



Policy 1018

Subject

LESSER OFFENSES & ALTERNATIVES TO ARREST

Date Published

12 April 2022

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By Order of the Police Commissioner

POLICY

This Policy provides guidance on the Baltimore Police Department's (BPD) philosophy governing enforcement action for certain Lesser Offenses where members have enforcement discretion. Lesser Offenses involve infractions of statutes and ordinances enumerated in the Baltimore City Code and the Maryland Annotated Code. Members must be deliberate in their enforcement of these offenses given the important balance required to enforce laws in a fair, impartial, and ethical manner in order to build trust and police legitimacy, and to address concerns raised by community members about these offenses.

CORE PRINCIPLES

Constitutional Enforcement. Members may only enforce Lesser Offenses, whether by issuing a warning, issuing a citation, or making a custodial arrest (See Policy 1106, *Warrantless Arrest Procedures and Probable Cause Standard*), where consistent with Fourth Amendment requirements — i.e., when they have probable cause to believe that a person has committed or is committing a criminal infraction or citable offense. In addition, such enforcement must also be consistent with other constitutional requirements, such as avoiding selective enforcement arising out of discriminatory bias (Fourteenth Amendment) or in retaliation for protected speech. (See Policy 317, *Fair and Impartial Policing*, and Policy 804, *First Amendment Protected Activity*).

Non-Discriminatory Policing. Members are prohibited from relying, to any extent or degree, on a person's race, ethnicity, national origin, religion, gender, sexual orientation, age, disability, gender identity or expression, or affiliation with any other similar identifiable group as a factor in conducting a field interview, investigative stop, vehicle stop, weapons pat-down, search, or arrest except when physically observable as part of an actual or credible description of a specific suspect or suspects in any criminal investigation that includes other appropriate non-demographic identifying factors (such as clothing or associated vehicle). See Policy 317, *Fair and Impartial Policing*.

Most Effective and Least Intrusive Response. A fair and effective response to a violation of the law balances public safety and order in the community against the serious impact of law enforcement action (e.g., loss of liberty; humiliation and stress; loss of income, employment, or housing) on the individual believed to have committed the violation. Where effective in resolving the violation in accordance with law and policy, problem-solving such as a verbal warning is generally preferable to a citation, and a citation is generally preferable to an arrest. As arrest is a last resort, members should refrain from making an arrest unless doing so reasonably advances the goal of public safety or addresses significant or chronic community disorder, and the situation cannot be resolved in a less intrusive manner that is authorized by law and policy.

Community Partnerships. The BPD continuously works with residents and neighborhood leaders to fully understand issues facing the City's diverse communities, and to co-develop strategies in order to address those issues. In addition to the advancement of public safety goals, the enforcement of Lesser Offenses must also align with the interests and priorities of the communities which the BPD serves.

DEFINITIONS

Aggravating Circumstances – Specific, articulable facts known to a member at the time of an offense for which a member may account when determining the least intrusive response appropriate to enforce the violation. Examples include, but are not limited to:

- Multiple, prior, individual warnings and attempts to counsel without resolution,
- Addressing a formal community priority (e.g., co-developed strategy between BPD and neighborhood groups to specifically address concerns around Lesser Offenses), or
- Behavior indicating the person will not comply with a verbal warning.

Lesser Offenses – Certain minor infractions of statutes or ordinances enumerated in the Baltimore City Code or the Maryland Annotated Code. Lesser Offenses include citation-eligible misdemeanor offenses that carry fines or maximum penalties of imprisonment up to 90 days. Generally, Lesser Offenses also include so-called "quality of life" offenses which members may enforce at their discretion. Examples of common Lesser Offenses include:

- Loitering,
- Misdemeanor Trespassing
- Public Urination/Defecation,
- Disorderly Conduct (including Disturbing the Peace),
- Obstructing or Hindering an Officer,
- Open Container, and
- Littering.

Pretext Stop – Stopping a person for an infraction to investigate other suspected or possible criminal activity for which the BPD member has neither reasonable articulable suspicion (RAS) nor probable cause. Members must have RAS for the infraction or violation for which they are stopping a person.

