

**THE BILL BLACKWOOD
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To Be or Not To Be?
A Juvenile Curfew in Longview, Texas

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ABSTRACT

Although the number of major crimes are declining nationally, crimes committed by juveniles are on the increase and municipalities are searching for ways to turn the tide. The purpose of this research project is to examine pivotal constitutional issues associated with the implementation of a juvenile curfew. Challenges to the juvenile curfew in the courts have resulted in the need to prove a compelling or significant state interest or need. Juvenile arrest/victimization statistics for crimes committed in the City of Longview for the years 1992 through 1995 are compared to national and state statistics. This comparison method and statistical trends tend to prove the compelling or significant state interest or need. The Longview Police Department must conduct an education campaign, receive public input, and complete service impact studies before making a recommendation to the City Council on whether to establish a juvenile curfew in Longview.

Introduction

The purpose of this research project is to examine pivotal constitutional issues associated with the implementation of a juvenile curfew. Many cities throughout the State of Texas use juvenile curfews as an effective method of reducing crime. Likewise, this popular crime prevention tool will soon be considered for use in the City of Longview. For many years the juvenile curfew has been challenged in the courts as a violation of the fundamental civil rights of children. As a result, the courts have provided stringent guidelines for the development of curfew statutes. In order to satisfy the 14th Amendment due process requirement, municipalities must prove a compelling or significant state interest (*Outb*, 11 F.3d 488). This requirement is typically addressed by the use of juvenile crime/victimization statistics. This research project will be used to examine the compelling state interest as it applies to a juvenile curfew in Longview.

The intended audience of this project is the Longview City Council as it considers the public policy issue of establishing a juvenile curfew. The police department will use the information in determining a policy position to either support or oppose a curfew in its recommendation to the city council. Likewise, the citizens of Longview will consider the need and impact of a juvenile curfew and make their opinions known to the elected officials.

Various sources of information are included in this research project. Relevant court opinions are used to show the basis of the compelling or significant state interest or need. Various publications as well as national and state crime statistics are

used to demonstrate the overall crime picture as compared to juvenile crime. Similarly, local juvenile crime/victimization statistics are compared to national and state statistics to argue for or against whether a compelling or significant state interest or need exists.

This project will be used to determine whether a sufficient increase in local juvenile crime/victimization exists to satisfy the compelling state interest issue imposed by the courts. That information will then be used to decide public policy with regard to the potential implementation of a juvenile curfew in Longview.

Historical and Legal Context

Since 1984, juvenile arrests in Texas have increased by 47%, while during the same period adult arrests increased by slightly more than 1% according to a report published in 1995 titled Crime and Justice in Texas (Teske 137). Cities in Texas and throughout the country have struggled for years with various programs and legislation intended to reduce juvenile crime. One of the leading and probably most controversial methods currently used to curb the growing juvenile crime rate is the curfew.

Since before the turn of the century, juvenile curfews have been challenged in the courts as unconstitutional. "In 1898, The Texas Court of Criminal Appeals struck down as unreasonable an ordinance imposing a blanket curfew after 9:00 p.m. for persons under age 21 " (CLU 2). "In 1957, the Beaumont Court of Appeals struck down a determination that a juvenile was delinquent under the law because she was wandering the streets late at night" (CLU 2). In 1976, the United States Court of Appeals, Second Circuit, struck down a juvenile curfew ordinance because "the failure

to provide the hour at which the curfew ends, makes the ordinance void for vagueness" (*Naprstek*, 545 F.2d 815).

More recently, in a 1981 case heard by the United States Court of Appeals, Fifth Circuit, a juvenile curfew was determined to be constitutionally over-broad due to the lack of exceptions to the ordinance (*Johnson*, 658 F.2d 1065). In 1984, the United States District Court (D. New Hampshire) declared a juvenile curfew as overbroad and insufficient to justify the infringement of a minor's liberty interest, therefore in violation of the Fourteenth Amendment Due Process Clause (*McColleston*, 586 F.Supp. 1381). In 1989, the United States District Court, District of Columbia, declared a juvenile curfew as overbroad in that the criminal acts the curfew was intended to prevent were not occurring during the times the curfew was in effect (*Barry*, 711 F.Supp. 1125).

