

Seattle's Criminalization of Drug Possession Promised Diversion and Treatment; Data Show It Has Failed

Drug Prosecutions Also Disproportionately Target Black Seattleites

Executive Summary

In September 2023, the Seattle City Council passed an ordinance authorizing the Seattle City Attorney's Office (SCAO) to prosecute misdemeanor public drug use and possession, two years after the previous felony drug possession statute was found unconstitutional in the *State v. Blake* Supreme Court decision in 2021. In response to widespread criticism that the legislation would be another attempt at the failed War on Drugs, proponents of the ordinance, including Mayor Bruce Harrell and City Attorney Ann Davison, stressed that this ordinance would avoid the failure of past drug criminalization policies by emphasizing diversion and treatment over prosecution and incarceration.¹

As Mayor Harrell explained his "bold health-first" approach: "Success will not – and cannot – be measured on how many people cycle through jail; instead, our focus is on improving connections to lifesaving treatment and expanding program options to better meet the needs of those with substance use issues."² Still, city officials insisted that enacting an ordinance criminalizing public drug use and possession was a necessary "tool" to compel some unspecified number of people – who they claimed threatened public safety – to engage in treatment.³

However, almost two years after going into effect, this "tool" has proven to be ineffective and harmful. A review of every drug prosecution by the SCAO through July 30, 2025 shows that criminalization has led to the outcomes opponents of the ordinance predicted: only 6 prosecutions out of more than two hundred have been associated with either someone completing treatment or with a court order directing someone to seek treatment while Black people continue to be disproportionately targeted for arrest and prosecution.

Rather than admit to the failure of the criminal legal system as a "tool" to compel treatment, the SCAO has recently abandoned the use of diversion before filing a case entirely. Their new Drug Prosecution Alternative⁴ bars all drug cases from pre-filing diversion and only offers a "no cost" evaluation after they have charged a person (often months after the incident) with drug use or possession – the exact opposite of the stated goal of the ordinance to immediately refer people to case managers and treatment facilities instead of arresting and prosecuting them.

¹ In a statement announcing the ordinance proposal, the mayor said: "The passed legislation will... [f]or the first time in the City's history, designate diversion and treatment as the preferred approach to addressing substance use issues – connecting people with care and responding to a public health crisis with evidence-based health solutions." Jamie Housen, Office of the Mayor, *Mayor Harrell Announces Efforts to Improve Addiction Treatment, Proposes Legislation to Reduce Public Consumption of Fentanyl and Other Illegal Drugs*, July 31, 2023, <https://harrell.seattle.gov/2023/07/31/mayor-harrell-announces-efforts-to-improve-addiction-treatment-proposes-legislation-to-reduce-public-consumption-of-fentanyl-and-other-illegal-drugs/>.

² *Id.*

³ Jamie Housen, Office of the Mayor, *Mayor Harrell and Fentanyl Systems Work Group to Address Consumption of Illegal Drugs in Public Spaces*, June 12, 2023, <https://harrell.seattle.gov/2023/06/12/mayor-harrell-and-fentanyl-systems-work-group-to-address-consumption-of-illegal-drugs-in-public-spaces/>

⁴ Seattle City Attorney's Office, *Drug Prosecution Alternative*, April 30, 2025, <https://news.seattle.gov/2025/05/05/drug-prosecution-alternative/>

With the outcome of nearly two years of misdemeanor criminalization summarized in this report, Seattle leaders now face a choice in crafting the city's next budget: double down on failed investments in the criminal legal system to prosecute these offenses or focus scarce city resources on the treatment and supports recommended by leading medical experts to promote lasting recovery for people struggling with substance use disorder.⁵

A Note on Methodology

To evaluate Seattle's misdemeanor criminalization of drug possession and public use, King County Department of Public Defense (DPD) policy analysts reviewed the court records of every drug prosecution filed from when the law became effective in October 2023 through July 30, 2025. DPD staff examined police reports, charging documents, final orders resolving cases, and more for each of the 215 cases included in this review. Any references to case statuses as of this year date back to October 1, 2025, the date that all case statuses were last reviewed. Cases filed after July 30 were not included in this two-year review, as they would be too new for any meaningful outcome evaluation.

