



## NEW JERSEY LAW REVISION COMMISSION

### Draft Tentative Report Regarding the Terms “Public” and “Tumultuous” as used in the New Jersey Code of Criminal Justice – N.J.S. 2C:1-1 et seq.

**December 10, 2018**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **February 18, 2019**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

John M. Cannel, Retired, Reviser of Statutes  
Samuel M. Silver, Counsel  
New Jersey Law Revision Commission  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 973-648-3123  
Email: [sms@njlrc.org](mailto:sms@njlrc.org)  
Web site: <http://www.njlrc.org>

“How all my brain was in tumult, and all my heart in insurrection!  
Yet in what darkness, what dense ignorance, was the mental battle fought!”  
— Charlotte Brontë, *Jane Eyre*

## Executive Summary

In *State v. Finnemen*,<sup>1</sup> the Appellate Division considered whether the defendant engaged in “tumultuous” behavior as required for a conviction under N.J.S. 2C:33-2(a)(1), as well as whether the definition of “public” as described in N.J.S. 2C:33-2(b) also applied to the word “public” as it appears in N.J.S. 2C:33-2(a).

In this unpublished opinion, the Appellate Division found the defendant’s behavior to be tumultuous.<sup>2</sup> The court reasoned that the “defendant’s conduct caused public inconvenience, annoyance or alarm and constituted overwhelming turbulence or upheaval ... and a violent agitation of mind and feelings.”<sup>3</sup> The Court went on to find that “for the present purposes,” the word “public,” as defined in N.J.S. 2C:33-2(b), applied to subsection a. of N.J.S. 2C:33-2(a).<sup>4</sup>

## Background

In *State v. Finnemen*, the defendant created a disturbance inside a Walgreens, then continued to yell obscenities and make obscene hand gestures toward Walgreens employees even after being asked to leave the store.<sup>5</sup> The responding police officers subsequently observed the defendant at a bus stop directly across the street from the store.<sup>6</sup> These officers described the defendant’s affect as “irate” and noted that at the time, he was angrily gesturing with his hands.<sup>7</sup> After being asked to leave the area, the defendant proceeded in the direction of another bus stop.<sup>8</sup> In a final confrontation with the responding officers the defendant “continued to yell and cause a scene” and entered a nail salon after being told by the officers not to so.<sup>9</sup>

After being found guilty of both disorderly conduct<sup>10</sup> and resisting arrest<sup>11</sup> the defendant appealed his conviction to the Superior Court, Law Division.<sup>12</sup> Following his conviction after a

---

<sup>1</sup> *State v. Finnemen*, 2017 WL 4448541 (App. Div. Oct. 6, 2017).

<sup>2</sup> *Id.* at \*5.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at \*4-5.

<sup>5</sup> *Id.* at \*1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at \*2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at \*1-2.

<sup>10</sup> N.J.S. 2C:33-2.

<sup>11</sup> N.J.S. 2C:29-2(a).

trial de novo, the defendant appealed to the Superior Court, Appellate Division. The defendant contested, among other issues, that his convictions should be reversed because his behavior did not rise to the level of “tumultuous” as set forth in N.J.S. 2C:33-2(a)(1).<sup>13</sup>

### Analysis

In *State v. Finneman*, the defendant was charged with disorderly conduct under N.J.S. 2C:33-2(a)(1).<sup>14</sup> The State, therefore, was required to prove that the defendant “acted with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof[,] ... [e]ngaged in fighting or threatening, or in violent tumultuous behavior. The defendant argued that he had not engaged in tumultuous behavior within the meaning of the statute. After engaging an analysis of the statute, the defendant’s convictions were ultimately affirmed. Staff’s review and analysis of the terms “public” and “tumultuous” as they appear in the statute follows.

#### • *Public*

The Appellate Division commenced its analysis with an examination of the “Disorderly Conduct” statute. In its current form, N.J.S. 2C:33-2 provides:

**a. Improper behavior.** A person is guilty of a petty disorderly persons offense, if with purpose to cause **public** inconvenience, annoyance or alarm, or recklessly creating a risk thereof he

(1) Engages in fighting or threatening, or in violent or **tumultuous** behavior; or

(2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

**b. Offensive language.** A person is guilty of a petty disorderly persons offense if, in a **public** place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

(Emphasis added).

---

<sup>12</sup> *State v. Finnemen*, 2017 WL 4448541 at \*1.

