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**SENATE BILL 5663**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Dhingra, Hasegawa, Saldaña, Stanford, and C. Wilson

AN ACT Relating to establishing streamlined procedures for compliance with the State v. Blake decision in order to improve criminal justice system coordination, create efficiencies, and reduce costs; adding a new chapter to Title 10 RCW; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  LEGISLATIVE FINDINGS. Due to the Washington supreme court's decision in *State v. Blake*, 197 Wn.2d 170, 174, 481 P.3d 521 (2021), all convictions since 1971 for simple drug possession are constitutionally void. This decision requires vacation of tens of thousands of convictions entered in the superior, district, and municipal courts. Under due process, a conviction vacated due to *Blake* requires a refund of any legal financial obligations and collection costs paid pursuant to that conviction. Since *Blake* was issued in February 2021, the state's criminal justice system has vacated over 10,000 cases, focusing first on persons currently incarcerated, under active supervision, or on warrant status. Using funds appropriated during the 2020 legislative session, efforts are ongoing to vacate additional cases and refund legal financial obligations and collection costs, but it is likely that the total number of convictions subject to *Blake* over the last 50 years exceed 150,000. As such, the legislature finds it is necessary to implement a concerted and coordinated procedure to vacate these convictions using a proactive and steady workflow that allows for rapid resolution of large numbers of cases over time. Because vacation of these convictions falls within the jurisdiction of the originating court, a procedure that utilizes current court rules and existing mechanisms of the state's criminal justice system is the most efficient way to vacate affected convictions. Once a conviction is vacated and a legal financial obligation refund is determined, a centralized method for disbursing refunds will most efficiently return money to affected people.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Convictions for simple drug possession" includes all convictions since adoption of the uniform controlled substances act of 1971 for possession of any controlled substance, attempted possession of any controlled substance, conspiracy to possess any controlled substance, or solicitation to possess any controlled substance, under the authority of statute, or an ordinance authorized by statute, where the statute or ordinance did not require proof of intentional possession of the controlled substance. It also includes convictions for offenses where a prior conviction for simple drug possession serves as an element of the subsequent offense.

(2) "Director" means the director of the department of revenue or the director's designee.

(3) "Legal financial obligations and collection costs" means a sum of money that is ordered by court in connection with a conviction for a crime and actually paid by the defendant or on the defendant's behalf, which may include restitution to the victim, statutorily imposed crime victims' compensation fees, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of the conviction. It also includes penalties, interest, fees, and collection costs authorized by law for the collection or enforcement of legal financial obligations.

NEW SECTION. **Sec.**  SUPERIOR AND DISTRICT COURT VACATIONS. (1) In coordination with the superior court clerk or district court administrator within each county, the administrator of the administrative office of the courts shall develop comprehensive, line-item reports for each court of all persons convicted of simple drug possession since 1971. The report will be based on available court records and list convictions chronologically by cause number in a readily searchable and sortable format. For each cause number that includes a conviction subject to vacation under the *Blake* decision, the report shall include the person's name, birth date, last known address, date of the judgment and sentence, a listing of all conviction counts for simple drug possession in the judgment and sentence, and a listing of all conviction counts for other offenses in the judgment and sentence. The administrator will indicate any period of time where court records are unavailable. The superior court clerk or district court administrator shall develop a similar report of all sealed cases of persons convicted of simple drug possession since 1971. This shall be kept confidential and shall only be shared with the administrator.

(2) In compiling the report, the administrator, with the assistance of the department of corrections and the superior court clerk or district court administrator, shall prioritize cases in the following order: (a) The person is incarcerated due to a qualifying conviction; (b) the person is incarcerated with a qualifying conviction in the person's criminal history score; (c) the person is under active or inactive supervision; and (d) the person has a past conviction for a qualifying offense. Within three months of the effective date of this section, the administrator shall complete the report for persons under (a), (b), or (c) of this subsection. For persons under (d) of this subsection, the administrator shall complete the report by January 1, 2023.

