family to pay for basic goods from the commissary.

13 3.7.5 In or around 2014, however, Mr. Boyce resolved to battle his addiction and
14 entered an in-patient treatment program, followed by intensive out-patient treatment. Since then,
15 he has not sustained any further convictions, and he continues attending support groups,
16 providing informal support and mentoring for others in the groups. Mr. Boyce has also taken a
17 leadership role in advocacy efforts on behalf of others caught in the vicious cycle of criminal
18 convictions and debilitating collateral consequences, including testifying before the Washington
19 State Legislature about his own experiences struggling to find employment in support of
20 proposed “Ban the Box” legislation. That legislation eventually passed into law and is designed
21 to provide individuals with past criminal records better opportunities to attain employment. Mr.
22 Boyce personally faced substantial difficulties finding employment, even after addressing his

23 _____
24 https://www.aclu.org/files/assets/race20and20drug20law20enforcement20in20seattle_20081.pdf
f.

1 addiction, reacquiring his driver's license, and earning his Commercial Driver's License so that
2 he could work as a truck driver.

3 3.7.6 Despite his turnaround efforts, LFOs continue to haunt Mr. Boyce and his family.
4 Over the years, Mr. Boyce has received letters threatening him with re-incarceration for failure
5 to pay, and he has had to contribute money towards LFO balances instead of towards his basic
6 needs and the needs of his family. Since getting clean, Mr. Boyce has been able to reunite with
7 his children, but on occasion has not been able to contribute to school events and activities
8 because he feared re-incarceration for failure to pay his LFOs and devoted any available income
9 to those balances instead of his children's needs. He has also experienced harassment from
10 private collections agencies contracted by Defendants to collect *Blake* and *Blake-Related* LFOs.

11 3.7.7 Even after the filing and service of the initial Complaint in this lawsuit in March
12 of this year, certain Defendants, including Snohomish County, have continued to accept payment
13 of *Blake* and *Blake-Related* LFOs, including from Mr. Boyce. When Mr. Boyce subsequently
14 asked Snohomish County about whether he would receive a refund of his past LFO payments
15 that are affected by *Blake* and this lawsuit, Snohomish County responded that they had "no idea"
16 as to whether he would receive a refund or what the timeline for such a refund would be.

17 3.8. Defendants are governmental entities that have instituted a policy and practice of
18 collecting, receiving, retaining, and refusing to cancel debt from LFOs as a result of *Blake* and
19 *Blake-Related* Convictions. Defendants continue to seek payments of LFOs through various
20 collection efforts based on *Blake* and *Blake-Related* Convictions and/or have failed to cancel
21 existing LFOs despite the *Blake* ruling.

22 IV. CLASS ACTION ALLEGATIONS

23 4.1 Definition of Classes. This is a bilateral plaintiff and defendant class action
24 brought pursuant to CR 23(a), (b)(2), (b)(3) and/or (c)(4).

1 4.1.1 The Class Plaintiffs bring this case as a class action on behalf of a class (“the
2 Plaintiff Class”) defined as follows:

3 All individuals who, as a result of any *Blake* or *Blake-Related* Convictions, had LFOs
4 imposed against them and/or paid LFOs that were charged, collected, received, or retained by or
5 on behalf of Defendants and/or Defendant Class Members.

6 4.1.2 Plaintiffs Irene Slagle and Deighton Boyce represent a Plaintiff Subclass for King
7 County of all Plaintiff Class Members, as defined above, whose convictions occurred in King
8 County (“King County Subclass”).

9 4.1.3 Plaintiffs Christine Zawaideh, Julia Reardon, and Deighton Boyce represent a
10 Plaintiff Subclass for Snohomish County of all Plaintiff Class Members, as defined above, whose
11 convictions occurred in Snohomish County (“Snohomish County Subclass”).

12 4.1.4 Plaintiffs bring this case against all Defendants, and a Defendant Class
13 represented by Defendant Class Representatives King and Snohomish County, of which all other
14 Washington Counties are members.

15 4.2 Numerosity. There are at least tens of thousands of individuals wrongfully
16 penalized under *Blake* and *Blake-Related* Convictions (and likely over 100,000) who have been
17 charged and/or paid fees, penalties, and other fines, including LFOs, to Washington and
18 Washington’s 39 Counties.³⁴ Nearly 7,000 people are presently on community supervision in
19

20 ³⁴ See Rich Smith, “New Data Analysis Shows the Astonishing Breadth of the Racial
21 Disparity in Washington’s Drug Possession Convictions,” *The Stranger*, Mar 17, 2021,
22 available at [https://www.thestranger.com/slog/2021/03/17/55910514/new-data-analysis-
23 exposes-wide-racial-disparities-in-drug-possession-convictions-across-washington](https://www.thestranger.com/slog/2021/03/17/55910514/new-data-analysis-exposes-wide-racial-disparities-in-drug-possession-convictions-across-washington) (noting that
24 Caseload Forecast Council data indicates 126,175 felony *Blake* Convictions from 1999-2019).
Even this number is likely underinclusive. For example, as to *Blake-Related* Convictions, in
fiscal year 2020 alone, Washington entered 1,156 convictions for felony inchoate possession of
controlled substances, 424 convictions for second-degree unlawful possession of a firearm, 229
convictions for various escape charges, and 305 bail jumping convictions. See Caseload
Forecast Council, Statistical Summary of Adult Felony Sentencing, at 14, Table 2 (Dec. 2020),

Washington flowing from simple possession convictions, according to the Washington Department of Corrections.³⁵ Thus, the members of the Plaintiff and Defendant Classes are so numerous that joinder of all members is impracticable. Moreover, the disposition of the claims in a single action will provide substantial benefits to all parties and the Court.

4.3 Commonality. There are numerous questions of law and fact common to Plaintiffs, Plaintiff Class Members, Defendants, and Defendant Class Members. These questions include, but are not limited to, the following:

(a) Whether Defendants and the Defendant Class have engaged in a common course of wrongfully collecting, receiving, retaining, and refusing to cancel debt from LFOs, against the Plaintiff Class;

(b) The nature and extent of class-wide injury and the means of addressing such injury;

(c) Whether declaratory relief is warranted; and

(d) Whether injunctive and other equitable relief is warranted.

4.4 Typicality. Class Plaintiffs' claims are typical of the claims of the Plaintiff Class. Class Plaintiffs were convicted for *Blake* and *Blake*-Related Convictions and had LFOs imposed on them by Defendants, and thus are members of the Plaintiff Class. Class Plaintiffs' claims, like the claims of the Plaintiff Class, arise out of the same common course of conduct by

available at https://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Adult_Stat_Sum_FY2020.pdf. While these broad statistics do not indicate whether and which unlawful possession of a firearm, escape, and bail jumping convictions depended on *Blake* charges or convictions, they demonstrate the possibility of such. Further, this report only includes *felony* convictions, so does not capture misdemeanor convictions for solicitation of possession of controlled substances, possession of legend drugs, or possession of 40g or less marijuana.

³⁵ Washington State Department of Corrections, "Supreme Court Ruling That Voids Statute Has Potential Implications for Sentences Imposed by Courts," May 5, 2021, available at <https://www.doc.wa.gov/news/2021/03052021p.htm>.

1 Defendants and are based on the same legal, equitable and remedial theories. Similarly,
2 Defendants' claims are typical of the claims of the Defendant Class. Defendants King County
3 and Snohomish County are Counties like the Defendant Class. All Defendants and Defendant
4 Class Members imposed, collected, received, and retained LFOs from Plaintiffs and the Plaintiff
5 Class.

6 4.5 Adequacy. Class Plaintiffs will fairly and adequately protect the interests of the
7 Plaintiff Class. Class Plaintiffs have retained competent and capable attorneys who have
8 significant experience in complex class action litigation, and its intersection with the criminal
9 legal system. Class Plaintiffs and their counsel are committed to prosecuting this action
10 vigorously on behalf of the Class and have the financial resources to do so. Neither Class
11 Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the
12 Plaintiff Class. In turn, Defendants will fairly and adequately protect the interests of the
13 Defendant Class because, among other reasons, the interests of the Defendants to defend against
14 Plaintiffs' claims are sufficiently similar to the interests of the members of the Defendant Class.

15 4.6 Declaratory/Injunctive Relief. Through imposing, collecting, receiving, and
16 retaining LFOs, as a result of *Blake* and *Blake-Related* Convictions, and other actions including
17 refusing to cancel LFOs, Defendants and the Defendant Class have acted or refused to act on
18 grounds generally applicable to Plaintiffs and the Plaintiff Class, thereby making appropriate
19 classwide declaratory and injunctive relief.

20 4.7 Predominance. Defendants and Defendant Class Members have engaged in a
21 common course of conduct toward Class Plaintiffs and members of the Plaintiff Class, including
22 by imposing, collecting, receiving, and retaining LFOs as a result of *Blake* and *Blake-Related*
23 Convictions. The common issues arising from this conduct that affect Class Members
24 predominate over any individual issues, and the calculation of restitution will be straightforward

1 and mechanical. Adjudication of these common issues in a single action has important and
2 desirable advantages of judicial economy.

3 4.8 Superiority. Class Plaintiffs and Class Members have suffered and will continue
4 to suffer harm and damages as a result of Defendants' and Defendant Class Members' unlawful
5 and wrongful conduct. Absent a class action, however, most Class Members (both individuals
6 and Counties) likely would find the cost of litigating these claims prohibitive. Class treatment is
7 superior to multiple individual suits or piecemeal litigation because it conserves judicial resources,
8 promotes consistency and efficiency of adjudication, provides a forum for small claimants, deters
9 illegal activities, and because under RCW 36.01.050, the Defendant Class Members would likely
10 have to be sued individually absent the class mechanism. There will be no significant difficulty
11 in the management of this case as a class action. The Plaintiff Class Members are readily
12 identifiable from Defendants' records, and the Defendant Class Members have been identified
13 above.

14 4.9 Issue Class. Class Plaintiffs also seek, in the alternative, certification of an
15 issue class, including as to the liability of Defendants and Defendant Class Members.

16 V. SUMMARY OF FACTUAL ALLEGATIONS

17 5.1 Common Course of Conduct: Unjust Enrichment/Restitution/Money Had and
18 Received. Defendants and Defendant Class Members have engaged in a common course of
19 wrongfully collecting, receiving, retaining, and refusing to cancel, LFO debts for *Blake* and
20 *Blake*-Related Convictions. Defendants and Defendant Class Members still seek to collect these
21 monies, hold these monies or have expended them for their own purposes (or repurposed them
22 to pay other LFOs), and, to the best of Plaintiff's knowledge, have not returned them or canceled
23 remaining LFO debt. In addition, Defendants and Defendant Class Members seek the payment
24 of LFOs through various collection efforts including the use of third-party collection agencies.

1 5.1.1 Class Plaintiffs and Plaintiff Class Members (including clients and members of
2 CSP) have paid certain LFOs to the Superior Courts of the Defendants and Defendant Class,
3 some of which are then transferred to the State of Washington and some to the Washington
4 Counties, under legal compulsion because of their *Blake* and *Blake-Related* Convictions.

5 5.1.2 Given the Washington Supreme Court’s decision in *Blake*, the obligation to pay
6 was unlawfully imposed because the predicate convictions were unconstitutional, and these funds
7 must be restored and outstanding LFOs canceled – in equity, good conscience, and justice.

8 5.1.3 Defendants and Defendant Class Members have charged, collected, received, and
9 retained such unwarranted payments from Class Plaintiffs and Plaintiff Class Members
10 (including CSP’s clients and members), and have not returned or canceled them, such that
11 Defendants and Defendant Class Members have been unjustly enriched and are actively seeking
12 further unjust enrichment by continuing to pursue LFO payments.

13 5.1.4 Class Plaintiffs and Plaintiff Class Members (including CSP’s clients and
14 members) have consequently also been “depriv[ed] of numerous other rights and
15 opportunities[,]” *Blake*, 197 Wn.2d at 173, which also must be restored.

16 5.2 Common Course of Conduct: Rescission. Defendants and Defendant Class
17 Members and Plaintiffs and Plaintiff Class Members entered into LFO payment contracts,
18 express or implied, that were premised on a mistake: that Plaintiff Class Members’ *Blake* and
19 *Blake-Related* Convictions were constitutional, and were legal bases for Defendants to impose
20 LFOs on them. As a result of that mistake, Defendants and Defendant Class Members wrongfully
21 collected, received, and retained LFOs based on these convictions from Plaintiffs and Plaintiff
22 Class Members, and Defendants and Defendant Class Members have refused to cancel remaining
23 LFO debt. These LFOs must be restored to Plaintiffs and Class Members, and outstanding
24

1 balances canceled, and Defendants and Defendant Class Members must take any and all other
2 actions required to restore Plaintiffs and Plaintiff Class Members to their pre-contract positions.

3 5.2.1 Defendants and Defendant Class Members independently believed that *Blake* and
4 *Blake*-Related Convictions were constitutional and legal bases for LFOs, which was a mistake.

5 5.2.2 Plaintiffs and Plaintiff Class Members independently believed that *Blake* and
6 *Blake*-Related Convictions were constitutional and therefore appropriate legal bases for LFOs,
7 which was a mistake.

8 5.2.3 As a result of these mistakes, Defendants and Defendant Class Members and
9 Plaintiffs and Plaintiff Class Members entered into payment contracts, express or implied, that
10 required Plaintiffs and Plaintiff Class Members to pay LFOs and empowered Defendants and
11 Defendant Class Members to collect, receive, and retain LFOs.

12 5.2.4 Theses mistakes changed the bargain for Plaintiffs and Plaintiff Class Members,
13 such that Plaintiffs and Plaintiff Class Members would not have agreed to pay LFOs, either
14 expressly or impliedly, if they had been aware that their convictions were unconstitutional and
15 were not legal bases for Defendants to collect LFOs.

16 5.2.5 Plaintiffs and Plaintiff Class Members had no reason to think that their *Blake* and
17 *Blake*-Related Convictions were unconstitutional when they entered into such payment
18 agreements, express or implied, to pay LFOs to Defendants and Defendant Class Members.

19 5.3 Types of Harms Suffered by Individuals. As a result of the Defendants' and
20 Defendant Class Members' actions, Plaintiffs and Plaintiff Class Members (including clients and
21 members of CSP) have suffered injuries including, but not limited to, unjustified payment of, or
22 subjection to, LFOs, and the repurposing by Defendants of LFOs paid by Plaintiffs and Plaintiff
23 Class Members for *Blake* and *Blake*-Related Convictions to pay LFO balances for non-*Blake* &
24 non-*Blake*-Related Convictions. Plaintiffs and Plaintiff Class Members have also suffered lost

1 wages while incarcerated, emotional distress, and other collateral consequences including loss of
2 housing, public benefits, student loan eligibility, and access to employment, injury to credit,
3 immigration consequences, such as deportation, as well as other forms of harm. Collateral
4 consequences also include costs and fees incident to their convictions, such as warrant and
5 booking fees, and other fees or costs assessed against Plaintiff Class Members, or that Plaintiff
6 Class Members were compelled to pay, based on their *Blake* and *Blake*-Related convictions.

7 5.4 Injury to The Civil Survival Project. In addition to the harm described above,
8 Defendants' and Defendant Class Members' actions have also injured CSP.

9 5.4.1 CSP has been harmed because Defendants' and Defendant Class Members'
10 actions regarding *Blake* and *Blake*-Related Convictions frustrated the organization's mission of
11 advancing the rights of formerly incarcerated people, and removing the barriers imposed by
12 criminal convictions on individuals attempting to secure basic opportunities in society, like
13 employment, housing, education, and voting rights. As a result of Defendants' and Defendant
14 Class Members' actions, CSP has been forced and will be forced to divert substantial resources
15 to address injuries to Washington residents who were and continue to be affected by *Blake* and
16 *Blake*-Related Convictions, including related to the collateral consequences of their convictions
17 and their obligation to pay LFOs. Many clients and members of CSP have been convicted of
18 drug possession and have requested assistance from CSP related to the burdens imposed by those
19 convictions. Since the *Blake* decision, CSP has received (and continues to receive) numerous
20 requests from individuals for assistance in being relieved from the penalties and obligations
21 related to their *Blake* and *Blake*-Related Convictions, including LFOs.

22 5.4.2 For example, CSP seeks to: (1) educate individuals about the law regarding the
23 consequences of their convictions, including eligibility for relief from those consequences,
24 through full-day workshops and other activities; (2) conduct and support "Game Changer

1 Groups” (“GCGs”), which are run by individuals, including clients and members, who were
2 involved in the criminal legal system, to support individuals with prior convictions; and (3)
3 engage in legislative advocacy that is geared towards improving Washington laws to alleviate
4 barriers arising from previous conviction history, including as to employment, housing, and
5 education.

6 5.4.3 But for the actions of Defendants and Defendant Class Members, CSP could
7 devote more of its scarce resources to other efforts regarding the criminal legal system and its
8 organizational mission. Further, Defendant and Defendant Class Members’ chaotic and
9 inadequate processes for relief have left CSP unable to educate or actively assist its statewide
10 membership and clients with respect to the processes to vacate and receive restitution for *Blake*
11 and *Blake-Related* Convictions.

12 5.4.4 CSP also represents in this action the interests of its clients and members,
13 including those in GCGs, many of whom have been convicted under *Blake* and *Blake-Related*
14 Convictions, and have been forced by Defendants and Defendant Class Members to pay LFOs
15 and have suffered other injuries as a result of their convictions.

16 5.4.5 The interests CSP seeks to protect are directly germane to its purpose. Amounts
17 paid and owed readily ascertainable based on Defendants’ and Defendant Class Members’
18 records, including publicly available conviction, sentencing, and accounting records, without
19 requiring the direct participation of its clients and members.

20 5.5. Defendants’ Common Course of Conduct. Defendants and Defendant Class
21 Members are all governmental entities that have acted in concert to enforce *Blake* and *Blake-*
22 *Related* statutes, and have engaged in a common course of conduct of imposing, collecting,
23 receiving, and retaining LFOs from individuals convicted for *Blake* and *Blake-Related*
24 Convictions, and refusing to cancel relevant LFO balances that remain. Instead, despite generally

acknowledging that they owe refunds to Plaintiffs, Defendants have retained previously collected LFOs from *Blake* and *Blake-Related* Convictions and, in some instances, have started allocating *Blake* and *Blake-Related* Convictions LFOs to cover balances for non-*Blake* and *Blake-Related* Convictions. Defendants and Defendant Class Members are so closely related that they should be treated substantially as a single unit for purposes of this lawsuit.

VI. FIRST CLAIM FOR RELIEF

Unjust Enrichment / Restitution / Money Had and Received

(Brought by Plaintiffs and Plaintiff Class Against Defendants and Defendant Class)

6.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

6.2 By the actions alleged above, Defendants and Defendant Class Members wrongfully imposed, collected, received and retained monies paid to them under legal compulsion, and refused to cancel LFOs, as a result of *Blake* and *Blake-Related* Convictions that were unconstitutional.

6.3 As a result of these unlawful acts, Plaintiff and Plaintiff Class Members have been deprived of money in amounts to be determined at trial, and are entitled to recovery of such damages, including interest thereon.

6.4 As a result of these unlawful acts, Plaintiffs and Plaintiff Class Members are further entitled to be restored to their pre-conviction position through monetary and equitable relief, including vacation of convictions, as warranted.

VII. SECOND CLAIM FOR RELIEF

Rescission

(Brought by Plaintiffs and Plaintiff Class Against Defendants and Defendant Class)

1 7.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
2 in the preceding paragraphs.

3 7.2 By the actions alleged above, Defendants and Defendant Class Members
4 wrongfully imposed, collected, received and retained monies paid to them under contract,
5 whether express or implied, and refused to cancel LFO debt, as a result of Plaintiff's and Plaintiff
6 Class members' and Defendants' and Defendant Class members' independent mistaken belief
7 that *Blake* and *Blake-Related* Convictions were lawful bases for the imposition of LFOs through
8 payment contracts.

9 7.3 Plaintiffs and Plaintiff Class Members would not have entered into agreements to
10 pay LFOs, express or implied, if they had been aware at that time that their convictions were
11 unconstitutional.

12 7.4 As a result of these unlawful acts, Plaintiff and Plaintiff Class members have been
13 deprived of money in amounts to be determined at trial, and are entitled to recovery of such
14 damages, including interest thereon.

15 7.5 As a result of these unlawful acts, Plaintiffs and Plaintiff Class members are
16 further entitled to be restored to their pre-conviction position through monetary and equitable
17 relief, including vacation of convictions, as warranted.

18 **VIII. THIRD CLAIM FOR RELIEF**

19 **Declaratory Relief Pursuant to the Washington Uniform**

20 **Declaratory Judgments Act, RCW 7.24**

21 (Brought by Plaintiffs and Plaintiff Class Against Defendants and Defendant Class)

22 8.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
23 in the preceding paragraphs.

8.2 As a result of the unlawful acts described above, Plaintiffs and Plaintiff Class members seek a declaratory judgment, including that: (i) their convictions are void and vacated as unconstitutional; (ii) they are entitled to recover *Blake* and *Blake-Related* LFOs wrongfully collected and retained by Defendants and Defendant Class members; (iii) Defendants and Defendant Class members must cancel any unpaid LFO debt claimed by them on *Blake* and *Blake-Related* Convictions; and (iv) Defendants and Defendant Class members must cease their practice of reallocating *Blake* and *Blake-Related* LFO payments to cover other LFO balances. In the alternative, Plaintiffs and Plaintiff Class members seek a declaratory judgment against Washington, requiring that it order the Defendant Counties and Defendant Class Members to effectuate the relief described above.

8.3 Plaintiffs and Plaintiff Class Members (including CSP and its clients and members) also seek further relief including return of LFOs paid, and equitable and declaratory relief that the Court finds proper against Defendants and Defendant Class Members.

8.4 Plaintiffs seek their reasonable costs pursuant to RCW 7.24.100.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff CSP, on its own behalf and on behalf of its clients and members, and the Class Plaintiffs, on their own behalf and on behalf of Plaintiff Class Members, pray for relief against Defendants and Defendant Class Members, as follows:

A. Certification of the proposed Plaintiff Class under CR 23(a) and (b)(2), (b)(3) and/or (c)(4), appointment of Plaintiffs' counsel as counsel for the Plaintiff Class (including the King and Snohomish County Subclasses), and appointment of the Class Plaintiffs as representatives of the Plaintiff Class, as well as appointment of Plaintiffs Irene Slagle and Deighton Boyce as representatives for the King County Subclass and Plaintiffs Christine

1 Zawaideh, Julia Reardon, and Deighton Boyce as representatives for the Snohomish County
2 Subclass.

3 B. Certification of the proposed Defendant Class under CR 23(a) and (b)(2), (b)(3)
4 and/or (c)(4), appointment of Defendants King County and Snohomish Counties as Defendant
5 Class Representatives, and their counsel as counsel for the Defendant Class;

6 C. A declaration that the Defendants' and Defendant Class Members' actions
7 complained of herein violate the law, and for further relief as set forth above and as ordered by
8 the Court;

9 D. An order enjoining Defendants and Defendant Class Members, as well as their
10 officers, agents, successors, employees, representatives, and any and all persons acting in concert
11 with them, as provided by law, from engaging in the unlawful and wrongful conduct set forth
12 herein;

13 E. An order restoring Plaintiffs and Plaintiff Class Members to their position prior
14 to their unlawful convictions and rectifying the harm caused by Defendants and Defendant Class
15 Members.

16 F. An award to Plaintiffs and Plaintiff Class Members of actual, compensatory, and
17 nominal/exemplary damages, as allowed by law;

18 G. Reasonable service awards to Class Plaintiffs, as allowed by law;

19 H. An award of attorneys' fees and costs to Plaintiffs, as allowed by law;

20 I. An award of prejudgment and post-judgment interest to Plaintiffs, as provided by
21 law;

22 J. Such other and further equitable and legal relief as the Court deems necessary,
23 just, and proper.

DATED this 19th day of August, 2021.

FRANK FREED SUBIT & THOMAS LLP

By: /s/ Michael C. Subit
Michael C. Subit, WSBA #29189
705 Second Avenue, Suite 1200
Seattle, Washington 98104
Telephone: (206) 682-6711
Facsimile: (206) 682-0401
Email: msubit@frankfreed.com

OUTTEN & GOLDEN LLP

Adam T. Klein*
Christopher M. McNerney*
685 Third Avenue
New York, NY 10017
Telephone: (212) 209-0676
Facsimile: (646) 509-2060
Email: atk@outtengolden.com
Email: cmcnerney@outtengolden.com

Mikael A. Rojas*
601 Massachusetts Ave NW, Suite 200W
Washington, D.C. 20001
Telephone: (202) 847-4400
Facsimile: (202) 847-4010
Email: mrojas@outtengolden.com

PUBLIC DEFENDER ASSOCIATION

By: /s/ Lisa Daugaard
Lisa Daugaard, WSBA #26740
Prachi Dave, WSBA #50498
Rebecca Fish, WSBA #57488
Corey Guilmette, WSBA #51165
110 Prefontaine Place South, Suite 502
Seattle, WA 98104
Telephone: (206) 392-0050
Email: lisa.daugaard@defender.org
Email: prachi.dave@defender.org
Email: becky.fish@defender.org
Email: corey.guilmette@defender.org

*Admitted *pro hac vice*

Attorneys for Plaintiffs and the Plaintiff Class

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via King County E-Service and/or email upon the following:

David J. Hackett, WSBA #21236
Senior Deputy Prosecuting Attorneys
DANIEL T. SATTERBERG
King County Prosecuting Attorney
500 Fourth Avenue, 9th Floor
Seattle, WA 98104
Ph: (206) 296-8820
Fax: (206) 296-8819
E-mail: david.hackett@kingcounty.gov

Attorneys for Defendant King County

Timothy George Leyh, WSBA #14853
Randall Thor Thomsen, WSBA #25310
Kristin E. Ballinger, WSBA #28253
HARRIGAN LEYH FARMER & THOMSEN LLP
999 Third Avenue, Suite 4400
Seattle, WA 98104
Ph: (206) 623-1700
Fax: (206) 623-8717
E-mail: timl@harriganleyh.com
randallt@harriganleyh.com
kristinb@harriganleyh.com

Attorneys for Defendant King County & Snohomish County

Joseph B. Genster, WSBA #14968
SNOHOMISH COUNTY PROSECUTING ATTORNEY OFFICE
3000 Rockefeller Avenue
Everett, WA 98201
Ph: (425) 388-7364
Fax: (425) 388-6333
E-mail: jgenster@snoco.org

Attorneys for Defendant Snohomish County

Paul M. Crisalli, WSBA #40681
Assistant Attorney General
ROBERT W. FERGUSON
Attorney General
800 Fifth Avenue, Suite 2000

1 Seattle, WA 98104
2 Ph: (206) 464-7744
3 E-mail: paul.crisalli@atg.wa.gov

4 *Attorneys for Defendant State of Washington*

5 DATED this 19th day of August 2021.

6 /s/ Sarah Gunderson
7 Sarah Gunderson
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**SUPREME COURT
OF THE STATE OF WASHINGTON**

CIVIL SURVIVAL PROJECT, et al.,

Plaintiffs/Appellants,

v.

STATE OF WASHINGTON, KING COUNTY, and
SNOHOMISH COUNTY,

Defendants/Respondents.

**KING COUNTY’S AND SNOHOMISH COUNTY’S
ANSWER TO STATEMENT OF GROUNDS FOR
DIRECT REVIEW**

Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
Kristin E. Ballinger, WSBA #28253
HARRIGAN LEYH FARMER &
THOMSEN LLP
999 Third Avenue, Suite 4400
Seattle, WA 98104
(206) 623-1700

Attorneys for King County and
Snohomish County

DANIEL T. SATTERBERG
King County Prosecuting Attorney
David J. Hackett, WSBA #21236

Senior Deputy Prosecuting Attorney
1191 2nd Ave Ste 1700
Seattle, WA 98101-2996
(206) 477-9483

Attorneys for King County

ADAM CORNELL
Snohomish County Prosecuting
Attorney
Bridget E. Casey, WSBA #30459
Deputy Prosecuting Attorney
3000 Rockefeller Avenue, M/S 504
Everett, WA 98201
(425) 388-6330

Attorneys for Snohomish County

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I. INTRODUCTION

Since February 2021, stakeholders in the State's criminal justice system have been working diligently to fully implement *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). These include judges, court clerks, prosecutors, public and private defenders, county auditors, the Administrative Office of the Courts (AOC), the Department of Corrections (DOC), the Office of Public Defense (OPD), Governor Inslee, and this Court. Initial *Blake* compliance efforts necessarily focused on ending incarcerations, quashing warrants, ending supervision, and ending legal financial obligation (LFO) payments for simple drug possession convictions. At the same time, stakeholders began developing and now are implementing systems that can efficiently handle the large number of *Blake*-required vacations and LFO refunds.

No one in the State's criminal justice system disputes that these convictions are void following *Blake*, and that due process demands that, upon vacation, all LFOs paid in

connection with the void convictions be refunded.

Nevertheless, *Blake* presents substantial logistical challenges.

There are estimated to be more than 150,000 convictions at issue dating to 1971, entered by courts in all 39 counties. Each conviction involves an individualized judgment and sentence (J&S) reflecting the conviction and penalties and under the jurisdiction of a particular court.

Thus, under RAP 4.2(a)(4), plaintiffs have no claim of “a fundamental and urgent issue of broad public import which requires prompt and ultimate determination” regarding the dismissed declaratory judgment portions of their complaint. There never has been any dispute that persons with convictions for simple drug possession are due vacations, cancellation of debt, and LFO refunds. Consistent with the “presumption . . . that ‘public officers will properly and legally perform their duties,’” *Burrowes v. Killian*, 195 Wn.2d 350, 357, 459 P.3d 1082 (2020) (citation omitted), direct review of an issue of universal agreement is unwarranted and unnecessary.

Plaintiffs’ remaining claims—for *en masse* LFO refunds through the class action mechanism—also fail to present any fundamental and urgent issue of broad import requiring prompt and ultimate determination. The well-established method of collaterally attacking a criminal judgment is a motion under CrR 7.8 in superior court and CrRLJ 7.8 in district court (together, Criminal Rule 7.8). *See State v. Molnar*, 497 P.3d 858, at *3 (Wash. Oct. 28, 2021) (“Collateral attacks filed in superior court are governed by CrR 7.8.”). In addition to ending incarceration, supervision, and LFO collection, vacation under Criminal Rule 7.8 serves several necessary and crucial purposes, including (1) removing the conviction from the court record, (2) removing the conviction from the person’s criminal history, (3) restoring rights (like the right to vote) lost or impaired by the conviction, and (4) restoring full access to employment and housing resources restricted by the conviction. Plaintiffs’ claim that they are entitled to a refund without

vacating the underlying criminal judgment¹ ignores the practical and legal effects of that judgment as well as the requirements of Criminal Rule 7.8.

The Criminal Rule 7.8 process, requiring nothing more than a simple motion because the conviction is void, results in complete relief: vacation of the conviction, cancellation of debt, and full recovery of all LFOs paid. By contrast, a civil class action cannot bring about the vacation of individual criminal judgments. Nor is the class action process simpler than a pro forma Criminal Rule 7.8 motion. Plaintiffs' proposed civil class action will require plaintiffs to engage in prolonged briefing (and potential discovery) about class certification issues, force plaintiffs to prove the elements of their equitable causes of action, and substantially reduce LFO refunds to pay class counsel's fees and costs.

¹ See Appendix 30 n.7 (“Plaintiffs do *not* seek to vacate a void judgment, undo a court order, or ‘obtain relief from a judgment or order.’” (emphasis in original)).

Despite not raising a constitutional challenge to Criminal Rule 7.8 in their complaint, plaintiffs now seek to make a constitutional challenge the centerpiece of their appeal. They cannot (and do not purport to) raise a facial challenge to the rule because it has long been a constitutional means to vacate individual convictions and provide relief from judgment. Instead, they claim that the rule becomes unconstitutional as applied when thousands of convictions are at issue. They are wrong. But plaintiffs cannot even raise an as applied challenge because none of them have attempted relief under Criminal Rule 7.8, and thus an as applied challenge is not justiciable.

This case is a poor vehicle to evaluate the adequacy of *Blake* compliance efforts. With stakeholders in the State's criminal justice system rapidly developing and implementing effective mechanisms for handling Criminal Rule 7.8 motions at scale, and no attempt by the plaintiffs to use Criminal 7.8 so that a particular procedure can be evaluated, this challenge is at best premature. The various branches of state and local

government, including the courts, are working diligently to implement full *Blake* relief, and should be given the room to do so. Should those efforts fail, or specific problems develop, the courts are available to consider those issues in the context of a ripe dispute. There is no urgent need to change the rules of procedure to permit plaintiffs' class action.

This case meets none of the RAP 4.2 criteria for direct review. This Court should transfer the case to the Court of Appeals for determination. *See* RAP 4.2(e)(1).

II. NATURE OF CASE AND DECISION

A. The Legislative, Executive, and Judicial Branches Are Diligently Addressing the Consequences of the *Blake* Decision.

Plaintiffs predicate their professed need for direct review on the supposed “chaotic and insufficient response” to *Blake* by the State’s criminal justice system (Statement at 1) which they claim means they must act as a “private Attorney’s [sic] General” to “force[]” relief (Statement at 20). In evaluating whether plaintiffs’ claim of an urgent and fundamental issue of

broad public import regarding *Blake* compliance efforts is present, this Court is not bound by the stale allegations from plaintiffs' complaint. *See Dioxin/Organochlorine Ctr. v. Dep't of Ecology*, 119 Wn.2d 761, 769-70 & n.42, 837 P.2d 1007 (1992) (noting commissioner's ruling permitting consideration of affidavit for "limited purpose of helping this court decide whether to accept direct review").

1. Immediate actions taken

Following the *Blake* decision, state and local stakeholders in the criminal justice system quickly prioritized necessary work based on impact to the convicted person. *E.g.*, Appendix 59-60 (Board for Judicial Administration), 79-83 (DOC), 49-51 (OPD), 47-48 (law enforcement). This includes ongoing and successful efforts to:

- Cease new arrests for simple possession (accomplished very soon after *Blake* issued).
- Dismiss all pending cases for simple possession (accomplished very soon after *Blake* issued).
- Commute simple possession sentences to allow for immediate release pending court action to vacate

the convictions (accomplished by the Governor soon after *Blake* issued).

- Commute DOC supervision for simple possession convictions pending court action to vacate the convictions (accomplished by the Governor soon after *Blake* issued).
- Vacate simple possession convictions and release and/or resentence persons currently incarcerated pursuant to them (accomplished soon after *Blake* issued).
- Quash all outstanding warrants arising from simple possession charges or convictions (ongoing).
- Vacate simple possession convictions to end DOC active supervision and consequent penalties for violating supervision terms (ongoing).
- Vacate simple possession convictions to end DOC inactive supervision and thereby quash DOC administrative warrants to eliminate the risk of a wrongful arrest (ongoing).
- Vacate simple possession convictions, resentence, and possibly end supervision for persons on DOC supervision with simple possession convictions in their criminal history (ongoing).
- End all collection by court clerks of LFOs for simple possession convictions (accomplished soon after *Blake* was issued).
- End all collection by DOC of LFOs for simple possession convictions (ongoing).

- End quarterly billings by AOC that include LFOs for simple possession convictions (ongoing).

Thus, the initial focus of *Blake* compliance was redress for persons incarcerated, under supervision, or on warrant status for simple drug possession charges or convictions.

2. Process improvements undertaken

In addition to these priority needs, criminal justice system stakeholders have been implementing procedures under Criminal Rule 7.8 to streamline the process of vacating convictions for simple drug possession and refunding 100% of LFOs paid because of those convictions.

For example, King County adopted a streamlined process to vacate *Blake* convictions and refund LFOs. Under this approach:

The King County Prosecutor, in coordination with the clerk's office, is currently compiling a list of all Blake-eligible convictions since 1971. Starting with the most recent convictions and working back in time, the PAO is currently filing motions in each cause number on behalf of the state to proactively vacate prior convictions for simple drug possession, cancel any outstanding LFO or collections cost balances that arise from the vacated conviction, and implement a process through the clerk's

office for a refund of any LFO or collections that were paid as a result of the vacated conviction. The State Patrol will also be informed that the conviction has been vacated.

Appendix 88. Other counties are following the process outlined by King County (*see id.*), and others are developing and implementing procedures tailored to their size and circumstances (Appendix 95-162).

3. Funding provided and anticipated

Although the *Blake* decision came out during the 2021 legislative session, the Legislature quickly appropriated substantial funds to support *Blake* compliance and is expected to make further appropriations. *See* Laws of 2021, ch. 334, § 115, 116, 117, 223 (Appendix 37-46). The Legislature appropriated:

- \$44.5 million to AOC for administrative costs of resentencings and vacations and another \$23.5 million for LFO refunds (fiscal year 2022). §115(5) & (6) (Appendix 40). As of November 15, 2021, AOC had executed contracts with 31 counties representing \$49.9 million in anticipated disbursements. Appendix 75-77; *e.g.*, Appendix 70-73.

- \$11 million to OPD for public defense costs associated with *Blake* (fiscal years 2022/23). § 116(5) (Appendix 42).
- \$1.2 million to the Office of Civil Legal Aid to develop *Blake* forms, provide legal assistance, and public outreach (fiscal years 2022/23). § 117(8) (Appendix 44).
- \$3.3 million to DOC for temporary court facilities, staffing, and other *Blake* purposes (fiscal year 2022). § 223 (Appendix 46).

Additional funding is expected in the 2022 session in response to the better understanding of the scope, impact, and consequences of *Blake* gained after a year's perspective. In preparation for the upcoming session, the Legislature already is devoting public meetings to *Blake* funding issues. *E.g.*, Appendix 74. And, anticipating additional funding from the Legislature, counties have committed resources and funding to *Blake* compliance. *See, e.g.*, Appendix 90-93 (King County ordinance advancing \$19 million toward *Blake* efforts).

4. Rulemaking undertaken

Soon after the *Blake* decision, this Court considered but did not adopt proposals from the Superior Court Judges'

Association and others for emergency orders or general rules regarding *Blake* compliance. Utilizing its GR 9 rule making authority, this Court is considering amendments to CrR 3.1 and CrR 7.8 to expand the right to counsel in connection with *Blake* relief. Appendix 65-69. The rule amendments were proposed by OPD, the Washington Defender Association, and the Washington Association of Criminal Defense Lawyers. Appendix 65, 67. Public comment closed on September 30, 2021 (Appendix 65), and the Court is scheduled to consider the amendments on December 1, 2021.

5. Impact

Despite historic Covid backlogs in pending cases and difficulties hiring personnel, as of November 2021, the DOC reported having received 13,362 *Blake*-related court orders. Appendix 79.

B. Plaintiffs Wish to Bypass Criminal Rule 7.8, Urging a “Binding, Statewide” Resolution of *Blake* Vacations and Refunds.

Less than two weeks after the *Blake* decision, plaintiffs filed their civil complaint, already claiming that the defendants were “wrongfully . . . retain[ing]” LFOs paid in connection with simple possession convictions. Appendix 34, 35. In plaintiffs’ view, government had failed before it even had a chance to address the problem.

Each plaintiff was convicted of simple drug possession in a criminal action independent of this civil action.² Most pled guilty in courts other than the superior court where they filed this action. Because this Court found the statute void, all convictions under it are void and subject to immediate vacation

² Plaintiffs did not preserve, and therefore waived (*see State v. Ibarra-Cisneros*, 172 Wn.2d 880, 884, 263 P.3d 591 (2011)), their argument that CSP’s claims should be evaluated differently than the claims of individuals (Statement, p. 13 ¶ E). But, in any event, CSP’s claims rise and fall with the claims of the individuals. *See Wash. St. Nurses Ass’n v. Cmty. Health Sys., Inc.*, 196 Wn.2d 409, 415, 469 P.3d 300 (2020).

(including a refund of LFOs paid) upon request. *See* CrR 7.8(b) (“the court may relieve a party from a final judgment” where “[t]he judgment is void”). Application “shall be made by motion” and relief is provided directly by the superior or district court that entered the conviction; neither referral to the court of appeals nor the one-year time bar of RCW 10.73.090 applies. CrR 7.8(c)(1), (2).

None of the named plaintiffs has attempted a CrR 7.8 motion. Plaintiffs’ complaint posits instead that vacations, LFO debt cancellation, and LFO refunds required by *Blake* should occur through a civil class action process. Plaintiffs wish to bypass established Criminal Rule 7.8 procedures to secure *Blake* relief, urging the need for “a binding, statewide judicial resolution of this case,” rather than the “one-by-one” process of CrR 7.8. Appendix 32.

C. The Trial Court Dismissed the Action.

The trial court held that Criminal Rule 7.8 is the binding, statewide process for plaintiffs to obtain vacations, LFO debt

cancellation, and LFO refunds required by *Blake*. Adhering to *Doe v. Fife Municipal Court*, 74 Wn. App. 444, 874 P.2d 182 (1994), the trial court held that

1. CrR 7.8 or CrRLJ 7.8 (Criminal Rule 7.8) is the exclusive mechanism to obtain the remedies that plaintiffs seek in their First and Second Claims for Relief (i.e., vacation of their criminal convictions, LFO refunds, and cancellation of any outstanding LFO debts).
2. Criminal Rule 7.8 is a completely adequate alternative remedy to declaratory relief and therefore plaintiffs are not entitled to relief by way of a declaratory judgment as sought in their Third Claim for Relief.

