

Metropolitan Police Academy



7.3 Offenses Against the Legal Process

Introduction

The law enforcement work performed by MPD involves human victims and offenders. Usually this is straightforward, as in the case of assault and property offenses. There are cases, however, where the aggrieved party is the legal process itself. The need for a fair, just, and efficient legal system has created the need for strict enforcement and punishment of any violations committed against it.

7.3.1 Define terms related to Bribery and Obstruction of Justice as set forth in the DC Code

In understanding offenses against the legal process, it is important to understand the role of each component as discussed in prior lessons. It is essential that you know all of these aspects in order to understand the situations surrounding offenses such as Bribery or Obstruction of Justice.

The most important component of the legal process is **the Court of the District of Columbia**. This usually refers to DC Superior Court although it can also refer to the DC Court of Appeals. It is where the bulk of the District's court matters take place. The court matters are frequently the result of a **criminal investigation**. According to Black's law dictionary, the term investigate means

“[t]o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry.”

A Criminal investigation is an investigation of a violation of any criminal statute in effect in the District of Columbia. MPD investigations seek to identify those who violate the DC Code and take appropriate police action.

A **Criminal Investigator** is an individual authorized by the Mayor or the Mayor's designated agent to conduct or engage in a criminal investigation, or a prosecuting attorney conducting or engaged in a criminal investigation. Such investigations often result in court cases.

Trials and hearings in court cases are a form of **official proceeding** (as are criminal investigations). Official proceedings include any hearings conducted by a court of the District of Columbia, the DC Government, and the DC Council. For example, Alcohol Beverage Regulation Administration (ABRA) hearings and grand jury hearings are official proceedings.

A **juror** in DC can serve on a grand jury or on a petit or other sized jury in DC Superior Court. Grand juries tend to be large in number and mostly decide whether to indict a defendant or not. Petit juries hear criminal or civil cases. Petit comes from the French word for small. Any crime with a penalty of over 180 days is jury-demandable in the District of Columbia. Jurors are required for all such trials. Juries therefore take official actions such as rendering a finding regarding guilt or liability.

An **Official Act** includes any decision, opinion, vote, recommendation, judgment, or other conduct taken after an official proceeding. It involves an exercise of discretion by a civil servant.

An **Official Duty** is different from an official act in that it does not involve discretion. It is required conduct on the part of a public servant.

Public Servants include jurors and also consist of officers or other employees who can act on behalf of DC government. A public servant can also be any person who has been elected, nominated, or appointed to serve in government or as a juror. However, independent contractors hired by DC agencies are not public servants.

7.3.2 Classify the elements of offenses relating to violations against the legal process

Assault on Member of Police Force, Campus or University Special Police, or Fire Department (known as APO) - §22-405

This statute is referred to as “APO” which stands for “assault on police officer.” Police officers, however, are not the only victims of an APO. The APO statute was revised in 2006 by significantly expanding who can be classified as a victim of this crime. It is important to note that Department of Youth Rehabilitation Services (DYRS) employees who supervise confined juveniles are now also covered under the APO statute, even though the New Beginnings Facility is located outside of Washington, D.C. Court Services and Offender Supervision Agency (CSOSA) and Pretrial Services Agency employees are covered under the APO statute as well.

In order to charge APO:

1. The victim must have been a “law enforcement officer,” a term which includes the following:
 - any officer or member of any police force operating and authorized to act in DC
 - any reserve officer or designated civilian employee of the Metropolitan Police Department
 - any licensed special police officer (SPO)
 - any officer or member of any fire department operating in DC
 - any officer or employee of any penal or correctional institution of the District of Columbia,
 - any officer or employee of the government of the District of Columbia charged with the supervision of juveniles being confined pursuant to law in any facility of the District, regardless of whether such institution or facility is located within the District
 - any investigator or code inspector employed by the government of the District
 - any officer or employee of the Department of Youth Rehabilitation Services, Court Services and Offender Supervision Agency, the Social Services Division of the Superior Court, or Pretrial Services Agency charged with intake, assessment, or community supervision

Examples of civilian employees that are included within the definition of “law enforcement officer” include DC public school investigators, certain civilian employees of MPD, and certain civilian employees of DC Superior Court.

