



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
POLICE COMPLAINTS BOARD  
OFFICE OF POLICE COMPLAINTS**

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**PCB POLICY REPORT #17-3:  
BLOCKING PASSAGE**

**Summary of Issue:**

Over the past several years, investigators with the Office of Police Complaints (OPC) have noticed a pattern in receiving complaints alleging harassment by Metropolitan Police Department (MPD) officers for unlawfully issuing citations or move along orders for “Blocking Passage.” In reviewing complaints made to OPC since the 2013 passage of the District’s Blocking Passage statute, the Police Complaints Board (PCB) identified important issues regarding police enforcement of the law. This report further examines those issues.<sup>1</sup>

**Case Examples:**

It is illustrative to look at specific complaints that have been brought to OPC to see how the blocking passage statute is used in certain circumstances to harass people in the District.<sup>2</sup>

One example happened when the complainant left the Congress Heights metro station and walked towards her car where she met up with her children. The complainant and her children were standing on the sidewalk on 13<sup>th</sup> Street, S.E., near Alabama Avenue, when the subject

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<sup>1</sup> The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

<sup>2</sup> Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as “words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity.”

The regulations governing OPC define harassment as “[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs. tit. 6A, § 2199.1.

officer yelled at them to “Get off the sidewalk!” twice, and then said, “I’m going to leave and come back, if you’re still over there, it’ll be a problem.” The subject officer then left, returned, and continued yelling, “I said, get off the sidewalk!” As the complainant and her children walked away, the subject officer followed them, “yelling” at them as they walked down the street.

The OPC conducted a complete investigation of the complaint, and issued a Report of Investigation (ROI) finding that the officer improperly harassed the complainant when he repeatedly instructed the complainant and her children to “[g]et off the sidewalk” and then followed them down the street, among other allegations in the original complaint. This finding was partially based on statements from the subject and witness officer, who said that in general, they approach people who are standing still on the sidewalk in order to warn or cite them for blocking passage, regardless of the number of persons and regardless of whether they are presenting an obstacle to pedestrian traffic. The subject officer also stated that he had made “numerous” arrests for blocking passage. The allegation of harassment was sustained in a merits determination by a Complaint Examiner, finding that there was no evidence that the complainant had actually been blocking passage, when in fact she was merely standing on the sidewalk talking to her children.<sup>3</sup>

In another case, an MPD Officer observed two complainants on the sidewalk in front of the home where they resided. One complainant was holding onto the fence that surrounded his home, and the other complainant was leaning against his car parked on the street in front of his home. The subject officer used the loudspeaker of his MPD vehicle to tell the complainants to leave the premises. The complainants separately shouted back that they lived there. The subject officer then exited his vehicle and told the complainants to move along and that they were blocking passage. The complainants refused, and the subject officer issued them both separate 61D citations.<sup>4</sup> When the complainant asked why they were receiving citations the subject officer said “I can do what I want and write what I want on the ticket.”

The OPC also conducted a complete investigation of this complaint, and issued a ROI finding that the officer improperly harassed the complainants when he ordered them to “move along” and by unlawfully issuing 61D citations for “blocking passage.” This finding was partially based on statements by the complainants and the subject officer, concluding that subject officer issued the 61D citation without cause. The allegation of harassment was sustained in a merits determination by a Complaint Examiner, finding that there was no evidence that the complainants were blocking or obstructing the sidewalk outside of their home at the time of the incident. To the contrary, the fact that one complainant was sitting on a bike, holding onto the

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<sup>3</sup> See OPC Case No. 14-0176, Merits Determination

<sup>4</sup> The PD Form 61D (Violation Citation) may be issued for the misdemeanor offenses under the jurisdiction of the Superior Court of the District of Columbia, and prosecuted by the Office of the Attorney General (OAG) for which collateral may be accepted by the Department. In lieu of taking the violator into custody, the member can issue a PD 61D violation citation. See SO-05-04 available at [https://go.mpdconline.com/GO/SOP\\_05\\_02.pdf](https://go.mpdconline.com/GO/SOP_05_02.pdf).

fence in front of his home, and that the other complainant was leaning against a car parked in the road, suggests that there was a wide berth between the two men, more than sufficient for passage, especially at a late hour (11 p.m.) when sidewalk traffic in a residential neighborhood presumably would not be voluminous.<sup>5</sup>

These complaints merely exemplify the issues of harassment that can come with enforcement of the blocking passage statute that cause concern for the PCB.

