SEATTLE CITY COUNCIL
CENTRAL STAFF

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M E M O R A N D U M

To: Public Safety Committee
From: Council Central Staff
Subject: CB 120836 – Prostitution Crimes and Diversion

On August 13, 2024, the Public Safety Committee will discuss Council Bill (CB) 120836, which would make several changes to the Seattle Municipal Code (SMC) Criminal Code pertaining to prostitution-related crimes with the intent of broadening the ability of law enforcement and prosecutors to take action against sex buyers and sex traffickers. First, it would restore the misdemeanor crime of **prostitution loitering**, which Council removed from the SMC in 2020. The proposed version of prostitution loitering, like the one that was removed, includes both the selling and the buying of sex, and it describes additional conduct that can be used to show intent to commit the crime. The additional focus on intent may assist the Seattle Police Department (SPD) and the prosecutor in determining that the charge is appropriate.

This bill would also create a new gross misdemeanor, **promoting loitering for the purpose of prostitution**. Promoting loitering for the purpose of prostitution would criminalize actions not currently addressed in the SMC, including repeatedly or continuously monitoring a person or persons engaged in prostitution loitering. This new crime is designed to address intermediate levels of culpable behavior by those who traffic prostitutes[1] that falls short of the evidence required to prove a felony charge of promoting prostitution.

CB 120836 would also authorize the City to establish Stay out of Area of Prostitution (SOAP) zones, defining these zones as geographically circumscribed areas within which a high level of illegal prostitution and/or criminal activity with a nexus to prostitution is taking place. It would operationalize SOAP zones by creating the authority for Seattle Municipal Court judges to issue SOAP exclusion orders ("**SOAP orders**").[2] Violation of a SOAP order would be a gross misdemeanor, committed by knowingly entering a prohibited area. Finally, CB 120836 would establish a **SOAP zone along the Aurora Avenue commercial corridor**, with southern and northern boundaries at North 85th Street and North 145th Street.[3]

While the bill restores the crime of prostitution loitering, it includes a new approach to enforcement for victims of exploitation and trafficking, emphasizing that the preferred dispositions for these individuals are diversion, referral to social services, safe house placement, and other alternatives to booking. Various provisions in the bill relate to the intended application of these proposed SMC changes and reporting on their outcomes. This memorandum describes the bill and discusses next steps.

[1] See "Terminology" section below.
[2] SOAP orders are thus a subset of court orders.
[3] Specifically, the bill defines the proposed SOAP zone as "the area in north Seattle bordered on the North by N. 145th Street, on the South by N. 85th Street, on the East by Stone Avenue N., and on the West by Fremont Avenue N."

Background

Exclusion Orders

One way to think of an exclusion order is as a restraining order from a place rather than a person. An exclusion order is a court order requiring an individual to remain outside of a specified area or areas due to the combination of (1) the individual's charge for, or conviction of, a crime and (2) the documented occurrence of related crimes within the perimeter of the area or areas. In this sense, an exclusion order is a supervisory mechanism for someone who has had prior contact with the criminal justice system. Judges issuing such orders typically do so as a condition of pretrial release on bail, of a sentence, or of any alternative disposition. A SOAP order is one type of exclusion order. Like a violation of a restraining order issued in conjunction with an assault charge, a violation of a SOAP order as described in CB 120836, issued in conjunction with prostitution-related charge would be a distinct and separate crime.

Terminology[4]

In recent years, the term "sex work" has gained favor as a replacement for "prostitution." Those who support the former term cite their desire to use more neutral and/or expansive language that does not connote immorality or stigmatize behavior, to emphasize actions rather than status, and/or to contextualize consensual sex work within the larger labor movement, where workers are understood to have rights.

The context for CB 120836, on the other hand, is reflected by its use of the phrase "commercial sexual exploitation" (CSE).[5] This phrase describes an ecosystem in which sex is sold in an inherently exploitive manner (unlike the ecosystem of consensual sex work). The participants in this ecosystem are sex sellers, sex buyers, and sex traffickers.

In a commonly used formulation, "'sex trafficking' encompasses the range of activities involved when a trafficker uses *force, fraud, or coercion* to compel another person to engage in a commercial sex act."[6] Many studies have shown that the majority of people who sell sex for money are being trafficked and do not willingly participate in prostitution and that they are compelled to give the majority of funds received to a pimp or trafficker. References in this memo to prostitution and "prostitutes" are consistent with Revised Code of Washington (RCW) and SMC language.

