

Exhibit A



AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE

18 Low Avenue
Concord, New Hampshire 03301
603-225-3080
www.ACLU-NH.org

DEVON CHAFFEE
EXECUTIVE DIRECTOR

December 10, 2015

VIA REGULAR MAIL AND EMAIL (nwillard@manchesternh.gov)

Nick Willard
Chief of Police
Manchester Police Department
405 Valley Street
Manchester, NH 03103

Re: Right-to-Know Request Regarding Panhandling

Dear Chief Willard:

This is a Right-to-Know request to the Manchester Police Department pursuant to RSA 91-A by the American Civil Liberties Union of New Hampshire (“ACLU-NH”). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU regularly conducts research into government activities in New Hampshire.

This request seeks records concerning panhandling. We ask that your Department waive all fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies. Below, I have enumerated certain categories of information for production in accordance with RSA 91-A:

1. From January 1, 2015 to the present, copies of all regulations, guidelines, guidance, or policies published, applied, communicated, or otherwise utilized by the Department concerning panhandling and/or the solicitation of money in public places. This request includes documents, emails, and other communications—including to/from Lt. Brian O’Keefe and Chief Willard/Mara—addressing how to handle panhandlers.

2. From January 1, 2015 to the present, copies of all regulations, guidelines, guidance, or policies published, applied, communicated, or otherwise utilized by the Department concerning how (and if) to apply New Hampshire’s disorderly conduct statute to panhandling and/or the solicitation of money in public places. This request includes documents, emails, and other communications—including to/from Lt. Brian O’Keefe and Chief Willard/Mara—addressing how (and if) to apply New Hampshire’s disorderly conduct statute to handle panhandlers.

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep’t of Res. & Econ. Dev.*, 155 N.H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, “within 5 business days of the request, make such records

available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied.” *Id.* at 440.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the reasons.

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,



Gilles Bissonnette
ACLU, Legal Director
Gilles@aclu-nh.org

Gilles Bissonnette

From: Tessier, Maureen <MTessier@manchesternh.gov>
Sent: Tuesday, December 15, 2015 2:04 PM
To: Gilles Bissonnette
Subject: RE: RTK Request
Attachments: Scan_20151216135207.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

Gilles,

I have attached a series of emails that were generated concerning the application of the Disorderly Conduct statute under certain circumstances. As we discussed on the phone, the only way I can be certain to retrieve all email communication related to this topic is to have our info systems conduct a search using key words and phrases. Let me know if you wish me to pursue that further research. However, based on the time frame you provided, I feel relatively confident that the attached documents accurately reflect the guidance we provided our officers when addressing the various violations often associated with panhandling activities.

Let me know if you need anything else!

Maureen

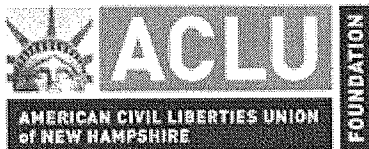
From: Gilles Bissonnette [<mailto:gilles@aclu-nh.org>]
Sent: Thursday, December 10, 2015 10:26 AM
To: Tessier, Maureen; Willard, Enoch
Subject: RTK Request

Cpt. Tessier and Chief Willard,

Please see attached, which has also been sent out by mail.

Best,

Gilles Bissonnette
Legal Director
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Phone: 603-224-5591
gilles@aclu-nh.org
www.aclu-nh.org



Because Freedom Can't Protect Itself

The Right-To-Know Law (RSA 91-A) provides that most e-mail communications, to or from City employees and City volunteers regarding the business of the City of Manchester, are government records available to the public upon request. Therefore, this email communication may be subject to public disclosure.

Tessier, Maureen

From: Reardon, Stephen
Sent: Tuesday, December 15, 2015 7:55 AM
To: Tessier, Maureen
Subject: FW:

From: Reardon, Stephen
Sent: Tuesday, January 27, 2015 12:16 PM
To: Soucy, James
Cc: O'KEEFE, BRIAN; Gallant, Jamie
Subject:

Capt.,

Here is the email I drafted to send out to the troops regarding the issue previously discussed. If there is anything you would like me to change please let me know. I will wait to hear from you before sending it out department wide.

Lt. Stephen Reardon
Manchester Police Department
Legal Division
603-792-5474
sreardon@manchesternh.gov

The Right-To-Know Law (RSA 91-A) provides that most e-mail communications, to or from City employees and City volunteers regarding the business of the City of Manchester, are government records available to the public upon request. Therefore, this email communication may be subject to public disclosure.

12/15/2015

MANC005

In an effort to address the manifold issues resulting from those who use the roadways for unlawful purposes please consider utilizing the charging options outlined below.

644:2 Disorderly Conduct. – *A person is guilty of disorderly conduct if:*

I. He knowingly or purposely creates a condition which is hazardous to himself or another in a public place by any action which serves no legitimate purpose; or

II. He or she:

(c) Obstructs vehicular or pedestrian traffic on any public street or sidewalk or the entrance to any public building;

VI. Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist; otherwise, it is a violation.

Violation level offenders should be issued a White Summons to appear at court. Failure to appear on such summonses can result in defaults and/or EBW's issued by the court. When they are bailed or arraigned, those defendants charged with misdemeanors can be specific conditions of release should be requested that are tailored to prohibit these defendants from engaging in similar behavior once released from custody. Please remember that a person in the roadway is not, per se, in violation of paragraph "c" of this statute and that any use of this statute must be predicated on the facts and circumstances then existing and that those facts and circumstances must meet the elements of this portion of the disorderly conduct statute. If the elements do warrant and support a disorderly conduct charge, please utilize this RSA. A 101 should be completed documents those facts and circumstances in any case alleging disorderly conduct regardless of the level of offense alleged.

If the situation does not rise to the level of a disorderly conduct charge, please consider taking enforcement under the following statutes:

265:11 Pedestrian Control Signals. – *Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk" are in place such signals shall indicate as follows:*

I. Walk--Pedestrians facing such steady or flashing signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles. There shall be no right turn allowed for any vehicle while a steady or flashing walk signal is being displayed.