(3) Upon availability, the administrator shall provide completed installments of the report of convictions to the county prosecutor and the superior court clerk or district court administrator. The county prosecutor shall review each cause number on the report to determine whether a person's conviction is properly subject to vacation under the *Blake* decision. When a person, or his or her legal representative, informs the prosecutor that he or she is facing immigration consequences such as deportation or bars to obtaining lawful status, the prosecutor shall prioritize the case. When the prosecutor determines that a conviction is subject to vacation, the prosecutor shall prepare an ex parte motion on behalf of the state under CrR 7.8 or CrRLJ 7.8 that asks the court to vacate the person's prior convictions for simple drug possession. Such a motion shall expressly state the motion is pursuant to *State v. Blake*'s holding that RCW 69.50.4013 is unconstitutional. By filing such a motion, the prosecutor agrees not to file additional or new charges for the acts described in the information. If the prosecutor determines that a conviction is improperly included on the report because the conviction is not a conviction for simple drug possession, the prosecutor shall file a "Notice of *Blake* Disposition" that contains a short written explanation with the superior court clerk or the district court administrator and send notice to the affected individual at his or her last known address. A copy shall also be sent to the local office of public defense or proper appointing authority, or, where no defense office is listed for the jurisdiction, notice shall be sent to the Washington state office of public defense. Defense counsel shall be appointed to a person who has been precluded from obtaining vacation to assist the person in challenging the decision if the person so elects. Absent vacation of the prior conviction for simple drug possession by ex parte motion, nothing in this section precludes the prosecutor from filing additional or new charges where allowed by law.

(4) The court shall consider the prosecutor's motion to vacate on paper without the presence of the prosecutor. If the court vacates a conviction for simple drug possession, the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction, and the person shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, a person whose conviction has been vacated may state that the person has never been convicted of that crime. A conviction that has been vacated under this section may not be disseminated or disclosed by the Washington state patrol or local law enforcement agency to any person. Nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

(5)(a) A court vacating a conviction for simple drug possession shall address whether legal financial obligations must be refunded to the person.

(i) When the sole crime of conviction under a cause number is simple drug possession, the court shall order a refund of all legal financial obligations and collection costs paid under that cause number.

(ii) Where a cause number includes both convictions for simple drug possession and other offenses not subject to vacation under the *Blake* decision, the court shall determine whether any nonvacated convictions independently support the court's imposition of legal financial obligations. When legal financial obligations previously imposed are independently supported by a nonvacated conviction, no refund of legal financial obligations and collection costs may be ordered by the court.

(iii) Where a cause number includes both convictions for simple drug possession and other offenses not subject to vacation, but imposition of legal financial obligations for those offenses is discretionary with the court, the court shall set a hearing with notice to the defendant and an opportunity to be heard on whether any nonvacated conviction supports imposition of legal financial obligations. In the interests of justice, the prosecutor may waive this hearing, and, if so, the court shall order a refund of all legal financial obligations and collection costs paid under that cause number.

(b) If the court determines that a refund of legal financial obligations and collection costs is appropriate, the vacation order shall direct the superior court clerk or district court administrator to cancel any unpaid legal financial obligation and collection cost balances. The order shall further direct the superior court clerk or district court administrator to compute all legal financial obligations and collection costs paid by the person that arise from the vacated counts, which amounts shall be certified by the superior court clerk or the district court administrator, to the refund bureau created in section 5 of this act. Upon filing the certification, the refund obligation is transferred to the refund bureau. Following issuance of a refund under a cause number, the refund bureau shall file notice of the amounts paid with the superior or district court.

(6) Where it is necessary to resentence a person or amend the existing sentence in connection with a vacation, the matter will proceed under the court rules with notice to the defendant. Defense counsel shall be appointed where required by law. The court shall notify the local office of public defense or proper appointing authority, appoint local defense counsel from the list published by the Washington state office of public defense, or, where no defense counsel is listed for the jurisdiction, contact the Washington state office of public defense. Nothing in this act limits the court's sentencing authority or its authority to resentence.

