



# Seattle City Attorney

Peter S. Holmes

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June 14, 2012

Honorable Sally J. Clark  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Clark:

Enclosed for the City Council's consideration is an ordinance making several changes to Seattle's criminal ordinances to reflect changes made to the corresponding state statutes by the 2012 Legislature. These penalty changes are necessary because the penalty for a crime under our ordinances must be the same as the penalty for a corresponding crime under state statute.

Section 1 increases the maximum punishment for Violation of a Harassment Order from 90 days in jail and a \$1,000 fine to 364 days in jail and a \$5,000 fine and clarifies that violation of such an order is a crime whether the order was issued as a condition of pretrial release or as a condition of the sentence. Section 2 requires a defendant charged with Violation of a Civil Antiharassment Order to appear in person for arraignment so the court can consider imposing conditions of pretrial release. Section 3 authorizes an affirmative defense to a charge of Prostitution that the defendant was the victim of sexual trafficking or promoting prostitution. Section 4 requires that a defendant convicted of first-offense Patronizing a Prostitute complete an education program concerning the negative costs of prostitution. Section 5 increases the Prostitution Prevention and Intervention Account (PPIA) assessment for Patronizing a Prostitute from \$150 to \$1,500, \$2,500 or \$5,000 depending on the number of prior convictions, increases the PPIA for Promoting Prostitution from \$50 to \$1,500, \$2,500 or \$5,000 depending on the number of prior convictions and authorizes the court to reduce, waive or suspend up to 2/3 of this assessment based on the defendant's indigency. The PPIA is retained by the City for prostitution prevention efforts and increased enforcement of commercial sex laws.

Again, because the penalty for violation of our ordinances must be the same as the penalty under state law, these changes are required.

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Thank you for your consideration of this legislation. Should you have questions, please contact Richard Greene at 684-8538.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter S. Holmes", with a long horizontal flourish extending to the right.

Peter S. Holmes  
Seattle City Attorney

CITY OF SEATTLE

ORDINANCE \_\_\_\_\_

COUNCIL BILL \_\_\_\_\_

AN ORDINANCE relating to the City's criminal code; amending and adding various sections and subsections in Chapters 12A.06 and 12A.10 of the Seattle Municipal Code to conform with changes in state law.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subsection C of Section 12A.06.040 of the Seattle Municipal Code is amended as follows:

**12A.06.040 Harassment.**

\* \* \*

C. The court shall determine the necessity for imposing a no-contact order or other conditions of pre-trial release. The Seattle Police Department and Seattle Municipal Court may enforce this section as it relates to orders restricting the defendant's ability to have contact with the victims or others. The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Wilful violation of a court order issued under RCW Chapter 9A.46, this section, or ~~((of an order issued by any court of competent jurisdiction under))~~ an equivalent statute or ordinance, either as a condition of pre-trial release or as a condition of the sentence, is a gross misdemeanor. The written order shall contain the court's directives and shall bear the legend: "Violation of this order is criminal offense under RCW Chapter 9A.46 or SMC Section 12A.06.040 and will subject a violator to arrest."

\* \* \*

1  
2 Section 2. Section 12A.06.190 of the Seattle Municipal Code is amended as follows:

3 **Violation of civil antiharassment protection order.**

4 A. Whenever a civil antiharassment protection order is issued by a court of competent  
5 jurisdiction any respondent or person to be restrained who wilfully disobeys the order shall be guilty of a  
6 gross misdemeanor.

