



FIRST AMENDMENT PROTECTED ACTIVITY ASSESSMENT

Report Published: February 3, 2020

TABLE OF CONTENTS

| | |
|--|----|
| OVERVIEW | 2 |
| KEY DEFINITIONS | 3 |
| RELEVANT POLICIES | 5 |
| MISCONDUCT CASE REVIEW | 5 |
| PROTEST ENVIRONMENT REVIEW | 5 |
| METHODOLOGY | 6 |
| JOHNS HOPKINS UNIVERSITY EVENT | 7 |
| PRESIDENTIAL VISIT | 8 |
| DISORDERLY CONDUCT ARREST REVIEW | 9 |
| NO FIRST AMENDMENT PROTECTED CONDUCT | 10 |
| NO VIOLATIONS OR SIGNIFICANT CONCERNS BASED ON THE REVIEW | 10 |
| FIRST AMENDMENT VIOLATIONS | 10 |
| PROBLEMATIC FOR OTHER REASONS | 11 |
| OTHER SIGNIFICANT OBSERVATIONS | 11 |
| ADJUDICATION OF THE CHARGES | 12 |
| CONCLUSION AND IMPROVEMENT MEASURES | 12 |
| APPENDIX A: MISCONDUCT CASE SUMMARIES | 14 |
| APPENDIX B: PROTEST ENVIRONMENT REVIEW SUMMARIES | 15 |
| APPENDIX C: MARYLAND CRIMINAL LAW, § 10-201(C) | 19 |
| APPENDIX D: DISORDERLY ARREST ANALYSIS SUMMARY TABLE | 20 |
| APPENDIX E: DISORDERLY ARREST CASE SUMMARIES | 24 |

OVERVIEW

The Baltimore Police Department (BPD) recognizes the importance of First Amendment Protected Activity, not only as a bedrock of our nation's values, but also as critical foundation to effective, transparent policing in Baltimore City. In order to ensure that BPD officers are respecting the public's First Amendment rights, BPD will conduct an annual assessment of data, events, and complaints related to First Amendment activities.

Through a collaborative process that incorporated feedback from the public, BPD revised its policies (Policy 804, *First Amendment Protected Activity* and Policy 1016, *Public Observation/Recording of Officers*) to provide officers with clear guidance as they encounter First Amendment Protected Activity in the course of their duties. Though these policies were revised, they remain in draft form because the Department has not yet had the opportunity to train its officers on the updated guidance. As such, this inaugural report and the below described assessments utilize currently active policies, published in 2016, as the measure against which BPD is testing for compliance. Future reports will conduct the analysis against compliance with the revised policies, once BPD is able to publish those updated policies.

As part of this annual assessment and report, BPD:

1. Reviewed and analyzed complaints alleging misconduct related to First Amendment Protected Activity (Consent Decree ¶ 255.a);
2. Analyzed responses to public protests or assemblies (¶ 255.b);
3. Reviewed Disorderly Conduct arrests for possible First Amendment implications;
4. Made conclusions, to the extent possible, about BPD's performance in protecting individuals' First Amendment Rights; and
5. Identified deficiencies and opportunities for improvement, implemented appropriate corrective action or improvement measures, and documented such measures (¶ 256).

For this report, in order to determine BPD's compliance with protecting the First Amendment rights of the public, BPD identified three types of cases or events that potentially implicated First Amendment protected speech or activity. Of note, similar to challenges that have been mentioned in other BPD public reports, the Department's available data on this topic is incomplete. BPD does not collect data specific to the exercise of the First Amendment by the public beyond its response to protests because these interactions are frequent, yet so varied in how and when they occur. BPD acknowledges that protests are only one way people can exercise their First Amendment rights, but these events are the clearest ways to track the exercise of First Amendment rights. Since interactions between BPD officers and the public can so often include a First Amendment Protected Activity (for example, criticism toward the officer, filming the officer, among others), BPD will continue to explore the best ways to evaluate these frequent and varied activities for future analyses.

Therefore, this inaugural report ventures to evaluate BPD's performance with First Amendment protections through the following strategies:

1. Analyzing misconduct complaints classified as related to the exercise of First Amendment Protected Activities. To accomplish this, BPD identified six misconduct complaints, made by members of the public against officers, related to First Amendment Protected Activity (one originated in 2018, five originated in 2019). All of these cases are still under investigation by BPD's Public Integrity Bureau, which is BPD's internal unit charged with conducting investigations of allegations of police misconduct.
2. Scrutinizing BPD's response to protest environments. BPD reviewed Body-Worn Camera (BWC) footage from a protest at Johns Hopkins University (JHU) in May of 2019, and from a protest of a Presidential visit in September of 2019, in order to examine officers' actions during large-scale protest events.

3. Examining arrests for Disorderly Conduct in 2018 that may have included First Amendment elements by reviewing incident reports and BWC footage for disorderly arrests that may have included First Amendment Protected Activities. While BPD recognizes that this analysis is not a complete view of BPD's ability to protect First Amendment rights of the public, BPD believes that focusing this study on Disorderly Conduct arrests offers a preliminary analysis of encounters with the public where First Amendment Protected Activities may be at play and how the Department responded to those incidents. BPD aims to revisit this strategy for future reports with the goal of undertaking potentially more effective methods to identify and assess incidents involving the public exercising its First Amendment rights.

The combination of these three different lenses enabled BPD to examine its responses to First Amendment Protected Activity from several angles, in order to determine what is being done well and what needs improvement.

In short, this report finds the following:

1. In December 2018, BPD implemented a new classification system for misconduct complaints involving First Amendment Protected Activities. This new system greatly enhanced BPD's ability to track these complaints from that point forward, but the Department's ability to review such allegations prior to that date is limited because previous complaints were not classified based on their connection to First Amendment Protected Activities
2. BPD's response to protest environments in 2019 was 100% compliant with policy requirements and did not infringe on protesters' First Amendment rights, based on a random, but statistically representative, sample review of BWC footage from two 2019 protest events.
3. A baseline review of BPD's handling of Disorderly Conduct arrests involving First Amendment Protected Activities in 2018 demonstrates both (1) the positive trend that BPD arrest rates for Disorderly Conduct calls is extremely low (0.08% of calls resulted in arrests), and (2) the need for additional training and guidance to officers. This review also highlighted the need to revisit how First Amendment Protected Activities not related to large-scale protests or assemblies may be identified and assessed for future versions of this annual report.

The following sections of the report explain each of the three reviews in greater detail, as well as discusses what BPD is currently doing successfully and provides conclusions and recommendations for improvement.

KEY DEFINITIONS

First Amendment Protected Activity: Any of the following conduct, speech, or expression: (1) free speech and expression, which includes criticizing law enforcement or otherwise engaging in protected expression in the presence of law enforcement officers without being subject to Retaliation; (2) organization and participation in lawful assemblies and protests in parks, on sidewalks, in streets and in other public forums, including public forums near the object of the assembly or protest so that those assembled may be seen or heard; and/or (3) observation and recording the actions of law enforcement officers in the public discharge of their duties in all public spaces, as well as all other areas in which persons have a legal right to be present, without being subject to Retaliation.¹

First Amendment Assembly/Demonstration: A lawful assembly of persons organized primarily to engage in First Amendment Protected Activity. These may be scheduled events that allow for law enforcement planning but also may include spontaneous assemblies. They include, but are not limited to, marches, protests, and other assemblies.²

Statement of Probable Cause (SPC): A clearly written statement made after an arrest in support of an Application for Statement of Charges which articulates the basis for the member's belief that a particular person has committed a crime.

¹ Draft BPD Policies 804 and 1016

² BPD Policy 804

Body-Worn Camera (BWC) Footage: Video footage obtained from police officers' required visual and audio recording device, which is affixed to an officer's person, uniform, or equipment.

