



**NORTH CAROLINA  
PRIVATE PROTECTIVE SERVICES BOARD**

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**TO:** All Private Protective Services Board Licensees  
**FROM:** Jeffrey P. Gray  
**RE:** What Constitutes a "Breach of the Peace" in North Carolina?  
**DATE:** June, 2009

North Carolina General Statutes § 15A-404, entitled, "Detention of offenders by private persons," provides that a private person may detain another person when he has probable cause to believe that the person has committed certain specified offenses in his presence, including "[a] breach of the peace." N.C.G.S. § 15A-404(b)(2). Unarmed and armed security guards, private investigators, and all other licensees of the Private Protective Services Board - - as "private persons" - - have the detention powers provided for in N.C.G.S. § 15A-404.

Frequently the question arises, "What exactly is a breach of the peace?" That is not a simple question to answer, but I will attempt to provide some guidance in this memorandum.

The leading legal dictionary used by lawyers defines it as follows:

**Breach of the Peace.** The criminal offense of creating a public disturbance or engaging in disorderly conduct, particularly by an unnecessary or distracting noise. Also termed *breach of peace*; *disturbing the peace*; *disturbance of the peace*.

Black's Law Dictionary (7<sup>th</sup> ed. 1999).

The North Carolina General Assembly generally has left the definition of the term "breach of the peace" to the North Carolina courts. *Giles v. First Va. Credit Servs.*, 149 N.C. App. 89, 96, 560 S.E.2d557, 562 (2002). The term is defined in only one place in the North Carolina General Statutes. In a special definition applicable for determining when a breach of peace constitutes a statutory "nuisance" the legislature has codified the following definition:

“Breach of the peace’ means **repeated acts** that disturb the public order including, but limited to, homicide, assault, affray, communicating threats, unlawful possession of dangerous or deadly weapons, and discharging firearms.”

N.C.G.S. § 19-1.1 (2008)(emphasis added).

For the more relevant inquiry as to breaches of the peace and private citizen detainment, the North Carolina Supreme Court has adopted the following definitions for “breach of the peace” sufficient to justify a warrantless arrest by police officers or private citizens:

A disturbance of public order and tranquility by act or conduct not merely amounting to unlawfulness but tending also to create public tumult and incite others to break the peace. . . . A breach of the peace may be occasioned by an affray or assault, by the use of profane or abusive language by one person toward another on a public street and in the presence of others, or by a person needlessly shouting and making loud noise.

*State v. Mobley*, 240 N.C. 476, 482, 83 S.E.2d 100, 104 (1954) (quoting 4 Am. Jur., Arrest § 30).

It is important to note that a breach of peace must occur in “public.” A domestic dispute in one’s residence that does not alarm neighbors would not be breach of the peace. On the other hand, breaches of the peace are not limited to the traditional forum of public streets. The courts have explicitly recognized that a breach of the peace can occur in any public forum as the state “has a paramount duty to maintain order not only in the streets but in schools, hospitals, and all public places.” *State v. Summrell*, 282 N.C. 157, 168, 192 S.E.2d 569, 576 (1972)(finding a hospital emergency room to be a public place) *overruled on other grounds by State v. Barnes*, 324 N.C. 539, 390 S.E.2d 118 (1989).

**Conduct that IS most probably a breach of the peace includes:**

Assault (in public):

“Affrays,” defined as “noisy quarrels or brawls” by the American Heritage Dictionary, are often cited as examples of breaches of the peace. *Alexander v. Lindsey*, 230 N.C. 663, 669, 55 S.E.2d 470, 475 (1949) (noting a superseded statute that included the provision, “Every person present at any riot, rout, affray, or other breach of the peace, shall endeavor to suppress and prevent the same, and, if necessary for that purpose, shall arrest the offenders.” N.C.G.S. § 15-39 (1949) (repealed 1971); *Tomlinson v. Town of Norwood*, 182 S.E. 659, 660 (N.C. 1935).

#### Disorderly Conduct:

By statute, the misdemeanor of Disorderly Conduct appears to be a definitional breach of the peace. North Carolina General Statute § 14-288.4 begins, “Disorderly conduct is a public disturbance.” The statute goes on to itemize fighting, violent conduct, fighting words, taking over public facilities, etc. as public disturbances warranting such a criminal charge.

#### Mob or Riot Activity:

See, *State v. Leary*, 264 N.C. 51, 140 S.E.2d756 (1965)(finding a lawful protest that degenerated into mob violence and riotous activity was an unlawful assembly and breach of the peace); see also, *Tomlinson*, 182 S.E. at 660 (“A person summoned . . .to aid in suppressing any riot, rout, **unlawful assembly**, affray or other breach of the peace . . . shall do so.” N.C. Code § 4547 (1935)(emphasis added)).