7 B. A defendant arrested for violating any civil antiharassment protection order issued pursuant  
8 to RCW Chapter 10.14 is required to appear in person before a magistrate within one (1) judicial day  
9 after the arrest. A defendant who is charged by citation or complaint with violating any civil  
10 antiharassment protection order issued pursuant to RCW Chapter 10.14 and not arrested shall appear in  
11 court for arraignment in person as soon as practicable, but in no event later than fourteen (14) days after  
12 the next day on which the court is in session following the issuance of the citation or the filing of the  
13 complaint. At the time of the appearance, the court shall determine the necessity of imposing a no-  
14 contact order or no-harassment order and consider the provisions of RCW 9.41.800 or other conditions  
15 of pretrial release. Appearances required pursuant to this section are mandatory and cannot be waived.  
16

17 Section 3. Subsection B of Section 12A.10.020 of the Seattle Municipal Code is amended as  
18 follows:

19 **12A.10.020 Prostitution.**

20 \* \* \*

21 B. It is an affirmative defense in any prosecution under this section that:

22 1. the sexual conduct was engaged in as part of any stage performance, play, or other  
23 entertainment, open to members of the public; or  
24



3. fulfill the terms of a program, if a first-time offender, designated by the court,  
designed to educate offenders about the negative costs of prostitution.

These requirements are ((This requirement is)) in addition to the penalties set forth in  
Section 12A.10.070.

\* \* \*

Section 5. Section 12A.10.070 of the Seattle Municipal Code is amended as follows:

**12A.10.070 Mandatory fee for defendant convicted of or entering into a diversion  
agreement or deferred prosecution for a prostitution-related offense; forfeiture of funds used as  
part of prostitution-related offenses.**

A. 1. In addition to penalties set forth in Section 12A.10.020 ~~((and Section 12A.10.060))~~, a  
person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered  
into a statutory or nonstatutory diversion agreement as a result of an arrest for violating Section  
12A.10.020 ~~((or Section 12A.10.060))~~ shall be assessed a fee of Fifty Dollars (\$50.00).

2. In addition to penalties set forth in Section 12A.10.040, a person who is either convicted or  
given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory  
diversion agreement as a result of an arrest for violating Section 12A.10.040 shall be assessed a fee in  
the amount of One Thousand Five Hundred Dollars (\$1500.00) if the person has no prior convictions,  
deferred sentences, deferred prosecutions or statutory or nonstatutory diversion agreements for this  
offense, Two Thousand Five Hundred Dollars (\$2500.00) if the person has one (1) prior conviction,  
deferred sentence, deferred prosecution or statutory or nonstatutory diversion agreement for this offense  
and Five Thousand Dollars (\$5000.00) if the person has two (2) or more prior convictions, deferred  
sentences, deferred prosecutions or statutory or nonstatutory diversion agreements for this offense ((One  
Hundred Fifty Dollars (\$150.00)))).

1 3. In addition to penalties set forth in Section 12A.10.060, a person who is either convicted or  
2 given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory  
3 diversion agreement as a result of an arrest for violating Section 12A.10.060 shall be assessed a fee in  
4 the amount of One Thousand Five Hundred Dollars (\$1500.00) if the person has no prior convictions,  
5 deferred sentences, deferred prosecutions or statutory or nonstatutory diversion agreements for this  
6 offense, Two Thousand Five Hundred Dollars (\$2500.00) if the person has one (1) prior conviction,  
7 deferred sentence, deferred prosecution or statutory or nonstatutory diversion agreement for this offense  
8 and Five Thousand Dollars (\$5000.00) if the person has two (2) or more prior convictions, deferred  
9 sentences, deferred prosecutions or statutory or nonstatutory diversion agreements for this offense.

10 \* \* \*

11 C. The court shall not reduce, waive, or suspend payment of all or part of the assessed fee in  
12 subsection A of this section unless it finds, on the record, that the offender does not have the ability to  
13 pay the fee, in which case it may reduce the fee by an amount up to two-thirds of the maximum  
14 allowable fee. The court may suspend payment of all or part of the fees required by subsection  
15 ((subsections A and)) B of this section only if the person presents documentary evidence, such as a tax  
16 return, wage receipts or bank statements, showing that the person's annual income before taxes is less  
17 than the most recent United States Department of Health and Human Services poverty guidelines for the  
18 48 contiguous states and the District of Columbia.

