

**WASHINGTON DEFENDER ASSOCIATION**  
**WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS**

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May 3, 2021

Governor Jay Inslee  
Office of the Governor  
PO Box 40002  
Olympia, WA 98504-0002

Re: Veto Request ESSB 5476: *State v. Blake* Decision

Dear Governor Inslee,

We are writing on behalf of the Washington Defender Association and the Washington Association of Criminal Defense Lawyers urging you to sign ESSB 5476: *State v. Blake* Decision as soon as possible and to veto the sections that relate to recriminalization. We support the portions of the bill that address possession of a controlled substance (PCS) as a public health issue and that assist the legal system with the resentencing of those whose PCS sentences have been deemed void. **Specifically, we request that you veto sections 8-14, 16, and 27- 29.**

We would encourage you to act on the bill as soon as possible as there still are many individuals being held under the voided PCS law. Many counties have stated that they are waiting for the bill signing, specifically Section 20, which exempts courts from requiring finger printing at release.

The decision in *State v. Blake* that the felony PCS statute is unconstitutional presented 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. 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 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. As John McKay, former US Attorney for the Western District of Washington, stated in his March 9, 2021 op ed in *The Seattle Times*:

As a former prosecutor, I understand the urge to clamp down and “fix” the constitutional issue the court exposed. But such a legislative “fix” would cement a system that treats drug use as a crime, disproportionately harms communities of color and wastes public resources.

Instead of re-criminalizing possession cases, the Legislature should identify resources to secure pathways to recovery for individuals with substance use

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WDA is a non-profit organization created in 1983 to promote, assist, and encourage public defense systems which ensure that all accused persons in every court receive effective assistance of counsel

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disorders. This approach would center the unique needs of individuals, providing professional and experienced support, including case management and proper medical care. A focus on recovery will result in safer and healthier communities and aligns with public opinion....

Rather than reigniting a lost war on drugs and doubling down on a system we know does not work, Washington can opt for a transformative approach — one that builds and funds systems to replace arrest and prosecution with public health solutions.

Preemption has been raised as an issue that requires legislative action. We believe RCW 69.50.608 would preempt and bar counties and cities from passing their own ordinances and that such efforts would trigger equal protection issues as well. We are working to get a ruling on this issue as quickly as possible on expedited review.

In addition to requesting a veto of sections recriminalizing PCS, we also are concerned with section 6 relating to diversion. This section seems positive on the surface because it allows police to divert persons to treatment for any crime pre-arrest if they believe the person has a substance abuse disorder. However, this section expressly states that this diversion does not eliminate criminal liability for the crime. Therefore, the prosecutor could still charge the person with a crime after the person completes treatment. They also can be charged with a crime if they don't complete treatment. How the individual is treated will completely depend upon the good faith of prosecutors not to charge people with crimes after they are diverted. In addition, we are concerned about the language about notifying the officer upon release and "violating such terms," and the broad sharing of private health information being shared with law enforcement and the prosecutors.

Finally, we remain deeply concerned that recriminalization disproportionately impacts Black, Indigenous, and people of color (BIPOC) communities and needlessly makes law enforcement interactions the primary gateway to access services rather than treatment on demand or a harm reduction model. These communities have not had a role in developing the legislative response.


Washington has many penalties in place to address the sale of drugs so it is unnecessary to recriminalize possession in order to protect the community. It is imperative that we limit the use of this discriminatory tool that has resulted in a greatly expanded prison and criminal legal system. Rather than rush to needless action that may be counterproductive to a treatment first approach, the legislative workgroup can take a measured look at the impact of the decision and make thoughtful recommendations as how we may best respond to drug use and addiction.

Thank you for your consideration.

Sincerely,



Amy Hirotaka  
Executive Director, WACDL



Christie Hedman  
Executive Director, WDA