

ORDINANCE No. 112541

COUNCIL BILL No. 105043

Law Department

The City of

AN ORDINANCE relating to the Criminal Code; repealing Sections 12A.02.130 (Proof beyond a reasonable doubt-Affirmative defenses), 12A.04.150 (Intoxication), 12A.04.160 (Mental disease or defect excluding responsibility), and 12A.04.170 (Duress); adding Sections 12A.04.150 (Intoxication), 12A.04.160 (Insanity), 12A.04.170 (Duress), 12A.04.190 (Entrapment), 12A.04.200 (Use of Force) and 12A.04.210 (Reasonable Use of Force for Detention by Shopkeepers).

Honorable President:

Your Committee on _____

9/20/85 - PS Code - NO PASS w/ our divided report.
COMPTROLLER FILE No. _____

to which was referred the within Council report that we have considered the same

Introduced: AUG 19 1985	By: City Attorney
Referred: AUG 19 1985	To: Public Safety
Referred: 9-30-85	To: Full Council
Referred: 10-7-85	To: Full Council
Reported: NOV 18 1985	Second Reading: NOV 18 1985
Third Reading: NOV 18 1985	Signed: NOV 18 1985
Presented to Mayor: NOV 19 1985	Approved: NOV 27 1985
Returned to City Clerk: NOV 27 1985	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

REC'D OMB NOV 19 1985

NP *DO PA*

adding

PK -

AS -

Vote 5-4

Sibonga, Smith, Williams, Rice

7-30-85 Hold in Full Council

10-7-85 Hold in Full Council

10-14 Hold for Full Council

11-12-85 Hold out - Gov.

OK

Department

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

President:

Committee on

Public Safety

was referred the within Council Bill No.

105043

we have considered the same and respectfully recommend that the same:

DO PASS (with one divided report on adding Section 12A.04-160 (Insanity))

PK - make no change to this Bill

NS - keep the existing language and strike the language on insanity

5-4

Smith Williams
Rice

from this Bill.

Hold in Full Council on week

Hold for full Council

Nov. 18, 1945 Committee Chair

MFS:pm
8/14/85
I:ORD1.

ORDINANCE 112541

1
2
3 AN ORDINANCE relating to the Criminal Code; repealing
4 Sections 12A.02.130 (Proof beyond a reasonable doubt-
5 Affirmative defenses), 12A.04.150 (Intoxication),
6 12A.04.160 (Mental disease or defect excluding responsi-
7 bility), and 12A.04.170 (Duress); adding Sections
8 12A.04.150 (Intoxication), 12A.04.160 (Insanity),
9 12A.04.170 (Duress), 12A.04.190 (Entrapment), 12A.04.200
10 (Use of Force) and 12A.04.210 (Reasonable Use of Force
11 for Detention by Shopkeepers).

12 BE IT ORDINATED BY THE CITY OF SEATTLE AS FOLLOWS:

13 Section 1. Section 12A.02.130, Proof beyond a reasonable
14 doubt, of the Seattle Municipal Code (Section 12A.01.130 of
15 Ordinance 102843) is repealed.

16 Section 2. Section 12A.04.150, Intoxication, of the
17 Seattle Municipal Code (Section 12A.02.150 of Ordinance
18 102843) is repealed.

19 Section 3. Section 12A.04.160, Mental disease or defect,
20 excluding responsibility, of the Seattle Municipal Code
21 (Section 12A.02.170 of Ordinance 102843) is repealed.

22 Section 4. Section 12A.04.170, Duress, of the Seattle
23 Municipal Code (Section 12A.02.190 of Ordinance 102843) is
24 repealed.

25 Section 5. Chapter 12A.04 of the Seattle Municipal Code
26 is amended by adding thereto a new Section 12A.04.150, as
27 follows:

28 12A.04.150 Intoxication

No act committed by a person while in a state of voluntary
intoxication shall be deemed less criminal by reason of
his/her condition, but whenever the actual existence of any
particular mental state is a necessary element to constitute a
particular species or degree of crime, the fact of his/her
intoxication may be taken into consideration in determining
such mental state.

