

# Frequently Asked Questions

Ordinance 23-046

Possession and Use in Public of Controlled Substances, Counterfeit Substances, or Legend Drugs

## General Questions

- **What is the Blake Decision?**
  - The [Blake](#) decision is a court ruling that invalidated the state's simple possession law (RCW 69.50.4013). The court ruled that the state exceed its police power and violated the Due Process clause of the state and federal constitution because without the word 'knowingly' someone could face a felony charge for unknowingly possessing a controlled substance.
- **What are the main differences between this ordinance and the 2021 temporary legislative fix?**
  - Removes the three-strike rule which was difficult to enforce in practice.
  - Makes possession a gross misdemeanor instead of a simple misdemeanor.
- **What was the penalty for simple possession prior to the Blake decision?**
  - Class C felony.
- **What parts of the ordinance stay in place if the state has a decision on Blake? How will conflicts be resolved if the language is not an exact match? (added 5/8/23)**
  - It will depend on what is passed at the state level. State law preempts local law, so where there are differences, state law will typically prevail.
- **How will 'severability be enacted? Does each section become invalid? (added 5/8/23)**
  - Any portion of the ordinance that is preempted by state law will essentially become unenforceable. Whatever is not preempted will remain in effect.
- **What is the legal justification for pre-empting state law? (added 5/8/23)**
  - The County cannot preempt state law.
- **When did work begin on this ordinance? (added 5/8/23)**
  - Discussions surrounding this began in Fall 2022. It has evolved over time, most recently to include drug possession as a result of the legislatures inaction.

- **What cities are considering similar ordinances? What is their timeline for decision making? Compare and contrast other city and county ordinances with the provisions in Ord, 23-015.** (added 5/8/23)
  - An email has been sent out to all city administrators within Snohomish County requesting the relevant information with a requested response by May 11<sup>th</sup>.
  - See attachment #1 to this FAQ (added 5/15/23)
  
- **What outreach was performed to departments, when did they receive a copy of the ordinance (including the date sent)?** (added 5/9/23)
  - The final version of this ordinance was shared with the following departments on April 26<sup>th</sup>.
    - Sheriff's Office
    - PA's Office
    - District Court
    - Superior Court
    - Human Services
    - Executive's Office
  - Meetings on the proposed ordinance were held with the Sheriff and Prosecuting Attorney's Office prior to finalizing the ordinance.
  - There were also individual meetings with the Human Services and OPD Director's relating to this ordinance. (added 5/15/23)
  
- **List types of drugs that are included as 'controlled substances' including those classified as schedule I, II, III, IV, V of chapter 69. How will changes to state or federal law impact this at the County?** (added 5/9/23)
  - The list of controlled substances can be found by clicking the respective sections in the question above. In general:
    - Schedule 1 - Drugs with no current medical use with high potential for abuse and/or addiction
    - Schedule 2 - Drugs with some medical uses, but high potential for abuse and/or addiction (prescription only drugs)
    - Schedule 3 - Drugs with low to moderate potential for abuse and/or addiction, but less dangerous than 1 & 2. Most often only obtained through a prescription, not over the counter.
    - Schedule IV - Drugs with viable medical use and low probability of misuse
    - Schedule V - Drugs with the lowest potential of abuse.
  
- **What outreach was there to cities within Snohomish County and was the County's ordinance provided to them?** (added 5/15/23)
  - A copy of the County's Ordinance was sent to Snohomish County Mayors on April 26<sup>th</sup>. The County also received a joint letter from 15 Snohomish County Mayors in support of the ordinance. (see attachment #2)

## Operational & Policy Questions

- **Why is drug paraphernalia not in this ordinance?**
  - Drug paraphernalia is already illegal under Snohomish County Code in [Chapter 10.48 SCC](#).
- **Are testing strips included as paraphernalia under this ordinance? Will aid and outreach groups be arrested if they are in possession of testing strips or needles for exchange or other harm reduction supplies? (added 5/8/23)**
  - No, this ordinance does not address drug paraphernalia in any capacity.
- **Can someone be charged with both use and possession, and receive two sentences?**
  - Charged – Yes
  - Sentenced – No, the individual can only receive one sentence even if they are charged and convicted of both use and possession.
- **Who is responsible for making sure they go to services in accordance with SCC 10.49.070 under this ordinance?**
  - If the individual elects a post arrest alternative, they will be referred to a service provider. If the individual fails to show up or complete the service, the service provider will notify the law enforcement agency who would then proceed with filing the case with the prosecutor.
- **Is it illegal to be high in public?**
  - No, it is not illegal to simply be high in public. Being impaired may lead an individual to committing other crime such as disorderly conduct but being high in public in and of itself is not illegal.
- **Does the jail have the capacity to handle any additional impacts as a result of this ordinance? (added 5/3/23)**
  - Yes. The jails operational model would allow them to sustain any increase in bookings caused by this ordinance.
- **Data/Metrics:**
  - **What are the metrics included in this ordinance to determine if people are entering into treatment, reducing recidivism, and entering recovery. (added 5/8/23)**
    - There are no metrics included in this ordinance.

