

CIRCULAR



DISTRICT OF COLUMBIA

Title
Disorderly Conduct
Topic/Number
CIR-11-01
Effective Date
January 21, 2011
Expiration Date:
January 21, 2012

I. PURPOSE

The purpose of this circular is to inform members of the enactment of the *Disorderly Conduct Amendment Act of 2010*, which revises several of the District's disorderly conduct laws.

- A. The changes to the disorderly conduct laws become effective on February 1, 2011, at 12:01 a.m.
- B. All members are required to:
 - 1. Review this circular;
 - 2. Affirm review of the circular in the SiTELMs module, "Circular 11-01 Disorderly Conduct Certification;" and
 - 3. Take and pass the SiTELMs "Disorderly Conduct" training module.
- C. **As of February 1, 2011, no member of the Metropolitan Police Department shall make or approve an arrest for disorderly conduct without first having completed the requirements set forth in Part I.B.1-2 of this circular. In addition, all members shall complete the requirement in Part I.B.3 before February 8, 2011.**

Please note that while this circular will expire on January 21, 2012, the changes made to the District's disorderly conduct laws as described in this circular are permanent until such time as the law is amended.

II. INTRODUCTION

It is important for law enforcement to address disorderly incidents in the community with a measured and thoughtful response. Disorderly conduct is a challenging issue for communities, individuals, and police. Laws on disorderly conduct or disturbing the peace often apply in situations where community and individual interests come into conflict. During these situations, police are often called upon to resolve the conflict – either through mediation, de-escalation, or, if necessary, arrest.

Although the new legislation modernizes the District's disorderly conduct laws – parts of

which date back to 1892 – there is no quick legislative solution to ease fundamental tensions between community and individual rights. For instance, community members may want to resolve disorder issues as quickly as possible, potentially with an arrest to take the offender out of the neighborhood. However, police are sworn to protect individual rights, and must carefully balance any competing interests. It is important for officers to determine whether an individual is actually breaking the law, or is just annoying others.

In particular, it is critical that members not base any disorderly conduct arrests on an individual's conduct or language toward an officer. Disorderly conduct arrests based merely on a person's language, gestures, or attitude toward law enforcement are not lawful arrests.

Another challenge with disorderly conduct is that individuals may not believe that their behavior is violating any law. So in addition to whatever disorder they are already causing, they may be resistant to or defensive about police interaction. An officer should attempt to resolve the situation with other means before making an arrest. Education and negotiation are strong tools for addressing disorder issues.

This circular and the SiTELMS Disorderly Conduct training module are the first steps in training on these new laws. The circular provides the exact language of the new law, as well as key points for enforcement. The SiTELMS Disorderly Conduct training module provides more detailed enforcement scenarios. The 2011 Professional Development Training includes a 90-minute session focused on key principles and scenarios for the disorderly conduct laws.

III. ROLES AND RESPONSIBILITIES

A. Members

1. As of midnight, February 1, 2011, no member shall make an arrest for disorderly conduct without having:
 - a. Reviewed this circular; and
 - b. Affirmed review of the circular in the SiTELMS module, "Circular 11-01 Disorderly Conduct Certification."
2. As of midnight, February 8, 2011, no member shall make an arrest for disorderly conduct without having taken and passed the SiTELMS module, "Disorderly Conduct." A teletype will be issued as soon as this is available online.
3. Members making arrests under disorderly conduct laws:
 - a. Are reminded that they are not probable cause misdemeanors. Officers must witness the offense in order to make an arrest, or seek an arrest warrant.
 - b. Shall provide a clear and detailed narrative to support a specific disorderly conduct charge.

NOTE: There is no longer an arrest and booking code to support a general or “other” disorderly conduct charge. The arrestee must be booked using a specific arrest charge.

4. Members are encouraged to submit questions or detailed scenarios to disorderly.questions@dc.gov.

NOTE: The answers to frequently asked questions will be provided to members, and used in follow-up training throughout 2011.