1 Section 6. Chapter 12A.04 of the Seattle Municipal Code
2 is amended by adding thereto a new section 12A.04.160, as
3 follows:

4 12A.04.160 Insanity

5 To establish the defense of insanity, it must be shown
6 that:

7 A. At the time of the commission of the offense, as a
8 result of mental disease or defect, the mind of the actor was
9 affected to such an extent that:

10 1. He/she was unable to perceive the nature and
11 quality of the act with which he/she is charged; or

12 2. He/she was unable to tell right from wrong with
13 reference to the particular act charged.

14 B. The defense of insanity must be established by a
15 preponderance of the evidence.

16 Section 7. Chapter 12A.04 of the Seattle Municipal Code
17 is amended by adding thereto a new Section 12A.04.170, as
18 follows:

19 12A.04.170 Duress

20 A. In any prosecution for a crime, it is a defense that:

21 1. The actor participated in the crime under
22 compulsion by another who by threat or use of force
23 created an apprehension in the mind of the actor that in
24 case of refusal he/she or another would be exposed to
25 immediate death or immediate grievous bodily injury; and

26 2. That such apprehension was reasonable upon the
27 part of the actor; and

28 3. That the actor would not have participated in
the crime except for the duress involved.

1 B. The defense of duress is not available if the actor
2 intentionally or recklessly places himself/herself in a
3 situation in which it is probable that he/she will be subject
4 to duress.

5 C. The defense of duress is not established solely by a
6 showing that a married person acted on the command of his or
7 her spouse.

8 Section 8. Chapter 12A.04 of the Seattle Municipal Code
9 is amended by adding thereto a new Section 12A.04.190, as
10 follows:

11 12A.04.190 Entrapment

12 A. In any prosecution for a crime, it is a defense that:

13 1. The criminal design originated in the mind of
14 law enforcement officials, or any person acting under
15 their direction, and

16 2. The actor was lured or induced to commit a crime
17 which the actor had not otherwise intended to commit.

18 B. The defense of entrapment is not established by a
19 showing only that law enforcement officials merely afforded
20 the actor an opportunity to commit a crime.

21 Section 9. Chapter 12A.04 of the Seattle Municipal Code
22 is amended by adding thereto a new Section 12A.04.200, as
23 follows:

24 12A.04.200 Use of Force - When Lawful

25 The use, attempt, or offer to use force upon or toward the
26 person of another is not unlawful in the following cases:

27 A. Whenever necessarily used by a public officer in the
28 performance of a legal duty, or a person assisting him/her and
acting under his/her direction;

1 B. Whenever necessarily used by a person arresting one
2 who has committed a felony and delivering him/her to a public
3 officer competent to receive him/her into custody;

4 C. Whenever used by a party about to be injured, or by
5 another lawfully aiding him/her in preventing or attempting to
6 prevent an offense against his person, or a criminal trespass,
7 or other malicious interference with real or personal property
8 lawfully in his/her possession, in which case the force is not
more than is necessary;

9 D. Whenever reasonably used by a person to detain
10 someone who enters or remains unlawfully in a building or on
11 real property in the control of such person, so long as such
12 detention is reasonable in duration and manner to investigate
13 the reason for the detained person's presence on the premises,
14 and so long as the premises in question did not reasonably
15 appear to be intended to be open to members of the public;

16 E. Whenever used in a reasonable and moderate manner by
17 a parent or his/her authorized agent, a guardian, master, or
18 teacher in the exercise of lawful authority, to restrain or
correct his/her child, ward, apprentice, or scholar;

19 F. Whenever used by a carrier of passengers or his/her
20 authorized agent or servant, or other person assisting them at
21 their request in expelling from a carriage, railway car,
22 vessel, or other vehicle, a passenger who refuses to obey a
23 lawful and reasonable regulation prescribed for the conduct of
24 passengers, if such vehicle has first been stopped and the
25 force used is not more than is necessary to expel the offender
26 with reasonable regard to his/her personal safety;

1 G. Whenever used by any person to prevent a mentally
2 ill, mentally incompetent, or mentally disabled person from
3 committing an act dangerous to himself/herself or another, or
4 in enforcing necessary restraint for the protection of his/her
5 person, or his/her restoration to health, during such period
6 only as is necessary to obtain legal authority for the
7 restraint or custody of his/her person.

