

MEMORANDUM

TO: Public Safety Committee

FROM: ~~M~~ Amanda Mihill, Legislative Attorney *Amihill*
Michael Faden, Senior Legislative Attorney
Robert Drummer, Senior Legislative Attorney *RDrummer*

SUBJECT: **Worksession 2:** Expedited Bill 25-11, Offenses – Curfew – Established

Expedited Bill 25-11, Offenses – Curfew – Established, sponsored by the Council President at the request of the County Executive, was introduced on July 12, 2011. A public hearing was held on July 26, at which speakers articulated strong positions for and against this Bill. See select testimony and correspondence on ©85-91. The Public Safety Committee held a first worksession on Bill 25-11 on September 15.

Bill 25-11 would establish a curfew for minors, prohibit certain activities during the curfew, allow certain defenses, and specify enforcement procedures and penalties. According to the County Executive’s transmittal memorandum, Bill 25-11 is intended to address issues relating to increased gang activity, violence, and crime involving minors in the County. The Executive noted that Bill 25-11 is similar to current laws in Prince George’s County and the District of Columbia. Representatives from the District of Columbia and Prince George’s County Police Departments are expected to attend this worksession to discuss the experiences regarding the curfews in place in those jurisdictions.

Council staff sent a set of questions on Bill 25-11 to Executive staff requesting background information, including crime statistics, information about potential alternatives, and effectiveness of curfews in other jurisdictions. The Executive’s responses are attached at ©22.¹

Summary of Introduced Bill

As introduced, Bill 25-11 would establish a curfew for minors between 11 p.m. and 5 a.m. on Sunday through Thursday and from 12:01 a.m. until 5 a.m. on Saturday and Sunday (©3, lines 32-34). During the curfew hours, a minor must not **remain** in any County public place or establishment (©4, lines 75-76). Executive staff confirmed that a minor could be cited for a curfew violation only after a police officer has told the minor to move along and the minor refused. “Public place” is defined as “a place to which the public, or a substantial group of the public, has access”

¹We did not reprint Executive attachments F and G because they were already in this packet.

(©4, lines 62-65). “Establishment” is defined as “any privately-owned place of business to which the public is invited, including any place of amusement or entertainment” (©3, lines 42-44). Bill 25-11 would also prohibit a minor’s parent from knowingly (or by insufficient control) permitting a minor to remain in any public place or establishment during curfew hours and prohibit the owner or operator of an establishment from knowingly allowing a minor to remain at an establishment during curfew hours (©4-5, lines 77-86; ©5, lines 87-95).

Bill 25-11 lists many situations in which a minor may lawfully remain during curfew hours (©5-6, lines 96-126). These exceptions are if the minor is:

- 1) accompanied by the minor’s parent;
- 2) accompanied by an adult authorized by the minor’s parent to accompany the minor for a specified period of time and purpose in a specified area;
- 3) on an errand at the direction of the minor’s parent, without any detour or stop, until 12:30 a.m.;
- 4) in a motor vehicle, train, or bus in interstate travel through the County or starting or ending in the County;
- 5) engaged in employment, or going to, or returning home from, employment, without any detour or stop. The minor must carry a valid work permit issued under State law;
- 6) responding to an emergency;
- 7) on the property where the minor resides;
- 8) on the sidewalk that abuts the minor’s residence, or that abuts the residence of a next-door neighbor if the neighbor did not complain to the Police Department about the minor’s presence;
- 9) attending an official school, religious, or other recreational activity sponsored by the County, a civic organization, or a similar entity that takes responsibility for the minor, or going to, or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the County, a civic organization, or a similar entity that takes responsibility for the minor; or
- 10) exercising First Amendment rights protected by the U. S. Constitution.

Additionally, an owner or operator would not be in violation of the law if the owner or operator notified the Police Department that a minor was in the establishment during curfew hours and refused to leave (©6, lines 127-130).

Bill 25-11 also specifies enforcement procedures and penalties. Under the bill, after asking an apparent offender’s age, if a police officer finds that a minor is committing a curfew violation, the police officer must take the minor to the nearest police facility and detain the minor until the minor can be released into a parent’s custody. If no parent is available, the police can take the minor to the minor’s residence or place the minor in custody of the Department of Health and Human Services (DHHS), who may release the minor at the end of curfew hours (©6-7, lines 131-156).

Violation of Bill 25-11 would be a Class A violation for a parent or owner/operator of an establishment. A civil Class A violation would carry a \$500 fine for a first offense and a \$750 fine for a repeat offense. A criminal Class A violation would carry a maximum fine of \$1,000 and a 6-

month maximum jail term. Bill 25-11 as introduced would also allow the Court to require a parent who violates the law to complete parenting classes. A minor who violates the curfew may be required to perform up to 25 hours of community service (©7-8, lines 157-167).

Executive Amendments

On August 31, the County Executive submitted proposed amendments to Bill 25-11 (see redraft on ©11-21). *Council staff suggests that this redraft be treated substantively as the Bill before the Committee, subject to further technical polishing.* The following Executive amendments are of particular note:

Enforcement procedures/penalties. The penalties for violating Bill 25-11 as introduced are detailed on page 2 (©7-8, lines 157-167). The Executive's proposed amendments would make a violation of Bill 25-11 a Class B civil citation for any minor, parent, or owner/operator (©20, lines 152-153; ©21, lines 169-170). The maximum fine for a Class B violation is \$100 for an initial offense and \$150 for a repeat offense. In his amendments memo, the Executive noted that the State's Attorney believes that if arrest authority is required in a specific situation, a police officer can use existing authority in state law requiring individuals to obey lawful police orders. A representative of the State's Attorney is expected to attend this worksession.

In addition, the Executive's amendments would delete the authority for a Court to require a parent to complete parenting classes and order a minor to perform community service (©21, lines 171-176). The County Attorney's office concluded that the County does not have the authority to empower courts to impose these requirements.

Finally, the Executive's amendments would delete language authorizing the police to take an offending minor to a police facility and allowing the police to release the minor into the custody of DHHS (©20-21, lines 147-164).

Exceptions. The Executive recommended several amendments to the exceptions to the curfew. As we noted on page 2, the bill includes a list of situations where a minor would not be found in violation of the curfew. The State's Attorney recommended that the bill be amended to clarify that these are affirmative defenses (©18, lines 99-100; ©19, line 134); Council staff is not sure that this change in terminology makes any legal difference, but it is more confusing to the non-lawyer. The Executive also recommended that this list of exceptions include a minor who is attending or returning home from "an event at a place of public entertainment" (©19, lines 131-132). The Executive also recommended that the exception related to employment be amended to not require the minor to carry a work permit (©19, lines 111-113).

Other amendments. The Executive's proposed amendments would also:

- alter the findings and purpose clauses to reflect the purpose of reducing juvenile violence, gang activity, and crime (and removing language indicating there has been an increase in these activities) and preventing disturbances of the public peace (©15, lines 4, 21-22);
- amend the definition of "emergency" (©16, lines 39-41);

- delete the phrase “insufficient control” from the prohibitions related to a parent, therefore narrowing the circumstances under which a parent could be found in violation of Bill 25-11 (©17, lines 79-80); and
- delete the definition of knowingly because it is a legal term that is defined in case law (©18, lines 83-89, 92-98).

Background

Fiscal and economic impact OMB found that Bill 25-11, as modified by the Executive’s proposed amendments, would have no fiscal impact on the County. (See the OMB Fiscal and Economic Impact Statement at ©57.) OMB did not explain this conclusion or point out any assumptions or variables used to arrive at it.

Council staff also cannot quantify any fiscal impact for the Bill, but note that the issuance of citations for a civil offense to minors in violation of the curfew is likely to bring some revenue to the County since a Class B offense is punishable by a maximum fine of \$100 for a first offense and \$150 for a second offense. Council staff cannot estimate the number of citations that would be issued in a fiscal year, but we assume it would be more than 1. If the recipient of the citation challenges it in District Court, the issuing police officer would have to appear in Court to testify. A police officer appearing in Court for a citation while on regular duty is not out on patrol. If the officer’s appearance requires overtime by that officer or another, that involves additional cost to the County. Whether overtime costs are significant depends on the type of enforcement used by the Police. If enforcement is limited to situations where an officer observes a minor acting suspicious, menacing, or potentially violent, as suggested in the Executive’s Frequently Asked Questions, then the fiscal impact should be insignificant. On the other hand, blanket enforcement would increase the fiscal impact.

OMB concluded that Bill 25-11, as modified, would have “no quantifiable impact on employment, personal income, investment, property values or other economic variables.” OMB relied on information received from the County Chamber of Commerce and the Bethesda-Chevy Chase and Silver Spring chambers. Although these organizations expressed some concern over a potential decline on entertainment and food businesses because of the curfew, they could not quantify this effect. OMB also concluded that the Executive’s proposed modification to permit minors to travel home from an entertainment event during curfew hours would mitigate any adverse effect. Council staff cannot quantify this potential impact, but we doubt that the curfew would have no affect on businesses and employment in the County urban centers. We suspect that minors routinely spend entertainment dollars during curfew hours, and a curfew would reduce this spending. The effect of the curfew on County businesses would also depend on the level of overall compliance.

Laws in other jurisdictions. According to a 1997 U.S. Mayors survey of 347 cities with a population over 30,000, 276 cities had a nighttime youth curfew (©46-55). According to a 2005 National League of Cities survey of 436 cities, more than half of those cities had a daytime or nighttime curfew (©59-61).

As Councilmembers know, both the District of Columbia and Prince George’s County have curfews (©62-68). The Executive’s proposal is very similar to the laws in both jurisdictions. The chart below highlights differences regarding the age of the minors subject to a curfew and the curfew hours.

	Executive Proposal	District of Columbia	Prince George’s
Age	Applies to minors under 18	Applies to minors under 17	Applies to minors under 17
Hours	Sun-Thur: 11 p.m. – 5 a.m. Sat-Sun: 12:01 a.m. - 5 a.m.	Sun-Thur: 11 p.m. - 6 a.m. Sat-Sun: 12:01 a.m. - 6 a.m. ²	Sun-Thur: 10 p.m. - 5 a.m. Fri-Sat: 11:59 p.m. - 5 a.m.

Commander Melvin Scott, from the D.C. Metropolitan Police Department, will attend the worksession to discuss the District’s experience with their curfew. A representative from the Prince George’s County Police Department is also expected to attend.

Curfew studies Council staff has reviewed several studies assessing the effectiveness of juvenile curfews on juvenile crime and victimization. Below is a brief summary of the conclusions of those studies:³

- A 1999 study by Mike Males and Dan Macallair,⁴ entitled “An Analysis of Curfew Enforcement and Juvenile Crime in California” concluded that curfew enforcement had no effect on crime, youth crime, or youth safety.
- A 2000 study by Catherine Gouvis,⁵ entitled “Evaluation of the Youth Curfew in Prince George’s County, Maryland”, concluded the following: any impact of the law on the target group of youth (ages 12-16) was not statistically significant; the curfew was associated with an immediate and permanent reduction in victimization to people ages 22-25; the impact of the law on reducing victimizations to all individuals was not significant; it could not be concluded that the size or number of hotspot crime areas was reduced after the law; there was no evidence of new hotspots after the law was implemented; and the hotspots of victimization during curfew hours remained stable over 7 years.
- A 2003 study by Kenneth Adams,⁶ entitled “The Effectiveness of Juvenile Curfews at Crime Prevention” concluded that the scientific evidence does not support the argument that curfews reduce crime and victimization. The study further noted that when changes in crime are observed, they are almost equally likely to be increases rather than decreases. Finally, the study concluded that curfew enforcement rarely leads to discovery of serious criminal behavior and that for the most part, curfew violators tend to be arrested for curfew-related offenses, such as lying about age.
- A 2003 study by Danny Cole⁷ entitled, “The Effect of a Curfew Law on Juvenile Crime in Washington, D.C.”, concluded that the D.C. curfew law was not effective in reducing total juvenile crime. The study also noted that it is important to include all juveniles under the curfew law because a significant number of juvenile crimes are not targeted. The study

²During July and August, the curfew hours are 12:01 a.m. until 6 a.m. all week.

³These studies are available from Council staff but are not reprinted in this packet because of their size.

⁴Published in the Western Criminology Review, San Diego State University School of Public Affairs.

⁵Affiliated with The Urban Institute.

⁶Affiliated with the School of Public and Environmental Affairs at Indiana University – Purdue University – Indianapolis; published in the ANNALS of the American Academy of Political and Social Science.

⁷Affiliated with the University of Maryland; published in the American Journal of Criminal Justice.

further notes that local governments need to implement companion crime prevention strategies because curfew laws are not in effect during the period when juveniles are most likely to commit crimes.

- Mr. Cole also summarized previous research on curfews and noted a 1999 report indicating aggressive curfew and truancy enforcement in Dallas led to significant reductions in gang violence; a 1977 report finding that a Detroit curfew reduced the relative crime during curfew hours, but resulted in a temporal displacement of criminal activity to the early afternoon period; a 2000 study of curfews in various cities and counties finding juvenile crimes and victimization rates did not decrease when new curfew laws were implemented; and a 2000 study of the New Orleans curfew finding no significant reduction in juvenile arrest or victimization rates, but finding an increase in victimization rates during non-curfew hours.
- A 2011 study by Patrick Kline⁸, entitled “The Impact of Juvenile Curfew Laws on Arrests of Youth and Adults”, concluded that “curfews appear to have important effects on the criminal behavior of youth” and that being subject to a curfew reduces the arrests of juveniles below the curfew age by approximately 10% in the 5 years following enactment.

State law During the first Committee worksession, Committee members discussed the State law that prohibits disturbing the public peace and disorderly conduct. Md. Code, Criminal Law Article, §10-201(c) provides in pertinent part:

- (c) (1) A person may not willfully and without lawful purpose obstruct or hinder the free passage of another in a public place or on a public conveyance.
- (2) A person may not willfully act in a disorderly manner that disturbs the public peace.
- (3) A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace.
- (4) A person who enters the land or premises of another, whether an owner or lessee, or a beach adjacent to residential riparian property, may not willfully:
- (i) disturb the peace of persons on the land, premises, or beach by making an unreasonably loud noise; or
 - (ii) act in a disorderly manner.
- (5) A person from any location may not, by making an unreasonably loud noise, willfully disturb the peace of another:
- (i) on the other’s land or premises;
 - (ii) in a public place; or
 - (iii) on a public conveyance.

After the worksession, Committee Chair Andrews requested written comments from the State’s Attorney describing the circumstances under which Criminal Law Article §10-201 could be used by the Police to avoid a repeat of the gang fight that occurred in downtown Silver Spring (©69). State’s Attorney John J. McCarthy advised that the State law is reactive and requires an officer to wait until an individual becomes disorderly and attempts to disturb the peace. Mr. McCarthy contrasted this law with the proposed curfew which would permit an officer to approach a minor during the curfew hours without waiting for the minor to become disorderly (©70-72).

⁸ Affiliated with the University of California, Berkeley/National Bureau of Economic Research.

Loitering bill alternative Bill 35-11, Offenses – Loitering or Prowling – Established, sponsored by Councilmembers Andrews, Leventhal, and Rice was introduced on October 25, 2011. A public hearing is scheduled for November 15 at 7:30 p.m. Bill 35-11 was introduced as an alternative to Bill 25-11; the Council could enact either or both bills.

The Executive’s Frequently Asked Questions document said (©73):

Police would confront teens called to their attention due to suspected suspicious, menacing, potentially violent, or violent behavior. The police would not be involved in routinely rounding up minors for the sake of enforcing the curfew law, but the curfew would instead be a tool when encountering suspicious or dangerous behavior either on patrol or when dispatched to a complaint from a citizen. Those individuals would be asked to give their age and purpose for being in a public place or establishment.

Bill 35-11 would define and prohibit certain loitering and prowling and specify enforcement procedures and penalties. As defined in the Bill, “loitering and prowling means to remain in a public place or establishment at a time or in a manner not usual for law-abiding persons under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.” Bill 35-11 was intended to give the police a more focused tool to respond to the situations described by the Executive as the target of the curfew without being limited to minors or certain times of the day.

Before 2006, the County Code prohibited certain loitering. However, the prior loitering law was not based on Model Penal Code §250.6. Under the former version of Code §32-13, loitering was defined as:

To circulate, stand around or remain or to park, or remain parked in a motor vehicle at a public place or place open to the public and to engage in any conduct prohibited under this law. Loiter also means to collect, gather, congregate or to be a member of a group or a crowd of people who are gathered together in any public place or place open to the public and to engage in any conduct prohibited under this law.

Bill 15-06, enacted on July 11, 2006, deleted the term “loitering” from the Code and replaced it with the current provision prohibiting certain “disturbing the public peace or disorderly conduct.” The legislative history for Bill 15-06 does not indicate that the former loitering law was challenged in court. The Council deleted the term “loitering” at the suggestion of the ACLU. County Code §32-14 currently provides:

Sec. 32-14. Disturbing the public peace or disorderly conduct—Prohibited conduct.

An individual must not at, on, or in a public place or place open to the public:

- (a) interfere with or hinder the free passage of pedestrian or vehicular traffic; or

- (b) incite unlawful conduct, by words or intentional conduct, which is likely to produce imminent unlawful conduct.

Although some behavior may violate both §32-14 and the proposed loitering or prowling offense that would be established by Bill 35-11, in Council staff's view the removal of the term "loitering" by Bill 15-06 does not affect the legal sufficiency of Bill 35-11.

Loitering laws have been challenged on constitutional grounds in other states. In *Chicago v. Morales*, 527 U.S. 41 (1999), the U.S. Supreme Court held that a Chicago law prohibiting loitering in a public place together with a criminal street gang member was impermissibly vague, and violated the Due Process Clause of the 14th Amendment to the U.S. Constitution. However, the Chicago "gang congregation" ordinance struck down in *Morales* is distinguishable from Bill 35-11.

Bill 35-11 is based on the American Law Institute's Model Penal Code §250.6 (©79-80). Similar laws based on the Model Penal Code have been upheld in Georgia,⁹ Florida,¹⁰ and Wisconsin.¹¹ The Supreme Court of Georgia upheld the Georgia loitering law in *Bell v. State*, 252 Ga. 267, 313 S.E.2d 678 (1984). The Supreme Court of Florida upheld the Florida loitering law in *Watts v. State*, 463 So.2d 205 (Fla. 1985). The Supreme Court of Wisconsin upheld the Milwaukee loitering and prowling ordinance in *Milwaukee v. Nelson*, 149 Wis. 2d 434; 439 N.W.2d 562 (1989). Despite the 1999 Supreme Court decision in *Morales*, convictions under the loitering laws in Florida and Georgia were later upheld in *B.J. v. State of Florida*, 951 So.2d 100 (Fla. App. 2007) and *O'Hara v. State*, 241 Ga. App. 855, 528 S.E.2d 296 (2000).

The Supreme Court of Georgia, in *Bell v. State*, described the test to decide if a statute is unconstitutionally void for vagueness as:

The statute, when read as a whole, passes constitutional muster in advising persons of ordinary intelligence of the conduct sought to be prohibited . . . [and] the statute also defines the offense in terms which discourage arbitrary enforcement." 313 S.E.2d at 681.

Applying the same test to a similar loitering and prowling law based on Model Penal Code §250.6, appellate courts in Washington,¹² Oregon,¹³ and Idaho¹⁴ held that the law was unconstitutionally void for vagueness. A similar Omaha, Nebraska ordinance was declared unconstitutionally vague by the United States Court of Appeals for the 8th Circuit in *Fields v. Omaha*, 810 F.2d 830 (8th Cir. 1987). The courts striking down these laws concluded that the law provided too much discretion for a police officer to decide if an individual is violating the law and is therefore susceptible to arbitrary or discriminatory enforcement. It is important to note that a court could use the same theory to conclude that the Executive's proposed

⁹ *O.C.G.A. § 16-11-36* (2011).

¹⁰ *Fla. Stat. § 856.021* (2011).

¹¹ Milwaukee City Ordinance §106-31.

¹² *Bellevue v. Miller*, 85 Wn.2d 539; 536 P.2d 603 (1975).

¹³ *Portland v. White*, 9 Ore. App. 239; 495 P.2d 778 (1972).

¹⁴ *State v. Bitt*, 118 Idaho 584; 798 P.2d 43 (1990).

enforcement of the curfew is susceptible to arbitrary or discriminatory enforcement. We could not find any Maryland appellate court decisions that reviewed a similar law for vagueness. The County Attorney's Office is currently reviewing Bill 35-11 for legal sufficiency.

Support and opposition Bill 25-11 has generated correspondence and testimony from supporters, opponents, and those who do not take a position but express concerns. Because reprinting each letter would make this packet too long, Council staff summarizes some elected officials and organizations that have commented. **This list is not exhaustive**, but will provide Councilmembers with a general idea of the positions of a variety of persons and organizations.

- *Support:* Comptroller Peter Franchot, East County Citizens Advisory Board, Greater Bethesda-Chevy Chase Chamber of Commerce, Greater Silver Spring Chamber of Commerce, Montgomery County Civic Federation, Safe Silver Spring, Silver Spring Urban District Advisory Committee.
- *Opposed:* Delegate Kirill Reznik, Action Committee for Transit, American Civil Liberties Union, Fraternal Order of Police, Identity, Montgomery County Council of Parent-Teacher Associations, National Youth Association, National Youth Rights Association.
- *No position taken, but concerns expressed:* Advocates for Children and Youth, Mental Health Association, Mid-County Citizens Advisory Board, Montgomery County Collaboration Council, Silver Spring Citizens Advisory Board.

Legal analysis

Although courts nationwide have reviewed local curfew laws with varying results, the reported appellate decisions that are most relevant to this County were decided by the federal 4th Circuit Court of Appeals (which covers Maryland), the Maryland Court of Appeals, and the District of Columbia federal Circuit Court (whose decisions do not bind Maryland courts but can be persuasive).

We will summarize those 3 cases:¹⁵

Schleifer v. City of Charlottesville, 159 F.3d 843 (1998)

The 4th Circuit upheld (2-1) the City's curfew against First and Fourteenth Amendment attacks. The majority opinion held that the proper level of scrutiny for issues involving minors is intermediate scrutiny, rather than either the lenient rational basis test applied to many government actions or the more stringent strict scrutiny test generally applied to fundamental constitutional rights. However, the majority also held that the Charlottesville curfew would survive a strict scrutiny analysis.

The majority emphasized that the "curfew must be shown to be a meaningful step towards solving a real, not fanciful problem." However, in examining the evidence offered by the City, the Court declined to require "scientific or statistical 'proof'" or to "question the potential effectiveness of legislative remedies designed to address societal problems".

¹⁵Because of their length we did not reprint these opinions in this packet but will make copies available for Councilmembers on request.

Looking at the substance, the Court held that the Charlottesville curfew was an appropriate means to achieve 3 legitimate legislative purposes: reduce juvenile violence and crime, protect juveniles from harm, and strengthen parental responsibility for children. The Court declined to second-guess the “legislative judgment” regarding “the law enforcement benefit” of applying the curfew to 17-year olds “against the greater law enforcement burden of doing so. Weighing benefits and burdens is what legislature are about.” The Court, reviewing whether a curfew would “curb (a) rising trend of juvenile crime”, concluded that “this dispute about the desirability or ultimate efficacy of a curfew is a political debate, not a judicial one.”

The Court also concluded that “the limited scope of the curfew and its numerous exceptions would satisfy even the strict scrutiny requirement of narrow tailoring.” The Court contrasted the Charlottesville curfew with one struck down by a federal appeals court in San Diego, where “the exceptions...were not sufficiently detailed and comprehensive to make the curfew the least restrictive means of serving San Diego’s compelling ends.” In particular, the 4th Circuit Court upheld the exceptions for First Amendment activities, emergencies, and activities sponsored by civic organizations, and noted approvingly that the law’s “varying exceptions enable minors to participate in necessary or worthwhile activities” during the curfew period.¹⁶ The dissent emphasized its view that the “First Amendment rights” exception was unconstitutionally vague.

***Ashton v. Brown*, 339 Md. 70, 660 A.2d 447 (1995)**

Faced with a factual record that strongly suggested a pattern of racially discriminatory enforcement, the Maryland Court of Appeals sidestepped a ruling on the merits of a broad Constitutional challenge to a Frederick City curfew ordinance. The Court of Special Appeals had held the City law unconstitutional because it was vague and did not satisfy a compelling governmental interest.

Instead, the Court of Appeals focused on the term “event supervised by a bona fide organization” in an exception to the curfew and, using existing vagueness standards, unanimously held¹⁷ that term to be facially unconstitutional because it “provided no clear standards” and was too ambiguous to “allow each person to ‘choose between lawful and unlawful conduct.’”¹⁸

The Court also held that the invalid phrase could not be severed from the entire law because “Severing the invalid exemption would extend the curfew to cover situations which the City Council intended to exclude from its scope and would partially defeat the clear purpose of the ordinance.” Thus, without further analyzing the rest of the law, the Court ruled that the entire law was unenforceable.

¹⁶The exceptions in Charlottesville’s curfew law were similar but not identical to those proposed in Bill 25-11 and the Executive’s amendments.

¹⁷One judge dissented on issues of governmental immunity from damages but concurred in the vagueness holding.

¹⁸The Court seemed especially irked by “the several conflicting interpretations of ‘bona fide organization’ offered in good faith by the parties through the course of the litigation.” The City Police Chief, Mayor, and City Attorney each defined the term differently in testimony or the City’s briefs.

***Hutchins v. District of Columbia*, 188 F.3d 531, 338 U.S. App. D.C. (en banc, 1999)**

The District of Columbia Circuit Court, sitting en banc, reversed the District Court and a smaller panel of its Court and upheld the D.C. curfew law against a constitutional challenge. The Court majority adopted the intermediate scrutiny standard used in the Charlottesville case, holding that “To withstand intermediate scrutiny, the curfew must be ‘substantially related’ (rather than narrowly tailored) to the achievement of ‘important’ (rather than compelling) governmental interests.”

Much of the D.C. Court’s majority/plurality opinion follows, and is based on, the 4th Circuit’s analysis in the Charlottesville case. The Court noted, with regard to any diminution of parental rights, that the D.C. curfew was “carefully fashioned much more to enhance parental authority than to challenge it...The curfew’s defenses allow the parents *almost* total discretion over their children’s activities during curfew hours.”

Topics for Committee Discussion

The primary question for the Committee’s consideration is whether a curfew is warranted and would improve law enforcement and the quality of life in the County. In making this decision, Committee members can evaluate the current crime and order situations in County urban areas, the data provided by the Executive or elsewhere, effectiveness of curfews in other jurisdictions, and any viable alternatives (for example, Bill 35-11 or increased funds for positive youth development programs), along with fundamental policy questions about the role of government in limiting personal conduct.