- **Line 42 - The prosecutor is 'encouraged' to divert cases, what are the encouragements included in this ordinance to divert cases?** (added 5/8/23)
  - There is no incentive, or encouragements, included in the ordinance. As drafted the language maintains prosecutorial discretion in assessing each case while encouraging diversion.
- **In relation to district court, how will the added cases impact the timeline for processing violent crime, property crime, domestic violence, and others?** (added 5/9/23)
  - The impact on timelines for cases is highly dependent on charging decisions by the prosecutor's office. During the last budget cycle, the prosecutor's office noted the substantial number of cases they have waiting for charging decisions. The impact on timelines would depend on how the prosecutors prioritize these types of cases compared to the significant backlog of cases that they already have waiting for charging decisions, some of which are nearing their statute of limitations.
- **Will this require additional support District Court staff/probation officers?** (added 5/9/23)
  - The impact to District Court staffing is highly speculative and dependent on charging and filing decisions made by law enforcement and the prosecutor. As written, the ordinance vests a great deal of discretion with both law enforcement and the prosecutor in deciding what, if any, cases will be charged and filed in the District Court. (As opposed to handled through pre charging law enforcement or prosecutorial diversion programs as allowed under the ordinance).

Should the prosecutor decide to file these cases in significant numbers in the District Court, there would be a need to increase both legal process assistants and probation staff proportionally to respond to the increased filings. The Snohomish County District Court currently and traditionally has been a very lean operation. By way of comparison, Pierce County District Court, which has SIGNIFICANTLY fewer filings than our Court has approximately 20 more FTE's than Snohomish County District Court. We would need to increase FTE's if there is a significant increase in criminal filings.

- **What is the functional difference between making possession a misdemeanor vs. gross misdemeanor?** (added 5/9/23)
  - Per State law, a misdemeanor is punishable by up to 90 days in jail and a \$1,000 fine whereas a gross misdemeanor is punishable by up to 364 days in jail and a \$5,000 fine. With the exception of DUI and Domestic Violence offenses, misdemeanor and gross misdemeanor convictions also carry a probation period of two years. In practice, it is unlikely that the initial sanctions for convictions under this ordinance would differ whether it is passed as a misdemeanor or a gross misdemeanor. In other words, a judge would likely impose the same amount of

jail time in a given case regardless of whether conviction for possession was defined as a misdemeanor or a gross misdemeanor. The difference between a misdemeanor and a gross misdemeanor could be more pronounced, however, in the probation process. For example, if an individual is convicted of a misdemeanor and sentenced to 5 days in jail, the court could suspend the remaining 85 days in jail and require the defendant to comply with conditions of probation (e.g., treatment, UA testing, counseling, refraining from new criminal violations, etc.) for up to 2 years. The remaining 85 days essentially serve as incentive for the defendant to comply with probation. If an individual is convicted of a gross misdemeanor and sentenced to 5 days in jail, the court would have up to 359 days to impose as sanctions for probation violations.

Another important difference exists in the respective statute of limitations, with the law requiring that a misdemeanor be filed within 1 year of the commission of the crime, and a gross misdemeanor within 2 years. Given the backlog of uncharged cases and continuing staffing challenges in the Prosecutor's Office, and with lengthy delays in drug testing by the State Patrol Crime Lab, it would create a significant hardship on the prosecutor's office attorneys and staff to expect all possessory drug offenses to be filed within 1 year.