This analysis does not include incidents in which police interacted with someone suspected of drug use or possession – or even arrested and booked someone into jail – if prosecutors did not ultimately file a drug charge against that person. Seattle city leaders have already demonstrated that non-profit organizations – rather than police – can effectively provide non-criminal interventions to those struggling with addiction, with Mayor Harrell planning to double the number of behavioral health responders and fund more treatment, overdose response, and community diversion programs.⁶

Instead, this analysis evaluates whether the “tool” of criminal prosecution has achieved the stated goal of compelling people charged under this ordinance to obtain an evaluation for substance use disorder (SUD) and follow recommended treatment. Cases where court documents show someone was ordered to seek evaluation and any recommended treatment (or obtained treatment) are categorized as “aligned with the stated goal” of the criminalization ordinance.

DPD analysts also examined whether enforcement of the ordinance matched with promises Seattle city leaders made to the public about how this approach to criminalization would not “continue to make the same mistakes of the past.”⁷ Without publicly available data from the Seattle Police Department (SPD), SCAO, or the Mayor's Office documenting how many arrests have been made pursuant to the criminalization ordinance, the scope of this analysis is limited to the 215 cases filed through July 30, 2025.

⁵ National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction: Treatment and Recovery*, July 6, 2020, <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery>.

⁶ Ben Dalgetty, Office of the Mayor, *Mayor Harrell Announces Proposal to Double CARE Response, Invest in Public Safety and Treatment with New Revenue*, Sept. 18, 2025, <https://harrell.seattle.gov/2025/09/18/mayor-harrell-announces-proposal-to-double-care-response-invest-in-public-safety-and-treatment-with-new-revenue/>.

⁷ Statement from then-Councilmember Andrew Lewis in press release. Joseph Peha, *Seattle City Council passes legislation to prioritize treatment and address public drug use*, Sept. 23, 2023, <https://council.seattle.gov/2023/09/19/seattle-city-council-passes-legislation-to-prioritize-treatment-and-address-public-drug-use/>.

Enforcement of the Criminalization Ordinance: Intent vs. Actuality

When the criminalization ordinance was proposed in 2023, proponents claimed that police and prosecutors would enforce it in a compassionate way intended to help even those ultimately subjected to prosecution. As public scrutiny has faded in the two years since the ordinance was passed, however, the way in which Seattle police and prosecutors have enforced it has drifted further and further from the stated goal of prioritizing diversion and treatment over arrest, incarceration, and prosecution.

Mayor Harrell explained the city's stated goal to KIRO in 2023: "We will pass a law that allows our department to make arrests. But we will do that with compassion to protect people when we have to, but our values will always be to lead with compassion, with help, with love, always."⁸ Mayor Harrell also insisted that comparisons to the failed War on Drugs were inaccurate since the intent of the ordinance was to divert people into treatment, telling Fox 13: "This is not the war on drugs. If anything, this is the war for health, for helping people."⁹

Mayoral spokesperson Jamie Housen reiterated the mayor's intention in a statement to KUOW when the ordinance was enacted: "In most situations, when officers have probable cause to arrest someone for violating this ordinance, they will take the offender to a nearby police precinct and introduce them to a case manager."¹⁰

Despite city leaders' promises to minimize the use of jail, police have increasingly chosen to incarcerate the people they arrest. Police did not book a single person into jail in 2023 for an alleged violation of the drug criminalization ordinance; so far this year, police have booked 42% of people who were contacted, arrested, and ultimately prosecuted due to only alleged drug use or possession.¹¹

Arresting and booking people into jail due to public drug use or possession also contradicts statements from both SPD and SCAO at the time the ordinance was enacted, when both agencies pledged that people would not be booked into jail simply for public drug use or possession.