(7) The prosecutor shall take action to quash judicial warrants based solely on underlying charges for simple drug possession or other offenses where a conviction for simple drug possession serves as an element of the crime. Within six months of the effective date of this section, the prosecutor shall certify to the director that all such warrants have been submitted to a judicial officer for action quashing the warrant. If exceptional circumstances apply, and a prosecutor cannot meet the six-month deadline, the prosecutor shall provide an estimate for a reasonable extension to the director.

(8) Within appropriated funds, the director shall contract with each county to ensure sufficient availability of clerks, prosecutors, defenders, judicial officers, and courtroom space to complete all work required by this section within three years of the effective date of this section. Contracts to complete resentencing, vacation, and refund work under this act may be based on actual time or upon the average time necessary to complete a task. The work required by this section is deemed complete when all warrants have been quashed and all cause numbers on the report have been dismissed, vacated, resentenced, or otherwise addressed through a "Notice of *Blake* Disposition." The superior court clerk or district court administrator shall track resolution of all cause numbers on the report. On a quarterly basis, the superior court clerk and the district court administrator shall report the following to the director: (a) Vacated cause numbers; (b) resentenced cause numbers; (c) cases where the prosecutor has filed a "Notice of *Blake* Disposition"; and (d) the number of cases on the report awaiting action.

(9) Nothing in this section precludes a person from filing a motion under his or her own criminal cause number to vacate a prior conviction for simple drug possession or be resentenced pursuant to *Blake*. Defense counsel shall be appointed where required by law. The court shall notify the local office of public defense or proper appointing authority, appoint local defense counsel from the list published by the Washington state office of public defense, or, where no defense counsel is listed for the jurisdiction, contact the Washington state office of public defense. A motion for resentencing or vacation under *Blake* does not constitute a collateral attack as set forth in chapter 10.73 RCW.

NEW SECTION. **Sec.**  MUNICIPAL COURT VACATIONS. (1) Within three months of the effective date of this section, each city with a municipal court shall determine whether the *Blake* decision applies to any municipal convictions for simple drug possession since 1971. If requested by the city, the administrator of the administrative office of the courts shall coordinate with the municipal court administrator to develop a comprehensive report for each city of all persons convicted of simple drug possession. The report will be based on available court records and list convictions chronologically by cause number in a readily searchable and sortable format. For each cause number that includes a conviction subject to vacation under the *Blake* decision, the report shall include the person's name, birth date, last known address, date of the judgment and sentence, a listing of all conviction counts for simple drug possession in the judgment and sentence, and a listing of all conviction counts for other offenses in the judgment and sentence. The administrator will indicate any period of time where court records are unavailable.

(2) In compiling the report, the administrator, with the assistance of the department of corrections and the municipal court administrator, shall prioritize cases in the following order: (a) The person is incarcerated due to a qualifying conviction; (b) the person is incarcerated with a qualifying conviction in the person's criminal history score; (c) the person is under active or inactive supervision; and (d) the person has a past conviction for a qualifying offense. Within three months of the city's request under subsection (1) of this section, the administrator shall complete the report for persons under (a), (b), or (c) of this subsection. For persons under (d) of this subsection, the administrator shall complete the report within six months of the city's request under subsection (1) of this section.

(3) Upon availability, the administrator shall provide completed installments of the report of convictions to the city prosecutor and the municipal court administrator. The city prosecutor shall review each cause number on the report to determine whether a person's convictions for simple drug possession are properly subject to vacation under the *Blake* decision. When the city prosecutor determines that a conviction is subject to vacation, the prosecutor shall prepare an ex parte motion under CrRLJ 7.8 asking the court to vacate the person's prior conviction or convictions for simple drug possession. Such a motion shall expressly state the motion is pursuant to *State v. Blake*'s holding that RCW 69.50.4013 is unconstitutional. By filing such a motion, the prosecutor agrees not to file additional charges for the acts described in the information. If the prosecutor determines that a conviction is improperly included on the report, the prosecutor shall file a "Notice of *Blake* Disposition" that contains a short written explanation with the municipal court administrator.

