AMERICAN CIVIL LIBERTIES UNION of MARYLAND

May 12, 2014

Honorable President and Members
of the City Council
Room 409 City Hall
100 N. Holliday St.
Baltimore, MD 21202

Re: Bill No. 13-0261 – Minors – Curfew Reform

Dear President Young and Members of the City Council:

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The ACLU writes to express our concern about the constitutionality and policy implications of City Council Bill No. 13-0261, which would significantly expand Baltimore City's daytime and nighttime curfews and mandate "family counseling" for those found in violation of the curfew. After carefully reviewing the proposal and the amendments offered in committee, our view is that, however well-intentioned, the proposal is deeply and fundamentally flawed and should be rejected.

The changes proposed in Council Bill 13-0261 can be summarized as follows:

1. Expand the daytime curfew from its current hours of 9 am-2:30 pm to 7:30 am-3 pm, adding an exception for kids traveling to or from school;

2. Expand the evening curfew, which is currently in effect for minors between midnight and 6 a.m. on weekends, and 11 p.m. and 6 a.m. on weekdays, to:
   - 9 pm – 6 am for any young person under 14
   - 10 pm – 6 am weekdays, 11 pm – 6 am on weekends and all nights between Memorial Day weekend and the last Sunday in August for any young person who is at least 14 but under 17;

3. Eliminate an exception that permits young people running errands for their parents, and an exception for young people who are married;

4. Require police officers to seek "school or other valid identification" from anyone they have stopped for any curfew;

5. Mandate that parents seeking to avoid a citation must attend "family counseling" classes approved by the City and complete all classes;

6. Increase the fine for subsequent violations from $300 to $500, and eliminate the 60-day jail term;[1] and

7. Add an annual reporting requirement.

[1] The addition of an exception for young people traveling to or from school and the elimination of potential jail time are the only provisions of the proposal worth further consideration, from the ACLU's perspective.

The collective impact of these changes significantly expands the breadth and scope of the curfew law. As far as we are aware, no evidence, other than anecdotal statements about the need to "keep kids off the street," has been offered to justify the proposed changes.

Policy Concerns: Putting Kids Under Virtual House-Arrest Creates More Problems Than it Solves

From an implementation and enforcement perspective, the proposal is totally unworkable and invites arbitrary and discriminatory enforcement.

Parents Know Their Kids & Have a Right to Decide How to Raise Them

First, presuming that any young person outside during certain daytime or evening hours is being neglected or raised by unfit parents who need family counseling to be instructed in how to raise their children is deeply problematic. Every young person, and every family, is different. Some 13-year-olds are wise beyond their years, and some 17-year-olds need extra hand-holding. Moreover, in Baltimore City and across the country, there are many different kinds of family structures, and working parents often rely on the help of relatives, close friends and other community members. The law makes no allowances for these differences.

Instead, the proposal significantly infringes upon fundamental parental rights by depriving parents of discretion to raise their children in ways that make sense for the family. For example, under the proposal a mom can't let her son stay late at a friend's house because he and his brother just had an argument and need a little space from each other. She can't ask an older daughter to run to the store for baby formula and diapers for an infant who can't be left unsupervised. A mom who knows that her 12- and 13- year old kids need to work off a little extra steam in order to fall asleep can't let them play ball a little late outside, even under the supervision of a babysitter.

There are an infinite number of scenarios in which the proposed expansion deprives parents of the ability to make perfectly healthy, appropriate and good decisions for their kids. The law's requirement that adolescents be under the supervision of their parents at all times is at odds with normal, healthy adolescent development.

Police Already Have the Authority to Intervene When Young People are in Danger or Doing Something Illegal and There is No Evidence that Locking People Inside Keeps Them From Being Victimized or Delinquent.

Moreover, police already have ample authority to inquire and take action when they believe a young person is in danger or engaged in some sort of delinquent activity; or to engage young people in conversation more generally, any time of the day. There is simply no evidence that additional authority or expanded hours are needed. Instead, curfews empower (and indeed require, if they are to be administered fairly) police to intervene with any young or young-looking person they encounter even when that person is doing nothing wrong.

In fact, studies of curfew laws have consistently shown that curfew laws fail to reduce youth victimization and delinquency. An extensive study of the empirical research on juvenile curfews supported by the National Institute of Justice concluded that "the evidence does not support the argument that curfews prevent crime and victimization." Kenneth Adams, Ph.D, "The Effectiveness of Juvenile Curfews at Crime Prevention, ANNALS," AAPSS, 587 (2003). Studies of curfew laws in nearby Washington D.C. and Prince George's County, similarly, 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.," American Journal of Criminal Justice : AJCJ; Spring 2003; 27:2 217 (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) (impact of the law on the target group of youth and on overall victimization not statistically significant).

