

<p style="text-align: center;">East Haven Police Department</p> 	Type of Directive: Policies & Procedures		No. 413.2
	Subject/Title: Breach of Peace Offenses	Issue Date: July 29, 2014	
		Effective Date: September 1, 2014	
	Issuing Authority: Honorable Board of Police Commissioners	Review Date: Annually	
References/Attachments: N/A		Rescinds: 413.1	Amends: N/A

I. PURPOSE

- A. The purpose of this directive is to set forth the policies and procedures of the East Haven Police Department regarding use of police officers' discretion when intervening in situations involving breach of peace.

II. POLICY

- A. It is the policy of the East Haven Police Department that officers encountering breach of peace situations shall exercise their discretion in a manner that brings order to the situation, using arrest only as a means of last resort.
- B. Arrest for breach of peace shall not be used as a retaliatory measure in instances in which the officer is the sole focus of the conduct.

III. GENERAL GUIDELINES AND CONSIDERATIONS

Police officers are frequently called upon to respond to and manage public disturbances involving myriad behaviors that potentially may invoke a violation of the breach of peace statute. Officers are expected to use sound legal principles, good judgment and tactical skills to bring such situations under control, only using arrest as a last resort.

When a police officer makes the decision to arrest an individual for breach of peace, the officer has determined that this course of action was the last step necessary to stop the unlawful behavior. In such instances, arrest may be necessary for a number of legitimate reasons, such as stopping a situation from escalating. The officer may conclude that an

individual's behavior is interfering with the officer's carrying out of official duties and the breach of peace creates a danger to the public or the individual involved.

The courts have made it clear that offensive language alone does not constitute a violation of the breach of peace statute. Speech alone, no matter how offensive it may seem, may not be abridged. People enjoy a First Amendment right to speak freely.

The fact that the First Amendment protects even obnoxious speech and expression does not mean that it provides a license to behave obnoxiously. The breach of peace statutes outlaw the following acts which intend to cause inconvenience, annoyance, or alarm or reckless creates a risk there of:

1. Placing a nonfunctional imitation of an explosive or incendiary device or imitation of a hazardous substance in a public place or in a manner likely to be discovered by another person.
2. Engaging in fighting or in violent, tumultuous, or threatening behavior in a public place.
3. Assaulting or striking another.
4. Threatening to commit a crime against another person or his or her property.
5. Publicly exhibiting, distributing, posting, or advertising any offensive, indecent, or abusive material concerning any person.
6. Using abusive or obscene language or making an obscene gesture in a public place.
7. Creating a public condition which is hazardous or physically offensive.

The Department expects its personnel to exercise restraint in all such situations. The law acknowledges that police officers, by virtue of their training, are held to a higher standard. Officers must be willing and able to accept more verbal abuse than average citizens before reacting with enforcement and, especially, with force.

Officers are expected to attempt to resolve breach of peace situations through alternative methods before resorting to making an arrest. The highest level of professionalism is exhibited when situations of conflict are resolved by the skill of the officer to intervene, de-escalate, and maintain a professional interaction with involved parties.

IV. PROCEDURES

- A. Under state statute there are four categories of breach of peace offenses.
 1. Breach of Peace First Degree.
 - a. This is a Class D felony under C.G.S. 53a-180aa for which an arrest is mandatory.
 2. Breach of Peace Second Degree.
 - a. This is a Class B misdemeanor under C.G.S. 53a-181 for which arrest is discretionary (except when the offense is family violence).

3. Disorderly Conduct.
 - a. A Class C misdemeanor under C.G.S. 53a-182 for which arrest is discretionary (except when the offense is family violence).
4. Creating a Public Disturbance
 - a. This is an infraction under C.G.S. 53a-181a for which a ticket may be issued.

