

SB 5476: *State v. Blake* Decision

The decision in *State v. Blake* that the felony Possession of a Controlled Substance statute is unconstitutional presents our legislature with an opportunity to reset its costly approach to the War on Drugs and to undo generations of harm caused to Black, Indigenous, and other communities of color. The very fact that such a large percentage of people involved in the legal system are impacted by this ruling underscores just how costly and insidious the War on Drugs has been to our state and communities. It is important that we refocus our statewide efforts to a behavioral health model in responding to drug use and addiction rather than reinforce our failed punitive approach.

We have many penalties in place to address the sale of drugs so it is unnecessary to recriminalize possession in order to protect the community. The legislature should limit its activities in responding to the decision this session to providing funding to support resentencing and treatment, passing legislation that will support a swift resentencing process, and the creation of a legislative workgroup. Rather than rush to needless action that may be counterproductive to a treatment first approach, a workgroup can take a measured look at the impact of the decision. It is imperative that we limit the use of this discriminatory tool that has resulted in a greatly expanded prison and criminal legal system. We need to examine how we are responding to drug use and addiction, what are best practice models, and how we can protect against the perpetuation of practices that harm low income communities and communities of color.

Preemption is not an issue that requires action. We believe RCW 69.50.608 and the three cases on point, would preempt and bar the counties and cities from passing their own ordinances and that such efforts would trigger equal protection issues as well.

Support is needed for criminal legal system *Blake* responses. This includes legislation to ensure adequate funding and access to counsel for those impacted by this decision and to streamline approaches to moving resentencing cases through the legal system.

We have many concerns with SB 5476, and especially its recriminalization of behavior that should be handled by the behavioral health system. Our specific concerns include:

- **We strongly oppose the imposition of a Class C felony for adults and a gross misdemeanor for young people under the age of 21.**
- **Personal use amounts vary from individual to individual. The personal use amounts are much too low and will provide an excuse for law enforcement interactions and**

arrests that may not stand up in court, but will harm the individual and be costly to the system. For example, officers on the street will not have an ability to distinguish between small amounts of a substance in a baggie or the number of pills in a bottle, but may still arrest the individual. The evidence will need to be sent the Washington State Crime Lab to determine net weight without packaging and for drug testing. The crime lab is underfunded, is experiencing backlogs, and has been experiencing problems with drug contamination. Rarely when people are buying drugs do they know the potency and the quality of drugs is often based upon ability to pay. This puts economically disadvantaged individuals at greater risk of criminal system involvement solely based on quantity.

- **Eliminate all drug paraphernalia charges/references in RCW 69.50.412. The amendment below will address the preemption issue relating to drug paraphernalia and is based on the firearms preemption language.**

The state of Washington hereby fully occupies and preempts the entire field of regulation of controlled substances within the boundaries of the state, including the possession, purchase, sale, acquisition, transfer, discharge, and transportation of controlled substances, or any other element relating to controlled substances or parts thereof, including drug paraphernalia. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are specifically authorized by state law and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

- **Section 6 - RCW 69.50.445 should be repealed.** If it is not, then it should be modified to make clear that the civil infraction can be completed with community service or that no fine imposed. It should be clear that a civil infraction can only be issued if the court finds that the individual is not indigent and also that the individual has a present or future ability to pay (cannot be ordered to pay or do community service if the individual is indigent defined by RCW 10.101.010(3)(a) - (c)i or the individual has a present or future inability to pay).
- **Issues relating to youth.**
 - **Section 3(1)(b) should be deleted.** A young person who plays a prank should not be subject to a Class C felony.
 - **Section 4 creating a gross misdemeanor for young people should be eliminated.**

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