<sup>13</sup> *Id.* at \*1-2, \*4.

<sup>14</sup> *Id.*

Conspicuously absent from subsection a. is a definition for either the word “public” or the word “tumultuous.” In attempting to ascertain a definition of the word “public” the court did not have to look further than just beneath section b., of the same statute.

N.J.S. 2C:33-2(b) of the Disorderly Conduct statute is entitled “Offensive Language.” Directly beneath section b., in a separate un-lettered paragraph, is a definition of the word “public.” The term public as means: “... affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.” The location of this definition within the statute, however, gave the Appellate Court pause to consider whether it applied solely to subsection b. or whether it applied to subsection a. as well.

In conducting its analysis, the Court found that it was “...not clear whether the Legislature intended [subsection (b)] definition to apply to [the] use of the word ‘public’ in subsection [(a)]....”<sup>15</sup> The Court went on to hold that the definition of public that immediately follows subsection b. also applies to subsection a. of the statute. The Court’s explanation for this finding was simply that “...for present purposes we assume a consistency of meaning.”<sup>16</sup> The Court’s use of the “present purpose” shorthand, however, does not provide a definitive basis for this conclusion.

- *The Model Penal Code*

New Jersey’s Disorderly Conduct statute is based upon the language contained in the Model Penal Code. A comparison of New Jersey’s Disorderly Conduct Statute with the Model Penal Code (MPC) statute of the same name provides the basis for applying the definition of the term “public” to both subsections of the New Jersey statute. The New Jersey definition of “public” is identical to the definition of the same word set forth in the Model Penal Code.<sup>17</sup> The only distinction between the two sections deals with placement, rather than substance.

In §250.2, of the MPC the disorderly conduct statute consists of two sections.<sup>18</sup> Subsection 1. of the MPC is entitled “Offenses Defined” and the “grading” of the offense is set forth in subsection 2. The word “public” is defined in subsection 1. and directly follows the subsections (a) - (c) that enumerate the type of behavior that is considered disorderly conduct. It is clear that in the context of the MPC the term “public” is meant to apply to each of the enumerated behaviors.

By contrast, New Jersey’s disorderly conduct statute, which is based on MPC §250.2, was bifurcated into two subsections. The first subsections, a. Improper Behavior, incorporates MPC §250.2(1)(a) and (c). The second subsection, b. Offensive Language, is predicated on 250.2(1)(a). The appearance of the definition of “public” immediately following subsection b.

---

<sup>15</sup> *Id.* (quoting *State v. Stampono*, 341 N.J. Super. 247, 254 (App. Div. 2001)).

<sup>16</sup> *Id.*

<sup>17</sup> MODEL PENAL CODE §250.2 Disorderly Conduct (Proposed Official Draft 1962).

<sup>18</sup> *Id.*

when viewed in connection with the original language of the MPC is indicia that the term applies to both provisions of the New Jersey statute.

To the extent that the structure of New Jersey's disorderly conduct statute forms the basis of any ambiguity, it should be clarified to eliminate any future confusion.<sup>19</sup>

- *Tumultuous*

The second issue addressed by the Appellate Division in *State v. Finneman* concerned the meaning of the word "tumultuous." The relevant portion of N.J.S. 2C:33-2(a) states the following:

A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he

(1) Engages in fighting or threatening, or in violent or **tumultuous**<sup>20</sup> behavior ...

The term tumultuous is not frequently used in common parlance, nor is it defined in the New Jersey Code of Criminal Justice. The Court, therefore, chose to examine extrinsic sources to ascertain a definition of the term tumultuous.

As "tumultuous" is not defined in the statute, the *Finneman* Court examined the Webster's New Collegiate Dictionary definition of this term as it appeared in 1978, the year N.J.S. 2C:33-2 was enacted.<sup>21</sup> At the time, "tumultuous" was defined as "marked by tumult," "tending or disposed or cause to excite a tumult," and "marked by violent or overwhelming turbulence or upheaval."<sup>22</sup> The Court then turned its attention to the limited case law in this area to find a definition for the word "tumultuous."

---

<sup>19</sup> See proposed language set forth in the Appendix.

<sup>20</sup> Emphasis added.

<sup>21</sup> *Id.* at \*5.