Appendix 1.

III. PLAINTIFFS HAVE NOT ESTABLISHED GROUNDS FOR DIRECT REVIEW.

Direct review is limited to the specific types of cases identified in RAP 4.2(a), each of which involves an enhanced need for a prompt, final appellate decision. While the plaintiffs rely on RAP 4.2(a)(4) and RAP 4.2(a)(5), neither applies and this Court should decline direct review.

A. The Appeal Does Not Involve an Urgent Issue of Broad Public Import Justifying Review under RAP 4.2(a)(4).

Under RAP 4.2(a)(4), the Court may grant direct review of “[a] case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.” *Id.* Plaintiffs identify no such issue.

1. Plaintiffs’ constitutional claims are not justiciable.

Plaintiffs anchor their supposed need for urgent resolution to a claimed due process violation (Statement at 24), but they did not plead a due process violation and, even had they, a constitutional challenge would not have been justiciable.

Plaintiffs did not, do not, and cannot mount a facial challenge to Criminal Rule 7.8 because such a challenge requires that “no set of circumstances exist[] in which” Criminal Rule 7.8 “can be constitutionally applied.” *See City of Redmond v. Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004).

But, to bring an as applied challenge, “[e]ven if a deprivation becomes more likely as a result of government

action, due process does not apply if an actual deprivation is contingent on a subsequent action.” *Carlisle v. Columbia Irr. Dist.*, 168 Wn.2d 555, 567-68, 229 P.3d 761 (2010). Thus, where a litigant claims that a procedure would violate the constitution, the “constitutional issue is . . . not ripe for review” until the litigant has been subject to the procedure. *Utter v. Bldg. Indus. Ass’n of Washington*, 182 Wn.2d 398, 430, 341 P.3d 953 (2015). Further, “[a] litigant does not have standing to challenge a statute on constitutional grounds unless the litigant is harmed by the particular feature of the statute which is claimed to be unconstitutional,” meaning “actual damage or injury” rather than “general dissatisfaction.” *Kadoranian by Peach v. Bellingham Police Dep’t*, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992) (citation omitted).

No plaintiff claims to have attempted to utilize CrR 7.8. Accordingly, the trial court correctly ruled that plaintiffs’ “constitutional claims are [not] ripe” (Appendix 26) and therefore “[a]mendment of the complaint cannot cure the

(already twice amended) complaint” (Appendix 2).³

But even a justiciable due process challenge to Criminal Rule 7.8 would fail. The Criminal Rule 7.8 procedure is nothing like the procedure found deficient in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017). In the context of *Blake*, Criminal Rule 7.8 requires only a basic motion. *E.g.*, Appendix 94. For a conviction invalidated by *Blake*, the convicted person has no burden of proof except to supply information necessary to confirm identity and to process a refund (such as a current address). Like all statutes, Criminal Rule 7.8 is presumed constitutional. *See State v. Waldon*, 148 Wn. App. 952, 962, 202 P.3d 325 (2009) (concerning GR 15).

The process invalidated in *Nelson* required far more than a simple motion. To obtain a refund of LFOs paid after his conviction already had been vacated, the petitioner in *Nelson*

³ *See also State v. Womble*, 858 S.E.2d 304, 319 (N.C. Ct. App. 2021) (*Nelson v. Colorado* challenge failed where defendant failed to “petition to return his property”); *State v. Schroeder*, 153 N.E.3d 27, 29 (Ohio 2020) (same for failure to appeal).

was required to “institute a discrete civil proceeding” and “prove[] his innocence by clear and convincing evidence.” *Id.* at 1252.⁴ Because the petitioner’s conviction already had been vacated and thereby “restored” the “presumption of their innocence,” this procedure was more than due process allowed. *Id.*

In contrast to a straightforward and simple motion under Criminal Rule 7.8, plaintiffs’ proposed class action is far more complicated and burdensome, requiring resolution of issues including class certification, class discovery, and attorneys’ fees. Plaintiffs do not get the automatic benefit of an LFO refund that comes with vacation under Criminal Rule 7.8, but must prove their causes of action in the face of an unvacated

⁴ Colorado’s statute is similar to chapter 4.100 RCW, which allows “an actually innocent” person who was “wrongly convicted” to “file a claim for compensation against the state.” RCW 4.100.020. Proceedings under chapter 4.100 RCW are separate from Criminal Rule 7.8, and a prerequisite is that the conviction was vacated or reversed and the person was not retried, or the person was pardoned. RCW 4.100.040(1)(c).

criminal judgment. Even if they prevail, plaintiffs' LFO recovery is offset against substantial class costs and attorney fees, thereby depriving them of the 100% LFO recovery readily available under the criminal rule. Ironically, it is plaintiffs' proposed class action mechanism, not a simple motion under Criminal Rule 7.8, that violates due process under *Nelson*.

2. Plaintiffs' claimed need to bypass Criminal Rule 7.8 presents no fundamental or urgent issue properly addressed to a reviewing court.

Plaintiffs want this Court to bless their putative class action as means of resolving, in a single judicial proceeding, all vacations, LFO refunds, and debt cancellations necessary under *Blake*. Such a policy request is better addressed to the Legislature, or possibly this Court's rulemaking authority. It is not an issue for appeal, much less an issue for direct review.

Plaintiffs' request for comprehensive *Blake* relief is best addressed to the Legislature. Just as the Legislature created the problem with the fatal flaw in the simple drug possession statute, it should play a primary role in unwinding 50 years of

convictions. But, if plaintiffs are correct that rule amendments are necessary, an appeal is not the mechanism to do so.

Rulemaking is the province of GR 9, which requires notice of proposed rule changes and considerations of the impact of those changes beyond the parties and issues on appeal.

Indeed, it is proposed rulemaking that the Massachusetts court suggested might be appropriate in *Commonwealth v. Martinez*, 109 N.E.3d 459 (Mass. 2018). Plaintiffs erroneously state that in *Martinez* the court “fashion[ed] a remedy to vacate thousands of convictions en masse” and “pav[ed] the way for a class action litigation.” Statement at 23-24. Neither of those statements is true. To the contrary, the *Martinez* court held that motion practice within each criminal cause number, even in the context of 21,000 void judgments (109 N.E.3d at 479), “satisfies the due process clause of the Fourteenth Amendment” (*id.* at 477). The court hypothesized that, to alleviate the “administrat[ive]” “burden,” it might later opt to use its special statutory “superintendence” authority to create a new process

by which a single judicial officer would conduct a “case-by-case adjudication.” *Id.* at 479-80.

The named plaintiffs already can address the urgency of relieving themselves of their invalid convictions and obtaining an LFO refund by moving to vacate their convictions pursuant to Criminal Rule 7.8. Direct review of a decision endorsing this relief under current rules is unnecessary.

3. Plaintiffs’ rule interpretation arguments raise no issue of substantial public import.

Plaintiffs’ challenge to the decisional law requiring that collateral attacks on void orders be brought under Criminal Rule 7.8 raises no issue of substantial public import. None of the bases on which this Court historically has granted direct review under RAP 4.2(a)(4) is present here. The trial court’s decision to adhere to the settled Criminal Rule 7.8 law did not alter the status quo for similarly situated persons.⁵ To the

⁵ *Cf., e.g., McCleary v. State*, 173 Wn.2d 477, 482, 269 P.3d 227 (2012) (direct review of post-trial judgment requiring State legislature to provide more educational funding).

contrary, the trial court's decision affirmed the propriety of proceeding in the usual manner under Criminal Rule 7.8 to obtain a prompt vacation and refund. Nor is direct review necessary to guide other pending cases.⁶ As evidenced by their proposed CrR 7.8 amendments, the public defense bar is proceeding apace to seek vacations and refunds under the rule and seeks to use that rule—not a civil class action where refunds will be reduced by fees to class counsel—to do so. *See supra* at 19. Especially when state and local government are implementing *Blake* approaches that utilize existing criminal rules to provide relief, this court should allow those efforts to come to fruition rather than prematurely directing the operations of the executive and legislative branches.

⁶ *Cf., e.g., Philippides v. Bernard*, 151 Wn.2d 376, 380-81, 88 P.3d 939 (2004) (direct review to settle statutory issue presented in three pending cases and question certified by federal court).

B. Plaintiffs' Action Is Not "against a State Officer" as Required by RAP 4.2(a)(5).

Plaintiffs mistakenly cite RAP 4.2(a)(5) as justifying review, failing to recognize that they sued entities, not people. RAP 4.2(a)(5) allows direct review of "[a]n action against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus." This rule is inapplicable for two reasons: (1) plaintiffs sued counties and the State of Washington, not "a state officer"; and (2) this action is not "in the nature of" the actions listed, all of which seek to compel or restrain action. Plaintiffs do not explain how the rule applies here despite these obvious defects (*see* Statement at 12, 14, 16, 17) and it does not.

IV. CONCLUSION

To promote the just, orderly, and fair access to the appellate courts for all litigants, the Court has strictly limited the types of cases warranting its direct review. Because this case does not meet the standard, the Court should deny direct review and transfer the case to the Court of Appeals.

I certify that this answer contains 3,913 words, in
compliance with RAP 18.17(b).

SUBMITTED this 30th day of November, 2021.

HARRIGAN LEYH FARMER &
THOMSEN LLP

By s/ Kristin E. Ballinger
Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
Kristin E. Ballinger, WSBA #28253
999 Third Avenue, Suite 4400
Seattle, WA 98104
Tel: (206) 623-1700
Fax: (206) 623-8717
Email: timl@harriganleyh.com
Email: randallt@harriganleyh.com
Email: kristinb@harriganleyh.com

*Attorneys for King County and
Snohomish County*

DANIEL T. SATTERBERG
King County Prosecuting Attorney

David J. Hackett, WSBA #21236
Senior Deputy Prosecuting Attorney
1191 2nd Ave Ste 1700
Seattle, WA 98101-2996
Tel: (206) 477-1120
Fax: (206) 296-0191
Email: david.hackett@kingcounty.gov

Attorneys for King County

Bridget E. Casey, WSBA #30459
Deputy Prosecuting Attorney
3000 Rockefeller Avenue, M/S 504
Everett, WA 98201
Tel: (425) 388-6330
Fax: (425) 388-6333
Email: bcasey@snogo.org

Attorneys for Snohomish County

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HONORABLE MICHAEL R. SCOTT
 Noted for Hearing: September 24, 2021 at 9:00 a.m.
 With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF KING

THE CIVIL SURVIVAL PROJECT, et al.

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defendants.

NO. 21-2-03266-1 SEA

ORDER GRANTING
 KING COUNTY'S AND SNOHOMISH
 COUNTY'S MOTION TO DISMISS

THIS MATTER came before the Court on King County's and Snohomish County's Motion to Dismiss. Having considered the motion and all responsive and related documents, the Court hereby GRANTS the motion for the following reasons.

1. CrR 7.8 or CrRLJ 7.8 (Criminal Rule 7.8) is the exclusive mechanism to obtain the remedies that plaintiffs seek in their First and Second Claims for Relief (i.e., vacation of their criminal convictions, LFO refunds, and cancellation of any outstanding LFO debts).

2. Criminal Rule 7.8 is a completely adequate alternative remedy to declaratory relief and therefore plaintiffs are not entitled to relief by way of a declaratory judgment as sought in their Third Claim for Relief.

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ORDER GRANTING KING COUNTY'S
 AND SNOHOMISH COUNTY'S MOTION TO DISMISS - 1

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
 999 THIRD AVENUE, SUITE 4400
 SEATTLE, WASHINGTON 98104
 TEL (206) 623-1700 FAX (206) 623-8717

3. Amendment of the complaint cannot cure the (already twice amended) complaint.

The Court therefore DISMISSES WITH PREJUDICE this action.

DATED this 24th day of September, 2021.

Electronic signature attached

HONORABLE MICHAEL SCOTT
KING COUNTY SUPERIOR COURT JUDGE

Presented by:

HARRIGAN LEYH FARMER & THOMSEN LLP

By s/ Kristin E. Ballinger

Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
Kristin E. Ballinger, WSBA #28253
999 Third Avenue, Suite 4400
Seattle, WA 98104
Tel: (206) 623-1700
Fax: (206) 623-8717
Email: timl@harriganleyh.com
Email: randallt@harriganleyh.com
Email: kristinb@harriganleyh.com

Attorneys for King County and Snohomish County

DANIEL T. SATTERBERG
King County Prosecuting Attorney

David J. Hackett, WSBA #21236
T. Shane Harrison, WSBA #51006
Senior Deputy Prosecuting Attorneys
500 4th Avenue, 9th Floor
Seattle, WA 98104
Tel: (206) 477-1120
Fax: (206) 296-0191
Email: david.hackett@kingcounty.gov
Email: t.shane.harrison@kingcounty.gov

Attorneys for King County

ADAM CORNELL
Snohomish County Prosecuting Attorney

Joseph B. Genster, WSBA #14968
Deputy Prosecuting Attorney
3000 Rockefeller Avenue, M/S 504
Everett, WA 98201
Tel: (425) 388-6330

ORDER GRANTING KING COUNTY'S
AND SNOHOMISH COUNTY'S MOTION TO DISMISS - 2

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

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Fax: (425) 388-6333
Joseph.Genster@co.snohomish.wa.us

Attorneys for Snohomish County

ORDER GRANTING KING COUNTY'S
AND SNOHOMISH COUNTY'S MOTION TO DISMISS - 3

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

CERTIFICATE OF SERVICE

I, Florine Fujita, declare that I am employed by the law firm of Harrigan Leyh Farmer & Thomsen LLP, a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On September 24, 2021, I caused a true and correct copy of the foregoing document to be served on counsel listed below in the manner indicated:

Michael C. Subit, WSBA #29189 FRANK FREED SUBIT & THOMAS LLP 705 Second Avenue, Suite 1200 Seattle, WA 98104 msubit@frankfreed.com Attorney for Plaintiffs and the Plaintiff Class	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via CM/ECF
Adam T. Klein Christopher M. McNerney OUTTEN & GOLDEN LLP 685 Third Avenue New York, NY 10017 atk@outtengolden.com cmcnerny@outtengolden.com Attorneys for Plaintiffs and the Plaintiff Class	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via CM/ECF
Mikael A. Rojas OUTTEN & GOLDEN LLP 601 Massachusetts Ave NW, Suite 200W Washington, D.C. 20001 mrojas@outtengolden.com Attorney for Plaintiffs and the Plaintiff Class	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via CM/ECF
Lisa Daugaard, WSBA #26740 Prachi Dave, WSBA #50498 Rebecca Fish, WSBA #57488 Corey Guilmette, WSBA #51165 PUBLIC DEFENDER ASSOCIATION 110 Prefontaine Place South, Suite 502 Seattle, WA 98104 lisa.daugaard@defender.org prachi.dave@defender.org becky.fish@defender.org corey.guilmette@defender.org Attorneys for Plaintiffs and the Plaintiff Class	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via CM/ECF

ORDER GRANTING KING COUNTY'S
AND SNOHOMISH COUNTY'S MOTION TO DISMISS - 4

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

1	Paul M. Crisalli, WSBA #40681	<input type="checkbox"/> Via Hand Delivery
2	Assistant Attorney General	<input type="checkbox"/> Via First Class Mail
3	ROBERT W. FERGUSON	<input type="checkbox"/> Via Facsimile
4	Attorney General	<input checked="" type="checkbox"/> Via Electronic Mail
5	800 Fifth Avenue, Suite 2000	<input checked="" type="checkbox"/> Via CM/ECF
6	Seattle, WA 98104-3188	
7	Paul.Crisalli@atg.wa.gov	
8	<i>Attorneys for State of Washington</i>	
9	David J. Hackett, WSBA #21236	<input type="checkbox"/> Via Hand Delivery
10	T. Shane Harrison, WSBA #51006	<input type="checkbox"/> Via First Class Mail
11	Senior Deputy Prosecuting Attorneys	<input type="checkbox"/> Via Facsimile
12	DANIEL T. SATTERBERG	<input checked="" type="checkbox"/> Via Electronic Mail
13	King County Prosecuting Attorney	<input checked="" type="checkbox"/> Via CM/ECF
14	500 4th Avenue, 9th Floor	
15	Seattle, WA 98104	
16	david.hackett@kingcounty.gov	
17	t.shane.harrison@kingcounty	
18	<i>Attorneys for King County</i>	
19	Joseph B. Genster, WSBA #14968	<input type="checkbox"/> Via Hand Delivery
20	George B. Marsh, WSBA #26188	<input type="checkbox"/> Via First Class Mail
21	Deputy Prosecuting Attorneys	<input type="checkbox"/> Via Facsimile
22	ADAM CORNELL	<input checked="" type="checkbox"/> Via Electronic Mail
23	Snohomish County Prosecuting Attorney	<input checked="" type="checkbox"/> Via CM/ECF
24	Robert J. Drewel Bldg., 7th Floor	
25	M/S 504	
26	3000 Rockefeller Ave.	
	Everett, WA 98201	
	Joseph.Genster@co.snohomish.wa.us	
	gmarsh@snoco.org	
	<i>Attorneys for Snohomish County</i>	

DATED this 24th day of September, 2021.

s/ Florine Fujita

Florine Fujita, Legal Assistant

florinef@harriganleyh.com

ORDER GRANTING KING COUNTY'S
AND SNOHOMISH COUNTY'S MOTION TO DISMISS - 5

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-03266-1
Case Title: CIVIL SURVIVAL PROJECT ET AL vs STATE OF WASHINGTON
ET AL
Document Title: ORDER RE MOTION TO DISMISS

Signed By: Michael R. Scott
Date: September 24, 2021

A handwritten signature in blue ink, appearing to read "m/r. Scott", is positioned above a horizontal line.

Judge: Michael R. Scott

This document is signed in accordance with the provisions in GR 30.

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O=KCDJA, CN="Michael R.Scott:
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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

3

4	CIVIL SURVIVAL PROJECT, individually)	
	and on behalf of its Members and)	
5	Clients, and Irene Slagle, Christina)	
	Zawaideh, Julia Reardon, Adam)	
6	Kravitz, Laura Yarbrough, and Deighton)	
	Boyce, individually and on behalf of)	
7	the Proposed Plaintiff Class,)	
)	
8	Plaintiffs,)	
)	
9	v.)	No. 21-2-03266-1 SEA
)	
10	STATE OF WASHINGTON, individually,)	
	and KING COUNTY and SNOHOMISH COUNTY,)	Hearing on
11	individually and on behalf of the)	Motion for Summary
	Proposed Defendant Class, and ADAMS)	Judgment
12	COUNTY, ASOTIN COUNTY, BENTON COUNTY,)	
	CHELAN COUNTY, CLALLAM COUNTY, CLARK)	September 24, 2021
13	COUNTY, COLUMBIA COUNTY, COWLITZ)	
	COUNTY, DOUGLAS COUNTY, FERRY COUNTY,)	The Honorable
14	FRANKLIN COUNTY, GARFIELD COUNTY,)	Michael Ramsey Scott
	GRANT COUNTY, GRAYS HARBOR COUNTY,)	Presiding
15	ISLAND COUNTY, JEFFERSON COUNTY,)	
	KITSAP COUNTY, KITTITAS COUNTY,)	
16	Klickitat County, LEWIS COUNTY,)	
	LINCOLN COUNTY, MASON COUNTY,)	
17	OKANOGAN COUNTY, PACIFIC COUNTY, PEND)	
	OREILLE COUNTY, PIERCE COUNTY, SAN)	
18	JUAN COUNTY, SKAGIT COUNTY, SKAMANIA)	
	COUNTY, SPOKANE COUNTY, STEVENS)	
19	COUNTY, THURSTON COUNTY, WAHKIAKUM)	
	COUNTY, WALLA WALLA COUNTY, WHATCOM)	
20	COUNTY, WHITMAN COUNTY, and YAKIMA)	
	COUNTY,)	
21)	
	Defendants.)	

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 24 Reed Jackson Watkins
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 25 206.624.3005

1 A P P E A R A N C E S

2 (All Attorneys Participated via Zoom)

3

4 On Behalf of Plaintiffs:

5 CHRISTOPHER M. MCNERNEY

6 ADAM T. KLEIN

7 Outten & Golden LLP

8 685 Third Avenue, 25th Floor

9 New York, New York 10017

10

11 MIKAEL A. ROJAS

12 Outten & Golden LLP

13 601 Massachusetts Avenue Northwest, Suite 200W

14 Washington, District of Columbia 20001

15

16 PRACHI V. DAVE

17 Public Defender Association

18 110 Prefontaine Place South, Suite 502

19 Seattle, Washington 98104

20

21 MICHAEL C. SUBIT

22 Frank Freed Subit & Thomas LLP

23 705 Second Avenue, Suite 1200

24 Seattle, Washington 98104

25

1 A P P E A R A N C E S, Cont.

2

3 On Behalf of Defendants King County and Snohomish County:

4 KRISTIN E. BALLINGER

5 TIMOTHY G. LEYH

6 Harrigan Leyh Farmer & Thomsen LLP

7 999 Third Avenue, Suite 4400

8 Seattle, Washington 98104

9

10 DAVID J. HACKETT

11 King County Administration Building

12 1191 Second Avenue, Suite 1700

13 Seattle, Washington 98101

14

15 BRIDGET E. CASEY

16 Snohomish County Prosecutor's Office

17 3000 Rockefeller Avenue

18 Everett, Washington 98201

19

20 On Behalf of Defendant the State of Washington:

21 PAUL M. CRISALLI

22 Washington Attorney General's Office

23 800 Fifth Avenue, Suite 2000

24 Seattle, Washington 98104

25

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2 September 24, 2021

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4 THE COURT: Thank you. Good morning, everyone.

5 MR. MCNERNEY: Good morning, Your Honor.

6 MS. BALLINGER: Good morning, Your Honor.

7 THE COURT: I understand you are all here --

8 MR. CRISALLI: Good morning.

9 THE COURT: -- so we've let you into the virtual courtroom
10 a bit early if that's all right with everyone.

11 This is Judge Scott. I am in open court, and we are on
12 the record for a hearing on a motion to dismiss in Civil
13 Survival Project v. State of Washington, Case
14 No. 21-2-03266-1, Seattle designation.

15 Counsel, please state your appearances, starting with
16 counsel for the plaintiffs.

17 MR. MCNERNEY: Good morning, Your Honor. Christopher
18 McNerney from the firm Outten & Golden for Plaintiffs. And
19 with me are my colleagues Adam Klein and Mikael Rojas. And
20 I'll let cocounsel introduce themselves. Thank you.

21 MS. DAVE: Thank you very much. Hello, Your Honor.
22 Prachi Dave from the Public Defender Association.

23 THE COURT: Good morning.

24 MR. SUBIT: And Mike Subit from Frank Freed Subit &
25 Thomas.

1 THE COURT: Good morning.

2 And for the defendants?

3 MS. BALLINGER: Your Honor, Kristin Ballinger on behalf of
4 King County and Snohomish County. With me is Timothy Leyh,
5 also from my firm. And from the King County Prosecuting
6 Attorney's Office, David Hackett. And from the Snohomish
7 County Prosecuting -- excuse me, Prosecuting Attorney's
8 Office, Bridget Casey.

9 THE COURT: Good morning to you all.

10 MR. CRISALLI: On behalf of the State, Paul Crisalli,
11 assistant attorney general.

12 THE COURT: Good morning.

13 Have we heard from everyone? It looks like we have, I
14 believe. Very well.

15 Who will be arguing on behalf of the moving parties?

16 MS. BALLINGER: Your Honor, Kristin Ballinger on behalf of
17 King County and Snohomish County. We are the moving
18 parties.

19 THE COURT: Thank you.

20 And who will be arguing on behalf of Plaintiffs?

21 MR. MCNERNEY: Your Honor, myself, Christopher McNerney
22 for Plaintiffs.

23 THE COURT: Very good. I have read the briefs you have
24 all submitted, so I am looking forward to your arguments,
25 and we'll begin with Ms. Ballinger.

1 MS. BALLINGER: Thank you, Your Honor.

2 As the Court knows, we are here on King County and
3 Snohomish County's motion to dismiss.

4 Doe controls. That's the first point I wanted to make.

5 The second point is that the constitutional claims are not
6 pled, and even if they were pled, they're not ripe. And as
7 I can discuss further, even if they were ripe, they would
8 fail.

9 And the third point I wanted to discuss is that
10 Plaintiffs' claims about fairness and efficiency go to
11 statewide. They are looking for a statewide procedure by
12 which this problem can be solved, but here today we are
13 looking at the six claims of the individuals who claim that
14 they're owed LFO refunds, that they're entitled to vacations
15 of their convictions, and that they're entitled to their
16 remaining LFO balances canceled, and the process for this
17 court is to decide whether those claims could proceed here
18 on the equitable causes of action that Plaintiffs pled.

19 As the Court knows, the class action is a device that's
20 meant to aggregate individual claims. It's not 180 of that,
21 where you look at the aggregation and then decide if the
22 claims should proceed. You look at the individual claims,
23 and if they can't proceed, then they can't proceed as an
24 individual, and they certainly can't proceed as a class.

25 So, Your Honor, again, I'll start at the top. Doe

1 controls. Plaintiffs have provided no reason why Doe should
2 be -- is different -- application of Doe is different in
3 this case. All they say is that Doe was wrongly decided.
4 And, of course, that's not for this court to decide, whether
5 Doe was wrongly decided. The Court of Appeals could take
6 that up, the State Supreme Court could take that up, but
7 right now there's a binding precedential authority that says
8 Criminal Rule 7.8 is the exclusive means by which the
9 plaintiffs can attack a judgment as void and then get their
10 LFO refunds.

11 I wanted to draw your attention to something that the
12 plaintiffs had misstated what the holding in Blake was. The
13 holding in Blake is that the statute is void, and then the
14 court went on to vacate the conviction. The plaintiffs
15 repeatedly say that the court in Blake voided their
16 convictions, and that is not the case. We can discuss
17 further, and I may on reply if they want to continue
18 attacking Doe as being wrongly decided. We provided
19 authority both in our motion and our reply why that's not
20 true.

21 As to the constitutional claims, again, they're not pled.
22 But even if they were pled, they're not ripe because they
23 don't bring a facial challenge to Rule 7.8, and they can't
24 bring an as-applied challenge because not one of the six
25 plaintiffs says that they have tried the vacation process

ARGUMENT/MCNERNEY

1 and it failed them. What they need to do is to do exactly
2 what the petitioners in Nelson v. Colorado and the
3 petitioners in the Massachusetts case did, which is bring a
4 motion in their criminal case for a refund of the LFOs. The
5 problem in Nelson was not that that process was deficient,
6 it was that the courts in Colorado said that they would not
7 give an LFO refund pursuant to bringing a motion in the
8 criminal case, and instead, even though the criminal
9 convictions had already been vacated, they had to bring a
10 separate civil proceeding.

11 And the third, again, point, Your Honor, is that their
12 efficiency claim can't bolster the lack of an individual
13 claim.

14 And for those reasons, Your Honor, the King County and
15 Snohomish County ask this court to dismiss this action with
16 prejudice, and I'd like to -- unless the Court has
17 questions, I'd like to reserve my remaining time for reply.

18 THE COURT: I have no questions at this time. Thank you,
19 Ms. Ballinger.

20 Mr. McNerney.

21 MR. MCNERNEY: Thank you, Your Honor.

22 Over six months ago, the Washington Supreme Court issued
23 State v. Blake, which was a massive change to Washington
24 law, and held that Washington's simple drug possession
25 statute was unconstitutional and void, meaning that

1 convictions obtained under it are a legal nullity. Because
2 of Blake, all the parties here agree that legal financial
3 obligations paid as a result of qualified convictions must
4 now be returned to the individuals who have the property
5 right in them; however, to date, the steps taken by the
6 government to return Plaintiffs their property and the
7 property of the class have been exceedingly slow and wholly
8 inadequate, and the proposal by the Counties is guaranteed
9 to fail to achieve systemic and comprehensive relief,
10 leaving many without redress.

11 But still, to its core, the Counties' motion to dismiss
12 amounts to a claim that individual one-off Criminal Rule 7.8
13 proceedings should be the class members' exclusive remedy,
14 but this argument should fail for at least three reasons.

15 First, it is unconstitutional, and the Counties have
16 failed to engage at all with the plaintiffs and the State's
17 concerns that the interpretation of this rule will lead
18 to --

19 THE COURT: Are you arguing that Criminal Rule 7.8 is
20 unconstitutional?

21 MR. MCNERNEY: We're arguing, Your Honor, that it's
22 unconstitutional as applied in this situation as to Blake
23 because of its exclusivity. So it's because it's exclusive
24 and because it is applying to Blake in a way that effect --
25 that denies systemic relief and will leave many people

1 without a remedy.

2 So turning to that, our argument in its core is Rule 7.8
3 cannot apply here because it will create an erroneous
4 deprivation of rights under Nelson. The problem is simply
5 too large. As we pled, there are over 100,000 individuals
6 impacted, and a one-off process is going to take upwards of
7 4,000 years. We have provided many more allegations in our
8 complaint, and these allegations must be accepted as true at
9 this stage.

10 But in addition to those allegations, we also have Blake's
11 recognition that thousands and thousands of people are
12 implicated, and we have the State's recognition in their
13 brief that the Counties' proposal raises serious access to
14 justice concerns. So together, this means that if we go
15 with the process that the Counties are proposing, many
16 individuals will be dead before they get an effec- -- seek
17 any actual relief.

18 Beyond that, Criminal Rule 7.8 keeps the burden of proof
19 with the individual, and this cuts directly against Nelson,
20 which said, and I quote, to get their money back, defendants
21 should not be saddled with any proof burden. Here, the
22 proof burden remains with the plaintiffs. And I think
23 Martinez proves a really helpful illustrative comparison,
24 where the Massachusetts high court noted that the way this
25 process -- this one-off process passes muster is, first,

1 it's not exclusive. You can effectuate relief in other ways
2 through a class action. But in addition to that, they made
3 sure to specify that while the individual has the burden of
4 production, the State has the burden -- or the government
5 has the burden of proof. And the court noted that this was
6 very important for several reasons, including that the
7 moving party simply doesn't have access to the same sorts of
8 information, can't fairly be held to have to put forth the
9 exact monies that they are owed when that information is
10 really in the government's possession.

11 And so beyond that, there's also a real notice problem
12 here. We are talking about a class that goes back to 1971,
13 at least. And as the State recognized in their brief, it
14 might even go back to 1951. And Criminal Rule 7.8 has no
15 process to actually notify class members, that, hey, there
16 is this property that is owed to you, and you are entitled
17 to have it returned.

18 Beyond that, there is the issue of Blake-related
19 convictions. It appears that the parties largely agree that
20 certain predicate convictions are also entitled to refund,
21 so like convictions where Blake was the predicate offense.
22 But there's a dispute amongst the parties as to which ones
23 fully are covered there, and that can only be adjudicated in
24 court, in a forum like this.

25 And so that's our argument for why Nelson, we believe,

1 squarely applies here and why Criminal Rule 7.8 is
2 problematic.

3 Turning to the Counties' arguments in response.

4 First off, they argue that our claim is not pled. But
5 this isn't our claim for relief. Our claim for relief is a
6 restitution claim that focuses on the fact that after Blake
7 the money is no longer the State's, it is the individuals'
8 and it needs to be returned. So the constitutional claim
9 isn't our cause of action; rather, it's a defense to what
10 the argument the State is making, that Criminal Rule 7.8
11 should be deemed exclusive. And furthermore, our arguments
12 for why it should not be deemed exclusive and why that would
13 implicate Nelson, those are all directly rooted and flow
14 from our complaint. So these are, again, factual
15 allegations that must be accepted as true at this stage.

16 As to the point that the claim isn't ripe, what the State
17 is -- appears to be arguing is that -- with this claim, is
18 that we need to make the 7.8 motion and have it denied
19 before we can bring this claim. But that's precisely what
20 didn't happen in Nelson. In Nelson, the issue was that the
21 individuals did not use the remedy that Colorado said was
22 the exclusive remedy, and so they were denied on that basis
23 and then they appealed. And the court had no trouble
24 finding that you could -- even though they didn't use that
25 remedy and then be denied, it was still an unconstitutional

1 remedy. And here, I think the State's argument really does
2 put the cart in front of the horse because what they're
3 saying is we have to use a remedy that we are alleging is
4 unconstitutionally unfair to be able to say that it's
5 constitutionally unfair. But, again, the argument also
6 requires ignoring the well-pled allegations in our
7 complaint, which really are the allegations that we set
8 forth in Rakey (phonetic), Dell (phonetic), and our motion
9 as to Factor B of the Nelson test for why the ability to
10 effectuate relief in this situation would be futile.

11 But in addition to those allegations, we also have
12 allegations that Snohomish County has no plan to address at
13 this time the issue of Blake refunds. Plaintiff Boyce
14 reached out to Snohomish County and was told there was no
15 idea when refunds would occur. In addition, King County has
16 said that it cannot even promise to respond to LFO
17 inquiries. Beyond these evidence of futility, there's also
18 insufficient money. That also is well pled in our
19 allegations that the amount to date is simply insufficient
20 to effectuate comprehensive Rule 7.8 -- comprehensive
21 refunds to all the impacted individuals.

22 And I'd also direct the Court's attention to the State's
23 brief where they noted that some counties had not even
24 refunded LFOs when the conviction was vacated, citing a lack
25 of resources.

1 And, sorry, Your Honor. Were you about to speak?

2 THE COURT: No, I wasn't. Thank you, though. I'm just
3 listening intently. It's hard with these masks.

4 MR. MCNERNEY: Okay. Yes, I know, Your Honor. In some
5 ways, we have the advantage because we're at home and don't
6 have to wear the masks.

7 But as to the point that the argument will fail, I won't
8 reiterate. I think it's very clearly laid in our brief, but
9 we have very strong reasons why we see this as a
10 constitutional violation. And insofar as I can see, there
11 really is only a challenge to prong B. It seems undisputed
12 that Plaintiffs have the right to this information and
13 that -- the right to this money and that the State does not
14 have any legitimate interest in still holding it. So the
15 dispute is to Factor B, and we see our well-pled allegations
16 as controlling.

17 As to the point that Plaintiffs need to first vacate their
18 convictions, which is a related but a distinct point by the
19 Counties, I turn to footnote 10 of Nelson, which says that
20 an invalid conviction is no conviction at all. And we're at
21 the point where everyone here recognizes that the statute in
22 question is invalid, that today if someone was to be -- if
23 the State or a governmental entity tried to charge someone
24 under the statute, they would not be able to do it. It's an
25 invalid statute. At the point where it's an invalid

1 statute, the monies paid as a result of that invalid statute
2 should be returned to Plaintiffs in the putative class in
3 good conscience and equity, as our restitution claim pleads.

4 As to Doe, we don't dispute that it's the same language.
5 It is clearly the same language in the two cases. But we do
6 note that the three cases at issue here -- Doe, Boone, and
7 Williams -- they're all dealing with misdemeanor court and
8 much smaller issues. Doe is dealing with deferred
9 prosecutions in one county. The other two cases are only
10 dealing with one traffic stop. They're simply not dealing
11 with the scope of this problem, the sheer size of the issue,
12 and the reality that this is going to overwhelm Washington
13 state courts. And so we think that, combined with the fact
14 that no court has actually held that Criminal Rule 7.8, as
15 opposed to the Misdemeanor Court 7.8, actually applies, and
16 a strong -- and a textual analysis of the rule strongly
17 suggests that it was not intended to be exclusive, all
18 provide further support for --

19 THE COURT: But, Mr. McNerney, that's what the court in
20 Doe addressed, that same textual analysis, didn't it?

21 MR. MCNERNEY: Well, it didn't address it with the added
22 information that we have provided, such that there was
23 actually an attempt of the Rules Committee in Criminal
24 Rule 7.8 to say this is exclusive, we want a provision that
25 says this is exclusive, and in response they said, well,

1 that's not a good idea. We actually don't want to limit the
2 powers of the Superior Courts. And so like that context, I
3 think, is what really distinguishes it. But I will go back
4 to I think the strongest argument against Doe is that it
5 didn't have Nelson before it. It didn't have the
6 constitutional issues before it. Nelson is supervening
7 authority and Nelson controls.

8 I am happy to answer any other questions you have,
9 Your Honor.

10 THE COURT: None at this time. Thank you for answering
11 the questions I posed, Mr. McNerney.

12 Mr. Crisalli, would you like to address the motion from
13 the State's perspective?

14 MR. CRISALLI: Yes. Thank you, Your Honor.

15 As mentioned in our briefing, the State does not take a
16 position on the Counties' motion to dismiss, but I would
17 like to highlight three things.

18 First, it does appear that Doe v. Fife is controlling on
19 this court. It's been applied by Division I, and it appears
20 to deal with many of the issues that are raised by the
21 complaint.

22 But, second, when dealing with the scale and scope of
23 Blake, the State is concerned about dealing with vacations
24 on a case-by-case basis, and we're not sure that the Doe
25 court properly envisioned such a scale and scope as what has

1 resulted from Blake. As recognized by the pleadings and
2 just the realities of what happened following Blake, there
3 are scenarios where individuals either won't find out that
4 they have a right to have their conviction vacated and their
5 LFOs returned or where a county won't seek out these
6 individuals or pay the LFOs for whatever reason. And there
7 are inherent delays in this process, as we're even
8 experiencing to this day, all of which perpetuate the
9 inequities in the system that Blake appears to try to take a
10 step towards correcting.

11 That said, the State does believe that if the Counties'
12 motion is granted, the case here needs to be dismissed as to
13 all defendants. If the reasoning is that the exclusive
14 remedy is through the criminal rules, then logically it does
15 make sense to keep the -- it does not make sense to keep the
16 claims alive just as to the State. The parties can deal
17 with either the appellate process or other means as we work
18 through this case and the other myriad issues that arise
19 from Blake, and as the State and counties inevitably must
20 continue to do so.

21 Thank you, Your Honor, unless you have any questions.

22 THE COURT: Not at this time. Thank you, Mr. Crisalli.
23 Back to you, Ms. Ballinger.

24 MS. BALLINGER: Thank you, Your Honor.

25 Just briefly, again, three points. Blake controls. They

1 have no viable constitutional claims. And their process
2 claims, they want the Court to come up with a systematic
3 solution, but CR 23 is not that systematic solution because
4 CR 23 requires a valid individual claim which they don't
5 have. They haven't addressed the fact that on an individual
6 level these six plaintiffs have no claim.

7 As to the constitutional issue, they say that there's a
8 proof problem, that the State of Washington will require
9 that they prove something in a Rule 7.8 proceeding. But
10 they haven't said what that is, and there's no proof burden
11 here. In Nelson, there was --it was the same criminal rule
12 process. We want an LFO refund, post vacation, post
13 reversal of convictions, and the court denied that. That's
14 what we have here is that would have sufficed as due process
15 in Nelson. The problem in Nelson is the court denied that
16 at the state court's highest level and said that the -- and
17 the United States Supreme Court said you can't require more
18 than that. You can't require that they have clear and
19 convincing evidence of actual innocence.

20 And, finally, should they bring 7.8 motions, whether it's
21 for a Blake -- you know, a simple possession conviction or
22 what they are calling a Blake-related conviction, say, you
23 know, a violation of the Uniform Firearms Act where the
24 predicate felony was a simple possession case and the court
25 denies the vacation, denies the LFO refund, they will have

1 recourse, the Court of Appeals and the State Supreme Court,
2 and that's how this system works out those problems and
3 decides those issues.

4 Again, they're looking for you to have a -- this court to
5 have a systemic solution where -- through Rule 23, when that
6 is not the purpose of Rule 23, and we ask the Court to
7 not -- excuse me, to grant the motion and dismiss this
8 action with prejudice.

9 Thank you.

10 THE COURT: All right. Thank you, Ms. Ballinger,
11 Mr. McNerney, Mr. Crisalli, and all of your teams.

12 You know, I certainly understand the plaintiffs'
13 frustration and motivation in bringing this case and their
14 desire for a more comprehensive and streamlined solution to
15 the handling of the thousands of convictions that need to be
16 reexamined in light of the Blake decision and that real
17 lives are affected and have been affected for quite some
18 time by the convictions and the LFOs, and so I understand
19 all of that. However, I have to agree with the Counties and
20 with the State that this court is bound by Doe. Doe cannot
21 be distinguished. A trial court cannot modify or reconsider
22 the opinion or decision of a Court of Appeals. I am bound
23 by it. I see no way to distinguish it.

24 I also do not believe the constitutional claims are ripe
25 at this point, and I have no choice but to grant the motion

1 to dismiss as to all defendants.

2 This matter needs to be set on a fast track, I hope, for
3 resolution by an appellate court or through a statutory or
4 rulemaking process, but I do not have jurisdiction over
5 those processes, and I don't have authority to act outside
6 of the parameters of Doe. Accordingly, the defendants'
7 motion to dismiss is granted, and I will enter an order
8 electronically shortly, and that will be emailed to all of
9 you.

10 Thank you, all. I hope this gets worked out swiftly for
11 the sake of all concerned. Take care.

12 MS. BALLINGER: Thank you, Your Honor.

13 MR. MCNERNEY: Thank you, Your Honor.

14 MR. CRISALLI: Thank you.

15 UNIDENTIFIED SPEAKER: Thank you.

16 (Conclusion of hearing)

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1 C E R T I F I C A T E

2

3 STATE OF WASHINGTON)

4)

5 COUNTY OF KING)

6 I, the undersigned, do hereby certify under penalty
7 of perjury that the foregoing court proceedings or other legal
8 recordings were transcribed under my direction as a certified
9 transcriptionist; and that the transcript is true and accurate to
10 the best of my knowledge and ability, including any changes made
11 by the trial judge reviewing the transcript; that I received the
12 electronic recording directly from the trial court conducting the
13 hearing; that I am not a relative or employee of any attorney or
14 counsel employed by the parties hereto, nor financially
15 interested in its outcome.