GENERAL

1. Lesser Offenses committed in a member's presence shall be enforced by the most effective and least intrusive response appropriate under the circumstances reasonably understood by the member at the time. This enforcement includes, but is not limited to:
 - 1.1. Verbal warning and counseling (which may include referral to services, such as location of accessible restroom facilities, shelter, or support center),
 - 1.2. Civil or Criminal Citation, or
 - 1.3. Arrest (under rare circumstances, see **DIRECTIVES** below).
2. In order to issue a citation or make an arrest, the member must not be engaged in

discriminatory policing and have probable cause to believe that a person has committed or is committing a criminal infraction or citable offense.

3. Members shall seek and receive approval from a permanent-rank supervisor prior to arresting an individual for a Lesser Offense. If specific, time-sensitive circumstances make it not practicable to obtain permission, the member must notify a permanent-rank supervisor as soon as practicable after making the arrest. The articulable circumstances for making the arrest prior to obtaining supervisory approval must be documented in the Incident Report.
4. Maryland law mandates the issuance of a civil citation in lieu of arrest if a member elects to take enforcement action beyond warning and counseling for certain lesser offenses, including:
 - 4.1. The use or possession of less than 10g marijuana for adults and youth (See Policy 809, *Marijuana: Uniform Civil Citation*).
 - 4.2. Alcohol violations for adults and youth, where appropriate:
 - 4.2.1. Misrepresenting age to purchase alcohol,
 - 4.2.2. Possession/consumption of alcohol by a minor,
 - 4.2.3. Possession of a fake ID for purposes of purchasing alcohol,
 - 4.2.4. Obtaining or furnishing alcohol to a minor,
 - 4.2.5. Keg violations,
 - 4.2.6. Consumption of alcohol in public, and
 - 4.2.7. Open container.
 - 4.3. Possession of salvia by persons under 21 years old.
 - 4.4. Persons under 21 playing or remaining near video lottery facilities.
 - 4.5. Possession or consumption of alcohol on public school property.

NOTE: Maryland Law does not authorize arrest for any of the above offenses.

DIRECTIVES

Members

5. The Department expects members to respond with a verbal warning and counseling in response to Lesser Offenses committed on-view or when responding to a call for service where there is a credible witness or evidence.
6. Even in the presence of Aggravating Circumstances, warning, counseling, and problem-

solving should be considered when practicable prior to any citation or arrest. A member may issue a citation for Lesser Offenses where Aggravating Circumstances exist as encountered by the member which support the issuance of a citation as opposed to a verbal warning and counseling.

7. Any time a citation is issued, the member shall complete the citation per Policy 808, *Civil Citation Procedures* or Policy 803, *Criminal Citation Procedures*.
8. Members may only issue one (1) citation per offense. Where multiple, citation-eligible offenses exist, members must receive supervisory approval for the issuance of more than three (3) citations that arise from a single incident.
9. It is rare that an arrest for a Lesser Offense would advance the goal of public safety. Members may only arrest an individual for a Lesser Offense when:
 - 9.1. The member has identified specific, articulable facts (that they can later document in their reporting) indicating that the individual presents an immediate danger to the life, safety, or property of themselves or others, **and**
 - 9.2. Other enforcement options will not resolve the problem(s) created by the violation or promote public safety, **and**
 - 9.3. A supervisor has approved the arrest based upon the above criteria. When it is not practicable to obtain permission, the member must notify a permanent-rank supervisor as soon as practicable after making the arrest.
10. In circumstances where an individual commits a more serious offense in addition to the Lesser Offense, the officer may arrest the perpetrator for the more serious, arrestable, offense provided less intrusive measures have failed or are impracticable. If the officer charges the individual with the more serious offense, the officer shall not charge the person with the Lesser Offense.
 - 10.1. See Policy 1106, *Warrantless Arrest and Probable Cause Standard* for guidelines on arresting a person without a warrant.
 - 10.2. Officers shall include information about the Lesser Offense in their Incident Report and in their statement of probable cause in support of the arrest.
11. For all stops related to Lesser Offenses where an arrest is not made, the member shall provide the stopped person with a Baltimore Police Contact Card (Appendix B), which will contain a summary of the reason for the stop and an identification number that corresponds to the stop. See Policy 1112, *Field Interviews, Investigative Stops/Detentions, Weapons Pat-Downs, & Searches* for further guidance on stops, pat-downs and searches related to Lesser Offenses.
12. Members shall not consider demographic category (e.g. race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, or disability) to any extent or degree when taking, or refraining from taking, any law enforcement action – including pedestrian or vehicle stops, pat-downs, searches, arrests, or uses of force – except when such information is part of an actual and credible description of a specific suspect in an ongoing investigation

that also includes other appropriate non-demographic identifying factors.