- **What are the impacts to people using controlled substances on private property but seen from a public place?** (added 5/9/23)
  - Generally speaking, law enforcement officers need a warrant or permission from the property owner to enter onto private property to affect an arrest or seize evidence.
- **Will residents be expected to carry their prescriptions for controlled substances based on section 10.49.020, what is acceptable proof of evidence of a valid prescription?** (added 5/9/23)
  - SCC 10.49.020 makes it a criminal offense to knowingly possess a controlled substance without a valid prescription. If an individual is arrested and charged for a violation of this provision, they could provide proof that they had a valid prescription at the time of their arrest as a defense against the charge. (Presumably, a police officer would not make an arrest and a prosecutor would not file charges if the individual had proof of a valid prescription at the time they were contacted by the police). The requirements for a legal prescription are set forth in RCW 69.41.
- **Will this increase prosecutions? If so, will it require more prosecutions, staff, public defenders, etc.?** (added 5/9/23)
  - Compared to current post-Blake situation – Yes
  - Compared to pre-Blake caseload – No

It is unclear what staffing impacts this ordinance will have as of now. Prior to Blake, all PCS referrals were sent to the prosecutor's office as felonies and were handled in Superior Court. With the change to making PCS a gross misdemeanor, only cases occurring within unincorporated Snohomish County will be referred to this office by the Sheriff's Office. Washington State Patrol does not enforce local ordinances, so this would likely further limit the number of referrals.

- **What is the current number of cases waiting to be processed by the Prosecuting Attorney's office?** (added 5/9/23)

- Below is the most recent data pulled for cases waiting for processing by the Prosecuting Attorney's Office in District Court only. Because cases filed under this ordinance would only go to District Court, only District Court data is included.

October 2022 - Roughly 7,200

February 2023 - Roughly 6,700

- **How will this ordinance be measured to understand its effectiveness? How will data be shared publicly and how will the public be made aware of the impacts?** (added 5/9/23)

- The ordinance does not include any metrics or reporting requirements. A dashboard is currently in development that will serve as a public facing tool providing insight and information into various data points within the justice system. This may be an avenue for sharing data driven from this ordinance.

- **Are there pre-arrest diversions included in this ordinance?** (5/15/23)

- Yes, the ordinance includes diversion options as an alternative to arrest. Specifically LEAD, local diversion center, substance use treatment facilities and programs are listed, but the language states that diversions are not limited to this list.

## Service's Related Questions

- **What is the Office of Neighborhoods (OON) and how does it operate?** (added 5/8/23)

- The Office of Neighborhoods is a Snohomish County Sheriffs Office unit that partners with embedded social workers from Snohomish County Human Services and focuses on outreach and enforcement related to individuals who are struggling with homelessness and addiction, and/or mental health issues.

Deputies make social contacts, as well as enforcement contacts (such as responding to trespasses, shoplifts, and nuisances), and help connect people from this population with the social workers. The program is completely voluntary and can include scheduling and transport to temporary shelter at the Diversion Center (a shelter run by Pioneer Human Services for individuals working with social

workers from OON or other agencies' social worker programs), dependency assessments, medical detox, and inpatient/outpatient treatments.

There is also a housing component to the program where clients can receive three months of housing at reliable clean and sober houses with their full rent covered and three more months with half of the rent covered. The goal is to help those struggling with substance use disorder to get clean and then have reliable living conditions to continue their treatment and move on with their lives.

Deputies in the Office of Neighborhoods will also take enforcement action when appropriate. Individuals may be arrested for crimes such as theft, trespassing after official warnings, or drug use after multiple documented diversions. Even when performing arrests or other enforcement actions, deputies will try to connect individuals with social workers during contacts, while at the jail, and/or when individuals are released from jail. This often occurs by having social workers meet with individuals at the jail or provide their business cards/contact information so individuals can speak with a social worker when they are ready to accept services.

- **What happens when OON makes contact with an individual using or possessing drugs?** (added 5/8/23)

- When contacting an individual who is using or possessing illegal substances, OON deputies may respond in a few different ways. Often, the individual using the illegal substances may be detained, advised of their Miranda rights, and searched under probable cause for possession of drug paraphernalia under SCC, or knowingly possessing a controlled substance without a prescription under the RCW. There will normally be a conversation about the individual's drug use/history and the amount of illegal substances in their possession will be considered. If a person has only "personal use" amounts of illegal substances (rather than large quantities of illegal substances in combination with scales, cash, ledgers, and/or other paraphernalia that may indicate felony possession with intent to sell/deliver), their local contact history will be reviewed. If the person has not yet received two or more officially documented diversions, then the deputy will issue a warning or take a case report to document an official diversion. A diversion consists of the deputy connecting the individual with a social worker if they would like, and/or providing social worker contact information and drug treatment/housing resource information to the individual. Deputies would then book any confiscated illegal substances/paraphernalia as evidence and complete a report noting the contact with the individual and the fact that they were referred to treatment resources, rather than being booked/charged with a crime.