The Only Way for Police to Enforce the Law is By Stopping Young-Looking People Simply for Being Outside, Even When They Do Not Appear to Be in Danger or Causing any Harm, and Demand That They Prove their Identity

It is impossible to pinpoint a person's precise age, as the proposal requires, simply by looking at him or her. This is especially true for adolescents, who are rapidly changing and among whom there is tremendous variation in physical development. It is also impossible for police to know whether they are looking at a 21-year-old who looks a lot younger, inviting stops of adults totally outside the scope of the curfew simply because they are outside.

Similarly, it is impossible for police to know, before stopping a young person, whether that young person is engaged in one of the exceptions permitted by the law. Police cannot tell, simply by looking at a teenager, whether he or she is walking to or from school,[2] home from work, or a basketball game, or, whether the activity she just left was properly supervised, as the curfew law requires. It is equally difficult for a young person to prove, in many instances, that she was where she said she was.

The people who know these answers are the parents, friends and neighbors of kids – not the police. If family and friends have concerns, they can take action. Rather than involving police, the City should continue focusing its efforts on building its capacity to provide supportive services and resources.

In fact, asking police to serve as curfew-enforcers invites the worsening of relationships between police and community members. One of the most troubling aspects of the proposal is that it imposes a new requirement that police seek to obtain "school or other valid identification" from a young person that is stopped. Does this mean that all young people must now carry identification at all times? What kind of identification is sufficient? What about people who look young? Is the failure to produce identification upon demand a basis for arrest? In effect, this provision seems to create a "carry your papers law" – not only for young people subject to the curfew, but also anyone who a police officer might "reasonably suspect" to be young enough to be subject to the curfew.

Since the only determinant of whether a person is committing this "offense" is whether he or she is of a certain age, police can stop any young-looking person they choose as a potential violator and demand proof of their age and what they are doing out. Since such proof is something that many youth are unlikely to have, brief stops can escalate into confrontational encounters, creating crimes where none existed – not only for youth, but also adults. Moreover, these stops are likely to be concentrated upon those areas with the greatest police presence at night – poor and minority neighborhoods – and disproportionately upon people of color.

Whatever the intent behind expanding Baltimore's curfew, it fails to account for the realities of enforcement, and particularly the realities of interactions between law enforcement and young people, particularly young people of color. In fact, a number of studies have found that juvenile curfews have a stunningly disproportionate impact on minority children. *See, e.g.,* Mary Lou O'Neil, "Youth Curfews in the United States: The Creation of Public Spheres for Some Young People," Journal of Youth Studies 5:1 49 (2002); Adams, *supra* (finding that African American children and parents received greater curfew violation citations); J. David Hirschel, Charles W. Dean, and Doris Dumond, Juvenile Curfews and Race: A Cautionary Note, Criminal Justice Policy Review 12: 197 (2001). It is no secret that Baltimore already suffers from extraordinarily high race disparities in arrests among both adults and young people, regardless of offense type. This proposal would likely exacerbate these disparities.

[2] Indeed, given the expanded daytime curfew hours, police could stop every student walking to and from school unaccompanied by a parent – a huge proportion of the children in Baltimore – to determine whether or not he or she was, in fact, on the way to or from school.

The Proposal Increases the Risk that Young People Will be Handcuffed, Subjected to Force by Police, and Coerces Parents Into Undefined "Counseling"

The law totally fails to describe what police are to do when confronted with a young person in violation of the curfew. Are they to take them home? To the curfew center? To "youth connection" centers not yet in existence? And, BPD has repeatedly stated that its policy when transporting anyone – regardless of age – is to handcuff them. Are police to make an exception when transporting curfew-violators? If a young person starts to run away, are police to pursue them? To use force, including weapons, to stop them?

And what happens to young people brought to centers? Prior reports stated that young people brought to the curfew center were subjected to checks relating to their delinquency history, such as whether they had previously failed to appear in court or were on probation. What confidence can anyone have that youth connection centers will connect young people to actual resources, rather than further entangling them with the criminal justice system, when the youth connection centers are not yet in service?

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The ACLU is especially troubled by the proposal to coerce "family counseling" approved by the City, regardless of context. The proposal would mandate that, in order to avoid being charged with a civil offense, parents must attend "family counseling sessions with the minor at an agency approved by the City of Baltimore," and, further, would be issued a citation if the counseling sessions are not completed. Is counseling going to be offered in a way that is culturally competent? Convenient to family work schedules? Who pays for the counseling? Will the City provide transportation? Who decides when counseling is completed?

And, the proposal to increase the fine from $300 to $500, plus court costs, is baffling in light of the limited resources of so many of Baltimore's families. The one bright spot in the proposal is the elimination of a 60-day jail term for parents whose children have previously violated the curfew. However, the law does not prevent anyone from being incarcerated for failing to appear in court or failure to pay the fine or complete community service.

