ESTADO LIBRE ASOCIADO DE PUERTO RICO
Departamento de Justicia
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Hon. José Emilio González
Presidente
Comisión de lo Jurídico Penal
Senado
El Capitolio
San Juan, Puerto Rico

Estimado señor Presidente:

Nos referimos al P. del S. 781, cuyo propósito, según se describe en la Exposición de Motivos, consiste en prohibir a los menores de dieciséis (16) años transitar o permanecer en las calles, plazas u otros lugares similares durante el período comprendido entre las 10:00 de la noche y las 6:00 de la mañana, a menos que por estado de necesidad sea vea obligado o esté acompañado de uno de sus padres, tutor o encargado; establecer período de vigencia, establecer penalidades; y para otros fines.

I

Los toques de queda para menores representan, en primer lugar, una restricción de ciertos derechos fundamentales de los menores, garantizados tanto por la Constitución de los Estados Unidos como por la Constitución del Estado Libre Asociado de Puerto Rico. Entre estos derechos se encuentran la libertad de expresión y prensa, de asociación, de culto y de movimiento. El hecho de que los afectados sean menores no libera por completo al Estado de su responsabilidad de proteger tales derechos.

Sin embargo, ello no impide cualquier tipo de reglamentación sobre dicha materia[1]. De hecho, la imposición de un toque de queda podría estar contenida dentro del ejercicio válido del poder regulador del Estado. En el caso de los menores, el poder de reglamentación que el estado puede ejercer sobre éstos, en su carácter de *parens patriae*, es más amplio que el que puede ejercer sobre los adultos.[2]

La jurisprudencia federal relativa a los toques de queda no ha regulado parámetros de análisis únicos. Así que, los tribunales no han sido uniformes en sus decisiones. Esto surge a raíz del cuestionamiento de la validez de los derechos de movimiento, expresión, asociación e igual protección, sobre su vaguedad o amplitud excesiva.[3]

A modo de ilustración, en Bellotti v. Baird[4], el Tribunal Supremo de los Estados Unidos reconoció tres razones que justifican la conclusión de que los derechos constitucionales de los niños no son co-extensivos a aquellos de los adultos: 1) la vulnerabilidad peculiar de los niños; 2) su inhabilidad de tomar decisiones críticas de una manera informada y madura; y 3) la importancia del papel de los padres en la crianza del niño. En casos subsiguientes a Belloti, los tribunales que han analizado la validez constitucional de los toques de queda, han aplicado estos tres factores, pero han llegado a conclusiones encontradas.

Al hacer tal análisis, los tribunales se han enfrentado a cuestionamientos sobre el efecto que estos toques de queda tienen en todos los derechos de los menores que mencionáramos anteriormente: 1) movimiento; 2) expresión; 3) asociación; 4) igual protección. Además, han considerado la validez de tales estatutos ante argumentos sobre su vaguedad o amplitud excesiva. En cuanto a cada uno de estos tipos de cuestionamientos, sin embargo, distintos tribunales han terminado en polos opuestos.

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[1] El derecho del pueblo al uso y disfrute de los lugares públicos es básico y fundamental al esquema de valores que sostienen nuestro sistema democrático, de manera que dicho derecho no puede ni debe ser restringido de forma irrazonable. El derecho a la libertad de movimiento se ha reconocido no sólo como uno necesario para ejercer otros derechos garantizados constitucionalmente, sino como uno con valor propio. Esto no impide que el Estado pueda reglamentar razonablemente este disfrute. Asoc. Ctrl. Acc. C. Maracaibo v. Cardona, 144 D.P.R. 1, 29-30 (1997). Véase además, Opinión del Secretario de Justicia, Núm. 3 de 8 de enero de 1987.

[2] Id.

[3] M. T. Torres Zapata, X. Martínez Santiago, Toque de Queda: Violación Constitucional o Mecanismo para Combatir la Criminalidad, 43 Rev. Der. P.R. 117, págs. 126- 127 (2005).

[4] 443 U.S. 622 (1979).

Jurisprudencia a favor de los toques de queda aplicables a menores

Así pues, en Schleifer by Schleifer v. City of Charlottesville[5], el tribunal resolvió que un toque de queda municipal era válido, a pesar de que los menores podían ser víctimas de crímenes cometidos, no sólo por extraños en las calles durante las horas del toque de queda, sino también por miembros de su familia y conocidos en cualquier momento del día. En Hutchins v. District of Columbia[6], por otra parte, una pluralidad de los miembros del Tribunal de Circuito del Distrito de Columbia, *en banc*, determinó que los menores no tenían un derecho fundamental a la libertad de movimiento bajo la vertiente sustantiva de la cláusula del debido proceso de ley, que les permitiese estar en las calles de noche sin supervisión adulta.

De particular interés es el caso de People v. Chambers[7], en el cual el Tribunal Supremo de Illinois validó un toque de queda de alcance estatal que prohibía la mera presencia de los menores en lugares públicos durante ciertas horas de la noche y la madrugada. En esa ocasión, el tribunal indicó que el Estado podía restringir los derechos de los menores, ya que las limitaciones impuestas estaban dirigidas a ciertos lugares y horas. El estatuto en Chambers también prohibía que un padre o tutor, a sabiendas, permitiera que un menor bajo su custodia o control violara el estatuto, tipificaba tal conducta como un delito menos grave, e imponía multas a tales adultos. El tribunal entendió que el toque de queda **promovía el interés legítimo del Estado de proteger a los menores**. A favor de tal postura, citó una variedad de estadísticas sobre el aumento en el crimen juvenil que indicaban que la legislación tenía la intención de atacar un serio problema en la comunidad, y no sólo tenía el propósito de facilitarle sus labores a la policía.

Es importante también mencionar, que el tribunal en Chambers rechazó la idea de que el estatuto era excesivamente amplio por no estar limitado a áreas geográficas particulares de alta incidencia criminal. Sobre este particular, explicó que el aspecto relacionado con el alcance geográfico de la medida era un asunto para la consideración del legislador y no de la judicatura, y que el alza en la tasa de criminalidad en las áreas rurales y suburbanas justificaba el alcance estatal de la medida.[8]

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[5] 159 F.3d 843 (4th Cir. 1998).
[6] 188 F.3d 531 (D.C. Cir. 1999).
[7] 360 N.E.2d 55 (Ill. 1976).
[8] Id.

Jurisprudencia en contra de los toques de queda aplicables a menores

En contraste, múltiples tribunales han invalidado toques de queda en diversas jurisdicciones de los Estados Unidos de América. Por ejemplo, el Segundo Circuito de Apelaciones resolvió en el 2003, que un toque de queda municipal violaba el derecho a la igual protección de las leyes de una madre y sus dos hijos menores de edad, ya que la madre no le había prohibido a sus hijos el estar afuera de la casa durante las horas del toque de queda, y no demostró una relación entre las restricciones impuestas por la ordenanza municipal y la premisa de hecho en la que la misma estaba basada.[9]. El tribunal entendió que no había una conexión entre las horas del toque de queda y prueba de cuáles eran las horas supuestamente problemáticas, y que no se había hecho un esfuerzo por asegurar que la población objeto de las restricciones fuera la parte de la población problemática, ni la parte víctima de la conducta problemática.[10]

De manera análoga, el Séptimo Circuito determinó que un estatuto que imponía un toque de queda en Indiana violaba los derechos a la libre expresión de los menores, aun cuando el mismo proveía defensas afirmativas para aquellos que estuvieran ejercitando sus derechos bajo la Primera Enmienda a la Constitución de los Estados Unidos de América.[11] El tribunal razonó que el estatuto no estaba estrechamente relacionado con el interés gubernamental que pretendía proteger, y no permitía suficientes vías alternas de expresión. Tampoco, a su entender, la existencia de la defensa afirmativa disminuía las posibilidades de que un menor fuera arrestado por ejercitar sus derechos bajo la Primera Enmienda, y tenía un "chilling effect" indebido.[12]

Asimismo, en In re Spagnoletti[13], un tribunal en Ohio entendió que una ordenanza que imponía un toque de queda municipal era inconstitucional, aun si se determinara que los menores no tienen un derecho fundamental a la libertad de movimiento. Resolvió, pues, dicho tribunal que tal toque de queda no sobrevivía ni tan siquiera el escrutinio racional, ya que el mismo no guardaba una relación racional con el propósito gubernamental que lo inspiraba; y que un toque de queda