Acts of Retaliation: A law enforcement officer's illegitimate acts that are made against a person in response to something they have done or said. Acts of Retaliation for persons exercising their First Amendment rights could take the form of ordering persons or groups to disperse, or by stopping, detaining, searching, using force against, arresting, issuing a citation to, or threatening to stop, detain, search, use force against, arrest or issue a citation to any person or group.³

Disorderly Conduct: A class of criminal offenses under Maryland law that prohibits three (3) types of conduct commonly known as (1) Hindering, (2) Disorderly Conduct/Disturbing the Peace, and (3) Failure to Obey:

- **Hindering:** "A person may not willfully and without lawful purpose obstruct or hinder the free passage of another in a public place or on a public conveyance."
- **Disorderly Conduct/Disturbing the Peace:** "A person may not willfully act in a disorderly manner that disturbs the public peace."
- **Failure to Obey:** "A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace."⁴

Loitering: The Baltimore City Code defines "loiter" as follows: "(1) to stand around or remain or to park or remain parked in a motor vehicle at a public place or place open to the public and to engage in any conduct prohibited under this law; or (2) to collect, gather, congregate, or to be a member of a group or a crowd of people who are gathered together in any public place or place open to the public and to engage in any conduct prohibited under [Baltimore City Code]."⁵ The Baltimore City Code defines the misdemeanor offense of Loitering, or "prohibited loitering," as follows: "(1) It shall be unlawful for any person to loiter at, on, or in a public place or place open to the public in such manner: (i) to interfere with, impede, or hinder the free passage of pedestrian or vehicular traffic; (ii) to interfere with, obstruct, harass, curse, or threaten or to do physical harm to another member or members of the public; or (iii) that by words, acts, or other conduct, it is clear that there is a reasonable likelihood a breach of the peace or Disorderly Conduct shall result. (2) It shall be unlawful for any person to loiter at a public place or place open to the public and to fail to obey the direction of a uniformed police officer or the direction of a properly identified police officer not in uniform to move on, when not to obey such direction shall endanger the public peace".⁶

Probable Cause - Where facts and circumstances taken as a whole, known to the member at the time of the arrest, would lead a reasonable member to believe that a particular person has committed or is committing a crime. Cause is based upon an objective assessment of the facts and circumstances presented to the member.

Baltimore City State's Attorney's Office (SAO): Agency responsible for the prosecution of crimes that occur in Baltimore City.

Court Commissioner: In Maryland, a District Court Commissioner is a judicial officer appointed by the Chief Judge of the District Court of Maryland. Court Commissioners have three primary responsibilities: (1) Reviewing Applications for Statement of Charges to determine whether Probable Cause exists to issue charging documents; (2) Conducting initial appearance hearings on arrested individuals to decide the conditions of pre-trial release; and Determining eligibility of applicants for Office of the Public Defender services..⁷

Stet Docket: An inactive docket maintained by the court.

³ BPD Policies 804 and 1016

⁴ Md. Crim. Law, § 10-201(c); see also Appendix C

⁵ Baltimore City Code, Article 19, Subtitle 25, Section 25-1(a)(1)

⁶ Baltimore City Code, Article 19, Subtitle 25, Section 25-1(b)(1)

⁷ mdcourts.gov/district/selfhelp/whodoeswhat

Released Without Charge (RWOC): Release from the Central Booking Intake Facility (CBIF) after arrest without being charged with the commission of a crime.⁸

Nolle Prosequi (Nol Pros): Nolle Prosequi is a legal term and in Latin means, “do not prosecute.” It is often referred to as a Nol Pros. If a person has been charged with a crime or traffic offense and the Assistant State’s Attorney elects not to proceed with the case, they will enter a Nolle Prosequi in the court record. This means the case is dismissed and the State has chosen not to proceed with the charges.⁹

RELEVANT POLICIES

Policy 804, First Amendment Protected Activity, dated July 1, 2016.

Policy 1016, Citizen Observation/Recording of Officers, dated July 1, 2016.

Draft Policy 804, First Amendment Protected Activity, dated September 13, 2018.

Draft Policy 1016, Public Observation/Recording of Officers, dated September 13, 2018.

Policy 1018, Quality of Life Offenses-Core Legal Elements, dated July 1, 2016.

MISCONDUCT CASE REVIEW

To conduct a review of misconduct allegations related to First Amendment Protected Activities, BPD searched for misconduct cases involving First Amendment violations within its misconduct records system, IAPro. BPD identified six cases related to First Amendment Protected Activities. These six cases remain under investigation, and therefore BPD is unable to provide their conclusions in this report, but will do so in a subsequent annual analysis of First Amendment Protected Activities. Short summaries of the allegations in the six cases are included as Appendix A of this report.

At this point, the Department cannot say precisely when each of these six investigations will conclude. The Consent Decree requires a 90 day deadline for completion of internal investigations. BPD is actively working toward this 90 day deadline goal. Though BPD is currently unable to meet this Consent Decree requirement, the Department takes all allegations of misconduct seriously and is continually working to improve its processes in order to reach this deadline goal.

The six cases summarized in Appendix A of this report were identified within the IAPro database through the Department’s implementation of a new classification system in 2019, which more clearly categorizes cases that involve First Amendment conduct, speech or expression. With this new classification system, BPD anticipates being able to more easily identify and examine the universe of First Amendment misconduct complaints moving forward.

PROTEST ENVIRONMENT REVIEW

A second strategy used by BPD to assess the Department’s response to First Amendment Protected Activities was an analysis of officers’ responses to protestors during two 2019 protest events – a Johns Hopkins University (JHU) protest in May 2019 and a Presidential visit to Baltimore in September 2019. BPD’s Performance Standards Section reviewed BWC footage from a total of 19 officers that responded to these two protest events to assess compliance with policy.

⁸ BPD Policy 1302

⁹ ricelawmd.com/nolle-prosequi/

Methodology

BPD's Internal Audits Unit totaled the number of officers present for each event, which was 136 officers present (79 officers deployed for the JHU protest and 57 for the Presidential visit). The Internal Audits Unit determined that 19 is a representative sample number of 136.

For the JHU protest in May 2019, the Internal Audits Unit reviewed 12 officers' BWC footage, totaling 40 hours of footage. The BWC footage of these 12 officers included all arresting officers (five (5) officers), and the remaining seven (7) JHU samples were randomly selected, using Randomizer.org. The five (5) arresting officers' footage comprised all seven (7) arrests that took place during the JHU event. The total run time of the BWC footage reviewed from these 12 officers was approximately 40 hours of footage.

For the Presidential visit in September 2019, the Internal Audits Unit also randomly selected seven (7) officers' BWC videos using Randomizer.org. The total run time of BWC footage reviewed from these 12 officers was approximately 42 minutes of footage.

Two auditors and a verifier reviewed and assessed each BWC sample for compliance with the following:

1. Did the member respect the First Amendment rights of all persons?
2. Did the member take any action in Retaliation for an individual's criticism of law enforcement, observing or recording law enforcement, or engaging in expressive activity, as protected by the First Amendment?
3. Did the member only interrupt demonstrations in accordance with permissible restrictions?
4. Did the member refrain from using force in response to an individual engaging in lawful First Amendment Protected Activities?
5. Did the member engage in unauthorized enforcement activities?

For each of the 19 samples, auditors determined that officers complied with each assessment area. The table below depicts the compliance score for each of the five assessment questions for every sample.

| Overall Assessment Scores | | | | | |
|---------------------------|--------------------------------|----------------------|----------------------------|------------------------------|--|
| District/Command | 1st Amendment Rights Protected | No Retaliation Taken | No Prohibited Interruption | No Unauthorized Use of Force | No Unauthorized Enforcement Activities |
| Sample 1 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 2 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 3 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 4 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 5 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 6 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 7 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 8 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 9 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 10 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 11 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 12 (JHU) | 100% | 100% | 100% | 100% | 100% |
| Sample 13 (Pres. Visit) | 100% | 100% | 100% | 100% | 100% |
| Sample 14 (Pres. Visit) | 100% | 100% | 100% | 100% | 100% |
| Sample 15 (Pres. Visit) | 100% | 100% | 100% | 100% | 100% |
| Sample 16 (Pres. Visit) | 100% | 100% | 100% | 100% | 100% |
| Sample 17 (Pres. Visit) | 100% | 100% | 100% | 100% | 100% |
| Sample 18 (Pres. Visit) | 100% | 100% | 100% | 100% | 100% |
| Sample 19 (Pres. Visit) | 100% | 100% | 100% | 100% | 100% |
| Total | 100% | 100% | 100% | 100% | 100% |

A detailed analysis of each protest event and the BWC footage reviewed is presented below.

