The Allegheny County Chiefs of Police Association

DISORDERLY CONDUCT
MODEL GUIDELINES

An Allegheny County Criminal Justice Advisory Board Project

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Please understand that this model should serve only as a "**Starting Point**" for those departments who may wish to update their Rules & Regulations Manual in this area. To best serve your department, it should be reviewed and revised by you and your Municipality and Insurance Carrier.

DISORDERLY CONDUCT GUIDELINES

Below are sample guidelines that may help outline as to what conduct violates the third clause of Title 18 Pa.C.S. § 5503 the Pennsylvania Disorderly Conduct statute.

Title 18 Pa.C.S. § 5503, Disorderly Conduct reads in part:
(a) OFFENSE DEFINED.-A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: …

(3) uses obscene language, or makes an obscene gesture;…

The term 'obscene' as used in subsection (3) does not refer to simple profanity, indecent speech or gestures. Members of the public **may not** be cited solely for the use of profane words or gestures, even when directed at law enforcement officers, because simple profanity by word or gesture is still considered speech **protected** by the First Amendment.

In Miller v. California, the Supreme Court held that language can only be considered obscene if:

(a) the average person, applying contemporary community standards" would find that the speech, taken as a whole, appeals to the prurient interest, (b) it depicts or describes, in a patently offensive way, sexual conduct specifically defined by an applicable state law, and (c) the speech, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Prurient Interest is defined as a morbid, degrading and unhealthy interest in sex, as distinguished from a mere candid interest in sex.

Clearly, speech that is commonly referred to as cursing, swearing or profanity does not fit into the definition of obscenity when the speech is not used in a sexual manner. This is true whether the language is used between members of the public or directed towards law enforcement.

Our Courts have repeatedly held that people have a constitutionally protected right to call an officer (or each other) an "asshole," flip "the bird" or use the "F__Bomb" without violating Section 5503. Commonwealth v. Hock 728 A.2d 943 (1999), Commonwelth v. Kelly 758 A.2d 1284 (2000), Johnson V. Campbell 332 F.3d 199 (2003).

Profanity is, however, often used in connection with starting a fight and to invite an immediate breach of the peace in violation of subsection (1) of 5503. In these situations the result of such speech is not protected, but the correct charge is 5503(a)(1)—engaging in "fighting or threatening, or violent or tumultuous behavior," and not 5503(a)(3). Police should not hesitate in these circumstances to charge accordingly.

As a final note, Police must be aware that language that might constitute fighting words between members of the public, are not fighting words when directed at law enforcement. It has been held that law enforcement must expect that they will be exposed to such situations and must remain professional and not assault the speaker. The bottom line is that the disorderly conduct statute may not be used as a vehicle to protect law enforcement personnel from all verbal indignities.