13. Members shall not conduct Pretext Stops in which the “pretext” justification for the stop is loitering or misdemeanor trespass. This does not prohibit stops that are not pretextual, such as a stop in response to a call for service concerning loitering or misdemeanor trespass.
14. Members shall not take any enforcement action in retaliation for protected speech. (See Policy 804, *First Amendment Protected Activity*).
15. Members may consult Appendix A, Lesser Offense Enforcement Flow Chart for visual guidance on the Lesser Offense enforcement guidance listed above.

Supervisors

16. A permanent-rank supervisor will approve or disapprove a member’s request to issue more than three (3) citations arising from a single incident, and/or make an arrest for a Lesser Offense. Supervisors shall ensure that the issuance of multiple citations or arrest is non-discriminatory, based on the existence of probable cause, and that the member adhered to departmental policy when determining when to verbally warn and counsel, issue a citation, or arrest a person for Lesser Offenses.
17. Supervisors must document and take appropriate action to address violations or deficiencies in members’ arrest requests and recommendations, including releasing the person, explaining reasons for rejecting requests/recommendations, and/or referring the incident for administrative or criminal investigation.

Special Considerations for Certain Lesser Offenses

Loitering

The BPD recognizes that community priorities and calls for service often request a law enforcement response to loitering, and that members require clear guidance on preserving individual’s rights to peacefully assemble while being responsive to the needs of the community. This section presents thresholds for when the citable-offense of loitering has occurred, and procedures for addressing the offense:

18. Members may use problem-solving to address an issue without taking enforcement action, (e.g., working with business owners on strategies for proactive engagement or prevention of loitering in front of their business). If called to address an instance of loitering, members may:
 - 18.1. Approach the individual(s) and engage in a voluntary contact,
 - 18.2. Use their presence to discourage criminal activity, and/or
 - 18.3. Problem-solve to mitigate further pedestrian or vehicular interference if the elements of the offense of loitering are not met, including the facilitation of First Amendment protected activity, e.g., controlling traffic around the assembly (See Policy 804, *First Amendment Protected Activity*).
19. Loitering occurs where individuals gathered in a public space are obstructing free passage of

pedestrian or vehicular traffic. In order for loitering to be enforced, members must (1) advise the individuals that they are interfering with the free flow of pedestrian or vehicular traffic, and that continuing to do so may result in a citation or arrest; and (2) provide the individuals with the opportunity to comply. This does not apply to individuals exercising First Amendment rights protected by the US Constitution, such as the free exercise of religion, freedom of speech, or the right of assembly.

20. If the steps listed in 18 above do not effectively address the issue, and the elements of 19 are present, members may perform an investigative stop and determine the most effective and least intrusive enforcement strategy to address the loitering violation.

Disorderly Conduct

21. Only law enforcement orders given to prevent a disturbance to the public peace are enforceable for violations of Disorderly Conduct.
22. In order to cite an individual for Disorderly Conduct, members must:
 - 22.1. Possess specific, articulable facts that support exactly how the public is disturbed if the individual were to be allowed to continue their actions,
 - 22.2. Advise the individual that their actions are disturbing the public and that continuing to do so may result in a citation or arrest, and
 - 22.3. Unless articulable facts suggest that the individual will fail to comply, provide an opportunity for the individual to comply with a member's warning or counseling.
23. No member shall use a charge of Disorderly Conduct in a fashion that violates a person's First Amendment rights to criticize the police, freely assemble or protest, observe police conduct, record police members, or use public sidewalks (See Policy 804, *First Amendment Protected Activity* and Policy 1016, *Public Observation/Recording of Officers*).

NOTE: In order to properly cite Disorderly Conduct, there must be a "public" presence and the "public" must be disturbed. Evidence of such "disturbance" has been defined by the courts in instances where, for example, a person's rude, aggressive behavior has led to complaints by numerous citizens who were unable to enjoy a particular event or endeavor due to the actions of the disorderly individual who persisted in their behavior despite numerous warnings.