2. The accused acted without justifiable and excusable cause and assaulted the victim on account of or while the victim was engaged in the performance of his or her official duties;

NOTE: It is important to understand what exactly “assaulted” means according to this statute. To assault someone is to “rush violently and hostilely against (a person), ... to attack (a person) typically with brutal violence, ... to commit rape upon (a person, or) to attack violently by non-physical means.”

For example: APO is committed when an offender physically strikes or attempts to strike an officer.

What if there were no actions by the defendant, just verbal threats? According to the DC Court of Appeals, “to constitute an offense under D.C. Code §22-405, a person’s conduct must go beyond speech and mere passive resistance or avoidance, and cross the line into active assault against an officer’s performance in the line of duty.” Likewise, the US Supreme Court allows citizens considerable leeway in what may be said to police officers. According to the Supreme Court, officers must be able to weather “a significant amount of verbal criticism and challenge directed at (them).”

A defendant’s words cross over into unprotected speech when they contain threats or have associated actions that are intended to actively confront, obstruct, or block an officer’s duties. The US Supreme Court found in *Virginia v. Black* that “a State may punish those words which by their very utterance inflict injury.” Therefore, making a threat of violence or physically intimidating an officer is not constitutionally protected conduct.

This poses the question of what to charge someone who has physically threatened an officer with injury or death. It is most appropriate to charge such cases **under D.C. Code §22-407 – Threats to Do Bodily Harm**.

3. The victim is engaged in the performance of official duties, whether on or off duty.

The APO statute is applicable when someone is a victim of APO while on-duty; however, what happens if the member is off-duty? If an MPD officer takes official action while off-duty, then APO is applicable here as well. However, an off-duty MPD officer not taking official action is not a victim of APO unless the perpetrator knows that the victim is an MPD officer and assaults him because of that. In other words, the perpetrator must assault the MPD officer on account of his or her duties as a law enforcement officer. This also holds true for CSOSA employees, DC Department of Corrections employees, and designated MPD civilians.

4. The defendant acts with the general criminal intent to commit the crime. (Recall we covered general intent in the **Introduction to Criminal Law** lesson).

In most instances, an APO will be a misdemeanor punishable by up to 180 days and a \$1,000 fine.

The APO charge becomes a felony when the defendant during the commission of the offense “causes significant bodily injury to the law enforcement officer, or commits a violent act that creates a grave risk of causing significant bodily injury to the officer.” Felony APO is punishable by up to ten (10) years imprisonment and a fine of up to \$25,000.

Before there is a charge of APO, it must be authorized by a Sergeant. In general situations where an officer receives information about a threat to a police officer(s), they must immediately notify a sergeant or above.

Officers must treat an APO scene like any other crime scene and make sure that it is secure. Medical care must be requested or rendered when needed. A canvass for possible witnesses of the APO must be made while you are still on the scene. Statements must be taken from any witnesses using the **Complainant/Witness Statement (PD 119)**.

Additionally, photographs must be taken of any visible injuries on the APO victim. Whenever possible, this should be done while the APO victim is still on the scene.

The arrest narrative for APO offenses must include the following whenever applicable:

- Member(s)/arrestee(s) age, skill level (e.g., martial arts, boxing, etc.), relative size, and if multiple subjects were involved
- Injuries, disability, exhaustion, imminent danger, proximity to service weapon
- Type of call, stop or contact that precipitated the assault
- Location, time of day, weather conditions
- Verbal commands and/or physical force
- Details about how the situation escalated
- Position of the member/arrestee at the time of the assault (e.g., on the ground, in a fighting stance, etc.)
- Number of persons on the scene
- Statements made by the arrestee
- Arrestee's demeanor and reactions

The victim of the APO as well as a Sergeant with knowledge of the case must be at papering the next day. The papering officer (or official) must bring the following with them:

