

*Rowan v. United States Post Office*, 397 U.S. 728 (1970) citing as authority *United States v. Cardiff*, 344 U.S. 174. "A statute is fatally vague only when it exposes a potential actor to some risk or detriment without giving him fair warning of the nature of the proscribed conduct." Justice Douglas' statement of this principle in *United States v. Cardiff supra*, is as follows: ". . . The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited. Words which are vague and fluid (cf. *United States v. L. Cohen Grocery Co.*, 255 U.S. 81) may be as much of a trap for the innocent as the ancient laws of Caligula." See also *State v. Sedacca*, 252 Md. 202, 212-216.

The statute at issue raises serious constitutional question when considered in light of this principle. It is readily apparent that the scope of the statute is not limited to acts contributing to the delinquency of a minor. It makes unlawful unspecified conduct which would bring or tend to bring a child within the provisions of the subtitle which relates not only to a "Delinquent child" as defined in Section 70-1 (h) but also a "Child in need of supervision" 70-1 (l),—"Neglected child" 70-1 (j), "Dependent child" 70-1 (k), and "Mentally handicapped child" 70-1 (k).

The provision proscribing conduct which would "tend to" accomplish a result whether or not the result is achieved is constitutionally suspect for vagueness. We feel that there is a serious question as to whether this provision in a criminal statute is so vague as to meet Chief Justice Burger's cited test in that it could be said that the statute "exposes a potential actor to some risk or detriment without giving him fair warning of the nature of the proscribed conduct." A determination as to whether specified conduct would "tend to" accomplish a result does not readily subject itself to any objective measure so that a potential defendant could be reasonably apprised of the criminality of his acts.

Accordingly, we are of the opinion that House Bill No. 149 is of doubtful constitutionality.

Sincerely,

/s/ FRANCIS B. BURCH,  
*Attorney General.*

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### House Bill No. 195—Montgomery County Alcoholic Beverage Laws

AN ACT to repeal and re-enact, with amendments, Sections 83(b), (c), and (d); 84(b), (c), (d), and (e); 85(b); 86(h); and 102 (a) and (c) of Article 2B of the Annotated Code of Maryland (1968 Replacement Volume AND 1970 SUPPLEMENT), title "Alcoholic Beverages," subtitle "Hours and Days for Sale," to permit the sale of alcoholic beverages by certain alcoholic beverage licensees in Montgomery County until 1:00 o'clock a.m.; and to permit the consumption thereof until 1:30 o'clock a.m.; AND FURTHER TO PROVIDE FOR A REFERENDUM ON THIS ACT.