B. Supervisors

1. As of midnight, February 1, 2011, no supervisor shall sign off on an arrest for disorderly conduct without having:
 - a. Reviewed this circular;
 - b. Affirmed review of the circular in the SiTELMS module, “Circular 11-01 Disorderly Conduct Certification;” and
 - c. Ensured that the arresting member has also complied with Parts III.A.1 and III.A.3 of this circular.
2. As of midnight, February 8, 2011, no supervisor shall sign off on an arrest for disorderly conduct without having:
 - a. Taken and passed the SiTELMS module, “Disorderly Conduct;” and
 - b. Ensured that the arresting member has also complied with Parts III.A.1-3 of this circular.

IV. KEY CHANGES

Although there are many changes in the law, the two most significant changes are as follows:

- A. Abusive language or gestures directed at an officer is not a crime. The new statute specifically excludes offensive or abusive language or gestures directed at a law enforcement officer acting in an official capacity from the criminal offense. Arrests for disorderly conduct based on language or gestures directed solely at an officer are not lawful arrests.
- B. **“Loud and Boisterous” is no longer a valid charge.** The “Loud and Boisterous” charge has been repealed. With certain specific exceptions that are discussed below, merely being loud is not a criminal offense.

V. REVISED DISORDERLY CONDUCT LAWS

<u>Charge</u>	<u>Page</u>
Blocking Passage.....	4
Lewd, Indecent or Obscene Acts	5
Disturbing Religious Congregation (Repealed).....	5
Disorderly Conduct: Causing Unreasonable Fear.....	5

Disorderly Conduct: Inciting Violence6
 Disorderly Conduct: Abusive Language or Gestures7
 Disrupting a Gathering or Congregation8
 Disrupting use of a Public Conveyance8
 Noise at Night.....9
 Urinating or Defecating in Public.....9
 Peeping Tom.....10
 Jostling.....10
 Illegal Gambling10
 Reference Table.....11

A)	Blocking Passage
Prohibits	It is unlawful for a person, alone or in concert with others, to crowd, obstruct, or incommode the use of any street, avenue, alley, road, highway, or sidewalk, or the entrance of any public or private building or enclosure or the use of or passage through any public conveyance, and to continue or resume the crowding, obstructing, or incommoding after being instructed by a law enforcement officer to cease the crowding, obstructing, or incommoding.
Need to Know	<ul style="list-style-type: none"> o Three or more people are no longer required. o Members must give a warning, which remains valid for a reasonable period of time. o Officers may not make an arrest for “Failure to move on.” Violators need only stop the prohibited conduct (i.e., stop crowding, obstructing, or incommoding). They do not necessarily need to leave the location in order to comply with an order to cease the crowding, obstructing, or incommoding.
Notes for PD163 Narrative	<ul style="list-style-type: none"> o What location is being crowded, obstructed or incommoded? o How are the defendant(s) crowding, obstructing or incommoding? o What specific warning was given? Who gave it and at what time? How many warnings were given? o Did the defendant(s) cease and subsequently resume crowding, obstructing or incommoding? How much time elapsed before the defendant(s) resumed crowding, obstructing or incommoding? o How much time was given between the warning(s) and arrest?
Reference	D.C. Official Code § 22-1307

B)	<i>Lewd, Indecent or Obscene Acts</i>
Prohibits	It is unlawful for a person, in public, to make an obscene or indecent exposure of his or her genitalia or anus, to engage in masturbation, or to engage in a sexual act. It is unlawful for a person to make an obscene or indecent sexual proposal to a minor.
Need to Know	<ul style="list-style-type: none"> ○ It is not only illegal for a person to expose his or her genitalia, but their anus as well. However, merely being naked is not against the law. ○ The law applies to sexual acts as defined in D.C. Official Code § 22-3001(8): <ul style="list-style-type: none"> (A) The penetration, however slight, of the anus or vulva of another by a penis; (B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (C) The penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. (D) The emission of semen is not required for the purposes of subparagraphs (A)-(C) of this paragraph. ○ Obscene or indecent sexual proposals to a minor are prohibited regardless of whether they are in public. ○ For this offense, there is a fairly broad definition of public exposure that includes deliberate acts on private space that can be easily viewed on public space.
Notes for PD163 Narrative	<ul style="list-style-type: none"> ○ If the act occurs on private space, how was it deliberate and how was it viewed on public space? ○ What did the officer observe? ○ Clearly establish the age of the minor. ○ Identify the exact words used that constituted an indecent proposal to a minor.
Reference	D.C. Official Code § 22-1312
C)	<i>Disturbing Religious Congregation (Repealed)</i>
Need to Know	This section of the DC Code has been repealed, and the offense has been incorporated into § 22-1321(b) (see below).
Reference	D.C. Official Code § 22-1314 (Repealed)
D)	<i>Disorderly Conduct: Causing Unreasonable Fear</i>
Prohibits	In any place open to the general public, and in the communal areas of multi-unit housing, it is unlawful for a person to intentionally or recklessly act in such a manner as to cause another person to be in reasonable fear that a person or property in a person's immediate possession is likely to be harmed or taken.
Need to Know	<ul style="list-style-type: none"> ○ This includes behavior that may be menacing or intimidating, but stops short of overt threats.
Notes for PD163 Narrative	<ul style="list-style-type: none"> ○ What specific behavior did the defendant engage in? ○ How was it intentional or reckless? ○ Describe how the behavior caused fear. A detailed statement from a victim would be valuable in sustaining this charge.
Reference	D.C. Official Code § 22-1321(a)(1)

