

# County continues bickering over proposed curfew

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The latest move in a county-wide curfew has a few scratching their heads and asking the point of the executive branch spending countless hours pushing the County Council to pass the proposed youth curfew bill if it openly plans not to enforce it as written anyway.

The Public Safety Committee held a work session on the youth curfew bill proposed in July and debated how it can possibly be enforced in Montgomery County with the exceptions County Executive Isiah Leggett proposed late August. This bill has caused a widespread debate within Montgomery County and each meeting the council has become more and more argumentative.

"If we have a law that plainly states - a minor must not remain in any public place or establishment in the county after curfew hours with all exceptions noted, can we act situational?" asked Councilmember George Leventhal. "Can we act according to the facts of the circumstances of the case or must a police officer follow the plain language of the law so that anytime a minor is in any public place or establishment in the county, must we act?"

"We can act situationally so long as we're enforcing the venue laws without being discriminatory," replied Assistant Chief of Police Wayne Jerman, who took Chief of Police J. Thomas Manger's place at the worksession. "I think law enforcement is largely about acting situationally. From people who get traffic tickets versus people who get sent on their way with a warning, if the record shows that you only give tickets to a certain group of people based on race, gender or what have you, then you have a civil rights violation. But exempting that, exempting discriminatory enforcement, yeah situation enforcement discretion is a good thing and a bad thing. Discretion is how we enforce our laws and as long as that's not exercised in a discriminatory manner, it's constitutional."

Leventhal suggested that there would be repercussions of enforcing the law in that manner. "I strongly suspect that after some years, statistically there will be a demographic imbalance as there is now with crime," said Leventhal. "It's not politically incorrect to note that the crime rate is higher in certain demographic groups than in others and so it's highly likely that behaviors that cause concern after some number of years will be found to be enforced in a manner that is disproportionate in certain demographic groups."

"I would think it would take something more than just the law of statistics," said Jerman. "...Most people who are arrested are African American, therefore all law enforcement would be deemed unconstitutional. That's not the case for law enforcement, that's not the case for job discrimination, it's a factor, but that is not the beginning and the end of the discussion this morning of what has to be done."

Councilmember and Public Safety Committee Chair Phil Andrews disagreed with that form of enforcement as well. "I would say that by its nature, the curfew is presence-based and behavior-based," he said. "So, if the police do not enforce it uniformly, if they enforce it situationally, or selectively or subjectively - you will get sued. You will spend money defending yourself. I don't know if you'll win, you may win, but you will get sued and you should factor that into the cost."

"It's situational and we're going to hone it through our directors and policy in much of the same way in a search policy that officers have the legal right to request a search, but what fires off the initial request to search is particularly due to the circumstances," said Jerman.

"Those sophisticated young people who intend to break the law, who intend to do harm, the destructive might be able to take advantage of that," said Leventhal.

In the previous meeting with the County Executive and the County Council, Council President Valerie Ervin pushed along the meeting as to not debate on the technicalities of the bill stating, "We're not going to solve this today."

Again, in this meeting, Ervin pushed back on the discussion of the curfew in this meeting, while she had her head in her hands for long minutes of the debate.

"I really don't like how this conversation began," said Council President Valerie Ervin. "The people in our communities are already in an uproar about how we're going to turn Montgomery County into a police state. I believe there is a better conversation that we should pursue today and that is the public policy direction here, like what we need, what works with the curfew, because if we're just going to sit here and let attorneys, no offense, talk about how we're going to prosecute juveniles, you're going to lose this thing before it even gets started. So, do we need a youth curfew in Montgomery County and if so, why?" said Ervin. "We need to go back to that or this is going to go nowhere very quickly."

Kathleen Boucher, chief administrative officer of the executive office justified Leggett's desire for the youth curfew bill with statistics. "Between 2009 and 2011, and between 11p.m. and 5 in the morning, we had 5,139 adult arrests and 1,766 juvenile arrests and from the county executive's perspective, these numbers indicate there is a significant amount of adult criminal activity during

curfew hours that poses a risk to the safety of minors and to the rest of the community," said Boucher. "So it's an unacceptably high rate for the county executive not to take a leap into the fact that the curfew is a low-cost, and in his mind, effective tool."

In the spotlight in the discussion of implementing a youth curfew is the Flash Mob incident, in which a group of teenagers robbed a 7 Eleven store in Germantown. "The events that happened over the July 4th weekend are examples of the changes in Montgomery County," said Boucher. "We are a more urbanized environment. We have challenges that we haven't had in the past. They are examples of where we reached a breaking point. They are examples of where we need a similar curfew to Prince George's County, just because we're near jurisdictions that have curfews, but because we have these problems all over our county."

"It wasn't really an issue of loitering per se," said Councilmember Roger Berliner. "We had a very ugly and frightening incident in Silver Spring and then two days later we had a bill sitting on our desk. So the question from my perspective is, is this the most appropriate response to the new phenomena, the flash mobs... to deal with what I perceive to be a classic case of disturbance of the peace?" said Berliner. "I read the law for you as a lawyer and say that our police had the tools available that they need in that situation. And if that's not the situation that we're seeking to impose a curfew on, then I think we need to have a conversation about the other things that you are fearful of because quite frankly, I never thought previously that loitering was such a problem that we would impose a curfew to address it. I need to understand why this state law is not adequate enough to address certain instances."

The assistant chief of police walked through the incident with the PSC. "They were just walking, they weren't doing anything and they said they weren't doing anything they were just on their way home from the Montgomery County Fair," said Jerman. "...and whether [a curfew] would have prevented the event that happened shortly thereafter at the 7 Eleven, I can't predict that, but I can tell you that is a proactive tool that the officer could have used because down the line, obviously there was a disturbance of the peace and a serious offense in that store. But, with using the current law, they would have to use a reactive posture as opposed to a proactive posture."

The police engaged in the behavior of the teens who committed the flash mob crime at 10:30 p.m., an hour and a half before proposed curfew hours, so Andrews disagreed that a curfew would have had any effect. "The curfew would not have been an option until midnight on Saturday night," said Andrews. "And the youth had said that they were going home, which is what the officer would have told them to do anyhow. So, I don't see how you think the curfew would have stopped that event."

Multiple council members noted that many comments made throughout the worksession was giving off a bad impression of Montgomery County and stressed how wonderful of a place it is to live, visit and spend money and said that they do not want to send the wrong message if the County implements a curfew.

The Council's Public Safety Committee is scheduled to discuss the issue further at its meeting at 9:30 a.m. on Thursday, Sept. 15, but according to another press release by Greenberger, for the second time ever, the council will hold a town hall meeting for students in an effort to learn what is on the mind of younger residents on Wednesday, Oct. 12, at the Council Office Building in Rockville. The meeting, in the Council's Third Floor Hearing Room, will start at 7 p.m. A pre-meeting reception will begin at 6:30 p.m. in the building's second-floor cafeteria.