




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

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By: Council President at the Request of the County Executive

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**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

<b>Boldface</b>	<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

184 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date

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APPROVED AS TO FORM AND LEGALITY  
OFFICE OF COUNTY ATTORNEY  
BY Edward C. Hatter  
DATE 8/30/11