



SEATTLE CITY COUNCIL

Public Safety and Human Services Committee

Agenda

Tuesday, September 12, 2023

9:30 AM

Council Chamber, City Hall
600 4th Avenue
Seattle, WA 98104

Lisa Herbold, Chair
Andrew J. Lewis, Vice-Chair
Teresa Mosqueda, Member
Sara Nelson, Member
Alex Pedersen, Member

Chair Info: 206-684-8801; Lisa.Herbold@seattle.gov

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Meeting Location:

Council Chamber, City Hall, 600 4th Avenue, Seattle, WA 98104

Committee Website:

<http://www.seattle.gov/council/committees/public-safety-and-human-services>

This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

Members of the public may register for remote or in-person Public Comment to address the Council. Details on how to provide Public Comment are listed below:

Remote Public Comment - Register online to speak during the Public Comment period at the meeting at <http://www.seattle.gov/council/committees/public-comment>. Online registration to speak will begin two hours before the meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

In-Person Public Comment - Register to speak on the Public Comment sign-up sheet located inside Council Chambers at least 15 minutes prior to the meeting start time. Registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Pursuant to Council Rule VI.10, this Committee meeting will broadcast members of the public in Council Chambers during the public comment period.

Submit written comments to Councilmember Herbold at Lisa.Herbold@seattle.gov

Please Note: Times listed are estimated

A. Call To Order

B. Approval of the Agenda

C. Public Comment

(20 minutes)

D. Items of Business

1. [CB 120645](#) **AN ORDINANCE relating to controlled substances; adding the crimes of knowing possession of a controlled substance and use of a controlled substance in a public place; amending Section 12A.09.020 of the Seattle Municipal Code; and adding a new Section 3.28.141 to the Seattle Municipal Code.**

Supporting Documents: [Summary and Fiscal Note](#)
[Central Staff memo](#)
[Substitute Amendment 1](#)
[Amendment 2](#)
[Amendment 3](#)
[Amendment 4](#)
[Amendment 5](#)

Briefing, Discussion and Possible Vote

Presenters: Asha Venkataraman and Greg Doss, Council Central Staff

E. Adjournment



Legislation Text

File #: CB 120645, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to controlled substances; adding the crimes of knowing possession of a controlled substance and use of a controlled substance in a public place; amending Section 12A.09.020 of the Seattle Municipal Code; and adding a new Section 3.28.141 to the Seattle Municipal Code.

WHEREAS, in 2021, the Washington State Supreme Court struck down Washington’s criminal statute prohibiting possession of a controlled substance in the case of *State v. Blake*; and

WHEREAS, in *State v. Blake*, the Washington Supreme Court determined it was necessary for the State to require proof of *knowing* possession of a controlled substance to obtain a conviction; and

WHEREAS, in response to *State v. Blake*, the State Legislature passed ESB 5476, which it subsequently amended in May 2023 with 2E2SSB 5536; and

WHEREAS, prior to *State v. Blake*, drug possession was a Class C felony, and cases in Seattle were referred to the King County Prosecuting Attorney for review and a determination of whether to file criminal charges and were processed through the King County Superior Court system; and

WHEREAS, 2E2SSB 5536 reclassifies the knowing possession of a controlled substance, and the knowing use of a controlled substance in a public place, as gross misdemeanors; and

WHEREAS, the reclassification provisions took effect on July 1, 2023, and certain other provisions of the law will take effect on August 15, 2023, and January 1, 2025; and

WHEREAS, with the State’s reclassification of these offenses to gross misdemeanors, it is necessary for The City of Seattle to adopt the State statute so that the Seattle City Attorney may receive and evaluate referrals submitted by Seattle police, and consider these offenses for prosecution or alternative

disposition in the Municipal Court; and

WHEREAS, in lieu of jail booking and referral to the prosecutor, 2E2SSB 5536 encourages law enforcement to offer a referral to assessment and services, which may include, but are not limited to, arrest and jail alternative programs, law enforcement assisted diversion programs, and the recovery navigator program; and

WHEREAS, people suffering from substance use disorders need treatment, and arrest in the case of knowing possession or use in a public place of a controlled substance should occur only when there is a threat to the peace and wellbeing of the community or a threat of harm to others; and

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, 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

WHEREAS, The City of Seattle is committed to coordinating with King County government as it endeavors to provide these services to county residents, including those within Seattle; and

WHEREAS, The City of Seattle recognizes that prior federal, state, and local drug offense law enforcement and policies, including the "war on drugs," disproportionately impacted Black, Indigenous, and People of Color and caused trauma and pain that lingers still today in these communities; and

WHEREAS, The City of Seattle is committed to not repeating the errors of the past and will work to have the implementation of this ordinance balance public safety with the well-being of individuals using controlled substances; and

WHEREAS, this ordinance and related efforts to increase the availability of substance use disorder care and treatment services, including diversion from the criminal justice system are necessary to protect the

peace and welfare of the city, the City government's primary responsibility as stated in the preamble to the City Charter; and

WHEREAS, consistent with Mayor Bruce Harrell's Executive Order 2023-04 addressing the Opioid and Synthetic Narcotics Crisis, issued on April 17, 2023, which identified treatment and services geared towards addressing substance abuse and overdose and committed to prioritizing enforcing sales and distribution related crimes; and

WHEREAS, in furtherance of Executive Order 2023-04, the Mayor announced on June 12, 2023 the creation of a stakeholder workgroup, the Fentanyl Systems Task Force, to advance effective and sustainable solutions to address the knowing possession or public use of controlled substances in public places; and

WHEREAS, the Mayor's Fentanyl Systems Task Force and its subgroups will review and make policy and implementation recommendations on effective substance use disorder diversion services and treatment programs consistent with 2E2SSB 5536, identifying options for pre-arrest, pre-booking, pre-trial and post-sentencing diversion; and

WHEREAS, the Mayor's Fentanyl Systems Task Force and its subgroups will further evaluate a potential successor to community court and other innovative possibilities for effective and restorative post-file diversion and court systems; and

WHEREAS, the Mayor will issue a Public Health and Safety Executive Order requiring that (a) the Seattle Police Department (SPD) create a policy establishing diversion and treatment as the standard approach for most instances of knowing possession and public use of controlled substances, and setting guidelines on circumstances when an arrest is appropriate, and (b) City departments collect data with sufficient frequency to achieve a general baseline of data or average number in order to measure the number of individuals the City is trying to assist; and

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; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City finds and declares:

A. In recent years, drug overdoses and overdose deaths have increased dramatically in Washington State. As of February 2023, according to the Centers for Disease Control and Prevention, Washington has the highest increase in overdose deaths-24 percent over 2022-in the country, from 2,348 to 2,910. In Seattle, there were 589 overdose deaths in 2022, compared to 342 in 2021, an increase of 72 percent.

B. Between January 1, 2023, and June 30, 2023-the first six months of the year-Seattle has recorded 378 overdose deaths compared to 202 in the same period in 2022, an increase of 87 percent. There were also 2,237 non-fatal overdose events, compared to 1,075 in 2022, an increase of 108 percent. The widespread availability and use of these deadly synthetic drugs are straining City resources and, as such, negatively impacts the provision of other emergency medical services.

C. Most of these nonfatal overdose incidents and overdose deaths involve synthetic fentanyl, synthetic methamphetamine, or both. These drugs are readily available, inexpensive, and deadly.

D. This is a regional crisis as well. In all of King County, including Seattle, in the first six months of 2023, emergency medical responses to opioid overdoses have surged to 4,108 compared to 2,374 in 2022, an increase of 73 percent.

E. The public use of controlled substances has historically been unchecked in certain areas of the city, harming individual users, adjacent businesses, transit riders, and people traveling to school, work, retail stores, or trying to enjoy the City's parks and other public places. Significant crime and street disorder are associated with selling, possessing, and using these drugs in public spaces.

F. From January 1 to July 31, 2023, the Seattle Fire Department (SFD) reported 2350 overdose

responses in public places by SFD, SPD, and the public, an average of more than 11 each day, with 40 percent of first overdose reversal dosages administered by a bystander. Given this, the enforcement strategy for public use and possession offenses must consider the potential harm that can be done if people using drugs avoid public spaces where they can be helped by first responders and the public; and

G. The use of controlled substances in public places creates a public health and safety threat to the peace and welfare of the City, and all available resources and tools should be used to address this crisis.

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

The following RCW sections as amended are adopted by reference:

* * *

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)

* * *

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

3.28.141 Policies governing arrests for public use and possession of controlled substances

A. Policy. Consistent with any public health and safety-related Mayor-issued executive orders, the Seattle Police Department (SPD) will adopt policies governing arrests for 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.

B. Body-worn videos. When officers interact with individuals 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.

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

D. Diversion. Diversion, treatment, and other alternatives to booking are the preferred approach when enforcing the crimes adopted under this Section 3.28.141 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 possession and public use while acknowledging that arrests are warranted in some situations.

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

b. Booked and referred for prosecution.

E. Threat of harm to others. When considering making an arrest 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 standard governs officer decisionmaking and is not an element of the crime to be proved during the prosecution of possession or public use offenses and cannot be used as a defense at trial.

F. Threat of harm to self. When an officer determines there is probable cause to believe public possession or public use of a controlled substance has occurred as described under this Section 3.28.141, and the user does not pose a threat of harm to others, the officer will then make a reasonable attempt to contact and coordinate efforts for diversion, outreach, and other alternatives to arrest. An officer will not arrest in this situation absent articulable facts and circumstances warranting such action. A determination of a threat of harm will govern officer decisionmaking and will not be an element of the crime to be proved during the prosecution of possession or public use offenses and cannot be used as a defense at trial.

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

H. 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.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by

Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2023, and signed by
me in open session in authentication of its passage this _____ day of _____, 2023.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2023.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2023.

Scheereen Dedman, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact:	CBO Contact:
	Andrew Myerberg	

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to controlled substances; adding the crimes of possession of a controlled substance and use of a controlled substance in a public place; amending Section 12A.09.020 of the Seattle Municipal Code; and adding a new Section 3.28.141 to the Seattle Municipal Code.

Summary and Background of the Legislation: This legislation results from a collaborative effort to identify a public health approach to the public safety impact of public use and possession of controlled substances.

The legislation makes the use or possession of controlled substances in a public place a gross misdemeanor in the City of Seattle. Earlier in 2023, the Washington state legislature passed 2E2SSB 5536, which makes the use or possession of controlled substances in a public place a gross misdemeanor in the state of Washington. Revised Code of Washington (RCW) 69.50.608 and RCW 35.22.208(35) require the penalty and disposition provisions of the City’s criminal ordinances to be the same as provided for in state law. Adopting this legislation aligns the City’s provisions with the newly enacted state provisions and allows the City (via the City Attorney’s Office) to prosecute the use or possession of a controlled substance in a public place as a gross misdemeanor.

