

February 11, 2022

Lieutenant Governor Denny Heck
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Hon. Majority Leader Andy Billig
Senate Democratic Caucus
Washington State Senate
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Hon. Majority Leader John Braun
Senate Republican Caucus
Washington State Senate
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Dear Lieutenant Governor Denny Heck, President Pro Tempore Karen Keiser, Vice President Pro Tempore Steve Conway, Senators Billig, Hasegawa, Pedersen, Randall, Dhingra, Saldaña, Das, Nguyen, C. Wilson, Braun, Warnick, Short, Wagoner, Brown, Muzzall, Gildon, Dozier:

We, the undersigned organizations and individuals, write to urge you not to pass SB 5663. SB 5663 does not ensure that impacted individuals will get access to the relief necessary under the Supreme Court's decision in *State v. Blake* ("*Blake*"). The impact of *Blake* is widespread and consequential, and we ask the legislature to ensure that the thousands of people who were impacted by years of unconstitutional prosecutions and convictions are made whole. In doing so, we ask that the legislature engage in a process that convenes stakeholders across the criminal legal system to create a system that will provide the full range of remedies necessary under *Blake*.

The process proposed by SB 5663 to vacate *Blake* convictions and refund legal financial obligations (LFOs) is not streamlined and will not offer people with prior *Blake* convictions with the protections that they need in order to access relief under *Blake*. Individuals with prior *Blake* convictions have historically faced numerous barriers as a result of their convictions. As a result, many continue to struggle because they have not been able to find adequate housing, stable employment, or have been incarcerated as a result of those convictions. *Blake* recognized the severe collateral consequences flowing from *Blake* convictions and in light of the decision, it is critical to ensure that those with prior *Blake* convictions are able to access all the legal remedies flowing from the decision such that they may overcome these barriers. This would benefit everyone. In order to do so, however, it is necessary that people have access to legal

representation from the beginning to the end of the process. The *Blake* decision requires complicated legal analyses that may differ from case to case, and as such individuals need the assistance of counsel to effectuate the relief to which they are entitled. The current bill does not contemplate such legal representation and will therefore mean that many will not be able to obtain sufficient legal redress.

Further, the notice provisions in SB 5663 are insufficient to notify impacted individuals that they are entitled to any relief flowing from their Blake convictions. Therefore, a wide swath of people across Washington may never learn that they are entitled to relief under this potential scheme. Also, to the extent that people do learn that they are entitled to a refund of their LFOs, the timeline for them to collect their LFOs is extremely contracted. It is currently set at seven years, but the mere process of identifying those people and cases that are eligible for relief will take years, and it is only then that individuals will be able to access their LFO refunds. If they do not, then their money will go back to the State. The process as it currently is, therefore, places a disproportionate burden on impacted people.

Importantly, a recent change in the bill confirms that the LFO refund process will not be streamlined. As the Department of Revenue was unable to house the Refund Bureau previously contemplated by SB 5663, the responsibility to certify LFO refunds will fall on the Administrative Office of the Courts (AOC). AOC will then certify LFO refund amounts to individual courts, which will then be responsible for processing refunds. This will mean that individuals will not have a centralized location to collect their LFO refunds across jurisdictions and will have to go court by court, jurisdiction by jurisdiction, in order to collect their refunds. This will create insurmountable burdens for individuals who are already struggling.

Additionally, SB 5663 frequently places the burden on individuals to identify flaws in the process. For example, where court records are unavailable, individuals will bear the burden to prove by “clear and convincing evidence” that they had a prior *Blake* conviction and they are entitled to relief. In this way, and others, the bill does not center those who have already borne the consequences of *Blake* convictions over the last several decades.

Finally, the bill currently has a provision that blocks access to the courts for individuals seeking *Blake* relief. The bill would preclude any person from filing a civil action to vindicate any of their rights under *Blake*. This provision is extremely concerning; individuals must always have access to courts in order to seek redress for harms, and certainly for harms that result from a case such as *Blake*, which rests on the unconstitutionality of a statute that has impacted thousands of Washingtonians. This provision, among others in SB 5663, will result in marginalized communities and people in Washington being severely limited in their access to relief.

Therefore, the undersigned organizations and individuals urge you to reconsider SB 5663 as a method to implement the decision in *Blake* in favor of a more comprehensive, stakeholder-led solution to address the rights and remedies of people impacted by *Blake* across the State of Washington.

Respectfully,

ACLU of Washington
All of Us or None
Ashley OConnor McCready & Mike McCready
Berkeley Law Policy Advocacy Clinic
Carollynn Zimmers, D.V.M
Civil Survival Project
Columbia Legal Services
Disability Rights Washington
Evan Walker
Freedom Project
Holly Brewer
I Did the Time
Indivisible Bainbridge Island
Jason Schwarz
King County Equity Now
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Marsha Cutting, Bainbridge Island
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Northwest Community Bail Fund
North Kitsap Indivisible
Peer Reentry Navigation Community Bail Fund
Revive Center for Returning Citizens
Snohomish County Public Defender Association
Statewide Poverty Action Network
Stone Gossard
TeamChild
Washington Association of Criminal Defense Lawyers
Washington Budget & Policy Center
Washington Defender Association
Washington Innocence Project
Washington Low Income Housing Alliance
Washington Reentry Council
Wallingford Indivisible
What's Next Washington