[4] The purpose of this section is to provide guidance to the reader, not to reference or explain anything in the SMC or the Revised Code of Washington (RCW).

[5] In 2015, ORD 124684 changed the name of SMC Section 12A.10.040 from "patronizing a prostitute" to "sexual exploitation." The fiscal note characterized the change as "[seeking] to more accurately label" the described crime. (Section 12A.10.040 was later repealed from the SMC, and the relevant RCW was incorporated by reference.)

[6] U.S. Department of State, "About Human Trafficking." https://www.state.gov/humantrafficking-about-human-trafficking/

The bill's recitals make reference both to "pimps"[7] and sex traffickers. Pimps are a type of trafficker: the former facilitate the sale of sex by others,[8] and the latter "recruit, harbor, transport, provide, or obtain a person for the purpose of a commercial sex act" that is induced by force, fraud, or coercion.[9]

Where it is not important that usage in this memo aligns with RCW and/or SMC language, it sometimes refers to sellers and buyers of sex. Respectively, these terms mean prostitutes and their direct customers, or "johns." "CSE victims" also means sellers of sex within the CSE ecosystem. The memo occasionally references "survivors" of CSE for alignment with specific bill language.

Laws Governing Prostitution-related Crimes

The SMC currently includes two crimes related to prostitution. They are:

- 12A.10.020, prostitution, an agreement or offer to engage in sexual conduct with another person in exchange for a fee (a misdemeanor); and
- 12A.10.060, permitting prostitution, failing to halt or abate knowing use of premises under one's control for prostitution purposes (a misdemeanor).

Note that the first of these crimes applies to both sellers and buyers of sex, though City policy and practice has focused the application of 12A.10.010 on sellers. In addition, a Section of the Revised Code of Washington (RCW) has been incorporated by reference into the SMC, which has the legal effect of making it part of the SMC – thus within the jurisdiction of the Seattle Municipal Court – even though its legislative language does not appear there. That statute is:

- RCW 9A.88.110, patronizing a prostitute, the paying of another person for sexual conduct either with that person or with a third person, pursuant to an understanding, or soliciting or requesting another person to engage in sexual conduct in return for a fee (a misdemeanor).

The RCW also contains other felony statutes related to prostitution, which SPD may enforce but must be referred to the King County Prosecuting Attorney's Office for filing (thus the Seattle Municipal Court has no role with respect to their adjudication). One example is RCW 9A.88.070, promoting prostitution in the first degree, which describes activities that are consistent with those of a pimp, as defined above.[10]

[7] Many organizations, including some that provide services and assistance to sex trafficking victims, discourage use of the word "pimp" on the basis that it is racially coded. This term is not used in the SMC or the RCW.
[8] Michelson, Erica, "A Comparison of DV/IPV and Sex Trafficking: How Understanding Batterers Can Help Develop Programming for "Boyfriend" Pimp/Traffickers." Online only chapter from Broadening the Scope of Human Trafficking Research: A Reader, Second Edition. heil nichols online chapter 02.pdf (cap-press.com)
[9] Trafficking Victims Protection Act (TVPA) of 2020, Pub. L. No. 106-386.
[10] The RCW also includes the statute of promoting prostitution in the second degree (RCW 9A.88.080). The elements of this crime are "advances" or "profits from" prostitution. Both of these RCW statutes may be enforced by SPD but would not be adjudicated in Seattle Municipal Court.

June 2020 Repeal of Prostitution Loitering Crime

At its meeting on June 22, 2020, Council passed Ordinance (ORD) 126099, which removed SMC Section 12A.10.010, the crime of prostitution loitering. The result of this legislative action was that a set of activities, which SPD previously had discretion to enforce and investigate up to and including the making of an arrest, were effectively decriminalized. The Council took this action in large part pursuant to a recommendation in the "Seattle Reentry Workgroup Final Report." That report, responsive to Council Resolution (RES) 31637, fulfilled a request that the Mayor convene a workgroup to develop policies and strategies that would strengthen the City's effort to assist with reentry after incarceration. Report authors noted that individuals in the commercial sex industry were already at high risk for trafficking, abuse, and other exploitation and that bringing them into the criminal legal system was likely to exacerbate any underlying unmet needs and expose them to further physical and sexual harm caused by incarceration. They also noted that, in other cities with similar laws in effect, many women who had been participating in "legal, routine activities" had been arrested and that there was a disproportionate enforcement impact on women of color.