16 IN WITNESS WHEREOF, I have hereunto set my hand this
17 6th day of October, 2021.

18

19 Shanna Barr

20 s/ Shanna Barr, CET

21 Reed Jackson Watkins, LLC

22 800 5th Avenue, Suite 101-183

23 Seattle, Washington 98104

24 Telephone: (206) 624-3005

25 Email: Info@rjwtranscripts.com

THE HON. MICHAEL R. SCOTT
Noted for Hearing: September 24, 2021 at 9:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

THE CIVIL SURVIVAL PROJECT, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defendants.

No. 21-2-03266-1 SEA

**PLAINTIFFS' OPPOSITION TO KING
COUNTY'S AND SNOHOMISH
COUNTY'S MOTION TO DISMISS**

PLAINTIFFS' OPPOSITION TO KING
COUNTY'S AND SNOHOMISH COUNTY'S
MOTION TO DISMISS

FRANK FREED
SUBIT & THOMAS LLP
Suite 1200 Hoge Building, 705 Second Avenue
Seattle, Washington 98104-1798 ~ (206) 682-6711

II. Criminal Rule 7.8 Is Not the Exclusive Remedy for Plaintiffs' Claims

Outside of their improper and selectively curated showing of extrinsic documents, the Counties' single legal argument for dismissal is that Criminal Rule 7.8 should be interpreted as the *exclusive* remedy for Plaintiffs and putative Class Members to seek LFO restitution and the cancelation of LFO debt—and because of Criminal Rule 7.8, all of Plaintiffs' claims must be dismissed. Mot. at 7-9. This argument conflicts with the United States Supreme Court's decision in *Nelson*, because it would result in more than “minimal” hurdles to individuals' recovery, and presents an incorrect reading of the statutory language and an unwarranted extension of *Doe*.⁷

A. Defendants “May Not Impose Anything More than Minimal Procedures on the Refund” of Plaintiffs' LFO Payments/Debt Cancellations

(1) *Nelson Controls*.

To start with, the Counties' argument violates due process under the United States and Washington constitutions because it “impose[s] . . . more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated.” *Nelson*, 137 S. Ct. at 1257-58 (2017).

In *Nelson*, the U.S. Supreme Court considered the refund claims of two individuals who had been ordered to pay Colorado's equivalent of LFOs in conjunction with criminal sentences which

⁷ To correct an initial matter, Plaintiffs do *not* seek to vacate a void judgment, undo a court order, or “obtain relief from a judgment or order.” See *generally* SAC. Plaintiffs need not do so given that *Blake* has already rendered their convictions void. 197 Wn. 2d at 195; *Nelson*, 137 S. Ct. at 1256 (“an invalid conviction is no conviction at all”). Thus, the Counties' assertion that Plaintiffs and putative Class Members are opening themselves up to theoretical re-prosecution of “more severe charges that had been dismissed pursuant to a plea agreement,” see Mot. at 4, is wrong. And the *only* “documentation [] necessary” for “resentencing in other actions[,]” see *id.*, is the *Blake* decision itself.

THE HONORABLE MICHAEL SCOTT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

THE CIVIL SURVIVAL PROJECT,
individually and on behalf of its Members and
Clients, and Irene Slagle, Christina Zawaideh,
Julia Reardon, Adam Kravitz, Laura
Yarbrough, and Deighton Boyce, individually
and on behalf of the Proposed Plaintiff Class,

Plaintiffs,

v.

STATE OF WASHINGTON, individually, and
KING COUNTY and SNOHOMISH
COUNTY, individually and on behalf of the
Proposed Defendant Class, and ADAMS
COUNTY, ASOTIN COUNTY, BENTON
COUNTY, CHELAN COUNTY, CLALLAM
COUNTY, CLARK COUNTY, COLUMBIA
COUNTY, COWLITZ COUNTY, DOUGLAS
COUNTY, FERRY COUNTY, FRANKLIN
COUNTY, GARFIELD COUNTY, GRANT
COUNTY, GRAYS HARBOR COUNTY,
ISLAND COUNTY, JEFFERSON COUNTY,
KITSAP COUNTY, KITTITAS COUNTY,
KLICKITAT COUNTY, LEWIS COUNTY,
LINCOLN COUNTY, MASON COUNTY,
OKANOGAN COUNTY, PACIFIC
COUNTY, PEND OREILLE COUNTY,
PIERCE COUNTY, SAN JUAN COUNTY,
SKAGIT COUNTY, SKAMANIA COUNTY,
SPOKANE COUNTY, STEVENS COUNTY,
THURSTON COUNTY, WAHKIAKUM
COUNTY, WALLA WALLA COUNTY,
WHATCOM COUNTY, WHITMAN
COUNTY, and YAKIMA COUNTY,

No. 21-2-03266-1 SEA

**SECOND AMENDED
CLASS ACTION COMPLAINT**

SECOND AMENDED
CLASS ACTION COMPLAINT - 1

FRANK FREED
SUBIT & THOMAS LLP
Suite 1200 Hoge Building, 705 Second Avenue
Seattle, Washington 98104-1798 ~ (206) 682-6711

consequences of *Blake*. For example, in 2020, before *Blake*, “60% of those who live burdened with criminal conviction records, or as many as 1 million Washingtonians, [were] potentially eligible” to make use of Washington’s statutory and rule-based process to vacate or seal eligible past convictions. “But less than 3% of individuals eligible for relief, and less than 1% of the charges eligible for relief” had actually received the relief to which they were entitled.³⁰ In fact, at the “current rates of vacation” under the existing process, it is estimated “that it would take over 4,000 years to clear the backlog of charges alone, based on the gap and the actual number of charges that were vacated last year[.]”³¹ *Id.*

1.24 Similar processes from county-to-county that require the thousands of people harmed by *Blake* and *Blake*-Related Convictions to try to vindicate their rights one-by-one, frequently without a lawyer, cannot possibly be expected to yield better results. Indeed, Defendant King County has stated that it will not even respond to “pro-se requests for resentencing at this time” because issues such as re-sentencing are too complex to discuss with individuals who are representing themselves.³² While prosecutors should not be discussing resentencing with unrepresented defendants, King County’s position on the issue further illustrates the ineffectiveness of the one-off approach to addressing the many consequences of *Blake*.

1.25 In other words, absent a binding, statewide judicial resolution of this case, the State of Washington and more than three dozen Defendant Counties will never adequately

³⁰ Colleen Chien, Zuyan Huang, Jacob Kuykendall, & Katie Rabago, *The Washington State Second Chance Expungement Gap*, 1 (Santa Clara University, School of Law, 2020), available at <https://digitalcommons.law.scu.edu/facpubs/971>.

³¹ *Id.*

³² See “*Blake* Requests,” King County, available at <https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx> (last accessed Aug. 10, 2021).

1 address the consequences of *Blake* in a systematic or equitable fashion, leaving tens of thousands
 2 of Washingtonians who were deprived of significant sums of money as a result of Defendants'
 3 unconstitutional actions subject to varying levels of relief based on where they happen to live or
 4 whether they have access to a lawyer and the court system.

5 1.26 While Defendants have understandably prioritized releasing individuals
 6 wrongfully incarcerated for *Blake* Convictions, they have failed to address the monetary
 7 consequences of their undisputedly unconstitutional drug prosecutions. In the wake of *Blake*,
 8 Defendants must now account for their past actions, including by returning money wrongly taken
 9 and cancelling outstanding debts wrongfully imposed.

10 1.27 Accordingly, Plaintiff CSP brings claims on its own behalf, and on behalf of its
 11 members and clients, and Class Plaintiffs bring claims on their own behalf and on behalf of a
 12 class of Washington residents pursuant to Civil Rule ("CR") 23(a) and (b)(2), (b)(3) and (c)(4),
 13 to recover LFOs wrongfully collected, received, and retained by – or claimed as debts owed to
 14 – the Defendants and Defendant Class Members, and for further monetary, equitable and
 15 injunctive relief necessary to make impacted individuals whole with respect to the harms they
 16 suffered.

17 II. JURISDICTION AND VENUE

18 2.1 The Superior Court of Washington has jurisdiction over Plaintiff's claims
 19 pursuant to RCW 2.08.010.

20 2.2 Pursuant to RCW 4.12.025(1), venue in King County is appropriate because
 21 Defendant Washington State and Defendant King County reside in this county. Pursuant to RCW
 22 36.01.050, venue in King County is further appropriate because this action is brought against
 23 King County. Pursuant to RCW 36.01.050, venue is also appropriate as to Snohomish County
 24 because, King County is one of the two nearest judicial districts. Pursuant to RCW 4.92.010(1)

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FRANK FREED
 SUBIT & THOMAS LLP
 Suite 1200 Hoge Building, 705 Second Avenue
 Seattle, Washington 98104-1798 ~ (206) 682-6711

1 acknowledging that they owe refunds to Plaintiffs, Defendants have retained previously collected
2 LFOs from *Blake* and *Blake*-Related Convictions and, in some instances, have started allocating
3 *Blake* and *Blake*-Related Convictions LFOs to cover balances for non-*Blake* and *Blake*-Related
4 Convictions. Defendants and Defendant Class Members are so closely related that they should
5 be treated substantially as a single unit for purposes of this lawsuit.

6 VI. FIRST CLAIM FOR RELIEF

7 Unjust Enrichment / Restitution / Money Had and Received

8 (Brought by Plaintiffs and Plaintiff Class Against Defendants and Defendant Class)

9 6.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
10 in the preceding paragraphs.

11 6.2 By the actions alleged above, Defendants and Defendant Class Members
12 wrongfully imposed, collected, received and retained monies paid to them under legal
13 compulsion, and refused to cancel LFOs, as a result of *Blake* and *Blake*-Related Convictions that
14 were unconstitutional.

15 6.3 As a result of these unlawful acts, Plaintiff and Plaintiff Class Members have been
16 deprived of money in amounts to be determined at trial, and are entitled to recovery of such
17 damages, including interest thereon.

18 6.4 As a result of these unlawful acts, Plaintiffs and Plaintiff Class Members are
19 further entitled to be restored to their pre-conviction position through monetary and equitable
20 relief, including vacation of convictions, as warranted.

21 VII. SECOND CLAIM FOR RELIEF

22 Rescission

23 (Brought by Plaintiffs and Plaintiff Class Against Defendants and Defendant Class)

24
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SUBIT & THOMAS LLP
Suite 1200 Hoge Building, 705 Second Avenue
Seattle, Washington 98104-1798 ~ (206) 682-6711

1 7.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
2 in the preceding paragraphs.

3 7.2 By the actions alleged above, Defendants and Defendant Class Members
4 wrongfully imposed, collected, received and retained monies paid to them under contract,
5 whether express or implied, and refused to cancel LFO debt, as a result of Plaintiff's and Plaintiff
6 Class members' and Defendants' and Defendant Class members' independent mistaken belief
7 that *Blake* and *Blake-Related* Convictions were lawful bases for the imposition of LFOs through
8 payment contracts.

9 7.3 Plaintiffs and Plaintiff Class Members would not have entered into agreements to
10 pay LFOs, express or implied, if they had been aware at that time that their convictions were
11 unconstitutional.

12 7.4 As a result of these unlawful acts, Plaintiff and Plaintiff Class members have been
13 deprived of money in amounts to be determined at trial, and are entitled to recovery of such
14 damages, including interest thereon.

15 7.5 As a result of these unlawful acts, Plaintiffs and Plaintiff Class members are
16 further entitled to be restored to their pre-conviction position through monetary and equitable
17 relief, including vacation of convictions, as warranted.

18 **VIII. THIRD CLAIM FOR RELIEF**

19 **Declaratory Relief Pursuant to the Washington Uniform**

20 **Declaratory Judgments Act, RCW 7.24**

21 (Brought by Plaintiffs and Plaintiff Class Against Defendants and Defendant Class)

22 8.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
23 in the preceding paragraphs.

24
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CLASS ACTION COMPLAINT - 33

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SUBIT & THOMAS LLP
Suite 1200 Hoge Building, 705 Second Avenue
Seattle, Washington 98104-1798 ~ (206) 682-6711

1 8.2 As a result of the unlawful acts described above, Plaintiffs and Plaintiff Class
 2 members seek a declaratory judgment, including that: (i) their convictions are void and vacated
 3 as unconstitutional; (ii) they are entitled to recover *Blake* and *Blake-Related* LFOs wrongfully
 4 collected and retained by Defendants and Defendant Class members; (iii) Defendants and
 5 Defendant Class members must cancel any unpaid LFO debt claimed by them on *Blake* and
 6 *Blake-Related* Convictions; and (iv) Defendants and Defendant Class members must cease their
 7 practice of reallocating *Blake* and *Blake-Related* LFO payments to cover other LFO balances. In
 8 the alternative, Plaintiffs and Plaintiff Class members seek a declaratory judgment against
 9 Washington, requiring that it order the Defendant Counties and Defendant Class Members to
 10 effectuate the relief described above.

11 8.3 Plaintiffs and Plaintiff Class Members (including CSP and its clients and
 12 members) also seek further relief including return of LFOs paid, and equitable and declaratory
 13 relief that the Court finds proper against Defendants and Defendant Class Members.

14 8.4 Plaintiffs seek their reasonable costs pursuant to RCW 7.24.100.

15 IX. PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff CSP, on its own behalf and on behalf of its clients and members,
 17 and the Class Plaintiffs, on their own behalf and on behalf of Plaintiff Class Members, pray for
 18 relief against Defendants and Defendant Class Members, as follows:

19 A. Certification of the proposed Plaintiff Class under CR 23(a) and (b)(2), (b)(3)
 20 and/or (c)(4), appointment of Plaintiffs' counsel as counsel for the Plaintiff Class (including the
 21 King and Snohomish County Subclasses), and appointment of the Class Plaintiffs as
 22 representatives of the Plaintiff Class, as well as appointment of Plaintiffs Irene Slagle and
 23 Deighton Boyce as representatives for the King County Subclass and Plaintiffs Christine
 24

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5092

Chapter 334, Laws of 2021
(partial veto)

67th Legislature
2021 Regular Session

OPERATING BUDGET

EFFECTIVE DATE: May 18, 2021

Passed by the Senate April 25, 2021
Yeas 27 Nays 22

DENNY HECK
President of the Senate

Passed by the House April 25, 2021
Yeas 57 Nays 40

LAURIE JINKINS
**Speaker of the House of
Representatives**

Approved May 18, 2021 2:26 PM with
the exception of sections 127(18);
127(13) [137(13)]; 308(18); 738;
1110(9); 955; and 1703, page 1076,
lines 34-35, which are vetoed.

JAY INSLEE
Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **ENGROSSED
SUBSTITUTE SENATE BILL 5092** as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

BRAD HENDRICKSON
Secretary

FILED
May 19, 2021

**Secretary of State
State of Washington**

1 sections; making appropriations; providing expiration dates; and
2 declaring an emergency.

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

4 NEW SECTION. **Sec. 1.** (1) A budget is hereby adopted and,
5 subject to the provisions set forth in the following sections, the
6 several amounts specified in parts I through IX of this act, or so
7 much thereof as shall be sufficient to accomplish the purposes
8 designated, are hereby appropriated and authorized to be incurred for
9 salaries, wages, and other expenses of the agencies and offices of
10 the state and for other specified purposes for the fiscal biennium
11 beginning July 1, 2021, and ending June 30, 2023, except as otherwise
12 provided, out of the several funds of the state hereinafter named.

13 (2) Unless the context clearly requires otherwise, the
14 definitions in this section apply throughout this act.

15 (a) "ARPA" means the American rescue plan act of 2021, P.L.
16 117-2.

17 (b) "CARES" means the coronavirus aid, relief, and economic
18 security act, P.L. 116-136.

19 (c) "CRF" means the coronavirus relief fund created by section
20 5001, the coronavirus aid, relief, and economic security act, P.L.
21 116-136, division A.

22 (d) "CRRSA" means the coronavirus response and relief
23 supplemental appropriations act, P.L. 116-260, division M.

24 (e) "CRRSA/ESSER" means the elementary and secondary school
25 emergency relief fund, as modified by the coronavirus response and
26 relief supplemental appropriations act, P.L. 116-260, division M.

27 (f) "Fiscal year 2022" or "FY 2022" means the fiscal year ending
28 June 30, 2022.

29 (g) "Fiscal year 2023" or "FY 2023" means the fiscal year ending
30 June 30, 2023.

31 (h) "FTE" means full time equivalent.

32 (i) "Lapse" or "revert" means the amount shall return to an
33 unappropriated status.

34 (j) "Provided solely" means the specified amount may be spent
35 only for the specified purpose. Unless otherwise specifically
36 authorized in this act, any portion of an amount provided solely for
37 a specified purpose which is not expended subject to the specified

In order to achieve operating efficiencies within the financial resources available to the legislative branch, the executive rules committee of the house of representatives and the facilities and operations committee of the senate by joint action may transfer funds among the house of representatives, senate, joint legislative audit and review committee, legislative evaluation and accountability program committee, joint transportation committee, office of the state actuary, joint legislative systems committee, statute law committee, and office of legislative support services.

NEW SECTION. Sec. 111. FOR THE SUPREME COURT

General Fund—State Appropriation (FY 2022)	\$9,781,000
General Fund—State Appropriation (FY 2023)	\$9,848,000
TOTAL APPROPRIATION	\$19,629,000

NEW SECTION. Sec. 112. FOR THE LAW LIBRARY

General Fund—State Appropriation (FY 2022)	\$1,811,000
General Fund—State Appropriation (FY 2023)	\$1,821,000
TOTAL APPROPRIATION	\$3,632,000

NEW SECTION. Sec. 113. FOR THE COMMISSION ON JUDICIAL CONDUCT

General Fund—State Appropriation (FY 2022)	\$1,650,000
General Fund—State Appropriation (FY 2023)	\$1,649,000
TOTAL APPROPRIATION	\$3,299,000

NEW SECTION. Sec. 114. FOR THE COURT OF APPEALS

General Fund—State Appropriation (FY 2022)	\$21,818,000
General Fund—State Appropriation (FY 2023)	\$22,146,000
TOTAL APPROPRIATION	\$43,964,000

NEW SECTION. Sec. 115. FOR THE ADMINISTRATOR FOR THE COURTS

General Fund—State Appropriation (FY 2022)	\$157,168,000
General Fund—State Appropriation (FY 2023)	\$81,033,000
General Fund—Federal Appropriation	\$2,209,000
General Fund—Private/Local Appropriation	\$681,000
Judicial Stabilization Trust Account—State	
Appropriation	\$6,692,000
Judicial Information Systems Account—State	
Appropriation	\$60,664,000

(b) The center for court research must complete a preliminary report by June 30, 2022, and submit a final report to the appropriate committees of the legislature by June 30, 2023.

(5) \$44,500,000 of the general fund—state appropriation for fiscal year 2022 is provided solely to assist counties with costs of resentencing and vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake* decision. Subject to the availability of amounts provided in this section, the office must provide grants to counties that demonstrate extraordinary judicial, prosecution, or defense expenses for those purposes. The office must establish an application process for county clerks to seek funding and an equitable prioritization process for distributing the funding.

(6) \$23,500,000 of the general fund—state appropriation for fiscal year 2022 is provided solely to establish a legal financial obligation aid pool to assist counties that are obligated to refund legal financial obligations previously paid by defendants whose convictions or sentences were affected by the *State v. Blake* ruling. County clerks may apply to the administrative office of the courts for a grant from the pool to assist with extraordinary costs of these refunds. State aid payments made to a county from the pool must first be attributed to any legal financial obligations refunded by the county on behalf of the state. The office must establish an application process for county clerks to seek funding and an equitable prioritization process for distributing the funding.

(7) \$1,782,000 of the general fund—state appropriation for fiscal year 2022 and \$749,000 of the general fund—state appropriation for fiscal year 2023 are provided solely for the implementation of Engrossed Second Substitute House Bill No. 1320 (civil protection orders). If the bill is not enacted by June 30, 2021, the amounts provided in this subsection shall lapse.

(8) \$68,000 of the general fund—state appropriation for fiscal year 2022 and \$60,000 of the general fund—state appropriation for fiscal year 2023 are provided solely for the implementation of Second Substitute House Bill No. 1219 (youth counsel-dependency). If the bill is not enacted by June 30, 2021, the amounts provided in this subsection shall lapse.

(9) \$110,000 of the general fund—state appropriation for fiscal year 2022 and \$165,000 of the general fund—state appropriation for

requirements set forth in the uniform guardianship act in chapter 11.130 RCW. If the amount provided in this subsection is insufficient to fully fund the local court costs, distributions must be reduced on a proportional basis to ensure that expenditures remain within the available funds provided in this subsection. No later than December 31, 2021, the administrative office of the courts will provide a report on distributions to local courts including, but not limited to, the amount provided to each court, the number of guardianship cases funded at each court, costs segregated by attorney appointments and court visitor appointments, the amount of any pro rata reductions, and a recommendation on how to forecast distributions for potential future funding by the legislature.

(15) \$375,000 of the general fund—state appropriation for fiscal year 2022 and \$285,000 of the general fund—state appropriation for fiscal year 2023 are provided solely for costs to relocate staff from the temple of justice to another workspace if the omnibus capital appropriation act provides funding for improvements to the heating, ventilation, lighting, and plumbing improvements to the temple of justice. Staff from the administrative office of the courts shall work with the department of enterprise services and the office of financial management to acquire temporary space in a state owned facility that meets the needs of the supreme court. If a state facility cannot be found, the court may acquire temporary workspace as it chooses.

NEW SECTION. Sec. 116. FOR THE OFFICE OF PUBLIC DEFENSE

General Fund—State Appropriation (FY 2022)	\$53,975,000
General Fund—State Appropriation (FY 2023)	\$54,202,000
General Fund—Federal Appropriation	\$362,000
General Fund—Private/Local Appropriation	\$30,000
Judicial Stabilization Trust Account—State	
Appropriation	\$3,896,000
TOTAL APPROPRIATION	\$112,465,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$250,000 of the general fund—state appropriation for fiscal year 2022 and \$250,000 of the general fund—state appropriation for fiscal year 2023 are provided solely for the office of public defense to contract with a free legal clinic that has a medical-legal

1 partnership and that currently provides parent representation to at-
2 risk clients in dependency cases in Snohomish, Skagit, and King
3 counties. Within amounts appropriated, the clinic must provide legal
4 representation to parents who are pregnant or recently postpartum who
5 are at risk of child abuse or neglect reports or investigations.

6 (2) \$900,000 of the general fund—state appropriation for fiscal
7 year 2022 and \$900,000 of the general fund—state appropriation for
8 fiscal year 2023 are provided solely for the purpose of improving the
9 quality of trial court public defense services. The office of public
10 defense must allocate these amounts so that \$450,000 per fiscal year
11 is distributed to counties, and \$450,000 per fiscal year is
12 distributed to cities, for grants under chapter 10.101 RCW.

13 (3) \$5,000 of the general fund—state appropriation for fiscal
14 year 2022 and \$14,000 of the general fund—state appropriation for
15 fiscal year 2023 are provided solely for the implementation of Second
16 Substitute House Bill No. 1219 (youth counsel-dependency). If the
17 bill is not enacted by June 30, 2021, the amounts provided in this
18 subsection shall lapse.

19 (4) \$443,000 of the general fund—state appropriation for fiscal
20 year 2022 and \$683,000 of the general fund—state appropriation for
21 fiscal year 2023 are provided solely for the implementation of
22 Engrossed Substitute House Bill No. 1140 (juvenile access to
23 attorneys). If the bill is not enacted by June 30, 2021, the amounts
24 provided in this subsection shall lapse.

25 (5) \$5,500,000 of the general fund—state appropriation for fiscal
26 year 2022 and \$5,500,000 of the general fund—state appropriation for
27 fiscal year 2023 are provided solely to assist counties with public
28 defense costs related to vacating the sentences of defendants whose
29 convictions or sentences are affected by the *State v. Blake* decision.
30 Of the amounts provided in this subsection:

31 (a) \$400,000 of the general fund—state appropriation for fiscal
32 year 2022 and \$400,000 of the general fund—state appropriation for
33 fiscal year 2023 are provided solely for the office of public defense
34 to provide statewide attorney training, technical assistance, data
35 analysis and reporting, and quality oversight and for administering
36 financial assistance for public defense costs related to *State v.*
37 *Blake* impacts; and

38 (b) \$5,100,000 of the general fund—state appropriation for fiscal
39 year 2022 and \$5,100,000 of the general fund—state appropriation for

fiscal year 2023 are provided solely for grants allocated for public defense assistance. The allocation of grant funding shall be determined based upon a formula as established by the office of public defense, and must be provided: (i) To assist counties providing counsel for clients seeking to vacate a sentence or to be resentenced under the *State v. Blake* decision; and (ii) to assist counties that may designate the office of public defense to contract directly with attorneys to represent and assist clients seeking to vacate a sentence or to be resentenced under the *State v. Blake* decision.

NEW SECTION. Sec. 117. FOR THE OFFICE OF CIVIL LEGAL AID

General Fund—State Appropriation (FY 2022)	\$41,280,000
General Fund—State Appropriation (FY 2023)	\$42,685,000
General Fund—Federal Appropriation	\$379,000
Judicial Stabilization Trust Account—State	
Appropriation	\$1,464,000
TOTAL APPROPRIATION	\$85,808,000

The appropriations in this section are subject to the following conditions and limitations:

(1) An amount not to exceed \$40,000 of the general fund—state appropriation for fiscal year 2022 and an amount not to exceed \$40,000 of the general fund—state appropriation for fiscal year 2023 may be used to provide telephonic legal advice and assistance to otherwise eligible persons who are sixty years of age or older on matters authorized by RCW 2.53.030(2) (a) through (k) regardless of household income or asset level.

(2) The office of civil legal aid shall enter into an interagency agreement with the department of children, youth, and families to facilitate the use of federal title IV-E reimbursement for child representation services.

(3) \$568,000 of the general fund—state appropriation for fiscal year 2022 is appropriated solely to continue and expand civil legal representation for tenants in eviction cases.

(4) Up to \$165,000 of the general fund—state appropriation for fiscal year 2022 may be used to wind down the children's representation study authorized in section 28, chapter 20, Laws of 2017 3rd sp. sess.

(5) \$5,440,000 of the general fund—state appropriation for fiscal year 2022 and \$5,000,000 of the general fund—state appropriation for fiscal year 2023 are provided solely to continue civil legal assistance to individuals and families directly and indirectly affected by the COVID-19 pandemic and its related health, social, economic, legal, and related consequences.

(6) \$159,000 of the general fund—state appropriation for fiscal year 2022 and \$1,511,000 of the general fund—state appropriation for fiscal year 2023 are provided solely for the implementation of Second Substitute House Bill No. 1219 (youth counsel/dependency). If the bill is not enacted by June 30, 2021, the amounts provided in this subsection shall lapse.

(7) \$10,772,000 of the general fund—state appropriation for fiscal year 2022 and \$11,478,000 of the general fund—state appropriation for fiscal year 2023 are provided solely for implementation of Engrossed Second Substitute Senate Bill No. 5160 (landlord-tenant relations), including representation of indigent tenants in unlawful detainer cases. By June 30, 2022, the department shall provide to the legislature a detailed report of program expenditures and outcomes including but not limited to the number of individuals served, the average cost of a representation case, and the number of qualified individuals who qualified for but were unable to receive representation for funding or other reasons. If the bill is not enacted by June 30, 2021, the amounts provided in this subsection shall lapse.

(8) \$600,000 of the general fund—state appropriation for fiscal year 2022 and \$600,000 of the general fund—state appropriation for fiscal year 2023 are provided solely to provide online automated plain language forms, outreach, education, technical assistance, and some legal assistance to help resolve civil matters surrounding legal financial obligations and vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake* decision.

NEW SECTION. Sec. 118. FOR THE OFFICE OF THE GOVERNOR

General Fund—State Appropriation (FY 2022)	\$11,093,000
General Fund—State Appropriation (FY 2023)	\$10,920,000
Economic Development Strategic Reserve Account—State	
Appropriation	\$5,000,000
TOTAL APPROPRIATION	\$27,013,000

leadership, training, and integration of community health workers with insurers, health care providers, and public health systems.

(53) \$250,000 of the general fund—state appropriation for fiscal year 2022 is provided solely for one-time grants to family planning clinics that are at risk of imminent closure, did not receive a paycheck protection program loan, and are ineligible for funding through the coronavirus aid, relief, and economic security (CARES) act or the coronavirus response and relief supplemental appropriations act of 2021 (CRRSA).

(54) \$450,000 of the general fund—state appropriation for fiscal year 2022 is provided solely for the nursing care quality assurance commission, in collaboration with the workforce training and education coordinating board and the department of labor and industries, to plan a home care aide to nursing assistant certified to licensed practical nurse (HCA-NAC-LPN) apprenticeship pathway. The plan must provide the necessary groundwork for the launch of at least three licensed practical nurse apprenticeship programs in the next phase of work. The plan for the apprenticeship programs must include programs in at least three geographically disparate areas of the state experiencing high levels of long-term care workforce shortages for corresponding health professions and incorporate the participation of local workforce development councils for implementation.

(55) \$85,000 of the general fund—state appropriation for fiscal year 2022 and \$23,000 of the health professions account—state appropriation are provided solely to implement Senate Bill No. 5124 (colon hydrotherapy). If the bill is not enacted by June 30, 2021, the amounts provided in this subsection shall lapse.

NEW SECTION. Sec. 223. FOR THE DEPARTMENT OF CORRECTIONS

(1) ADMINISTRATION AND SUPPORT SERVICES

General Fund—State Appropriation (FY 2022)	\$77,278,000
General Fund—State Appropriation (FY 2023)	\$79,651,000
General Fund—Federal Appropriation	\$400,000
TOTAL APPROPRIATION	\$157,329,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) \$1,135,000 of the general fund—state appropriation for fiscal year 2022 and \$1,731,000 of the general fund—state appropriation for

(5) INTERAGENCY PAYMENTS

General Fund—State Appropriation (FY 2022) \$58,651,000
 General Fund—State Appropriation (FY 2023) \$52,702,000
 TOTAL APPROPRIATION. \$111,353,000

(6) OFFENDER CHANGE

General Fund—State Appropriation (FY 2022) \$77,046,000
 General Fund—State Appropriation (FY 2023) \$77,596,000
 TOTAL APPROPRIATION. \$154,642,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The department of corrections shall use funds appropriated in this subsection (6) for offender programming. The department shall develop and implement a written comprehensive plan for offender programming that prioritizes programs which follow the risk-needs-responsivity model, are evidence-based, and have measurable outcomes. The department is authorized to discontinue ineffective programs and to repurpose underspent funds according to the priorities in the written plan.

(b) The department of corrections shall collaborate with the state health care authority to explore ways to utilize federal medicaid funds as a match to fund residential substance use disorder treatment-based alternative beds under RCW 9.94A.664 under the drug offender sentencing alternative program and residential substance use disorder treatment beds that serve individuals on community custody. The department of corrections must complete a report and submit its findings and recommendations to the appropriate committees of the legislature by December 15, 2021.

(c) \$3,106,000 of the general fund—state appropriation for fiscal year 2022 and \$3,106,000 of the general fund—state appropriation for fiscal year 2023 are provided solely for the housing voucher program.

(d) \$3,300,000 of the general fund—state appropriation for fiscal year 2022 is provided solely for temporary court facilities, staffing, and to provide release assistance, including limited housing and food assistance, and other costs associated with individuals resentenced or ordered released from confinement as a result of the *State v. Blake* decision.

(e)(i) \$1,001,000 of the general fund—state appropriation for fiscal year 2022 and \$675,000 of the general fund—state appropriation

From: waspc@memberclicks-mail.net <waspc@memberclicks-mail.net>
Sent: Thursday, February 25, 2021 10:30 AM
To: Howard, Bryan <Bryan.Howard@kingcounty.gov>
Subject: WASPC GTWO: WA State Supreme Court Ruling- Urgent Attention

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.



WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

GET THE WORD OUT (GTWO)

February 25, 2021

WASPC Members:

The Washington State Supreme Court issued a ruling this morning in the case of State v. Blake (<https://www.courts.wa.gov/opinions/?fa=opinions.disp&filename=968730MAJ>), declaring that [RCW 69.50.4013](#) (1) (Washington's simple possession of controlled substance statute) violates the due process clause of the state and federal constitution and is void. We believe this ruling takes effect immediately (today).

WASPC is actively working with the Washington Association of Prosecuting Attorneys (WAPA), but here is what we believe at this point:

1. Effective immediately, Washington law enforcement officers are no longer authorized to conduct a criminal investigation, effect an arrest, seek a search warrant, or take any other law enforcement action for simple possession of controlled substances pursuant to RCW 69.50.4013(1).
2. We believe that prosecutors will soon take the following actions:
 - a. Arrange for the immediate release of all pre-trial detainees whose only charged offenses are simple possession.
 - b. Obtain orders vacating the judgments of all persons in your jails who are currently only serving time on simple possession. This is best done by sending a list of the defendants to their attorneys. *See State v. Hall*, 162 Wn.2d 901 (2008). But, since retrial will be impossible, it is not fatal if you decide to prepare the orders so as to get the defendants out of custody asap.
 - c. Recall all arrest warrants issued in cases in which the only charge is simple possession of drugs.

- d. Either dismiss with prejudice all cases in which the only charge is simple possession of drugs or note up a motion to file an amended information that charges another crime.
- e. Figure out what to do with drug court participants whose only underlying charge is simple possession of drugs—they appear to have an absolute right to withdraw from drug court and have their charges dismissed.
- f. Stop including simple possession convictions in offender scores. I think we also need to stop using such convictions in the wash-out analysis but I would like input from the appellate committee on this point.
- g. Stop collecting any LFOs in cases in which the only crimes of conviction were simple possession of drugs.
- h. Prepare to deal with motions to vacate judgments by people in prison either on a simple possession charge or who had one or more simple possession conviction included in the calculation of their offender score.
- i. Prepare to deal with motions to vacate judgments by people who are out of prison and who have prior convictions for simple drug possession.

It is still unclear at this point whether the Court's ruling also affects controlled substances' status as contraband.

It is also unclear the impact of today's ruling on property forfeited pursuant to simple possession.

It is also unclear how today's ruling impacts cases where the fruits from search warrants based on simple possession revealed information relating to other crimes.

WASPC strongly advises that you immediately consult with your legal advisor on the impacts of this decision on your agency and the appropriate actions of your officers.

It is possible (though not likely) that the Legislature could enact a bill to insert the word "knowingly" into RCW 69.50.4013 and resolve the issue at the heart of the court's ruling. WASPC is aware of several legislators who have already indicated a strong interest in pursuing such legislation. It is important to note that WASPC believes that any legislative action to cure the unconstitutionality of the statutes as it exists would be prospective only. All existing simple possession cases that have been charged or convicted under the existing law will still be void under the court's ruling.

- Steve

This email was sent to bryan.howard@kingcounty.gov by dgregory@waspc.org

Washington Association of Sheriffs and Police Chiefs • 3060 Willamette Drive NE, Lacey, Washington 98516,
United States

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Internet Email: opd@opd.wa.gov

**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

(360) 586-3164
FAX (360) 586-8165

To: The Honorable Judge Riquelme

From: Larry Jefferson, Director

Date: May 20, 2021

Re: Defense Services in *State v. Blake* Post-Conviction Cases

Developing an equitable and efficient response to the *State v. Blake* decision on a statewide basis will require ongoing collaboration and innovation from our criminal justice system partners. We take this opportunity to share with the Superior Court Judges Association our ideas for providing defense services in *Blake* cases, and responding to the SCJA's request for defense assistance in assigning *Blake* cases to priority tier levels.

Funds Allocated to OPD for Defense Services in *Blake* Cases

Section 116(5)(b) ESSB 5092, as adopted by the Washington Legislature, allocates \$5.5 million to the Washington State Office of Public Defense (OPD) in each of state fiscal years 2022 and 2023 to assist counties with public defense costs for representing clients whose convictions or sentences are affected by the *Blake* decision. Of that amount, **\$5.1 million will be granted to counties each year.** Defense grants may be in the form of direct funding to the counties, or counties may designate OPD to contract directly with attorneys to represent clients seeking relief under *Blake* in their jurisdictions. This latter approach may be a helpful solution in counties that lack public defense administrators, or lack a sufficient pool of local felony-qualified defense attorneys. **The remaining \$400,000 per year is designated for OPD to provide oversight of these grants and contract representation services, basic data tracking, and statewide training and technical assistance to defense attorneys working on *Blake* cases.** OPD will hire one staff attorney and one program assistant to provide *Blake* defense program management.

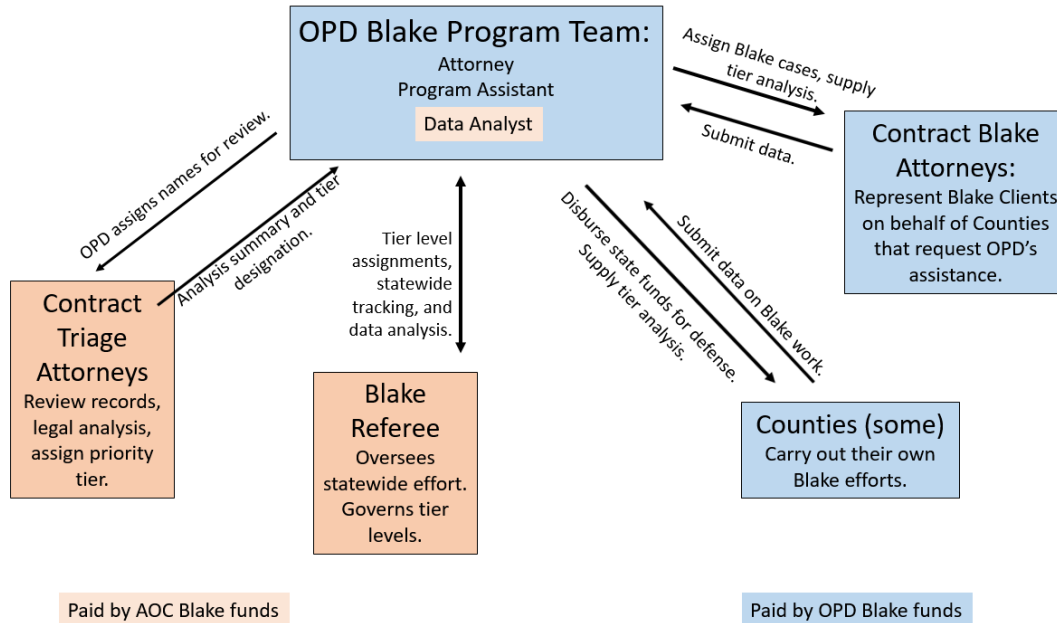
Additional Defense Assistance in State Level *Blake* Management

As of February 28, 2021 there were **21,152 individuals** serving sentences under the Washington Department of Corrections who are potentially impacted by the *Blake* decision. *Blake* relief will have immediate impact on many individuals' sentences, while others will face little or no change to their sentence length. Court stakeholders agree that a tiered structure will be crucial for managing the volume and ensuring that limited legal resources be prioritized for individuals potentially facing immediate release. However, there is no quick and easy data solution to identify and quantify how the *Blake* decision will impact peoples' sentences. Each case requires individualized legal analysis. **The Superior Court Judges Association (SCJA) has suggested implementing several new services to ensure equitable and efficient processing of *Blake* cases statewide.** One such service will be establishing a **Referee** who will have certain authorities over *Blake* cases statewide: govern tier designations, ensure appointment of counsel, manage statewide *Blake* data, and partner with the Department of Corrections on video remote hearings.

The SCJA has also suggested that **a designated group of defense attorneys should provide individualized case analysis and make recommendations to assign *Blake* cases to agreed-upon priority tiers.** The *triage attorneys* would review Judgment and Sentence records, criminal histories, and categorize individuals into a tiered priority system. **Concentrating this triaging analysis into a small group of attorneys will provide statewide consistency, economies of scale, and state-level data management.** The triage attorneys' analysis will reduce the time required of county-level justice partners in categorizing *Blake* cases.

OPD would be responsible for selecting, contracting with, and managing the triage attorneys. OPD would also share the tier designation results with the Referee, defense counsel, courts, and prosecutors. A data analyst expert could provide additional support by managing and categorizing *Blake* case data, and providing statewide court partners with county-specific and statewide analysis.

Funding for the triage attorney team and data analyst functions was not included in OPD's \$400,000 allocation in ESSB 5092 Section 116(5)(b). To carry out these additional services which benefit court partners statewide, OPD would require that an alternative funding source supports these functions, such as ESSB 5092 Section 115(5). A model illustrating OPD's oversight of its own *Blake* services combined with these system-wide functions is below:



Barriers to Appointment of Counsel

OPD has strong concerns about barriers to the appointment of counsel in *Blake* cases. Some counties have taken broad approaches to ensuring blanket representation to all currently sentenced individuals impacted by *Blake*. Meanwhile, others require impacted individuals to draft and file *pro se* motions in which they must successfully articulate a basis for relief prior to qualifying for counsel. The steps outlined in CrR 7.8 and RCW 10.73.150 create barriers for individuals impacted by the *Blake* decision to seek relief. Those convicted or RCW 69.50.4013 and its previous iterations are entitled to relief because the Supreme Court found the drug possession statute unconstitutional. This is a distinct situation from individuals seeking collateral attacks based on other legal strategies. We urge the adoption of another pathway to representation that ensures equity and efficiency in situations where individuals are entitled to relief based on changes in the law. This approach also provide a basis for representation for other similarly situated individuals, such as those entitled to relief under *Matter of Monschke* (2021), *Matter of Domingo-Cornelio* (2020) and *Matter of Ali*, (2020). OPD recommends edits to CrR 3.1 and CrR 7.8 as identified below:

CrR 3.1

RIGHT TO AND ASSIGNMENT OF LAWYER

(b) Stage of Proceedings.

