



Colorado Springs Police Department Standard Operating Procedure

DL-1091-10 Enforcement of Loitering Ordinance

Section 1000 Patrol Functions

Effective Date: 7/5/2021

Supersedes Date: 8/19/2013

.01 Purpose

The purpose of this directive is to provide guidelines for the enforcement of the city ordinance governing loitering.

.02 Cross Reference

[GO 101 First Amendment Rights](#)

[DL-1050-10 Juvenile Offenders](#)

.03 Definitions

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.04 Procedure

Colorado Springs City Ordinance § 9.2.102 "Loitering" contains four distinct ways in which a defendant can violate this law. Each of these theories of legal liability has different technical requirements that must be met before a suspect can be arrested and charged with a violation of the ordinance. These requirements are designed to protect the constitutional right of all citizens to go about their legitimate activities in public places, free of police interference.

Officers are responsible for familiarizing themselves with the legal elements of all four versions of the offense of "Loitering" and the provisions of this standing operating procedure, prior to taking any enforcement action against a defendant for a violation of this ordinance. The SOP will highlight specific considerations and discuss the procedure for enforcing the ordinance.

Specific Subsections

- I. Subsection 9.2.102(B): *"Loitering so as to warrant alarm for safety of persons and property."*

Under this subsection, it must be proved beyond a reasonable doubt, not only that the person was loitering, but also that the loitering was done in a manner to legally "warrant alarm."

Ordinance Subsection D, describes the specific factors the officer can take into consideration when enforcing subsection B, which is as follows:

Among the circumstances which may be considered in determining whether reasonable grounds for belief have arisen that a person is loitering is the fact that the person:

- a. Takes flight upon appearance of a peace officer; or
- b. Refuses to provide the person's identity; or
- c. Manifestly endeavors to conceal the person's person or any object; or
- d. Systematically checks the means of access to buildings or vehicles; or
- e. Maintains a continuous presence in close proximity to a place when the person's activity manifests a high probability of unlawful activity.

Additionally, unless circumstances make it impractical, the ordinance requires the officer to give the person an opportunity to:

- Identity themselves and;
- Explain the purpose of their presence and conduct.

If the suspect is not offered an opportunity to explain the situation, any subsequent loitering charges will be dismissed by the court. If the explanation provided by the suspect sufficiently explains the circumstances so that alarm is no longer warranted no further action will be taken under this ordinance. If the explanation does not dispel the alarm, then the person may be arrested and charged with "Loitering."

II. Subsection 9.2.102(C)(1): *"Loitering on School Grounds."*

In order to charge a person with "Loitering on School Grounds" all of the following elements must be present:

- a. He or she loiters in a school building, on school grounds, or within 100 feet of school grounds, and;
- b. School is in session or, children under the age of 18 years are otherwise present on the school grounds, and;

- c. They were asked by a school administrator, other school representative, or a peace officer to leave, and;
- d. They have no reason to loiter near the school related to the custody of or responsibility for a student, or other legitimate reason for their presence, and;
- e. The circumstances of their continued presence does one of the following:
 - 1. Interferes with or disrupts the school program, or;
 - 2. Interferes with or endangers schoolchildren or school personnel present on the school grounds or in school buildings.

III. Subsection 9.2.102 (C)(2): *"Juveniles Loitering During Nighttime Hours."*

It is unlawful for persons under the age of 18 years to loiter or to aimlessly drive about in any of the following places:

- a. a street, avenue, highway, road, sidewalk, curb, gutter, alley, parking lot, yard, lot, park, playground, building, place of amusement, eating place (whether public or private);
- b. without the permission or consent of the owner or occupant;
- c. during the hours ending at 6:00 A.M. and beginning at 12:00 midnight on Saturday and Sunday mornings, and from 10:00 P.M. until 6:00 AM Sunday night through Thursday night;
- d. unless accompanied by a parent, guardian, or other person over the age of 21 years, who is authorized by the parent or guardian to accompany the juvenile during this time, and in the specific area.

Each of the elements must be met in order to charge a juvenile under this subsection, the key to the violation (e.g. corpus delicti of the offense) is the undirected loitering or wandering about in public places during certain hours. The ordinance is narrowly defined to prevent minors from aimlessly roaming the streets during certain nighttime hours and has been upheld by the Colorado Supreme Court in the case of *People in The Interest of J.M.* 768 P2d. 219 (1989).

Nothing in this section prohibits juveniles from participating in employment, coming or going from legitimate social activities, or engaging in legitimate activities protected by the First Amendment (such as religious or civic events) during these hours.

Enforcement

It is the policy of the Colorado Springs Police Department (CSPD) that this subsection will be enforced in a progressive manner. It is important that officers be equitable in the application of this ordinance to individuals. Its purpose is to interdict rising levels of juvenile crime, not to harass any segment of the community. Enforcement will be based solely upon the specific actions, time and location, and prior history of the juvenile involved.

