

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

COMMONWEALTH OF VIRGINIA,)	
)	
v.)	Case Nos.: CR25-1288, 1307, 1308,
)	1309, 1310, 1311, 1312, 1313, 1274,
RICHARD COX,)	1275
Defendant.)	

MEMORANDUM OPINION

This matter comes before the Court on the Defendant Richard Cox's Motion to Dismiss the above-captioned indictments charging violations of Virginia Code § 18.2-370.2(B).¹ Mr. Cox is charged with multiple counts alleging that he² unlawfully loitered within one hundred feet of locations identified in the statute following a prior conviction for an offense involving proximity to children. Mr. Cox contends that the statute is unconstitutional on its face because it is impermissibly vague in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and further infringes upon rights protected by the First Amendment. The Commonwealth opposes the motion, arguing that "loitering" carries a plain and commonly understood meaning sufficient to provide fair notice of the prohibited conduct to a person of ordinary intelligence.

The Court heard argument from the parties and has properly considered the statutory language, the pleadings, and the relevant precedent of the United States Supreme Court, the

¹ Virginia Code § 18.2-370.2(B) provides:

Every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school. In addition, every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2006, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a child day program as defined in § 22.1-289.02.

² The Court is aware that the Defendant uses she/her pronouns. The Court nevertheless uses pronouns consistent with those reflected in the indictments.

Supreme Court of Virginia, and the United States Court of Appeals for the Fourth Circuit. For the reasons set forth below, the Court concludes that the statute fails to provide constitutionally sufficient notice of the conduct it prohibits and lacks adequate standards to guide enforcement. The statute is therefore void for vagueness. Accordingly, the Defendant's motion must be granted.

PROCEDURAL HISTORY

On September 29, 2025, a grand jury of this Court returned multiple indictments charging the Defendant, Richard Cox, with violations of Virginia Code § 18.2-370.2(B), alleging that he unlawfully loitered within one hundred feet of locations prohibited by statute following a prior qualifying conviction.

On October 24, 2025, the Commonwealth filed a motion seeking joinder of the indictments and the admission of certain prior bad acts evidence. The Court granted the Commonwealth's motion for joinder and granted the motion for admission of prior bad acts in part and denied it in part. The Court ruled that the Commonwealth could introduce the titles and descriptions of certain websites searched on the Defendant's cellular telephone but could not introduce letters written by the Defendant to the Court or images from the referenced websites.

On November 21, 2025, the Defendant was granted leave to proceed pro se on several of the indictments in these matters (CR25-1274, 1307, 1308, 1309, 1310, 1311, 1312, 1313), with the Public Defender's Office remaining available as standby counsel. The Defendant remains represented by counsel in Case Nos. CR25-1275 and CR25-1288. The matters were thereafter continued on several occasions due to various pretrial motions and scheduling issues.

On January 16, 2026, the Defendant filed several motions, including a motion to exclude certain evidence, a motion to dismiss the indictments, and related motions asserting, among other

things, that Virginia Code § 18.2-370.2(B) is unconstitutional for vagueness and overbreadth and violates rights protected by the First Amendment.

On March 6, 2026, the Court conducted a hearing on the pending motions. At that hearing, the Court heard argument from the parties regarding the Defendant's motion to dismiss the indictments on constitutional grounds. This memorandum opinion addresses the Defendant's claim that Virginia Code § 18.2-370.2(B) is unconstitutionally vague.

DISCUSSION

Virginia Code § 18.2-370.2(B) provides, in relevant part, that any adult convicted of certain offenses involving proximity to children "shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school." The statute further extends that prohibition to "any place he knows or has reason to know is a child day program as defined in § 22.1-289.02." A violation of this provision constitutes a Class 6 felony.

The operative conduct prohibited by the statute is "loitering." The statute, however, provides no definition of that term and contains no guidance regarding the duration of presence, the purpose of the conduct, or the surrounding circumstances that transform otherwise lawful presence near the listed locations into criminal behavior. The Defendant contends that the absence of definitional clarity renders the statute unconstitutionally vague.

A constitutional challenge to a statute begins with the principle that duly enacted laws are presumed to be constitutional. Courts are required to resolve any reasonable doubt concerning the constitutionality of a statute in favor of its validity. Accordingly, if a statute can reasonably be construed in a manner that renders its terms definite and sufficient, such a construction must be

adopted. *Tanner v. City of Virginia Beach*, 277 Va. 432, 438–39 (2009); *Marshall v. Northern Virginia Transp. Auth.*, 275 Va. 419, 427 (2008).

