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ENGROSSED SENATE BILL 5476

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State of Washington

67th Legislature

2021 Regular Session

By Senators Dhingra, Hasegawa, Hunt, Kuderer, Lovelett, Nguyen, Pedersen, Rivers, Robinson, Saldaña, and Wellman

Read first time 03/24/21. Referred to Committee on Ways & Means.

1 AN ACT Relating to responding to the State v. Blake decision by  
2 addressing justice system responses and behavioral health prevention,  
3 treatment, and related services for individuals using or possessing  
4 controlled substances, counterfeit substances, and legend drugs;  
5 amending RCW 69.50.4011, 69.50.4013, 69.50.412, 69.41.030, 69.41.030,  
6 2.24.010, 2.24.040, and 9.94A.728; adding a new section to chapter  
7 41.05 RCW; creating new sections; prescribing penalties; providing an  
8 effective date; providing expiration dates; and declaring an  
9 emergency.

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

11 NEW SECTION. **Sec. 1.** The legislature finds that substance use  
12 disorder is a disease and should be treated using a public health,  
13 rather than a criminal justice-centered, approach. Existing laws  
14 criminalizing the possession of drugs have been ineffective in  
15 reducing drug use and preventing substance use disorder. These laws  
16 cause significant harm to individuals who use drugs by disrupting and  
17 further destabilizing their lives. It also contributes to an  
18 increased risk of death, the spread of infectious diseases, mass  
19 incarceration, the separation of families, and barriers to accessing  
20 housing, employment, and other vital services. Furthermore, even  
21 though research shows that drugs are used and sold at similar levels

1 across all races, laws criminalizing the use of drugs have  
2 disproportionately impacted minority communities.

3 This act takes the important first step of reducing the crime of  
4 possession from a felony to a gross misdemeanor and institutes  
5 greater opportunities for treatment. In coordination with this act,  
6 the legislature intends to increase funding for programs that have a  
7 proven track record of assisting individuals to break free from  
8 substance use dependency. These programs include LEAD (law  
9 enforcement assisted diversion/let everyone advance with dignity  
10 program); HOST (homeless outreach stabilization transition teams);  
11 peer-run clubhouses; opioid treatment network; project for  
12 psychiatric outreach for the homeless; mobile opioid treatment grant;  
13 peer support programs; and family navigators.

14 The purpose of this act is to save lives and to help transform  
15 Washington's approach to drug use from one based on criminalization  
16 and stigma to one based on science and compassion.

17  
18  
19 **PART I**

20 **POSSESSION AND USE OF CONTROLLED SUBSTANCES, COUNTERFEIT SUBSTANCES,**  
21 **AND LEGEND DRUGS**

22 **Sec. 2.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to  
23 read as follows:

24 (1) Except as authorized by this chapter, it is unlawful for any  
25 person to create, deliver, or knowingly possess a counterfeit  
26 substance.

27 (2) (~~Any~~) Except as provided in subsection (3) of this section,  
28 any person who violates this section with respect to:

29 (a) A counterfeit substance classified in Schedule I or II which  
30 is a narcotic drug, or flunitrazepam classified in Schedule IV, is  
31 guilty of a class B felony and upon conviction may be imprisoned for  
32 not more than ten years, fined not more than twenty-five thousand  
33 dollars, or both;

34 (b) A counterfeit substance which is methamphetamine, is guilty  
35 of a class B felony and upon conviction may be imprisoned for not  
36 more than ten years, fined not more than twenty-five thousand  
37 dollars, or both;

1 (c) Any other counterfeit substance classified in Schedule I, II,  
2 or III, is guilty of a class C felony punishable according to chapter  
3 9A.20 RCW;

4 (d) A counterfeit substance classified in Schedule IV, except  
5 flunitrazepam, is guilty of a class C felony punishable according to  
6 chapter 9A.20 RCW;

7 (e) A counterfeit substance classified in Schedule V, is guilty  
8 of a class C felony punishable according to chapter 9A.20 RCW.