In its discussion of CB 119808, which became ORD 126099, Councilmembers referenced, for example, the "deep and harmful racist history" of loitering laws. They also affirmed a need that the court system prosecute sex traffickers and acknowledged that addiction often plays a role in sex work. Those participating in Public Comment prior to the bill's discussion and passage were generally supportive of it, from such perspectives as conceptualizing sex work as consensual exchange between adults, favoring its decriminalization and – from a self-described sex worker – noting that fear of enforcement by SPD had had the effect of driving sex workers to more private areas, where they were more vulnerable to predators.

Stay Out of Area of Prostitution (SOAP) Orders

SOAP zones as a law enforcement tool were developed in response to the social disorder created by concentrated open-air prostitution markets. A common definition of open-air markets describes them as operating in geographically well-defined areas at identifiable times so sellers and buyers can easily locate one another.[11] The SOAP zone proposed in CB 120836 is consistent with this framework.

Several jurisdictions in the state, including Fife, Everett, and Shoreline (since 1996), currently have SOAP zones, and judges in their municipal courts may issue SOAP orders. The intent of SOAP orders is to restrict sex buyers from areas in which sex sellers are known to operate, thus incrementally reducing demand. (Some jurisdictions have also used SOAP zones in a more targeted manner, including such facilities as schools within a SOAP zone to protect children from exposure to prostitution-related activity.) When sellers and buyers of sex know where to find each other, this activity tends to become geographically concentrated, with negative impacts to the communities in which those concentrations occur. SOAP orders also seek to decrease these impacts. Since 1975, at least 140 cities and counties in the United States have employed SOAP orders.[12]

[11] Harocopus, Alex, and Mike Hough, "Drug Dealing in Open Air Markets." Problem-Specific Guides Series No. 31, Community Oriented Policing Services, U.S. Department of Justice.
[12] National Center on Sexual Exploitation, "S.O.A.P. Orders for Sex Buyers in the United States." Report prepared for the National Institute of Justice, updated March 1, 2023.

Although they are a law enforcement tool, SOAP orders must be issued by a judge for a police officer to enforce a violation of such order. CB 120836 would give Seattle Municipal Court judges the authority to issue pretrial SOAP orders in cases where an underlying criminal charge has not been proven, which would allow for the temporary exclusion from a public space of a person who is still presumed innocent of the charged crime. In issuing such orders the judge would be bound by the requirements of CrRLJ 3.2, where the presumption is release without additional conditions.[13] SOAP orders issued as a condition of sentence are lawful if they are reasonably related to the offense and tend to prevent the future commission of crime. Additionally, the legislation lists specific circumstances where presence in a SOAP zone is not a violation of the SOAP order.

SOAP in Seattle

Prior to 2010, SOAP orders – then styled as S.O.A.P. orders – were occasionally issued by Seattle Municipal Court judges pursuant to the judiciary's authorized function of setting reasonable pretrial conditions of release and post-conviction conditions of probation. The Seattle Municipal Court presiding judge approved the SOAP zones, the boundaries for which were drafted by the City Attorney's Office (CAO) based on SPD crime data. These zone boundaries, and the zones themselves, were not legislated by the Council, so SOAP order violations were treated only as probation violations, not standalone crimes.

Current concerns

In 2018 the federal government seized and shut down the classified advertising platform Backpage.com, which had been used nationally to facilitate connections between sellers and buyers of consensual sex. The government alleged that Backpage had also been used to facilitate sex trafficking and filed trafficking-related charges against the company and its leadership. (Owners of the platform were later convicted of promoting prostitution business enterprises and money laundering.) Shortly thereafter, new trafficking laws curtailed the business model of competitors to Backpage. SPD identifies a correlation between the shutdown of these platforms and an increase in public prostitution and sex trafficking – i.e., open-air prostitution markets – particularly along northern Aurora Avenue. SPD analysis suggests that simultaneously with this transition, national gangs began to become more involved in large-scale sex trafficking for financial gain, resulting in more turf wars among these gangs and gun violence among their members. SPD considers the proposed SOAP zone in CB 120836 a "hot spot" for crime. Hot spots are areas in which a high density of crimes occur compared to surrounding areas. SPD believes that within these hot spots, a relatively small number of people engaging in illegal behaviors have an outsized impact on the localized criminogenic environment and that SOAP orders would be an effective tool in mitigating these individuals' impact.

[13] CB 120836 provides for the termination of a SOAP order issued as a pretrial condition of release upon dismissal of the initial criminal charge.

