

Multiple Agency Fiscal Note Summary

Bill Number: 5476 SB	Title: State v. Blake decision
-----------------------------	---------------------------------------

Estimated Cash Receipts

Agency Name	2021-23			2023-25			2025-27		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Office of State Treasurer	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Total \$	0	0	0	0	0	0	0	0	0

Agency Name	2021-23		2023-25		2025-27	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.					
Loc School dist-SPI						
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.					
Local Gov. Total						

Estimated Operating Expenditures

Agency Name	2021-23				2023-25				2025-27			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of State Treasurer	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Attorney General	Fiscal note not available											
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Social and Health Services	Fiscal note not available											
Department of Health	.1	0	0	17,000	.0	0	0	0	.0	0	0	0
Department of Corrections	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Total \$	0.1	0	0	17,000	0.0	0	0	0	0.0	0	0	0

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2021-23			2023-25			2025-27		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of State Treasurer	.0	0	0	.0	0	0	.0	0	0
Office of Attorney General	Fiscal note not available								
Caseload Forecast Council	.0	0	0	.0	0	0	.0	0	0
Department of Social and Health Services	Fiscal note not available								
Department of Health	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

NONE

Prepared by: Danielle Cruver, OFM	Phone: (360) 522-3022	Date Published: Preliminary 4/ 5/2021
--	---------------------------------	---

Judicial Impact Fiscal Note

Bill Number: 5476 SB	Title: State v. Blake decision	Agency: 055-Administrative Office of the Courts
-----------------------------	---------------------------------------	--

Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact . Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact Kayla Hammer	Phone: 360-786-7400	Date: 03/24/2021
Agency Preparation: Sam Knutson	Phone: 360-704-5528	Date: 03/30/2021
Agency Approval: Ramsey Radwan	Phone: 360-357-2406	Date: 03/30/2021
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 03/30/2021

168,789.00

Request # 5476 SB-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

Please see attached Judicial Impact Note (JIN).

II. B - Cash Receipts Impact

II. C - Expenditures

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

NONE

III. B - Expenditure By Object or Purpose (County)

NONE

III. C - Expenditure By Object or Purpose (City)

NONE

III. D - FTE Detail

NONE

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

168,789.00

Form FN (Rev 1/00)

Part II: Narrative Explanation

This bill would remove criminal penalties for the possession of a controlled substance or a counterfeit substance or a legend drug that does not exceed the personal use amount. The bill would establish personal use amounts for various controlled substances. The bill would authorize law enforcement to refer individuals possessing a personal use amount of a controlled substance, counterfeit substance, or legend drug to a forensic navigator for the purpose of evaluation and treatment.

The bill would create a new civil infraction for using a controlled or counterfeit substance in a public place, with a maximum fine of \$125.

Part II.A – Brief Description of what the Measure does that has fiscal impact on the Courts

Section 2 – Would establish personal use amounts for various controlled, counterfeit and legend drug substances.

Section 3 – Provides that it would be unlawful for any person to create, deliver, or knowingly possess more than a personal use amount of counterfeit substance or a person under the age of 21 to knowingly possess a counterfeit substance of any amount.

Section 3(3) – Would provide that a person who possesses a counterfeit substance in an amount that does not exceed the applicable personal use amount may be referred to a forensic navigator for evaluation and services.

Section 4 - Provides that it would be unlawful for any person to create, deliver, or knowingly possess more than a personal use amount of a controlled substance or a person under the age of 21 to knowingly possess a controlled substance of any amount.

Section 4(3) – Would provide that a person who possesses a controlled substance in an amount that does not exceed the applicable personal use amount may be referred to a forensic navigator for evaluation and services.

Section 6 – Would provide that it is unlawful to open a package containing a counterfeit or controlled substance or consume a counterfeit or controlled substance in view of the general public or in a public place. Would provide that a person who violates this section would be guilty of a Class 2 Civil Infraction under RCW 7.80 and would be subject to a maximum fine of \$125. Would provide that proceeds from this infraction are to be deposited in the *State v. Blake* reimbursement account created by this bill.