9 (3) A violation of this section involving possession is a gross  
10 misdemeanor. Where a case is legally sufficient, the prosecutor shall  
11 divert the case for treatment if the alleged violation involving  
12 possession is the person's first or second violation. On a person's  
13 third and subsequent violation involving possession, the prosecutor  
14 is encouraged to divert the case for treatment.

15 **Sec. 3.** RCW 69.50.4013 and 2017 c 317 s 15 are each amended to  
16 read as follows:

17 (1) It is unlawful for any person to knowingly possess a  
18 controlled substance unless the substance was obtained directly from,  
19 or pursuant to, a valid prescription or order of a practitioner while  
20 acting in the course of his or her professional practice, or except  
21 as otherwise authorized by this chapter.

22 (2) Except as provided in RCW 69.50.4014, any person who violates  
23 this section is guilty of a ~~((class C felony))~~ gross misdemeanor  
24 punishable under chapter 9A.20 RCW.

25 (3) Where a case is legally sufficient, the prosecutor shall  
26 divert the case for treatment if the alleged violation is the  
27 person's first or second violation of this section. On a person's  
28 third and subsequent violation of this section, the prosecutor is  
29 encouraged to divert the case for treatment.

30 (4)(a) The possession, by a person twenty-one years of age or  
31 older, of useable marijuana, marijuana concentrates, or marijuana-  
32 infused products in amounts that do not exceed those set forth in RCW  
33 69.50.360(3) is not a violation of this section, this chapter, or any  
34 other provision of Washington state law.

35 (b) The possession of marijuana, useable marijuana, marijuana  
36 concentrates, and marijuana-infused products being physically  
37 transported or delivered within the state, in amounts not exceeding  
38 those that may be established under RCW 69.50.385(3), by a licensed  
39 employee of a common carrier when performing the duties authorized in

1 accordance with RCW 69.50.382 and 69.50.385, is not a violation of  
2 this section, this chapter, or any other provision of Washington  
3 state law.

4 ~~((4))~~ (5)(a) The delivery by a person twenty-one years of age  
5 or older to one or more persons twenty-one years of age or older,  
6 during a single twenty-four hour period, for noncommercial purposes  
7 and not conditioned upon or done in connection with the provision or  
8 receipt of financial consideration, of any of the following marijuana  
9 products, is not a violation of this section, this chapter, or any  
10 other provisions of Washington state law:

- 11 (i) One-half ounce of useable marijuana;
- 12 (ii) Eight ounces of marijuana-infused product in solid form;
- 13 (iii) Thirty-six ounces of marijuana-infused product in liquid  
14 form; or
- 15 (iv) Three and one-half grams of marijuana concentrates.

16 (b) The act of delivering marijuana or a marijuana product as  
17 authorized under this subsection ~~((4))~~ (5) must meet one of the  
18 following requirements:

- 19 (i) The delivery must be done in a location outside of the view  
20 of general public and in a nonpublic place; or
- 21 (ii) The marijuana or marijuana product must be in the original  
22 packaging as purchased from the marijuana retailer.

23 ~~((5))~~ (6) No person under twenty-one years of age may possess,  
24 manufacture, sell, or distribute marijuana, marijuana-infused  
25 products, or marijuana concentrates, regardless of THC concentration.  
26 This does not include qualifying patients with a valid authorization.

27 ~~((6))~~ (7) The possession by a qualifying patient or designated  
28 provider of marijuana concentrates, useable marijuana, marijuana-  
29 infused products, or plants in accordance with chapter 69.51A RCW is  
30 not a violation of this section, this chapter, or any other provision  
31 of Washington state law.

32 **Sec. 4.** RCW 69.50.412 and 2019 c 64 s 22 are each amended to  
33 read as follows:

34 (1) It is unlawful for any person to use drug paraphernalia to  
35 plant, propagate, cultivate, grow, harvest, manufacture, compound,  
36 convert, produce, process, or prepare(~~(, test, analyze, pack, repack,~~  
37 ~~store, contain, conceal, inject, ingest, inhale, or otherwise~~  
38 ~~introduce into the human body)) a controlled substance other than~~

1 marijuana. Any person who violates this subsection is guilty of a  
2 misdemeanor.

