



Disorderly Conduct Arrests Made by Metropolitan Police Department Officers

**Report and Recommendations of the
Citizen Complaint Review Board**

to

**Mayor Anthony A. Williams,
The Council of the District of Columbia, and
Chief of Police Charles H. Ramsey**

November 19, 2003

Citizen Complaint Review Board

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I. INTRODUCTION AND OVERVIEW

Since the Office of Citizen Complaint Review (OCCR) opened in January 2001, the office has regularly received police misconduct complaints that involve arrests for disorderly conduct.¹ Four of OCCR's first 19 decisions, or over 20% of the decisions, dealt with allegations of an improper disorderly conduct arrest, and the allegations were sustained in all four cases. In each of these decisions, the complaint examiner concluded that the officer harassed the citizen by arresting him for disorderly conduct because the facts developed in investigation did not justify the citizen's arrest. The officer either did not understand or ignored the law regarding disorderly conduct in each of these situations, and appeared to be retaliating against the citizen for his behavior during the encounter with the officer. These decisions, together with the allegations made in other complaints currently under investigation by OCCR, prompted the Citizen Complaint Review Board (CCRB), OCCR's governing body, to further examine disorderly conduct arrests made by Metropolitan Police Department (MPD) officers.² Consistent with its obligation to make recommendations to the Mayor, the Council of the District of Columbia, and the Chief of Police that, if implemented, may lower the occurrence of police misconduct,³ CCRB submits this report and accompanying recommendations based on its examination of the issue.

CCRB's principal objectives for this report were to gather as much information as possible to develop a better understanding of disorderly conduct arrests made by MPD officers, and to consider whether any actions or changes by MPD might reduce the occurrence of improper disorderly conduct arrests. Although there were practical constraints in terms of staff and access to some information that limited how far CCRB could carry its review of disorderly conduct arrests, CCRB examined a variety of information, which is summarized in this report. The information included the disorderly conduct statute and related case law, MPD's procedure for making a disorderly conduct arrest, OCCR's decisions involving disorderly conduct arrests, MPD and nationwide arrests statistics, information and statistics regarding the resolution of MPD's disorderly conduct arrests, and MPD training materials.

¹ Disorderly conduct is a violation of District of Columbia law. *See* D.C. Official Code § 22-1321.

² CCRB would like to acknowledge the assistance of OCCR's staff in preparing this report and accompanying recommendations. OCCR's executive director, Philip K. Eure, and deputy director, Thomas E. Sharp, managed the project. OCCR's management analyst, Samuel L. McFerran, also worked on the report, and OCCR summer law clerk, Andrew Szekely, who is enrolled at the George Washington University Law School, performed the initial research and provided other valuable assistance. We also are grateful to MPD for its cooperation in providing information for and comments regarding the report, and to the Office of Corporation Counsel for providing information to CCRB. We also appreciate the efforts of everyone else who contributed to the report.

³ When CCRB was created, it was vested with the responsibility to make recommendations, where appropriate, to the Mayor, the Council of the District of Columbia, and the Chief of Police "concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers." D.C. Official Code § 5-1104(d). CCRB is able to gather information about the incidence of police misconduct through the work of OCCR, which has the authority to receive, investigate, and resolve "citizen complaint[s] against a member or members of the MPD ... that allege[] abuse or misuse of police powers by such member or members." D.C. Official Code § 5-1107(a).

As a result of its examination, CCRB believes that the OCCR decisions and the other complaints being investigated by OCCR may be a warning sign of a larger problem with disorderly conduct arrests made by MPD officers. Four decisions have already concluded that officers harassed citizens because they made improper disorderly conduct arrests, and many other complaints alleging similar misconduct are currently under investigation. Overall, disorderly conduct arrests are very common in the District of Columbia. MPD officers made 10,600 disorderly conduct arrests in 2000, which accounted for more than one in five arrests that year, and constituted the single largest category of arrests, nearly twice the number for the next largest category.⁴ MPD's disorderly conduct arrest rate is significantly higher than the rate in nationwide statistics, ranging from two to four times the nationwide rate during the period from 1996 to 2000.⁵ The high number of disorderly conduct arrests, combined with an arrest procedure that allows citizens arrested for disorderly conduct to "post and forfeit" a \$25 "collateral"⁶ at the police station at the time of the arrest without receiving any written notice about the collateral forfeiture process or its consequences, and without signing any acknowledgement of their choice of this option over the others available to them, leaves the majority of disorderly conduct arrests with little or no review after the arrest is concluded. Consequently, CCRB is concerned that there is the potential for a large number of improper or unlawful disorderly conduct arrests in Washington, D.C.

In light of the outcomes of the OCCR decisions, and the large number of disorderly conduct arrests that receive little or no review after the arrest is completed, CCRB recommends that MPD take steps that will help minimize the likelihood of improper disorderly conduct arrests, including changing its procedures, providing additional training to its officers, and reviewing a sample of disorderly conduct arrests to ensure that they comply with the law and MPD procedure. CCRB believes that failing to take these steps will adversely affect confidence in MPD and in its goal of providing fair law enforcement.

CCRB's specific recommendations are that the Mayor, the Council, and MPD should: (1) modify MPD's arrest procedure to ensure that all citizens who pay \$25 to resolve their arrest are provided with written notice about the collateral forfeiture process and its consequences and that they sign an acknowledgment of their choice to pay the \$25 collateral; (2) immediately begin providing additional training to all MPD officers and supervisors regarding the law and procedure related to disorderly conduct arrests; (3) distribute a videotape message from the Chief of Police reinforcing the responsibilities of all members of the Department when making disorderly conduct arrests; (4) examine a sample of the disorderly conduct arrests made by MPD officers that is significant enough to allow MPD to determine if there are any widespread problems in the entire pool of disorderly conduct arrests; and (5) review the criminal code regarding disturbances of the public peace, particularly disorderly conduct, and the rules regarding collateral forfeiture and consider whether the code or rules need to be revised, updated,

⁴ These statistics are drawn from MPD's arrest statistics for 2000, the most recent year for which this information is publicly available. *See* Metropolitan Police Department, Washington, D.C., *2000 Annual Report*, at 20-21 (2001).

⁵ The nationwide statistics are discussed in detail in Section V of this report, beginning on page 10.

⁶ The collateral essentially amounts to a fine for the offense, and, after it is posted and forfeited, it ends the arrest without any obligation for the person to appear in court at a later date to answer the disorderly conduct charge.

or changed, and also consider specific reforms, such as decriminalizing disorderly conduct and allowing individuals 15 days to decide whether to forfeit collateral or challenge their arrest.

II. THE DISORDERLY CONDUCT STATUTE AND RELATED CASES

Disorderly conduct is distinct from many other statutes in that most criminal prohibitions are intended to punish and deter crimes, whereas disorderly conduct is meant to give police the power to defuse a situation that disturbs the public.⁷ The goal of restoring public order comes from the concern that citizens who are being bothered or annoyed might choose violent self-help when someone is being loud on the street or otherwise causing a disturbance.⁸

The District of Columbia, like most jurisdictions in the United States, has a chapter in its criminal code that covers disturbances of the public peace.⁹ The D.C. Official Code divides disturbances of the public peace into several different offenses, one of which is disorderly conduct.¹⁰ The District's disorderly conduct statute provides:

Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; (2) congregates with others on a public street and refuses to move on when ordered by the police; (3) shouts or makes a noise either outside or inside a

⁷ Robert Force, *Decriminalization of Breach of Peace Statutes: A Nonpenal Approach to Order Maintenance*, 46 Tul. L. Rev. 367, 373 (1972).