After discussing these central issues, if the Committee is inclined to recommend enactment of some version of Bill 25-11, Committee members should review the following specific issues:

Enforcement How do the Police intend to enforce the curfew? If enacted, will the curfew be enforced uniformly against all minors in public places during curfew hours or will the Police selectively enforce the curfew against only certain minors. The Executive’s Frequently Asked Questions states that Police would confront “teens called to their attention due to suspicious, menacing, potentially violent, or violent behavior” (©74). The FAQ further states that Police would respond to groups of young people that appear threatening or where trouble has started and that Police would not stop people only because of their potential juvenile status (©75). Would this type of selective enforcement open the County to charges of arbitrary and/or discriminatory enforcement that rendered certain loitering laws unconstitutional?

Executive authority Councilmember Floreen indicated that she expects to offer an amendment to convert the Bill’s youth curfew authority to a conditional provision that only takes effect after the County Executive has imposed a youth curfew, as needed to maintain public order, by Executive order published in the County Register, after receiving the advice of the State’s Attorney, County Attorney, and Police Chief, for:

- the entire County or one or more designated areas of the County; and
- a certain time period that does not exceed a specified limit (e.g. 6 months).

This time limit would assure a regular review of the need for and effectiveness of any curfew. Councilmember Floreen's amendment is on ©81.

Locations Should any curfew be limited to urban areas or Central Business Districts of the County? While a case could be made for a curfew in, say, Silver Spring, the same factual case almost certainly cannot be made for Poolesville or Damascus, and possibly not even Bethesda. Executive staff argue that misbehaving juveniles will move to uncovered areas if a curfew is geographically limited. That is hardly clear on its face; in any case, if the curfew is geographically limited and juvenile unrest spreads as Executive staff predict, the curfew's reach could easily be extended as needed. The D.C. Circuit Court opinion in *Hutchins* concluded that limiting the D.C. curfew to high-crime areas, as its opponents argued, would open the District to "charges of racial discrimination". Council staff is not sure that would be the case here – at least any more than the Executive's stated enforcement practices would open the County to such charges.

Age limit Bill 25-11 would prohibit a minor – defined as anyone under 18, except a judicially emancipated minor or a married minor – from remaining in a public place or establishment during the curfew hours. Tony Hausner and Safe Silver Spring urged the Council to lower the age limit to minors under 17 (©85). The curfews in D.C. and Prince George's County apply to minors under 17.

Hours Bill 25-11 would set the curfew hours at 11 p.m. to 5 a.m. on Sunday through Thursday and 12:01 a.m. to 5 a.m. on Saturday (e.g., Friday night) and Sunday (e.g., Saturday night). The curfew hours in D. C. are 11 p.m. to 6 a.m. Sunday through Thursday and 12:01 a.m. – 6 a.m. Saturday and Sunday. During July and August, the curfew hours are 12:01 a.m. to 6 a.m. every day. The curfew hours in Prince George's County are 10 p.m. to 5 a.m. Sunday through Thursday and 11:59 p.m. to 5 a.m. Friday and Saturday. The Council received correspondence from constituents urging that the curfew hours be based not on day of the week, but on whether the following day is a school day. The Silver Spring Chamber of Commerce, while supporting the curfew, urged the Council to set a later curfew hour during the summer months, similar to the D.C. law (©87).

Exceptions Bill 25-11 contains many exceptions (see pages 2 and 3), most of which are derived from curfew laws elsewhere. The First Amendment rights exception, while probably constitutionally required, is quite broad; for example, it could be read to apply to a single teenager because he or she is wearing a shirt saying "No curfews!" or another political or social opinion.

Questions also have been raised about whether other exceptions are necessary. For instance, the Council was asked whether the exceptions in the Executive's draft allow minors to take early morning fishing trips without a parent or take a camping trip with a group of friends who are all under the age of 18 (©88).

In addition, Jane Redicker, from the Greater Silver Spring Chamber of Commerce urged the Council to add an exception for owner/operators of establishments such that they could not be cited for employing minors after curfew hours. As proposed, Bill 25-11 prohibits an owner or operator of an establishment from knowingly allowing a minor to remain at an establishment in

the County during curfew hours. There is an exception in the bill for minors who are engaged in employment, or going to, or returning home from, employment, without any detour or stop, but there is not an parallel exception for the employer.

Teenage drivers and passengers Action Committee for Transit (ACT) opposed Bill 25-11, arguing that the curfew would be enforced against minors on foot or in public transit, but not in cars (©90). ACT may be referring to the exception in Bill 25-11 for a minor “in a motor vehicle, train, or bus in interstate travel through the County or starting or ending in the County”. An interstate travel exception may be constitutionally required; Council staff would have to research that further. In any case, state law prohibits provisional drivers license holders under 18 from driving between midnight to 5 a.m., with certain exceptions.¹⁹

Sunset In its initial letter expressing concerns about Bill 25-11, the Greater Bethesda-Chevy Chase Chamber of Commerce urged the Council to adopt a one year sunset for the curfew so that its impact and need can be reviewed at a time certain (©91). Although the Chamber now supports Bill 25-11, a 1- or 2-year sunset may be an appropriate way to assure that the curfew is having the intended effect.

This packet contains:	<u>Circle #</u>
Expedited Bill 25-11	1
Legislative Request Report	9
Introductory memo from County Executive	10
Revised Bill with Executive amendments	11
Executive memo with responses to Council questions	22
Fiscal Impact Statement	57
National League of Cities survey	59
D.C. and Prince George’s County curfew laws	62
Memo from Chair Andrews re state law	69
Memo from State’s Attorney	70
Executive curfew FAQ	73
Model Penal Code §250.6	79
Councilmember Floreen amendment	81
<i>Washington Post</i> article	82
Select testimony and correspondence	
Safe Silver Spring	85
Greater Silver Spring Chamber of Commerce	87
Jerome Oden	88
Action Committee for Transit	90
Greater Bethesda-Chevy Chase Chamber of Commerce	91

¹⁹ See Md. Code, Transportation Article, §16-113(d).

Expedited Bill No. 25-11
Concerning: Offenses – Curfew –
Established
Revised: 7/11/2011 Draft No. 1
Introduced: July 12, 2011
Expires: January 12, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) establish a curfew for minors;
- (2) make certain findings;
- (3) prohibit certain activities during the curfew;
- (4) provide for certain defenses;
- (5) establish enforcement procedures and penalties; and
- (6) generally amend County law relating to offenses and curfews.

By adding

Montgomery County Code
Chapter 32, Offenses – Victim Advocate
Section 32-23A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec 1. Sections 32-23A is added as follows:**

2 **32-23A. Curfew.**

3 (a) **Findings and Purpose.**

4 (1) There has been an increase in juvenile violence, juvenile gang
5 activity, and crime by minors in the County.

6 (2) Minors are particularly susceptible, because of their lack of
7 maturity and experience, to participate in unlawful and gang-
8 related activities and to be the victims of crime.

9 (3) The County is obligated to provide for:

10 (A) the protection of minors from each other and from other
11 persons;

12 (B) the enforcement of parental control over, and
13 responsibility for, children;

14 (C) the protection of the general public; and

15 (D) the reduction of the incidence of juvenile criminal
16 activities.

17 (4) A curfew for minors is in the interest of the public health,
18 safety, and general welfare and will help to attain these
19 objectives and to diminish the impact of unwanted conduct on
20 County residents.

21 (5) A curfew law will protect the welfare of minors by:

22 (A) reducing the likelihood that minors will be the victims of
23 criminal acts during the curfew hours;

24 (B) reducing the likelihood that minors will become involved
25 in criminal acts or exposed to trafficking in controlled
26 substances during the curfew hours; and

27 (C) aiding parents in carrying out their responsibility to

28 exercise reasonable supervision of minors entrusted to their
29 care.

30 **(b) Definitions.**

31 In this Section, the following terms have the meanings indicated:

32 Curfew hours means from 11 p.m. on any Sunday, Monday, Tuesday,
33 Wednesday, or Thursday, until 5 a.m. the following day, and from
34 12:01 a.m. until 5 a.m. on any Saturday or Sunday.

35 Drug trafficking means the act of engaging in any prohibited activity
36 related to controlled dangerous substances as defined in State law.

37 Emergency means an unforeseen combination of circumstances or the
38 resulting state that calls for immediate action. Emergency includes a
39 fire, natural disaster, automobile accident, or any situation that
40 requires immediate action to prevent serious bodily injury or loss of
41 life.

42 Establishment means any privately-owned place of business to which
43 the public is invited, including any place of amusement or
44 entertainment.

45 Minor means any person under 18 years old, but does not include a
46 judicially emancipated minor or a married minor.

47 Operator means any individual, firm, association, partnership, or
48 corporation that operates, manages, or conducts an establishment.

49 Operator includes the members or partners of an association or
50 partnership and the officers of a corporation.

51 Parent means:

- 52 (1) natural parent;
53 (2) adoptive parent;
54 (3) step-parent;

- 55 (4) any person who has legal custody or is the guardian of a minor
 56 by court order or marriage;
- 57 (5) any person who is at least 21 years old who is authorized by a
 58 natural parent, adoptive parent, step-parent, or custodial parent
 59 of a child to act as a caretaker for the child; or
- 60 (6) a public or private agency with whom a minor has been placed
 61 by a court.

62 Public place means any place to which the public, or a substantial
 63 group of the public, has access. Public place includes any street,
 64 highway, and common area of a school, hospital, apartment house,
 65 office building, transport facility, or shop.

66 Remain means to linger, stay, or fail to leave a public place or
 67 establishment when requested to do so by a police officer or the
 68 owner, operator, or other person in control of the public place or
 69 establishment.

70 Serious bodily injury means bodily injury that creates a substantial
 71 risk of death or that causes death, serious permanent disfigurement, or
 72 protracted loss or impairment of the function of any bodily member or
 73 organ.

74 (c) **Prohibitions.**

75 (1) **Minor.** A minor must not remain in any public place or
 76 establishment in the County during curfew hours.

77 (2) **Parent.** A parent of a minor must not knowingly permit, or by
 78 insufficient control allow, the minor to remain in any public
 79 place or any establishment in the County during curfew hours.
 80 The term “knowingly” includes knowledge that a parent should
 81 reasonably be expected to have concerning the location of a

82 minor in that parent's legal custody. This requirement is
 83 intended to hold a neglectful or careless parent to a reasonable
 84 community standard of parental responsibility through an
 85 objective test. It is, therefore, no defense that a parent did not
 86 know of the activities, conduct, or location of the minor.

87 (3) **Owner or Operator.** The owner or operator of an
 88 establishment must not knowingly allow a minor to remain at
 89 an establishment in the County during curfew hours. The term
 90 "knowingly" includes knowledge that an owner or operator
 91 should reasonably be expected to have concerning the patrons
 92 of the establishment. The standard for "knowingly" must be
 93 whether a reasonable person in the position of the owner or
 94 operator should have known that the patron was a minor
 95 committing a curfew violation.

96 (d) **Defenses.**

97 (1) It is not a violation of this Section if a minor during curfew
 98 hours was:

99 (A) accompanied by the minor's parent;

100 (B) accompanied by an adult authorized by the minor's
 101 parent to accompany the minor for a specified period of
 102 time and purpose in a specified area;

103 (C) on an errand at the direction of the minor's parent,
 104 without any detour or stop, until 12:30 a.m.;

105 (D) in a motor vehicle, train, or bus in interstate travel
 106 through the County or starting or ending in the County;

107 (E) engaged in employment, or going to, or returning home
 108 from, employment, without any detour or stop. The

109 minor must carry a valid work permit issued under State
 110 law;

111 (F) responding to an emergency;

112 (G) on the property where the minor resides;

113 (H) on the sidewalk that abuts the minor's residence, or that
 114 abuts the residence of a next-door neighbor if the
 115 neighbor did not complain to the Police Department
 116 about the minor's presence;

117 (I) attending an official school, religious, or other
 118 recreational activity sponsored by the County, a civic
 119 organization, or a similar entity that takes responsibility
 120 for the minor, or going to, or returning home from,
 121 without any detour or stop, an official school, religious,
 122 or other recreational activity supervised by adults and
 123 sponsored by the County, a civic organization, or a
 124 similar entity that takes responsibility for the minor; or

125 (J) exercising First Amendment rights protected by the
 126 United States Constitution.

127 (2) It is not a violation of subsection (c)(3) if the owner or operator
 128 of an establishment promptly notified the Police Department
 129 that a minor was present in the establishment during curfew
 130 hours and refused to leave.

131 (e) **Enforcement procedures.**

132 (1) Before taking any enforcement action under this Section, a
 133 police officer must ask an apparent minor's age and reason for
 134 being in the public place or establishment. The officer must not
 135 issue a citation or make an arrest under this Section unless the

136 officer reasonably believes that:

137 (A) an offense has occurred; and

138 (B) based on any response and other circumstances, no
 139 condition in subsection (d) applies.

140 (2) If a police officer finds that a minor is committing a curfew
 141 offense, the police officer must take the minor to the nearest
 142 available Police facility, substation, or other area designated by
 143 the Police Department, and detain the minor until the minor can
 144 be released to the custody of the minor's parent or an adult
 145 acting in loco parentis.

146 (3) The minor's parent or an adult acting in loco parentis with
 147 respect to the minor must be called to the Police facility,
 148 substation or other designated area to take custody of the minor.
 149 A minor who is released to a person acting in loco parentis with
 150 respect to the minor must not be taken into custody for violation
 151 of this Section while returning home with the person acting in
 152 loco parentis. If no person claims responsibility for the minor,
 153 the police may take the minor to the minor's residence or place
 154 the minor in the custody of the Department of Health and
 155 Human Services, who may release the minor at 5 a.m. the next
 156 morning.

157 (f) **Penalties.**

158 (1) Any parent or any owner or operator of an establishment who
 159 violates this Section has committed a separate offense for each
 160 day, or part of a day, during which the violation is committed,
 161 continued, or permitted. Each offense is a Class A violation.

162 (2) The Court may also require one or more parent of a minor, after

LEGISLATIVE REQUEST REPORT

Bill 25-11

Offenses – Curfew - Minors

- DESCRIPTION:** This bill imposes a curfew on youth under the age of 18 years from Midnight to 5:00 am on Saturday and Sunday and from 11:00 pm to 5:00 am on the remaining days of the week.
- PROBLEM:** This bill is intended to address issues relating to increased gang activity, violence, and crime involving minors in the County.
- GOALS AND OBJECTIVES:** Youth under the age of 18 are particularly susceptible, because of their lack of maturity and experience, to participate in unlawful and gang-related activities and to be the victim of older perpetrators of crime. Enactment of this bill will protect the welfare of minors by: (1) reducing the likelihood that minors will be the victims of criminal acts during curfew hours; (2) reducing the likelihood that minors will become involved in criminal acts or exposed to criminal acts during curfew hours; and (3) aid parents in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care. The bill will also protect the general public from juvenile related criminal activity.
- COORDINATION:** Department of Police, Office of the State's Attorney
- FISCAL IMPACT:**
- ECONOMIC IMPACT:**
- EVALUATION:**
- EXPERIENCE ELSEWHERE:** This bill is similar to laws that currently exist in the District of Columbia and Prince George's County.
- SOURCE OF INFORMATION:** Police Chief Tom Manger
Assistant Chief Administrative Officer Kathleen Boucher, 240-777-2593
- APPLICATION WITHIN MUNICIPALITIES:** All except Gaithersburg, Garrett Park, Kensington, Laytonsville, Poolesville, Rockville, Somerset, Washington Grove
- PENALTIES:** Class A



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

RECEIVED
MONTGOMERY COUNTY
PROBATION

2011 JUL 11 PM 3:43

MEMORANDUM

July 11, 2011

TO: Valerie Ervin, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation Establishing a Curfew for Minors

I am transmitting for Council introduction an expedited bill that creates a curfew for youth under the age of 18 years, as well as a Legislative Request Report for the bill. This bill is similar to curfew laws that already exist in Prince George's County and the District of Columbia.

This bill is intended to address issues relating to increased gang activity, violence, and crime involving minors in the County. It imposes a curfew from Midnight to 5:00 am on Saturday and Sunday and from 11:00 pm to 5:00 am on the remaining days of the week.

Youth under the age of 18 are particularly susceptible, because of their lack of maturity and experience, to participate in unlawful and gang-related activities and to be the victim of older perpetrators of crime. Enactment of this bill will protect the welfare of minors by: (1) reducing the likelihood that minors will be the victims of criminal acts during curfew hours; (2) reducing the likelihood that minors will become involved in criminal acts or exposed to criminal acts during curfew hours; and (3) aid parents in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care. The bill will also protect the general public from juvenile related criminal activity.

I would greatly appreciate Council's expedited review of this bill. If you have any questions about the bill, please contact Assistant Chief Administrative Officer Kathleen Boucher at 240-777-2593 or Kathleen.boucher@montgmoerycountymd.gov.

Attachment

10



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

August 31, 2011

TO: Valerie Ervin
Council President

FROM: Isiah Leggett 
County Executive

SUBJECT: Recommended amendments to Bill 25-11, Offenses – Curfew – Established

I want to thank the Council for introducing Bill 25-11, Offenses – Curfew – Established on my behalf on July 12 and promptly holding a public hearing on the bill on July 26. Based on testimony provided at the public hearing and feedback I have received from the State's Attorney and other County residents, I would like to recommend a number of amendments to clarify the intent of the bill and the manner in which it would be implemented. I am attaching an amended version of the bill that reflects all of my recommended amendments. Each of the amendments is discussed in more detail below.

Legislative Intent

I recommend that language be added to clarify that the intent of the bill is to reduce juvenile violence, juvenile gang activity, and juvenile crime in the County and prevent disturbances of the public peace, in addition to protecting minors from each other and other persons and enforcing parental responsibility for children (see lines 4 and 21-22).

Civil Citation

The bill currently specifies that a curfew violation is a Class A violation but does not specify whether the violation is criminal or civil. This is similar to other existing County Code provisions relating to certain types of offenses, which can be enforced either criminally or civilly. However, based on advice from the State's Attorney, I recommend that the bill be amended to make a curfew violation a Class B civil offense that is punishable by a maximum fine of \$100 for a first offense and \$150 for a second offense (see lines 138-170). If arrest authority is needed in a situation involving a curfew violation, the State's Attorney believes that a police officer could use existing authority granted under §10-201(c)(3) of the Criminal Law Article to arrest an individual who disobeys an order made by a police officer to prevent a disturbance of the public peace.

Penalties

I recommend that the bill be amended to delete language that allows a court to require a parent of a minor who violates the curfew law to complete parenting classes and to order a minor to perform up to 25 hours of community services (see lines 171-176). According to the County Attorney's office, the County does not have authority under State law to authorize courts to impose these types of requirements. However, courts already have authority under State law to impose them in some circumstances (e.g., as conditions of probation before judgment).

Emergency

Under the bill, a minor may not be cited for a curfew violation if the minor is responding to an emergency. I recommend that the definition of "emergency" be clarified by deleting language that could be construed to make the definition internally inconsistent (see lines 39-41).

Parental Responsibility

The bill prohibits a parent from "knowingly" or "by insufficient control" allowing a minor to remain in any public place or establishment during curfew hours. Based on advice from the State's Attorney, I recommend deleting the reference to "insufficient control" because it is too vague (see lines 79-80).

Definition of "Knowingly"

Based on advice from the State's Attorney, I recommend deleting the definition of "knowingly" from the bill because this is a legal term of art that is defined in case law and does not need to be defined in the County Code (see lines 83-89 and lines 92-98).

Affirmative Defenses

The bill includes a broad list of circumstances under which a minor may be in a public place or establishment during curfew hours, including situations when a minor is:

- (1) accompanied by a parent;
- (2) accompanied by an adult authorized by the minor's parent to accompany the minor;

- (3) on an errand at the direction of the minor's parent without any detour or stop, until 12:30 a.m.;
- (4) in a motor vehicle, train, or bus in interstate travel through the County or starting or ending in the County;
- (5) engaging in employment, or going to, or returning home from employment, without any detour or stop (while carrying a valid work permit issued under State law);
- (6) responding to an emergency;
- (7) on the property where the minor resides;
- (8) on a sidewalk that abuts the minor's residence or the residence of a next-door neighbor if the neighbor did not complain to the Police Department about the minor's presence;
- (9) going to, attending, or returning home from an official school, religious, or recreational activity sponsored by the County, a civic organization, or a similar entity that takes responsibility for the minor at the event; or
- (10) exercising First Amendment rights protected by the United States Constitution.

Based on advice from the State's Attorney, I recommend that the bill be amended to clarify that all of the circumstances in this list constitute affirmative defenses to a curfew violation (see lines 100 and 134). I also recommend that this list be expanded to include a minor who is attending or returning home from, without any detour, an event at a place of public entertainment, including a movie, concert, play, or sporting event (see lines 131-133). Finally, I recommend that the requirement to carry a valid work permit referenced in item (5) above be deleted as unnecessarily restrictive because possession of a work permit is only one way for a police officer to confirm that a minor is involved in a work related activity (see lines 111-113).

Thank you for your consideration of these recommended amendments.

- c: Tom Manger, Police Chief
John McCarthy, State's Attorney
Marc Hansen, County Attorney
Kathleen Boucher, ACAO

Expedited Bill No. 25-11
Concerning: Offenses – Curfew –
Established
Revised: 7/11/2011 Draft No. 2
Introduced: July 12, 2011
Expires: January 12, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) establish a curfew for minors;
- (2) make certain findings;
- (3) prohibit certain activities during the curfew;
- (4) provide for certain defenses;
- (5) establish enforcement procedures and penalties; and
- (6) generally amend County law relating to offenses and curfews.

By adding

Montgomery County Code
Chapter 32, Offenses – Victim Advocate
Section 32-23A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec 1. Sections 32-23A is added as follows:**

2 **32-23A. Curfew.**

3 **(a) Findings and Purpose.**

4 (1) [[There has been an increase in]] A curfew for minors will help
5 reduce juvenile violence, juvenile gang activity, and crime by
6 minors in the County.

7 (2) Minors are particularly susceptible, because of their lack of
8 maturity and experience, to participate in unlawful and gang-
9 related activities and to be the victims of crime.

10 (3) The County [[is obligated to]] should provide for:

11 (A) the protection of minors from each other and from other
12 persons;

13 (B) the enforcement of parental control over, and
14 responsibility for, children;

15 (C) the protection of the general public; and

16 (D) the reduction of the incidence of juvenile criminal
17 activities.

18 (4) A curfew for minors is in the interest of the public health,
19 safety, and general welfare and will help to attain these
20 objectives and to diminish the impact of unwanted conduct on
21 County residents, including the prevention of disturbances to
22 the public peace.

23 (5) A curfew law will protect the welfare of minors by:

24 (A) reducing the likelihood that minors will be the victims of
25 criminal acts during the curfew hours;

26 (B) reducing the likelihood that minors will become involved
27 in criminal acts or exposed to trafficking in controlled

28 substances during the curfew hours; and
29 (C) aiding parents in carrying out their responsibility to
30 exercise reasonable supervision of minors entrusted to their
31 care.

32 (b) **Definitions.**

33 In this Section, the following terms have the meanings indicated:

34 Curfew hours means from 11 p.m. on any Sunday, Monday, Tuesday,
35 Wednesday, or Thursday, until 5 a.m. the following day, and from
36 12:01 a.m. until 5 a.m. on any Saturday or Sunday.

37 Drug trafficking means the act of engaging in any prohibited activity
38 related to controlled dangerous substances as defined in State law.

39 Emergency means [[an unforeseen combination of circumstances or
40 the resulting state that calls for immediate action. Emergency
41 includes]] a fire, natural disaster, automobile accident, or any situation
42 that requires immediate action to prevent serious bodily injury or loss
43 of life.

44 Establishment means any privately-owned place of business to which
45 the public is invited, including any place of amusement or
46 entertainment.

47 Minor means any person under 18 years old, but does not include a
48 judicially emancipated minor or a married minor.

49 Operator means any individual, firm, association, partnership, or
50 corporation that operates, manages, or conducts an establishment.

51 Operator includes the members or partners of an association or
52 partnership and the officers of a corporation.

53 Parent means:

54 (1) natural parent;

- 55 (2) adoptive parent;
56 (3) step-parent;
57 (4) any person who has legal custody or is the guardian of a minor
58 by court order or marriage;
59 (5) any person who is at least 21 years old who is authorized by a
60 natural parent, adoptive parent, step-parent, or custodial parent
61 of a child to act as a caretaker for the child; or
62 (6) a public or private agency with whom a minor has been placed
63 by a court.

64 Public place means any place to which the public, or a substantial
65 group of the public, has access. Public place includes any street,
66 highway, and common area of a school, hospital, apartment house,
67 office building, transport facility, or shop.

68 Remain means to linger, stay, or fail to leave a public place or
69 establishment when requested to do so by a police officer or the
70 owner, operator, or other person in control of the public place or
71 establishment.

72 Serious bodily injury means bodily injury that creates a substantial
73 risk of death or that causes death, serious permanent disfigurement, or
74 protracted loss or impairment of the function of any bodily member or
75 organ.

76 (c) **Prohibitions.**

77 (1) **Minor.** A minor must not remain in any public place or
78 establishment in the County during curfew hours.

79 (2) **Parent.** A parent of a minor must not knowingly [[permit, or
80 by insufficient control]] allow, the minor to remain in any
81 public place or any establishment in the County during curfew

82 hours. [[The term “knowingly” includes knowledge that a
 83 parent should reasonably be expected to have concerning the
 84 location of a minor in that parent’s legal custody. This
 85 requirement is intended to hold a neglectful or careless parent to
 86 a reasonable community standard of parental responsibility
 87 through an objective test. It is, therefore, no defense that a
 88 parent did not know of the activities, conduct, or location of the
 89 minor.]]

90 **(3) Owner or Operator.** The owner or operator of an
 91 establishment must not knowingly allow a minor to remain at
 92 an establishment in the County during curfew hours. [[The
 93 term “knowingly” includes knowledge that an owner or
 94 operator should reasonably be expected to have concerning the
 95 patrons of the establishment. The standard for “knowingly”
 96 must be whether a reasonable person in the position of the
 97 owner or operator should have known that the patron was a
 98 minor committing a curfew violation.]]