Sections 7 and 8 - Provides that it would be unlawful for any person to create, deliver, or knowingly possess more than a personal use amount of a legend drug or a person under the age of 21 to knowingly possess a legend drug of any amount.

Section 12 – Would create the *State v. Blake* reimbursement account. Would provide that all penalties collected under RCW 69.50.445(4)(b) created by Section 6 of this bill, must be deposited into this account.

II.B - Cash Receipt Impact

Indeterminate. There is no data available to estimate the number of civil infractions that would result from this bill.

II.C – Expenditures

This bill would create a *mens rea* element of “knowingly” to certain drug possession statutes and would create personal use exemptions for counterfeit, controlled, or legend drug substances. Persons who possess drugs below the personal use limits established by this bill could be referred to “forensic navigators” by law enforcement as a resource for evaluation and treatment.

The bill would create a new civil infraction for using counterfeit, controlled, or legend drugs in a public setting, establishing a maximum penalty of \$125.

Judicial education would be required. Updates to the law tables and judicial system accounting codes would be required. These impacts would be managed within existing resources.

Part III: Expenditure Detail

III.A – Expenditures by Object or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE – Staff Years					
A – Salaries & Wages					
B – Employee Benefits					
C – Prof. Service Contracts					
E – Goods and Services					
G – Travel					
J – Capital Outlays					
P – Debt Service					
Total:					

III.B – Detail:

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
Total FTE's						

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

None.

Individual State Agency Fiscal Note

Bill Number: 5476 SB	Title: State v. Blake decision	Agency: 090-Office of State Treasurer
-----------------------------	---------------------------------------	--

Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact . Factors impacting the precision of these estimates , and alternate ranges (if appropriate) , are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Kayla Hammer	Phone: 360-786-7400	Date: 03/24/2021
Agency Preparation: Dan Mason	Phone: (360) 902-8990	Date: 03/24/2021
Agency Approval: Dan Mason	Phone: (360) 902-8990	Date: 03/24/2021
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 04/02/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

SB 5476 creates the State v. Blake reimbursement account, coupled with the general fund as the recipient of the earnings from investments under RCW 43.84.092 (4).

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

Projected cash flows are currently unavailable; therefore, estimated earnings from investments are indeterminable.

There may be an impact on the debt service limitation calculation. Any change to the earnings credited to the general fund will change, by an equal amount, general state revenues.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 5476 SB	Title: State v. Blake decision	Agency: 101-Caseload Forecast Council
-----------------------------	---------------------------------------	--

Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact . Factors impacting the precision of these estimates , and alternate ranges (if appropriate) , are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Kayla Hammer	Phone: 360-786-7400	Date: 03/24/2021
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 03/26/2021
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 03/26/2021
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 03/30/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

See attached.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

See attached.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

SB 5476
ADDRESSING THE STATE V. BLAKE DECISION
101 – Caseload Forecast Council
March 25, 2021

SUMMARY

A brief description of what the measure does that has fiscal impact.

- Section 1 Amends RCW 69.50.101 by adding a new definition for “Personal Use Amount”.
- Section 2 Amends RCW 69.50.101 by adding a new definition for “Personal Use Amount”.
- Section 3 Amends RCW 69.50.4011 by including a person must knowingly possess more than a personal use amount to commit the crime of Create, Deliver or Possess a Counterfeit Substance.
- Section 3 Additionally amends RCW 69.50.4011 by expanding the crime of Create, Deliver or Possess a Counterfeit Substance by adding it is unlawful for a person under the age of 21 to knowingly possess a counterfeit substance of any amount.
- Section 3 Additionally amends RCW 69.50.4011 by stating a person who possesses a counterfeit substance in an amount that isn’t “personal use amount” may be referred to a forensic navigator for evaluation and services as provided in Section 11.
- Section 4 Amends RCW 69.50.4013 by including a person must knowingly possess more than a personal use amount to commit the crime of Unlawful Possession of a Controlled Substance.
- Section 4 Additionally amends RCW 69.50.4013 by establishing a new gross misdemeanor for the crime of Unlawful Possession of a Controlled Substance by adding it is unlawful for a person under the age of 21 to knowingly possess a controlled substance of any amount.
- Section 4 Additionally amends RCW 69.50.4013 by stating a person who possesses a controlled substance in an amount that isn’t “personal use amount” may be referred to a forensic navigator for evaluation and services as provided in Section 11.
- Section 5 Amends the misdemeanor offenses of Use of Drug Paraphernalia and Deliver, Possess with intent to Deliver Drug Paraphernalia in RCW 69.50.412 by eliminating the use of drug paraphernalia to inject, ingest, inhale, or otherwise introduce a controlled substance other than marijuana into the human body.
- Section 6 Amends RCW 69.50.445 by establishing a Class 2 civil infraction for opening a package containing a counterfeit or controlled substance or consuming a counterfeit or controlled substance in view of the general public or in a public place.
- Section 7 Amends RCW 69.41.030 by including a person must knowingly possess more than a personal use amount to commit the crime of Sell, Deliver, or Possess a Legend Drug.
- Section 7 Additionally amends RCW 69.41.030 by expanding the crime of Sell, Deliver, or Possess a Legend Drug by adding it is unlawful for a person under the age of 21 to knowingly possess a legend drug of any amount.
- Section 8 Amends RCW 69.41.030 by including a person must knowingly possess more than a personal use amount to commit the crime of Sell, Deliver, or Possess a Legend Drug.