⁸ *Id.* at 373-74.

⁹ Most of the provisions in the criminal code chapter covering disturbances of the public peace were enacted around the turn of the 20th century. The chapter includes a number of offenses that may have been relevant many years ago, but seem less relevant today, such as Dueling challenges, § 22-1302, Assault for refusal to accept a challenge, § 22-1303, Leaving the District to give or receive challenge, § 22-1304, Playing games in streets, § 22-1308, Throwing stones or other missiles, § 22-1309, Urging dogs to fight or create disorder, § 22-1310, Allowing dogs to go at large, § 22-1311, Kindling bonfires, § 22-1313, Flying fire balloons or parachutes, § 22-1317, and Driving or riding on footways in public grounds, § 22-1318. The language of the disorderly conduct statute also is dated, although it appears to have been enacted in 1953.

¹⁰ Although not the focus of this report, modernization of the District's criminal code chapter covering disturbances of the public peace might be in order. To the extent the Mayor and the Council undertake this work, we strongly encourage them to consider the changes proposed in the Model Penal Code, particularly insofar as they clarify and organize the offenses in this chapter, and decriminalize offenses whose purpose is to maintain order and not punish the people arrested under those provisions.

The Model Penal Code, which was completed in 1962, provides guidance for criminal law reform and modernization through a review of the prohibitions the criminal law contains, the excuses it admits, the sanctions it imposes, and the range of the authority that it distributes and confers. Article 250 of the Model Penal Code covers riot, disorderly conduct, and related offenses, and is designed to assist jurisdictions in developing their law regarding this "vast area of penal law." Model Penal Code, § 250.2, Explanatory Note for Sections 250.1-250.12. As the Explanatory Note to Article 250 indicates, "disorderly conduct and related offenses form a critically important area of the criminal justice system. Offenses in this category affect a large number of defendants, involve a great proportion of public activity, and powerfully influence the view of public justice held by millions of people." *Id.* Consequently, the Model Penal Code works to systematize the relevant provisions of the law, provide rational penalties for offenses, including decriminalizing some of them, eliminate overlap of offenses, and modernize the offenses to remove obsolete provisions and cover behavior not previously covered.

building during the nighttime to the annoyance or disturbance of any considerable number of persons; (4) interferes with any person in any place by jostling against such person or unnecessarily crowding such person or by placing a hand in the proximity of such person's pocketbook, or handbag; or (5) causes a disturbance in any streetcar, railroad car, omnibus, or other public conveyance, by running through it, climbing through windows or upon the seats, or otherwise annoying passengers or employees, shall be fined not more than \$250 or imprisoned not more than 90 days, or both.¹¹

As the language of the statute plainly indicates, either “intent to provoke a breach of the peace” or “circumstances such that a breach of the peace may be occasioned thereby,” is a necessary element of the disorderly conduct offense, along with engaging in one of the five proscribed activities. Over the years, a series of cases has helped define the scope of the statute, including the meaning of “breach of the peace,” and outlined the proper enforcement of the statute. In *Williams v. District of Columbia*, the D.C. Circuit held that a breach of the peace occurs only when profane language “creates a substantial risk of provoking violence, or because it is, under ‘contemporary community standards,’ so grossly offensive to members of the public who actually overhear it as to amount to a nuisance.”¹² The reasoning of *Williams* was extended to the disorderly conduct statute eight years later in *Washington Mobilization Committee v. Cullinane*, where the court made it clear that both words and actions could cause a breach of the peace by provoking violence or creating a nuisance.¹³

Over the years, there have been challenges to the validity of the statute alleging, among other things, that it is too vague, and therefore violates the U.S. Constitution. These challenges have regularly been rejected. In 1962, in *Scott v. District of Columbia*,¹⁴ the District of Columbia Court of Appeals held that the statute’s “incommoding” language, which prohibits “congregat[ing] with others on a public street and refus[ing] to move on when ordered by the police,”¹⁵ was not so vague as to constitute a threat to First Amendment rights.¹⁶ Similarly, in 1978, the court rejected a challenge to sub-section (4) of the disorderly conduct statute in *In the Matter of A.B., Jr.*,¹⁷ holding that the language “jostling against such person or unnecessarily crowding such person or by placing a hand in the proximity of such person's pocketbook, or handbag,”¹⁸ was sufficiently clear to give notice to members of the public of the conduct being proscribed.¹⁹

¹¹ D.C. Official Code § 22-1321.

¹² 418 F.2d 638, 646 (D.C. Cir. 1969) (footnotes omitted). The court was interpreting a different section of the D.C. Official Code, § 22-1307, criminalizing a breach of the peace caused by the use of profane language.

¹³ 566 F.2d 107, 116 (D.C. Cir. 1977).

¹⁴ 184 A.2d 849 (D.C. 1962).

¹⁵ D.C. Official Code § 22-1321(2).

¹⁶ *Scott*, 184 A.2d at 851.

¹⁷ 385 A.2d 59 (D.C. 1978).

¹⁸ D.C. Official Code § 22-1321(4).

¹⁹ *In the Matter of A.B., Jr.*, 385 A.2d at 62.

In another line of cases, the District of Columbia Court of Appeals further defined the elements of disorderly conduct and explained what was sufficient evidence for a conviction. To have probable cause to make an arrest for disorderly conduct, proof of an actual or impending breach of the peace is not necessary; however, the conduct must make a breach of the peace likely to occur.²⁰ In *Chemalali v. District of Columbia*, the conduct that supported the defendant's conviction was "kicking and jabbing at pedestrians on the street" and both the trial and appellate courts found that the defendant's actions were "offensive actions which would tend to disturb, annoy, and interfere with [the pedestrians]." ²¹

In a more recent case, the same court held that there was not enough evidence to convict a defendant for swearing at a several police officers who were in the process of searching a group of men suspected of being a part of a shooting.²² The juvenile defendant rode his bicycle behind the officers and "spoke in a loud voice to the officer, 'Y'all petty as s---. F y'all.'" The defendant then entered a store and upon exiting was confronted by an officer who accused him of stealing a bicycle. He again began to swear at the officers, at which point a crowd formed around the defendant and the officers. The court overturned the trial judge's conviction on the grounds that the swearing of the defendant was not likely to create violence on the part of the crowd, just on the part of the officers, who are "trained to deal with unruly and uncooperative members of the public ... [and are] expected to have a greater tolerance for verbal assaults."²³ The court identified the difference between the instant case and *Chemalali* as being the difference between directing conduct at the police and directing conduct toward the public.²⁴

In light of the statute and the cases interpreting it, the law regarding disorderly conduct arrests is clear. To violate the disorderly conduct statute, a person must be engaging in one of the five proscribed activities either with the intent to cause a breach of the peace, or in such a way that may cause a breach of the peace or be so offensive as to amount to a nuisance. Directing conduct at police officers alone is not sufficient to violate the statute. Enforcing the disorderly conduct law may require making some challenging judgments, like what circumstances may cause a breach of the peace, and when an action is so offensive that it amounts to a nuisance, but case law provides sufficient guidance to assist with making these judgments.

III. MPD PROCEDURE FOR MAKING A DISORDERLY CONDUCT ARREST

At CCRB's request, MPD provided a basic description of the Department's procedure for making a disorderly conduct arrest, along with the forms and notices used in this process. This description represents CCRB's understanding of the procedure from encounter on the street to arrest to release from custody, and is not meant to capture every eventuality that may arise in an arrest.