Importantly, this legislation clarifies that diversion – pre-arrest, post-arrest, or pre-file – is the preferred approach when enforcing public use and possession offenses. It also includes a threat of harm standard to help guide police officer decision-making and to reduce the likelihood of arrest. Lastly, this legislation expressly adopts the diversion requirements outlined in 2E2SSB 5536, Sections 2, 9, and 10.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

This legislation may increase the number of criminal charges filed in the Seattle Municipal Court. A significant increase could eventually result in a need for additional resources in the

City Attorney’s Office, the Seattle Municipal Court, or an expansion of the City’s contracted work with the King County Office of the Public Defender.

This legislation may also result in the need for additional investments in diversion systems, including at pre-arrest, arrest, pre-file, and post-file stages. This need will be explored by the diversion workgroup created as part of Mayor Harrell’s Fentanyl Systems Work Group.

Are there financial costs or other impacts of *not* implementing the legislation?

We are unaware of any direct financial impacts as a result of not implementing this legislation.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

Resources in the City Attorney’s Office and Seattle Municipal Court may be needed for prosecution of a gross misdemeanor resulting from this legislation. HSD may also require additional funding to support increases to diversion programs.

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

No.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

Historically in the United States, drug use and possession laws have disproportionately impacted BIPOC and other vulnerable communities. This legislation does not require arrest or prosecution for the gross misdemeanors it creates, nor is its goal arrest, prosecution, or incarceration. To the contrary, it identifies diversion as the preferred approach when enforcing these laws. This legislation is intended as one of several tools available to public safety teams and other responders, but the goal is to connect people with recovery services.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

No.

- 2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**

No.

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?**

N/A

August 16, 2023 (updated Aug 24, 2023)

MEMORANDUM

To: Public Safety and Human Services Committee
From: Asha Venkataraman, Greg Doss, Ann Gorman, Jennifer LaBrecque, Analysts
Subject: CB 120645: Knowing possession or use in a public place of unprescribed or illegal controlled substances and associated policies

On September 12, 2023, the Public Safety and Human Services (PSHS) Committee will discuss and possibly vote on [Council Bill \(CB\) 120645](#), co-sponsored by Councilmembers Herbold and Lewis. CB 120645 would adopt by reference portions of second engrossed second substitute Senate bill 5536 ([2E2SSB 5536](#)) to make a gross misdemeanor the knowing possession or use in a public place of unprescribed or illegal controlled substances. The legislation would also establish policies governing arrests for these crimes. The Council previously considered [CB 120586](#), which would have codified the adoption of the state law by reference but did not include any policies governing arrests. Please see the [June 1, 2023 Central Staff memo](#) for further background on CB 120586 and issues that inform CB 120645. This memo provides background, a description of the bill and associated funding, issues for the committee's consideration, and next steps.

Background

For discussion of the development of [2E2SSB 5536](#), please see the "Background" section of the June 1, 2023, Central Staff memo on CB 120586. In short, after a court decision struck down Washington State's felony possession law, a temporary measure made possession a simple misdemeanor, and was then replaced by 2E2SSB 5536, which make knowing possession or use in a public place of unprescribed or illegal controlled substances gross misdemeanors.

On April 17, 2023, Mayor Harrell issued [Executive Order 2023-04](#) to address the opioid and synthetic drug crisis in Seattle. On June 12, 2023, he launched the Fentanyl Systems Task Force to make recommendations on substance use disorder diversion and treatment. The intent was for three subgroups to meet and discuss: alternatives to community court/therapeutic courts; diversion; and treatment. To date, the courts subgroup has met several times, but the other subgroups have not.

Related Funding

While announcing the plan to transmit CB 120645, the Mayor also [announced his intent](#) to invest \$27 million towards facilities, treatment, and services to address substance use disorder. No legislation has yet been transmitted appropriating this \$27 million for the purposes described below.

Mayor Harrell's announcement included approximately \$7 million in Community Development Block Grant (CDBG) funding. The \$7 million is funding that was allocated for other purposes in prior years and has gone unspent.¹ The Executive will be transmitting an appropriations bill in September to consolidate this funding into the Human Services Department (HSD), as funds were originally allocated among several departments. Concurrent with the appropriations bill, HSD will also be transmitting an updated 5-Year Consolidated Plan, which governs use of CDBG and other federal funding; the plan will include a new policy priority related to addressing the needs of people impacted by mental health and substance abuse issues.

At the August 14 PSHS Committee meeting, Mayor's Office Special Projects Director Andrew Myerberg stated that the Executive intends to conduct a Request for Proposal (RFP) process to award the CDBG funds consistent with the policy priority referenced above. The one-time CDBG funding would support facilities that provide programs and services related to substance use. Ongoing funding would need to be identified for the operational costs associated with these facilities.

Mayor Harrell's announcement also references the use of \$20 million of the City's share of funding from State-negotiated resolutions with opioid distributors, producers, and manufacturers, which would result in an annual allocation of about \$1.1 million for at least the first seven years of a 17-year payout period.^{2,3} It is possible that ongoing investigations by the State Attorney General's Office will lead to the recovery of additional resolutions and/or settlements, which will incrementally increase the funding that will flow to the City. These revenues may be used for the treatment of opioid use disorder (OUD) and any co-occurring substance use disorder (SUD) or mental health conditions, through evidence-based or evidence informed programs or strategies.

In addition, [Ordinance 126876](#), the mid-year supplemental budget legislation, also includes \$1 million of one-time funds for the HSD budget for a contract with Evergreen Treatment Services to support the expansion of its Treatment in Motion (TIM) program, which services those with opioid use disorder

¹ Central Staff has not yet received information from the Executive on the original purpose of the CDBG funds or why they were unspent.

² In October 2022, Attorney General Ferguson announced a resolution requiring McKesson Corp., Cardinal Health Inc., and AmerisourceBergen Drug Corp. to pay the State a total of \$518 million. In June 2023 he announced a resolution requiring CVS, Walgreens, Teva, and Allergan to pay the State a total of \$371.8 million. Half of resolution funding is directed to eligible Washington cities and counties, per an Allocation Agreement.

³ Central Staff estimate that net revenue to the City will be \$24 million over a period of 17 years. From a settlement that is separate from these two resolutions, Seattle will receive in excess of \$1 million over a payout period to be determined. These figures were developed for the purposes of this memo only and should not be used for planning purposes. The methodology for determining an actual figure is highly complex and currently opaque to Central Staff. Central Staff awaits the HSD document described in footnote 5, *infra*. Central Staff understand that King County will request ten percent of the City's net revenues to administer the Opioid Abatement Council established as an element of the State resolutions. An additional ten percent of net revenues may be dedicated to the administrative costs of a City department or departments consistent with eligibility requirements.

through a mobile medication unit, and \$200,000 in one-time funds for the HSD budget for pre-filing diversion contracts.

CB 120645

Adoption of 2E2SSB 5536 by reference

For discussion of the content of [2E2SSB 5536](#) to be adopted by reference, please see the “State Legislation” section of the June 1, 2023, Central Staff memo on CB 120586.

Policies governing arrests for public use and possession of controlled substances

CB 120645 would direct the Seattle Police Department (SPD) to adopt policies governing arrests for public use and knowing possession of a controlled substance. Among other things, these policies would:

- State that diversion and referral to services is the preferred response to possession and public use while acknowledging that arrests are warranted in some situations;
- Provide guidance on diversion and be consistent with any public health and safety-related guidance in a Mayor-issued Executive Order (discussed below);
- Seek to minimize use of force and incorporate de-escalation and crisis intervention that reflect existing SPD policies in those areas; and
- Require SPD to report to the Council on data that it collects on the racial composition of those who are arrested and diverted to community-based services prior to jail booking or referral for prosecution, and those who are booked and referred for prosecution.

The Mayor’s Office has indicated that it will issue an Executive Order to inform future SPD policies that will govern officer actions when encountering people who are using or possessing drugs in public. These policies would provide officers with specific direction about how to determine whether a person, through their actions and conduct, presents a threat of harm to others. The SPD policy will serve as the basis for actions that officers would take consistent with CB 120645 Sections E (threat of harm to others) and Section F (threat of harm to self). These sections require that officers follow a specific course of action when they have established probable cause to arrest a person for possessing or using drugs in public:

- 1. Section E: Threat of harm to others:** Officers must determine whether the person is a threat of harm to others. This determination will be guided by SPD policy (to be developed), the totality of circumstances, and the officer’s training and experience.
- 2. Section F: Threat of harm to self:** Officers must make a reasonable attempt to contact and coordinate efforts for diversion, outreach, and other alternatives to arrest. If a person is not a threat of harm to others, then officers will only arrest if they have identified additional articulable facts and circumstances warranting arrest.

The bill requires officers who make arrests under the authority that would be granted in CB 120645 to complete an arrest report that includes the facts that establish probable cause, an assessment of the threat presented by the individual engaged in knowing possession and public use of a controlled substance, and whether, and in what manner, arrest or diversion was considered or utilized. The bill also notes that nothing in SMC 3.28.141 is intended to compromise the safety or well-being of police officers. Finally, the bill indicates that the officer's determination of threat of harm will not be an element of the crime to be proved during the prosecution of possession or public use offenses and cannot be used as a defense at trial.

Issues

Adoption of 2E2SSB 5536 by reference

For discussion of the issues associated with adopting portions of [2E2SSB 5536](#) by reference, please see the "Analysis" section of the June 1, 2023 Central Staff memo on CB 120586. The issues identified in that section (prosecution, law enforcement, diversion, fiscal responsibility and impact, and racial equity impacts) are all still relevant and applicable to CB 120645. Additional information and analysis regarding some of those issues are described below, as the addition of policies governing arrest may affect these issues.

Policies governing arrests for public use and possession of controlled substances

Existing state and local laws provide SPD officers with the discretion to make arrests when they have probable cause to believe that a crime may have been committed. CB 120645 acknowledges that probable cause is required for an arrest of knowing drug possession or use, and also modifies officer discretion by requiring additional considerations and actions:

1. An officer will consider whether an individual presents "threat of harm to others;"
2. An officer will make a "reasonable attempt to contact and coordinate efforts for diversion, outreach and other alternatives to arrest" when they have determined a person is not a threat of harm to others.