Section 8 Additionally amends RCW 69.41.030 by expanding the crime of Sell, Deliver, or Possess a Legend Drug by adding it is unlawful for a person under the age of 21 to knowingly possess a legend drug of any amount.

Section 9 Amends RCW 69.41.010 by adding a definition for “personal use amount”.

Section 10 Amends RCW 69.41.010 by adding a definition for “personal use amount”.

Section 11 Adds a new section to chapter 10.77 RCW that allows the services provided in RCW 10.77.074 to be used as a resource for law enforcement to serve as a care coordinator for substance use disorder resources. Also requires forensic navigators to attempt to contact the individual in order to provide resources, when the navigator received information alleging that the person was in possession of a counterfeit or controlled substance, or legend drug when in possession of personal use amounts.

Section 12 Adds a new section that creates an account in the state treasury, the State v. Blake Reimbursement Account.

Section 13 States Section 1, 7, and 9 of the act expire July 1, 2022.

Section 14 States Section 2, 8, and 10 of the act take effect July 1, 2022.

Section 15 States the act, other than Sections 2, 8, and 10, takes effect immediately.

EXPENDITURES

Assumptions.

None.

Impact on the Caseload Forecast Council.

None.

Impact on prison and jail beds and community corrections population:

A recent Washington State Supreme Court decision (*State v. Blake*) has ruled that RCW 69.50.4013 is unconstitutional. As a result, it is currently not unlawful to possess a controlled or counterfeit substance. This bill addresses the issue in the Blake decision by adding the requirement that it must be proven that the individual knowingly possessed the substance. The bill also includes a provision that allows for lawful personal use amounts for individuals age 21 and over.

The Caseload Forecast Council (CFC) has no information regarding how many of the offenses for possession of a controlled or counterfeit substance will include amounts in excess of personal use and as such, be guilty of Possession of a Controlled Substance; or, Create, Deliver or Possess a Counterfeit Substance. The CFC has no information concerning how many incidents of the felony offenses may occur or the sentences that might actually be imposed. As such, the CFC cannot reliably predict bed impacts resulting from the bill.

However: as a Class C felony offense ranked at Seriousness Level I on the Adult Felony Drug Grid, Possession of a Controlled Substance (in excess of person use amounts) would be punishable by a standard range term of confinement of between 0 - 6 months in jail to 12.03-24 months in prison (depending on the criminal history score). For violations of this offense for

individuals under the age of 21, it is a gross misdemeanor punishable by 0-364 days in jail. Therefore, any impact would be on both jail and prison beds.

As a Class B or C felony, Create, Deliver or Possess a Counterfeit Substance (in excess of personal use amounts or by a person under the age of 21) is ranked at Seriousness Level II on the Adult Felony Drug Grid and would be punishable by a standard range between 12.03 – 20 months to 60.03 – 120 months. Therefore, any impact would be on prison beds.