Johns Hopkins University Event

BPD employed the Incident Command System (ICS) protocol, a nationally recognized system designed to enable effective and efficient domestic incident management, and a written operations plan to respond to the JHU event. The plan outlined the event situation and background, intelligence information, the operation's mission and the execution of operations. BPD coordinated a unified response with the Baltimore City Fire Department and JHU personnel. BPD's Internal Audits Unit collected and analyzed all documentation and video footage related to the event, including a running log of the event details. The operational plan contained detailed instructions for the protocol to conduct arrests if necessary, including multiple opportunities for involved officers to avoid arrest. The arrest protocol met the standard for a lawful arrest for the offense of trespass under the Maryland Criminal Law and the Baltimore City Fire Codes. The operations plan outlined the following:

- The Incident Commander, who has overall responsibility for managing the incident, along with a JHU representative would give occupants of the JHU Administrative Building a warning to leave the building and then wait 15 minutes.
- If the occupants did not leave the building within those 15 minutes, after the 15 minutes elapsed, the Operations Commander, who manages the tactical activities during the incident, would enter the premises with the arrest team and an additional team comprised of two sergeants and eight officers. The Operations Commander would then inform the occupants they were committing criminal trespass and give an order for the occupants to leave the building.
- If the occupants did not leave the building upon hearing the order, the Operations Commander would declare the assembly unlawful, note the time, and order the arrest of remaining occupants.

A total of 79 officers were deployed to the event, and the Internal Audits Unit reviewed BWC footage of 12 of those officers. The below description describes what the auditors observed through the BWC samples that they reviewed.

Both an inner and outer perimeter were established for this event. The outer perimeter included the outside area of 10 to 15 feet from the entrance of the JHU Administrative Building; the inner perimeter included the interior of the JHU Administrative Building. The arrest team, comprised of five officers (both male and female) and one sergeant, were initially positioned outside of the building and eventually entered the building. Other officers remained outside through the event. The Internal Audits Unit reviewed footage of officers who entered the building as well as footage of officers who remained outside during the event.

Before officers engaged with the protestors, the Incident Commander provided a briefing to officers in a staging area, which was captured on a BWC. The briefing highlighted Policy 804, *First Amendment Protected Activities*, and the above-mentioned operations plan. Officers were then deployed to the outer perimeter. From various BWC, a group of 15 to 20 people was gathering just outside of the outer perimeter, behind bicycle stations. People in the crowd chanted peacefully, and some recorded the event with cellular phones, with no interference by officers.

The Incident Commander was outside the building and used a bullhorn to give three warnings to occupants to vacate the building during a 40-minute period. The warnings advised the occupants that they were violating the law governing trespassing and the Baltimore City fire code because the occupants had padlocked entrances and exits of the building. City Fire Department personnel then breached the building's outer and inner doors.

On the first floor of the building was a lounge area located just inside of the inner doors, where five protestors were sitting on the floor with their backs against a wall to the left. Some protestors were holding up cellular phones and recording the event. Officers entered the building and opened rear doors on the first floor. The Incident Commander then entered the building and gave another warning for the occupants to leave the building. The occupants did not respond to the warning. The Operations Commander and a JHU administrator each gave further warnings and told the protestors that they could vacate through a door of their choosing. One protestor got up and left the building. The Arrest Coordinator then gave

several warnings for the remaining occupants to leave. The occupants did not leave. An arrest order was then given. The Arrest Team then arrested five occupants, one female and four males for trespassing. Various cameras captured two protesters being arrested outside the building for Disorderly Conduct after lying in the roadway to block a prisoner transport from leaving the area. Prior to taking the protesters into custody, several warnings were given over a period of time advising the protestors that they could be arrested. The occupants' violations met the criteria for Disorderly Conduct in Maryland. All of the arrests observed followed the operations plan arrest protocol and were lawful. All the arrests that occurred at the event could be viewed and heard through the BWC footage of the sample officers reviewed for this assessment.

A description of each sample officer's BWC footage is contained in Appendix B.

Presidential Visit

See Appendix B (samples 13-19) for summaries of each BWC sample reviewed for this analysis.

The Presidential Visit event followed the ICS protocol. An operations plan was written in advance of the visit. The plan outlined the event situation, background, intelligence information, the operation's mission and the execution of operations. The event was a unified response, which coordinated federal, state and regional law enforcement agencies, as well as, the Baltimore City Fire Department, Department of Public Waste, and Traffic Enforcement. All documentation and video footage related to the event was collected and analyzed by the Internal Audits Unit. Full operations and arrest instructions were listed within the plan, which stated the following in regard to the First Amendment:

- It is the policy of the Baltimore Police Department to safeguard the constitutional rights of all persons.
- In the event of a civil disturbance, only a member of the BPD holding the rank of Major or above will declare an assembly to be unlawful. The declaration will be documented in writing. Such a declaration will be initiated by a Lieutenant or above. Officers must obtain supervisory approval before issuing any citations or making arrests related to the dispersal order.
- A supervisor must be present to approve arrests for obstructing or Hindering law enforcement while recording police activity, or refusal to obey a dispersal order while engaging in public protest prior to arrestees being transported to a holding facility, absent exigent circumstances.
- If the assembly is declared unlawful, the Site Commander will advise protestors of the declaration, noting the time, and will begin the warning process. All activities will be recorded by BWCs. The Command Room will be notified of all of all activities for the event log.
- All arrests and law enforcement actions will be based on individual Probable Cause. All arrests will be reviewed by the Deputy Site Commander. Officers will use the least amount of force needed to conduct any arrest and an uninvolved supervisor will be requested for any uses of force for a proper investigation.
- Mass arrest will be avoided to the extent possible.
- Every effort will be made to allow protestors to leave the area with a clear route identified to leave.
- Officers will activate their BWC prior to communicating with protestors.

The operation instructions also directed officers to adhere to BPD Policy 804, *First Amendment Protected Activity*, linked above on page 6.

A total of 57 officers were detailed to the event. Officers were given a briefing outlining the operations plan and *Policy 804*. Officers were given specific instructions that the deployment area was a commercial space and would be free for pedestrian traffic outside the Marriott Waterfront Hotel. The orders stressed that protestors would be free to move through the area. An area immediately around the Marriot Hotel was established and restricted by bicycle racks.

Officers were deployed to areas surrounding the Marriott Hotel. During the event, numerous protestors, some with opposing views, are seen in the area. At times, officers directed some of the protestors to move out of roadways for their

safety. Protestors with opposing views can be seen arguing amongst themselves; at times BPD officers intervened and deescalated heated exchanges. There were no arrests made for the entirety of the event. During interactions with protestors and others in the deployment area, sample officers' contact with the public was respectful and constitutional, and the officers did not inhibit free speech or free assembly.

DISORDERLY CONDUCT ARREST REVIEW

BPD's Inspections Unit reviewed incident reports and BWC footage from Disorderly Conduct arrests that occurred in 2018 to create a baseline assessment of BPD's performance in this area. Disorderly Conduct, Maryland Code, Criminal Law § 10-201 (see Appendix C) includes Hindering, Disorderly Conduct/Disturbing the Peace, and Failure to Obey. Activity related to these actions may be protected by the rights to assembly and free speech under the First Amendment to the United States Constitution. As mentioned in the Overview above BPD determined that for this inaugural report, Disorderly Conduct Arrests were a helpful starting point to evaluate enforcement actions that may relate to the public's exercise of First Amendment rights. While this is not a precise method to determine BPD's compliance with First Amendment Protected Activity policies, it provides a foundation for conducting this analysis and for future inspections.

In order to conduct its review, BPD searched through InPursuit, BPD's records management system, and found 143 "Code 55s," the code for Disorderly Conduct, in 2018. Out of those 143 cases, 73 had an arrest associated with them. After reviewing the 73 incident reports associated with those arrests, 30 BPD arrests indicated a possible First Amendment nexus. The Inspections Unit then reviewed BWC footage to determine whether or not there was First Amendment protected conduct, speech or expression involved in the incident.

Only arrest situations were reviewed in this analysis. For context, BPD handled 89,380¹⁰ disorderly calls in 2018 according to Computer Aided Dispatch (CAD) data and conducted only 73 arrests for Disorderly Conduct (0.08% of calls). While this basic analysis does not serve as a perfectly complete encapsulation of BPD's response to First Amendment activities since disorderly calls may or may not involve First Amendment activities, it does indicate that BPD responds to a high volume of Disorderly Conduct calls that possibly pertain to First Amendment rights and that BPD rarely conducts arrests in those situations. In future analyses, BPD plans to evaluate its response to First Amendment Protected Activities in non-arrest situations as well to provide more context for its overall handling of First Amendment Protected Activities.