An officer who contacts a juvenile whose behavior and location is such to lead the officer to suspect that the juvenile is violating subsection city ordinance § 9.2.102(C)(2), "Juvenile Loitering During Nighttime Hours" will afford the juvenile an opportunity to explain their conduct prior to taking enforcement action under this subsection. This questioning will be completed during the investigative stop, prior to taking the juvenile into custody.

If no explanation is given or, if the explanation does not reveal a lawful purpose to the actions of the juvenile under this subsection, the officer will request dispatch query LERMS for previous loitering warnings or arrests.

First Offense

If this check reveals no prior record of a violation of this subsection, and the incident under investigation does not involve any other violations of law, a juvenile will not be cited into court. The juvenile will be released back to the custody of their parent or legal guardian with a "Notice to Parents of Loitering Violation" warning letter.

If the juvenile is determined to be involved in other illegal conduct at the time of the violation, (excluding traffic offenses), then the officer has the option of citing the violator into court, notwithstanding the lack of prior violations. (Officers must be aware of potential double jeopardy problems, and charge all concurrent violations into the same Court).

Subsequent Violations

If department records reflect the subject has violated this ordinance within the past 12-month period, the officer will charge the suspect. They will be served a summons and released to the custody of their parent(s)/legal guardian(s). The parent or guardian will be provided a "Notice to Parents of Loitering Violation" letter.

Documentation of Violations

Violations of city ordinance § 9.2.102(C)(2) "Juvenile Loitering During Nighttime Hours" will be documented in an MFR Field Interview (FI) indicating the reason for the contact was loitering.

The parent(s)/guardian(s) will receive the "Notice to Parents of Loitering Violation" letter which will include the date, time, location of the violation, and provisions of subsection city ordinance § 9.2.102(C)(2).

A copy of the notice will be scanned and attached to the MFR FI report. If the juvenile was served a summons, attach both the notice and summons to the MFR FI. If a case report was generated because of the contact, the officer should still complete a loitering FI that can be readily searched in the event of repeated contacts with the juvenile.

Release to Parents

Whenever practical, an officer should return a juvenile who is found to be in violation of subsection city ordinance § 9.2.102(C)(2) to the custody of their parents or legal guardian in person. This may be accomplished by either taking the juvenile home, or taking the juvenile to the nearest police department substation, and summoning the parents to pick up the child. (With the consent of the parents, obtained over the phone, the juvenile may be left in the lobby of the police facility while awaiting a parent to pick them up. In such cases, the PSR can give the parents their copy of the "Notice of Violation").

If the juvenile is at least fourteen years of age, and the officer is unable to locate the parents or legal guardians of the juvenile, the juvenile may be issued a verbal warning or served and released, as appropriate. In determining whether it is appropriate to release a juvenile other than to their parents, the officer will consider the following factors:

- age of the juvenile.
- location and distance to the juvenile's home.
- means of transportation.
- weather conditions.
- known levels of criminal activity in the area.

If, in the opinion of the officer, personal contact with the parent(s)/guardian(s) is not necessary, and telephone contact with the parents is sufficient and, the parents are in agreement, the officer may also serve and release, or warn and release a juvenile offender. During such phone notification, the officer will advise the parents that they will be receiving a written "Notice of Violation" in the mail regarding the incident.

If the officer is able to make contact with the parents via telephone, and the parents refuse to come down and pick up a juvenile offender who is 14 years of age or over, the officer has the discretion to either take the child home or serve and release the subject as described (If a juvenile is contacted for a violation of this ordinance who is 1) found to reside outside of El Paso County or 2) who is

found to be under 14 years of age, and the officer is unable to make contact with the parents or legal guardian, the Adolescent Pager of the El Paso County Department of Human Services will be contacted to determine if placement of the child is appropriate. The child will then be handled per their instructions.

In any case where it is impractical to personally serve the parents with a "Notice of Violation" of subsection city ordinance § 9.2.102(C)(2), the officer will mail this to the parents via regular mail prior to going off shift.

In any case, where an officer encounters a situation where the officer believes that a child may be habitually beyond the control of their parents, or where the home situation may otherwise require the intervention of the Department of Human Service (DHS), (such as repeated violations of the ordinance), the officer will complete a case report and refer the matter to DHS for further inquiry, and possible Juvenile Court action.

IV. Subsection 9.2.102(C)(3): *"Parental Responsibility For Juveniles Loitering During Nighttime Hours."*

This subsection holds parents legally responsible if they knowingly permit their child to violate the subsection regulating loitering during nighttime hours by juveniles. Officers will not make arrests for a violation of this subsection without prior review of the case by the City Attorney's Office.

If an officer believes that they have encountered a case where the parents should be charged for violating this subsection, either because of repeated violations by the suspect's children, or because of the attitude of the parent regarding a violation when contacted, the officer should initiate a case report. This report should include the date, time, and location of the violation, any statements made by the child and parent, and the past record of violations by children of the suspect. This will then be presented by the divisional detectives to the City Attorney's Office for review. In such cases, a copy of the case report will also be provided to DHS to determine if a referral is appropriate.

If the case is accepted for filing, the summons and complaint will be forwarded to the Marshal's Office for service.

Attachment

[Notice to Parents of Loitering Violation](#)