

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 14-23: POLICE – LATE NIGHT BUSINESS SAFETY PLAN

SUMMARY

The Office of Legislative Oversight (OLO) finds the racial equity and social justice (RESJ) impact of Bill 14-23 is indeterminant. There are several unknown factors in determining how this Bill will impact safety and RESJ for late night business owners, patrons, and surrounding community members. This Bill could have a negative RESJ impact on particular communities depending on the demographics of stakeholders in priority police response areas to be defined by the Montgomery County Police Department (MCPD). One policy option is offered for Council consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 14-23

According to the County Executive, the intent of Bill 14-23 is to “ensure that the County public safety agencies and businesses are working synergistically to ensure there are improvements to the balance of [nightlife] safety and vibrancy throughout our County.” Towards that end, the Bill proposes requiring “certain establishments that operate in the late night/early morning hours, in areas with higher calls for service during those hours, to develop a Safety Plan.”³

Bill 14-23 defines a late night business as “a business located within a ‘priority’ police response area if the business: (1) has liquor, tobacco, or food sold and consumed on the premises; and (2) operates between the hours of midnight and 6:00 a.m.”⁴ If enacted, Bill 14-23 would:⁵

- **Require that designated late night businesses submit a late night business safety plan to MCPD every three years.** The late night business plan would depend upon the business and could require security personnel and training, exterior lighting, digital security cameras, and clearing exterior windows, among other things. Businesses that are required to install security cameras would have to provide video recordings to MCPD upon demand if MCPD is investigating a violent felony. MCPD could recommend, but not require, a business to search patrons by metal detectors, magnetometers, or pat downs.
- **Authorize MCPD to review and approve a proposed late night business safety plan.** The late night business safety plan would be subject to MCPD approval. If the plan is disapproved, the late night business would not be permitted to operate from midnight to 6:00 a.m.

RESJ Impact Statement

Bill 14-23

- **Authorize MCPD to establish the requirements of a late night business plan.** MCPD would be required to develop Method (2) regulations to implement the Bill's requirements. The regulations would need to be submitted to the Council for review and approval within 180 days of the Bill's enactment. Late night businesses would be required to submit a late night business safety plan within 90 days of the approved regulations being published in the County Register.

Violations of the Bill would constitute a Class A violation; each day a violation continues would be a separate offense.⁶ Bill 14-23, Police – Late Night Business Safety Plan, was introduced by the Council at the request of the County Executive on February 28, 2023.

In July 2022, OLO published a RESJIS for Bill 14-22, Police – Private Security Incentive Program – Established. Please refer to this RESJIS for more detailed background on policing, surveillance, and racial equity.⁷

NIGHTLIFE, POLICING, AND RACIAL EQUITY

Nightlife is often recognized as a key component of vibrant communities for its role in fostering local culture, tourism, and economic development.⁸ A bustling nightlife has also been a common theme of thriving Black, Indigenous, and Other People of Color (BIPOC) communities. During the Harlem Renaissance of the early twentieth century, for instance, Black-owned nightlife venues – such as playhouses, nightclubs, and cabarets – were the center of creative expression and entertainment for Black performers and audiences.⁹ Nightlife continues to play an important role in the lives of BIPOC today. As noted by researcher Marcus Anthony Hunter in a study of Black nightclubs, they “can and do provide individuals with a unique space to establish ties that provide social leverage and social support.”¹⁰

Modern policing in the United States is marked by a legacy of racial inequity.¹¹ An article from the Gotham Center for New York City History illustrates how Black New Yorkers were harassed by police in the years surrounding the Harlem Renaissance.¹² Today, racial inequities in policing, including in nightlife settings, continues to be a general condition. Locally, while Black constituents account for 18 percent of the County's population, they account for 30 percent of MCPD traffic stops, 44 percent of MCPD arrests, and 55 percent of MCPD use of force incidents.^{13,14,15}

More attention has been given in recent years to the role of private security staff in policing and perpetuating racial inequities. For instance, an experimental audit study analyzing the relationship between nightclub dress codes and racial discrimination found “systematic evidence that African Americans are denied access to nightclubs [by private security staff] more often than similarly appearing [W]hites and (in some cases) Latinos attempting to enter the same nightclubs.”¹⁶ Further, following the death of three constituents by private security guards in recent years, state lawmakers from Baltimore City recently introduced legislation to regulate private security companies and employees to address concerns over “lack of formal training and little oversight.”¹⁷

ANTICIPATED RESJ IMPACTS

The intent of Bill 14-23 is to increase the safety of nightlife in the County; however, several factors are unknown in determining how this Bill will impact safety and RESJ for late night business owners, patrons, and surrounding community members, including:

RESJ Impact Statement

Bill 14-23

- Specific safety concerns arising around late night businesses and effectiveness of prescribed late night business safety plan measures in addressing safety concerns;
- Data on calls for service that demonstrate need for safety measures in late night businesses in particular; and
- Defined priority police response areas or specific late night businesses that will be required to implement safety plan measures.