- Complainant/Witness Statement (PD 119), to include law enforcement member witness statement(s), Incident and Arrest Reports
- Medical treatment reports, if available
- Available copies of all color photographs of injuries to the member/complainant, arrestee, and damaged property
- All available evidence (e.g., weapons, torn uniforms)

Resisting Arrest - §22-405.01

This law was passed in June 2016 and removed the "resisting arrest" element from the APO statute. Including "resisting arrest: in the former APO statute confused most DC residents in its application. The now separate Resisting Arrest statute reads:

"Whoever shall without justifiable and excusable cause intentionally resists an arrest by an individual who he or she has reason to believe is a law enforcement officer or prevents that individual from making or attempting to make an arrest of or detain another person shall be guilty of a misdemeanor..."

NOTE: An individual is not allowed to resist arrest *even if the arrest is unlawful.*

It is important to know how we define "to resist": To "resist" is to "withstand the force or the effect of ... to exert oneself to counteract or defeat." For example, someone who actively turns his or her arms away from a police officer who is trying to handcuff that person commits Resisting Arrest.

The DC Court of Appeals and federal courts have further elaborated on what "assaulted or resisted" means. The DC Court of Appeals has held that "the key to establishing any violation of the APO statute is the 'active and oppositional nature of the conduct for the purpose of thwarting a police officer in his or her duties.'" This is important to understand because passive resistance cannot lead to a charge of APO or Resisting Arrest. For example, someone who runs away from or avoids a police officer cannot be

charged with Resisting Arrest. Additionally, someone who refuses to merely put his hands behind his back after being commanded to do so by an officer cannot be charged with Resisting Arrest. However, if that same person then forcibly makes it difficult for the officer to put on the handcuffs or pulls his hands away from the officer during an arrest or lawful stop, Resisting Arrest can then be charged. Flight or refusing to cooperate in a passive way on its own **is not** considered to be Resisting Arrest.

It is important to note that the Resisting Arrest statute also applies to third parties who try to prevent someone's arrest or detention. There have to be physical actions on the part of the third party and not mere words. Remember that mere words that rise to the level of Threats are to be handled accordingly.

The penalty for this offense is up to 6 months imprisonment and/or a \$1,000 fine.

Escape from institution or Officer - § 22-2601

On rare occasions, an escape from an institution or officer will occur. That is how most MPD officers will encounter this statute. This law includes any escape or attempt to escape from:

- "Any penal or correctional institution or facility in which that person is confined pursuant to an order issued by a court of the District of Columbia."
- "The lawful custody of an officer or employee of the District of Columbia or of the United States"
- "An institution or facility, whether located in the District of Columbia or elsewhere, in which a person committed to the Department of Youth Rehabilitation Services is placed."

The penalty for this offense is up to 5 years imprisonment and/or a \$12,500 fine.

Bribery - § 22-712

An important charge that is rarely encountered by MPD patrol officers is **Bribery**.

A person commits Bribery if that person:

- "Corruptly offers, gives, or agrees to give anything of value, directly or indirectly, to a public servant;"

OR

"Corruptly solicits, demands, accepts, or agrees to accept anything of value, directly or indirectly, as a public servant;"

- "In return for an agreement or understanding that an official act of the public servant will be influenced thereby or that the public servant will violate an official duty,"

OR

In return for an agreement or understanding "that the public servant will commit, aid in committing, or will collude in or allow any fraud against the District of Columbia."

An example of Bribery is when a police officer asks for money or is offered money in exchange for not writing an NOI. **NOTE:** The request or offer does not have to be for money; it could be for any service in exchange.

The penalty for Bribery, a felony, is up to ten (10) years in prison and/or a fine of \$25,000 or twice the monetary equivalent of the thing of value involved.

False Personation of Police Officer - § 22-1406

A law of particular concern to police officers is False Personation of Police Officer. This crime applies to anyone who is not a member of any police force who, with a fraudulent motive, falsely represents him- or herself as a police officer. A fraudulent motive means that there is something to be made from the false personation. The illicit gain could be money, favors, favorable treatment, etc. Remember that there are two requirements in this law: an actual representation of oneself as a police officer although not a police officer, and a fraudulent design.