<sup>22</sup> *State v. Finnemen*, 2017 WL 4448541 at \*5 citing Webster's New Collegiate Dictionary 1258 (1977). See *Tumultuous*, Random House Webster's Unabridged Dictionary (2d. ed. 2001) ("highly agitated, as the mind or emotions"); *Tumultuous*, The American Heritage Dictionary of the English Language, <https://ahdictionary.com/word/search.html?q=tumultuous> (last visited Nov. 15, 2017) ("[c]haracterized by mental or emotional agitation"); *Tumultuous*, The American Heritage Dictionary (Second College Ed. 1982) ("[c]onfusedly or violently agitated"); see also *Hunter v. Allen*, 422 F.2d 1158, 1164 n.14A (5th Cir. 1970) (Godbold, J., dissenting) (citing The Random House Dictionary of the English Language (1966) to define "tumult" as "[h]ighly distressing agitation of mind or feeling; turbulent mental or emotional disturbance"), *rev'd on other grounds, Embry v. Allen*, 401 U.S. 989, 91 S.Ct. 1237, 28 L.Ed.2d 528 (1971); *State v. Lund*, 144 Vt. 171, 475 A.2d 1055, 1060 (1984) (citing Webster's New International Dictionary (1961) to define "tumult" as a "violent outburst").

In the context of examining the municipal ordinances affecting the rental of summer properties, the Appellate Division in *United Property Owners Association of Belmar v. Borough of Belmar*<sup>23</sup>, had occasion to pass upon the term tumult. The Court determined that, “[a]lthough excessive noise does not qualify as disorderly conduct under N.J.S.A. 2C:33-2b, unless it consists of course or abusive language, it falls within the rubric of tumultuous.”<sup>24</sup> The Court went on to define tumult as “...either “uproar” or “violent agitation of mind or feelings.”<sup>25</sup> The court went on to find that “[e]xcessive noise could qualify as an uproar or a violent agitation to the victim.”<sup>26</sup> As presently cast, N.J.S. 2C:33-2 does not include statutory language pertaining to excessive or unreasonable noises.

The Criminal Law Revision Commission included “unreasonable noise” in its definition of disorderly conduct.<sup>27</sup> The term “unreasonable noise” was coupled with “offensively course utterance.” This term, however, was lost when the New Jersey Legislature recast the provision “offensive language.”

Inherently, the category of offense defined by this statute raises some problems. While it is appropriate to forbid breaches of the peace that effect the rights of others, if drawn too broadly the statute may be used to forbid conduct that should otherwise be tolerated. These problems will likely be exacerbated by the inclusion of a noise provision. The use of the word “annoyance” in the phrase, “public inconvenience, annoyance or alarm” may have the unintended consequence of criminalizing a panoply of legitimate behavior. Arguably, the word does not add anything to “public inconvenience or alarm.”

The word “inconvenience” is also susceptible to overly broad interpretation. To limit the meaning of the term some jurisdictions have added the word “physical” before the word “inconvenience.”<sup>28</sup> While the word “alarm” alone may be too narrow, the inclusion of the phrase “physical inconvenience” provides sufficient statutory protection without the subjectivity of “annoyance” or the vagueness of “inconvenience” when used alone.

To the extent that this omission of the term “unreasonable noise” from New Jersey’s body of statutes was inadvertent, rather than intentional, the disorderly conduct statute could be amended have the term “unreasonable noise” replace the term “tumultuous” to eliminate any future confusion concerning the term tumultuous.<sup>29</sup>

---

<sup>23</sup> *United Prop. Owners Ass’n of Belmar v. Borough of Belmar*, 343 N.J. Super. 1, 67 (App. Div. 2001)..

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* quoting Webster’s New American Dictionary 555 (Smithmark 1995).

<sup>26</sup> *Id.*

<sup>27</sup> FINAL REPORT OF THE CRIMINAL LAW REVISION COMMISSION, Volume I \*111 (1971).

<sup>28</sup> *State v. Teal*, 139 Hawai’i 351 (S.Ct. Feb. 2017).

<sup>29</sup> See proposed language set forth in the Appendix.

• 50 State Survey of “Tumultuous”<sup>30</sup>

New Jersey is not the only state in the country to use the term “tumultuous” in its criminal statutes, but rather is one of 24 states that use the term tumultuous in its body of law.<sup>31</sup> The majority of states, however, do not use the term “tumultuous” in their disorderly conduct statutes.<sup>32</sup> After a review of each state’s disorderly conduct statute, three solutions present themselves for consideration in clarifying New Jersey’s statute on this subject.