E)	<i>Disorderly Conduct: Inciting Violence</i>
Prohibits	In any place open to the general public, and in the communal areas of multi-unit housing, it is unlawful for a person to incite or provoke violence where there is a likelihood that such violence will ensue.
Need to Know	<ul style="list-style-type: none"> ○ This addresses situations in which a person(s) is trying to get others to engage in violent behavior under circumstances where violence is likely to happen. ○ Although officers acting in an official capacity cannot be the target of the charge “Disorderly Conduct: Abusive Language or Gestures” (see below), it is possible that someone can be charged with inciting violence against a police officer, if the facts support that violence was likely to ensue. ○ This differs from “Rioting or Inciting to Riot” because a rioting charge requires five or more people, as well as injury or property damage.
Notes for PD163 Narrative	<ul style="list-style-type: none"> ○ What specific behavior did the defendant engage in? What specific language was used? ○ Who did the defendant try to incite to violence, either directly or constructively? ○ Who or what was the intended target of the violence? ○ What was the reaction of the by-standers to the defendant’s actions / speech? How does that demonstrate that violence was likely to ensue?
Reference	D.C. Official Code § 22-1321(a)(2)

<p>F) <i>Disorderly Conduct: Abusive Language or Gestures</i></p> <p>Prohibits</p> <p>Need to Know</p> <p>Notes for PD163 Narrative</p> <p>Reference</p>	<p>In any place open to the general public, and in the communal areas of multi-unit housing, it is unlawful for a person to direct abusive or offensive language or gestures at another person (other than a law enforcement officer while acting in his or her official capacity) in a manner likely to provoke immediate physical retaliation or violence by that person or another person.</p> <ul style="list-style-type: none"> ○ Officers are prohibited from arresting someone for disorderly conduct based on their language and gestures towards any officer acting in an official capacity. Courts have repeatedly ruled that officers are expected to be able to tolerate verbal abuse. Reacting to verbal abuse is not only poor policing that diminishes law enforcement's legitimacy and effectiveness in the community, but it also leads to unlawful arrests and to possible discipline or criminal prosecution of the arresting officer. ○ In situations in which the verbal abuse is not directed at an officer but at a civilian, the Abusive Language charge can potentially help an officer to prevent imminent violence. To meet the elements of this charge, the defendant's conduct must be likely to provoke a violent response, but the situation doesn't need to result in actual violence. This statute encompasses when a person deliberately tries to provoke a violent response from another person by using "fighting words." <ul style="list-style-type: none"> ○ What specific behavior did the defendant engage in? What did he/she say? Quote the defendant verbatim. ○ To whom was the language or gesture directed? ○ What was the nature of the exchange between the parties? ○ What factual basis exists to believe others were likely to respond violently? <p>D.C. Official Code § 22-1321(a)(3)</p>
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<p>G) <i>Disrupting a Gathering or Congregation</i></p> <p>Prohibits</p> <p>Need to Know</p> <p>Notes for PD163 Narrative</p> <p>Reference</p>	<p>It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct, with the intent and effect of impeding or disrupting the orderly conduct of a lawful public gathering, or of a congregation of people engaged in any religious service or in worship, a funeral, or similar proceeding.</p> <ul style="list-style-type: none"> ○ The event being disrupted must be a lawful public gathering, or a congregation engaged in religious service or worship, or a funeral, or similar proceeding. Some examples might include a public memorial service or government meeting. A funeral or memorial service would not need to be religious to be covered. ○ The person must have both the intent and the effect of impeding or disrupting the event. <ul style="list-style-type: none"> ● If a person intended to impede or disrupt an event but no one noticed him or her, then it is not a violation of this law. ● Conversely, if a person inadvertently disrupts an event, it is not a violation. ○ The person's conduct must be loud, threatening, abusive, or disruptive. Merely standing quietly near an event with a sign with non-threatening or abusive language would not be a violation. <ul style="list-style-type: none"> ○ Describe the gathering in sufficient detail to convey that it was a covered event. ○ What specific behavior did the defendant engage in? What specific language was used? ○ How was the gathering disrupted and/or impeded? <p>D.C. Official Code § 22-1321(b)</p>
<p>H) <i>Disrupting use of a Public Conveyance</i></p> <p>Prohibits</p> <p>Need to Know</p> <p>Notes for PD163 Narrative</p> <p>Reference</p>	<p>It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct, which unreasonably impedes, disrupts, or disturbs the lawful use of a public conveyance by one or more other persons.</p> <ul style="list-style-type: none"> ○ The people affected by the conduct can be passengers or operators. ○ Public conveyances may include, but are not limited to, buses, trains, train stations, taxis, and pedi-cabs. <ul style="list-style-type: none"> ○ What was the public conveyance? ○ What specific behavior did the defendant engage in? What specific language was used? ○ How did that behavior disrupt, impede, or disturb the use of the public conveyance? ○ Who was affected by the behavior (i.e., passengers, drivers, other employees)? <p>D.C. Official Code § 22-1321(c)</p>