At the same time, the Due Process Clause of the Fourteenth Amendment requires that criminal statutes provide sufficient clarity to inform individuals of the conduct they prohibit and to prevent arbitrary enforcement. A statute is void for vagueness if it either (1) fails to provide persons of ordinary intelligence fair notice of the conduct it prohibits, or (2) encourages arbitrary or discriminatory enforcement by failing to establish minimal guidelines governing law enforcement. *Stoltz v. Commonwealth*, 297 Va. 529, 534–35 (2019); *Tanner*, 277 Va. at 439.

The Supreme Court of the United States articulated these principles in *City of Chicago v. Morales*, 527 U.S. 41 (1999), which invalidated a municipal ordinance prohibiting gang members from “loitering” in public places. The Court held that the ordinance was unconstitutionally vague because it failed to provide adequate notice of prohibited conduct and vested excessive discretion in law enforcement officers to determine what behavior constituted unlawful loitering. Similarly, Virginia courts have long recognized that statutes lacking objective standards invite arbitrary enforcement and violate due process because individuals “of common intelligence must necessarily guess at [their] meaning.” *Tanner*, 277 Va. at 439; *see also Coleman v. City of Richmond*, 5 Va. App. 459 (1988) (finding that the City of Richmond’s loitering statute that prohibited loitering with the intent to solicit prostitution was void because loitering is not unlawful and enforcement of such would require discretionary enforcement in violation of the vagueness doctrine).

Federal courts applying the same constitutional principles have reached similar conclusions in the context of statutes regulating individuals previously convicted of sex offenses. In *Doe v. Cooper*, 842 F.3d 833 (4th Cir. 2016), the United States Court of Appeals for the Fourth Circuit

distinguished between statutes that "require a person to conform his conduct to an imprecise but comprehensible normative standard" and those that specify "no standard of conduct" at all. *Id.* at 842. Applying that distinction, the court held that a statutory prohibition on presence in places "where minors gather" was impermissibly vague because neither citizens nor law enforcement officers could determine with reasonable certainty which locations were covered by the statute. *Id.* at 843.

With these principles in mind, the Court analyzes the constitutionality of Virginia Code § 18.2-370.2(B) under the two established prongs of the vagueness doctrine. The Court first considers whether the statute provides persons of ordinary intelligence fair notice of the conduct it prohibits. The Court then examines whether the statute establishes sufficient standards to prevent arbitrary or discriminatory enforcement.

I. Prong One: Failure to Provide Fair Notice

The first inquiry under the vagueness doctrine is whether the statute provides persons of ordinary intelligence fair notice of the conduct it prohibits. The Due Process Clause requires that criminal statutes be sufficiently definite to give individuals fair warning of what behavior is unlawful. A statute is impermissibly vague when persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Tanner*, 277 Va. at 439; *Stoltz*, 297 Va. at 534–35.

Virginia Code § 18.2-370.2(B) makes it a felony for certain individuals previously convicted of offenses involving proximity to children to "loiter" within one hundred feet of a school or child day program. The statute does not, however, define the term "loiter." Nor does it provide any indication of the duration of presence, the type of conduct, or the surrounding

circumstances that convert otherwise lawful presence near the listed locations into criminal behavior.

The absence of such guidance creates a substantial ambiguity regarding the scope of the prohibited conduct. The statute does not identify how long a person must remain in a location before “loitering” occurs. It does not distinguish between passive presence and conduct suggesting an unlawful purpose. Nor does it specify whether common and otherwise lawful activities—such as waiting for transportation, standing on a public sidewalk, or briefly pausing near a nearby business—may constitute criminal conduct if they occur within the statutorily prohibited distance. Without such standards, individuals subject to the statute are left to speculate as to when lawful presence becomes criminal behavior.

The constitutional difficulty presented by such uncertainty was recognized by the United States Supreme Court in *City of Chicago v. Morales*, 527 U.S. 41 (1999). In *Morales*, the Court invalidated a municipal ordinance that prohibited gang members from “loitering” in public places. Although the ordinance attempted to define loitering as “remaining in any one place with no apparent purpose,” the Court held that the definition still failed to provide sufficient clarity to distinguish innocent conduct from criminal conduct. The Court concluded that the ordinance failed to provide adequate notice to citizens and therefore violated the vagueness doctrine.

