

Amendment A Version 1 to CB 120645 - MO Public Safety and Health Response to the Opioid
Crisis ORD

Sponsor: Councilmember Herbold
Technical and clarifying edits

Effect: This amendment would make technical and clarifying edits for consistency in drafting convention and ease of understanding.

Amend Section 3 of CB 120645 as follows:

Section 3. A new Section 3.28.141 is added to the Seattle Municipal Code as follows:

3.28.141 Policies governing arrests for knowing possession of a controlled substance and use of a controlled substance in a public place

A. The provisions of this Section 3.28.141 apply to enforcement of RCW 69.50.4013(1), (2), (7), and (8) as amended by 2E2SSB 5536 (68th Legislature, 2023 1st Special Session), Section 2.

B. Policy. Consistent with any public health and safety-related Mayor-issued executive orders, the Seattle Police Department (SPD) will adopt policies governing arrests for the crimes described in subsection 3.28.141.A. These new policies will seek to minimize use of force and incorporate de-escalation and crisis intervention that reflect existing SPD policies in those areas. SPD will train its officers on these new policies.

C. Body-worn videos. When officers interact with individuals allegedly committing the crimes described in subsection 3.28.141.A, officers shall comply with SPD policies and procedures for body-worn video cameras and/or other equipment intended to record officer interactions with the public.

D. Probable cause for arrest. An officer must have probable cause for arrest.

E. Arrest: Nothing in this ~~((section))~~ Section 3.28.141 or in any other provisions of this ~~((ordinance))~~ legislation shall mandate an arrest to occur.

F. Diversion. Diversion, treatment, and other alternatives to booking are the preferred approach when enforcing the crimes adopted under this Section 3.28.141 as described in subsection 3.28.141.A.

1. SPD policies adopted under this Section 3.28.141 will contain guidance on diversion.

2. SPD policies will state that diversion and referral to services is the preferred response to the crimes described in subsection 3.28.141.A.

3. A lack of diversion opportunities shall not be a reason for arrest.

4. SPD shall collect data and report to the City Council Public Safety and Human Services Committee or its successor that identifies the racial composition of those:

a. Arrested and diverted to community-based services prior to jail booking or referral for prosecution; and

b. Booked and referred for prosecution.

G. Threat of harm to others. When considering making an arrest, releasing, or diverting an individual, pursuant to subsection 3.28.141.F, officers may determine whether the individual, through their actions and conduct, presents a threat of harm to others. This determination will occur after probable cause has been established. This determination is based on the totality of the circumstances and the officer's training and experience. SPD policy will identify factors to guide officers when assessing the threat of harm presented by the individual. The threat of harm assessment governs officer decisionmaking and is not an element of the crime to be proved

during the prosecution of the crimes described in subsection 3.28.141.A and cannot be used as a defense at trial.

H. Threat of harm to self

1. If an officer determines there is probable cause to arrest, and the officer's assessment indicates that the individual does not pose a threat of harm to others, the individual only poses a threat of harm to self.

2. An officer may attempt to contact and coordinate efforts for diversion, outreach, and other alternatives to arrest. An officer may arrest at the officer's discretion to avoid additional ~~((self harm))~~ harm to self.

3. An officer will not arrest when the individual only poses a threat of harm to self absent articulable facts and circumstances warranting such action.

4. The threat of harm assessment will govern officer decisionmaking and will not be an element of the crime to be proved during the prosecution of the crimes described in subsection 3.28.141.A and cannot be used as a defense at trial.

I. Officer safety. Nothing in this Section 3.28.141 is intended to compromise the safety or well-being of police officers.

J. An officer's failure to comply with this Section 3.28.141 shall not render an arrest unlawful if the arrest is otherwise supported by probable cause ~~((subsections 3.28.141.G and 3.28.141.H, or any other provisions of this legislation, will not be a basis to exclude or render inadmissible any subsequently obtained evidence))~~.

K. Reporting ~~((Requirements))~~ requirements

1. If an officer determines, based on the totality of circumstances, that an arrest is authorized by this Section 3.28.141, an arrest report shall be completed by the officer that

includes, at a minimum, the facts establishing probable cause, an assessment of the threat presented by the individual, and whether, and in what manner, arrest or diversion was considered or utilized.

2. The Office of Inspector General for Public Safety (OIG) (and/or an independent, academically based research organization engaged by OIG) and SPD shall work with the City Attorney's Office, Seattle Municipal Court, the Seattle Fire Department, and any other relevant departments to obtain the data described in subsections 3.28.141.L.1 through 3.28.141.L.12 by January 1, 2025 and annually on January 1 until 2030.

