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ISSUE ANALYSIS

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Daytime Curfews

Guilty Until Proven Innocent

Ricky Duran was walking home one morning after his classes at the nearby community college in Salt Lake City, Utah. As he neared his house, he was approached by a police officer who asked Ricky why he was not in school. Ricky explained that he was walking back from the college. However, having asked Ricky's age, the officer didn't believe that 17-year-old Ricky could be in college. When Ricky suggested that the officer walk to his house a few feet away and ask his mother, the officer refused. Instead, Ricky was handcuffed, ordered into a patrol car, and taken to a detention center.¹

In the nearby city of Provo, Utah, three girls were given permission by their parents to take a day off school. It was a tradition at Christmas: the parents made sure the girls were caught up on schoolwork, and then allowed them to go to the mall for a day. Scarcely 10 minutes after the girls were dropped off a security guard apprehended them. The girls were not allowed to call their parents. They were taken to a detention center, their bags were searched, and they were quizzed about drugs and tattoos.²

A 15-year-old boy walked into the town of Monrovia, California, one morning while on Christmas break, intending to sell candy bars. As he walked to the bank, a man stopped him, warning that he could be fined if he were found outside. As the morning progressed, the boy was accosted and questioned by two police officers and warned not to appear in public.³

Two girls in Monrovia were walking to the store one morning and noticed a car following them. They tried to ignore it and walked faster. The car pulled alongside of them, and two men stepped out. They identified themselves as police officers, although neither wore a uniform, and asked for the girls' ID. The girls had permission to go to the store, so they were allowed to proceed; but they were told that they would have to have more identification next time.⁴

Around the same time, 21-year-old Rachella Rodarte visited her mother at work one morning. She stepped out to make a phone call at the store on the corner. A police officer pulled up and asked her name. She gave her name and age and explained why she was not in school, and he left. A few minutes later, a second officer approached Rachella and also asked her name. "I was just asked that by another officer," Rachella said. The officer answered, "Yeah, right." He would not leave until he had called Rachella's mother, to confirm that Rachella had permission to be in the store.⁵

What is the common element in all of these situations? All of these people are suspected criminals simply because they *looked too young to be in public during school hours.*

Why Curfews Should Be Opposed

Daytime curfews are gaining popularity around the country. A typical ordinance prohibits any person under the age of 18 from being in public during the hours of 8:30 A.M. to between 1:30 P.M. and 3:00 P.M., when school is in session. Most ordinances have provisions which allow a juvenile some legal excuses to be in public, such as permission from school or parents, an emergency, or when accompanied by a parent. Some even contain specific home school exemptions. Technically, a child without a legal excuse to be outside can be cited and fined for breaking the curfew. In reality, even a person who *does* have a legal excuse to be outside is still not protected from being questioned, detained, or held in custody until his innocence is proven.

Supporters of *daytime* curfews argue that juvenile crime has reached desperate levels; only a measure as harsh as a curfew will control it. Many citizens, however, see no need for the wholesale abrogation of juveniles' liberty merely because a few "bad apples" do not abide by the law.

- ***Daytime curfews do not deter juvenile crime.***

Curfew proponents rely most heavily on the argument that daytime curfews deter juvenile crime. If this premise was true, then areas that strictly enforce a curfew ordinance should have a lower juvenile crime rate than areas that do not have a curfew. A 1998 California study compared the crime rates of counties that enforced curfew ordinances and counties that did not.⁶ The study found that the crime rate of the counties where a curfew ordinance was enforced remained the same as those counties without such an ordinance. The curfews had no effect on juvenile crime.

- ***Daytime curfews allow searches without probable cause.***

The Fourth Amendment of the Constitution proscribes any investigation of a citizen without "probable cause." Under curfew ordinances, police are not bound to this principle. They have the authority to stop, question, and possibly cite anyone who appears to be young enough to be violating the curfew.

- ***Daytime curfews assume a person is guilty until proven innocent.***

In the incidents mentioned above, none of the teenagers had engaged in any suspicious activities. There was no evidence that they either had committed a crime or intended to commit a crime. Nonetheless, the police subjected these young people to interrogation and suspicion until they had proved their innocence. A daytime curfew reverses the long-held American presumption of "innocent until proven guilty."

- ***Daytime curfews punish all juveniles indiscriminately.***

The Constitution guarantees all citizens equal treatment under the law—courts will make no judgment based on property, wealth, or fame. Under a curfew, juveniles learn that "equal protection" means that all juveniles are punished equally, distinguishing between neither victims nor perpetrators, neither innocent nor guilty. Juveniles quickly learn that because some kids are truant and some kids commit crimes, all kids must suffer. If our liberties depend on everyone else's good behavior, our liberties are fragile indeed.

