

Know Your Rights

Restrictions on Police Misconduct During Demonstrations in D.C.

In the District of Columbia, the First Amendment Assemblies Act of 2004 (FAAA) governs D.C. police conduct in the context of demonstrations.

The below is applicable to the D.C. Metropolitan Police Department (MPD) and operations taking place on land under the jurisdiction of D.C. Other police agencies, including federal law enforcement on federal land in D.C., operate under their own laws and regulations.

Please note: These are abbreviated areas of the law, intended to provide introductory information as to certain reforms and restrictions on police conduct. This is not intended as legal advice. You should consult an attorney directly if you have legal questions or concerns.

Police, generally, cannot use police lines to encircle a demonstration.

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

No arrests for parading or demonstrating without a permit.

Generally, you can’t be arrested solely because you don’t have a permit in advance of a protest. D.C. law 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 an approved plan from the municipality. 5 D.C. Code § 331.05 (Notice and plan approval process for First Amendment assemblies -- generally).

FAAA, § 106. Removed the use of the term “permit” in connection with protests, establishing a policy that authorizes protest without prior notice to, or getting a permit, from 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 a prior permit or permission is not a requirement of law to engage in street protest.

The Act does require “notice” and “approval of a plan” by the MPD for a demonstration on D.C. land except where (1) the assembly is a sidewalk march or will take place on sidewalks and crosswalks without preventing others from using the same; (2) the assembly will not occur on a street and is reasonably expected to have fewer than 50 participants; or (3) the assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event.

Failing to have prior notice and approval is not, in and of itself, grounds for arrest.

If an assembly occurs without notice and approval of a plan, the MPD “shall, consistent with then interests of public safety, seek to respond to and handle the assembly in substantially the same manner as it responds to and handles assemblies with approved plans.” 5 D.C. Code § 331.07(f)(1).

In that case, “[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 the assembly.” 5 D.C. Code § 331.07(f)(2).

The MPD “may take into account any actual diminution, caused by the lack of advance notice, in its ability, or the ability of other governmental agencies, appropriately to organize and allocate their personnel and resources so as to protect the rights of both persons exercising free speech and other persons wishing to use the streets, sidewalks, other public ways, and parks.” 5 D.C. Code § 331.07(f)(3).

In other words, the police can still order dispersal under certain circumstances, and persons would be obligated to comply with any lawful order, however the lack of a permit or advance notice alone without other factors is not a basis for dispersal or arrest.

There are restrictions on police dispersal orders 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. The law says 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”).

The police must provide opportunity to comply with a dispersal order and provide an exit.

The law 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”).

The police must make sure that any order is audible prior to any authorized dispersal.

If the MPD seeks to disperse an assembly, “the MPD shall issue multiple dispersal orders and, if appropriate, shall issue the orders from multiple locations. The orders shall inform persons of the route or routes by which they may disperse and shall state that refusal to disperse will subject them to arrest.” 5 D.C. Code § 331.07 (e)(2).

If, however, “there is imminent danger of personal injury or significant damage to property” the MPD will be required only to “issue at least one clearly audible and understandable order to disperse using an amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.” 5 D.C. Code § 331.97 (e)(1).

The police can’t just show up wearing riot gear because there’s a protest.

The law 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 justifying the decision, 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: If arrested for a nonviolent misdemeanor at a protest, like a sit-in, you should be generally be released within four hours

“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 use of Chemical Irritants or Less Lethal Projectiles to Disperse an Assembly**

Temporary amendments, which may be made permanent, to the FAAA provide that Chemical Irritants, such as pepper spray or tear gas, and less-lethal projectiles “shall not be used by MPD to disperse a First Amendment assembly.” 5 D.C. Code § 331.16(b)(1), (c)(1).

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

The police are prohibited from restraining arrestees by “connecting his or her wrist to his or her ankle” or “in any other manner that forces the person to remain in a physically painful position.” 5 D.C. Code § 331.11(b).

Provision of Appropriate Food and Water to Arrestees

For persons not released within a reasonable period of time, there must be 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”).

Police Must Give You a Written Statement of Your Release Options

“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”). There are detailed requirements in the law about the content of those notices.

Record-Keeping Obligations

The Chief must 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

Officers assigned to First Amendment assemblies must be 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”).