8 Section 10. Chapter 12A.04 of the Seattle Municipal Code
9 is amended by adding thereto a new section 12A.04.210, as
10 follows:

11 12A.04.210 Reasonable Use of Force for Detention
12 by Shopkeeper

13 In any criminal action brought by reason of any person
14 having been detained on or in the immediate vicinity of the
15 premises of a mercantile establishment for the purpose of
16 investigation or questioning as to the ownership of any
17 merchandise, it shall be a defense of such action that the
18 person was detained in a reasonable manner and for not more
19 than a reasonable time to permit such investigation or
20 questioning by a peace officer, by the owner of the mercantile
21 establishment, or by the owner's authorized employee or agent,
22 and that such peace officer, owner, employee, or agent had
23 reasonable grounds to believe that the person so detained was
24 committing or attempting to commit theft or shoplifting on
25 such premises of such merchandise. As used in this section,
26 "reasonable grounds" shall include, but not be limited to,
27 knowledge that a person has concealed possession of
28 unpurchased merchandise of a mercantile establishment, and a
"reasonable time" shall mean the time necessary to permit the

(To be used for all Ordinances except Emergency.)

person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

Section 11... This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 18th day of November, 1925, and signed by me in open session in authentication of its passage this 18th day of November, 1925.

W. H. ...
President of the City Council.

Approved by me this 27th day of November, 1925.

Charles ...
Mayor.

Filed by me this 27th day of November, 1925.

Attest: *Jim Hill*
City Comptroller and City Clerk.

(SEAL)

Published

By *Theresa Dunbar*
Deputy Clerk.

THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDING . SEATTLE, WASHINGTON 98104

AREA CODE 206 TELEPHONE 625-2402

DOUGLAS N. JEWETT, CITY ATTORNEY

August 14, 1985

The Honorable Paul Kraabel, Chair
Public Safety Committee
City Council
The City of Seattle

Re: Proposed Amendments to the Traffic
and Criminal Code

Dear Councilmember Kraabel:

We have attached for your consideration a series of proposed amendments to the Traffic and Criminal Codes. One of the two proposed amendments to the Traffic Code is a general housekeeping ordinance correcting internal references contained therein. The second traffic ordinance, if adopted would:

1. Amend the DWI ordinance to comply with recently enacted state law;
2. Amend SMC 11.31.010 and 11.34.010 to clarify and further distinguish infractions and violations;
3. Adopt an amendment imposing duties on the last known driver of a vehicle involved in a traffic accident; and
4. Repeal 11.56.310 to repeal redundant language.

If adopted, the proposed amendments to the criminal code would

1. Repeal SMC 12A.08.110, Unauthorized use of a Motor Vehicle, 12A.08.060, Extortion, and 12A.06.060 Unlawful Imprisonment, since they conflict with state law;
2. Repeal all ordinances relating to gun control, as provided by state law;

The Honorable Paul Kraabel
August 14, 1985
Page two

3. Amend 12A.16.060, Unlawful Interference With a Police Dog to eliminate provisions conflicting with state law;
4. Amend the present Lewd Conduct ordinance to eliminate sections previously declared unconstitutional; and
5. Amend 12A.02.110, to give Municipal Court Judges greater latitude to punish for contempt.

The second proposed amendment to the Criminal Code would adopt recently enacted state legislation concerning domestic violence.

If you have questions regarding any of the above proposed amendments, please contact the undersigned assistant at 625-2050.

Very truly yours,

DOUGLAS N. JEWETT
City Attorney



By
MARILYN F. SHERRON
Assistant

MFS:lp

attachments

cc: Patrick Fitzsimons, Chief
Seattle Police Department
Esther Bauman, Court Administrator
Seattle Municipal Court
Norma Smith, Presiding Judge
Seattle Municipal Court

Affidavit of Publication

STATE OF WASHINGTON KING COUNTY—SS.

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

Ordinance No. 112541

was published on December 4, 1985

S. Blair
Subscribed and sworn to before me on
December 4, 1985

Therese Summers
Notary Public for the State of Washington,
residing in Seattle.

