

Amendment 4 to CB 120645 – MO Public Safety and Health Response to the Opioid Crisis ORD

Sponsor: Councilmembers Herbold and Mosqueda

Amending Section 2 to adopt by reference RCW 10.05 and clarify applicability and procedures for offenses with a nexus to controlled substances

Effect: This amendment would expand upon the Deferred Prosecution program created by state statute and clarifies the applicability and procedures for offenses that are not enumerated in RCW 10.05.010(2) and (3), which are traffic infractions, domestic violence offenses, and criminal mistreatment offenses. To date, courts across Washington have utilized the Deferred Prosecution statute sparingly and caselaw reflects that only offenses related to DUI have entered Deferred Prosecution and received court review. This amendment would provide guidance to Seattle Municipal Court judges in utilizing Deferred Prosecution for other offenses with a nexus to substance use disorder or mental health disorder, including public use or knowing possession of controlled substances. In doing so, the amendment clarifies for the court which provisions of RCW 10.05 are applicable to the offenses enumerated in RCW 10.05.010 (2) and (3), and which may be generally applied to other offenses. Finally, this amendment provides guidance to the court on the nature and duration of treatment program terms as well as case dismissal considerations.

Amend recitals to CB 120645 as follows:

WHEREAS, the Public Health and Safety Executive Order will further set expectations around outreach to be conducted with those possessing and publicly using controlled substances; individuals who reside with, care for, or interact with those possessing and publicly using controlled substances; members of the of the criminal justice system; members of the treatment and service provider community; and others directly affected by public drug use; and

WHEREAS, adding the State's deferred prosecution program guides courts of limited jurisdiction to apply a specific framework regarding misdemeanors and gross misdemeanors; and

WHEREAS, including this state program in Seattle's Municipal Code to apply to misdemeanors and gross misdemeanors with a nexus between an individual's behavior and

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substance use disorders and/or mental health disorders, with certain exceptions, provides policy with program criteria specific to Seattle and the issues this jurisdiction is currently facing; and

WHEREAS, this policy provides courts with further guidance where the state has otherwise been silent; and

WHEREAS, adding this program does not mandate Seattle Municipal Court judges to take any mandatory actions within a specific time frame, but rather allows the Court further options to address this specific population; and

WHEREAS, this program is contingent on provision of sufficient resources and capacity, as well as any other relevant factors applicable to allowing the Court to operationalize it; NOW, THEREFORE,

* * *

Amend Section 2 to CB 120645 to incorporate by reference RCW 10.05 and clarify applicability and procedures for offenses with nexus to controlled substances, as follows:

Section 2. Section 12A.09.020 of the Seattle Municipal Code, last amended by Ordinance 126691, is amended as follows:

12A.09.020 Adoption of RCW sections

A. The following RCW sections as amended are adopted by reference:

* * *

9A.88.130 - Additional requirements

10.05 - Deferred prosecution - Courts of limited jurisdiction (except that Seattle Municipal Court shall apply specific procedures as noted in subsection 9A.88.130.B to address certain offenses with a nexus to substance use disorders and/or mental health disorders)

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43.43.754's crime of refusal to provide DNA

69.50.101 - Definitions (except that cannabis is not included in the definition of "controlled substance")

69.50.204 - Schedule I (except that cannabis is not included)

69.50.206 - Schedule II

69.50.208 - Schedule III

69.50.210 - Schedule IV

69.50.212 - Schedule V

69.50.4013(1), (2), (7), and (8) as amended by 2E2SSB 5536 (68th Legislature, 2023 1st Special Session), Section 2

The section created by 2E2SSB 5536, Section 9 (except that these provisions apply to all misdemeanors and gross misdemeanors for public use and possession of a controlled substance)

The section created by 2E2SSB 5536, Section 10 (except that these provisions apply to all misdemeanors and gross misdemeanors for public use and possession of a controlled substance)

* * *

B. Seattle Municipal Court shall apply chapter 10.05 RCW to misdemeanors and gross misdemeanors. For offenses other than those listed in RCW 10.05.010(2) or (3), and for which there is a nexus between a defendant's conduct and an underlying substance use disorder and/or mental health disorder, the following guidance shall apply:

1. Consistent with RCW 10.05.030, 10.05.040, and 10.05.050, a judge in Seattle Municipal Court may continue a case for a deferred prosecution pursuant to a defendant's agreement to waive their right to a speedy trial and apply the procedures in chapter 10.05 RCW for a period not to exceed 24 months.

2. RCW 10.05.020 shall apply only to offenses listed in RCW 10.05.010(2) and (3).

3. RCW 10.05.090, 10.05.100, 10.05.120, 10.05.140, 10.05.050, 10.05.055, 10.05.180, and 10.05.190 are inapplicable to offenses other than those listed in RCW 10.05.010(2) and (3) and as expressly limited by their terms.

4. Treatment terms for deferred prosecution cases under this subsection 12A.09.020.B shall focus on links to services and have terms of completion commensurate with the goal of providing stabilizing service connections rather than completing service programming.

5. Requirements governing periodic reporting to the court, prosecutor and defense on the Defendant's progress shall be identical to those provided in RCW 69.50.4017, including the requirement that reports be filed under seal, that embarrassing or stigmatizing information be avoided in public discussions, and that such reports are exempt from public disclosure and should be treated as therapeutic court records consistent with Washington Courts General Rule (GR) 22.

6. Admissions made by a defendant in the course of receiving services under the Deferred Prosecution program may not be used against the defendant in the prosecution's case in chief.

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7. Dismissal for any deferred prosecution cases under this subsection

12A.09.020.B may occur at any time in the judge's discretion. Judges are encouraged to dismiss cases immediately following successful conclusion of the program terms.