Neither of the above changes would ultimately prevent an officer from making an arrest under the authority that would be provided under CB 120645. If officers choose to arrest, officers must comply with the reporting requirements in Section 3 of the bill (SMC 3.28.141.H), which includes adding to the arrest report a description of the reasonable attempt that was made to coordinate diversion as an alternative to arrest.

A person who is deemed to not be a threat of harm to others may still be arrested. One such circumstance might involve an officer taking into custody a person for the purpose of police transport to a secure or voluntary crisis facility.

When an arrest is made under CB 120645, an officer may utilize diversion as a post-arrest alternative to a jail booking. For instance, an officer that deems a person to be a threat of harm to others could choose to arrest, transport the arrestee to the police precinct, and then later initiate a “warm handoff” to an organization that facilitates diversion (e.g., Let Everyone Advance with Dignity (LEAD)). Presently, the King County Jail is not accepting bookings for most non-violent misdemeanors and would likely not accept a booking made for possession of controlled substance or use of controlled substance in a public place. Post-arrest diversion, release, or Charge By Officer⁴ may be other options for officers who determine that an individual is a threat of harm to others, but who do not believe that an individual must be sent for a behavior evaluation under [Revised Code of Washington \(RCW\) 71.05](#) (discussed further below).

While Section F is titled “Threat of harm to self”, the officer is not required to make a separate determination about whether a person is a threat of harm to themselves. However, under current law and practice, officers may make a determination that a person is in imminent danger because of being gravely disabled, a condition that would require officers to take a person into custody for a behavioral health evaluation under RCW 71.05.

Threat of harm to others: Councilmembers have asked if existing law provides any guidance on when an individual could be deemed a threat of harm to others. While there is no “Threat of Harm Standard” defined in the RCW, officers are at times required to assess a threat of harm when taking certain civil actions. For instance, an officer may refer a person for an involuntary behavioral health evaluation under [SPD policy 16.110-Pro-1](#), which empowers officers to take into custody, and deliver to a treatment facility a person who 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. [RCW 71.05.020](#) defines the “Likelihood of serious harm” as:

- a) A substantial risk that: **(i)** Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; **(ii)** physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or **(iii)** physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or (b) The person has threatened the physical safety of another and has a history of one or more violent acts;....

There are also times when an officer is required to assess “threat” as an element of a crime. The CAO indicates that such crimes largely fall within the rubric of harassment ([RCW 9A-46](#)). These crimes are subject to arrest when an officer has probable cause to believe that the threat has

⁴ The SPD Charge By Officer is a program that allows patrol sergeants to route misdemeanor cases that do not need further investigation directly to the Seattle Law Department. The policy is not to be used in cases of DUI arrests, incidents involving juveniles, incidents referred through the Retail Theft Program, Felony charges, Traffic Crimes and infractions, Prostitution Offering & Agreeing, Sexual Exploitation, and any crimes that require follow-up by a detective.

reached a criminal threshold. The term “threat” can be found defined in [RCW 9A.04.110](#). Broadly, the term covers actions that communicate, directly or indirectly, the intent to cause bodily injury or to do any act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition or personal relationships (see definition for complete list acts captured by the definition).

Threat of harm, as identified in future SPD policies, would likely need be defined in a way that is (1) exclusive of other arrestable criminal behavior; and (2) does not capture behavior that could qualify as a behavioral health crisis that would require an emergent detention for an evaluation under RCW 71.05.

Arrest Policy Considerations: The Executive has indicated that the final version of CB 120645 will inform the Executive Order and SPD Policies, and therefore, the Executive will not make these documents available to the Council and public until after the adoption of CB 120645.

This sequencing precludes the Council from better understanding how the arrest policies of CB 120645 will be implemented when officers encounter subjects possessing or using drugs. For example, it is difficult to know whether SPD officers will, when determining the threat of harm to others, weigh more heavily factors related to preserving order (e.g., removing non-violent persons using drugs near heavily transited bus stops or commercial properties) or factors that suggest a potential for bodily harm to others (e.g., behavior suggesting a physical threat). SPD policies will need to balance all these factors while also providing officers with specific, clear/ understandable, and actionable direction.

Executive staff have indicated that the SPD policies would be completed and published before the effective date of the legislation, which could occur as soon as mid-October under the legislative schedule proposed by the Chair of the Council’s PSHS Committee. If the policies affect officer working conditions, implementation may require bargaining.

Fiscal impacts

Net revenue per year from the opioid-settlement resolutions will decline over a 15-year period, so the Executive will have to exercise care in allocating these resources for ongoing expenditures.⁵ Anticipated net resolution and settlement revenues are not currently known on a per-year basis, but the \$20 million the Mayor’s Office has proposed in conjunction with this legislation would result in approximately \$1.1 million per year for the purposed described, for at least the first seven years of the payout period.

⁵ The Department of Human Services (HSD) is currently developing a document that will track the revenue and settlement revenues that are anticipated per year, and to the extent that additional resolutions and/or settlements are finalized in the future, HSD will update the document.

All of the proposed new resources announced by the Mayor are for opioid treatment services - that is, treatment and clinical follow-up related to an individual's substance use disorder, including emergent events such as an overdose. While the proposed investments in treatment may reduce the number of people using drugs in the City and consequently repeated interactions with the criminal legal system, and guidance in the legislation directs officers to divert where appropriate, the actual impact on the system will depend on how many individuals SPD actually refers for diversion and the availability and the appropriateness and capacity of diversion programs. Please see the June 1, 2023, Central Staff memo on CB 120586 "Fiscal Responsibility and Impact" section, which reflects the Seattle Municipal Court's (SMC) indication that case filings are increasing back to pre-pandemic levels and that a preliminary estimate of referrals from SPD under the new state legislation is between 700 and 870, based on historical filings before the COVID-19 pandemic. No additional funding is proposed for SPD, CAO, or SMC. The fiscal note for CB 120645 confirms that:

This legislation may increase the number of criminal charges filed in the Seattle Municipal Court. A significant increase could eventually result in a need for additional resources in the City Attorney's Office, the Seattle Municipal Court, or an expansion of the City's contracted work with the King County Office of the Public Defender. This legislation may also result in the need for additional investments in diversion systems, including at pre-arrest, arrest, pre-file, and post-file stages. This need will be explored by the diversion workgroup created as part of Mayor Harrell's Fentanyl Systems Work Group.

Diversion is different from treatment in that it typically takes place over a longer period of time, can involve multiple non-clinical social interventions, and requires the intensive participation of a coordinating caseworker. No new funding is proposed for diversion of any kind: pre-arrest, pre-filing, or pre-trial.

Diversion

Subgroups of the Fentanyl Systems Task Force focused on substance use disorder diversion and treatment have not convened, discussed these issues, or issued recommendations. As a result, it is unclear what additional analysis and information was used to inform how diversion and treatment could best be used to address the needs of the individuals in this population. Additional issues specific to pre-filing and pre-arrest/pre-booking diversion are described below.

Pre-filing diversion

Approximately \$585,000 annually is appropriated to HSD for contracts for pre-filing diversion, and the supplemental budget adds \$200,000 of one-time funds for pre-filing diversion in 2023.

It is not clear how often pre-filing diversion is the appropriate support for people being stopped or arrested under CB 120645. Pre-filing diversion may not be an intensive enough intervention for individuals in this population. Challenges for pre-filing diversion programs include the ability to conduct outreach immediately and consistently after initial engagement with the criminal legal system; providing the wraparound services that individuals may need to maintain consistent participation in the

programs; and finding sufficient staffing to expand capacity for the needs of this population. For example, while the most appropriate pre-filing diversion intervention for this population might be enrollment into King County's Therapeutic Alternative Diversion (TAD) program, staffing and capacity challenges limit the ability to expand in ways that may not be solved with additional funding.

Pre-arrest or pre-booking diversion

The City's primary option for diversion at the point of arrest is the Let Everyone Advance with Dignity (LEAD) program, for which the City contracts⁶ across the following three referral pathways:

- Arrest diversion: referral to LEAD by law enforcement at the point of arrest rather than booking for a crime;
- Social contact or pre-arrest diversion: referral to LEAD by law enforcement when there is reason to believe that an individual engages in law violations, but law enforcement has no probable cause for arrest or the officers choose not to arrest; and
- Community referral: no law enforcement role and an individual is referred to LEAD by a neighborhood group, business, or social-service or community-based organization.

CB 120645 will likely lead to increased referral volume to LEAD by establishing diversion and treatment as the standard approach for most instances of knowing possession and public use of controlled substances and in committing to the development of SPD policies to support this outcome. However, LEAD currently does not have capacity to accept most new referrals to the program. Even if sufficient funding were allocated to fund LEAD to scale as described in [Resolution 31916](#), the PDA and its subcontractors would require time to recruit, hire, train and deploy the requisite case managers to support program operation at scale. Given these challenges, it is unlikely that CB 120645 will result in significantly increased enrollment of new clients in law enforcement assisted diversion programs in the near term.

The City's contract for LEAD services explicitly prioritizes referrals to LEAD by law enforcement, including pre-arrest diversion and social contact diversion. However, during the first half of 2023 only three percent of all referrals were from arrest diversion, and an additional 25 percent were from social contact, and the majority of referrals were initiated by community members. Significantly more referrals from law enforcement could crowd out the program's ability to accept referrals from community members or create an environment in which police officers are the de facto gatekeepers for access to LEAD programs and services.

The City's 2023 contract with PDA to support the LEAD diversion model is for \$9.9 million. With these resources, the PDA had 752 active LEAD clients at the end of June. It was not possible to develop an estimate for this memo of the additional funding that would be required to fund LEAD to scale. As a point of reference, a September 2021 Central Staff memo (Attachment A) to the PSHS Committee estimated the need for \$21 million in 2022 and \$30 million in 2023 to fund all "priority qualifying

⁶ The contract is held by Purpose. Dignity. Action. (PDA). This organization was formerly known as the Public Defender Association.

referrals” to LEAD, which the memo defines as “individuals who engage in criminal activity related to behavioral health issues, substance use, and/or extreme poverty or income instability.” If policies were developed to prioritize such referrals for enrollment in LEAD, one effect could be to curtail access to program services for individuals connected to LEAD mainly or solely because of behavioral issues, extreme poverty, and/or income instability. Information is not available on the proportion of LEAD clients who were connected with the program mainly or solely due to public use of unprescribed or illegal controlled substances.

Central Staff understand that PDA staff have engaged with the Executive related to CB 120645 and identified the need for ongoing discussion about PDA’s capacity, options for optimizing current diversion resources, and how the bill will be operationalized.

