

DISTURBING THE PEACE

The defendant is charged with disturbing the peace. In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That the defendant engaged in conduct which most people would find to be unreasonably disruptive, such as (making loud and disturbing noise) (tumultuous or offensive conduct) (hurling objects in a populated area) (threatening, quarreling, fighting, or challenging others to fight) (uttering personal insults that amount to fighting words, that is, are so offensive that they are inherently likely to provoke an immediate violent reaction);

Second: That the defendant's actions were done intentionally, and not by accident or mistake; and

Third: That the defendant did in fact annoy or disturb at least one person.

To amount to disturbing the peace, the defendant's acts must have been voluntary, unnecessary, and contrary to normal standards of conduct. You should consider all the circumstances, including such important

factors as time and location, in determining whether the defendant disturbed the tranquility of at least one person in that area, or interfered with at least one person's normal activity.

See Instruction 3.120 (Intent).

G.L. c. 272, § 53. *Commonwealth v. Orlando*, 371 Mass. 732, 733-736, 359 N.E.2d 310, 311-313 (1977) (definition; statute not unconstitutionally vague or overbroad); *Commonwealth v. Jarrett*, 359 Mass. 491, 269 N.E.2d 657 (1971); *Commonwealth v. Oaks*, 113 Mass. 8, 9 (1847); *Commonwealth v. Piscopo*, 11 Mass. App. Ct. 905, 905, 414 N.E.2d 630, 631 (1981) (fact that police were called will support inference that citizens of neighborhood were disturbed).

NOTE:

Offensive language. General Laws c. 272, § 53 cannot be applied to offensive and abusive language unless it falls outside the scope of First Amendment protection, i.e., it constitutes “profane, libelous, and insulting or fighting words which by their very utterance tend to incite an immediate breach of the peace.” However, it is not a defense that proscribed behavior was accompanied by protected speech. *Commonwealth v. Bohmer*, 374 Mass. 368, 373-377, 372 N.E.2d 1381, 1386-1388 (1974) (disturbing a school or assembly [G.L. c. 272, § 40]); *Commonwealth v. Richards*, 369 Mass. 443, 448-449, 340 N.E.2d 892, 896 (1976) (disorderly conduct); *Commonwealth v. A Juvenile*, 368 Mass. 580, 584-598, 334 N.E.2d 617, 621-628 (1975) (same). See *Houston v. Hill*, 482 U.S. 451, 107 S.Ct. 2502 (1987) (ordinance forbidding “abuse” of police is unconstitutionally overbroad); *Lewis v. New Orleans*, 415 U.S. 130, 92 S.Ct. 2499 (1974) (statute forbidding cursing or using “obscene or opprobrious language” toward police is unconstitutionally overbroad); *Rosenfeld v. New Jersey*, 408 U.S. 901, 92 S.Ct. 2479 (1972); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S.Ct. 766 (1942) (“fighting words” can be constitutionally proscribed). Loud speech may be constitutionally proscribed when uttered late at night in a residential neighborhood, so that people are disturbed in their homes by the noise. *Orlando*, 371 Mass. at 735, 359 N.E.2d at 312 (disturbing the peace).