

LURKING FACT SHEET

- **The purpose of the lurking ordinance is to deter crime and protect public safety.** The lurking ordinance is an important tool to protect public safety. Lurking and loitering are both anticipatory crimes; that is, the laws prohibit conduct that is a step toward committing a crime, although the conduct itself is not a completed separate crime (such as burglary). Prohibiting anticipatory conduct is important to preventive policing. If the police believe, based on a person's conduct, that he or she is about to commit another crime, our laws allow police intervention. Typically, when police stop someone for lurking, the person receives a citation. When the police cite individuals for lurking and loitering, they can stop more serious crimes from being committed. As the old adage goes, "an ounce of prevention is worth a pound of cure." Public safety is enhanced by preventive policing.
- **Lurking and loitering are different.** Minneapolis ordinances prohibit two unique types of conduct: lurking with intent to commit a crime (Minneapolis Ordinance 385.80) and loitering with intent to commit a crime (Minneapolis Ordinance 385.50). Although these two crimes sound similar, the ordinances are quite different. The conduct prohibited is different, as is the breadth of the ordinances. In short, loitering targets those who are trying to attract attention, while lurking targets those who are trying to avoid it. The lurking ordinance is directed at those who are present in either public or private places lurking (behaving surreptitiously) with intent to commit any crime. The loitering ordinance more specifically targets those who are present in public spaces whose conduct reflects intent to engage in either prostitution or the sale or purchase of drugs. The lurking ordinance is broader in that its focus is not solely prostitution or drug-related behavior. For example, a person may be cited for lurking with intent to commit a burglary, theft, or sex-related crime (rape, interference with privacy, indecent exposure, etc.). The loitering ordinance does not extend to these crimes. However, this distinction is often misunderstood. This distinction is important because critics of the lurking ordinance often are actually criticizing the loitering ordinance.
- **The lurking ordinance is becoming more relevant and has the potential to be expanded.** Copper thefts are skyrocketing in Minneapolis. Many times lurking will be the only tool available to officers who observe suspects casing homes or other areas where copper is prevalent. Also, the ordinance can be employed against groups of people who pass around drugs or alcohol for shared consumption when possession charges are not feasible.
- **Lurking is associated with a wide variety of crimes.** According to an MPD review of lurking arrests from 2006-February 2007, the following are the most common crimes underlying the arrests:
 - Theft (all types) (27%)
 - Narcotics (25%)

- Burglary – of Dwelling and Business (17%)
 - Robbery (Person and Business) (5%)
 - Graffiti, Prostitution (4% each)
 - Assault (2%)
 - Other (1% each): consuming in public, damage to property, gambling, indecent exposure, open bottle, peeping, public urination, violation of restraining order, urinating in public.
- **Lurking is an important tool to help the police fight crime.** Examples:
 - ***Interference with Privacy.*** Police received calls about a male on a bike lurking on the side of an apartment building. When police arrived, they found a male attempting to leave a secluded back driveway. The male claimed to be in the area to meet a friend in the building. A witness told officers of seeing the male standing near a lower-level apartment window. When police investigated further, they found that the window into which the male was looking had a broken shade and a woman inside was sitting in her bedroom partially dressed. When the man was identified, officers learned he is a chronic window peeper. The suspect was arrested for lurking, and booked for interference with privacy. The felony charges were later declined, but Jennings was charged with a misdemeanor lurking case which is pending. (Calvin Jennings, MP-07-313214).
 - ***Burglary.*** Officers responded to a 911 call in which the caller said an unknown male was in her back yard and had approached the garage and tried to open a garage window. Officers responded and canvassed the area. They located a male nearby who matched the description given by the caller, and whom they knew to be a chronic burglar. When officers conducted a show-up identification with the caller, the caller immediately positively identified him. Officers booked the man, who later pled guilty to lurking. (MP-07-021251).
 - ***Graffiti.*** Officers were patrolling at 1:30 a.m. when they observed 3 juvenile males walking after curfew. The officers stopped the 3 and learned they were all juveniles. As the officers were speaking with the 3, they noticed that one was wearing latex gloves with paint on the gloves. The officers knew that graffiti “taggers” often wear latex gloves. The officers then observed spray paint cans protruding from pockets on the clothing of the 3, and strapped to the backpacks the 3 were carrying. When the officers searched the backpacks, they located 9 cans of spray paint, paint markers, and more latex gloves. These cases were further investigated and submitted to the County Attorney’s Office for juvenile delinquency proceedings. (MP-06-167316).
 - ***Theft from Auto/Motor Vehicle Tampering.*** An officer was patrolling in an unmarked squad car when he observed a male walking slowly past cars parked on the side of the street. The man appeared to be looking in the vehicles. At one point, the officer observed the man step into the street to look into a vehicle from another angle. As he did so, the officer noticed the man was carrying a large piece of asphalt in his right hand. As the officer drove past the man, the man threw the piece of asphalt to the ground. The officer stopped the man with the assistance of a marked squad. The man claimed to have been carrying the piece of asphalt for