(1) The right to a lawyer shall accrue as soon as feasible after the defendant is taken into custody, appears before a committing magistrate, or is formally charged, whichever occurs earliest.

(2) A lawyer shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. A lawyer shall be provided without regard to a prior finding of indigence for any person (i) serving a sentence for a conviction based upon a statute determined to be void, invalid, or unconstitutional, or (ii) serving a sentence which was calculated under RCW 9.94A.525 using a prior conviction based upon a statute determined to be void, invalid, or unconstitutional. A lawyer initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of the original lawyer pursuant to section (e) because geographical considerations or other factors make it necessary. Where a defendant seeks post-conviction review

CrR 7.8

RELIEF FROM JUDGMENT OR ORDER

(c) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing. For purposes of subsection (i), a defendant necessarily makes a substantial showing that he or she is entitled to relief where the motion contends the person (A) is serving a sentence for a conviction based upon a statute determined to be void, invalid, or unconstitutional, or (B) is serving a sentence which was calculated under RCW 9.94A.525 using a prior or current conviction based upon a statute determined to be void, invalid, or unconstitutional.

(3) Order to Show Cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

BOARD FOR JUDICIAL ADMINISTRATION



MEETING PACKET

**FRIDAY, September 17, 2021
9:00 A.M.**

VIDEOCONFERENCE

Board for Judicial Administration Membership

2021–2022



VOTING MEMBERS:

Chief Justice Steven González, Chair
Washington State Supreme Court

Judge Tam Bui, Member Chair
District and Municipal Court Judges' Association
Snohomish County District Court

Judge David Estudillo, President
Superior Court Judges' Association
Grant County Superior Court

Judge Rebecca Glasgow
Court of Appeals, Division II

Judge Marilyn Haan
Superior Court Judges' Association
Cowlitz County Superior Court

Judge Dan Johnson
District and Municipal Court Judges' Association
Lincoln County District Court

Judge Mary Logan
District and Municipal Court Judges' Association
Spokane Municipal Court

Judge David Mann
Court of Appeals, Division I

Justice Raquel Montoya-Lewis
Washington State Supreme Court

Judge Rebecca Pennell
Court of Appeals, Division III

Judge Rebecca Robertson
District and Municipal Court Judges' Association
Federal Way Municipal Court

Judge Michael Scott
Superior Court Judges' Association
King County Superior Court

Judge Charles Short, President
District and Municipal Court Judges' Association
Okanogan County District Court

Judge Paul Thompson
Superior Court Judges' Association
Snohomish County Superior Court

Judge M. Scott Wolfram
Superior Court Judges' Association
Walla Walla Superior Court

NON-VOTING MEMBERS:

Judge Marlin Appelwick,
Presiding Chief Judge
Court of Appeals, Division I

Judge Jennifer Forbes, President-Elect
Superior Court Judges' Association
Kitsap County Superior Court

Commissioner Rick Leo, President-Elect
District and Municipal Court Judges' Association
Snohomish County District Court


Terra Nevitt, Interim Executive Director
Washington State Bar Association

Dawn Marie Rubio
State Court Administrator

Kyle Sciuchetti, President
Washington State Bar Association

The **Mission** of the Board for Judicial Administration is to provide leadership and develop policy to enhance the judiciary's ability to serve as an equal, independent, and responsible branch of government.

The **Vision** of the Board for Judicial Administration is to be the voice of the Washington State courts.

	Board for Judicial Administration (BJA) Friday, September 17, 2021 (9 a.m. – noon)	
Zoom Meeting		
AGENDA		
1. Call to Order Welcome and Introductions	Chief Justice Steven González Judge Tam Bui	9:00 a.m.
2. Presentation: Gender and Justice Commission’s Gender Justice Report Information Sharing	Justice Sheryl Gordon McCloud Dr. Dana Raigrodski Sierra Rotakhina Kelley Amburgey-Richardson	9:05 Tab 1
3. BJA Member Orientation <i>BJA member Overview</i> <u>Member Guide</u> <i>Small group discussion</i> Answer the following questions and briefly report back to the larger Board. <ul style="list-style-type: none">• What is one thing I can do to improve morale and well-being in the judicial branch?• What is one way in which I can help promote the Board’s goals this year?	Chief Justice Steven González Judge Tam Bui	9:35
4. BJA Task Forces Court Recovery Court Security Motion: Amend and readopt the BJA Resolution in Support of Court Security	Chief Justice Steven González / Jeanne Englert Judge Rebecca Robertson/ Penny Larsen	10:10 Tab 2
Break		10:20–10:30
5. Standing Committee Reports Budget and Funding Committee Motion: Prioritize and vote on Supplemental Budget requests	Judge Mary Logan/ Chris Stanley	10:30 Tab 3

2

Court Education Committee Motion: Approve proposed changes to GR26 and GR26 standards.	Judge Tam Bui/Judith Anderson	
Legislative Committee	Judge Kevin Ringus/ Brittany Gregory	
Policy and Planning Committee Motion: Expire the Guardianship and Civil Legal Needs resolutions	Judge Rebecca Robertson/ Penny Larsen	
6. Judicial Leadership Summit Follow up: recommendations and activities Discuss advisory committee proposal	Chief Justice Steven González Jeanne Englert Brittany Gregory	11:35 Tab 4
7. Motion: Approve May 21, 2021 Minutes	Chief Justice Steven González	11:45 Tab 5
8. Information Sharing BJA Business Account Summary	Chief Justice Steven González Judge Tam Bui	11:50 Tab 6
9. Adjourn		12:00
Persons who require accommodations should notify Jeanne Englert at 360-705-5207 or jeanne.englert@courts.wa.gov to request or discuss accommodations. While notice five days prior to the event is preferred, every effort will be made to provide accommodations, when requested.		

Next meetings: Location TBD if not listed

October 15 – 9:00 – 12:00 - Zoom


November 19 – 9:00 – 12:00 Joint BJA and CMC Meeting - Zoom

February 18 – 9:00 – 12:00

March 18 – 9:00 – 12:00

May 20 – 9:00 – 12:00

June 17 – 9:00 – 12:00

 WASHINGTON COURTS	Board for Judicial Administration (BJA) Meeting Friday, May 21, 2021, 9:00 a.m. – 12:00 p.m. Videoconference
DRAFT MEETING MINUTES	

BJA Members Present:

Chief Justice Steven González
Judge Greg Gonzales, Member Chair
Judge Tam Bui
Judge David Estudillo
Judge Jennifer Forbes
Judge Michelle Gehlsen
Judge Rebecca Glasgow
Judge Dan Johnson
Judge Mary Logan
Judge David Mann
Judge Rebecca Pennell
Judge Rebecca Robertson
Dawn Marie Rubio
Judge Michael Scott
Judge Charles Short
Justice Debra Stephens

Guests Present:

Esperanza Borboa
Barbara Carr
Timothy Fitzgerald
Chris Gaddis
Judge Heidi Heywood
Justice Charles Johnson
Justice Barbara Madsen
Sophia Byrd McSherry
Robert Mead
Justice Raquel Montoya-Lewis
Judge Kevin Ringus
Tristen Worthen

**Administrative Office of the Courts
(AOC) Staff Present:**

Crissy Anderson
Judith Anderson
Cindy Bricker
Jeanne Englert
Penny Larsen
Dirk Marler
Stephanie Oyler
Ramsey Radwan
Caroline Tawes
Lorrie Thompson

Call to Order

Chief Justice González called the meeting to order at 9:00 a.m.

Court Level PresentationsSupreme Court

The heating, air, and ventilation system at the Temple of Justice will be upgraded soon, requiring the residents to relocate.

Chief Justice González thanked the *State v Blake* workgroups who are beginning their work.

The Supreme Court continues to work on rules. The emergency orders in place will be lifted, probably in September, so courts have time to plan. Justice Johnson or Justice Yu, co-chairs of the Rules Committee, can answer questions.

Court of Appeals

The Court of Appeals was able to move ahead more easily this past year due to their transition to electronic records. Filings are down. Richard Johnson retired as the Court Administrator/Clerk in Division I, and Lea Ennis was selected for that position. Renee Townsley, Administrator/Clerk in Division III, will be retiring at the end of July, and Tristen Worthen has been hired for that position. Division II moved into new location in downtown Tacoma.

The Court of Appeals is easing out of COVID restrictions, and live arguments are expected to begin in September. The option will remain for some remote oral arguments, especially in Division III.

The Court of Appeals is working with Superior Courts on *Blake* processes. All three Court of Appeals divisions have discussed internal processes regarding transferring certain Administrative Procedures Act (APA) and the Land Use Petition Act (LUPA) appeals to the Court of Appeals.

The Court of Appeals may request upgrades to the OnBase system for public access to records. They are also working on the electronic transfer of records to the state archives.

Superior Court Judges' Association (SCJA)

The SCJA is committed to addressing racial justice issues including webinars and court trainings. The SCJA Legislative Committee identified two questions to guide their support of legislation: 1. What is the potential negative impact on people of color; and 2. Is the legislation a net positive or neutral in dismantling bias?

In 2021, the SCJA worked to secure funding for Uniform Guardian Act (UGA), and worked with the Court of Appeals on APA and LUPA cases. The SCJA hopes to continue a strong working relationship with District and Municipal Court Judges' Association (DMCJA) judges.

Three hundred thirty-three thousand dollars was appropriated to implement a statewide text messaging notification system. Some pilot counties will soon start to use the system, and the statewide rollout to interested Odyssey courts should occur before the end of the year.

The current focus is on resentencing issues in *Blake*. Efforts are focused on prioritizing incarcerated individuals without transporting them and those who may be eligible for immediate release. A scheduling referee will be used to coordinate this effort equitably across the state. The SCJA is working with justice partners to put a structure in place, and are working with the AOC to allocate funds.

The SCJA is currently working with the Unlawful Detainers Workgroup to help implement and advise members on SB 5160, and are working with the Office of Civil Legal Aid (OCLA) to develop judicial training and benchcards.

The AOC is working with the Department of Health (DOH) on developing industry-specific guidelines. Chief Justice González and Dawn Marie Rubio met with the DOH court liaisons, and discussed jury trials in particular. DOH is working on guidelines that AOC hopes to review early next week. In the meantime, Department of Labor and Industries guidelines have not changed.

District and Municipal Court Judges' Association (DMCJA)

There is still \$1.9 million of CARES funding available. Judge Gehlsen reminded participants to look at Inside Courts and put in application.

Judge Gehlsen thanked Chief Justice González and Justice Stephens for the Friday morning presiding judge meetings.

DMCJA Lobbyist Melanie Stewart is retiring after 41 years in that position. Legislation of note included passing an interlocal probation bill so a defendant may be monitored in one jurisdiction instead of multiple, \$750,000 in court security funding, \$4.5 million for therapeutic courts, and retaining funding for the Courts of Limited Jurisdiction Case Management (CLJCMS) project.

DMCJA priorities include racial justice and adding two judges of color to the board. Future efforts will include adequate court funding and work on eFiling and the courts of limited jurisdiction case management system.

The DMCJA will create a workgroup to begin work on *Blake*.

BJA Task Forces

Court Recovery Task Force (CRTF)

The CRTF website has been updated. Reports and activities are posted there.

The CRTF has issued three surveys, and courts are encouraged to share the surveys.

The CRTF is meeting every two months.

Court Security

The Court Security Task Force secured funding of \$750,000 for equipment and structural changes. They hope for more funding for equipment and staffing.

It was moved by Chief Justice González and seconded by Judge Gehlsen to extend the Court Security Task Force through June 2022. The motion carried unanimously.

Presentation: Court Orders and Rules

Justice Stephens presented an overview of how the Supreme Court may envision the court order and rules process moving forward, and what is being worked on now.

In the materials sent to the members was a collection of responses received regarding what emergency processes currently in place should be continued after the health crises is over. Justice Stephens also prepared an Excel spreadsheet that loosely categorizes the information. The actual responses were included, as well as rule proposals received to date to make some of the emergency orders permanent.

The goal behind the CRTF was to gather information, to assess the success or not of emergency measures, and to gather lessons learned to make proposals for moving forward.

Three rules will be published for comment through the GR 9 process:

1. Criminal rules to permanently authorize remote *voir dire* as an opt-in process.
2. New civil rule CR 39 to authorize and set out procedures for full remote civil jury trials.
3. The SCJA recommended amendments to CrR 3.4. This would amend a new version that went into effect earlier this year. The rule would allow the judge to determine appearance of defendant.

These rules will be reviewed at the June 3, 2021, *en banc* with a recommendation to publish for comment through September 30.

Presentation: Access to Justice Board (ATJ)

Esperanza Borboa reviewed the work and goals of ATJ, and discussed the ATJ priorities for 2021–22. Specific priorities and an ATJ overview were included in the meeting materials.

The ATJ is looking for new board members, and asked for recommendations.

Innovating Justice Award

The Innovating Justice Award was presented by Chief Justice González to Justice Barbara Madsen of the Washington State Supreme Court, and Judge Heidi Heywood presented the award to Kristy Hendrickson, Wahkiakum District Court Clerk.

Chief Justice González also acknowledged the work of Cindy Bricker and the COVID Rapid Response Workgroup.

Standing Committee Report

Budget and Funding Committee (BFC): Judge Logan thanked everyone involved in the 2021 Legislative Session.

Ramsey Radwan reviewed the items on the blue sheet included in the meeting materials and pointed out a new column on the blue sheet, the funding flag column. This column includes items categorized as custom, meaning those are items that the AOC has to work with legislative staff to find out what the Legislature intended and if those funds will automatically roll forward; if not, the AOC must develop a budget request for that item.

Ramsey Radwan will send instructions next week on the 2022 Supplemental Budget.

Court Education Committee (CEC): The CEC report was included in the meeting materials. Spring programs have been completed, and the Search and Seizure program is continuing. The request to modify GR 26 is moving forward.

Judith Anderson thanked Judge Gonzales for his work as Committee Chair, and welcomed incoming chair Judge Bui.

Legislative Committee (LC): Devon Connor-Green's Legislative Report was included in the meeting materials. BJA Request legislation request for a ninth Superior Court judge in Thurston County was successful. Work will continue on the Continuity of Operations in Single Judge Courts proposal for a subsequent legislative session.

Moving forward, there will be a workgroup for pretrial detention and release, civil protection, *Blake*, the LFO bill, and continuity of operations of single judge courts. A request for proposed legislative initiatives was sent by email in March. Request legislation proposals are due by June 15th.

Policy & Planning Committee (PPC): The PPC is focused on proposed plans for adequate funding for trial courts. The next step will be a survey sent to judges and

court administrators. The PPC will come back to the BJA with recommendations from that survey.

The PPC is also focused on increasing membership diversity on the BJA Board. They have developed a flyer to recruit a new member on the PPC.

Judicial Leadership Summit

Chief Justice González encouraged members to register for the Summit. The focus of the Summit will be increasing communication between and among the branches of government. He encouraged the members to look at the questions in the meeting packet and be ready to discuss them during the Summit breakout sessions.

There will be a smaller number of invitees this year, and participants are welcome to check with their associations and groups to get additional feedback on the Summit questions included in the meeting materials.

March 19, 2021 Minutes

It was moved by Judge Scott and seconded by Judge Gehlsen to approve the March 19, 2021, BJA meeting minutes. The motion carried unanimously with one abstention.

Meeting Schedule

It was moved by Judge Bui and seconded by Judge Logan to approve next year's BJA meeting schedule. The motion carried unanimously.

Information Sharing

The Judicial Leadership Summit will be held on June 18, and there will not be a June BJA meeting.

Chief Justice González recognized Justice Montoya-Lewis, Judge Forbes, Judge Bui, and Judge Haan joining the BJA, and thanked Justice Stephens and Judge Gonzales for their work on the BJA. Judge Bui will be taking over as the BJA member chair and CEC chair.

Judge Gonzales thanked the BJA members for their time, and members thanked Judge Gonzales and the other departing members for their work.

The AOC is working to find a successor for retiring Chief Financial and Management Officer Ramsey Radwan. The job announcement has been published widely. They hope the successful candidate will have a one month overlap with Ramsey Radwan. Brittany Gregory has been hired as the new Associate Director of the Office of Judicial

and Legislative Relations at AOC. She will begin work on June 1 and will attend the Judicial Leadership Summit.

Other

There being no further business, the meeting was adjourned at 11:48 a.m.

Recap of Motions from the May 21, 2021 Meeting

Motion Summary	Status
Extend the Court Security Task Force through June 2022.	Passed
Approve next year's BJA meeting schedule.	Passed
Approve the March 19, 2021, BJA meeting minutes.	Passed

Action Items from the March 19, 2021 Meeting

Action Item	Status
The PPC is focused on proposed plans for adequate funding for trial courts. The next step will be a survey sent to judges and court administrators, with a goal to come back to the BJA with recommendations from that survey.	
Chief Justice González encouraged the BJA members to look at the questions in the meeting packet and be ready to discuss them during the Judicial Leadership Summit breakout sessions.	Ongoing
<u>March 19, 2021, BJA Meeting Minutes</u> <ul style="list-style-type: none"> • Post the minutes online. • Send minutes to the Supreme Court for inclusion in the En Banc meeting materials. 	Done Done

FILED
 SUPREME COURT
 STATE OF WASHINGTON
 JULY 1, 2021
 BY ERIN L. LENNON
 CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED)
 AMENDMENTS TO CrR 3.1— RIGHT TO AND)
 ASSIGNMENT OF LAWYER AND CrR 7.8—)
 RELIEF FROM JUDGMENT OR ORDER)
 _____)

ORDER

NO. 25700-A-1366

The Washington State Office of Public Defense, the Washington Defender Association, and the Washington Association of Criminal Defense Lawyers, having recommended the suggested amendments to CrR 3.1— Right to and Assignment of Lawyer and CrR 7.8—Relief From Judgment or Order, and a majority of the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites with an end date of September 30, 2021.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than September 30, 2021. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or

Page 2

ORDER

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CrR 3.1—RIGHT TO AND
ASSIGNMENT OF LAWYER AND CrR 7.8—RELIEF FROM JUDGMENT OR ORDER

supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 1st day of July, 2021.

For the Court


González, C.J.



May 24, 2021

Justice Charles Johnson
Justice Mary Yu
Co-Chairs, Supreme Court Rules Committee
Washington Supreme Court
415 12th Ave SW
Olympia, WA 98501-2314

Re: Suggested amendments to CrR 3.1, Right To And Assignment of Lawyer and
CrR 7.8, Relief From Judgment Or Order

Dear Justice Johnson and Justice Yu:

The Washington State Office of Public Defense (OPD), Washington Defender Association (WDA), and Washington Association of Criminal Defense Lawyers (WACDL) are submitting suggested amendments to CrR 3.1 and CrR 7.8, and requesting expedited adoption in the interest of justice.

The following is submitted pursuant to GR 9(e):

Name of Proponents: Washington State Office of Public Defense (OPD), Washington Defender Association (WDA), Washington Association of Criminal Defense Lawyers (WACDL)

Spokesperson: Larry Jefferson, Director, Washington State Office of Public Defense

Purpose: CrR 3.1 and CrR 7.8 should be amended on an expedited basis to remove unjust barriers to the appointment of counsel in cases eligible for resentencing under the Supreme Court's recent decision in *State v. Blake*. The Legislature has provided funding to OPD to ensure counsel in these cases. Additional funding can be requested, if needed.

Some courts have taken broad approaches to providing counsel for all currently sentenced individuals impacted by *Blake*. Meanwhile, other courts are requiring impacted individuals to research, draft, and properly file *pro se* motions in which they must successfully articulate a basis for relief prior to qualifying for counsel. The suggested amendments to CrR 3.1 and CrR 7.8 would acknowledge the profound injustice already suffered by persons convicted under unconstitutional and invalid statutes, and would ensure their equal treatment in courts statewide.

Website: defensenet.org

110 Prefontaine PI S
Seattle, WA 98104
(206) 623-4321

Website: opd.wa.gov

711 Capitol Way S o PO Box 40957
Olympia, WA 98501
(360) 586-3164
Page 65 of 83

Website: wacdl.org

1511 Third Avenue
Seattle, WA 98101
(206) 623-1302

Persons convicted of violating RCW 69.50.4013 and its previous iterations over the past 40-plus years are entitled to timely relief because the Supreme Court found the drug possession statute to be void, invalid, and unconstitutional. This is a distinct situation from individuals seeking collateral attacks based on other legal strategies. OPD, WDA, and WACDL urge the adoption of a pathway to timely legal representation that ensures equity and efficiency where individuals are entitled to relief based on significant changes in the law. This approach also provides a basis for representation for other similarly situated persons, such as those entitled to relief under *Matter of Monschke* (2021), *Matter of Domingo-Cornelio* (2020) and *Matter of Ali*, (2020).

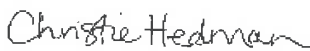
Hearing: Not requested

Expedited Consideration: Expedited consideration is in the interest of justice and efficient court operation. Thousands of people are currently serving unlawful prison sentences, and without timely access to qualified counsel many will linger in custody unnecessarily. The complexity of navigating ongoing COVID restrictions at DOC institutions and the courts requires that they have an attorney to assist them at the outset of the resentencing process.

The suggested amendments to CrR 3.1 and CrR 7.8 are identified below at Attachment 1. We are available to discuss at your convenience.

Best regards,


Larry Jefferson, Director
Washington State Office of Public Defense


Christie Hedman, Executive Director
Washington Defender Association


Amy Hirtotaka, Executive Director
Washington Association of Criminal Defense Lawyers

ATTACHMENT 1 – SUGGESTED AMENDMENTS TO CrR 3.1 AND CrR 7.8

CrR 3.1

RIGHT TO AND ASSIGNMENT OF LAWYER

(b) Stage of Proceedings.

(1) The right to a lawyer shall accrue as soon as feasible after the defendant is taken into custody, appears before a committing magistrate, or is formally charged, whichever occurs earliest.

(2) A lawyer shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. A lawyer shall be provided without regard to a prior finding of indigence for any person (i) serving a sentence for a conviction based upon a statute determined to be void, invalid, or unconstitutional, or (ii) serving a sentence which was calculated under RCW 9.94A.525 using a prior conviction based upon a statute determined to be void, invalid, or unconstitutional. A lawyer initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of the original lawyer pursuant to section (e) because geographical considerations or other factors make it necessary.

CrR 7.8

RELIEF FROM JUDGMENT OR ORDER

(c) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing. For purposes of subsection (i), a defendant necessarily makes a substantial showing that he or she is entitled to relief where the motion contends the person (A) is serving a sentence for a conviction based upon a statute determined to be void, invalid, or unconstitutional, or (B) is serving a sentence which was calculated under RCW 9.94A.525 using a prior or current conviction based upon a statute determined to be void, invalid, or unconstitutional.

(3) Order to Show Cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

INTERAGENCY REIMBURSEMENT AGREEMENT IAA22181
BETWEEN
WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
PACIFIC COUNTY

THIS REIMBURSEMENT AGREEMENT (Agreement) is entered into by and between the Administrative Office of the Courts (AOC) and Pacific County, for the purpose of reimbursing Pacific County (County) for extraordinary costs of resentencing and vacating sentences under *Blake* and for the cost of refunding legal financial obligations (LFOs) under the *Blake* decision.

1. PURPOSE

The purpose of this Agreement is to provide reimbursements to assist Counties with extraordinary judicial, prosecutorial, or defense-related costs of resentencing and vacating the sentences of defendants whose convictions or sentences in Superior Court and District Court are affected by the *State v. Blake* decision and to provide reimbursements to assist Counties who have reimbursed or will reimburse LFOs to defendants whose convictions or sentences in Superior Court and District Court are affected by the *State v. Blake* decision.

2. REIMBURSEMENT

- A. Extraordinary Expenses Reimbursement. AOC shall reimburse the County up to a maximum of **\$381,100** for extraordinary judicial, prosecutorial, or defense-related costs of resentencing and vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake* decision incurred during the period of February 25, 2021 to June 30, 2022. No reimbursement will be made under this Agreement for resentencing or vacation costs incurred after June 30, 2022, and any reimbursement requests in excess of this amount will be denied. If additional funding is appropriated by the Legislature for these purposes, the amount of reimbursement under this Agreement may be increased by agreement of the parties.
- B. LFO Reimbursement. AOC will reimburse the County up to a maximum of **\$154,266** for payments made by the County during the period February 25, 2021 to June 30, 2022 pursuant to court order which required reimbursement by the State of Washington of legal and financial obligations. No reimbursement will be made under this Agreement for resentencing or vacation costs incurred after June 30, 2022, and any reimbursement requests in excess of this amount stated in this Section 2 (b) will be denied. If additional funding is appropriated by the Legislature for these purposes, the amount of reimbursement under this Agreement may be increased by

agreement of the parties. Nothing in this Agreement requires the County to make payments pursuant to a court order when the funds available for reimbursement are less than the amount of the payment.

- C. General. AOC shall provide reimbursement to the County for approved and completed reimbursements by warrant or account transfer within 30 days of receipt of a properly completed A-19 invoice and the completed data report as required below.

3. PERIOD OF PERFORMANCE

Performance under this Agreement begins **July 1, 2021**, regardless of the date of execution, and ends on **June 30, 2022**. The period of performance may be amended by mutual agreement of the parties if the Legislature provides additional funding or time for these purposes.

4. TERMS OF REIMBURSEMENT

a) The County shall request reimbursement as follows:

1. The County will submit its A-19 invoices monthly to countyreimbursements@courts.wa.gov. A-19 invoices submitted under this agreement must include:
 - a. Payment documents from the County indicating the amounts expended, the recipients, and the date of expenditure.
 - b. Sufficient information to allow AOC to determine that the costs reimbursed are extraordinary judicial, prosecutorial, or defense-related costs of resentencing and vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake*.
 - c. Proper coding for expenses under both 2.A. and B. For Pacific County, expenses under 2.A. must be coded **40125**, and reimbursement under 2.B. must be coded **40100**.
2. The County shall provide a monthly report to AOC that must contain at a minimum:
 - a. A list of any case numbers associated with the services provided;
 - b. A breakdown of expenses by judicial, prosecutorial, and defense-related costs;
 - c. The amount of LFOs reimbursed, with the case number associated with that amount.
 - d. Any positions supported by these funds, broken down by judicial, prosecutorial, and defense-related positions; and
 - e. Data, including case numbers and aggregate data on the number and type of cases:

- i. Vacated under *Blake*;
 - ii. Resentenced under *Blake*; and
 - iii. Being worked on under *Blake*.
- b) By May 1, 2022, the County agrees to report any allocated funds under either 2. A. or B. that it will be unable to spend during the term of the contract, or any additional funds it anticipates needing during the term of the contract should additional funds become available. AOC reserves the right to reallocate funds that are reported to be unable to be spent.

5. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by agreement of the parties. Such amendments are not binding unless they are in writing and signed by personnel authorized to bind each of the parties.

6. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement must be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency will be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. This Agreement; and
- c. Any other provisions of the agreement, including materials incorporated by reference.

7. WAIVER

A failure by either party to exercise its rights under this Agreement does not preclude that party from subsequent exercise of such rights and is not a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

8. SEVERABILITY

If any provision of this Agreement, or any provision of any document incorporated by reference is held invalid, such invalidity does not affect the other provisions of this Agreement which can be given effect without the invalid provision and to this end the provisions of this Agreement are declared to be severable.

9. AGREEMENT MANAGEMENT

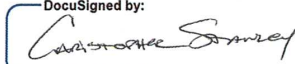
The program managers noted below are responsible for and are the contact people for all communications and billings regarding the performance of this Agreement:

AOC Program Manager	County Program Manager
Christopher Stanley Chief Financial and Management Officer PO Box 41170 Olympia, WA 98504-1170 christopher.stanley@courts.wa.gov (360) 890-2549	Lisa Olsen Commissioner/Chair PO Box 187 South Bend, WA 98586 lolsen@co.pacific.wa.us 360-875-9337

10. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement are considered to exist or to bind any of the parties to this agreement unless otherwise stated in this Agreement.

AGREED:**Administrative Office of the Courts****Pacific County**

DocuSigned by:

 B760CAAE4FE6410...
 Signature Date

10/4/2021

Christopher Stanley
 Name

Chief Financial and Management Officer
 Title

 9/28/2021
 Signature Date

Lisa Olsen
 Name

Chair
 Title



Senate Committee Services
PO Box 40466
Olympia, WA 98504-0466
(360) 786-7400

Washington State Senate Ways & Means Committee

Senator Christine Rolfes, Chair
Senator David Frockt, Vice Chair, Capital
Senator June Robinson, Vice Chair,
Operating & Revenue
Senator Lynda Wilson, Ranking Member
Senator Sharon Brown, Assistant Ranking
Member, Operating
Senator Jim Honeyford, Assistant Ranking
Member, Capital
Senator Mark Schoesler, Assistant
Ranking Member, Capital

**November 15, 2021
MONDAY**

3:30 p.m.

Work Session:

1. Revenue and caseloads update.
2. Update on COVID-19 response funding.
3. Impacts of vaccine mandate on agency operations.
4. Blake implementation.
5. Broadband expansion.

Possible other business.

See <https://app.leg.wa.gov/CSIRemote/Senate> for testimony options.

To view committee meetings or access the committee meeting documents, visit the Legislature's committee schedules, agendas, and documents website: <https://app.leg.wa.gov/committeeschedules>

Committee Members: Sen. Christine Rolfes, Chair | Sen. David Frockt, Vice Chair, Capital | Sen. June Robinson, Vice Chair, Operating & Revenue | Sen. Lynda Wilson, Ranking Member | Sen. Sharon Brown, Assistant Ranking Member, Operating | Sen. Jim Honeyford, Assistant Ranking Member, Capital | Sen. Mark Schoesler, Assistant Ranking Member, Capital | Sen. John Braun | Sen. Reuven Carlyle | Sen. Steve Conway | Sen. Jeannie Darneille | Sen. Manka Dhingra | Sen. Chris Gildon | Sen. Bob Hasegawa | Sen. Sam Hunt | Sen. Karen Keiser | Sen. Marko Liias | Sen. Mark Mullet | Sen. Ron Muzzall | Sen. Jamie Pedersen | Sen. Ann Rivers | Sen. Kevin Van De Wege | Sen. Keith Wagoner | Sen. Judy Warnick | Sen. Lisa Wellman



Distribution of *Blake* Funding

Christopher Stanley, CGFM – Chief Financial and Management Officer, AOC
November 15, 2021

How Was Funding Allocated?



Funding was Allocated Equitably Across Washington's Counties

- Vacating and Resentencing: \$44.5M allocated to counties based on a proportional share of the DOC population with a possession conviction. Population includes both in-facility and supervised.
- Legal Financial Obligations (LFOs): \$23.5M allocated to counties based on a proportional share of average LFOs paid on Blake-related convictions between 2007 and 2016.

How is Funding Distributed?



Funding is Distributed in a Transparent and Accountable Manner

AOC has entered into reimbursable contracts with each of the counties to distribute the allocated amounts as receipts for work and LFO reimbursements come in to us.

To date, 31 of 39 counties have executed contracts with AOC. This represents \$49.9M of the \$68M provided to AOC for this purpose.



MISSION: TO IMPROVE PUBLIC SAFETY
BY POSITIVELY CHANGING LIVES



VISION: WORKING TOGETHER
FOR SAFER COMMUNITIES

Senate Ways & Means Work Session **State v. Blake**



State v. Blake Court Orders

As of November 8, 2021

The department does not have the statutory authority to disregard or unilaterally correct a judgment and sentence and must wait for the court to issue further direction.

DOC has received 13,362 court orders impacting 8,483 individuals pursuant to State v. Blake.

Total or Partial Confinement	
Count of Individuals	1,446
Individuals Granted Immediate Release	444
Total Orders Received	2,812

Community Supervision	
Count of Individuals	7,037
Total Orders Received	10,550



State v. Blake Commutations

As of November 8, 2021

The department worked with the Governor's Office to offer commutations to individuals serving sentences solely for Possession of a Controlled Substance.

- April 2021 – Total or partial confinement
- July 2021 – Active supervision
- September 2021 – Inactive/warrant status

Total or Partial Confinement	
Total Commutations	19
DOC Facility	17
Work Release	2

Community Supervision	
Total Petitions Received	849
Petitions Signed by Governor	523



Resentencing Work

Since 3/1/2021,

- Provided criminal justice partners with data, to help them strategize and deploy responses to court decisions.
- Provided training to criminal justice partners, facilitated work groups and partnered to develop sustainable practices.
- Managed resentencing impacts to ensure efficient processing of court orders, while coordinating with staff involved in release efforts.
- Coordinated internal and external resources for individuals releasing to assist in successful reentry.
- Stopped deducting/billing for Legal Final Obligations solely for simple possession convictions.



Virtual Hearings

Implemented virtual hearings at all 12 prison facilities in order to expedite court proceedings. DOC has facilitated 3,032 virtual court hearings and is currently averaging 40-50 hearings each week.

Virtual Hearings	
State v. Blake	1,192
Other	1,840

DOC has requested **\$4.6M** to continue virtual court hearings and provide expanded virtual access for:

- Medical and behavioral health services
- Child dependency and support modification/abatement hearings
- Programming and reentry services



Reentry Resources

The department was able to provide critical resources to individuals releasing pursuant to State v. Blake.

- Housing Vouchers
- \$100 food cards
- Prepaid Cell Phones
- Backpacks with Hygiene Items
- Prescription medications and Narcan toolkits

DOC has requested **\$2.1M** for continued funding and expanded authority to provide reentry services to individuals resentenced and released earlier than anticipated.



Thank you

Thank you to all the agencies, organizations, stakeholders and partners that have worked together with DOC to provide resources for those releasing and supporting successful reentry.





Questions?

Contact Information

Jeannie Miller, Assistant Secretary Administrative Operations
jsmiller@DOC1.WA.GOV

Melena Thompson, Executive Policy Director
melena.thompson@DOC1.WA.GOV

Dianne Ashlock, Statewide Records Director
dkashlock@DOC1.WA.GOV



Blake Requests

Forms and Information

The Washington Supreme Court's recent opinion in *State v. Blake*, 197 Wn. 2d 170, 174, 481 P.3d 521, 524 (2021), held that RCW 69.50.4013 and its predecessor statutes (collectively "RCW 69.50.4013" or "simple possession") are unconstitutional. This has resulted in an unprecedented number of post-conviction motions for relief. Please be advised that the King County Prosecuting Attorney's Office is attempting to respond to a large number of inquiries, and we realize that all inquiries are important. We are giving priority to those requests from individuals currently in custody who are likely to be released within the next 0-180 days based upon a change to their offender score and sentencing range. We are also prioritizing individuals with active or inactive DOC supervision.

You may send your request to us at any time, but please be advised that due to the extreme volume you will not get an immediate response for less time-sensitive requests. ALSO, FOR VUCSA POSSESSION CASES YOU DO NOT HAVE TO REQUEST RELIEF UNLESS THERE IS AN URGENT NEED because the KCPAO will be proactively addressing these dismissals-[see below*](#).

Send requests to: PAOBlakeRequest@kingcounty.gov.

Please be advised that the state cannot and will not respond to pro-se requests for resentencing. A pro-se request is a request made by the defendant and not through an attorney. If you are a defendant and have a request or question about resentencing you need to contact DPDBlakeRequest@kingcounty.gov. These requests will go to the public defender's office and they will contact us as needed.

Attorneys may submit re-sentencing requests to PAOBlakeRequest@kingcounty.gov.

In order to help us act quickly on the most urgent cases, in the subject line of your email please include:

1. The name and cause number;
2. Whether the request is for re-sentencing or dismissal;
3. And—please indicate "urgent" if release from custody or community custody is immediate.

Please be aware:





- We are constantly working to get through all requests.
- For most requests, we are likely to agree to amend the Judgment and Sentence without a hearing.
- If a hearing is required, we are trying to limit the inconvenience to defendants by coordinating with Department of Corrections to hold hearings virtually.
- *We cannot provide you with any legal advice. If you need legal advice, please contact your attorney or contact the King County Department of Public Defense to screen for an attorney. Due to the complex legal nature of the re-sentencing requests, we cannot respond to pro-se requests for resentencing at this time. If you are pro-se, please contact an attorney.*
- If you want to seek appointment of counsel for Blake related issues please visit the King County Department of Public Defense website for more information: <https://kingcounty.gov/depts/public-defense.aspx>.
- If you are a victim of a case affected by the Blake decision and have further questions, please also email us at PAOBLAKEREQUEST@kingcounty.gov and let us know that you are a victim. The KCPAO is attempting to notify victims of re-sentencings.

How to submit a Blake related request to the KCPAO

In order to help us prioritize your request and respond as quickly as possible, please fill out the Blake Request Form found below and attach all necessary documents. We cannot review your request until we have this information. Once a completed request is received, we can add it to a queue for review by a DPA. Incomplete requests and missing documents will delay our ability to respond to your request.

In addition to the documents requested, please include completed proposed orders where applicable.

Required Forms

Document Name	File Link
Blake Request Form	
Dismissal for a VUCSA Possession case that <i>only</i> includes Blake related counts	
Dismissal in a VUCSA Possession case that has multiple counts that include non-VUCSA crimes, and one (or more) Blake/VUCSA counts	
Agreed order to amend the Judgment and Sentence to correct the offender score, standard range, and sentence (for use by licensed attorney only)	

Once all forms and documentation have been completed, email forms and attachments to:

<https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx>[11/18/2021 2:37:53 PM]

PAOBLAKEREQUEST@kingcounty.gov

Once again, in order to help us act quickly on the most urgent cases, in the subject line of your email please include:

1. The name and cause number;
2. Whether the request is for re-sentencing or dismissal;
3. And—please indicate “urgent” if release from custody or community custody is immediate.

*Vacation of Prior Simple Possession Convictions and Refund of Legal Financial Obligations and Collection Costs

In addition to urgent vacation cases, King County has also implemented a process to vacate all prior convictions for simple drug possession in Superior Court, including convictions where a prior conviction for simple drug possession was an element of the subsequent offense. The good news is that a person with a qualifying conviction does not need to take any action for this to happen! The King County Prosecutor, in coordination with the clerk's office, is currently compiling a list of all Blake-eligible convictions since 1971. Starting with the most recent convictions and working back in time, the PAO is currently filing motions in each cause number on behalf of the state to proactively vacate prior convictions for simple drug possession, cancel any outstanding LFO or collections cost balances that arise from the vacated conviction, and implement a process through the clerk's office for a refund of any LFO or collections that were paid as a result of the vacated conviction. The State Patrol will also be informed that the conviction has been vacated.

Please check your court record periodically to determine if your conviction for simple drug possession has been vacated. The clerk's office will shortly post the process on its website for obtaining a refund of any LFO and collections costs that were actually paid due to the vacated conviction. You will need to follow the short application process posted by the clerk's office to receive a full refund of any LFO or collections costs that are due to you.

If you have convictions for simple possession in other counties, you will need to check with that county to determine how simple drug possession convictions are being vacated in that jurisdiction and how LFO refunds are being processed. About a dozen counties are following the process outlined above, but the specific procedure for each county may vary.

Victim FAQs

What is State v Blake? ☐

Why are Violation of the Uniformed Controlled Substances Act (VUSCA) cases being dismissed? ☐

Does State v Blake affect cases that are not VUSCA cases? ☐

Are all cases affected by the Blake decision going to be re-sentenced at a hearing? ☐

Will I be notified if the offender is released from custody? ☐

In the future will all VUSCA Possession charges be invalid? ☐

Prosecuting Attorney's Office

King County Courthouse
516 Third Avenue, W400
Seattle, WA 98104
Hours: 8:30 a.m. - 4:30 p.m.


[Get directions](#)

King County Prosecutor
Dan Satterberg
[Read Dan's Biography](#)

Phone:
206-477-1200

Email:
Prosecuting.Attorney@kingcounty.gov

Social media channels:



Last Updated November 18, 2021

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Information for

Residents

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King County
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Property tax
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payment

Jail inmate look up

Parcel viewer or iMap

Public records

More online tools...

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Employee directory

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En Español



King County

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KING COUNTY
Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Ordinance 19319

Proposed No. 2021-0249.1

Sponsors Kohl-Welles

1 AN ORDINANCE related to the Washington state
2 Supreme Court's decision in State v. Blake, 197 Wn.2d 170
3 (2021); making a supplemental appropriation of
4 \$19,545,000 to several general fund agencies; and
5 amending the 2021-2022 Biennial Budget Ordinance,
6 Ordinance 19210, Sections 30, 31, 32, 34, 39 and 51, as
7 amended.

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 **SECTION 1. Findings:**

10 A. On April 20, 2021, the Washington state Supreme Court issued a decision in
11 State v. Blake, 197 Wn.2d 170 (2021), finding the statute creating the crime of simple
12 drug possession, RCW 69.50.4013, unconstitutional because it does not contain a
13 knowledge element.