An SCAO spokesperson told KUOW "[SPD] does not plan to book anybody for simple drug possession" without an allegation that they had committed an additional crime. In the same article, SPD Deputy Chief Eric Barden said, "Seattle police 'have no intention of trying' to book anyone into jail solely on a charge for drug possession or public use."¹²

The increasing use of incarceration is not just a reversal from the promises made to the public about how this "tool" would be used – it endangers the very people Seattle city leaders pledged to help. As the Vera Institute for Justice explains: "[s]ubstantial evidence shows that incarceration is associated with increased risk of overdose death due to a loss of tolerance to opioids, limited access to harm reduction

⁸ Kate Stone, *Seattle mayor, city council respond to failed drug possession ordinance with new plan*, KIRO Newsradio, June 12, 2023, [Seattle mayor, city council respond to failed drug possession ordinance with new plan](#).

⁹ Thompson, <https://www.fox13seattle.com/news/seattle-mayor-signs-approved-ordinance-that-allows-city-attorney-to-prosecute-open-drug-use>.

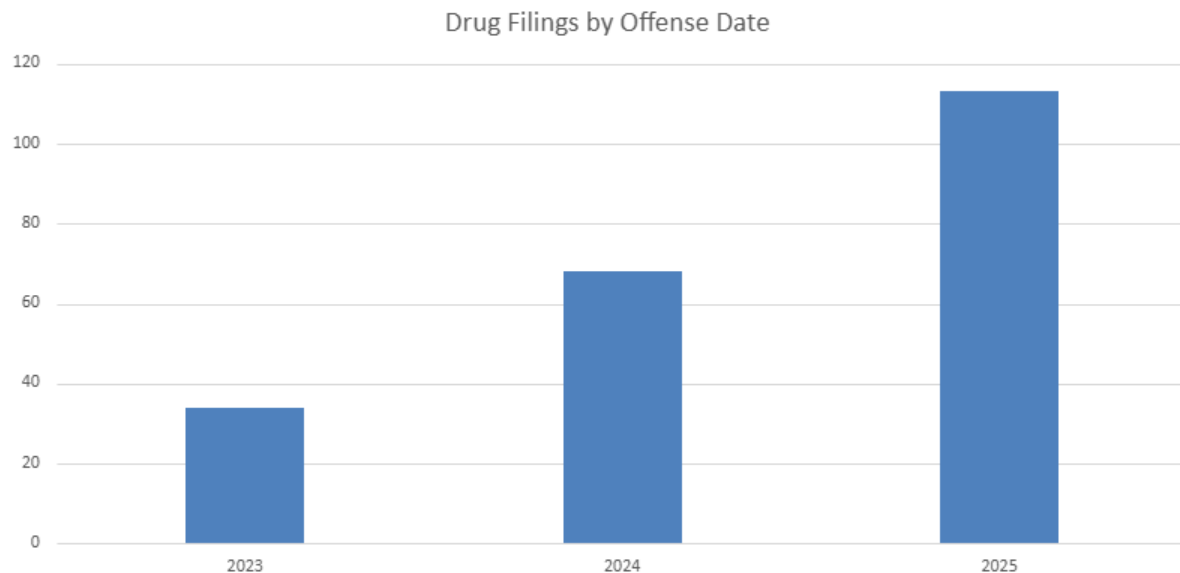
¹⁰ Amy Radil, *Jail reserved for exceptional cases, as Seattle's new drug law takes effect*, KUOW Puget Sound Public Radio, Oct. 20, 2023, <https://www.kuow.org/stories/seattle-police-can-now-enforce-new-drug-law-how-likely-is-jail>.