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[9] Ramos v. Town of Vernon, 331 F.3d 315 (2d Cir. 2003).
[10] Id.
[11] Hodgkins ex rel. Hodgkins v. Peterson, 355 F.3d 1048 (7th Cir. 2004).
[12] Id.
[13] 702 N.E.2d 917 (Ohio App. 1997).

que aplicaba a todos los menores bajo cualquier circunstancia (mientras no estuvieran acompañados por un adulto) era excesivamente amplio.[14]

Derecho de los padres a decidir cómo criar a sus hijos

Ahora bien, un segundo problema que puede surgir con este tipo de estatuto es que incide en el derecho fundamental de los padres a decidir cómo criar sus hijos. El Tribunal Supremo de los Estados Unidos, desde Meyer v. Nebraska[15], y Pierce v. Society of Sisters[16], ha protegido el derecho fundamental de los padres a tomar las decisiones sobre la crianza de sus hijos. Recientemente, el Tribunal reafirmó tal derecho en Troxel v. Granville[17]. En esa ocasión, el Tribunal Supremo Federal expuso que, no cabe duda de que la cláusula del debido proceso de ley protege el derecho fundamental de los padres a decidir sobre la crianza de sus hijos.[18] Así pues, quedó establecido que cualquier legislación que coarte tal derecho de los padres tendrá que enfrentarse a un escrutinio estricto, y sólo será constitucional si está estrechamente relacionada a un interés gubernamental apremiante.

Varios tribunales se han enfrentado a la aplicación de esta doctrina sobre los derechos de los padres en el contexto de los toques de queda. Una vez más, encontramos que la jurisprudencia está dividida en cuanto a este asunto.

En Bykofsky v. Middletown[19], el tribunal resolvió que una ordenanza que imponía un toque de queda no violentaba los derechos de los padres ya que la misma contenía numerosas excepciones, incluyendo una que permitía que el menor estuviera fuera de su casa en cualquier momento mientras estuviese acompañado de su padre o madre. De igual modo se expresó el tribunal en Schleifer[20]. En esa ocasión, el Cuarto Circuito entendió que un toque de queda no violentaba el derecho de los padres, aun cuando prohibiera que los menores participaran en actividades que gozaban del aval de sus padres pero que no estaban entre las ocho excepciones establecidas por la ordenanza. Igual fue el caso en Hutchins[21], en el cual una pluralidad de los miembros del Tribunal de Circuito del Distrito de Columbia, *en banc*, determinó que el derecho de los padres a decidir sobre la crianza de sus hijos se enfocaba específicamente en el control del hogar y de la

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[14] Id.
[15] 262 U.S. 390 (1923).
[16] 268 U.S. 510 (1925).
[17] 530 U.S. 57 (2000).
[18] Id. Véase además, Rexach v. Ramírez Vélez, 163 D.P.R. 130 (2004).
[19] 401 F. Supp. 1242 (M.D. Pa. 1975), confirmado sin opinión en: 535 F.2d 1245 (3rd Cir. 1975).
[20] Id., nota 4.
[21] Id., nota 5.

educación formal de los menores. Por tanto, un toque de queda no incidía en tal derecho.[22]

Por otra parte, el tribunal en McCollester v. Keene[23], invalidó un toque de queda que prohibía que los menores de 16 años estuvieran en lugares públicos entre las 10:00 p.m. y las 5:00 a.m., si no estaban acompañados de un mayor de 18 años autorizado. El tribunal determinó que tal medida restringía inconstitucionalmente el derecho de los padres a tomar decisiones sobre la crianza de sus hijos, ya que los objetivos gubernamentales de promover la seguridad pública, proteger a los menores, y fomentar la autoridad de los padres, no justificaban la intromisión en los derechos de intimidad y libertad de los padres. El tribunal entendió que la ordenanza objeto de revisión no ayudaba a los padres en sus deberes de supervisión, y que la usurpación del rol de los padres no se podía basar en la teoría de que el control de los padres no podía proveerse de otra manera.[24]

Igual resultado se obtuvo en Allen v. Bordentown[25]. En esa ocasión el tribunal entendió que los padres tenían un derecho a permitirle a sus hijos el ejercitar sus derechos fundamentales a la expresión, a la asociación, al culto, y al libre movimiento. El toque de queda impuesto mediante ordenanza, según el tribunal, incidía irrazonablemente en tal derecho de los padres. [26]

II

De la anterior discusión queda meridianamente claro que los contornos específicos del Derecho Constitucional, en el contexto de los toques de queda, no están muy bien delimitados. Sin embargo, consideramos que la manera más efectiva para asegurar que un estatuto de esta índole sobreviva el escrutinio constitucional es mediante la **delimitación precisa del alcance y la implantación del mismo, la inclusión de múltiples y bien ponderadas excepciones a sus prohibiciones, y la**

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[22] Id. Véanse además, Treacy v. Municipality of Anchorage, 91 P.3d 252 (Alaska 2004) (validando un toque de queda por cumplir con las exigencias del escrutinio estricto); Panora v. Simmons, 445 N.W.2d 363 (Iowa 1989) (igual); Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993) (validando un toque de queda que tipificaba una violación al mismo como delito menos grave, e imponiendo responsabilidad al menor, su padre o custodio, y al establecimiento que permitiera la presencia del menor); Thistlewood v. Trial Magistrate for Ocean City, 204 A.2d 688 (Md. 1964); Cheri L. Lichtensteiger Baden, When the Open Road is Closed to Juveniles: The Constitutionality of Juvenile Curfew Laws and the Inconsistencies among the Courts, 37 Val. U. L. Rev. 831, 867 (2003).
[23] 586 F. Supp. 1381 (D.N.H. 1984).
[24] Id.
[25] 216 N.J. Super. 557 (1987).
[26] Id.

justificación sólida de su necesidad y provecho mediante datos estadísticos relativos al problema que se desea atender.[27]

Así pues, al analizar la presente medida, recomendamos que se considere cuidadosamente la posibilidad de mantener o añadir excepciones al toque de queda para aquellos casos en los que el menor: 1) trabaje o estudie durante las horas comprendidas por el toque de queda; 2) esté acompañado de sus padres, tutores u otros adultos autorizados por sus padres o tutores; 3) esté respondiendo a una situación de emergencia; 4) esté ejercitando su derecho a la libre expresión; 5) esté participando en actividades oficiales o sociales de su escuela o iglesia; 6) esté participando en actividades oficiales o sociales del gobierno o de organizaciones comunitarias (por ejemplo, en una reunión de una asociación de vecinos o de alguna asamblea municipal); 7) esté participando o disfrutando de una actividad cultural, deportiva o de recreación (cine, teatro, eventos deportivos, conciertos y fiestas); o 8) tenga un permiso especial otorgado por la persona o agencia que se determine competente para conceder tales permisos (bien sean los padres o tutores del menor, el Departamento de la Familia, u otra dependencia gubernamental).

De otro lado, el historial legislativo de la presente medida debe contener información estadística sustancial que justifique el establecimiento de las prohibiciones propuestas, inclusive prueba de la alta tasa de criminalidad entre los menores a los cuales le va a aplicar esta ley, y narraciones de incidentes específicos de la mala conducta que se desea prevenir. Además, recomendamos que se especifique claramente en el texto propio de la ley, mediante un preámbulo o declaración de política pública, el propósito y las justificaciones de la legislación.

También sería prudente incluir en el estatuto una sección de **definiciones precisas** que establezcan claramente el alcance de cada una de las disposiciones de la ley. Esto ayudará a evitar que la misma pueda adolecer de vaguedad o amplitud excesiva. Específicamente, recomendamos que se incluyan definiciones sobre los siguientes términos: "estado de necesidad", "lugares públicos", "adulto autorizado", y "oficial del orden público", conceptos ya contenidos en la presente medida.

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[27] Véase, por ejemplo, City of Wadsworth v. Owens, 536 N.E.2d 67 (Ohio Misc. 1987) (invalidando un toque de queda por no incluir excepciones razonables); y compárese con Bykofsky, 401 F. Supp. 1242 (validando una ordenanza que imponía un toque de queda ya que la misma contenía numerosas excepciones); Schleifer, 159 F.3d 843 (validando un toque de queda que incluía ocho excepciones).