²⁰ *Chemalali v. District of Columbia*, 655 A.2d 1226, 1228 (D.C. 1995) (citation omitted).

²¹ *Id.*

²² *See In re: W.H.L.*, 743 A.2d 1226, 1226 (D.C. 2000).

²³ *Id.* (citations omitted).

²⁴ *Id.* at 1229.

A disorderly conduct arrest begins when an officer encounters a person engaged in the following behavior: (1) the person is behaving in a way that is annoying, disturbing, or offensive to others, or that interferes with the actions of others; and (2) the person is intending to provoke or may provoke others to react or respond in violent or dangerous way, or is so offensive as to amount to a nuisance.²⁵ MPD's training recommends that officers use warnings and other attempts to encourage people to stop the actions that may lead to a breach of the peace, but once an officer has identified these circumstances, he or she can place the person under arrest for disorderly conduct. After the person is arrested, the individual is transported to the police station for processing of the arrest.

At the station, the officer places the person in a holding cell. The officer follows the procedure for collecting information from the individual. After gathering the information, the officer completes the arrest paperwork, which, in most cases, would be only an Arrest/Prosecution Report.²⁶ The Arrest/Prosecution Report is then reviewed by the officer's supervisor, typically his or her first-line supervisor, who ensures that all of the elements of the offense, as well as the probable cause for the arrest, are reflected in the report narrative. If the supervisor approves the report, the station staff then processes the arrest paperwork. If the supervisor does not approve the report, it may need to be revised or corrected.

After the report is approved, a member of the station staff reviews the information in the report with the person arrested for disorderly conduct to confirm that it is accurate, and then the staff verifies that the individual does not constitute a flight risk. Assuming that the person has no outstanding warrants, or that there are no other reasons to detain the person, the arrest process is completed and the person is released in one of two ways. The first is that the person may opt for citation release.²⁷ In this case, the station staff would complete the citation release paperwork, which includes a Citation Release Determination Report and a Citation to Appear.²⁸ The citation release paperwork assigns a court date on which the person has to appear to answer the disorderly conduct charge, and allows for the person's release on his or her own recognizance. Both forms have an acknowledgement that the person must review and sign indicating he or she has received the paperwork and agrees to return for the appearance in court.

The second and more common way that the arrest process is completed is that the person may opt to post and forfeit collateral, which essentially amounts to paying a fine for the offense, and which ends the arrest without any obligation for the person to appear in court at a later date to answer the disorderly conduct charge. In this case, the station staff takes the person's money for the collateral, and gives him or her a Collateral Receipt.²⁹ MPD indicated that there is no other paperwork in the collateral forfeiture process that is completed by the station staff or that is

²⁵ This is a general description of the elements of the disorderly conduct offense, and does not necessarily reflect all of the types of conduct that may warrant a disorderly conduct arrest.

²⁶ P.D. Form 163. The Department's policy and procedures for completing the P.D. Form 163 are contained in MPD General Order 401.05.

²⁷ The Department's policy and procedures for citation release are contained in MPD General Order 502.06.

²⁸ P.D. Form 778 and P.D. Form 799. In addition to the P.D. 799, which is an MPD form, D.C. Superior Court also has a Citation to Appear form that may be used in addition to, or instead of, the P.D. 799.

²⁹ P.D. Form 67.

given to or signed by a person who opts to pay the \$25 collateral to resolve a disorderly conduct arrest. After this process is completed, the person is released.

IV. OCCR DECISIONS INVOLVING DISORDERLY CONDUCT ARRESTS

OCCR's complaint examiner decisions were the starting point for CCRB's effort to gather further information about disorderly conduct arrests made by MPD officers. Four of the first 19 decisions dealt with allegations of an improper disorderly conduct arrest, and each of these decisions sustained the allegations.³⁰ In each of these decisions, the complaint examiner concluded that the officer harassed the citizen by arresting him for disorderly conduct because the facts developed in investigation did not justify the citizen's arrest. The officer either did not understand or ignored the law regarding disorderly conduct in each of these cases, and appeared to be retaliating against the citizen for his behavior during the encounter with the officer. The following is a short synopsis of the facts found by the complaint examiner in these four matters, as well as the complaint examiner's decision:

- During a late-night traffic stop, the complainant and the subject officer had a "prolonged, heated and profane exchange" in which the complainant demanded to know why he had been stopped. The complainant had been removed from the car and handcuffed, and was standing on the sidewalk. As the encounter progressed, the officer insisted that the complainant be quiet, and when he refused, the officer arrested the complainant for disorderly conduct, and also issued him a ticket related to the traffic stop.

The complaint examiner concluded that the subject officer harassed the complainant because "[t]he evidence gathered by the investigator established that [the complainant] used profanity and spoke loudly, but there is no indication that his conduct met the requirements for a violation of the disorderly conduct statute. First, there is no evidence that he acted in such a way as to disturb or be offensive to others, since it was uncontroverted that the incident involved only [the complainant] and the four police officers. Second, although the incident occurred late at night and [the complainant] did engage in loud and obscenity-laden discussion, it occurred on a sidewalk which was set back from the nearest building, it was cold out and most windows presumably would be closed, there were no pedestrians and few cars passing in the vicinity, and the police officers observed at most only a few individuals looking out their windows at the scene. Thus, it cannot be found that [the subject officer] at the time legitimately contemplated that [the complainant] was annoying or disturbing 'any considerable number of persons,' as required by D.C. Code § 22-1321(3). Although an officer need not wait until an actual breach of the peace occurs before making an arrest for disorderly conduct ... there is no evidence that the conduct occurred under 'circumstances such that a breach of the peace may be occasioned thereby.' In the absence of evidence of annoyance to others, the mere acts of yelling or using

³⁰ The complaint examiner decisions discussed below are available on OCCR's website at www.occr.dc.gov. All personal information regarding the parties and witnesses to each complaint has been removed from the discussion of the decisions.

profane language toward police officers, or repeatedly demanding to know the purpose of being stopped, do not constitute disorderly conduct.”³¹

- While the subject officer was discussing a parking violation with the complainant’s fiancée, the complainant came out of a store and asked the subject officer if he had “nothing better to do.” The subject officer told the complainant to return to the store, which he did. The subject officer then entered the store, and followed the complainant around the store threatening to arrest him if he continued to make comments to the subject officer. The complainant’s comments back to the subject officer resulted in the subject officer continuing to follow and threaten him, and eventually arresting him for disorderly conduct. The owners of the store had not indicated that the complainant was being disruptive in the store, and one witness said that the subject officer told him that he had arrested the complainant for “running his mouth.”

The complaint examiner concluded that the subject officer harassed the complainant by arresting him for disorderly conduct because the evidence clearly indicated that the subject officer “arrested [the complainant] for actions that occurred inside the store. These actions did not fall within the definition of disorderly conduct, as provided in D.C. Code § 22-1321. [The subject officer] himself said that he gave [the complainant] a specific order to return to the store and that [the complainant] complied. [The subject officer] told OCCR investigators that he entered the store to make sure that [the complainant] was not disturbing customers, while in the P.D. 163 Arrest/Prosecution report, he stated that he entered the store to inform [the complainant] about parking regulations. In either case, [the subject officer] clearly did not enter the store to arrest [the complainant] for any conduct that occurred outside. There were no other customers in the store, and as [the subject officer] himself acknowledged, no store employee indicated that [the complainant] was causing a disturbance or annoying them in any way. [The subject officer] admitted that he did not have adequate legal justification to arrest [the complainant] for disorderly conduct.”³²

- While out for a walk in his neighborhood at approximately 7:00 p.m., the complainant passed close to a house where officers had responded to a call for violation of a civil protective order (CPO). The woman who had the CPO pointed out her window toward a man standing on the street, who she identified as the subject of the CPO. She described the man as black, 6’4” tall, 180 pounds, and wearing a green army jacket, blue jeans, and a cap. The man also was smoking a cigarette. As the police searched for the alleged CPO violator, they came upon the complainant, who was walking nearby smoking a cigarette. The complainant is a black man, 5’6” tall, and was wearing a brown coat, purple shirt, and black pants at the time of the incident. The subject officer stopped the complainant to determine if he was the man they were searching for. The complainant did not

³¹ OCCR Complaint No. 02-0041, Findings of Fact and Merits Determination (July 9, 2003).