¹¹ This analysis includes both people who were booked and those who police tried to incarcerate but who could not be booked due to medical issues, but excludes anyone booked pursuant to a verified warrant at the time of arrest. This analysis only includes arrests where the SCAO eventually filed charges against the person booked.

¹² Radil, <https://www.kuow.org/stories/seattle-police-can-now-enforce-new-drug-law-how-likely-is-jail>.

and treatment services, and disruptions in health care and social support during and after periods of incarceration.”¹³

Despite repeated commitments to avoid the failed, carceral approach to drug use, the recent spike in drug prosecutions from SCAO shows that Seattle has shifted its enforcement of the ordinance away from diversion. Through July 30, 2025, prosecutors have filed nearly double the number of cases for alleged violations of the criminalization ordinance that took place this year than they did in all of 2024.



Note: 2023 and 2025 are partial years (10/30/23-12/31/23, 1/1/25-7/30/25).

Not only is SCAO filing more cases for recent alleged violations of the ordinance, they are also increasing their prosecution of older alleged incidents of drug possession or public use as well: Two-thirds of all misdemeanor drug prosecutions included in this analysis were filed in March 2025 or later, including incident dates going as far back as January 25, 2024. Combined with the office’s recent policy change to completely abandon pre-filing diversion for these cases and the increasing number of jail bookings solely for drug use, this trend signals a clear shift in enforcement strategy from SPD and SCAO that contradicts the ordinance’s stated preference to avoid criminal legal system involvement and incarceration for people struggling with substance use in public.

Much like the War on Drugs of the past, the harm inflicted by this approach disproportionately falls on Black people. Despite comprising only roughly 7% of the city population, 25% of the 210 people charged with drug possession or public use are Black. That means that a Black person is 4.1 times more likely to be charged with drug possession than their white neighbor.

Only 2.8% of Drug Prosecutions Lead to Outcomes Aligned with Stated Goal of Criminalization

The reality of enforcement over the last two years shows that Seattle’s drug criminalization ordinance has been ineffective, harmful, and expensive. Out of the 215 drug prosecutions examined for this review,

¹³ Vera Institute of Justice, *Overdose Deaths and Jail Incarceration: Using Data to Confront Two Tragic Legacies of the U.S. War on Drugs*, <https://www.vera.org/publications/overdose-deaths-and-jail-incarceration>.

only 6 have been resolved in a way where the “tool” of prosecution *may* have been effective in achieving the stated goal of criminalization.

By contrast, 46 cases were dismissed without any conditions imposed. Most of these cases were dismissed due to a lack of proof or a determination that the person was unable to assist in their own defense.

Status of cases as of 10/1/25	Number of Cases	Percentage of Cases
☐ Aligned with stated goal (SUD evaluation/treatment ordered or obtained)	6	2.8%
☐ Continued for dismissal	2	
Continued for dismissal - SUD evaluation/treatment ordered or obtained	2	
☐ Dismissed	3	
Dismissed - interest of justice - SUD treatment completed	2	
Dismissed - interest of justice - SUD evaluation completed	1	
☐ Negotiated plea / global resolution	1	
Negotiated plea / global resolution - SUD evaluation/treatment ordered or obtained	1	
☐ Cannot determine at this time	32	14.9%
☐ Pre-trial	32	
Pre-trial, in custody	1	
Pre-trial, out of custody	22	
Awaiting competency evaluation/hearing	3	
Pre-trial, Drug Prosecution Alternative	6	
☐ Not aligned with stated goal	177	82.3%
☐ Continued for dismissal	6	
Continued for dismissal - No SUD evaluation/treatment ordered or obtained	6	
☐ Dismissed	46	
Dismissed - defendant died	2	
Dismissed - lack of competency	12	
Dismissed - lack of proof	16	
Dismissed - no reason found	8	
Dismissed - interest of justice - in custody for felony charges	1	
Dismissed - compromise of misdemeanor	1	
Dismissed - interest of justice - reason not specified	6	
☐ Negotiated plea / global resolution	15	
Negotiated plea / global resolution - No SUD evaluation/treatment ordered or obtained	15	
☐ Out on bench warrant	109	
Out on bench warrant	109	
☐ Sentence suspended	1	
Sentence suspended - No SUD evaluation/treatment ordered or obtained	1	
Grand Total	215	100.0%