There may be certain incidents in which an individual is engaged in protected speech (e.g., picketing, protests, pamphleting). These individuals should be allowed to continue their protected speech so long as in doing so they are not unreasonably loud and disturbing the peace of others (See Policy 804, *First Amendment Protected Activity*). Members must be able to articulate the charges of "unreasonably loud" and "disturbance of the peace of others" through disturbance complaints by community members or having received information from other persons whose peace was reasonably affected (*Baynard v. State*, 318 Md. 531 (1990)).

24. "Failure to Obey" an order by a police officer is not itself generally a crime. Officers shall only charge Failure to Obey for noncompliance with orders made to prevent a disturbance to the

public peace, such as a dispersal order. If an individual fails to obey an order made to prevent another crime (e.g., loitering, hindering, trespassing, etc.), that crime would be the more appropriate charge (not "Failure to Obey"). If no crime was committed, members shall not charge "Failure to Obey."

- 24.1. Even if the crime "Failure to Obey" is committed, members shall consider the alternatives to formal enforcement as required in this policy.

Hindering

25. In order to properly charge a person for hindering, the following criteria shall be met:

- 25.1. A law enforcement officer is engaged in the performance of a duty; and
- 25.2. An individual acts (or fails to act) in a manner that materially obstructs or hinders the law enforcement officer; and
- 25.3. The individual knows that the law enforcement officer is engaged in the performance of a duty and knowingly acts (or fails to act) in order to obstruct or hinder the law enforcement officer.

NOTE: An individual's protected speech may not be used as a basis for hindering (See Policy 804, *First Amendment Protected Activity*).

REQUIRED ACTION

Members: Documenting Lesser Offense Enforcement

26. Members shall provide a Baltimore Police Contact Card (See Appendix B) to individuals who are stopped and subsequently warned or counseled for a Lesser Offense.
27. For Lesser Offenses that result in Civil or Criminal Citations, members shall prepare an accompanying Incident Report where appropriate (See Policy 808, *Civil Citation Procedures*). If more than three (3) citations are issued in a single incident, members shall include in their Incident Report the name and rank of the supervisor that approved the issuance of the additional citations.
28. Any time a member receives supervisory approval and makes a custodial arrest for a Lesser Offense, the member shall record in the Incident Report and the statement of probable cause the factual basis for their decision to make a custodial arrest, rather than providing a warning or verbal counseling, or issuing a citation. The report shall be completed by the end of the member's shift.

NOTE: Refer to Policy 1112, *Field Interviews, Investigative Stops/Detentions, Weapons Pat-Downs, & Searches* for complete guidance on documenting all stops, pat-downs and searches.

Supervisors: Lesser Offense Enforcement Review

29. Supervisors shall monitor the Lesser Offense enforcement decisions made by a subordinate

and provide ongoing guidance and support to ensure that members are adhering to the BPD's guidance around the least intrusive and most effective response to Lesser Offenses.

30. Supervisors shall approve or disapprove of a subordinate's request to effect an arrest on an individual for a Lesser Offense based on Aggravating Circumstances as articulated by the member.
31. Supervisors shall review any associated Civil or Criminal Citations for completeness and that the decision to cite represented the least intrusive and most effective enforcement decision under the circumstances (See Policy 803, *Criminal Citation Procedures* and Policy 808, *Civil Citation Procedures*).

Data Tracking

32. All reporting required for any stop, citation, or arrest as related to a Lesser Offense shall follow the protocol listed in Policy 1112, *Field Interviews, Investigative Stops/Detentions, Weapons Pat-Downs & Searches*.
33. BPD's Performance Standards Section – Audits Unit will track all citations given for Lesser Offenses, and will analyze citation data using peer group analysis on an annual basis to assess how members are enforcing Lesser Offenses and to identify members who may benefit from additional guidance or counseling.