II. Don't Walk--No pedestrian shall start to cross the roadway in the direction of such signals whether steady or flashing, but any pedestrian who has partially completed his crossing on the "Walk" signal shall proceed to a sidewalk or safety island.

265:35 Pedestrian's Right of Way in Crosswalks. –

I. When traffic control signals are not in place or not in operation the driver of a

vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

II. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

III. Paragraph I shall not apply under the conditions stated in RSA 265:36.

IV. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

265:36 Crossing at Other Than Crosswalks. –

I. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

II. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

III. Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

IV. No pedestrian shall cross a roadway intersection diagonally unless authorized by traffic control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic control devices pertaining to such crossing movements.

265:39 Pedestrians on Roadway. –

I. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

II. Where a sidewalk is not available, any pedestrian walking along and upon a way shall walk only on a shoulder, as far as practicable from the edge of the roadway. Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a way shall walk as near as practicable to an outside edge of the roadway, and if on a two-way roadway, shall walk only on the left side of the roadway.

III. Except as otherwise provided in this chapter, any pedestrian upon a roadway shall yield the right of way to all vehicles upon the roadway.

Tessier, Maureen

From: Tessier, Maureen
Sent: Wednesday, May 20, 2015 9:48 AM
To: Soucy, James
Cc: O'KEEFE, BRIAN; Gallant, Jamie
Subject: FW: DOC enforcement

Guys!

In light of recent DOC enforcement action against Mr. Webber, I asked Greg Muller to review a recent report (15-007852) to be sure we were following the guidelines he suggested. He has offered some additional input for consideration.

Thanks!

From: Muller, Gregory
Sent: Wednesday, May 20, 2015 9:38 AM
To: Tessier, Maureen
Subject: RE: DOC enforcement

Maureen,

I have reviewed the attached report and I would suggest that the report be sent back to Officer Karoul for more details as to the reasonable grounds he possessed to believe that Mr. Webber was about to engage in a violation of either the Motor Vehicle Code or the Criminal Code.

Here, Officer Karoul states that Mr. Webber is standing at the intersection of I-293 and South Willow Street and he references an undescribed course of conduct. What is missing are the details, observations, and conduct that caused Officer Karoul to believe that a violation of either the Motor Vehicle Code or the Criminal Code was ongoing or imminent? For instance, did they observe Mr. Webber to be holding a sign soliciting funds? Where cars in the area? Was he trying to get vehicles to stop regardless of the traffic lights? The reports reference panhandling later on and the Mr. Webber has been successful but it does not reference what conduct at the moment caused the officers to believe that a violation of either the Motor Vehicle Code or the Criminal Code was imminent.

Hopefully, this helps and is not as clear as mud.

Respectfully yours,

Gregory T. Muller
City of Manchester
Office of the City Solicitor
Manchester, NH 03101
(603) 624-6523
(603) 624-6528 (fax)
gmuller@ManchesterNH.gov

From: Tessier, Maureen
Sent: Wednesday, May 20, 2015 7:55 AM
To: Muller, Gregory
Subject: DOC enforcement

Greg,

Can you take a look at this report....the officers are trying to implement your suggestion of using the DOC statute to issue a lawful order for them to leave an area. This individual was previously white summonsed for DOV (V) at that same location just in the past month because he was observed impeding traffic. In each instance the officers documented their observations in a report.

Based on the past two offenses, Karoul ordered him to leave the intersection as stated in this report. We plan to continue this sort of enforcement so please let me know if you have any concerns.

Thanks!

Let me know what you think.

Capt. Maureen Tessier
Legal Division/Professional Standards
Manchester Police Department
405 Valley Street
Manchester, NH 03103
(603) 792-5473
mtessier@manchesternh.gov

The Right-To-Know Law (RSA 91-A) provides that most e-mail communications, to or from City employees and City volunteers regarding the business of the City of Manchester, are government records available to the public upon request. Therefore, this email communication may be subject to public disclosure.

Tessier, Maureen

From: Soucy, James
Sent: Monday, June 01, 2015 5:14 PM
To: Tessier, Maureen
Cc: Reardon, Stephen; O'KEEFE, BRIAN; Gallant, Jamie
Subject: Re: Need help

Thank u very much.

Sent from my iPhone

On Jun 1, 2015, at 3:13 PM, "Tessier, Maureen" <MTessier@manchesternh.gov> wrote:

Jim,

We'll take a look at it and get back to you.

Thanks!

From: Soucy, James
Sent: Monday, June 01, 2015 1:40 PM
To: Tessier, Maureen; Reardon, Stephen
Cc: O'KEEFE, BRIAN; Gallant, Jamie
Subject: FW: Need help

Maureen/Steve,

If you recall, we met with Greg Muller a while back to discuss ways to handle panhandling enforcement. I thought a (brief) bullet point outline from the City Solicitor's to our troops could be used as a guideline—something that would highlight what they can and cannot do on the street.

Attached is what Greg sent me, although in its current form I don't think we should send it out to the troops. The docs are lengthy and don't flow very well.

When you have a moment, could you review the attached docs and maybe put something out from Legal regarding how you would like the guys to handle enforcement?

Thank you very much,
Jim

Captain James Soucy
Community Policing Division
Manchester Police Department
405 Valley St.
Manchester, NH 03101
(603)668-8711 ext. 5433
jsoucy@manchesternh.gov

From: Muller, Gregory
Sent: Wednesday, May 20, 2015 3:46 PM
To: Soucy, James

Subject: RE: Need help

Jim,

My apologies but getting back in the office and getting my Apple documents to translate have proven to me monumental tasks.

I cannot get my hands on the new Panhandling ordinance yet. I have been told that it went to committee and that it was remanded for additional work. If you really need it I can try to get a draft but it is not the final legislation yet or so I have been told.

Sorry for the delay, attached please find the worksheets for the contempts and the disorderly conducts. I originally had drafted checklists but found that they quickly morphed into memorandum. The worksheet I thought was a good compromise because it would give the officers a step by step guide to use for the investigation and limit confusion. Additionally, I wanted to get John and Jeremy onboard so you did not run into the issue of three different opinions from three different attorneys. I have attached the complete drafts to this email, our thought is that the officers could use these forms like the original DWI templates in ILEADS.

