



Review of State Drug Possession Laws

City of Tacoma
January 24, 2023



●●● Overview of Presentation



- Introductions
- Summary of *State v. Blake*
- Impacts of the *Blake* decision
- Legislative response (Summary of the current law)
- Current state of enforcement
- Review of the 2023 legislative proposals to-date

● ● ● Blake Decision



- RCW 69.50.4013 made possession of a controlled substance a felony
- In 2016 police executed a search warrant in Spokane
- They arrested three individuals including Shannon Blake
- At the jail the jailers discovered a small bag of methamphetamine in the coin pocket of Blake's jeans
- At trial Blake relied on the affirmative defense of "unwitting possession"

3

● ● ● Blake Decision



- Blake said a friend bought the jeans secondhand and gave them to Blake two days before her arrest
- Blake claimed she didn't know they contained drugs and that she has never used drugs
- Trial court found Blake possessed the drugs without finding her possession was intentional or knowing –and that Blake did not meet her burden proving her possession was unwitting, Blake was convicted
- Blake appealed her conviction to the State Supreme Court

4

●●● Blake Decision



- In 2021 the St. Supreme Court in 5-4 decision held RCW 69.50.4013 was unconstitutional
- The Court held the state drug possession law was a strict liability statute because it allows for a conviction based on the unintentional and unknowing possession of drugs
- The statute must contain a “mental element” such as knowing or intentional to charge and convict someone with drug possession
- Based on the decision all prosecutions for drug possession ended and all prior convictions were to be vacated

5

●●● Impacts of *State v. Blake*



- Retroactive application
 - Convictions vacated
 - Legal Financial Obligation refunds
- Possession of controlled substance statute unenforceable
- Manufacture, sale, delivery statutes were not affected by *Blake*

6

••• Legislative Response to *Blake*



- In 2021, the legislature passed ESB 5476
 - Added element of “knowing” to controlled substance possession
 - Made unlawful possession of a controlled substance a misdemeanor
 - Required two diversions prior to charging
- Expiration date added bill to expire the addition of “knowing” in the controlled substance statutes

7

••• Current State of Enforcement



- Local jurisdictions engaging differently, but few cases charged
- Potential reasons for lack of criminal charges:
 - Inability to track prior diversions
 - Lack of funding for necessary services through municipal court

8

●●● 2023 Controlled Substance Bills



Discussion of bills introduced in the 2023 legislative session

9



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