**Fig. 1.**

---

<sup>30</sup> Staff conducted a fifty-state survey in Westlaw using the term “tumult!” In addition, each state was searched for the terms “disorderly conduct.”

<sup>31</sup> Ala. (§ 13A-11-7. Dis. con.); Ark. (§ 5-71-207. Dis. con.); Conn. (§ 53a-182. Dis. con.); Del. (§ 1301. Dis. con.; unclassified misd.); Ga. (§ 16-11-39. Dis. con.); Haw. (§ 711-1101. Dis. con.); Idaho (§ 18-6409. Dist. the peace); Ind. (35-31.5-2-338 Tumultuous cond.); Ky. (525.055 Dis. con. in the first degree); La. (§ 103. Disturbing the peace); Mass. (§8. Destr. of or damage to prop. by persons riotously assembled; liability of town); Miss. (§ 97-35-9. Disturb. by tumultuous or offensive cond.); Nev. (203.010. Breach of peace); N.H. (644:2 Dis. con.); N.J. (2C:33-2. Dis. con.); N.Y. (§ 240.20 Dis. con.); N.D. (§ 12.1-31-01. Dis. con.); Or. (166.025. Dis. con. in the second degree); Pa. (§ 5503. Dis. con.); R.I. (§ 11-45-1. Dis. con.); Tex. (§ 38.13. Hindering Proc. by Dis. con.); Utah (§ 76-9-102. Dis. con.); Vt. (§ 1026. Dis. con.); Wash. (9A.84.030. Dis. con.). *See* Fig. 1.

<sup>32</sup> Alaska (§ 11.61.110. Dis. con.); Ariz. (§ 13-2904. Dis. con.; classification); Cal. (§ 415. Fighting; noise; offensive words); Colo. (§ 18-9-106. Dis. con.); D.C. (§ 22-1322. Rioting or inciting to riot.); Fla. (877.03. Breach of the peace; Dis. con.); Ill. (5/11-5-3. Intox.; fighting; Dis. con.); Iowa (723.4. Dis. con.); Kan. (21-6203. Dis. con.); Me. (§ 501-A. Dis. con.); Md. (§ 10-201. Dist. the public peace and Dis. con.); Mich. (750.167. “Disorderly person” defined.); Minn. (609.72. Dis. con.); Mo. (574.010. Peace disturbance--penalty); Mont. (45-8-101. Dis. con.); Neb. (17-129. Dis. con.; power to prevent); N.M. (§ 30-20-1. Dis. con.); N.C. (§ 14-288.4. Dis. con.); Ohio (2917.11 Dis. con.); Okla. (725:30-4-17. Dis. con.); S.C. (§ 16-17-530. Public Dis. con.); S.D. (22-18-35. Dis. con. - Misdemeanor); Tenn. (§ 39-17-305. Dis. con.); Va. (§ 18.2-415. Dis. con. in public places); W.Va. (§ 61-6 1b. Dis. con.; penalty); Wis. (947.01. Dis. con.); Wyo. (§ 6-6-102. Breach of the peace; penalties). *See* Fig. 1.