If an individual already has two or more locally documented diversions (diversions will be visible if they have been entered by several local agencies such as SCSO, Everett PD, Marysville, PD, Lake Stevens PD, Monroe PD, Mill Creek PD

etc.), the deputy has discretion to issue another diversion or to take enforcement action and make an arrest. Currently, based on my own observations/interactions, an average of around 7 of 10 individuals contacted for illegal substances on the street have already received two or more documented diversions in the past two years.

- **What happens if OON offers an individual services and they refuse?** (added 5/8/23)
  - If OON offers an individual services and they refuse, we simply attempt to provide contact information, educate the individual, and remind them that the offer for services will continue. Because the treatment and services in the program are voluntary, the individual's acceptance/refusal of services does not inherently/directly change anything about the enforcement side of the deputies duties. An individual may state they want services after being arrested and a deputy could choose to allow the individual to go to the diversion center rather than being booked for a crime, or the deputy may choose to still book the individual and then connect them with the services following the booking process. These decisions are often made in collaboration between the deputy and social workers and may include factors such as the individual's history, the number of times they have been offered/accepted services in the past, the severity of any current crimes, and if the individual has outstanding warrants.

If the situation is not an arrest and the person refuses services, that may be documented in a diversion, they may be issued an official warning or trespass notice (if appropriate), or they may simply walk/drive away from the contact/conversation.

- **What is the Law Enforcement Assisted Diversion (LEAD) program?** (added 5/9/23)
  - LEAD gives police officers and prosecutors the ability to divert individuals away from jail when committing low-level misdemeanors that may stem from mental illness, substance use and extreme poverty. They are instead connected to care through dedicated case managers who work to address the root cause of the person's challenges and connect them to appropriate care, navigating the complicated web of social services by walking alongside them. LEAD recognizes that substance use disorders and mental illness are public and social health issues that affect individuals and communities.
- **What cities participate in LEAD?** (added 5/9/23)
  - Lynnwood, Everett, Bothell, Mill Creek, Mountlake Terrace, and Mukilteo.

## Timing Questions



- **What happens July 1, 2023, if there is no legislation passed by the State or Local Jurisdictions?**
  - If no legislation is passed regarding possession, it will be legal to possess controlled substances beginning July 1, 2023.
- **What is the last day an ordinance could be passed by the County for it to be effective July 1, 2023?**
  - May 31, 2023 – if at a regular public hearing; or
  - June 6, 2023 – if a special public hearing is called.

### Questions Pending Answers (updated 5/15/23)

- **How will the data be tracked, specifically relating to impact on certain communities?**
- **What are the current statistics of Fentanyl and Trank in our community?**
- **How will officer have to prove drug use is seen from a public place? How will officers be trained to understand the evidence needed?**
- **What is the threshold and capacity for new cases deferred by the Prosecutor for “assessment, treatment and other services” how are cases deferred?**
- **What is the capacity of current pre-arrest diversions?**
- **Will deputies and law enforcement be required under 10.49.080 to make an arrest?**
- **Will officers require additional training for this change? When will training be completed and who will conduct the training on this new law?**
- **What data do you track for bookings?**
- **How many people (and what) of jail inmates receive medicated opioid treatment? What is the increase in capacity that the county can withstand? Are those costs reimbursed by any funding sources or potential funding sources? After release, what is the capacity for maintaining medicated assisted treatment outside of jail.**
- **What is the capacity of the jail for increasing the current census?**
- **What will happen when people move between jurisdictions with different laws including adjacent counties and or cities?**