99 **(d) Affirmative Defenses.**

100 **(1)** It is [[not]] an affirmative defense to a violation of this Section
 101 if a minor during curfew hours was:

102 **(A)** accompanied by the minor’s parent;

103 **(B)** accompanied by an adult authorized by the minor’s
 104 parent to accompany the minor for a specified period of
 105 time and purpose in a specified area;

106 **(C)** on an errand at the direction of the minor’s parent,
 107 without any detour or stop, until 12:30 a.m.;

108 **(D)** in a motor vehicle, train, or bus in interstate travel

- 109 through the County or starting or ending in the County;
 110 (E) engaged in employment, or going to, or returning home
 111 from, employment, without any detour or stop. [[The
 112 minor must carry a valid work permit issued under State
 113 law]];
 114 (F) responding to an emergency;
 115 (G) on the property where the minor resides;
 116 (H) on the sidewalk that abuts the minor's residence, or that
 117 abuts the residence of a next-door neighbor if the
 118 neighbor did not complain to the Police Department
 119 about the minor's presence;
 120 (I) attending or returning home from, without any detour,
 121 an official school, religious, or [[other]] recreational
 122 activity sponsored by the County, a civic organization,
 123 or a similar entity that takes responsibility for the minor
 124 at the event [, or going to, or returning home from,
 125 without any detour or stop, an official school, religious,
 126 or other recreational activity supervised by adults and
 127 sponsored by the County, a civic organization, or a
 128 similar entity that takes responsibility for the minor; or]]
 129 (J) exercising First Amendment rights protected by the
 130 United States Constitution[.]or;
 131 (K) attending or returning home from, without any detour,
 132 an event at a place of public entertainment, including a
 133 movie, concert, play, or sporting event.
 134 (2) It is [[not]] an affirmative defense to a violation of subsection
 135 (c)(3) if the owner or operator of an establishment promptly

136 notified the Police Department that a minor was present in the
 137 establishment during curfew hours and refused to leave.

138 **(e) Enforcement procedures.**

139 (1) Before taking any enforcement action under this Section, a
 140 police officer must ask an apparent minor's age and reason for
 141 being in the public place or establishment. The officer must not
 142 issue a citation [[or make an arrest]] under this Section unless
 143 the officer reasonably believes that:

144 (A) an offense has occurred; and

145 (B) based on any response and other circumstances, no
 146 condition in subsection (d) applies.

147 (2) If a police officer finds that a minor is committing a curfew
 148 offense, the police officer [[must take the minor to the nearest
 149 available Police facility, substation, or other area designated by
 150 the Police Department, and detain the minor until the minor can
 151 be released to the custody of the minor's parent or an adult
 152 acting in loco parentis]] may issue a civil citation and order the
 153 minor to go home promptly.

154 [[3) The minor's parent or an adult acting in loco parentis with
 155 respect to the minor must be called to the Police facility,
 156 substation or other designated area to take custody of the minor.
 157 A minor who is released to a person acting in loco parentis with
 158 respect to the minor must not be taken into custody for violation
 159 of this Section while returning home with the person acting in
 160 loco parentis. If no person claims responsibility for the minor,
 161 the police may take the minor to the minor's residence or place
 162 the minor in the custody of the Department of Health and

163 Human Services, who may release the minor at 5 a.m. the next
164 morning.]]

165 (f) **Penalties.**

166 (1) Any minor, parent, or any owner or operator of an
167 establishment who violates this Section has committed a
168 separate offense for each day, or part of a day, during which the
169 violation is committed, continued, or permitted. Each offense
170 is a Class [[A]] B violation.

171 [(2) The Court may also require one or more parent of a minor, after
172 each conviction for violating this Section to complete parenting
173 classes.

174 (3) A minor found to have violated this Section by the Juvenile
175 Court may be ordered to perform up to 25 hours of community
176 service for each violation.]]

177 **Sec 2. Expedited Effective Date.**

178 The Council declares that this Act is necessary for the immediate protection
179 of the public interest. This Act takes effect on the date when it becomes law.

180 *Approved:*

181

Valerie Ervin, President, County Council Date

182 *Approved:*

183

Isiah Leggett, County Executive Date



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

September 13, 2011

TO: Valerie Ervin, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill 25-11, Offenses - Curfew – Established

This memorandum responds to questions regarding Bill 25-11, Offenses - Curfew – Established that Council staff forwarded to Executive staff on behalf of the Council on July 28, 2011, August 15, 2011 and August 19, 2011, respectively. Thank you for the opportunity to provide this input. I look forward to working with Council as it moves forward with its consideration of this bill.

1. Please explain in detail the justification for imposing this type of measure?

Establishing a limited youth curfew in the County is a proactive step that is intended to help reduce juvenile violence, juvenile gang activity, and juvenile crime in the County, prevent disturbances of the public peace, protect minors from each other and other persons, and support parental responsibility for children.

A youth curfew will help police head off juvenile crimes before they occur, protect minors from being lured into participating in criminal activity or becoming the victim of crimes, and promote parental involvement in a child's upbringing. The youth curfew established by Bill 25-11 is a balanced approach that includes various exemptions for youth who are engaged in necessary and worthwhile activities during curfew hours.

Montgomery County is particularly vulnerable to becoming a place where youth congregate in large numbers late at night because Prince George's County and the District of Columbia already have curfew laws. One recent example of that vulnerability was an incident over the July 4th weekend which involved a large group of about 70 youth who congregated in the Silver Spring Central Business District (CBD). As police sought to gain control of the situation, the large group broke into smaller groups and began moving around the area, avoiding the police but alternatively fighting with each other and ultimately resulting in a serious stabbing. Despite the immediate and high number of responding officers the situation was difficult to control. It was later learned in police interviews that many of the youth had flocked to Silver Spring because of the curfews in Prince George's County and the District of Columbia.

The public safety challenges associated with youth who congregate late at night in public places are not limited to areas of our County that are easily accessible from neighboring jurisdictions or to situations involving youth from other jurisdictions. The recent "mass theft" which occurred in August involving approximately 25 County youth at a 7-Eleven store in Germantown just before 2:00 a.m. is a glaring example of the challenges that exist in various parts of the County.

Police are not able under current law to adequately manage large groups of teens that gather for the purpose of intimidation, violence, or criminal activity. A limited youth curfew law is an important tool to help police officers prevent problems that arise out of these challenging situations. A curfew would help prevent our youth, other residents, and businesses from becoming victims of unlawful behavior close to and during the curfew hours. Preventing problems is easier and less costly than fixing problems after they escalate.

Bill 25-11 would give County police officers the same tool that Prince George's County and District of Columbia police officers have to prevent unlawful behavior and victimization. It would help the County manage the influx of youth coming from those curfew-regulated jurisdictions who engage in criminal activity as well as problems that arise when large groups of our own County youth congregate late at night. It would protect minors from being lured into crime or becoming a victim of crime. A by-product of the curfew law could be assisting parents and guardians who have difficulty getting their teens to adhere to family-established curfews.

2. What data do we have on juvenile crime in the county? Is it trending up? What about crime against juveniles? What data do we have on the time of day that crimes committed by or against juveniles occur?

In recent years the number of juvenile arrests and the number of juvenile arrests as a percent of total arrests have increased in the County. The total number of juvenile arrests increased from 1,548 in 2006 to 2,626 in 2010 (see Attachment A). During that same time, the total number of adult arrests declined. As a result, juvenile arrests as a percent of total arrests increased from 12% in 2006 to 21% in 2010 (see Attachment A).

Between 2009 and 2010, the total number of juvenile arrests increased by 730. As shown in the table below, that increase is due in large part to the increase in the number of juveniles arrested for larceny, assault, and controlled dangerous substance (CDS) offenses.

	2009	2010	Change
Larceny	438	691	57.8%
Assault	143	293	104%
CDS	440	594	35%

The number of adult arrests during curfew hours remained fairly steady in 2009, 2010, and 2011, with a slight decrease from 2,046 to 1,972 between 2009 and 2010. See **Attachment B**. Regardless of that decrease, these numbers indicate that there is significant adult criminal activity during curfew hours which poses a risk to the safety of minors who may become victims or be lured into participating in criminal activity. Juvenile arrests during curfew hours decreased somewhat from 774 to 646 between 2009 and 2010 but are still at unacceptably high levels. See **Attachment B**.

With one caveat, **Attachment B** shows the number of arrests (adult and juvenile) for all crimes that were made during the proposed curfew hours in 2009, 2010, and the first seven months of 2011. In the aggregate, there were 5,139 adult arrests and 1,766 juvenile arrests made between January 2009 and July 2011 during the 6-hour period between 11:00 p.m. and 5:00 a.m.

The one caveat relates to available data for juvenile arrests as captured in the Juvenile Justice Information System (JJIS). The actual time of arrest is not captured in JJIS, only the "start time" of the crime. Typically, for crimes such as robbery or assault, the nature of the crime allows for collection of better data regarding the exact time of the crime. Arrests for "crimes against a person" are more contemporaneous with the occurrence of the crimes so the "arrest time" is more likely to be accurately related to the "start time" for the crimes. However, for a crime such as burglary or theft, the exact time of the occurrence is not known and a suspect typically is not seen. For these types of crimes, if an arrest is made at any time, the "arrest time" is shown as the "start time" for the event. For example, if a report shows that a burglary occurred between 8:00 a.m. and 5:00 p.m. and the juvenile was arrested at midnight, the arrest would not be reflected in **Attachment B**. On the other hand, if a burglary or theft occurred at midnight and the juvenile was arrested at 8:00 a.m., the arrest would be reflected in **Attachment B**.

Attachment C provides a strict "apples to apples" comparison of available data by showing the number of arrests (adult and juvenile) for all crimes except burglary and theft that were made during the proposed curfew hours in 2009, 2010, and the seven months of 2011. In the aggregate, there were 4,609 adult arrests and 1,515 juvenile arrests made between January 2009 and the first seven months of 2011 during the 6-hour period between 11:00 p.m. and 5:00 a.m.

In addition to adult and juvenile arrests that occur during curfew hours, police officers receive thousands of calls for service each year during the proposed curfew hours that result in written reports of crime for which no arrest is made or for which criminal or civil citations are issued without an arrest. **Attachment D** shows data relating to calls for service in 2009, 2010, and first seven months of 2011 between 11:00 p.m. and 5:00 p.m.

Valerie Ervin, Council President

September 13, 2011

Page 4

In terms of data relating to juveniles who are victims of crime, the table below shows that for 2008, 2009, and 2010, juveniles accounted for approximately 4% of all victims who reported incidents of crime in the County.

	All Victims	Juv. Victims	% Juv. Victims
2008	58,992	2,475	4.2%
2009	55,292	2,075	3.8%
2010	49,537	2,009	4.1%

This table is based on CJIS incident data for all reported events with an event classification of less than 2900 (and excludes reported incidents that were later determined to be unfounded). For a list of event classification codes, see **Attachment H**.

The following table shows the number of reported robbery incidents with a juvenile victim that occurred between 11:00 p.m. and 5:00 a.m. during 2008, 2009, and 2010:

	2008	2009	2010
Robbery incidents with a juvenile victim occurring between 11:00 p.m. and 5:00 am	35	32	32

This table reflects the number of robbery incidents with at least one juvenile victim. It does not reflect the actual number of juvenile victims of robbery incidents because an incident could have more than one victim.

The following table shows the number of assault incidents with a juvenile victim that occurred between 11:00 p.m. and 5:00 a.m. in 2008, 2009 and 2010.

	2008	2009	2010
Assault incidents with a juvenile victim occurring between 11:00 p.m. and 5:00 am	100	71	97

This table reflects the number of assault incidents with at least one juvenile victim. It does not reflect the actual number of juvenile victims of assault incidents because an incident could have more than one victim.

3. What alternative strategies exist to combat the issues the bill is designed to address? Have other alternatives been tried? What was the result?

Nothing other than a youth curfew law will eliminate the vulnerability that exists for Montgomery County because Prince George's County and the District of Columbia have curfew laws that incentivize youth to congregate in Montgomery County late at night. Nothing other than a youth curfew law gives police officers the authority to require youth who are congregating late at night in large groups to go home. However, a youth curfew is only one tool for addressing challenges relating to juvenile crime and victimization. It is not a panacea.

It is incumbent upon the County to take all reasonable steps to reduce the personal, social, and economic costs associated with criminal activity. A youth curfew is not a substitute for vigorous and creative law enforcement activities and positive youth development programs. However, it is a widely accepted and cost effective tool for helping to reduce juvenile crime and protect juveniles from becoming the victims of crime.

The County is involved in numerous efforts to support positive youth development and to serve youth along the continuum of prevention, intervention, and suppression. The Police Department, Department of Health and Human Services (DHHS), Recreation Department, State's Attorney's Office, Montgomery County Public Schools (MCPS), and Department of Corrections and Rehabilitation all have a role in these efforts. Although significant budget constraints in recent years have restricted important components of many County programs relating to positive youth development, my goal is to return to more vigorous programs as soon as possible.

In recent years, Executive staff participated in various Council briefings on the County's efforts to support positive youth development, including the: (1) November 10, 2009 full Council briefing on programs and activities aimed at decreasing incidents of juvenile crime, increasing student performance, and creating a better environment for County youth; (2) June 24, 2010 joint briefing of the Public Safety and Health and Human Services Committees on coordination of prevention, intervention, and suppression efforts for individuals who are or have been gang-involved; and (3) October 21, 2010 joint briefing of the Public Safety and Health and Human Services Committees on coordination of gang prevention activities, including strategies and services provided to youth and their families to prevent gang involvement at all levels. For further information relating to the programs and activities discussed at these meetings, see the following Council staff packets:

November 10, 2009 – Council Briefing
http://www.montgomerycountymd.gov/content/council/pdf/agenda/col/2009/091110/20091110_10.pdf

Valerie Ervin, Council President
September 13, 2011
Page 6

June 24, 2010 – PS/HHS Committee Meeting
http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2010/100624/20100624_PSHHS1.pdf

October 21, 2010 – PS/HHS Committee Meeting
http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2010/101021/20101021_HHSPS1.pdf

The Police Department uses a variety of crime prevention, intervention, and suppression strategies throughout the County. These strategies are targeted to the challenges and needs that exist in particular areas of the County. The Police Department's resources have been constrained by our fiscal challenges in recent years but I am committed to implementing the Police Department Staffing Plan developed several years ago as soon as fiscal conditions allow. That plan calls for a phased-in increase in the total number of police officers from a previous low of 1,100 to a high of 1,350. Although budget difficulties have precluded the County from attaining that goal over the recommended five-year period, the County now has approximately 1,150 police officers and I am committed to reaching the goal of 1,350 police officers as soon as possible. This would allow the County to reinvigorate important programs relating to our youth, including our community liaison officers and school resource officers.

DHHS has taken a leadership role in three programs that are particularly relevant here: (1) the Countywide Youth Violence Prevention Coordinator (YVPC) Strategy; (2) the Central Business District (CBD) Intervention Strategy; and (3) the Regional Intervention Strategy.

The YVPC Strategy includes a Street Outreach Network (SON) comprised of 4 full-time staff that have engaged a total of 380 gang-involved youth in the past two years. The SON staff have targeted hot spot communities like Maple Avenue, Bel Pre, Briggs Chaney, Lockwood, White Oak, Downtown Silver Spring, Wheaton, Rockville, Gaithersburg, Montgomery Village, Germantown, and Damascus. These strategies include weekly projects that engage youth in positive, life affirming activities such as:

- DJ/Life Skills Program which serves 40 youth per week;
- Boxing/Life Skills Program that serves about 20 youth per week;
- Graffiti alternative/Life Skills Program which serves about 15 youth per week;
- Young Women's Support and Empowerment Group which serves about 20 youth per week; and
- Soccer/Team building/Life Skills Program that serves about 30 youth per week.

Valerie Ervin, Council President
September 13, 2011
Page 7

In addition, SON staff maintains daily engagement in County schools, malls, recreation centers, libraries, youth programs, homes and neighborhood of gang-involved youth. Finally, one part-time grant-funded SON staff member provides 2 weekly job training and readiness sessions to 20 youth. This initiative began in March of this year under ARRA grant funds. Currently eight youth have been successfully hired and continue to maintain employment.

The YVPC continues to educate youth and parents about the consequences of gang activity throughout the County. This work is done in partnership with a detective from the County Gang Unit. In addition, the YVPC continues to work with many community partners and community associations in order to build their capacity to address gang and youth violence throughout the County. The YVPC has provided workshops and trainings to over 200 parents in MCPS on accessing intervention services in the County. The YVPC has provided workshops on the consequences of gang life and bad choices to over 100 youth in MCPS.

As a result of a couple of high profile incidents that occurred last summer in the Silver Spring CBD, the YVPC along with SON staff were engaged by you to be a part of a multi-agency response team to address these incidents. A CBD Intervention Strategy was initiated which included SON staff doing targeted engagement of youth from Maple Avenue Crew, Hampshire Towers (HT), and 38 Mob from Briggs Chaney. The SON also sought to implement community-based intervention projects in Takoma Park and the Briggs Chaney Community; however, SON staff faced logistical issues that made it extremely difficult to maintain those efforts consistently. In addition, the Crossroads Youth Opportunity Center (CYOC) focused on serving youth from these communities as well. Last year prior to the high profile incidents which led to development of the CBD Intervention Strategy, the CYOC served about 8 youth from these communities. SON staff now serve 44 youth from these communities. Through these efforts the ongoing disputes between these communities de-escalated.

In addition to the CBD Intervention Strategy, HHS developed a Regional Intervention Strategy which calls for the YVPC to meet on a quarterly basis with counterparts from Prince George's, the District of Columbia, and Northern Virginia in order to discuss regional activity by these particular groups. In addition, there was a proposal to have street workers meet on a quarterly basis to share information and develop strategies to address the regional nature of this activity. Due to the many budgetary challenges faced by all of the partner jurisdictions, this effort became logistically difficult to maintain, although the coordinators from each jurisdiction continue to meet on a quarterly basis. As a result of increased conflict between Montgomery County youth and District of Columbia youth, the SON and District of Columbia intervention workers will be meeting bi-weekly starting this fall to develop a regional strategy for engaging youth and reducing conflicts among the various groups.

The Department of Recreation has carried out successful evening programs targeted to adolescent youth for a number of years. Programs targeted to at-risk adolescent youth have included battle of the bands, dances, hosting post-prom parties, midnight basketball, midnight soccer, late movies, pool parties, and more. These events have been credited by law enforcement personnel, youth advocates, and youth themselves for providing positive and supervised activities that have led to a reduction in juvenile delinquency.

At the height of its budget, the Department of Recreation had dedicated staffing who were charged with administering a wide variety of teen programming which included weekend and evening activities every month throughout the County. However, as a result of the budget challenges over the last four years and reductions to the Department's budget, these programs and staffing have been significantly scaled back. The program budget for after-hour events in FY12 was cut completely. These programs are well regarded deterrents to juvenile delinquency and I support the reestablishment of these efforts with appropriate resources as the County's fiscal situation improves. In the meantime, the Department is leveraging some existing resources to carry out an evening indoor league during the winter months and has established a Youth Café model in partnership with Councilmember Navarro and DHHS.

4. **How will the law be enforced when a movie or show at the Fillmore lets out late (near or after curfew hour). Are minors allowed to walk home? Are they allowed to walk to the Metro to get home? Are the Police really only looking to use this when a group is hanging out rather than moving along?**

I submitted recommended amendments to Bill 25-11 to the Council on August 31, 2011. See **Attachment G**. Those amendments included a recommendation to expand the list of exemptions to the curfew to include a minor who is attending or returning home from, without any detour, an event at a place of public entertainment, including a movie, concert, play, or sporting event. Under this amendment, if a movie or show at the Fillmore lets out close to or after the start of the curfew, youth will be allowed to walk directly home or to the Metro to go home.

Under Bill 25-11, a police officer may issue a citation for a curfew violation only after (1) the officer determines that an individual is under the age of 18 and not engaged in activities that are exempt from the curfew, and (2) the juvenile refuses to go home after being asked to do so. In situations where an officer finds a need to enforce the curfew violation, the officer would try to ascertain what the juvenile is doing. If the juvenile can explain his or her presence and is either eligible for a curfew exemption or on the way home, the officer would be expected allow the juvenile to go on his or her way.

5. **Related to question #4, should there be an exception for movies, concerts, and other entertainment activities?**

See answer to Question 4.

The County does not have authority to require a municipality to adopt a curfew law. However, if Bill 25-11 is enacted, it would apply by default in some municipalities unless they pass laws rejecting it. According to the County Attorney, Bill 25-11 would apply by default in all municipalities except Gaithersburg, Garrett Park, Kensington, Laytonsville, Poolesville, Rockville, Somerset, and Washington Grove. These eight municipalities could pass laws to make Bill 25-11 applicable in their jurisdictions. Likewise, any municipality to which Bill 25-11 would apply by default could pass a law to reject it.

6. **If the law as proposed requires a minor to be charged with a criminal offense, should the County seek State legislation to make violation of a curfew by a minor an offense that remains a juvenile matter rather than creating a permanent arrest record?**

The bill currently specifies that a curfew violation is a Class A violation but does not specify whether the violation is criminal or civil. This is similar to other existing County Code provisions relating to certain types of offenses, which can be enforced either criminally or civilly. However, based on advice from the State's Attorney, I have recommended that the bill be amended to make a curfew violation a Class B civil offense that is punishable by a maximum fine of \$100 for a first offense and \$150 for a second offense. **See Attachment G.** If arrest authority is needed in a situation involving a curfew violation, the State's Attorney believes that a police officer could use existing authority granted under §10-201(c)(3) of the Criminal Law Article to arrest an individual who disobeys an order made by a police officer to prevent a disturbance of the public peace.

7. **The bill allows the Police to place a minor who has violated curfew in the custody of the Department of Health and Human Services, who can release the minor at 5:00 a.m. the next morning. Is this feasible? How would this work? Where would HHS keep them?**

According to the County Attorney, the County does not have authority under State law to take a juvenile into custody for a curfew violation unless, the violation is a criminal offense and the police officer is using arrest authority. As discussed in my answer to Question 7, I have recommended that the bill be amended to make a curfew violation a civil offense. That amendment includes deletion of any language in Bill 25-11 that relates to placing a juvenile in the custody of DHHS.

**8. Have curfews been effective in other jurisdictions that have adopted them?
What has been the effect in Prince George's County and the District of
Columbia?**

Many cities have adopted youth curfew laws. Attachment E shows the results of a 1997 survey of 347 cities with a population over 30,000 conducted by the U.S. Conference of Mayors. Four out of five cities in that survey (276) had a nighttime curfew. Of those cities:

- 90% (247 cities) said that enforcing a nighttime curfew is a good use of a police officer's time;
- 93% (257 cities) said that a nighttime curfew is a useful tool for police officers; and
- 88% (236 cities) said that nighttime curfew enforcement helps to make streets safer for residents.

The survey included comments from numerous city officials which reflected a belief that a curfew is a proactive way to combat youth violence, involve parents, deter future crime, prevent "gathering" (which also meant fewer calls for service to the police), keep the "good" kids good and the at-risk kids from becoming victims or victimizers, reduce late-night traffic, make residents feel safer, make it easier to find runaways, make it harder for criminals to hide from the police during curfew hours because there are fewer people with which to blend in, reduce graffiti and vandalism, and reduce opportunities for gang recruitment and gang activities.

In 2000, the Regional Community Policing Institute at Wichita State University conducted a survey of 446 police departments serving populations of at least 15,000. See <http://webs.wichita.edu/depttools/depttoolsmemberfiles/rcpi/Policy%20Papers/Curfew%20Research.pdf>. This report concluded that "[t]he data strongly support the belief among respondents that curfews were an effective tool for reducing various crimes." Most noteworthy, according to the report, was that 93.5% of respondents agreed that curfews had an effect on reducing vandalism, 89.1% agreed they had reduced graffiti, 85.7% agreed curfews contributed to the reduction of gang activity, 84.7% agreed that curfews reduced rates of nighttime burglary, and 81.1% agreed that curfew enforcement had reduced auto theft.

Numerous jurisdictions have reported success after implementing curfew laws. Dallas and New Orleans provide two examples of such self-reporting. The Dallas Police Department reported that three months after the enactment of a curfew law juvenile victimization during curfew hours declined by 17.7% and juvenile arrests during curfew hours dropped by 14.6%. New Orleans reported that a dusk-to-dawn curfew enacted in that city was influential in decreasing the incidents of juvenile arrests by 27% in the year after its adoption.

Valerie Ervin, Council President
September 13, 2011
Page 11

The study available through the following link provides an example of research that supports the effectiveness of curfew laws:

http://www.econ.berkeley.edu/~pkline/papers/curfews_resubmit.pdf. *The Impact of Juvenile Curfew Laws on Arrests of Youth and Adults* (August 2011), Patrick Kline, UC Berkeley/NBER.

This study reviewed data from 54 cities with curfew laws and concluded that: "Overall, curfews appear to have important effects on the criminal behavior of youth. The arrest data suggest that being subject to a curfew reduces the number of violent and property crimes committed by juveniles below the curfew age by approximately 10% in the year after enactment, with the effects intensifying substantially in subsequent years for violent crimes."

However, it is important to note that the scientific and statistical research on the effectiveness of curfew laws is mixed and studies can be found to support both sides of the issue. Numerous stakeholders and academics have noted that there has been no comprehensive statistically valid study regarding the effectiveness of curfew laws. Such a study would be extremely difficult to conduct, time consuming, and expensive because it would have to account for all of the different variables relating to: (1) demographics of particular jurisdictions (population size, income, employment rates, age distribution, etc.); (2) differences in the curfew laws in various jurisdictions (curfew hours, age of individuals subject to the curfew, exceptions, etc.); and (3) crime rates in any given jurisdiction (laws in place in neighboring jurisdictions, other law enforcement initiatives, etc.). In considering the existence of studies on both sides of the issue, one court noted that this reality "simply illustrates that proving broad sociological propositions by statistics is a dubious business." See *Schleifer et. al. v. City of Charlottesville*, 159 F.3d 843, 849 (4th Cir. 1998). In this regard, it is important to note that courts do not require legislative bodies to have scientific or statistical "proof" before acting on a policy decision. Legislative bodies may act on the basis of information from many sources, including (but not limited to) local crime data, surveys of public opinion, news reports, national crime data, and experience in other jurisdictions.

With regard to Prince George's County, a 2003 study showed that arrests of curfew-age youth decreased after the curfew was implemented but concluded that it could not prove with certainty that the curfew was the cause of the decrease in juvenile arrests. For a copy of that study, see following link: <https://www.ncjrs.gov/pdffiles1/nij/grants/200520.pdf>. With regard to the District of Columbia, Police Chief Cathy Lanier advised me that the District experienced a 50% reduction in juvenile victims of violent crime in public spaces and a 43% reduction in juveniles arrested during curfew hours after the District imposed a 10:00 p.m. curfew during a 2006 crime emergency. Although a number of public safety initiatives were launched during that emergency, the decreases in juvenile victims and juvenile arrests during the curfew were significantly higher than the decreases during non-curfew hours. During non-

Valerie Ervin, Council President
September 13, 2011
Page 12

curfew hours, the District experienced only a 3% reduction in juvenile arrests and a 5% reduction in juvenile victims of violent crime in public spaces.