Although anybody can flash a badge and claim to be a police officer, that act does not become illegal without a fraudulent motive. Many times, false personation of a police officer is charged in robberies. In these instances, somebody flashes a badge and claims to be a police officer in order to gain the cooperation of the victim and then proceeds to rob them. Other times, someone may use a badge in order to gain access to facilities restricted to law enforcement or in order to use a gym facility for free or to obtain free food.

The penalty for False Personation of Police Officer, a misdemeanor, is up to 180 days in jail or a \$1,000 fine.

Falsely Impersonating Public Officer or Minister - § 22-1404

A violation of this statute requires that the person attempts to or actually performs the duties of the position he or she is impersonating. Merely claiming to be a police officer followed by no exercise of authority or duty, for example, does not constitute a violation of this statute.

However, this law involves more than just impersonating a police officer. It also includes falsely impersonating a:

- DC Superior Court Judge
- Notary Public
- Other public officer
- Minister qualified to celebrate marriage

The DC Code states that “whoever falsely represents himself or herself ... and attempts to perform the duty or exercise the authority pertaining to any such office or character, or having been duly appointed to any of such offices shall knowingly attempt to act as any such officers after his or her appointment or commission has expired or he or she has been dismissed from such office” is guilty of this offense. An example would be someone claiming to be a notary public and certifying documents even though he or she is not a notary public.

Violations of this felony offense are punishable by not less than one (1) and not more than three (3) years in jail and a fine of \$12,500.

False Statements - § 22-2405

When signing or making claims on documents, it is essential that there is no misrepresentation or falsehood made. Making and/or signing false statements is a violation of DC Code. The statements in question must be reasonably expected to be relied upon as true and both material and written. **NOTE:**

There must be a warning on the document that falsifying or affirming by signing false facts is not allowed and is punishable.

This law is most prevalent in financial, tax or DMV matters. Examples include:

- An officer lies on a Complainant/Witness Statement (PD119)
- A citizen provides false information on a driver's license application.
- An applicant for a DC government position provides false information on an application or other document, such as a background investigation form.

Even so, MPD patrol officers rarely make arrests for False Statements.

This misdemeanor offense is punishable by up to 180 days in jail and/or a fine of \$1,000.

False Swearing - § 22-2404

If under oath or affirmation an individual makes a false written statement that is, in fact, material, he or she has committed a violation of the DC Code law: **False Swearing**. The oath or affirmation must be administered by a notary public or other person authorized to administer oaths. In addition, the false statement must be willfully made. The main difference between False Statements and False Swearing is that the latter requires the statement be made while the individual is under an oath.

The penalty for this felony is up to three (3) years in jail and/or a fine of up to \$12,500.

Examples include:

- An officer lies on a Gerstein form about a material fact.
- An officer lies on an arrest or search warrant affidavit.

Obstruction of Justice - § 22-722

Obstructing justice entails severe penalties according to the DC Code. The law encompasses numerous law enforcement and court situations. For example, it protects persons, jurors, witnesses, and officers. It involves the use of harassment, intimidation, threats, or assaults as means of influencing or intimidating another.

Some of the most severe forms of obstructing justice include:

- By any means, preventing a witness, juror or officer of the court from performing their duties.
- By any means, preventing someone from reporting a crime or any information related to a crime to a police officer.
- By any means, retaliating against someone for performing their duties to the court or reporting information to the police.
- By any means, obstructing, impeding or attempting to obstruct or impede the administration of justice.

Officers will sometimes improperly charge Obstruction of Justice due to a missing element of the crime. For example, it is not obstruction to cross a police line, refuse to answer questions posed by an officer, or to decline to provide a name or similar information upon request.

The penalty for this felony is not less than three (3) years and not more than 30 years and/or a fine of \$75,000.

Perjury - § 22-2402

One of the most important criminal offenses related to law enforcement is **Perjury**. When taking an oath or affirmation before a court or during a deposition, one must be 100 percent truthful in any testimony given. It is also unlawful for a notary public or other officer to falsely certify something.