³² OCCR Complaint No. 02-0090, Findings of Fact and Merits Determination (September 12, 2003).

know why he had been stopped, and kept asking the subject officer. He also objected to being stopped, questioned, and handcuffed, and may have used obscenity, including calling the subject officer a “motherfucker.” Several people came out of their houses across the street to watch the encounter, which lasted less than five minutes, and ended with the subject officer arresting the complainant for disorderly conduct before even determining his name and whether he was the man the officers were searching for.

The complaint examiner concluded that the subject officer harassed the complainant by arresting him for disorderly conduct because “[a]lthough the complainant’s attitude toward [the subject officer] may have been disrespectful and annoying, his behavior did not justify an arrest for disorderly conduct, given the statutory definition set forth above. [The complainant] had no intent to provoke a breach of the peace; his behavior was offensive to no one but the officers; and, if people came out to see what was going on, they were likely drawn by the flashing lights just as much if not more than any yelling, and there is no evidence that a ‘considerable number of persons’ gathered. The officers may have had a legitimate reason to stop [the complainant], but instead of quickly ruling him out as the suspect . . . [the subject officer] arrested him. In so doing, he committed harassment, because this action clearly ‘interfered with . . . [the complainant’s] ability to go about lawful business normally, in the absence of a specific law enforcement purpose.’”³³

- While responding to a call from an address down the street from the complainant’s house, the subject officer and his partner came upon the complainant and a group of friends standing around a car in front of one friend’s house. The officers instructed the group to be quiet and disband. Some of the people left, while the complainant and one friend went inside the fenced front yard of the friend’s house. The exchange between the officers and the complainant continued as the complainant and his friend protested the officers’ orders to be quiet and go inside, and the officers continued to give orders and made some derogatory comments. The exchange escalated to a confrontation after the complainant used profane language toward the officers, and the subject officer struck the complainant, knocking him into a fence and injuring him. The subject officer then entered the yard and placed the complainant under arrest for disorderly conduct.

The complaint examiner concluded that the subject officer harassed the complainant because the facts did not support a disorderly conduct arrest since the evidence gathered during the investigation showed only that there was a group of people standing in front of one friend’s house, and that the complainant and his friend responded verbally to the orders and insulting remarks made by the officers, neither of which rise to the level of disorderly conduct. Furthermore,

³³ OCCR Complaint No. 01-0099, Findings of Fact and Merits Determination (November 5, 2003).

during their own interviews and in their reports about the incident, neither of the officers identified any other facts that would support a disorderly conduct arrest.³⁴

Beyond the complaint examiner decisions, OCCR also is investigating a number of other complaints that involve disorderly conduct arrests. While many of the complaints appear to involve proper disorderly conduct arrests, a significant number resemble the fact patterns in the decisions where the officer made an arrest either incorrectly or without regard for the law, and appeared to be retaliating against the citizen for his or her behavior during the encounter with the officer. Up to this point, OCCR has not been keeping statistical information regarding complaints that involve a disorderly conduct arrest. In the future, however, OCCR will keep this statistical information so that it can report about the complaints in a more systematic and thorough manner.

The complaint examiner decisions indicate that there are instances where officers do not know or are not following the law when making disorderly conduct arrests. These decisions and the allegations in other complaints under investigation by OCCR suggest that there will likely be more instances in which it is confirmed that improper arrests for disorderly conduct have been made. Such improper arrests, whether the result of lack of knowledge or intentional action, are intolerable, and, depending on the circumstances, may constitute an abuse or misuse of police power. CCRB believes that these complaints are an important warning sign that requires action.

V. MPD AND NATIONWIDE ARREST STATISTICS

CCRB examined MPD's arrest statistics from 1995 to 2000 to determine the frequency with which MDP officers make disorderly conduct arrests.³⁵ CCRB also looked at nationwide data and statistics for cities with a population of 250,000 or greater to have some basis for comparison with the MPD statistics. The nationwide and large city statistics cover the same six-year period and were taken from the Uniform Crime Reports (UCR) prepared by the Federal Bureau of Investigation (FBI).³⁶

³⁴ OCCR Consolidated Complaint Nos. 02-0318 & 02-0319, Findings of Fact and Merits Determination (August 21, 2003).

³⁵ MPD's Office of Organizational Development provided disorderly conduct arrest statistics to OCCR on July 29, 2003. The remaining statistics regarding MPD arrests were taken from MPD's 1998, 1999, and 2000 Annual Reports, which are available on MPD's website, www.mpdc.dc.gov. See Metropolitan Police Department, Washington, D.C., *1998 Annual Report*, at 22-23 (1999); Metropolitan Police Department, Washington, D.C., *1999 Annual Report*, at 24-25 (2000); Metropolitan Police Department, Washington, D.C., *2000 Annual Report*, at 20-21 (2001). Population information for the District of Columbia was obtained from the U.S. Census Bureau website, www.census.gov, and is taken from the 2000 Census.

³⁶ The Uniform Crime Reports are available on the FBI website, <http://www.fbi.gov/ucr/ucr.htm>. CCRB took statistical data from the 1995 through 2000 reports. See Federal Bureau of Investigation, Uniform Crime Reports for the United States 1995 (1996), Table 31, at 210-11; Federal Bureau of Investigation, Uniform Crime Reports for the United States 1996 (1997), Table 31, at 216-17; Federal Bureau of Investigation, Uniform Crime Reports for the United States 1997 (1998), Table 31, at 224-25; Federal Bureau of Investigation, Crime in the United States 1998, Uniform Crime Reports (1999), Table 31, at 212-13; Federal Bureau of Investigation, Crime in the United States 1999, Uniform Crime Reports (2000), Table 31, at 214-15; Federal Bureau of Investigation, Crime in the United States 2000, Uniform Crime Reports (2001), Table 31, at 218-19.