Racial Equity Impacts

In general, the state’s decision to increase criminalization of the knowing possession or use in a public place of unprescribed or illegal controlled substances from a simple to a gross misdemeanor will have disproportionate impacts on Black, Indigenous, and other communities of color. As related to enforcement, SPD has been found to disproportionately stop and search Black and Native American persons, even though their White counterparts were more likely to be found with a weapon than any other demographic group.⁷

The more cases that are prosecuted, the more likely it is that communities of color will experience disproportionate impacts. In addition, the Vera Institute of Justice has found “substantial evidence shows that incarceration is associated with an increased risk of overdose death due to a loss of tolerance to opioids, limited access to harm reduction and treatment services, and disruptions in health care and social support during and after periods of incarceration.”⁸ It is Black and Indigenous communities, as well as other communities of color

who suffer disproportionately from the harms of the criminal legal system and lack of access to health care, and Black and Latinx individuals who are disproportionately represented in jails and prisons, leaving these populations subject to the harms of criminalizing drug use and possession.⁹

If the City fully implements the system in this legislation, and that system successfully connects as many people as possible to treatment and support programs that are fully funded, staffed and scaled to capacity appropriate to this population, and does so in a way that decreases additional criminal records and involvement with the criminal legal system, the City could address knowing drug possession and public use in a way that produces fewer negative racial equity outcomes. Tracking the appropriate data will be important to understanding racial disparities that remain or are created through these systems.

⁷ [Dkt-554-1-SPDs-Disparity-Review.pdf \(seattle.gov\)](#)

⁸ Taylor, A., Miller, C., Tan de Bibiana, J., Beck, Jackson, Overdose Deaths and Jail Incarceration, available at <https://www.vera.org/publications/overdose-deaths-and-jail-incarceration/national-trends-and-racial-disparities>.

⁹ Ibid.

Next Steps

The Public Safety and Human Services committee plans to consider and vote on any amendments to CB 120645 on September 12, 2023. Central Staff requests that Councilmembers submit any amendments by September 5.

Attachments:

A. September 2021 Memo

cc: Esther Handy, Director
Aly Pennucci, Deputy Director

September 24, 2021

MEMORANDUM

To: Public Safety and Human Services Committee
From: Jeff Simms, Analyst
Subject: Response to SLI HSD-006-A-003 Estimating Cost to Fully Fund LEAD Program

On September 24, 2021, the Public Safety and Human Services Committee (PSHS) will hear a presentation responding to Statement of Legislative Intent [HSD-006-A-003](#) (the SLI) by the Let Everyone Advance with Dignity program (LEAD, formerly Law Enforcement Assisted Diversion), which is managed by the Public Defender Association. The SLI requests the Human Services Department (HSD) provide estimates for referrals and associated costs if all priority qualifying referrals to the LEAD program citywide are accepted and a description of how these estimates will be incorporated into the Mayor's 2022 Proposed Budget. Inclusion of the SLI in the 2021 Adopted Budget was intended to obtain information necessary to assess further action on [Resolution 31916](#), which calls for appropriate funding to accept all priority qualified referrals for the LEAD program citywide.

HSD asked LEAD to prepare data-driven calculations to respond to the Council's request. The submission of this data was accompanied by a statement from HSD (see Attachment 1) recommending against further expansion of the LEAD program in the 2022 budget so that further work could be completed to ensure alignment between HSD, LEAD, and other criminal justice system alternatives and the impact of the Council's appropriation of \$3 million for LEAD in June 2021 could be assessed.

This memo examines the referral and cost estimates prepared by LEAD. The estimate provided by LEAD would result in a total program cost of \$21 million in 2022 and \$30 million in 2023 to accept all priority qualifying referrals, an increase above current levels of \$13 million and \$21 million, respectively.

Definition of Priority Qualifying Referral

The SLI is focused on serving all priority qualifying referrals to LEAD. A "priority qualifying referral" is a term that allows for subjective judgements based on the specific circumstances of the referral. Generally, LEAD clients are individuals who engage in criminal activity related to behavioral health issues, substance use, and/or extreme poverty or income instability. Arrest diversion to LEAD has been authorized from the program's outset in 2011 for drug crimes and prostitution, and as of 2018, the Seattle Police Department and City Attorney's Office have expressed an intent to allow arrest diversion of criminal trespass, theft, property destruction, and obstructing charges. Arrest diversion for non-domestic violence assault and harassment has

been discussed by City departments as a potential further arrest diversion expansion for people likely not to be legally competent for criminal proceedings due to acute mental illness. Per

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changes mandated by the Council in the 2020 Mid-Year Supplemental Budget ([Ordinance 126148](#)), LEAD referrals can be approved if the LEAD project management team determines that the referred individual chronically violates the law, that accepting the referral is consistent with racial equity, and if the LEAD case management teams believe that the resources available to them are appropriate to the individual's known needs.

Over the last year, factors determining when there is a priority qualifying referral have included examining whether the referred individual has experienced intergenerational poverty, been impacted by the war on drugs, or reported intergenerational behavioral health or chemical dependency issues. Black, indigenous, and other people of color are generally prioritized. An individual's actual community impact, such as having known warrants and open court cases is considered. Due to direction from Council regarding geographic expansion and areas of focus, geographic location can be a reason for not accepting a referral.

Referral and Caseload Estimates

To estimate total priority qualifying referrals City-wide, LEAD conducted a survey of partners that currently refer clients to the program. The survey asked for the estimated number of Seattle-based referrals the partner would send if LEAD had sufficient funding to accept all priority qualifying referrals (see Attachment 2 for details). After obtaining this data, LEAD reduced the number of referrals based on the current rate of duplicate referrals and proportion of individuals who do not complete intake into the program. This resulted in an estimate that 2,586 referrals would be made over the course of 2022, resulting in 1,450 individuals entering the program.

Generally speaking, a LEAD client falls into one of three stages. The most common stage is an active client who is intensely and actively meeting with the LEAD clinical team more than once every three months. The second stage, outreach, is a client who has contact with the LEAD clinical team but is not considered intensely engaged and typically has less than one contact every three months. A third stage, alumni, is a stabilized client who no longer requires intensive care coordination but may occasionally return for some assistance. Clients in any stage are considered discharged or disengaged in the event the person is sent to prison, moves out of the area, is out of contact for more than a year, or dies. Over the last year, it is estimated that a client remains in the active stage for an average of eight months, outreach for an average of six months, and alumni status for an average of four months. It is not uncommon for a client to move between the active and outreach stages.

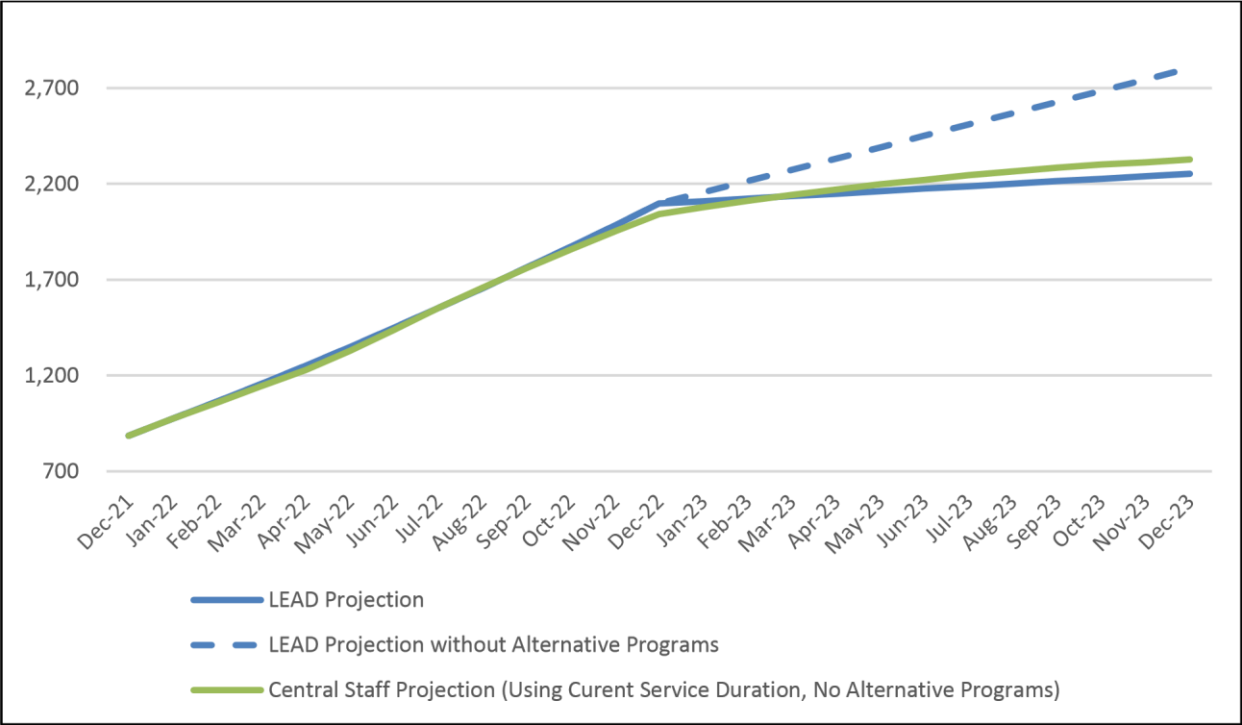
The estimate of caseload prepared by LEAD in the SLI response assumes that new referrals who complete the intake process always move into the active LEAD caseload. It also assumes a fixed number of program exits each month in order to project the net caseload growth. Significantly,

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the LEAD estimate assumes that new community-based organizations and public safety initiatives would become operational by 2023, and some individuals who might otherwise qualify for LEAD would be referred to those programs and resources rather than to LEAD. Such a change in the rate of referrals would slow the rate that the monthly caseload increases (see the solid blue line in Chart 1). However, absent the development of those alternative pathways by 2023, LEAD caseload could continue to rise substantially (see the dotted blue line in Chart 1) and there is a risk that the program would need to limit or pause accepting referrals.

Central Staff sought to confirm LEAD’s caseload projection based on the average time spent in each stage of the program. The Central Staff projection does not assume the rate of referrals to LEAD would decrease in 2023 due to new program alternatives, but it does assume that the number of referrals each month remains the same after reaching the levels projected from the partner survey. With these underlying assumptions, the rate of caseload increase in the Central Staff projection levels off in 2023 but continues to increase (See the green line in Chart 1).