De igual modo, recomendamos que en el texto de la ley se establezcan unos parámetros básicos que deban seguir los funcionarios que realicen las intervenciones con los menores. Se debe hacer todo lo posible para evitar que esta legislación pueda desembocar en intervenciones innecesarias con individuos que no están cubiertos por la ley, así como con aquellos menores de 16 años que estén participando en actividades constitutivas de las excepciones a la ley. De igual modo, se debe asegurar que la limitación a los derechos de los menores y la intromisión en la intimidad de todos los ciudadanos sea lo menor posible. En particular, se debe especificar cómo los funcionarios públicos encargados de intervenir con los menores habrán de determinar que un individuo es menor de 16 años. Entendemos prudente, por ejemplo, que se requiera que el funcionario tenga motivos fundados para pensar que las prohibiciones de la presente medida se están violando antes de poder intervenir con un individuo. Al menos, recomendamos que se requiera una **sospecha individualizada** para llevar a cabo tal intervención. Además, se debe establecer claramente cómo el funcionario habrá de proceder de tener tales motivos fundados o tal sospecha individualizada. Se debe aclarar si el funcionario estará autorizado para detener al individuo temporalmente para hacerle preguntas solamente, si estará autorizado para arrestar a un individuo que se niegue a contestar preguntas, o si sólo podrá detener a tal individuo en lo que un funcionario del Departamento de la Familia se persone en el lugar para encargarse entonces de la persona. Quizás esta delimitación se pueda realizar más específicamente a través de un reglamento o protocolo interagencial.

Nos preocupa, también, el poder que tendrán los funcionarios públicos que intervengan con los menores para realizar registros y allanamientos incidentales a tal intervención. Entendemos que esos registros y allanamientos incidentales se deben limitar a aquellos que sean estrictamente necesarios para garantizar la seguridad del funcionario que lleva a cabo la intervención. De esta manera se protegen los derechos de los ciudadanos a estar libres de registros y allanamientos irrazonables.

De otra parte, hacemos hincapié en la importancia de que este proyecto sea uno con un **enfoque preventivo** y al servicio de los menores que intenta proteger, en lugar de uno que pueda convertirse en estrictamente punitivo. Por tal razón, recomendamos que se especifique en el texto de la ley que los funcionarios que realicen las intervenciones no trasladen al menor a ningún lugar, excepto bajo circunstancias que pongan en peligro al menor o a los agentes, y siempre que sea a un cuartel, división o departamento cercano al lugar de la intervención hasta la llegada de sus padres o tutores. No obstante, debe quedar claro en el texto de la ley

que el menor nunca deberá ser colocado en una celda ni esposado, salvo que haya sido intervenido por encontrarse cometiendo una falta, por lo cual se le arrestaría de conformidad con la Ley de Menores de Puerto Rico[28].

Además, sugerimos que se considere crear un cuerpo de funcionarios, adscritos al Departamento de la Familia, que sean los encargados de intervenir con los menores que los oficiales de orden público detengan bajo las disposiciones de esta ley. Tal cuerpo de funcionarios debería estar entrenado para el manejo de menores, y tener a su disposición todas las herramientas para educar y ayudar a aquellas familias e individuos que incurran en violaciones a esta ley. También, podrían ser estos funcionarios los que acompañen al menor a su casa, o que se encarguen de su bienestar de encontrarse con una situación en la cual no aparece un adulto que pueda hacerse responsable del menor.

De igual modo, entendemos que sería prudente entrenar a todos los funcionarios, incluyendo a los policías estatales y municipales, si éstos serán los que realizarán las intervenciones, al amparo de la ley que se apruebe. De esta manera se asegura que la interacción entre dichos funcionarios y los ciudadanos sea cordial y pacífica. En ese sentido, y con relación a las posibles interacciones que puedan surgir entre agentes del orden público y adolescentes, algunos de los cuales estarán inocentemente ejerciendo sus derechos, ya sea por estar participando en actividades exceptuadas de la presente medida, o por ser mayores de 16 años, nos parece asertiva la propuesta de que esta medida se implante mediante un proyecto piloto. Recomendamos que se realice, primeramente, en algunas áreas geográficas representativas de la población en general.

Con relación a la penalidad propuesta en la medida que nos ocupa, recomendamos que se disponga específicamente el procedimiento que regirá la imposición de la multa administrativa a los padres de los menores que violen las disposiciones la ley que se apruebe; que se precise dónde se harán los pagos, y si es revisable ante los tribunales.

Recomendamos, además, que se solicite asesoramiento a la Asociación y Federación de Alcaldes sobre la experiencia que han tenido los municipios con las ordenanzas que establecen toques de queda. De igual forma, recomendamos que se solicite asesoramiento al Superintendente de la Policía de Puerto Rico.[29] También

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[28] Ley Núm. 88 de 9 de julio de 1986, según enmendada, 34 L.P.R.A. §§ 2201 et seq.

[29] Esta agencia realizó el "Estudio sobre Toque de Queda Aplicable a Menores". Véase, Op. Sec. Just. Núm. 3 de 1987.

sugerimos que se soliciten comentarios al Departamento de la Familia, de conformidad con la recomendación anteriormente expresada.

De ser tomadas en cuenta nuestras recomendaciones y comentarios, el Departamento de Justicia estaría en la disposición de respaldar el proyecto ante la consideración de esta Honorable Comisión.

Esperamos que nuestros comentarios le sean de utilidad.

Cordialmente,

Antonio M. Sagardía de Jesús

U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

OJJDP

Shay Bilchik, Administrator

April 1996

JUVENILE JUSTICE BULLETIN

Curfew: An Answer to Juvenile Delinquency and Victimization?

Traditionally, the determination of a minor's curfew has been considered to be a family issue, within the parental purview, rather than a matter to be determined by government. Nevertheless, public curfews have been enacted and enforced throughout the Nation's history in reaction to increased juvenile delinquency, decreased parental supervision, and other social trends. Recent increases in juvenile crime and victimization have prompted local communities in many States to once again consider evening curfews (e.g., from 11 p.m. to 6 a.m. on school days and from midnight to 6 a.m. on nonschool days) as a viable means to enhance the safety of the community and its children. Although most curfew ordinances apply to juveniles under 16 years of age, some include 16- and 17-year-olds. This Bulletin explores developments in curfew ordinances, legal issues related to curfews, how jurisdictions have responded to legal challenges, the elements of sound community-based curfew programs, and examples of a range of curfew programs and services from seven jurisdictions.

In a recent study of curfew ordinances in the 200 largest U.S. cities (population of 100,000 or greater in 1992), Ruefle and Reynolds found a dramatic surge in curfew legislation during the first half of the 1990's. Of the 200 cities surveyed, 93 (47 percent) had curfews in effect on January 1, 1990. Between January 1990 and the spring of 1995, an additional 53 of these 200 cities (27 percent) enacted juvenile curfew ordinances, bringing the total of those with curfew laws to 146 (73 percent). During the same period, 37 of the 93 cities with an existing curfew ordinance revised that legislation.[1]

Legal Challenges

The question of curfews has raised a variety of legal issues and divided numerous communities, as the following sample of newspaper headlines illustrates: "The Trouble With Curfews," "Cities Deciding That It's Time for Teen Curfews," "Curfew Not a Good Idea," "Curfew Needs To Be Stronger," "Limiting Kids' Time on the Streets Elicits Both Relief and Resentment."[2] Differences in opinion have led individuals and civil rights organizations in many communities to challenge the legality of juvenile curfew ordinances. The American Civil Liberties Union (ACLU), the most vocal opponent, has challenged the constitutionality of juvenile curfew ordinances in jurisdictions across the country, either directly or by providing assistance to individuals who wish to test such laws in court.

Legal challenges to the constitutionality of curfew ordinances are most often

From the Administrator

With juvenile crime on the rise in communities across the country, increasing numbers of city and county jurisdictions are passing curfew ordinances, either independent of an overall anticrime and community safety program or as one component of such a program. The Office of Juvenile Justice and Delinquency Prevention has seen a growing trend of these ordinances being accompanied by comprehensive, community-based curfew enforcement programs that are receiving strong support from law enforcement and citizens alike.