Let me know if you have any questions or concerns.

Respectfully yours,

Gregory T. Muller
City of Manchester
Office of the City Solicitor
Manchester, NH 03101
(603) 624-6523
(603) 624-6528 (fax)
gmuller@ManchesterNH.gov

From: Soucy, James
Sent: Tuesday, May 19, 2015 2:43 PM
To: Muller, Gregory
Subject: Need help

Greg,

I know you're extremely busy, but when you could I need the outline our guys can follow/refer to regarding the Panhandlers. Wayne Webber has been calling the PD complaining about harassment over the last few days. He's unhappy with our approach to his panhandling and feels we cannot "predict" that his behavior will continue and therefore ask him to leave the area.

The Chief would also like a copy of the new Panhandling Ordinance that was passed by the Alderman last week. It's my understanding that this is not in effect as yet—am I correct?

Thanks.
Jim

Captain James Soucy
Community Policing Division
Manchester Police Department
405 Valley St.
Manchester, NH 03101
(603)668-8711 ext. 5433
jsoucy@manchesternh.gov

The Right-To-Know Law (RSA 91-A) provides that most e-mail communications, to or from City employees and City volunteers regarding the business of the City of Manchester, are government records available to the public upon request. Therefore, this email communication may be subject to public disclosure.

INVESTIGATIVE WORKSHEET FOR CONTEMPTS**DEFINITION OF INDIRECT CRIMINAL CONTEMPT FOR FAILING TO APPEAR:**

Indirect Criminal Contempt is a common law crime and therefore is defined by case law and not a particular criminal statute. Criminal contempt is "...a sanction imposed by the trial court when a defendant has intentionally failed to comply with a valid order of which the defendant had knowledge." **State v. Hancock**, 156 N.H. 301, 304, 934 A.2d 551 (2007). "Indirect contempt is committed outside the presence of the judge, without the judge having personal knowledge of every element of contempt." *Id.* at 305, 934 A.2d 551. To prove indirect criminal contempt, the State must prove the existence of a valid order, the defendant's knowledge of the order, and the defendant's intentional failure to comply with the order. **State v. Nott**, 149 N.H. at 280, 282, 821 A.2d 976 (2003).

FIRST ELEMENT: VALID ORDER

Order (i.e. bail order, sentence, summonsetc): _____

Date Issued: _____

Please make sure that a copy of the Order is attached to the case file or entered into evidence.

SECOND ELEMENT: DEFENDANT'S KNOWLEDGE OF THE ORDER

Was the Defendant provided a copy of the Order?: yes/no

If the Defendant was given a copy of the Order did he sign for it?: yes/no

How was the Defendant provided a copy of the Order?: given in hand/ mailed

If a copy of the Order was provided in hand, please identify the person who gave the Defendant a copy of the Order: _____

If a copy of the Order was mailed, was mail returned?: yes/no

Additional Information: *Please include any additional information that may support the idea that the Defendant was aware of the Order in question such as conversation on the street, pleadings filed by the Defendant, etc.:* _____

THIRD ELEMENT: DEFENDANT'S INTENTIONAL FAILURE TO COMPLY:

Direct Evidence: Statements of the Defendant – *Please include any and all statements made by the Defendant that it was his purpose to violate the Order. Please include, if known, the identity of any witness who may have heard this statement; the date it was made; and any corresponding case or incident number from the ILEADS system: Example ("You can keep giving my all the tickets you want. I am not going to Court and I know that these will just get dumped when I pick up something serious." – Officer John Doe – May 2015 MPD 15-01234567.)* _____

Circumstantial Evidence:

Is there a history or pattern of failing to appear (i.e. the Defendant has failed to appear for his arraignment 3 times in the last calendar year on each of his last three cases)? Yes/No

Number of times the Defendant has failed to appear: _____

Dates of those failures to appear: _____

Has the statute of limitations run? The complaint must be brought within one (1) year on the most recent failure to appear: Yes/ No

Was the defendant incarcerated during those dates?: Yes/No

Has the court's file been reviewed?: Yes/No

Were any pleadings filed by the Defendant attempting to address those failures to appear and notations made in the court's file that would explain the defendant's failure to appear: Yes/No

If, yes. Please describe the notation and/or place a copy of any pleading in evidence:

Has the Defendant been arrested and been brought before the Court since his most recent failure to appear?: Yes/no

If yes, when: _____

Was the Defendant seen by any officers or witnesses on the date he was supposed to be in Court? *Please identify the witness and describe what was seen.* Example: Def. was seen intoxicated and sleeping in Veteran's Park when he was supposed to be in Court by Officer John Doe.

List any and all other evidence not previously disclosed that may weigh one way or another on the Defendant's *mens rea* of intentional/ purposeful failing to appear?: _____

FREQUENTLY ASKED QUESTIONS:

1. **Can a Defendant be charged with Attempted Indirect Criminal Contempt?** Yes, the New Hampshire Supreme Court in *State v. Michael Smith* 163 N.H. 13 (N.H. 2011) affirmed the finding that the Defendant committed the offense of attempted indirect criminal contempt.
2. **How many times must a Defendant fail to appear before he can be considered to have engaged in a pattern of non-appearance?** If the contempt is based on purely non-appearance without any statement by the Defendant as to his intent, the safe rule of thumb is three non-appearances on single case or for several cases in a short period of time (one year or less) shows a pattern of non-appearance.
3. **Should an investigating officer talk to the Defendant about his non-appearance before charging?** To the extent possible yes. Even if the Defendant provides you with some story or excuse it is highly beneficial to get this information as early as possible as it gives the State a preview of the defense and prevents the State from being surprised at trial.
4. **Should an officer attempt to talk to the Defendant after he has been arrested?** Yes. The more information obtained including defenses the better the likelihood of conviction.
5. **Can a conviction for Indirect Criminal Contempt be used to impose a suspended sentence?** Yes, a conviction for Indirect Criminal Contempt is a criminal conviction and violates the terms of good behavior. See *State v. Michael Smith* 163 N.H. 13 (N.H. 2011).
6. **Why doesn't the Defendant have to prove that he did not intentionally fail to appear?** The Defendant is charged with indirect criminal contempt, a crime, under both the New Hampshire and Federal Constitutions the Defendant is entitled to have the State prove each and every element of the offense charged beyond a reasonable doubt.
7. **What if an officer is unsure whether there is sufficient evidence to support a conviction for Indirect Criminal Contempt?** If you are uncertain as to whether the conduct is sufficient to support a conviction for indirect criminal contempt please feel free to review the matter with a supervisor or send the case over to the City of Manchester Office of the City Solicitor for

review. The contact information for the City of Manchester Office of the City Solicitor prosecutors is as follows:

Gregory Muller, Esq. (603) 624-6523 gmuller@manchesternh.gov

John Blanchard, Esq. (603) 624-6523 jblanchard@manchesternh.gov

Jeremy Harmon, Esq. (603) 624-6523 jharmon@manchesternh.gov

Sample Complaint Language:

...did commit the offense of _____

_____ Contempt of Court _____ contrary to RSA _____ 594:14 _____

and the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:

after receiving an order to appear to court on (date) , to which the defendant had knowledge of, the defendant purposely fail to comply with said order when the defendant failed to appear for the scheduled event on (date) .

INVESTIGATIVE WORKSHEET FOR DISORDERLY CONDUCT- REFUSAL TO MOVE

DISORDERLY CONDUCT – REFUSAL TO MOVE N.H. R.S.A. 644:2(II)(E):

A person is guilty of disorderly conduct if he or she knowingly refuses to comply with a lawful order of a peace officer to move from or remain away from any public place.

“Knowingly” is defined by N.H. R.S.A. 626:2(II)(b) as “A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist.”

“Lawful Order” is defined by N.H. R.S.A. 644:2(V)(a) and means:

- (1) A command issued to any person for the purpose of preventing said person from committing any offense set forth in this section, or in any section of Title LXII or Title XXI, when the officer has reasonable grounds to believe that said person is about to commit any such offense, or when said person is engaged in a course of conduct which makes his commission of such an offense imminent;
- (2) A command issued to any person to stop him from continuing to commit any offense set forth in this section, or in any section of Title LXII or Title XXI, when the officer has reasonable grounds to believe that said person is presently engaged in conduct which constitutes any such offense; or
- (3) A command not to enter or a command to leave an area closed pursuant to paragraph IV, provided that a person may not lawfully be ordered to leave his or her own home or business.

“Public Place” is defined by N.H. R.S.A. 644:2(V)(b) and means “any place to which the public or a substantial group has access. The term includes, but is not limited to, public ways, sidewalks, schools, hospitals, government offices or facilities, and the lobbies or hallways of apartment buildings, dormitories, hotels or motels.”

VIOLATION VERSUS MISDEMEANOR DISORDERLY CONDUCT:

N.H. R.S.A. 644:2(VI) states “Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist; otherwise, it is a violation.” In charging a person with a misdemeanor Disorderly Conduct – Refusal to Move under N.H. R.S.A. 644:2(II)(e), this means that the Defendant must refuse to comply with the initial order and must continue to refuse to comply with a second order to move or remain away from the any public place. If there is only one order then the matter must be charged as a violation.

ELEMENTS OF THE OFFENSE:

The following elements must be established by the State of New Hampshire to have a successful prosecution for Disorderly Conduct:

- 1.) A "lawful order" to move from or remain away from a public place as defined by N.H. R.S.A. 644:2(V)(a) (see definition in prior section);
- 2.) The order is issued by a peace officer
- 3.) The Defendant must act "knowingly" as defined by N.H. R.S.A. 626:2(II)(b) (see definition in prior section)
- 4.) That the Defendant failed to comply with said order
- 5.) That the place the Defendant is ordered to move from or remain away from is a "public place" as defined by N.H. R.S.A. 644:2(V)(b)

And if charging a misdemeanor:

- 6.) That the offense (elements 1 through 4) continued after a request by any person to desist.

ELEMENT ONE AND TWO: LAWFUL ORDER BY A PEACE OFFICER TO MOVE FROM OR REMAIN AWAY FROM A PUBLIC PLACE:

Order Given, please describe: _____

Issued by Whom, please identify officer: _____

Was the Defendant committing a violation of either a violation of the Motor Vehicle Code (Title XXI) and/or a violation of the Criminal Code (Title LXII): yes/no

If "yes" then, what offense was the Defendant committing? Please cite to a specific offense or offenses under the Motor Vehicle and/ or Criminal Code: _____

What reasonable grounds do you cite to believe that the Defendant was committing the offense specified above? (prior observed behavior including reference to specific MPD case numbers, statements of the defendant, etc.): _____

Was the Defendant about to commit a violation of either the Motor Vehicle Code (Title XXI) and/or violation of the Criminal Code (Title LXII): yes/no

If "yes" then, what offense was the Defendant about to commit? Please cite a specific offense or specific offenses under the Motor Vehicle and/or Criminal Code: _____

What reasonable grounds do you cite to believe that the Defendant was about to commit the offense specified above? (prior observed behavior, history, etc.): _____

Was the area closed due to probable cause to believe that a serious threat to the public health or safety was created by a flood, storm, fire, earthquake, explosion, riot, ongoing criminal activity that poses a risk of bodily injury, or other disaster? yes/no

If "yes" then please set forth the facts relied on to establish the probable cause described above: _____

Was the area closed to any unauthorized person the immediate area surrounding any emergency field command post activated for the purpose of abating any threat enumerated above, whether or not the field command post is located near the source of the threat? Yes/no

If "yes" then please describe the any markers or signs or orders closing said area: _____