14 B. The State v. Blake decision invalidates convictions dating back to 1971, which
15 were obtained in the name and by the authority of the state of Washington. The superior
16 court, the district court, the prosecuting attorney and the court clerks acted as agents of
17 the state in connection with prosecutions and convictions for drug possession.

18 C. The decision in State v. Blake results in cases that must be dismissed, warrants
19 that must be quashed and defendants who must be resentenced. It is estimated that

Ordinance 19319

20 between 750 and 1,200 King County cases will require resentencing, some through
21 agreed orders and others through sentencing hearings where victims and defendants will
22 be entitled to address the court.

23 D. The decision in State v. Blake also requires that some defendants who have
24 completed their sentences be provided with relief in the form of vacated convictions and
25 the reimbursement of fines and fees paid to the state of Washington as part of the
26 conviction. It is estimated that petitions from as many as 50,000 defendants will need to
27 be carefully screened to determine legal eligibility for vacation and reimbursement.

28 E. As the convictions affected by the decision in State v. Blake and the effort to
29 unwind drug possession convictions since 1971 are brought in the name of and by the
30 authority of the state of Washington, all costs related to resentencing, vacating
31 convictions and reimbursing fines and fees required by the decision should be subject to
32 reimbursement from state funds.

33 F. Despite its constitutional obligations to fund the judiciary, the state of
34 Washington already ranks last in the nation for funding its state court system and any
35 failure by the state to cover costs associated with State v. Blake compliance can only
36 worsen this situation.

37 G. There is an immediate need for resources by the department of public defense,
38 the prosecuting attorney's office, the superior court, the district court and the department
39 of judicial administration to address the effects of the decision in State v. Blake referenced
40 in subsections A. through E. of this section.

41 H. King County will seek reimbursement from the state for all costs related to
42 resentencing, vacating convictions and reimbursing fines and fees required by the

Ordinance 19319

43 decision in State v. Blake.

44 SECTION 2. Ordinance 19210, Section 30, as amended, is hereby amended as
45 follows:

46 PROSECUTING ATTORNEY - From the general fund there is hereby
47 appropriated to:

48	Prosecuting attorney	\$5,640,000
----	----------------------	-------------

49 SECTION 3. Ordinance 19210, Section 31, as amended, is hereby amended as
50 follows:

51 SUPERIOR COURT - From the general fund there is hereby appropriated to:

52	Superior court	\$620,000
----	----------------	-----------

53 SECTION 4. Ordinance 19210, Section 32, as amended, is hereby amended as
54 follows:

55 DISTRICT COURT - From the general fund there is hereby appropriated to:

56	District court	\$963,000
----	----------------	-----------

57 SECTION 5. Ordinance 19210, Section 34, as amended, is hereby amended as
58 follows:

59 JUDICIAL ADMINISTRATION - From the general fund there is hereby
60 appropriated to:

61	Judicial administration	\$1,019,000
----	-------------------------	-------------

62 SECTION 6. Ordinance 19210, Section 39, as amended, is hereby amended as
63 follows:

64 INTERNAL SUPPORT - From the general fund there is hereby appropriated to:


65	Internal support	\$5,600,000
----	------------------	-------------


PUBLIC DEFENSE - From the general fund there is hereby appropriated to:

Public defense	\$5,703,000
----------------	-------------

Yes: 9 - Ms. Balducci, Mr. Dembowski, Mr. Dunn, Ms. Kohl-Welles,
Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer
and Mr. Zahilay

DocuSigned by:
Claudia Balducci
7E1C273CE9994B6...
Claudia Balducci, Chair

DocuSigned by:

 8DE1BB375AD3422...
 Melani Pedroza, Clerk of the Council

DocuSigned by:

4FBCAB8196AE4C6...
Dow Constantine, County Executive

**Superior Court of Washington
County of Chelan**

State of Washington, Plaintiff,
vs.

Defendant.

DOB

No.

**Motion to Vacate Conviction
Pursuant to *State v. Blake***
(Simple Possession only)

I. Motion

I, the undersigned request the court grant an order vacating my conviction pursuant to *State v. Blake*, 197 Wn.2d 170 (2021). I am also requesting that the court waive any non-restitution LFO interest in the following cases: _____

Dated: _____

Defendant/Defendant's Attorney

II. Declaration

I am the defendant in the above action and declare that I have provided a copy of this notice to the Chelan County Prosecuting Attorney's Office:

- 2.1 The only count(s) on which I was convicted in this matter are RCW 69.50.4013(1) or RCW 69.50.401(d) between 1979 and 2003.
- 2.2 ☐ If the State agrees with this motion by presenting a written order within fourteen days, I agree that this matter may be handled *ex parte* by written order.
- 2.3 If the State does not agree with this motion, I request the court set a hearing ☐ and I request the appointment of an attorney at public expense because I am indigent and I have attached an affidavit of indigency to this motion.
- 2.4 I understand that I may be entitled to a refund of any paid legal financial obligations and that such refund may be subject to other unpaid legal financial obligations.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____ on (date) _____.

Signature of Defendant

Print Name

Mt to Vacate Conviction (Blake)



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State v. Blake

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STATE V. BLAKE

On February 25, 2021, the Washington State Supreme Court vacated the felony possession of controlled substance statute in State v. Blake, affecting possession of controlled substance cases dating back to 1971.

If you believe you are entitled to relief under this court decision, please contact Adams County Public Defender Kyle Smith at 907 W. Sharp Avenue, Suite 1, Spokane, Washington 99201; by telephone at 509-325-2500; or by email at kyle@madelandsmith.com

State v. Blake

STATE V. BLAKE

On February 25, 2021, the Washington State Supreme Court vacated the felony possession of controlled substance statute in State v. Blake, affecting possession of controlled substance cases dating back to 1971. Our office is gathering information to assist Defendants who may be entitled to relief as a result of this court decision. If you believe you are entitled to relief under this court decision, please complete all the information fields in the form below. If you are eligible, cases will be reviewed and processed in the order in which they were received. Failure to provide complete information will delay or prevent completion of processing. A valid email address is required as any completed forms or documents filed with the court will be sent to the email address provided.

There are still many unknowns at present time and we are still working out determinations and the process for which refunds for any applicable court costs, fines, and fees. If a drug charge was included with other criminal charges on the same cause number, this will likely affect eligibility for a refund. You may either be eligible for a lesser amount or no refund at all depending on the assessed charges.

Please be aware that on older offenses, such charges may not appear in computer databases or other sources of publicly available information due to the age of the charge(s). When new documents are filed with the court, these documents will become either a public record or a court record.

State v. Blake

Name *

Other Names Used or Associated

Date of Birth *



In Custody on this charge

☐ Yes ☒ No

Asotin County Cause Number(s) (Provide if Available)

Home Address

Home Address

<input type="text" value="Address Line 1"/>		
<input type="text" value="Address Line 2"/>		
<input type="text" value="City"/>	<input style="text-align: right;" type="text" value="State"/> ▼	<input type="text" value="Zip Code"/>

Mailing Address

<input type="text" value="Address Line 1"/>		
<input type="text" value="Address Line 2"/>		
<input type="text" value="City"/>	<input style="text-align: right;" type="text" value="State"/> ▼	<input type="text" value="Zip Code"/>

Home Phone

Mobile Phone

Work Phone

Email *

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Prosecuting Attorney

Blake and Relief from Drug Possession Convictions

On February 25, 2021, the Washington State Supreme Court decided [State v. Blake, No. 968373-0, 481 P.3d 521 \(2021\)](#). In that decision, the Court determined that the controlled substance offense under [RCW 69.50.4013\(1\)](#) violated the Constitutions of the United States and the State of Washington. This decision impacts certain convictions for possession of controlled substances convictions, e.g., possession of methamphetamine, possession of heroin, etc. It does not impact the validity of convictions for drug offenses beyond simple possession (e.g., possession with intent to deliver or other controlled substances violations like manufacturing or delivery). It may however affect sentences on other offenses in which the criminal history included a simple possession conviction.

If you believe you have a Benton County conviction that is impacted by the [Blake](#) decision, you may file the form below with our office to see if our office and you can agree to relief for you. Whether or not you will be entitled to some type of relief will depend on the facts of your case.

[Link to Blake Relief Request Form](#)

Also, in order to ensure they have the correct contact information to process your case, please contact the Benton County Clerk's Office and update your address and contact information.

[Benton County Clerks Office](#)

509-735-8388

The Benton County Prosecutor's Office is now open to the public. Our regular office hours remain:

Monday - Friday

8:00 am - 12:00pm

1:00pm - 5:00pm

Closed on Holidays

Wearing a face mask is required for everyone in the Prosecutor's office with the exception of those who have been fully vaccinated against COVID-19 and provide vaccination verification to office staff.

The Prosecuting Attorney is the lawyer for the people of Benton County.



Prosecuting Attorney - Andy Miller

The main responsibility of the Prosecutor is to enforce criminal laws and work for the victims of crime. This includes ordering restitution for the victim, informing the victim of court dates, and acting as an advocate for the victim at trial and sentencing.

The prosecuting attorney also acts as legal counsel to the other county departments, operates a risk management program for Benton County, assists in certain child support cases, and performs a number of other duties.

Deputy prosecutors are appointed by the prosecutor to help perform the duties of the Prosecutor. The Prosecutor and deputies must have passed the Washington State Bar Association

Contact Us

Andy Miller

Benton County Prosecuting Attorney

Benton County Justice Center, Building A

7122 W. Okanogan Place, Building A
Kennewick, WA 99336

[Get Directions](#)

Phone: 509-735-3591

Fax: 509-736-3066

[Send Email](#)

Benton County Courthouse

620 Market Street
Prosser WA 99320

Hours

Monday through Friday
8:00 a.m. to 12:00 p.m.
1:00 p.m. to 5:00 p.m.

Prosecuting Attorney



Civil Division

District Court Division

Felony Division

Juvenile Division

Paternity & Child Support Division

Daily Jail Roster

Crime Victim Program

Blake Relief Request Form

Protocol for Child Abuse Investigations

FOR MORE INFORMATION (FAQ)

[Frequently Asked Questions \(FAQ\)](#)

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[Public Record Requests](#)

[ICE Victim Notification Program](#)



BENTON
COUNTY
WASHINGTON

620 Market Street
Prosser, Washington 99350

Phone: 509-786-5710 or 509-783-1310

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State v. Blake Motions for Vacation and Resentencing

In February of 2021, the Supreme Court of the State of Washington declared that RCW 69.50.4013(1) was unconstitutional.

- If you were convicted under this statute or a preceding statute related solely to the unlawful possession of a controlled substance, you may be eligible to have your sentence for that crime vacated.
- If you were sentenced to another felony and your sentence was based on an offender score including a vacated conviction, you may be eligible for resentencing.

General Instructions

In order for your case to be addressed by the court, you must notify the court of your request in writing. Please complete a separate form for each cause number on which you are requesting relief.

For the purposes of this document and the attached forms Simple Possession refers to a conviction for RCW 69.50.4013(1) from 2003 to the present, or of RCW 69.50.401(d) from 1979 to 2003, or of RCW 69.50.401(c) from 1971 to 1979.

Please fill out each form completely and accurately. Failure to provide complete information may delay consideration of your petition. Criminal history information may be obtained from the Washington State Patrol at: www.wsp.wa.gov/crime/criminal-history/.

If you are requesting an attorney be appointed at public expense, please fill out an affidavit of indigency and attach it to the motion.

Please make sure the court has your current mailing address.

You must provide a copy of your motion to the Chelan County Prosecutor's Office before filing with the court.

If you have questions regarding how to prepare or submit these forms, please call the Counsel for Defense of Chelan County at 509-663-2444.

Forms to Use

If you have a cause number on which you were convicted of one or more counts of Simple Possession, and no other crimes:

Please use the form marked [Motion to Vacate Conviction Pursuant to State v. Blake \(Simple Possession Only\)](#).

If you have a cause number on which you were convicted of one or more counts of Simple Possession, AND other crimes:

If you are currently in custody, please use the form marked [Motion to Vacate Conviction Pursuant to State v. Blake \(Other Counts – Resentencing Requested\)](#).

Otherwise use the form marked [Motion to Vacate Conviction Pursuant to State v. Blake \(Other Counts – No Resentencing\)](#).

If you have a cause number on which you were convicted of crimes OTHER THAN Simple Possession, but your offender score was based on prior convictions for Simple Possession:

Please use the form marked [Motion for Resentencing Pursuant to State v. Blake \(Offender Score Recalculation\)](#).

Posted: 07/196/2021 09:28 AM

Last Updated: 08/223/2021 03:36 PM



Chelan County Calendar

Upcoming events and schedules at the county!

15 Dec
2021

01:00 PM - 03:00 PM

Hearing Examiner - December 15, 2021

Posted by: Community Development

 By Zoom Video Conference

[Learn More...](#)

15 Dec
2021

06:00 PM - 08:00 PM

Boundary Review Board

Posted by: Board Of County Commissioners

The newly formed Chelan County Boundary Review Board meets on Dec. 15.

 By Zoom video conference

[Learn More...](#)

11 Dec
2021

09:00 AM - 01:00 PM

December Parenting Class - English Only

Posted by: Superior Court Clerk

Supporting Children Through Divorce is a four-hour educational program designed to help parents focus on the needs of their children during and after divorce and separation.

 Washington State University Extension

[Learn More...](#)

01 Dec
2021

09:00 AM - 03:00 PM

Hearing Examiner - December 1, 2021

Posted by: Community Development

 By Zoom Video Conference

[Learn More...](#)

24 Nov
2021

08:00 AM - 05:00 PM

Office Closures

Posted by: Public Works

Office closures for the Thanksgiving holiday



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Chelan County

Video Tour

- Welcome
- Quality of Life
- Real Estate and Relocation
- Education
- Tourism and Attractions
- Business and Agriculture
- Parks and Recreation
- Community Organization

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Clallam County, Washington

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Prosecuting Attorney's Office

Mission Statement: *Seek the Just Result.*



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- [Divisions](#)
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- [Municipal Research Service Center \(MRSC\)](#)
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- [Washington Attorney General's Office](#)
- [Washington State Bar Association](#)
- [Washington State Courts](#)

Seen, Heard, Said

- [Listen to Mark on KONP!](#)
- [Listen to Mark on Forks 1490](#)

Press Releases

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- [Whatcom County Man Sentenced in Attempted Child Rape Case](#)
- [Port Angeles Man Sentenced to 48 Months for Vehicular Assault](#)

[Bench Bar Press Guidelines](#)

Prosecutor's Post

- [What is Drug Court?](#)
- [What is a "72 Hour Hold"?](#)
- [Why Didn't the Defendant get the Maximum Sentence?](#)
- [Welcome!](#)

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- [Coroner Statistics](#)
- [Prosecutor Statistics](#)

[Submit a Public Records Act request](#)

On February 25, 2021, the Washington State Supreme Court in State v. Blake declared as unconstitutional Washington's strict liability drug possession statute. For more information about the Blake decision visit: <https://mrsc.org/Home/Stay-Informed/MRSC-Insight/March-2021/The-Status-of-Drug-Possession-in-Washington-State.aspx>

If you are inquiring about dismissal, resentencing, or vacation of your case due to the State v Blake decision, please contact Clallam Public Defender via email: gasnickcpd@olypen.com with the subject line, BLAKE. Clallam Public Defender may also be reached at (360) 452-3307 or 516 E. Front Street, Port Angeles, WA 98362. Office hours for Clallam Public Defender are Monday – Friday 8:30am-12pm and 1pm-4:30pm. When calling, please identify the call as relating to Blake.

Attorneys and those who are not represented by Clallam Public Defender may seek



Mark B. Nichols
Nov 2014 - Dec 2022

[Biography](#)

Public Hours of Operation:
8:00 a.m. - 4:30 p.m.
Lunch Closure
12:00 p.m. to 12:30 p.m.

Felony Division:
360-417-2301

District Court Division:
360-417-2368

Juvenile Court Division:
360-417-2509

Civil Division:
360-565-2611

Family Support Division:
360-417-2500

Coroner:
360-565-2611

21732

dismissal, resentencing, or vacation of a case due to the State v Blake decision by sending an email to cwojnowski@co.clallam.wa.us with the subject line, "BLAKE REQUEST LAST NAME". The email should include the Defendant's full name, date of birth, contact information, and the relevant case number.

"We exercise the power given to us by the people to promote safety, justice and service."

[Disclaimer](#)

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This is our shot. Get the COVID-19 vaccine.



Help for unconstitutional drug convictions (Blake)

Have you ever been convicted of a drug crime in Clark County?

A recent State Supreme Court case may make your conviction invalid.

The Washington Supreme Court struck down the state's felony drug possession law (also known as Unlawful Possession of a Controlled Substance or VUCSA - possession) in February 2021. The ruling in *State v. Blake*, states that any person convicted of particular drug prior to February 2021 could get those convictions invalidated.

Who is entitled to legal help, and what could that help look like?

- A person in prison whose sentence was increased due to a conviction for felony drug possession could get their sentence shortened.
- A person on probation or community custody supervision due to a conviction for felony drug possession (or attempted possession) could have their probation period stricken or shortened.
- A person with past felony drug convictions could have them removed from their record and get any fines or fees they paid removed.

If you, a friend or family member have a drug conviction from Clark County, a lawyer from Clark County Indigent Defense may be able to help.

For more information, please contact matthew.kimball@clark.wa.gov.



What if I have a prior conviction for possession of controlled substance, aka Violation of Uniformed Controlled Substance Act (VUCSA)?

Based on the Washington State Supreme Court Ruling in State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021), convictions for Possession of Controlled Substance, aka called Violation of Uniform Controlled Substances Act (VUCSA), were not lawful. Your conviction for that charge can be vacated. You should contact our office and our Blake support staff and *Blake* attorney can discuss your options for having that conviction vacated. You should contact our office and our Blake support staff and *Blake* resource attorney can discuss your options for having that conviction vacated and to assist if you need to be resentenced.

▼ **CCOPD Frequently Asked Questions**

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1. **Is my public defender a “real lawyer”?**
2. **Since you’re paid by the government, the same as prosecutors, aren’t you just working together?**
3. **Can I call or drop by the Cowlitz County Office of Public Defense for some quick legal advice?**
4. **What is an arraignment?**
5. **What is a pre-trial hearing?**

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10. [How do I discuss my case with my attorney during COVID-19?](#)
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12. [What if I have a prior conviction for possession of controlled substance, aka Violation of Uniformed Controlled Substance Act \(VUCSA\)?](#)
13. [Why hasn't my attorney gotten my case dropped?](#)
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Franklin County Prosecutor's Office

Shawn Sant - Prosecutor

[Contact](#)

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PROSECUTOR HOME

STATE V. BLAKE

DUTIES AND RESPONSIBILITIES

LEGAL HELP LINKS

CRIME VICTIMS

FREQUENTLY ASKED QUESTIONS

CONTACT US

Courthouse Address
1016 N. 4th Ave
Pasco, WA 99301

Office Hours
Monday-Friday*
8:00AM - 12:00PM
1:00PM - 4:00PM

*Closed for Holidays

➔

STATE V. BLAKE

On February 25, 2021, the Washington State Supreme Court vacated the felony possession of controlled substance statute in State v. Blake, affecting possession of controlled substance cases dating back to 1971. While this decision is currently being challenged by Spokane County, the origin of the litigation, our office is gathering information to assist Defendants who may be entitled to relief as a result of this court decision. If you believe you are entitled to relief under this court decision, please complete all the information fields in the form below. If you are eligible, cases will be reviewed and processed in the order in which they were received. Failure to provide complete information will delay or prevent completion of processing. A valid email address is required as any completed forms or documents filed with the court will be sent to the email address provided.

There are still many unknowns at present time. There has been no guidance or determination as to how the State of Washington intends to process refunds for any applicable court costs, fines, and fees. If a drug charge was included with other criminal charges on the same cause number, this will likely affect eligibility for a refund. You may either be eligible for a lesser amount or no refund at all depending on the assessed charges. Our focus at present time will be to assist with vacating the eligible offenses from conviction history. Our office will file a request with the court to vacate the applicable charge(s) from a prior plea of guilty and judgment and sentence.

Please be aware that on older offenses, such charges may not appear in computer databases or other sources of publicly available information due to the age of the charge(s). When new documents are filed with the court, these documents will become either a public record or a court record.

Full Name

Other Names Used or Associated

Date of Birth

Franklin County Cause Number(s) Involving Felony Unlawful Possession of a Controlled Substance

In Custody on this charge: (if applicable)

NOT In Custody on this charge: (if applicable)

Home Address

Mailing Address

Home Phone Number (including area code)


11/24/21, 12:21 PM

Prosecutor's Office - State v. Blake

Mobile Phone Number (including area code)

Work Phone Number (including area code)

Your E-mail Address (for return of filed conformed orders)

Please type these letters: 

Refresh

Send Message

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GARFIELD COUNTY

Washington



COVID 19 UPDATE

State V. Blake

On February 25, 2021, in the matter of State v. Blake, the Washington State Supreme Court declared Washington's strict liability drug possession statute unconstitutional. For more information about the Blake decision visit: <https://mrsc.org/Home/Stay-Informed/MRSC-Insight/March-2021/The-Status-o...>

If you have been convicted of a drug possession criminal charge in Garfield County and wish to inquire about your case due to the State v Blake decision, please contact the Garfield County Prosecutor's Office. While the Prosecutor cannot give you legal advice, he will attempt to identify whether your case has been affected. If you are entitled to relief, the Prosecutor can help determine a course of action.

Garfield County Prosecutor

(509) 843-3082

Fax: (509) 843-2337

prosecutor@co.garfield.wa.us

PO Box 820, Pomeroy, WA 99347

DISTRICT COURT

Contact Information

Judge: Thomas W. Cox

Clerk: M. Katie Magill

Deputy Clerk: Lisbeth Randall

Phone: 509-843-1002

Mailing Address: P.O. Box 817 Pomeroy, WA 99347

Physical Address: 789 W. Main Street Pomeroy, WA 99347

Office Hours: Monday through Friday; 8:30 A.M. – 5:00 P.M. (Closed from 12:00–1:00 for lunch)

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789 W. Main St. | Pomeroy, WA 99347



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a municode design

State v. Blake

Vacating Drug Possession Convictions

State v. Blake

Anyone convicted and sentenced in Washington for possessing controlled substances (illegal drugs) is entitled to have that conviction cleared from their record. The Washington Supreme Court's recent opinion in State v. Blake, Cause No. 96873-0 (Feb. 25, 2021), held that RCW 69.50.4013 and its predecessor statutes (collectively "RCW 69.50.4013" or "simple possession") are unconstitutional.

If you have been convicted of drug possession, you may be entitled to a vacation of your conviction and remissions of any legal fines you have paid. While those with pending cases or are under sentence are the current priority, our attention will turn to those persons in the community whose records need clearing.

If you were sentenced in Grant County, please feel free to call our office to consider if you have a conviction that you are entitled to have vacated. Also, if you were sentenced for other felonies in Grant County, are currently under that sentence and had possession of controlled substances in your history, you can call to see if you might benefit from resentencing with a lower criminal history score.

You can call (509)-754-6027. Let the staff know you would like a Blake consultation.

 Government Websites by CivicPlus®

FAQ

How do I vacate my possession of Controlled Substance conviction or (Blake Issue)

The Washington State Supreme Court ruling in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021) issued February 25, 2021, declared the current Possession of a Controlled Substance law unconstitutional. The decision has great impact on many citizens. However, the resolution will take time to implement.

Grays Harbor County has set a prioritization process to resolve those incarcerated facing release. If one has a conviction for Possession of a Controlled Substance, it may be removed from the criminal history record. The removal may result in an adjustment to a sentence for a crime based on a revised offender score; removal of a felony from criminal history and /or a challenge to any criminal charge predicated upon the initial conviction.

If you believe you are entitled to relief under the *Blake* decision, and if you are indigent and unable to afford your own counsel, provide the following information by

Mail: Department of Public Defense

100 W. Broadway # 1, Montesano, WA 98563

OR email: publicdefense@co.grays-harbor.wa.us

Blake Request

NAME:



PHONE:


ADDRESS:

E-MAIL:

CASE NUMBER(s):

SB 6164 Update Resentencing



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Public Defense

The Office of Public Defense represents Island County's interest and responsibility when providing attorney representation to indigent persons charged with a criminal or dependency action. The staff of the Office of Public Defense / GSA are not attorneys and will not give legal advice. You must meet certain financial guidelines to qualify for a Public Defender. If you qualify for a Public Defender, an attorney will be appointed to represent you for your current case in Superior, Juvenile or District Court.

A financial interview is required to see if you are eligible for a public defender. These interviews -- also called financial screenings -- can take place over the phone. **To screen, call 360-679-7326.** Interviewers are available by phone from **8 a.m. to 3:30 p.m. Monday to Friday.**

You should gather the following items before you call:

- Your criminal citation, notice and summons and paperwork that you receive from the court which contains your charge(s), case number(s) and court dates;
- Current pay stubs; unemployment, retirement income, pension income or Labor and Industries income; if married also spouse's income information.
- If you are unemployed, you must provide information about whoever is providing you with shelter, food, transportation, or other support.
- Any public assistance you receive (food stamps award letter, financial assistance award letter, current month's medical coupon, etc.);
- Bank account information (it is easiest to get this from a teller at your bank or online);
- Child support or court ordered fines that you pay or should pay.

11/24/21, 2:31 PM

General Services Administration Public Defense

You MUST re-apply for public defense representation each time that you are charged with a new criminal offense or violation and if you're Public Defender withdraws from your case because a warrant is issued and you get a new court date.

PETITIONING FOR INDIGENT DEFENSE IN RESPONSE TO BLAKE V. WASHINGTON DECISION

Persons seeking representation in Island County for post-conviction appeals in response to the recent Washington State Supreme Court decision in Blake v. State of Washington must put their request in writing and mail to:

Island County Office of Public Defense
Blake Representation
PO Box 5000
Coupeville, WA 98239

Petitioners must include:

- Full name
- Birthdate
- Case/Cause Number
- Charges
- Contact information, including:
 - Telephone
 - Email Address
 - Mailing Address

Petitions and Petitioners deemed eligible for representation at public expense will be assigned appropriate counsel in the order they are received.

Island County

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Main Offices

Whidbey Office
1 NE 7th Street
Coupeville, WA 98239

Camano Office
121 N East Camano Dr
Camano Island, WA 98282

Mailing Address
PO Box 5000
Coupeville, WA 98239

Helpful Numbers

Main Line: (360) 678-5111
Sheriff: (360) 679-7310

Juror Recordings
Superior Court: (800) 254-2755
District Court: (800) 946-9765

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Blake Motions

How to obtain a vacation of a simple drug possession felony conviction under *State v. Blake*

The Washington Supreme Court's recent opinion in *State v. Blake* 197 Wn.2d 17 (2021), held that RCW 69.50.4013 and its predecessor statutes (collectively "RCW 69.50.4013" or "simple possession") are unconstitutional. This has resulted in an unprecedented number of post-conviction motions for relief across the state. If you qualify under *State v. Blake*, the Jefferson County Prosecuting Attorney's office will file a motion to vacate your simple possession conviction.

Please send us an email stating that you would like your simple possession conviction vacated under *State v. Blake*. **Send requests to:**
blake_motions@co.jefferson.wa.us

In the subject line of your email please include:

1. The case name and cause number;
2. Whether the request is for re-sentencing or dismissal;
3. And—please indicate "urgent" if release from custody or community custody is immediate.


Please be aware:

We are working to get through all contacts about vacations under *State v. Blake*, so, please do not expect immediate response.

We cannot provide you with any legal advice. If you need legal advice, please contact your attorney or contact Jefferson Associated Counsel to ask for an attorney. Due to the complex legal nature of the re-sentencing requests, we cannot respond to pro-se requests for resentencing at this time.

If you want to seek appointment of counsel for State v. Blake related issues please visit the Jefferson Associated Counsel website for more information:
<https://jacdefender.org/>

If you are a victim of a case affected by the State v. Blake decision and have further questions, please also email us at blake_motions@co.jefferson.wa.us and let us know that you are a victim.



Kitsap County

LIVE / VISIT BUSINESS GOVERNMENT

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Do you have a Kitsap County UPCS conviction?

On February 25, 2021, in *State v. Blake*, the Washington Supreme Court held that RCW 69.50.4013(1), the Unlawful Possession of a Controlled Substance (UPCS) statute, is unconstitutional. As such, you may be eligible to have your conviction(s) vacated and/or be resentenced on your case(s). Additionally, if you are currently serving a term of community custody due to a UPCS conviction, you may be entitled to have your term of community custody stricken. Moreover, if you are currently serving a prison sentence for a non-UPCS conviction, but have a prior UPCS conviction that scored against you in your offender score, you may be entitled to resentencing with a corrected offender score calculation.

If you have been convicted of UPCS in Kitsap County and are interested in having Kitsap County Office of Public Defense move to vacate your conviction(s) and address other potential relief, please contact our office at staylor@co.kitsap.wa.us with your full name, date of birth and case number so that we may assist you. You may also write to us at **Kitsap County Office of Public Defense, 614 Division St MS 40, Port Orchard WA 98366**.

The *Blake* decision impacts thousands of cases, so we appreciate your patience as we look through all the cases and respond to everyone's requests.

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Kittitas County Superior Court

Face Coverings Required In County Facilities Starting August 23, 2021

To comply with the [Statewide Face Coverings order](#), beginning Monday, August 23, 2021, all Kittitas County employees and customers in County facilities will be required to wear a face covering when indoors, regardless of vaccination status.

TELEPHONE APPEARANCE INSTRUCTIONS

Per the Court's Emergency Local Rule dated 04.20.2020 public access will be provided for telephonic hearings by allowing the public to listen to hearings contemporaneously. To do so follow these instructions:

For hearings before The Honorable Scott R. Sparks in Department 2 call 509-933-8299 and follow instructions: Meeting ID 533. If attendances call in before the host they will sit on hold for up to 15 minutes before being disconnected. If attendees call in after the host they would enter the attendee access code 9876.

For hearings before The Honorable L. Candace Hooper in Department 1 call 509-933-8299 and follow instructions: Meeting ID 025. If attendances call in before the host they will sit on hold for up to 15 minutes before being disconnected. If attendees call in after the host they would enter the attendee access code 1234.

If you have any questions or trouble connecting to the conference call contact: Superior Court Administrator at 509-962-7533 or Superior Court Clerk at 509-962-7531

COURT ORDERS REGARDING OPERATIONS

For specific details please see [Fifth Amended Emergency Admin Order](#), [Extended and Revised Order re Dependency and Termination Cases](#), [Covid-19 Response Plan](#), and [October Extended and Revised SCT Order October, 2020](#).

Welcome to Kittitas County Superior Court. Most trials and hearings are open to the public. We encourage our citizens to become more familiar with their courts.

If you have questions regarding accessing additional information about court process and programs, please feel free to contact Court Administration.


In Washington the Superior Court is the court of general jurisdiction, meaning that the court adjudicates almost all types of controversies including adult felony crimes, civil disputes, dissolutions and family law matters, juvenile offenders, matters involving children, real property disputes, and domestic violence issues.

BLAKE

On February 25, 2021, the Washington State Supreme Court decided *State vs. Blake*, No. 968373-0, 481 P.3d 521 (2021). In that decision, the Court determined that the controlled substance offense under RCW 69.50.4013(1) [violated](#) the Constitution of the United States and the State of Washington. This decision impacts certain convictions for possession of controlled substances convictions, e.g., possession of methamphetamine, possession of heroin, etc. It does not impact the validity of convictions for drug offenses beyond simple possession (e.g., possession with intent to deliver or other controlled substances violations like manufacturing or delivery). It may however affect sentences on other offenses in which the criminal history included a simple possession conviction. If you believe you have a Kittitas County Superior Court conviction that is impacted by the Blake decision, you may file the form below with the Court Administrator at 205 W 5th Ave, Ste 210, Ellensburg, WA 98926 or via email at superiorcourt@co.kittitas.wa.us to see if you qualify for an attorney to assist you.

 [Request for Attorney form](#)

Quicklinks

 [FAX Coversheet - Working Copies](#)

[Kittitas County Superior Court Clerk's Webpage](#)

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[Juror Website](#) [↗](#)

[Court Forms](#) [↗](#)

Contact

Kittitas County Superior Court
205 W. 5th Ave., Suite 207
Ellensburg WA 98926

509-962-7533 – Court Administrator
509-962-7534 – Jury Administrator
509-962-7667 fax
superiorcourt@co.kittitas.wa.us

[Map and office location](#)
[Get driving directions](#) [↗](#)

Office Hours

Open Monday - Friday
8:30 AM - 12 PM, 1 PM - 4:30 PM
[Courthouse closures](#)

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State vs. Blake

State vs. Blake Ruling Information

Can an attorney be appointed to help me in my case?

Yes! You have the right to have counsel appointed and we strongly encourage you to have legal counsel to assist you.

If you are requesting an attorney be appointed at public expense, please complete an affidavit of indigency and attach it to your motion. [Motion to Appoint Counsel - Blake](#)

How can I find an attorney to assist me?

The following attorneys are available to assist with Blake ruling cases:

Christopher R. Lanz

PO Box 1116

White Salmon, WA 98672

509.493.2921

Lori Lynn Hector

214 W. Main St.

Goldendale, WA 98620

509.773.0149

Select Language ▼

Lewis County Prosecuting Attorney's Office



345 W. Main Street, 2nd Floor
Chehalis, WA 98532
Phone: (360) 740-1240
Fax: (360) 740-1497
TDD: (360) 740-1480

Introduction

On February 25, 2021, the Washington State Supreme Court decided *State v. Blake*, No. 968373-0. In that decision, the Court determined RCW 69.50.4013(1) violated the Constitutions of the United States and the State of Washington. In addition, when the analysis is applied to other criminal possessory charges, such an analysis would require the same result.

This decision ***does not*** impact drug offenses beyond simple possession (e.g., Possession with Intent to Deliver). In addition, if the conviction was the result of plea negotiations, the ***original charges may be reinstated and prosecuted***. Such a result may be unwanted and *may* result in a conviction for a different and/or more serious crime and additional time in custody.

If you have been convicted of a possessory drug offense the conviction(s) may *potentially* be vacated. In addition, if you have subsequent criminal history, those convictions and/or sentences may be impacted as well. If you have criminal history in Lewis County (either a conviction for a possessory drug offense or a subsequent conviction) and would like it reviewed by this Office in an expedited manner, please provide the information requested below. Otherwise, cases will be reviewed in order of conviction date and filing date beginning with the most recent cases.

Personal Information

Name *

First Name

Middle Name



Powered by Formstack [Create your own form >](#)

Last Name

Current Address *

Address Line 1

Address Line 2

City

State

ZIP Code

Email *

Date of Birth (Month/Day/Year) *



Other Names Used

Best Contact Number (Including area code)

Case Number(s) Impacted (If Known)

Signature

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I understand that by submitting this form, I am indicating that I am not currently represented by counsel and am acting *pro se* (on my own). In some circumstances, I could qualify for counsel (possibly at public expense) if I file court paperwork on my own, but I choose to use this form *pro se* to speed up the process. I understand the Lewis County Prosecutor's Office will conduct a criminal background check to cover the State of Washington and other states. I understand the Lewis County Prosecutor's Office does not represent me in this matter and is prohibited by law from providing legal advice regarding this, or any other, matter, criminal or civil.

If a non-felony possessory drug offense conviction is vacated, I understand such a result is not mandated under *State v. Blake*. As a result, the collateral benefits resulting from the vacation of the conviction may differ from the relief available in other matters.

I understand that I am not required to submit this form and can, if I choose, present matters directly to the Court either through an attorney or *pro se* (without an attorney). I further agree the Lewis County Prosecutor's Office is providing this service as a courtesy in the interests of justice and may cease to assist in the process at any stage.

Signature *



[\[clear\]](#)

Use your mouse or finger to draw your signature above

Dated *

Nov ▾	30 ▾	2021 ▾	
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Submit Form



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St v. Blake Cases (Possession of Controlled Substance charges)

The Washington State Supreme Court has ruled under *St v. Blake*, 482 P.3d 821 (2021) that cases falling under this category can have felony convictions vacated or felony re-sentencing. The cases specifically addressed under the *St v. Blake* decision are Possession of Controlled Substance charges.

If you feel you may have a case that could be affected by this latest ruling, please contact the Lincoln County Superior Court public defender designated to help with the various cases. Please contact Mr. David Hearrean, Attorney at Law. His contact information is listed:

- P.O. Box 55; Wilbur, WA 99185
- 509-324-7840 or 509-641-0080
- email: davidhearrean@gmail.com

You can also retain a private attorney who can assist you with the process to get your charge vacated and/or have you re-sentenced.

Lincoln County Superior Court will work with any and all defendants who feel they have a case that is affected by this ruling.

Any other questions or concerns, please contact the Court Administrator at 509-725-3081.

Lincoln County Superior Court

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COVID-19

Local Court Rules Proposed Changes

St V. Blake Cases (Possession Of Controlled

Substance Charges)

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Welcome to Mason County Public Defender

On February 25, 2021, the Washington State Supreme Court declared the current Possession of a Controlled Substance law unconstitutional.

If you have been convicted of the crime of Possession of a Controlled Substance, you may be entitled to have this removed from your record. That removal could include:

- An adjustment to a sentence for another crime being currently served based on a revised offender score
- A refund of fines, fees, and court costs paid for the conviction
- The removal of a felony from your criminal history
- A challenge to any criminal charge predicated upon the initial conviction, such as Unlawful Possession of a Firearm.

If you believe you are entitled to relief under the Blake decision, and if you are indigent and unable to afford your own counsel, please download and fill out the following form and bring it to the public defender's office, or e-mail it to our legal assistant, Julie Hansen, JHansen@masoncountywa.gov.

Please download the [Blake Review form here](#).

Mason County, WA

411 N 5th St
Shelton WA 98584
(360) 427-9670

Links

- [Departments / Elected Officials](#)
- [Email Us](#)
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Forms, handouts and brochures may require Adobe Acrobat Reader DC or higher to be viewed properly

ELIGIBILITY FOR RELIEF UNDER STATE V. BLAKE

On February 25, 2021, the Washington State Supreme Court in *State v. Blake* declared unconstitutional Washington's strict liability drug possession statute, which criminalized unintentional, unknowing possession of controlled substances without a prescription.

If you have been convicted in Washington State for drug possession, you may be eligible to have your conviction vacated. You may also be eligible for resentencing on other offenses if you are currently serving a sentence and your prior Washington State conviction for Possession of Controlled Substance was counted against you to increase your sentence range.

If you have questions about your eligibility for relief under *State v. Blake*, please contact Rachelle Lawson at (509) 422-9701 or (509) 322-3056.

Search the FAQs...

State v. Blake (Possession of Controlled Substance Charges)

If you have a prior conviction for possession of controlled substance, based on the Washington State Supreme Court Ruling in State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021) convictions for Possession of Controlled Substance aka Violation of Uniform Controlled Substances Act (VUCSA), were not lawful. Your conviction for that charge can be vacated.

Please contact our office for more information:

Telephone:

(360) 875-9328 ext. 2 – Rikki Thompson, Court Administrator

(360) 875-9328 ext. 3 – Emma Rose, Assistant Court Administrator

Physical & Mailing Address:

300 Memorial Drive

PO Box 67

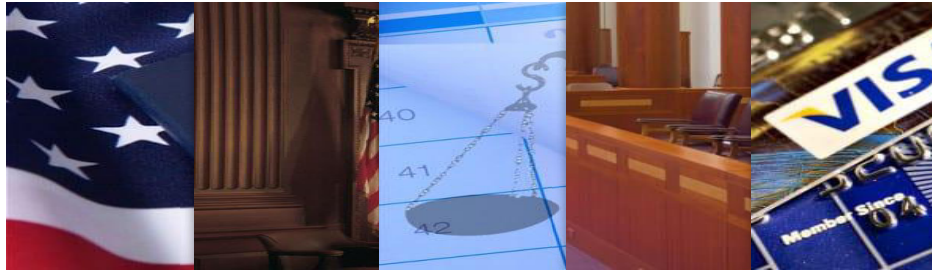
South Bend, WA 98586

Hours of Operation:

Monday - Friday 8:00 a.m. - 4:00 p.m.

Closed Saturday and Sunday

[Return to Pacific County Superior Court homepage](#)



SUPERIOR AND JUVENILE COURT

! SUPERIOR COURT CLERK'S OFFICE...ANNOUNCEMENTS!

****Superior Court Clerk's Office Hours:**

The Hall of Justice is open from 8:00am to 4:30pm, the Superior Court Clerk's Office is closed from **noon to 1pm**.

Passport processing has resumed on Monday, Tuesday and Wednesday.
Passport pictures are available for \$10.

****State v. Blake Resentencing and Vacations**

Home	Court Records & Forms	Court Calendar	Fax Filing	Protection Orders
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- If you were convicted under this statute or a preceding statute related solely to the unlawful possession of a controlled substance, you may be eligible to have your sentence for that crime vacated.
- If you were sentenced to another felony and your sentence was based on an offender score including a vacated conviction, you may be eligible for a resentencing.
- In order for your case to be addressed you must notify the court in writing. Please, contact **Van Valkenburg Law Office at 509-822-7078** for assistance.

****Superior Court Remote Hearing Information:**

If your hearing can be done remotely and you would like to appear for your hearing via zoom, you will need to use the following link:

<https://us02web.zoom.us/j/5094472435>

If you need to call in to communicate with zoom, you will need the following information:

Meeting ID: 509 447 2435

Phone into Zoom:

#833 548 0282 US Toll-free
#877 853 5257 US Toll-free
#888 475 4499 US Toll-free
#833 548 0276 US Toll-free

Mute your device until your name is called.