The number of disorderly conduct arrests made by MPD officers grew from 6,616 in 1995 to 10,600 in 2000. In addition, the rate of disorderly conduct arrests per 100,000 residents in the District increased by approximately 60% from 1,157 in 1995 to 1,853 in 2000. To compare the increase in the disorderly conduct arrest rate with any changes that may have occurred in the rate of other arrests made by MPD, CCRB also examined the rate of all arrests made by MPD and the rate of all arrests excluding disorderly conduct arrests. Over the same period, the rate of all arrests increased only by approximately 7% from 7,524 in 1995 to 8,028 in 2000, and the rate of all arrests except disorderly conduct fell by approximately 3% from 6,367 in 1995 to 6,175 in 2000. In general, the number of arrests in all three of these categories increased in 1996 and 1997. Although all three categories decreased after 1997, the number of disorderly conduct arrests was still significantly higher in 2000 than in 1995. In contrast, total arrests excluding disorderly conduct were actually lower in 2000 than in 1995. The following table reflects the data collected by CCRB regarding MPD arrests:

Arrests Made by MPD Officers

	1995	1996	1997	1998	1999	2000
Total Arrests	43,040	46,884	57,678	50,660	45,950	45,924
Arrests per 100,000 Residents	7,524	8,196	10,083	8,856	8,032	8,028
Disorderly Arrests	6,616	7,478	13,811	9,758	10,715	10,600
Disorderly per 100,000	1,157	1,307	2,414	1,706	1,873	1,853
Total Arrests Excluding Disorderly Arrests	36,424	39,406	43,867	40,902	35,235	35,324
Total Excluding Disorderly per 100,000	6,367	6,888	7,668	7,150	6,159	6,175
D.C. Population (2000 Census)	572,059	572,059	572,059	572,059	572,059	572,059

By way of comparison, CCRB examined UCR arrest statistics from 1995 to 2000 for the entire nation and for cities with a population of 250,000 or greater. CCRB initially focused on the UCR statistics for disorderly conduct arrests alone, but, in response to comments from MPD, CCRB also examined the UCR statistics for disorderly conduct and drunkenness arrests combined.³⁷

³⁷ In its comments to a draft of this report, MPD indicated that the District's disorderly conduct statute includes several offenses that may not be included in other jurisdictions' statutes, such as drinking in public, possession of an open container of alcohol, urinating in public, and affrays, among other things. Consequently, MPD argued that its statistics for disorderly conduct arrests alone might not be a fair comparison with other jurisdictions.

First, it is not clear to CCRB that all of the offenses identified by MPD properly fall under the disorderly conduct statute because there is a separate provision of the criminal code that covers affrays, § 22-1301, and the other offenses do not necessarily create circumstances that may provoke a breach of the peace or amount to a nuisance. Second, even to the extent that the District's law differs from that of other jurisdictions, CCRB notes that the UCR contains the following comment about its statistics:

To ensure these data are uniformly reported, the FBI provides contributing law enforcement agencies with a handbook that explains how to classify and score offenses and provides uniform crime offense definitions. Acknowledging that offense definitions may vary from state to state, the FBI cautions agencies to report offenses not according to local or state statutes but according to those guidelines provided in the handbook. Most agencies make a good faith effort to comply with established guidelines.

In general, the nationwide and large city rates for disorderly conduct arrests and disorderly conduct and drunkenness arrests combined increased slightly in 1996 and 1997, but then decreased from 1998 through 2000, ending up at a rate that was noticeably lower in 2000 than it was in 1995. Over the same period, the nationwide and large city rates for all arrests, all arrests except disorderly conduct, and all arrests except disorderly conduct and drunkenness showed a steady decline from 1995 to 2000, decreasing by anywhere from 13% to 21%. The following tables reflect the data collected by CCRB regarding arrests made nationwide and in large cities:

Arrests Made Nationwide

	1995	1996	1997	1998	1999	2000
Total Arrests	11,407,288	11,088,352	10,540,215	10,291,317	9,136,294	9,123,428
Arrests per 100,000 Residents	5,807	5,838	5,752	5,534	5,317	5,010
Disorderly Arrests	561,642	626,918	561,621	501,866	421,662	421,542
Disorderly per 100,000	286	330	306	270	245	232
Drunkenness Arrests	527,200	522,869	509,764	510,318	437,153	423,310
Disorderly & Drunkenness Arrests	1,088,842	1,149,787	1,071,385	1,012,184	858,815	844,852
Disorderly & Drunkenness per 100,000	554	605	585	544	500	464
Total Arrests Excluding Disorderly Arrests	10,845,646	10,461,434	9,978,594	9,789,451	8,714,632	8,701,886
Total Excluding Disorderly per 100,000	5,521	5,508	5,446	5,264	5,072	4,779
Total Arrests Excluding Disorderly & Drunkenness Arrests	10,318,446	9,938,565	9,468,830	9,279,133	8,277,479	8,278,576
Total Excluding Disorderly & Drunkenness per 100,000	5,253	5,233	5,167	4,990	4,817	4,546
Population in UCR	196,440,000	189,927,000	183,240,000	185,964,000	171,831,000	182,090,101

FBI website, www.fbi.gov/ucr/word.htm.

Nonetheless, CCRB reviewed the other statistical categories contained in the UCR and determined that the only other category that would likely include the offenses identified by MPD would be drunkenness arrests, which is a category that is listed as having zero arrests in MPD's annual reports for the relevant years. Consequently, to ensure a fair comparison with MPD statistics, CCRB examined both disorderly conduct arrests and disorderly conduct and drunkenness arrests combined. The nationwide and large city tables reflect both of these sets of data.

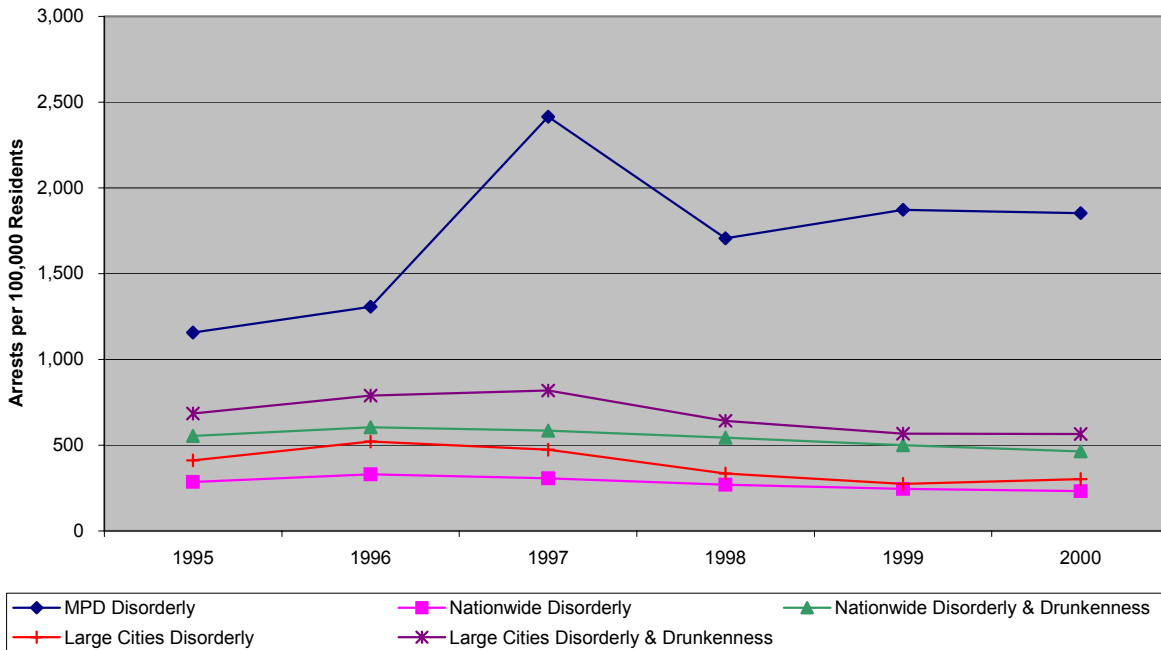
Arrests Made in Large Cities

	1995	1996	1997	1998	1999	2000
Total Arrests	3,021,325	3,074,699	2,480,043	2,456,806	2,163,849	2,145,369
Arrests per 100,000 Residents	7,783	7,700	7,491	7,024	6,402	6,107
Disorderly Arrests	159,705	207,900	156,834	116,899	93,002	106,445
Disorderly per 100,000	411	521	474	334	275	303
Drunkness Arrests	106,029	107,265	114,005	107,533	98,622	92,271
Disorderly & Drunkness Arrests	265,734	315,165	270,839	224,432	191,624	198,716
Disorderly & Drunkness per 100,000	685	789	818	642	567	566
Total Arrests Excluding Disorderly Arrests	2,861,620	2,866,799	2,323,209	2,339,907	2,070,847	2,038,924
Total Excluding Disorderly per 100,000	7,372	7,179	7,017	6,690	6,127	5,804
Total Arrests Excluding Disorderly & Drunkness Arrests	2,755,591	2,759,534	2,209,204	2,232,374	1,972,225	1,946,653
Total Excluding Disorderly & Drunkness per 100,000	7,098	6,911	6,673	6,382	5,835	5,541
Population in UCR	38,820,000	39,932,000	33,106,000	34,978,000	33,801,000	35,131,894