Prior to the 2020 removal of the prostitution loitering crime, SPD seldom enforced this crime against prostitutes, but officers report that its availability in the SMC had allowed officers to engage suspected prostitutes in conversation. These conversations could be a tool for gathering information about pimps and sex traffickers, potentially in pursuit of subsequent criminal charges against them. Once the law was repealed, any such engagement with officers could take place only on a voluntary basis, because officers no longer had lawful authority to initiate the contact and potentially detain an individual. Thus if a pimp or trafficker observed a prostitute speaking to an officer, he[14] would know that the contact was voluntary, and this knowledge could create the risk of personal danger for the prostitute. Also, around the time of the repeal officers began to separate from SPD at an unprecedented rate, requiring that many SPD officers on specialist details be redeployed to respond to 9-1-1 calls. This redeployment significantly decremented SPD's capacity to support trafficking investigations.

Law enforcement data and documentary evidence show gun violence associated with CSE along Aurora Avenue has significantly impacted the surrounding neighborhood communities. Constituents report that prostitution activity and the violence associated with it have created social disorder and public-safety risk, with impacts both to individuals and families and to businesses, which have sustained economic and property damage. Constituents have expressed a desire for City action while also expressing their preference that any legislation crafted to address this activity prioritize support services and "off-ramps" for CSE victims.

CB 120836

Prostitution loitering

CB 120836 would restore to the SMC the misdemeanor crime of prostitution loitering. As written both prior to the 2020 repeal and in CB 120836, this crime can be committed by both sellers and buyers of sex who are age 18 or older.[15] This crime, SMC 12A.10.010, includes a number of circumstances that an officer may consider in determining whether an individual intended to commit a violation. They include repeatedly beckoning to, stopping or attempting to stop passersby in conversation; repeatedly stopping or attempting to stop vehicles (which both would be applicable to sellers of sex); and requesting the touching or exposing of genitals or female breasts to prove that someone is not a police officer (which would be applicable to buyers of sex).[16] Despite the SMC language, prior to 2020 this law was primarily enforced against sex sellers.

[14] Most pimps and traffickers are men. See Brown, Elizabeth Nolan, "15 Facts about the Underground Sex Economy in America." Reason, March 14, 2014 and Wheeler, Alyssa Currier, "Trafficker Profile According to US Federal Prosecutions," Anti-Trafficking Review, issue 18, 2022, pp. 185-189, https://doi.org/10.14197/atr.2012221813

[15] RCW 13.40.215 and 13.40.219 address juvenile dispositions for prostitution loitering arrests and charges. These dispositions include diversion of the alleged offense and presumption that the alleged offender is a trafficking victim. Restoring this charge in the SMC would not leave juveniles in a state of legal vulnerability.

[16] The prostitution loitering charge in the SMC addresses activities that are committed by someone who "remains in a public place," who could be a seller or a buyer of sex. In other cities with a criminal code that includes prostitution loitering, that code also emphasizes the public nature of the described crime, which can likewise be committed by both sellers and buyers of sex. In contrast, the existing SMC prostitution charge does not include this public element, nor does the promoting loitering for the purpose of prostitution charge that this bill proposes.

In addition to restoring the historical SMC language, CB 120836 would add to the list of circumstances referenced above, creating bases specifically targeted at the behaviors of sex buyers. These include:

- After being beckoned by a person soliciting an act of prostitution, circling the area in question; and
- Stopping the motor vehicle in the traffic lane, or pulling over to the side of the road, or pulling around the corner on an adjacent street, or pulling into a parking lot and engaging in conversation with those soliciting, inducing, or enticing an act of prostitution.

The bill also adds "repeatedly approaching a motor vehicle, leaning into the vehicle and engaging in conversation with the driver," which provides an additional circumstance focused on sellers.

These new circumstances are modeled after those in other jurisdictions' prostitution loitering laws. (California Penal Code section 653.23)

The RCW statute of patronizing a prostitute is also applicable to buyers of sex. Proving this charge requires a finding that a fee for sexual conduct was offered and agreed upon by the parties involved in the transaction. Undercover operations may result in sex buyers' arrest and potential charge for patronizing a prostitute. However, such operations require significant law enforcement personnel, and trials tend to have low success rates. Restoring the prostitution loitering charge, which can be sustained by easily observable buyer behaviors, may therefore be a more effective deterrent to the open-air activity that this bill seeks to address.

