

MORE THAN A PLAZA
DC JUSTICE LAB

CITATION IN LIEU OF ARREST

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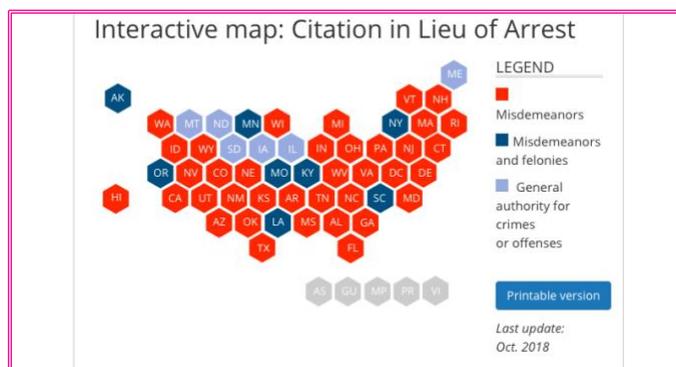
Brooke Pemberton • Samantha Piszcz • Patrice Sulton



Citation in lieu of Arrest

If you look around the nation today, there is no corner of America where it is not recognized that the institution of policing is in a crisis. For almost four months, demonstrations have raged in all 50 states and the District of Columbia in protest of brutality by the hands of law enforcement.¹ The catalyst? The vicious killing of George Floyd, a man who, on May 25, 2020, was arrested in Minneapolis for allegedly using a counterfeit \$20 bill. This arrest was wholly unnecessary. Given that **a custodial arrest is an inherently violent act that should be reserved for situations in which it is absolutely necessary to immediately ensure public safety**, its use can hardly be justified for a violation of the law as benign as forgery. The District of Columbia should stop allowing arrests under these circumstances.

The heart of the country's over-empowerment of police lies in the very center of power: Washington, D.C. In 2017, the District spent the most per capita on police across state and local governments in the U.S.² In order to quell the injustice perpetrated by state-sanctioned violence, the nation's capital (and the rest of its localities, for that matter) should replace its current presumption-of-arrest standard with a safer, smarter, and less expensive presumption-of-citation standard. Over half of states have a presumption of issuing citations for certain crimes or circumstances.³



Source: National Conference of State Legislatures

Because a full custodial arrest means a full body search, there is more physical interaction and a higher likelihood of escalating into a physical confrontation.⁴ The Metropolitan Police Department (“MPD”) reports that in hundreds of cases every year the leading charge is assault on a police officer with no accompanying, more serious offense.⁵ These altercations are preventable.

Given that arrests are “the front door of the justice system,” citations in lieu of arrest serve a critical gatekeeping role in determining who enters a life behind bars and who does not.⁶ In the District of Columbia, an arrest for even the most minor offenses typically consists of a law enforcement officer taking a suspect to a District station, booking them, and then detaining them. The person is then transferred to D.C. Central Lock-Up, a facility plagued by issues such as poor suicide prevention training, lack of space for recreation, and excessive use of isolation and segregation.⁷ In contrast, a citation is an order issued by law enforcement which releases a non-high-risk individual on a promise to appear in court or pay a fine.⁸

D.C. Councilmember Mary Cheh has publicly stated support for increasing citation in lieu of arrest.⁹ As D.C. Attorney General Karl Racine put it, in addition to the expansion of the District’s ‘citation in lieu of arrest’ program being safe, it “improves police-community relations, and data shows that 90 percent of those who are issued citations do not reoffend.”¹⁰ Indeed, while this policy emerged as a means to cope with COVID-19, it is imperative that it continue to be enforced, pandemic or not, if D.C. wants to “reduce [its] footprint on policing” that too often leads to unnecessary violence.¹¹

Prompted by an Administrative Order issued on March 16, 2020, in response to COVID-19-related public health concerns,¹² MPD issued a General Order expanding this avenue to offenses such as simple assault, unlawful entry, shoplifting, a DUI or traffic offense, and certain kinds of property offenses (i.e., breaking a window).¹³ In the six months since the order was implemented, the MPD has increasingly been using citations to “limit the number of people that are actually being arrested, [and] limit the number of people that are being held overnight for court.”¹⁴ As a result, the overnight jail population dropped to around 30 individuals, whereas it previously ranged between 90 to 120 on a given day.¹⁵ By taking these measures, the Department is reducing viral transmission inside jail facilities, and in turn, into D.C. neighborhoods.¹⁶