This Bulletin provides an overview of the legal challenges to curfew and presents profiles of seven jurisdictions with comprehensive curfew enforcement programs that both address the factors that place these youth at risk for delinquency and victimization and promote the development of healthy behavior. Comprehensive curfew enforcement programs often bring together the law enforcement community and juvenile and family court judges with representatives from the social services and the education, recreation, religious, and medical communities. This collaborative, community-based approach to curfew enforcement has demonstrated that juvenile delinquency and victimization can be decreased when communities work together to implement a comprehensive curfew program.

I am pleased to provide you with this information on curfews, from the court challenges to the success stories, and hope it will assist in your local decision-making process on whether and how to use a juvenile curfew.

Shay Bilchik
Administrator

based on the 1st, 4th, 5th, 9th, and 14th amendments to the U.S. Constitution. The first amendment guarantees the right to freedom of speech, religion, and peaceful assembly. The fourth amendment protects persons against unreasonable searches and seizures and has been interpreted to include protection against unreasonable stopping and detainment of individuals. The fifth amendment guarantees citizens the right to due process under the law. The ninth amendment has been interpreted to include a right to privacy, including the right to family autonomy.[3] The 14th amendment protects persons against the deprivation of their liberty without due process of law and includes the right to travel, which is embodied in the privileges and immunities clause.

In 1975, the first Federal case concerning the constitutionality of juvenile curfews was heard by the U.S. District Court for the Middle District of Pennsylvania. In *Bykofsky* v. *Borough of Middletown*, the court upheld a juvenile curfew that was challenged on the grounds that it violated juveniles' 1st and 14th amendment rights and encroached upon parents' rights to raise their children, which is embodied in the 9th amendment and in the due process and equal protection clauses of the 14th amendment.[4] In its opinion, the court found that the regulations on juveniles' 14th amendment due process rights were "constitutionally permissible." The court further declared that the curfew ordinance did not suppress or impermissibly regulate juveniles' right to freedom of speech or parents' rights to raise their children as they saw fit. The court stated, "The parents' constitutionally protected interest . . . which the ordinance infringes only minimally, is outweighed by the Borough's interest in protecting immature minors. . . ."[5]

Fourteen years later, in 1989, Simbi Waters challenged a juvenile curfew ordinance in the District of Columbia on the grounds that it violated her first, fourth, and fifth amendment rights.[6] The U.S. District Court for the District of Columbia, in *Waters* v. *Barry*, found the juvenile curfew law to be unconstitutional on the grounds that it violated the first and fifth amendment rights of juveniles in the District: "The right to walk the streets, or to meet publicly with one's friends for a noble purpose or for no purpose at all—and to do so whenever one pleases is an integral component of life in a free and ordered society."[7] However, the court did not find that the curfew violated the fourth amendment rights of District juveniles: "So long as the officer could reasonably have believed that the individual looked 'young,' the search, seizure or arrest would take place on the basis of probable cause and no Fourth Amendment violation would occur."[8] Although the district court invalidated this particular curfew, in July 1995 the District of Columbia enacted another juvenile curfew ordinance modeled after one enacted in Dallas, Texas, that had survived constitutional scrutiny by the U.S. Court of Appeals for the Fifth Circuit in 1993.[9]

The seminal issue of the State's authority to restrict the constitutional rights of minors is consistently raised in juvenile curfew cases. In the *Bykofsky* case cited above, the court held that "the conduct of minors may be constitutionally regulated to a greater extent than those of adults."[10] The U.S. Court of Appeals for the Fifth Circuit, in upholding the Dallas curfew, applied the reasoning of the Supreme Court of the United States in *Hodgson* v. *Minnesota*, which held that a parental notification requirement of the State's abortion statute passed constitutional muster because States have ". . . a strong and legitimate interest in the welfare of [their] young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely."[11]

The Strict Scrutiny Test

In order to pass constitutional muster, laws that impinge on fundamental constitutional rights must pass a two-pronged strict scrutiny test that requires jurisdictions to (1) demonstrate that there is a compelling State interest and (2) narrowly tailor the means to achieve the law's objective. The Dallas curfew provides an excellent example of an ordinance that has been held by a Federal court to satisfy both prongs of the strict scrutiny test.

The Dallas City Council adopted its curfew ordinance in 1991 after hearings that included testimony on increased incidences of late-night juvenile violence. Challenged by the ACLU, Dallas' curfew ordinance was upheld in 1993 by the U.S. Court of Appeals for the Fifth Circuit in *Qutb* v. *Strauss*.[12] The Fifth Circuit held that the Dallas curfew satisfied the strict scrutiny test because the city had demonstrated a compelling State interest in reducing juvenile crime and victimization and because the ordinance was properly aimed, that is, narrowly tailored to ". . . allow the city to meet its stated goals while respecting the rights of the affected minors."[13] A subsequent appeal was refused by the Supreme Court of the United States without comment in May 1994.[14] However, this ruling neither guarantees protection from future constitutional legal challenges to curfews in other circuits under the provisions of the U.S. Constitution or State constitutions, nor forecloses challenges based on nonconstitutional grounds.

Jurisdictions that seek to enact curfew laws may want to examine how Dallas laid the groundwork needed to pass the strict scrutiny test. Data on juvenile crime and victimization helped meet the compelling State interest test. The city provided the following statistical information:[15]

- Juvenile delinquency increases proportionally with age between the ages of 10 and 16 years.
- In 1989, Dallas recorded 5,160 juvenile arrests, and in 1990, there were 5,425 juvenile arrests, including 40 murders, 91 sex offenses, 233 robberies, and 230 aggravated assaults. From January through April 1991, juveniles were arrested for 21 murders, 30 sex offenses, 128 robberies, 107 aggravated assaults, and an additional 1,042 crimes against property.
- The most likely time for the occurrence of murders by juveniles was between 10 p.m. and 1 a.m.; the most likely place was in apartments and apartment parking lots and on streets and highways.
- Aggravated assaults by juveniles were most likely to occur between 11 p.m. and 1 a.m.
- Rapes were most likely to occur between 1 a.m. and 3 a.m., and 16 percent of rapes occurred on public streets and highways.
- Thirty-one percent of robberies occurred on public streets and highways.

The Court relied on these data in holding that the City of Dallas provided

sufficient evidence to establish that the ordinance was in keeping with the State's compelling interest in reducing juvenile crime and victimization.

Second, the Dallas legislation was narrowly tailored to address the specific needs enumerated by the jurisdiction by the least restrictive means possible. The Dallas curfew was applied to youth under the age of 17 and in effect from 11 p.m. through 6 a.m. Sunday through Thursday and from midnight to 6 a.m. Friday and Saturday. The statute exempted juveniles who were:

- Accompanied by an adult.
- Engaged in activities related to interstate commerce or protected by the first amendment.
- Traveling to or from work.
- Responding to an emergency.
- Married.
- Attending a supervised school, religious, or recreational activity.

The Fifth Circuit found, in *Qutb* v. *Strauss*, that the exemptions under the Dallas ordinance, which permitted juveniles to exercise their fundamental rights and remain in public, demonstrated that the ordinance was narrowly tailored to meet the city's legitimate objectives.

Other challenges to juvenile curfews have been based on the concepts of vagueness and overbreadth. A statute is void for vagueness if it is too general and its ". . . standards result in erratic and arbitrary application based on individual impressions and personal predilections."[16] A statute that broadly restricts fundamental liberties when less restrictive means are available may be void on the grounds of overbreadth. Therefore, when constructing juvenile curfew ordinances, in addition to considering constitutional issues that involve fundamental rights, jurisdictions should ensure the legislation is both precise in its language and limited to necessary restrictions.