#	STATES WHOSE DISORDERLY CONDUCT STATUTES USE THE TERM TUMULT	STATES WHOSE DISORDERLY CONDUCT STATUTES DO NOT USE THE TERM TUMULT
1	Alabama (§ 13A-11-7. Disorderly conduct.)	Alaska (§ 11.61.110. Disorderly conduct)
2	Arkansas (§ 5-71-207. Disorderly conduct)	Arizona (§ 13-2904. Disorderly conduct; classification)
3	Connecticut (§ 53a-182. Disorderly conduct...)	California (§ 415. Fighting; noise; offensive words)
4	Delaware (§ 1301. Disorderly conduct; unclassified misd.)	Colorado (§ 18-9-106. Disorderly conduct)
5	Georgia (§ 16-11-39. Disorderly conduct)	District of Columbia (§ 22-1322. Rioting or inciting to riot.)
6	Hawaii (§ 711-1101. Disorderly conduct)	Florida (877.03. Breach of the peace; disorderly conduct)
7	Idaho (§ 18-6409. Disturbing the peace)	Illinois (5/11-5-3. Intoxication; fighting; disorderly conduct)
8	Indiana (35-31.5-2-338 “Tumultuous conduct”)	Iowa (723.4. Disorderly conduct)
9	Kentucky (525.055 Disorderly conduct in the first degree)	Kansas (21-6203. Disorderly conduct)
10	Louisiana (§ 103. Disturbing the peace)	Maine (§ 501-A. Disorderly conduct)
11	Massachusetts (§8. Destr. of or damage to prop. by persons riotously assembled; liability of town)	Maryland (§ 10-201. Disturbing the public peace and disorderly conduct)
12	Mississippi (§ 97-35-9. Disturb. by tumultuous or offensive conduct)	Michigan (750.167. “Disorderly person” defined...)
13	Nevada (203.010. Breach of peace)	Minnesota (609.72. Disorderly conduct)
14	New Hampshire (644:2 Disorderly Conduct.)	Missouri (574.010. Peace disturbance--penalty)
15	New Jersey (2C:33-2. Disorderly conduct)	Montana (45-8-101. Disorderly conduct)
16	New York (§ 240.20 Disorderly conduct)	Nebraska (17-129. Disorderly conduct; power to prevent)
17	North Dakota (§ 12.1-31-01. Disorderly conduct)	New Mexico (§ 30-20-1. Disorderly conduct)
18	Oregon (166.025. Disorderly conduct in the second degree)	North Carolina (§ 14-288.4. Disorderly conduct)
19	Pennsylvania (§ 5503. Disorderly conduct)	Ohio (2917.11 Disorderly conduct)
20	Rhode Island (§ 11-45-1. Disorderly conduct)	Oklahoma (725:30-4-17. Disorderly conduct)
21	Texas (§ 38.13. Hindering Proc. by Disorderly Conduct)	South Carolina (§ 16-17-530. Public disorderly conduct.)
22	Utah (§ 76-9-102. Disorderly conduct)	South Dakota (22-18-35. Disorderly conduct--Misdemeanor)
23	Vermont (§ 1026. Disorderly conduct)	Tennessee (§ 39-17-305. Disorderly conduct)
24	Washington (9A.84.030. Disorderly conduct)	Virginia (§ 18.2-415. Disorderly conduct in public places)
25		West Virginia (§ 61-6 1b. Disorderly conduct; penalty)
26		Wisconsin (947.01. Disorderly conduct)
27		Wyoming (§ 6-6-102. Breach of the peace; penalties)

The first solution involves eliminating the term from the statute.<sup>33</sup> The second, option provides for the elimination of the word “tumultuous” and substitution of the phrase “creates excessive or unreasonable noise.”<sup>34</sup> The final modification would be to define the term “tumultuous.”<sup>35</sup>

Presently, Indiana is the only state in the country that supplies a statutory definition for the term tumultuous.<sup>36</sup> Indiana’s criminal law and procedure are found in Title 35 of the Indiana Code (“IC” or the “Code”). The Code prohibits tumultuous conduct pursuant to IC 35-45-1-3 *et seq.* A person who recklessly, knowingly, or intentionally engages in fighting or in tumultuous conduct commits disorderly conduct.<sup>37</sup> Tumultuous conduct is defined in the Code in IC 35-45-1-1. Tumultuous conduct, as used in this chapter, “...means conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property.”<sup>38</sup> The addition a

<sup>33</sup> See Appendix, Option #2. This solution may be employed, with or without the inclusion of subsection (a)(2) as discussed *supra*.

<sup>34</sup> See Appendix, Option #2. This solution provides for the inclusion of subsection (a)(2) as discussed *supra*.

<sup>35</sup> See Appendix, Option #3.

<sup>36</sup> IC 35-45-1 defines “Tumultuous Conduct.”

<sup>37</sup> IC 35-45-1-3(a)(1).

