

January 24, 2022

Washington State Senate
Law & Justice Committee

Re: SB 5663

Dear Members of the Committee:

I write today to request changes to SB 5563 that are necessary to respect the constitutional nature of *State v. Blake*. I also write to request further relief in the form of expungement of arrest records for those affected by this state's and this country's failed war on drugs.

My practice is devoted to securing and protecting an individual's Second Amendment rights. I am the leading firearms lawyer in Washington state and have unmatched expertise in state and federal firearm laws. I have written articles, presented Continuing Legal Education programs to other lawyers, litigated and won key decisions in state and federal appellate courts, and have a unique perspective on what works.

There is a crucial mistake in the current version of SB 5563. Currently, the very last sentence of section three, subsection four states: "Nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040." This language has no legal authority and will not pass judicial review. A conviction for simple possession of a controlled substance is unconstitutional and cannot serve as a predicate for restoration of firearm rights. A person with a voided conviction for simple possession has no conviction for which to restore his or her firearm rights. If this language passes, it will be struck down by the courts, but not before causing mayhem and chaos with the state's law enforcement. This language must be stricken at once.

Additionally, the legislature should go further to affording *Blake*-affected individuals more relief, in the form of arrest record expungement. Since simple possession of a controlled substance has never been a valid crime, so it stands to reason that all arrests for such an offense were without authority of law. Therefore, the records of those arrests should be expunged. A new section should be added to RCW 10.97, specifying that



Washington State Patrol shall expunge the record of any affected arrest upon request of the subject of the record. At your request, I would be happy to work with members of this Committee on drafting a proposed amendment to incorporate this relief.

I remain committed and available for further consultation with members of this committee and the legislature.

Sincerely,

Vitaliy Kertchen
Attorney at Law