In addition to constitutional and structural challenges to juvenile curfews, jurisdictions enacting curfew laws should also bear in mind the core requirement of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, which addresses the deinstitutionalization of status offender and nonoffender juveniles (DSO).[17] In general, this JJDP Act core requirement prohibits a status offender (i.e., a juvenile who has committed an offense that would not be a crime if committed by an adult, such as truancy or curfew violations) or nonoffender (i.e., a dependent or neglected child) from being held in secure detention or confinement. However, Office of Juvenile Justice and Delinquency Prevention (OJJDP) regulations allow detention for brief periods in a juvenile detention facility—not to exceed 24 hours exclusive of weekends and holidays—necessary for pre- or postcourt appearance, processing, release to a parent or guardian, or transfer to court or an appropriate nonsecure facility. The statute also makes exceptions that allow the detention or confinement of status offenders who violate a valid court order or who violate State law provisions prohibiting the possession of a handgun. Status and nonoffender juveniles cannot be detained or confined in an adult jail or lockup for any length of time. To comply with the DSO core requirement of the JJDP Act Formula Grants Program, and to reduce the burden on police, Dallas and many other cities have established comprehensive, community-based curfew programs that provide local sites, such as community and recreation centers, where police officers can bring curfew violators for temporary detention pending release to their parents or other appropriate disposition. These sites provide an atmosphere conducive to investigation, processing, prerelease counseling, and planning for appropriate followup services.

Representative Curfew Programs

Local governments have enacted juvenile curfews pursuant to their general police powers or State statutes specifically authorizing such ordinances. The seven cities whose curfew programs are discussed below enacted their ordinances pursuant to specific authorizing State legislation.

Law enforcement professionals generally view a juvenile curfew ordinance as an effective means to combat late evening crime. However, curfews are also intended to protect youth from becoming victims of crime. The curfew ordinances described below were enacted in the context of a comprehensive, community-based program designed to protect both the community and the juvenile from victimization and to serve as a constructive intervention against developing patterns of delinquency.

Each of the jurisdictions described below collected statistical data on juvenile crime and victimization prior to passing a curfew ordinance. This activity also laid a foundation for formulating a curfew ordinance that addressed the jurisdiction's unique juvenile crime and victimization problems. Although juvenile crime is not restricted to evening hours, the data analysis done by these cities demonstrated that their rates of juvenile crime and victimization were serious enough to warrant a carefully crafted evening curfew program.

Each of these seven cities has its own unique and innovative approach to addressing the problem of juvenile crime and victimization through a curfew ordinance. The approaches demonstrate a range of community partnerships and nonpunitive strategies designed to promote early intervention to prevent the development of delinquent behavior and to address the issues of parental responsibility, discipline, and family dysfunction. The strategies have been credited with helping to prevent juvenile crime and victimization and repeated curfew violations while providing protection and safety to the community.

While the comprehensive, community-based curfew programs implemented by the seven cities employ a variety of strategies, each program includes one or more of the following common elements:

- Creation of a dedicated curfew center or use of recreation centers and churches to receive juveniles who have been picked up by the police for violating curfew.
- Staffing of curfew centers with social service professionals and community volunteers.
- Intervention, in the form of referrals to social service providers and counseling classes, for the juveniles and their families.
- Procedures for repeat offenders, including fines, counseling, or sentences to community service.
- Recreation and jobs programs.

- Antidrug and antigang programs.
- Hotlines for followup services and crisis intervention.

The cornerstone of each of the seven programs is creative community involvement that works to transform the juvenile curfew from a reactive, punitive response to a proactive intervention against the root causes of juvenile delinquency and victimization.

Tables 1 and 2 summarize the key features of the juvenile curfew ordinances enacted by the seven jurisdictions profiled in this bulletin, including the exceptions adopted by each jurisdiction that reduce the potential for successful court challenge on constitutional grounds. A summary of the statutory provisions relating to curfews in U.S. cities with a population of more than 100,000 can be found in the *Sourcebook of Criminal Justice Statistics—1994*, published by the Bureau of Justice Statistics.[18]

Dallas, Texas

In developing a juvenile curfew for Dallas, government officials and the police department worked together to create an appropriate and effective curfew program. The curfew, which went into effect on May 1, 1994, applies to all youth under the age of 17. Prior to the effective date of the curfew ordinance, the Dallas Police Department engaged in a media campaign to promote curfew awareness. The multicomponent campaign included public service announcements on radio, posters in English and Spanish that were distributed at recreation centers and at public schools, and a well-covered press conference. Also, 1 week before the curfew took effect, warning fliers were handed out by police officers to youth in public during the hours of the curfew.[19]

When Dallas police apprehend juvenile curfew violators, they may give them a verbal warning, take them home, issue a ticket with a fine as high as $500, or take them into custody. In cases of repeated curfew violations, a child's parents may be fined up to $500. Business establishments may be cited for allowing minors to remain on their premises after curfew hours. In addition to these enforcement mechanisms, the Dallas curfew program features comprehensive youth programs that address juvenile crime and victimization, including Law Enforcement Explorers, a School Liaison Unit, Law Enforcement Teaching Students (LETS), supervised midnight basketball (with a curfew exception on tournament nights), and a Police Athletic League (PAL).[20]

During the first 3 months of curfew implementation, warnings and citations were issued to curfew offenders, and eight tickets were written to adults for permitting curfew violations. No arrests were made for curfew violations, but 15 juveniles were arrested and taken into custody on other charges. The Dallas Police Department conducted an assessment of the effectiveness of the juvenile curfew after 3 months of enforcement. The Department found that juvenile victimization during curfew hours dropped 17.7

Table 1:
Statutory Provisions of Juvenile Curfew Ordinances in Seven Jurisdictions

Jurisdiction	Age (years)	Weekday Times	Weekend Times	Parental Fines: Discretionary[1]
Dallas, TX	Under 17	11 p.m.–6 a.m.	12 a.m.–6 a.m.	Up to $500
Phoenix, AZ	15 or under 16 and 17	10 p.m.–5 a.m. 12 a.m.–5 a.m.	10 p.m.–5 a.m. 12 a.m.–5 a.m.	Up to $75 Up to $75
Chicago, IL	Under 17	10:30 p.m.–6 a.m.	11 p.m.–6 a.m.	$200–$500
New Orleans, LA	Under 17	8 p.m.–6 a.m., September–May 9 p.m.–6 a.m., June–August	11 p.m.–6 a.m.	$500 and/or serve 60 hours of community service at discretion of judge; $23 court fee per ticket.
Denver, CO	Under 18	11 p.m.–5 a.m.	12 a.m.–5 a.m.	None[2]
North Little Rock, AR	17 or under	10 p.m.–6 a.m.	12 a.m.–6 a.m.	Fine for second violation, but suspended for 1 year if no further curfew violations occur.
Jacksonville, FL	Under 18	11 p.m.–6 a.m.	12 a.m.–6 a.m.	None

[1] Note: Fines in many of these jurisdictions also apply to proprietors of business establishments who knowingly permit a minor to remain on the premises after curfew.

[2] Youth and parents who choose not to participate in an assigned diversion program, or who fail to complete such a program, may be assessed a fine.

percent, from 1,950 during the period from May to July 1993, to 1,604 during the same period in 1994. Further, juvenile arrests during curfew hours decreased 14.6 percent, from 294 during the period from May to July 1993, to 251 during the same period in 1994. These initial statistics indicate that the efforts of the Dallas curfew enforcement program have reduced juvenile crime and victimization.[21]

Phoenix, Arizona

In Phoenix, a multifaceted approach has been developed to implement the city's curfew ordinance. A review of the city's original curfew legislation, enacted in 1968, found it ambiguous and unenforceable. New legislation was enacted in 1992, and a partnership was established between the Phoenix Police Department and the Department of Parks, Recreation, and Libraries (PRL).[22] The curfew ordinance is designed to impact crimes in which the suspect, victim, or both is a juvenile.

PRL allows the Phoenix Police Department to use four of the city's recreation centers as reception facilities for juvenile curfew violators. Once paperwork is processed by police officers, the juveniles are supervised by recreation specialists until their parents arrive. The administrative requirements for police officers are kept to a minimum in order to allow officers to return sooner to patrol duties.

When a curfew violation is charged, the juvenile and the parents have the option of attending a diversion program that includes classes in parenting, interpersonal communication, conflict resolution training, and community service. When the police department receives notification that the juvenile and parents have completed the program, the charge is dismissed. If the diversion program is not completed, a petition is filed in juvenile court, where the outcomes can include a fine for the juvenile, counseling for both the juvenile and the family, and community service. A parental responsibility provision in the curfew law could also result in a fine to the parents.

PRL personnel conduct postdiversion followup contacts with curfew violators and their families to determine if additional referrals to other agencies, such as health and social services, are needed. These followup procedures have been favorably received by the community.