ELEMENT THREE: DEFENDANT'S KNOWLEDGE OF THE ORDER

How was the Order given to the Defendant (i.e. verbal or written)?: _____

Did the Defendant acknowledge that he or she understood the order?: _____

What language did the Defendant speak?: _____

If the Defendant spoke a language other than English, was an interpreter used?: yes/no

Please explain (please identify any interpreter or interpreter service used): _____

What was the Defendant's level of sobriety when the order was given?: _____

Please list any additional information that would cause you to believe that the Defendant understood the order (his or her response, mental state, etc.): _____

ELEMENT FOUR: NON-COMPLIANCE WITH ORDER TO MOVE FROM OR REMAIN AWAY FROM A PUBLIC PLACE

Did the Defendant comply with your lawful order to move from or remain away from a public place? yes/no

If no, please describe what evidence or observations cause you to conclude that the Defendant was in non-compliance with your lawful order (i.e. statements, returning immediately after the officer left, etc.): _____

ELEMENT FIVE: PUBLIC PLACE:

"Public Place" is defined by N.H. R.S.A. 644:2(V)(b) and means "any place to which the public or a substantial group has access. The term includes, but is not limited to, public ways, sidewalks, schools, hospitals, government offices or facilities, and the lobbies or hallways of apartment buildings, dormitories, hotels or motels." Please identify the area the Defendant was ordered to move from or remain away from: _____

ELEMENT SIX: CONTINUED NON-COMPLIANCE AFTER SUBSEQUENT ORDER

N.H. R.S.A. 644:2(VI) states "Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist; otherwise, it is a violation."

Subsequent Order Given, please describe: _____

Number of Times Subsequent Order was given?: _____

Who issued said Subsequent Order?: _____

Did the non-compliance continue after the subsequent order was given?: yes/no

Please describe continued non-compliance: _____

FREQUENTLY ASKED QUESTIONS:

1. **Is panhandling a basis for which to order a person to move from or remain away from a public place?:**No. The act of panhandling is generally viewed a protect speech and is not a basis for a lawful order. The officer must set forth reasonable grounds to believe that the Defendant is currently or is about to commit any offense under the Motor Vehicle Code or Criminal Code.
2. **Is the order to move from or remain away from a public place a trespass order?**No. While it may seem that the order is similar to a trespass order it would be incorrect and problematic to refer to a lawful order under the Disorderly Conduct statute as a trespass order. The purpose of the lawful order under the Disorderly Conduct statute is to abate ongoing or imminent unlawful conduct in a public area.
3. **How long does the order to move from or remain away from a public place last?** Again this is not a trespass order. The order lasts for the period of time necessary to abate the ongoing or imminent violation(s) of the Criminal Code or the Motor Vehicle Code. The purpose of the statute is to allow the police to gain control of a situation occurring in a public place. Once the threat of unlawful behavior is no longer imminent the order terminates. A good rule of practice would be one (1) hour after the threat of unlawful behavior has been abated.
4. **How big of an area is closed due by the lawful order?** The size of the area is determined by the nature of the unlawful conduct that is ongoing or imminent. If the Defendant is soliciting contributions contrary to R.S.A. 265:40 at the intersection of the 293 off-ramp and Granite Street, the officer would be reasonable and authorize to order the Defendant to leave the entire intersection as this would be necessary to abate the ongoing violation. The officer would not be justified to order the Defendant to leave the City of Manchester or remain away from all intersections as this would be overly broad. The statue contemplates the closing of the immediate area to the offender to prevent the ongoing or imminent unlawful conduct.

5. **What happens if a Defendant is order to leave a particular intersection because the officer has reasonable grounds to believe that he is committing a violation of R.S.A. 265:40 or is about to commit a violation of R.S.A. 265:40, the officer then watches the Defendant takes his sign requesting donations and travel up to the next intersection to begin the same behavior again?** The officer should then follow the Defendant to the next intersection and if he has reasonable grounds to believe that the Defendant is about engage in another violation of R.S.A. 265:40, then the officer could order the Defendant to move from or remain away from this new intersection. However, if the Defendant is merely walking to the next intersection and does nothing to suggest he is about to commence his unlawful behavior again the officer cannot order him to move from or remain away from this new intersection. That being said, nothing prevents an officer from following or speaking with this offender and thereby deterring the offender from engaging in the conduct.
6. **What if an officer has reasonable grounds to believe that the defendant is committing or is about to engage in a violation of the City of Manchester Code of Ordinances, can he issue the person a lawful order to move from or remain away from a public place?** No. The language of R.S.A. 644:2(V)(a) is clear that a lawful order can only be issued when the officer has reasonable grounds that the defendant is committing or is about to commit an offense under the Motor Vehicle Code (Title XXI) or the Criminal Code (Title LXII).
7. **What if an officer is unsure whether there is sufficient evidence to support a conviction for Disorderly Conduct?** If you are uncertain as to whether the conduct is sufficient to support a conviction for disorderly conduct please feel free to review the matter with a supervisor or send the case over the City of Manchester Office of the City Solicitor for review. The contact information for the City of Manchester Office of the City Solicitor prosecutors is as follows:

Gregory Muller, Esq. (603) 624-6523 gmuller@manchesternh.gov

John Blanchard, Esq. (603) 624-6523 jblanchard@manchesternh.gov

Jeremy Harmon, Esq. (603) 624-6523 jharmon@manchesternh.gov

Tessier, Maureen

From: Reardon, Stephen
Sent: Wednesday, June 03, 2015 10:46 AM
To: Soucy, James
Cc: Tessier, Maureen
Subject: RE: Need help

Jim,

I've modified Greg's worksheets considerably. I spoke wit Sgt. Gallant about working with me to create a simpler and more user friendly protocol that addresses both issues. I think we are almost there, but I'd like to have his input as he is more directly involved with the actual enforcement process, his guys will be using them and I want these protocols to work. When he comes back from vacation we will hash this out once and for all.

From: Soucy, James
Sent: Monday, June 01, 2015 1:40 PM
To: Tessier, Maureen; Reardon, Stephen
Cc: O'KEEFE, BRIAN; Gallant, Jamie
Subject: FW: Need help

Marueen/Steve,

If you recall, we met with Greg Muller a while back to discuss ways to handle panhandling enforcement. I thought a (brief) bullet point outline from the City Solicitor's to our troops could be used as a guideline—something that would highlight what they can and cannot do on the street.

