



**LEGAL BULLETIN #2001-01
OFFICE OF LEGAL AFFAIRS**

DISORDERLY CONDUCT



Legal Flag: In a charge of Disorderly Conduct where there is an allegation of a Breach of the Peace, the police officer's peace is not relevant. There must be a direct correlation between the alleged conduct and a disturbance of the public peace.

The purpose of this Bulletin is to update officers and supervisors on the offense of Disorderly Conduct where a breach of the public peace is alleged. Over time, Illinois courts have interpreted these statutes and have usually reached the conclusion that a breach of the public peace occurs when a particular course of conduct has a disturbing effect on the general public and not merely the police officer making the arrest.

In general, the State offense of Disorderly Conduct (720 ILCS 5/26-1(a)) and the Chicago Municipal Code violation of Disorderly Conduct (8-4-010 a through e) have two elements that must be satisfied before a charge can be successfully prosecuted:

- (1) Knowingly does any **act** in such an **unreasonable** manner as to alarm or disturb another and
- (2) To provoke a **breach of the peace**.

The difficulty for an officer in using either of these statutes lies in the Courts' interpretation of the phrases **act**, **unreasonable** and **breach of the peace**.

Unfortunately, unlike most criminal or quasi-criminal offenses, Disorderly Conduct does not have a precise definition and the courts, both Federal and State have issued rulings, over the years, that can lead to confusion.

There are some factors, however, that the courts have consistently agreed upon:

- (1) There must a definite act or specific course of conduct
- (2) That act or course of conduct must be unreasonable in the eyes of the court
- (3) There must be a relationship between the alleged conduct and the public order or the right of others not to be molested or harassed.

Acts that the courts have rarely found to be unreasonable include **swearing at or insulting a police officer, obscene gestures, or arguing with a police officer, even if done in a loud voice that causes on-lookers to gather**. In general, words do not constitute the type of act required by the courts. In addition, when a police officer appears in the complaint to have been the only person's peace that was disturbed, the courts have found that disorderly conduct was not the most appropriate charge because an officer's peace is not relevant. What is important is how the offender's conduct impacted upon the public peace. **For this reason, it is important to have a civilian complainant, or at the very least, for the officer to include in the complaint civilian witnesses that could provide corroborative evidence of the offender's conduct .**

There have been a few instances where, although the charge was dismissed at the State

level, the officers were able to prevail in a Federal court civil suit where they had signed a complaint. For example, in Lester v. City of Chicago (1987) two officers arrested a woman inside a police station for the offense of disorderly conduct. The testimony at trial indicated that her loud yelling, screaming, pushing of other civilians and general combative behavior had reached the level where the desk personnel were unable to conduct any of their normal business activities. The court commented that sufficient evidence existed for a jury to have found that the officers had probable cause to arrest the woman for disorderly conduct.

In contrast, in the 1967 case of Landry v. Daley, the defendant was arrested after he had attempted to obtain a seat in City Hall Chambers to hear the voting on a petition being presented there. When the officer told him on several occasions that there were no seats available and asked him to leave, the defendant refused. The testimony of the officer was that he arrested the defendant because he concluded that the defendant's cumulative conduct that morning demonstrated an intent to be disruptive. However, there was no corroborative evidence that the defendant's conduct had any disturbing effect upon anyone else present that day. The court found that the officer's assumption that there was "an intent to be disruptive" was insufficient to show a breach of the peace.

In Cook County, State judges routinely tend to dismiss Disorderly Conduct cases, regardless of the underlying facts, where the officer is the complainant and there does not appear to have been any act that caused a breach of the peace. Unfortunately, this can have repercussions for both the City and the officers later if the defendant files a complaint or civil suit.

The Department has advised Watch Commanders to read the officers' complaints carefully to make sure that the activity of the offender is accurately stated, that the activity is

an actual violation and that the offender is then charged appropriately.

In those cases where the officer's appearance is required in court, the officer should arrive early enough to make his/her presence known to the prosecutor. In some cases, it may be possible for the prosecutor to obtain a stipulation that the defendant committed the offending conduct in exchange for the dismissal. The officer should check with the prosecutor to see if that would be appropriate in his/her case.

By carefully analyzing a situation on the street, a police officer will probably be able to use a number of alternative statutes. In some instances, however, the officer may simply be unable to make an arrest because either there is no civilian willing to sign a complaint or the subject's actions are not against the law.

Some alternative statutes that may be applicable instead of Disorderly Conduct are listed below:

- (1) Aggravated Assault - 720 ILCS 5/12-2
- (2) Assault - 720 ILCS 5/12-1
- (3) Casting Refuse & Liquids - Mun. Code 10-8-48
- (4) Obstructing Person on Highway - 625 ILCS 5/11-1416
- (5) Obstruction of Traffic - Mun. Code 9-40-130
- (6) Reckless Conduct - 720 ILCS 5/12-5
- (7) Resisting or Obstructing a Police Officer - 720 ILCS 5/31-1
- (8) Soliciting Unlawful Business - Mun. Code 10-8-515
- (9) Throwing Objects on Athletic Fields - Mun. Code- 8-4-190

This is not an exhaustive list of possible alternative charges. Once the officer has determined that an actual offense has been committed, a careful reading of both the Illinois Criminal Statutes and the Chicago Municipal Code should reveal an appropriate charge.

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