3. To the extent practicable, SPD officers shall collect and record in the department's record management system (RMS) data each contact with an individual in pursuit of enforcement of the crimes described in subsection 3.28.141.A and the number of attempts to contact and coordinate efforts for diversion, outreach, and other alternatives to arrest as described in subsection 3.28.141.F. If SPD is unable to collect the data described in this subsection 3.28.141.K.3, SPD and OIG shall endeavor to collect such data from service providers.

L. Annual reporting and recommendations. OIG and/or an independent, academically based research organization engaged by ~~((the Office of the Inspector General))~~ OIG shall review implementation of this Section 3.28.141 to determine the impact of subsections 3.28.141.G and 3.28.141.H, including but not limited to the ability of SPD officers to effectively address incidents described in subsection 3.28.141.A and based upon that review, provide recommendations to improve this Section 3.28.141 and related policy. OIG shall also provide recommendations regarding data collection and operationalization of such data collection to improve the City's ability to assess the effectiveness of this ~~((ordinance))~~ legislation. A

preliminary report shall be provided to the Council by June 30, 2025. The following data, or an explanation of why the data is unavailable, and written recommendations shall be provided by the OIG to the Council by December 31, 2025, and at least annually by December 31 until 2030:

1. The number of drug overdoses in Seattle on a quarterly basis (including baseline years of 2019 – 2022 and the first three quarters of 2023);
2. The number of shootings in which drugs were present or an individual was under the influence of drugs within Seattle on a quarterly basis (including baseline years of 2019 – 2022 and the first three quarters of 2023);
3. The number of 911 calls about use of controlled substances in a public place on a quarterly basis (including baseline years of 2019 – 2022 and the first three quarters of 2023);
4. The number of documented contacts between police officers, including community service officers, and individuals encountered (~~(in pursuit of)~~ during enforcement of the crimes described in subsection 3.28.141.A;
5. The number of attempts by police officers, including community service officers, to contact and coordinate efforts for diversion, outreach, and other alternatives to arrest as described in subsection 3.28.141.F;
6. The number of arrests for the crimes described in subsection 3.28.141.A;
7. The number of individuals transported for booking at jail and of that number: the name of the jail, the number of individuals who are booked into jail, the number of individuals the jail did not accept, the number of individuals transported to a medical facility, and the number of individuals released without booking into jail or being transported to a medical facility;

8. The number of possession and public use cases referred to the City Attorney's Office for prosecution;

9. The number of referred cases dismissed before or during trial, including pre-filing diversion cases;

10. The reasons for dismissal of referred cases;

11. The results of any interviews of SPD personnel with experience in the field implementing this Section 3.28.141 and their suggestions, if any, for improving the law or related policies, including the feasibility of implementing subsection 3.28.141.G and 3.28.141.H; and

12. Any other information deemed by OIG as helpful for the purposes of the review required by this subsection 3.28.141.L or providing written recommendations.

M. Based on officer availability, location, and deployment limitations, SPD shall seek to prioritize use of officers who have received at least 40 hours of crisis intervention team (CIT) training when enforcing the crimes described in subsection 3.28.141.A.

Section 4. Given that there are numerous unscaled community-based care teams in Seattle and that an effective response to complex behavioral health needs requires coordination and division of labor, this ~~((ordinance))~~ legislation establishes a behavioral health alternatives committee. This committee shall advise the Mayor, City Council, the Seattle Police Department (SPD), and ~~((the Civilian Assisted Response and Engagement (CARE) Department))~~ other public safety-related departments on an ongoing basis regarding any need for change in operationalized police protocols, legislation, or other policies. Committee approval shall not be required prior to implementation of SPD policies.

A. Reporting. The behavioral health alternatives committee created in this section shall produce bi-annually a report that identifies for individuals who are referred to diversion through SPD social contact, demographic and other information as recommended by the state's substance abuse and recovery services plan. Data used to produce the report shall be made available to the City for subsequent analysis to include persons who were arrested, booked, or prosecuted for the crimes described in subsection 3.28.141.A of the Seattle Municipal Code.

Section 5. This legislation is enacted as an exercise of the police power of the City of Seattle to protect the public peace, health, safety, and welfare, and its provisions shall be liberally construed to accomplish those purposes. The express purpose of this ~~((code))~~ legislation is to promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this ~~((code or ordinance))~~ legislation. The specific intent of this legislation is to provide guidance to police officers enforcing the crimes described in subsection 3.28.141.A. of the Seattle Municipal Code and increase public safety. No provision or term used in this ~~((code))~~ legislation is intended to impose any duty whatsoever on the City, or any of its officers or employees.