On a related note, Chief Lanier and Prince George's County Police Chief Mark Magaw both personally advised me last week that their respective curfew laws are very important law enforcement tools in their respective jurisdictions.

- 10. One option could be to limit the curfew to certain parts of the County. Is this a feasible option? If so, which portions of the County would you apply the curfew?**

I believe that the curfew law should apply Countywide. A curfew that applies in only certain parts of the County would simply incentivize some youth to congregate in the parts of the County that do not have a curfew. The problem would shift across the street, just outside the CBD, or to other parts of the County.

Crimes committed by or against juveniles occur throughout the County and are not concentrated in one or two police districts or locations. The County estimates that approximately 1300 gang members currently reside in the County and gang-related crime can occur anywhere. The County, its businesses and residents have made enormous investments of time, money and effort to create vibrant, culturally rich and interesting venues to which all are welcome. However, the violence that occurred in Silver Spring over the July 4th weekend, the mass theft that occurred in Germantown in August, and other types of criminal activity and victimization can occur anywhere.

- 11. What is the estimated fiscal impact of Bill 25-11?**

Bill 25-11 would have no fiscal impact on the County. See **Attachment F** for the Fiscal and Economic Impact Statement prepared by the Office of Management and Budget for this bill.

- 12. What is the estimated economic impact of Bill 25-11?**

It is not expected that Bill 25-11 will have an economic impact on private businesses in the County. See **Attachment F** for the Fiscal and Economic Impact Statement prepared by the Office of Management and Budget for this bill.

13. **To our knowledge, there are 2 court cases about curfews that are particularly on point: *Schleifer v. Charlottesville* (4th circuit) and *Ashton v. Brown* (Maryland Ct of Appeals). How does Bill 25-11 match up with the criteria in those cases?**

Bill 25-11 is similar to the curfew law upheld by the Fourth Circuit in *Schleifer v. Charlottesville*, 159 F.3d 843 (4th Cir. 1998). In that case, the Fourth Circuit upheld a Charlottesville curfew law that provided exceptions for activities where minors were accompanied by a parent, in supervised activities, in interstate travel, on property abutting parents' residence, emergencies, and when exercising their First Amendment rights. The court held that minors' rights were not coextensive with that of adults. It also held that parents did not have an unqualified right to raise their children that could trump every government regulation. The law was reasonably related to the important governmental interests of preventing crime, protecting juveniles, and strengthening parental responsibility. It was reasonable to apply the restrictions to minors. The ordinance was not void for vagueness because it fairly provided minimal guidelines to govern enforcement and gave reasonable notice of the proscribed conduct.

Bill 25-11 is also similar to the District of Columbia curfew law that was upheld in *Hutchins v. District of Columbia*, 188 F.3d 531 (D.C. Cir. 1999) (*en banc*).

Bill 25-11 does not suffer from the infirmity that doomed the Frederick City curfew law in *Ashton v. Brown*, 339 Md. 70 (1995). In that case, the Maryland Court of Appeals struck down a Frederick City curfew law that contained an exception for "a child attending a cultural, scholastic, athletic, or recreational activity supervised by a bona fide organization." The court found that the term "bona fide organization" was unconstitutionally vague. Bill 25-11 does not include a similarly vague exception. It contains an exception for a minor who is "in attendance at an official school, religious, or other recreational activity sponsored by the County, a civic organization, or another similar entity that takes responsibility for the minor" or who is "returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the County, a civic organization, or another similar entity that takes responsibility for the minor."

14. **Do you have any suggested amendments to the Bill?**

As mentioned previously in my answers to Questions 4, 5, 7, and 8, I submitted recommended amendments to Council on August 31, 2011. See **Attachment G**.

15. Please specify exactly how this law will be enforced? Will it be based on age or behavior, or both?

Enforcement will be based on age, behavior, and any other factors in the totality of circumstances that lead a police officer to develop a reasonable belief that an individual is under 18 and not exempt from the curfew. When an officer is on patrol and sees someone who appears to be under age, the officer can ask that person his or her age. If the individual indicates that he or she is a minor or the officer is able to form a reasonable belief that he or she is a minor based on other factors (e.g., statements of witnesses, appearance, etc.), the officer will order that person to go home. If the individual does not go home after being asked to do so, the officer may issue a civil citation. If the individual still refuses to go home after being issued a civil citation, the officer may arrest the individual for failure to obey a lawful order of a police officer made to prevent a disturbance of the public peace.

I firmly believe that the vast majority of youth under the age of 18 in the County would comply with a curfew law. This would have a positive impact on our community in all of the ways that were referenced by city officials in the U.S. Conference of Mayors survey discussed above. As reflected in that survey, it would reduce the number of youth gatherings which lead to calls for service to the police, keep the "good" kids good and the at-risk kids from becoming victims or victimizers, reduce late-night traffic, make residents feel safer, make it easier to find runaways, make it harder for criminals to hide from the police during curfew hours because there are fewer people with which to blend in, reduce graffiti and vandalism, and reduce opportunities for gang recruitment and gang activities.

16. Please provide detail on the process you will undergo once you remove a child from the street. Does HHS take over at some point? If so, what costs are involved? Is it feasible to require the Police take a minor in violation of curfew to the Police Station?

See responses to Questions 6 and 7.

I have recommended that the bill be amended to make a curfew violation a civil offense. See Attachment G. Since the County does not have authority to take an individual into custody for a civil offense, I have also recommended deletion of the language that relates to placing a juvenile in the custody of DHHS.

17. Will this law push juvenile crime to earlier hours?

We have no conclusive evidence that this will occur.

18. How will you verify the exception "running errands?" Will you need to contact a parent/guardian? What if you cannot?

Verification of the errand exception will be situational. If a minor says "I'm going to the drug store for my Mom" and the child is loitering on a street corner nowhere near a drug store, the officer would likely have reasonable cause to order the minor to go home and, if the minor does not do so, to issue a civil citation. Parents can also be called to verify whether a minor is running an errand.

19. Please clarify what it means to "remain" on the premises? Is the violation the act of being out past curfew, or is the violation the act of remaining once asked to leave by police?

A minor violates the curfew law by remaining during curfew hours in a public place or private establishment to which the public is invited after being asked to go home. The term "remain" is defined in the bill to mean "to linger, stay, or fail to leave a public place or establishment when requested to do so by a police officer or the owner, operator, or other person in control of the public place or establishment."

20. Please explain steps you will take to ensure that this law would not encourage racial profiling.

This question seems to assume that Bill 25-11 encourages racial profiling or that our Police Department would engage in racial profiling if Bill 25-11 is enacted. There is no evidence to support either of these assumptions. Our Police Department has not historically had a problem with racial profiling. There is no reason to believe that the enactment of a youth curfew law will prompt members of the Police Department to engage in this unlawful practice in the future.

In fact, a curfew law would lend itself to profiling strictly by age. Remember, profiling, in and of itself, is not illegal. Police officers criminally profile people everyday based on their behavior and the totality of the circumstances of their actions (e.g., when, where, and how things are happening). Proper training of police officers is the key to avoiding unlawful profiling. At recruit training and during in-service training each year, we provide our officers with a foundation which allows them to understand when they can stop someone, when they can compel someone to identify themselves, and when they can arrest someone. Strong policies are in place which prohibit the use of race, gender, ethnicity, or religion as a reason to stop, search or arrest someone.

The County goes to great lengths to hire the right people to be police officers. We test for many personality and character traits and eliminate anyone for employment that demonstrates any identifiable bias that would indicate a propensity for abusing law enforcement authority or otherwise harming the public interest. I have confidence in our hiring process and the integrity and character of our police officers. To insinuate that a youth curfew law, or any other law, would lead these same police officers to suddenly engage in unlawful racial or ethnic profiling is unfair to our employees and without basis in fact.

The Police Department intends to develop guidelines governing enforcement of the curfew law to assist in training police officers and ensuring fair and consistent enforcement throughout the County. The County will continue to seek to hire the right people, train them well, set high standards, investigate complaints of misconduct with due diligence, and if warranted, punish those who do not live up to required standards.

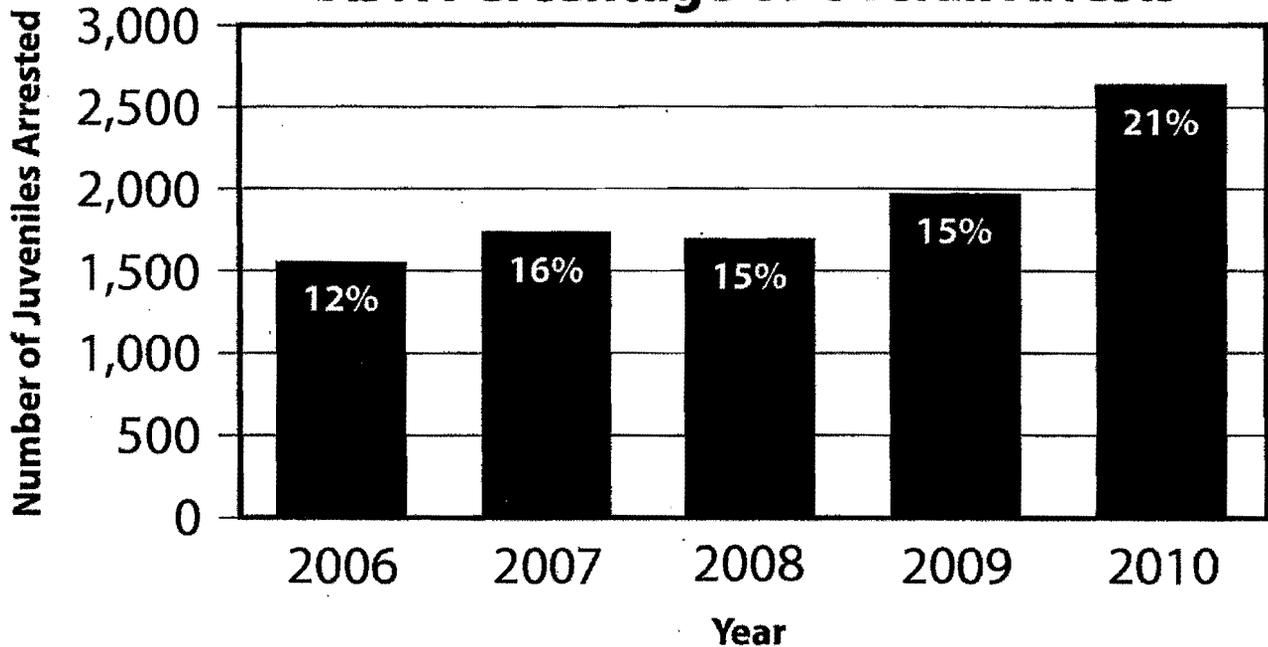
21. **It is my understanding that the curfew proposal allows for discretion in enforcement. In other words, the police department does not intend to enforce a ban on all minors being out in public, but rather intends to enforce the curfew selectively in response to problematic situations. First, can the executive branch please spell out this intent more clearly? Second, can the executive branch discuss any constitutional issues that arise, and how they are resolved, from laws that are intended to be enforced in this manner. Related to the second question, can the executive branch propose any safeguards that could accompany the curfew to monitor whether it is being enforced in a fair manner, for example using related examples around racial profiling – gathering of information about stops, reports, etc.**

Every criminal law reposes some discretion in those who must enforce it. The Police Department intends to develop guidelines governing the exercise of discretion in the context of enforcing the curfew law to assist in training police officers and ensuring fair and consistent enforcement throughout the County. Bill 25-11 and my recommended amendments to the bill were written in consultation with the County Attorney to avoid any constitutional issues. As discussed above in the response to Question 13, Bill 25-11 is similar to other curfew laws that have been upheld by the courts. I am open to exploring any amendments that Council believes are necessary to ensure that Bill 25-11 is enforced in a fair and objective manner, including a requirement to collect and report relevant data.

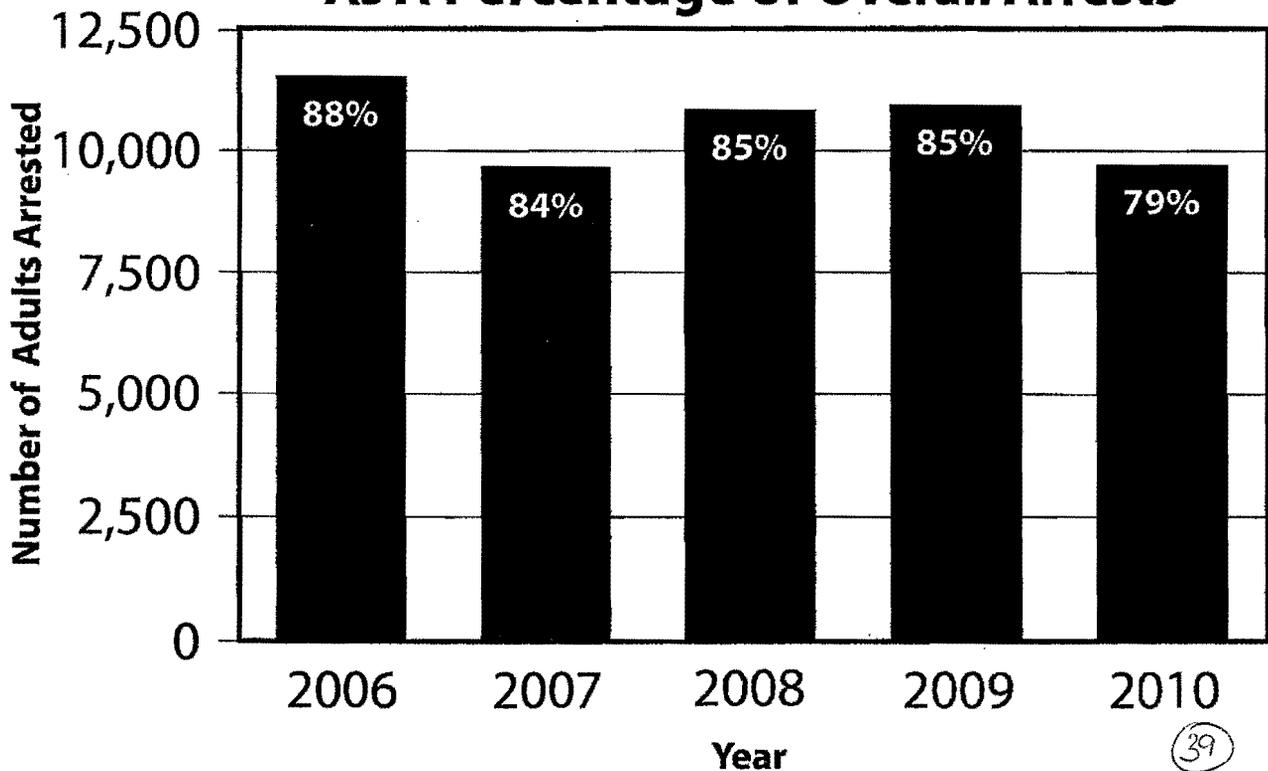
Valerie Ervin, Council President
September 13, 2011
Page 17

c: Timothy Firestine, Chief Administrative Officer
Uma Ahluwalia, Director, Department of Health and Human Services
Gabe Albornoz, Director, Department of Recreation
Kathleen Boucher, Assistant Chief Administrative Officer
Marc Hansen, County Attorney
Tom Manger, Chief of Police
Amanda Mihill, Legislative Attorney

Juvenile Criminal Arrests 2006-2010 As A Percentage of Overall Arrests

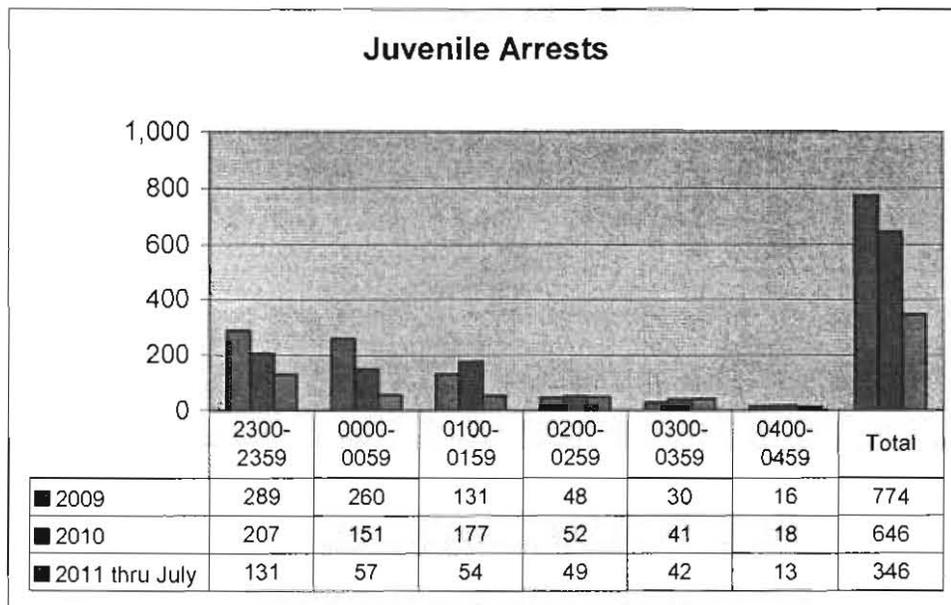
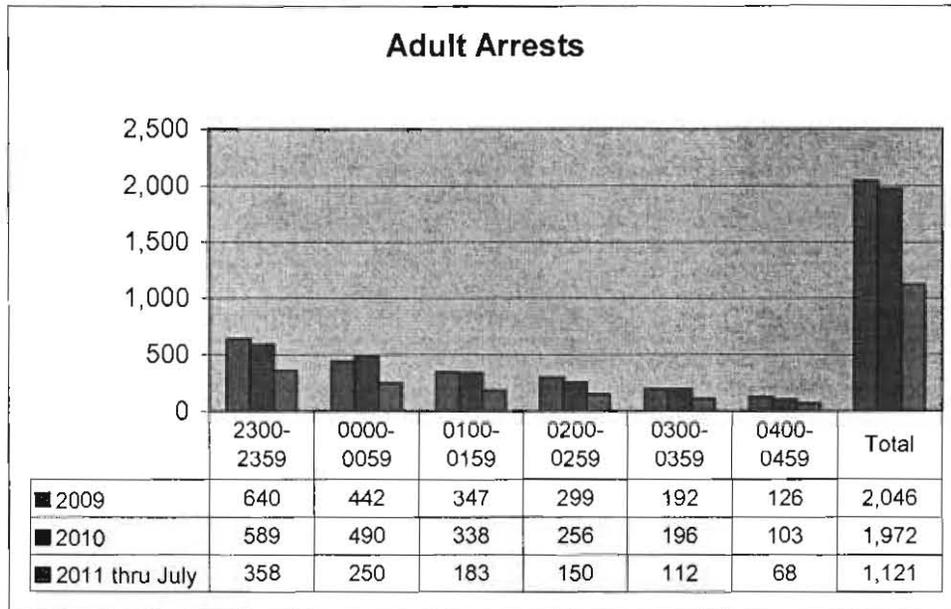


Adult Criminal Arrests 2006-2010 As A Percentage of Overall Arrests

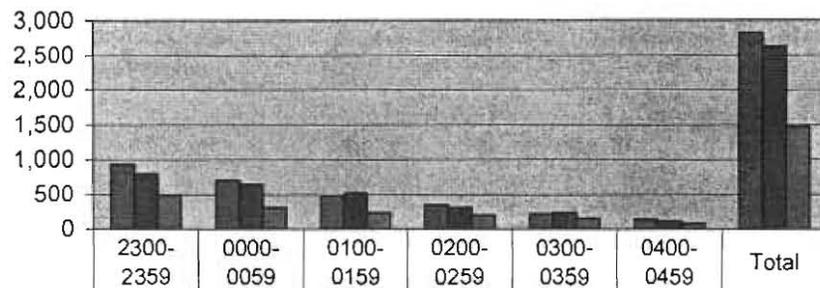


ATTACHMENT B

ADULT AND JUVENILE ARRESTS: 11:00 PM TO 5:00 AM

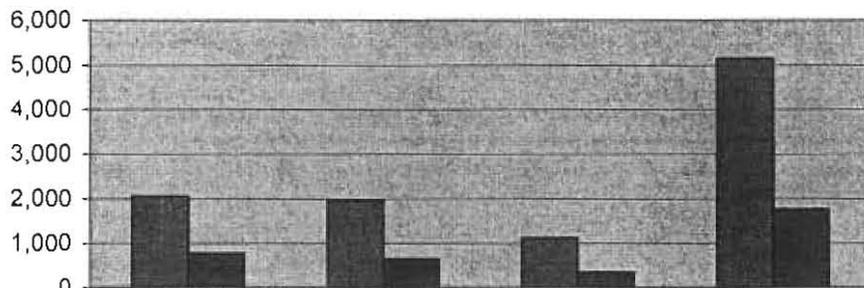


All Arrests



2009	929	702	478	347	222	142	2,820
2010	796	641	515	308	237	121	2,618
2011 thru July	489	307	237	199	154	81	1,467

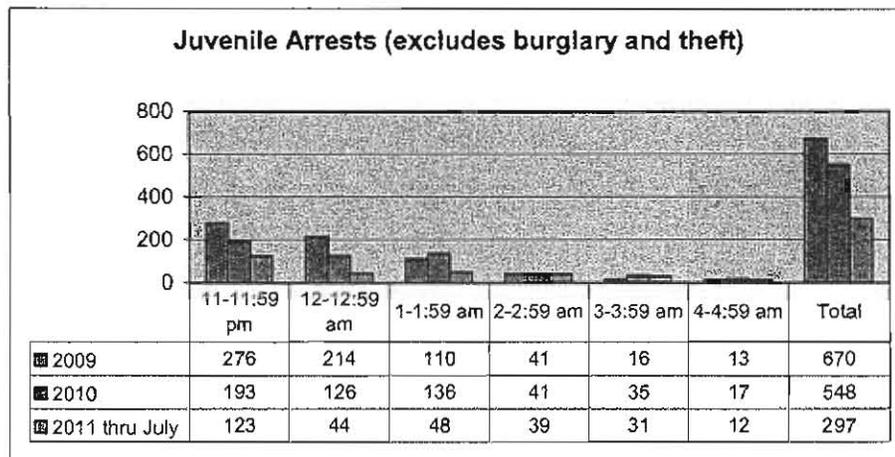
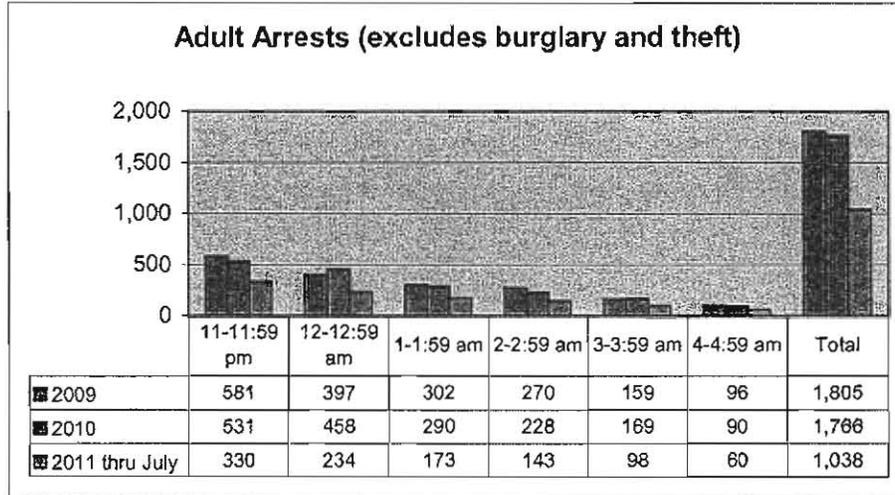
Adult Arrests vs. Juvenile, 2300-0459 hours



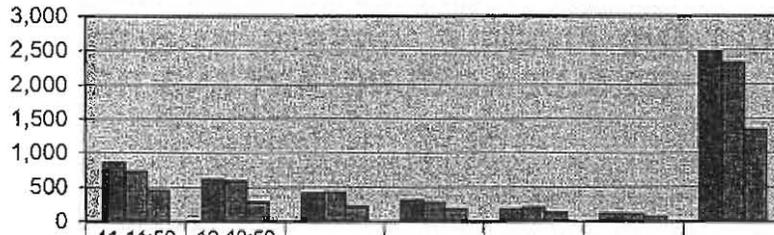
	2009	2010	2011 thru July	Total
Adult	2,046	1,972	1,121	5,139
Juvenile	774	646	346	1,766

ATTACHMENT C

ADULT AND JUVENILE ARRESTS: 11:00 PM TO 5:00 AM (EXCLUDING BURGLARY AND THEFT)



All Arrests (excludes burglary and theft)

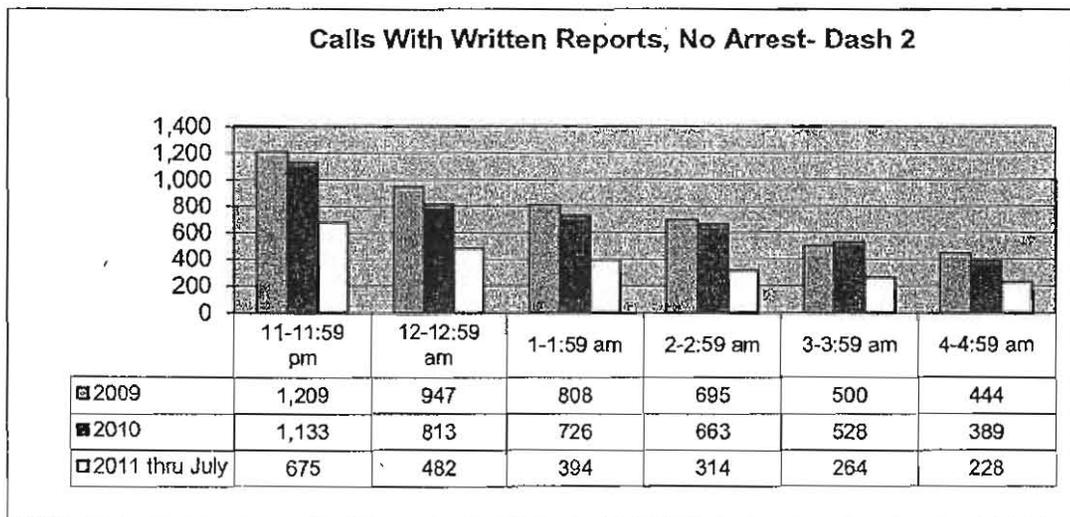
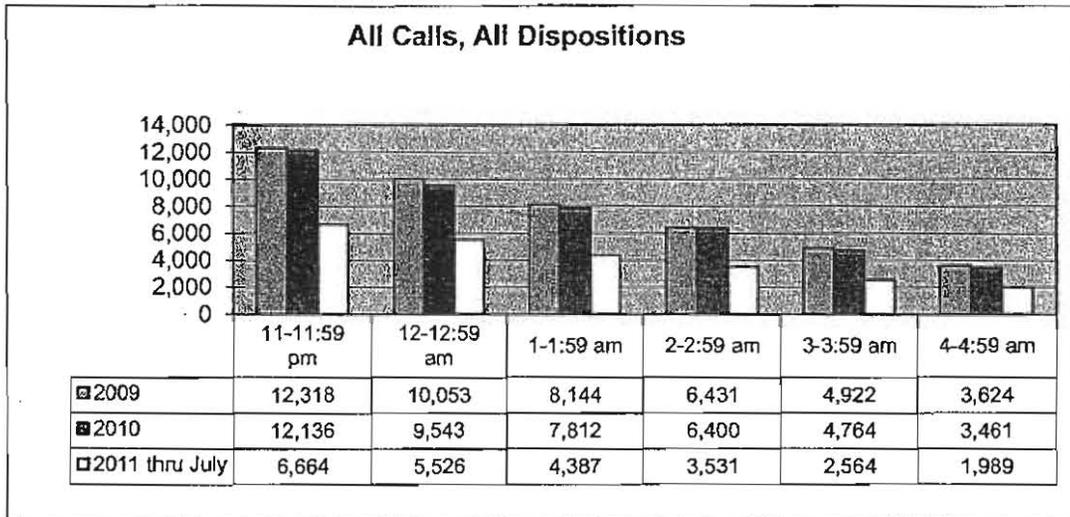


