Seattle Office of Police Accountability

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Harassment: RCW vs. SMC

Recently, the City of Seattle passed a law repealing various crimes from the SMC, including harassment, and adopting several RCWs, including one on harassment. A recent OPA case, however, made it clear that the RCW is not a replica of the SMC, and is, in fact, substantially more restrictive.

The old SMC 12A.06.040 stated that "A person is guilty of harassment if…With the intent to annoy or alarm another person he/she repeatedly uses fighting words or obscene language, thereby creating a substantial risk of assault…" This provision is absent from RCW 9A.46.020, which defines harassment as knowingly threatening to:

- harm someone;
- cause physical damage to the property of another person;
- subject a person to physical restraint or confinement; or
- maliciously to do any other act intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety.

The RCW also says it must be established that "the person by words or conduct places the person threatened in reasonable fear that the threat will be carried out."

In 2019OPA-0381, officers responded to a disturbance call at a bar. The subject, who was intoxicated, was refusing to leave the vicinity and making profane and derogatory statements towards bar patrons. After his continued refusal to comply, officers arrested him for harassment. Based on the SMC, which was in effect at the time, the officers had probable cause to believe that if the subject was allowed to continue to use obscene language, a physical conflict could result between him and the bar patrons, thus creating a substantial risk of physical assault. As such, the arrest was appropriate under SMC 12.06.040(A)(1). However, if applying the RCW, there was no evidence that the subject threatened to physically harm the bar patrons or their property and that the bar patrons were actually in reasonable fear that the threat would be carried out.

Please be cognizant of the limited scope of RCW 9A.46.020 and, specifically, that officers may no longer have probable cause to arrest in situations where an assault could result from the repeated use of obscene language but there is no actual threat of harm or a reasonable fear that such harm will occur.

Use of Force and Non-Emergent Detention Orders

A South Precinct officer asked his supervisor for guidance regarding "what level of force is acceptable per policy when enforcing" a Non-Emergent Detention Order. The supervisor forwarded this question to CRU and OPA.

CRU explained that "if the DCRs have a Court Order and the officers are in a public space or lawfully in a protected space, then the Legal Authority/Lawful Purpose component is covered." CRU further stated that there is no specific caselaw or policy concerning what level of force is appropriate when effectuating a Non-Emergent Detention Order and that the reasonable, necessary, and proportional elements apply.

OPA agrees with CRU. We apply the reasonable, necessary, and proportional standard when evaluating force used in the context of Non-Emergent Detention Orders. As such, we do not distinguish between force used in the context of Non-Emergent Detention Orders and other force scenarios. Moreover, if the force was exercised consistent with policy and not in a manner that was otherwise prohibited, it is OPA's opinion that officers will meet the "exemption from liability" provisions set forth in RCW 71.05.120.

For more discussion on Non-Emergent Detention Orders, see Volume 20 of the Case & Policy Update.