Seattle Municipal Court judges may require individuals who were convicted of a prostitution-related charge to attend Stopping Sexual Exploitation classes (or similar classes) – colloquially known as "john school" – as a condition of their sentences. SMC 12A.10.070 describes the mandatory fees for defendants convicted of or entering into a diversion program for a prostitution-related offense (it also allows judges to reduce these fees by up to two-thirds upon a finding that the offender does not have the ability to pay). RCW 9A.88.120 directs that at least 50 percent of funds received must be spent on prevention, including education programs for offenders, such as john school. Studies suggest that attending john school may reduce recidivism rates among sex buyers and that it can engender greater understanding of the CSE ecosystem and the harms it causes to sex sellers.[17] The sponsor supports requirements for sex buyers, like john school, that hold them accountable for their actions, particularly for a first offense. The maximum penalty for a misdemeanor is 90 days in jail and a $1,000 fine; any fees levied under 12A.10.070 would be additive to that amount.

It is the intent of the sponsor that SPD focus its enforcement efforts related to the proposed restored crime on sex buyers. SPD and CAO have both expressed to the sponsor in public conversation a preference and commitment to diversion services for CSE victims.

[17] Demand Abolition, "John Schools: A practical, cost-effective way to reduce demand." https://www.demandabolition.org/news/john-schools-practical-cost-effective-way-reduce-demand. October 5, 2016.

Promoting loitering for the purpose of prostitution

CB 120836 also would create the new crime of promoting loitering for the purpose of prostitution. With respect to the CSE ecosystem described above, this proposed crime is intended to provide a tool to address criminally culpable conduct by sex traffickers that does not rise to felony-level promoting prostitution. Like prostitution loitering, it would include circumstances that an SPD officer may consider in determining whether an individual intended to commit a violation. These circumstances include repeatedly transporting or delivering any person or persons to a known prostitution area or vicinity[18] and, in such vicinity, repeatedly or continuously monitoring or surveilling a person engaged in loitering for the purpose of prostitution. (It may be instructive to recall the "force, fraud, or coercion" trafficking formulation cited above.)

Promoting prostitution in the first degree (RCW 9A.88.070) also describes activities that are consistent with this formulation. However, as written, the RCW statute would generally be challenging to prove without the testimony of a CSE victim against her trafficker.[19] Advocates have reported that CSE victims open themselves to further trauma and/or personal danger in situations when such testimony is sought or provided. In contrast with the RCW statute, a charge of promoting loitering for the purpose of prostitution could theoretically be prosecuted based on the observable activities of a trafficker.

In that respect, the proposed crime is novel. From the sponsor's perspective, its framework reflects a victim-centered approach to enforcement against CSE. Promoting loitering for the purpose of prostitution would be a gross misdemeanor, subject to a maximum penalty of 364 days in jail and/or a fine of up to $5000.

SOAP zone

CB 120836 would establish a SOAP zone along the Aurora Avenue commercial corridor. The proposed boundaries of this zone are based on both analysis of SPD crime data and the input of community members in the sponsor's district. It would allow Seattle Municipal Court judges to issue a SOAP order to anyone charged with, or convicted of

- Any violation, occurring in a designated SOAP area, of the following crimes: prostitution loitering, prostitution, promoting loitering for the purpose of prostitution, permitting prostitution, and patronizing a prostitute; and
- "A crime occurring in a designated SOAP zone in which the court finds a nexus between the offense and [the prostitution-related crimes listed above]."

In other words, there is a broad range of criminal activity, both at the charging and conviction phases, that could subject an individual to a SOAP order. The key phrase in the bill language is "nexus," or a causal connection. Studies have found that there is a consistent pattern of correlation between prostitution activity and crime – particularly violent crime – reflecting such a causal link.

[18] For instance, the proposed SOAP zone.

[19] Most CSE victims are women.

As an example of what the bill would permit, someone arrested for one of the prostitution-related crimes listed above could be booked and charged for that crime and then arraigned before a Seattle Municipal Court judge. The judge, after finding probable cause, could require bail and issue a SOAP order as a separate condition of the individual's release. The individual would then be required to remain outside the SOAP zone defined in the bill, absent any exceptions set by the judge. If an SPD officer encountered this individual in a SOAP zone in violation of the court's active SOAP order, that officer would have discretion to arrest the individual, who could then be booked for the SOAP order violation. This violation would be a gross misdemeanor. (As for any criminal offense, the actual sentence imposed would be at the discretion of the sentencing judge in Seattle Municipal Court.)