In addition, individuals assessed as a high risk to reoffend are supervised by the Department of Corrections for a period of 12 months.

Individual State Agency Fiscal Note

Bill Number: 5476 SB	Title: State v. Blake decision	Agency: 303-Department of Health
-----------------------------	---------------------------------------	---

Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.1	0.0	0.1	0.0	0.0
Account					
Health Professions Account-State 02G-1	17,000	0	17,000	0	0
Total \$	17,000	0	17,000	0	0

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact . Factors impacting the precision of these estimates , and alternate ranges (if appropriate) , are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Kayla Hammer	Phone: 360-786-7400	Date: 03/24/2021
Agency Preparation: Donna Compton	Phone: 360-236-4538	Date: 03/30/2021
Agency Approval: Carl Yanagida	Phone: 360-789-4832	Date: 03/30/2021
OFM Review: Danielle Cruver	Phone: (360) 522-3022	Date: 03/30/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Sections 1, 2, 3, and 4: Chapter 69.50 RCW (Uniform Controlled Substances Act) is amended to establish personal use amounts for several substances and provides the Health Care Authority with rulemaking authority to establish personal use amounts for controlled substances, counterfeit substances, or legend drugs for which a maximum personal use amount has not been established. The bill makes it lawful for a person age 21 or over to possess personal use amounts of counterfeit and controlled substances.

Sections 7, 8, 9, and 10: Chapter 69.41 RCW (Legend Drugs – Prescription Drugs) is amended to align the definition of personal use amount with the definition established for Chapter 69.50 RCW and to make it lawful for any person age 21 or over to possess a personal use amount of a legend drug.

Section 15: Except for sections 2, 8, and 10 of this act, this act takes effect immediately.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

Current law RCW 43.70.250 (License fees for professions, occupations, and businesses.) requires the department to charge a fee to generate sufficient revenue to fully support the costs of administering its pharmacy licensing activities. The Department of Health (department) does not anticipate the need to increase licensing fees to support the changes proposed in this bill. The department will monitor the program fund balance and adjust fees over a six (6) year period to ensure that fees are sufficient to cover all program expenditures.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Rulemaking

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, & 15: The department will adopt and/or amend rules to align with the statutory changes in chapter 69.41 RCW and 69.50 RCW. The department anticipates this will be a standard rulemaking process taking approximately 12 months to complete. Rulemaking will include two stakeholder meetings as well as one formal hearing which allows for stakeholder participation.

Costs for rulemaking include staff, associated expenses (including goods and services, travel, intra-agency, and indirect charges), and Office of Attorney General support in the amount of \$4,100. In fiscal year 2022, one-time costs for rulemaking will be 0.10 FTE and \$17,000 (02G-1).

TOTAL COSTS TO IMPLEMENT THIS BILL:

FY 2022: 0.10 FTE and \$17,000 (02G-1)

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
02G-1	Health Professions Account	State	17,000	0	17,000	0	0
Total \$			17,000	0	17,000	0	0

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.1		0.1		
A-Salaries and Wages	9,000		9,000		
B-Employee Benefits	3,000		3,000		
C-Professional Service Contracts					
E-Goods and Other Services	4,000		4,000		
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	1,000		1,000		
9-					
Total \$	17,000	0	17,000	0	0

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
HEALTH SERVICES CONSULTANT 4	80,292	0.1		0.1		
Total FTEs		0.1		0.1		0.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules .

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10: The commission will adopt rules in chapter 246-945 WAC (Pharmacy Quality Assurance Commission) as necessary to implement this bill.

Individual State Agency Fiscal Note

Bill Number: 5476 SB	Title: State v. Blake decision	Agency: 310-Department of Corrections
-----------------------------	---------------------------------------	--

Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact . Factors impacting the precision of these estimates , and alternate ranges (if appropriate) , are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia , complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Kayla Hammer	Phone: 360-786-7400	Date: 03/24/2021
Agency Preparation: Nicole Trexler	Phone: 360-725-8483	Date: 03/31/2021
Agency Approval: Michael Steenhout	Phone: 360-725-8270	Date: 03/31/2021
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 04/01/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

This bill addresses the State vs. Blake decision amending and adding new sections to applicable RCWs.