As seen in the comparison of the tables above, MPD's rate of disorderly conduct arrests is significantly higher than both the nationwide and large city disorderly conduct arrest rates, even when drunkness arrests are included. While the MPD, nationwide, and large city rates were closer to one another in 1995 and 1996, from 1997 through 2000, the MPD rate was 2.5 to four times the nationwide and large city rates for disorderly conduct and drunkness arrests and five to eight times the nationwide and large city rates for disorderly conduct arrests.³⁸ The chart below depicts the different disorderly conduct and disorderly conduct and drunkness arrest rates for the period from 1995 to 2000.

³⁸ In its comments to a draft of this report, MPD indicated that its rate of disorderly conduct arrests is driven, at least in part, by community requests for enforcement of the law. CCRB recognizes that the arrest rate for minor crimes may increase as a result of community requests for enforcement of the law and through the implementation of community policing programs, which are being used in the District. *See generally*, Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 Colum. L. Rev. 551 (1997). The arrest rate alone, however, is not CCRB's concern, especially to the extent that the arrests are proper and for actual violations of the disorderly conduct statute. Rather, CCRB's concern is that MPD's high rate of disorderly conduct arrests creates a much greater potential for improper arrests, and when considered together with OCCR's decisions, raises an inference that the higher rate may be, at least in part, the result of improper arrests.

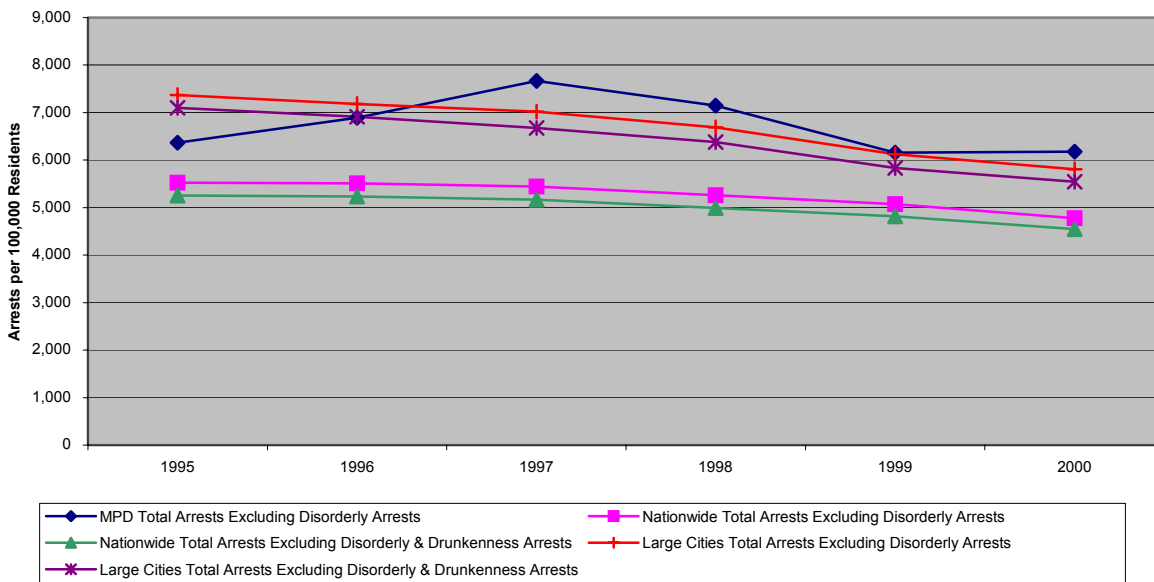
Disorderly and Disorderly & Drunkenness Arrest Rates per 100,000 Residents



To examine the larger context for MPD’s disorderly conduct arrest rate, CCRB compared MPD’s rate for all arrests except disorderly conduct with the nationwide and large city rates for all arrests except disorderly conduct arrests and all arrests except disorderly conduct and drunkenness arrests. MPD’s rate for all arrests except disorderly conduct was consistently higher than the nationwide rates, ranging from approximately 15% to 50% higher in a given year. In contrast, MPD’s disorderly conduct arrest rate was a remarkable 100% to 700% higher than the nationwide rates. MPD’s rate for all arrests except disorderly conduct was much closer to the large city rates, with MPD’s rate being lower than the large city rates in 1995 and 1996, and MPD’s rate being anywhere from approximately 0.5% to 15% higher during the period from 1997 to 2000. Again, however, when comparing disorderly conduct arrests, MPD’s rate was many times greater at 65% to 580% higher than the rates found in other large cities.

The chart below depicts the different arrest rates excluding disorderly conduct arrests or disorderly conduct and drunkenness arrests for the period from 1995 to 2000.

Total Arrest Rates Excluding Disorderly and Disorderly & Drunkenness Arrests per 100,000 Residents



MPD’s disorderly conduct arrest rate stands in sharp contrast to the nationwide and large city disorderly conduct arrest rates, even when drunkenness arrests are included. The contrast is particularly stark when the difference between MPD’s rate for all arrests except disorderly conduct is compared with the similar nationwide and large city rates, which are much closer to MPD’s rate. CCRB believes that MPD’s high rate of disorderly conduct arrests creates a much greater potential for improper arrests, and believes that MPD should take steps to understand why its statistics differ so significantly from nationwide and large city statistics, to ensure that the difference in the rates is not the result of improper arrests.³⁹

VI. RESOLUTION OF MPD DISORDERLY CONDUCT ARRESTS

Beyond looking at MPD’s arrest statistics, CCRB also looked at information and statistics regarding the resolution of MPD’s disorderly conduct arrests. As described in Section III above, there are two ways in which a disorderly conduct arrest can be resolved and the citizen released from custody promptly. The first is citation release, where the citizen is released from police custody on his or her own recognizance with a later date on which he or she must appear in court to answer the disorderly conduct charge. The authority to issue citations is given to police station staff by statute,⁴⁰ and the policy and procedures for citation release are set out in an MPD general order.⁴¹ The citation release procedure includes the completion of paperwork by

³⁹ Another concern is to ensure that the District’s police resources are deployed in the most effective manner possible. To the extent improper arrests are being made, they are consuming officer and station staff time that would be much better used on patrol or addressing other issues that citizens bring to the police on a regular basis.

⁴⁰ See D.C. Official Code § 23-1110.