To answer the following questions, the 30 cases that involved an arrest for a type of Disorderly Conduct offense were analyzed by multiple examiners, to ensure quality control. Examiners reviewed the narrative of the incident report and associated BWC footage, to answer the following questions:

1. Did the incident occur in the officer's presence?
2. Was the individual engaged in First Amendment Protected Activity as defined in Policies 804 and 1016 (e.g., criticizing police action, video recording police action, or assembling with others)?
3. If the individual was engaged in First Amendment Protected Activity, was there sufficient Probable Cause that their actions met the elements of Disorderly Conduct?
4. Did the officer give a verbal warning or attempt to use a less intrusive means of enforcement?
5. If the person's arrest was due mainly to their physical location, did the officer recommend an alternative location where the individual could continue to engage in constitutionally-protected speech/conduct?
6. Did the officer articulate in the Statement of Probable Cause/Incident Report why a less intrusive means of enforcement was not utilized or effective?
7. Are the events reported by the officer in the Statement of Probable Cause/Incident Report consistent with the BWC footage?

¹⁰ Duplicate calls and unfounded incidents are not included in this number.

8. Is there evidence suggesting that the arrest for Disorderly Conduct was in Retaliation for constitutionally-protected speech?
9. If multiple civilians were involved in the incident and only some were arrested for Disorderly Conduct, is there evidence suggesting that the content or viewpoint of the arrested individuals' speech was a reason for their arrest?
10. Was force used to effect the arrest?

Further analysis was conducted to determine if satisfactory Probable Cause existed to charge the individual with Disorderly Conduct offenses. An additional layer of review determined if there was Probable Cause to arrest the subject for other crimes.

Based on the questions above and the Probable Cause for arrest review, incidents were categorized into four outcomes:

- Arrestee not engaged in 1st Amendment protected conduct as defined by Policies 804 and 1016.
- Officer committed no violations or significant concerns.
- 1st Amendment violation.
- No 1st Amendment violation, but problematic for other reasons.

No First Amendment Protected Conduct

Of the 30 incidents reviewed, eight (8), highlighted in gray in Appendix D and E, contained events not protected by the First Amendment as defined by Policies 804 and 1016. Probable Cause for these incidents ranged from satisfactory to unsatisfactory and are summarized in Appendix E.¹¹

No Violations or Significant Concerns Based on the Review

Review of five (5) of the 30 incidents revealed no First Amendment violations or other significant concerns. These are highlighted in green on the chart in Appendix D.

First Amendment Violations

Three (3) of the 30 incidents contained violations of the First Amendment. These are highlighted in orange on the chart in Appendix D and E.

- Cases #1 and #6 involved arrestees who were voicing displeasure with police actions. No evidence could be seen on BWC of crowds forming or third parties being disturbed by the arrestee's behavior. In both cases the arrestee attempted to leave the area prior to the arrest.
- Case #11 involved an arrestee who was recording police activity. Based on BWC video, she did not appear to be disturbing the public peace or louder than other onlookers. While she seemed intoxicated, she did not appear to be endangering anyone. After a warning, the sergeant bypassed closer people and handcuffed the arrestee who appeared to be the only person recording.

¹¹ Three cases were problematic and appear on their face to be policy violations; therefore, they will be included in the cases referred to PIB noted in the final section entitled "Conclusions and Improvement Measures".

Problematic for Other Reasons

14 cases, highlighted in yellow in Appendix D and E, did not show First Amendment violations, but upon review were problematic for other reasons. The reasons include (1) whether the arrest was a good use of police resources, (2) deficient report writing, and (3) unclear evidence of disturbance of the public peace.

- Cases #4 and #8 included arrests for violations of city ordinance and minor crime(s). While the arrests were legal, BPD should consider whether they were an effective use of BPD time and resources. While the arrest may have achieved a goal of an officer and/or BPD (e.g., addressing an individual disruptive to a community), the arrest absorbed time and energy that may have been better spent focused on higher police priorities.
- Cases #3, #9, and #10 reflected incomplete report writing measures. BWC footage revealed important elements of the incident that were not included in the reporting.
- Five cases involved other crimes for which the suspect was arrested, in addition to Disorderly Conduct related charges. When this occurs, the arrest cannot be viewed as the enforcement of just Disorderly Conduct, but of the other crime(s) *and* Disorderly Conduct. Some cases, person may have been arrested for a different crime, but upon review by the SAO, it was determined that Disorderly Conduct should be added as a charge. As such, this occurrence often eliminates efforts for less intrusive measures that may otherwise have been utilized.¹² Cases #4, #5, #22, #23, and #26 reflect this dynamic.

Other Significant Observations

The Statements of Probable Cause (SPC) in cases #3, #8, #15, #17, #26, #27, and #30, included language describing people gathering to watch the subject's behavior, and using these observations as evidence of Disturbing the Peace. What appeared to be lacking from reviewing these cases was the officer describing the relationship between the people gathered and the subject's behavior, which is an important element for establishing Disturbing the Peace. It is impracticable to mandate that officers ask onlookers if the person's behavior is "disturbing" or if they were drawn to the police activity or otherwise planned to be present. An officer needs to consider that people often gather to observe the police (not merely the person who draws police attention) and people are otherwise often gathered in certain places for reasons that have nothing to do with police. These considerations should be made and articulated prior to charging someone with Disorderly Conduct. Officers should not be charging Disorderly Conduct solely on the basis of a gathered crowd, without further details that demonstrate the public was disturbed.

This review, though, revealed a lack of the understanding by some officers about what specific factors need to be observed or present in order to demonstrate Disturbing the Peace and other Disorderly Conduct related violations, as well as concerns about the articulation (or lack thereof) of those factors into their SPCs. While the SPCs reviewed may have been written for cases that were indeed Disorderly Conduct violations, the SPCs often did not sufficiently detail why taking enforcement action was proper. This emphasizes the need for further training and guidance for BPD officers on the different elements required under the law for each type of Disorderly Conduct offense, understanding what factors must be present to enforce a violation of Disorderly Conduct, and how to write a sufficiently detailed SPC to support an arrest for such a violation.

It is important to note that before criminal charges are approved, an on-duty Assistant State's Attorney (ASA) assigned to the Central Booking Intake Facility speaks to the arresting officer to ensure the SPC contains sufficient articulation of the necessary elements of applicable offenses. For the group of cases discussed in this subsection, the SAO approved Disorderly Conduct related charges. The on-duty ASA may not have access to all evidence at the time of approving these

¹² Officers make an arrest and then write a report detailing the events that occurred. SAO reviews the narrative and applies corresponding criminal charges. They often apply Disorderly Conduct related charges in addition to non-Disorderly Conduct charges.

initial charges; a more in-depth review of evidence and other information typically is conducted by the district court ASA prior to trial (this may include review of BWC footage and correspondence with necessary witnesses). After the SAO approves initial charges, a Court Commissioner then reviews and either approves or rejects the Probable Cause statements for the charges. If approved, a court date is set approximately 30 days after the arrest.

The rigorous analysis in this report points to some variations between BPD training and guidance, Maryland Courts, and prosecutors, which at times results in inconsistent enforcement of the Disorderly Conduct statute. Therefore, BPD must engage with these partners to ensure a more consistent application of these laws.

Adjudication of the Charges

It is important to note that of the 28 adult cases included in this assessment, 27 were reviewed by the Baltimore City State's Attorney Office (SAO) and by the Court Commissioner and found to have sufficient Probable Cause for the initial charge of Disorderly Conduct. The outcomes of those cases were as follows:

- 21 were dismissed at trial
- 4 were placed on the Stet Docket
- 2 resulted in conviction
- 1 was Released Without Charges due to reasonable doubt standard

CONCLUSION AND IMPROVEMENT MEASURES

This report has helped create the foundation for a much more robust Department-wide First Amendment assessment process. The report highlighted the following positive aspects of BPD's response to First Amendment Protected Activities:

1. The implementation of the new classification system in December 2018 by the Public Integrity Bureau (PIB) is a significant improvement because BPD previously did not have a specific category for allegations related to First Amendment Protected Activities. This updated system will greatly enhance BPD's ability to track these cases going forward, allowing for a more robust analysis of BPD's response to First Amendment Protected Activities in the future.
2. For the two 2019 protest events analyzed in this report, BPD officers were 100% compliant with policy requirements outlined in Policy 804, *First Amendment Protected Activity*. Therefore, during these two events, officers did not infringe on protestors' First Amendment rights including protestors' rights to film officers, chant their protestations, and yell at officers. This is an encouraging conclusion and can provide a good example for officers deployed to protest and assembly events to come.
3. Of the over 89,000 calls for Disorderly Conduct received by BPD in 2018, only 73 arrests were made. This amounts to a 0.08% arrest rate for such calls, which is a very promising figure. While BPD acknowledges that Disorderly Conduct calls may not serve as a direct proxy for First Amendment Protected Activities, the fact that these often overlap provides a preliminary perspective into how BPD responds to First Amendment Protected Activities that occur outside of a protest, demonstration or assembly.