Chart 1: LEAD Caseload Projections Using Different Underlying Assumptions



Neither the LEAD nor the Central Staff projection reach a point where the outflow of clients balances the inflow of new referrals. So in both projections, the caseload would interminably increase. If correct, the projections would therefore suggest that either the definition of a priority qualifying referral requires narrowing or new practices must be developed to more rapidly exit clients from LEAD.

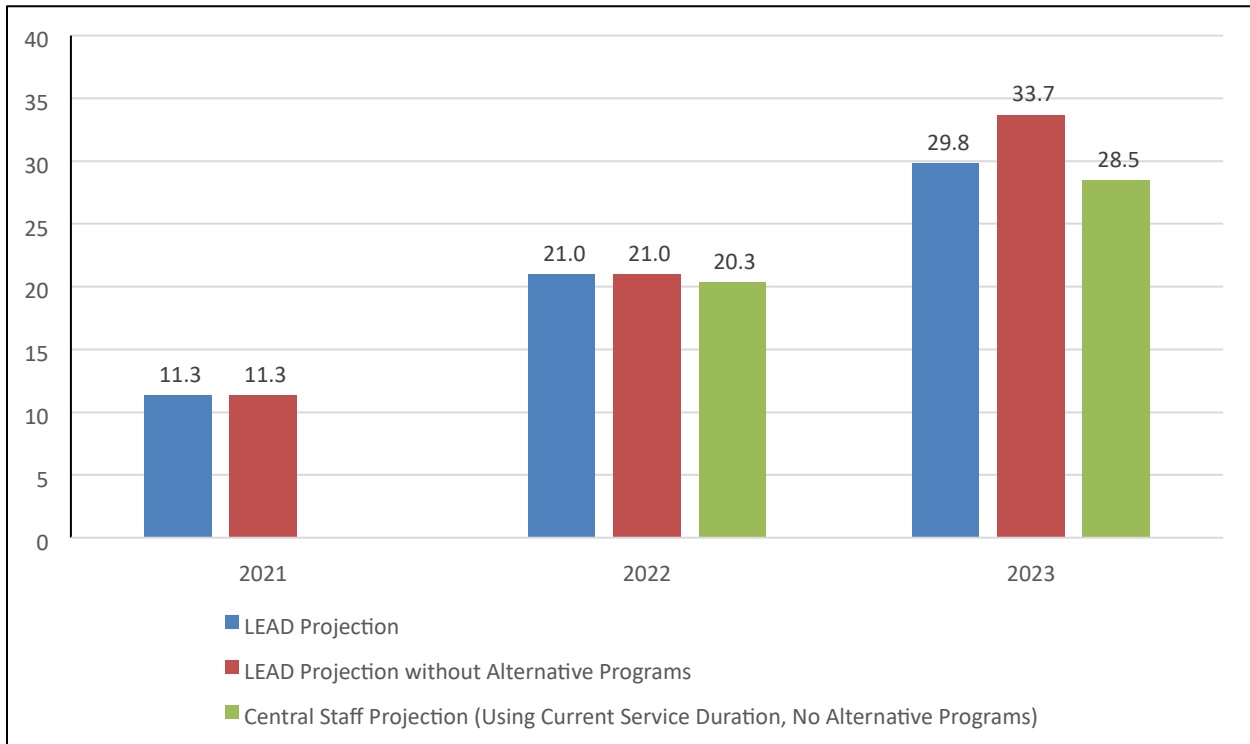
The need for such changes could be even greater than suggested by these projections if the number of referrals increased more than estimated by the partner survey. For example, both the LEAD and the Central Staff caseload estimates assume that no new referral sources emerge as funding for the program increases. However, it is possible, perhaps likely, that new community partners would begin to provide referrals or that greater awareness of LEAD's presence in a community would impact the number of referrals. It is not possible to project what those impacts could be at this time.

Nevertheless, it is important to remember there were numerous assumptions made to develop these estimates and the slower rate of caseload increase could be an indication that in-flow and out-flow are beginning to balance. If LEAD funding is increased in the future, the accuracy of these assumptions should be monitored to better project if caseload will reach an equilibrium.

Cost Estimates

LEAD developed a staffing and cost model that varies based on the total program caseload each month. The model uses existing salary, benefit, and operational costs, though they are not adjusted for inflation or other changes over time. It assumes one case manager for every twenty active cases and one for every 80 outreach cases. The modeling assumes that 15 percent of active clients would receive hotel sheltering supports. Chart 2 shows the estimated cost of accepting all priority qualified referrals citywide using this staffing and cost model and the caseload estimates discussed above.

Chart 2: Estimated Total Cost to Accept All Priority Qualified Referrals City-wide (Dollars in Millions)



Other public entities could support some of these estimated costs along with the City. In addition to City General Fund support that is provided through HSD, LEAD currently receives funds through two contracts with King County. The King County Mental Illness and Drug Dependency Sales Tax (MIDD) currently provides nearly \$1.5 million to support LEAD in Seattle. LEAD assumes that funding will increase by four percent in each of the next two years due to inflationary adjustments. Similarly, LEAD receives approximately \$380,000 from the Trueblood Court Monitor for pre-booking police diversion of individuals whose law violations were thought to stem from high acuity mental health needs, though the Trueblood funding will end in June 2022. In addition, there are multiple other public funding sources that could potentially support the program, including State funding for the Recovery Navigator Program and State mental health services funding.

Assuming that the on-going funding from HSD increases by four percent over each of the next two years, City funding is expected to already be \$6.5 million in 2022 and \$6.7 million in 2023. These amounts do not include \$3 million one-time funding provided by the Council for the LEAD program in 2021 through [Ordinance 126375](#), which is assumed to end without Council action.

Next Steps

In the next week, the Council will receive the Mayor’s 2022 Proposed Budget. Through that process, the Council will have the opportunity to deliberate over funding for LEAD in 2022. The SLI was intended to provide Council the information needed for those deliberations.

Attachments:

1. Response to SLI HSD-006-A-003 (Report on demands and costs for citywide diversion program) from Tess Colby, Deputy Director Human Services Department
2. LEAD Project Management Team Response to SLI HSD-006-A-003 (revised September 17, 2021)

cc: Esther Handy, Central Staff Director
Aly Pennucci, Policy and Budget Manager

Memo

Date: August 4, 2021

To: Councilmember Lisa Herbold, Chair, Public Safety and Human Services Committee

From: Tess Colby, Deputy Director, Human Services Department

Subject: Response to SLI HSD-006-A-003 (Report on demands and costs for citywide diversion program)

Introduction

This report is provided in response to Statement of Legislative Intent (SLI) HSD-006-A-003, which requests that the Human Services Department (HSD) provide a report to determine the amount of funding necessary to allow law enforcement pre-arrest diversion programs to accept all priority qualifying referrals citywide.

Pursuant to the direction in the SLI, the Let Everyone Advance with Dignity (LEAD) Policy Coordinating Group prepared the attached report and they offer it as a response to the questions included in the request. HSD is transmitting the report on behalf of LEAD.

Current City of Seattle Investments in LEAD

This SLI was approved and included in the 2021 City of Seattle Budget which invested \$6 million in LEAD. In June 2021, Ordinance 126298 appropriated an additional \$3 million to LEAD.

At this time, we cannot support an expansion of the program, as the data outlined in this report is insufficient to understand the total cost of expanding the LEAD program. In 2022, HSD's contract with LEAD is transitioning over to the newly formed Safe & Thriving Communities (STC) division. HSD recommends any discussion related to evaluation, cost analysis, or impact analysis of LEAD be delayed to 2022 in order to (1) allow STC to ensure alignment with LEAD and other systemic responses to criminal justice system alternatives and (2) allow sufficient time to contract and evaluate impact of the \$3M midyear budget add to LEAD in 2021 spearheaded by Councilmember Herbold.

Attachment

Lead Project Management Team Response to SLI HSD-006-A-003

Lead Core Principles

|

700 Fifth Avenue, Suite 5800 | PO Box 34215 | Seattle, WA 98124-4215 | 206-386-1001 | seattle.gov/department

LEAD Project Management Team Response to SLI HSD-006-A-003 revised

September 17, 2021

We appreciate the opportunity to address what would be required to expand LEAD to scale throughout the City of Seattle, including the capacity to accept any and all arrest diversions and appropriate community referrals. “Scale” is defined, in Resolution 31916, as the capacity to accept all priority qualifying referrals, to ongoing case management and care coordination without a pre-determined end date.

We begin with a brief background on the present scope and impact of LEAD, and then explore possible models for calculating expansion to scale.

I. LEAD summarized

LEAD began as a resolution of long-running litigation from 2001-2008 by PDA’s (Public Defender’s Office) Racial Disparity Project and the ACLU Drug Law Reform Project, challenging the over-policing of Black people delivering crack cocaine, and demonstrating that white people constitute the majority of those dealing drugs in outdoor drug markets in Seattle. Since 2011, PDA has served as the project manager for LEAD – Let Everyone Advance with Dignity – formerly called Law Enforcement Assisted Diversion – in Seattle-King County,¹ which provides community-based care for people who commit law violations related to behavioral health issues or extreme poverty, as an alternative to punitive enforcement-based responses.

Individuals referred to LEAD receive immediate access to harm reduction-based intensive case- management, including – but not limited to – chemical dependency treatment, mental health care, legal system support, and job training and placement. LEAD participants are those who commit, or are at high risk of committing, law violations related to their behavioral health challenges and/or income instability. LEAD case management follows the harm reduction principle of taking the harm seriously--the central program goal is to reduce problematic and illegal behavior, and thereby to reduce the “police-ability” of individuals who in the past have largely been rebuffed by care systems and exposed to enforcement and the legal system as a primary response for behavioral health conditions and income instability. Police and court response is reduced by providing an alternative, community-based response that is reliable and satisfying to participants and community alike.