Section 1 amends RCW 69.50.101 by adding and defining personal use amount for substances and mixtures.

Section 3(1) adds that it is unlawful for individuals to create, deliver, or knowingly possess more than a personal use amount of counterfeit substance and any person under the age of 21 to knowingly possess counterfeit substances of any amount.

Section 3(3) states that a person who possesses a counterfeit substance in an amount that does not exceed the applicable personal use amount as defined in RCW 69.50.101 may be referred to a forensic navigator for evaluation and services as provided in Section 11 of this act.

Section 6 adds that it is unlawful to open a package containing a counterfeit or controlled substance in public, or in the general view of the public, and a person who violates this this section is guilty of a class 2 civil infraction under RCW 7.80.

Section 7(2) states that it is unlawful for any individual to sell, deliver, or knowingly possess more than the personal use amount of any legend drug or for any person under the age of 21 to knowingly possess a legend drug of any amount.

Section 8(2) amends RCW 69.41.030 and states that the sale, delivery, or possession of a legend drug does not constitute a violation of this section upon the order or prescription of a physician under RCW 18.71.

Section 9 provides the definition of personal use amount as provided in RCW 69.50.101.

Section 12 is added to state that the State vs. Blake reimbursement account will be created in the state treasury. All receipts from penalties collected under RCW 69.50.445 (4)(b) must be deposited into the account. Expenditures from the account may be used only for state and local government costs resulting from decision to reimburse individuals for legal financial obligations paid in connection with sentences that have been invalidated because of the decision of State vs. Blake.

Section 13 states that Sections 1, 7, and 9 of this act expire July 1, 2022.

Section 14 states that Sections 2, 8, and 10 will take effect on July 1, 2022.

Section 15 states that except for sections 2, 8, and 10, this act will take effect immediately.

The effective date is assumed 90 days after adjournment of session in which this bill is passed for all other applicable sections.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

The fiscal impact of this bill is indeterminate, assumed to be more than \$50,000 per Fiscal Year (FY).

This bill covers the Blake vs. State decision, which invalidates any Washington sentence for simple possession of a controlled substance. Personal use amounts are defined while guidelines on the sale, delivery, and knowledge of possession of more than the personal use amounts on both controlled and counterfeit substances are expanded. This creates new laws that deem it unlawful for a person to knowingly possess more than personal use amounts of a controlled substance while making it illegal for a person under the age of 21 to knowingly possess any amount of a legend drug. An individual under the age of 21 who is guilty of possession is now guilty of a gross misdemeanor as opposed to the previous class C felony.

The Caseload Forecast Council (CFC) has no information regarding how many of the offenses for possession of a controlled or counterfeit substance will include amounts in excess of personal use and as such, be guilty of Possession of a Controlled Substance or, create, deliver or possess a counterfeit substance. The CFC has no information concerning how many incidents of the felony offenses may occur or the sentences that might be imposed. As such, the CFC cannot reliably predict bed impacts resulting from the bill.

However, as a Class C felony offense ranked at Seriousness Level I on the Adult Felony Drug Grid, possession of a controlled substance, in excess of personal use amounts, would be punishable by a standard range term of confinement of between 0 - 6 months in jail to 12-24 months in prison, depending on the criminal history score. Violations of this offense for individuals under the age of 21 is a gross misdemeanor punishable by 0-364 days in jail. Therefore, any impact would be on both jail and prison beds.

As a Class B or C felony, creation, delivery or possession of a counterfeit substance, in excess of personal use amounts or by a person under the age of 21, is ranked at Seriousness Level II on the Adult Felony Drug Grid and would be punishable by a standard range between 12 – 20 months to 60 – 120 months. Therefore, any impact would be on prison beds.

In addition, individuals assessed as a high risk to reoffend are supervised by the Department of Corrections (DOC) for a period of 12 months.

The DOC assumes this bill would likely result in an Average Daily Population (ADP) increase, although the impact cannot be reliably estimated. Therefore, the fiscal impact is indeterminate, assumed to be more than \$50,000 per FY.

