



# Minor Restrictions: The Challenge of Juvenile Curfews

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**S**taggering juvenile crime rates indicate that the fate of America's most vulnerable population group is at risk. In 1995, the U.S. Department of Justice reported that the number of criminal offenses committed by juveniles between 1988 and 1992 had increased 26 percent, to nearly 1.5 million cases. The largest increase recorded during that period was for crimes against persons, which rose 56 percent. Criminal homicide increased by 55 percent, accounting for 2,500 cases in 1992; forcible rape grew by 27 percent, reaching 5,400 cases; robbery rose by 52 percent, to 32,900 cases; and aggravated assault rose by 80 percent, to 77,900 cases. The typical offender in 1992 was younger than in 1988: youths under 16 were responsible for 62 percent of juvenile offenses against persons, 64 percent of property offense cases, and 39 percent of drug offense cases in 1992.

If violent juvenile crime increases in the future at rates similar to those of the past decade, the Justice Department estimates that by the year 2010 the number of juvenile arrests for a violent crime will more than double, and the number of juvenile arrests for murder alone will increase nearly 150 percent.

### **Calls for Action**

These statistics have spurred in the public both outrage and fear. Citizens continually demand that local officials take action to prevent youths from committing, or being victimized by, crime and/or violence. In recent years, many localities have responded to these demands, despite controversy, by adopting or revising juvenile curfew ordinances. Justifications for curfews have centered on protecting juveniles from crime and violence, regulating criminal gang activities, and assisting parents in controlling their children during curfew hours.

According to Professor William Reuffe of the University of South Alabama, as of spring 1995, 146 of the largest 200 cities, all with minimum populations of 100,000, had enacted juvenile curfews. In addition, it is estimated that more than 1,000 jurisdictions nationwide have adopted or revised curfews in the past five years, 95 of them among the 200 largest cities. Consequently, curfews are being cited as one of the fastest-growing areas of law enforcement.

Curfews are both politically powerful and divisive tools for local crime control. Although no national public opinion poll focusing on curfews has been undertaken, a number of local governments have conducted surveys revealing support for such initiatives. In 1994, Cincinnati, Ohio, found that 92 percent of its citizens supported the city's curfew, with 72 percent of citizens responding that they felt safer. A 1995 Mobile, Alabama, survey discovered that

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78 percent of white and 75 percent of African-American adults supported a proposed ordinance that was later enacted. A poll conducted by the *Washington Post* showed that 77 percent of youth in the metropolitan Washington area supported the District of Columbia's curfew, enacted in the summer of 1995.

Although the impact of curfews on crime and delinquency nationally has yet to be studied, many local governments have reported notable reductions in crime during curfew hours. Respectively, San Antonio, Texas, and Cincinnati experienced 60.1 percent and 18 percent decreases in juvenile crime during their first year of curfew enforcement. The juvenile crime rate in New Orleans dropped by 38 percent within 60 days of that city's curfew enactment, and violent crime in San Jose, California, was reduced by 13 percent, 12 percent for crimes against minors.

The success of those local governments reporting the most curfew effectiveness may be attributed to the tethering of curfew enforcement to local youth services programming, as well as to a high degree of parental involvement.

### **The Opposition's View**

For some local officials and citizens, especially some parents and minors, however, the issues are not statistics, politics, and public opinion. Constitutionality is the issue. Consequently, minors and parents—individually, privately, and with the assistance of the American Civil Liberties Union (ACLU)—have challenged curfews as being “inherently incompatible with the Bill of Rights” and calling them the equivalent to “martial law, not . . . democracy.”

Curfews are continually challenged under a variety of legal theories. According to the International Municipal Lawyers Association (IMLA), the most common challenges include vagueness; substantive due process rights under the Fourteenth Amendment, including freedom of association and rights to travel; overbreadth, including First Amendment rights of speech, religion, and assembly; Fourth Amendment rights against unreasonable searches and seizures; Fifth Amendment due process clause; Fourteenth Amendment equal protection clause; parental rights of privacy; Ninth Amendment protection of rights not otherwise enumerated in the Constitution; and state constitutional rights.

Although curfew opponents agree that juvenile crime and violence prevention are serious problems, they contend that curfews will not significantly reduce crime because only law-abiding, nontroublemaking teenagers will obey them, and thus they needlessly subject themselves to virtual house arrest every night. Opponents also maintain that there is a danger in mandating that juveniles

who wish to escape home life remain indoors when abusive parents or adults make those children's domestic environments unsafe. Furthermore, parents reason that they have a right to raise their families as they wish, barring abuse or neglect.