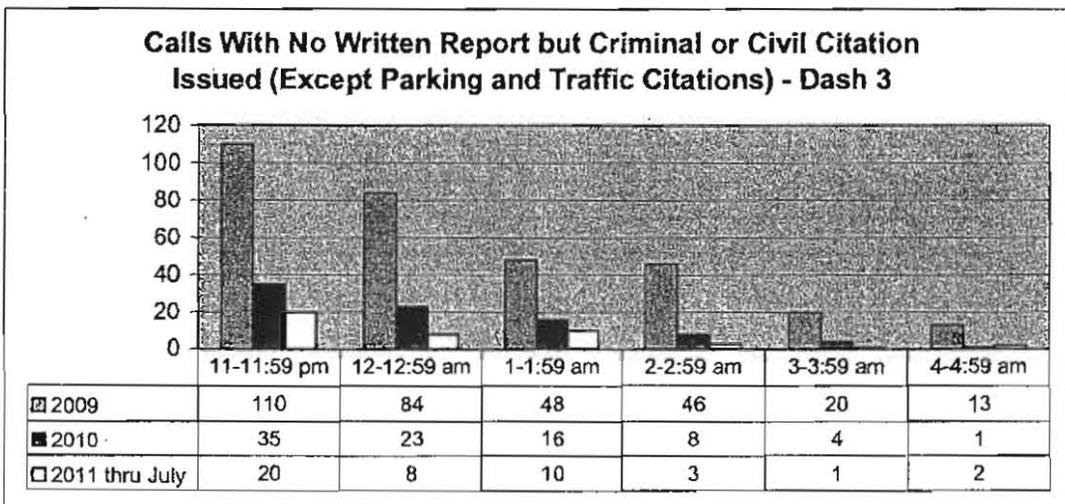
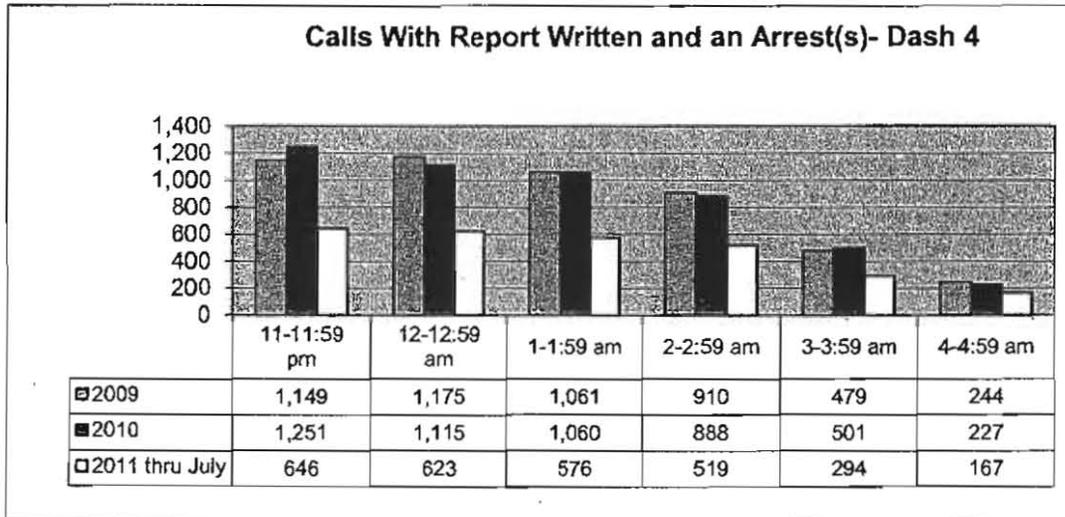
	11-11:59 pm	12-12:59 am	1-1:59 am	2-2:59 am	3-3:59 am	4-4:59 am	Total
2009	857	611	412	311	175	109	2,475
2010	724	584	426	269	204	107	2,314
2011 thru July	453	278	221	182	129	72	1,335

ATTACHMENT D

CALLS FOR SERVICE: 11 PM TO 5 AM

This data came from an export of records in the dispatch system and contains calls requiring a dispatched police response, events found by officers on patrol that were given a call disposition code, and "no-dispatch" report numbers obtained for other events reported after the fact. Simply put, it is anything a police officer deals with between 11PM and 5AM except for routine traffic stops and events that citizens report using our on-line self reporting service (no police response). Also, a few calls within the city of Takoma Park may be included due to our CAD system limitations.





**2010 and 2011 stats above are lower due to policy change. All criminal and civil citations must now have a written report which changes the clearance code to Dash 4.*

A Status Report on Youth Curfews in America's Cities

A 347-City Survey

Many cities have imposed youth curfews in recent years. A 1995 survey by The U.S. Conference of Mayors found that 272 cities, 70 percent of those surveyed, had a nighttime curfew. Fifty-seven percent of these cities considered their curfew effective.

Since that survey was done the trend toward establishing curfews—both nighttime and daytime—has continued and more is known about their impact. This report updates the 1995 survey and provides additional information on the effectiveness of those curfews.

The 1997 survey gathered information from 347 cities with a population over 30,000. Mayors and city officials were asked for information on:

1. the use of both daytime and nighttime curfews,
2. perceptions of whether curfew enforcement is a good use of police officers' time,
3. perceptions of whether curfews make streets safer at night, cut down on daytime truancy,
4. effectiveness of curfew enforcement in curbing gang violence or gang activities,
5. increases or decreases in crime rates since curfews have been in effect,
6. police department costs associated with curfew enforcement,
7. problems encountered in implementing curfews and
8. constitutional challenges to curfews.

Among the findings of the survey:

- **Four out of five of the survey cities (276) have a nighttime youth curfew. Of these cities, 26 percent (76) also have a daytime curfew. *Click [here](#) for a list of cities which have curfews.***
- **Nine out of 10 of the cities (247) said that enforcing a curfew is a good use of a police officer's time.** Many respondents felt that curfews represented a proactive way to combat youth violence. They saw curfews as a way to involve parents, as a deterrent to future crime, and as a way to keep juveniles from being victimized. In addition, they commented that a curfew gives the police probable cause to stop someone they think is suspicious. Examples of city comments:
 - **Tulsa:** There is generally no useful purpose for a juvenile to be out late at night. Enforcement of curfews serves to protect them from being victimized by the criminal element.
 - **Charlotte:** This is a good tool to protect children. Most parents didn't even know their children were outside the home.
 - **Jacksonville (NC):** It provides officers with "probable cause" to stop the youth.
 - **Claremont:** It frees up officers' time during the curfew hours to do other police work. Kids don't go out because they know they will get in trouble.

46

- **Anchorage:** Parents are contacted each time a juvenile is picked up, often eliminating repeat occurrences.
- **St. Peters (MO):** It assists in providing a method of controlling juveniles when adult supervision is lacking. Less time is spent by officers in getting them off the street than responding to problems they create.
- **Toledo:** It provides officers an opportunity to intervene with potential issues before problems develop. Periodic sweeps remind the public about the law officer. Curfew enforcement has, in large part, become a part of routine enforcement.

Twenty-six cities (10 percent) did not feel that curfew enforcement is a good use of a police officer's time. They commented that police have higher priorities than chasing curfew breakers, and that there is too much paperwork involved, tying up a police officer's time when he or she should be using that time to pursue more serious offenders. Some suggested that random sweeps seem to be more effective in keeping offenders off balance, as they are never sure when the police will be around. Finally, several commented that there is nowhere to take the young people when they are picked up because many parents aren't home. Examples of city comments:

- **San Francisco:** Offenses occur before curfew hours. Therefore, the curfew is ineffective.
 - **Billings:** There is no place to take the kids. Often the parents are not home.
 - **Roanoke:** There is no punishment for the law. The law is on the books but there is no punishment.
 - **Freeport (IL):** It ties up the police and keeps them "babysitting" all day long.
 - **Richmond (CA):** Curfews treat all youth as violators. It turns off good kids and is unfair to them.
- **Ninety-three percent of the survey cities (257) said that a nighttime curfew is a useful tool for police officers.** The city officials commented that curfews help to reduce the incidence of juveniles becoming victims by preventing "gathering," which also means more calls for the police. They said that a curfew compels parents to be more responsible and gives them a specific reason to tell their children they cannot be out after a certain time, and they said that curfews are a good prevention tool, keeping the good kids good and keeping the at-risk kids from becoming victims or victimizers. Examples of city comments:
 - **Orlando:** Since we have had the curfew we have seen dramatic declines in youth-related crimes.
 - **Murray (UT):** Prevention is nine-tenths of the cure.
 - **Fresno:** Because of the curfew there is less gathering. Less gathering means fewer calls for police.
 - **South Bend:** Few first time violators are repeat offenders.
 - **Maui:** It compels parents to be responsible.

Nineteen cities said that a nighttime curfew was not a useful tool, explaining that it removes parental control as the city, in effect, becomes the parent. They also commented that more crime happens during non-curfew hours due to curfew enforcement. Examples of city comments:

- **Kauai:** It causes more crime during non-curfew hours.
 - **Richland (WA):** All youth, not just delinquents, are affected by a curfew.
 - **Wausau:** We need to avoid harassment and need to avoid focussing on minorities or specific neighborhoods.
- **All of the 72 cities which have a daytime curfew report that it has cut down on truancy.** They said that it reduces daytime burglary, holds parents accountable and keeps kids in school. Examples of city comments:
 - **Columbus (OH):** Seventeen hundred truants have been processed, less than seven percent have been re-fined (as repeat offenders).
 - **Allentown:** Since the inception of our daytime curfew, students know there are consequences to their actions. It has had a favorable impact on school attendance.
 - **Torrance:** It discourages truants' trips en masse to "hang-outs." With this curfew, students must stay at home or risk detention.
 - **Philadelphia:** Daytime curfew enforcement causes the minor to attend school, which can only benefit the minor.
 - **Roswell:** It cuts down on graffiti, vandalism and truancy. It keeps kids at home or in school where they are safe.
 - **Eighty-eight percent (236) of the cities said that curfew enforcement helps to make streets safer for residents.** The officials commented that there is less traffic late at night; residents feel safer; it is easier to find runaways; it is harder for criminals to hide from the police during curfew hours because there are fewer people to blend in with; graffiti and vandalism are reduced; and parents are helped to feel responsible. Examples of city comments:
 - **Canton:** Police find more runaways and missing juveniles, reducing the number of delinquencies.
 - **Tulsa:** The criminal element has to work harder to "hide" from cops.
 - **Inglewood:** It does, in fact, make it safer. There is less traffic at night.
 - **Corpus Christi:** The daytime curfew has cut down on the truancy problem considerably simply because school-aged kids observed wandering the streets or in locations away from school are easily detected, and they have come to know that.

Thirty-three cities (12 percent) said that curfews have no impact on street safety, commenting that it is people over 17 who create the more serious crimes, and that they do not always enforce the curfew due to lack of funds or lack of interest. Examples of city comments:

48

- **Memphis:** Most evening crimes are committed by adults.
- **Chillicothe (MO):** Those over 17 are still out causing most of the trouble.
- **Tallahassee:** Several studies have indicated that curfews displace crime to other times of the day without having any real impact over the long run.
- **Eighty-three percent (222) of the cities said that a curfew helps to curb gang violence.** City officials believe it is a tool to reach "wannabe" gang members and keep recruitment to a minimum; it prevents gang members from gathering; it gives the police a legal reason to contact individuals or the group; it tells kids their movements are being monitored and lessens gang activities during curfew hours. They also said that curfews help the police to identify gang members and come in contact with them at an earlier stage, help to curb young peoples' activities before they become more violent, and help the police to seize the guns and drugs of gang members, thus impairing their ability to fight. Finally, the curfew helps to educate parents to the signs of gang membership and activity. Examples of city comments:
 - **Moline (IL):** Gang activity stops after curfew hours begin.
 - **Dearborn:** It curbs activities before they get to a more violent level.
 - **Shaker Heights:** If you address inappropriate behavior, you will minimize the opportunity for it to escalate into violence. In other words, if you catch youths early it is more likely they can become valuable members of society.
 - **Napa:** I have never seen a gang member who wasn't a truant first. Curbing truancy curbs gang violence.
 - **Houston:** We have had an increase in drug and weapons seizures from gangs. Seizing these things lowers gangs' ability to fight.

Seventeen percent (46) of the cities said that curfews had no impact on gang-related activities. These cities said that most hardcore gang member do not pay attention to curfews; most gang activities occur before curfews go into effect; and gangs are not afraid of curfew laws because they know there will be no punishment. Examples of city comments:

- **Ogden:** Curfews do little to curb activities of hardcore gang members.
- **Rochester (MN):** Gangs aren't afraid of curfews because the punishment is little or nothing.
- **Memphis:** Most gang activities happen before curfew hours.
- **Fifty-six percent (154) of the survey cities have had a youth curfew in effect for 10 years or less. Officials in 53 percent of these cities have had a decrease in juvenile crime which they attribute to the curfew. Eleven percent have seen the number of juvenile crimes stay the same; 10 percent have had an increase in juvenile-related crimes.** Because most of the remaining cities have had curfews in effect for a short time, no data on the impact on juvenile crime was available.

Twenty-six cities with a nighttime curfew only were able to provide data on the percent reduction 49

in juvenile crime. Juvenile crime was reduced by an average of 21 percent in these cities, ranging from a two percent decrease in Charlotte, three percent in Waterloo, five percent in Bloomington (IL) and Fort Worth and seven percent in Killeen (TX) to a 40 percent reduction in Inglewood and Idaho Falls, 42 percent in San Jose and 50 percent in Orlando.

Twenty-two cities with both a nighttime and daytime curfew were able to provide data on the percent reduction in juvenile crime, which was reduced by an average of 21 percent in these cities. The percent reduction ranged from two percent in Richmond (GA), five percent in Lombard (IL) and eight percent in Fairfield (CA) to 50 percent in Hayward and 70 percent in Charleston (SC).

Six cities reported that juvenile crime increased after their curfew was introduced, by an average of 14.5 percent across these cities. The increases ranged from three percent in Billings and Tulsa and 10 percent in St. Charles to 25 percent in Grand Forks and 26 percent in Fargo. It should be noted that many cities reported that when they initially implemented the curfew or began to rigorously enforce an existing curfew, the number of crimes increased for a period of six months to a year. Following this, however, they saw a significant decline in juvenile crime.

- **Twenty-three percent (61) of the cities said there were increased costs related to curfew enforcement.** These costs related primarily to increased police officer time and detention centers. Examples of city comments:
 - **Chandler (AZ):** There was an increase in costs in paperwork, court appearances and fees and officers' time spent processing and convicting the youth.
 - **San Jose:** We had to add \$1 million in new police payroll to enforce our curfew.
 - **Shreveport:** We received a grant from the federal government to help defray the costs of a detention center, but the federal funds decrease each year, and after four years the city will have to pay all of the costs.
 - **Upland (CA):** Our gang task force has caused an increase in costs.
 - **New Orleans:** There have been cost increases associated with overtime for police in order to enforce the curfew properly.
 - **Cleveland:** The increase in enforcement of the curfew has caused more costs for police to appear in court.
- **Twenty-three percent (62) also reported problems in implementing their curfew.** These problems include concerns about violating young peoples' rights or targeting minorities, parental opposition, and officials within the criminal justice system not taking the curfew seriously. Examples of city comments:
 - **Denver:** In one of our middle class neighborhoods it was proposed that we put up a detention center, and this met with strenuous opposition.
 - **Los Angeles:** The problem is convincing liberal politicians that it doesn't violate kids' rights and convincing police officers that it is productive.
 - **Chicago:** The problem is getting judges to take curfew cases seriously.

(50)

- **Cincinnati:** The curfew laws need to be monitored to make sure that African-Americans aren't targeted. You have to make sure you are trying to keep it fair and legal.
- **Plano:** A small segment of our population feel it is the parents' responsibility to say when a child should be indoors.
- **Buena Park:** Several home schooling groups challenged it as being unfair to their children.
- **Five percent (14) of the cities said there have been constitutional challenges either to the curfew itself or to its wording.** Those cities with a challenge are Allentown, Bellingham, Dallas, El Cajon, Escondido, Lompoc, North Miami Beach, Orlando, Philadelphia, Poway (CA), Santa Ana, Tulsa, Wenatchee (WA) and West Covina. In two additional cities—Fort Lauderdale and Rio Rancho (NM)—a challenge to the curfew has been threatened.
- For the 276 cities with curfews:
 - Five percent have had the curfew for less than one year.
 - Eight percent have had the curfew for one year.
 - Eleven percent have had the curfew for two years.
 - Eleven percent have had the curfew for three years.
 - Four percent have had the curfew for four years.
 - Eight percent have had the curfew for five years.
 - Nine percent have had the curfew for six to 10 years.
 - Forty-four percent have had the curfew for more than 10 years.

Survey Cities Which Have A Curfew

The 276 survey cities with a curfew are listed below. Those with an * have both a daytime and a nighttime curfew; the rest have a nighttime curfew only.

ALABAMA	Birmingham *	Gadsden	
ALASKA	Anchorage		
ARIZONA	Chandler	Phoenix	Tucson
	Gilbert	Surprise	Yuma
	Glendale	Tempe	
ARKANSAS	Fort Smith	North Little Rock *	Pine Bluff *
CALIFORNIA	Anaheim	Gardena *	Poway *
	Antioch	Hayward *	Riverside *
	Bakersfield	Inglewood	San Clemente
	Brea	La Habra *	San Francisco
	Buena Park *	Lancaster *	San Jose *
	Burbank *	Lodi	San Ramon
	Claremont *	Lompoc *	Santa Ana
	Colton *	Long Beach *	Santa Barbara *

	Concord	Los Angeles	Santa Cruz
	Covina *	Manhattan Beach *	Santa Rosa
	Culver City	Modesto	Stockton *
	El Cajon *	Montebello *	Thousand Oaks
	Escondido *	Monterey *	Torrance *
	Fairfield *	Napa *	Tulare
	Fontana *	Newark	Upland *
	Fountain Valley	Oxnard *	West Covina *
	Fresno	Pittsburg	
COLORADO	Aurora	Loveland	Thornton
	Denver	Pueblo	Westminster
CONNECTICUT	New Britain	West Haven	
FLORIDA	Fort Lauderdale *	Miami Beach	Pembroke Pines
	Garden Grove	North Miami	Port Orange
	Jacksonville	Orlando	
GEORGIA	Augusta *	Macon	Roswell
	East Point *		
HAWAII	Honolulu	Kaua'i	Wailuku Maui
IDAHO	Boise	Idaho Falls	
IOWA	Cedar Rapids	Waterloo	
ILLINOIS	Arlington Heights	Elk Grove *	Normal
	Aurora	Evanston	Palatine
	Bartlett	Freeport	Paris
	Bloomington	Glencoe	Park Ridge *
	Bolingbrook *	Highland Park	Pekin *
	Buffalo Grove	Lansing *	Rockford
	Carbondale	Lombard *	Schaumburg
	Champaign	Moline	Waukegan *
	Chicago	Mount Prospect	Wheeling
	Decatur	Naperville	
INDIANA	Carmel	Fort Wayne	New Albany
	Columbia City	Marion	South Bend
	Elkhart	Michigan City	
KANSAS	Hutchinson	Olathe	Wichita *
KENTUCKY	Frankfort	Lexington	Louisville
LOUISIANA	Houma	New Orleans *	Shreveport
	Lake Charles		
MAINE	Augusta		

MASSACHUSETTS	Chicopee Lowell	Lynn Malden	Methuen Revere
MARYLAND	Hagerstown		
MICHIGAN	Allen Park Battle Creek Dearborn Dearborn Heights Detroit *	East Point Farmington Hills Holland Jackson Lansing	Livonia Midland Muskegon St. Claire Shores Wyoming
MINNESOTA	Blaine Brooklyn Park Burnsville	Maplewood Minneapolis *	Minnetonka Rochester
MISSISSIPPI	Biloxi * Greenville *	Natchez *	Tupelo *
MISSOURI	Chesterfield Chillicothe Kansas City	St. Charles St. Joseph	St. Peters University City
MONTANA	Billings	Great Falls	
NEBRASKA	Bellevue		
NEVADA	Las Vegas		
NEW HAMPSHIRE	Nashua		
NEW JERSEY	Elizabeth Gloucester	Jersey City *	Newark
NEW MEXICO	Rio Rancho *	Roswell *	
NEW YORK	Buffalo Jamestown	Schenectady	Troy
NORTH CAROLINA	Charlotte	Jacksonville	
NORTH DAKOTA	Fargo	Grand Forks	
OHIO	Akron * Canton Chillicothe Cincinnati Cleveland * Columbus *	Elyria Euclid Fairborn Lima (Recently lost day) Mansfield	Parma * Shaker Heights Toledo University Heights Waynesville
OKLAHOMA	Lawton	Oklahoma City	Tulsa
OREGON	Beaverton		

PENNSYLVANIA	Allentown * Erie Harrisburg	Lancaster McKeesport Philadelphia *	Pittsburgh * Wilkes-Barre
PUERTO RICO	Caguas	San Juan	
RHODE ISLAND	North Providence	Pawtucket	
SOUTH CAROLINA	Charleston	Columbia	Rock Hill
SOUTH DAKOTA	Rapid City		
TENNESSEE	Chattanooga Germantown	Hendersonville Knoxville *	Memphis
TEXAS	Arlington * Austin * Corpus Christi * Fort Worth Galveston *	Houston * Killeen League City * Mesquite Plano	San Angelo San Antonio * Temple * Waco Wichita Falls
UTAH	Murray Ogden	Salt Lake City	Sandy
VIRGINIA	Chesapeake Newport News	Norfolk Richmond *	Roanoke Virginia Beach
WASHINGTON	Bellingham	Longview	Wenatchee *
WEST VIRGINIA	Parkersburg		
WISCONSIN	Beloit * Brookfield Green Bay	Greenfield Manitowoc	Sheboygan West Allis
WYOMING	Casper	Cheyenne	

Survey Cities Which Do Not Have A Curfew

The 71 survey cities listed below do not have a youth curfew.

