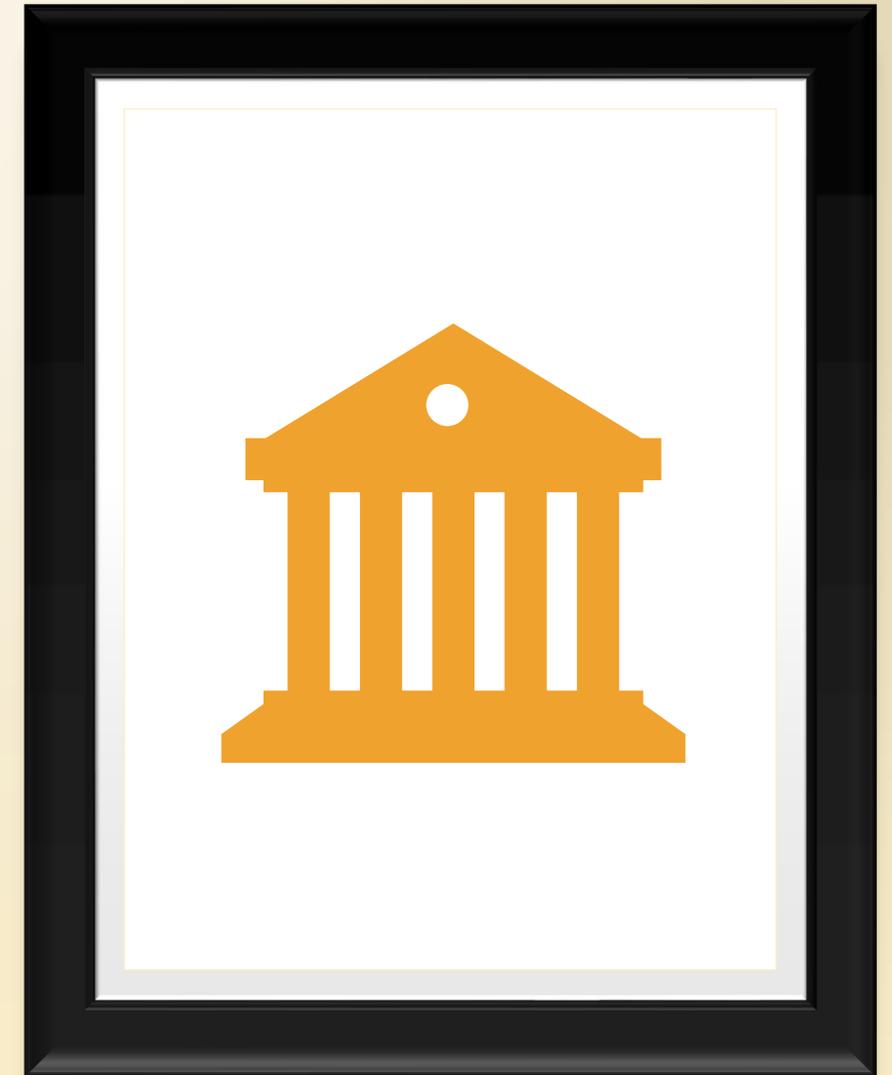


# SENTENCE REFORM: THE IMPACT OF BLAKE & OTHER RULINGS

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AN EXAMINATION BY THE KING  
COUNTY PROSECUTING ATTORNEY'S  
OFFICE

MAY 2021



# STATE V. BLAKE – THE BASIC RULING

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- Case from Spokane County
- Washington State Supreme Court found that possession of a controlled substance statute was unconstitutional because it did not contain a “knowledge” element.
- Spokane County filed a motion to reconsider, which was denied.
- Because crimes like Delivery of a Controlled Substance and Possession with Intent to Deliver have required mental elements in the statutes, they are not affected by this ruling.

# STATE V. BLAKE – THE FALL-OUT

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- All pending VUCSA Possession cases must be dismissed.
- All warrants for VUCSA Possession cases must be quashed.
- All prior convictions under statutory scheme are unconstitutional and void.
  - Right to vacate all VUSCA Possession convictions back to 1971.
  - Right to refund of previously paid legal financial obligations.

# STATE V. BLAKE – THE FALL-OUT

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- Anyone serving a sentence on VUCSA Possession must be released.
- Anyone who had a prior conviction for VUCSA Possession and was sentenced to a different crime, must be re-sentenced (or submit an agreed order) due to a change in their offender score.
- Anyone who had a conviction for Unlawful Possession of a Firearm based on a predicate felony of VUCSA Possession must have their case dismissed.

# STATE V. BLAKE – PENDING CASES

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- The KCPAO dismissed all pending VUCSA Possession cases.
- The KCPAO is attempting to quickly identify and quash all outstanding warrants on VUCSA Possession cases. Warrants go back several decades – and this process will take time to comb through old records.
- This process includes not only VUCSA Possession but also Attempt, Solicitation and Conspiracy to Possess controlled substances (from King County District Court.)