Additionally, in 2018, the Policy Coordinating Group decided to respond to an RFP (Request for Proposal) from the Trueblood Court Monitor which sought proposals for pre-booking police diversion of individuals whose law violations were thought to stem from high acuity mental health needs, and LEAD was selected to expand services to this population. Pursuant to the award of Trueblood funding, beginning July 1, 2018, LEAD law enforcement partners were formally able to refer individuals to LEAD when they are under arrest for a wider range of offenses, approved by the Policy Coordinating Group. Phase I of the expanded arrest diversion eligibility criteria included criminal trespass, theft and property destruction (which, after extensive data review by SPD, the CAO (City Attorney Office), King County BHRD (Behavioral Health and Recovery Division) and PDA, were found to account for nearly half of cases in which individuals were held for competency evaluation on Seattle Municipal Court cases in the first quarter of 2018). Phase II expansion

¹Our local LEAD program is governed by a Policy Coordinating Group (PCG), operating under an MOU (Memorandum of Understanding), making decisions by consensus, comprised of (for Seattle) the Mayor, City Council, City Attorney and Seattle Police Department, as well as the King County Executive, Council, Prosecutor and Sheriff, the ACLU of Washington, and the Public Defender Association, which serves as project manager. The PCG

meets quarterly. The advocacy organizations represented were those that litigated the race discrimination challenge that catalyzed LEAD. The MOU could be amended by consensus to add or remove stakeholders. PDA is the project manager working for the PCG--if the PCG so chose, it could select another project management entity. In that sense, LEAD is not a project of PDA, and it can continue if PDA were no longer selected to provide project management.

may include non-domestic violence assault and harassment. However, to date, there have been no arrest diversions on these expanded arrest diversion criteria.

LEAD has recognized core principles (attached to this memo) that are essential to its recognition as an evidence-based approach, and which are used by evaluators nationally to measure fidelity to the model. These principles are currently in use by the Washington Health Care Authority in designing the SB5476 "Recovery Navigator" program which, per that legislation, must align with LEAD core principles. Within those core principles, however, there is substantial room for program adaptation, including in the model of care. The model is intended to accomplish the maximum possible paradigm shift from legal system involvement to community-based care. It is also meant to establish a floor, not a ceiling, on the resources individuals are provided to stabilize, recover and heal from complex trauma and harm.

It is often said that LEAD is not a program or a single organization, but a collective impact model creating a *framework* for diversion to community-based care of individuals who do commit law violations related to behavioral health issues or income instability, where there is a public expectation of enforcement response, and where it is clear that a punitive response is harmful and counterproductive. In contrast to gun violence, the impact of each instance of problematic behavior may be less severe, but taken together, these behaviors are problematic, for vulnerable communities as well as for more affluent ones, and require a response – and the number of individuals who fall into the category of eligible priority referrals is large, because these problems and situations are pervasive, for systemic reasons that are not likely to be soon resolved.

From time to time the Policy Coordinating Group convenes an evaluation and data working group to assess program operations and impacts. In 2019, among other areas of focus, that workgroup looked at LEAD's impact on racial disparity and race equity. Black and other POC participants have always constituted a majority of LEAD participants. The benefits of the program in reducing felony filings, prison and jail time, and subsequent arrests, were found by a UW research team to be experienced equally by LEAD participants regardless of race. LEAD case management was already regarded as a higher level of care than has traditionally been offered to this participant group. In 2019, the evaluation and data workgroup determined that increasing the level of care offered to participants to include both more access to housing and a channel to secure legal income constituted appropriate modifications to the LEAD standard of care. In 2020, amidst the pandemic, the Policy Coordinating Group confirmed that more certain access to housing and legal income supports should be considered, as much as possible, essential to the LEAD model of care.

In Fall 2019, the 2020 budget process saw a commitment to take LEAD to full scale citywide by 2023, in Resolution 31916, and nearly tripled the City's investment in the program, to restore ability to take on new referrals and alleviate crushing caseloads that were created when referrals mounted in 2018-2019 without significant increases in funding (other than Trueblood). The Policy Coordinating Group directed, and the City contract with PDA anticipated, that a second case management team would be created in 2020, so that REACH would not have to carry the planned growth of the program alone.

The COVID-19 pandemic elevated the need for a housing-based approach and a legal income stream to meet basic needs. It also accelerated the need for a second case management team. The brokerage case management approach LEAD has historically used was less usable when almost all other services became inaccessible to the LEAD participant population during the COVID shutdown. At the same time, jails declined to book on low level

offenses, police had little contact, and courts closed, meaning that the LEAD population was largely left out on the streets unable to safely shelter in place and without access to lawful income. In response, with agreement of the PCG, PDA developed Co-LEAD, an intensive outreach and case management team that was able to provide this population temporary lodging at hotels as well as wraparound, on-site services. Co-LEAD, thus, is the second LEAD case management team, presently deployed to quasi-residential program sites for participants for whom that is the necessary level of care.

The other major change to the LEAD model in 2020 was the advent of direct community referrals, without involvement of or approval from law enforcement. In the past, LEAD was intentionally designed to intercept individuals who were suspected of crimes and otherwise would be subject to being jailed and prosecuted, in order to prevent that harm. In 2020, initially due to the impact of COVID, and later in response to regional reconsideration of the appropriate role for police, jails, courts and police largely withdrew from engaging this population. However, large numbers struggled with lack of access to lawful income, engagement in the illicit economy to meet basic needs, and record levels of harmful substance use and untreated mental illness. The need remained, but the intercept channel needed to be adjusted to ensure LEAD services reached those they were designed to assist. Recognizing this, in summer 2020, the LEAD project management team proposed, and the City and County Councils required by budget proviso, that community referrals be accepted without the previous requirement of law enforcement approval.

Presently, LEAD arrest diversion, street outreach, case management, and direct services are available for individuals who pose a risk of ongoing law violations (are exposed to enforcement and the legal system) due to behavioral health conditions or extreme poverty. Without prior approval from law enforcement personnel, under terms of the City and County Council budget provisos, LEAD referrals can be approved if the LEAD project management team determines that the referred individual chronically violates the law, that accepting the referral is consistent with racial equity, and if the LEAD case management team(s) believe that the resources available to them are appropriate to the individual's known needs.

With the advent of direct community referrals, we are seeing widespread community willingness to make referrals directly to LEAD without involving law enforcement at all. We have also seen requests from new neighborhoods for a LEAD response, sometimes communicated directly to HSD, and sometimes via community stakeholders and councilmembers. As of 2021, Community Referrals make up the large majority (>80%) of new LEAD referrals. As a result, the LEAD Project Management Team (LPMT) has had to put the majority of eligible referrals on pause as demand for the program has outpaced current LEAD resources.

Research demonstrating LEAD's positive impact on recidivism, income and shelter outcomes has been published in peer-reviewed journals. This research was calculated conservatively using metrics approved by an evaluation advisory committee that include representatives from the Seattle Mayor's Office and Council, as well as the King County Executive, Council and Department of Adult & Juvenile Detention.

II. Scope of LEAD Operations at present

Capacity for new referrals has been exhausted. Although LEAD services are technically available in all precincts, the service provision is not available in every neighborhood and does not operate at saturation levels.² HSD has had over 200 community originated referrals since the opening of the direct Community Referral process in August 2020, after provisos were passed in King County Council and Seattle City Council directing the end of law enforcement's role as sole gatekeeper to services.

REACH LEAD caseloads are again at levels seen in 2019 which caused the last referral shutdown, and which are known to imperil effective case management (the 2019 legislation requires an average caseload of no more than

20 cases and a maximum of 25 cases; LEAD case managers are in general once again far above that level. Intensive case management best practice caseload levels are 12-15 cases by comparison).

Throughout the City of Seattle, neighborhoods and businesses have demonstrated that they are willing to call directly for community-based care responses to low level criminal activity or other problematic or concerning behavior, when it is evident to them that the behavior results from behavioral health issues or poverty, and that they have confidence in the LEAD model, which emphasizes ongoing accountability and transparent

²Saturation implies felt neighborhood impact by the project and that any or all eligible referrals can be staffed with the program in a manner that complies with program fidelity communication to those who make referrals. The LEAD model is capable of generating a high level of felt legitimacy for alternative community-based responses to such criminal activity. However, our capacity ceiling prevents acceptance of most such referrals, leaving willing communities without anywhere to turn for these legitimate public safety and order needs.

This inability to operate at scale has left response and service gaps for most public health/public safety issues. For example, businesses and individuals in the Mount Baker neighborhood organized to request LEAD services throughout Q2 2021. LEAD outreached the neighborhood to assess its needs and found that businesses, individuals, and service providers were prepared to immediately refer a number of potential clients. Among these referrals were a number of people residing in the Cheasty Greenbelt prior to the fatal encampment fire on June 15, 2021. As LEAD works to bring its services to scale, the public safety and well-being of potential LEAD clients in the Mount Baker neighborhood continues to be tenuous. Throughout the City, eager referral sources are being told that we cannot accept their priority appropriate referrals.

III. Factors bearing on scope of expansion to scale by 2023

Calculating the scope and cost of providing a response to all appropriate priority referrals requires determining the following:

- (Arrest referrals) how many individuals are/will be subject to arrest by SPD where it would be appropriate to refer to LEAD in lieu of arrest in at least some instances -- and on what charges is the option of referral to LEAD desired? Here it is important to note that there were already many missed opportunities since 2018 for pre-booking diversion of individuals who meet Trueblood criteria and are arrested and booked for criminal trespass, property destruction and theft; however, query the rate at which individuals are being arrested and booked for these charges since the landscape changes in 2020;
- (Community referrals) how many individuals are projected to be referred by various community sources, including ○ Neighborhood groups ○ Business groups ○ Service providers ○ Department of Public Defense ○ City Attorney ○ King County Prosecutor ○ Courts (including Seattle Municipal Court's LEAD calendar and Community Court) ○ Jail discharge planners;
- Compensation adjustments needed to recruit and retain the workforce needed to effectively engage and support the LEAD participant population; and
- Value of expanding the number of case management providers to whom referrals may be assigned, to allow for greater specialization and investment in a diverse array of community organizations (recalling that LEAD is a framework for diversion, not a program of a single organization), as a system of multiple providers entails some degree of supervision and administrative duplication that increases costs while also increasing equity in investment and helping to develop capacity in a wide array of community organizations to do this work.

Diversifying the case management organizations also requires investment in technical support from the existing case management organizations for the new partners.

IV. Forecast of Priority Qualifying Referrals, including social referrals with or without law enforcement and arrest referrals

This forecast is of limited utility in predicting the scope of expansion to scale because current referrals are constrained by our known lack of capacity to accept them, and by the fact that we conduct no affirmative outreach to recruit referrals or to make community and neighborhood organizations aware of this option, since we know we do not have the capacity to respond to additional referrals. This is offered for what it may be worth in understanding even the very constrained scope of current referrals.

COMMUNITY REFERRAL SURVEY

Data from neighbors, neighborhood advocacy groups, and out-of-network social service organizations were gathered via a survey which asked respondents about the number of referrals they anticipate that they will make in 2022. Respondents were selected based on an assessment of which individuals and groups are likely to utilize the community-based referral system in 2022. Although survey respondents represent a wide variety of Seattle neighborhoods, it should be noted that response rate was below 33%, and that survey results comprise a partial representation of anticipated LEAD referrals in 2022.