ALABAMA	Decatur	Huntsville	Mobile
ARKANSAS	Fayetteville	Hot Springs	
CALIFORNIA	Dublin Livermore Oakland	Rancho Palos Verdes Richmond San Luis Obispo	Santa Clara Sunnyvale

(54)

COLORADO	Fort Collins	Greeley	Lakewood
CONNECTICUT	Middletown New Haven	Stamford	Wallingford
FLORIDA	Boca Raton Bradenton Clearwater Fort Myers	Holy Hill Miramar Palm Bay Port St. Lucie	St. Petersburg Sarasota Tallahassee Tamarac
ILLINOIS	Galesburg		
IOWA	Des Moines		
KANSAS	Topeka		
MASSACHUSETTS	Attleboro Boston	Haverhill	Salem
MICHIGAN	Port Huron	Rochester Hills	
NEBRASKA	Lincoln	Omaha	
NEW JERSEY	Bridgewater Edison	Fort Lee	West Orange
NEW YORK	Freeport Mount Vernon	New Rochelle White Plains	Yonkers
NORTH CAROLINA	Greensboro Wilmington	Wilson	Winston-Salem
OHIO	Centerville	Kettering	
RHODE ISLAND	Cranston	Providence	
TEXAS	Abliene Denton	Longview	Lufkin
VIRGINIA	Alexandria	Lynchburg	
WASHINGTON	Auburn Richland	Seattle	Spokane
WISCONSIN	Wausau		

[< Back to Online Publications](#)

<input type="text" value="Home"/>	<input type="text" value="Search"/>	<input type="text" value="asolomon@usmayors.org"/>
-----------------------------------	-------------------------------------	----------------------------------------------------



CAD Call Disposition Codes

* Indicates written report is optional

0100 HOMICIDE <i>(does not include attempted homicide)</i>	0800 ASSAULT	2400 Disorderly Conduct	*2939 Homeland Security Event
0200 RAPE	0900 ARSON	2411 Unlawful Assembly	*2941 Lost Property
0300 ROBBERY	0910 Occupied Structure	*2412 Loitering	*2942 Mental Illness/EEP
0310 Highway/Road/Alley	0920 Unoccupied Structure	*2413 General Disorderly	*2943 Missing Person (includes runaways)
0320 Commercial (not 30, 40, or 60)	0930 Vehicle	2600 SUICIDE	2946 Recovered Prop. (from Mont. Co. only)
0330 Gas Station	1000 FORGERY-COUNTERFEITING	2700 OTHER OFFENSES (NOT TRAFFIC)	2947 Recovered Prop. (from other jurisdiction)
0340 Convenience Store	1011 Identity Theft	2711 Blackmail/Extortion	2948 SANE Collection/Stranger
0350 Resid. (home invasion only)	1012 All Other	2712 Ex-Parte/Protective Order Violation	2949 SANE Collection/Non-stranger
0360 Bank	1100 BAD CHECKS	2713 Escapee	*2951 Family Trouble
0370 Other	1200 EMBEZZLEMENT/CONFIDENCE GAME	*2714 False Alarm	*2952 Suspicious Situation
0380 Carjacking	1300 STOLEN PROPERTY	2715 False Report of a Crime	*2953 Emergency Shelter Care
0400 AGGRAVATED ASSAULT <i>(1st degree only)</i>	1400 DAMAGED/DESTROYED PROPERTY	*2716 Fire Code Violation	*29xx Alarm Call
0500 BURGLARY	1410 All Other	*2717 Fireworks	296x Bank/Credit Union
<u>Night time, 2100-0600 hours</u>	1420 Graffiti	*2718 Harassment/Stalking	297x Other Commercial
0511 Night Residential	1500 WEAPON OFFENSES/EXPLOSIVE	2719 Home Improvement Violation	298x Residential
0512 Night Commercial	DEVICE OR THREAT	2720 Impersonating a Police Officer	1 Accidental/Error
0513 Night School	1511 All Others	2721 Kidnapping	2 Malfunction
<u>Day time, 0600-2000 hours</u>	1512 Bomb threat	*2722 Littering/Trash Dumping	3 Weather
0521 Day Residential	1513 Explosive Device	*2723 Panhandling	4 Unknown Cause
0522 Day Commercial	1600 VICE CRIMES	*2724 Pornography	5 Cleared by ECC or Patrol Supervisor with no dispatch
0523 Day School	<i>(Gambling/Prostitution/Other)</i>	2725 Threatening/Annoying Phone Calls	6 Duplicate Call
<u>Multi-day or Time Unknown</u>	1700 SEX OFFENSES	*2726 Trespassing	7 Alarm company cancelled call
0531 Unk Time Residential	<i>(does not include rape/attempt rape)</i>	*2727 Vendor Violation	*2991 Other Miscellaneous Calls
0532 Unk Time Commercial	1711 All Other	*2728 All Other Non-Traffic Criminal	2995 Dispatched Follow-up of Previously Reported Event (do not clear as report made)
0533 Unk Time School	1712 Indecent Exposure	2729 Fugitive from Justice (outside of MD)	3000 DEER COMPLAINTS
0600 LARCENY	1714 Peeping Tom	2800 MISCELLANEOUS TRAFFIC OFFENSES	*3011 Dead/Injured Deer in Road
0610 Pickpocket	1800 CDS LAWS	*2811 Abandoned Vehicle	*3012 Deer-Other
0620 Purse Snatch	2000 FAMILY/CUSTODIAL OFFENSES	2812 Driving Under the Influence	3100 HUNTING VIOLATIONS
0630 Shoplifting	2001 Animal Bite	*2813 All Other Traffic Hazard	5xxx TRAFFIC COLLISIONS
0640 From Vehicle	2100 JUVENILE OFFENSES	2900 MISCELLANEOUS CALLS	53xx Fatal
0650 Vehicle Part	2200 LIQUOR LAW/ALCOHOL VIOLATIONS	291x Sudden Death	54xx Personal Injury
0660 Bike	2300 CONTRIBUTING (not alcohol or sex)	1 Accidental, Non-Traffic	55xx Property Damage
0670 From Building (not burglary)		2 Drowning	1x Public Road/Street/Highway
0680 From Coin/Vending Machine		3 Natural	2x Pkg. Lot/Garage, Public or Pvt.
0690 All Other		4 Undetermined	3x Other Private Property
0700 AUTO THEFT/UNAUTHORIZED USE <i>(includes rental car violation & joyriding)</i>		2920 Accidental Drug Overdose (non-fatal)	1 Collision
		2931 Animal Bite	2 Hit & Run
		*2932 Animal Complaint	3 Deer Collision
		*2934 Drunk	4 MCP Vehicle Involved
		*2935 Fire, Non-Arson	
		*2937 Injury, Non-Traffic	
		*2938 Police Information	

Dash 1
Event verified and adjusted; no report, no arrest.

Dash 2
Event verified, report made; no arrest.

Dash 3
Event verified, no report, no physical arrest; traffic or parking citation issued.

Dash 4
Event verified, report made, arrest or charge made (to include criminal/civil citation).

Dash 5
Event not verified; no report.

Dash 6
Event unfounded; no report.

Dash 7
Event investigated and turned over to other police agency; no MCPD report.

56



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Jennifer A. Hughes
Director

MEMORANDUM

September 9, 2011

TO: Valerie Ervin, President, County Council
FROM: Jennifer A. Hughes, Director
SUBJECT: Expedited Council Bill 25-11, Offenses, - Curfew - Established

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

Expedited Bill 25-11 was introduced on July 12, 2011 by the Council President at the request of the County Executive. This Bill would establish a curfew for minors, make certain findings; prohibit certain activities during the curfew; provide for certain defenses; establish enforcement procedures and penalties; and generally amend County law relating to offenses and curfew. A public hearing on Expedited Bill 25-11 was held by the County Council on July 26, 2011 at 1:30 p.m. On August 31, 2011, the County Executive submitted several recommended amendments to modify certain provisions of this Bill including:

1. Definition of a curfew violation as a Class B civil offense punishable by a maximum fine of \$100 for a first offense and \$150 for a second offense.
2. Expansion of the list of exemptions to the prohibitions against minor remaining in public place or establishment during curfew hours to include a minor who is attending or returning home from, without any detour, an event or place of public entertainment, including a movie, concert, play or sporting event.
3. Deletion of the bill's provision that allows the Police to place a minor who has violated curfew in the custody of the Department of Health and Human Services, who, in turn, can release the minor at 5:00 a.m. the next morning.

FISCAL AND ECONOMIC SUMMARY

Enactment of this bill, as modified, was reviewed by the Department of Police, the Department of Correction and Rehabilitation, the Department of Health and Human Resources, the Department of Economic Development, and the Office of State's Attorney and they have determined that the Bill, as modified, will not result in any fiscal impact to the County in terms of requiring additional personnel and operational resources.

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
www.montgomerycountymd.gov



Valerie Ervin, President, County Council
September 9, 2011
Page 2

The Department of Finance has determined that this legislation will have no quantifiable impact on employment, personal income, investment, property values or other economic variables.

Finance contacted the various Chambers of Commerce (County, Bethesda-Chevy Chase, and Silver Spring) for specific information and concerns about the economic impacts. They expressed some concern about the impact on arts and entertainment businesses and restaurants. However, Finance was unable to quantify any impact and the amendment recommended by the County Executive to allow minors to attend and return from a place of entertainment (such as a movie, concert, play, or sporting event) during curfew hours should mitigate those concerns.

The following contributed to and concurred with this analysis: Terrence Pierce, Department of Police, Dave Platt and Michael Coveyou, Department of Finance, Kim Mayo, Department of Health and Human Resources, Tina Benjamin, Department of Economic Development; Lisa Russo, Office of the State's Attorney, Robert Green, Department of Correction and Rehabilitation, and Ed Piesen, Office of Management and Budget.

JAH:ep

c: Kathleen Boucher, Assistant Chief Administrative Officer
Joseph Beach, Director, Department of Finance
J. Thomas Manger, Chief of Police
Uma S. Ahluwalia, Director, Department of Health and Human Services
Arthur Wallenstein, Director, Department of Correction and Rehabilitation
John McCarthy, State's Attorney
Gabriel Albornoz, Director, Department of Recreation
Robert Green, Department of Correction and Rehabilitation
David Platt, Department of Finance
Michael Coveyou, Department of Finance
Lisa Russo, Office of the State's Attorney
Kim Mayo, Department of Health and Human Resources
Tina Benjamin, Department of Economic Development
Ed Piesen, Office of Management and Budget
Amy Wilson, Office of Management and Budget

News from the National League of Cities

For Immediate Release
January 13, 2006

For Information Contact:
Latricia Good 202-626-3051
Sherry Appel 202-626-3003

Youth Curfews Continue to Show Promise

Washington, DC, January 13, 2006 – Although cuts in federal aid and reduced budgets are making it more difficult for cities to provide adequate public safety programs, the latest Insta-Poll from the National League of Cities (NLC) shows that city officials continue to implement and enforce youth curfews as an effective strategy for deterring crime and violence among adolescents.

Of the cities surveyed, more than half have implemented a daytime or nighttime curfew, and most are optimistic about their curfew enforcement activities. Ninety-six percent view their laws as very or somewhat effective for combating juvenile crime in their communities and 93 percent say curfew enforcement is still a good use of police officers' time.

“Local officials are relying on youth curfews as one way to ensure the safety of the citizens in their communities,” said Donald J. Borut, NLC Executive Director. “The findings of this poll show that enhanced officer training and creative partnerships are common elements in local programs aimed at reinforcing youth curfews.”

In many cities, local agencies and community groups serve as resources for officers dealing with troubled youth. Seventy-eight percent report that their police officers are instructed or trained to refer troubled youth to a local agency for help. Some examples of services provided by city officials include: youth service departments, teen shelters, mental health institutions, parks and recreation programs such as the Boys and Girls Club, and local nonprofit agencies. Innovative programs like the New Haven, Conn., partnership with the Yale Child Study Center and the Pasadena, Calif., first-time offender diversion program were also cited.

Youth curfews have become a growing trend. According to the NLC poll, 67 percent of those cities with curfews have enacted them in the past 20 years and 38 percent within the last 10 years. Daytime curfews appear to be less popular. Only 18 percent of cities responding to the survey have instituted daytime curfews.

Though daytime curfews seem to be less attractive, more than 3 in 4 cities found afterschool programs to be effective in helping to cut down on juvenile offenses during the daytime hours. Seventy-eight percent report that after-school programs have enhanced their community's efforts to curb juvenile crime and violence in the daytime.

The 2005 survey is the latest in a series conducted in 1999, 2001 and 2003, and includes responses from mayors and city officials from 436 cities. The survey group included 62 central cities, 215 suburban communities and 159 rural and non-metropolitan cities and towns.

For more information about the report, contact the Latricia Good at 202-626-3051 or lgood@nlc.org. For more news and information about NLC and local government issues, visit www.nlc.org.

###



**NATIONAL LEAGUE OF CITIES
Insta-Poll on Youth Curfews**

The results being reported from this survey are not based on a nationally represented sample of U.S. cities. Responses are from 436 cities including, 62 central cities, 215 suburban communities and 159 rural and non-metropolitan cities and towns. City Officials were also surveyed in 1999, 2001, and 2003. This survey included additional questions, which were not asked in the previous surveys.

2005 Results as Compared to 2003/2001/1999

Majority of city officials (40 percent) believe their curfews are very effective at fighting juvenile crime.

	2005	2003	2001	1999
Very Effective	40%	46%	31%	31%
Somewhat effective	56%	50%	66 %	65 %
Not effective	2%	4%	3 %	4%

Of the cities that have implemented curfews, 67 percent have a night curfew and 18 percent report a daytime curfew.

	2005	2003	2001	1999
Night Curfew	67%	67%	68%	69%
Daytime Curfew	18%	11%	12%	14%

Sixty-eight percent of cities with daytime curfews believe their laws are very or somewhat effective in cutting down on truancy.

	2005	2003	2001	1999
Very effective	27%	24%	61 %	41 %
Somewhat effective	41%	45%	35 %	45 %
Not effective	31%	31%	3 %	14 %

Overall, city officials believe that youth curfews are effective in limiting gang violence.

	2005	2003	2001	1999
Very effective	33%	34%	24 %	N/A
Somewhat effective	56%	56%	64%	N/A
Not Effective	9%	9%	12 %	N/A

Most city officials (95 percent) report no increase in police costs associated with curfews.

	2005	2003	2001	1999
Yes	4%	12%	11%	14%
No	95%	88%	89 %	86%

Majority of city officials (91 percent) report no problems with implementing their Day/Night Time curfew.

	2005	2003	2001	1999
Yes	8%	7%	6 %	8 %
No	91%	93%	94 %	92 %

Small number (3 percent) of cities report constitutional challenges related to youth curfews.

	2005	2003	2001	1999
Yes	3%	2%	4 %	4 %
No	94%	98%	96%	96%

Questions asked in 2005 and 2003 only:

Majority of city officials say youth curfew enforcement is a good use of police officers' time.

	2005	2003
Yes	93%	93%
No	7%	7%

A significant number of city officials (66 percent) say public safety will be more difficult to maintain due to budgets and reduced police forces, though slighter lower than the number in 2003.

	2005	2003
Yes	66%	70%
No	33%	30%

Many city officials (73 percent) do not anticipate reducing the size of their police forces because of fiscal conditions, but a small percentage is unsure.

	2005	2003
Yes	14%	13%
No	73%	54%
Don't know yet	12%	33%

Most city officials report no shifts in resources from public safety budgets in order to cover homeland security costs or activities – down from 2003.

	2005	2003
Yes	15%	24%
No	84%	76%

Questions asked in 2005 only:

Most cities officials believe afterschool programs enhance their efforts to curb juvenile crime or violence during daytime hours.

	2005
Yes	78 %
No	21%

In many cities, police officers are instructed or trained to refer troubled youth to a local agency for help.

	2005
Yes	78 %
No	21%

The National League of Cities is the nation's oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership and governance. NLC is a resource and advocate for 18,000 U.S. cities, towns and villages, which collectively serve 225 million people.



DIVISION I. GOVERNMENT OF DISTRICT
TITLE 2. GOVERNMENT ADMINISTRATION
CHAPTER 15. YOUTH AFFAIRS
SUBCHAPTER III. JUVENILE CURFEW

§ 2-1541. Findings and purpose [Formerly § 6-2181]

- (a) The Council of the District of Columbia ("Council") has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of 17 years in the District of Columbia.
- (b) The Council has determined that persons under the age of 17 years are particularly susceptible, because of their lack of maturity and experience, to participate in unlawful and gang-related activities and to be the victims of older perpetrators of crime.
- (c) The Council has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over, and responsibility for, children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities.
- (d) The Council has determined that a curfew for those under the age of 17 years will be in the interest of the public health, safety, and general welfare and will help to attain these objectives and to diminish the undesirable impact of this conduct on the citizens of the District of Columbia.
- (e) The Council determines that passage of a curfew law will protect the welfare of minors by:
 - (1) Reducing the likelihood that minors will be the victims of criminal acts during the curfew hours;
 - (2) Reducing the likelihood that minors will become involved in criminal acts or exposed to narcotics trafficking during the curfew hours; and
 - (3) Aiding parents or guardians in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care.

§ 2-1542. Definitions [Formerly § 6-2182]

For the purposes of this subchapter, the term:

- (1) "Curfew hours" means from 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday, until 6:00 a.m. on the following day, and from 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday. During the months of July and August, the term "curfew hours" means from 12:01 a.m. until 6:00 a.m.
- (2) "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term "emergency" includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation that requires immediate action to prevent serious bodily injury or loss of life.
- (3) "Establishment" means any privately-owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment.
- (4) "Guardian" means a person who, under court order, is the guardian of the person of a minor or a public or private agency with whom a minor has been placed by a court.
- (5) "Minor" means any person under the age of 17 years, but does not include a judicially emancipated minor or a married minor.
- (6) "Narcotic trafficking" means the act of engaging in any prohibited activity related to narcotic drugs or controlled substances as defined in Chapter 9 of Title 48.
- (7) "Operator" means any individual, firm, association, partnership, or corporation that operates, manages, or conducts any establishment. The term "operator" includes the members or partners of an association or partnership and the officers of a corporation.

- (8) "Parent" means a natural parent, adoptive parent or step-parent, or any person who has legal custody by court order or marriage, or any person not less than 21 years of age who is authorized by the natural parent, adoptive parent, step-parent or custodial parent of a child to be a caretaker for the child.
- (9) "Public place" means any place to which the public, or a substantial group of the public, has access, and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- (10) "Remain" means to linger or stay or fail to leave the premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.
- (11) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

§ 2-1543. Curfew authority; defenses; enforcement and penalties [Formerly § 6-2183]

- (a)
 - (1) A minor commits an offense if he or she remains in any public place or on the premises of any establishment within the District of Columbia during curfew hours.
 - (2) A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the District of Columbia during curfew hours.
 - (3) The owner, operator, or any employee of an establishment commits an offense if he or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours.
- (b)
 - (1) It is a defense to prosecution under this subchapter that the minor was:
 - (A) Accompanied by the minor's parent or guardian;
 - (B) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
 - (C) In a motor vehicle, train, or bus involved in interstate travel;
 - (D) Engaged in an employment activity pursuant to subchapter I of Chapter 2 of Title 32 or going to, or returning home from, an employment activity, without any detour or stop;
 - (E) Involved in an emergency;
 - (F) On the sidewalk that abuts the minor's residence or that abuts the residence of a next-door neighbor if the neighbor did not complain to the Metropolitan Police Department about the minor's presence;
 - (G) In attendance at an official school, religious, or other recreational activity sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor, or going to, or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor; or
 - (H) Exercising First Amendment rights protected by the United States Constitution, including free exercise of religion, freedom of speech, and the right of assembly.
 - (2) It is a defense to prosecution under subsection (a)(3) of this section that the owner, operator, or employee of an establishment promptly notified the Metropolitan Police Department that a minor was present on the premises of the establishment during curfew hours and refused to leave.
- (c)
 - (1) Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection (b) of this section is proffered or is present.
 - (2) If a police officer determines that a minor is committing a curfew offense, the police officer shall take the minor to the nearest available Police District headquarters or substation or other area designated by the Metropolitan Police Department.
 - (3) A minor who violates this subchapter shall be detained by the Metropolitan Police Department at the nearest available Police District headquarters or substation or other area designated by the Metropolitan Police Department and released into the custody of the minor's parent, guardian, or an adult person acting in loco parentis. The minor's parent or an adult person acting in loco parentis with respect to the

minor shall be called to the Police District headquarters or substation or other designated area to take custody of the minor. A minor who is released to a person acting in loco parentis with respect to the minor shall not be taken into custody for violation of this subchapter while returning home with the person acting in loco parentis. If no one claims responsibility for the minor, the minor may be taken to the minor's residence or placed in the custody of the appropriate official at the Family Services Administration of the Department of Human Services and, subsequently, released at 6:00 a.m. the following morning.

- (d)
 - (1) Any adult who violates a provision of this subchapter is guilty of a separate offense for each day, or part of a day, during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$ 500 or community service.
 - (2) Parents or persons in loco parentis of the minor may, upon each conviction for violating this subchapter, be required to complete parenting classes pursuant to subchapter I of Chapter 14 of Title 7 or Title 16.
 - (3) When required by § 16-2302, charges brought under this subchapter shall be transferred to the Family Division of the Superior Court of the District of Columbia.
 - (4) A minor adjudicated of a violation of this subchapter by the Family Division of the Superior Court may be ordered to perform community service of up to 25 hours for each violation.
- (e)
 - (1) The Mayor shall report to the Council, not less than 90 days prior to the expiration of this subchapter, on the curfew's effectiveness and shall recommend that the curfew either be continued or discontinued.
 - (2) The Mayor shall include the following in the report required by this subsection:
 - (A) The number of minors detained and the number of persons fined as a result of a violation of this subchapter;
 - (B) The number of criminal homicides and other narcotic trafficking related crimes of violence committed during the time that this subchapter is in effect by age of persons involved and by time of day;
 - (C) The number of minors injured during the curfew hours as a result of crime and the cause of each injury; and
 - (D) The District's net cost of enforcing the ordinance.

Part II
Title 17, the Public Local Laws of Prince George's County
SUBTITLE 14. MORALS AND CONDUCT.
DIVISION 1. JUVENILE CURFEW.

Sec. 14-101. Definitions.

- (a) For the purposes of this Division, the following words and phrases shall have the following meanings:
- (1) **Emergency** means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
 - (2) **Juvenile** or **minor** means any unemancipated person under the age of seventeen (17) years.
 - (3) **Operator** means any individual, firm, association, partnership, or corporation operating, managing, or conducting any place open to the public. The term includes the members or partners of an association or partnership and the officers of a corporation.
 - (4) **Parent** means any person having temporary or permanent care or custody of a juvenile as a natural or adoptive parent, as a legal guardian, as a person stands *in loco parentis*, or as a person to whom legal custody has been given by court order.
 - (5) **Place open to the public** shall mean any privately-owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment, regardless of whether a charge for admission or entry is made.
 - (6) **Public place** means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, common areas of schools, shopping centers, parking lots, parks, playgrounds, transportation facilities, theaters, restaurants, shops, bowling alleys, taverns, cafes, arcades, and similar areas that are open to the use of the public. "Street" includes any public right-of-way, including, but not limited to, the cartway of traffic lanes; the curb; the sidewalks, whether paved or unpaved; and any grass plots or other grounds found within the legal right-of-way of a street.
 - (7) **Remain** means to stay behind, to tarry and to stay unnecessarily in a public place, including the congregating of groups (or of interacting minors) totaling three or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes, such as mere passage or going home, or to fail to leave the premises of a place open to the public when requested to do so by a police officer or the operator of a place open to the public.
 - (8) **Time of night** referred to herein is based upon the local prevailing standard of time.

Sec. 14-102. Curfew for juveniles.

- (a) It shall be unlawful for any person under the age of seventeen (17) to be or remain in or upon a public place within the County during the period ending at 5:00 A.M. and beginning:
- (1) At 11:59 P.M. on Friday and Saturday nights; and

- (2) 10:00 P.M. on all other nights.

Sec. 14-103. Exceptions.

- (a) The curfew for juveniles imposed in this Division shall be subject to the following exceptions:
 - (1) When a juvenile is accompanied by the juvenile's parent.
 - (2) When a juvenile is accompanied by an adult authorized by the juvenile's parent to take the parent's place in accompanying the juvenile for a designated period of time and purpose within a specified area.
 - (3) When the juvenile is on an errand as directed by his or her parent until the hour of 12:30 A.M.
 - (4) When a juvenile is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly, by first delivering to the person designated by the County Chief of Police to receive such information a written communication, signed by the juvenile and countersigned, if practicable, by a parent of the juvenile. The communication shall include the parent's home address and telephone number and specify when, where, and in what manner the juvenile will be in a public place during hours when this Division is otherwise applicable to minors.
 - (5) In case of reasonable necessity for the juvenile remaining in a public place, but only after the juvenile's parent has communicated to the person designated by the Chief of Police to receive such notifications the facts establishing the reasonable necessity relating to a specified public place at a designated time for a designated purpose including points of origin and destination.
 - (6) When a juvenile is on the property where the juvenile resides.
 - (7) When a juvenile is returning home by a direct route (without any unnecessary detour or stop) from and within one (1) hour of the termination of a school activity or an activity of a religious or other voluntary association, or a place of public entertainment, such as a movie, play, or sporting event.
 - (8) When the juvenile is legally employed and carries a certified card of employment, renewable every six months, dated or reissued by the Chief of Police, the card of employment shall identify the juvenile, the addresses of the juvenile's home and of the juvenile's place of employment, and the juvenile's hours of employment.
 - (9) When the juvenile is, with parental consent, engaged in normal interstate travel through the County or originating or terminating in the County.
 - (10) When the juvenile is married or has been married pursuant to State law.
 - (11) In the case of an operator of a place open to the public, when the operator has notified the police that a juvenile was present on the premises of the place open to the public during curfew hours and refused to leave.

Sec. 14-104. Parental responsibility.

It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit, or by inefficient control to allow, the juvenile to remain in any County public place under circumstances not constituting an exception to, or otherwise beyond the scope of, this Division. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall,

therefore, be no defense that a parent was without knowledge of the activities or conduct or whereabouts of such juvenile.

Sec. 14-105. Operator responsibility.

It shall be unlawful for any operator of a place open to the public to knowingly permit a juvenile to remain at the place open to the public under circumstances not constituting an exception to, or otherwise beyond the scope of, this Division. The term "knowingly" includes knowledge that an operator should reasonably be expected to have concerning the patrons of the place open to the public. The standard for "knowingly" shall be applied through an objective test: whether a reasonable person in the operator's position should have known that the patron was a juvenile in violation of this Division.

Sec. 14-106. Enforcement procedures.

- (a) If a police officer reasonably believes that a juvenile is in a public place in violation of this Division, the officer shall notify the juvenile that he or she is in violation of this Division and shall require the juvenile to provide his or her name, address and telephone number, and how to contact his or her parent.
- (b) The police officer shall issue the juvenile a written warning that the juvenile is in violation of this Division and order the juvenile to go promptly home. The Chief of Police shall send the parent of the juvenile written notice of the violation pursuant to Section 14-104.
- (c) Notwithstanding Subsection (b) of this Section, when a juvenile has received one (1) previous written warning for violation of this Division or a police officer has reasonable grounds to believe that the juvenile has engaged in delinquent conduct, the police officer shall take the juvenile into custody and transport the juvenile to the police district station. The parent shall immediately be notified to come for the juvenile. The police officer shall determine whether, under constitutional safeguards, the juvenile and/or the parent is in violation of this Division.
- (d) When a parent, immediately called, has come to take charge of the juvenile, and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be released to the Department of Social Services or, upon the recommendation of the Department of Social Services, to another adult who will, on behalf of a parent, assume the responsibility of caring for the juvenile pending the availability or arrival of a parent.
- (e) In the case of a first violation of this Division by a juvenile, the Chief of Police shall, by regular mail, send to a parent written notice of the violation with a warning that any subsequent violation will result in full enforcement of this Division, including enforcement of parental responsibility and of applicable penalties.
- (f) For the first violation of this Division by an operator of a place open to the public who permits a juvenile to remain on the premises, a police officer shall issue a written notice of the violation with a warning that any subsequent violation will result in full enforcement of this Division, including enforcement of operator responsibility and of applicable penalties.

Sec. 14-106.01. Penalties.

- (a) If, after the warning notice pursuant to Section 14-106 of a first violation by a juvenile, a parent violates Section 14-104 (in connection with a second violation by the juvenile), this shall be treated as a first offense by the parent and shall be a civil violation pursuant

to Subtitle 28, Division 3. For the first offense by a parent, the fine shall be \$50.00, \$100.00 for the second offense, and \$250.00 for the third and any subsequent offense.

- (b) The parent of a juvenile subject to this Section shall be liable for all costs incurred by the County for providing personnel to remain in the company of a juvenile who has been detained as a curfew violator if the parent does not pick up the juvenile within one hour after receiving notice from the County that the County is detaining the juvenile for a curfew violation. The amount to be paid by the parent shall be based on the hourly wage of the County employee who is assigned to remain with the juvenile plus the cost of benefits for that employee.
- (c) If, after the warning notice pursuant to Section 14-106 of a violation of this Division, an operator of a place open to the public violates Section 14-105 a second time, this shall be treated as a first offense by the operator and shall be a civil violation pursuant to Subtitle 28, Division 3. For the first offense by an operator, the fine shall be \$100.00, \$250.00 for the second offense, and \$500.00 for the third and any subsequent offense.

MEMORANDUM

October 7, 2011

TO: Kathleen Boucher, Assistant Chief Administrative Officer

FROM: Phil Andrews, Public Safety Committee Chair *Phil Andrews*

SUBJECT: Criminal Law §10-201, Disturbing the Public Peace and Disorderly Conduct

During the recent Public Safety Committee worksession concerning Bill 25-11, Offenses-Curfew-Established, we discussed the above-referenced State law prohibiting disturbing the public peace and disorderly conduct.