19 \* \* \*

20 E. The fee assessed and collected under subsection A of this section shall be collected by the  
21 clerk of the court and remitted and subject to the use and distribution conditions of RCW 9A.88.120(4).  
22 ((Any fee assessed under subsection A of this section shall be collected by the clerk of the court and  
23 distributed each month to the state treasurer for deposit in the prostitution prevention and intervention  
24

1 ~~account under RCW 43.63A.740 for the purpose of funding prostitution prevention and intervention~~  
2 ~~activities.)~~ Any fee assessed under subsection B of this section and the portion of any fine imposed  
3 upon a defendant convicted of a violation of Section 12A.10.010, 12A.10.020, 12A.10.040 or  
4 12A.10.060 that is retained by the City shall be collected by the clerk of the court or the Director of  
5 Probation Services and shall be deposited in the Sex Industry Victims Fund. Monies forfeited under  
6 subsection D of this section shall be deposited in the Vice Enforcement/Money Laundering Forfeiture  
7 Account.

8 \* \* \*

9 Section 6. This ordinance shall take effect and be in force thirty (30) days from and after its  
10 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after  
11 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

12 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2012, and signed by  
13 me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2012.

14  
15 \_\_\_\_\_  
16 President \_\_\_\_\_ of the City Council

17 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2012.

18 \_\_\_\_\_  
19 Michael McGinn, Mayor

20 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2012.

21 \_\_\_\_\_  
22 Monica Martinez Simmons, City Clerk

23 (Seal)  
24

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Law – Criminal Division	Richard Greene 684-8538	

**Legislation Title:** AN ORDINANCE relating to the City’s criminal code; amending and adding various sections and subsections in Chapters 12A.06 and 12A.10 of the Seattle Municipal Code to conform with changes in state law

**Summary of the Legislation:** Amends the City’s criminal code to conform with changes in the corresponding state criminal statutes made by the recent session of the Legislature, increases the classification of Violation of a Harassment Order, requires a defendant charged with Violation of a Civil Anti-Harassment Order to appear in person for arraignment, creates an affirmative defense to the charge of Prostitution, requires a defendant convicted of Patronizing a Prostitute to attend an education class regarding the negative costs of prostitution, increases the Prostitution Prevention and Intervention Account assessment for a defendant convicted of Patronizing a Prostitute or Permitting Prostitution and authorizes Municipal Court to reduce, waive or suspend a portion of that assessment.

**Background:** Many provisions of Seattle’s criminal code are identical to provisions of the state criminal statutes. When the Legislature amends those statutes, our criminal code usually should be amended to ensure uniformity. This ordinance changes provisions of our criminal code to conform with changes made to the corresponding state criminal statutes by the recent session of the Legislature.

This ordinance increases the maximum penalty for Violation of a Harassment Order from 90 days in jail and a \$1,000 fine to 364 days in jail and a \$5,000 fine. It requires that a defendant charged with Violation of a Civil Anti-Harassment Order appear in person for arraignment so conditions of release can be imposed. It creates an affirmative defense to a charge of Prostitution that the defendant was the victim of sexual trafficking or promoting prostitution. It requires a defendant convicted of a first-offense Patronizing a Prostitute to complete an education program regarding the negative costs of prostitution. It increases the Prostitution Prevention and Intervention Account assessment for a defendant convicted of Patronizing a Prostitute from \$150 to \$1,500, \$2,500 or \$5,000, depending on the number of prior convictions. It increases the Prostitution Prevention and Intervention Account assessment for a defendant convicted of Permitting Prostitution from \$50 to \$1,500, \$2,500 or \$5,000, depending on the number of prior convictions. It authorizes Municipal Court to reduce, waive or suspend up to two-thirds of this assessment.

X  **This legislation does not have any financial implications.**

**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**

No.

- b) **What is the financial cost of not implementing the legislation?** None.
- c) **Does this legislation affect any departments besides the originating department?**  
No.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None seem apparent.
- e) **Is a public hearing required for this legislation?** No.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No.
- g) **Does this legislation affect a piece of property?** No.
- h) **Other Issues:**

**List attachments to the fiscal note below:**