Those who responded include:

- North Helpline
- Real Escape from the Sex Trade (REST)
- U District Partnership
- Interim CDA
- Alliance for Pioneer Square
- Anything Helps
- Aurora Commons
- Mercy House
- Various individual businesses
- Community members who have made referrals (not affiliated with other respondents already listed)

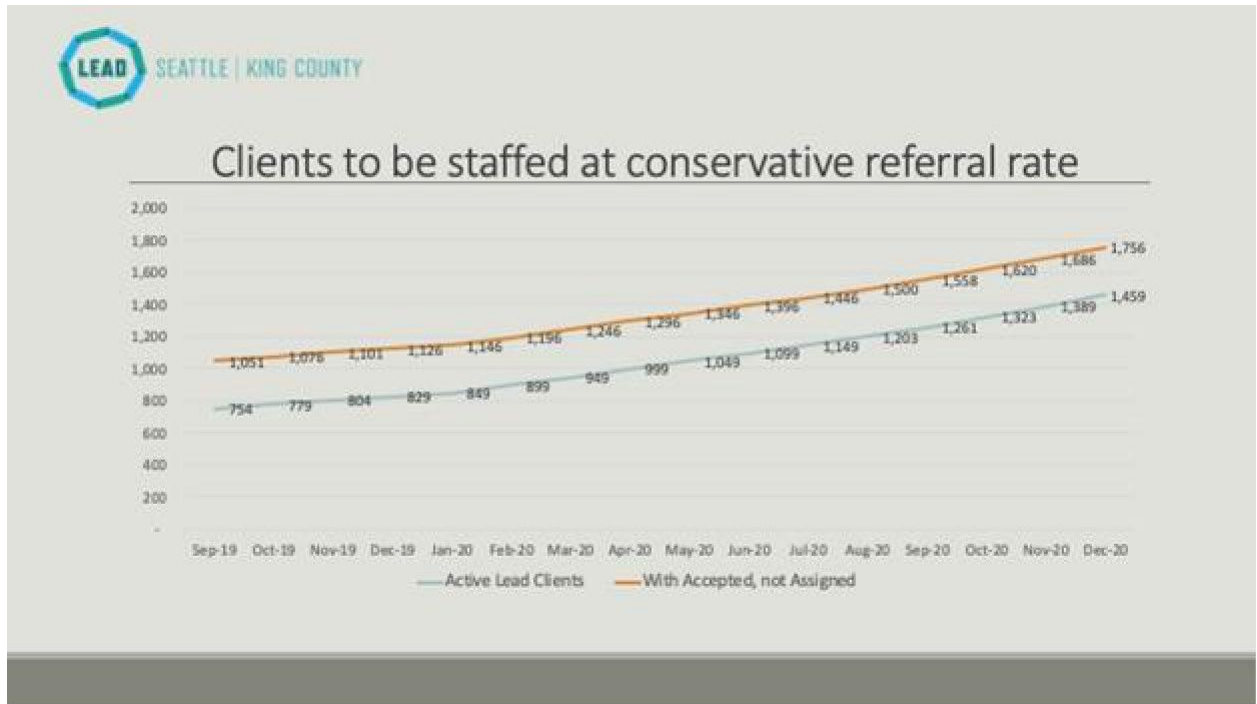
PROJECTIONS

Projections for referrals based on Q1 of 2021:

- Community Referrals – 548
- Social Contact – 124
- Arrest Diversions - 4 (caveat that expanded arrest diversion criteria are not yet in use)

These numbers are projections for the remainder of 2021 based on LEAD referrals for the first quarter of the year. During the first quarter, community referrals were incoming at a high rate as the program had the capacity to take on these referrals. The numbers above reflect the projected amount of referrals if LEAD was able to take on community referrals at the same capacity. Shortly after Q1 LPMT placed most community referrals on pause due to capacity so further projections of community referrals based on Q2 would be an inaccurate estimate of current demand of LEAD services in the areas in Seattle in which LEAD is active and we are prioritizing referrals. Additionally, SPD, especially in West Seattle, are starting to make more Social Contact referrals so we estimate our Social Contact estimates to potentially increase.

PDA provided the following projection to City Council, on October 2, 2019, for estimated Law Enforcement LEAD referrals in Seattle based on referral rates in 2018 and 2019 (it is evident that these projections pertained to an era of greater SPD staffing and focus on public order offenses than we see at present or are likely to see going forward):



V. Estimated referral volume at scale

No single existing data source smoothly predicts or allows estimation of appropriate priority LEAD referrals.

- Arrest numbers are not a useful guide to the LEAD-eligible population, as LEAD can work with individuals who are (or reasons including an increased community desire for an alternative to police response, impact of the COVID pandemic on police response, intentional jail use decreases, police staffing shortages to justice system priorities) not going to be arrested, despite that they are committing law violations. Social contact referrals approved by law enforcement have long outstripped arrest referrals (80% to 20% in 2017). In Q1, 2021 Community Referrals made up 81.1% of LEAD referrals, social contact referrals by police made up 18.3% of LEAD referrals, and arrest diversions only comprised 0.6% of overall LEAD referrals.
- The King County Point in Time (PIT) Count of those who are living homeless, while it estimates the percentage of unsheltered individuals who are drug users, also under-estimates the LEAD-eligible population, because not all who are LEAD-eligible are unsheltered. LEAD, at its core, is an alternative, community-based care response to law violations/low level crime, which will be needed even if great progress is made on unsheltered homelessness in coming months and years.

Instead, the total number of priority appropriate LEAD referrals can be loosely estimated or triangulated from an assortment of data sources, with a discount factor for estimating unduplicated individual who would be referred, acknowledging the likelihood that some individuals overlap these referral sources:

- Survey of the most common community referral sources to estimate the number of individuals they would want to refer for LEAD services over a single year, if LEAD had the capacity to accept all appropriate priority referrals.
- Adjust upward by 25% for impact of greater awareness, publicity/intentional advertising of this option
- “Intercept 0” referrals from legal system partners (these are “intercept 0 referrals,” as they are identified based on past legal system involvement and known vulnerability to future encounters with law enforcement and the legal system absent a care-based intervention—they are not post-booking or post-filing diversion referrals). The legal system partners consulted are:
 - Seattle Municipal Court Community Court ○ Department of Public Defense ○ Seattle City Attorney’s Office
 - King County Prosecuting Attorney’s Office (KCPAO)
- SPD estimates of likely arrest and social contact referrals, to the extent they differ from patterns we are currently seeing based on intentional policymaking by SPD leadership, the City Council or the Mayor’s Office. Absent an estimate SPD or City officials will espouse, the LEAD project management team is using 2021 current projections as a placeholder.
- Adjust the cumulative number arrived at through the above estimation exercises downward by 20% to estimate unduplicated individuals to be referred
- Adjust the number to be staffed with case managers downward by 30% to reflect the number of individuals who do not complete the intake process, when the outreach follow up is robust and not limited by COVID.
- Factor in clients who exit the LEAD program (estimated at 20% after two years), which creates additional capacity.
- Factor in the need to maintain capacity constantly to take new referrals, the need to locate teams in geographically specific zones of work, and the desire to have teams in different provider organizations for reasons of balance, specialization and cultural expertise, all of which create an upward ratchet in case manager positions not reflected in the 1:20 calculation.
- Factor in the assumption that other crucial social services will come online for LEAD’s client demographic, which will distribute the service load currently bearing on the LEAD program. Derive a projected number of additional case managers needed in coming years until an equilibrium point is reached where program departures roughly balance new intakes, and a stable workforce is arrived at.

Using the above methodology, and after surveying partners and considering current referral rates, the LEAD project management team projects a referral volume of 2,586 in 2022, as follows:

Referral Source	Number of Projected Referrals
Survey of Community Referral Sources (exclusive of legal sources ¹⁰)	1128 projected annual community referrals from all sources (acknowledge that 25% upward adjustment

¹⁰ As of June 8th, 2021, community referrals had come from a variety of sources including REACH (36.1% of referrals), Co-LEAD (19.5%), the Department of Public Defense (10%), Everspring (9.2%), and the Seattle Police Department (5.5%). Other referral sources, whose respective referrals each account for less than 5% of the total, include but are not limited to the Aurora Commons, the Seattle Fire Department, the King County Prosecuting Attorney's Office, the University of Washington Police Department, the Seattle City Attorney's Office, Asian Counseling and Referral Services, family/friend referrals, and self-referrals.

	could occur with intentional communication that this option is available)
Survey of legal system partners and review of SMC filing data provided by the City Attorney’s Office	<ul style="list-style-type: none"> ● 520-1040 projected annual referrals from Community Court (mean=780) ● An additional estimated unduplicated 300 individuals filed in SMC not passing through Community Court ● An additional estimated
	unduplicated 250 individuals referred for filing to KCPAO
	<ul style="list-style-type: none"> ● Total: 1330 internally unduplicated referrals from legal system partners
Based on SPD Referral Patterns	<ul style="list-style-type: none"> ● 128 annual internally unduplicated referrals from SPD
Projected Total	<ul style="list-style-type: none"> ● 2586 referrals

After factoring the 20% probability of duplicate referrals between different referral sources, a number of the total 2586 referrals can be discounted. In addition to this duplication reduction, an intake reduction should also be applied. Each of these priority referrals would have a staffing impact for the outreach/screening function (in-field staff who seek out and patiently engage individuals who are not yet ready to work with case managers). The case management cohort is estimated to need to absorb 70% of this number, as prompt outreach when fully staffed and not impacted by COVID is estimated to engage and facilitate intake for 70% of referrals, up somewhat from the “conversion to intake” rate from recent years when outreach staff were far under needed capacity. With both reductions and with monthly rounding, the projection model assumes that 1451 individuals will be assigned to a case manager in 2022.

To determine how many additional case managers would be needed until an equilibrium between new referrals (after current demand is absorbed) and program graduates/departures is reached, we use the average caseload ratio established by the City Council in 2019 (1:20), to determine that, in 2022, 66 new case managers would be required with the new referral volume. Individuals departing the program (REACH staff estimate 20% after two years) at the same time create some additional capacity, while the need to maintain capacity constantly to take new referrals, the need to locate teams in geographically specific zones of work, and the desire to have teams in different provider organizations for reasons of balance, specialization, and cultural expertise, requires an upward ratchet in case manager positions not reflected in the 1:20 calculation. Taking these two factors together into consideration, 66 is a reasonable estimate of the number of added case managers projected to be needed in 2022.