Online self-service options are available at the Superior Court Clerk's Office as well as continued remote services via phone, email and the mail.

Please call us if these remote options are not possible, or if you need help navigating our services:

Superior Court Clerk's Office
(509) 447-2435

Fax
(509) 447-2734

We remain committed to protecting the health and safety of our community and employees and thank you for your help.


Do you have a Pierce County UPCS conviction?

On February 25, 2021, in *State v. Blake*, the Washington Supreme Court held that RCW 69.50.4013(1), the Unlawful Possession of a Controlled Substance (UPCS) statute, is unconstitutional. As such, you may be eligible to have your conviction(s) vacated and/or be resentenced on your case(s). Additionally, if you are currently serving a term of community custody due to a UPCS conviction, you may be entitled to have your term of community custody stricken. Moreover, if you are currently serving a prison sentence for a non-UPCS conviction, but have a prior UPCS conviction that scored against you in your offender score, you may be entitled to resentencing with a corrected offender score calculation.

The Pierce County Department of Assigned Counsel can represent the following three groups of individuals with regards to obtaining *Blake* relief:

1. Individuals who are currently in-custody who are entitled to resentencing under *Blake* (meaning the individual is currently in-custody serving a prison sentence AND one of their current convictions is for UPCS, Attempted UPCS or they were sentenced with an offender score that included prior UPCS convictions or attempted UPCS convictions).
2. Individuals who are currently on community custody supervision from a UPCS conviction or Attempted UPCS conviction.
3. Individuals who were convicted of UPCS, Attempted UPCS, or Solicitation to UPCS who are seeking to vacate their *Blake*-affected conviction.

Please note that due to the significant number of individuals affected by the *Blake* decision, we are currently prioritizing those individuals who are currently in-custody and eligible to be re-sentenced. After that group is completed, we will work on individuals in the community who are eligible to have their *Blake*-affected convictions vacated.

If you fall into any of the three categories listed above and are interested in having the Department of Assigned Counsel move to vacate your conviction(s) and address other potential relief, please fill out and submit the information below so that we may assist you. You can also  mail us at

DAC_Resentencing@piercecountywa.gov or write to us at **Department of Assigned Counsel, 949 Market Street, Suite 334, Tacoma, WA 98402**



The *Blake* decision impacts thousands of cases, so we appreciate your patience as we review all cases and respond to everyone's requests.

Hello, welcome to the virtual assistant. Can I help you find the answer to your question?

Application for UPCS Conviction relief pursuant to State v. Blake

Name *

First	Last
-------	------

Address

Address Line 1

Address Line 2

City	State ▼	Zip Code
------	---------	----------

Date of Birth

	📅
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Email *

--

Phone

--

Department of Corrections Number (DOC#):

--

Currently in custody?

☐ Yes ☐ No

Submit



Government Websites by CivicPlus®



Hello, welcome to the virtual assistant. Can I help you find the answer to your question?



Vacating Drug Convictions

Do you have a conviction in San Juan County for Unlawful Possession of a Controlled Substance? On February 25, 2021, in *State v. Blake*, the Washington Supreme Court held that RCW 69.50.4013(1), the Unlawful Possession of a Controlled Substance (UPCS) statute, is unconstitutional. As such, you may be eligible to have your conviction(s) vacated and/or be resentenced on your case(s).

If you have a UPCS conviction and would like to see if you are eligible to have it vacated, contact the Public Defender at resentencing@sanjuanco.com. Please send as much information as you can, including your full name, date of birth, and case numbers, if you know them.

The *Blake* decision impacts thousands of cases, so we appreciate your patience as we look through all the cases and respond to everyone's requests.

 Government Websites by CivicPlus®



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Anyone convicted and sentenced in Washington for possessing controlled substances (illegal drugs) is entitled to have that conviction cleared from their record. The Washington Supreme Court's recent opinion in *State v. Blake*, Cause No. 96873-0 (Feb. 25, 2021), held that RCW 69.50.4013 and its predecessor statutes (collectively "RCW 69.50.4013" or "simple possession") are unconstitutional.

If you have been convicted of drug possession (a "Blake" conviction), you may be entitled to a vacation of your conviction and return of any legal fines you have paid. If you are currently serving a jail or prison sentence stemming from Skagit County that is due to a Blake conviction or enhanced by a Blake conviction or if you are out of custody but on Community Custody (supervision) by the Department of Corrections because of a Blake conviction, **please contact Skagit County's Office of Assigned Counsel to have an attorney assigned to assist you.**

Skagit County's office of Assigned Counsel contact information is as follows:

Office Hours:

8:30 a.m. - 4:30 p.m. Monday-Friday

Closed daily:

12:00 p.m. - 1:00 p.m.

[The office is closed on holidays](#)

Skagit County Court House 205 W. Kincaid, Suite #305

Mount Vernon, WA 98273

Phone: (360) 416-1690

FAX: (360) 416-1692

email: assignedcounsel@co.skagit.wa.us

If you are out of custody and not on Community Supervision but have a Blake conviction on your criminal record that you would like vacated (taken off) please contact the [Skagit County Prosecutor's office](#) directly for assistance.

Due to the COVID-19 pandemic, the offices of the Skagit County Public Defender are closed to the public.

Be assured that staff and attorneys are still working and you may communicate with them about your case via telephone, e-mail, or letter put through the pass through at the main office.

To communicate via telephone, call (360) 416-1650. The receptionist will connect you to your attorney or their assistant.

State v. Blake

STATE v. BLAKE RULING INFORMATION

In February 2021, the Supreme Court of the State of Washington declared that RCW 69.50.4013(1) was unconstitutional.

If you were convicted under this statute or a preceding statute related solely to the unlawful possession of a controlled substance, you may be eligible to have your sentence for that crime vacated.

If you were sentenced to another felony and your sentence was based on an offender score including a vacated conviction, you also may be eligible for re-sentencing.

Can an attorney be appointed to help me in my case?

Yes! You have the right to have counsel appointed and we strongly encourage you to have legal counsel to assist you.

General Instructions

For your case to be addressed by the court, you must notify the court of your request in writing. Complete a separate form for each cause number for which you are requesting relief.

**You must provide a copy of your motion to the Skamania County Prosecutor's Office before filing with the court.*

Simple Possession refers to a conviction for RCW 69.50.4013(1) from 2003 to the present, or of RCW 69.50.401(d) from 1979 to 2003, or of RCW 69.50.401(c) from 1971 to 1979.

Fill out each form completely and accurately. Failure to provide complete information may delay consideration of your petition. Criminal history information may be obtained from Washington State Patrol.

If you are requesting an attorney be appointed at public expense, please complete an affidavit of indigency and attach it to your motion. Motion-for-Counsel-Blake

If you have a cause number on which you were convicted of one or more counts of Simple Possession, and no other crimes:

Please use the form marked Motion to Vacate Conviction Pursuant to State v. Blake (Poss Only).

If you have a cause number on which you were convicted of one or more counts of Simple Possession, AND other crimes:

If you are currently in custody, please use the form marked Motion to Vacate Conviction Pursuant to State v. Blake (Resent Rqst).

Otherwise use the form marked Motion to Vacate Conviction Pursuant to State v. Blake (No Resent).

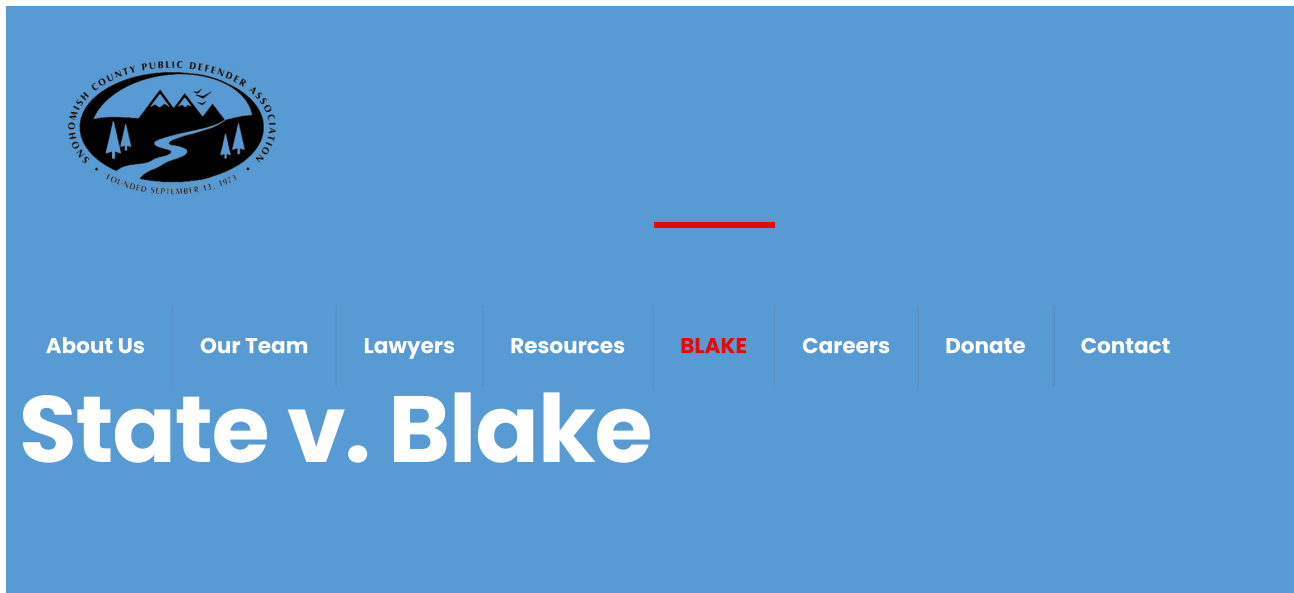
If you have a cause number on which you were convicted of crimes OTHER THAN Simple Possession, but your offender score was based on prior convictions for Simple Possession:

Please use the form marked Motion for Resentencing Pursuant to State v. Blake (Offender Score Recalculation).

How can I find an attorney to assist me?

The following attorneys are available to assist with Blake ruling cases:

Christopher Lanz	Todd Pascoe	Peter S. Banks
PO Box 1116	1104 Main St., Ste 200	PO Box 3
White Salmon, WA 98672	Vancouver, WA 98660	Stevenson, WA 98648
(509) 493-2921	(360) 696-4495	(360) 558-2676



With the decision in Blake, we are working with the county Office of Public Defense to ensure that there is a process that will ensure that all persons unconstitutionally convicted of PCS get their conviction vacated.

While we are currently attending to those persons with pending cases or are under sentence, our attention will turn to those persons in the community whose records need clearing. We hope to develop a procedure and plans for those cases soon. For now, if you know that you have an unconstitutional PCS conviction that you would like to vacate on your own, here are some documents that may assist you in the process.

[Motion-to-Vacate-DOC-with-other-felony-convictions](#) [Download](#)

[Proposed-Order-DOC-withother-felonies](#) [Download](#)

[Proposed-Order-Correcting-Offender-Score-and-for-Resentencing](#) [Download](#)

[Template-Motion-and-Order-Vacating-Dismissing](#) [Download](#)

[Motion-to-Vacate-Dismiss-Correct-Offender-Score-and-Resentence](#) [Download](#)

[Proposed-Order-Vacating-Dismissing-Correcting-Offender-Score-and-for-Resentencing](#) [Download](#)

Additionally, Civil Survival, a non-profit organization working with persons upon re-entry, has filed a class-action suit against the State, King Co., and Snohomish Co., is seeking to recoupment of Legal Financial Obligations (LFOs) paid on PCS cases. The Criminal Division of the Prosecutor's Office is not intending to address this issue at this time, so motions seeking recoupment of LFOs or modification/suspension of LFO obligations need to be separated from motions pertaining to criminal convictions impacted by Blake. Please contact Civil Survival if you have questions on how to file for LFO recoupment.

<https://civilsurvival.org/>

11/24/21, 3:17 PM

State v. Blake - Snohomish County Public Defender



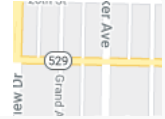
2722 Colby Avenue,
Suite 200,
Everett, WA 98201

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LinkedIn

Main Office

425-339-6300

Hours: Monday - Friday
8:00 AM - 5:00 PM
Switchboard Hours:
9:00 AM - 4:30 PM
Closed Between 12:00 PM -
1:00 PM



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Eligibility for Relief under State v. Blake

On February 25, 2021, the Washington State Supreme Court in *State v. Blake* declared unconstitutional Washington's strict liability drug possession statute, which criminalized unintentional, unknowing possession of controlled substances without a prescription.

If you have been convicted in Washington State for drug possession, you may be eligible to have your conviction vacated. You may also be eligible for resentencing on other offenses if you are currently serving a sentence and a prior Washington State conviction for Possession of Controlled Substance was counted against you to increase your sentence range.

If you have any questions about your eligibility for relief under *State v. Blake*, please call the Spokane County Public Defender's Office at 509-477-4246 and we will try to answer your questions.

-




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WASHINGTON

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State v. Blake Resentencing Contact

Posted on Sunday August 01, 2021

Resentencing Contact pursuant to State v. Blake

ATTENTION:

For information and instruction regarding resentencing in response to **STATE V. BLAKE**, contact

TIMOTHY D. TRAGESER

Attorney at Law (WSBA 18704)



Mailing Address:

505 W. Riverside Ave., Ste. 570

Spokane, WA 99201-0518

Email Address:

trageserlaw@hotmail.com

Phone Number:

(509) 252-5085

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By Design Professional Services –
Design/Engineering

Posted 11/23/2021

Statement of Qualifications

Floodplains By Design Professional Services – Communications and Outreach

Statement of Qualifications Floodplains
By Design Professional Services –
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Notice of Application

ACU-21-013

Posted 11/18/2021



CONTACT US

Stevens County Washington
215 South Oak Street
Colville, WA 99114

Phone: 866-513-2741

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Mission Statement

The Prosecuting Attorney's Office will perform its constitutional and statutory duties by serving as a highly skilled and innovative legal team advocating for public safety, seeking justice in criminal cases for victims and those accused, representing the interests of children, and providing effective legal services to Thurston County government.

If you are inquiring about dismissal, resentencing, or vacation of your case due to the State v Blake decision, please contact Thurston County Public Defense (TCPD) via email: TCPD_Blake@co.thurston.wa.us (mailto:TCPD_Blake@co.thurston.wa.us) with the subject line, Vacate My Conviction. TCPD may also be reached at (360) 754-4897 or 926 24th Way SW, Olympia, Washington, 98502.

Attorneys and those who are not represented by Thurston County Public Defense may seek dismissal, resentencing, or vacation of a case due to the State v Blake decision by sending an email to PAO_Blake_Motions@co.thurston.wa.us (mailto:PAO_Blake_Motions@co.thurston.wa.us) with the subject line, "VACATE REQUEST LAST NAME or RESENTENCE REQUEST LAST NAME." The email must include the following attachments to be processed: a completed coversheet ([download here \(/pao/paodocuments/Blake%20Cover%20Sheet.pdf\)](/pao/paodocuments/Blake%20Cover%20Sheet.pdf)), Judgment and Sentence, Statement of Defendant on Plea of Guilty, and Prosecutor Statement of Criminal History and Score Sheets.

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Wahkiakum County Superior Court

PLEASE CLICK THE FOLLOWING LINKS TO VIEW THE ORDER OPENING THE COURT AND THE COURT CALENDER:

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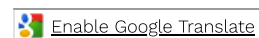
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State vs. Blake (Possession of Controlled Substance Charges)

If you have a prior conviction for possession of controlled substance, based on the Washington State Supreme Court Ruling in State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021) convictions for Possession of Controlled Substance aka Violation of Uniform Controlled Substances Act (VUCSA), were not lawful. Your conviction for that charge can be vacated. Please contact our office for more information.

Mission Statement

"To serve the public by administering justice and resolving disputes under the law, thereby protecting the rights and liberties guaranteed by the constitutions of the State of Washington and the United States."

Disclaimer

The information contained in this web site and its associated web pages is meant to provide legal information, not legal advice. It is our goal to provide information that will help the general public, but we cannot provide legal opinions.





Blake Relief Form

If you think you have a Walla Walla County case impacted by the **Blake** decision, please fill out the following form and someone from the Prosecuting Attorney's Office will get back to you. Prosecutors will review your case but cannot give you legal advice and do not represent you.

If you are represented by an attorney, DO NOT USE THIS FORM, instead talk to your attorney.

First Name*

Middle Name

Last Name*

Current Mailing Address

Defendant's Date of Birth*

mm/dd/yyyy



Cause Number

If you do not know the Cause Number what was the year of your conviction:

Is Defendant in Custody or on probation?

☐ Yes☐ No

Is there an active warrant

☐ Yes☐ No

Name of Contact/Requestor (If not Defendant)

Email Address

* Denotes Required field

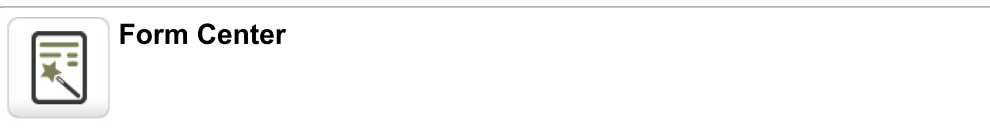
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Blake Relief Request Form

Blake Relief Request Form

On February 25, 2021, the Washington State Supreme Court decided *State v. Blake*, No. 968373-0, 481 P.3d 521 (2021). In that decision, the Court determined that the controlled substance offense under RCW 69.50.4013(1) violated the Constitutions of the United States and the State of Washington. This decision impacts certain convictions for possession of controlled substances convictions, e.g., possession of methamphetamine, possession of heroin, etc. It **does not** impact the validity of convictions for drug offenses beyond simple possession (e.g., possession with intent to deliver or other controlled substances violations like manufacturing or delivery). It may however affect *sentences* on other offenses in which the criminal history included a simple possession conviction.

If you believe you have a *Whatcom County* conviction that is impacted by the *Blake* decision, you may file the form below with our office to seek relief. Whether or not you will be entitled to some type of relief will depend on the facts of your case. In addition, if the conviction was the result of plea negotiations, the *original charges might be reinstated and prosecuted*.

Please fill provide as much of the information below so that our office can review your request in as timely a manner as possible. Please be advised that our office is receiving numerous requests for relief related to the *Blake* decision, and we are working to process them as quickly as possible, but it may take some time to respond to your request. Please also be advised, **if you are working with an attorney to process your request for relief related to the *Blake* decision, do NOT use this form, and do not contact our office directly as we are only entitled to communicate with your attorney if you are represented in this matter.**

First Name*

Select Language ▼

Last Name*

Address1*

City*

State*

Zip*

Other Means of Contact

Please provide an alternate means of contacting you: an email address and / or phone number with area code.

Date of Birth

Please enter your date of birth in the format: dd/mm/yy.

Case Number(s) which you are seeking relief on: *

If currently incarcerated; case number you are serving time on with expected release date (if known)

Signature

I understand that by submitting this form, I am indicating that I am not currently represented by counsel and am acting *pro se* (on my own). I also understand that I am not required to submit this form and can, if I choose, present matters directly to the Court either through an attorney or *pro se*. In some circumstances, I might qualify for counsel (possibly at public expense), but I am choosing to use this form instead. I understand the Whatcom County Prosecutor's Office will conduct a criminal history check if the relief sought includes resentencing. I understand the Whatcom County Prosecutor's Office does not represent me in this matter and is prohibited by law from providing legal advice regarding this, or any other, matter, criminal or civil.

I further agree the Whatcom County Prosecutor's Office is providing this service as a courtesy in the interests of justice and may cease to assist in the process at any time. If you haven't heard from us within 30 days of your having submitted this form to our office, you should contact us at WCPA-Blake@co.whatcom.wa.us.

Dated on this day*

Of (Month) *

20- (Year)

Signed*

Print Full Name*

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WHITMAN COUNTY PROSECUTING ATTORNEY

400 North Main Street - P.O. Box 30, Colfax, WA 99111-0030
voice (509) 397-6250 fax (509) 397-5659

April 27, 2021

Denis P. Tracy
Prosecuting Attorney

Dan LeBeau
Chief Deputy Prosecutor

Wendy Lierman
Senior Deputy Prosecutor

Tessa Scholl
Senior Deputy Prosecutor

Lindi Alcantar
Deputy Prosecutor

Kristina Cooper
Office Administrator and
Victim/Witness Coordinator

Open letter to those people who were convicted of Possession of Controlled Substance in Whitman County in the last 50 years:

The Washington Supreme Court recently decided the case of State v. Blake. The Court ruled that Washington's statute which made possession of a controlled substance illegal is un-constitutional and so is void.

If you were convicted of Possession of Controlled Substance, or of Conspiracy to commit that crime, or of Solicitation to Possess Controlled Substance, you are likely entitled to have that conviction vacated and have that charge dismissed from your record. Also, if you paid money to the court as a result of such conviction, such as a fine, you are likely entitled to have that money reimbursed from the State.

This office has already taken action to seek to Vacate and Dismiss many cases. If you want to know what this office's position will be regarding your prior conviction, you may fill out the Request For Contact form on our website and someone from this office will contact you.

However, keep in mind that this office cannot be your lawyer, or give you legal advice. If you have questions, you should consult your own attorney.

Sincerely,
Denis Tracy
Whitman County Prosecutor



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State v. Blake Contact form

Name*

Date of Birth*

Court Case Number (ex: 21-1-00123-38)*

Mailing Address*

Phone Number*

Email Address*

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Email address

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Blake Relief

Prosecuting Attorney's Blake Relief Request Form

Please provide as much of the information below so that the Prosecuting Attorney's Office can review your request to agree to relief in as timely a manner as possible. Please be advised that our office is receiving numerous requests for relief related to the Blake decision, and we are working to process them as quickly as possible, but it may take some time to respond to your request. Please also be advised, IF YOU ARE WORKING WITH AN ATTORNEY to process your request for relief related to the Blake decision, DO NOT USE THIS FORM, AND DO NOT CONTACT OUR OFFICE DIRECTLY. We are only entitled to communicate with your attorney if you are represented in this manner.

First Name*

Last Name*

Date of Birth*

Address*

Select Language | ▼

City*

State*

ZIP*

Email*

Phone*

Case Number(s) which you are seeking relief on: (If you are currently incarcerated; case number you are serving time on with expected release date, if known)*

Are you currently on probation/community custody?*

☐ Yes☐ No

Is there an active warrant for the UPCS case? *

☐ Yes☐ No

I understand that by submitting this form, I am indicating that I am not currently represented by counsel and am acting pro se (on my own). I also understand that I am not required to submit this form and can, if I choose, present matters directly to the Court either through an attorney or as a pro se litigant. In some circumstances, I might qualify for counsel (possibly at public expense), but I am choosing to use this form instead. I understand the Yakima County Prosecutor's Office will conduct a criminal history check if the relief sought includes resentencing. I understand the Yakima County Prosecutor's Office does not represent me in this matter and is prohibited by law from providing legal advice regarding this, or any other, matter, criminal or civil. I further agree the Yakima County Prosecutor's Office is considering my request for relief as a courtesy in the interests of justice and may require that I file a motion for relief with the court at any time. If you haven't heard from us within 30 days of your having submitted this form to our office, you should contact us at prosecuting.attorney@co.yakima.wa.us.

Signature (Typed)*

Select Language | ▼

Date of Signature*

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CERTIFICATE OF SERVICE

I, Florine Fujita, swear under penalty of perjury under the laws of the State of Washington that on November 30, 2021, I caused the preceding document to be served via the following method(s):

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<p> Lisa Daugaard Prachi Dave Corey Guilmette PUBLIC DEFENDER ASSOCIATION 110 Prefontaine Place South, Suite 502 Seattle, WA 98104 lisa.daugaard@defender.org prachi.dave@defender.org corey.guilmette@defender.org </p>	<p> <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> WA Appellate ECF </p>
<p> Paul M. Crisalli Assistant Attorney General ROBERT W. FERGUSON Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 Paul.Crisalli@atg.wa.gov </p>	<p> <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> WA Appellate ECF </p>

DATED this 30th day of November, 2021.

s/ Florine Fujita

Florine Fujita, Legal Assistant
 florinef@harriganleyh.com

HARRIGAN LEYH FARMER & THOMSEN LLP

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- paul.crisalli@atg.wa.gov
- pleadings@aclu-wa.org
- prachi.dave@defender.org
- randallt@harriganleyh.com
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OF THE STATE OF WASHINGTON**

CIVIL SURVIVAL PROJECT, et al.,

Plaintiffs/Appellants,

v.

STATE OF WASHINGTON, KING COUNTY, and
SNOHOMISH COUNTY,

Defendants/Respondents.

**BRIEF OF RESPONDENTS KING COUNTY AND
SNOHOMISH COUNTY**

Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
HARRIGAN LEYH FARMER &
THOMSEN LLP
999 Third Avenue, Suite 4400
Seattle, WA 98104
(206) 623-1700

Attorneys for King County and
Snohomish County

DANIEL T. SATTERBERG
King County Prosecuting Attorney
David J. Hackett, WSBA #21236
Senior Deputy Prosecuting Attorney
500 4th Avenue, 9th Floor

Seattle, WA 98104
(206) 477-9483

Attorneys for King County

ADAM CORNELL
Snohomish County Prosecuting
Attorney
Bridget E. Casey, WSBA #30459
Deputy Prosecuting Attorney
3000 Rockefeller Avenue, M/S 504
Everett, WA 98201
(425) 388-6330

Attorneys for Snohomish County

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I. INTRODUCTION

A civil class action before one superior court judge cannot be used to collaterally attack and undermine over 150,000 criminal judgments entered by other judges over the course of 50 years. Certainly, under *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), any person with a prior conviction for simple drug possession is entitled to vacation of that conviction and a refund of legal financial obligations (“LFOs”) previously paid. But the Hon. Michael Scott of the King County Superior Court correctly ruled that the proper mechanism for vacation and LFO refunds is CrR 7.8, not a civil class action process.

Judge Scott’s dismissal of this class action suit was compelled by the Court of Appeals’ decision in *Doe v. Fife Municipal Court*, 74 Wn. App. 444, 453–54, 874 P.2d 182 (1994), *rev. denied* 125 Wn.2d 1024 (1995), which rejected use of the civil class action mechanism to obtain a refund of court costs imposed in connection with a deferred prosecution. At

least as to civil class actions, the court held that CrRLJ 7.8 was the “exclusive mechanism” for seeking relief from a criminal judgment. *Id.* Because CrR 7.8 is substantively identical to CrRLJ 7.8, the court below was bound by *Doe* to dismiss Plaintiffs’ attempt to collaterally attack thousands of criminal judgments through use of the civil class action mechanism.

To avoid the obvious and fatal impact of *Doe* on their civil class action, Plaintiffs implore this Court to hold that *Doe* was wrongly decided and that the criminal rules allow collateral civil litigation through class actions. Appellants’ Br. at 7, 16, 17, 23, 24–31. But any plea to abandon the logic of *Doe* is untenable following this Court’s very recent decision in *Williams v. City of Spokane*, __ Wn.2d __, 2022 WL 619690, at *4 (Mar. 3, 2022). The *Williams* case addresses *Doe*’s core concern of whether a class action in one court can be used to collaterally attack and undo the judgments of other courts. Citing *Doe* with approval, this Court dismissed Mr. Williams’s putative class action because “[t]o obtain a refund of his

infraction fine, Williams must bring a motion to vacate the judgment in municipal court.” *Id.* at *6. This Court reasoned that “it is equally true here as it was in *Doe* ‘that judicial resources are employed more efficiently if the party who asserts a judgment or order as being void is first required to address its concerns to the court that issued the judgment or order.’” *Id.* at *4.

The fatal flaw with Plaintiffs’ proposed civil class action mechanism is that it leaves underlying convictions for simple possession fully intact, while depriving former criminal defendants of a 100% LFO refund. Plaintiffs openly disclaim any interest in vacating simple possession convictions. Appellants’ Br. at 30 (“Appellants do not seek systemic vacation of convictions through this lawsuit.”). Whatever common fund they generate must be divvied up between class counsel, class representatives, and class litigation expenses with only the remaining amounts returned to participating class members. This is hardly “the promise of . . . *Blake*.” *Id.* at 1.

Unlike the CrR 7.8 process that is already being followed in courts throughout the state, class members' existing convictions for simple drug possession would remain on their criminal record and they would not recover all LFOs previously paid toward their criminal sentences.

Since this Court issued its decision in *Blake*, all branches of Washington government have been working in concert utilizing the CrR 7.8 process to vacate simple possession convictions and refund LFOs. King County alone has vacated 5,040 criminal judgments so far and established a process for former defendants to claim LFO refunds in connection with these vacated convictions.¹ The Legislature recently passed, and Governor Inslee just signed, a supplemental budget that increases funding “to assist counties with costs of complying with the *State v. Blake* decision that arise from the county’s role

¹ See, e.g., <https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx?msclkid=c5d41430b52c11ecbfa339425350fd92> (last accessed April 5, 2022).

in operating the state’s criminal justice system, including resentencing, vacating prior convictions for simple drug possession, and certifying refunds of legal financial obligations and collections costs.” Laws of 2022, ch. 297 §§114(5)–(6)). The supplemental budget allocates additional monies to the Administrative Office of the Courts (AOC), a judicial branch agency, to prepare comprehensive reports of all Blake convictions in all courts dating back to 1971 and to establish a “direct refund process” based on LFO refund certifications entered in connection with vacation of the cases from the reports. *Id.* at §§ 114(5), 114(29). The total appropriation this biennium for *Blake* compliance work is over \$130 million for superior courts, district courts, municipal courts, clerks, prosecutors, defenders, and civil legal aid.

This Court should affirm the trial court’s dismissal of Appellants’ proposed class action. Per *Williams* and *Doe*, the proper mechanism for vacating prior *Blake* convictions and

refunding LFO payments is CrR 7.8, not a civil class action proceeding.

II. ISSUES PRESENTED

A. When CrR 7.8 provides the established and proper procedure for vacating a criminal judgment and refunding LFOs previously paid under that judgment, may a person instead proceed through a civil class action to obtain an LFO refund while leaving the underlying criminal judgment in place? No.

B. Is Plaintiffs' "as applied" due process challenge against CrR 7.8 justiciable when their due process claim for an LFO refund is not yet ripe due to the presence of an unvacated conviction, when Plaintiffs have never attempted the CrR 7.8 vacation and LFO refund process, and when no court has ever denied them relief? No.

C. Does the CrR 7.8 vacation and LFO refund process violate due process under *Nelson v. Colorado* merely because it requires a motion to the sentencing court? No.

D. May Plaintiffs seek declaratory relief when there is an adequate alternative legal remedy available to them via the CrR 7.8 process? No.

E. Does Plaintiff Civil Survival Project (CSP) have standing to bring claims for LFO refunds on behalf of its members when those members lack standing themselves and relief is available to them under CrR 7.8? No.

F. Does this court have “superintendence authority” outside the rulemaking process, and if so, should it exercise such authority when all branches of State government have already mobilized under CrR 7.8 to vacate simple possession convictions and refund LFO monies? No.

III. STATEMENT OF THE CASE

A. The *Blake* Decision.

On February 25, 2021, this Court voided Washington’s strict liability drug possession statute, RCW 69.50.4013, on constitutional grounds. *State v. Blake*, 197 Wn.2d at 173. Because a conviction based on a void statute is invalid, any

person with a prior conviction for simple possession is entitled to vacate that conviction. *E.g.*, *State v. LaBounty*, 17 Wn. App. 2d 576, 581, 487 P.3d 221, 223 (2021) (“A conviction based on an unconstitutional statute must be vacated.”). With the conviction vacated and the presumption of innocence restored, due process requires a refund of any penalties exacted from the defendant as part of the prior criminal judgment.

Nelson v. Colorado, __ U.S. __, 137 S. Ct. 1249, 1255, 197 L. Ed. 2d 611 (2017). On these important points, the parties agree.

B. Plaintiffs’ Premature Lawsuit.

On March 11, 2021—just two weeks after *Blake* was issued—CSP filed a lawsuit on behalf of itself, its members, and its clients in King County Superior Court against the State of Washington, King County, and Snohomish County. CP 1–8. It sought, by way of claims for unjust enrichment and declaratory relief, “to recover [LFOs] wrongfully collected, received, and retained by . . . the Defendants.” CP 2, ¶ 1.5.

Several weeks later, on March 30, 2021, Plaintiffs

transformed their complaint into a class action and added a second quasi-contractual claim (rescission). CP 9–27. When the First Amended Complaint was filed, the mandate for the *Blake* case had not yet issued. It would not issue until April 21, 2021. None of the three named plaintiffs had moved previously to vacate their prior criminal convictions and obtain a refund of previously paid LFOs under CrR 7.8.

C. Immediate Efforts Toward *Blake* Compliance.

Within days of the *Blake* decision, all branches of Washington government sprang into action to address the decision’s impact. Initial executive efforts included the cessation of arrests and prosecutions under RCW 69.50.4013. The Governor moved to commute simple possession convictions and DOC supervision for those convictions. County prosecutors, who represent the State in criminal proceedings, immediately worked to vacate the simple possession convictions of incarcerated individuals, seeking to release or resentence such individuals as appropriate. County

clerks stopped collecting LFOs assessed because of simple possession convictions. *See* Counties' Ans. to Stmt. of Grounds at 14–15.

Although *Blake* was issued deep into the 2021 legislative session, substantial efforts were made to build a framework for compliance. Toward this end, the Legislature appropriated more than \$80 million for *Blake*-related resentencing, vacation, and LFO refunds. Laws of 2021, ch. 334, §§ 115(5)–(6), 116(5), 117(8), 223(6)(d), 1221(6). Although these appropriations became available in July 2021, it took several more months for state agencies like AOC and DOC to develop procedures, implement strategies, and issue contracts to local jurisdictions performing *Blake* compliance work.

Before funding became available, courts, prosecutors, defenders, and clerks continued to process vacations, resentencings, and LFO refunds. The comprehensive and overlapping efforts of the various counties reflect differences in their size and circumstances but underscore a singular desire to

provide appropriate relief to individuals impacted by *Blake*.

For example, King County quickly instituted a multi-phase process to streamline the vacation of *Blake* convictions and refund associated LFOs. First, the King County Prosecutor and the superior court clerk's office began "compiling a list of all *Blake* eligible convictions since 1971." Ctys.' Ans. to Stmt. of Grounds at App. 88. Next, the Prosecuting Attorney's Office started filing motions on behalf of the State to vacate convictions, cancel LFO balances, initiate LFO refunds, and inform State Patrol of the vacated conviction. *Id.*

Snohomish County similarly initiated a procedure allowing individuals with simple possession convictions to expedite vacation of convictions under CrR 7.8. Ctys.' Ans. to Amici at 9.

Other counties are also working to ensure that relief is available for criminal defendants subject to *Blake*. *See* Ctys.' Ans. to Stmt. of Grounds at App. 88.

D. Dismissal of Plaintiffs' Second Amended Complaint.

Despite steady progress on *Blake* compliance, Plaintiffs filed their Second Amended Complaint on August 19, 2021. CP 28–66. The Second Amended Complaint expanded the defendants to include all 39 counties, but except for King and Snohomish County, no other county has been served.² The Second Amended Complaint also added three named plaintiffs with superior court convictions for simple drug possession to represent the putative class.³ As with the prior named plaintiffs, none of these individuals have made any attempt to vacate their prior convictions and obtain LFO refunds under CrR 7.8 following *Blake*.

The Counties filed a motion to dismiss Plaintiffs' complaint on August 27, 2021, relying on *Doe v. Fife*'s holding

² Due to this failure of service, none of the remaining 37 counties are parties to this case.

³ No class has been certified and the named plaintiffs are before this Court as individuals.

that CrR 7.8 provides the “exclusive mechanism” for pursuing a collateral civil attack on a criminal judgment. CP __ (Ctys.’ Mot. to Dismiss at 7–9).⁴ The State agreed that there was “no basis to distinguish this case from *Doe* and the cases that apply it” and under that “controlling authority,” CrR 7.8 is “the exclusive mechanism for individuals to vacate their *Blake* convictions and obtain LFO refunds.” CP ____ (State Stmt. of No Position at 7).

Judge Scott agreed with the Counties that *Doe* required dismissal of Plaintiffs’ action because CrR 7.8 “is the exclusive mechanism to obtain the remedies” Plaintiffs seek. CP 112, ¶ 1. The trial court further found the CrR 7.8 process to be “a completely adequate alternative remedy to declaratory relief” and denied Plaintiffs’ declaratory judgment claim. CP 112, ¶ 2.

⁴ The Counties filed a Supplemented Designation of Clerk’s Papers on April 6, 2022. Because page numbers have not yet been assigned, references to documents included in the supplemental designation are to “CP __” and the title of the referenced document.

Following Judge Scott's order of dismissal, Plaintiffs filed a timely notice of appeal and sought direct review by this Court. The Counties opposed direct review because this matter is controlled by established case law, namely *Doe v. Fife*.

IV. ARGUMENT

This Court reviews a trial court's grant of a motion to dismiss as a matter of law *de novo*. *Eugster v. State*, 171 Wn.2d 839, 843, 259 P.3d 146 (2011). Here, Plaintiffs' effort to avoid CrR 7.8 in favor of a civil class action fails.

A. **Because CrR 7.8 Is the Proper Mechanism for Vacating a Criminal Judgment and Obtaining LFO Refunds, Plaintiffs' Civil Class Action Fails as a Matter of Law.**

Plaintiffs' attempt to obtain LFO refunds through use of a civil class action is foreclosed by this Court's recent decision in *Williams v. Spokane*, ___ Wn.2d ___, which endorsed the reasoning of *Doe v. Fife*, 74 Wn. App. at 453–55. The *Doe* decision confirms that CrR 7.8, not a civil class action, is the proper mechanism to secure relief from a criminal judgment. *Id.* After *Doe* and *Williams*, it cannot be argued that a civil

class action filed in one court can be used to effectively overturn the criminal judgments of countless other courts.

1. *Doe and Williams Preclude Plaintiffs from Circumventing CrR 7.8 Through a Civil Class Action.*

In *Doe v. Fife*, the Court of Appeals correctly rejected the availability of a civil class action and held that CrRLJ 7.8 provides the “exclusive” means for a person to vacate a criminal order and obtain a refund of court costs imposed by that order.⁵ *Id.* In *Doe*, four plaintiffs brought separate class action suits in the superior court against various courts of limited jurisdiction seeking a refund of costs imposed by order of the criminal court as a condition of their deferred prosecutions. Each *Doe* plaintiff argued that because RCW

⁵ The *Doe* holding that CrR 7.8 is the “exclusive remedy” does not mean that a criminal defendant cannot seek relief through a Personal Restraint Petition (“PRP”) or move to vacate a conviction for rehabilitative reasons under RCW 9.94A.640 (felony) and RCW 9.96.060 (misdemeanor). *Doe*’s use of the term “exclusive” simply means that CrR 7.8 is exclusive as against a civil class action.

chapter 10.05 did not authorize the conditional imposition of court costs in deferred prosecutions, the resulting deferred prosecution orders were “void.” *Id.* at 447.

Even though the Court of Appeals agreed that portions of the criminal judgments were void, *id.* at 451, the *Doe* plaintiffs were not permitted to obtain a refund of the wrongly imposed court costs through a civil class action process. The court found that plaintiffs’ civil class action was barred because they did not avail themselves of the “exclusive remedy” of CrRLJ 7.8(b)(4). *Id.* at 451. Because this was a criminal matter and involved criminal orders, the “sole mechanism” for plaintiffs to obtain their requested relief was through the established CrRLJ 7.8 process. *Id.* at 455. That rule exists “to enable a party to obtain ‘[r]elief from judgment[s] or order[s],’ not merely convictions.” *Id.* at 452. Plaintiffs could not use the class action mechanism because “CrRLJ 7.8 fully sets out the procedure to be employed in vacating void judgments, and, thus it is not to be supplemented by CR 60” or other civil rule

mechanisms. *Id.* at 453. The court concluded that “CrRLJ 7.8 is the *sole mechanism* for a party to move to vacate a void judgment or order issued by a court of limited jurisdiction.” *Id.*

The *Doe* court found support for its conclusion that CrRLJ 7.8 is the proper remedy in “the strong policy reason that judicial resources are employed more efficiently if the party who asserts a judgment or order as being void, is first required to address its concerns to the court that issued the judgment or order.” *Id.* at 454. It rejected the *Doe* plaintiffs’ concern that the rule might prove inadequate and ineffective to provide relief to the “large numbers of people who are attempting to recoup court costs that were allegedly wrongly assessed” because the motion procedure required by CrRLJ 7.8 “is quite simple.” *Id.* at 454–55.

Given these holdings, it is obvious why Plaintiffs urge this Court to declare *Doe* “wrongly decided.” *Doe*’s reasoning is directly on point, and it amply supports the trial court’s decision to dismiss their class action. But the fatal blow to

Plaintiffs’ argument is this Court’s recent decision in *Williams*, which expressly approved of *Doe*, thereby precluding Plaintiffs’ plea to abandon this precedent.

The *Williams* decision erases any doubt that Plaintiffs with void convictions must seek relief under CrR 7.8 from the criminal court that entered judgment against them, not through a separate civil class action brought before a different court. As in *Doe*, the plaintiff in *Williams* challenged the imposition of a traffic fine against him—not by moving for relief from judgment in the municipal court that issued the notice of infraction—but by filing a class action in superior court. *Williams*, 2022 WL 619690, at *1. Applying *Doe*, this Court held that CRLJ 60(b) required Williams to “seek a refund of his fine in municipal court.” *Id.* at *4.

