

UW – ToC – *State v. Blake*,  
ESB 5476, and Beyond  
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# *State v. Blake* (2021)

- On February 25, 2021, the Washington Supreme Court struck down the state's main drug possession crime in a case called *State v. Blake*. The ruling meant there was no state law making simple possession of drugs a crime unless the legislature re-criminalized it, which it has now done via passage of [ESB 5476](#).
- However, the criminal changes, making possession crimes misdemeanors with mandatory diversion to services for at least the first two occasions, are only in effect until July 1, 2023. This means the policy landscape for this issue is unsettled.
- Lots of work underway to provide [criminal record](#) and legal financial obligation [relief](#) to people with past convictions.

# ESB 5476 – Major Components

- Criminal Legal Changes
- Behavioral Health Services
- Appropriations
- *State v. Blake* Implementation Issues

# ESB 5476 – Criminal Legal Changes - Sections (6, 8-13,)

- Possession of controlled substances other than marijuana, marijuana between 28.35-40grams, counterfeit substances, and legend drugs is a misdemeanor crime. But “law enforcement shall offer a referral to assessment and services,” unless “law enforcement agency records reflect that an individual has been diverted...twice or more previously,” at which point diversion is optional
- These criminal possession changes expire July 1, 2023, meaning the law would be the post-*Blake* pre ESB-5476 law

# ESB 5476 – Criminal Legal Changes - Sections (2, 6, 7, 13, 15-16)

- Diversion requirements – New “Recovery Navigator Programs” (i.e. LEAD) to be established statewide via HCA and Behavioral Health Administrative Service Organizations. Law enforcement are authorized to divert cases, but the programmatic details for things like the recovery navigator programs are still being worked out.
- Law enforcement to receive training on substance use disorders
- Adult and juvenile sentencing grids changed to reflect new possession laws

# Paraphernalia Law – Amended in ESB 5476

- Possession and delivery of paraphernalia changes – 69.50.412:

It is unlawful to use/deliver paraphernalia to “plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, or prepare (~~test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body~~)).

- No expiration date for this section
- 69.50.412(5) – “(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing blood-borne diseases.”

# Paraphernalia Law

- 69.50.4121 remains – class 1 civil Infraction for giving away drug paraphernalia (\$250 fine)
- 69.50.4121 (3) – “(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies.”

# ESB 5476 – Behavioral Health Services- Section (1)

- HCA “shall establish a substance use recovery services plan,” and submit preliminary report by 12/1/21. Final report 12/2/22. Adopt rules and enter contracts for services by 12/1/23. Additional reports each year by 12/1 until 2026.
- HCA shall convene an “[advisory committee](#)” (SURSAC) with at least 23 members and give “due consideration” to the committee’s recommendations.
- A variety of issues to be addressed – including “recommendations regarding the appropriate criminal legal system response, if any, to possession of controlled substances.”



# Drug Policy Moving Forward

- [I-1922](#) possibly on the 2022 November ballot. It would direct \$141 million each year from state cannabis revenues currently going to the general fund, to local prevention, outreach, and recovery support services and end arrests and prosecutions of people for possessing drugs for their personal use.
- If I-1922 doesn't move forward or doesn't pass, the legislature will likely take some action in light of the criminal provisions in SB 5476 sunseting in July 2023.

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