

Blake Resource for Attorneys

A Summary of Blake Forms Work Group Activity and
Guide for Attorneys Working With Blake Form Orders

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SUMMARY

Blake Forms Work Group Activity

Introduction to the Blake Forms Work Group

The Blake Forms Work Group formed in January 2024 as a subcommittee of a Blake Work Group convened by the Washington State Supreme Court (WSSC) and co-chaired by Justice Mary Yu.

The WSSC's Blake Work Group was convened to address the many outstanding *Blake*-affected convictions that remained to be vacated. Stakeholders agreed that a lack of consistent forms to vacate these convictions presented a procedural barrier. The Blake Forms Work Group was formed as a subcommittee of the larger work group.

The Blake Forms Work Group met twice a month for a year and included stakeholders from:

- Superior courts
- District courts
- Municipal courts
- Superior Court clerks
- Courts of Limited Jurisdiction administrators
- Prosecutors
- Public defenders
- Individuals with lived experience
- Civil legal aid
- Washington State Patrol
- Department of Corrections

Blake Forms Work Group's Goals

The group had several goals, to include:

- Developing a form that could be used in multiple circumstances.
- Using plain language for litigants, court-system actors, and agencies required to act on the orders.
- Assisting jurisdictions with updating their vacate forms.

The Blake Forms Work Group benefited from the participation of a wide variety of stakeholders. Based on various stakeholders' experience working with orders entered shortly after the *Blake* decision in 2021, the group identified areas where many previously drafted form orders carried unintended negative consequences for people with unconstitutional *Blake* convictions. In the beginning of 2025, the Blake Forms Work Group shared these forms widely within their networks to receive additional input and guidance.

The language used in these proposed form orders has been scrutinized and edited by work group members with an eye toward unwinding *Blake*-related convictions as completely as possible.

Call to Use New Form Orders

Attorneys are encouraged to use these form orders instead of orders that were likely proposed shortly after the Blake decision was issued.

In the four years since that decision, all stakeholders within the work group had seen errors and omissions in prior orders that carried unintentional consequences. Affected areas related to immigration, debt collection, receipt of benefits, as well as insufficient reporting to other entities such as Department of Corrections, Department of Licensing, or Washington State Patrol. These orders also give clear direction to clerks as to which charges are vacated, quashing warrants, and how to address LFOs and process documents.

These orders represent more than a year of regular discussion, scrutiny, and editing to finalize orders that remove as many potential collateral consequences as possible when vacating unconstitutional convictions.

Form Orders Approved by WSSC and Pattern Forms Committee

The group's proposed forms were presented to the Washington State Supreme Court, which approved the forms at their April 2025 en banc meeting. These forms are already in use by the Administrative Office of the Courts' Blake Administrative Vacate Unit.

The forms were submitted to and approved by the Pattern Forms Committee and are now published online at the [Washington State Courts - Court Forms webpage](#), in addition to having been disseminated through various other stakeholder groups. These orders, along with form motions and notes for calendar, will also be added to [WashingtonLawHelp.org](#).

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GUIDE

Working With Blake Form Orders

Specific Orders for Blake-Only Cases and Blake-Plus Orders, by Specific Court

Attorneys should note that there are four possible form orders for use:

- There is a Blake-Only Order for use in Superior Court, as well as a Blake-Plus Order for use in Superior Court, when vacating past felony convictions.
- Likewise, there is a Blake-Only Order for use in Courts of Limited Jurisdiction, as well as a Blake-Plus Order for use in Courts of Limited Jurisdiction, when vacating past misdemeanor convictions.
- The Blake-Only order is appropriate for use in a case in which the only conviction on the judgment and sentence is a *Blake*-eligible offense.
- The Blake-Plus Order is appropriate for use in a case in which the individual was convicted of a *Blake*-eligible offense, plus other offenses that are not eligible to be vacated.