I)	Noise at Night
Prohibits	It is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences.
Need to Know	<ul style="list-style-type: none"> ○ The content of speech, music or other communications is not relevant. This law addresses the volume of the conduct, not its content or meaning. ○ The noise must occur between 10:00 p.m. and 7:00 a.m. You should confirm the time with the dispatcher when making an arrest under this provision. ○ The noise must be likely to annoy or disturb one or more persons in their residences, not offices, stores, cars, etc. However, it is not required that the noise was heard by a person in a home, only that it was likely to be heard. ○ The noise does not have to occur on public space. The noise can occur anywhere it is likely to annoy or disturb people in their residences, including in other people's homes. ○ When a noise complaint involves a business that is regulated through the city, such as a bar, restaurant or store, the first step would be to refer it to the regulatory agency for that business. An arrest shall only be considered after efforts have been made to resolve the complaint through the other regulatory agencies, and the District Commander and possibly MPD General Counsel have been consulted.
Notes for PD163 Narrative	<ul style="list-style-type: none"> ○ What was the defendant doing that was causing the noise? ○ How did the officer confirm that the offense occurred between 10:00 p.m. and 7:00 a.m.? ○ Where is/are the dwelling(s) located in relationship to location of the offense? ○ If no complaints were received about the noise, how did the officer determine that the noise could likely be heard from the dwellings? Was anything done to confirm this? For instance, could the officer hear the noise from the other end of the block?
Reference	D.C. Official Code § 22-1321(d)
J)	Urinating or Defecating in Public
Prohibits	It is unlawful for a person to urinate or defecate in public, other than in a urinal or toilet.
Need to Know	<ul style="list-style-type: none"> ○ Urinating in public used to be charged under disorderly conduct because of judicial decisions. Urinating in public – and defecating in public – are now explicitly prohibited under the law. ○ As with all of these disorderly offenses, this is not a probable cause misdemeanor. An officer must see the offense occur. ○ This includes urinating or defecating on private space within public view.
Notes for PD163 Narrative	<ul style="list-style-type: none"> ○ Was the defendant seen urinating or defecating? ○ Was it in public? What location did it occur in? ○ If the act occurs on private space, how was it viewed on public space?
Reference	D.C. Official Code § 22-1321(e)