While priority police response areas are pending definition by MCPD, available data suggests that downtown Silver Spring would likely be among the included communities. In 2022, one third of police dispatched incidents occurred in Silver Spring (Appendix, Table 1) and the Silver Spring police district had the highest per capita crime rate in 2020 (Appendix, Table 2). Search results from Google show that most late night establishments in Silver Spring are located in downtown (20910 zip code).

Considering these factors, additional potential impacts to stakeholders include:

- **Designated late night businesses** will bear the costs of implementing safety plan measures and risk having to discontinue late night operations if requirements are not met.

Generally, there is insufficient data to determine whether there could be disproportionalities by race and ethnicity among designated late night businesses. However, the enforcement of Bill 14-23 in downtown Silver Spring in particular could disproportionately impact Ethiopian-owned businesses, which have a well-known hub in the area.¹⁸

- **Late night business patrons** risk having less nightlife options should businesses have to discontinue late night operations for not meeting safety plan requirements. The lack of regulation on private security personnel in Maryland could also pose safety concerns for patrons.

Generally, there is insufficient data to determine whether there could be disproportionalities by race and ethnicity among late night business patrons. However, to the extent that BIPOC patrons frequent designated late night businesses, they could experience increased racial discrimination from private security personnel.¹⁹ Further, increased surveillance through security cameras could put BIPOC patrons at a greater risk of law enforcement interactions that could widen existing racial disparities in policing.²⁰

- **Community members residing near late night businesses** could experience increased surveillance through security cameras. As Black constituents are overrepresented in downtown Silver Spring (Appendix, Table 3), the enforcement of Bill 14-23 in this area in particular could put Black constituents at a greater risk of law enforcement interactions that could widen existing racial disparities in policing.

Taken together, OLO finds the RESJ impact of Bill 14-23 is indeterminant. There are several unknown factors in determining how this Bill will impact safety and RESJ for late night business owners, patrons, and surrounding community members. The enforcement of this Bill in downtown Silver Spring in particular could have a negative RESJ impact on Ethiopian-owned businesses and Black constituents residing in the area. This Bill could have a negative RESJ impact on other communities depending on the demographics of stakeholders in priority police response areas to be defined by MCPD.

RESJ Impact Statement

Bill 14-23

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.²¹ OLO finds the RESJ impact of Bill 14-23 is indeterminant, with a potentially negative impact depending on police priority response areas defined by MCPD. To reduce the potential negative impact of Bill 14-23 on RESJ, the Council can consider the following policy option:

- **Assemble a group of diverse stakeholders to update Bill 14-23, draft Method 2 regulations, and develop annual reporting requirements to the Council to prioritize RESJ.** The County Council has increasingly adopted strategies aimed at promoting civilian oversight in policing and decision-making to advance RESJ. Council action has included creating the Policing Advisory Commission and the Police Accountability Board and enacting legislation to increase transparency in policing data and operations. The Council can consider tasking MCPD to convene community stakeholders representative of BIPOC communities to craft a revised Bill that explicitly seeks to advance RESJ with public safety. The Council can also consider tasking MCPD to partner with BIPOC community stakeholders to draft Method 2 regulations and annual reporting requirements to the Council that reflect the priorities of disproportionately impacted communities.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

RESJ Impact Statement

Bill 14-23

APPENDIX

Table 1: Montgomery County Police Dispatched Incidents by City, 2022

City	Number of Dispatched Incidents	Percent of Dispatched Incidents
Silver Spring	64,252	33.0
Rockville	32,712	17.0
Gaithersburg	27,161	14.0
Germantown	17,751	9.0
Bethesda	13,873	7.0
Other	8,503	4.0
Montgomery Village	5,536	3.0
Potomac	5,500	3.0
Chevy Chase	4,638	2.0
Derwood	3,268	2.0
Kensington	3,078	2.0
Olney	3,024	2.0
Clarksburg	2,961	2.0

Source: OLO Analysis of Police Dispatched Incidents Dataset, DataMontgomery.

Table 2: Population and Per Capita Crime Rate in Montgomery County Police Districts, Sorted by Highest to Lowest Crime Rate

Police District	Population	Crime rate per 100,000 residents
3 rd - Silver Spring	163,266	3962.2
6 th - Gaithersburg	156,064	3449.2
5 th - Germantown	141,113	2916.8
4 th - Wheaton	216,176	2502.6
2 nd - Bethesda	190,506	2439.3
1 st - Rockville	156,848	2413.8

Source: 2020 Annual Report on Crime and Safety, MCPD.