# STATE V. BLAKE – RESOLVED CASES

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- According to DOC there are between 750 and 1200 King County defendants serving time in DOC that may be affected by Blake.
- For defendants serving time just on VUCSA possession, they have already been released.
- However, there are defendants who were convicted of a *different* crime but had a VUCSA possession conviction in their past that added to their offender score and therefore increased their sentence. These defendants need to be re-sentenced (or addressed by an agreed order.)

# STATE V. BLAKE – ALL TYPES OF CASES AFFECTED

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- All types of convictions are affected by Blake.
- Convictions for Rape, Robbery, Murder may all need to be re-sentenced because the defendant had a prior VUCSA Possession in their offender score.

# STATE V. BLAKE – ALL TYPES OF CASES AFFECTED

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- For the more serious cases, this will result in new lengthy sentencing hearings, where victims and defendants are entitled to address the court.
- For other cases, the parties may try to reach an agreed resolution – but victim notification is still mandated.

# STATE V. BLAKE - RESENTENCINGS

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- Working with the court on a primary point of contact.
- Also trying to establish a tiered response to address those most affected first.
- Number of King County cases requiring resentencing or agreed order:

**750 to 1200**

# STATE V. BLAKE – RIGHT TO VACATE/REFUND

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- Defendants who have completed their sentence are entitled to vacation of prior VUCSA Possession conviction and a refund of all fines/fees (“LFOs”) paid as a result of that conviction.
- Responsibility for LFO refund should fall on State of Washington, who is the plaintiff in the criminal case, receives the LFOs, and directs their disbursement.
- Need to carefully screen petitions to determine legal eligibility and confirm defendant’s identify for refund.

# STATE V. BLAKE – SCOPE OF VACATE/REFUND

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King County Clerk's Office estimates:

- **Over 50,000 cases dating back to 1971**
- **About \$10 million in LFO refunds**

# STATE V. BLAKE – PROPOSED EXPEDITED PROCESS FOR VACATION AND LFO REFUND

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"There is only  
one way to eat  
an elephant: a  
bite at a time."

Desmond Tutu



 **Arbre**  
Consulting

## Outreach

- Website
- Publicity
- Hard to reach populations



## User-Friendly Website

- FAQs
- Guided questionnaire
- Generate motion with caption
- ECR access to J&S



## DPD Helpdesk & Motion Intake

- Assist with completing motion
- Verify ID & address
- Intake completed motion
- Point of contact



## PAO Sign-off

- Review motion
- Agree to vacation & dismissal with prejudice



## Court Approval

- Agreed order placed in Blake Order Que
- Approve vacation, dismissal, and where appropriate, LFO refund



## Clerk: All Orders

- File
- Communicate vacation to WSP



## Clerk: Orders with LFO Refund Provision

- Zero out any outstanding LFO balances
- Research court file to determine amounts paid & compute refund
- Initiate refund



## Finance

- Issue refund payment per direction of Court/Clerk
- Debit Card option

# OTHER JUDICIAL/LEGISLATIVE DECISIONS MANDATING RE-SENTENCINGS

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- State v. Ali
- In Re Personal Restraint Monschke
- SB 5164 (Laws of 2021, Ch. 141, sec 1 (ESB 164))

# STATE V. ALI

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- In Ali, the Washington State Supreme Court ruled that standard-range sentences imposed in adult court on offenders who committed their crimes while under the age of 18 may be unlawful unless the superior court made an individualized determination that the adult sentence is constitutionally proportionate.
- This means that up to **108** cases will need to be re-sentenced before the King County Superior Court.
- These are serious and violent and sex abuse cases often committed against other juveniles, that require special care. Each of these cases will likely require significant time and resources, including the appointment of experts on both sides.

# IN RE PERSONAL RESTRAINT OF MONSCHKE

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- In Monschke, the Washington State Supreme Court extended the prohibition on Mandatory Life Without the Possibility of Parole (LWOP) of juveniles to 18 to 20-year old's.
- This decision necessitates 10 re-sentencings of aggravated murder cases.
- Other cases pending before the Washington Supreme Court ask the court to expand Monschke's ruling to 21-23-year old's. It is therefore possible that this number will rise, depending on the supreme court's rulings, which may not come until later this year.

# SB 5164

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- In SB 5164, the Washington State Legislature mandated that any defendant who was sentenced to life as a persistent offender would be entitled to resentencing if one of the predicate felonies was a Robbery in the Second Degree.
- We have proactively identified about **29** KC cases and awaiting to receive a complete list from DOC.
- Like the previous cases, these are serious cases and will require special care and victim assistance.

# SENTENCE REFORM: THE IMPACT OF BLAKE & OTHER RULINGS

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## THANK YOU

- CARLA C. LEE, DEPUTY CHIEF OF STAFF
- DAN J. CLARK, CHIEF CRIMINAL DIV.
- DAVID HACKETT, SR DEPUTY PROSECUTOR,

**MAY 27, 2021**