3 (2) It is unlawful for any person to deliver, possess with intent  
4 to deliver, or manufacture with intent to deliver drug paraphernalia,  
5 knowing, or under circumstances where one reasonably should know,  
6 that it will be used to plant, propagate, cultivate, grow, harvest,  
7 manufacture, compound, convert, produce, process, or prepare(~~(, test,~~  
8 ~~analyze, pack, repack, store, contain, conceal, inject, ingest,~~  
9 ~~inhale, or otherwise introduce into the human body)) a controlled  
10 substance other than marijuana. Any person who violates this  
11 subsection is guilty of a misdemeanor.~~

12 (3) Any person eighteen years of age or over who violates  
13 subsection (2) of this section by delivering drug paraphernalia to a  
14 person under eighteen years of age who is at least three years his or  
15 her junior is guilty of a gross misdemeanor.

16 (4) It is unlawful for any person to place in any newspaper,  
17 magazine, handbill, or other publication any advertisement, knowing,  
18 or under circumstances where one reasonably should know, that the  
19 purpose of the advertisement, in whole or in part, is to promote the  
20 sale of objects designed or intended for use as drug paraphernalia.  
21 Any person who violates this subsection is guilty of a misdemeanor.

22 (5) It is lawful for any person over the age of eighteen to  
23 possess sterile hypodermic syringes and needles for the purpose of  
24 reducing blood-borne diseases.

25 **Sec. 5.** RCW 69.41.030 and 2019 c 55 s 9 are each amended to read  
26 as follows:

27 (1) (~~(††)~~) Except as provided in subsection (2) of this section,  
28 it shall be unlawful for any person to sell, deliver, or knowingly  
29 possess any legend drug (~~(except)~~).

30 (2) The sale, delivery, or possession of a legend drug does not  
31 constitute a violation of this section upon the order or prescription  
32 of a physician under chapter 18.71 RCW, an osteopathic physician and  
33 surgeon under chapter 18.57 RCW, an optometrist licensed under  
34 chapter 18.53 RCW who is certified by the optometry board under RCW  
35 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician  
36 and surgeon under chapter 18.22 RCW, a veterinarian under chapter  
37 18.92 RCW, a commissioned medical or dental officer in the United  
38 States armed forces or public health service in the discharge of his  
39 or her official duties, a duly licensed physician or dentist employed

1 by the veterans administration in the discharge of his or her  
2 official duties, a registered nurse or advanced registered nurse  
3 practitioner under chapter 18.79 RCW when authorized by the nursing  
4 care quality assurance commission, a pharmacist licensed under  
5 chapter 18.64 RCW to the extent permitted by drug therapy guidelines  
6 or protocols established under RCW 18.64.011 and authorized by the  
7 commission and approved by a practitioner authorized to prescribe  
8 drugs, an osteopathic physician assistant under chapter 18.57A RCW  
9 when authorized by the board of osteopathic medicine and surgery, a  
10 physician assistant under chapter 18.71A RCW when authorized by the  
11 Washington medical commission, or any of the following professionals  
12 in any province of Canada that shares a common border with the state  
13 of Washington or in any state of the United States: A physician  
14 licensed to practice medicine and surgery or a physician licensed to  
15 practice osteopathic medicine and surgery, a dentist licensed to  
16 practice dentistry, a podiatric physician and surgeon licensed to  
17 practice podiatric medicine and surgery, a licensed advanced  
18 registered nurse practitioner, a licensed physician assistant, a  
19 licensed osteopathic physician assistant, or a veterinarian licensed  
20 to practice veterinary medicine: PROVIDED, HOWEVER, That the above  
21 provisions shall not apply to sale, delivery, or possession by drug  
22 wholesalers or drug manufacturers, or their agents or employees, or  
23 to any practitioner acting within the scope of his or her license, or  
24 to a common or contract carrier or warehouse operator, or any  
25 employee thereof, whose possession of any legend drug is in the usual  
26 course of business or employment: PROVIDED FURTHER, That nothing in  
27 this chapter or chapter 18.64 RCW shall prevent a family planning  
28 clinic that is under contract with the health care authority from  
29 selling, delivering, possessing, and dispensing commercially  
30 prepackaged oral contraceptives prescribed by authorized, licensed  
31 health care practitioners: PROVIDED FURTHER, That nothing in this  
32 chapter prohibits possession or delivery of legend drugs by an  
33 authorized collector or other person participating in the operation  
34 of a drug take-back program authorized in chapter 69.48 RCW.

