

HOW WASHINGTON'S DRUG POSSESSION LAWS HAVE CHANGED

STATE V. BLAKE AND SURSAC

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WASHINGTON'S CRIMINAL STATUTE REGARDING DRUG POSSESSION BEFORE STATE V. BLAKE

- Before the *Blake* decision, drug possession for one's own use was a felony that carried a standard sentence range of 0-6 months for the first three offenses (assuming no other criminal history points)
- The standard range sentences topped out at 24 months regardless of how many criminal history points one had
- **An exceptional sentence could be as long as 5 years**
- Some, but not all, cities and counties also offered diversion options, which meant Washingtonians might be offered help in one place, but punished in another

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STATE V. BLAKE AND LEGISLATIVE ACTIONS IN 2021

- On Feb. 25, 2021, the Washington Supreme Court struck down the state's main drug possession crime in a case called *State v. Blake*
- This ruling meant there was no state law making simple possession of drugs a crime unless the Washington state Legislature recriminalized it
- The Legislature discussed an approach that focused on building a public health-centered approach to address drug use with HB 1499 (2021)
- The Legislature later rejected HB 1499 and instead recriminalized possession via ESB 5476

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WHAT'S CURRENTLY IN PLACE

- ESB 5476 (2021) made possession crimes misdemeanors with mandatory diversion to services for at least the first two occasions
- The misdemeanor penalty and diversion requirements in SB 5476 expire on July 1, 2023
- **If the Legislature takes no action before then, the law will revert to its status after the *Blake* decision, with no criminal penalty for simple drug possession**

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RECOMMENDATIONS FOR THIS SESSION

- ESB 5476 also created the [Substance Use Recovery Services Advisory Committee \(SURSAC\)](#)
- SURSAC was tasked with making recommendations for how best to help individuals with substance use disorders access services
- **SURSAC released its final plan Jan. 11, 2023, which included recommendations to decriminalize possession, create a safe supply working group, and expand access to recovery services**
- SB 5624 (2023) would have enacted these recommendations

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WHERE THINGS STAND AFTER 2023 SESSION

- The Legislature did not pass a law addressing drug possession
- On July 1, 2023, the current misdemeanor criminal penalty expires
- Drug possession would no longer be a crime after July 1, but drug manufacture and distribution would remain felonies
- Police could still seize illicit drugs under existing state law
- The Legislature could take up the issue again in January 2024
- **The governor could also call a 30-day special session to revisit this issue prior to July 1**
- Cities and counties could adopt local ordinances addressing drug possession