Attachment #1 – City Ordinance Comparison

City	Action/Proposed Action	Signed Letter of Support
<b>Arlington</b>	Passed Ordinance 2023-005 on April 3, 2023 making the use of a controlled substance and the possession of drug paraphernalia a misdemeanor. <i>**penalty limited by state law at the time of enactment</i>	Yes
<b>Bothell</b>	Currently taking a “wait and see” approach, the City of Bothell will join with Kenmore, Kirkland, Lake Forest Park and the City of Shoreline to enact a consistent approach across these five communities. This approach will largely be based on the City of Kent’s legislation which makes	
<b>Brier</b>	No response as of 5/12/2023	Yes
<b>Darrington</b>	No response as of 5/12/2023	Yes
<b>Everett</b>	The City of Everett passed Ordinance No. 3956-23 on May 4, 2023 which made knowing use of a controlled substance in a public place a gross misdemeanor (effective date of July 1, 2023).	Yes
<b>Gold Bar</b>	If the State Legislature does not act, the intention is to pass an Ordinance substantively similar to County-proposed Ordinance 23-046.	Yes
<b>Granite Falls</b>	Intent is to consider an ordinance with language substantively similar to the proposed County Ordinance 23-046.	
<b>Lake Stevens</b>	Passed Ordinance 1159 making the use of dangerous drugs in public places a misdemeanor. <i>**penalty limited by state law at the time of enactment</i>	Yes
<b>Lynnwood</b>	The City of Lynnwood passed Ordinance No. 3438 on February 22 <sup>nd</sup> , 2023. This Ordinance prohibits the use of controlled substances in a public place (or in view of the general public), prohibits the deposit of controlled substances on the ground or in a body of water and provides post-arrest alternatives for law enforcement to consider.  *The penalty for violation of the current ordinance is a misdemeanor.  **Lynnwood has stated they intend to repeal Ordinance No. 3438 and pass a new ordinance substantively similar to the current County-proposed Ordinance 23-046.	Yes
<b>Marysville</b>	Passed Ordinance 3179 on March 12, 2021 prohibiting the possession of controlled substance or drug paraphernalia; violation is misdemeanor. Passed Ordinance 3247 on December 12, 2022 making the use of a controlled substance in a public place a misdemeanor. <i>**penalty limited by state law at the time of enactment</i>	Yes
<b>Monroe</b>	Taking a “wait and see” approach with a contingency plan to act with an emergency ordinance for a July 1 effective date	Yes
<b>Mountlake Terrace</b>	No response as of 5/12/2023	Yes

<b>Mukilteo</b>	No response as of 5/12/2023	Yes
<b>Snohomish</b>	Intend to bring an Ordinance before their City Council in June; the proposed Ordinance will be closely aligned with the current County-proposed Ordinance 23-046.	Yes
<b>Stanwood</b>	No response as of 5/12/2023	Yes
<b>Sultan</b>	Proposed Ordinance 1387-23 is before the city council on May 11 <sup>th</sup> . The proposed ordinance makes it illegal to use or possess controlled, counterfeit substances or legend drugs; the penalty for violation is a gross misdemeanor.	Yes
<b>Woodway</b>	No response as of 5/12/2023	Yes

Mayors and  
Business Leaders for **Public Safety**

May 5, 2023

Snohomish County Council  
Robert J. Drewel Building  
Eighth floor  
3000 Rockefeller Ave., M/S 609  
Everett, WA 98201

Dear Councilmembers Nehring, Dunn, Peterson, Mead and Low:

On behalf of the undersigned Snohomish County mayors represented by the Mayors and Business Leaders for Public Safety coalition, we are writing to convey our support for Ordinance 23-046, relating to the use and possession of controlled or counterfeit substances.

Currently, cities in Snohomish County and across Washington state are looking to enact laws governing the possession or public use of illegal drugs in our communities. Absent a statewide drug possession statute, we believe the ordinance proposed by the county council will provide a path forward in unincorporated parts of the county that is consistent with what many of our cities are considering.

We understand there are efforts underway in Olympia to craft a new compromise bill that may provide a solution before the current state law expires at midnight on June 30. We hope a compromise can be achieved, but believe it is necessary and prudent to enact legislation at the county and local levels to ensure policies are in place in the event a statewide policy is not enacted.

Thank you for your efforts to address this vital public safety issue. We support this ordinance and urge its passage.

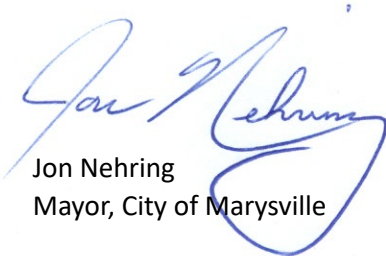
Sincerely,



Cassie Franklin  
Mayor, City of Everett



Brett Gailey  
Mayor, City of Lake Stevens



Jon Nehring  
Mayor, City of Marysville



Russell Wiita  
Mayor, City of Sultan



Barbara Tolbert  
Mayor, City of Arlington



Dale Kaemingk  
Mayor, City of Brier



Dan Rankin  
Mayor, City of Darrington



Steve Yarbrough  
Mayor, City of Gold Bar



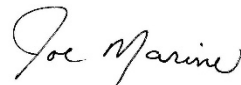
Christine Frizzell  
Mayor, City of Lynnwood



Geoffrey Thomas  
Mayor, City of Monroe



Kyoko Matsumoto Wright  
Mayor, City of Mountlake Terrace



Joe Marine  
Mayor, City of Mukilteo



Linda Redmon  
Mayor, City of Snohomish



Sid Roberts  
Mayor, City of Stanwood



Mike Quinn  
Town of Woodway