35 ~~((+2))~~ (3)(a) A violation of this section involving the sale,  
36 delivery, or possession with intent to sell or deliver is a class B  
37 felony punishable according to chapter 9A.20 RCW.

38 (b) A violation of this section involving possession is a  
39 misdemeanor. Where a case is legally sufficient, the prosecutor shall  
40 divert the case for treatment if the alleged violation involving

1 possession is the person's first or second violation. On a person's  
2 third and subsequent violation involving possession, the prosecutor  
3 is encouraged to divert the case for treatment.

4 **Sec. 6.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to  
5 read as follows:

6 (1) (~~It~~) Except as provided in subsection (2) of this section,  
7 it shall be unlawful for any person to sell, deliver, or knowingly  
8 possess any legend drug (~~except~~).

9 (2) The sale, delivery, or possession of a legend drug does not  
10 constitute a violation of this section upon the order or prescription  
11 of a physician under chapter 18.71 RCW, an osteopathic physician and  
12 surgeon under chapter 18.57 RCW, an optometrist licensed under  
13 chapter 18.53 RCW who is certified by the optometry board under RCW  
14 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician  
15 and surgeon under chapter 18.22 RCW, a veterinarian under chapter  
16 18.92 RCW, a commissioned medical or dental officer in the United  
17 States armed forces or public health service in the discharge of his  
18 or her official duties, a duly licensed physician or dentist employed  
19 by the veterans administration in the discharge of his or her  
20 official duties, a registered nurse or advanced registered nurse  
21 practitioner under chapter 18.79 RCW when authorized by the nursing  
22 care quality assurance commission, a pharmacist licensed under  
23 chapter 18.64 RCW to the extent permitted by drug therapy guidelines  
24 or protocols established under RCW 18.64.011 and authorized by the  
25 commission and approved by a practitioner authorized to prescribe  
26 drugs, a physician assistant under chapter 18.71A RCW when authorized  
27 by the Washington medical commission, or any of the following  
28 professionals in any province of Canada that shares a common border  
29 with the state of Washington or in any state of the United States: A  
30 physician licensed to practice medicine and surgery or a physician  
31 licensed to practice osteopathic medicine and surgery, a dentist  
32 licensed to practice dentistry, a podiatric physician and surgeon  
33 licensed to practice podiatric medicine and surgery, a licensed  
34 advanced registered nurse practitioner, a licensed physician  
35 assistant, or a veterinarian licensed to practice veterinary  
36 medicine: PROVIDED, HOWEVER, That the above provisions shall not  
37 apply to sale, delivery, or possession by drug wholesalers or drug  
38 manufacturers, or their agents or employees, or to any practitioner  
39 acting within the scope of his or her license, or to a common or

1 contract carrier or warehouse operator, or any employee thereof,  
2 whose possession of any legend drug is in the usual course of  
3 business or employment: PROVIDED FURTHER, That nothing in this  
4 chapter or chapter 18.64 RCW shall prevent a family planning clinic  
5 that is under contract with the health care authority from selling,  
6 delivering, possessing, and dispensing commercially prepackaged oral  
7 contraceptives prescribed by authorized, licensed health care  
8 practitioners: PROVIDED FURTHER, That nothing in this chapter  
9 prohibits possession or delivery of legend drugs by an authorized  
10 collector or other person participating in the operation of a drug  
11 take-back program authorized in chapter 69.48 RCW.

12 ~~((+2))~~ (3)(a) A violation of this section involving the sale,  
13 delivery, or possession with intent to sell or deliver is a class B  
14 felony punishable according to chapter 9A.20 RCW.