Most commonly, issuance of a bench warrant follows the filing of charges. Once someone fails to appear for court – most frequently due to a lack of stable housing resulting in a lack of notice of the court date – the criminal legal system’s default response is for a judge to authorize police to arrest the person and then book them into jail. SPD lacks the resources to search for people with misdemeanor bench warrants, which leaves their case effectively in limbo.

Just over half of cases (109 out of 215) remain stalled at this stage, where the “tool” of a criminal charge has failed to force the person charged into treatment. Of course, at the time the ordinance was enacted,

opponents and medical professionals explained why forcing someone into treatment is an ineffective and harmful approach.¹⁴

These failed prosecutions are not just missed opportunities for diversion and referral to evidence-based treatment options – involvement in the criminal legal system harms people who need help. Even a criminal case that is ultimately dismissed can destabilize and harm the person charged. If the person does have a job or stable housing, a pending criminal charge can put those at risk; if they don't, an open case only makes it harder for people to gain the stability necessary for successful recovery.

In addition to that harm, every case represents thousands of dollars spent on police, prosecutors, defense attorneys, judges, and court staff – money that should have been allocated to increasing treatment capacity, expanding supportive housing, or hiring case managers. Drug possession or public use is the only alleged offense in 76% of these cases (i.e., there is no criminal allegation that the person was engaged in theft or other illegal behavior). Seattle could save a substantial portion of the resources spent on enforcing its ineffective criminalization ordinance by prioritizing its public health responses to the opioid and homelessness crises instead.

What's more, Seattle is expending significant public resources on misdemeanor drug possession prosecutions despite the overwhelming majority of cases (71%) involving a very small amount of drugs (a gram or less) – cases that King County prosecutors decided years ago were not worth the resources it cost to prosecute them. In 2019, former King County Prosecuting Attorney Dan Satterberg revised his office's filing standards¹⁵ to stop prosecuting these minor cases in favor of diversion.

As Satterberg's office recognized when declining to prosecute those cases, the criminal legal system's failure as a "tool" does not stem from mismanagement or a lack of resources. Spending even more money to add staff to prosecute these cases will not suddenly transform a system that produced outcomes potentially aligned with its stated goal in just 2.8% of cases. The criminal legal system is simply too blunt, harmful, and expensive of an instrument to effect the change Seattle's city leaders have said they want to make possible for people struggling with substance use in public.

The Human Cost of Seattle's Criminalization of Drug Use and Possession

Though there is no way of knowing how many people on bench warrant status (representing over 50% of all cases) have been harmed by this ordinance, some court filings found in this review illustrate the devastation wrought by drug possession prosecutions.

Arrest and incarceration cut people who are struggling with substance use disorder and other mental health conditions off from their normal support systems, increasing the risk that their behavioral health symptoms worsen while in jail and impairing their chances of recovery. In one case reviewed for this project, police arrested and handcuffed a resident of the Bailey-Boushay House. This Virginia Mason facility provides inpatient care for those with HIV/AIDS who need skilled services, or those with complex

¹⁴Letter to Seattle City Council, June 6, 2023, <https://council.seattle.gov/wp-content/uploads/2023/06/2023-0606-FINAL-Letter-to-Council-with-signers.pdf>. See also D. Werb et al., *The Effectiveness of Compulsory Drug Treatment: A Systematic Review*, *The International Journal on Drug Policy*, vol. 28, 2016, <https://pmc.ncbi.nlm.nih.gov/articles/PMC4752879/>.