(4) The court shall consider the prosecutor's motion to vacate on paper without the presence of the prosecutor. If the court vacates a conviction for simple drug possession, the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction, and the person shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, a person whose conviction has been vacated may state that the person has never been convicted of that crime. A conviction that has been vacated under this section may not be disseminated or disclosed by the Washington state patrol or local law enforcement agency to any person. Nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

(5)(a) A court vacating a conviction for simple drug possession shall address whether legal financial obligations must be refunded to the person.

(i) When the sole crime of conviction under a cause number is simple drug possession, the court shall order a refund of all legal financial obligations and collection costs paid under that cause number.

(ii) Where a cause number includes both convictions for simple drug possession and other offenses not subject to vacation under the *Blake* decision, the court shall determine whether any nonvacated convictions independently support the court's imposition of legal financial obligations. When legal financial obligations previously imposed are independently supported by a nonvacated conviction, no refund of legal financial obligations and collection costs may be ordered by the court.

(iii) Where a cause number includes both convictions for simple drug possession and other offenses not subject to vacation, but imposition of legal financial obligations for those offenses is discretionary with the court, the court shall set a hearing with notice to the defendant and an opportunity to be heard on whether any nonvacated conviction supports imposition of legal financial obligations. In the interests of justice, the prosecutor may waive this hearing, and, if so, the court shall order a refund of all legal financial obligations and collection costs paid under that cause number.

(b) If the court determines that a refund of legal financial obligations and collection costs is appropriate, the vacation order shall direct the municipal court administrator to cancel any unpaid legal financial obligation and collection cost balances. The order shall further direct the municipal court administrator to compute all legal financial obligations and collection costs paid by the person that arise from the vacated counts, which amounts shall be certified by the municipal court administrator, to the refund bureau created in section 5 of this act. Upon filing the certification, the refund obligation is transferred to the refund bureau. Following issuance of a refund under a cause number, the refund bureau shall file notice of the amounts paid with the municipal court.

(6) Where it is necessary to resentence a person or amend the existing sentence in connection with a vacation, the matter will proceed under the court rules with notice to the defendant. Defense counsel shall be appointed where required by law. The court shall notify the local office of public defense or proper appointing authority, appoint local defense counsel from the list published by the Washington state office of public defense, or, where no defense counsel is listed for the jurisdiction, contact the Washington state office of public defense. Nothing in this act limits the court's sentencing authority or its authority to resentence.

(7) The prosecutor shall take action to quash any judicial warrants based solely on underlying charges for simple drug possession or other offenses where a conviction for simple drug possession is an element of the crime. Within six months of the effective date of this section, the prosecutor shall certify to the director that all such warrants have been submitted to a judicial officer for action quashing the warrant. If exceptional circumstances apply, and a prosecutor cannot meet the six-month deadline, the prosecutor shall provide an estimate for a reasonable extension to the director.

(8) Within appropriated funds, the director shall contract with each city to ensure sufficient availability of clerks, prosecutors, defenders, judicial officers, and courtroom space to complete all work required by this section within three years of the effective date of this section. Contracts to complete resentencing, vacation, and refund work under this act may be based on actual time or upon the average time necessary to complete a task. The work required by this section is deemed complete when all warrants have been quashed and all cause numbers on the report have been dismissed, vacated, resentenced, or otherwise addressed through a "Notice of *Blake* Disposition." The municipal court administrator shall track resolution of all cause numbers on the report. On a quarterly basis, the municipal court administrator shall report the following to the director: (a) Vacated cause numbers; (b) resentenced cause numbers; (c) cases where the prosecutor has filed a "Notice of *Blake* Disposition"; and (d) the number of cases on the report awaiting action.

(9) Nothing in this section precludes a person from filing a motion under his or her own criminal cause number to vacate a prior conviction for simple drug possession or be resentenced pursuant to *Blake*. Defense counsel shall be appointed where required by law. The court shall notify the local office of public defense or proper appointing authority, appoint local defense counsel from the list published by the Washington state office of public defense, or, where no defense counsel is listed for the jurisdiction, contact the Washington state office of public defense.