Table 3: Percent of Residents by Race and Ethnicity, Montgomery County, Downtown Silver Spring²²

Race and Ethnicity	Montgomery County	Silver Spring, 20910
Asian	15.2	7.9
Black	18.4	29.4
Native American	0.4	0.2
Pacific Islander	0.0	0.0
White	48.8	49.8
Latinx	19.7	11.7

Source: Table DP05, 2021 American Community Survey 5-Year Estimates, Census Bureau.

RESJ Impact Statement

Bill 14-23

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid

³ Memorandum from County Executive to Council President, Introduction Staff Report for Bill 14-23, February 1, 2023.

⁴ Bill 14-23 defines a priority area as one or more police response areas (PRA) identified and published by the Montgomery County Police Department, based upon public safety indicators, including crime levels, as areas where late night businesses would benefit by operating in accordance with a late night safety plan.

⁵ Introduction Staff Report for Bill 14-23, Montgomery County Council, Introduced February 28, 2023.

https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2789_1_23775_Bill_14-23_Introduction_20230228.pdf

⁶ Refer to Montgomery County Code, Chapter 1, Article 01, Sec. 1-19 for fines and penalties associated with Class A violations.

⁷ RESJIS for Bill 14-22, Office of Legislative Oversight, July 21, 2022.

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/Bill14-22.pdf>

⁸ David Grazian, “Urban Nightlife, Social Capital, and the Public Life of Cities,” Sociological Forum, December 2009.

<https://www.jstor.org/stable/40542603>

⁹ “A New African American Identity: The Harlem Renaissance,” National Museum of African American History and Culture.

<https://nmaahc.si.edu/explore/stories/new-african-american-identity-harlem-renaissance>

¹⁰ Marcus Anthony Hunter, “The Nightly Round: Space, Social Capital, and Urban Black Nightlife,” City & Community, American Sociological Association, June 2010. <https://journals.sagepub.com/doi/pdf/10.1111/j.1540-6040.2010.01320.x>

¹¹ RESJIS for Bill 14-22

¹² Marcy S. Sacks, “‘Skull Trouble’: A Brief History Of Police Harassment Of Black New Yorkers,” Gotham Center for New York City History, April 23, 2020. <https://www.gothamcenter.org/blog/skull-trouble-a-brief-history-of-police-harassment-of-black-new-yorkers>

¹³ Natalia Carrizosa, OLO Memorandum Report 2022-12, Analysis of dataMontgomery Traffic Violations Dataset, Office of Legislative Oversight, October 25, 2022. https://www.montgomerycountymd.gov/OLO/Resources/Files/2022_reports/OLOReport2022-12.pdf

¹⁴ Elaine Bonner-Tompkins and Natalia Carrizosa, OLO Report 2020-9, Local Policing Data and Best Practices, Office of Legislative Oversight, July 12, 2020. <https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/OLOReport2020-9.pdf>

¹⁵ MCPD 2021 Annual Use of Force Report, Montgomery County Police Department.

<https://www.montgomerycountymd.gov/pol/Resources/Files/Annual-Reports/UseOfForce/2021%20MCPD%20Use%20of%20Force%20Report.pdf>

¹⁶ Reuben A. Buford May and Pat Rubio Goldsmith, “Dress Codes and Racial Discrimination in Urban Nightclubs,” Sociology of Race and Ethnicity, American Sociological Association, December 12, 2017.

<https://journals.sagepub.com/doi/full/10.1177/2332649217743772>

¹⁷ David Collins, “Bill Would Require Security Guards in Maryland to be Licensed by the State,” WBAL-TV 11 Baltimore, March 7, 2023. <https://www.wbal.com/article/security-guard-state-license-bill-maryland/43233961>

¹⁸ Silver Spring Downtown and Adjacent Communities Plan, Montgomery Planning, June 2022. <https://montgomeryplanning.org/wp-content/uploads/2022/11/Silver-Spring-DAC-Approved-Adopted-web.pdf>

¹⁹ Buford May and Rubio Goldsmith

²⁰ RESJIS for Bill 14-22

²¹ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

²² Latinx is an ethnicity rather than a race; therefore, Latinx people are included in multiple racial groups throughout this impact statement unless where otherwise noted. Demographic data is on based on U.S. Census Bureau’s Zip Code Tabulation Areas (ZCTA), which may have slightly different boundaries than USPS zip codes.