### **Applicable Directive or Law:**

Section 22-1307 of the DC Code is the District's Blocking Passage statute. This law gives MPD officers the authority to prevent crowding, obstructing, or incommoding of public spaces. According to this statute, which was effective June 11, 2013, it is unlawful for one or more persons to crowd, obstruct, or incommode "(A) the use of any street, avenue, alley, road, highway, or sidewalk; (B) the entrance of any public or private building or enclosure; (C) the use of or passage through any public building or public conveyance; or (D) the passage through or within any park or reservation."<sup>6</sup> MPD officers are required to issue a move along order instructing any person who violates the above statute to cease doing so prior to issuing a citation.<sup>7</sup> The law does not require proof that the person engaging in the activity actually "breached the peace." *Duffee v. D.C.*, 93 A.3d 1273, 1275 (D.C. 2014). This statute is strikingly similar to the loitering and vagrancy laws in other jurisdictions.<sup>8</sup>

### **Policy Concerns:**

The members of the community making complaints regarding blocking passage- move along orders often indicated that they felt unlawfully harassed. The PCB is concerned that the unlawful use of the statute is contributing to the perception that the law is being used to harass certain minority segments of our community. Since the passage of the law in 2013, OPC has received 14

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<sup>5</sup> See OPC Case No. 14-0094, Merits Determination

<sup>6</sup> DC Code § 22-1307 (2013) [hereinafter Blocking Passage statute].

<sup>7</sup> *Id.*

<sup>8</sup> See e.g. Del. Code Ann. tit. 11, § 1321 ("A person is guilty of loitering when: (1) The person fails or refuses to move on when lawfully ordered to do so by any police officer; or(2) The person stands, sits idling or loiters upon any pavement, sidewalk or crosswalk, or stands or sits in a group or congregates with others on any pavement, sidewalk, crosswalk or doorstep, in any street or way open to the public in this State so as to obstruct or hinder the free and convenient passage of persons walking, riding or driving over or along such pavement, walk, street or way, and fails to make way, remove or pass, after reasonable request from any person."); Mich. Admin. Code R. 299.321 ("A person shall not in a state park or recreation area . . . loiter, sit, or lie upon walks, passages, steps, or porches thereby obstructing the free passage of others."); Ga. Code Ann. § 16-11-36 ("A person commits the offense of loitering or prowling when he is in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity."); Va. Code Ann. § 46.2-930 (2011) ("Pedestrians shall not loiter on any bridge or in any portion of the right-of-way of any highway where loitering has been determined by the Commissioner of Highways or the local governing body of any county, city, or town to present a public safety hazard and on which the Commissioner of Highways or the governing body of any county, city, or town has posted signs prohibiting such action.").

complaints alleging that officers have improperly issued blocking passage move along orders or citations<sup>9</sup>. Several of these complaints have led to sustained allegations through the complaint examination process, and there are complaints involving blocking passage that are currently under investigation as well. Of these 14 complaints, 9 complainants identified their race: seven involved African American complainants, one involved another minority complainant, and one involved a Caucasian complainant. In addition, in some of the cases the complainant was homeless.

The fact that a majority of the complainants belong to a racial minority and some of the complainants are homeless reflects PCB's concern that MPD officers use of the Blocking Passage statute is disproportionately discriminating against specific groups of individuals. It is essential that MPD officers understand the proper application of the law and are able to execute it consistently and fairly in order to foster trust and alleviate tension. Although some of the complaints investigated by OPC were dismissed based on merit, the continual filing of complaints with the agency since passage of the law may indicate that certain communities perceive that they are being targeted or harassed by MPD. Because of the frequency with which MPD officers interact with the community, it is important that MPD take corrective action to ensure that similar incidents do not continue to occur in order to improve relations and build community trust. The Department must ensure that its officers are aware of the appropriate applications of the statute so that move along orders are issued fairly, and that officers and community members alike understand what activity is barred under the law.

Many jurisdictions outside of the District of Columbia have revisited the constitutionality of their loitering statutes – which are similar to the District's Blocking Passage statute – in order to ensure that the law passes Constitutional muster and that individual groups of people were not being unfairly targeted. The Supreme Court and other appellate courts have held that loitering statutes are constitutional even without a “breach of peace” requirement as long as they are not vague or overbroad.<sup>10</sup> As a result, many jurisdictions have used the Model Penal Code's loitering statute as a template when enacting their own loitering statutes.<sup>11</sup> The Model Penal

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<sup>9</sup> As of January 24, 2017. In addition to the 12 blocking passage move along orders or citation, there were also 57 complaints alleging harassment for other move along orders or citations.