In addition to the positive conclusions stated above, BPD also identified areas of improvement through conducting this assessment. Therefore, the Department will implement the following:

1. **Corrective Action:** Cases #1, #2, #6, #11, #12, and #29 from the Disorderly Conduct Arrest Review will be referred to the PIB for investigation. In addition, the entirety of this report, to include the Disorderly Conduct Arrest cases categorized as "problematic for other reasons," will be forwarded to PIB for review. PIB shall review the cases for

corrective action. This means that PIB could initiate new investigations, and/or that the referral of these cases could result in training, coaching, or other measures that can be taken to address specific violations or deficiencies. These referrals will be made regardless of whether there has been previously initiated investigations as a result of internal or external complaints related to these incidents.

- 2. Data Collection:** PIB shall ensure it continues to use its revised misconduct allegation classification system that identifies and categorizes complaints pertaining to First Amendment Protected Activities. Moving forward, BPD will be able to analyze the full scope of First Amendment related misconduct cases and report on the results annually. This will give the Department a better understanding of what measures need to be taken to improve policy, training, and, ultimately, officer-community interactions.
- 3. Policy and Training:** BPD has developed improved policies related to First Amendment Protected Activities through a collaborative process with the Consent Decree Monitoring Team and Department of Justice, as well as with the application of community feedback. BPD will be developing improved training pertaining to First Amendment Protected Activities this year. Additionally, this report will be forwarded to BPD's Education & Training (E&T) Section to ensure that upcoming trainings on most effective enforcement protocols can emphasize the importance of considering First Amendment Protected Activities that may be a factor in lower-level offenses. Furthermore, this report details two other concerns that arose through the Disorderly Conduct Arrest Analysis: deficient report writing and lack of understanding about what constitutes Probable Cause to arrest for Disorderly Conduct offenses. Therefore, E&T also shall ensure that upcoming trainings cover how to write a complete incident report, as well as explain what criteria must be considered when determining whether a charge of Disorderly Conduct applies to a situation and what criteria can help an officer determine whether they have sufficient Probable Cause to charge Disorderly Conduct offenses. Lastly, BPD will submit a letter to SAO requesting clear guidance from the SAO on what is valid evidence of Disturbing the Peace, as well as Loitering, to update appropriate policies and gain clarity for officers.
- 4. Ongoing Performance Reviews:** BPD's Performance Standards Section shall review all disorderly arrests in 2020 for compliance with law and policy. In addition, the Performance Standards Section shall review BPD's response to protest environments shortly after such events arise to provide timely performance feedback.

BPD will annually review its response to First Amendment Protected Activities to monitor compliance and identify opportunities for improvement and necessary corrective measures, as well as document the improvements and corrective measures taken. Doing so is crucial not only to establishing standards by which BPD may more effectively assess its response to First Amendment Protected Activities, but also to increasing public trust and BPD's legitimacy as a law enforcement agency.

APPENDIX A: MISCONDUCT CASE SUMMARIES

Summaries of six pending misconduct cases including allegations of First Amendment violations:

- 1. External complaint received December 22, 2018 alleging the following: On December 22, 2018 in the Southeastern District, a member of the public was taking pictures of a crime scene, and an officer told the civilian twice to stop taking pictures or the officer would take the camera away.**
- 2. External complaint received February 21, 2019 alleging the following: On February 17, 2019 in the Eastern District, the complainant stopped to record a police stop of two persons that escalated into an arrest. While the complainant was recording, an officer made the complainant stand across the street and told the complainant that they could not record the encounter. The officer poked the complainant to get them to move from where the persons were being arrested.**
- 3. External complaint received May 30, 2019 alleging the following: On May 30, 2019 in the Southwestern District, two people walked past two officers who had detained another individual. While walking past, one of the passersby said something about the detainee being on the curb, and the officer came up, grabbed the passerby, pinned them to the ground, told the other passerby to walk away, and arrested the first passerby.**
- 4. External complaint received August 19, 2019 alleging the following: On August 19, 2019 in the Southeastern District, an officer came to the location where the complainant was playing an instrument, snuck up on and bothered the complainant. The complainant stated that this officer has done the same thing several times over many years.**
- 5. External complaint received September 19, 2019 alleging the following: On September 18, 2019 in the Northern District, the complainant was in an accident. When officers arrived they asked for identification, which the complainant did not wish to provide. Officers arrested complainant, confiscated complainant's phone and deleted media from the phone.**
- 6. External complaint received October 18, 2019 alleging the following: On June 6, 2019 in the Southeastern District, the complainant was recording a police encounter with their phone. Officer assaulted complainant and threatened complainant with arrest.**

APPENDIX B: PROTEST ENVIRONMENT REVIEW SUMMARIES

JHU Protest Samples

Below is a summary of the sample BWC footage from twelve officers who were present at the JHU protest event. All of the officers' videos reviewed had their BWCs activated throughout the event, with videos of nearly three hours in length.

Sample 1: For the first half of the sample officer's video, the officer has no interaction with the public. Eventually, the sample officer enters the building and stands in the lounge area. After some time, the sample officer is viewed standing in front of protestors. The Operations Commander gives an arrest order. The sample officer's camera captures other officers telling the protestors to stand up because they are under arrest. The camera captures each protestor voluntarily standing up and placing their hands behind their backs, and other officers handcuffing them without using force. The sample officer and another officer are viewed, each leading an arrestee to the transport van. The video shows the sample officer conducting a search of the arrestee. The arrestee is loaded into the transport vehicle and seat belted by another officer. Subsequently, the sample officer walks over to another parking lot where protestors are yelling, chanting and recording other officers' actions with two protestors who are being arrested. The sample officer has a brief interaction with the protestors. He does not prohibit their speech or prevent them from recording or assembling. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 2: For the first half of the sample officer's video, the officer has no interaction with protestors. After a time, the sample officer enters and stands in the lounge area. The sample officer's first interaction occurred when he stepped up to arrest a male protestors, who is recording the sample officer with a cellular phone. The officer tells the protestor he is under arrest and asks him to stand up. The protestor complies, places his phone in his pocket, and then places his hands behind his back. The sample officer handcuffs the arrestee and does not use any force. The sample officer and arrestee exit the building. The arrestee is brought to the transport vehicle and searched. The arrestee is loaded into the transport vehicle and the sample officer walks over to an on-campus parking lot. There, two students lay in front of a transport vehicle to prevent it from moving. The sample officer's footage shows protestors yelling, chanting and recording the officer with cellular phones. The officer does not interact with the protestors. The officer's arrest was lawful. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 3: For the first half of the sample officer's video, the officer has no interaction with the public. Eventually, the sample officer enters and stands in the lounge area. The sample officer's first interaction occurs when he steps up to arrest one of the protestors. The sample officer asks the protestor to stand up. The protestor complies and places his hands behind his back. The sample officer handcuffs the arrestee without the use of any force. The officer exits the building with the arrestee, brings him to the transport van and searches him. The arrestee is loaded into the transport vehicle and the sample officer walks over to an on-campus parking lot. There, two students lay in front of a transport vehicle to prevent it from moving. Other protestors were yelling and recording officers with cellular phones and cameras. The sample officer has no interaction with any of the protestors. There were no incidents of First Amendment violations observed in this video. The officer's arrest was lawful. The officer's actions are fully compliant with the testing standards.

Sample 4: This sample officer takes a short bathroom break and therefore has two recordings for this event. For the first hour of the video, the sample officer has no interaction with protestors. After that time, he is positioned in front of a barrier with chanting protestors opposite him. He does not engage the protestors. Thirty-one minutes later, he is positioned by another barrier adjacent to the first barrier. Thirty minutes into the second recording the officer is observed in a brief conversation with an individual that appears to be a JHU employee. After that, no further interaction is observed during the video. There were no incidents of First Amendment violations observed in this footage.