SOAP order violation as a new crime

Under existing City code, a municipal judge has the authority to issue a SOAP order as a condition of pre-adjudication release or as part of a post-conviction sentence. In either case, violation of the SOAP order would not constitute a new criminal violation, with new potential penalties. Instead, any further sanctions would be related to the original underlying crime. As a practical matter, without the assistance of the CAO and SPD to establish an appropriate and documented geographic SOAP zone, municipal judges have not been well positioned to impose such orders.

As previously noted, CB 120836 would create the new gross misdemeanor of violation of a SOAP order, and at the same time define the boundaries of a SOAP zone on North Aurora Avenue. If a judge issues a SOAP order pursuant to this new law and the individual to which it applies violates the SOAP order, the violation would be a new and separate offense with its own discrete penalties. This might be seen as analogous to a judge issuing a no-contact order in the context of an assault. Violation of the no-contact order represents a new criminal violation, distinct and in addition to the alleged or actual assault.

The crime of violating a SOAP order can be proven on the basis that an individual was (1) subject to and had notice of an active SOAP order and (2) willfully violated the terms of that order by entering into or remaining within the prohibited area. In contrast to the elements of Promoting Loitering in for the Purpose of Prostitution or Prostitution loitering offenses, violation of a SOAP order is less fact intensive and may be more straightforward to prosecute.

Implementation, reporting, and recommendations

Consistent with the sponsor's intent that enforcement activities related to CB 120836 target sex buyers and sex traffickers, the bill directs SPD to

- adopt policies governing arrests for prostitution and prostitution loitering that seeks to minimize harm to survivors of CSE;
- conduct mandatory trainings, for officers, on best practices for interacting with CSE victims; and
- prioritize, to the best of its ability, the use of so-trained officers when interacting with CSE victims in the course of enforcement of prostitution-related crimes.

The bill notes that diversion, referral to social services, safe house placement, and other alternatives to booking are the preferred disposition for CSE victims. The sponsor supports diversion for first-time sex buyers.

CB 120836 calls for an implementation review, to be conducted or engaged by the Office of the Inspector General (OIG) and completed by June 2026. The bill also directs OIG to provide annual data reports, beginning in December 2026 and through at least December 2030, documenting law enforcement and adjudicative actions taken with respect to the new loitering for the purpose of prostitution crime and inviting recommendations for its improvement.

The bill also requests that the Human Services Department (HSD), in partnership with the City Innovation and Performance (IP) unit, develop a proposal and recommendations for a new program that would help CSE survivors vacate prostitution-related convictions from their records and/or clear such charges from their arrest histories. This report would be due to Council by August 31, 2025, a timeframe that would allow consideration of its recommendations during the 2026 Mid-Biennial Budget Adjustments process.

Anticipated Impact on Existing Criminal Activity

According to SPD, in broad strokes the goal of SOAP orders is to disrupt a crime hotspot in order to help restore public order, improve public safety and quality of life for area residents, invite lawful behavior, and foster lawful economic activity. When individuals with disproportionate criminogenic impact may be excluded from an area or areas where crime is concentrated, their exclusion may also be experienced disproportionately in a positive way. SOAP orders also expand the ability of SPD officers to engage in proactive policing in pursuit of the same improvements in that they would create a lawful basis for contact with such individuals. Based on their experience policing drug hotspots, SPD reports that some individuals who spend significant time in these areas have warrants for their arrest, including for felony violations, and they believe that the same is likely true for the proposed SOAP zone. The ability to engage with individuals believed to be subject to a SOAP order – based on reasonable and articulable suspicion – would increase SPD officers' ability to detain and arrest those whose presence poses a risk of harm to themselves or to others and contributes to a localized environment of criminality. Such detainments and arrests could also support ongoing SPD investigations of criminal enterprises that manifest, in part, within hotspot areas.

Assuming that Seattle Municipal Court judges act on the authority provided by CB 120836, the sponsor and SPD believe that the combined effect of the proposed new (1) promoting loitering for the purpose of prostitution, 2) loitering enforcement focused on buyers, and (3) violation of a SOAP order could provide a means to mitigate and potentially disrupt the open-air prostitution market along the Aurora Avenue commercial corridor, in that traffickers and buyers could be barred from that market.

Other ongoing efforts would also support the goal of disruption, for instance increased hiring of police officers and technology initiatives that provide greater evidentiary basis for criminal charges and investigations. The North Aurora Avenue area has been proposed as a location for such a technology initiative.