- ***Daytime curfews preempt existing truancy laws.***

Daytime curfews will supposedly curb truancy, forcing kids to stay in school and therefore get a

good education. This argument encounters a legal obstacle. States already have truancy laws on their books. If a city attempts to replace statewide laws with its own law, it violates the doctrine of preemption. This doctrine teaches that state laws always take precedence over local laws. A city cannot replace a state law with its own law. Curfews are merely tougher truancy laws and are illegal according to preemption doctrine.

- ***Daytime curfews are overbroad.***

Curfew laws prohibit the constitutional right to move about freely, among other activities. Any restriction of a fundamental right must be supported by a compelling governmental interest. Furthermore, the restriction must be as narrow as possible, so that it impinges on a citizen's rights as little as possible. Daytime curfews do not meet this requirement. There are less restrictive methods of dealing with truancy and crime. Curfews are too broad and are illegal.

- ***Daytime curfews are too vague.***

If a person of ordinary intelligence cannot understand what a law permits and prohibits, the law is considered "vague" and, therefore, unconstitutional. Daytime curfews can be challenged easily for vagueness. Terms such as "loitering," "idling," or even "being in" can be interpreted at an officer's or court's discretion, giving juveniles no clear idea of what they can or cannot do in public during the curfew hours. Because the ordinances are vague, they are void.

Curfews on Trial

On January 23, 2003, the Supreme Court of Washington State struck down a nighttime curfew ordinance of the City of Sumner, saying that the curfew was unconstitutionally vague, an argument that also applies to daytime curfews. The ordinance made it unlawful for juveniles to "remain" (i.e., linger or stay) in a public place during curfew hours. Judge C.J. Anderson of the Washington Supreme Court wrote that

"These terms [remain, linger, stay] are not, in our judgment, sufficiently precise so that a person of ordinary intelligence is accorded fair notice of what conduct is prohibited. Neither do these terms provide sufficient guidance to officers endeavoring to determine if a juvenile's conduct is exempt from the ordinance."⁷

The U.S. Court of Appeals for the Second Circuit struck down another nighttime curfew ordinance on June 2, 2003, holding that it interfered with a minor's right to freedom of movement, thus violating the right of equal protection. The court stated that the ordinance "interfered with juveniles'...right to walk the streets, move about at will...and leave their houses when they please."⁸ Although this decision invalidated a nighttime curfew case, the reasoning would also apply to a daytime curfew.

This country has not needed curfews until now because of its history of swiftly punishing all offenders. Today these offenders are escaping proper punishment through the trend towards leniency in our courts. Only by returning to our foundational system of justice—punishment for the criminal, freedom for the innocent—will we restore the balance of liberty that Americans cherish.

Federal and State Curfew Legislation

In 1997, the Congress attempted to fund daytime curfews in its Violent and Repeat Juvenile Offender

Act of 1997. The National Center contacted congressional subcommittee attorneys as well as the bill's sponsors and persuaded them to remove funding for daytime curfews. At this time, there is no federal funding for such ordinances.

In Virginia, Delegate Jay Katzen, at the request of HSLDA and the Home Education Association of Virginia, introduced a bill to prohibit cities from passing daytime curfew ordinances—only nighttime curfews would be allowed. The bill passed and now Virginia cities and counties cannot pass ordinances unless specifically authorized by the state legislature. The law states:

Any locality may by ordinance prohibit loitering in, upon or around any public place whether on public or private property. Any locality may by ordinance also prohibit minors who are not attended by their parents from frequenting or being in public places whether on public or private property at such times, between 10:00 p.m. and 6:00 a.m., as the governing body deems proper. Va. Code Ann. 15.2-926.

This language serves as a model for other states that want to stop unconstitutional curfews.

The Real Solution

Juvenile crime is a serious problem and must be combated, but daytime curfews are not the way to do it. We don't need ordinances which are better suited to a country under martial law, especially when existing ordinances address the same problem. Existing ordinances need only to be enforced. The solution to crime—juvenile and otherwise—is swift and severe penalties for breaking the law. It is sadly nonsensical that those who support curfews and are willing to curtail the liberties of all juveniles are often the same people who oppose punishment for the juveniles who do commit the crimes. Punishment is a strong deterrent to crime.

Endnotes

1. Utah OnLine, *Salt Lake Tribune*, 1996
2. Utah OnLine, *Salt Lake Tribune*, 1996
3. Written Testimony, L. Arnold; Monrovia, California; April 5, 1997
4. Written Testimony, J. Isenberger; Monrovia, California; April 4, 1997
5. Written Testimony, V. Rodarte; Monrovia, California; April 6, 1997
6. Mike A. Males and Dan Macallair, *The Impact of Juvenile Curfew Laws in California*, The Justice Policy Institute, San Francisco, June 1998
7. *City of Sumner v. Walsh*, 148 Wash.2d 490, 61 P.3d 1111
8. *Ramos v. Town of Vernon*, 331 F.3d 315 (2nd Cir. 2003); 71(48)
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