

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



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~~ATTORNEY-CLIENT COMMUNICATION~~

MEMORANDUM

TO: Sally Gere
Deputy Attorney General
Public Interest Division

FROM: Janet M. Robins 
Deputy Attorney General
Legal Counsel Division

DATE: June 15, 2017

SUBJECT: Legal Analysis – Penalty Structure for Riot Offenses
(AL-17-364)

You asked for our analysis of the District’s rioting statute (known as the “Riot Act”), which appears to provide that someone who incites a riot that results in serious bodily harm or property damage above \$5,000 may be charged with a felony rioting offense, while someone who willfully engages in the riot but does not incite it may be charged only with a rioting misdemeanor. You asked whether these penalty provisions are ambiguous and whether we would recommend a legislative fix.

Brief Answer

The Riot Act’s penalty provisions are unambiguous. In the context of a riot causing significant property damage or serious bodily harm, the statute imposes a higher penalty on those who incited the riot than on those who participated in it. The legislative history indicates that this was an intentional choice because those who take part in a riot can often be charged with other offenses.

Whether a legislative fix is appropriate is a policy decision. We are aware of no need for one, but we would be happy to assist in drafting amendatory language if there is any concern about a gap in the law.

Discussion

The Riot Act penalty provisions are in section 901(b)-(d) of An Act relating to crime and criminal procedure in the District of Columbia (“1967 Act”)¹:

(b) Whoever willfully engages in a riot in the District of Columbia shall be punished by imprisonment for not more than 180 days or a fine of not more than the amount set forth in § 22-3571.01, or both.

(c) Whoever willfully incites or urges other persons to engage in a riot shall be punished by imprisonment for not more than 180 days or a fine of not more than the amount set forth in § 22-3571.01, or both.

(d) If in the course and as a result of a riot a person suffers serious bodily harm or there is property damage in excess of \$5,000, every person who willfully incited or urged others to engage in the riot shall be punished by imprisonment for not more than 10 years or a fine of not more than the amount set forth in § 22-3571.01, or both.²

To determine what these provisions mean, we employed the normal tools of statutory interpretation. We began, “as we must, with a careful examination of the statutory text,”³ since the “only authoritative source of statutory meaning is the text that has passed through the [legislative] process.”⁴ To the extent that the text is unambiguous, the plain meaning of that text controls.⁵ We also examined pertinent legislative history to understand Congress’s reasoning for the penalty structure it adopted.⁶

The Riot Act’s penalty structure is unambiguous. Subsection (b) states that willfully “engag[ing] in” a riot is a misdemeanor, and subsection (c) states that willfully “incit[ing] or urg[ing] other persons to engage in” a riot is a misdemeanor as well. Subsection (d) establishes a felony charge for anyone who “willfully incited or urged others to engage in” a riot that resulted in serious bodily harm or property damage above \$5,000, but does not establish a felony charge for “engag[ing] in” such a riot.

¹ Approved December 27, 1967 (81 Stat. 742; D.C. Official Code § 22-1322(b)-(d) (2012 Repl. and 2016 Supp.)).

² This language has been amended twice since 1967, but these amendments do not affect our analysis. The Council amended the language in 1994 to reduce the misdemeanor prison term from 1 year to 180 days, and amended it in 2013 to alter the fine structure. See Omnibus Criminal Justice Reform Amendment Act of 1994, § 111, effective August 20, 1994 (D.C. Law 10-151; 41 DCR 2611); Criminal Fine Proportionality Amendment Act of 2012, § 216, effective June 11, 2013 (D.C. Law 19-317; 60 DCR 2086).

³ *Henson v. Santander Consumer USA Inc.*, 582 U.S. ___ (2017) (slip op. at 3).

⁴ *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 241 n.72 (2011).

⁵ See *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (plurality opinion) (“our inquiry begins with the statutory text, and ends there as well if the text is unambiguous”).

⁶ See *In re Sinclair*, 870 F.2d 1340, 1342 (7th Cir. 1989) (“Clarity depends on context, which legislative history may illuminate”).

Viewed out of context, such a penalty structure may appear anomalous, because it appears to mean that someone who incites a destructive riot may be charged with a felony, but someone who actually engages in such a riot is punishable only by a misdemeanor. Against the backdrop of other District law, however, this penalty structure makes sense. Someone who engages in a destructive riot might be chargeable only with a rioting misdemeanor, but the person can also be charged with any felonies he or she committed in the process of rioting, such as malicious destruction of property,⁷ assault on a police officer,⁸ or burglary.⁹

The legislative history bolsters this plain reading of the statute. Before these anti-rioting penalty provisions were incorporated into the 1967 Act,¹⁰ they were part of several identical legislative proposals designed to combat rioting.¹¹ A subcommittee of the House Committee on the District of Columbia considered these proposals in an October 1967 hearing, and as participants in that hearing noted, the proposed penalty structure applied enhanced penalties only to those who incited or urged others to participate in destructive riots. Representative Joel Broyhill, who supported these proposals, explained that the enhanced penalties were designed to combat “a trained cadre of professional agitators” who, in his view, were responsible for sparking riots.¹² Assistant Attorney General Fred D. Vinson, testifying from the Department of Justice, likewise noted that the proposals would establish a felony charge specifically for those who incite damaging riots.¹³ This, he maintained, would ensure that the penalties for inciting destructive riots would be “similar to those imposed on persons who actually commit such acts of destruction such as arson, larceny and assault which are felonies under existing District of Columbia law.”¹⁴ When these proposals were incorporated into the 1967 Act, discussions of these proposals echoed Representative Broyhill’s and Mr. Vinson’s statement that the enhanced penalties for destructive riots applied only to those who incited them.¹⁵

If you have any questions, please contact Assistant Attorney General Joshua Turner at 442-9834, or me at 724-5524.

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⁷ See D.C. Official Code § 22-303 (2012 Repl. and 2016 Supp.).

⁸ See *id.* § 22-405(c) (felony assault on a police officer).

⁹ See *id.* § 22-801.

¹⁰ See *United States v. Bridgeman*, 523 F.2d 1099, 1113 (D.C. Cir. 1975) (discussing this history); 113 CONG. REC. H16,892 (daily ed. Dec. 13, 1967) (statement of Rep. Whitener) (the anti-riot language in the 1967 Act is “similar to an anti[-]riot bill which the Committee on the District of Columbia has recently had under consideration here in the House of Representatives”).

¹¹ See *Anti Riots: Hrg. Before Subcmte. No. 4 of the Cmte. on the Dist. of Columbia* (“1967 Hearing”), 90th Cong., 1 (1967) (these proposals were H.R. 12328, H.R. 12605, and H.R. 12721). An additional proposal would have incorporated inciting a riot, and engaging in one, into a single felony offense. *Id.* at 2.

¹² *Id.* at 8; see *id.* at 8 (enhanced penalties would apply to those who “willfully incite or urge others to engage in” destructive riots, but not to those who engage in a riot themselves).

¹³ See *id.* at 16 (observing that H.R. 12328 establishes a felony charge for “persons who *incite*” damaging riots, and maintaining that “[t]hose who incite this kind of destruction should be dealt with as felons”).

¹⁴ *Id.* at 16.

¹⁵ See S. REP. NO. 90-912, at 31 (1967) (section-by-section analysis); 113 CONG. REC. S18382 (daily ed. Dec. 12, 1967) (statement of Rep. Bible).