ORDINANCE 107541

AN ORDINANCE relating to the Criminal Code; repealing Sections 12A.02.130 (Proof beyond a reasonable doubt-Affirmative defenses), 12A.04.150 (Intoxication), 12A.04.160 (Mental disease or defect excluding responsibility), and 12A.04.170 (Duress); adding Sections 12A.04.150 (Intoxication), 12A.04.160 (Insanity), 12A.04.170 (Duress), 12A.04.190 (Entrapment), 12A.04.200 (Use of Force) and 12A.04.210 (Reasonable Use of Force for Detention by Shopkeepers).

BE IT ORDNANED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 12A.02.130, Proof beyond a reasonable doubt, of the Seattle Municipal Code (Section 12A.01.130 of Ordinance 102843) is repealed.

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Section 3. Section 12A.04.160, Mental disease or defect, excluding responsibility, of the Seattle Municipal Code (Section 12A.02.170 of Ordinance 102843) is repealed.

Section 4. Section 12A.04.170, Duress, of the Seattle Municipal Code (Section 12A.02.190 of Ordinance 102843) is repealed.

Section 5. Chapter 12A.04 of the Seattle Municipal Code is amended by adding thereto a new Section 12A.04.150, as follows:

12A.04.150 Intoxication

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his/her condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his/her intoxication may be taken into consideration in determining such mental state.

Section 6. Chapter 12A.04 of the Seattle Municipal Code is amended by adding thereto a new section 12A.04.160, as follows:

12A.04.160 Insanity

To establish the defense of insanity, it must be shown that:

A. At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

- 1. He/she was unable to perceive the nature and quality of the act with which he/she is charged; or
2. He/she was unable to tell right from wrong with reference to the particular act charged.

B. The defense of insanity must be established by a preponderance of the evidence.

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- 1. The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he/she or another would be exposed to immediate death or immediate grievous bodily injury; and
2. That such apprehension was reasonable upon the part of the actor; and
3. That the actor would not have participated in the crime except for the duress involved.

B. The defense of duress is not available if the actor intentionally or recklessly places himself/herself in a situation in which it is probable that he/she will be subject to duress.

C. The defense of duress is not established solely by a...

law enforcement officials, or any person acting under their direction, and

2. The actor was lured or induced to commit a crime which the actor had not otherwise intended to commit.

B. The defense of entrapment is not established by a showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime.

Section 9. Chapter 12A.04 of the Seattle Municipal Code is amended by adding thereto a new section 12A.04.200, as follows:

12A.04.200 Use of Force - When Lawful

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

A. Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him/her and acting under his/her direction;

B. Whenever necessarily used by a person arresting one who has committed a felony and delivering him/her to a public officer competent to receive him/her into custody;

C. Whenever used by a party about to be injured, or by another lawfully aiding him/her in preventing or attempting to prevent an offense against his person, or a criminal trespass, or other malicious interference with real or personal property lawfully in his/her possession, in which case the force is not more than is necessary;

D. Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property in the control of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

E. Whenever used in a reasonable and moderate manner by a parent or his/her authorized agent, a guardian, master, or teacher in the exercise of lawful authority, to restrain or correct his/her child, ward, apprentice, or scholar;

F. Whenever used by a carrier of passengers or his/her authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car,

vehicle, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to his/her personal safety;

G. Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to himself/herself or another, or in enforcing necessary restraint for the protection of his/her person, or his/her restoration to health, during such period only as is necessary to obtain legal authority for the restraint or custody of his/her person.

Section 10. Chapter 12A.04 of the Seattle Municipal Code is amended by adding thereto a new section 12A.04.210, as follows:

12A.04.210 Reasonable Use of Force for Detention by Shopkeeper

In any criminal action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by...

2

"reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

Section 11. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 19th day of November, 1935.

and signed by me in open session in authentication of its passage this 19th day of November, 1935. *W. M. ...*
President of the City Council

Approved by me this 27th day of November, 1935. *Charles Royer*
Mayor

Filed by me this 27th day of November, 1935.

Attest: *Tim Hill*
City Comptroller and City Clerk

(REAL)

By: *J. Henry Duncan*
Deputy Clerk

Publication ordered by TIM HILL, Comptroller and City Clerk.
Date of official publication in Daily Journal of Commerce, Seattle, December 4, 1935.

(C-433-73)