Twenty-one percent of Phoenix's curfew violators are gang members.[23] The curfew ordinance provides the police with a legal basis to separate minors from gangs, at least temporarily. Gang members are taken to the reception facility, where they receive special counseling and exposure to positive alternatives to gang affiliation. The Phoenix Police Department reports statistics that bear out the fact that the curfew appears to be working. A comparison made since the citywide implementation of the curfew program in May 1993 showed a 10-percent decrease in juvenile arrests for violent crimes (homicide, sexual assault, robbery, aggravated assault) during the 11-month period from June 1993 through April 1994 as compared with the period from June 1992 through April 1993.[24]

Table 2:
Exceptions to Juvenile Curfew Ordinances in Seven Jurisdictions

Jurisdiction	Adult Escort	Interstate Commerce/ Travel Activities[1]	First Amendment Activities[2]	Travel To and From Work	Emergency/ Necessity	Married Juvenile	Attending School or a Religious or Supervised Activity	Sidewalk Bordering Residence[3]
Dallas, TX	✓	✓	✓	✓	✓	✓	✓	
Phoenix, AZ	✓			✓			✓	
Chicago, IL	✓			✓		✓	✓	
New Orleans, LA	✓			✓			✓	
Denver, CO	✓	✓		✓	✓		✓	✓
North Little Rock, AR	✓	✓	✓	✓	✓		✓	
Jacksonville, FL	✓	✓	✓	✓	✓		✓	✓

[1] Interstate business or travel activities that are protected by the U.S. Constitution.

[2] Participation in activities that are protected by the first amendment, such as meetings or rallies.

[3] Presence on a sidewalk that may be considered a public area yet borders a home or other residence of the juvenile.

Community leaders and parents strongly support the curfew ordinance because of its comprehensive, community-based character. According to the Phoenix Police Department, the ordinance is an effective component of Phoenix's citywide crime prevention and reduction program. In addition to the curfew enforcement program, Phoenix has strengthened its commitment to crime prevention and reduction through community policing, newly enacted weapon laws, and police-led programs in elementary and junior high schools.

Examples of these programs include Drug Abuse Resistance Education (DARE)—developed with funds from the U.S. Departments of Justice and Education, with major contributions from the private sector—and Gang Recognition and Education Awareness Training (GREAT), initiated by the Phoenix Police Department with funds provided by the U.S. Department of the Treasury. The Police Department's Cease Violence program—a unique partnership with other city agencies, the private sector (Motorola), and various elementary and junior and senior high schools—employs traditional and nontraditional methods to address the crime problem. This program produced a video on gang and teen pressures entitled "Wake-Up," geared to youth 7 to 17 years of age. Another Police Department program, Project Interact, seeks to promote better relationships between at-risk youth and the department. In monthly 90-minute workshops, patrol officers meet with youth to share information and ideas, with the goal of establishing a code of conduct for both officers and youth. The program is facilitated by a police supervisor; students attend at a ratio of two students to one officer.[25]

Chicago, Illinois

Chicago passed its first curfew ordinance in July 1948. It has been amended several times, most recently in June 1992. In April 1993, the Chicago Police Department initiated the Chicago Alternative Police Strategy (CAPS) program. CAPS is a community policing initiative that started in 5 of Chicago's police districts and is now operating in all 20. In 1994, the Chicago Police Department's Bureau of Investigative Services supported an experimental research project, "Operation Timeout," a summer curfew project under the direction and management of the commander of a 20-member Youth Division Strike Force. The Fourth Police District CAPS site aggressively implemented Operation Timeout by getting community support for sending curfew enforcement teams of officers from the Department's School Patrol Unit into targeted areas within the fourth district with a single mission: to enforce the city's curfew ordinance vigorously.[26]

The Operation Timeout curfew enforcement program is designed to reduce juvenile crime and victimization and to foster communication between the Patrol Division, the Youth Division, and the community. To support the program, the Chicago Police Department's Neighborhood Relations sergeants work with communities to prevent curfew violations. When special events are held, for example, they encourage sponsoring organizations to comply with curfew hours when developing the event schedule.

The city advocates a "no-tolerance" policy for curfew violators through aggressive enforcement and the required involvement of a parent or guardian when a juvenile is picked up for a curfew violation. The specialized curfew enforcement teams utilize "Care-O-Vans" to pick up curfew violators. Teams using the van process all curfew violators in the district on a given evening, including those picked up by beat patrol officers. This approach reduces the downtime of beat patrol officers, who can turn over the curfew violators to the team shortly after they are apprehended and return immediately to beat patrol duty. First-time offenders are returned to their homes, and a parent or guardian is issued a warning notice. Parents or guardians of a first-time curfew violator may also be charged with "contributing to the delinquency of a minor" if it is determined that they ". . . knowingly or willfully permitted, caused, aided, abetted, or encouraged such child to commit a violation of this or any ordinance" and fined $200 to $500.

Repeat offenders are taken to the Chicago Police Department's Fourth District station. Parents are required to pick up their child, are issued a nontraffic citation for the ordinance violation, and are required to appear in court to answer the complaint. Children whose parents are working, cannot be reached, or are unwilling to pick up their children are returned home by district personnel. A followup investigation is conducted when the officer is unable to locate the parent at the time of the curfew violation, and the parent is issued a citation. Parents who refuse to appear in court or refuse to pay a fine may have a judgment entered against them. For the parents of repeat curfew violators, special assistance such as parenting classes and joint counseling sessions may be provided. In addition, parents of "children requiring authoritative intervention" under State law may be given assistance through court-appointed social service agencies.

The Fourth District reports that a comparison of data from 1993 to 1994 demonstrated a decrease in the number of serious juvenile crimes reported. The most notable decreases were in burglaries (from 304 in 1993 to 269 in 1994), vehicle theft (from 255 in 1993 to 177 in 1994), and theft (from 522 in 1993 to 177 in 1994). Operation Timeout appears to be an effective curfew initiative, and community support for its continuation remains high. As a result of the success of the Fourth District program, four additional police districts have been added to Operation Timeout. All 20 police districts in Chicago are expected to become a part of Operation Timeout in the near future.

New Orleans, Louisiana

Based on an assessment of juvenile delinquency in New Orleans, a comprehensive and collaborative prevention strategy was initiated by Mayor Marc Morial. A dusk-to-dawn curfew ordinance was part of the Morial Administration Crime Initiative (MACI) that began in May 1994. To manage and implement the curfew program, the city opened the Central Curfew Center (CCC), which is staffed with trained professionals from government agencies and the religious and medical communities. The sheriff's office assigned 30 deputies and several other staff to CCC and provided 15 two-man units to patrol the streets. Each night the New Orleans Police Department has more than 50 police officers on the streets and 5 to 6 officers from the Juvenile Bureau onsite at CCC. A local group of ministers, All Congregations Together, has several ministers at CCC each night to counsel juveniles and their parents or guardians on the ramifications of the curfew violation. Also on duty at the

center to provide counseling are staff from the Louisiana State University Medical Center's Department of Psychiatry and from the City of New Orleans Truancy Center. In addition, a 24-hour curfew hotline has been set up to respond to questions about the curfew policy and its enforcement.[27]

Curfew violators brought to the CCC are screened by counselors, and their parents or guardians are contacted. Parents are required to pick up their children at the center and to participate in counseling sessions with trained volunteers. Parents of repeat offenders are issued a court summons and risk being fined for failure to keep their children from violating the curfew. These steps are designed to help promote and support dialog between parent and child, establish parental accountability, and set new ground rules within the home.