B. Police Discretionary Authority

1. The scope of discretionary authority of an officer should change based on the focus of the perpetrator's behavior and degree of criminal conduct.
 - a. An officer has less discretion as the perpetrator's behavior is more volatile, disruptive, and poses a risk to others. The officer has less opportunity to intervene in a way that would de-escalate the situation.
 - b. When the perpetrator's behavior is less tumultuous the officer's discretionary authority broadens. The officer should exercise his or her discretion to bring the situation to an acceptable resolution without having to resort to making an arrest.
 - c. Given the potential volatility of these situations, officers should take the following into consideration.
 - 1) Avoid being baited into an emotional reaction that potentially could affect the officer's objectivity and decision-making abilities.
 - 2) Officers should focus on peace not speech. Guard against reacting solely to the content of what is being said. Do not infringe on an individual's First Amendment right of free speech.
 - d. The officer needs to take into account whether the conduct represents safety concerns for the general public or the officers dealing with the situation. If the actions and/or behavior are such that there is an immediate threat the officer will need to take immediate lawful steps to stop the threat.
 - e. If the officer is satisfied that no immediate danger, threat, or harm is present, the officer should take steps to quell the situation and bring the matter to a peaceful resolution. The officer shall use de-escalation techniques to achieve that objective.
 - f. Tactical Disengagement is a preferred de-escalation technique.
 - 1) Tactical disengagement is breaking contact with an individual in an effort to de-escalate a situation. It is a deliberate effort on the part of the officer to defuse what otherwise could be a volatile situation, or where the officer believes that any further engagement with the subject would be counterproductive.
 - 2) It is a tactic that should be used when the officer reasonably believes that such action would prove to be prudent and bring the situation to a resolution.

- 3) The officer should be prepared to re-engage if the situation seems to be worsening or it does not appear that this tactic will work.
- g. An officer may choose to warn an individual that if the behavior does not cease, the officer will make an arrest. If an officer is contemplating such a warning, the officer should be aware of the following.
- 1) If the officer is going to advise or warn a person that the consequences of his or her continued behavior of breach of peace will result in an arrest, the officer should be prepared to carry out his or her warning if the perpetrator does not heed the warning.
 - 2) The warning should generally come after the officer has attempted other means of de-escalating the situation and the elements of the offense are satisfied.

C. Supervisory Oversight of Officer Discretion

1. Breach of peace situations afford supervisors excellent opportunities to learn how officers in their commands exercise discretionary authority.
2. When notified that an officer is engaged in a breach of peace situation, the supervisor should respond to the scene for the purpose of assessing the situation. He or she should provide guidance when appropriate. If the supervisory officer is unable to respond, he or she should monitor the situation and provide whatever direction may be appropriate.
 - a. A supervisor shall immediately respond to the scene or document the extenuating circumstances preventing his or her presence at the scene of an arrest for any violation of either Breach of Peace in the Second Degree or Disorderly Conduct in which the violative conduct is a reaction to police presence or officer conduct or targeted towards a police officer.
3. Supervisors shall examine breach of peace cases for the purpose of identifying any discernible patterns or trends that may suggest the need for some type of intervention, training, or corrective action.

D. Review of Breach of Peace and Disorderly Conduct Arrests.

1. The Professional Standards Officer shall review all breach of peace arrest reports on an annual basis. The IAO shall make any recommendations that might improve upon the existing police practices or procedures that would enhance officers' approach to these types of situations, and submit this report to the Chief of Police. The report shall be available to the public.
2. The review will cover the following factors.
 - a. Breakdown of the arrests by legal category.
 - b. Compare the number of breach of peace arrests to the total number of arrests for the time period being analyzed.

- c. Specifically analyze the proportion of breach of peace arrests involving the perpetrator(s) against a police officer, against the total number of breach of peace arrests.
- d. Determine if there is any racial or ethnic disparity that may exist among these types of arrests.
- e. Determine if there are multiple arrests involving the same officer, and if so, analyze the underlying rationale for each arrest. Determine if there is any occurring pattern or trend that might suggest problems with the application of the officer's discretionary authority.
- f. Determine if there are any policy or procedural issues regarding the officers' arrests, and if so, the corrections to be made. If no such patterns or trends are detectable, indicate that no such patterns or trends could be identified.