## STAFF REPORT

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| **Agenda Item:** | 19 | **Name:** | Sam Porter |
| **Proposed No**.: | 2021-0426 | **Date:** | December 7, 2021 |

**SUBJECT**

Proposed Ordinance 2021-0426 would authorize Superior Court to hire criminal court commissioners for the purpose of reducing the court backlog and addressing the increased workload due to *State v. Blake*[[1]](#footnote-1)("*Blake*") and codify this section in King County Code.

**SUMMARY**

The Proposed Ordinance would amend Ordinance 16819 and codify Section 2 of that Ordinance in King County Code to allow Superior Court to hire new, temporary, criminal court commissioners for the specific purpose of reducing the Court's backlog and addressing increased workload from *Blake*, the February 2021 decision by the Washington State Supreme Court which invalidated sentences for simple possession of a controlled substance.

**BACKGROUND**

Superior Court is the County’s trial court for civil matters, family law, criminal (adult felony) and juvenile criminal offenses (misdemeanor and felony). The court has almost 75,000 case filings annually and is responsible for juvenile court services and court-ordered supervision and treatment. The court currently operates out of Seattle through the County Courthouse, the Youth Services Center, and the Harborview Involuntary Treatment Court, and in Kent at the Regional Justice Center.

**Backlog and *Blake* Workload.** According to a presentation by Presiding Judge Jim Rogers at the Regional Policy Committee meeting on November 10, 2021, from 2020 through November 2021 King County Superior Court held more trials than any other federal or state court in the country.[[2]](#footnote-2) Superior Court has returned to their pre-pandemic capacity and is now averaging 28-32 trials a day.[[3]](#footnote-3) The Court's goal is to exceed that capacity in the Criminal Department in order to address the backlog. The Court's case backlog has grown from 3,421 cases in August 2019 to 5,557 cases in August 2021 primarily due to the COVID-19 pandemic and an increase in the violent crime rate.[[4]](#footnote-4) In July 2021, the King County Council adopted Ordinances 19318[[5]](#footnote-5) and 19319[[6]](#footnote-6). Ordinance 19318 allocated $10.9 million, including 22.5 TLTs, to Superior Court to reduce the backlog due to the COVID-19 pandemic. Ordinance 19319 allocated $620,000 to Superior Court to address the fiscal impact of matters pursuant to *Blake*.

**Court Commissioners.** Court commissioners work under the direction of a judge as quasi-judicial officers and assume many of the same powers and duties of judges.[[7]](#footnote-7) Court commissioners are appointed to hear matters related to probate, issuing temporary restraining orders, and presiding over various pretrial issues. Article IV, Section 23 of the Washington State Constitution authorizes the appointment of up to three "constitutional" court commissioners per county. These commissioners have broad jurisdiction over estate, guardianship, and family law matters. In addition, the Legislature has authorized supplementary court commissioners with limited jurisdiction to assist in family court and the Involuntary Treatment Act court. State law also authorizes the county legislative authority of counties with a population more than 400,000 to approve the creation of criminal court commissioners.[[8]](#footnote-8)

RCW 2.24.010 establishes that criminal court commissioners have the same power, authority, and jurisdiction as a Superior Court judge to perform the following responsibilities in adult criminal cases:

* preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings;
* accept pleas if authorized by local court rules;
* appoint counsel;
* make determinations of probable cause;
* set, amend, and review conditions of pretrial release;
* set bail;
* set trial and hearing dates;
* authorize continuances;
* accept waivers of the right to a speedy trial; and
* authorize and issue search warrants and orders to intercept, monitor, or record wired or wireless communications or for the installation of electronic taps or other devices to include, but not be limited to, vehicle GPS or other mobile tracking devices.

In response to *Blake*, the State Legislature adopted ESB 5476[[9]](#footnote-9) which amended RCW 2.24.010 to grant authority to criminal court commissioners to conduct resentencing hearings and to vacate convictions related to *Blake* and allow commissioners to be appointed specifically for this purpose.