Summer youth programs are a key component of MACI. A $500,000 city funding reallocation was provided to the New Orleans Recreation Department (NORD) to increase summer programs such as evening swimming and volleyball. The number of NORD summer camps increased from 17 to 41, serving more than 100,000 youth. The number of swimming pools increased from 4 to 14. Additionally, the city created 1,300 new summer jobs for youth under a local public-private partnership and also received $1.8 million in Federal funding from AmeriCorp's Youth Action Corps to provide year-round employment for youth in local education, park, and recreation programs.[28]

The combination of curfew, the summer jobs program, and the revitalization of recreation programs resulted in a 27-percent reduction in juvenile crime during curfew hours in 1994, compared with the previous year.[29] The crimes most significantly reduced were armed robbery, down 33 percent, and auto theft, down 42 percent. New Orleans Sheriff Charles Foti calls the curfew program ". . . a coordinated effort, of unprecedented proportions, between private and public agencies across the City to a unified end—to reduce crime and protect the young people of this City" and reports that the program ". . . has earned the unqualified support of the New Orleans community."[30]

Denver, Colorado

During the summer of 1993, a group of 2,500 citizens in Denver met in a Safe City Summit to discuss their concerns about youth crime, violence, and safety. Their recommendations included establishing a program to authorize police to take youth in violation of Denver's amended curfew law to a safe place and increasing parental involvement with and responsibility for children under the age of 18. Mayor Wellington E. Webb responded to the citizens' recommendations with a 10-point Safe City Plan, one component of which is the SafeNite After Curfew (SafeNite) program, developed in collaboration with community groups, parents, police, recreation, and social services staff. SafeNite, which was launched in July 1994, provides a safe place—either a recreation center or a church—where youth found on the streets during curfew hours are taken by police to wait for a parent or guardian.[31]

Youth taken to SafeNite locations are processed and served a citation from police officers onsite. SafeNite staff contact the youth's parents or guardians to pick them up. The parent may also receive a ticket, at police discretion. The youth and parent are seen onsite by a professional counselor who helps address family issues and obtain social services if needed. Counseling services are available on a variety of issues, as are workshops on conflict resolution and interpersonal communication skills.

On nights when SafeNite sites are not in operation, curfew counselors in the municipal courtroom interview and offer diversion to the ticketed youth and their families. Currently, SafeNite locations are open Friday through Sunday. However, the program is flexible, and the days of operation may be changed to respond to shifting patterns of youth activity. For example, when youth began to gather "en masse" on nights when the SafeNite center was closed, the center's operating schedule was altered to reflect this change.

The Denver curfew program enjoys a collaborative partnership with 234 community programs to which children and their families are diverted. Of these programs, 80 percent are at no cost to SafeNite or to the client. (The program leverages community service providers by providing referrals and data to assist them in grant procurement.)[32] Through this collaboration, the curfew program has become a revolving door of information, linking "demand" with "supply" by identifying citizens' needs, noting gaps in service for identified problems, and connecting citizens with current resources.

As indicated above, youth and parents are given the option of participating in an appropriate diversion program rather than going to court. If they successfully complete the program, the case is dismissed. Youth and parents who do not elect to participate in or complete a diversion program go to court and may be required to pay a fine or complete court-ordered community service. Repeat curfew violators and/or their parents are dealt with on a case-by-case basis, and incremental sanctions apply. These sanctions may include a court appearance with assessed fines, community service or a more intense diversion program, or probation status.[33]

Denver officials credit the SafeNite program with fostering more consistent enforcement of the city's curfew ordinance and with providing a secure and safe environment for curfew violators until they are reunited with their families. The only time required of the police officer is the time needed to drive to and from the SafeNite site. The enforcement of SafeNite is credited with helping to deter graffiti, vandalism, car theft, and more violent crimes while decreasing juvenile victimization, increasing parental involvement, and assisting families.

Initial statistics on SafeNite from the Denver Police Department for the period from July 1994 through December 1995 are encouraging: More than 168 cases were dismissed per month, alleviating court congestion; 61 percent of the 4,676 youth served by the program and their families have completed or are in the process of completing diversion; and the recidivism rate is down to 7 percent from 56 percent at the start of the program. The law enforcement community also believes SafeNite has contributed significantly to the 11-percent drop in serious crime during each of the first 2 years of curfew implementation. Specifically, the category of motor vehicle theft, which is often a juvenile crime, was reduced 17 percent in 1994 and 23 percent in 1995.

Plans are under way to apply the SafeNite diversion model to juveniles who commit such offenses as shoplifting, petty theft, and giving false information.[34]

North Little Rock, Arkansas

In North Little Rock, community life was adversely affected in the late 1980's by organized juvenile gangs that trafficked in drugs and whose members carried high-powered weapons on city street corners. In 1991, the local police department, Neighborhood Watch groups, elected officials, and city administrators joined together to organize a collaborative response to increased serious crime in general, and juvenile crime and victimization in particular. One of their first proposals was to establish a curfew law. With strong support from dozens of neighborhood organizations, the city council passed a curfew ordinance in July 1991. In creating a practical and effective curfew ordinance, particular attention was given to two important issues: increasing parental supervision of children and keeping the police department process simple.[35]

The North Little Rock Police Department recognized that its limited resources required a curfew process that was as straightforward and simple as possible. A concentrated effort was made to simplify the extensive reporting requirements for a juvenile arrest by creating a 1-page form for a curfew violation that required the officer to complete just 10 items of information. When a juvenile is picked up for a curfew violation, he or she is taken to police headquarters and turned over to a juvenile officer. The juvenile is detained in a nonsecure area of headquarters designated for curfew violators while arrangements are made with a parent or guardian to return the juvenile home following a review of the curfew ordinance and the circumstances of the violation with the parent or guardian and the child. The North Little Rock ordinance provides that a juvenile's second curfew violation can result in charges against the parents. Generally, a fine is imposed but suspended for 1 year and dismissed if no further curfew violations occur. After three curfew violations, a referral to the State's Department of Human Services for consideration of a juvenile-in-need-of-services petition is required. However, such referrals have been necessary in only a few cases.

Keeping curfew enforcement and processing simple has kept police support high. The North Little Rock curfew ordinance is a key element in a multifaceted set of solutions that are part of North Little Rock's overall community policing plan. With the cooperation of city administrators, the police department was able to increase its personnel to provide additional officers in the schools, facilitating the development of joint programs by the police department and the school district. Programs include a school resource officer program to reduce in-school conflicts, school crime, truancy, and dropping out, and introduction of the DARE program for students in kindergarten through sixth grade. The local school district also created an alternative school to provide a place to which juveniles who are truant or suspended for disruptive behavior could be brought instead of being sent home.

With support from 10 corporate sponsors, North Little Rock also instituted a supervised midnight basketball program to provide at-risk youth with an alternative to being on the street. This program, which serves boys and girls ages 12 to 18, combines athletic activity with academic tutoring, mentoring, and an employment orientation program that covers the importance of a good work ethic, how to complete an employment application, and the development of job interview skills. The program is held at the local recreation facility, Sherman Park, on Friday and Saturday evenings from 8 p.m. to midnight. Participants are instructed to return directly home because the curfew goes into effect at midnight. On tournament nights, the program runs until 1 a.m., with a 1-hour exception made to the curfew. Periodic followup checks with the recreation and police departments have indicated that participants are adhering to the program guidelines.

To monitor the impact of the comprehensive curfew enforcement program, the North Little Rock Police Department completes daily reports that track the location of curfew apprehensions, along with statistical information on age, sex, and race. Statistics from 1992, the first full year of curfew enforcement, showed a significant reduction in crimes against persons. Compared with 1991, the city experienced an average 12-percent reduction in the categories of homicide, rape, robbery, and assault and a 10-percent reduction in burglaries.[36] Local law enforcement officials attribute these crime reductions in great measure to the curfew enforcement program. Based on these initial results, other jurisdictions in Arkansas have begun similar curfew enforcement programs.

Jacksonville, Florida

In response to high rates of juvenile crime and victimization, the City of Jacksonville instituted a juvenile curfew ordinance in April 1995, giving police officers the authority to stop and question suspected curfew violators.

When a juvenile is stopped on suspicion of curfew violation, the officer first determines whether he or she falls under a curfew exemption. A juvenile who is found to be in violation of the curfew may either be taken home by the officer or brought to the Juvenile Assessment Center (JAC), at the discretion of the officer. While each of the cities described in this bulletin provides a range of services to curfew violators, Jacksonville is one of the few cities in the country with a centralized intake and assessment facility for juvenile offenders, including juvenile curfew violators.[37]

JAC is a centralized, multiagency facility with multidisciplinary staffing. By coordinating law enforcement and social, educational, and mental health services at one location, JAC provides juveniles and their families with easy access to a comprehensive range of services. By providing access to needed services at the earliest possible time, JAC hopes to provide early interventions that will avert a pattern of at-risk and delinquent behavior.

