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May 27, 2009
By facsimile

The Honorable
Phil Mendelson, Chair
Committee on Public Safety and the Judiciary
Council of the District of Columbia
Washington, DC 20004

Re: Bill 18-151: Revision of Disorderly Conduct Statutes

Dear Chairperson Mendelson:

Section 106 of Bill 18-151 proposes an appropriate and long overdue revision of the District's disorderly conduct statutes, D.C. Code §§ 22-1307 and 22-1321. Unfortunately, the representative of the U.S. Attorney for the District of Columbia, Patricia A. Riley, in her May 18, 2009 testimony before your committee, misconstrued and misrepresented section 106. Most significantly, she listed nine "problems" that she claimed were not adequately encompassed within section 106.

Ms. Riley's criticism demonstrates what is wrong with the existing disorderly conduct statutes. They are used as a catchall device to deal with an overly broad range of conduct. As we review Ms. Riley's nine "problems," we find that the District's criminal code already deals with most of them. Where the code does not and the conduct should be criminalized, it is covered by section 106 of Bill 18-151.

1. Nighttime Noise

This issue is specifically addressed in the District's Municipal Regulations. 20 DCMR 2799 defines "nighttime" as between the hours of 9 p.m. to 7 a.m. "Noise disturbance" is defined as "any sound which is loud and raucous or loud and unseemly and unreasonably disturbs the peace and quiet of a reasonable person of ordinary sensibilities in the vicinity thereof . . ." Infractions are punishable by criminal and civil sanctions. This is not an appropriate subject for the disorderly conduct statute.

2. Fighting

The following sections of the criminal code deal with fighting:

- § 22-404 Assault or threatened assault in a menacing manner; stalking;
- § 22-407 Threats to do bodily harm;
- §22-1301 Affrays [fighting].

If the fighting takes place in public, then it is also sanctionable under section 106(b)(1): "threatening or harming another's person or property in such a manner that is likely to cause an immediate breach of the peace."

Therefore, under existing law and Section 106 of Bill 18-151, fighting is comprehensively criminalized.

3. Jostling

If this conduct is indeed criminal and not an accidental push or shove, then it is covered by the sections of the criminal code cited above under "fighting." If the jostling is a prelude to pick-pocketing or other theft, it is covered by D.C. Code § 22-3211. If the jostling is in public, then section 106(b)(1) might also apply.

4. Loud and Boisterous Behavior

Loud and boisterous behavior should not be a *per se* offense. Whether it is depends on the context. If the conduct "unreasonably hinder[s] the lawful use or peaceful enjoyment of a public facility by another person," then it would violate section 106(b)(3) of Bill 18-151. A group of young people laughing loudly at a joke while walking home from school or from a movie is not a group of criminals.

5. Peeping Toms

D.C. Code § 22-3531 specifically deals with peeping Toms. If the "Tom" enters private property to do his peeping, then he would also violate § 22-3302, unlawful entry on property.

6. Disturbance on a Public Conveyance

This conduct is covered by section 106(b)(3) of Bill 18-151: "unreasonably hindering the lawful use or peaceful enjoyment of a public facility by another person."

7. Urinating in Public

This conduct is covered by D.C. Code § 22-1312, lewd, indecent, or obscene acts.

8. Screaming Profanities at Citizens

This conduct may constitute an assault (see the sections of the code cited under "fighting," above). Alternatively, it could be disorderly conduct if it meets the criteria of section 106(b)(1) of Bill 18-151: "threatening or harming another's person or property in such a manner that is likely to cause an immediate breach of the peace."

9. Blocking Sidewalks and Entries

This conduct could constitute an assault (see the sections of the code cited under "fighting," above) or disorderly conduct under section 106(b)(2) of Bill 18-151: "obstructing or hindering the free passage of another in a public place or a public conveyance and refusing to move when so instructed by a police officer."

Ms. Riley stated that "[t]hus far the Court of Appeals has construed § 22-3107 [presumably she meant § 22-1307] and § 22-3212 [presumably she meant § 22-1321] to be constitutional." She misstates the law.

Section 22-1307 is based on an 1892 statute last modified in 1953. On its face, it contains provisions that are constitutionally suspect. See, e.g., *In re W.*, 383 A.2d 646 (D.C. 1978) (juvenile's adjudication as a delinquent for using profanity against a police officer reversed).

Section 22-1321 is based on a 1953 statute last modified in 1994. It is riddled with vague language that is constitutionally suspect, for example: "acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others."

The disorderly conduct statutes need to be corrected and consolidated so as to be more understandable to both the police and the public. Section 106 of Bill 18-151 restricts the concept of disorderly conduct to conduct that may constitutionally be sanctioned while at the same time it affords the police all the latitude they were entitled to employ under the existing law. We strongly urge its adoption.

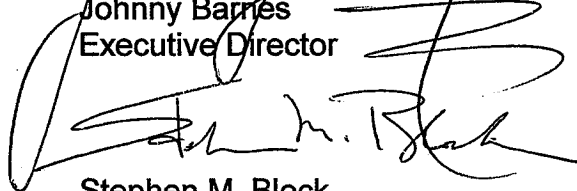
Please include this letter in the Committee's record for Bill 18-151.

Thank you.

Sincerely,



Johnny Barnes
Executive Director



Stephen M. Block
Legislative Counsel

cc. Members of the Committee on Public Safety and the Judiciary