

State Supreme Court's Blake decision could be costly

Refund estimate is \$80 million

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PORT ANGELES — A state Supreme Court ruling that decriminalized simple drug possession will have a multi-million-dollar pricetag for the state's 39 counties, Clallam County commissioners heard Monday.

Juliana Roe, policy director for the Washington Association of Counties, said the ripple effects of the Blake decision will include transport and staffing for tens of thousands of re-sentencing hearings and more than \$80 million in refunded legal financial obligations in cases dating back 50 years.

In a 5-4 decision, the state Supreme Court struck down the state's felony drug possession law because it did not require prosecutors to prove someone knowingly or intentionally possessed drugs.

The Feb. 25 ruling came in the case of a Spokane woman, Shannon Blake, who had received a pair of jeans from a friend that had a small bag of methamphetamine in a pocket.

"The ultimate effect of Blake is that it says that the personal possession of drugs, at the end of the day, cannot be charged because the penalty section was found to be unconstitutional," Roe told the three commissioners in a briefing Monday.

"The real-life effect of that is personal possession of drugs is not a crime. This statute went back to 1971, and that means this decision is retroactive back to then."

Roe said the fiscal impacts on individual counties have not been determined.

"This is really the state's responsibility," Roe said.

"The Legislature was made aware of this problem probably 15, 20 years ago," she said. "The fix back then would have been add the word 'knowing' to the statute, that a person 'knowingly possessed the drugs,' and the Legislature chose not to fix that.

"Once we get a little farther along in this process, we're hoping that that will help us with our argument, that this is really the state's responsibility.

“I don’t know that we’ll get there, but that’s my hope.”

Using a “low-end” figure of \$800 per case, Roe estimated there would be at least \$80 million in legal financial obligations owed to inmates and former inmates statewide.

Prior to the Blake decision, a simple drug possession conviction in a person’s criminal history increased the offender score and corresponding sentencing range.

About 25,000 state Department of Corrections inmates and others on DOC supervision are now eligible for new sentences based on the Blake decision, Roe said.

“With this many people, I think it may be a little too complicated and too costly to start transporting people,” Roe said.

“One of the things we’re asking the state to do is set up portables at DOC to allow for sentencing hearings to take place at the prisons rather than in each county, and then allow them to use video like Zoom or whatever it is to conduct those hearings.”

Roe said it would cost about \$25 million in Superior Court time to re-sentence 25,000 cases and at least \$40 million for county prosecutors and defense attorneys to prepare for the hearings.

“You can see that this just keeps adding up,” Roe said.

The Washington State Association of Counties, a nonprofit that serves all 39 counties, had asked the state to establish a central fund for legal financial obligations related to the Blake ruling, Roe said.

It also has asked for funding to address the backlog of criminal cases related to the COVID-19 pandemic.

“We’ve estimated that COVID is a two- to three-year backlog, and then Blake is another two- to three-year backlog,” Roe told commissioners.

Meanwhile, Roe presented 10 pieces of pending legislation that could impact county law and justice budgets if approved by the Legislature and signed into law.

The proposed bills she highlighted were House Bills 1169, 1413, 1203, 1320, 1412 and Senate Bills 5120, 5164 and 5122, 5226 and 5293.

Commissioner Bill Peach said he had reviewed each of the bills that Superior Court Judge Brent Basden had brought to the board’s attention.

“What stood out was the fact that there was only one that had a fiscal note, the quantification of the cost,” Peach said.

“That’s disturbing to know that the Legislature is proceeding with these actions without recognizing the impact on local government, just to comment.”