

JUDICIAL IMPACT FISCAL NOTE

Bill Number: 5476 SB 5476.E AMH APP H1608.1	Title: State v Blake Decision	Agency: 055 – Administrative Office of the Courts (AOC)
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Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
Total:					

Estimated Expenditures from:

STATE	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE – Staff Years					
Account					
General Fund – State (001-1)	INDETERMINATE – PLEASE SEE BELOW				
State Subtotal					
COUNTY					
County FTE Staff Years					
Account					
Local - Counties					
Counties Subtotal					
CITY					
City FTE Staff Years					
Account					
Local – Cities					
Cities Subtotal					
Local Subtotal					
Total Estimated Expenditures:					

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form parts I-V

☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

Legislative Contact:	Phone:	Date:
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Agency Approval: Ramsey Radwan	Phone: 360-357-2406	Date:
OFM Review:	Phone:	Date:

Part II: Narrative Explanation

This bill would reclassify criminal penalties for possession of a controlled substance or counterfeit substance to a misdemeanor. The bill would expire provisions containing penalties for possession of a controlled substance, possession of a counterfeit substance, and possession of a legend drug on July 1, 2023, and would replace those provisions with provisions establishing a class 2 civil infraction for such violations. The bill would allow a violator to avoid the \$125 infraction fine if they receive a recovery navigator program assessment within 30 days. The bill would require deposit of funds collected from infraction fines into the newly created *State v Blake* Reimbursement Account. Would provide that criminal commissioners would have the authority to conduct resentencing hearings and to vacate convictions related to *State v Blake*. Would provide that court commissioners would have the authority to conduct resentencing hearings and hearings to vacate convictions related to *State v Blake*.

Part II.A – Brief Description of what the Measure does that has fiscal impact on the Courts

Section 8 – Would provide that it is unlawful for any person to knowingly possess a counterfeit substance. Would provide that a violation of this Section is a misdemeanor. Would provide that where a case is legally sufficient, a prosecutor shall divert the case for treatment if the alleged violation involving possession is the person's first or second violation. Would provide that on subsequent violations, the prosecutor is encouraged to divert the case for treatment.

Section 9 – Would provide that it is unlawful for any person to knowingly possess a controlled substance unless the substance was obtained through a prescription. Would provide that a person who violates this Section would be guilty of a misdemeanor. Would provide that where a case is legally sufficient, a prosecutor shall divert the case for treatment if the alleged violation involving possession is the person's first or second violation. Would provide that on subsequent violations, the prosecutor is encouraged to divert the case for treatment.

Section 10 – Would provide that it is unlawful for any person to knowingly possess any legend drug unless the legend drug was obtained through a prescription. Would provide that where a case is legally sufficient, a prosecutor shall divert the case for treatment if the alleged violation involving possession is the person's first or second violation. Would provide that on subsequent violations, the prosecutor is encouraged to divert the case for treatment.

Section 11 - Would provide that it is unlawful for any person to knowingly possess any legend drug unless the legend drug was obtained through a prescription. Would provide that where a case is legally sufficient, a prosecutor shall divert the case for treatment if the alleged violation involving possession is the person's first or second violation. Would provide that on subsequent violations, the prosecutor is encouraged to divert the case for treatment.

Section 13 – Would provide that is unlawful for any person to knowingly possess a counterfeit substance. Would provide that a violation of this Section would be a class 2 civil infraction. Would provide that a law enforcement officer issuing the infraction shall refer the person to the program established in Section 2 of this bill. Would provide that the monetary penalty for the civil infraction must be waived upon verification that the person has received an assessment by the program within 30 days of receiving the infraction. Would provide that proceeds from the infraction must be deposited into the *State v Blake* Reimbursement Account created in Section 25 of this bill.

Section 14 – Would provide that it is unlawful for any person to knowingly possess a controlled substance unless the controlled substance was obtained by a prescription. Would provide that a violation of this Section would be a class 2 civil infraction. Would provide that a law enforcement officer issuing the infraction shall refer the person to the program established in Section 2 of this bill. Would provide that the monetary penalty for the civil infraction must be waived upon verification that the person has received an assessment by the program within 30 days of receiving the infraction. Would provide that proceeds from the infraction must be deposited into the *State v Blake* Reimbursement Account created in Section 25 of this bill.

Section 15 – Would provide that it is unlawful for any person to knowingly possess any legend drug unless the legend drug was obtained by a prescription. Would provide that a violation of this Section would be a class 2 civil infraction. Would provide that a law enforcement officer issuing the infraction shall refer the person to the program established in Section 2 of this bill. Would provide that the monetary penalty for the civil infraction must be waived upon verification that the person has received an assessment by the program within 30 days of receiving the infraction. Would provide that proceeds from the infraction must be deposited into the *State v Blake* Reimbursement Account created in Section 25 of this bill.

Section 17 – Would provide that a person who receives a notice of civil infraction under RCW 69.50.4011, 69.50.4013, or 69.41.030 shall respond to such notice within 30 days of the date of the notice.

Section 21 – Would provide that criminal commissioners shall have the authority to conduct resentencing hearings and to vacate convictions related to *State v Blake*.

Section 22 – Would provide that court commissioners shall have the authority to vacate convictions related to *State v Blake*.