APPENDICES

- A. Lesser Offense Enforcement Flow Chart
- B. Baltimore Police Contact Card

ASSOCIATED POLICIES

Policy 317, *Fair and Impartial Policing*
Policy 804, *First Amendment Protected Activity*
Policy 803, *Criminal Citation Procedures*
Policy 808, *Civil Citation Procedures*
Policy 809, *Marijuana: Uniform Civil Citation*
Policy 1016, *Public Observation/Recording of Officers*
Policy 1106, *Warrantless Arrest Procedures and Probable Cause Standard*
Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*
Policy 1202, *Interactions with Youth*

RESCISSION

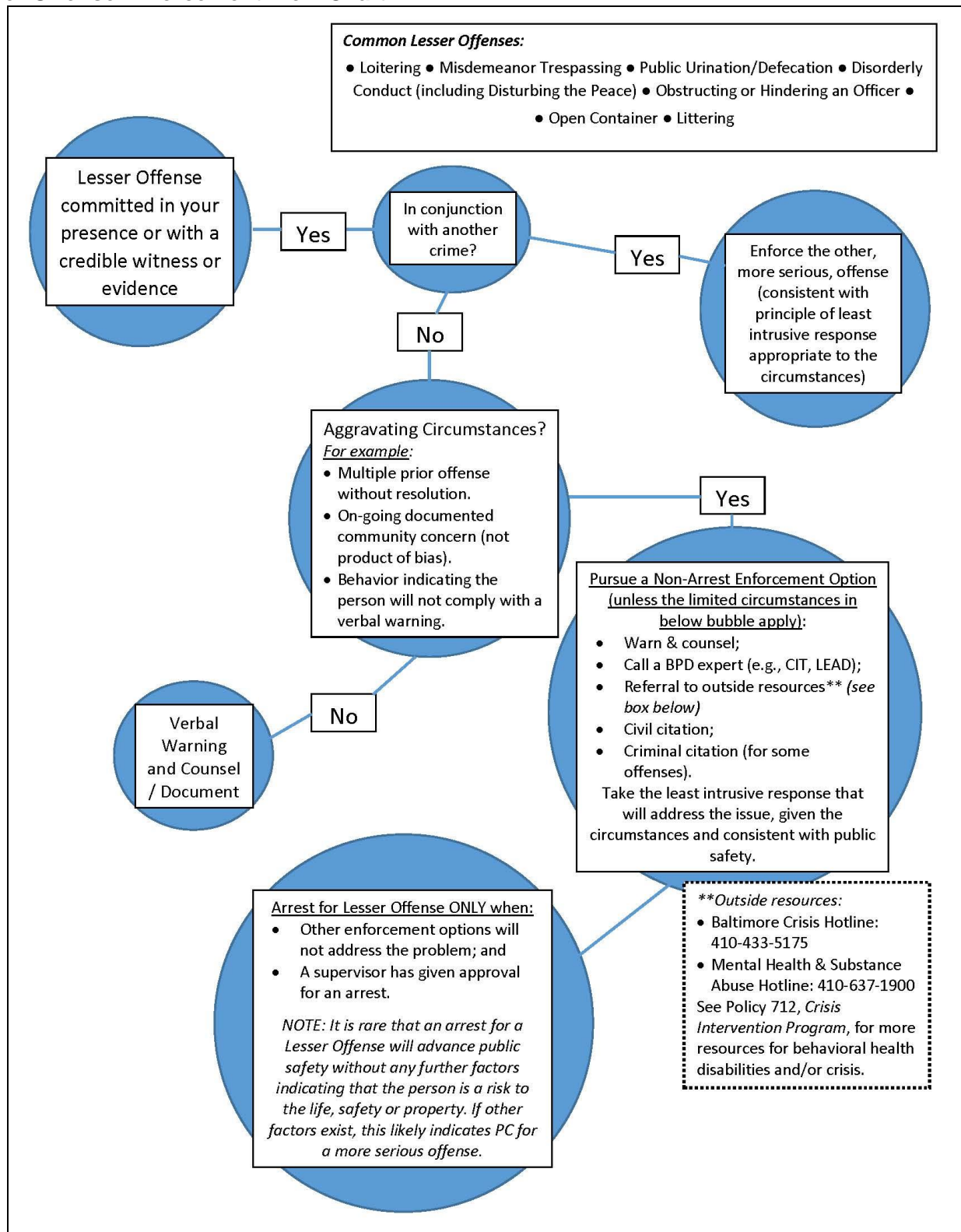
Remove and destroy Policy 1018, *Quality of Life Offenses – Core Legal Elements*, dated 1 July 2016.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A


Lesser Offense Enforcement Flow Chart



APPENDIX B

Baltimore Police Contact Card

Badge #:	_____	Date:	_____
Name:	_____	Seq. #:	_____
CC/CAD #:	_____		
Reason for Stop:	_____		
Location:	_____		



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