The constitutional deficiencies identified in *Morales* closely parallel those present in Virginia Code § 18.2-370.2(B). First, each statute criminalizes a broad category of otherwise innocent conduct, namely remaining in a location without a clear purpose. Second, neither statute establishes objective criteria distinguishing innocent presence from unlawful conduct. Moreover, unlike the Chicago ordinance, which at least attempted a definition of loitering, Virginia Code § 18.2-370.2(B) provides no definitional guidance whatsoever. A statute that provides no such

guidance therefore presents an even stronger case for constitutional invalidation than the ordinance struck down in *Morales*.

The Commonwealth argues that courts in the Commonwealth ordinarily give statutory terms their plain and ordinary meaning unless the term is a word of art. *Stein v. Commonwealth*, 12 Va. App. 65, 69 (1991). The Commonwealth therefore contends that the dictionary definition of loitering—“to remain in an area for no obvious reason”—provides sufficient clarity to satisfy constitutional requirements.

The Court is not persuaded that reliance on a dictionary definition cures the constitutional problem presented here. As the Supreme Court recognized in *Morales*, the concept of loitering has historically generated constitutional concerns precisely because it fails to draw a clear line between innocent presence and unlawful conduct. Without statutory clarification, the term provides no objective criteria by which an individual can determine when otherwise lawful presence becomes criminal behavior. While the vagueness doctrine does not demand mathematical precision in statutory drafting, it does require that a statute make clear what conduct is prohibited. *Tanner*, 277 Va. at 439. A statute that provides no standard whatsoever goes beyond mere imprecision; it provides no guidance at all.

The practical implications of this uncertainty are readily apparent. An individual subject to the statute might briefly pause on a public sidewalk adjacent to a child day program, wait near the entrance of a nearby building for a rideshare vehicle, or stand outside a commercial establishment located within one hundred feet of a school. The statute provides no indication of when such conduct crosses the line into unlawful “loitering.” Individuals subject to the statute therefore cannot reasonably determine what conduct must be avoided to comply with the law.

For these reasons, the Court concludes that Virginia Code § 18.2-370.2(B) fails to provide persons of ordinary intelligence fair notice of the conduct it prohibits. The statute therefore fails the first prong of the constitutional vagueness analysis.³

II. Prong Two: Arbitrary or Discriminatory Enforcement

The second inquiry under the vagueness doctrine is whether the statute establishes sufficient standards to prevent arbitrary or discriminatory enforcement. Even when a statute may provide some notice of prohibited conduct, it is constitutionally deficient if it “authorizes and even encourages arbitrary and discriminatory enforcement.” *Morales*, 527 U.S. at 56. The requirement that legislatures provide minimal guidelines governing law enforcement exists to prevent the delegation of basic policy decisions to police officers, judges, and juries on an ad hoc and subjective basis. *Tanner*, 277 Va. at 439. When a statute lacks objective standards, it invites precisely the type of discretionary enforcement that the Due Process Clause prohibits.

Virginia Code § 18.2-370.2(B) provides no objective criteria by which law enforcement officers may determine when a person’s presence within one hundred feet of a school or child day program becomes unlawful “loitering.” Because the statute does not define the term, enforcement necessarily depends upon the subjective interpretation of individual officers.⁴ Officers are left to

³ The Defendant also argues that Virginia Code § 18.2-370.2(B) violates the First Amendment. The Court recognizes that vague statutes may raise heightened constitutional concerns when they potentially inhibit constitutionally protected activity, because individuals may refrain from lawful conduct rather than risk violating an unclear law. *Tanner*, 277 Va. at 439–40. Conduct such as standing, waiting, or otherwise remaining in public spaces—including sidewalks and areas near commercial establishments—may involve forms of association or other constitutionally protected activity. However, because the Court concludes that the statute is void for vagueness under the Due Process Clause of the Fourteenth Amendment, it is unnecessary to resolve the Defendant’s First Amendment challenge.

⁴ The Court recognizes that the General Assembly enacted Virginia Code § 18.2-370.2(B) to advance the unquestionably important governmental interest of protecting children from individuals previously convicted of certain offenses involving minors. The protection of children is a compelling governmental objective, and the Court does not question the legitimacy of that purpose. Nevertheless, even statutes enacted to promote public safety must comply with constitutional requirements. The vagueness doctrine exists to ensure that criminal laws provide clear notice of prohibited conduct and establish objective standards governing enforcement. As the Supreme Court has repeatedly emphasized, important governmental objectives cannot be pursued through statutes that fail to provide the clarity required by the Due Process Clause. *See Morales*, 527 U.S. at 55–56; *see also Tanner*, 277 Va. at 439.

determine for themselves how long a person must remain in a location before the conduct becomes criminal, what types of behavior indicate loitering rather than innocent presence, and whether otherwise lawful activities fall within the statute's prohibition.