15 (b) A violation of this section involving possession is a  
16 misdemeanor. Where a case is legally sufficient, the prosecutor shall  
17 divert the case for treatment if the alleged violation involving  
18 possession is the person's first or second violation. On a person's  
19 third and subsequent violation involving possession, the prosecutor  
20 is encouraged to divert the case for treatment.

## 21 PART II

### 22 SUBSTANCE USE RECOVERY SERVICES ADVISORY COMMITTEE

23 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.05  
24 RCW to read as follows:

25 (1) The authority shall establish the substance use recovery  
26 services advisory committee to make recommendations for  
27 implementation of a substance use recovery services plan.

28 (2) The authority must, in consultation with the University of  
29 Washington department of psychiatry and behavioral sciences and an  
30 organization that represents the interests of people who have been  
31 directly impacted by substance use and the criminal legal system,  
32 appoint members to the advisory committee who have relevant  
33 background related to the needs of persons with substance use  
34 disorder. The membership of the advisory committee must include, but  
35 is not limited to, experts in the etiology and stabilization of  
36 substance use disorders, including expertise in medication-assisted  
37 treatment and other innovative medication therapies; experts in  
38 mental health and trauma and their comorbidity with substance use

1 disorders; people who are currently using controlled substances  
2 outside the legal authority of prescription or valid practitioner  
3 order; experts in the relationship between social determinants of  
4 health, including housing and substance use disorder; experts in drug  
5 user health and harm reduction; representatives of city and county  
6 governments; a representative of urban police chiefs; a  
7 representative of rural county sheriffs; a representative of the  
8 interests of rural communities; a representative of fire chiefs;  
9 experts in peer support services; experts in substance use disorder  
10 recovery support services; experts in diversion from the criminal  
11 legal system to community-based care for people with complex  
12 behavioral health needs; experts in reducing racial disparity in  
13 exposure to the criminal legal system; an academic researcher with an  
14 expertise in drug policy and program evaluation; a substance use  
15 disorder professional; a representative of public defenders; a  
16 representative of prosecutors; a representative of the criminal  
17 justice training commission; a nongovernmental immigration attorney  
18 with expertise in the immigration consequences of drug possession and  
19 use crimes and findings of substance use disorder; recovery housing  
20 providers; low-barrier housing providers; representatives of racial  
21 justice organizations, including organizations promoting antiracism  
22 and equity in health care; a representative of a local health  
23 jurisdiction with expertise in overdose prevention and harm  
24 reduction; representatives of the interests of tribes; at least three  
25 adults in recovery from substance use disorder, including individuals  
26 with previous contact with the criminal legal system due to substance  
27 use; at least three youths in recovery from substance use disorder,  
28 including youths with previous criminal legal system contact due to  
29 substance use; and at least three family members of persons with  
30 substance use disorder. The advisory committee shall be reflective of  
31 the community of individuals living with substance use disorder,  
32 including people who are Black, indigenous, and people of color, and  
33 individuals who can represent the unique needs of rural communities.

34 (3) The advisory committee must make recommendations and provide  
35 perspectives to the authority regarding:

36 (a) Reforms to state laws that align with the goal of treating  
37 substance use disorder as a disease, rather than a criminal behavior;

38 (b) Current regional capacity for existing public and private  
39 programs providing substance use disorder assessments, each of the

1 American society of addiction medicine levels of care, and recovery  
2 support services;

3 (c) Barriers to accessing the existing health system for those  
4 populations chronically exposed to criminal legal system responses  
5 relating to complex behavioral health conditions and the consequences  
6 of trauma, and possible innovations that could reduce those barriers  
7 and improve the quality and accessibility of care for those  
8 populations;

9 (d) Evidence-based, research-based, and promising treatment and  
10 recovery services appropriate for target populations, to include, but  
11 not be limited to, field-based outreach and engagement, case  
12 management, mental and physical health care, contingency management,  
13 medication-assisted treatment and other innovative medication  
14 therapies, peer support services, family education, housing, job  
15 training and employment programs, and treatments that have not  
16 traditionally been covered by insurance;

17 (e) Workforce needs for the behavioral health services sector,  
18 including wage and retention challenges;