Sample 5: For almost half of the recording the sample officer had no interaction protestors. At a point in the video, the order was given to make arrests. The sample officer, a female, approaches a female protestor who is recording the officer with a cellular phone. The officer asks the protestor to stand. She complies and places her hands behind her back. The sample officer handcuffs the arrestee without the use of force. The sample officer walks the protestor to an awaiting transport wagon, and conducts a search of the arrestee before placing the arrestee inside the transport wagon. At a later time, the sample officer walks to an adjacent parking lot where there are protestors. Two female protestors are lying in front of a transport vehicle, preventing it from leaving the area. The two protestors are given several warnings that they could be arrested. A BPD lieutenant gives the order to arrest the two protestors. The sample officer grabs the arm of one of the arrestees and asks her to stand. The arrestee complies and stands up and places her hands behind her back. The officer handcuffs the arrestee without the use of force. The officer preforms a pat down of the arrestee and escorts her to the transport vehicle. The officer has no other interactions with protestors. The officer's arrests are lawful and no force was used. There are no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 6: The sample officer stands in the outer perimeter, in front of the barrier made from bike racks, throughout his recording. He has no interactions with any protestors, even though they stood in front of him shouting. Throughout the duration of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 7: The sample officer stands in the outer perimeter and outer parking lot throughout his recording. The officer assisted with crowd control in the parking lot, where protestors blocked the path of a transport wagon in the process of transporting arrestees. Throughout the duration of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 8: The sample officer was positioned in front of the JHU building, outer perimeter, and parking lot with other officers for crowd control and standby assistance. The officer assisted with crowd control for pedestrian safety to clear the parking lot path where protestors obstructed the movement of a transport wagon in the process of transporting arrestees. Throughout the duration of the video, protestors are visibly screaming, chanting, recording, and directing a barrage of police related insults towards the officer without Retaliation or obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 9: The sample officer stands in the outer perimeter and in front of the JHU building throughout his recording. The officer assisted fellow officers with crowd control on the campus grounds. During the beginning portion of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 10: The sample officer stands in the outer perimeter, and outer parking lot throughout his recording. The officer assisted fellow officers with crowd control on the campus grounds, and in the parking lot where protestors blocked the path of a transport wagon. Throughout the duration of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards

Sample 11: For almost half of the recording, the sample officer stands in front of the JHU building and has no interaction with protestors. At a point in the video, the sample officer stands in the outer perimeter for standby assistance during his recording. Later in the video, the sample officer also assists with crowd control to clear the parking lot path where protestors are blocking the transport wagon. During the video, protestors are heard/visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 12: For almost half of the recording, the sample officer has no interaction with protestors. At a point in the video, the order is given to make arrests. The sample officer, a female, approaches a male protestor. The protestor places his hands behind his back, is handcuffed without the use of force, the sample officer walks the protestor to an awaiting transport wagon, and conducts a search of the arrestee before placing the arrestee inside the transport wagon. The sample officer later walks to an adjacent parking lot to assist with crowd control for pedestrian safety to clear the parking lot path where protestors are blocking a transport wagon in the process of transporting arrestees. Two female protestors are lying in front of a transport vehicle, preventing it from leaving the area. The two protestors are given several warnings that they could be arrested but do not comply. A BPD lieutenant gives the order to arrest the two protestors. The sample officer grabs the arm of one of the arrestees to assist her up off of the ground. The arrestee complies and stands up and places her hands behind her back. The officer handcuffs the arrestee without the use of force. The officer performs a pat-down of the arrestee and escorts her to the transport vehicle. The officer's arrests were lawful and no force was used. There are no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Presidential Protest Samples

Sample 13: The sample officer walks through and stands in the street among shouting protestors throughout his recording. He has brief interactions with protestors. One protestor voices his opinion, and a second protestor is visibly recording the officer with her cell phone while asking him a political opinion related to his deployment. The officer politely replies that he is unable to answer her question. The woman visibly accepts the officer's response, thanks the officer for his service, and walks away without further contact. Throughout the duration of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 14: The sample officer is engaged in a conversation with a citizen that cannot be heard during the 30 second initial BWC buffering period. Following the buffering period, the officer is standing in the street, engaged in a conversation to intervene two small groups of males involved in an escalating verbal altercation regarding opposing political positions. The officer intervenes by requesting for all of the people engaged in the verbal altercation to voluntarily go their separate ways to avoid further escalation of their verbal dispute. All of the men voluntarily walked away and ended their altercation during in response to the officer's request without any incident. The officer also provides directions to one man. No arrests were made. Throughout the duration of the video, men are visibly speaking freely during the recording without obstruction by any BPD officers at any time.

Sample 15: The sample officer is standing on the street in a traffic control capacity. A large group of protestors is observed stepping off of the sidewalk and into the street. Protestors are recording with mobile devices and holding signs. The sample officer gives two warnings for protestors to step back onto the sidewalk, and out of the street for safety. Protestors voluntarily step back onto the sidewalk and out of the street without incident. The sample officer also politely requested to be excused by one protestor, standing directly in front of a rack of unassembled crowd control barriers, to gain access to crowd control barriers to assist with set-up along President Street. The protestor voluntarily complied with the sample officer's request without incident. Throughout the duration of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 16: The sample officer is standing on the street in a traffic control capacity. A small group of protestors is observed stepping off of the sidewalk and into the street. The sample officer gives warnings for the protestors to step back onto the sidewalk, and out of the street for safety. The protestors voluntarily complied with the sample officer's request without incident. Throughout the duration of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 17: The sample officer is standing on the street in a traffic control capacity. A small group of protestors is observed stepping off of the sidewalk and into the street. The sample officer gives warnings for the protestors to step back onto the sidewalk, and out of the street for safety. The protestors voluntarily complied with the sample officer's request without incident. Throughout the duration of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 18: The sample officer is standing on the street in a traffic control capacity. A small group of protestors is observed stepping off of the sidewalk and into the street. The sample officer gives warnings for the protestors to step back onto the sidewalk, and out of the street for safety. The protestors voluntarily complied with the sample officer's request without incident. Throughout the duration of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

Sample 19: The sample officer is standing on the street in a traffic control capacity. A protestors is observed stepping into the street. The sample officer gives a warnings for the protestors to step back onto the sidewalk, and for safety. The protestors voluntarily complied with the sample officer's request without incident. The officer also briefly interacts with people passing by asking for directions, commenting about the volume of the crowd, and thanking the officer for his service. Throughout the duration of the video, protestors are visibly chanting and recording without obstruction by the officer at any time. There were no incidents of First Amendment violations observed in this video. The officer's actions are fully compliant with the testing standards.

APPENDIX C: MARYLAND CRIMINAL LAW, § 10-201(C)

- (1) A person may not willfully and without lawful purpose obstruct or hinder the free passage of another in a public place or on a public conveyance.
- (2) A person may not willfully act in a disorderly manner that disturbs the public peace.
- (3) A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace.
- (4) A person who enters the land or premises of another, whether an owner or lessee, or a beach adjacent to residential riparian property, may not willfully:
 - (i) disturb the peace of persons on the land, premises, or beach by making an unreasonably loud noise; or
 - (ii) act in a disorderly manner.
- (5) A person from any location may not, by making an unreasonably loud noise, willfully disturb the peace of another:
 - (i) on the other's land or premises;
 - (ii) in a public place; or
 - (iii) on a public conveyance.

APPENDIX D: DISORDERLY ARREST ANALYSIS SUMMARY TABLE

Key: Y = Yes N = No U = Undetermined N/A= Not Applicable Green = No Violations or Significant Concerns Orange = 1st Amendment Violation
 Yellow = Problematic for Other Reasons Grey = No 1st Amendment Protected Activity

| # Case | Criteria Question | | | | | | | | | | Probable Cause Analysis | Charge 1 | Charge 2 | Charge 3 | Charge 4 | PC for crime not charged | Court Disposition | Result of overall analysis |
|--------|-------------------|---|---|---|-----|---|---|-----|---|----|---|---------------------------|------------------------------------|---------------------------------|---------------------------------|--------------------------|---|----------------------------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | | | | | | | | |
| 7 | Y | Y | Y | Y | Y | Y | N | N/A | N | N | Satisfactory PC w/ PC for other charge(s) | Failure to Obey | | | Trespassing | No! Pros | No violations or significant concerns | |
| 16 | Y | Y | Y | Y | Y | Y | N | N/A | N | N | Satisfactory PC w/ PC for other charge(s) | Disorderly Conduct | Failure to Obey | Trespassing on Private Property | | Stet | No violations or significant concerns | |
| 19 | Y | Y | Y | Y | Y | Y | N | N/A | N | N | Satisfactory PC w/ PC for other charge(s) | Disorderly Conduct | Failure to Obey | Trespassing on Private Property | | Stet | No violations or significant concerns | |
| 20 | Y | Y | Y | Y | Y | Y | N | N/A | N | N | Satisfactory PC w/ PC for other charge(s) | Assault:2 | Trespass | Harass | | Guilty | No violations or significant concerns | |
| 24 | Y | Y | Y | Y | Y | Y | N | N | N | Y | Satisfactory Probable Cause | Failure to Obey | Disorderly Conduct | | | No! Pros | No violations or significant concerns | |
| 1 | Y | Y | N | Y | N/A | N | U | N/A | U | N | Unsatisfactory Probable Cause | Failure to Obey | Disorderly Conduct | | | No! Pros | 1 st Amendment Violation | |
| 6 | Y | Y | N | N | N | N | U | N/A | U | Y | Unsatisfactory Probable Cause | CDS Possession (10 grams) | Resisting/ Interfering with Arrest | Disorderly Conduct | | No! Pros | 1 st Amendment Violation | |
| 11 | Y | Y | N | Y | Y | U | U | N | U | N | Unsatisfactory Probable Cause | Disorderly Conduct | Failure to Obey | Obstructing/ Hindering | Resisting/ Interfering w Arrest | No! Pros | 1 st Amendment Violation | |
| 3 | Y | Y | Y | Y | Y | N | U | N/A | U | N | Inconclusive but PC for other charge(s) | Disorderly Conduct | | | Intoxicated Endangerment | No! Pros | No 1 st Amendment violation; problematic for other reasons | |