ASSUMPTIONS

1. The estimated ADP impact to DOC prison facilities /institutions and/or community supervision/violator caseloads is based on projections from CFC.
2. We assume Direct Variable Cost (DVC) of \$5,648 per incarcerated individual per FY to facilitate cost discussions during legislative session for bills. This cost estimate includes prison and health services direct variable costs. It does not include staffing or dollars necessary for staffing needed at the facility outside of the living /housing units. The DVC is calculated by DOC and reviewed and approved with Office of Financial Management, Senate, and House staff each legislative session.
3. For illustration purposes only, the average annual, Community Supervision caseload model is \$5,309 per ADP (not including startup costs), regardless of supervised risk level based on the workload model. If ADP impacts are applicable to this fiscal note, the calculated rate per community supervision ADP includes direct supervision and ancillary units, such as Hearings, Records and Training that are directly affected by supervision population changes. The estimate will vary based on risk level of the supervised individuals, which requires different staffing levels. The population trend data used is based on the Risk Level Classification tool and provides a risk level of 42.8% high violent; 27.3% high non-violent; 21% moderate; 7.9% low; and 1.0% unclassified. (June – November 2017)

4. The DOC assumes that any increase in community supervision caseload will result in an increased need for violator beds. For illustration, the FY2020 average percentage of supervised individuals that served jail time for violating their conditions of supervision was a rate of 5.0%. The current average daily cost for jail beds is \$98.94 per day, inclusive of all risk levels and healthcare costs. The rate is an average and actual rates vary by local correctional facilities.

5. We assume additional impacts will result when ADP caseload changes in either prison or community, and resources will be necessary. The DOC will “true up” our fiscal impact in subsequent budget submittals should the legislation be enacted into session law.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5476 SB	Title: State v. Blake decision
-----------------------------	---------------------------------------

Part I: Jurisdiction

Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities: Indeterminate expenditures due to changes to felony charges and law enforcement training and process changes.
- Counties: Same as above
- Special Districts: Same as above
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: Reduction in charges for possession of controlled or counterfeit substances; required process changes; the number of class 3 civil infractions that would fund the State v. Blake reimbursement account; and the proportion of funds that would be distributed to local governments.

Estimated revenue impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: Rebecca Duncan	Phone: 360-725-5040	Date: 03/31/2021
Leg. Committee Contact: Kayla Hammer	Phone: 360-786-7400	Date: 03/24/2021
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 03/31/2021
OFM Review: Danielle Cruver	Phone: (360) 522-3022	Date: 04/01/2021

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government .

This bill would establish personal use amounts for controlled substances , remove criminal penalties for the possession of a controlled or counterfeit substance or a legend drug that does not exceed the personal use amount , and authorize law enforcement to refer individuals possessing a personal use amount of a controlled substance , counterfeit substance, or legend drug to a forensic navigator for the purpose of evaluation and treatment.

Sections 1, 2, 9 and 10 would define personal use amounts of a controlled substance as an amount that does not exceed:

- 40 units of methadone;
- 40 pills of oxycodone;
- one gram of heroin;
- one gram or five pills of MDMA;
- two grams of cocaine;
- two grams of methamphetamine;
- 40 units of LSD; or
- 12 grams of psilocybin.

Sections 3, 4, 7 and 8 would provide that it is unlawful for a person to knowingly possess more than a personal use amount of a controlled substance or counterfeit substance, and it is unlawful for a person under the age of 21 to knowingly possess a controlled substance or counterfeit substance of any amount. In addition, unless the use is subject to a valid prescription, it would be unlawful for a person to knowingly possess more than a personal use amount, or for a person under the age of 21 to knowingly possess any amount, of a legend drug. Furthermore, a person who possesses a personal use amount of a controlled substance , counterfeit substance, or legend drug could be referred to a forensic navigator for evaluation and services .

Section 5 would remove language prohibiting introduction of a controlled substance other than marijuana into the human body from RCW 69.50.412.

Section 6 would establish a class 3 civil infraction for opening a package or using a controlled substance or counterfeit substance in view of the general public or a public place . A class 3 civil infraction is subject to a maximum penalty of \$125 .