<p>K) <i>Peeping Tom</i></p> <p>Prohibits</p> <p>Need to Know</p> <p>Notes for PD163 Narrative</p> <p>Reference</p>	<p>It is unlawful for a person to stealthily look into a window or other opening of a dwelling...under circumstances in which an occupant would have a reasonable expectation of privacy. It is not necessary that the dwelling be occupied at the time the person looks into the window or other opening.</p> <ul style="list-style-type: none"> o The new law includes a specific Peeping Tom provision, which had previously been charged under disorderly conduct through judicial decisions. o The law applies to dwellings as defined in D.C. Official Code § 6-101.07, meaning: “any building or structure used or designed to be used in whole or in part as a living or a sleeping place by 1 or more human beings.” o The reason a person looks into the dwelling is not an element of this offense. o The dwelling does not need to be occupied. <ul style="list-style-type: none"> o How was the suspect’s manner of looking in the window or other opening stealthy? For instance, was the suspect standing to the side of a window trying to peer in without being seen? o Would a person in the dwelling have a reasonable expectation of privacy? For example, someone standing in an open front doorway facing the street probably couldn’t have a reasonable expectation of privacy. <p>D.C. Official Code § 22-1321(f)</p>
<p>L) <i>Jostling</i></p> <p>Prohibits</p> <p>Need to Know</p> <p>Reference</p>	<p>It is unlawful, under circumstances whereby a breach of the peace may be occasioned, to interfere with any person in any public place by jostling against the person, unnecessarily crowding the person, or placing a hand in the proximity of the person’s handbag, pocketbook, or wallet.</p> <p>The only change to the jostling offense is that it has been expanded to include a person placing his or hand in the proximity of someone’s WALLET. Before, it only applied to a handbag or pocketbook.</p> <p>D.C. Official Code § 22-1321(g)</p>
<p>M) <i>Illegal Gambling</i></p> <p>Prohibits</p> <p>Need to Know</p> <p>Reference</p>	<p>It shall be unlawful in the District to participate in any game of chance for money or property with dice, cards, or any gambling table or other gambling device adopted, devised, and designed for the purpose of playing any game of chance for money or property upon any public property or highway, or upon any vacant or unoccupied property that is so near to a public highway that it is seen or heard from the highway.</p> <p>This is what is commonly referred to as “Disorderly, Craps.” This offense was not revised in the new legislation, however, because calling it disorderly conduct has led to confusion and needless challenges in Court, the Office of the Attorney General (OAG) has asked that MPD clarify the name of the offense.</p> <p>DCMR 19-1309.1</p>

Reference Table

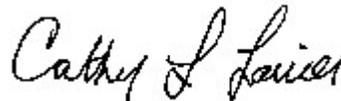
The table below includes codes for Arrest and Booking, and citations to the D.C. Official Code or District of Columbia Municipal Regulations (DCMR) for arrests often referred to as “Disorderly Conduct.” Not all of these offenses have been revised in the new legislation.

Incident Type	Arrest & Booking	DC Code / DCMR
Peeping Tom	1709	§ 22-1321(f)
Lewd, Indecent, or Obscene Acts	1733	§ 22-1312
Disorderly (Jostling)	2400	§ 22-1321(g)
Illegal Gambling ^a	2409	DCMR 19-1309.1
Drinking in Public ^b	2410	§ 25-1001
Possession of an Open Container of Alcohol (POCA) ^b	2411	§ 25-1001
Urinating or Defecating in Public	2414	§ 22-1321(e)
Disorderly Conduct in Public Building ^c	2430	§ 22-3311
Affrays ^b	2431	§ 22-1301
Panhandling ^b	2437	§ 22-2300 et seq
Blocking Passage	2444	§ 22-1307
Disorderly, Causing Unreasonable Fear	2445	§ 22-1321(a)(1)
Disorderly, Inciting Violence	2446	§ 22-1321(a)(2)
Disorderly, Abusive Language or Gestures	2447	§ 22-1321(a)(3)
Disorderly, Disrupting Gathering or Congregation	2448	§ 22-1321(b)
Disorderly, Disrupting Use of Public Conveyance	2449	§ 22-1321(c)
Disorderly, Noise at Night	2450	§ 22-1321(d)

^a Formerly known as “Disorderly, Craps.” No change to law, just a clarification of the name.

^b No change to the law.

^c No change to the law. Note, this is different from “Disrupting a Gathering or Congregation,” as it only applies to disorderly conduct in a building or on the property belonging to the United States.



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CLL:PH:MOC:KDO