To help assess the need for Bill 25-11, the Committee would like written comments from the County Attorney and the State's Attorney describing the circumstances under which Criminal Law Article §10-201 could be used by the Police to avoid a repeat of the gang fight that occurred in downtown Silver Spring. If they believe that this existing State law would not have been helpful to prevent or defuse this incident, please explain why not. In addition, are there any other types of laws that they feel could be enacted to prevent this type of incident in the future that are not directed at persons of a particular age?

Please coordinate the responses from the County Attorney and the State's Attorney. As you know, the next Public Safety Committee worksession is scheduled for November 3. We would appreciate receiving these responses before October 21.

cc. Councilmembers
Marc Hansen
John McCarthy
Chief Manger

BILL 25-11

NAN
CC
SBF
LL
MF
BD
AM



STATE'S ATTORNEY
JOHN J. MCCARTHY

State's Attorney for Montgomery County

50 Maryland Avenue
Rockville, Maryland 20850

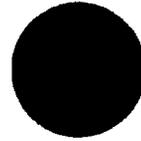
(240) 777-7300
FAX (240) 777-7413
www.montgomerycountymd.gov/sao

DEPUTY STATE'S ATTORNEYS
LAURA CHASE
JOHN M. MALONEY

October 21, 2011

The Honorable Phil Andrews
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

065244



RECEIVED
MONTGOMERY COUNTY

OCT 25 09 05

RE: Criminal Law Article, Section 10-201

Dear Mr. Andrews:

I am writing in response to your request for written comments from my office relating to *Criminal Law Article, Section 10-201*, which pertains to the offense of disorderly conduct and disturbing the peace. My understanding is that this will help you in your assessment as to the usefulness of Bill 25-11, relating to the creation of a curfew.

Specifically, you have asked us to describe circumstances under which police may use the disturbing the peace statute to prevent gang fights such as the one that occurred in downtown Silver Spring last July. The relevant portions of the Statute under *10-201(c)* prohibit the following:

- (1) "A person may not willfully and without lawful purpose obstruct or hinder the free passage of another in a public place or on a public conveyance."
- (2) "A person may not willfully act in a disorderly manner that disturbs the public peace."
- (3) "A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance of the public peace."
- (4) "A person who enters the land or premises of another, whether an owner or lessee, or a beach adjacent to residential riparian property, may not willfully:
 - (i) disturb the peace of persons on the land, premises, or beach by making an unreasonably loud noise; or

(ii) act in a disorderly manner.

(5) "A person from any location may not, by making an unreasonably loud noise, willfully disturb the peace of another:

(i) on the other's land or premises;

(ii) in a public place; or

(iii) on a public conveyance.

Disturbing the Peace is a misdemeanor punishable by a maximum of 60 days imprisonment or a fine not exceeding \$500. At first glance, it may appear to be a simple and readily available tool for officers to use. However, the definition of the disorderly conduct that accompanies disturbing the public peace is somewhat more complicated. In determining whether a person's particular conduct is applicable under the statute, a Court must examine whether the accused's speech or actions are protected under the First and Fourteenth Amendments of the Constitution.

The Court of Appeals has indicated that this statute, "does not invite arbitrary or discriminatory enforcement. It can be enforced to limit protected speech only to the extent that the speaker's actions are willful, the volume clearly exceeds what is necessary to address passersby, and the noise is actually disruptive to the captive audience in the neighborhood." *Eanes v. State*, 318 Md. 436 (1990). With respect to the level of loudness required, Maryland Courts have described it as, "high volume and intensity of sound – clamorous and insistent." *In re Nawrocki*, 15 Md. App. 252 (1972).

As to the nature of the language used, the mere reference that a defendant was using "profane language" is not enough to meet the requirements of the statute. *Id.* However, "fighting words" which are likely to cause acts of violence by the person to whom the remark is addressed will fall under the ambit of the statute. *Id.* The test is whether, "such words as a matter of common knowledge, would inherently, likely provoke violent reaction where addressed to an ordinary citizen." *Id.* Obscene language may also be punishable under the statute, but the language must be "erotic, so as to conjure up such psychic stimulation to anyone likely to be confronted with it." *Id.*

Commonly, the statute comes into play when officers encounter a person in a public area who is angry and yelling loudly, either using fighting words or obscenities. Usually, officers will try to prevent further disturbance of the peace by asking him to stop. If he refuses, police may elect to arrest him pursuant to the statute, specifically under 10-201(c), for failure to obey a lawful order of a police officer to prevent a disturbance of the peace.

It should be understood however, that by its nature, the statute is a reactive tool. If police encounter a person or persons simply standing on the street whom they believe *may* become disorderly, but as of yet have done nothing wrong, they have no basis in fact to give any order. Rather, they must wait for the individual or group to become disorderly in the attempt to disturb the peace before acting.

With respect to the Silver Spring incident, video taken from police cruisers that night reflects young people congregating on the street before fights break out. Officers were properly concerned about the potential for a riot, but faced a dilemma, because simply being out on the street, whether in large or small groups is not a crime. The officers had no basis to use the statute until later in the evening when there was a breach of the peace.

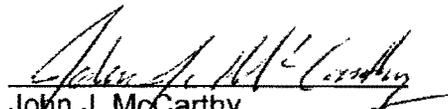
In comparing the utility of the proposed curfew, it is understood that the curfew statute will be civil in nature, and that there will be no arrests for violating the curfew. For multiple reasons that go beyond the focus of this letter, I opposed a criminal curfew from the outset and continue to do so.

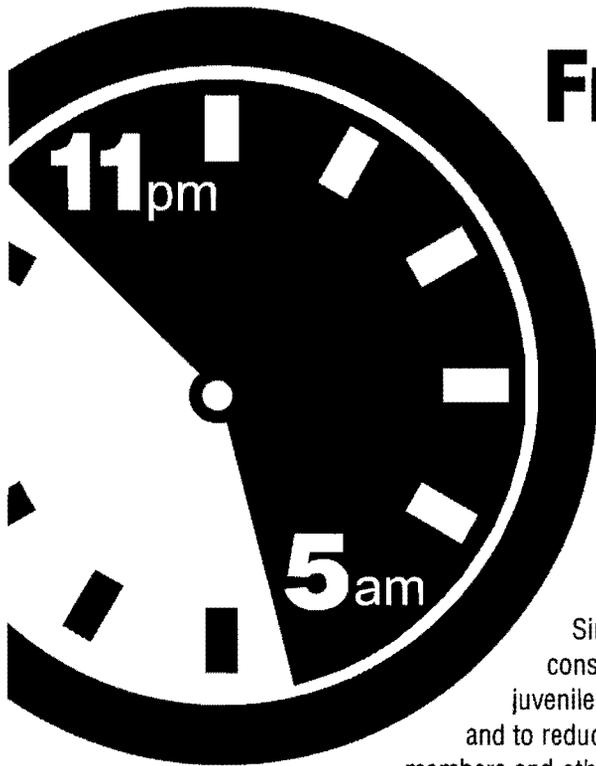
Returning to your inquiry, under circumstances similar to those encountered by police in downtown Silver Spring, if underage youths were on the street after the prescribed curfew hour, police would not have to wait until a disturbance breaks out before approaching and ordering them to go home. However, if a person refuses to go home, the officer may issue a citation, but may not take the violator into custody for failure to comply with the order.

In short, the curfew statute would appear to give police a proactive tool to initially approach and order underage persons home and off the streets before a crime is committed. Of course, its effectiveness presupposes the police will encounter such persons *after* the curfew hour has tolled, and that curfew violators will comply with the order to leave.

I hope this information is helpful to you. As always, this office remains available to provide legal guidance on questions directed to us. If you have any questions, please feel free to give me a call.

Sincerely,


John J. McCarthy
State's Attorney for
Montgomery County, Maryland



Frequently Asked Questions about the County Executive's Youth Curfew Proposal

From the Montgomery County Office of Public Information

► Why is Montgomery County considering a curfew?

Simply put, a youth curfew will help protect young people. The County is considering a limited youth curfew as an additional method to improve the safety of juveniles, the safety of residents and visitors to our increasingly urbanized communities, and to reduce juvenile-related crimes. In the past several months police have seen gang members and other young adults coming from neighboring areas that have curfews and engaging in unlawful or violent activities – at times including county youth or directed at them. Current laws are not adequate to manage large groups of teens that gather for the purpose of causing trouble. A youth curfew would complement already existing public safety activities and positive youth development programs to protect underage youth from being the victims of crime or being involved in crime.

► What could a curfew accomplish?

A limited curfew could help prevent our youth, other residents, and businesses from becoming victims of unlawful behavior close to and during the curfew hours. It would give the Montgomery County Police Department the same tool that Prince George's County and Washington D. C.'s Metropolitan Police have to prevent unlawful behavior and victimization. It would help manage the influx of youth coming from other curfew-regulated jurisdictions who engage in criminal activity. A by-product could be assisting parents and guardians who have difficulty getting their teens to adhere to family-established curfews. A curfew is a management tool that police could use to disperse large groups of juveniles, such as the approximately 25-member group who participated in the August mass theft at a 7-Eleven store in Germantown just before 2:00 a.m.

► What does the curfew law include?

The curfew basically restricts youths under the age of 18 from gathering and remaining in public places between 11:00 p.m. and 5:00 a.m. Sunday through Thursday and between midnight and 5:00 a.m. on Friday and Saturday. Its purpose is to prevent unlawful behavior and safeguard law-abiding teens. It includes a list of exemptions for which it would not restrict minors during a portion of or all of the curfew hours.

► Which other jurisdictions have curfews?

According to a survey by the United States Conference of Mayors, more than 500 U.S. jurisdictions have youth curfews, including 84 percent of cities with populations over 180,000.

In our area, two of the largest urban areas, the District of Columbia and Prince George's County have curfew laws. So does Baltimore. Virginia state law allows local jurisdictions the authority to establish curfews for minors between the hours of 10:00 p.m. and 6:00 a.m. In 1996, President Bill Clinton recommended a 9:00 p.m. youth curfew to protect young people from becoming victims. Over 70 cities have **daytime** youth curfew laws to hold parents accountable and keep kids in school. Montgomery County has revitalized or developed urban centers in Bethesda, Clarksburg, Germantown, Rockville, Silver Spring, and Wheaton, so it would make sense to have a **county-wide** curfew.

► How will it work?

Police would confront teens called to their attention due to suspected suspicious, menacing, potentially violent, or violent behavior. The police would not be involved in routinely rounding up minors for the sake of enforcing the curfew law, but the curfew would instead be a tool when encountering suspicious or dangerous behavior either on patrol or when dispatched to a complaint from a citizen. Those individuals would be asked to give their age and purpose for being in a public place or establishment.

If they are 17 or younger and their purpose for being out does not fall within the exemptions, the minor would be advised of the curfew law and directed to return home. If the minor leaves, no further action would be taken. If the minor refuses to leave, the minor would be issued a civil citation. If the minor still refuses to leave, he could be "failing to obey the lawful order of a law enforcement officer to prevent a disturbance of the public peace" and could be taken into custody.

The now "juvenile defendant" would be transported to a Police District station and processed for that misdemeanor charge. The defendant's parents and/or guardian would be notified to come and take custody of the minor. If the appropriate adult responds, the juvenile is released to that person pending any follow-up action by the Department of Juvenile Services (DJS). If the parent/guardian or their designee refuses or is unable to respond to take custody, the DJS is contacted by the arresting officer. The DJS has its own protocols that determine if the juvenile will be placed in a facility pending action the following day. Youth who are repeat offenders and who appear to lack adult supervision and support may be brought to the attention of Montgomery County's Department of Health and Human Services so that some follow up or assessment may be completed and the needs of the youth may be addressed.

► What are the penalties?

A curfew violation would be a civil violation punishable by a fine of \$100 for the first offense and \$150 for a second offense according to amendments the County Executive is proposing to the original bill. As amended, minors would not be ordered to perform up to 25 hours of community service. If arrest authority is needed a juvenile offender could be charged with "failure to obey an order made by a police officer to prevent a disturbance of the public peace."

The penalty for the criminal offense of "failure to obey" is up to 60 days in jail and/or up to a \$500 fine.

A parent of a minor commits an offense if he or she knowingly permits, or allows, a minor to remain in any public place during curfew hours. Parents would also be liable for a fine of \$100 for the first offense and \$150 for a second offense. Parents of a minor cited under the law would not be required to attend parenting classes.

An owner or operator of an establishment commits an offense if he or she knowingly allows a minor to remain on the premises of the establishment within curfew hours.

Any owner or operator of an establishment not exempted under the curfew - after being given a warning - is subject to a fine of \$100 for the first offense and \$150 for a second offense.

► When is a juvenile exempt from the curfew?

1. When accompanied by a parent or guardian.
2. When accompanied by another adult authorized by the parent or guardian to accompany the juvenile for a designated purpose and period of time.
3. When on an errand at the direction of the parent or guardian without any detour or stop until 12:30 a.m.
4. When in a motor vehicle, train, or bus in interstate travel through the County or starting or ending in the County.
5. When going to, engaged in or returning home from employment without any detour or stop.
6. Responding to an emergency.
7. When on the property where the minor lives.
8. On the sidewalk next to the minor's residence or the next-door neighbor's residence if the neighbor does not complain to police about the minor's presence.
9. When attending, or returning from an official school, religious, or other type of recreational activity sponsored by the County, a civic organization, or another similar entity that takes responsibility for the minor at the event.
10. When exercising First Amendment rights protected by the U.S. Constitution, including free exercise of religion, freedom of speech, and the right of assembly.

► **What additional exemptions are being considered?**

The County Executive has proposed an additional exemption when a minor is attending and/or returning from a movie, concert, play, or sporting event.

► **How can you ensure that a curfew will not cause police to engage in racial and age profiling?**

Police would be asked to respond to groups of young people and particular situations that appear threatening or where trouble has erupted. The response would be based on activity, not race. Officers would not be stopping someone solely based on their race or potential juvenile status. There would need to be probable cause to believe that trouble would occur. Montgomery County Police have consistently been vigilant about not engaging in profiling. There is no reason to believe that a new law would cause that to change. Prevention of any type of profiling is based on hiring the right caliber of officers, giving officers appropriate and continuing training, and having consequences in place for failure to perform to defined standards.

► **Curfews fail to address the causes of juvenile delinquency. Why doesn't the County put more efforts into prevention programs which would target the offenders, not the law-abiding teens?**

The County has invested and does invest in prevention and suppression programs. The County has spent over \$8 million in prevention-based programming over the past four years as part of the County Executive's "Positive Youth Development" initiative which includes out-of-school-time programs across the County. Programs are offered throughout the year at both the middle school and high school levels with the goal of providing youth with safe, supervised and constructive activities that prevent negative behavior. The Police, Health & Human Services and Recreation Departments join together with other agencies in efforts to educate about, intervene to prevent, and suppress gang activity in the County.

The youth curfew would complement these and other efforts by government and community and non-profit groups and organizations. The problem of youth violence and victimization needs immediate attention by police who are in need of another means to control unruly groups of minors. The curfew is not meant to take the place of other types of assistance to at-risk teens and their parents.

► **Why don't you take the money you would spend on administering a curfew and spend it on youth programs to help prevent violence?"**

The cost to administer a curfew would be low and offset by the prevention of situations that would tax Police resources even more. The County is already investing in a broad range of positive youth programs.

► **The crime statistics posted on the police website show that crime is down in the county and that there is a decrease in "youth offenses." Why a curfew when youth crime is down?**

Total crime has been on a downward trend in the County for the past four years. That's good news. However, the "juvenile offenses" category of statistics under the Uniform Crime Reporting standards refers only to "runaways, "out of control youth", and "runaways-other jurisdictions" which are exclusive to juveniles. It is not a measure of such crimes as robberies, assaults, sexual offenses, etc. that may be committed by either juveniles or adults.

Still, existing County data shows that the total number of youth arrests increased from 1,548 in 2006 to 2,626 in 2010. Juvenile arrests as a percentage of all arrests increased from 12 percent in 2006 to 21 percent in 2010.

The curfew proposal did not come after a study of statistics that showed a dramatic increase in crimes committed by juveniles. Rather, it came as a proactive measure to address an emerging potentially dangerous situation and to better protect young people from being victims of crime or being involved in criminal activity.

► **Why not limit curfews to, say, the Central Business Districts in the County?**

That would simply cause the problem to shift across the street, just outside the business districts or to other parts of the County. Not all juvenile-related crimes and juvenile victimization occur in Central Business Districts.

► **Do curfews really cut down on youth crime?**

If you do some research you'll find that there are valid studies that say they don't and others that say they do. However, one of the benefits of a curfew is that it can act as a deterrent to crime; and that aspect of a curfew — what **doesn't** happen — can't be statistically measured.

We do know for certain that serious traffic crashes involving our youngest drivers have dropped significantly since Maryland tightened teen driving laws. According to preliminary state data released in June of this year, teen fatalities dropped 25 percent from 48 deaths in 2009 to 36 in 2010. Teen injuries fell by 17 percent, from 5,479 in 2009 to 4,543 in 2010. Teen drivers can't obtain a license without restrictions, including driving between midnight and 5:00 a.m., until they are 18 years old. The curfew would apply the same types of restrictions to teens who are on foot or who use mass transit.

► **If you are basing the need for a curfew on actual crimes being committed by young people during the overnight hours, why am I not seeing that reflected in the crimes listed in the Recent Crime Summaries that are posted on the police website on each District's webpage?**

The Recent Crime summaries are not a listing of every crime reported in the county. The summaries provide a sampling of trends of crimes reported to police. There is no suspect description for the majority of the crimes listed, so the age of a suspect is not known at that phase of reporting. Because of that, reviewing what is printed in the crime summaries would not be a means of determining how many crimes are committed by juveniles and/or how many crimes are committed during proposed curfew hours. Those crime listings do not include calls for service that come through the police computer-aided dispatch system. Some of those calls for service do not require that a report be written but still mandate a police response. An example might be a fight in progress or a disorderly conduct incident.

► **What data do you have on juvenile crime and victimization occurring in the County?**

A recent analysis of reported crime regarding juveniles revealed:

- The percentage of juvenile arrests (out of total arrests) increased from 12% in 2006 to 21% in 2010.
- For each year from 2008 through 2010, juvenile victims accounted for approximately 4% of all victims reporting incidents in the county.
- The percentage of robberies occurring between 11:00 p.m. and 5:00 a.m. with any juvenile arrest has increased steadily since 2008. However, the percentage of robberies in that same time period with any juvenile victim has decreased.
- The percentage of assaults occurring between the above hours with any juvenile arrest has increased steadily since 2008, and the percentage of assaults occurring between those hours with a juvenile victim has increased.
- The percentage of weapon offenses occurring between the above hours with any juvenile arrest has increased since 2008.

► **Don't you think the curfew will cause a loss of revenue to local businesses?**

No. Business owners know that groups of rowdy and intimidating teens keep their adult customers (who typically spend more) away. Many adults have expressed fear in the presence of groups of young people who speak loudly and act in a threatening manner. Businesses in Prince George's County and in the District of Columbia have been supportive of the youth curfews there, according to the police chiefs in those jurisdictions. Some Montgomery County Chambers of Commerce have already provided their supportive feedback for the curfew.

► **What about other municipalities like Gaithersburg, Rockville, and Takoma Park — are they going along with the curfew proposal?"**

Some municipalities adopt legislation enacted by the County. The governing body of each municipality will likely examine the final proposal and after discussion with their jurisdiction's police department make the determination if they will accept the curfew legislation. Any jurisdiction that does not accept a curfew law may open itself up to becoming a haven for those juveniles who are seeking a gathering place to cause trouble.

From young people affected by the curfew:

► **"The curfew doesn't seem fair, why penalize the majority of good teens because of the actions of a few?"**

We know that the vast majority of our teens are responsible members of our community. That's why with a list of exemptions to the curfew and the manner in which it will be enforced, the curfew is designed to have a minimum impact on our young people who aren't causing any trouble. The curfew's purpose is to protect you and adults from becoming victims of crime, as well as to provide a tool for police to prevent crimes committed by minors who are posing a threat to public safety.

As Police Chief Tom Manger said in his testimony before the County Council: "As a parent and a Police Chief, I do not want to limit the legitimate opportunities for entertainment and interaction for our young people. Nor do I want to stand idly by and not have at our disposal a tool which can help us manage situations before they turn ugly."

► **"Will teens be able to work past the curfew hours?"**

Yes. If you have a job that requires you to work past curfew hours you are exempt from the curfew law. However, when your work shift ends, you would be expected to return directly home without making any other stops along the way.

▶ **“Will kids still be able to go to late-night movies?”**

Yes, if the movie begins before the curfew hour. It does not have to end before curfew. The current proposal was never meant to be the final product. It was presented to get the process started. Input from members of the County Council and the community, especially our young adult community members, is welcomed as a final drafting of the law is in process.

The County Executive has proposed an amendment to the bill that would exempt minors attending and/or returning from movies, concerts, plays, and sporting events.

▶ **“Will kids be able to stop by an open establishment on their way to a Metro or bus stop after curfew hours?”**

The goal is compliance with the curfew so try to get what needs to be done prior to the curfew hours. If there is a very particular reason that causes you to need to make a stop on the way home, chances are that will not arouse concern. If you are stopped and asked your age and purpose of being out past curfew, you just need to comply with an officer's or business owner's direction that you are in violation of the curfew and continue home.

▶ **“Why does the curfew law apply to youth under age 18?”**

One of the goals of the curfew is to provide police with an additional tool to prevent criminal activity committed by juveniles. A juvenile does not legally become an adult until age 18. That's why there are restrictions on the sale of alcohol and the purchase of tobacco products to underage individuals. So it makes sense for the curfew to cover those 17 and under. Once you are 18, adult laws apply to the offender.

▶ **“Why can't the County police use the existing laws such as loitering, disorderly conduct, and trespassing, instead of creating a new curfew law?”**

Loitering laws are now strictly drawn to comply with recent court decisions. Loitering is now defined only as blocking an entrance or exit to a place or area. Disorderly conduct must be observed by the responding officer. Trespassing laws are not applicable to public spaces unless that space is explicitly posted as closed between certain hours (such as County parks). The youth curfew is designed to apply to situations where none of these laws are options.

▶ **“Don't you think a curfew will foster distrust of police and government by youth?”**

No. Young people are providing their input to the proposal; they will have a voice in the final product. Once everyone understands that the curfew is important to improve everyone's safety, and that its enforcement will have little impact on minors who aren't breaking the law, there should be greater acceptance.

▶ **“According to the Youth Rights Association, statistical studies don't show a correlation between curfew enforcement and decreased juvenile crime. So why have a curfew if it isn't going to be effective?”**

The curfew wasn't proposed based on statistics, it was based on what police are seeing as an emerging concern. We could sit back and wait until the situation gets worse, but the County Executive didn't want to hold back if there was something that could be more quickly done that could make everyone safer.

There are a variety of studies on the subject and studies can be found to both support and that disprove the effectiveness of curfews.

According to a survey by the United States Conference of Mayors, more than 500 U.S. jurisdictions have youth curfews, including 84 percent of cities with populations over 180,000.

A survey by the group of 347 cities with populations over 30,000 found the following:

- 90 percent of jurisdictions with curfews said that enforcing a curfew was a good use of Police time.
- 93 percent said a nighttime curfew was a useful tool for police officers.
- 88 percent said curfews helped make their streets safer for residents.
- 83 percent said curfews helped to curb gang violence.

While comparisons and cause-and-effect can be difficult, San Antonio saw victimization of youth drop 53 percent after enactment of a curfew. The rate in Dallas fell 17 percent. In San Diego, violent crime by juveniles dropped by 20 percent and violent crimes against juveniles fell by 40 percent.

In our region, two of the largest urban areas, the District of Columbia and Prince George's County have curfew laws. So does Baltimore. Virginia state law allows local jurisdictions the authority to establish curfews for minors between the hours of 10:00 p.m. and 6:00 a.m. The District of Columbia experienced a 50 percent reduction in juvenile victims of violent crime and a 43 percent reduction in juveniles arrested during curfew hours when a 10:00 p.m. curfew was in effect during a 2006 crime emergency.

In 2010, the District of Columbia police had 4,326 cases of curfew violations; Prince George's County had 78 cases. In both jurisdictions this represents only those underage who have refused to go home. Obviously, hundreds and thousands have been told to go home and complied – and/or complied in the first place by not being out after curfew. Those much larger numbers are not reflected in the statistics.

The County Executive and Police Chief Tom Manger spoke directly to Washington D.C.'s Metropolitan Police Chief Cathy Lanier and Prince George's Police Chief Mark Magaw who believe that the youth curfew has been an effective tool in their jurisdictions for protecting young people. Though, as in Montgomery, there were questions raised at the beginning of the process, the youth curfew now enjoys broad support and, according to the chiefs, any public comment now tends toward supporting broader use of the youth curfew.

Police have confirmed that minors in neighboring jurisdictions with curfews are entering Montgomery County and getting into trouble here because there isn't currently a curfew in our county and that issue needs to be addressed

From concerned parents:

▶ "Will parents be able to pick up their children at establishments such as fast food restaurants after curfew hours?"

Yes, in a situation where you are unavoidably delayed. It is expected that parents will support the curfew hours and make arrangements to pick up their children to avoid them being out after those hours. The curfew targets groups of teens in public places who are engaging in menacing or violent actions. A small group of teens eating quietly at a restaurant or waiting to be picked up by a parent, is not likely to cause anyone to call police.

▶ "Why should the government set a curfew, isn't that the right and responsibility of parents?"

Many parents do set and are able to enforce curfews for their children. However, the at-risk teens that this curfew is designed to prevent getting into trouble frequently resist parental control or belong to challenged families where the parents need additional support to manage the actions of their children. The curfew can aid parents in carrying out their responsibilities to reasonably supervise children entrusted to their care. It is important to note again that there has been a de facto motor vehicle operator curfew in effect for many years now – the curfew simply applies that same concept to pedestrians and people traveling by mass transit.

From business owners:

▶ "Can my businesses provide goods and services to teens past the curfew — i.e. sell movie tickets past the curfew; serve them dinner, etc?"

Businesses are expected to support the curfew by not allowing their property to become a gathering place for groups of teens who could potentially cause trouble. There will be exemptions to the curfew and owners of entertainment and sports-related businesses should know those exemptions. A quiet gathering of young people should not pose a problem, but if a group gets rowdy business owners can use the curfew in the same way police officers would, as a means to move the troublemakers out of their establishment. Business managers should not put themselves in harm's way and can also call for police to disperse a group becoming out of control.

▶ "Can my business get into trouble for providing goods and services to teens after the curfew?"