One significant concern is that unequal or discriminatory curfew enforcement will result in high-crime, urban-minority communities in which backyards or other curfew-exempt areas where youth can congregate are not prevalent. Furthermore, curfews are viewed as placing more financial and administrative burdens on already tightly budgeted and understaffed local police forces. Therefore, opponents like the ACLU reason that, rather than enact more laws like curfews, local officials should better enforce existing criminal statutes that are violated by juveniles.

While the ACLU has mounted successful campaigns to dismantle curfews in major cities like Miami in 1994 and Washington, D.C., in 1989, it lost its challenge to Dallas's curfew ordinance in the 1994 case of *Qutb v. Strauss*. That case is significant for local governments considering curfew adoption because the carefully drafted ordinance was upheld after being subjected to the highest standard of judicial review.

### ***Qutb v. Strauss: Dallas Passes Strict Scrutiny***

In 1990, juveniles in Dallas committed 40 murders, 91 sex offenses, 233 robberies, and 230 aggravated assaults. In 1991, crimes in Dallas involving juveniles reached epic proportions. From January to April 1991, juveniles were arrested for 21 murders, 30 sex offenses, 126 robberies, 107 aggravated assaults, and 1,042 crimes against property. City leaders reported that homicides most commonly occurred between 10 p.m. and 1 a.m., aggravated assaults between 11 p.m. and 1 a.m., and rapes between 1 a.m. and 3 a.m.

Responding to residents' demands for the protection of the city's youth, the Dallas city council passed a curfew to reduce the number of minors victimized by crime, lower the number of accidents involving minors, decrease the amount of field time spent by police officers, provide an alternative method for dealing with gang problems, reduce peer pressure on minors to stay out late, and help parents control their children.

The ordinance prohibited anyone under 17 years of age from occupying a public place between 11 p.m. and 6 a.m. on weeknights, and midnight and 6 a.m. on weekends. The curfew, however, did not apply to juveniles if they were: (1) accompanied by a parent, legal guardian, or someone at least age 18 with the minor's parental approval; (2) traveling interstate or returning from a school, civic, or religious organization-sponsored function; (3) returning home from a place of employment; (4) running an errand for a parent or guardian; (5) involved in an emergency; (6) occupying a sidewalk in front of their own, or a neighbor's, home; or (7) exercising First Amendment rights.

A group of parents filed suit to block enforcement of the curfew. The parents argued that the ordinance was overbroad and vague and violated the First, Fourth, Fifth, and Fourteenth Amendments. Despite changes made to the ordinance by the city council during trial, the district court ruled that the ordinance was unconstitutional.

The case was appealed to the U.S. Circuit Court of Appeals for the Fifth Circuit, which overruled the district court and upheld the ordinance. The Fifth Circuit's decision was based on its finding that the ordinance did not violate the Fourteenth Amendment's equal protection clause. Under the Supreme Court's standards of review, some government actions that distinguish between two groups of people are

scrutinized more strictly for equal protection violations than others. If an action discriminates against such a suspect class as a specific race, or threatens such a fundamental right as free speech, it becomes subject to a "strict scrutiny" analysis. Under this test, the government has to show that its action is narrowly tailored to serve a compelling governmental interest and is the least restrictive means available of serving that interest. If an action does not affect a suspect class or a fundamental right, the government only has to show that the action is rationally related to a legitimate governmental interest or meets an intermediate-level test.

Juveniles are not considered a suspect class. Because the Dallas curfew ordinance affected the fundamental right of free movement in public, however, the Fifth Circuit reviewed the curfew under strict scrutiny. And because both sides in the case agreed that protecting youths from crime was a compelling governmental interest, the critical question was whether the ordinance was narrowly tailored and the least restrictive means available to the city. The court ruled that the exemptions in the ordinance, which permitted juveniles to attend many evening and late-night events and granted parents latitude in determining when their children could go out, allowed it to meet these criteria.

The *Qutb* decision was unique because it reflected a judicially balanced approach to reviewing curfews. By subjecting the Dallas ordinance to strict scrutiny, the court recognized the importance of juvenile rights. By allowing the ordinance to stand, it validated the broad authority of local governments to protect the welfare of their citizens and allowed them the chance to balance the rights of juveniles against public safety.