Finally, while we appreciate that the proposal includes a reporting requirement, the language simply does not capture the range of harms created by the curfew expansion, in terms of criminal justice entanglement and interactions. Moreover, there is no way to measure the extraordinary chilling effects of the proposal on the basic rights of young people and their parents– nor the opportunities lost by kids who do not get to play outside, to spend time with friends or relatives, or to be subject to rules and timetables that make sense for their families.

Legal Concerns About the Law's Constitutionality Under the Maryland and U.S. Constitutions

Equally importantly, we think it critical to note that the proposal is sufficiently extreme to raise significant concerns about its constitutionality. In its review of the proposal, the City Law Department itself noted that state and federal courts have not hesitated to strike down juvenile curfew laws that excessively and unnecessarily abridge the rights of young people and their parents, and that it is unclear whether Baltimore's existing and proposed curfew law would survive such scrutiny.

Maryland's highest court struck down, on vagueness grounds under both the federal and state constitutions, a Frederick juvenile curfew law with language similar to Baltimore's. *Ashton v. Brown*, 339 Md. 70, 93 (1995). The Court of Special Appeals, in the same case, also concluded that Frederick's law was an 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. App. 1992).

Because curfew laws implicate the most fundamental rights, federal courts and the supreme courts of other states have subjected them to strict or heightened standards of review and routinely struck down ordinances as unconstitutional. *See, e.g., Hodgkins v. Peterson*, 355 F.3d

1048 (7th Cir. 2004); *Ramos v. Towns of Vernon*, 331 F.3d 171 (2nd Cir. 2003), re'hrg en banc denied (2004); *Nunez v. City of San Diego*, 114 F.3d 935 (9th Cir. 1997); *Maquoketa v. Russell*, 484 N.W.2d 179 (Iowa 1992); *City of Milwaukee v. K.F.*, 426 N.W.2d 329 (Wis. 1988). In such legal challenges, as noted in the City Law Department's letter, even when applying lesser standards of scrutiny, courts have placed the burden of proof on local governments to show, with actual evidence, that the ordinance is substantially related to achieving important government interests. No such showing has been made – or even attempted– here.

Moreover, in comparison to juvenile curfew laws which have been upheld, Baltimore's proposed expansion differs in significant respects, such as in mandating that young people be kept inside as early as 9 p.m., and also in drawing arbitrary distinctions based on age. *See, e.g., Schleifer by Schleifer v. City of Charlottesville*, 159 F.3d 843, 846 (4th Cir. 1998). In upholding a Charlottesville juvenile curfew in *Schliefer*, the Fourth Circuit repeatedly pointed to the curfew's limited hours – 1 am to 5 am on weekends, and midnight to 5 am on weeknights, for youth under 17, as evidence that the law was not overbroad. *Id.* at 852. Here, by contrast, young people are compelled to be inside as early as 9 pm. We have found no case upholding a curfew as early as 9 pm or that requires police to differentiate between young people under or over 14.

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In short, by enacting this far-reaching and extreme proposal, particularly without any evidence in support, the City would be entering into unchartered territory in juvenile curfew law and inviting potential legal challenges under both federal and state law. The ACLU has successfully litigated to overturn illegal curfew laws in numerous cases around the country, and, in fact, was involved in the successful legal challenge before Maryland's supreme court in *Ashton v. Brown*. Most recently, the ACLU of New Jersey filed suit challenging a curfew law that is arguably less onerous than Baltimore's proposal. *See Richardson v. Borough of Wanaque*, N.J. Superior Court (Passaic County 2013). Until now, the ACLU of Maryland has not been compelled to scrutinize the constitutionality of Baltimore's curfew laws, but a significant expansion of the curfew would invite such review.

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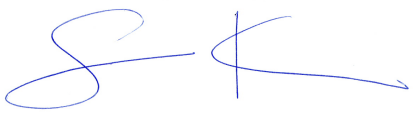
Whether the bill's intent is to prevent young people from committing crime, protect them from harm, or, as has been suggested by its lead sponsor, make sure they are in bed early on school nights, there is simply no evidence that the proposal actually furthers those ends, and in fact significant evidence to the contrary. The problems that seek to be addressed cannot be legislated through a curfew that essentially places all young people in Baltimore on house arrest and deprives every parent the right to make healthy choices for his or her children, regardless of context.

It is wrong and misguided to claim that young people and their parents, and particularly young people of color, must give up fundamental rights in order to be safe. Courts have repeatedly rejected this notion based upon both legal and policy considerations, and the City Council should do the same.

For the above reasons, the ACLU urges the City Council to reject Council Bill 13-01261.

Sincerely,



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