Examples of Where These Shifts Are Happening Already:

On May 31, 2020, San Marcos became the first city in Texas to implement a cite-and-release ordinance, requiring officers to issue citations for crimes such as possession of less than four ounces of marijuana (a Class A or Class B misdemeanor) and driving with an invalid license (a Class B misdemeanor).¹⁷ In Alabama, the St. Clair County Commission passed a resolution authorizing law enforcement to issue a summons and complaint citation in lieu of arrest.¹⁸ Additionally, Portland Police and Multnomah County District Attorney’s Office in Oregon reached a decision to hand out citations for misdemeanors in lieu of arrest to reduce jail overcrowding amidst COVID-19.¹⁹

By keeping its citation-expansion policy in existence, the District would join the ranks of these locations and several others who have expanded their use of citations this year, and for good reason. **Among the benefits of a presumption-of-citation standard are the saving of time and money, reduction of the carceral population, and allowance of law enforcement to spend less time on booking and detention and more time on investigating serious violent offenses.** Most importantly, though, citations preserve communities. They let children continue to attend school. They let parents continue to be employed and provide for their children. They prevent the destabilization and trauma that can occur for families when a loved one is jailed - even for a single night - and separated from their pod.²⁰



Requiring a presumption of citation in lieu of arrest is one way in which the District can begin to restore and uplift the legitimacy of our criminal legal systems.²¹ We urge the Council to do so swiftly.

References

- ¹ See Jessica Wang & Lindsay Huth, *Maps: How Protests Evolved in the Wake of George Floyd's Killing*, THE WALL STREET JOURNAL (Jun. 12, 2020), <https://www.wsj.com/articles/maps-how-protests-evolved-in-the-wake-of-george-floyds-killing-11591984846>
- ² *Criminal Justice Expenditures: Police, Corrections, and Courts*, URBAN INSTITUTE, [https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/police-and-corrections-expenditures#:~:text=Across%20the%20US%2C%20state%20and,%2C%20and%20California%20\(%24487\)](https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/police-and-corrections-expenditures#:~:text=Across%20the%20US%2C%20state%20and,%2C%20and%20California%20(%24487)) (last visited Jan. 17, 2020).
- ³ *Citation in Lieu of Arrest*, NAT'L CONF. OF ST. LEGISLATURES (Mar. 18, 2019), <https://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>.
- ⁴ See *Chimel v. California*, 395 U.S. 752 (1969); see also *United States v. Robinson*, 414 U.S. 218 (1973).
- ⁵ See METROPOLITAN POLICE DEPARTMENT, 2018 ANNUAL REPORT (2018), https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20Annual%20Report%202018_lowres_0.pdf.
- ⁶ Benjamin Wofford, *DC Is Quietly Experimenting With Eliminating Jail Time*, WASHINGTONIAN (Jul. 2, 2020), <https://www.washingtonian.com/2020/07/02/dc-is-quietly-experimenting-with-eliminating-jail-time/>.
- ⁷ See Derek Gilna, *Suicides, Poor Conditions at D.C. Jail Remain Critical Issues Despite Progress*, PRISON LEGAL NEWS (Feb. 29, 2016), <https://www.prisonlegalnews.org/news/2016/feb/29/suicides-poor-conditions-dc-jail-remain-critical-issues-despite-progress/>.
- ⁸ *Citation in Lieu of Arrest*, *supra* note 3.
- ⁹ Mary Cheh (@marycheh), TWITTER (May 31, 2020, 8:24 PM), <https://twitter.com/marycheh/status/1267250524417646592>.
- ¹⁰ Karl A. Racine, *The District's new racial justice future*, THE WASHINGTON POST (Jun. 1, 2020), <https://www.washingtonpost.com/opinions/2020/06/01/districts-new-racial-justice-future/>.
- ¹¹ See Wofford, *supra* note 6.
- ¹² Order enabling law enforcement to release an individual not otherwise eligible for release, D.C. Super. Ct. (Mar. 16, 2020), http://www.dccourts.gov/sites/default/files/Order_3-16-20.pdf.
- ¹³ See Wofford, *supra* note 6.
- ¹⁴ *Id.*
- ¹⁵ See *id.*
- ¹⁶ See *id.*
- ¹⁷ See Stacy Rickard, *San Marcos First Texas City with Cite-And-Release Law to Limit Low-Level Offense Arrests*, SPECTRUM NEWS 1 (Jun. 5, 2020), <https://spectrumlocalnews.com/tx/san-antonio/news/2020/06/05/san-marcos-first-texas-city-with-cite-and-release-law-to-limit-low-level-offense-arrests>.
- ¹⁸ See Taylor Mitchell, *St. Clair commission OKs citation in lieu of arrest resolution*, ST. CLAIR TIMES (Apr. 9, 2020), https://www.annistonstar.com/the_st_clair_times/st-clair-commission-oks-citation-in-lieu-of-arrest-resolution/article_8c327344-7aaf-11ea-a87d-efa0dbc7d967.html.
- ¹⁹ See Tess Riski, *Portland Police Will Not Take Misdemeanor Arrests to Jail During the COVID-19 Outbreak, to Avoid Overcrowding*, WILLAMETTE WEEK (Mar. 20, 2020), <https://www.wweek.com/news/2020/03/20/ppb-will-not-take-misdemeanor-arrests-to-jail-during-covid-19-outbreak-to-avoid-overcrowding/>.
- ²⁰ See FWD.US, EVERY SECOND: THE IMPACT OF THE INCARCERATION CRISIS ON AMERICA'S FAMILIES (2018), https://www.publicwelfare.org/wp-content/uploads/2019/04/CJ-EverySecond.FWD_.us_-December-Report-on-family-incarceration.pdf.
- ²¹ See Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice and the Rule of Law: Fostering Legitimacy in Alternative Dispute Resolution*, 2011 J. DISP. RESOL. 1 (2011) ("The legitimacy of government authorities is central to the ability of government to function.").