The U.S. Supreme Court declined to review the case on appeal. The

*Quib* decision, however, does not mean that all curfew laws will be found constitutional. Until the Supreme Court rules definitively on the issue, decisions will depend on the approach of other federal and state courts. Unlike the Fifth Circuit, which emphasized what the Dallas law exempted, some courts tend to focus only on what curfews prohibit. In addition, even under the Fifth Circuit's approach, curfew laws that do not provide sufficient exemptions will probably violate the Fourteenth Amendment.

### Considerations Before Drafting Juvenile Curfews

When considering adoption or revision of a curfew ordinance, all local governments should consult with their attorneys to determine the best course of action under current federal and state court jurisprudence. Local governments are well advised to obtain copies of the *IMLA Model Juvenile Curfew Ordinance* and an article written by attorney Mark Hessel entitled "Drafting a Juvenile Curfew to Withstand Constitutional Challenges" (see "Resources" box accompanying this article).

Because courts do not take a uniform approach to reviewing juvenile curfews, adoption of an ordinance closely modeled after Dallas's will most likely have the best chance of passing constitutional muster under strict scrutiny analysis, given the absence of a definitive Supreme Court ruling on the issue.

Before drafting an ordinance, local governments must consider a number of factors. They need to have clear purpose for their curfews in order to establish a compelling interest to enforce them. In an effort to justify an action, Hessel suggests that local governments consider preparing detailed reports highlighting juvenile offender and victim statistics. These statistics should track juvenile crimes occurring during the pro-

posed curfew hours, including such violent crimes as murder and rape, property destruction, theft, and gang-related offenses. The data may be broken down by age groups and should be collected and maintained by the local police agency to ensure consistency.

Local governments also should seek input from community stakeholders, both proponents and opponents, including adults, juveniles, school boards, child welfare agencies, and such community groups as a PTA or the ACLU. For instance, in the adoption of its recent curfew, Washington, D.C., relied heavily on its Advisory Neighborhood Commission (ANC) system for input. Well-attended public hearings will prove beneficial in helping local leaders to

understand and record the panoply of viewpoints on the issue and will assist in future efforts to enforce or defend the ordinance from attack.

The IMLA indicates that carefully thought-out definitions and provisions included in ordinances are critical in guarding against "vagueness" attacks, perhaps the most common kind of attack on curfew validity. Depending on the individual curfew, definitions typically will, at a minimum, be needed for the following: curfew hours; the status of a minor, including age; public places; establishments; parents and guardians; and commercial operators.

Defining the curfew hours and whether the curfew is applicable at an earlier evening hour for younger juveniles, and at a later evening time for

### Resources

*Youth Violence Prevention: Managing Local Government's Role.* This ICMA report details the practical design and management strategies of some effective and innovative local programs to reduce youth violence. It is due to be released in fall 1996. For more information, contact Will Fischer, assistant policy analyst at ICMA, 202/962-3506. To order after October 1, 1996, contact the ICMA Distribution Center at 800/745-8780.

*International Municipal Lawyers Association (IMLA) Model Juvenile Curfew Ordinance.* To order, contact IMLA at 202/466-5424.

*Juvenile Crime Prevention: Curfews and Youth Services.* Part of the National League of Cities' Issues and Options Series, this publication includes an important article entitled "Drafting a Juvenile Curfew Ordinance to Withstand Constitutional Challenges." To order, contact the NLC Distribution Center at 301/725-4299.

*Dallas Juvenile Curfew Ordinance: Dallas City Code Sec. 31-33.* The ordinance can be found on ICMA's local government home page, at <http://local.gov.org>.

"Curfews and Delinquency in Major American Cities." By William Reufle and Kenneth Mike Reynolds, this article was published in *Crime & Delinquency*, vol. 41, no. 3 (July 1995), pp. 347-363.

*Keep Them At Home: Juvenile Curfew Ordinances in 200 American Cities.* This article will be published in the *American Journal of Police* (Summer 1996).

American Civil Liberties Union, New York, New York. To contact, call 212/944-9800.

older ones, is important as well. The more hours that a curfew restricts, however, the more vulnerable the ordinance will be to attacks. If variable curfew times are desired in the community, statistical information justifying the distinction between the juvenile age groups should be readily available. In addition, if a curfew applied only to certain high-crime areas within a locality, justification for the site-specific application is needed.