#### Noise in Violation of Local Ordinance:

North Carolina General Statute § 153A-133 authorizes counties to “regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens.” This statute and the ordinances passed under its authority have been upheld where they were limited to protecting actual citizens from harm or nuisance. In *State v. Garren*, the North Carolina Court of Appeals found a local ordinance overbroad, but the court’s opinion cited favorably a Wisconsin case that held that an ordinance there was not overbroad where the prohibition was limited to “noise tending to unreasonably disturb the peace and quiet of persons in the vicinity.” 117 N.C. App. 393, 398, 451 S.E.2d 315, 319 (citing *City of Madison v. Baumann*, 470 N.W.2d 296, 296 (Wisc. 1991)).

#### **Conduct that could be but IS NOT NECESSARILY a breach of the peace:**

#### Criminal Trespass:

Until 1987, North Carolina had a statutory offense of “Forcible Trespass,” which was codified in N.C.G.S. § 14-126; it was repealed in 1987. Such a felony often was proved by a breach of the peace. “[T]o constitute the offense of forcible trespass, there must be a demonstration of force, as with weapons or multitude of people, so as to make a beach of the peace or directly tend to it, or such as is calculated to intimidate or put in fear.” *State v.*

*Davenport*, 72 S.E. 7, 10 (N.C. 1911)(citing *State v. Ray*, 32 N.C. 39 (1849)); see also, *State v. Davis*, 13 S.E. 883, 883 (N.C. 1891) (examining forcible entry as analogous to forcible trespass).

Despite the repeal of Forcible Trespass, today there are a multitude of particularized trespass offenses in Article 22 of the Chapter 14 of the North Carolina General Statutes. See, §§ 14-127 to -159.3 (2008). This leaves the question as to whether a particular criminal trespass is a breach of the peace to the individual facts of that particular offense.

Misdemeanors:

The statutes of North Carolina make no provision for arrest or detention on the basis of misdemeanors. North Carolina General Statutes § 15A-404 only provides for detention based on a felony, a breach of the peace, a crime involving physical injury to another person, or a crime involving theft or destruction of property. “The fact that an offense arrestable under this statute is a breach of the peace is also a misdemeanor is purely coincidental.” *State v. Mobley*, 240 N.C. 476, 481, 83 S.E.2d 100, 104 (1954). The same would be true if the crime involving physical injury or the theft or destruction of property is also a misdemeanor offense.

Nuisances:

“An offense amounting to a nuisance is not *per se* a breach of the peace.” *Id.*

Public Intoxication:

“Mere drunkenness, unaccompanied by language or conduct which creates. . . public excitement and disorder amounting to a breach of the peace” will not justify a detention by a private citizen. *Id.* at 481, 83 S.E.2d at 104.

**Conduct that IS NOT a breach of the peace:**

Protected Expressions:

Legal assembly in a public forum is protected as “expression” under the First Amendment to the United States Constitution and does not constitute an actionable breach of the peace. Picketing and protest, so long as in compliance with constitutional regulations controlling time, place, and manner of expression, also cannot constitute a breach of the peace.

As the North Carolina Supreme Court recognized, “public expression of ideas may not be prohibited merely because the ideas are offensive, disturbing, or alarming to some hearers.” *Summrell*, 282 N.C. at 167, 192 S.E.2d at 575 (citing *Street v. N.Y.*, 394 US 576, 592, (1969.)) Instead, only the use of “fighting words,” that is, “words tending to cause an immediate breach of the peace willfully spoken in a public place” can constitute a crime. *Id.* at 168, 192 S.E.2d at 576.

## **Conclusion**

The common law definitions of breach of the peace are still very much applicable in North Carolina. Because of this approach, the term “breach of the peace” is defined largely by its own terms. Has the public peace been breached by an unlawful act? As such, the recognition of a breach is largely a “I know it when I see it” sort of determination that lends itself poorly to most categorical definitions.

This memo is not inclusive of all possible recognizable breaches of the peace. It should only be used as a guide. Facts novel to a particular situation will determine whether in fact a breach of the peace has occurred. Is the occurrence happening in public? Is the occurrence violent? Has a panic or excitement been aroused? Is the occurrence protected as a First Amendment freedom? This memorandum has attempted only to provide a summary of the important reported cases that may be useful as guidelines for evaluating unique situations.