<sup>38</sup> IC 35-45-1-1 Sec. 1.



definition such as this one to New Jersey's disorderly conduct statute, would eliminate any confusion regarding the term tumultuous.<sup>39</sup>

- *Pending Legislation – A1324*

Assembly Bill 1234 was introduced on January 9, 2018 and referred to the Assembly Law and Public Safety Committee. This legislation seeks to “enhance[] the penalties for engaging in the petty disorderly person’s offense of improper behavior while in a place of public accommodation.”<sup>40</sup> This legislation, however, does not address the ambiguity raised in *Finneman* with respect to the term tumultuous. Rather, this bill leaves the current language of the statute unchanged, and adds a new subsection wherein a person engaging in the behavior described in subsection a. of the current statute, which includes “tumultuous” behavior, in a place of public accommodation “shall be sentenced to a term of imprisonment of not less than one day or more than 30 days; shall be ordered to perform 50 hours of community service; shall be ordered to pay a fine of \$500 in addition to any restitution ordered; and shall be banned by judicial order from frequenting the place of public accommodation for not less than one year or more than two years.”<sup>41</sup>

If this proposed legislation is enacted, the penalties for “tumultuous” behavior in a “public” place would include imprisonment, as well as fines. Given the possibility of incarceration for those found guilty of disorderly conduct, it may be beneficial to define or eliminate the word “tumultuous” and clarify whether the definition of “public” applies to both subsections a. and b. of N.J.S. 2C:33-2.

### **Conclusion**

A review of New Jersey's disorderly conduct statute, and similar statutes throughout the United States suggests that N.J.S. 2C:33-2 may benefit from revision to provide for: gender neutral language, modification or elimination of the term tumultuous, and clarification that the term “public” applies to the entire statute rather than to only one subsection.

The Appendices on the following pages propose modifications to the New Jersey statute that which seeks to discourage individuals from acting in a disorderly manner in public. The proposed modifications are derived from the language and principles contained in similar statutes and the case law.

---

<sup>39</sup> See Appendix, Option #3.

<sup>40</sup> A1324, 2018 Leg., 218<sup>th</sup> Leg., 1<sup>st</sup> Sess. (N.J. 2018).

<sup>41</sup> *Id.*

## Appendix Proposed Changes to 2C:33-2 – Three Options

The proposed modifications (shown with *italics* underlining and ~~striketrough~~ [optional language choices shown in [brackets]]), are as follows:

### Option #1:

#### **2C:33-2. Disorderly conduct**

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he or she

(1) Engages in fighting or threatening, or in violent ~~or tumultuous~~ behavior; or

(2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

c. “Public,” as used in this section, means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

#### Comment

Language has been added to section a. to render the statute gender neutral. The term tumultuous has been stricken from (a)(1). The paragraph directly below section b. has been designated as section c. and language added to clarify that the word “public” applies to both sections of this statute.

### Option #2:

#### **2C:33-2. Disorderly conduct**

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public physical inconvenience, ~~annoyance~~ or alarm, or recklessly creating a risk thereof he or she

(1) Engages in fighting or threatening, or in violent ~~or tumultuous~~ behavior; or

(2) Creates excessive and unreasonable noise; or

↔ (3) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

c. “Public,” as used in this section, means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

#### Comment

The word “physical” has been added to clarify the type of inconvenience necessary to constitute improper behavior under section a. The term “annoyance” has been struck from this statute because of the ambiguity surrounding the definition of this subjective term. Language has been added to section a. to render the statute gender neutral. The term tumultuous has been stricken from (a)(1) and language concerning excessive noise has been added to the statute as (a)(2). The previously designated section (a)(2) has been renumbered (a)(3). The paragraph directly below section b. has been designated as section c. and language added to clarify that the word “public” applies to both sections of this statute.

#### Option #3: (Inclusion of Definition Section)

### **2C:33-2. Disorderly conduct**

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public physical inconvenience, ~~annoyance~~ or alarm, or recklessly creating a risk thereof he or she

(1) Engages in fighting or threatening, or in violent or tumultuous behavior; or

[(2) Creates excessive and unreasonable noise; or]

↔ [(3)] Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the

probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

c. “Public,” as used in this section, means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

d. “Tumultuous conduct,” as used in this section, means conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property.

#### Comment

The word “physical” has been added to clarify the type of inconvenience necessary to constitute improper behavior under section a. The term “annoyance” has been struck from this statute because of the ambiguity surrounding the definition of this subjective term. Language has been added to section a. to render the statute gender neutral. The language concerning excessive noise *can* be added to the statute as (a)(2). The previously designated section (a)(2) *can* be renumbered (a)(3). The paragraph directly below section b. has been designated as section c. and language added to clarify that the word “public” applies to both sections of this statute. Finally, the term tumultuous conduct is defined in a newly created section d. The definition was found in the Indiana Code, IC 35-45-1-1 Sec. 1.