

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

Sponsor: Councilmembers Herbold and Lewis

Sponsors' substitute

Effect: This amendment would make the following changes:

1. Add a recital acknowledging that in some circumstances, diversion is not an effective response;
2. Add a reference to the crimes covered in the state bill as new subsection 3.28.141.A so all references to "public use and possession of a controlled substance" or other shorthand can be replaced with a single reference (technical edit);
3. Add a new subsection 3.28.141.E.3 to the diversion subsection to make clear that if diversion rather than arrest is the appropriate response to an individual, a lack of availability of a diversion opportunity does not mean an arrest should occur instead;
4. Add in subsection 3.28.141.F (threat of harm to others) a reference to the policy in 3.28.141.E that pre-booking diversion is preferred even where a person poses a threat of harm to others;
5. Change the references in in subsections 3.28.141.F and 3.28.141.G.4 to be consistent is saying that the threat of harm assessment is not an element of the crime to be proved in prosecution;
6. Clarify in subsection 3.28.141.G.1 that if an individual is not determined to be a threat of harm to others, then they are a threat of harm only to themselves;
7. Add in subsection 3.28.141.G.2 that officers are exempt from complying with the requirement that they make a reasonable attempt to contact and coordinate efforts for diversion, outreach, or other alternatives to arrest when the appropriate or most viable care strategy appears to be transport to a diversion point of contact, a medical care facility, a crisis care center, or a diversion facility;
8. Add in subsection 3.28.141.G.3 that specify officers may not arrest when a person is only a harm to themselves without additional articulable facts and circumstances, and add that SPD policies and training will identify what additional articulable facts and circumstances would warrant arrest;
9. Add a new subsection 3.28.141.J to ask SPD to try and use officers with 40 or more hours of crisis intervention team training to respond to public use or knowing possession crimes, where operationally possible; and
10. Add a new section 4 to establish a behavioral health advisory committee to advise the City regarding the needs for changes in police protocol, legislation, or any other policy

and provide data as recommended by the State’s substance abuse and recovery services plan biannually.

Amend recitals of CB 120645 as follows:

* * *

WHEREAS, whenever possible, The City of Seattle should seek to divert individuals into case management and substance use disorder treatment services, and police arrest policies under this ordinance should reflect officers’ best attempt to distinguish between the need to arrest and efforts to divert; and

WHEREAS, while pre-booking diversion and community-based care are preferred, there may be unique articulable circumstances that are so acute or problematic that they make pre-booking diversion alternatives an ineffective response to the situation; and

WHEREAS, as the county’s designated Behavioral Health Administrative Service Organization, King County is responsible, in part, for delivering countywide services related to mental and behavioral health and substance use disorder care and treatment; and

* * *

Amend Section 3 of CB 120645 as follows:

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

A. The provision 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.

~~A.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 ((public use and possession of a controlled substance)).

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.

~~BC~~. Body-worn videos. When officers interact with individuals allegedly committing the crimes described in subsection 3.28.141.A ((knowingly possessing a controlled substance or using a controlled substance in a public space)), 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.

~~CD~~. Probable cause for arrest. An officer must have probable cause for arrest ((to believe that an individual knowingly possesses a controlled substance or is knowingly using a controlled substance in a public place)).

~~DE~~. Diversion. Diversion, treatment, and other alternatives to booking are the preferred approach when enforcing the crimes ((adopted under this Section)) described in subsection 3.28.141.A ((consistent with the statutory authority of 2E2SSB 5536, Sections 2, 9, and 10)).

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 ((possession and public use)) while acknowledging that arrests are warranted in some situations.

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

34. 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.

EF. Threat of harm to others. When considering making an arrest, releasing, or diverting an individual, pursuant to subsection 3.28.141.E, ((for knowing possession or public use,)) officers will determine whether the individual, through their actions and conduct, presents a threat of harm to others. 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 ((standard)) 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 ((possession or public use offenses)) and cannot be used as a defense at trial.

FG. Threat of harm to self((-))

1. If ((When)) an officer determines there is probable cause to arrest ((believe public possession or public use of a controlled substance has occurred as described under this Section 3.28.141,)) and the officer's assessment indicates that the individual ((user)) does not pose a threat of harm to others, the individual only poses a threat of harm to self.

2. ((the)) An officer will then make a reasonable attempt to contact and coordinate efforts for diversion, outreach, and other alternatives to arrest, but officers are not required to make such reasonable attempt when the appropriate or most viable care strategy appears to be

transport to a diversion point of contact, a medical care facility, a crisis care center, or a diversion facility.

3. An officer will not arrest ((in this situation)) when the individual only poses a threat of harm to self absent articulable facts and circumstances warranting such action and SPD policies and/or training will identify what additional articulable facts and circumstances would warrant arrest.

4. ((A determination of a)) 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 ((possession and public use)) and cannot be used as a defense at trial.

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

HI. Reporting. 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 ((engaged in possession and public use)), and whether, and in what manner, arrest or diversion was considered or utilized.

J. 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.

Add a new Section 4 to CB 120645 and renumber subsequent sections:

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 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 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.