Section 24 – The *State v Blake* Reimbursement Account is created. Expenditures from the account would only be allowed for state and local government costs resulting from *State v Blake* and to reimburse individuals for legal financial obligations paid in connection with sentences invalidated by *State v Blake*.

Section 25 – The *State v Blake* Reimbursement Account is created. Would provide that all receipts from penalties collected under RCW 69.50.4011, 69.50.4013, and 69.41.030 must be deposited into the account. Expenditures from the account would only be allowed for state and local government costs resulting from *State v Blake* and to reimburse individuals for legal financial obligations paid in connection with sentences invalidated by *State v Blake*.

Section 26 – Would repeal RCW 69.50.4014 (possession of forty grams or less of marijuana-penalty).

Section 28 – Would provide that Section 10 of this bill would expire July 1, 2022.

Section 29 – Would provide that Section 11 of this bill would be effective July 1, 2022.

Section 30 – Would provide that Sections 8, 9, 11, 19, and 24 of this bill would expire July 1, 2023.

Section 31 – Would provide that Sections 13 through 17, 20, and 25 of this bill would be effective July 1, 2023.

II.B - Cash Receipt Impact

Indeterminate. It is unknown how many civil penalties may result from this bill.

II.C – Expenditures

Please Note: Caseloads, judicial officer time, and cost information displayed below represent only a partial and low estimate of actual costs that will be incurred. Information is provided below to help establish a minimum baseline for workload impact and potential costs. Full costs are indeterminate at this time, and it is very likely that costs will be significantly higher.

Sections 21 and 22 would provide for the authority for criminal and court commissioners to conduct resentencing hearings and to vacate convictions related to RCW 69.50.4013.

Resentencing of individuals currently in active Department of Corrections (DOC) custody
Individuals whose sentence may have been impacted by a conviction for possession of a controlled substance will need to be resentenced. Resentencing estimates were calculated from DOC populations as of February 28, 2021. At that time there were 5,314 individuals in DOC confinement, serving a sentence or with a previous conviction for RCW 69.50.4013. SCJA estimates each resentencing will take three hours on average. Re-sentencings will require a support structure beyond existing court capacity statewide. This includes support staff, court interpreters, equipment (such as computers), rental space, court security and jail transportation to the rental space. Table I, below, displays the estimated costs.

Table I – Resentencing Individuals Currently in Active DOC Custody

Resentencing Caseload (Individuals)	Average Commissioner Minutes / Resentence	Commissioner Need FTEs	Court Costs: Pro tems, judicial staff, clerk's staff, interpreters and equipment	Additional Courtroom Costs: Rental space, security for rental space, jail transportation to rental space
5,314	180	15	\$11,448,809	\$8,123,062

Table I, notes:

- Judge need formula = average needed judge time (minutes) per case divided by judge year value (65,000 minutes). The judge year value reflects available bench time per judicial position and implicitly accounts for vacation, sick leave, holidays, and chambers time.
- Caseload data was provided by DOC for individuals in DOC custody as of February 28, 2021, who are serving a current sentence or have a previous conviction for RCW 69.50.4013.

Sentence vacations of individuals under DOC supervision or violation

Sentences need to be vacated for those released from prison whose sentence was impacted by RCW 69.50.4013 who are currently under active or inactive supervision or violations. The inactive population includes individuals released from prison but who have not been present for supervision (e.g., a bench warrant has been issued). DOC reports that 15,838 individuals fall into one of these categories as of February 28, 2021. SCJA estimates an average of 15 minutes of judicial time per individual to vacate these sentences. Additional judge time and staff support is needed to process these cases. Table II, below, displays the estimated costs.

Table II – Sentence Vacations of Individuals under DOC Supervision or Violation

Resentencing Caseload (Individuals)	Average Commissioner Minutes / Resentence	Commissioner Need FTEs	Court Costs: Pro tems, judicial staff, clerk's staff, interpreters and equipment	Additional Courtroom Costs: Rental space, security for rental space, jail transportation to rental space
15,838	15	4	\$2,799,671	\$0

Table II, notes:

- Caseload data was provided by DOC for individuals under supervision or violation, active and inactive, dated February 2021 with either a sentence or criminal history under RCW 69.50.4013.

Court and Courtroom Cost Assumptions

- Cost estimates are based on data obtained from information surveyed by superior court administrators and county clerks.
- Court and courtroom costs are based on a per-FTE ratio of commissioner work.
- Costs displayed do not include estimated costs for police departments, prosecutors, prison transportation, or local jail housing for prisoners returned to local courts for resentencing.
- Rental costs are based on the assumption that courts do not have additional capacity for *State v Blake* cases.

For purposes of this Judicial Impact Note, it is assumed that resentencing and vacation hearings will occur in Fiscal Year 2022. Additional costs may continue into Fiscal Year 2023 and beyond due to scheduling, rental facility availability and other factors that cannot be determined at this time.

For purposes of this Judicial Impact Note, it is assumed that a State General Fund appropriation would be provided to the Administrative Office of the Courts (AOC). This funding would then be distributed to trial courts.

Part III: Expenditure Detail

III.A – Expenditures by Object or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE – Staff Years					
A – Salaries & Wages					
B – Employee Benefits					
C – Prof. Service Contracts					
E – Goods and Services					
G – Travel					
N – Grants / Pass Through					
P – Debt Service					
Total:					

III.B – Detail:

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27

Total FTE's						
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Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

None.