¹⁵ Justin Jouvenal, *No charges for personal drug possession: Seattle's bold gamble to bring 'peace' after the war on drugs*, *The Washington Post*, Aug. 11, 2019, https://www.washingtonpost.com/local/public-safety/no-charges-for-personal-drug-possession-seattles-bold-gamble-to-bring-peace-after-the-war-on-drugs/2019/06/11/69a7bb46-7285-11e9-9f06-5fc2ee80027a_story.html

neurodegenerative conditions who have a prognosis of six months or less.¹⁶ Bailey-Boushay also offers a program serving “people with HIV and chemical dependency issues who are unable to succeed in traditional abstinence-based programs,” of which “[m]edication management is a key element.”¹⁷

The arresting officers referred the Bailey-Boushay resident for prosecution for allegedly possessing a pipe with visible black methamphetamine residue outside the facility, despite learning from a nurse during the arrest that the man normally takes psychosis medications but had not taken them that day. Though he was not initially jailed, he was subject to a bench warrant after not appearing in court and was then jailed for five days. As of his most recent court hearing on August 7, his case has now stalled as he awaits an evaluation of his competency to stand trial, which typically takes months for those not in jail.

The consequences of prosecution can be even more dire for people without support in place before they are arrested and jailed. As former Seattle Police Chief Sue Rahr noted in 2024,¹⁸ local jails are not equipped to address the needs of those forced into drug withdrawal through incarceration, which leads to an increased risk of overdose on release. One study found that released prison inmates were 40 times more likely to overdose within two weeks of release than the general public.¹⁹

The tragic case of one 25-year-old man charged for allegedly smoking fentanyl while sitting on a sidewalk encapsulates the repeated failure of the criminal legal system as a “tool” in responding to Seattle’s opioid crisis. As happens in the majority of these cases, a bench warrant was issued for the man’s arrest after he failed to appear at the start of his case.

It took 11 months for the police to contact him again, resulting in a week of incarceration once they did. At this point, his arrest and prosecution had been completely ineffective at connecting him to treatment, nor did he receive any other material support as a result of having a charge filed against him.

Twelve days after his release, he was found dead due to acute combined drug intoxication.

Conclusion

In the two years that the ordinance has been in effect, the criminal legal system has failed to result in an order to obtain an evaluation for substance use disorder (SUD) and follow recommended treatment in all but 6 of the 215 cases reviewed for this analysis. Instead of following through on promises to prioritize diversion over prosecution, Seattle city prosecutors have filed nearly double the number of cases for alleged violations of the criminalization ordinance that took place this year than they did in all of 2024.

Making matters worse, SCAO has recently excluded drug use and possession offenses from their pre-filing diversion programs. Despite the well-documented harms of incarceration for people struggling with substance use disorder, 42% of the people charged solely for drug use or possession this year were booked into jail. The harm of this failed approach continues to fall disproportionately on Black Seattleites, who are 4.1 times more likely to face prosecution than a white person.

¹⁶ Virginia Mason Franciscan Health, <https://www.baileyboushay.org/admission>.

¹⁷ *Id.*

¹⁸ Karissa Braxton, Office of the Mayor, *Mayor Harrell Directs \$2.85M to Expand Substance Use Disorder Detox and Treatment Beds*, August 14, 2024, <https://harrell.seattle.gov/2024/08/14/mayor-harrell-directs-2-6m-to-expand-substance-use-disorder-detox-and-treatment-beds/>.

¹⁹ Shabbar I. Ranapurwala et al., *Opioid Overdose Mortality Among Former North Carolina Inmates: 2000–2015*, *American Journal of Public Health* 108, no. 9, Sept. 1, 2018, pp. 1207–1213, <https://doi.org/10.2105/AJPH.2018.304514>.

While the results of nearly two years of enforcement have shown the “tool” city leaders advocated for to be a failure, the stakes of finding the right response to help Seattleites struggling with addiction in public – one that does not include wasteful spending on harmful, ineffective prosecutions – remains critically important.