Owners of businesses not exempt from the curfew are obligated to reasonably uphold the curfew. A business owner could be held legally accountable for knowingly providing a location for an unruly group of juveniles to gather during curfew hours.

▶ "Can my business hire a teen when I know that their shift will go beyond the curfew?"

Yes. Teens with jobs are exempt from the curfew.

▶ "Should I notify the police if teens are coming into my establishment after the curfew without an adult, or notify the police if teens are gathering outside of my business after the curfew?"

Business owners should notify police if a group of underage teens is causing trouble inside their establishment or on their property, just as they would be expected to do outside of curfew hours.





Model Penal Code
Copyright 1962, American Law Institute

PART II. DEFINITION OF SPECIFIC CRIMES
OFFENSES AGAINST PUBLIC ORDER AND DECENCY
ARTICLE 250. RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES

Model Penal Code § 250.6

§ 250.6. Loitering or Prowling.

A person commits a violation if he loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall prior to any arrest for an offense under this section afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this Section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

NOTES:

Explanatory Note for Sections 250.1-250.12

Article 250 covers riot, disorderly conduct, and related offenses. This article deals with a vast area of penal law, which, at the time the Model Code was drafted, had received little systematic consideration by legislators, judges, or scholars. The penalties involved were generally minor, the defendants usually came from the lower social and economic levels, and appeals were consequently infrequent. For these reasons, pressures for legislative reform were minimal. Yet, disorderly conduct and related offenses form a critically important area of the criminal justice system. Offenses in this category affect a large number of defendants, involve a great proportion of public activity, and powerfully influence the view of public justice held by millions of people.

The purposes of Article 250 are the following:

- (1) to systematize the chaotic provisions of prior law penalizing a wide variety of petty misbehavior under such vague headings as "disorderly conduct" or "vagrancy";
- (2) to provide a rational grading of penalties and especially to limit the discretion of the minor judiciary to impose substantial imprisonment for petty infractions;
- (3) to safeguard civil liberty by careful definition of offenses so that they do not cover, for example, arguing with a policeman, peaceful picketing, or disseminating religious or political views;
- (4) to minimize the overlap of disorderly conduct offenses and offenses dealt with by more specific provisions of the Model Code so that policies embodied in other offenses will not be disregarded by prosecuting the same behavior as disorderly conduct;
- (5) to eliminate obsolete or unconstitutional provisions frequently found in prior law, e.g., against blasphemy, or creating "status crimes," such as being a common scold, common prostitute, common gambler, or common drunkard;

Model Penal Code § 250.6

(6) to extend the penal law to new areas of misbehavior involving public or aggravated assault on the feelings of individuals and groups, e.g., by false bomb scares, harassing telephone calls, illegal wire-tapping, and other invasion of privacy; and

(7) to improve criminal statistics by requiring prosecuting and reporting agencies to distinguish the widely differing forms of misbehavior often lumped together under the common heading "disorderly conduct."

Section 250.1 defines the offense of riot, which is the only felony in this article, and a subsidiary offense of failure of disorderly persons to disperse upon official order. The objectives of this offense are to provide aggravated penalties for disorderly conduct where the number of participants makes the behavior especially alarming or dangerous and to establish penal sanctions for persons who disobey lawful police orders directing a disorderly crowd to disperse.

Section 250.2 covers the offense of disorderly conduct, which is defined in ways significantly different from prior law. Perhaps most notably, Section 250.2 prohibits only conduct that is itself disorderly and does not punish lawful behavior that prompts others to respond in a disorderly manner. Another significant innovation in the law of disorderly conduct is the reduction of the offense to a violation, which does not authorize imprisonment, unless the actor's purpose is to cause substantial harm or serious inconvenience or unless he persists in disorderly conduct after reasonable warning or request to desist, in which case the offense is a petty misdemeanor.

The next six sections of Article 250 deal with special cases of conduct that is disorderly or otherwise constitutes a public nuisance. Section 250.3 punishes false public alarms as a misdemeanor. Section 250.4 defines the petty misdemeanor of harassment. This offense covers a variety of harassing events, including making a telephone call without purpose of legitimate communication, insulting another in a manner likely to provoke violent response, making repeated communications anonymously or at extremely inconvenient hours or in offensively coarse language, and engaging in any other course of harmful conduct serving no legitimate purpose of the actor. Section 250.5 states the Model Code offense of public drunkenness and drug incapacitation. It differs from prior law principally in requiring that the person be under the influence of alcohol or other drug "to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity." Additionally, Section 250.5 departs from earlier practice in punishing public drunkenness as a violation unless the actor has been convicted twice before within a period of one year, in which case the crime is a petty misdemeanor.

Section 250.6 defines the crime of loitering or prowling. This offense replaces the extremely broad vagrancy laws typical of an earlier time with an offense carefully designed to nip incipient crime in the bud. Specifically, Section 250.6 punishes a person who loiters or prowls "under circumstances that warrant alarm for the safety of persons or property in the vicinity." The section further requires that, save where impracticable, the police officer shall, before making an arrest for this offense, afford the actor an opportunity to dispel alarm for persons or property by identifying himself and explaining his presence and conduct. Section 250.7 punishes the obstruction of highways and other public passages and deals particularly with police control over a person whose speech or other lawful behavior attracts an obstructing audience. Section 250.8 covers disrupting meetings and processions. This offense is distinct from the general provision against disorderly conduct in that it reaches some instances of behavior not in itself disorderly but calculated to outrage the sensibilities of the group involved.

Finally, Article 250 includes several offenses addressed to disparate kinds of conduct that, although not likely to generate disorder, are widely recognized as instances of public nuisance. For example, Section 250.9 punishes the purposeful desecration of venerated objects, including most notably the national flag. Section 250.10 deals with abuse of corpse. Section 250.11 punishes cruelty to animals, and Section 250.12 covers violation of property in a variety of different contexts.

Two comments of a more general nature should also be made at this point. First, it should be noted that regularization of the state penal code will not suffice to bring reform to this area of the law. It will also be necessary to suppress or align innumerable local ordinances under which much prosecution of disorderly conduct and related offenses takes place. Second, the constitutional background of these offenses has changed significantly since promulgation of the Model Code in 1962. In general, judicial concern with the vagueness of penal legislation has increased; and expanding concepts of liberties protected under the first amendment have withdrawn many areas of expressive activity from legislative competence. The various constitutional questions raised by the offenses in Article 250 are discussed in the Comments to specific sections.

For detailed Comment to 250.6, *see* MPC Part II Commentaries, vol. 3, at 383.

AMENDMENT

To Bill 25-11

BY COUNCILMEMBER FLOREEN

PURPOSE: To authorize the County Executive to impose a youth curfew as necessary to maintain public order.

On page 4 of the Executive redraft, after line 75, insert subsection (c) and reletter later subsections:

(c) Executive Order. To impose a curfew under this Section, the County Executive must:

(1) find, after receiving the advice of the Police Chief, County Attorney, and State's Attorney, that imposing a youth curfew in all or part of the County is necessary to maintain public order in the affected area;

(2) issue an Executive Order, which must specify:

(A) each area of the County where the curfew will take effect, if the curfew does not apply in the entire County;
and

(B) the time period, which must not exceed 180 days, during which the curfew remains in effect, unless cancelled or modified by a later Executive Order; and

(3) notify the Council President of the issuance of the Order, post the Order on the County website, and publish the Order in the next issue of the County Register.

Any Executive Order issued under this subsection takes effect when the Order is posted on the County website, unless the Order specifies a later date.

The Washington Post

[Back to previous page](#)



Montgomery County debates merits of teen curfew

By [Dan Morse](#) and [Michael Laris](#), Published: August 31

A group of about 15 young men exited the Silver Spring Metro station on a recent Friday night, heading toward the area's bustling open-air restaurant district.

Just before 10 p.m. they passed a police lieutenant. No hellos or smiles, but plenty of tattoos and stares.

"My hunch is that's not a good crowd," Montgomery County police Lt. Robert Carter said, calling into his radio to alert fellow officers to keep track of them.

For 38 minutes they watched. The group made its way to Dixon Avenue, a darkened street just off the main strip. Officers confronted them and started asking questions. Just a month earlier on those same streets, more than 50 young men, many of them gang members, got into nighttime brawls that lasted hours. When police chased them from one spot, the group gathered a few blocks away and kept fighting. By the end, a female had been stabbed.

That melee pushed Montgomery's top elected official, County Executive Isiah Leggett (D), to propose a countywide curfew for ages 17 and younger: midnight on weekends, 11 p.m. during the week.

Police say that there's been an uptick in arrests of juveniles and that a curfew law would give officers a valuable tool to head off trouble. Neighboring Prince George's County and the District have curfews, which police say are pushing more youths into Montgomery late at night. Philadelphia officials recently toughened their teen curfew to tamp down on flash mobs.

But others in Montgomery say a curfew is an overreaction, wouldn't be effective and — at its worst — could lead to racial profiling. Most crimes committed nationwide by young people don't occur late at night, research has shown. The same holds true in Montgomery, where 92 percent of assaults and 83 percent of robberies for

<http://www.washingtonpost.com/local/montgomery-county-debates-merits-of-teen-curfew/2011/08/...> 9/1/2011

which juveniles were arrested last year happened outside the proposed curfew's hours.

As the Montgomery County Council prepares to vote on the measure this fall, the debate is intensifying.

"Parents are divided on this issue between those who believe it is an unnecessary intrusion into how they raise their children and parents who believe it will make the community safer," said council member Roger Berliner (D-Potomac-Bethesda), a curfew skeptic.

On Wednesday, Leggett proposed amendments to the bill to tone it down. Youths coming home from movies, concerts and sporting events would be exempted. Rather than detain curfew violators, the officers would issue a civil citation, punishable by a fine of up to \$100 for the first offense. Then, if the kids don't go, officers could arrest them for failing to obey a lawful order. Forcing parents of curfew violators to attend parenting classes is no longer part of the proposed curfew.

When officers approached the group on Dixon Avenue, the teenagers answered questions and had their pockets searched and their tattoos photographed. Police found no weapons or drugs and didn't charge anyone.

"They just automatically assumed we were thugs, or we were about to cause some trouble or go fight," said Mike Brown, 18, a James Hubert Blake High School student who ended his junior year with a 3.1 GPA and thinks the youths were targeted because they are black.

Carter said it was not about race. The officer had exchanged friendly hellos with other black teens that night, but this group was larger and passed by without a word. He said he "absolutely would have done the same thing" had the youths been white.

Although Brown didn't like the way he and his friends were stopped, he's not anti-curfew. He said he has seen some late-night fights in Silver Spring and thinks the curfew could help.

The proposed curfew is county-wide, but much of the debate has focused on downtown Silver Spring, a once lackluster stretch that has been transformed in recent years and now draws big crowds. This month, the Fillmore theater is scheduled to open and bring in even more people. As recent nighttime visits show, the streets are busy and friendly.

After 11 p.m. Friday, Guinean nanny Amina Traore, 23, emerged from Ramadan services at a nearby civic center wearing a black-and-white African gown. Her 3-year-old nephew ran up and down the closed-off street yelling, "I'm Spider-Man-Superman!"

Two-year-old Bryanna Rodriguez spun in circles, licking vanilla ice cream that looked pink in the red-neon glow of Silver Spring's Majestic theater. Bryan Rodriguez, 5, climbed into their younger brother, Bryseidy's, stroller, lying back to get comfortable.

Their parents, Eudy Rodriguez and Yudi Arevalo, both 23, enjoy the downtown but don't always feel secure.

Problems percolate when crowds surge with the pristine weather or during festivals, Rodriguez said, calling the curfew "100 percent a good idea." Some young people "just make dramas for nothing, fighting," Arevalo said.

Just before 1 a.m. Saturday, Yory Martinez, 17, of Rockville walked in the same area with a friend. Martinez is starting his junior year in high school. He could, under the curfew proposal, be a violator.

"It's not right," Martinez said. "It's the weekend. It's supposed to be enjoyed, not under control."

(B)

Leggett, the leading proponent of the curfew, said the aim is to stop trouble before it happens. "I'm going to err

on the side of providing protection,” Leggett said. “You don’t want to wait until the problem consumes you. I’m not going to do that.”

Although overall crime and gang incidents in the county are down, Leggett and Police Chief J. Thomas Manger said they worry about increased juvenile arrests, and not just in Silver Spring.

At a recent council meeting, Manger ticked off some summertime incidents: 12:45 a.m., Bethesda, three juveniles arrested trying to break into a car; 3 a.m., a neighborhood four miles west of downtown Silver Spring, two groups of kids flashed gang signs, and one was stabbed; 12:30 a.m., Olney, a juvenile stabbed during a drug deal.

But such late-night crimes are hardly the norm. Last year in the county, youths were arrested in connection with about 323 assaults, only 25 of which happened after proposed curfew hours. Juveniles were arrested in connection with 54 robberies in 2010, nine of those during times the curfew would be in effect.

“Typically curfews aren’t that effective. They target the wrong hours, and they don’t have any teeth,” said John Roman, a senior fellow in the Justice Policy Center at the Urban Institute, which studied Prince George’s County’s curfew in the late 1990s.

Council members Phil Andrews (D-Gaithersburg-Rockville) and Marc Elrich (D-At Large) said they also are concerned about the possibility of racial profiling. And they said a curfew wouldn’t deter the most dangerous teenagers.

Council member Craig Rice (D-Upcounty), who is black, said he’s “90 percent there” in supporting the curfew, even though he said he was once a teenage victim of racial profiling. Rice said that when he was 17, he was pulled over while driving a Volvo and listening to hip-hop.

Still, Rice said he thinks a curfew could be effective.

Proponents also stress that although most teens hang out peacefully, sometimes things can go bad quickly.

On a recent Friday night, Sgt. Mark Miller was on patrol in downtown Silver Spring. By 11:45 p.m., the crowd had thinned enough for him to take a dinner break at a nearby police station, but he only got a few bites down.

One mile north, said the call on his radio, someone fired a gun. Minutes later, he pulled up to a parking lot teeming with teenagers and young adults.

Miller and his colleagues started piecing together what happened: A teenager threw a party and, as word spread through text messages, the crowd swelled to more than 50.

One uninvited guest took a Sony PlayStation III, tucked it in his bag and left. A host followed him into a parking lot, and the thief pulled a gun from his trunk. A shot was fired, but no one was struck. Still, dozens of teenagers continued to hang around within two blocks of the party. It was 12:30 a.m. Miller asked a handful their ages; 16, 17, 18, 19, they said. Miller has concerns about a curfew and worries it could eat up his patrol time. He also wanted the youngest people in the crowd to go home but had no way to force them. “This would be a nice time to have that law,” he said.

Testimony of Woody Brosnan, vice chairman of Safe Silver Spring
9101 Louis Ave., Silver Spring, Md. 20910
240-481-0309

July 26, 2011

Thank you for allowing me to testify. Safe Silver Spring is a non-profit organization dedicated to keeping Silver Spring a community where people of all backgrounds and ages can prosper and enjoy themselves in safety.

Gangs threaten this safety. Most Silver Spring neighborhoods are gang-free but members of regional gangs do prey on the community, partially because of the popularity of our entertainment district and the availability of transit. In one recent incident, two gangs organized a late-night rumble in downtown Silver Spring, forcing a massive police response that left neighborhoods as far as Wheaton and Bethesda depleted of patrols. Our police need tools to try to break up such gatherings before violence erupts.

We support the idea of a teen curfew but the current proposal needs some important modifications before we can fully endorse it.

The curfew should apply to youths 16 and under, not 17 and under. This would conform the age to the curfew in Prince George's County and the District of Columbia. We also believe there should be reasonable exception to allow youths to attend movies and concerts that extend through the curfew hour.

We believe the Youth Advisory Council should be consulted on this and other possible exceptions before the curfew is put in place. There also needs to be appropriate monitoring to ensure the curfew is not being used for racial profiling.

We urge the Council and other county officials to work with their counterparts in DC and Prince George's County on a common curfew. Area teens need one set of rules to follow when they cross jurisdictions on the Metro. This will be even more important when we build the Purple Line.

Gangs are no longer isolated to home neighborhoods either. Using text messages and email they can organize flash mobs anywhere in the area. Safe Silver Spring has called for a regional anti-gang summit to plan a regional strategy for combating gangs.

A curfew alone is not the answer to ensuring a safe environment for teens.

We need positive youth development programs, continued and expanded truancy court programs, and a teen center in Silver Spring.

We need a system of public security cameras covering key intersections in the Central Business District. Chief Manger has told us that most entertainment districts have them. Had this system been in place it is possible that some of the gang members involved in the July 1-2 incident could have been charged with crimes later.

The business community also should resist the temptation to make an extra buck by enticing teenagers to be out after midnight. This last Saturday night there were 10 PG or G-rated movies at the Regal Majestic in Silver Spring that started after 11 p.m. The latest was a 12:50 a.m. showing of Captain America that did not end until after the trains and buses had stopped running.

Let me just close on an historical note.

For more than 100 years the Progressive Movement in the United States has been associated with the goal of protecting children. It was the progressives who passed laws to get children out of coal mines and textile mills. Progressives pushed for universal education so that every child would have a chance to succeed.

Protecting children, sometimes even from their own foolishness, is progressive.



10

**Testimony of
The Greater Silver Spring Chamber of Commerce
Public Hearing – Expedited Bill 25-11, Offenses – Curfew - Established
Montgomery County Council
Tuesday, July 26, 2011**

Council President Ervin, members of the Council, good afternoon. For the record, my name is Jane Redicker and I am President of the Greater Silver Spring Chamber of Commerce. I am here today to express the Chamber's support for Expedited Bill 25-11, which would establish a curfew for minors in Montgomery County.

We agree with the County Executive and the Montgomery County Police that this legislation is necessary to address the increase in juvenile violence, juvenile gang activity, and crime by minors in our County. We also agree that a curfew law will serve to protect the welfare of minors by reducing the likelihood that minors will be the victims of criminal acts during the curfew hours and reducing the likelihood that minors will become involved in criminal acts or exposed to trafficking in controlled substances during the curfew hours. And, we agree that a curfew law will serve to help protect the general public from juvenile related criminal activity.

Similar laws exist in Washington D.C. and Prince George's County, and we understand from County Police that this creates challenges for Montgomery County, particularly for those areas that abut these neighboring jurisdictions. We agree that enacting a law that closely mirrors the practice in these jurisdictions makes sense. It's worth noting that this legislation is not intended to give police a mandate to "round up" every minor out after the curfew hours. It is meant to be a tool for police to help address youth crime and gang activity.

When the U.S. Conference of Mayors studied cities in which nighttime curfews had been implemented, they found that ninety-three percent of the survey cities (257) saw nighttime curfews as a useful tool for police officers. Many felt that curfews represented a proactive way to combat youth violence. They said curfews are a good prevention tool, keeping the good kids good and keeping the at-risk kids from becoming victims or victimizers.

We do recommend that the bill be amended to mirror the provision in the District of Columbia that provides for a later hour during summer months. In addition, we recognize that many of our youth patronize businesses where events may begin before the curfew hours but end after (e.g. movie theaters, concert venues). Therefore, we also recommend that the provisions of the bill which exempt youth attending -- or on their way home from -- an official school, religious, or other recreational activity sponsored by the County or a civic organization, be amended so as to also cover these private business venues. We understand that this is consistent with the practice in Prince George's County.

Our Chamber applauds the efforts of the Montgomery County Police in keeping our County safe and secure, and helping making it an attractive place to live, work, and play. We strongly support this effort to give them just one more tool to curb youth crime and to keep our youth safe from crime during the hours covered by the curfew. We urge you to support Bill 25-11.

Marin, Sandra

From: jwoden@comcast.net
Sent: Tuesday, July 19, 2011 7:18 PM
To: Montgomery County Council
Subject: Bill No. 25-11: Offenses -Curfew

RECEIVED
 MONTGOMERY COUNTY
 JUL 20 11 8:24

Ladies and Gentlemen:

I am writing to express my 100% opposition to the subject Bill.

The bill as written would make my child a criminal for many legal activities. Examples are:

1. Traveling with my 20 year old daughter during the proposed curfew hours to sporting events, concerts, movies, etc..
2. My child traveling with his/her friends to sporting events, concerts, school dances, etc. These kids are allowed to drive legally once they are 16 years old. The MD-DMV already regulates young drivers.
3. My child could not participate in State sponsored activities such as Youth Hunting Days. 5:00am is not early enough to travel to a hunting spot, get into the field, walk to a hunting spot and then be ready to hunt at the legal time of 30 minutes before sunrise. And yes, people are allowed to hunt in Montgomery County.
4. My child could not go fishing in the early morning hours much the same as hunting as I state under item #3.
5. My child could not go camping with a group of his friends during the proposed curfew hours.
6. Why must my child carry an "authorization" (written, I presume) for my child to travel with a aunt, uncle or adult friend of mine? My child would be restricted from traveling with anyone out of high school and less than 21 years of age (see #1 above).

My child is not even a resident of Montgomery County but my child's freedoms for the activities he/she enjoys with his/her friends who live in Montgomery County would be eliminated under the Bill No. 25-11.

I understand you want to curb youth crime and gang activity. Kids are in gangs because they don't get love at home now. If you don't believe me, ask your Police Chief. If those youth who participate in criminal activities and gangs now are not supervised by their parents now, do you think parents will supervise their children after the passage of this Bill? I would bet big money they would not! Why are you trying to mandate what current, responsible parents do now! This proposed Bill is a prime example of government interfering in a person's rights; parents and children. I don't need Montgomery County to be a nanny to my children or the children of my friends who live in Montgomery County.

What is the percentage of irresponsible children and parents as opposed to the percentage of good and responsible parents in Montgomery County? It appears to me that the majority of law abiding citizens would be affected by the passage of bill. I would bet the percentage of good and responsible parents far exceeds the percentage of irresponsible children and parents. The passage of this bill is like "throwing out the baby with the bath water" in my eyes. It will result in good kids and adults being charged as criminals for now legal and wholesome activities young and old citizens now enjoy.

If you want to curb gang activities, stop supporting illegal immigration. Stop acting as the sanctuary County you are now. I guess you know you are only second to California in supporting and harboring illegal residents in the United States. Why do you think the majority of residents who were born and raised in Montgomery County no longer live there. I fall in that category. It is because of

88

your extreme liberal positions and the need to regulate nearly every facet of your citizens lives.

The way I see it, this bill is an infringement on your citizens rights of "Life, Liberty, and the pursuit of Happiness".

Sincerely,
Jerome Oden
jwoden@comcast.net

Action Committee for Transit

www.actfortransit.org

P.O. Box 7074, Silver Spring, MD 20907

July 28, 2011

Ms. Valerie Ervin
President, Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

Subject: Teenage Curfew

Dear Ms. Ervin:

The Action Committee for Transit urges the Council to reject the proposed teenage curfew and to actively pursue other means of ensuring that downtown Silver Spring is a safe and secure place that our entire community can enjoy. Part of the solution is better community policing, using officers on foot and bicycle at night as well as in the daytime.

We were quite disturbed to read the police department's explanation of the curfew in the Wednesday *Washington Post*. It is apparent that the curfew would be enforced against teenagers on foot or in public transit, but not in cars.

Not only is this discriminatory, but teenagers will drive to avoid the curfew. Putting rowdy teenagers on the roads late at night will certainly not make the county safer.

For that matter, teenagers in cars already cause far more deaths and injuries than teenagers on foot or in transit vehicles. We are so accustomed to the carnage caused by overdependence on the automobile that we frequently overlook it. A much greater gain in public safety would come from a curfew on teenage drivers than from the current curfew proposal. We are not recommending additional limits on teenage driving here, but we do ask that the police collect data on deaths and injuries from vehicular accidents involving teen drivers so that effective action can be taken in the future.

The traditional urban form of downtown Silver Spring is not an experiment that is at risk. Rather, it is part of the solution for the limitations and inherent risks of suburban design. The renaissance of our downtowns – not just Silver Spring, but also Bethesda, Rockville and soon White Flint and Wheaton – will fully succeed only when they are welcoming environments for everyone in the county. This requires strenuous efforts to ensure safety, but not a safety achieved by excluding one segment of the population.

Sincerely,
Ben Ross
Vice President



THE GREATER
BETHESDA-CHEVY CHASE
CHAMBER OF COMMERCE

7910 Woodmont Avenue, Suite 1204
Bethesda, MD 20814
T: (301) 652-4900
F: (301) 657-1973
staff@bccchamber.org
www.bccchamber.org

VIA EMAIL

July 26, 2011

New Business
Community Business

The Honorable Valerie Ervin, President
and Members of the Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Expedited Bill 25-11, Offenses-Curfew-Established

Dear Ms. Ervin and Members of the County Council:

On behalf of The Greater Bethesda-Chevy Chase Chamber of Commerce (B-CC Chamber), we are writing in regards to Expedited Bill 25-11, which proposes the establishment of a new curfew for minors and related recommendations.

As we understand, the impetus of this legislation is due to the increased number of incidents caused by youth from outside our County who are congregating in Silver Spring and causing an increased need for security. We also understand that this issue is critical to the safety and continued success of area businesses in the Silver Spring area, as well as the safety for citizens and visitors to that area.

Our concern is that this proposal seems to be a shotgun approach without having conducted the needed research which would determine if this is the best solution to the issue. We recommend that between July 26th and the Public Safety Committee's worksession on September 15th, expedited research be conducted as to the impact that curfews have had in other similar communities, including measurements of success and/or failure, and other solutions that have successfully been implemented. Like all other legislation, we urge the County to complete the research as to the fiscal impact of the curfew or any other option, in advance of the September 15th worksession.

Given the current situation and the needs of the business community and the community as a whole, **inaction is not an option.** We recommend that instead of enforcing a blanket curfew on all youth throughout the County, the County should first know that all methods of dealing with this particular problem have been explored and a curfew is the best tool to achieve the goal. If that is the case, we strongly urge that a sunset provision of no more than one year be included so that this issue can be reviewed again as to its impact and need.

Thank you for your consideration of our recommendations.

Sincerely,

Leslie Ford Weber, Chair
(Suburban Hospital)

Heather Dlhopsky, VP, Economic Development & Government Affairs
(Linowes and Blocher)

2011 Annual Sponsors

Platinum: EAGLEBANK

Gold: Lerch, Early, & Brewer, Chtd.

Silver: BDO USA • The Chevy Chase Land Company • ExactTarget • M&T Bank • Suburban Hospital

Corporate: Barwood Transportation • Bond Beebe Accountants & Advisors • Councilor, Buchanan & Mitchell P.C. • Dembo, Jones, Healy, Pennington & Marshall, P.C. • Doubleree by Hilton Bethesda • Elite Personnel • The Gazette • Grossberg Company LLP • Holland & Knight LLP • Hyatt Regency Bethesda • Linowes and Blocher LLP • Merrill Lynch - Melanie Folstad • PNC Bank • White Flint Mall

91