Contrary to the trend in most of these court cases, in 1975, the United States District Court (M. D. Pennsylvania), upheld a curfew that contained sufficient exceptions in that it protected the liberty interests of the juvenile thus satisfying the overbreadth and vagueness issues (*Bykofsky*, 401 F.Supp. 1242). Similarly, in 1993, the United States Court of Appeals, Fifth Circuit, ruled that a juvenile curfew ordinance, crafted by the City of Dallas and challenged as unconstitutional under the First, Fourth, Fifth and Fourteenth Amendments, was constitutional because "the State demonstrated that the curfew ordinance furthers a compelling state interest, i.e., protecting juveniles from crime on the streets" and "the ordinance is narrowly tailored to achieve this compelling State interest" (*Qutb*, 11 F.3d 488).

In the case of *Johnson v. City of Opelousas*, the Fifth Circuit Court provided guidance in the construction of curfew ordinances with regard to showing a significant state interest. Those interests include the protection of juveniles from crime, the protection of the public from criminal acts committed by juveniles, and the enhancement of parental control. "In order to meet this significant state interest test, a city would have to show an increase in crime over the past few years" (CLU 3). In the case challenging the Dallas curfew ordinance, the city demonstrated the significant state interest by showing the increasing number of crimes committed by juveniles as well as the propensity for crimes against juveniles, but was careful to include a number of exceptions to the ordinance specifying legitimate reasons for non-compliance with the curfew.

While many remain opposed to the restriction of one's fundamental rights regardless of age, the courts recognized the special circumstances that exist with regard to children. "The ability (for children) to make reasonable judgements depends on intellectual capacity which increases with age through early adulthood and on knowledge and experience which grow over time. Until individuals develop a certain level of judgement capacity, they are more likely to engage in irresponsible behavior without proper consideration of the possible consequences to themselves or to others" (Michigan Law Review 130). "In cases in which minors face truly grave or critical decisions or in which the emotional and mental immaturity of minors demands special treatment, the analysis will allow for greater protection by the state..." (Harvard Law Review 1163). In essence, the courts view children as less capable of making

reasonable decisions when faced with the complex issues of crime as either the perpetrator or victim, thus allowing for the implementation of laws directed at the protection of children from the criminal element.

As was the case in many of the early court challenges, "state courts in three different states recently struck down juvenile curfew ordinances as unconstitutionally overbroad and vague": *Allen v. City of Bordertown*, 1987, *K.L.J. v. State of Florida*, 1991, and *City of Maquoketa v. Russell*, 1992 (CLU 3). Ordinances that have passed the strict scrutiny of the courts have successfully dealt with the issues of overbreadth and vagueness by including a sufficient number of exceptions that allow for the exercise of legal activities guaranteed by the First Amendment and concise language that defines the intended purpose and scope of the statute.

Review of Literature or Practice

Little research exists regarding specific arrest and victimization data in most cities, as well as research regarding the overall effectiveness of the juvenile curfews. However, the effect of juvenile curfew ordinances on crime, and the displacement phenomenon -the movement of crime to times that the curfew is not in effect - that sometimes occurs as a result, should become evident in the near future. Juvenile curfew ordinances exist in eleven of Texas' twenty-five largest cities according to a survey taken in 1994 by James A. Pilant, doctoral student at Sam Houston State University. Although crime statistics upon which the curfews may have been based is unavailable, summaries of ten of the respondent cities are included in the following table.

Summary of Curfew Ordinances

City	Type	Age Group	Curfew Time	Exceptions
Austin	Area School	under age 17	11p-6a Su-Th 12A-6a Fr-Sa 9a-2:30p	Yes
Corpus Christi	Nocturnal	under age 17	11p-6a Su-Sa	Yes
Dallas	Nocturnal	under age 17	11p-6a Su-Th 12:01a-6a Fr-Sa	Yes
Grand Prairie	Nocturnal	under age 17	11p-6a Su-Th 12:01a-6a Fr-Sa	Yes
Houston	Nocturnal School	under age 18	12p-6a Su-Sa 9a-2:30p	Yes
Laredo	Nocturnal School	under age 17	11p-6a Su-Th 12:01a-6a Fr-Sa 8a-4p	Yes
Lubbock	Nocturnal	under age 17	11p-6a Su-Th 12a-6a nights preceding school holidays	Yes
Pasadena	Nocturnal School	under age 13 over 13 under 18 age 13-16	9p-6a daily 10p-6a Su-Fr 12a-6a Sa-Su 9a-2:30p	Yes
San Antonio	Nocturnal School	under 17 over 9	12a-6a Su-Sa 9a-2:30p	Yes
Wichita Falls	Nocturnal	under age 17	11p-6a Su-Th 12:01a-6a Fr-Sa	Yes