This Court further observed that two unpublished Court of Appeals decisions applying *Doe* in similar contexts—*i.e.*, plaintiffs seeking damages, restitution, and declaratory relief by way of collateral class actions rather than bringing motions for

relief from judgment in their underlying cases—had properly relied on *Doe* to preclude the precise type of independent action Plaintiffs press in this case. *Id.* at *3–*4, *discussing Boone v. Seattle*, No. 76611-2-I, 2018 WL 3344743 (Wn. App. July 9, 2021) (unpublished) (dismissing class action seeking declaratory and monetary relief from traffic infraction incurred due to purportedly deficient signage in school zone), and *Karl v. Bremerton*, No. 50228-3-II, 2019 WL 720834 (unpublished) (Wn. App. Feb. 20, 2019) (dismissing civil damages claim arising out of fine imposed for traffic infraction).

In *Williams*, this Court agreed with *Doe* that a person seeking to escape the effects of a prior judgment must apply to the court that entered that judgment rather than seek collateral relief in a civil class action proceeding. This Court emphasized, “it is equally true here as it was in *Doe* ‘that judicial resources are employed more efficiently if the party who asserts a judgment or order as being void is first required to address its concerns to the court that issued the judgment or order.’”

__Wn.2d__, 2022 WL 619690, at *4.

The logic of *Doe* and *Williams* applies with equal force to this case, where Plaintiffs launched a collateral civil attack against the judgments of countless criminal courts through a class action filed before one superior court. CrR 7.8 simply does not allow this approach.

2. CrR 7.8 Cannot Be Supplanted by the Civil Class Action Mechanism.

The result in *Williams* and *Doe*—that civil class actions in one court cannot be used to usurp the judgments of other courts—is unsurprising. Especially in the criminal law context, civil mechanisms like class actions have no operation in the face of controlling criminal rules. The criminal rules are expressly intended to govern procedure in criminal cases, while application of the civil rules is limited to civil cases. *See* CrR 1 (“These rules govern the procedure . . . in all criminal proceedings . . .”); CR 1 (“These rules govern the procedure . . . in all suits of a civil nature”). “[T]he civil rules by their very

terms apply only to civil cases.” *State v. Gonzalez*, 110 Wn.2d 738, 744, 757 P.2d 925 (1988).

Through their class action, Plaintiffs seek to force a refund of LFOs that were imposed and collected as part of a criminal judgment. Legal financial obligations are part of the criminal sentence entered by the court. *See* RCW 9.94A.760(1) (“Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence.”). A criminal judgment specifies the terms of the sentence, including the amount of LFOs imposed. CrR 7.3. Because LFOs are part of the criminal judgment, any subsequent action seeking a refund of LFOs necessarily impacts the criminal matter and the jurisdiction of the court that entered the criminal judgment.

In these circumstances, CrR 7.8 provides comprehensive relief allowing convicted persons to seek vacation or modification of the criminal judgments entered against them. *See State v. Waller*, 197 Wn.2d 218, 226, 481 P.3d 515 (2021)

(“CrR 7.8 allows parties in a criminal case to move for ‘relief from [a] judgment or order.’”); *State v. Florencio*, 88 Wn. App. 254, 258, 945 P.2d 228 (1997) (“A court has jurisdiction under CrR 7.8 to correct an erroneous sentence.”). Under the rule, vacation or modification includes vacation of the conviction or sentence. *Waller*, 197 Wn.2d at 226. A convicted person is permitted to make an application “by motion stating the grounds upon which relief is asked.” CrR 7.8. Among the specified grounds for relief from judgment is that the “judgment is void.” CrR 7.8(b)(4). There is no time limit to vacate a void judgment. *Id.*; *see also* RCW 10.73.100(2) (no time bar when statute is void). Thus, there is no doubt that CrR 7.8 offers available relief for any person with a criminal judgment for a *Blake* crime.⁶

⁶ Through amendments adopted December 28, 2021, this Court added language to CrR 7.8(c)(2) that required relief for persons serving a sentence for a conviction under a statute determined to be void, invalid, or unconstitutional by the . . . Washington Supreme Court.” This amendment was proposed specifically to account for the impact of the *Blake* decision.

Because CrR 7.8 offers comprehensive relief for the vacation or modification of a criminal judgment, there is no room for application or use of the civil class action rules. Application of the civil rules is inappropriate when an existing criminal rule speaks directly to an issue. *See, e.g., State v. Pawlyk*, 115 Wn.2d 457, 476, 800 P.2d 338 (1990) (civil rules do not apply when criminal rules specifically address the situation); *Doe v. Fife Mun. Ct.*, 74 Wn. App. 444, 453, 874 P.2d 182 (1994) (detailed criminal rules “need not be supplemented by civil rules”). Here, CrR 7.8 clearly applies to criminal cases and judgments and should not be “supplemented” by Civil Rule 60(c) or any class action mechanism.

3. Plaintiffs Offer No Compelling Reason to Depart from *Doe* or *Williams*.

Plaintiffs’ argument that this Court should go back to the language of CrR 7.8 and interpret it anew raises several problems. First, the *Doe* decision already interprets CrRLJ 7.8,

which is a nearly verbatim analogue of CrR 7.8, to preclude collateral civil class action attacks. Especially given this Court’s approval of *Doe* in *Williams*, there is no need to redo that analysis. The text of CrRLJ 7.8 is identical to the text of CrR 7.8 in all relevant respects; Plaintiffs point to no material differences in language.⁷ As in *State v. Waller*, 197 Wn.2d 218, 225, 481 P.3d 515 (2021), “there’s just not that much to interpret here.”

Second, Plaintiffs completely miss the issue. The question is not whether CrR 7.8 is the “exclusive mechanism” to other criminal law mechanisms like PRPs, but whether it is exclusive to the civil class action procedure.⁸ Plaintiffs in *Doe* attempted to avoid CrRLJ 7.8 by filing a civil class action. The

⁷ To the extent Plaintiffs seek LFO refunds from the district courts, CrRLJ 7.8 has direct application to their claims.

⁸ The *Doe* court nowhere suggests that CrR 7.8 precludes other statutory avenues of pursuing relief from the effects of a criminal judgment, such as RCW 9.94A.640 or RCW 9.96.060. Plaintiffs’ claim that *Doe* conflicts with other criminal vacation processes is a red herring. See Appellants’ Br. at 22.

holding of *Doe* must be understood in light of those facts: a CrRLJ 7.8 or CrR 7.8 motion, not a civil class action, is the “exclusive mechanism” for challenging criminal judgments. The *Williams* reasoning, which similarly rejects the use of a civil class action in superior court to collaterally attack a different court’s judgment, is consistent with this notion.

Even if this Court were to consider the language of CrR 7.8 without regard to the applicable case law, it should still reach the necessary conclusion that CrR 7.8—not a civil class action in a different court—provides the appropriate mechanism for challenging a criminal judgment. Like the rule analyzed in *Williams*, CrR 7.8 “does not refer to ‘a’ court or ‘any’ court; it refers to ‘the’ court, that is, the court that issued the underlying judgment.” 2022 WL 619690, at *3. *See* CrR 7.8(b) (“On motion and upon such terms as are just, the court may relieve a party . . .”).

As noted above, civil rules apply to civil cases, not criminal cases. *Pawlyk*, 115 Wn.2d at 476. A criminal rule that

“sets out the exact obligations” with sufficient detail suggests “that no further supplementation should be sought from the civil rules.” *Gonzalez*, 110 Wn.2d at 744. Because CrR 7.8 is both detailed and comprehensive, it leaves no room for supplementation by a civil class action process. Moreover, unlike CR 60(c), CrR 7.8 contains no provision allowing “a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.” By itself, this difference is sufficient to preclude Plaintiffs’ effort to overlay the criminal rules with a civil class action mechanism. Because CrR 7.8 is both detailed and comprehensive, it leaves no room for supplementation by a civil class action process.

Plaintiffs’ claim that the *Doe* and *Williams* analysis conflicts with *Orwick v. City of Seattle*, 103 Wn.2d 249, 692 P.2d 793 (1984), misreads the facts of that case. *Orwick* is inapposite. The proposed class action in *Orwick* sought injunctive and declaratory relief to stop an ongoing constitutional violation related to traffic infractions. *Id.* at 250–

51. The individually named plaintiffs also sought damages for malicious prosecution because their infractions had been dismissed. *Id.* Unlike the current matter, there was no effort to use the class action mechanism to collaterally attack a judgment entered by another court—no such judgments existed because “all three traffic citations were dismissed before a hearing was held.” *Id.* at 250. Indeed, this Court stated “[t]his case is not before the court as a class action and we express no opinion as to the merits of the class claims” because plaintiffs did not seek review of the trial court’s denial of class certification. *Id.* at 254. Moreover, because the prior judgments had already been dismissed, *Orwick* did not involve consideration of CrR 7.8 (or similar) and whether a class action could supplant a vacation rule. In short, *Orwick* is irrelevant to the current case.⁹

⁹ Notably, Plaintiffs make no malicious prosecution claims, nor could they. At the time of their convictions, Washington’s simple possession laws were in full effect and were not declared unconstitutional until the *Blake* decision. It is well established that “malice and want of probable cause constitute the gist of a malicious prosecution action.” *Clark v. Baines*, 150 Wn.2d

What Plaintiffs ultimately seek in this action is an *en masse* refund of LFOs for putative class members while sidestepping the need to vacate or modify their underlying criminal judgments under CrR 7.8. Until it is vacated, the criminal judgment memorializes each plaintiff's conviction for simple possession and the accompanying sentence, including the amount of LFOs paid. The authority for this criminal judgment is the signature of a local judge wielding the full judicial authority of the State of Washington under Article IV of the Washington Constitution. The criminal judgment itself and the record of LFO payments pursuant to that judgment exist in the public court records of the sentencing court.¹⁰

Although vacating criminal judgments and refunding LFOs under CrR 7.8 requires a sustained effort, it affords

905, 912, 84 P.3d 245, 249 (2004). There is no possible malice when a prosecution is based on then-current statutory law.

¹⁰ The court clerk, pursuant to RCW 2.32.050, maintains the record of all LFO payments made pursuant to the criminal judgment. This record is resident in the local court file.

proper respect to the courts and judicial officers that entered those judgments. The CrR 7.8 process also ensures that court records around the State are properly corrected to conform with *Blake* by vacating criminal convictions, zeroing out any LFO balances, and refunding LFOs previously paid.¹¹ It is both contrary to CrR 7.8 and inconceivable that a single department of the King County Superior Court—acting under the authority of Plaintiffs’ *civil* class action—could somehow vitiate over 150,000 *criminal* judgments under the jurisdiction of superior and district courts from around the state, especially without any physical modifications to those criminal judgments or the court files containing them. Because CrR 7.8 controls and civil class actions are an inappropriate method to modify or vacate a criminal judgment, this Court should affirm the trial court’s order of dismissal.

¹¹ Vacation of convictions, not just a refund of LFOs, could also have important immigration consequences.

B. Plaintiffs' Due Process Challenge Fails as A Matter of Law.

Although CrR 7.8 is readily available to vacate Plaintiffs' prior criminal judgments and provide a refund of any LFOs paid pursuant to those judgments, they claim that making a simple motion under the rule somehow violates procedural due process. Plaintiffs' claims are neither justiciable, nor legally colorable.

1. Plaintiffs' Due Process Claims are Not Properly Before This Court.

a. Plaintiffs' Have No Ripe Due Process Claims to an LFO Refund Until Their Underlying *Blake* Offense Has Been Vacated.

Plaintiffs are emphatic that they “*do not seek* systemic vacation of convictions through this lawsuit” and that “vacation is not [a] condition precedent for *any* of Appellants' causes of action.” Appellants' Br. at 30, 31 (emphases supplied). They make this admission to downplay the impossibility of using the civil class action mechanism to vacate criminal convictions entered by numerous courts in other jurisdictions. As a matter

of law, however, any claim for an LFO refund based in due process is not ripe until the underlying conviction for simple possession has been vacated. This is the inescapable flaw of their preferred class action approach and another reason why CrR 7.8 is the proper and necessary avenue for full relief.

Nelson v. Colorado establishes a due process obligation to refund LFOs after a conviction is reversed or vacated without the possibility of a re-trial. In *Nelson*, “the sole legal basis” for LFO payments was the fact of conviction and “[a]bsent those convictions, Colorado would have no legal right to exact and retain petitioners’ funds.” 137 S. Ct. at 1253. After petitioners’ convictions were invalidated on direct appeal, they filed simple motions in their criminal cases seeking a refund of LFOs paid pursuant to those convictions, a procedure upheld by the intermediate state appellate courts.¹² *Id.* The Colorado

¹² The Colorado Court of Appeals had found that a simple motion in the criminal court was appropriate and that no separate civil action was necessary. *People v. Nelson*, 2013 COA 58, ¶ 25, 369 P.3d 625, 630, *rev’d*, 2015 CO 68, ¶ 25, 362

Supreme Court, however, held that an LFO refund required a separate civil action under Colorado's Exoneration Act.

Similar to Washington's wrongful conviction statute, chapter 4.100 RCW, the Colorado Exoneration Act establishes the substantial burden that "a defendant must prove her innocence by clear and convincing evidence to obtain the refund of costs, fees, and restitution paid pursuant to an invalid conviction." *Id.* at 1255.

The procedural due process issue before the U.S.

Supreme Court "concern[ed] the continuing deprivation of property *after a conviction ha[d] been reversed or vacated*,

P.3d 1070, *rev'd and remanded sub nom. Nelson v. Colorado*, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017); *People v. Madden*, 2013 COA 56, ¶ 1, 399 P.3d 706, 707, *rev'd*, 2015 CO 69, ¶ 1, 364 P.3d 866, *rev'd and remanded sub nom. Nelson v. Colorado*, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017). Similar to this Court in *Williams*, the Colorado Court of Appeals concluded that "judicial economy will better be served by allowing the matter of the restitution, fees, and costs to be resolved in the criminal proceeding by the court that tried the case, even if the criminal case has been concluded." 369 P.3d at 630.

with no prospect of reprosecution,” id., specifically whether the high burdens imposed by the Colorado Exoneration Act satisfied the familiar *Mathews v. Eldridge*, 424 U.S. 319 (1976), procedural due process inquiry.

The Court held that the heightened showing required by the Exoneration Act, as opposed to a simple motion in the underlying criminal case based on reversal of the conviction alone, violated procedural due process. *Nelson*, 137 S. Ct. at 1252. Once petitioners’ “convictions were erased, the presumption of their innocence was restored.” *Id.* As a result, Colorado could not “retain funds taken from [petitioners] solely because of their now-invalidated convictions . . . for Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions.” *Id.* at 1256. With the presumption of innocence restored by “a conviction subsequently invalidated,” *id.* at 1258, the risk of erroneous deprivation by requiring petitioners to offer “proof of innocence by clear and convincing evidence” was simply too high and “to

get their money back, defendants should not be saddled with any proof burden.” *Id.* Certainly, Colorado had “no interest in withholding from Nelson and Madden money to which the State currently has zero claim of right.” *Id.* at 1257.

Although this Court held in *Blake* that Washington’s simple possession statute was void, a defendant is still required to vacate their prior conviction under CrR 7.8 to obtain the full benefit of the *Blake* decision. Indeed, even after declaring the statute void, this Court took the additional step to “vacate Blake’s conviction.”¹³ *Blake*, 197 Wn.2d at 195. The practical effect of vacating a conviction is to set aside the prior criminal judgment, including provisions requiring payment of LFOs, and restore the person’s presumption of innocence. Proper vacation

¹³ The necessary and practical effect is to memorialize the effect of this Court’s decision in Ms. Blake’s superior court case file. With issuance of the mandate, a copy of the decision is placed in the case file to indicate that the criminal judgment has been reversed and the conviction vacated. *See* RAP 12.5 (mandate). If Ms. Blake had paid any LFOs pending appeal, this Court’s vacation order gives her the right to obtain a refund of those LFOs by filing a simple motion in her criminal case.

may also have substantial repercussions under immigration law. Once this necessary step is completed, due process both allows and requires a refund of LFOs previously paid under the cause number without any further showing.

Here, Plaintiffs’ due process challenges to the simple motion procedures of CrR 7.8 are not yet ripe because they have skipped the step of vacating their prior convictions. Quite simply, the due process holding of *Nelson v. Colorado* “applies only to convictions that are reversed or vacated.” *United States v. Daugerdas*, 521 F. Supp. 3d 320, 328 (S.D.N.Y. 2021), *aff’d*, No. 21-605, 2022 WL 274226 (2d Cir. Jan. 31, 2022). *Accord Commonwealth v. Nieves*, 486 Mass. 1006, 1007, 155 N.E.3d 719, 721 (2020) (*Nelson* applies only where a conviction has been set aside); *United States v. Brooks*, 872 F.3d 78, 89 (2d Cir. 2017) (“The statutory predicate for restitution . . . is a conviction, and once that conviction has been vacated—even by abatement upon the death of the defendant—there is no longer a basis to require payment of restitution.”).

Because Plaintiffs have not taken the necessary step of vacating their underlying convictions—relief which is readily available under CrR 7.8—this Court should hold that their due process challenges to CrR 7.8 are not justiciable.¹⁴

b. This Court Should Decline Plaintiffs’ “As Applied” Challenge to CrR 7.8 Because They Have Never Sought Relief Using this Procedure, Nor Experienced a Concrete Harm from the Denial of Relief.

Plaintiffs argue that it would violate procedural due process under *Mathews* to deem CrR 7.8 the proper mechanism to obtain full refunds of LFOs paid in connection with their criminal judgments. Appellants’ Br. at 35. They make no argument that CrR 7.8 is facially invalid, nor could they.¹⁵

¹⁴ This Court may affirm the superior court on any grounds supported by the record. *LK Operating, LLC v. Collection Grp., LLC*, 181 Wash. 2d 48, 73, 331 P.3d 1147, 1157 (2014). Moreover, questions of ripeness implicate jurisdiction. Under RAP 2.5(a), a party may raise questions of jurisdiction at any time.

¹⁵ To wage a successful *facial* challenge against a statute or rule, a person must establish that “no set of circumstances exist[] in which” the rule “can be constitutionally applied.”

Instead, they argue that CrR 7.8 “violates due process and is unconstitutional as applied here.” *Id.* at 3. But Plaintiffs lack standing to raise an as-applied challenge to CrR 7.8 because none of them has attempted to obtain relief under the rule, much less experienced constitutional harm through a denial of relief.

Outside the First Amendment context, a “party may challenge the constitutionality of a statute only as applied to the party, and may not challenge it on the ground that the statute might be unconstitutional as applied to someone else.” *Guard v. Jackson*, 132 Wn.2d 660, 665, 940 P.2d 642 (1997) (citations omitted). This rule exists because parties who have not availed themselves of the challenged procedure lack the “concrete”

City of Redmond v. Moore, 151 Wn.2d 664, 669, 91 P.3d 875 (2004). “Facial claims are generally disfavored.” *Woods v. Seattle’s Union Gospel Mission*, 197 Wn.2d 231, 239–40, 481 P.3d 1060 (2021), *cert. denied*, ___ U.S. ___ (2022). Here, Plaintiffs have no possible facial claim against CrR 7.8, which is applied constitutionally in a wide variety of circumstances every day. Even in the *Blake* context, Plaintiffs make no argument that CrR 7.8 fails to provide relief in individual cases, nor could they, when it is being successfully utilized around the state to provide current *Blake* relief.

harm necessary to confer standing to wage a constitutional challenge. *See Preminger v. Peake*, 552 F.3d 757, 763 (9th Cir. 2008) (“[P]laintiff must identify some personal harm resulting from application of the challenged statute or regulation.”); *Savage v. Gee*, 665 F.3d 732, 741 (6th Cir. 2012) (no standing when plaintiff has suffered no “concrete harm” from the alleged violation). Thus, “[a] litigant does not have standing to challenge a statute on constitutional grounds unless the litigant is harmed by the particular feature of the statute which is claimed to be unconstitutional,” meaning “actual damage or injury” rather than “general dissatisfaction.” *Kadoranian by Peach v. Bellingham Police Dep’t*, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992) (citation omitted).

Here, Plaintiffs lack standing to challenge CrR 7.8 because none of them have tried the process, much less experienced any concrete harm from it. Although they worry that Washington’s courts will be unable to handle the high volume of vacations and LFO refunds required by *Blake*, no

Plaintiff has been denied relief under CrR 7.8. No Plaintiff has ever even experienced a delay in relief, much less a constitutionally relevant one. No Plaintiff has ever been denied a refund for LFOs previously paid. Standing for an “as applied” challenge requires a real and concrete injury, which in this case would be a court’s refusal to refund LFOs following a CrR 7.8 motion to vacate.

For the same reasons, Plaintiffs’ due process challenges to CrR 7.8 are not ripe. Indeed, “[e]ven if a deprivation becomes more likely as a result of government action, due process does not apply if an actual deprivation is contingent on a subsequent action.” *Carlisle v. Columbia Irr. Dist.*, 168 Wn.2d 555, 567-68, 229 P.3d 761 (2010). Thus, where a litigant claims that a procedure would violate the constitution, the “constitutional issue is . . . not ripe for review” until the litigant has been subject to the procedure. *Utter v. Bldg. Indus. Ass’n of Washington*, 182 Wn.2d 398, 430, 341 P.3d 953 (2015).

Plaintiffs' speculation that a CrR 7.8 system might crumble under the weight of cases or otherwise prove inadequate necessitates an actual record of failure, not a record that is merely imagined by Plaintiffs who have never tried it. Certainly, in the eight months since Plaintiffs recorded their speculations in the Second Amended Complaint, they have not proved prescient. The Legislature has appropriated over \$130 million to support *Blake* compliance efforts, including substantial sums for vacation and LFO refunds under existing law. In short, the speculative world Plaintiffs imagined has been entirely precluded by this bold and certain legislative action.

Because no Plaintiff has attempted to utilize the CrR 7.8 procedure to vacate their conviction and obtain an LFO refund, their claims that this process violates due process are not justiciable. The trial court's dismissal of this action should be affirmed. *See State v. Womble*, 858 S.E.2d 304, 319 (N.C. Ct. App. 2020) (cannot consider due process claim under *Nelson*

when defendant made no petition to return his property and “did not invoke the statutory minimum procedure”).

2. Applying for *Blake* Relief to the Sentencing Court Through a CrR 7.8 Motion Comports with Due Process.

Even if Plaintiffs have a justiciable “as applied” due process challenge to the CrR 7.8 vacation and LFO refund process, it would fail. Court rules, like statutes, are presumed constitutional and may be declared unconstitutional only if the court so determines beyond a reasonable doubt. *State v. Waldon*, 148 Wn. App. 952, 962, 202 P.3d 325 (2009). “Our traditional articulation of the standard of review in a case where the constitutionality of a statute is challenged is that a statute is presumed to be constitutional and the burden is on the party challenging the statute to prove its unconstitutionality beyond a reasonable doubt.” *Island Cty. v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998). At the very least, this standard “refers to the fact that one challenging a statute must, by argument and research, convince the court that there is no reasonable doubt

that the statute violates the constitution.” *Id.* at 147.

An “as applied” challenge to the constitutional validity of a rule or statute “is characterized by a party’s allegation that application of the statute in the specific context of the party’s actions or intended actions is unconstitutional.” *City of Seattle v. Evans*, 184 Wn.2d 856, 862, 366 P.3d 906 (2015) (emphasis added; quotation omitted). Here, Plaintiffs argue that CrR 7.8 “erroneous[ly] depriv[es]” them of their right to LFO refunds contrary to the standard articulated in *Mathews v. Eldridge*. Appellants’ Br. at 39-41.

Although Plaintiffs have never attempted to secure relief under CrR 7.8, they claim that it violates due process by requiring “more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated.” Appellants’ Br. at 36 (*quoting Nelson*, 137 S. Ct. at 1257). But Plaintiffs’ due process argument depends entirely on drawing a false equivalence between the heavy burden imposed by the Colorado Exoneration Act and the simple

motion procedure contemplated in CrR 7.8. As noted above, the Colorado Exoneration Act requires far more than a straightforward request for vacation and an LFO refund by simple motion. Plaintiffs gloss over the specifics of the Exoneration Act and quote *Nelson* out of context, but it is clear that the burden faced by the *Nelson* petitioners to obtain LFO refunds after their criminal judgments had *already* been invalidated and their presumption of innocence restored was quite substantial: “a defendant *must prove her innocence by clear and convincing evidence* to obtain the refund of costs, fees, and restitution paid pursuant to an invalid conviction.” *Id.* at 1255 (emphasis added).

Contrary to Plaintiffs’ claims, the *Nelson* decision establishes no due process rule that a court cannot require a simple motion to affect vacation and an LFO refund. To the contrary, the decisions of the Colorado Court of Appeals that were reversed by the Colorado Supreme Court and reinstated by the U.S. Supreme Court held that a simple motion in the

underlying criminal case was sufficient to refund LFOs without the need for a separate civil action under the Exoneration Act. *See People v. Nelson*, 369 P.3d at 630; *People v. Madden*, 399 P.3d at 707. If nothing else, a motion is necessary to indicate a person's desire for relief and to place the matter on the court docket. Motions do not deprive litigants of due process; *they are due process*.

The CrR 7.8 procedure is nothing like the procedure found deficient in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017). In the context of *Blake*, CrR 7.8 requires only a basic motion seeking vacation of the criminal judgment and a refund of LFOs previously paid in connection with the judgment.¹⁶ With

¹⁶ At worst, persons seeking to vacate prior *Blake* conviction and obtain LFO refunds “bear only a burden of production” to furnish the exact paperwork that Plaintiffs admit is constitutionally acceptable. *See* Appellants’ Br. at 65 n.15 (“In accord with *Nelson*,” impacted individuals should only be required “to provide *a motion with a sworn statement that the underlying conviction is invalid, and that the defendant has paid the fines and fees for which the refund is sought.*”) (emphasis added).

regard to *Blake* convictions for simple possession, the Court of Appeals has uniformly ruled that “[a] conviction based on an unconstitutional statute must be vacated.” *State v. LaBounty*, 17 Wn. App. 2d 576, 581, 487 P.3d 221 (2021); *State v. A.L.R.H.*, 500 P.3d 188, 189 (Wash. Ct. App. 2021) (same); *State v. Gouley*, 19 Wn. App. 2d 185, 205, 494 P.3d 458 (2021), *review denied*, 198 Wash. 2d 1041, 502 P.3d 854 (2022) (same). Thus, in the context of a *Blake* conviction for simple possession, a CrR 7.8 motion to vacate a criminal judgment and obtain a LFO refund represents a perfunctory effort with near-certain success.¹⁷

Plaintiffs have failed to cite a single case where a simple

¹⁷ In numerous Washington counties, the State is acting through the prosecutor under CrR 7.8 to pro-actively vacate prior criminal judgments for simple possession and refund LFOs; no motion by the defendant is required. As long as the State agrees to forego renewed charges in accord with Double Jeopardy, it “generally has the authority to move to vacate a judgment under CrR 7.8(b).” *State v. Hall*, 162 Wn.2d 901, 905, 177 P.3d 680, 682 (2008).

motion was found to violate due process under *Nelson*. To the contrary, a “motion for a refund in the same criminal case in which her convictions had been invalidated . . . provides a fair, prompt, and efficient means of resolving a defendant’s claim.” *Commonwealth v. Nieves*, 155 N.E.3d 719, 722 (Mass. 2020) (quotations omitted). *See also State v. Womble*, 858 S.E.2d 304, 319 (N.C. Ct. App. 2021) (requirement that defendant file a petition for return of property a permissible “minimal procedure” under *Nelson*). If a trial court erroneously denies a CrR 7.8 motion for vacation and LFO refund, an appeal of the trial court’s decision is sufficient under due process and *Nelson* to vindicate a defendant’s rights. *State ex rel. Davies v. Schroeder*, 153 N.E.3d 27, 29 (Ohio 2020) (appeal from denial of motion to vacate and reimburse fines is “an adequate remedy in the ordinary course of law”).¹⁸

¹⁸ Plaintiffs’ concern that CrR 7.8 cannot be used to obtain LFO refunds for persons who do not want their convictions vacated falls outside the concerns of the due process clause. As explained above, the due process rule from *Nelson* applies only

Plaintiffs’ proposed class action procedure is far more complex, complicated, and burdensome than a simple motion under CrR 7.8. It requires resolution of issues like class certification, class discovery, and attorneys’ fees. Plaintiffs do not get the automatic benefit of the 100% LFO refund that comes with vacation under CrR 7.8, because any class recovery is offset against substantial class costs and attorney fees. Ironically, it is Plaintiffs’ proposed class action mechanism, not a simple motion under CrR 7.8, that likely violates due process under *Nelson*. See generally *Bacom v. Cty. of Merced*, 136 Cal. Rptr. 14, 16 (Cal. Ct. App. 1977) (rejecting class action process

to convictions that have been reversed or vacated, not convictions that remain active. *Daugerdas*, 521 F. Supp. 3d 328. Similarly, the *Nelson* due process doctrine is unconcerned with collateral damages arising from a vacated conviction. See *United States v. Davis*, 16 F.4th 1192, 1195 (5th Cir. 2021), *cert. denied*, No. 21-1063, 2022 WL 585916 (U.S. Feb. 28, 2022) (“Davis’s interest in receiving damages for her wrongful conviction is not about the continuing deprivation of property after a conviction has been reversed. Rather, she seeks something above and beyond her existing rights.”) (quotation omitted).

for reimbursement of fines paid in connection with misdemeanor convictions set aside on constitutional grounds because “their use creates more problems than they solve”). Moreover, Plaintiffs’ proposed class action procedure is insufficient to provide the full relief envisioned by this Court in *Blake*. Convictions would remain unvacated, and class members would still be at risk from the collateral consequences of those unvacated convictions, including immigration consequences.

Plaintiffs attempt to raise further due process claims that CrR 7.8 motions will not work due to high volume. *See* Appellants’ Br. at 41 (“[A] one-off process will result in many individuals not recovering at all due to a lack of time and a lack of judicial resources, and the real prospect of courts becoming overwhelmed.”). But this Court is not required to credit Plaintiffs’ wild and conclusory allegations that *Blake* compliance under CrR 7.8 will take “4,000 years.” Appellants’ Br. at 11. Conclusory and speculative claims of a constitutional

violation are insufficient to overcome the presumption that CrR 7.8 can be applied constitutionally in the context of *Blake* relief. *See, e.g., Brown v. Zavaras*, 63 F.3d 967, 972 (10th Cir. 1996) (conclusory allegations of equal protection violation insufficient to withstand dismissal under Fed. R. Civ. P. 12(b)(6)); *Robertson v. Means*, 263 F.3d 163 (5th Cir. 2001) (vague and conclusory allegations of a constitutional violation are insufficient to avoid dismissal). Because it is likely that the State of Washington would try a different approach should the CrR 7.8 process prove problematic, the due process question need not be decided based on Plaintiffs' worries over the coming millennia. *Musselman v. Dep't of Soc. & Health Servs.*, 132 Wn. App. 841, 852, 134 P.3d 248 (2006) (Washington courts presume that officials will act in good faith).

The recent 2022 budget provisos, which were enacted into law through ESSB 5693, demonstrate that the State of Washington is working diligently toward full *Blake* compliance. Laws of 2022, ch. 297. The provisos became

effective on March 31, 2022 with Governor Inslee's signature. Under this law, the actions of courts, clerks, prosecutors, and defenders to proactively vacate *Blake* convictions and refund LFOs exceed what is required under *Nelson* and due process. Using appropriated funds, AOC is tasked with developing comprehensive statewide lists of all *Blake* convictions for all courts dating back to 1971. The appropriated sum of \$44.5 million is dedicated to the work of judges, clerks, and prosecutors for "resentencing, vacating prior convictions for simple drug possession, and certifying refunds of legal financial obligations and collections costs." § 114(6). An additional \$11 million is appropriated for associated defense costs. § 115(5). The Legislature, which is presumed to be aware of current law, is appropriating these funds for use in current CrR 7.8 efforts toward *Blake* compliance.

The budget provisos further require AOC to "[e]stablish a process to locate and notify individuals of available refunds and notify those individuals of the application process

necessary to claim the refund and issue payment from the legal financial obligation aid pool upon submission and approval of applications.” § 114(29)(b). In accord with *Nelson*, refunds are made available to “defendants whose convictions have been vacated by court order due to the *State v. Blake* ruling.” §114(6). The Legislature appropriated \$46,750,000 for LFO refunds, which is distributed by counties until AOC has implemented a centralized refund process.” *Id.* An additional \$2.85 million is appropriated for civil legal aid related to *Blake*. §116(8).

Given the ready availability of CrR 7.8 to provide full *Blake* relief by vacating convictions and refunding LFOs, as well as the Legislature’s robust funding of this process, Plaintiffs’ due process challenges can only be described as specious. This Court should affirm dismissal of Plaintiffs’ class action.

C. Plaintiffs’ Remaining Arguments Are Unavailing.

1. CrR 7.8 is an Adequate Alternative Remedy to the Declaratory and Injunctive Relief Plaintiffs Seek.

The Superior Court properly dismissed Plaintiffs’ declaratory judgment claims because “Criminal Rule 7.8 provides a completely adequate alternative remedy to declaratory relief.” CP 112, ¶ 2. By way of their declaratory judgment claims, Plaintiffs seek “return of LFOs paid,” CP 61, ¶ 8.3, a declaration that “their convictions are void and vacated,” CP 61, ¶ 8.2, a declaration they are “entitled to recover . . . LFOs,” *id.*, and a declaration that outstanding LFO debts must be canceled, *id.* In short, Plaintiffs want their convictions vacated and their LFO payments returned. However, declaratory judgment is unavailable because Plaintiffs have “an adequate legal remedy” available to them to obtain this requested relief—CrR 7.8. *Stafne v. Snohomish Cty.*, 174 Wn.2d 24, 39, 271 P.3d 868 (2012); *see also Grandmaster Sheng-Yen Lu v. King County*, 110 Wn. App. 92,

98, 38 P.3d 1040 (2002).

This Court has held that a plaintiff is not entitled to a declaration of rights regarding claims that could have been pursued through existing, alternative mechanisms. In *Stafne*, for example, the plaintiff was barred from seeking a declaration regarding the “legal consequences” of a boundary line adjustment because he “could have timely sought relief under” the appropriate statute (LUPA). 174 Wn.2d at 39. The Court of Appeals has followed suit. In *Grandmaster Sheng-Yen Lu*, the court refused to intrude upon a local jurisdiction’s land use decision by entertaining a request for declaratory relief that would effectively supplant that decision. 110 Wn. App. at 100, 105. In *Hawkins v. Empres Healthcare Management*, the court rejected plaintiff’s declaratory judgment claim because the declaration would “have [the] exact effect” of an alternative remedy—rescission. 193 Wn. App. 84, 102, 371 P.3d 84 (2016). Here, too, Plaintiffs’ declaratory judgment claim is simply a CrR 7.8 motion “under another name.” *Id.*

Moreover, Plaintiffs bear the burden of showing “the absence of the alternative remedy” and they have failed to do so. *Id.* Plaintiffs appeal to a decision of this Court permitting a declaratory action to proceed in superior court over the objection that the plaintiff was required to proceed instead through an informal hearing process. *New Cingular Wireless PCS, LLC v. Clyde Hill*, 185 Wn.2d 594, 606, 374 P.3d 151 (2016). But in *New Cingular*, the party seeking declaratory relief already had exhausted all other administrative avenues. Plaintiffs, by contrast, have declined to avail themselves of the CrR 7.8 process. *New Cingular* is thus wholly inapposite and merely reaffirms that a plaintiff who has not availed himself of existing administrative remedies is not “authorized” to end-run around those remedies and seek declaratory relief.

Plaintiffs point to the jurisdictional rule in *Orwick* as a basis for claiming they are entitled to declaratory relief. Appellants’ Br. at 57–58. *Orwick*, 103 Wn.2d at 252. Whether the superior court has jurisdiction to hear a claim for

declaratory relief is not at issue. The question is whether Plaintiffs are entitled to seek declaratory relief given the existence of CrR 7.8 as an “adequate alternative remedy” to secure vacations and LFO refunds. This is not one of the “very rare” circumstances that would “justify[] exceptional treatment” and permit a declaratory action where adequate alternative relief exists. *Grandmaster Sheng-Yen Lu*, 110 Wn. App. 92, 106; *accord Tait v. Sangamon Cty.*, 138 Ill. App. 3d 169, 171, 485 N.E.2d 558, 559 (1985) (court can refuse declaratory judgment where plaintiff “could have filed a motion to retax the costs in the criminal proceeding”).

2. Plaintiffs’ Claims for Declaratory Relief are Nonjusticiable.

Plaintiffs’ request for declaratory relief is nonjusticiable because there is no “actual, present and existing” dispute between the Counties and Plaintiffs as to the requested relief. *See League of Educ. Voters v. State*, 176 Wn.2d 808, 816, 295 P.3d 743 (2013). The Counties agree that individuals with a

prior *Blake* conviction are entitled to vacation of their criminal judgment, including cancellation of any outstanding LFO debts and refunds of LFOs previously paid. The lack of any dispute over Plaintiffs' entitlement to LFO refunds should be enough to foreclose their declaratory action. Here, Plaintiffs also have not sought to obtain LFO refunds through the CrR 7.8 process. Any question whether they will be denied that relief is thus "a matter of speculation" that cannot give rise to a justiciable controversy. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 416, 27 P.3d 1149 (2001).

Plaintiffs' final request that Washington be required to "order the [counties] to effectuate" the LFO relief they seek is similarly nonjusticiable for a separate reason. CP 61, ¶ 8.2. Plaintiffs' request seeks to declare rights affecting the relationship between the State and the Counties, not between the State or Counties and the Plaintiffs. Plaintiffs have no "genuine and opposing interest" in a declaration that would not operate on them. *Thompson v. Wilson*, 142 Wn. App. 803, 818,

175 P.3d 1149 (2008).

Plaintiffs also misunderstand the relationship between the State of Washington and its Counties. Although the Legislature has authority to direct the actions of municipalities through statutory law (subject to limitations in the Washington Constitution), there is no blanket authority for the State to direct the actions of counties by executive fiat. Further, many of the officials responsible for *Blake* compliance are outside the control of county legislative authority and act on the State's behalf "in operating the state's criminal justice system." Laws of 2022, §114(6). Operation of Washington's criminal justice system is highly decentralized. For example, central to *Blake* compliance are independently elected superior and district court judges who wield authority pursuant to Wash. Const. Art. IV, section 1.¹⁹ Similarly, the prosecutor functions as a "state

¹⁹ When performing functions for the courts, the county clerk is "by virtue of his office, clerk of the superior court," and under the direction the court when performing their duties. Wash. Const. Art. IV, sec. 26.

officer in pursuing criminal cases on behalf of the state of Washington.” Laws of 2008, ch. 309, § 1. Within the state criminal justice system, these officials exercise their own official discretion—not at the direction of state or county authorities—so Plaintiffs’ request for an order requiring “the State” to order these officials to act would not do much.

Finally, as this Court recently held in *Williams*, Plaintiffs have no standing to bring “equitable claims for declaratory [] relief” until they “first properly seek to reverse any [imposed] penalt[ies] by bringing a motion to vacate” in their criminal cases. __ Wn.2d at __, 2022 WL 619690, at *6. Until Plaintiffs seek to vacate their criminal judgments, they “cannot show an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement.” *Id.* (citations and quotations omitted). For this reason, too, Plaintiffs’ declaratory judgment claims must be dismissed as nonjusticiable.

3. The Superior Court Properly Dismissed CSP's Claims.

CSP argues that even if the claims of named putative class plaintiffs must be dismissed because they have not utilized the CrR 7.8 process, CSP's claims for relief may nonetheless proceed. Appellants' Br. at 34-35. To the extent CSP's argument is predicated on its own standing as an organizational plaintiff, this Court is not required to address that issue for the first time on appeal because the argument was not raised below in response to the County's motion to dismiss. RAP 2.5.

To seek damages on behalf of its members, CSP must satisfy three associational standing requirements. *See Wash. State Nurses Ass'n v. Comm. Health Sys., Inc.*, 196 Wn.2d 409, 416, 469 P.3d 300 (2020) (associational standing inappropriate where "the individual participation of association members" is required to resolve the claims). These standing requirements include that "neither claim asserted nor relief requested requires the participation of the organization's individual members."

Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports, 146 Wn.2d 207, 213-14, 45 P.3d 186 (2002), *amended on other grounds in Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 50 P.3d 618 (mem.) (Wash. July 18, 2002). CSP cannot meet this requirement.