Curfew violators brought to JAC are also screened to determine if they have committed additional violations that require court review. Those who have are moved to the secure section of the facility for further screening and assessment. Curfew violators are held in the nonsecure section of JAC and screened to determine whether they are experiencing problems relating to drug and alcohol abuse, mental health, or family dynamics. Parents are then contacted to pick up their child. If the home situation appears too volatile and unsafe for the juvenile, a

temporary housing arrangement is secured until a further evaluation is completed. Depending on the nature of the services warranted, either a letter is presented to the parents recommending followup services, which they can accept or reject on a voluntary basis, or a court referral is made for a "family in need of services." Services available include counseling, parenting training, treatment for drug and alcohol abuse, treatment for mental illness, and training in family dynamics and interpersonal communication skills. Repeat curfew violators are also taken to JAC to be screened to determine what services may be provided the youth and their families to help address the situation.

Florida State law allows local jurisdictions to assess both the parent and the child a $50 fine for a curfew violation. However, Jacksonville's curfew ordinance did not adopt this portion of the State statute, and fines for curfew violation are not levied.

In support of the curfew ordinance, the Jacksonville Police Department, the Duval County Parks, Recreation, and Entertainment Department, and the Duval County School Board provide a range of community-based delinquency prevention programs. One innovative program supported by all three organizations is the combined Safe, Accessible, Flexible Enrichment and Teaching for Educational Achievement through Math and Science (SAFE/TEAMS) program. This multi-agency program includes teachers, recreation specialists, and school resource officers. These officers provide guidance, counseling, mentoring, and overall program security. The SAFE/TEAMS program is available 2 hours each school day and on Saturday mornings for children in Duval County's 23 middle schools. It provides juveniles a place to receive tutoring on school work, with an emphasis on math and science, and an opportunity to participate in arts and crafts, horseback riding, field trips, clubs, recreation, and athletics.

The Jacksonville PAL provides at-risk children an opportunity to interact with police officers who serve as mentors during their nonduty hours. Jacksonville has added a new dimension to its PAL program through a newly donated computer laboratory. The lab allows juveniles to develop their academic and computer skills by engaging in computer games as a reward for completing their homework. PAL also offers a range of sports activities that include basketball, boxing, karate, and other activities for boys and girls between the hours of 4 p.m. and 10 p.m., 7 days a week.

It is too early to determine the impact of Jacksonville's comprehensive curfew program. The program has been in operation for less than a year, and collection of data on its effectiveness and impact is ongoing. However, community support has been strong, and State Attorney Harry L. Shorstein has expressed his office's support, stating that "The curfew program is viewed as one component of a comprehensive crime prevention program that can help fight juvenile delinquency and protect our youth from victimization."[38]

Summary

Curfew ordinances are in effect in a majority of the Nation's largest cities. While curfews have been challenged in many jurisdictions on a variety of constitutional and other grounds, narrowly crafted ordinances designed to address specifically identified problems appear able to withstand such challenges. Statistical analyses of the impact of curfew ordinances on delinquency and juvenile victimization in many communities continue to be conducted. The information made available by the communities highlighted in this bulletin and by other communities where curfew programs have been implemented indicates that comprehensive, community-based juvenile curfew programs are helping to reduce juvenile delinquency and victimization. It is important for communities that are enforcing curfews or considering a curfew ordinance to keep abreast of legal developments, establish a firm foundation for the ordinance, and model the curfew program after community-based efforts in other jurisdictions.

The initial evidence offered by the seven communities profiled in this Bulletin is that community-based curfew programs that offer a range of services are more easily and effectively enforced, enjoy community support, and provide a greater benefit in preventing juvenile delinquency and victimization. In addition, several of the benefits of positive interventions that community-based curfew programs can provide may not be easily quantifiable—at least in the short term. Phoenix curfew staff have observed that many of the curfew violators brought into the recreation centers that function as curfew reception centers welcome the opportunity for social interaction with other youth and with program staff. Often these youth seek advice, assistance, and counsel from program staff. Parents sometimes bring their son or daughter to a curfew site to seek assistance and advice on the best approach for curfew compliance or to deal with other problem behaviors.

Communities that develop and implement curfew ordinances in conjunction with programs and services designed to assist youth and families to solve underlying individual or family problems have an opportunity to enhance positive youth development, prevent delinquency, and reduce the victimization of children.

Notes

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3. See *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925); *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972).

4. *Bykofsky* v. *Middletown,* 401 F.Supp. 1242 (1975).

5. Id. at 1264.

6. *Waters* v. *Barry* 711 F.Supp. 1125 (1989).

7. Id. at 1134.

8. Id. at 1138.

9. See *Qutb* v. *Bartlett,* 11 F.3rd 494 (5th Cir. 1993).

10. *Bykofsky,* 401 F.Supp. 1242, 1254 (1975).

11. *Qutb* v. *Bartlett,* 11 F.3d 488, 492 (5th Cir. 1993) citing *Hodgson* v. *Minnesota,* 497 U.S. 417, 444 (1990).

12. *Qutb* v. *Strauss,* 11 F.3rd 488 (5th Cir. 1993).

13. Id. at 494.

14. *Qutb* v. *Bartlett,* 114 S.Ct. 2134 (1994).

15. *Qutb* v. *Strauss,* 11 F.3rd 488, 494 (5th Cir. 1993).

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Additional Reading

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For Further Information

- The Juvenile Justice Clearinghouse (800–638–8736) can provide additional information on juvenile curfew and contacts for each of the seven jurisdictions discussed in this bulletin. Documents cited in this bulletin that are available from the clearinghouse are indicated by an NCJ (National Criminal Justice) number at the end of the reference.
- The National Institute of Justice (NIJ), Office of Justice Programs, U.S. Department of Justice, funded two research studies in 1995: The Effects of Juvenile Curfews on Violent Crime (awarded to Sam Houston University,

College of Criminal Justice), and An Analysis of the Juvenile Curfew in New Orleans, Louisiana, as a Crime Prevention Measure for American Cities (awarded to the University of New Orleans, College of Urban/Public Affairs). The results of both studies will be available in 1996. For information contact Rosemary N. Murphy, Program Manager, National Institute of Justice, at 202–307–2959, or the National Criminal Justice Reference Service at 800–851–3420.

- The U.S. Conference of Mayors announced in December 1995 the results of a 387-city survey of trends in cities' use of youth curfews. For information on the survey and its findings, contact John Pionke or Mike Brown at the U.S. Conference of Mayors by telephone, 202–293–7330, or fax, 202–293–2352.
- The National League of Cities' publication *Juvenile Crime Prevention: Curfews and Youth Services*, which is part of the series *Issues & Options: Practical Ideas for Local Government Leaders*, provides background information, a section on "Drafting a Curfew Ordinance To Withstand Constitutional Challenges" by Mark Hessel, and other helpful resources. To obtain a copy, contact Nathan Ridnouer at the National League of Cities by telephone, 202–626–3188, or e-mail, ridnouer@nlc.org.
- The International Municipal Lawyers Association (IMLA, formerly the National Institute of Municipal Law Officers, Inc., or NIMLO), has published a Model Juvenile Curfew Ordinance that includes a discussion of legal challenges to juvenile curfew ordinances and provides curfew drafting guidelines. IMLA has also published Sam Lindsay's 1994 NIMLO Mid-Year Seminar Paper, "Juvenile Curfews and the Constitution: The Latest Round in a Continuing Debate." Copies of both can be obtained by contacting IMLA by telephone, 202–466–5424; fax, 202–785–0152; or e-mail, IMLADC@aol.com.
- The International Association of Chiefs of Police (IACP) has developed a Model Policy on Juvenile Curfew Enforcement, with an accompanying discussion paper, under a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The model policy and paper are designed to assist law enforcement executives in tailoring their own policies to the requirements and circumstances of their communities and their law enforcement agencies. To obtain copies of these materials, contact Philip Lynn, Manager, IACP, National Law Enforcement Policy Center, by telephone, 703–836–6767, or fax, 703–836–4543.

This bulletin was prepared by Donni LeBoeuf, Senior Program Manager, OJJDP, with assistance from OJJDP Intern Patricia Brennan and the Juvenile Justice Resource Center.

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