Attached is what Greg sent me, although in its current form I don't think we should send it out to the troops. The docs are lengthy and don't flow very well.

When you have a moment, could you review the attached docs and maybe put something out from Legal regarding how you would like the guys to handle enforcement?

Thank you very much,
Jim

Captain James Soucy
Community Policing Division
Manchester Police Department
405 Valley St.
Manchester, NH 03101
(603)668-8711 ext. 5433
jsoucy@manchesternh.gov

From: Muller, Gregory
Sent: Wednesday, May 20, 2015 3:46 PM
To: Soucy, James
Subject: RE: Need help

Jim,

My apologies but getting back in the office and getting my Apple documents to translate have proven

to me monumental tasks.

I cannot get my hands on the new Panhandling ordinance yet. I have been told that it went to committee and that it was remanded for additional work. If you really need it I can try to get a draft but it is not the final legislation yet or so I have been told.

Sorry for the delay, attached please find the worksheets for the contempts and the disorderly conducts. I originally had drafted checklists but found that they quickly morphed into memorandum. The worksheet I thought was a good compromise because it would give the officers a step by step guide to use for the investigation and limit confusion. Additionally, I wanted to get John and Jeremy onboard so you did not run into the issue of three different opinions from three different attorneys. I have attached the complete drafts to this email, our thought is that the officers could use these forms like the original DWI templates in ILEADS.

Let me know if you have any questions or concerns.

Respectfully yours,

Gregory T. Muller
City of Manchester
Office of the City Solicitor
Manchester, NH 03101
(603) 624-6523
(603) 624-6528 (fax)
gmuller@ManchesterNH.gov

From: Soucy, James
Sent: Tuesday, May 19, 2015 2:43 PM
To: Muller, Gregory
Subject: Need help

Greg,

I know you're extremely busy, but when you could I need the outline our guys can follow/refer to regarding the Panhandlers. Wayne Webber has been calling the PD complaining about harassment over the last few days. He's unhappy with our approach to his panhandling and feels we cannot "predict" that his behavior will continue and therefore ask him to leave the area.

The Chief would also like a copy of the new Panhandling Ordinance that was passed by the Alderman last week. It's my understanding that this is not in effect as yet—am I correct?

Thanks.
Jim

Captain James Soucy
Community Policing Division
Manchester Police Department
405 Valley St.
Manchester, NH 03101
(603)668-8711 ext. 5433
jsoucy@manchesternh.gov

The Right-To-Know Law (RSA 91-A) provides that most e-mail communications, to or from City employees and City volunteers regarding the business of the City of Manchester, are government records available to the public

MANC026

12/14/2015

upon request. Therefore, this email communication may be subject to public disclosure.

ENFORCEMENT OF CONTEMPTS INVOLVING FAILURES TO APPEAR**DEFINITION OF INDIRECT CRIMINAL CONTEMPT FOR FAILING TO APPEAR:**

Indirect Criminal Contempt is a common law crime and therefore is defined by case law and not a particular criminal statute. Criminal contempt is "...a sanction imposed by the trial court when a defendant has intentionally failed to comply with a valid order of which the defendant had knowledge." **State v. Hancock**, 156 N.H. 301, 304, 934 A.2d 551 (2007). "Indirect contempt is committed outside the presence of the judge, without the judge having personal knowledge of every element of contempt." *Id.* at 305, 934 A.2d 551. To prove indirect criminal contempt, the State must prove the existence of a valid order, the defendant's knowledge of the order, and the defendant's intentional failure to comply with the order. **State v. Nott**, 149 N.H. at 280, 282, 821 A.2d 976 (2003).

"Knowingly" is defined by N.H. R.S.A. 626:2(II)(b) as "A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist."

Procedure for Charging Contempt for Failing to Appear:

1. If the contempt is based on purely non-appearance there must a minimum of **three non-appearances** (either for a single case or for separate, individual cases) in a short period of time (one year or less) in order to show a pattern of non-appearance. Please note the date each summons was issued to the defendant, the name of the issuing officer as well as each date the defendant failed to appear in court in your affidavit/101. Records should have copies of any MPD summonses issued. The City Solicitor requests that the original summons be placed into evidence. A copy can be attached to the original summons case file in place of any original copy placed into evidence. The pattern established by the behavior will ultimately be used by the prosecutor to establish the required mental state that the defendant did act "knowingly" when that defendant did not appear as required.
2. If possible, a post arrest pot Miranda interview should be conducted. If the defendant is willing to speak to you ask the defendant if they knew that they were supposed to appear in court and why they did not. A 102 should be completed documenting any such interview.

Sample Complaint Language:

...did commit the offense of _____

Contempt of Court contrary to RSA 594:14

and the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:

after receiving an order to appear to court on (date) , to which the defendant had knowledge of, the defendant purposely fail to comply with said order when the defendant failed to appear for the scheduled event on (date) .

Tessier, Maureen

From: Reardon, Stephen

Sent: Wednesday, June 03, 2015 2:00 PM

To: Tessier, Maureen

Lt. Stephen Reardon
Manchester Police Department
Legal Division
603-792-5474
sreardon@manchesternh.gov

The Right-To-Know Law (RSA 91-A) provides that most e-mail communications, to or from City employees and City volunteers regarding the business of the City of Manchester, are government records available to the public upon request. Therefore, this email communication may be subject to public disclosure.

12/14/2015

MANC030

DISORDERLY CONDUCT- REFUSAL TO MOVE

DISORDERLY CONDUCT – REFUSAL TO MOVE N.H. R.S.A. 644:2(II)(E):

A person is guilty of disorderly conduct if he or she knowingly refuses to comply with a lawful order of a peace officer to move from or remain away from any public place.

“Knowingly” is defined by N.H. R.S.A. 626:2(II)(b) as “A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist.”