<sup>10</sup> See *City of Chicago v. Morales*, 527 U.S. 41, 41 (1999) (holding Illinois' statute of “remaining in any one place with no apparent purpose” unconstitutional for being too vague and overbroad); *City of Seattle v. Drew*, 70 Wash. 2d 405, 406 (1967) (holding unconstitutionally vague a statute requiring any individual to give a satisfactory account of himself from one-half hour after sunset to one-half hour before sunrise). But see *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965) (holding that it is not facially unconstitutional to penalize persons obstructing free passage only if the person refused to obey a request by a police officer to move along); *State v. Kemp*, 429 So. 2d 822 (Fla. Dist. Ct. App. 1983) (holding a statute was not overbroad or vague where it penalized a hindrance of pedestrians or vehicles, as long as reasonable notice was provided by police officer to move)

<sup>11</sup> See *State v. Ecker*, 311 So. 2d 104 (Fla. 1975); *City of Milwaukee v. Nelson*, 149 Wis. 2d 434, 439 N.W.2d 562 (1989); *City of Seattle v. Drew*, 70 Wash. 2d 405, 423 P.2d 522, 25 A.L.R.3d 827 (1967); *Bell v. State*, 252 Ga. 267, 313 S.E.2d 678 (1984) (holding that a local loitering ordinance based on the Model Penal Code was not unconstitutionally vague as applied to a suspect who stood in front of a bar in a high-crime area shaking hands with passersby on foot and in vehicles, who disappeared into the bar when officers approached, and who answered “nothing” when officers asked what he was doing). But see *Fields v. City of Omaha*, 810 F.2d 830 (8th Cir. 1987)

Code places more stringent requirements than the District does for when an officer can issue either a move along order or a citation. While the Model Penal Code places a higher burden on officers, it results in a more equitable and consistent application of the statute and reduces the likelihood of intentional and unintentional racially-based enforcement.<sup>12</sup>

## **Recommendations**

To help improve and facilitate better relations and increase trust between MPD officers and community members, the PCB recommends that:

1. MPD require its officers to document any incident where a move along order and/or a blocking passage citation was issued, and the incident reports must detail how specifically the person was blocking passage.
2. MPD should provide additional training on the correct application of the statute as well as cultural and sensitivity training on the proper way to issue move along orders in a manner that promotes cooperation and decreases animosity.<sup>13</sup>
3. The Council of the District of Columbia should review the current statute and weigh the legislative intent against its effects on community trust since the law's passage in 2013.<sup>14</sup> Consideration should be given to amending the law in order to better define the terms "crowding," "incommoding," and "obstructing" to reduce incongruity and more closely align with the Model Penal Code. Additionally, restructuring of the law should be considered so that, prior to issuing a move along order, the officer is required to observe: (1) a pedestrian or vehicular presence currently or imminently being crowded, obstructed, or incommoded by the actions of the suspect, 2) circumstances in which a reasonable person would be alarmed for the safety of persons or property in the vicinity, including

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(holding the model penal statute to be unconstitutionally vague); *State v. Bitt*, 118 Idaho 584 (1990) (same); *City of Portland v. White*, 9 Or. App. 239 (1972) (same).

<sup>12</sup> The Model Penal Code's loitering statute is as follows: "A person commits a violation if he loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall prior to any arrest for an offense under this section afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm." American Law Institute, Model Penal Code, § 250.6 (1962).

<sup>13</sup> In response to a draft of this report sent to MPD, MPD informed OPC that the Academy will now be directed to use blocking passage scenarios in training for recruits.

<sup>14</sup> The PCB is aware that significant time and resources from multiple agencies, as well as the Council, went into the drafting of DC Code § 22-1307 (2013). However, now that the law has been in effect for nearly four years, the impact of the language and the ways that the law is used in practice have become apparent, leading to the concerns that brought about the need for this report.

but not limited to flight upon appearance of officer, a refusal by the suspect to identify themselves, or an attempt to conceal himself or an object, and 3) a refusal to provide a legitimate and reasonable explanation for his/her presence.<sup>15</sup>

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<sup>15</sup> In accordance with the American Law Institute, Model Penal Code, § 250.6 (1962).