(TELEMASP 10-11)

While a curfew ordinance must be constructed in a manner to satisfy the overbreadth and vagueness scrutiny of the courts, communities must also demonstrate a compelling or significant interest or need. The need for a juvenile curfew is typically based on crime statistics involving juvenile crime/victimization. In the Dallas case, the city was able to demonstrate a compelling or significant need in that juvenile arrests increased by 1.5 percent in one year, trend studies showed that

juvenile arrests for major crimes were on the increase, and major crimes in the city were most likely to occur during curfew hours. "The court found this sufficient to substantiate a compelling interest for the curfew ordinance" (TELEMASP 6). Also, the court found that the number and type of exceptions to the ordinance were narrowly tailored to accomplish the goal in the least restrictive manner.

In December 1992, the City of Phoenix, Arizona, amended its 1968 curfew statute. The community was concerned with the threats posed by increasing violence including armed robberies and drive-by shootings perpetrated both by and against juveniles (Garrett 29). The ordinance was narrowly tailored and included exceptions to satisfy the vagueness and overbreadth issues.

Between October 1992 and June 1993, the City of Wilmington, Delaware experienced a significant increase in juvenile related crime prompting complaints from citizens, business owners, and politicians (Pratcher 58). Due to constitutional concerns, an existing curfew statute was revised and enacted in May 1994. The ordinance was narrowly tailored and included several exceptions in compliance with constitutional requirements.

The City of North Little Rock, Arkansas, had been fairly insulated from the debilitating trends of violence and social breakdown sweeping the nation until the late 1980's (Nolan 59). With the arrival of the west coast gang influence, the city experienced a dramatic increase in crime with crimes against persons exceeding expected trends. With the support of dozens of neighborhood groups, the city passed a curfew ordinance on July 30, 1991.

Existing research indicates that current curfew ordinances in Texas are well constructed and constitutionally based, although the issue has yet to be argued before the United States Supreme Court. While the contemporary juvenile curfew has not been in effect long enough to fully gauge its effectiveness, some cities have seen very promising results. Within two years after the Dallas curfew went into effect, the number of juvenile arrests in that city decreased by 25 percent. The number of juveniles held for burglary and robbery fell 66 percent and 94 percent respectively (Counter Attack). Juvenile crime in New Orleans, Louisiana, fell by 38 percent sixty days after implementation of a juvenile curfew. After ninety days, overall crime had decreased by 14.6 percent (Morial 2). After the first full year of curfew enforcement, the city of North Little Rock experienced an average 12 percent reduction in the number of homicides, rapes, robberies, and assaults, and a 10 percent reduction in burglaries (Nolan 61). Within months of enacting a juvenile curfew in the city of Wilmington, the city saw a corresponding decrease in criminal mischief cases - 9 percent, and auto thefts - 24 percent (Pratcher 58). Although the research does not indicate causality, it appears that a correlation exists between the number of curfew arrests and reductions in major crimes.

Discussion of Relevant Issues

The key issue to consider in the implementation of a juvenile curfew is the significant or compelling state interest or need. While the overbreadth and vagueness are important, these issues have been clarified by the courts and included in all contemporary juvenile curfew ordinances in Texas. Pursuant to constitutional

challenges, the courts have determined the significant state interest is best satisfied with the production of crime statistics indicating the need to protect society from crimes committed by juveniles and reducing juvenile victimization.

With respect to the compelling state interest issue, the City of Longview is fortunate in that statistics for crimes both committed by and against juveniles are available for years 1992 through 1995. The following table compares the number of juvenile arrests (under age 17) using national, state, and local statistics.