“Lawful Order” is defined by N.H. R.S.A. 644:2(V)(a) and means:

- (1) An order issued when an officer has reasonable grounds that the defendant is committing or is about to commit an offense under the Motor Vehicle Code (Title XXI) or the Criminal Code (Title LXII) only and does not include Manchester City Ordinance violations.
- (2) A command not to enter or a command to leave an area closed pursuant to paragraph IV, provided that a person may not lawfully be ordered to leave his or her own home or business.

“Public Place” is defined by N.H. R.S.A. 644:2(V)(b) and means “any place to which the public or a substantial group has access. The term includes, but is not limited to, public ways, sidewalks, schools, hospitals, government offices or facilities, and the lobbies or hallways of apartment buildings, dormitories, hotels or motels.”

VIOLATION VERSUS MISDEMEANOR DISORDERLY CONDUCT:

N.H. R.S.A. 644:2(VI) states “Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist; otherwise, it is a violation.” In charging a person with a misdemeanor Disorderly Conduct – Refusal to Move under N.H. R.S.A. 644:2(II)(e), this means that the Defendant must refuse to comply with the initial order and must continue to refuse to comply with a second order to move or remain away from the any public place. If there is only one order then the matter must be charged as a violation.

POINTS TO CONSIDER:

1. **Panhandling by itself CAN’T constitute the basis for which to order a person to move from or remain away from a public place.** The act of panhandling is generally viewed as a constitutionally protected speech and is not a basis for a lawful order.
2. **The order to move from or remain away from a public place IS NOT a trespass order.** The purpose of the lawful order under the Disorderly Conduct statute is to stop or prevent

unlawful conduct in a public area. The order to desist/leave lasts for the period of time necessary to stop the ongoing or imminent violation(s) of the Criminal Code or the Motor Vehicle Code. Once the threat of unlawful behavior ceases the order terminates. A good rule of practice would be one (1) hour after the threat of unlawful behavior has been stopped a new lawful order would need to be issued to address any recurrence of unlawful behavior.

3. The size of the area closed to the suspect by the lawful order is determined by the nature of the unlawful conduct that is being addressed. If the Defendant is soliciting contributions contrary to R.S.A. 265:40 at the intersection of the 293 off-ramp and Granite St. it would be reasonable to order the suspect to leave the entire intersection as this would be necessary to stop that behavior. The officer would not be justified to order the Defendant to leave the City of Manchester or remain away from all intersections.

Tessier, Maureen

From: Reardon, Stephen
Sent: Monday, June 15, 2015 6:56 AM
To: Soucy, James
Cc: Tessier, Maureen
Subject: FW: Attached Proposals

Jim,

Here is what we cam up with. I would disseminate the contempt document to the troops in CP only as they have more experience with this sort of thing and more latitude to do the research needed to establish the pattern of behavior based upon the FTA's. Let me know what you think.

From: Gallant, Jamie
Sent: Sunday, June 14, 2015 10:55 AM
To: Reardon, Stephen
Subject: Attached Proposals

Please see the revised attached documents. They should work.

Thanks,

Sgt. Jamie Gallant
Community Policing Division
Manchester Police Department
405 Valley Street
Manchester, NH 03103
Main # (603) 668-8711
Direct # (603) 792-5429

The Right-To-Know Law (RSA 91-A) provides that most e-mail communications, to or from City employees and City volunteers regarding the business of the City of Manchester, are government records available to the public upon request. Therefore, this email communication may be subject to public disclosure.

12/14/2015

MANC033

ENFORCEMENT OF CONTEMPTS INVOLVING FAILURES TO APPEAR**DEFINITION OF INDIRECT CRIMINAL CONTEMPT FOR FAILING TO APPEAR:**

Indirect Criminal Contempt is a common law crime and therefore is defined by case law and not a particular criminal statute. Criminal contempt is "...a sanction imposed by the trial court when a defendant has intentionally failed to comply with a valid order of which the defendant had knowledge." **State v. Hancock**, 156 N.H. 301, 304, 934 A.2d 551 (2007). "Indirect contempt is committed outside the presence of the judge, without the judge having personal knowledge of every element of contempt." *Id.* at 305, 934 A.2d 551. To prove indirect criminal contempt, **the State must prove the existence of a valid order, the defendant's knowledge of the order, and the defendant's intentional failure to comply with the order.** **State v. Nott**, 149 N.H. at 280, 282, 821 A.2d 976 (2003).

"Knowingly" is defined by N.H. R.S.A. 626:2(II)(b) as "A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist."

Procedure for Charging Contempt for Failing to Appear:

1. If the contempt is based on purely non-appearance there must a minimum of **three non-appearances** (either for a single case or for separate, individual cases) in a short period of time (one year or less) in order to show a pattern of non-appearance. Please note the date each summons was issued to the defendant, the name of the issuing officer as well as each date the defendant failed to appear in court in your affidavit/101. Records should have copies of any MPD summonses issued. The City Solicitor requests that the original summons be placed into evidence. A copy can be attached to the original summons case file in place of any original copy placed into evidence. The pattern established by the behavior will ultimately be used by the prosecutor to establish the required mental state that the defendant did act "knowingly" when that defendant did not appear as required.
2. If possible, a post arrest pot Miranda interview should be conducted. If the defendant is willing to speak to you ask the defendant if they knew that they were supposed to appear in court and why they did not. A 102 should be completed documenting any such interview.

Sample Complaint Language:

...did commit the offense of _____

_____ Contempt of Court _____ contrary to RSA _____ 594:14 _____

and the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:

after receiving an order to appear to court on (date) , to which the defendant had knowledge of, the defendant purposely fail to comply with said order when the defendant failed to appear for the scheduled event on (date) .

DISORDERLY CONDUCT- REFUSAL TO MOVE

A person is guilty of disorderly conduct if he or she knowingly refuses to comply with a lawful order of a peace officer to move from or remain away from any public place.

“Knowingly” is defined by N.H. R.S.A. 626:2(II)(b) as “A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist.”