The harms CSP seeks to redress are monetary in nature and therefore uniquely unsuited for a representational lawsuit. The variability in the circumstances of each criminal case at issue here render the monetary claims “peculiar” to CSP’s individual members. *Id.* For example, following vacation, CSP’s members are entitled to differing levels of refunds depending on how much they paid toward LFOs. The amount of LFOs previously paid—which range from court costs to restitution—is reflected in the local court file. Some individuals with both simple possession and other convictions in the same judgment will require an examination of their criminal judgment to determine if LFOs are attributable to a

vacated *Blake* conviction or to a non-vacated conviction.²⁰

“Associational standing is improper when . . . the fact and extent of injury would require individualized proof.” *Id.*

Nor can CSP overcome its associational standing deficiencies by relying on its declaratory judgment claim. Appellants’ Br. at 49 (referencing only the standing requirements under the Uniform Declaratory Judgment Act); *see Five Corners Family Farmers v. State*, 173 Wn.2d 296, 303-305, 268 P.3d 892 (2011); (analyzing associational standing and declaratory judgment standing requirements). For the same reasons that putative class members do not have standing to bring a declaratory judgment action without utilizing the CrR 7.8 process, CSP and its members do not have standing to bring such claims. It is difficult to imagine a

²⁰ For example, where a criminal judgment includes convictions for simple possession and felony theft, restitution ordered in connection with the non-vacated theft conviction would not be subject to refund. Other mandatory LFOs would not be refundable because the theft conviction alone would support the LFO portion of the criminal judgment.

situation where CSP could have standing to bring suit on behalf of its members, when those individuals lack standing on their own; the whole cannot exceed the sum of its parts in this situation.

It is well settled that an association only has standing “to bring suit on behalf of its members when . . . its members would otherwise have standing to bring suit in their own right.” *Hunt v. Wash. State Apple Advertising Com’n*, 432 U.S. 333, 343 (1977); *Riverview Community Grp. v. Spencer & Livingston*, 181 Wn.2d 888, 894, 337 P.3d 1076 (2014). Here, CSP has not alleged any facts to suggest it is suing on behalf of members who have availed themselves of the CrR 7.8 process. Importantly, there is no allegation that a CSP member attempted relief under CrR 7.8 and was denied either vacation or an LFO refund.²¹ Just the opposite—CSP alleges that its

²¹ Even if it were possible to make such a claim in an isolated case, such a person would have a right to appeal. *See* RAP 2.2(a)(10) (right to appeal denial of a motion to vacate judgment). The appeal itself is an adequate remedy to correct

members have “requested assistance from CSP” (rather than through the CrR 7.8 process) to alleviate the “burdens” of simple possession convictions. *See* CP 57, ¶ 5.4.1. CSP also joins with the other Plaintiffs in vehemently denying that its suit seeks vacation of convictions, even though its members would need to seek vacation to have standing to bring their declaratory judgment claims. *See Williams*, __ Wn.2d __, 2022 WL 619690, at *6. Even if CSP were to allege that some of its members might seek vacations, the mere “statistical probability that some of [CSP’s] members are threatened with concrete injury” is insufficient for standing. *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009).

Moreover, to have standing to seek declaratory relief, the act CSP seeks to challenge must “have caused injury in fact, economic or otherwise, to the party seeking standing.” *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution*,

trial court errors.

185 Wn.2d 97, 103, 369 P.3d 140 (2016). Although CSP alleges that its members have been harmed, it does not allege how CSP itself was injured due to the Counties’ actions. CSP’s standing argument, raised for the first time on appeal, is not supportable.

4. There is no Need for this Court to Exercise Its Superintendence Authority to Fashion a Novel Remedy for Effectuating *Blake* Relief.

Citing the Supreme Judicial Court of Massachusetts’ decision in *Martinez*, Plaintiffs urge this Court to exercise its “superintendence authority” to fashion a remedy other than the one afforded by CrR 7.8. Appellants’ Br. at 63. There are several problems with this proposal.

First, unlike Massachusetts, Washington does not have a unified court system. Within Washington’s system, Plaintiffs fail to cite any case where this Court has claimed a “superintendence authority” or outlined the scope of this authority; no such case exists.

This Court does have “supervisory powers over our

State’s courts,” but this authority is typically exercised through the promulgation and operation of general rules. *State v. Bennett*, 161 Wn.2d 303, 317, 165 P.3d 1241 (2007).

Rulemaking is the province of GR 9, which requires notice of proposed rule changes and consideration of the impact of those changes beyond the parties and issues on appeal. The rule-making process results in an opportunity for input from interested stakeholders and an opportunity for careful consideration. *In re Pers. Restraint of Carlstad*, 150 Wn.2d 583, 592 n. 4, 80 P.3d 587 (2003). This Court typically does not enact new general rules in the context of an individual appeal. *Id.* (“Foisting [a] rule upon courts and parties by judicial fiat could lead to unforeseen consequences.”).

Second, the Legislature also has an appropriate role in fashioning methods for *Blake* compliance, which it has exercised through the most recent budget and its provisos. Laws of 2022, ch. 297 *et seq.* It would be remarkable for this Court to exercise some heretofore unknown “superintendence

authority” to override the system of *Blake* compliance that has been funded by the Legislature, directed by legislative provisos, and implemented by various agencies and municipalities around the state. This Court has long recognized that “courts must limit their incursions into the legislative realm in deference to the separation of powers doctrine.” *Matter of Salary of Juv. Dir.*, 87 Wn.2d 232, 245, 552 P.2d 163, 170 (1976). This case presents the type of “constantly evolving” issue where this Court “must take a measured approach to each issue as it arises, giving sufficient deference to legislative judgments and ensuring that we confine our decisions to the merits of the issues presented.” *State v. Ramos*, 187 Wn.2d 420, 458, 387 P.3d 650, 670 (2017).

Finally, Plaintiffs erroneously represent that the *Martinez* court exercised its superintendence powers to fashion a specialized remedy. To the contrary, the *Martinez* court held that a motion practice within each criminal cause number, even in the context of 21,000 void judgments, 109 N.E.3d at 479,

“satisfies the due process clause of the Fourteenth Amendment,” *id.* at 477. Although the Massachusetts court hypothesized that it might consider other approaches in the future to alleviate the administrative burden faced by its courts in making LFO refunds, *id.* at 479-80, it never opted to follow this approach. *See Commonwealth v. Nieves*, 486 Mass. 1006, 1008 n.2, 155 N.E.3d 719, 722 (2020) (“As in *Commonwealth v. Martinez*, 480 Mass. 777, 797, 109 N.E.3d 459 (2018), we refrain from attempting to craft a global remedy for the refund of fines, fees, and costs in all of the cases tainted by Annie Dookhan and Sonja Farak.”).

Plaintiffs’ request for an exercise of “superintendency authority” is simply a bad idea with no support in Washington law. The legislative and executive branches are actively complying with *Blake*, in cooperation with the courts and AOC. This Court has already adopted one rule change to smooth the process and this rulemaking process remains available should further needs arise. Plaintiffs should not be able to use a single

court case to disrupt this careful, measured and considered system. It took 50 years for over 150,000 convictions to accrue under the former simple possession statute and it will take many years to fully unwind them. As a matter of comity consistent with separation of powers, this Court should grant the executive, legislative and judicial branches sufficient time to work out effective approaches to difficult problems. *See Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1836, 207 L. Ed. 2d 218 (2020) (Kavanaugh, J dissenting) (“It is true that meaningful legislative action takes time—often too much time, especially in the unwieldy morass on Capitol Hill. But the Constitution does not put the Legislative Branch in the ‘position of a television quiz show contestant so that when a given period of time has elapsed and a problem remains unsolved by them, the federal judiciary may press a buzzer and take its turn at fashioning a solution.’ Rehnquist, *The Notion of a Living Constitution*, 54 Texas L. Rev. 693, 700 (1976).”).

V. CONCLUSION

For the reasons stated above, this Court should affirm the Superior Court's order and dismiss Plaintiffs' civil class action seeking relief from judgments entered in their criminal cases.

I certify that this motion contains 11,642 words, in compliance with RAP 18.17(b).

SUBMITTED this 7th day of April, 2022.

HARRIGAN LEYH FARMER &
THOMSEN LLP

By s/ Timothy G. Leyh
Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
999 Third Avenue, Suite 4400
Seattle, WA 98104
Tel: (206) 623-1700
Fax: (206) 623-8717
Email: timl@harriganleyh.com
Email: randallt@harriganleyh.com

*Attorneys for King County and
Snohomish County*

DANIEL T. SATTERBERG
King County Prosecuting Attorney

David J. Hackett, WSBA #21236
Senior Deputy Prosecuting Attorneys
500 4th Avenue, 9th Floor
Seattle, WA 98104
Tel: (206) 477-1120
Fax: (206) 296-0191
Email: david.hackett@kingcounty.gov

Attorneys for King County

Bridget E. Casey, WSBA #30459
Deputy Prosecuting Attorney
3000 Rockefeller Avenue, M/S 504
Everett, WA 98201
Tel: (425) 388-6330
Fax: (425) 388-6333
Email: bcasey@snoco.org

Attorneys for Snohomish County

CERTIFICATE OF SERVICE

I, Florine Fujita, swear under penalty of perjury under the laws of the State of Washington that on April 7, 2022, I caused the preceding document to be served via the following method(s):

Michael C. Subit
FRANK FREED SUBIT &
THOMAS LLP
705 Second Avenue, Suite 1200
Seattle, WA 98104
msubit@frankfreed.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Adam T. Klein
Christopher M. McNerney
OUTTEN & GOLDEN LLP
685 Third Avenue
New York, NY 10017
atk@outtengolden.com
cmcnerney@outtengolden.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Mikael A. Rojas
OUTTEN & GOLDEN LLP
601 Massachusetts Ave NW,
Suite 200W
Washington, D.C. 20001
mrojas@outtengolden.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Lisa Daugaard
 Prachi Dave
 Corey Guilmette
 PUBLIC DEFENDER
 ASSOCIATION
 110 Prefontaine Place South,
 Suite 502
 Seattle, WA 98104
 lisa.daugaard@defender.org
 prachi.dave@defender.org
 corey.guilmette@defender.org

- ☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Paul M. Crisalli
 Assistant Attorney General
 ROBERT W. FERGUSON
 Attorney General
 800 Fifth Avenue, Suite 2000
 Seattle, WA 98104-3188
 Paul.Crisalli@atg.wa.gov

- ☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

DATED this 7th day of April, 2022.

s/ Florine Fujita
 Florine Fujita, Legal Assistant
 florinef@harriganleyh.com

HARRIGAN LEYH FARMER & THOMSEN LLP

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- msubit@frankfreed.com
- paul.crisalli@atg.wa.gov
- pleadings@aclu-wa.org
- prachi.dave@defender.org
- randallt@harriganleyh.com
- talner@aclu-wa.org
- tkranz@snoco.org

Comments:

Sender Name: Florine Fujita - Email: florinef@harriganleyh.com

Filing on Behalf of: Timothy George Leyh - Email: timl@harriganleyh.com (Alternate Email: florinef@harriganleyh.com)

Address:
999 Third Avenue
Suite 4400
Seattle, WA, 98104
Phone: (206) 623-1700 EXT 303

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Case No. 840151

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

CIVIL SURVIVAL PROJECT, et al.,

Plaintiffs/Appellants,

v.

**STATE OF WASHINGTON, KING COUNTY, and
SNOHOMISH COUNTY,**

Defendants/Respondents.

**ANSWER OF KING COUNTY AND SNOHOMISH
COUNTY TO BRIEFS OF *AMICUS CURIAE***

Timothy G. Leyh,
Randall T. Thomsen
HARRIGAN LEYH
FARMER &
THOMSEN LLP
999 Third Ave.
Suite 4400
Seattle, WA 98104
(206) 623-1700

Attorneys for King
County and
Snohomish County

DANIEL T.
SATTERBERG
King County
Prosecuting Attorney
David J. Hackett
Senior Deputy
Prosecuting Attorney
1191 Second Ave.
Suite 1700
Seattle, WA 98101
(206) 477-9483

Attorneys for King
County

ADAM CORNELL
Snohomish County
Prosecuting Attorney
Bridget E. Casey
Deputy Prosecuting
Attorney
3000 Rockefeller
Ave., M/S 504
Everett, WA 98201
(425) 388-6330

Attorneys for
Snohomish County

I. INTRODUCTION

*Amici*¹ misjudge the efficacy of the CrR 7.8 process.

For those seeking relief under *Blake*,² CrR 7.8 is the only mechanism that can vacate prior simple possession convictions, correct conviction records, and provide a full refund of previously paid LFOs. Plaintiffs’ proposed class action would achieve none of these goals. This Court should affirm the Superior Court’s holding that CrR 7.8—not a class action—is the proper vehicle for Plaintiffs’ claims.

II. ANSWER

A. CrR 7.8 Currently Provides *Blake* Relief in King County, Snohomish County, and Statewide.

Amici’s repetition of Plaintiffs’ claim that it will take

¹ Five *amici curiae* filed a total of three briefs in this case. The joint brief of the ACLU of Washington and the Fred T. Korematsu Center is abbreviated herein as “ACLU Brief.” The joint brief of the Center for Legal Services and the Lawyers’ Committee for Civil Rights Under Law is abbreviated herein as “CLS Brief.” The brief of the Washington Defender Association is abbreviated herein as “WDA Brief.”

² 197 Wn.2d 170, 481 P.3d 521 (2021).

“4,000 years” to address *Blake* convictions does not make it any more accurate; the statement is nonsense. *See* CLS Br. at 26.

From prior briefing, this Court is well aware of the efforts in King County, Snohomish County, and throughout the State to provide meaningful and complete *Blake* relief.³ Using the available CrR 7.8 process, King County already has vacated over 9,700 *Blake* convictions and established a refund right where available.⁴ The King County Superior Court has hired an extra Commissioner to attend to *Blake* matters. It currently is vacating around 1,500 convictions per month. A person with a *Blake* conviction is not required to take any action to obtain a vacation of his conviction with prejudice, which a prosecutor

³ Due to *Blake*, no party to this suit disagrees that prior convictions for simple drug possession are “void” for purposes of CrR 7.8 and that individual defendants are entitled to seek vacation of those convictions and a refund of any LFOs paid. *See* CrR 7.8(b)(4) (addressing void convictions).

⁴ King County also has resentenced persons with *Blake* convictions in 425 cases and dismissed 972 pending cases. The best estimate is that King County has 54,000 total *Blake* cases arising from convictions in the Superior Court.

initiates and the court enters.⁵

Each order vacates the conviction and allows the person to truthfully answer that they never have been convicted of a *Blake* offense.⁶ A copy of the order is provided to the State Patrol to correct the person's criminal history. In this way, a proper CrR 7.8 vacation order allows the person to avoid any future disabilities resulting from the vacated *Blake* order.

Although *amici* appear to endorse the necessity of a process that allows vacation, they ignore that Plaintiffs expressly disavowed that they seek vacations through their class action approach. *See* Pls.' Op. Br. at 30 ("Appellants *do not seek* systemic vacation of convictions through this lawsuit.")

⁵ A person may also request a vacation outside this process through the Department of Public Defense, through private counsel, or pro se, and their request will be considered immediately.

⁶ A copy of the form order vacating a conviction that includes only *Blake* related charges is attached as Exhibit 1 and can be found at the following link: <https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx>.

(emphasis in original).

Where a person has paid LFOs attributable to a *Blake* conviction, the form order of dismissal directs the clerk to compute the refund and initiate payment upon application from the affected person. *See* Ex. 1 at 2 (“Upon application by the defendant made to the clerk’s office, which shall include proof of identity and information necessary to process the application, the clerk shall initiate a refund of the LFO Amount to defendant on behalf of plaintiff State of Washington.”). The refund application requires only verified identification (to prevent fraud) and a current address to send payment.⁷ The clerk does not deduct any funds for administrative costs, attorneys’ fees, class expenses, or for any other reason. Instead, persons with convictions vacated under CrR 7.8 obtain a 100% refund.⁸

⁷ A copy of the *Blake* refund application is attached as Exhibit 2 and can be found at the following link:
<https://kingcounty.gov/courts/clerk/programs/blake.aspx>.

⁸ In some cases, individuals have obtained refunds by submitting the refund application described above. In the

Snohomish County has instituted a similar streamlined process, expediting vacations and refunds in *Blake* cases automatically. Snohomish County has been processing orders to vacate simple possession convictions, with the clerk reviewing such orders to “determine if a refund is owed and process the refund accordingly.”⁹ Some defendants may also complete “refund applications,” which are available on the Snohomish County website.¹⁰ The application requires the

remaining cases, the court clerk is certifying refunds for paid LFOs. Refunds will be paid upon submission of an application by a former defendant or transferred for payment by AOC when the refund bureau becomes operational. Because the collateral consequences of an unvacated conviction are of particular concern, King County is processing vacations and refunds in reverse chronological order with the most recent convictions first. For many years, King County has neither sought nor enforced LFO obligations in connection with a simple possession conviction. The more recent cases currently being processed likely involve lower LFO amounts.

⁹ See <https://snohomishcountywa.gov/6065/State-v-Blake-Refunds>.

¹⁰ See <https://www.snohomishcountywa.gov/DocumentCenter/View/100114/Blake-Refund-Application>.

defendant to input basic contact information and the case number eligible for a refund. The application also includes a link to the online case search system for those defendants who do not know their case number.¹¹

In Snohomish County, too, the *Blake* vacation and refund process is working. Snohomish County has vacated over 1,200 convictions and continues to process vacations, dismissals, and refunds. Other counties throughout the State have implemented processes similar to those used in King and Snohomish Counties. The assertion that counties are fighting “tooth and nail” to avoid addressing *Blake* is wholly unsupported and wrong.¹² CLS Br. at 2. The sheer number of vacations and

¹¹ *See id.* (“If you don’t have a case number, you can locate it two ways . . .”).

¹² Other counties have a more rigorous history of imposing and collecting LFOs for simple drug possession convictions and have accordingly issued even more LFO refunds. For example, Benton County has issued \$1.5 million in refunds due to *Blake* vacations so far. *See* <https://kuow.org/stories/washington-courts-move-to-clear-old-drug-convictions-and-refund-fines>. The average refund amount in Benton County far exceeds the

refunds already processed tells the true story. Although unwinding 50 years of convictions and LFO payments necessarily takes time, the State should easily beat the “4,000 year” mark *amici* put forth.

The statewide efforts to provide *Blake* relief under CrR 7.8 have been endorsed through legislative action, including substantial appropriations. Legislation passed shortly after *Blake* in 2021 allowed each county to add judicial officers to speed *Blake* relief. The Legislature also made substantial appropriations toward *Blake* compliance.

With increasing understanding of the issue, in Spring 2022, the Legislature passed, and the governor signed into law, an appropriations bill that allocates over \$130 million for the *Blake* compliance work to be performed by the superior, municipal, and district courts, clerks, prosecutors, defenders, and civil legal aid for the remainder of the biennium. Laws of

average in King or Snohomish Counties.

2022, ch. 297. The Legislature premised these appropriations on the assumption that the CrR 7.8 process will be utilized to effectuate *Blake* relief. There is no appropriation to address Plaintiffs’ putative class action.

The Administrative Office of the Courts (AOC) has entered into contracts with every county to perform work within the state’s criminal justice system for resentencing, vacating, and refunding LFOs under *Blake*. *See* Laws of 2022, ch. 297, §114(5) (requiring AOC to contract with counties). To facilitate this work, AOC is required to prepare comprehensive reports of all *Blake* convictions dating back to 1971. *Id.* at § 114(29)(a). The resulting lists are then used to determine which cases require *Blake* relief.

To further support existing CrR 7.8 vacation efforts throughout the state, the Legislature tasked AOC with developing a “direct refund process” for LFOs and a process to notify individuals of available refunds. *Id.* §§ 114(5), 114(29). AOC must “[e]stablish a process to locate and notify

individuals of available refunds and notify those individuals of the application process necessary to claim the refund and issue payment from the legal financial obligation aid pool upon submission and approval of applications.” *Id.* § 114(29)(b).

Toward this refund and notification effort, AOC recently hired a full-time manager. AOC also has organized a workgroup of stakeholders—including Plaintiff Civil Survival Project and individuals affiliated with *amici*—to develop the refund bureau process, which is expected to come online in July 2023.¹³

In short, *amici*’s claims of due process problems with CrR 7.8 are uninformed by the work that is already being done. Although they claim that they prefer a class action process, they ignore the obvious shortcoming of that process. More importantly, they fail to provide any colorable legal theory that would allow their preferences to override those of the

¹³ See AOC Presentation, *Municipalities and Blake Funding*, attached as Exhibit 3 and available at https://www.courts.wa.gov/appellate_trial_courts/aocwho/msd/Blake%20Webinar%205-17-22.pdf.

Legislature, which already has determined the appropriate procedural vehicle for providing *Blake* relief. *Amici* have not presented any argument that would require disturbing the sound decision of the Superior Court dismissing Plaintiffs' claims. Plaintiffs have full and complete access to constitutionally adequate process through CrR 7.8.

B. Plaintiffs' Proposed Class Action Is More Burdensome, Costly, and Inefficient Than The CrR 7.8 Process, and Fails to Provide Complete Relief.

As compared to the simple, straightforward CrR 7.8 mechanism, there is no chance that class members would obtain the full scope of relief to which they may be entitled through class litigation. First, unless class counsel intend to waive their fees, the class recovery pool necessarily will be reduced by fee payments to counsel, meaning that no class member will receive a complete refund as they would by way of the CrR 7.8 process. Second, while Plaintiffs and *amici* decry the collateral consequences of unvacated criminal judgments, *amici* ignore that the proposed class action will not yield vacations of the

underlying criminal convictions. *See* Pls.' Op. Br. at 30. Even if class members obtain some portion of their LFO refunds through Plaintiffs' class litigation, they will still need to go through the CrR 7.8 process to vacate their convictions. The class action process saves no time for courts, prosecutors or public defenders. At best, under Plaintiffs' theory, a class action strips out the refund piece, leaving vacation to proceed separately under CrR 7.8.

Moreover, the same infirmities that *amici* raise with the CrR 7.8 process exist in class action litigation, but to a greater extent. A class action requires notice to all potential class members, which may require locating individuals who may be incarcerated or homeless or no longer living. Responding to a class action notice requires navigating legal complexities and engaging in risk assessments about whether to opt in or out of the class (depending on its ultimate structure), which may be difficult for those with limited access to legal resources. These are precisely the concerns that *amici* raise with respect to CrR

7.8. *See, e.g.*, CLS Br. at 28-29; WDA Br. at 10-11; ACLU Br. at 14-15. The difference is that, as explained above, the CrR 7.8 process is happening automatically and does not require any convicted person to navigate the legal process.¹⁴ As to notice, AOC already is required to develop a process to notify individuals of their eligibility for LFO refunds. The Legislature has appropriated funds to administer that process. If Plaintiffs' litigation even reaches the class notice stage, the class notice process likely will be more burdensome and less efficient than the already available CrR 7.8 process being funded by the Legislature.

¹⁴ *Amici* allude to practices in other counties, taken on behalf of the State, that cause them concerns. However, only King and Snohomish County are directly before this court on appeal. To the extent that any former defendant takes issue with the practice of any county in vacating a *Blake* conviction or processing an appropriate refund, CrR 7.8 allows for an appeal. RAP 2.2(a)(10) (appeal from order granting or denying a motion to vacate a judgment). Any questions on the specifics of a *Blake* vacation or refund are best litigated in the context of actual facts by parties with an interest in those cases. They should not be considered in the abstract in this case.

Were it to occur and succeed, the class action process would not reduce the work necessary to provide LFO refunds. In a class action context, court clerks will need to review well over a hundred thousand cases to determine whether a person was ordered to pay LFOs, the amount of those LFOs, the amount of any collection costs, and the appropriate refund amount due by the State. Some persons may have multiple records of conviction and further analysis may be required to determine eligibility for class membership and *Blake* relief.

In addition to the county clerk, prosecutors, defenders, and judges will need to review each individual *Blake* case to determine refund eligibility in the context of a class action. For persons with convictions for both *Blake* and non-*Blake* offenses, further examination of the underlying judgment and sentence may be required to determine class eligibility. The same stakeholders who currently are reviewing court records to determine eligibility for *Blake* relief will be required to reexamine conviction records in the future to determine LFO

refund eligibility for class members.

Further compounding the difficulties of proceeding via the class action process is the fact that the vast majority of *Blake* convictions were entered by plea agreement. Invalidating those convictions merely sets aside the person's plea "without prejudice to the State's ability to refile [lawful] charges." *State v. De Rosia*, 124 Wash. App. 138, 153, 100 P.3d 331, 339 (2004). Because a refund is due under *Nelson v. Colorado*, 137 S. Ct. 1249, 1255, 197 L. Ed. 2d 611 (2017), only when a conviction has been vacated "and no further criminal process is implicated," a refund in a class action is unavailable until the local county prosecutor, on the State's behalf, determines whether to bring new charges. For example, many individuals were allowed to plead guilty to simple possession (an invalid charge under *Blake*) in order to avoid a more serious charge of delivery of a controlled substance, which remains a valid felony. Refunds are available under CrR 7.8 after the prosecutor takes this step, but a class action cannot force this

exercise of discretion via discovery or otherwise; the class action is a poorly conceived mechanism in this context.

These efforts already are underway through the CrR 7.8 process, which provides an existing procedural vehicle for addressing these individual situations within the context of each *Blake* case. To duplicate such efforts after years of class litigation is not only inefficient but wholly unnecessary considering the existence of CrR 7.8, as *Williams* and *Doe* both dictate. *Williams v. City of Spokane*, 199 Wn.2d 236, 244, 505 P.3d 91 (2022); *Doe v. Fife Mun. Court*, 74 Wn. App. 444, 874 P.2d 182 (1994).

III. CONCLUSION

The briefs of *amici* confirm that this Court should affirm the superior court's dismissal of Plaintiffs' class action. CrR 7.8 is the appropriate mechanism for obtaining vacation of simple possession convictions and refund of corresponding LFOs and already is effectuating relief for thousands of defendants. A class action will involve more complexity and

delay and would leave class members unable to receive full LFO refunds and without vacated convictions.

I certify that this response contains 2,592 words in compliance with RAP 18.17(b).

SUBMITTED this 29th day of July, 2022.

HARRIGAN LEYH FARMER &
THOMSEN LLP

By s/ Randall T. Thomsen
Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
999 Third Avenue, Suite 4400
Seattle, WA 98104
Tel: (206) 623-1700
Fax: (206) 623-8717
Email: timl@harriganleyh.com
Email: randallt@harriganleyh.com

*Attorneys for King County and
Snohomish County*

DANIEL T. SATTERBERG
King County Prosecuting Attorney

David J. Hackett, WSBA #21236
Senior Deputy Prosecuting Attorneys
1191 Second Avenue, Suite 1700
Seattle, WA 98101
Tel: (206) 477-1120
Fax: (206) 296-0191

Email: david.hackett@kingcounty.gov

Attorneys for King County

ADAM CORNELL
Snohomish County Prosecuting Attorney

Bridget E. Casey, WSBA #30459
Deputy Prosecuting Attorney
3000 Rockefeller Avenue, M/S 504
Everett, WA 98201
Tel: (425) 388-6330
Fax: (425) 388-6333
Email: bcasey@snoco.org

Attorneys for Snohomish County

EXHIBIT 1

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Defendant,

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No. _____

AGREED MOTION AND ORDER
 VACATING AND DISMISSING
 JUDGMENT AND SENTENCE FOR
 POSSESSION-ONLY OFFENSES
 PURSUANT TO STATE V. BLAKE.

CODE: ORVCD

[Clerk's Action Required]

MOTION

Defendant, represented by undersigned counsel, and the State of Washington, through the undersigned DPA, jointly move this court for an order vacating and dismissing with prejudice the judgment and sentence previously entered by the court in this cause against defendant for VUCSA simple possession (or solicitation, conspiracy, or attempt to possess). Because all of Defendant's convictions under this cause number are for VUCSA simple possession (or solicitation, conspiracy, or attempt to possess), defendant is also entitled to a refund of any legal financial obligations, fees, fines, costs, charges, collection costs, assessments, or interest on LFOs ("LFOs") paid by the defendant, and cancellation of any LFOs remaining due. This motion is brought under the authority of CrR 7.8; *State v. Blake*, 197 Wn. 2d 170, 174, 481 P.3d 521, 524 (2021); and *Nelson v. Colorado*, 137 S. Ct. 1249, 1252, 197 L. Ed. 2d 611 (2017). Following vacation, the State will not file further charges based on the operative Information under which the defendant was convicted in this cause number.

ORDER

THIS MATTER having come before the undersigned judge through the parties' agreed CrR 7.8 motion to vacate, the court finds that (1) all conviction(s) in the judgment and sentence previously entered in this cause number are limited to VUCSA simple possession offense(s) (or solicitation, conspiracy, or attempt to possess); (2) these conviction(s) are unconstitutional based on *Blake*; (3) the previous judgment and sentence is now void pursuant to *Blake*; (4) the

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Daniel T. Satterberg
 Prosecuting Attorney
 W554 King County Courthouse
 516 Third Avenue
 Seattle, Washington 98104

requirements of CrR 7.8 are satisfied under the circumstances of this case; and (5) the defendant is entitled to a refund of any LFOs previously paid in connection with this cause number as set forth below. As a result of these findings, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

VACATION. The judgment and sentence previously entered by the court in this cause number is vacated under CrR 7.8 and this case is dismissed with prejudice. The conviction(s) for VUCSA simple possession reflected in this cause number shall be considered *void ab initio*, which means that defendant may truthfully deny conviction for all crime(s) in the judgment and sentence previously entered in this cause number.

DEPARTMENT OF CORRECTIONS. The Department of Corrections is ordered to terminate any supervision or community custody on the above cause number and quash any active DOC warrants that arise solely from the conviction(s) vacated by this order.

LEGAL FINANCIAL OBLIGATIONS. All counts from the judgment and sentence previously entered in this cause number were for violations of RCW 69.50.4013(1) (or previous codifications of this statute) (or solicitation, conspiracy, or attempt to possess) that have been vacated by this order and no other counts remain. As part of the vacation process, per Nelson, plaintiff State of Washington is obligated under due process to refund to the defendant all legal financial obligations, fees, fines, costs, charges, collections costs, assessments, or interest on the LFO principle actually paid by defendant that arise solely from the conviction(s) vacated by this order ("LFO Amount"). Upon application by the defendant made to the clerk's office, which shall include proof of identity and information necessary to process the application, the clerk shall initiate a refund of the LFO Amount to defendant on behalf of plaintiff State of Washington out of funds made available by the State of Washington, or if such funds are not available, the clerk shall certify the LFO Amount owing to defendant for direct payment by the State of Washington. The clerk shall also delete or cancel any unpaid LFO balances that arise solely from the conviction(s) vacated by this order, including any interest or collection costs.

WASHINGTON STATE PATROL. The clerk of the court shall transmit a copy of this order to the Washington State Patrol, which agency shall immediately update its records to reflect the vacation and dismissal of all counts under this cause number. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation.

DONE this ____ day of _____, 2021.

The Honorable

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Daniel T. Satterberg
Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104

1 **Motion Presented and Agreed to by:**

2
3 _____
4 Deputy Prosecuting Attorney, WSBA # _____

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6 _____
7 _____, WSBA # _____
8 Counsel for Defendant

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**AGREED MOTION & ORDER VACATING
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BLAKE**

Daniel T. Satterberg
Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104

EXHIBIT 2


King County

Department of Judicial Administration

Received Stamp

King County Superior Court *State v. Blake* Refund Application

Applicant Information		
First Name:	Middle Name:	
Last Name:		
Mailing Address: (Street)		
(City)	(State)	(Zip)
Date of Birth:		
Phone Number or Email Address:		
Refund Eligible Case Number(s):		
<ul style="list-style-type: none"> If you don't have a case number, you can locate it two ways: <ol style="list-style-type: none"> Search by your name online here: https://dja-prd-ecexap1.kingcounty.gov/?q=Home Visit one of our office locations. If you have a conviction before 1980 and don't have the case number, please indicate the approximate year and details about the event for the clerk to search for a case number. 		

Subject to the perjury laws of the State of Washington, I hereby certify that the information provided is true and correct and that I am the defendant in the cause number(s) listed above and am entitled to a refund of any LFO's previously paid.

Date: _____

Location: _____

Name: _____

Signature: _____

Instructions to apply for a refund of LFO's paid on cases impacted by the State v. Blake Supreme Court decision

Once an Order Vacating Conviction and Dismissal is signed by the court and filed, you may request a refund of any previously paid LFO's. Below are the steps and additional information needed by the clerk to process your refund application.

Step 1: Complete the application

Step 2: Provide Proof of ID

A copy of **1** of the following: (must be valid with photo)

- Driver's License, Instruction Permit, or state-issued ID Card
- Valid Washington State Temporary Driver's License
- U.S. Armed Forces I.D. Card
- Merchant Marine I.D. Card issued by the U.S. Coast Guard
- Official Passport, Passport Card, NEXUS Card
- Washington State Tribal Enrollment Card (No expiration date required)

Or

A copy of **2** of the following:

- Expired WA driver's license, ID card, or permit
- Cell phone bill or statement
- Home utility or service document (bill, statement, hook-up order, etc.)
- Bank or credit card document (statement, card mailer, etc.)
- School transcript or report card.
- DSHS benefits letter (medical, food, etc.)
- Tribal ID
- Proof of home ownership (mortgage documents, property tax documents, deed, title, etc.).
- Selective Service Card
- Concealed weapons permit from a WA county (license to carry a concealed pistol)
- Homeowner's or renter's insurance policy
- Auto insurance policy, declarations page, or binder
- Consulate ID card or Mexican Federal Electoral card
- Paycheck or pay stub with the employer's name and phone number or address
- Washington professional license (nursing, physician, engineer, pilot, etc.)
- W-2 form from an employer or form 1099
- Letter attesting residence in alternate housing (e.g. assisted living, college campus, mission, senior housing, shelter, or retirement home) on company letterhead with a phone number that could be used in verification of the facility

Important

If your name has changed and doesn't match the defendant's name on the case(s), you must provide documentation showing your previous and new name. Examples of this are:

- Certified copy of a court order showing your change of name
- Certified copy of divorce decree showing the new name or authorizing a name change
- Marriage certificate (including same-sex marriage certificate) that has been filed with the county or authorized issuing authority and has the control or file number.

Step 3: Send to the Clerk

Email to: DJA-BlakeRefund@kingcounty.gov

Mail to: King County Superior Court Clerk
 Attn: Blake Refunds
 516 3rd Ave Room E609
 Seattle, WA 98104

Drop off at:

King County Courthouse 516 Third Avenue Room E609 Seattle, WA 98104	Maleng Regional Justice Center 401 Fourth Ave North Room 2C Kent, WA 98032	Children & Family Justice Center 1211 East Alder Room 3015 Seattle, WA 98122
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Step 4: Confirmation of Refund

- Once the Clerk has received your application and confirmed your identity, they will review the case(s) for an Order Vacating the Conviction and Dismissing the Charges and mail a letter informing you of the amount previously paid and to be refunded.
- Not all cases are eligible for a refund through this application process. Below are some common scenarios and what you will receive from the Clerk.
 - Cases with no eligible convictions – The Clerk will mail a letter indicating that none of the convictions for the case(s) are eligible for a refund.
 - Cases with drug possession and other convictions - The Clerk will mail a letter indicating other convictions remain on the case. A separate order identifying the specific LFO's that are to be refunded is required.

EXHIBIT 3

Municipalities and *Blake* Funding

Christopher Stanley, CGFM – Chief Financial and Management Officer, AOC
May 17, 2022

What the Legislature Provided: ^{B359}



“\$11,500,000...is provided solely to assist cities with costs of complying with the *State v. Blake* ruling that arise from the city’s role in operating the municipal criminal justice system...”

“\$10,000,000...is provided solely to establish a legal financial obligation aid pool for cities to refund legal financial obligations and collection costs previously paid by defendants whose convictions have been vacated by court order due to the *State v. Blake* ruling.”

How is Funding Distributed?

B360



Reimbursable contracts will be issued by the Administrative Office of the Courts to 112 cities by mid-June.

Contracts will specify a maximum amount to be reimbursed – this approach allows each city to share in the pool according to a calculated share.



The same methodology used to calculate county LFO distributions last August is the same methodology used for the cities' LFO pool: A 10-year average of LFOs paid between 2007-2016.

Assuming that LFOs roughly translate to total caseload, those same proportions are used to distribute the \$11.5M of vacating and resentencing funds.

What if my City Isn't on the List?

B362



AOC is holding back \$500,000 from each of the pools in case other cities that did not initially receive a contract have costs that qualify for reimbursement.

After January 2023, these funds will also be used to provide reimbursements to cities that hit their maximum contracted amounts and need additional funds for reimbursement*.

**To date, no contracted entity has exceeded their contracted Blake amount.*

Eligible Expenses

B363



Regarding the costs of vacating and resentencing:

“The office shall contract with cities for judicial, clerk, prosecution, and defense expenses for these purposes.” – page 19, lines 34-35, 2022 Supplemental Budget

Direct Refund Bureau Coming

B364



Reminder: The Legislature provided funding for AOC to stand up a direct refund bureau so that qualifying individuals could apply directly to AOC for their refund. These individuals will need to be certified by municipal administrators prior to payment.

A workgroup has been established to deal with the mechanics of implementing this bureau.

Target date of implementation: July 1, 2023

Questions?

B365



If you think of a question after the webinar ends, please feel free to contact me:

Christopher Stanley

Office: 360-357-2406

Christopher.Stanley@courts.wa.gov

CERTIFICATE OF SERVICE

I, Florine Fujita, swear under penalty of perjury under the laws of the State of Washington that on July 29, 2022, I caused the preceding document to be served via the following method(s):

Michael C. Subit
FRANK FREED SUBIT &
THOMAS LLP
705 Second Avenue, Suite 1200
Seattle, WA 98104
msubit@frankfreed.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Adam T. Klein
Christopher M. McNerney
OUTTEN & GOLDEN LLP
685 Third Avenue
New York, NY 10017
atk@outtengolden.com
cmcnerney@outtengolden.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Mikael A. Rojas
OUTTEN & GOLDEN LLP
601 Massachusetts Ave NW,
Suite 200W
Washington, D.C. 20001
mrojas@outtengolden.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Lisa Daugaard
Prachi Dave
Corey Guilmette
PUBLIC DEFENDER
ASSOCIATION
110 Prefontaine Place South,
Suite 502
Seattle, WA 98104
lisa.daugaard@defender.org
prachi.dave@defender.org
corey.guilmette@defender.org

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Paul M. Crisalli
Assistant Attorney General
ROBERT W. FERGUSON
Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
Paul.Crisalli@atg.wa.gov

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

DATED this 29th day of July, 2022.

s/ Florine Fujita
Florine Fujita, Legal Assistant
florinef@harriganleyh.com

HARRIGAN LEYH FARMER & THOMSEN LLP

July 29, 2022 - 2:14 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 84015-1
Appellate Court Case Title: Civil Survival Project et al. v. State of Washington et al.

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- david.hackett@kingcounty.gov
- hcolechu@outtengolden.com
- jaimehawk@hotmail.com
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- jmidgley@aclu-wa.org
- jonathan.nomamiukor@columbialegal.org
- laurwilson@kingcounty.gov
- leeme@seattleu.edu
- levinje@seattleu.edu
- lisa.daugaard@defender.org
- msubit@frankfreed.com
- paul.crisalli@atg.wa.gov
- pleadings@aclu-wa.org
- prachi.dave@defender.org
- talner@aclu-wa.org
- timl@harriganleyh.com
- tkranz@snoco.org

Comments:

Sender Name: Florine Fujita - Email: florinef@harriganleyh.com

Filing on Behalf of: Randall Thor Thomsen - Email: randallt@harriganleyh.com (Alternate Email: florinef@harriganleyh.com)

Address:
999 Third Avenue
Suite 4400
Seattle, WA, 98104
Phone: (206) 623-1700 EXT 303

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Michael C. Subit
FRANK FREED SUBIT &
THOMAS LLP
705 Second Avenue, Suite 1200
Seattle, WA 98104
msubit@frankfreed.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Adam T. Klein
Christopher M. McNerney
OUTTEN & GOLDEN LLP
685 Third Avenue
New York, NY 10017
atk@outtengolden.com
cmcnerney@outtengolden.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Moiria Heiges-Goepfert
Outten & Golden LLP
One California Street, 12th Flr.
San Francisco, CA 94111
mhg@outtengolden.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Hanna Cole-Chu
Outten & Golden LLP
601 Massachusetts Avenue NW
Suite 200W
Washington, DC 20001
hcolechu@outtengolden.com

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Lisa Daugaard
Corey Guilmette
Skylar Brett
PUBLIC DEFENDER
ASSOCIATION
110 Prefontaine Place South,
Suite 502
Seattle, WA 98104
lisa.daugaard@defender.org
corey.guilmette@defender.org
skylar.brett@defender.org

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

Paul M. Crisalli
Assistant Attorney General
ROBERT W. FERGUSON
Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
Paul.Crisalli@atg.wa.gov

☐ Via Hand Delivery
☐ Via First Class Mail
☐ Via Facsimile
☐ Via Electronic Mail
☒ WA Appellate ECF

DATED this 27th day of February, 2023.

s/ Florine Fujita

Florine Fujita, Legal Assistant
florinef@harriganleyh.com

HARRIGAN LEYH FARMER & THOMSEN LLP

February 27, 2023 - 3:01 PM

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Appellate Court Case Number: 101,600-0
Appellate Court Case Title: Civil Survival Project et al. v. State of Washington et al.

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- randallt@harriganleyh.com
- skylar.brett@defender.org
- tkranz@snoco.org
- valerie.skylarbrett@gmail.com
- whottot@ij.org

Comments:

Sender Name: Florine Fujita - Email: florinef@harriganleyh.com

Filing on Behalf of: Timothy George Leyh - Email: timl@harriganleyh.com (Alternate Email: florinef@harriganleyh.com)

Address:
999 Third Avenue
Suite 4400
Seattle, WA, 98104
Phone: (206) 623-1700 EXT 303

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