Additional Information on Specific Provisions in the Form Orders

Eligible Offenses

The Basis and Findings sections reference potentially eligible offenses. Under settled law, simple possession of a controlled substance and possession of 40 grams or less of marijuana are eligible for a vacate: *State v. Blake*, 197 Wn.2d 170 (2021) and *State v. A.L.R.H.*, 20 Wn. App. 2d 384 (2021). Many jurisdictions are also vacating inchoate offenses for possession, though the law is less settled regarding these offenses. The form orders reference inchoate offenses to allow for the possibility that the request could be granted; jurisdictions may not be vacating these kind of offenses. If you are using a Blake Forms Work Group Form Order as an attorney, do not assume your jurisdiction is vacating inchoate offenses.

Prosecutor-Specific Information Regarding Eligible Offenses

A prosecutor member of the Blake Forms Work Group raised concerns about including a reference to inchoate offenses in the form orders. While general agreement suggested that attempts to commit *Blake*-eligible offenses should be included in these forms, *In re Richey*, 162 Wn.2d 865 (2008), there were more concerns about whether conspiracy and solicitation to commit such offenses were subject to being vacated pursuant to *Blake*.

Unconstitutionally Void Language

This language is essential to properly unwind collateral consequences of a Blake conviction, particularly in an immigration context. For more information on the importance of this language in the immigration context, please feel free to reach out to [The Washington Defender Association Immigration Project](#).

Codes

The group worked with clerks to ensure that the appropriate codes were used to vacate these convictions. It is very important that clerks/administrators of Courts of Limited Jurisdiction use the VU code when entering the vacate disposition into JIS. The VU code is a special, *Blake*-specific code that enables the Washington State Patrol to distinguish between a *Blake* vacate and statutory vacate, or another kind of dismissal. Using a non-VU code may result in a person not having their *Blake* case fully vacated and require additional court action.

Sending Orders to the Department of Corrections (DOC)

Orders vacating felony convictions should be sent to DOC at docamendedorders@doc1.wa.gov. The orders include direction to the clerks to do this, but attorneys may want to double-check that this has occurred. DOC uses the vacate orders to process cost of supervision refunds, and the vacate can make a difference to DOC's determination of an incarcerated person's risk assessment.

Hearing/Notice Sections

It is anticipated that many of these orders will be agreed upon and signed ex parte, and that some will be pursued by prosecutors without knowledge of the affected person. The hearing and notice sections, which include checkboxes, are to clarify the procedural posture in the order, which could have significance for people who are involved in immigration proceedings.

- If you are an attorney representing a client in a vacate proceeding bringing a vacate motion at the express direction of the client, **do check the box** indicating that the affected person had actual notice of the motion for entry of the order. If you are representing a non-citizen client, be sure you understand the ramifications of a vacate order on any current or future citizenship proceedings. Please check to see if the person already has immigration counsel or reach out to [The Washington Defender Association Immigration Project](#).
- If you are an attorney (defense or prosecution) seeking entry of a vacate order on a case number, either ex parte or in open court, but you have had no contact with the affected person, **do not check the box** indicating that the affected person had actual notice of the motion. Instead, check the box indicating the order was entered with no actual notice to the affected person.
- In other words, the box indicating the affected person had actual notice should only be checked if the affected person affirmatively requested the vacate order and the attorney(s) seeking the vacate order provided the affected person with information about where and how the vacate order would be entered.
- In some jurisdictions, public defenders may assist with an administrative vacate process, and may sign vacate orders on behalf of the affected person as to form only. Public defenders should be aware that a recent draft advisory opinion for the Washington State Bar Association's Committee on Professional Ethics (CPE) indicates that it may be a Rules of Professional Conduct (RPC) violation for a defense attorney to enter a vacate order on behalf an affected person without an established client relationship. Defense attorneys may wish to consult the [CPE webpage](#) for the current status of the advisory opinion.

LFO Definition, Collections, and Refunds

Any Legal Financial Obligations (LFOs) paid towards a *Blake* conviction must be refunded under *Nelson v. Colorado*, 581 U.S. 128, 137 S. Ct. 1249, 197 L.Ed. 2d 611 (2017). The sections addressing LFO refunds in these orders were carefully drafted to deliver appropriate relief to affected people with regard to past LFO payments on vacated convictions, waiver of any outstanding balances, and any outstanding collections actions. Attorneys are encouraged to carefully read the sections pertaining to LFO relief.