“Lawful Order” is defined by N.H. R.S.A. 644:2(V)(a) and means:

- (1) An order issued when an officer has reasonable grounds that the defendant is committing or is about to commit an offense under the Motor Vehicle Code (Title XXI) or the Criminal Code (Title LXII) only and does not include Manchester City Ordinance violations.
- (2) A command not to enter or a command to leave an area closed pursuant to paragraph IV, provided that a person may not lawfully be ordered to leave his or her own home or business.

“Public Place” is defined by N.H. R.S.A. 644:2(V)(b) and means “any place to which the public or a substantial group has access. The term includes, but is not limited to, public ways, sidewalks, schools, hospitals, government offices or facilities, and the lobbies or hallways of apartment buildings, dormitories, hotels or motels.”

VIOLATION VERSUS MISDEMEANOR DISORDERLY CONDUCT:

“Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist; otherwise, it is a violation.” In charging a person with a misdemeanor Disorderly Conduct – Refusal to Move under N.H. R.S.A. 644:2(II)(e), this means that the Defendant must refuse to comply with the initial order and must continue to refuse to comply with a second order to move or remain away from the any public place. If there is only one order then the matter must be charged as a violation.

POINTS TO CONSIDER:

1. **Panhandling by itself CAN’T constitute the basis for which to order a person to move from or remain away from a public place.**
2. **The order to move from or remain away from a public place IS NOT a trespass order.** The purpose of the lawful order under the Disorderly Conduct statute is to stop or prevent unlawful conduct in a public area. The order to desist/leave lasts for the period of time necessary to stop the ongoing or imminent violation(s) of the Criminal Code or the Motor Vehicle Code. Once the threat of unlawful behavior ceases the order terminates. A good rule of practice would be one (1) hour after the threat of unlawful behavior has been stopped a new lawful order would need to be issued to address any recurrence of unlawful behavior.
3. The size of the area closed to the suspect by the lawful order is determined by the nature of the unlawful conduct that is being addressed. If the Defendant is soliciting contributions contrary to R.S.A. 265:40 at the intersection of the 293 off-ramp and Granite St. It would be reasonable to order the suspect to leave the entire intersection as this would be necessary to stop that behavior. The officer would not be justified to order the Defendant to leave the City of Manchester or remain away from all intersections.

Tessier, Maureen

From: Soucy, James
Sent: Thursday, July 02, 2015 11:12 AM
To: POL FYI All
Cc: Communication
Subject: Panhandlers

Simply put, if a Panhandler does any of the following – you may use these options:

Action: Panhandler causes traffic to slow or become impeded when accepting donations – even if they're not standing or step into a public way

Officer's Option: Charge with DOC 644:2(c) Obstructing vehicular traffic on any public street

Action: IF a Panhandler has been summonsed or charged with obstructing traffic or stepping into roadway on prior occasion AND you think they will or are about to commit this violation again AND they refuse to move OR come back to the area after moving...

Officer's Option: Charge with DOC 644:2 II (e) Refusing to Move.

***Charge with Violation – unless they continue behavior or refuse to move – then you may ARREST.
(M)

Please use the attachment if you need any further guidance.

Captain James Soucy
Community Policing Division
Manchester Police Department
405 Valley St.
Manchester, NH 03101
(603)668-8711 ext. 5433
jsoucy@manchesternh.gov

The Right-To-Know Law (RSA 91-A) provides that most e-mail communications, to or from City employees and City volunteers regarding the business of the City of Manchester, are government records available to the public upon request. Therefore, this email communication may be subject to public disclosure.

DISORDERLY CONDUCT- REFUSAL TO MOVE

A person is guilty of disorderly conduct if he or she knowingly refuses to comply with a lawful order of a peace officer to move from or remain away from any public place.

“Knowingly” is defined by N.H. R.S.A. 626:2(II)(b) as “A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist.”

“Lawful Order” is defined by N.H. R.S.A. 644:2(V)(a) and means:

- (1) An order issued when an officer has reasonable grounds that the defendant is committing or is about to commit an offense under the Motor Vehicle Code (Title XXI) or the Criminal Code (Title LXII) only and does not include Manchester City Ordinance violations.
- (2) A command not to enter or a command to leave an area closed pursuant to paragraph IV, provided that a person may not lawfully be ordered to leave his or her own home or business.

“Public Place” is defined by N.H. R.S.A. 644:2(V)(b) and means “any place to which the public or a substantial group has access. The term includes, but is not limited to, public ways, sidewalks, schools, hospitals, government offices or facilities, and the lobbies or hallways of apartment buildings, dormitories, hotels or motels.”

VIOLATION VERSUS MISDEMEANOR DISORDERLY CONDUCT:

“Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist; otherwise, it is a violation.” In charging a person with a misdemeanor Disorderly Conduct – Refusal to Move under N.H. R.S.A. 644:2(II)(e), this means that the Defendant must refuse to comply with the initial order and must continue to refuse to comply with a second order to move or remain away from the any public place. If there is only one order then the matter must be charged as a violation.

POINTS TO CONSIDER:

1. **Panhandling by itself CAN’T constitute the basis for which to order a person to move from or remain away from a public place.**
2. **The order to move from or remain away from a public place IS NOT a trespass order.** The purpose of the lawful order under the Disorderly Conduct statute is to stop or prevent unlawful conduct in a public area. The order to desist/leave lasts for the period of time necessary to stop the ongoing or imminent violation(s) of the Criminal Code or the Motor Vehicle Code. Once the threat of unlawful behavior ceases the order terminates. A good rule of practice would be one (1) hour after the threat of unlawful behavior has been stopped a new lawful order would need to be issued to address any recurrence of unlawful behavior.
3. The size of the area closed to the suspect by the lawful order is determined by the nature of the unlawful conduct that is being addressed. If the Defendant is soliciting contributions contrary to R.S.A. 265:40 at the intersection of the 293 off-ramp and Granite St. It would be reasonable to order

the suspect to leave the entire intersection as this would be necessary to stop that behavior. The officer would not be justified to order the Defendant to leave the City of Manchester or remain away from all intersections.