**ANALYSIS**

Proposed Ordinance 2021-0426 would amend Ordinance 16819 to be in alignment with recently amended RCW 2.24.010 with regard to *Blake*. Ordinance 16819 limited Superior Court to only hire criminal court commissioners from commissioners who are already employed by the Court. All new judicial officials are hired through the Judicial Protocol budget process established through Ordinance 8936 that was adopted by Council in 1989. The Proposed Ordinance would also allow Superior Court to hire new, temporary, criminal court commissioners for the specific purpose of reducing the court backlog and addressing increased workload resulting from *Blake*. Proposed Ordinance 2021-0426 would be consistent with Ordinance 8936 because the new commissioners would be temporary. The Proposed Ordinance would also codify Section 2 of Ordinance 16819 as recommended by Council's legal counsel and the Code Reviser.

There are currently 13 court commissioners in the King County Superior Court. The Court has hired three temporary commissioners: two for criminal plea hearings and one for *Blake* related matters. All commissioners are appointed by the court with prior authorization of the County Council through the budget process. The appointments are made by majority vote of the Superior Court judges in the county. Court commissioner salaries are set and paid by the county in accordance with state law.[[10]](#footnote-10)

State law requires the county legislative authority approve the creation of criminal court commissioner positions.[[11]](#footnote-11) The Court characterizes the effect of the Proposed Ordinance as ministerial in nature. There is no fiscal impact of this legislation because the fiscal authority for these commissioners was granted through previous budget appropriations as mentioned in the background section of this staff report.[[12]](#footnote-12)

Council's legal counsel has reviewed the proposed ordinance.

**INVITED**

* Jim Rogers, Presiding Judge, Superior Court
* Patrick Oishi, Assistant Presiding Judge, Superior Court
* Karen Donohue, Chief Criminal Judge, Superior Court

**ATTACHMENTS**

1. Proposed Ordinance 2021-0426
1. State v. Blake, 197 Wn.2d 170 (2021) <https://www.courts.wa.gov/opinions/pdf/968730.pdf> [↑](#footnote-ref-1)
2. Regional Policy Committee, November 10, 2021, <http://king.granicus.com/MediaPlayer.php?view_id=4&clip_id=8997> [↑](#footnote-ref-2)
3. Briefing 2021-B0147 *Update from Superior Court on Addressing the COVID-19 Superior Court Case Backlog*, PowerPoint Slides 2-3 <https://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=5198577&GUID=FF8B8DDB-1554-4251-B4E6-E95CB4C24C3C&Options=&Search=> [↑](#footnote-ref-3)
4. Briefing 2021-B0147 *Update from Superior Court on Addressing the COVID-19 Superior Court Case Backlog*, PowerPoint Slide 7, <https://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=5198577&GUID=FF8B8DDB-1554-4251-B4E6-E95CB4C24C3C&Options=&Search=> [↑](#footnote-ref-4)
5. Ordinance 19318 <https://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=4989493&GUID=EB2D97F9-13E0-4F38-B8A7-93CFE290AC05&Options=Advanced&Search=> [↑](#footnote-ref-5)
6. Ordinance 19319 <https://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=5009578&GUID=C478A57F-D8EF-4BA4-9DE3-4EF2D1D8295E&Options=Advanced&Search=> [↑](#footnote-ref-6)
7. Washington Courts, Superior Court Personnel definitions, <https://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo_jury.display&altMenu=Citi&folderID=jury_guide&fileID=superior> [↑](#footnote-ref-7)
8. RCW 2.24.010 [↑](#footnote-ref-8)
9. SB 5476 - 2021-22 Addressing the State v. Blake decision. <https://app.leg.wa.gov/billsummary?BillNumber=5476&Year=2021&Initiative=false> [↑](#footnote-ref-9)
10. RCW 2.24.030 [↑](#footnote-ref-10)
11. RCW 2.24.010 [↑](#footnote-ref-11)
12. Ordinance 19318 and Ordinance 19319 [↑](#footnote-ref-12)