protection. The case was ultimately dismissed in exchange for a plea to a different case. (MP-07-229921).

- **Theft/Damage to Property.** Officers responded to a 911 call about a bike theft in progress. When officers arrived, they saw a man bent over a bike. As officers approached, the man waved at them. Another man told the officer that the man who waved was the one who was trying to steal the bike. Officers detained the man, and learned from the victim that when he went to get his bike, he saw this suspect trying to snap the lock off his bike. In the process, he damaged the victim's bike. Eventually, the suspect admitted that he was trying to steal the bike. The officer cited the suspect for lurking. The suspect later pled guilty and was ordered to perform 5 days of STS. (UM-05-147913).
- **Indecent Exposure.** Officers responded to a 911 call that a male was in the area of Burroughs School, hiding in the bushes watching school children playing. Another later 911 caller (who ultimately could not be identified) reported seeing this male with his pants down and wearing a white cloth on his head. Officers responded to the scene several times that day, but found nothing at first. In a final call, responding officers found a male who matched the description on his bicycle about to leave. Officers did not observe him exposing himself, and were unable to locate the unidentified caller. However, officers noted that this party matched the description of the person who had been exposing himself that day, as well as a description of a person who had been exposing himself nearby at a laundromat. Officers also found a white mask when searching him. He was arrested for lurking and pled guilty to an amended charge of disorderly conduct. (MP-07-185073).
- **Nearly 1/3 of the lurking cases handled by MPD were initiated by citizen 911 callers.** An analysis of MPD lurking cases indicates that many of these cases were initiated by citizens, not the police. Citizen involvement is critical to effective policing. There are more citizens than there are officers, and when citizens watch for suspicious activity, they can act as extra "eyes" for the police in deterring or preventing crime. If lurking were not a crime, police would have less flexibility in responding to these reports of suspicious individuals.
- **Of all lurking arrests, only about 11.6% are of homeless individuals.** Of all 2006 and 2007 arrestees, approximately 11.6% self-reported to police that they had no permanent address or listed a shelter address. By contrast, of the 2007 loitering arrests, 14.7% of those arrested or cited were homeless.
- **Other Minnesota cities have ordinances similar to Minneapolis' lurking ordinance.** The following Minnesota cities have similar laws: St. Paul (has both a lurking and a "loitering or lurking for unlawful purposes" ordinance), Moorhead, Robbinsdale, Roseville, Wabasha, Minnetonka (prohibits lurking in its loitering ordinance).
- **Enforcing the lurking ordinance is relatively inexpensive.** Lurking offenders are usually not arrested; thus, there is usually no booking fee or jail cost associated with these charges. Pursuant to Rule 6.01 of the Minnesota Rules of Criminal Procedure, police must issue citations to those who commit most

misdemeanors (including lurking), unless certain limited situations exist. Those limited reasons are: if the person poses a risk of danger to self or others, if the officer believes the person is likely to continue criminal conduct unless arrested, or if the officer believes the person is unlikely to respond to a citation.