Appendix: Proposed Amendments

§ 16–1031. Arrests.

~~(a) A law enforcement officer shall arrest a person if the law enforcement officer has probable cause to believe that the person:~~

~~(1) Committed an intrafamily offense that resulted in physical injury, including physical pain or illness, regardless of whether or not the intrafamily offense was committed in the presence of the law enforcement officer; or~~

~~(2) Committed an intrafamily offense that caused or was intended to cause reasonable fear of imminent serious physical injury or death.~~

~~(b) The law enforcement officer shall present the person arrested under subsection (a) of this section to the United States Attorney for charging.~~

~~(c) — (1) Notwithstanding subsections (a) and (b) of this section, a law enforcement officer shall not be required to arrest a person who is under 18 years of age when there is probable cause to believe that the person has committed an intrafamily offense that does not constitute intimate partner violence.~~

~~(2) If a person is not arrested under paragraph (1) of this section, the person shall be diverted to a program that provides behavioral health and community support services.~~

§ 23–581. Arrests without warrant by law enforcement officers.

~~(a)(1) A law enforcement officer may arrest, without a warrant having previously been issued therefor~~

~~(A) a person who he has probable cause to believe has committed or is committing a felony;~~

~~(B) a person who he has probable cause to believe has committed or is committing an offense in his presence;~~

~~(C) a person who he has probable cause to believe has committed or is about to commit any offense listed in paragraph (2) and, unless immediately arrested, will:~~

~~(1) continue or promptly resume engaging in conduct constituting a felony;~~

~~(3) continue or promptly resume engaging in disorderly conduct or otherwise disturb the peace;~~

~~(1) physically injure, stalk, or sexually violate another person;~~

~~(2) take or destroy another person's property;~~

~~(4) fail to appear in court as required and successfully avoid apprehension; or~~

~~(5) alter, destroy, mutilate, conceal, or remove a record, document, or other object, with intent to impair its integrity or its availability for use in the official proceeding.~~

~~may not be apprehended, may cause injury to others, or may tamper with, dispose of, or destroy evidence; and~~

~~(D) a person whom he has probable cause to believe has committed any offense which is listed in paragraph (3) of this section, if the officer has reasonable grounds to believe that, unless the person is immediately arrested, reliable evidence of alcohol or drug use may become unavailable or the person may cause personal injury or property damage.~~

~~(2) The offenses referred to in subparagraph (C) of paragraph (1) are the following:~~