NEW SECTION. **Sec.**  REFUND BUREAU. (1) The director shall establish a refund bureau for the purpose of refunding legal financial obligations and collection costs paid by persons that arise from the vacation of convictions for simple drug possession in the superior, district, or municipal courts. The director may adopt rules to establish bureau operations and refund procedures. Prior to establishment of the refund bureau, the superior court clerk, the district court administrator, or the municipal court administrator may initiate payment of legal financial obligations out of funds appropriated by the state for this purpose. If state funds are unavailable, the superior court clerk, the district court administrator, or the municipal court administrator shall certify the amount of the refund due for payment by the refund bureau.

(2) Within appropriated funds, the refund bureau shall issue refunds of legal financial obligations and collection costs to eligible persons with vacated convictions for simple drug possession in the amounts certified by the superior court clerk, the district court administrator, or the municipal court administrator pursuant to a court vacation order.

(3) The director shall publicize the availability of refunds to persons with vacated convictions for simple drug possession and the process for obtaining those refunds. In addition, the director shall provide specific notice to persons still living whom the superior court clerk, district court administrator, or municipal court administrator has certified under section 3 or 4 of this act are due refunds of legal financial obligations and collection costs. Such notice shall be accomplished by first-class mail to the person's last known address. To determine the last known address, the director may consult databases maintained by the department of corrections, the courts, and the department of licensing.

(4) The refund bureau established by the director is the exclusive means to obtain a refund of any legal financial obligations and collection costs paid by a person with a prior or vacated conviction for simple drug possession. No civil action may be filed against the state, counties, or cities that have requested assistance under subsection (1) of this section, nor may such an action be filed against any officials, employees, or agents of those entities seeking a refund of legal financial obligations and collection costs, other damages, or any other type of relief in connection with a prior or vacated conviction for simple drug possession.

(5) Any person seeking a refund of legal financial obligations and collection costs arising from a vacated conviction for simple drug possession shall have 10 years from the effective date of this section to complete his or her application to the refund bureau. Any legal financial obligations and collection costs that have not been claimed within this 10-year period will escheat to the state. The refund bureau established in this section will terminate operation 10 years and one month after the effective date of this section.

NEW SECTION. **Sec.**  UNAVAILABLE COURT RECORDS. (1) Except where court records are no longer available, court records showing crimes of conviction and legal financial obligation and collection cost payments are presumptively correct. A person seeking to rebut this presumption may do so only by clear and convincing evidence.

(2) A person seeking vacation of a conviction within the time period where court records are unavailable may prove the existence of the conviction through a declaration accompanied by copies of a judgment and sentence, or official records reporting the conviction. Upon proof deemed adequate by the court, such a conviction is subject to potential vacation under section 3 or 4 of this act.

(3) A person seeking a refund of legal financial obligations and collection costs within the time period where court records are unavailable may prove the existence of payments by declaration accompanied by direct or secondary sources demonstrating payment.

(4) Any person contesting the existence of a conviction for simple drug possession or the amounts due for refund shall bring the matter before the court of conviction.

NEW SECTION. **Sec.**  WASHINGTON STATE PATROL. When presented with an order vacating a prior conviction for simple drug possession, the Washington state patrol shall remove any convictions covered by the vacation order from all criminal record information systems maintained by the Washington state patrol. In addition, the Washington state patrol shall report the vacated convictions to relevant federal authorities.

NEW SECTION. **Sec.**  LIMITATION ON LIABILITY. The state, its agencies, and its municipal subdivisions, as well as officials, employees, and agents of those entities, shall not be civilly liable for performing any duties pursuant to this act: PROVIDED, That such duties were performed in good faith and without gross negligence. Nothing in this section limits any statutory or common law immunity otherwise applicable to the state, its agencies, and its municipal subdivisions, as well as officials, employees, and agents of those entities.

NEW SECTION. **Sec.**  EMERGENCY CLAUSE. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. **Sec.**  CODIFICATION DIRECTIVE. Sections 1 through 9 of this act constitute a new chapter in Title 10 RCW.

**--- END ---**