



October 21, 2013

The Honorable President and Members  
of the Baltimore City Council  
c/o Karen Randle, Executive Secretary  
Room 409, City Hall  
100 North Holliday Street  
Baltimore, Maryland 21202

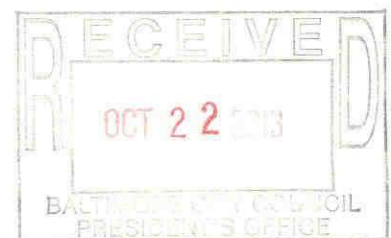
Re: City Council Bill 11-0005 Loitering – Requests to Move On

Dear President and City Council Members:

The Office of the State's Attorney for Baltimore City has received City Council Bill 11-0005 to review. The bill would amend the loitering statute to require a person who has been requested to "move on" by a police officer to move at least 500 feet from the location of the loitering. It also removes the language in section 25-1 that a request for a person to move on must be necessary to protect the public peace.

Loitering statutes nationwide have long been the subject of constitutional challenge and greater clarity as to what is prohibited is helpful. There are, however, questions raised by the amendments. One question is the interaction of the new person based distance requirement with the existing place based distance restrictions defined in sections 25-2 and 25-4. A related question is the manner of measuring distance from a person who may or may not be stationary.

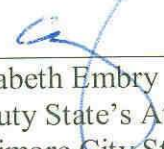
Currently under 25-1(b)(2)(I), it is unlawful for any person to loiter and fail to obey the request of an officer to move on, "when not to obey such direction shall endanger the public peace," which is consistent with the holding of the Maryland Court of Special Appeals in *Williams v. State*, 140 Md. App., 463. The Court held that the officer may only order a person to "move on" if the person is impeding the free flow of traffic and/or the order is necessary to stop or prevent a breach of the peace. Bill 11-0005 removes the quoted language in an effort to expand the section to cover all loitering as defined in 25-1(a)(1). However because 25-1(a)(1) defines loitering as standing or congregating in a manner prohibited under the subtitle, the articulation as to what conditions must exist for the officer to constitutionally order dispersal is circular. In order to be consistent with the Court's holding, we recommend adding language consistent with *Williams* to section 25-1(b)(2)(I) so that there is no confusion.



Our Office would welcome the opportunity to meet with stakeholders to discuss these matters further and supports the effort to add clarity to the loitering statute.

Sincerely,

Gregg L. Bernstein  
State's Attorney for Baltimore City

By:   
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Elizabeth Embry  
Deputy State's Attorney  
Baltimore City State's Attorney's  
Office

cc: The Honorable William Henry  
Angela C. Gibson, Mayor's Legislative Liaison