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Amendment 3 Version 1 to CB 121248 - City Drug Ordinance Update

Sponsor: Councilmember Rivera

Recognize officer's use of Ricky's Law

Effect:

This amendment would recognize an officer's ability to take into custody individuals in severe crises due to substance use or mental health disorders. As authorized under RCW 71.05.153(2), officers may transport an individual to a secure withdraw and stabilization facility for emergency stabilization and/ or evaluation by a Designated Crisis Responder (DCR).

Background: Ricky's Law is part of Washington State's Involuntary Treatment Act (ITA) and was enacted to expand access to treatment for people experiencing severe substance use or mental health crises who cannot make safe decisions for themselves.

Under Ricky's Law, police officers may take a person into custody for emergency transport and a temporary hold when the person appears to present an imminent danger due to substance use. However, the legal determination that the person meets criteria for involuntary behavioral health detention must be made by a Designated Crisis Responder (DCR).

RCW 71.05.153(2) A peace officer may take or cause such person to be taken into custody and immediately delivered to a crisis stabilization unit, 23-hour crisis relief center, evaluation and treatment facility, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or the emergency department of a local hospital when he or she has reasonable cause to believe that such person is suffering from a behavioral health disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

- Amend Section 1 of CB 121248 as follows:

Section 1. Section 3.28.141 of the Seattle Municipal Code, enacted by Ordinance 126896, is amended as follows:

3.28.141 Policies governing ((arrests)) enforcement 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))~~ enforcement related to 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))~~ C. Probable cause for arrest. An officer must have probable cause for arrest.

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

~~((F.))~~ E. Diversion. ~~((Diversion, treatment, and other alternatives to booking are))~~ Field-based, pre-booking diversion through a direct, in-person transfer of an individual (“warm handoff”) to recovery service providers who utilize the City’s law enforcement diversion framework, is 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 field-based, pre-booking diversion processes and state that in-field diversion and referral to services is the preferred response to crimes described in subsection 3.28.141.A.

~~((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.)) 2. A lack of diversion ((~~opportunities~~)) capacity shall not be a reason for arrest, jail booking, or referral for prosecution.

((4.)) 3. 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. Referred for recovery services on a voluntary basis without an arrest;

b. Arrested, released, and referred for prosecution;

c. Arrested and diverted to ((community-based)) recovery services prior to jail booking or referral for prosecution; and

((b-)) d. Booked and referred for prosecution.

((G-)) E. Threat of harm to others. When considering making an arrest, releasing, or diverting an individual, pursuant to subsection ((3.28.141.F)) 3.28.141.E, 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-))~~ G. 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, or take into custody, at the officer's discretion to avoid additional harm to self, including, when appropriate, for the purpose of emergency stabilization and evaluation as authorized under RCW 71.05.153(2). Reasonableness is determined from the perspective of a reasonable officer facing similar circumstances.

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

~~((J-))~~ I. 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.

~~((K-))~~ J. Reporting 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))~~ 3.28.141.K.1 through ~~((3.28.141.L.12))~~ 3.28.141.K.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))~~ 3.28.141.E. If SPD is unable to collect the data described in this subsection ~~((3.28.141.K.3))~~ 3.28.141.J.3, SPD and OIG shall endeavor to collect such data from service providers.

4. Any diversion strategies in which SPD participates must be structured to ensure that data on referrals, participation, outcomes, and participant demographics are collected and maintained, and such data are readily accessible to City departments, including SPD, OIG, the City Auditor, and the Mayor's Office.

~~((L.))~~ K. Annual reporting and recommendations. OIG and/or an independent, academically based research organization engaged by OIG shall review implementation of this Section 3.28.141 to determine the impact of subsections ~~((3.28.141.G))~~ 3.28.141.F and ~~((3.28.141.H))~~ 3.28.141.G, 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 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)))~~ The number of incidents marked as involving controlled substances as defined by the Seattle Municipal Code and Revised Code of Washington and in which a firearm was also found;
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 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))~~ 3.28.141.E;

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 due to medical declines or for other reasons, the number of individuals transported to a medical facility, including Harborview Medical Center, the number of individuals who are released from a medical facility and then transported to jail, 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))~~ referrals made to the City Attorney's Office for prosecution;

9. The number of ~~((referred cases dismissed before or during trial, including pre-filing diversion cases))~~ cases that the City Attorney's Office diverts pre-file to LEAD in which possession of a controlled substance or public use of a controlled substance is the sole charge;

10. The number of cases that the City Attorney's Office declines to file~~((= and the reasons for the decline,))~~ for cases in which possession of a controlled substance or public use of a controlled substance is the sole charge;

11. The number of cases that the City Attorney's Office diverts post-file to Law Enforcement Assisted Diversion in which possession of a controlled substance or public use of a controlled substance is the sole charge;

12. The number of cases that the City Attorney's Office dismisses, and the reasons for the dismissal, for cases in which possession of a controlled substance or public use of a controlled substance is the sole charge;

~~((10. The reasons for dismissal of referred cases;~~

~~11.))~~ 13. 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))~~ 3.28.141.F and ~~((3.28.141.H))~~ 3.28.141.G; and

~~((12.))~~ 14. Any other information deemed by OIG as helpful for the purposes of the review required by this subsection ~~((3.28.141.L))~~ 3.28.141.K or providing written recommendations.

~~((M.))~~ L. 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.