Growth in referral volume and the case management workforce requires some additional staff for milieu management, outreach, and clinical supervision, as well as increased flex funds for participant basic needs and direct support.

VI. Cost estimates to support pre-arrest diversion services for those referrals citywide in 2022 and 2023

COST

- Requires determination of compensation to address workforce challenges and appropriate equitable compensation for work of this significance and challenge. Front line FTEs should be budgeted at \$54,000-\$70,000 (mean of \$62,000) and supervisors at \$70,000-\$95,000 (mean of \$82,500).
- Requires estimating added cost (for supervision, administration, and technical support) if multiple case management providers are engaged. There are presently three LEAD case management teams (REACH, Co-LEAD & Community Passageways) in Seattle or adjacent communities; additional providers, if desired (which LEAD partners support) will decrease cost efficiency to a degree because of admin duplication, but this inefficiency is offset by the opportunity for specialization, cultural expertise, and a more stable workforce base not dependent on a small number of providers.
- Requires assessment of whether additional neighborhood-based office locations are needed apart from North and East spaces already secured. It is likely that SE Seattle and SODO workspaces will be needed, and that the satellite office space costs should be increased from current; costs likely would not double given the favorable commercial lease rates presently available. This is not included in the present budget projections.
- Possible additional cost for participant income stabilization and basic needs provision. Propose that flex funds and cash support be increased by 25%; alternatively, or additionally, that a local minimum income program be established (not only for LEAD participants).
- Assessment of whether quasi-residential model is essential for impact for some participants and if so, strategies for providing space. Propose that City leaders encourage engage the Regional Homelessness Authority and the County's Health Through Housing leadership to ensure that this population, sitting at the intersection of homelessness and exposure to the criminal legal system, be prioritized for both noncongregate shelter programs and permanent housing placements, especially ARPA vouchers that can pair with long term LEAD case management to address housing needs of this chronically unsheltered high barrier population.

Note on additional available resources for LEAD expansion: Resolution 31916 requires that there be public funding for all appropriate priority LEAD referrals -- it does not limit that public funding source to the City general fund. There are immediate prospects for increased public support for LEAD via State funding for implementation of the SB 5476 Recovery Navigator program, which is required to operate on LEAD core principles. Trueblood, 988 and other mental health services funding in the 2021 Washington State budget are also likely sources to supplement local LEAD funding. Federal funding for LEAD expansion is also likely, and Representative Jayapal has consistently offered to pursue that channel.

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.

Amendment 2 to CB 120645 – Adding the crimes of knowing possession of a controlled substance and use of a controlled substance in a public place.

Sponsor: Councilmember Mosqueda

Defining “Threat of harm to others” for use in Seattle Police Department (SPD) policies that implement drug use and possession laws adopted under CB 120645.

Effect: This amendment would require that SPD policies define the threat of harm as follows:

“Comprised of factors related to a potential that physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm, or which places another person or persons in reasonable fear of sustaining such harm.

Additionally, such factors may not include the mere use of drugs in public absent other identifiable factors.”

This amendment assumes that if the identified factors rise to a level that would constitute “Likelihood of Serious harm” as defined by in RCW 71.05.020, then the officer would take the individual into custody for a behavioral health evaluation.

Background:

While there is no “Threat of Harm Standard” defined in the RCW, law enforcement officers are at times required to assess a threat of harm when taking certain civil actions. For instance, an officer may refer a person for an involuntary behavioral health evaluation under SPD policy 16.110-Pro-1, which empowers officers to take into custody, and deliver to a treatment facility a person who 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. RCW 71.05.020 defines the “Likelihood of serious harm” as:

*a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) **physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm;** or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or (b) The person has threatened the physical safety of another and has a history of one or more violent acts;...*

1. On page 8, add the following to the “Threat of Harm” standard:

Doss
Public Safety and Human Services
September 12, 2023
D1

When defined in SPD policies, the threat of harm standard shall be comprised of factors related to a potential that physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm, or which places another person or persons in reasonable fear of sustaining such harm.

Additionally, such factors may not include the mere use of drugs in public absent other identifiable factors.

Amendment 3 to CB 120645 – Adding the crimes of knowing possession of a controlled substance and use of a controlled substance in a public place.

Sponsor: Councilmembers Mosqueda and Herbold

Adding recitals to address LEAD (Let Everyone Advance with Dignity) capacity for pre-booking diversion

Effect: This amendment would add recitals that highlight the City’s support for diverting individuals away from the criminal legal system; and:

- That the LEAD program (Let Everyone Advance with Dignity) has the ability to support diversion for this population that is both eligible and appropriate for that intervention, as long as it is provided with sufficient resources and the City is prioritizing referrals from police at the point of arrest for pre-booking diversion;
- If there are insufficient resources to support pre-booking diversion for this population and a priority for pre-booking diversion is maintained over other types of referral to maintain coverage of the law enforcement-involved population, it is possible that access to program services for individuals connected to LEAD outside of police referrals could be negatively impacted, leading to a situation in which the primary entry into the diversion system is through contact with law enforcement

Background: CB 120645 will likely lead to increased referral volume to LEAD by establishing diversion and treatment as the standard approach for most instances of knowing possession and public use of controlled substances and in committing to the development of SPD policies to support this outcome. The City’s contract for LEAD services explicitly prioritizes referrals to LEAD by law enforcement, including pre-arrest diversion and social contact diversion. However, during the first half of 2023 only three percent of all referrals were from arrest diversion, and an additional 25 percent were from social contact, and the majority of referrals were initiated by community members. Significantly more referrals from law enforcement could crowd out the program’s ability to accept referrals from community members or create an environment in which police officers are the de facto gatekeepers for access to LEAD programs and services.

The City’s 2023 contract with PDA to support the LEAD diversion model is for \$9.9 million. With these resources, the PDA had 752 active LEAD clients at the end of June. It was not possible to develop an estimate of the additional funding that would be required to fund LEAD to scale. As a point of reference, a September 2021 Central Staff memo to the PSHS Committee estimated the need for \$21 million in 2022 and \$30 million in 2023 to fund all “priority qualifying referrals” to LEAD, which the memo defines as “individuals who engage in criminal activity related to behavioral health issues, substance use, and/or extreme poverty or income instability.” If policies were developed to prioritize such referrals for enrollment in LEAD, one effect could be to curtail access to program services for individuals connected to LEAD mainly

or solely because of behavioral issues, extreme poverty, and/or income instability. Information is not available on the proportion of LEAD clients who were connected with the program mainly or solely due to public use of unprescribed or illegal controlled substances.

1. On page 3, after “WHEREAS, The City of Seattle is committed to coordinating with King County government as it endeavors to provide these services to county residents, including those within Seattle; and” add the following:

“WHEREAS, the City supports a framework that diverts individuals away from the criminal legal system and to services to address individual needs where appropriate; and

WHEREAS, that framework, of which a substantial part is diversion through the Let Everyone Advance with Dignity (LEAD) program, has the ability to sufficiently support diversion for this population that is both eligible and appropriate for that intervention, as long as it is provided with sufficient resources and the City is prioritizing referrals from police at the point of arrest for pre-booking diversion; and

WHEREAS, if there are insufficient resources to support pre-booking diversion for this population and a priority for pre-booking diversion is maintained over other types of referral to maintain coverage of the law enforcement-involved population, it is possible that access to program services for individuals connected to LEAD outside of police referrals could be negatively impacted, leading to a situation in which the primary entry into the diversion system is through contact with law enforcement; and”

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

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)

* * *

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.

Asha Venkataraman
Public Safety and Human Services
September 12, 2023
D1

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.

Amendment 5 Version 1 to CB 120645 - MO Public Safety and Health Response to the Opioid
Crisis ORD

Sponsor: Councilmember Pedersen

Adding reporting requirements and OIG request

Effect: This amendment would ask the Office of the Inspector General to work with SPD and other relevant departments to collect data and share data with the Council to help it evaluate how the policy guidance regarding diversion is impacting an officer's ability to do their job and provide recommendations.

Amend recitals of CB 120645 as follows:

* * *

WHEREAS, 2E2SSB 5536 reclassifies the knowing possession of a controlled substance, and the knowing use of a controlled substance in a public place, as gross misdemeanors; and

WHEREAS, Council Bill 120586, received by the City Clerk on May 17, 2023, aimed to adopt 2E2SSB 5536 into the Seattle Municipal Code, but was rejected by a 5 to 4 vote of the City Council on June 6, 2023; and

WHEREAS, the reclassification provisions took effect on July 1, 2023, and certain other provisions of the law will take effect on August 15, 2023, and January 1, 2025; and

* * *

WHEREAS, The City of Seattle is committed to coordinating with King County government as it endeavors to provide these services to county residents, including those within Seattle; and

WHEREAS, the Mayor “introduced a plan to invest \$27 million toward facilities, treatments, and services to address the opioid crisis – a significant investment to save lives and improve access to care,” according to his July 31, 2023 press release; and

WHEREAS, The City of Seattle recognizes that prior federal, state, and local drug offense law enforcement and policies, including the “war on drugs,” disproportionately impacted Black, Indigenous, and People of Color and caused trauma and pain that lingers still today in these communities; and

WHEREAS, the Mayor has requested and the City Auditor has agreed to conduct an audit to identify and document evidence-informed place-based interventions for reducing substance use disorder-related crime, disorder, and overdose incidents among people using drugs in areas with high levels of concentrated crime to help the city government better respond to the urgent need in Seattle to address escalating drug overdoses, fatalities, crime, and victimization associated with substance use disorder that are concentrated in and around specific public places; and

WHEREAS, the data and recommendations requested from the Office of Inspector General for Public Safety (OIG) would complement the work of the City Auditor; and

WHEREAS, because the City of Seattle would be implementing provisions related to harm that constitute an addition to the state law, an independent review of the administration and effectiveness of those provisions is warranted along with any recommendations for improvement; and

WHEREAS, such an independent review would assist the Executive and the Council in determining whether the policy guidance regarding diversion is affecting the ability of Seattle Police Department officers to promote public safety; and

* * *

Amend Section 3 of CB 120645 as follows:

H. 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 engaged in possession and public use, 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.I.1 through 3.28.141.I.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.H.3, SPD and OIG shall endeavor to collect such data from service providers.

I. Annual reporting and recommendations. OIG and/or an independent, academically based research organization engaged by the Office of the Inspector General shall review

implementation of this Section 3.28.141 to determine the impact of subsections 3.28.141.E and 3.28.141.F, 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. 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 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.E and 3.28.141.F; and

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