Fiscal and Operational Impact

SPD would bear some new costs associated with the proposed expanded enforcement purview, the development and/or revision of policies, and the provision of training as described in CB 120836. CAO would also incur incremental new costs associated with the proposed expanded prosecutorial purview, as would the Seattle Municipal Court for its roles in adjudication and sentencing. The City would also face additional costs associated with providing legal defense services for those facing additional charges or court-ordered restrictions. For all these entities, those costs will depend on the number of cases that are referred for charging, but the increase could be significant and sudden. The reporting requirements in the bill would pose new obligations for SPD, CAO, and OIG. More new costs would inhere should OIG engage an independent research organization to support the bill's reporting requirements. For the program proposal and recommendations that the bill requests, HSD and IP may also take on additional costs and/or reprioritize workload so that some other work products are delayed. It is currently not possible to develop an estimate of such costs or to predict any such delays.

The City is currently finalizing an interlocal agreement with the South Correctional Entity (SCORE) for the provision of jail services additive to those currently provided by King County at the King County Jail (KCJ). Specifically, the agreement will detail the operational and policy framework by which the City will use 20 SCORE beds for the booking of misdemeanor detainees. Ongoing constraints at KCJ have affected its capacity such that the City has access to fewer such beds there than was the case in 2019. To the extent that CB 120836 increases demand for jail beds beyond 20 – by virtue of a Seatle Municipal Court judge sentencing a buyer or trafficker to jail time for a prostitution-related offense or SOAP order violation – there will be additional cost to the City. The 20-bed SCORE contract has an estimated cost of $2 million, exclusive of any costs related to transportation or detainee defense.

Issues for Consideration

Judicial authority and discretion: As described above, CB 120836 would give Seattle Municipal Court judges explicit authority to issue a SOAP order in cases involving a prostitution crime and in cases where the court finds a nexus between the charge or conviction and prostitution-related activity. The bill does not limit the types of crimes for which judges may find such nexus, which means that they may do so for *any* crime. It is possible that given the same evidence to evaluate in making that determination, different judges will make different articulable findings about whether or not such nexus exists. As is the nature of judicial decision making, the high amount of judicial discretion vested in courts of limited jurisdiction (such as the Seattle Municipal Court) allows for divergent outcomes from similar fact patterns.

CB 120836 would present Seattle Municipal Court judges with two distinct opportunities to exercise their discretion. First, they may find a nexus between a charge and prostitution-related crimes and issue a SOAP order on the basis of this finding. Second, they may authorize exceptions to the SOAP order, for instance to see family, to attend medical or social appointments, to fulfill work commitments (the bill references such exceptions). The degree to which judges would act on these opportunities is unknown at the time of this memo's publication.

SPD enforcement capacity: As of April, SPD had 913 deployable officers, a reduction from the pre-Covid figure of approximately 1400. With the support of Council and the Executive, the department is making significant investments in the recruiting and retention of officers, but any new enforcement responsibility must be balanced with existing workload in a resource-constrained environment, and the staffing deficit will require years of steady gains to overcome. According to SPD, re-establishing a lawful basis to contact individuals is likely to result in greater efficiencies and ultimately to reduce detective time downstream.

Efficacy of SOAP zones and orders: Central Staff have not found any rigorous evaluations suggesting that the use of SOAP orders (when issued by judges and comprehensively enforced by police departments) reduces sex buyers' demand or disrupts sex markets. However, quantifiable measurement of the impact of such interventions is at least difficult. Anecdotal evidence from law enforcement, extensive surveys of sex buyers, and criminological research on deterrence have all provided some evidence to suggest that SOAP orders deter demand. In particular, sex buyers have cited their fear that having to adhere to a SOAP order will cause people in their lives to learn about the behavior that led to its issuance.[20, 21]

Officers from the Shoreline Police Department have shared with SPD that they believe the Shoreline Aurora Avenue SOAP Area has had a deterrent effect on prostitution and has disrupted that city's localized open-air sex market, alleviating the need for its police officers to perform focused patrols and enforcement activities in this area. The southern border of

[20] Some cities that issue SOAP orders and similar orders publish online lists of those who are currently subject to them. No such action is contemplated as an element of this bill.

[21] National Center on Sexual Exploitation, "S.O.A.P. Orders for Sex Buyers in the United States." Report prepared for the National Institute of Justice, updated March 1, 2023.

