



KNOW YOUR RIGHTS

Restrictions on Police Misconduct During Demonstrations in D.C.

Litigation brought by the Partnership for Civil Justice Fund for violations of the constitutional rights of demonstrators and extensive hearings before the D.C. Council resulted in the statutory enactment of the First Amendment Rights and Police Standards Act (“FARPSA”). References are to the D.C. Code statutory enactment or to the FARPSA directly.

The below is applicable to the D.C. Metropolitan Police Department and operations taking place on land under the jurisdiction of the District of Columbia. Other jurisdictions’ agencies operate under their own laws and regulations.

Please note that these are abbreviated areas of the law, intended to provide introductory information as to the scope of reform of police conduct. This is not intended as legal advice. You should consult an attorney directly if you have legal questions or concerns.

Restrictions on Use of Police lines.

“Use of police lines,” with identified exceptions, generally prohibits police from “using a police line to encircle, or substantially encircle, a demonstration.” 5 D.C. Code § 331.08 (“Use of police lines”).

Restrictions on Dispersal or Terminations of Demonstration Activity

“The MPD shall not issue a general order to disperse to participants in a First Amendment assembly except” under three exceptional and defined circumstances. Establishes that “[a]n order to disperse or arrest assembly participants shall not be based solely on the fact that a plan has not been approved for assembly” or lacks a permit. 5 D.C. Code § 331.07 (“Police handling and response to First Amendment assemblies”).

No Arrests for Parading or Demonstrating Without a Permit.

D.C. law now declares “it shall not be an offense to assemble or parade on a District street, sidewalks, or other public way, or in a District park, without having provided notice” or receiving a permit or an approved plan from the municipality. 5 D.C. Code § 331.05 (Notice and plan approval process for First Amendment assemblies - - generally”).

FARPSA, § 106. Removes reference and use of the term “permits” in connection with protests, establishing a policy that authorizes protest without prior notice to the police.

The Act struck from the D.C. Code and/or ceased the use of statutory references to demonstration “permits,” in an effort to convey that prior permit or permission is not a requirement of law to engage in street protest.

Sec. 142, modifies the existing regulations pertaining to parade permits to explicitly exclude from its scope protests or First Amendment assemblies.

Opportunity to Comply If an Order is Appropriate

Requires, in the limited circumstances where dispersal of a protest may be authorized under law, that the MPD shall issue one or more audible orders to those assembled using an amplification system or device, and shall provide persons with an adequate time to disperse and with a clear and safe route for dispersal. 5 D.C. Code § 331.07(e)(1) (“Police handling and response to First Amendment assemblies”).

Restrictions on Riot Gear

Prohibits the deployment of officers in riot gear to First Amendment assemblies, except in limited circumstances where there is a danger of violence and, further, requires the commander at the scene to issue a written report to the Chief which is to be made available to the public following any deployment of officers in riot gear. 5 D.C. Code § 331.16(a) (“Use of riot gear and riot tactics at First Amendment assemblies”).

Limitations on Period of Detention and Arrest

“Prompt release of persons arrested in connection with a First Amendment assembly,” establishes a standard that persons eligible for release be released within 4 hours from the time of arrests and requires “that an officer holding a supervisory rank document and explain any instance in which a person arrested in connection with a First Amendment assembly who opts for release pursuant to any lawful release option or who is not charged with any offense is not released within 4 hours from the time of arrest.” 5 D.C. Code § 331.12 (“Prompt release of persons arrested in connection with a First Amendment assembly”).

Restrictions on use of pepper spray

Restricts and further regulates any use of chemical irritants, and requires written report issuance whenever such weapons are used. 5 D.C. Code § 331.16(b)(1) (“Use of riot gear and riot tactics at First Amendment assemblies”).

Prohibition of Wrist-to-Ankle “Hogtying” or Methods of Restraint Causing Inhumane Stress and Duress

“Use of handcuffs, plastic cuffs, or other physical restraints on persons arrested in connection with a First Amendment assembly,” provides that “no such person shall be restrained by connecting his or her wrist to his or her ankle, and no such person shall be restrained in any other manner that forces the person to remain in a physically painful position.” 5 D.C. Code § 331.11(b).

Provision of Food and Water to Arrestees

For persons not released within a reasonable period of time, requires provision of “food appropriate to the person’s health.” 5 D.C. Code § 331.12 (b)(2) (“Prompt release of persons arrested in connection with a First Amendment assembly”).

Written Statement of Rights to Release

“Notice to persons arrested in connection with a First Amendment assembly of their release

options,” requires written notice clearly indicating the availability and alternatives for “obtaining a prompt release,” which is required to be issued in English and Spanish and offered in any other languages as is reasonable to ensure notice for persons who are limited in English proficiency. 5 D.C. Code § 331.13 (“Notice to persons arrested in connection with a First Amendment assembly of their release options”).

Detailed requirements for the content of such written notice are mandated by statute. 5 D.C. Code § 331.13(b)(1) (“Notice to persons arrested in connection with a First Amendment assembly of their release options”).

Record-Keeping Obligations

Requires the Chief to issue an annual public report addressing specific matters related to arrest and prompt release of persons in connection with First Amendment assemblies. 5 D.C. Code § 331.12 (c) (“Notice to persons arrested in connection with a First Amendment assembly of their release options”).

No Covering or Removing Badges

Requires that officers assigned to First Amendment assemblies are equipped with easily visible or “enhanced” badge or name identification that remains visible and allows identification even if officers are wearing riot gear. 5 D.C. Code § 331.09 (“Identification of MPD personnel policing First Amendment assemblies”).