In terms of what you will most commonly encounter, a person commits the offense of Perjury if he or she

- “Having taken an oath or affirmation before a competent tribunal, officer, or person, in a case in which the law authorized such oath or affirmation to be administered,
- that he or she will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by that person subscribed is true,
- willfully and contrary to an oath or affirmation states or subscribes any material matter which he or she does not believe to be true and which in fact is not true.”

NOTE: To charge someone with Perjury, the person must have taken an oath or affirmation and testified to or certified a material fact that they believe is not true and is in fact not true.

This felony is punishable by up to ten (10) years in prison and/or a fine of \$25,000.

Subornation of Perjury - § 22-2403

Subornation of perjury is the willful procurement of another person to commit the offense of Perjury. For example, it is subornation of perjury if someone procures a witness, such as asking a friend, to knowingly give false testimony while under oath in an official proceeding. This offense generally does not include the use of force, threats or blackmail.

This felony is also punishable by up to ten (10) years in prison and/or a fine of \$25,000.

NOTE: If the second person does not commit Perjury, then the appropriate charge would be Attempt Subornation of Perjury.

Tampering With a Detection Device - § 22-1211

DC Superior Court attempts to release most defendants pending trial. Sometimes this is not possible due to the defendant being an immediate threat to the safety of the community or when the defendant has failed to appear for numerous court dates and may be trying to avoid justice. A recent tool that courts (including the DC Superior and US District Courts) have used is a GPS monitoring device or ankle bracelet. These devices have allowed more defendants to be free from prison pending trial because the court can remotely monitor the defendants through the assigned detection device.

Although fortunate to not have been held in jail pending trial, numerous defendants have tried to defeat these GPS devices. They do so by removing the device from their leg or by allowing the device to lose power (the device needs a charged battery to function). To address these actions, the DC Code includes a law on Tampering with a Detection Device. Anybody who is required to wear such a device as a condition of his or her incarceration, while subject to a protection order, while on pretrial release cannot intentionally alter, remove, or in any way interfere with the detection device. Additionally, the person cannot allow the device to lose power or have somebody else remove, alter, or interfere with it.

Handling criminal offenses that involve tampering with detection devices frequently involves collaboration between MPD and the Court Services and Offender Supervision Agency (CSOSA).

Punishment for violation of this law is up to 180 days in jail and/or a \$1,000 fine.

Tampering with a Detection Device is a *probable cause misdemeanor*.

Tampering With Physical Evidence - § 22-723

Tampering with Physical Evidence is an important offense that officers will encounter. This is particularly true during drug investigations. If a suspect knows that official proceedings (such as a criminal trial or hearing) may arise or are currently pending and he or she destroys physical evidence, then it is a crime.

A person commits the offense of Tampering with Physical Evidence if:

- “knowing or having reason to believe an official proceeding has begun or knowing that an official proceeding is likely to be instituted,
- that person alters, destroys, mutilates, conceals, or removes
- a record, document, or other object,
- with intent to impair its integrity or availability for use in an official proceeding.”

A person can commit this offense in a number of ways. For example, a stockbroker, thinking that she might be under investigation, shreds documents, or a person tries to swallow drugs to prevent an officer from seizing them, or a defendant tears up an officer’s arrest paperwork.

NOTE: The suspect does not have to be the target of the investigation or case to be charged under this offense.

The penalty for this felony is up to three (3) years and/or a \$12,500 fine.

7.3.3 Complete an Event Report and Arrest Report for the offenses of APO, Escape, and Tampering with a Detection Device

Practice completing reports.

Summary

In this lesson, we reviewed offenses against the legal process. These offenses range from assaults on police and other types of officers to misrepresenting oneself as a certified notary public. Remember that these laws are in place because it is important that the legal process be allowed to run its course without corruption, threats, or coercion.

REFERENCES

GO 701.01	Courts and Hearings	12/31/2008
GO 701.03	Handling Assaults on Police Officer	09/29/2010