⁴¹ See MPD General Order 502.06.

the station staff that must be signed by the person arrested for disorderly conduct, in addition to paperwork that is given to the person indicating his or her court date and the consequences of failing to appear in court.⁴²

The second way for a person to be released from custody promptly is for the individual to post and forfeit collateral, which essentially amounts to paying a fine for the offense, and which ends the arrest without any obligation for the person to appear in court at a later date to answer the disorderly conduct charge. The post and forfeit process for disorderly conduct arrests is not specifically authorized by statute, regulation, or court rule; rather, it appears to be a practice that has developed over time through the cooperation of the courts, prosecutors, police, and arrestees.⁴³ The consequences of collateral forfeiture are not clear. It appears that a person who opts to post and forfeit might have an arrest record, but would not have a conviction record, because the agreement implicit in the process is that the prosecutor will not prosecute if the person posts and forfeits the collateral, which essentially amounts to paying a fine.⁴⁴ However, being allowed to post and forfeit is a privilege and not a right, so, for a period of time after the collateral is forfeited, the prosecutor has the option to prosecute any of these cases, although this appears to happen only very rarely.⁴⁵ MPD has a general order that lists the collateral amounts for various offenses, but the Department does not appear to have one that sets out the procedures for processing a collateral forfeiture.⁴⁶ Other than a receipt for payment of the collateral, the station staff does not complete any paperwork, require any acknowledgment by the arrestee of the choice to post and forfeit collateral, or give the arrestee any paperwork that explains the collateral forfeiture process or any related information.

The following table reflects how frequently citizens chose citation release and collateral forfeiture in response to MPD's disorderly conduct arrests during the period from 1995 to 2000.

⁴² See P.D. Form 778 and P.D. Form 799.

⁴³ See *District of Columbia v. Baylor*, 125 Daily Wash. L. Rep. 1665 (D.C. Super. Ct. Aug. 25 & Aug. 26, 1997) (Cr. Nos. D-1114-96, D-3504-96, D-3956-96, D-3125-96, T-6033-96, and T-6817-96).

⁴⁴ *Id.* at 1670. CCRB had a difficult time finding a conclusive answer about the consequences of opting to post and forfeit collateral, but getting a conclusive answer is very important. Depending on the answer, many individuals who post and forfeit could face difficulties when applying for a job, a security clearance, rental housing, or a loan or with their immigration status because of their arrest or other record.

⁴⁵ *Id.* at 1678-79.

⁴⁶ See MPD General Order 503.03. CCRB requested general orders containing procedures for collateral forfeiture from MPD, and was given only General Order 503.03. There may be procedures relating to collateral forfeiture contained in other general orders, but CCRB was not able to identify them, and there does not appear to be a general order specifically devoted to processing a collateral forfeiture.

Resolution of MPD Disorderly Conduct Arrests⁴⁷

	1995	1996	1997	1998	1999	2000
Total Disorderly Arrests	6,616	7,478	13,811	9,758	10,715	10,600
Total Citation Release (CR)	700	711	1430	844	698	576
% CR of Total Disorderly Arrests	10.6%	9.5%	10.4%	8.6%	6.5%	5.4%
Total Collateral Forfeiture (CF)	3595	4029	7724	5366	7258	6498
% CF of Total Disorderly Arrests	54.3%	53.9%	55.9%	55.0%	67.7%	61.3%

Citizens chose collateral forfeiture at least five times more often, and as high as ten times more often, than citation release in the six years for which CCRB obtained statistics. The ability to post and forfeit collateral allows the citizen to pay \$25 to end his or her arrest without an obligation to appear in court, which may make the option more attractive than citation release because citation release requires the citizen to appear before a judge at a later date to answer the disorderly conduct charge.⁴⁸

CCRB has two principal concerns based on the information and statistics above. First, with so many citizens choosing collateral forfeiture, over 50%, and sometimes as high as 67%, of disorderly conduct arrests are receiving little or no review after the arrest is completed, contributing to a greater potential for improper disorderly conduct arrests that may go unnoticed. Without any further review, an improper disorderly conduct arrest can more easily pass through the system without being scrutinized. Second, the process for and consequences of collateral forfeiture are vague and unclear, and the absence of clear rules and procedures to govern collateral forfeiture creates several potential problems. Without clear rules, citizens who opt to post and forfeit cannot be fully advised of how the process works and what their rights are in the process. In addition, the lack of explicit procedures allows for the possibility that citizens who opt to post and forfeit may be treated differently as they go through the same process. Finally, without procedures, it is difficult to ensure that all citizens are being properly advised of how the process works and what their options are so that they can make an informed decision to post and forfeit collateral. Thus, CCRB is concerned that thousands of arrestees each year are opting to post and forfeit collateral without a clear understanding of the process or consequences, and with no written acknowledgment of their choice to post and forfeit over the other options available to

⁴⁷ The sum of the number of citation releases and collateral forfeitures does not add up to the total number of disorderly conduct arrests because there are other outcomes for the arrests, the most significant of which is that the citizen is held in lock-up for reasons not necessarily related to the disorderly conduct arrest.

⁴⁸ Anecdotal evidence from citizen complaints and interviews suggests that some citizens may choose collateral forfeiture instead of citation release because collateral forfeiture may be presented to them as the only way to be released from custody promptly. Citizens have reported to OCCR that they are given the option of either paying the \$25 collateral and being released from jail or spending the night in jail so they can appear in court the next day. In these cases, citation release is never presented to the citizen as an option, so the coercive effect of possibly spending more time in custody tilts the scales heavily in favor of paying the \$25 collateral at the police station for many citizens.

them.⁴⁹ Consequently, CCRB believes that the collateral forfeiture process needs to be clarified and systematized to ensure that individuals are being properly advised about the process and that they are making an informed decision to post and forfeit.

VII. MPD TRAINING

CCRB also reviewed the materials that MPD uses to train its officer recruits regarding disorderly conduct. The materials indicated that a new recruit at the MPD police academy receives approximately four hours of training on disorderly conduct as a part of his or her 80-hour training on the D.C. Official Code. The lesson consists of a lecture, a handout, and a brief video. The heart of the lesson is the lecture, while the handout and video provide reinforcement.

The lecture combines a description of the applicable D.C. Official Code provisions and examples that reflect situations that officers might face while on patrol. The first point the instructor makes during the lecture is, “[u]nless the facts clearly show that the defendant intended to breach the peace, or that the offending conduct was committed under circumstances such that a breach of the peace might be occasioned, there can be no violation of the disorderly conduct law.”⁵⁰ The lesson plan further states that disorderly conduct is a difficult area in which to exercise police powers because, “these types of offenses are frequently committed by persons who do not regard themselves as criminals and who regard these laws, and police enforcement of these laws, as an intrusion of their rights.” Another theme in the lesson plan is the idea that where a breach of peace can be resolved without an arrest, that is the preferred method of handling the situation.⁵¹

The lesson plan includes numerous examples, the general theme of which is that the charge of disorderly conduct relates largely to the time, the place, and the person committing the act. One example involves a group of drunken citizens singing loudly on a street corner. The scenario contrasts the proper response if the citizens were in Georgetown on the corner of M Street and Wisconsin Avenue, N.W., on a Saturday night, as opposed to when the citizens are in a residential neighborhood doing the same thing, and points out that the same conduct would not necessarily disturb the peace in Georgetown even if it could disturb the peace in the residential neighborhood.⁵²

⁴⁹ The lack of paperwork and information provided to the citizen in the collateral forfeiture process contrasts sharply with the information provided when a person is issued a ticket for a parking violation. The front of the ticket indicates the offense and the penalty and has a blank for the recipient to sign and date the ticket acknowledging receipt of it. The back of the ticket has instructions for responding to the ticket. The instructions state that the recipient has 15 days to respond, and indicate the penalties for failing to respond and the procedures for admitting the infraction or denying the infraction and challenging it. The back of the ticket also includes a box where the recipient indicates his or her answer to the ticket, either admitting or denying liability, and must sign and date it before submitting it. On the other hand, a person who posts and forfeits collateral in response to a disorderly conduct arrest, a misdemeanor offense, does not receive any of the information or protections that are provided to people charged with parking violations.

