

WACDL/WDA *State v. Blake* Recommendations

Now that the Washington State Supreme Court has held in *State v. Blake* that the felony Possession of a Controlled Substance statute is unconstitutional, it is presenting 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. Since 1989, Washington State stood alone as the only state in the nation to have a statute for possession of a controlled substance statute without a *mens rea* element and criminalized passive nonconduct. 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. The War in Drugs is a failed policy, and treatment and harm reduction efforts should be the focus, not police enforcement, legal system involvement, and incarceration. We cannot afford to resurrect a system that has caused the destruction of countless lives.

Criminalizing the possession of drugs causes serious and predictable harm that disproportionately impacts Black, Indigenous, and people of color. Though we know that Black and white people use and sell drugs at similar rates, a new analysis of state sentencing data shows that Black people are convicted of drug possession at disproportionately high rates throughout Washington. The same is true for Native Americans. Convictions for drug possession have substantial and lifelong impacts on an individual's ability to participate fully in society including obtaining access to housing, employment, and opportunities to serve their communities.

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 decision. It is important that we 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. 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 imperative that we limit the use of this discriminatory tool that has resulted in a greatly expanded prison and criminal legal system.

Legislative Responses to the *Blake* Ruling

Action required by the Washington State Legislature falls into two main areas. The first is to facilitate and support the court activities that will be required to provide relief to those who have suffered under these unconstitutional charges. The second focuses upon what, if any

Washington Defender Association | 110 Prefontaine Pl. S., Suite 610 | Seattle, WA98104 | 206-623-4321
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

Washington Association of Criminal Defense Lawyers | 1511 Third Ave., Suite 503 | Seattle, WA98101 | 206-623-1302
WACDL is a non-profit organization working to improve the quality & administration of justice by protecting & insuring by rule of law those individual rights guaranteed by the Washington and Federal Constitutions

actions, are required this year to address potential holes in the law that might have arisen due to the ruling.

Support Needed for Criminal Legal System *Blake* Responses:

- **Access to Counsel and Resentencing:** We strongly urge legislation to ensure adequate funding and access to counsel for those impacted by this decision.
- **Streamlined Approaches to Moving Resentencing Cases through the Legal System:** Without a streamlined approach to resentencing and judicial review of impacted cases, individuals will be lost in the shuffle. Washington State does not have a unified court system and requires all 39 jurisdictions to address *Blake* matters. Compounding the matters includes the lack data around the number impacted individuals and those currently incarcerated. It is fundamental and top priority to help those incarcerated and on community custody to be relieved from their void sentences. This approach allows resources to be reallocated to address the path to healing.

Legislative Fixes to Drug Statutes: No action is required this legislative session other than the creation of a legislative workgroup and significantly increased funding for treatment services. We are developing specific responses to concerns raised about preemption as well as to other aspects of SB 5476 relating to personal use amounts, paraphernalia and issues relating to youth.

For more information, contact:

Neil Beaver: (509)979-9550 or neil.beaver@gmail.com