

Dear Democratic State Legislators:

As you continue to deliberate the criminal penalties associated with E2SSB 5536/Blake, we understand that additional clarity is needed around the scope of a city's ability to legislate crimes and related criminal penalties. On behalf of ACLU of Washington, we offer you the following guidance related to a local jurisdiction's limited authority to impose criminal sanctions for behavior that is criminalized locally but not by the legislature.

**LOCAL JURISDICTIONS DO NOT HAVE UNFETTERED AUTHORITY;
PENALTIES LIMITED TO GROSS MISDEMEANOR**

1. Cities Criminal Penalty Authority is Limited. A city's ability to create a criminal penalty is capped at the gross misdemeanor level. In other words, a city cannot, via ordinances, legislate a criminal penalty that is worse than a gross misdemeanor. See [RCW 35A.11.020](#).
2. Cities Ability to Legislate Crimes. A city can create any crime, but if a state law exists for the same crime, the city penalties must be the same as the state's designated criminal penalties. If the state legislature is silent on drug possession and/or public use, the cities can adopt ordinances addressing them, but their penalties can't be any worse than what the Senate is already demanding, i.e., a gross misdemeanor. Notably, the [Bellingham ordinance](#) (p. 122), which has received much media attention as of late, only proposes imposing misdemeanor penalties, not gross misdemeanor penalties.
3. Most Sentences Run Concurrently, not Consecutively. In Washington, sentences on multiple counts arising from the same act must run concurrently, not consecutively. See [RCW 9.92.080](#). It's conceivable a police officer could witness someone consuming in public, arrest them, conduct a pat down, and find them to be in possession. These would be two separate acts that the prosecutor could charge and seek consecutive sentences for; however, the judge could order them to be served concurrently (see subparagraph (3)).

We respectfully request that you do not support E2SSB 5536. Behavioral treatment investments can be advanced without criminalization. Please let us know if you need any additional information.

Sincerely,

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