⁵⁰ Metropolitan Police Department, Training Materials for D.C. Official Code Part I (emphasis in the original).

⁵¹ *Id.*

⁵² *Id.*

Instructors at MPD’s Institute of Police Science supplement the disorderly conduct lesson plan with a 25-page handout on the D.C. Official Code that reinforces the lesson plan.⁵³ The general format is to quote a section of the code and then explain the elements to the officers. The handout features the same examples found in the lesson plan, and emphasizes that the officer should review the handout semiannually. Finally, the handout has several special orders at the end.⁵⁴ These orders remind officers to properly process all arrests,⁵⁵ emphasize the importance of enforcing disorderly conduct even though enforcement is often unpopular,⁵⁶ and further refines the definition of “incommoding” and the failure to move on charges.⁵⁷ The special orders serve to remind recruit officers that their training is meant to be integrated into their patrol practices. Furthermore, the special orders are on the “A” distribution schedule, meaning it is to be “posted on all bulletin boards, read at roll calls, and issued to individual sworn members of the department.”⁵⁸

The final part of the disorderly conduct training is a 13-minute training video.⁵⁹ The video uses examples from the lesson plan to show how an actual officer would handle particular situations. As was the case with the handout, the video closely follows the lesson plan and reinforces the major themes of the lesson on disorderly conduct – there must be an actual or likely breach of the public peace and that officers should try to resolve the situation without making an arrest if possible.

Taken as a whole, the lesson on disorderly conduct aims to teach recruits how to handle disorderly conduct situations. The lesson integrates the holdings from cases that have interpreted and clarified the statute, and it consistently reminds recruit officers of the elements of the offense. Although the materials appear to be substantively sound, CCRB cannot comment on their effectiveness because CCRB has not observed MPD providing the training, nor is CCRB aware of how widely the information contained in the lesson materials is distributed to officers other than recruits.

VIII. RECOMMENDATIONS

Based on the information included in this report, CCRB makes the following recommendations to address the issues it has identified regarding disorderly conduct arrests made by MPD officers:

⁵³ Metropolitan Police Department, D.C. Criminal Code Handout (March 2001).

⁵⁴ *Id.*

⁵⁵ Metropolitan Police Department, Special Order 92.8 (1992)

⁵⁶ Metropolitan Police Department, Special Order 92.1 (1992)

⁵⁷ Metropolitan Police Department, Special Order 92.9 (1992); Metropolitan Police Department, D.C. Criminal Code Handout (March 2001).

⁵⁸ Metropolitan Police Department, Operation Handbook Introduction, 4 (January 1, 1991).

⁵⁹ Videotape: Enforcement of the Disorderly Conduct Statutes (Metropolitan Police Department Media Production Unit 1996) (on file with the Maurice T. Turner, Jr., Institute of Police Science).

A. Modify Arrest Procedure

MPD should review its arrest procedure, and modify it to ensure that citizens are provided with written notice about the collateral forfeiture process that describes how it operates and the consequences of choosing to post and forfeit. In addition, each person who opts to post and forfeit should be required to sign an acknowledgement that he or she knowingly chose to post and forfeit over the other options available. These changes will give the collateral forfeiture process protections that are similar to those in the citation release and parking ticket processes.

B. Training

MPD should provide additional instruction to its officers about the law and procedure related to disorderly conduct arrests. Taking steps to implement the training immediately will communicate important information to officers that they need to do their jobs on a daily basis. Considering the large number of disorderly conduct arrests made by MPD officers, ensuring that all officers are current in their knowledge of the law and procedure for these arrests ought to be a high priority. To the extent that any improper disorderly conduct arrests are being made as a result of an officer's lack of knowledge, additional training should eliminate these improper arrests.

MPD could undertake this effort through training at roll call or adding a lesson on disorderly conduct to annual in-service training attended by all officers. MPD may incorporate its existing disorderly conduct materials in the additional training, but CCRB recommends that MPD examine different methods of instruction to determine which method will be most effective for its officers. Some issues that MPD should consider are the extent to which any educational lessons or programs provide realistic examples to guide officers, allow officers to ask questions and raise issues regarding the law and procedures, and test each officer's knowledge of the material covered in the instruction.

C. Message from the Chief Reinforcing Officer and Supervisor Responsibilities

The Chief of Police should distribute a videotape message to all officers and supervisors reinforcing their responsibilities in conducting disorderly conduct arrests. A communication from the Chief will notify all MPD members that disorderly conduct arrests are being reviewed from the highest levels in the Department, and that every officer and supervisor has an important role to play in making and reviewing arrests. The Chief also should emphasize that MPD members will be held accountable to the extent that they are not following the law or procedure regarding disorderly conduct arrests because MPD relies heavily on its officers and first-line supervisors to ensure that the law and procedure are being followed.

D. Examine Sample of Disorderly Conduct Arrests

MPD should examine a sample of the disorderly conduct arrests made by its officers that is significant enough to allow MPD to determine if there are any widespread problems in the entire pool of disorderly conduct arrests. As part of its examination, MPD should independently verify the facts underlying each arrest in the sample, rather than relying solely on the narrative in the P.D. Form 163.

CCRB believes that this review is critical to ensuring that OCCR's decisions are not a warning sign of a larger problem with MPD's disorderly conduct arrests. Beyond the examination, MPD should pursue appropriate discipline against officers who are making improper disorderly conduct arrests, as well as the supervisors who are not adequately monitoring the work done by these officers. CCRB believes that following through with appropriate discipline is an indispensable part of reducing the occurrence of any problems uncovered by MPD's examination.

Based on its review, MPD should consider whether any additional steps need to be taken to address any problems uncovered by the examination.

E. Review and Consider Revising Relevant Law and Rules

The Mayor, the Council, and MPD should review the criminal law chapter covering breaches of the public peace, with a focus on the disorderly conduct provision, as well as the rules governing collateral forfeiture, to determine if the chapter and rules are adequate to meet the needs of the public. Based on their own review, as well as MPD's review of disorderly conduct complaints, the Mayor and Council should consider whether the code and rules need to be revised, updated, or changed. In addition, the Mayor and Council should consider specific reforms, such as whether disorderly conduct and other offenses should be decriminalized, and whether the collateral forfeiture process should be modified to mirror the response process for a parking violation, which allows 15 days for the recipient of a ticket to decide how he or she wants to respond to the charged offense.

IX. CONCLUSION

Based on its examination of disorderly conduct arrests made by MPD officers and a comparison with arrest rates in other jurisdictions, CCRB believes that the Department should take steps to ensure that officers are fully trained about, and adhering to, the law and procedure governing disorderly conduct arrests. Because of the large number of disorderly conduct arrests made by MPD officers compared to other large cities, and because the majority of these are resolved by paying \$25 at the police station with little or no review after the arrest is completed, CCRB believes that there is the potential for a significant number of improper or unlawful disorderly conduct arrests in the District that could go unnoticed. The Mayor, the Council, and MPD should take steps to ensure that disorderly conduct arrests are made only when authorized under the law, and consistent with MPD's procedures.