Section 11 would provide that a forensic navigator may be used as a resource for law enforcement to serve as a care coordinator for substance use disorder resources. When a forensic navigator receives information alleging a person was in possession of a personal use amount of a controlled substance, counterfeit substance, or legend drug, the forensic navigator must attempt to contact the individual to provide resources for evaluation, treatment, recovery, and support.

Section 12 would create the State v. Blake reimbursement account in the state treasury . All receipts from the new class 3 civil infraction created by this act must be deposited into the account . Moneys in the account may be spent only after appropriation . Expenditures must be used for state and local government costs resulting from the Supreme Court's decision in State v . Blake.

Section 13 would provide that sections 1 , 7, and 9 of this act expire July 1 , 2022.

Section 14 would provide that sections 2 , 8, and 10 of this act take effect July 1 , 2022.

Section 15 would provide that, except for sections 2 , 8, and 10 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions , and takes effect immediately.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments , identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

This bill would have an indeterminate impact on local government expenditures .

JAIL AND JUVENILE FACILITY BED DEMANDS

This bill would remove criminal penalties for the possession of a controlled or counterfeit substance or a legend drug that does not exceed the personal use amount. Therefore, it is anticipated that the number of offenses will decrease . The Caseload Forecast Council (CFC) has no information regarding how many of the offenses for possession of a controlled or counterfeit substance will include amounts in excess

of personal use and as such, be charged with Possession of a Controlled Substance; or be charged with Create, Deliver or Possess a Counterfeit Substance. The CFC has no information concerning how many incidents of the felony offenses may occur or the sentences that might actually be imposed. As such, the CFC cannot reliably predict bed impacts resulting from the bill.

Since the change in the number of individuals that would be jailed cannot be known, the fiscal impact to jail expenditures would be indeterminate. However, any reductions in sentences for these offenses would result in reduced need for local juvenile facility beds as well as county jail beds. For reference, the 2021 Local Government Fiscal Note Program Criminal Justice Cost Matrix estimates the cost of an occupied county jail bed is \$114 per day. Additionally, a 2020 report by the Justice Policy Institute, the costs to incarcerate a juvenile in the state of Washington is about \$240 per day. Ultimately, though, costs from this anticipated change in offenses and jail occupancy is indeterminate.

CRIMINAL PROCEEDING COSTS

A change in the legality of possession of controlled or counterfeit substances and legend drugs as well as the usage drug paraphernalia when concerning applicable personal use amounts may cause savings to be realized by law enforcement agencies and the prosecution and defense aspects of the criminal justice system.

For reference, according to the 2021 Local Government Fiscal Note Program Criminal Justice Cost Matrix, drug/narcotics violations ranging from gross misdemeanors to class B felonies are estimated to costs about \$6,200 per offense. \$1,200 of this figure comes from law enforcement response, investigation, evidence maintenance, and trial participation while the other \$5,000 can be attributed to public prosecuting attorneys and court-appointed public defenders.

According to the 2019 Crime in Washington Report, in 2019 there were 10,054 drug equipment violations and 20,578 drug/narcotics violations for a total of 30,632 violations. It is unknown how many of these instances would no longer be unlawful due to the changes in statutes made by this legislation. Furthermore, it is possible a proportion of the aforementioned law enforcement costs will still be expended as officers' investigations of potentially unlawful possession will still occur.

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

This bill would have an indeterminate impact on local government revenues.

Section 12 would create the State v. Blake reimbursement account in the state treasury. All receipts from the new class 3 civil infraction created by this act must be deposited into the account. Expenditures must be used for state and local government costs resulting from the Supreme Court's decision in State v. Blake. The amount of funds that would be collected from the new \$125 class 3 civil infraction, as well as what portion of these funds would be distributed to local governments, cannot be determined at this time. Therefore, the impact on local government revenues is indeterminate.

SOURCES:

2019 Crime in Washington Report

2021 Local Government Fiscal Note Program Criminal Justice Cost Matrix

Justice Policy Institute report "Sticker Shock: The Cost of Youth Incarceration"

<http://www.justicepolicy.org/research/12928>

Washington Caseload Forecast Council

Washington State Association of Sheriffs and Police Chiefs

Caseload Forecast Council