Shoreline's SOAP Area, North 145th Street, is the northern border of the SOAP zone proposed in this bill. It is possible that the establishment of the Shoreline SOAP Area pushed some prostitution activity south into Seattle, because individuals knew that they would not risk a SOAP order once they crossed North 145th Street.

SPD believes that the impacts of CB 120836 would not be best measured by statistics such as number of arrests for violating a SOAP order. The department would instead endorse a more holistic means of evaluating the impact of new SOAP zones that takes into account business activity and the perceptions of residents, visitors, and merchants as well as those of law enforcement stakeholders and the various community groups who are frustrated by current conditions in the proposed SOAP zone. SPD also believes that the use of Risk Terrain Modeling to monitor the impact of prostitution on select aspects of the criminological environment (currently, shots-fired incidents) could be another way to assess the impact of SOAP-related arrests on associated crime.

In developing CB 120836, it was the sponsor's intent to develop tools for enforcement that would target sex buyers and sex traffickers without a need that any sex seller participate in subsequent investigations and/or prosecutions. Both (1) the proposed addition of specific bases targeting the behaviors of sex buyers and (2) the proposed creation of the new prostitution loitering crime serve this purpose in that they describe behaviors being committed by a single individual, and those behaviors may alone serve as the basis for enforcement. They would additionally serve the purpose of obviating the need for women SPD officers to participate in undercover enforcement operations.

Research suggests that prostitution loitering laws may not be effective in reducing prostitution-related activity and that they have historically been used to target people – both sex sellers and sex buyers – based on their appearance or presumed sexual behaviors, such that they have disproportionately criminalized women, transgender, and Black, Indigenous, and people of color (BIPOC) individuals, as well as CSE victims. Such research led to the Council's 2020 removal of the prostitution loitering crime from the SMC Criminal Code. However, those who oppose prostitution loitering laws, including on the basis that they undermine anti-trafficking work, often cite the vagueness of those laws and their origin in racist and/or classist public-order concerns. CB 120836 includes clear and descriptive language about the behaviors that may lead to detainment or arrest, and unlike many jurisdictions' similar laws it explicitly references its CSE context and also emphasizes an intent that City laws addressing prostitution-related activity treat sex sellers, sex buyers, and sex traffickers differently. Central Staff had limited time to engage with the full body of research about prostitution loitering laws and SOAP orders.

Need for diversion resources: The bill states the preferred disposition for CSE victims – diversion, referral to social services, safe house placement, and other alternatives to booking– but it does not include additional funding for these resources. The sponsor has publicly stated plans to identify and propose ERC funding during Council's upcoming 2025-2026 budget process. Advocates for CSE victims have stated that for the diversion-centric aspect of the bill to be operationalized, the most critical need is ongoing funding for an emergency receiving center

(ERC) for CSE victims. An ERC is a 24-hour facility that functions as a small shelter, with case management and care connections tailored to sex sellers who want to leave the CSE ecosystem. The approximate annualized cost for an ERC with seven beds is $700,000. In advancing this bill, it was the sponsor's intent to create a legislative and operational pathway to such diversion, in partnership with CAO and SPD and informed by the perspective of advocates for CSE victims.

Race and Social Justice Considerations

Root causes: In many cases, a sex seller's engagement in the behaviors described in CB 120836 12A.10.010 (prostitution loitering) and proposed for recriminalization have their roots in such factors as poverty, food and/or housing insecurity, lack of access to support resources or fearfulness about accessing them based on immigration status, and lack of remunerative employment opportunities, all of which disproportionally impact people of color. Meaningfully addressing these root causes, as a long-term strategy for improving public order and public safety issues, is beyond the scope of this bill.

Potential for real and/or perceived discriminatory enforcement: CB 120836 would allow SPD officers to approach and engage with an individual in a SOAP zone based on the reasonable and articulable suspicion that the individual is knowingly violating an active SOAP order. (The applicable legal standard for this type of brief detention, also known as a *Terry* stop, is a suspicion based on articulable facts that the individual is engaged in criminal activity.) The operational guidelines for such approach have not been developed. It is possible that perceived discriminatory enforcement of suspected SOAP orders may foster new tensions between police and those in SOAP zones. It is SPD's practice to track and analyze police contacts for any disparate outcomes, and the department believes it will be able to measure any such outcome and work to mitigate it.

Next Steps

The Public Safety Committee plans to vote on CB 120836, including any proposed amendments, on September 10. The bill could then be voted on by the City Council on September 17.

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