| | | | | | | | | | | | | | | | | | | |
|----|---|---|---|---|-----|---|-----|-----|---|--|--------------------|------------------------------------|-------------------------------|------------------------|------------------------------|--------------------------|---|---|
| 23 | Y | Y | Y | Y | N/A | Y | N | N/A | N | Inconclusive but PC for other charge(s) | Disorderly Conduct | Trespassing on Private Property | | | | Intoxicated Endangerment | Stet | No 1st Amendment violation; problematic for other reasons |
| 25 | Y | Y | Y | Y | Y | Y | N | N/A | N | Inconclusive but PC for other charge(s) | Disorderly Conduct | | | | | Intoxicated Endangerment | No! Pros | No 1st Amendment violation; problematic for other reasons |
| 26 | Y | Y | Y | Y | Y | Y | U | N/A | Y | Unsatisfactory PC but valid PC for other charge(s) | Disorderly Conduct | Resisting/ Interfering with Arrest | Failure to Obey | Obstructing/ Hindering | Unauth Use, Driv w/o License | No! Pros | No! Pros | No 1st Amendment violation; problematic for other reasons |
| 27 | Y | Y | Y | Y | Y | Y | U | N/A | N | Unsatisfactory PC but valid PC for other charge(s) | Disorderly Conduct | | | | Intoxicated Endangerment | No! Pros | No 1st Amendment violation; problematic for other reasons | |
| 30 | Y | Y | Y | Y | Y | Y | U | N | N | Inconclusive | Disorderly Conduct | | | | | | No! Pros | No 1st Amendment violation; problematic for other reasons |
| 2 | Y | Y | Y | Y | N | Y | N | N | Y | Unsatisfactory Probable Cause | Disorderly Conduct | Failure to Obey | Impeding Free Flow of Traffic | | | | No! Pros | No 1st Amendment protected conduct as defined by policy |
| 12 | Y | Y | Y | Y | Y | Y | N/A | N/A | N | Inconclusive but PC for other charge(s) | Disorderly Conduct | | | | Obstructing/ Hindering | No! Pros | No! Pros | No 1st Amendment protected conduct as defined by policy |
| 13 | Y | Y | Y | Y | N | Y | N | N/A | N | Inconclusive but PC for other charge(s) | Disorderly Conduct | | | | Trespassing | No! Pros | No! Pros | No 1st Amendment protected conduct as defined by policy |

| | | | | | | | | | | | | | | | | |
|----|---|-----|---|---|-----|---|---|---|--|--|--|---|-------------------------------|---------------------------|--------------------|---|
| 14 | Y | N | Y | Y | Y | U | N | Y | Disorderly Conduct | Disorderly Conduct | | | | Obstructing/ Hindering | No! Pros | No 1st Amendment protected conduct as defined by policy |
| 18 | Y | N/A | Y | Y | Y | Y | N | Y | Disorderly Conduct | Disorderly Conduct | Intoxicated Public Disturbance | | | | No! Pros | No 1st Amendment protected conduct as defined by policy |
| 21 | Y | N/A | Y | U | N/A | N | Y | Y | Disorderly Conduct | Disorderly Conduct | Resisting/ Interfering with Arrest | | | | Guilty (DC = STET) | No 1st Amendment protected conduct as defined by policy |
| 28 | Y | N | N | U | N/A | N | U | N | Disorderly Conduct | Disorderly Conduct | | | | Assault | (Juvenile) | No 1st Amendment protected conduct as defined by policy |
| 29 | Y | N | Y | Y | Y | N | Y | Y | Disorderly Conduct | Disorderly Conduct | Impeding Free Flow of Traffic | | | | (Juvenile) | No 1st Amendment protected conduct as defined by policy |
| | | | | | | | | | Unsatisfactory PC but valid PC for other charge(s) | Satisfactory PC w/ PC for additional charge(s) | Unsatisfactory PC but valid PC for other charge(s) | Inconclusive but PC for other charge(s) | Unsatisfactory Probable Cause | | | |

APPENDIX E: DISORDERLY ARREST CASE SUMMARIES

Key (same as Appendix D): Green = No Violations or Significant Concerns Orange = 1st Amendment Violation
 Yellow = Problematic for Other Reasons Grey = No 1st Amendment Protected Activity

| | <u>Summary</u> |
|----|---|
| 1 | Officers were conducting a self-initiated CDS investigation with another individual and checking for a possible warrant on the arrestee. Arrestee voiced displeasure with officer's actions. No crowd was observed gathering on BWC. The arrestee left the area. Officer followed him into the next block to make the arrest. |
| 2 | Officer was patrolling and observed the arrestee was standing in a restaurant doorway. Officer cited a "No Loitering" sign instructing the arrestee to go into the restaurant. No pedestrians were observed being blocked by the arrestee's presence; there existed only the potential for a person attempting to gain entry to the restaurant to be blocked. Evidence of blocking pedestrian traffic was described in conclusory terms without specific examples of who, if anyone, was blocked from free movement in a public place. |
| 3 | Officer was seated in his vehicle when approached by the arrestee. Arrestee appeared to be intoxicated and voiced displeasure with the police officer. After approaching the officer in a threatening manner, he walked into moving vehicular traffic. He was arrested. Officer did not document less intrusive means in the report. Unknown if the onlookers were disturbed by the actions of the arrestee. |
| 4 | Officer was told by a business owner about narcotics dealers in front of his establishment calling out names of drugs to potential customers. Officer located the arrestee in the block. The same block has been the subject of numerous complaints. Arrest did not meet the elements of disorderly conduct. However, during the encounter with the officer, the arrestee spit on the ground and voiced displeasure with the officer's actions. The officer attempted to cite the arrestee for spitting, but the arrestee refused to provide identification. With limited police resources, processing a spitting arrest is a questionable effective use of BPD personnel, despite being a lawful arrest. |
| 5 | Officers were patrolling and observed arrestee's father drinking alcohol on the steps of a vacant dwelling. Officers were conducting an investigation regarding those observations when the arrestee attempted to physically remove his father from the scene, against the officers' instructions, while voicing displeasure with the police. The actions of the arrestee met the elements of obstructing/ hindering, but not necessarily disorderly conduct. Both crimes were charged by the SAO. |
| 6 | Officers were patrolling and stopped an individual for trespassing. Arrestee was in the area and reportedly yelled profanity towards police. During the encounter, the sergeant advised the officer that as soon as they were finished, they were going to make the arrest. After officers finished the initial stop and began to walk in the direction of the arrestee, the arrestee walked away. Officers made the arrest, and later found CDS. |
| 7 | Intoxicated arrestee was attempting to get into his girlfriend's house to retrieve his identification. Officers responded to a call for service and spoke with the girlfriend. They checked the house for the arrestee's identification, but could not locate it. Arrestee reportedly yelled and cursed at police. Arrestee was told to leave the girlfriend's property, but the arrestee refused. |
| 8 | Arrestee was asked to leave a crime scene. Arrestee complied but continued to stand in the middle of the street, although not necessarily impeding traffic. Arrestee was observed littering. Arrestee yelled and cursed at police. Insufficient information detailed to establish whether was a disturbance to the peace. With limited police resources, processing a littering arrest is a questionably effective use of BPD personnel, despite being a lawful arrest. |
| 9 | Officers responded to location numerous times for a neighborhood dispute that continued to escalate. Both groups yelled at each other. Officers advised residents several times to cease the dispute. An aggravated assault by threat was committed during the dispute; however, this crime was not charged. Alleged assault did not occur in the presence of police and was not included in the report. Sufficient evidence present to indicate the dispute cause a disturbance of the peace. |
| 10 | Officers were advised by a citizen that the arrestee was highly intoxicated and belligerent. Arrestee advised that he did not know where he was or how to get home. During the encounter with officers, the arrestee became agitated and began to curse and walk into the street. Arrestee began to yell and curse at persons in the area, causing a child to cry. It's not clear if the officers felt that the arrestee was a danger to himself or others and did not articulate such as the reason for detaining the arrestee. Arresting officer did not note less intrusive attempts in the report. |
| 11 | Arrestee was recording police as another person in police custody was being treated by medics. The officer ordered the arrestee to move back and the arrestee complied. The officer states that the arrestee continued to advance toward the medics diverting the attention of officers, and causing neighbors to gather and observe. These events were difficult to see on BWC, possibly due to the lighting and vantage point. The officer focused on the arrestee who was recording, but not on other individuals gathered, but not recording. |
| 12 | Arrestee's vehicle was illegally parked in front of a grocery store. Tow truck attempted to remove arrestee's vehicle. The arrestee ran from store and entered vehicle. Officer was called to the location and ordered arrestee to exit the vehicle. The arrestee refused. Officer asked tow truck operator to take the vehicle. The tow truck driver drove the vehicle for a short distance. The officer then stopped the tow truck and placed the arrestee into custody for failure to obey. Obstructing/hindering was not charged. |
| 13 | Intoxicated arrestee was detained by overtime BPD officer and hospital security for trespassing and walking through the hospital, and refusing to leave the area. Officers then responded to the scene where they observed the arrestee already in custody. Security took handcuffs off the arrestee, and the arrestee was then ordered to leave the property, but refused. The arrestee's actions were consistent with trespassing, but trespassing was not charged. |
| 14 | Police were called to a home for a family disturbance. Arrestee's boyfriend was ordered to leave arrestee's mother's house at request of the mother. While the boyfriend was being escorted from the location, the arrestee continually attempted to step in between officers and her boyfriend. Arrestee's actions were consistent with obstructing/hindering, but that was not charged. |

