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Subject: Reject E2SSB 5536/Blake Conference Report
Date: Sunday, April 23, 2023 1:32:59 PM
Attachments: [image001.png](#)

Dear Senators and Representatives of the Democratic Caucus:

On behalf of ACLU of Washington, we urge you to vote NO on the Conference Committee Report related to E2SSB 5536/Blake.

The new proposed striker is dangerous, a step in the wrong direction and will do little to ameliorate the conditions for those suffering from substance use disorder in public or their neighbors. We urge the Legislature to advance the diversion and behavioral health investments via its Operating Budget but go back to the drawing table on crimes and criminal penalties during the 2024 Legislative Session.

The striker recommended by the Conference Committee would, in part, establish the following new crimes and the harshest criminal penalties already available to cities:

1. Establishes a “gross misdemeanor” criminal penalty for the knowing possession of a controlled substance or counterfeit substance and use in a public place.
2. Establishes a misdemeanor offense for the knowing possession of a legend drug and use in a public place. A legend drug is a prescription drug that is regulated by the government and is not available over-the-counter and requires a doctor’s prescription. Examples of legend drugs include opioids, stimulants, antidepressants, and antipsychotics.
3. Eliminates the state preemption of the field of drug paraphernalia regulation. In other words, local jurisdictions have retained legal authority to pass harmful legislation related to drug paraphernalia.

The Conference Committee’s Report proposes that the Legislature establish a blanket policy of imposing the harshest criminal penalty available to cities. Should the Legislature reject the Conference Committee Report, *some* cities may choose to impose a misdemeanor while others may pursue a gross misdemeanor. While we do not favor a patchwork of local

laws, establishing the harshest penalty available in every county, city and town across Washington will produce irreversible harm to thousands of people. The Legislature retains its authority to preempt a patch work of laws, should it arise, by returning in 2024 and preempting local laws that are inconsistent with a less harmful criminal penalty for simple drug possession and/or public consumption of drugs.

Below is a guideline on the limited scope of a city's ability to legislate criminal penalties related to drug possession and paraphernalia:

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 Create Crimes is Distinct from Setting Criminal Penalties.** 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](#).

A vote to maintain criminal penalties is a vote to derail progress toward a real solution. It is a vote to cement racist and elitist policies that perpetuate inequities and sow division in our communities. It devalues the voices of people who've experienced substance use disorder and the direct and collateral damage of the War on Drugs. It sanctions diversion of public resources away from the task of building the right systems in favor of maintaining the tools of punishment and dehumanization.

Win or lose, vote on the right side of history. Vote your values. Vote with vision and the hope of inspiring the communities you serve. We respectfully ask that you say no to the harmful policies reflect in E2SSB 5536.

Sincerely,

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