19 (f) Options for leveraging existing integrated managed care,  
20 medicaid waiver, American Indian or Alaska Native fee-for-service  
21 behavioral health benefits, and private insurance service capacity  
22 for substance use disorders, including but not limited to  
23 coordination with managed care organizations, behavioral health  
24 administrative services organizations, the Washington health benefit  
25 exchange, accountable communities of health, and the office of the  
26 insurance commissioner;

27 (g) Framework and design assistance for jurisdictions to assist  
28 in compliance with the requirements of RCW 10.31.110 for diversion of  
29 individuals with complex behavioral health conditions to community-  
30 based care whenever possible and appropriate, and identifying  
31 resource gaps that impede jurisdictions in fully realizing the  
32 potential impact of this approach;

33 (h) The design of a referral mechanism for referring people with  
34 substance use disorder or problematic behaviors resulting from drug  
35 use into the supportive services described in this section, including  
36 intercepting individuals who likely would otherwise be referred into  
37 the criminal legal system, with the express intention of ensuring  
38 that decriminalization of possession of personal use amounts does not  
39 inadvertently contribute to increased racial disparity among those  
40 who continue to be exposed to the criminal legal system due to income

1 instability and involvement in the illicit economy to meet basic  
2 needs;

3 (i) The design of ongoing qualitative and quantitative research  
4 about the types of services desired by people with substance use  
5 disorders and barriers they experience in accessing existing and  
6 recommended services; and

7 (j) Proposing a funding framework in which, over time, resources  
8 are shifted from punishment sectors to community-based care  
9 interventions such that community-based care becomes the primary  
10 strategy for addressing and resolving public order issues related to  
11 behavioral health conditions.

12 (4) The authority shall submit a summary report of the substance  
13 use recovery services plan and recommended changes to the law to the  
14 appropriate committees of the legislature by October 1, 2022. The  
15 authority shall submit an interim report on the progress of the  
16 advisory committee to the appropriate committees of the legislature  
17 by December 1, 2021.

18 (5) This section expires December 31, 2023.

19 **PART III**

20 **RESENTENCING AND RELEASE OF PERSONS IMPACTED BY *STATE V. BLAKE***

21 **Sec. 8.** RCW 2.24.010 and 2013 c 27 s 3 are each amended to read  
22 as follows:

23 (1) There may be appointed in each county or judicial district,  
24 by the judges of the superior court having jurisdiction therein, one  
25 or more court commissioners for said county or judicial district.  
26 Each such commissioner shall be a citizen of the United States and  
27 shall hold the office during the pleasure of the judges making the  
28 appointment.

29 (2) (a) There may be appointed (~~(in counties with a population of~~  
30 ~~more than four hundred thousand,))~~) by the presiding judge of the  
31 superior court having jurisdiction (~~(therein)~~), one or more attorneys  
32 to act as criminal commissioners to assist the superior court in  
33 disposing of adult criminal cases. Such criminal commissioners shall  
34 have power, authority, and jurisdiction, concurrent with the superior  
35 court and the judges thereof, in adult criminal cases, to preside  
36 over arraignments, preliminary appearances, initial extradition  
37 hearings, and noncompliance proceedings pursuant to RCW 9.94A.6333 or  
38 9.94B.040; accept pleas if authorized by local court rules; appoint

1 counsel; make determinations of probable cause; set, amend, and  
2 review conditions of pretrial release; set bail; set trial and  
3 hearing dates; authorize continuances; accept waivers of the right to  
4 speedy trial; and authorize and issue search warrants and orders to  
5 intercept, monitor, or record wired or wireless telecommunications or  
6 for the installation of electronic taps or other devices to include,  
7 but not be limited to, vehicle global positioning system or other  
8 mobile tracking devices with all the powers conferred upon the judge  
9 of the superior court in such matters. Criminal commissioners also  
10 shall have the authority to conduct resentencing hearings and to  
11 vacate convictions pursuant to *State v. Blake*, No. 96873-0 (Feb. 25,  
12 2021).

13 (b) The county legislative authority must approve the creation of  
14 criminal commissioner positions.