~~(A) The following offenses specified in the Act entitled “An Act to establish a code of law for the District of Columbia”, approved March 3, 1901, and listed in the following table:~~

Offense:	Specified in—
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Assault	section 806 (D.C. Code, sec. 22-404).
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Unlawful entry	section 824 (D.C. Code, sec. 22-3302).
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Malicious burning, destruction or injury of another's property	section 848 (D.C. Code, sec. 22-303).
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(B) The following offense specified in the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; 53 DCR 8610):

Offense: Specified in—

Voyeurism	section 105 (D.C. Code, sec. 22-3531).
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(C) The following offenses specified in the District of Columbia Theft and White Collar Crimes Act of 1982, and listed in the following table:

Offense: Specified in—

Theft of property valued less than \$250	section 111 [D.C. Official Code, § 22-3211].
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Receiving stolen property	section 132 [D.C. Official Code, § 22-3232].
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Shoplifting	section 113 [D.C. Official Code, § 22-3213].
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(D) Attempts to commit the following offenses specified in the Act and listed in the following table:

Offense: Specified in—

Theft of property valued in excess of \$250	section 111 [D.C. Official Code, § 22-3211].
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Unauthorized use of vehicles	section 115 [D.C. Official Code, § 22-3215].
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(E) The following offenses specified in the Illegal Dumping Enforcement Act of 1994 [Chapter 9 of Title 8], and listed in the following table:

Offense: Specified in—

Unauthorized Disposal of Solid Waste	Section 3. [D.C. Official Code, § 8-902]
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(F) The following offenses specified in section 113.7 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 113.7):

Offense: Specified in—

Illegal construction	section 113.7 (12A DCMR § 113.7)
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(3) The offenses which are referred to in paragraph (1)(D) of this section are the following offenses specified in the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.01 et seq.), and listed in the following table:

Offense: Specified in—

Aggravated reckless driving	section 9(b-1) (D.C. Official Code § 50-2201.04(b-1))
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Fleeing from the scene of an accident section ~~10(a)~~ (D.C. Official Code § ~~50-2201.05(a)~~)

~~Operating or physically controlling a vehicle when under the influence of intoxicating liquor or drugs, when operating ability is impaired by intoxicating liquor, or when the operator's blood, breath, or urine contains the amount of alcohol which is prohibited by section 10(b)~~ section ~~10(b)~~ (D.C. Official Code § ~~50-2201.05(b)~~)

~~Operating a motor vehicle when the operator's permit is revoked or suspended~~ section ~~13(e)~~ (D.C. Official Code § ~~50-1403.01(e)~~)

~~(a-1) A law enforcement officer may arrest a person without an arrest warrant if the officer has probable cause to believe the person has committed an intrafamily offense as provided in section 16-1031(a).~~

~~(a-2) A law enforcement officer may arrest a person without an arrest warrant if the officer has probable cause to believe the person has committed an offense as provided in Chapter 23 of Title 22.~~

~~(a-3) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed an offense as provided in sections 22-3312.01, 22-3312.02, and 22-3312.03.~~

~~(a-4) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of unlawful entry of a motor vehicle as provided in [§ 22-1341].~~

~~(a-5) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of tampering with a detection device as provided in [§ 22-1211].~~

~~(a-6) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of engaging in an unlawful protest targeting a residence as provided in [§ 22-2752].~~

~~(a-7) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of misdemeanor sexual abuse, misdemeanor sexual abuse of a child or minor, or lewd, indecent, or obscene acts, or sexual proposal to a minor, as provided in §§ ~~22-3006, 22-3010.01, and 22-1312.~~~~

~~(a-8) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of stalking as provided in § ~~22-3133.~~~~

~~(a-9) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of presenting a fraudulent identification document for the purpose of entering an establishment possessing an on-premises retailer's license, an Arena C/X license, or a temporary license as provided in § ~~25-1002(b)(2).~~~~

(a-10) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has been directed by a releasing official pursuant to § 23-584(d)(1) as a condition of release on citation to stay away from a particular place or a particular person, and the person has violated that condition.

(b) A law enforcement officer may, even if his jurisdiction does not extend beyond the District of Columbia, continue beyond the District, if necessary, a pursuit commenced within the District of a person who has committed an offense or who he has probable cause to believe has committed or is committing a felony, and may arrest that person in any State the laws of which contain provisions equivalent to those of section 23-901.