While detailing the activities that are restricted and the liabilities that are imposed by a curfew is essential, a list of exempt activities or of defenses for curfew violators is critical to an ordinance's constitutionality. It is imperative that all local governments provide juveniles with adequate opportunities during curfew hours to engage in constitutionally protected activities. This is the primary component of a local government's balancing of juvenile safety and rights when enacting a curfew. Some defenses to consider are listed above, in the discussion of *Qutb*.

### **Curfew Enforcement and Effectiveness**

Curfew enforcement generally involves police apprehension of violators, who may be instructed to return to their homes, issued warnings, or transported to police or recreation centers for processing. In many jurisdictions, both juveniles and their parents may be subject to penalties, including heavy fines and community service. Enforcement provisions in a juvenile curfew should detail the procedures by which minors in a public setting may be identified by police during curfew hours and the procedures for citation and arrest. Some local police agencies like the one in Dallas try to ensure that juvenile offenders are not treated like criminals or made to feel threatened.

Rather than take juvenile offenders into custody and make them feel like criminals at police stations while awaiting a responsible adult to retrieve them, some local governments are taking more progressive ap-

proaches to detention. Cincinnati and Washington, D.C., have established juvenile curfew centers at city recreation facilities. Currently, Cincinnati operates two centers, while Washington is operating three. The juvenile offender is brought to the recreation center, where a police officer or volunteer contacts the juvenile's parents or guardians.

In Washington, when an officer is unable to locate a responsible adult by 6 a.m., the juvenile is transported to the city's department of human services. This presents a real opportunity for the social service agencies to get involved in the process by helping to determine whether juveniles are potential neglect or abuse cases. Thus, in Washington, the curfew provides an early alert in the treatment and prevention of child neglect cases. Within a few months of its curfew enactment, 10 cases of potential neglect had been identified in the District.

While curfew centers appear to be a kinder alternative to an otherwise harsh atmosphere, center operating costs may be prohibitive for most local governments. In Cincinnati, for the period of July 1, 1994, through June 30, 1995, the total center staffing cost to the police division came to \$160,585, while the total cost to the recreation commission was \$38,574. Some communities are offsetting administrative costs by charging parents a fee for each detained child. For instance, Huntington Beach, California, charges \$85.80 for every hour that a curfew violator sits in police custody. Other cities like Dallas pay administrative and court costs through fines imposed on violators.

Local penalties for the violation of any provision listed in the ordinance should be described in the ordinance, together with the proper court procedures under local or state laws. For example, in Dallas and Washington, each offense is punishable by a fine not to exceed \$500.

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Other communities can impose fines up to \$1,000 for repeat offenders. Additionally, adults in Washington may be required to perform community service or to attend parenting classes and support groups. The city is paying for the classes and support groups out of its annual appropriations under the Federal Child Abuse and Neglect Act.

Despite the successes realized in some localities, results from a U.S. Conference of Mayors (USCM) survey released in December 1995 revealed mixed feelings among local elected leaders about the effectiveness of their communities' curfews. Of the 387 survey respondents, 36 percent said that their curfews were "very effective"; 20 percent labeled them "somewhat effective"; and 14 percent labeled them "not effective at all." The USCM survey discovered that curfew ineffectiveness in some

cities resulted from inadequate funding for the personnel, detention facilities, and courts needed for curfew enforcement. Respondents from these cities indicated that juvenile offenders knew that the system was unable to process violators. Thus, these offenders view curfew enforcement as a "revolving door" and curfews as "empty threats."

Local government officials have a responsibility to ensure the health, welfare, and safety of juveniles. And in carrying out that responsibility, they must recognize that children have constitutional rights. With juvenile crime rates soaring and scores of children being victimized every day, local officials may need to provide the public with such tools as curfews to counteract these problems. However, those local governments seeking to enact curfews do not have to sacrifice juvenile rights in pursuit of

juvenile safety and crime prevention. Like Dallas, local governments can find a balance that will address both issues: allowing children to experience life, while still providing safety and security.

Local government officials must realize that the effectiveness of a curfew lies in its use as a complement to other crime control and social welfare measures. A curfew, or any other measure, alone will not cure violence and destruction among youths. Without badly needed public education and other social policy reforms—including increased funding for community policing, anti-gang, anti-gun, and anti-drug initiatives, and better rehabilitation programs for juvenile offenders—the juvenile crime rate in this country will continue to rise. **CM**

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