15 **Sec. 9.** RCW 2.24.040 and 2009 c 28 s 1 are each amended to read  
16 as follows:

17 Such court commissioner shall have power, authority, and  
18 jurisdiction, concurrent with the superior court and the judge  
19 thereof, in the following particulars:

20 (1) To hear and determine all matters in probate, to make and  
21 issue all proper orders therein, and to issue citations in all cases  
22 where same are authorized by the probate statutes of this state.

23 (2) To grant and enter defaults and enter judgment thereon.

24 (3) To issue temporary restraining orders and temporary  
25 injunctions, and to fix and approve bonds thereon.

26 (4) To act as referee in all matters and actions referred to him  
27 or her by the superior court as such, with all the powers now  
28 conferred upon referees by law.

29 (5) To hear and determine all proceedings supplemental to  
30 execution, with all the powers conferred upon the judge of the  
31 superior court in such matters.

32 (6) To hear and determine all petitions for the adoption of  
33 children and for the dissolution of incorporations.

34 (7) To hear and determine all applications for the commitment of  
35 any person to the hospital for the insane, with all the powers of the  
36 superior court in such matters: PROVIDED, That in cases where a jury  
37 is demanded, same shall be referred to the superior court for trial.

1 (8) To hear and determine all complaints for the commitments of  
2 minors with all powers conferred upon the superior court in such  
3 matters.

4 (9) To hear and determine ex parte and uncontested civil matters  
5 of any nature.

6 (10) To grant adjournments, administer oaths, preserve order,  
7 compel attendance of witnesses, and to punish for contempts in the  
8 refusal to obey or the neglect of the court commissioner's lawful  
9 orders made in any matter before the court commissioner as fully as  
10 the judge of the superior court.

11 (11) To take acknowledgments and proofs of deeds, mortgages and  
12 all other instruments requiring acknowledgment under the laws of this  
13 state, and to take affidavits and depositions in all cases.

14 (12) To provide an official seal, upon which shall be engraved  
15 the words "Court Commissioner," and the name of the county for which  
16 he or she may be appointed, and to authenticate his official acts  
17 therewith in all cases where same is necessary.

18 (13) To charge and collect, for his or her own use, the same fees  
19 for the official performance of official acts mentioned in  
20 subsections (4) and (11) of this section as are provided by law for  
21 referees and notaries public.

22 (14) To hear and determine small claims appeals as provided in  
23 chapter 12.36 RCW.

24 (15) In adult criminal cases, to preside over arraignments,  
25 preliminary appearances, initial extradition hearings, and  
26 noncompliance proceedings pursuant to RCW 9.94A.6333 or 9.94B.040;  
27 accept pleas if authorized by local court rules; appoint counsel;  
28 make determinations of probable cause; set, amend, and review  
29 conditions of pretrial release; set bail; set trial and hearing  
30 dates; authorize continuances; ~~(and)~~ accept waivers of the right to  
31 speedy trial; and conduct resentencing hearings and to vacate  
32 convictions pursuant to State v. Blake, No. 96873-0 (Feb. 25, 2021).

33 **Sec. 10.** RCW 9.94A.728 and 2018 c 166 s 2 are each amended to  
34 read as follows:

35 (1) No person serving a sentence imposed pursuant to this chapter  
36 and committed to the custody of the department shall leave the  
37 confines of the correctional facility or be released prior to the  
38 expiration of the sentence except as follows:

1 (a) An offender may earn early release time as authorized by RCW  
2 9.94A.729;

3 (b) An offender may leave a correctional facility pursuant to an  
4 authorized furlough or leave of absence. In addition, offenders may  
5 leave a correctional facility when in the custody of a corrections  
6 officer or officers;

7 (c) (i) The secretary may authorize an extraordinary medical  
8 placement for an offender when all of the following conditions exist:

9 (A) The offender has a medical condition that is serious and is  
10 expected to require costly care or treatment;

11 (B) The offender poses a low risk to the community because he or  
12 she is currently physically incapacitated due to age or the medical  
13 condition or is expected to be so at the time of release; and

14 (C) It is expected that granting the extraordinary medical  
15 placement will result in a cost savings to the state.

