MEMORANDUM

July 11, 2011

TO: County Council

FROM: Amanda Mihill, Legislative Analyst
       Michael Faden, Senior Legislative Attorney

SUBJECT: Introduction: 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 is scheduled to be introduced on July 12, 2011. A public hearing and action is tentatively scheduled for July 26, 2011 at 1:30 p.m.

Bill 25-11 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 curfews.

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 notes that Bill 25-11 is similar to existing laws in Prince George’s County and the District of Columbia.

This packet contains:

| Expedited Bill 25-11 | 1 |
| Legislative Request Report | 9 |
| Memo from County Executive | 10 |

F:\LW\BILLS\1125 Curfew\Intro Memo Doc
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

Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Added by amendment.
Deleted from existing law or the bill by amendment.
Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:
Sec 1. Sections 32-23A is added as follows:

32-23A. Curfew.

(a) Findings and Purpose.

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

(2) Minors 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 crime.

(3) The County is obligated to provide for:

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

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

(C) the protection of the general public; and

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

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

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

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

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

(C) aiding parents in carrying out their responsibility to
exercise reasonable supervision of minors entrusted to their care.

(b) Definitions.

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

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

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

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

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

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

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

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

Parent means:

(1) natural parent;

(2) adoptive parent;

(3) step-parent:
(4) any person who has legal custody or is the guardian of a minor by court order or marriage;

(5) any person who is at least 21 years old who is authorized by a natural parent, adoptive parent, step-parent, or custodial parent of a child to act as a caretaker for the child; or

(6) a public or private agency with whom a minor has been placed by a court.

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

*Remain* means 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.

*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.

**c) Prohibitions.**

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

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

The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the location of a
minor in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent to a reasonable community standard of parental responsibility through an objective test. It is, therefore, no defense that a parent did not know of the activities, conduct, or location of the minor.

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

(d) **Defenses.**

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

(A) accompanied by the minor's parent;

(B) 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;

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

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

(E) 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;

(F) responding to an emergency;

(G) on the property where the minor resides;

(H) 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;

(I) 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

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

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

(e) Enforcement procedures.

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

(A) an offense has occurred; and

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

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

(3) The minor’s parent or an adult acting in loco parentis with respect to the minor must be called to the Police facility, 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 must not be taken into custody for violation of this Section while returning home with the person acting in loco parentis. If no person claims responsibility for the minor, the police may take the minor to the minor’s residence or place the minor in the custody of the Department of Health and Human Services, who may release the minor at 5 a.m. the next morning.

(f) Penalties.

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

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

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

Sec 2. Expedited Effective Date.

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

Approved:

Valerie Ervin, President, County Council

Approved:

Isiah Leggett, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council
LEGISLATIVE REQUEST REPORT

*Bill 25-11*
Offenses – Curfew - Minors

<table>
<thead>
<tr>
<th>DESCRIPTION:</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROBLEM:</td>
<td>This bill is intended to address issues relating to increased gang activity, violence, and crime involving minors in the County.</td>
</tr>
<tr>
<td>GOALS AND OBJECTIVES:</td>
<td>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.</td>
</tr>
<tr>
<td>COORDINATION:</td>
<td>Department of Police, Office of the State’s Attorney</td>
</tr>
<tr>
<td>FISCAL IMPACT:</td>
<td></td>
</tr>
<tr>
<td>ECONOMIC IMPACT:</td>
<td></td>
</tr>
<tr>
<td>EVALUATION:</td>
<td></td>
</tr>
<tr>
<td>EXPERIENCE ELSEWHERE:</td>
<td>This bill is similar to laws that currently exist in the District of Columbia and Prince George’s County.</td>
</tr>
<tr>
<td>SOURCE OF INFORMATION:</td>
<td>Police Chief Tom Manger</td>
</tr>
<tr>
<td>Assistant Chief Administrative Officer Kathleen Boucher, 240-777-2593</td>
<td></td>
</tr>
<tr>
<td>APPLICATION WITHIN MUNICIPALITIES:</td>
<td>All except Gaithersburg, Garrett Park, Kensington, Laytonsville, Poolesville, Rockville, Somerset, Washington Grove</td>
</tr>
<tr>
<td>PENALTIES:</td>
<td>Class A</td>
</tr>
</tbody>
</table>
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@montgomerycountymd.gov.

Attachment