

# Seattle City Council passes law to prosecute drug use, possession

Proponents argue the new law will bolster treatment for substance-use disorders, while critics have called it a War on Drugs 2.0

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*Seattle City Hall (Paul Christian Gordon for Crosscut)*

The Seattle City Council voted 6-3 Tuesday to align the city's municipal code with a 2023 state law making public drug use and possession a gross misdemeanor and give the City Attorney's Office authority to prosecute those crimes.

Councilmembers Lisa Herbold, Andrew Lewis, Debora Juarez, Sara Nelson, Alex Pedersen and Dan Strauss voted in support. Councilmembers Tammy Morales, Teresa Mosqueda and Kshama Sawant voted against.

Supporters argue the legislation is a critical tool for addressing a worsening drug crisis and that language in the bill is meant to push people with substance-use disorders to treatment. Opponents say it's a return to a failed Drug War tactic that will incarcerate drug users and disproportionately impact Black and brown residents rather than provide people the help they need.

Tuesday was the Council's second attempt to align city municipal code with state drug possession laws. In June, a bill co-sponsored by Councilmembers Sara Nelson and Alex Pedersen at the behest of City Attorney Ann Davison [was voted down 5-4](#). In a last-minute turn that killed the June bill, Councilmember Andrew Lewis said that while he supported aligning state and city law, he could not support a bill without a stronger plan for treatment.

In the intervening months, Councilmembers Lisa Herbold and Lewis co-sponsored a new version of the bill that places greater emphasis on diversion and treatment and attempts to outline the "last resort" conditions under which officers should arrest drug users.

In its simplest terms, the passage of the Council bill puts the [state drug possession law](#) into Seattle's Municipal Code. The law states that public drug possession or use is a gross misdemeanor punishable by up to 180 days in prison and a maximum fine of \$1,000. For someone with two prior convictions for drug possession, the maximum penalty can increase to 364 days.

By adopting the language of the state law into city code, the council granted the Seattle City Attorney's Office authority to prosecute drug possession charges. When drug possession was a felony in Washington, that authority resided with the King County Prosecutor.

In 2021 the [Washington State Supreme Court ruled](#), in what is known as the *Blake* decision, that the felony drug possession law was unconstitutional because it criminalized "unknowing possession."

In May 2023 the Legislature [passed a new law](#) that made possession and public use gross misdemeanors. The state law encourages, but does not require, prosecutors and

police to divert people arrested into treatment programs and other pretrial diversion options.

The law has applied to Seattle since it took effect statewide on July 1, but King County Prosecutor Leesa Manion stated her office does not have capacity to prosecute misdemeanor drug crimes.

Seattle's new law attempts to more explicitly define that police should almost always divert people with substance-use disorders into treatment and save arrest and referral to the City Attorney's Office in situations when someone poses a threat of harm to others.

"Without passage of this law limiting arrests, I believe more harm would be done, not less," said Herbold at Tuesday's council meeting. "The threat of harm analysis is meant to rein in discretion otherwise allowed by the *Blake* fix."

Councilmembers butted heads over how explicit the bill should be about diversion versus arrest. In its original form, the bill stated that "officers will determine whether the individual, through their actions and conduct, presents a threat of harm to others."

A successful amendment from Nelson at the Sept. 12 committee meeting softened the directive to "officers may determine" whether someone presents a threat of harm to others and may "attempt to contact and coordinate efforts for diversion, outreach, and other alternatives to arrest."

Ultimately, guidance for when and how Seattle police officers should divert public drug users to treatment and services or arrest them will come from an executive order issued by Mayor Bruce Harrell. The council bill illustrated the legislative branch's intent for the new law, but the executive branch holds the legal authority to dictate Seattle Police Department policy.

Once the new law is in place, it will be up to police officers to determine when someone using drugs in public poses a threat of harm to others and the course of action to take.

Harrell has stated repeatedly that he sees the drug crisis as a public health issue and wants to help people with substance-use disorders get treatment, not throw them in jail, and instead focus on arresting drug dealers.

How many people get the help they need will depend in part on the strength of Harrell's executive order and how much Seattle can expand its landscape of diversion and treatment options, which are currently insufficiently small to address the number of people in need.

Seattle's primary tool for diverting someone into services is [a model called LEAD](#), which once stood for Law Enforcement Assisted Diversion and now stands for Let Everyone Advance with Dignity. LEAD, managed by the nonprofit Purpose Action Dignity, lets police officers and community members refer people engaged in low-level criminal activity to the nonprofit for case management and referral to services.

The city's 2023 budget provides \$9.9 million to Purpose Action Dignity to do LEAD work. But an analysis by city staff found that the city would have to spend around \$30 million annually on LEAD in order to serve all the high-priority referrals that qualify for case management.

Seattle also used to divert people to services and treatment through Seattle Municipal Court's Drug Court program, which allowed people to access treatment and services without pleading guilty to a crime. But this spring, City Attorney Davison [announced her office would no longer participate in the program](#), effectively ending it. Although there have been discussions among city leaders about reestablishing some form of municipal drug court, it has not happened yet.

As with LEAD, drug treatment providers, researchers and advocates in King County say [the current array of treatment options](#) are insufficient to serve everyone who wants and needs help with their substance-use disorder.

Brandie Flood, director of community justice at REACH, a homeless outreach nonprofit that works with LEAD, spoke in support of the bill at the Sept. 12 committee hearing, but said, "In order for it to work, there needs to be sufficient resources to divert people to. ... We don't have adequate services to connect people to. I urge the Council, if they're

going to push this forward, that they provide adequate resources to connect people to treatment, housing, shelter, mental health, better crisis services.”

Limited capacity at inpatient treatment facilities force people to wait days if not weeks to get admitted. Treatment providers are short-staffed, thanks in part to high turnover in the face of challenging work and low wages. Both housed and unhoused people suffer from substance-use disorders, but for those experiencing homelessness there is insufficient shelter space and affordable housing, which exacerbates the problem.

Harrell has directed \$20 million from Seattle’s share of settlement money from a state lawsuit against opioid producers and distributors to be used for expanding opioid-use-disorder treatment options. The mayor has also announced he plans to direct another \$7 million in unspent federal funds toward treatment options, including establishing [an overdose recovery center](#) and another \$1 million in one-time funds to expand Evergreen Treatment Services’ mobile medication-assisted treatment.

In her vote against the bill Tuesday, Mosqueda expressed concern that there would not be any significant new funding for diversion and treatment in the 2024 budget, due to a [looming budget deficit](#), and as such that arresting drug users will become the default for police officers. Morales echoed Mosqueda’s sentiment, calling the bill performative and reiterated that “jailing people will not address their drug addictions.”

With the passage of the bill, the new law takes effect in 30 days.

A mayor’s office spokesperson said Harrell plans to sign the bill immediately. He could not provide an exact timeline for the mayor’s executive order directing SPD policy, but said they are aiming to release it within the next week.

## **About the Authors & Contributors**



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