16 (ii) An offender sentenced to death or to life imprisonment  
17 without the possibility of release or parole is not eligible for an  
18 extraordinary medical placement.

19 (iii) The secretary shall require electronic monitoring for all  
20 offenders in extraordinary medical placement unless the electronic  
21 monitoring equipment interferes with the function of the offender's  
22 medical equipment or results in the loss of funding for the  
23 offender's medical care, in which case, an alternative type of  
24 monitoring shall be utilized. The secretary shall specify who shall  
25 provide the monitoring services and the terms under which the  
26 monitoring shall be performed.

27 (iv) The secretary may revoke an extraordinary medical placement  
28 under this subsection (1) (c) at any time.

29 (v) Persistent offenders are not eligible for extraordinary  
30 medical placement;

31 (d) The governor, upon recommendation from the clemency and  
32 pardons board, may grant an extraordinary release for reasons of  
33 serious health problems, senility, advanced age, extraordinary  
34 meritorious acts, or other extraordinary circumstances;

35 (e) No more than the final twelve months of the offender's term  
36 of confinement may be served in partial confinement for aiding the  
37 offender with: Finding work as part of the work release program under  
38 chapter 72.65 RCW; or reestablishing himself or herself in the  
39 community as part of the parenting program in RCW 9.94A.6551. This is

1 in addition to that period of earned early release time that may be  
2 exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

3 (f) No more than the final six months of the offender's term of  
4 confinement may be served in partial confinement as home detention as  
5 part of the graduated reentry program developed by the department  
6 under RCW 9.94A.733;

7 (g) The governor may pardon any offender;

8 (h) The department may release an offender from confinement any  
9 time within ten days before a release date calculated under this  
10 section;

11 (i) An offender may leave a correctional facility prior to  
12 completion of his or her sentence if the sentence has been reduced as  
13 provided in RCW 9.94A.870;

14 (j) Notwithstanding any other provisions of this section, an  
15 offender sentenced for a felony crime listed in RCW 9.94A.540 as  
16 subject to a mandatory minimum sentence of total confinement shall  
17 not be released from total confinement before the completion of the  
18 listed mandatory minimum sentence for that felony crime of conviction  
19 unless allowed under RCW 9.94A.540; and

20 (k) Any person convicted of one or more crimes committed prior to  
21 the person's eighteenth birthday may be released from confinement  
22 pursuant to RCW 9.94A.730.

23 (2) Notwithstanding any other provision of this section, an  
24 offender entitled to vacation of a conviction or the recalculation of  
25 his or her offender score pursuant to *State v. Blake*, No. 96873-0  
26 (Feb. 25, 2021), may be released from confinement pursuant to a court  
27 order if the offender has already served a period of confinement that  
28 exceeds his or her new standard range. This provision does not create  
29 an independent right to release from confinement prior to  
30 resentencing.

31 (3) Offenders residing in a juvenile correctional facility  
32 placement pursuant to RCW 72.01.410(1)(a) are not subject to the  
33 limitations in this section.

34 NEW SECTION. **Sec. 11.** The *State v. Blake* reimbursement account  
35 is created in the state treasury. Moneys in the account may be spent  
36 only after appropriation. Expenditures from the account may be used  
37 only for state and local government costs resulting from the supreme  
38 court's decision in *State v. Blake* and to reimburse individuals for

1 legal financial obligations paid in connection with sentences that  
2 have been invalidated as a result of the decision in *State v. Blake*.

3 **PART IV**

4 **MISCELLANEOUS PROVISIONS**

5 NEW SECTION. **Sec. 12.** Section 5 of this act expires July 1,  
6 2022.

7 NEW SECTION. **Sec. 13.** Section 6 of this act takes effect July  
8 1, 2022.

9 NEW SECTION. **Sec. 14.** Sections 1 through 5, and 7 through 11 of  
10 this act are necessary for the immediate preservation of the public  
11 peace, health, or safety, or support of the state government and its  
12 existing public institutions, and take effect immediately.

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