| | |
|----|---|
| 15 | Arrestee's brother was in police custody after a vehicle pursuit. Arrestee came to the location to inquire about his brother's well-being. Officers instructed the arrestee to move back, the arrestee complied and stepped onto a porch. The arrestee continued to yell and curse at police. Persons were gathered in the block, but unknown why they gathered. After several minutes of the arrestee yelling and cursing he was arrested. |
| 16 | Officers were called to a local business for a disorderly person. Intoxicated arrestee was verbally abusing employees at a carryout. Arrestee and he left the location and cursed at officers and others. Arrestee was then seen banging on the window at a nearby gas station. Officers again convinced the arrestee to leave. 10 minutes later the arrestee returned to the carryout and began to verbally abuse the employees. Arrestee refused to leave and was arrested. |
| 17 | Arrestee was in a verbal altercation with his girlfriend. Officers received a call for service to that location. Officers arrived and asked him to leave. Arrestee advised that his identification was in the location. Officers spoke with girlfriend and checked the location with negative results. Arrestee continued to yell his girlfriend's name and advance toward her house. In 5 PC officer stated that several persons had come outside to observe the activity; however, due to the lighting at approx. 4 a.m., this was not visible on BWC. Even if BWC confirmed neighbors exiting their homes, insufficient information detailed to establish whether was a disturbance to the peace |
| 18 | Officers received a call to a home. Intoxicated arrestee had been in a verbal altercation with her boyfriend and his family. Arrestee stated that her wallet was in the residence and refused to leave until she found her wallet. Officer attempted to locate the wallet with negative results. Arrestee threatened to damage the residence. Officers convinced arrestee to leave. Arrestee then returned and began pounding on the rear door of her boyfriend's house. |
| 19 | After an altercation with her mother, arrestee went to a dollar store and began verbally abusing store employees and customers. Police were called to the location. Officer had encountered arrestee numerous times, and had attempted to provide her with resources on several different occasions. After numerous warnings to cease her behavior and leave the location she continued to shout profanity. She was arrested. |
| 20 | Arrestee was intoxicated and officers were called to a bar where employees wanted arrestee removed. Arrestee left and stayed in the immediate area. Arrestee yelled and cursed police and citizens. Arrestee began to verbally and physically assault persons on the street. He was arrested. |
| 21 | Police were called to a home for an armed person. Arrestee was in a verbal altercation with his sister. Warrant check was conducted revealing that the arrestee was wanted on a warrant. When officers attempted to place handcuffs on the arrestee he resisted and a struggle ensued until officers were able to successfully handcuff him. Based on BWC footage there does not appear to be persons gathered to watch the encounter. Arrestee was later found guilty of resisting arrest. The disorderly conduct charge was placed on the stet docket. |
| 22 | Officer was approached by a security guard in reference to the arrestee attempting to steal nachos from a 7-11. The officer attempted to obtain identification from the arrestee several times. The arrestee then became verbally abusive towards the store employee and the officer, and the situation began to escalate rapidly. The arrestee's actions were disorderly; however, no warnings were issued by the officer. The arrestee also was charged with theft. |
| 23 | Arrestee was intoxicated and trespassing in the Horse Shoe Casino. According to casino staff when arrestee was asked to leave, he refused and took a fighting stance. Arrestee had previously been evicted from the casino. Arresting officer later arrived and contacted SAO who listed crimes that the arrestee could be charged with, including disorderly conduct. Arrestee yelled and cursed at security. |
| 24 | Earlier on the same date, the arrestee was involved in a verbal altercation with her girlfriend, arrestee gathered belongings and left the location advising that she would be obtaining an ex parte order. Less than an hour later the arrestee returned and began another verbal altercation with her girlfriend. Police were called to the location and the arrestee's girlfriend cooperated with officers and attempted to leave the location. The arrestee shouted and yelled obscenities. The arrestee refused to leave, or to stop yelling and causing a disturbance. She was arrested. |
| 25 | Police were called to a home for a domestic. Intoxicated arrestee was involved in a dispute with his girlfriend. The girlfriend attempted to leave with her children. Once the girlfriend was outside of the house with the children the arrestee then exited the house and continued to yell and verbally abuse his girlfriend. As the arrestee shouted, persons were observed standing on their porch watching the events, but it is undetermined if they were disturbed. Officer attempted to obtain statements from onlookers, but they refused. |
| 26 | Arrestee's vehicle was stopped for speeding and equipment violation. Arrestee stated he was in possession of marijuana, had no identification card, and was not on the rental agreement. While officers were investigating the incident the arrestee began to scream and curse. People exited surrounding buildings. The arrestee's sister can be seen on BWC exiting her house; however, it is unclear if the people who exited buildings were disturbed by the arrestee's actions. The arrestee's driving privilege was suspended. |
| 27 | Arrestee's son was being arrested subsequent to a search and seizure warrant. Intoxicated arrestee came to the location and began to cause a disturbance outside of the residence. Arrestee was warned to cease this behavior; however, the arrestee refused to comply. Officers noted that several persons in the area came to windows and outside in reaction to the arrestee's actions. However, due to the time of night, this was not evident on BWC. Insufficient information detailed to establish whether was a disturbance to the peace. |
| 28 | Officer was called to the location for several juveniles observed around the gas station. When the officer walked towards the group only one juvenile is observed running. A plastic bottle can be seen landing near the officer, but the bottle's point of origin is not captured on BWC. The officer finds the juvenile that he observed throwing the bottle and places him under arrest. There was also a report that the juvenile slapped the officer, but it could not be seen on BWC. |
| 29 | Officer observed the juvenile standing in the doorway of a business. The officer advised the juvenile that he had to leave because of a "No Loitering" sign on the business. The juvenile refused and began to curse at the officer. The officer asked for the juvenile's information but the juvenile refused. The juvenile was not observed blocking pedestrians. Officer placed juveniles under arrest. Evidence of blocking pedestrian traffic was described in conclusory terms without specific examples of who, if anyone, was blocked from free movement in a public place. |
| 30 | The officer was involved in a vehicle stop when the arrestee, who was not related to the vehicle stop, began yelling and cursing at officers. The arrestee was joined by several other people who also began to yell at officers. Officer gave verbal warnings but the arrestee continued until approached and arrested by officers. Unknown if the crowd was disturbed by the actions of the arrestee, or if gathered as mere onlookers or participants. |