- Appropriate LFO relief may include non-restitution and restitution amounts, depending on the case.
- LFO calculations may also depend on whether the case is a *Blake*-only case, or a *Blake*-plus case.
- These sections also include an option for clerks to use when no records exist to aid in calculating a refund amount.
- The sections also include an option for jurisdictions that calculate a refund amount after the entry of a vacate order.

The proposed form orders are not intended for use in motions for third-party refunds. Generally, third-party motions are brought as a separate motion, with or after a vacate motion, and a judge determines what costs will or will not be returned. Common examples of a third-party refunds are drug treatment costs, fees associated with therapeutic courts, civil forfeiture, and bail. While these orders are not intended for use in recouping third-party costs, the orders do allow affected individuals to bring subsequent motions for additional or different relief, such as a refund for third-party costs.

The orders are also not intended for use in recouping refunds for cost of supervision fees from the Department of Corrections; DOC will proactively refund cost of supervision fees when it receives notice that the underlying case is vacated. More info on [DOC's process for cost of supervision refunds can be found online](#). Attorneys representing clients on Blake vacate motions should discuss with their client all the costs paid to local or state authorities as a result of the *Blake* conviction to ensure all potential refunds are addressed.

Prosecutor-specific information regarding LFO reallocation

These forms assume that a jurisdiction will not reallocate legal financial obligations from a *Blake* case to unpaid restitution or legal financial obligations in a different case.

Prosecutor-specific information regarding LFO refunds on *Blake*-plus convictions

Prosecutor members of the Blake Forms Work Group raised concerns about which legal financial obligations would be waived/refunded for cases involving a *Blake* conviction and at least one additional conviction. There was debate in the work group about whether the form orders should order that collection costs should be waived and any collections actions stopped where at least one valid count remains. Similar concerns arose as to language that directed waiving “restitution and restitution interest assessed” on the vacated conviction should be waived where courts may not have regularly imposed restitution for *Blake*-related offenses and many court records do not indicate which count restitution or restitution interest was imposed for.

General Rule (GR) 39 Motions

As noted, these forms assume that a jurisdiction will not reallocate *Blake* LFO refunds to another case with unpaid restitution or LFOs. For defense attorneys and civil legal aid attorneys, if your client will have surviving convictions on a Judgment and Sentence following a *Blake* vacate, or has other cases upon which LFOs are owed, also consider whether changes in the law since the convictions were imposed support a GR 39 request for the court to now waive or reduce any remaining LFO balances for those unvacated convictions/cases. For example, courts may now waive discretionary LFOs on the basis of indigency under RCW 9.94A.760; may waive DNA fees when a DNA fee has already been imposed on a previous conviction under RCW 43.43.7541; and may waive non-restitution interest under RCW 10.82.090. Note that it may be necessary to obtain this type of relief in a separate motion and order, depending on your jurisdiction's local practice. While LFOs paid on the valid convictions are not refundable, the *Blake* proceeding may still present an opportunity to relieve your client of these remaining LFOs.

Additional Information on Other Possible Offenses That May Be *Blake*-Impacted

Defense attorneys, civil legal aid, and prosecutors should be aware that some jurisdictions are vacating old possession of drug paraphernalia convictions when they are part of an unlawful possession of a controlled substance conviction being vacated under *Blake* and depending on whether the applicable local code or ordinance included a mens rea element. Additionally, defense attorneys, civil legal aid, and prosecutors should also be aware that unpublished case law suggests that a conviction for unlawful possession of a firearm in the second degree predicated on an unconstitutional felony simple drug possession charge may also be eligible for a vacate order. See *In re Matter of Gonzales*, 19 Wn. App.2d 1039 (2021) (unpublished). Defense attorneys and civil legal aid attorneys should consider whether a motion to vacate these kinds of offenses could be brought on behalf of a client.