Such a framework creates a substantial risk that identical conduct could be treated differently depending on the officer observing it. One officer may conclude that an individual waiting near a building entrance for transportation is engaged in lawful activity, while another officer may interpret the same conduct as unlawful loitering. The statute provides no standards by which those determinations may be made, and thus no consistent framework to guide enforcement.

The Supreme Court of Virginia's decision in *Coleman v. City of Richmond*, 5 Va. App. 459 (1988), is particularly instructive. In *Coleman*, the Court of Appeals struck down a Richmond loitering ordinance that prohibited loitering with the intent to solicit prostitution. The court explained that although the language of the ordinance was facially clear, "the public is not adequately apprised of the behavior that is proscribed." *Id.* at 466. Because loitering is not itself unlawful, the ordinance effectively proscribed no illegal conduct, leaving those who wished to comply unable to identify what conduct to avoid. The court further held that the ordinance vested excessive discretion in enforcement officers and permitted arbitrary and discriminatory application. *Id.* at 466. The parallel to the statute at issue here is direct. Like the Richmond ordinance, Virginia Code § 18.2-370.2(B) criminalizes loitering without defining it, leaving both citizens and officers without any objective standard to distinguish innocent presence from criminal conduct.

The Supreme Court identified similar concerns in *Morales*, where the challenged ordinance permitted police officers to order individuals to disperse if the officer believed that one of the persons present was a gang member engaged in loitering. The Court concluded that the ordinance

impermissibly vested “absolute discretion” in law enforcement officers to determine what conduct constituted loitering. *Morales*, 527 U.S. at 61. The absence of clear standards created a significant risk of arbitrary enforcement. Indeed, the absence of any statutory definition of “loitering” leaves even greater discretion in the hands of law enforcement officers than the ordinance invalidated in *Morales*.

The Court also declines to supply the missing standards through judicial interpretation. To do so would require the Court to determine the duration of presence necessary to constitute loitering, the types of conduct encompassed by the term, and the circumstances that distinguish lawful presence from criminal behavior. Those determinations are fundamentally legislative in nature. As the Supreme Court of Virginia has repeatedly recognized, courts may not rewrite statutes to cure constitutional deficiencies. *Tanner*, 277 Va. at 439.

The Court further recognizes that the factual allegations underlying these indictments are serious. The Commonwealth contends that because the statute regulates individuals previously convicted of certain sex offenses, the Court should apply less searching scrutiny and give greater deference to the plain meaning of the statute. The Court respectfully declines that invitation. Regardless of the nature of the underlying offense or the identity of the defendant, the Court is duty-bound to evaluate this matter through the lens of the Constitution and the presumption of innocence.

For these reasons, the Court concludes that Virginia Code § 18.2-370.2(B) fails to establish minimal guidelines governing law enforcement and therefore encourages arbitrary or discriminatory enforcement. The statute thus fails the second prong of the vagueness analysis.

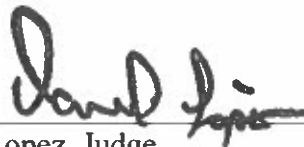
CONCLUSION

Applying the governing principles articulated by the United States Supreme Court, the Supreme Court of Virginia, and the United States Court of Appeals for the Fourth Circuit, the Court concludes that Virginia Code § 18.2-370.2(B) fails both prongs of the constitutional vagueness analysis. The statute does not provide persons of ordinary intelligence fair notice of the conduct it prohibits and fails to establish objective standards sufficient to guide law enforcement and prevent arbitrary enforcement. Accordingly, the Court holds that Virginia Code § 18.2-370.2(B) is void for vagueness under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

For these reasons, the Defendant's Motion to Dismiss the indictments is **GRANTED**, and the indictments are hereby **DISMISSED**.

The Court notes the Commonwealth's exceptions to the Court's rulings based upon the arguments raised in its pleadings and at oral argument. Pursuant to Virginia Code § 19.2-398(E), the Commonwealth may pursue an interlocutory appeal from this ruling. Additionally, pursuant to Virginia Code § 19.2-409, the provisions of § 19.2-243 governing speedy trial shall not apply to the period beginning when the Commonwealth files its notice of pretrial appeal and ending sixty days after the Court of Appeals of Virginia or the Supreme Court of Virginia issues its mandate disposing of that appeal. An order consistent with this opinion shall issue.

ENTERED this 12 day of March 2026.



Daniel T. Lopez, Judge
Circuit Court of Arlington County