



## Testimony for the County Council for Montgomery County, Maryland

Expedited Bill 25-11, Offenses -Curfew-Established

July 26, 2011

AMERICAN CIVIL  
LIBERTIES UNION  
OF MARYLAND

MAIN OFFICE  
& MAILING ADDRESS  
3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
or 240-274-5295  
F/410-366-7838

FIELD OFFICE  
6930 CARROLL AVENUE  
SUITE 610  
TAKOMA PARK, MD 20912  
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND  
DIRECTORS  
SARA N. LOVE  
PRESIDENT

SUSAN GOERING  
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN  
GENERAL COUNSEL

### OPPOSE

The American Civil Liberties Union of Maryland (ACLU-MD) opposes Expedited Bill 25-11, a bill to establish a curfew for minors in Montgomery County, Maryland. The ACLU-MD is the Maryland state affiliate office of the American Civil Liberties Union (ACLU), one of the nation's oldest civil liberties and civil rights organizations. The ACLU-MD was founded in 1931, and currently has approximately 14,000 members and supporters statewide. Our mission is to ensure that all people in the State are free to think and speak as they choose and can lead their lives free from discrimination and unwarranted government intrusion. The Bill of Rights and the Maryland Declaration of Rights guide our work, and we act without partisanship to achieve these goals.

The ACLU believes juvenile curfew laws are unconstitutional because they violate the rights of both young people and their parents. Like adults, young people are entitled to what our nation's founders called the "inalienable" right of liberty. Liberty includes the right to sit outdoors on a hot summer night, to go jogging early in the morning before school, or to walk home after visiting friends and family. Such activities do no harm to anyone, and thus cannot be made a crime. Curfew laws also violate the rights of parents to raise their children as they think best. Parents may set curfews for their children, and also may decide when to allow their children to stay out later. The government has no business overruling a parent's judgment in this area.

While legal decisions about the constitutionality of juvenile curfew laws have gone both ways in courts throughout the country, the most recent decision in Maryland came in *Ashton v. Brown*, 339 Md. 70 (1995), where the Court of Appeals struck down the City of Frederick's juvenile curfew. Because that law was found to be unconstitutionally vague, the Court declined to address the merits of the plaintiffs' claims, leaving for another day the question of whether *any* juvenile curfew law could survive a direct challenge under the Maryland Constitution. Earlier in the same case, the Court of Special Appeals held Frederick's law was an unjustifiable infringement on the fundamental rights of young people to exercise their constitutionally protected liberty interests and subverted parents' role in raising their children. *Brown v. Ashton*, 93 Md. App. 25 (Md. Ct. Spec. App. 1992).

Even if curfew laws were constitutional, they would be bad public policy because the majority of studies show no correlation in preventing juvenile crime. In an

extensive study of the empirical research on juvenile curfews supported by the National Institute of Justice, the author concluded that “the evidence does not support the argument that curfews prevent crime and victimization.” Kenneth Adams, The Effectiveness of Juvenile Curfews at Crime Prevention, ANNALS, The American Academy of Political and Social Science, 587 (May 2003). Studies in particular of the curfew laws in the nearby areas of the District of Columbia and Prince George’s County have found little to no evidence that they have prevented crime. See Danny Cole, The Effect of a Curfew Law on Juvenile Crime in Washington, D.C., 27 American Journal of Criminal Justice, no. 2, 217 (Spring 2003) (The curfew law did not reduce total juvenile arrests); Caterina Gouvis, Evaluation of the Youth Curfew in Prince George’s County, Maryland, Final Report, The Urban Institute (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/200519.pdf>. (Impact of the law on the target group of youth and on overall victimization was small and not statistically significant; victimization of those between the ages of 22 and 25 reduced but unclear if resulted from curfew law or other crime initiatives).

While proponents sometimes argue that curfew laws prevent crime because police do not need to wait for illegal conduct to occur in order to act, we think this argument demonstrates precisely what is wrong with curfew laws. They allow police to pick up a child who is engaged in wholly innocent conduct – doing nothing whatsoever wrong. This is utterly antithetical to a free society.

Additionally, a number of studies have found that juvenile curfews have a stunningly disproportionate impact on minority children. In New Orleans, for example, African-American youth are arrested at 19 times the rate of whites. Mary Lou O’Neil, Youth Curfews in the United States: The Creation of Public Spheres for Some Young People, 5 J. of Youth Stud., no.1, 49, 61 (2002) (citing to Brian Privor, Dusk ‘Til Dawn: Children’s Rights and the Effectiveness of Juvenile Curfew Ordinances, 79 B. U. L. Rev. 415 (1999)). In the case of *Ashton v. Brown*, 339 Md. 70 (1995), discussed above, the disparate racial impact of the law was one of the issues raised. O’Neil reports that “[a]lthough the court did not decide this issue, arrest records for Frederick, MD showed that ‘the proportion of African-Americans arrested for curfew violations was substantially greater than the proportion of African-Americans to the population at large’ (*Aston* [sic] v. *Brown*, 1995, note 5).” O’Neil, *supra*, at 61. See also, Adams, *supra* at 154 (“available research suggests a pattern of disproportionate curfew enforcement against minorities”); J. David Hirschel, Charles W. Dean, and Doris Dumond, Juvenile Curfews and Race: A Cautionary Note, 12 Crim. Just. Pol’y Rev., 197, 208 (2001) (African-Americans are overrepresented among curfew violators in comparison with their representation in the general population).

Some of the reasons posited for this racial disparity are that curfew laws “have a discriminatory effect on children from lower socio-economic backgrounds [and c]hildren in large cities with curfews disproportionately tend to be minorities” who often do not possess recreational spaces like the “backyards, porches, or basements” of wealthy communities. Deirdre E. Norton, Why Criminalize Children? Looking Beyond the Express Policies Driving Juvenile Curfew Legislation, 4 N.Y.U. J. Legis. & Pub. Pol’y 175, 195-196 (2000). Norton also

stated that since there is already racial profiling in many communities, “minority juveniles may be stopped more frequently in a legitimate effort to enforce laws or under that [curfew] pretext.” Norton, *supra*, at 197.

It would be a waste of the County’s resources to force police to spend their time investigating and arresting young people who are doing nothing harmful, when they could instead be pursuing people of all ages who are committing real crimes. The Montgomery County police already possess ample authority under Maryland law to do the job the citizenry wants them to do. Nothing would be gained, but much could be lost, through the County’s enactment of a juvenile curfew law.

Montgomery County would surely be better served by using its resources to create services for young people, support for their families, and adequate policing for the community as a whole, particularly in this challenging economic climate that has already resulted in significant cuts to exactly these types of programs. We urge you to oppose this juvenile curfew bill.