



Legislation Text

File #: CB 120645, Version: 3

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, 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, 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, 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

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 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

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 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, 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

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-bookings, 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 knowing possession of a controlled substance and use of a controlled substance in a public place

A. The provisions of this Section 3.28.141 apply to enforcement of RCW 69.50.4013(1), (2), (7), and (8) as amended by 2E2SSB 5536 (68th Legislature, 2023 1st Special Session), Section 2.

B. Policy. Consistent with any public health and safety-related Mayor-issued executive orders, the Seattle Police Department (SPD) will adopt policies governing arrests for the crimes described in subsection 3.28.141.A. These new policies will seek to minimize use of force and incorporate de-escalation and crisis intervention that reflect existing SPD policies in those areas. SPD will train its officers on these new policies.

C. Body-worn videos. When officers interact with individuals allegedly committing the crimes described in subsection 3.28.141.A, officers shall comply with SPD policies and procedures for body-worn video cameras and/or other equipment intended to record officer interactions with the public.

D. Probable cause for arrest. An officer must have probable cause for arrest.

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

F. Diversion. Diversion, treatment, and other alternatives to booking are the preferred approach when enforcing the crimes adopted under this Section 3.28.141 described in subsection 3.28.141.A.

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.

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

4. 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.

G. Threat of harm to others. When considering making an arrest, releasing, or diverting an individual, pursuant to subsection 3.28.141.F, officers may determine whether the individual, through their actions and conduct, presents a threat of harm to others. This determination will occur after probable cause has been established. This determination is based on the totality of the circumstances and the officer's training and experience. SPD policy will identify factors to guide officers when assessing the threat of harm presented by the individual. The threat of harm assessment governs officer decisionmaking and is not an element of the crime to be proved during the prosecution of the crimes described in subsection 3.28.141.A and cannot be used as a defense at trial.

H. Threat of harm to self

1. If an officer determines there is probable cause to arrest, and the officer's assessment indicates that the individual does not pose a threat of harm to others, the individual only poses a threat of harm to self.

2. An officer may attempt to contact and coordinate efforts for diversion, outreach, and other alternatives to arrest. An officer may arrest at the officer's discretion to avoid additional -harm to self.

3. An officer will not arrest when the individual only poses a threat of harm to self absent articulable facts and circumstances warranting such action.

4. The threat of harm assessment will govern officer decisionmaking and will not be an element of the crime to be proved during the prosecution of the crimes described in subsection 3.28.141.A and cannot be used as a defense at trial.

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

J. An officer's failure to comply with this Section 3.28.141 shall not render an arrest unlawful if the arrest is otherwise supported by probable cause.

K. Reporting requirements

1. If an officer determines, based on the totality of circumstances, that an arrest is authorized by this Section 3.28.141, an arrest report shall be completed by the officer that includes, at a minimum, the facts establishing probable cause, an assessment of the threat presented by the individual, and whether, and in what manner, arrest or diversion was considered or utilized.

2. The Office of Inspector General for Public Safety (OIG) (and/or an independent, academically based research organization engaged by OIG) and SPD shall work with the City Attorney's Office, Seattle Municipal Court, the Seattle Fire Department, and any other relevant departments to obtain the data described in subsections 3.28.141.L.1 through 3.28.141.L.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.K.3, SPD and OIG shall endeavor to collect such data from service providers.

L. Annual reporting and recommendations. OIG and/or an independent, academically based research organization engaged by OIG shall review implementation of this Section 3.28.141 to determine the impact of subsections 3.28.141.G and 3.28.141.H, including but not limited to the ability of SPD officers to effectively address incidents described in subsection 3.28.141.A and based upon that review, provide recommendations to improve this Section 3.28.141 and related policy. OIG shall also provide recommendations regarding data collection and operationalization of such data collection to improve the City's ability to assess the effectiveness of this legislation. A preliminary report shall be provided to the Council by June 30, 2025. The following data, or an explanation of why the data is unavailable, and written recommendations shall be provided by the OIG to the Council by December 31, 2025, and at least annually by December 31 until 2030:

1. The number of drug overdoses in Seattle on a quarterly basis (including baseline years of 2019 - 2022 and the first three quarters of 2023);
2. The number of shootings in which drugs were present or an individual was under the influence of drugs within Seattle on a quarterly basis (including baseline years of 2019 - 2022 and the first three quarters of 2023);
3. The number of 911 calls about use of controlled substances in a public place on a quarterly basis (including baseline years of 2019 - 2022 and the first three quarters of 2023);
4. The number of documented contacts between police officers, including community service officers, and individuals encountered during enforcement of the crimes described in subsection 3.28.141.A;
5. The number of attempts by police officers, including community service officers, to contact and coordinate efforts for diversion, outreach, and other alternatives to arrest as described in subsection 3.28.141.F;
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.G and 3.28.141.H; and

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

M. 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.

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 legislation establishes a behavioral health alternatives committee. This committee shall advise the Mayor, City Council, the Seattle Police Department (SPD), and other public safety-related departments 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.

Section 5. This legislation is enacted as an exercise of the police power of the City of Seattle to protect the public peace, health, safety, and welfare, and its provisions shall be liberally construed to accomplish those purposes. The express purpose of this legislation is to promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this legislation. The specific intent of this legislation is to provide guidance to police officers enforcing the crimes described in subsection 3.28.141.A of the Seattle Municipal Code. and increase public safety. No provision or term used in this legislation is intended to impose any duty whatsoever on the City, or any of its officers or employees.

Section 6. 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)