United States			Texas		Longview	
All Crimes	Juvenile	All	Juvenile	All	Juvenile	All
1995	Not Available	Not Available	Not Available	Not Available	971 (19%)	5,016
1994	1,699,035 (14%)	11,877,188	178,677 (16%)	1,121,158	850 (19%)	4,437
1993	1,541,296 (13%)	11,765,764	154,524 (14%)	1,068,928	662 (16%)	4,040
1992	1,483,699 (12%)	11,893,153	138,620 (13%)	1,033,359	592 (16%)	3,662

While juvenile arrest rates in Longview are only slightly higher than national and state figures, a comparison of arrests for Part I offenses - major crimes - may better illustrate the compelling need issue.

United States			Texas		Longview	
Part I	Juvenile	All	Juvenile	All	Juvenile	All
1995	Not Available	Not Available	Not Available	Not Available	372 (30%)	1243
1994	583,243 (25%)	2,367,480	55,379 (28%)	197,326	341 (28%)	1208
1993	564,541 (23%)	2,406,706	50,899 (26%)	194,398	292 (26%)	1139
1992	570,875 (23%)	2,464,202	49,660 (25%)	201,548	282 (26%)	1080

The number of crime victims in all crime categories reported in Longview for 1992 through 1995 was 33,421. Of that total, 1401 (4%) were juveniles. Part I or

violent crimes committed against juveniles totaled 441 (31%) during the same period.

Although the number of juvenile arrests in Longview are similar to those at the national and state levels, an opportunity may exist for the reduction of Part I crimes committed by juveniles. According to local statistics, 279 (20%) of the 1287 juvenile arrests for Part I offenses, for 1992 through 1995, occurred between the hours of 11:00 p.m. and 6:00 a.m., Sunday through Thursday, and between the hours of 12:00 a.m. and 6:00 a.m., Friday and Saturday, the time during which a typical nocturnal curfew would have been in effect. Also, 112 (25%) of the 441 Part I crimes in which juveniles were victims occurred during the same period.

Government officials must consider the costs, benefits, and risks associated with the implementation of a curfew ordinance. Much of the concern over cost fades when compared to the success experienced by most cities in which a curfew has been implemented. Although the costly threat of a legal challenge to the curfew exists, typical costs such as police, court, and detention manpower and equipment are offset by the reduction of crime. The City of Wilmington experienced a slight reduction in overall response time to calls for service as a result of the curfew, thus allowing officers to concentrate on other patrol duties (Pratcher 58). Even though the juvenile curfew could prove to be a successful tool in reducing juvenile crime, some argue that the cost includes the loss of fundamental constitutional rights of many due to the unlawful acts of few. However, most citizens are willing to tolerate the restriction of some freedoms in exchange for a reduction in the number of violent crimes plaguing their cities.

Conclusion/Recommendations

The purpose of this research project was to examine pivotal constitutional issues associated with the implementation of a juvenile curfew. For many years the juvenile curfew has been challenged in the courts as a violation of the fundamental civil rights of children. As a result, the courts have provided stringent guidelines for the development of curfew statutes. In order to satisfy the 14th Amendment due process requirement, municipalities must prove a compelling or significant state interest typically addressed by the use of juvenile crime/victimization statistics. This research project will either prove or disprove the compelling state interest as it applies to a juvenile curfew in Longview.

The decision to implement a juvenile curfew in the city of Longview ultimately rests with the Longview City Council. However, it is the responsibility of the Police Department, after reviewing all applicable information, to recommend a course of action. Statistics indicate a juvenile curfew could have impacted 391 major crime incidents committed by and against juveniles, those under age 17, during the times that a typical nocturnal curfew would have been in effect. Part I arrest trends indicate a 2 percent increase per year each of the past four years. Victimization trends indicate a 15 percent increase each year during the same period. These statistics tend to prove the compelling state interest. The police department should implement a significant education campaign and receive public input on the issues surrounding a juvenile curfew. Additional research is needed to determine a prudent enforcement policy and the impact a curfew would have on court and detention operations. This

process should result in a recommendation for presentation to the city council.

Based on this research, and after receiving a recommendation from the police department, the Longview City Council should have sufficient information to make a public policy decision on the establishment of a juvenile curfew.

BIBLIOGRAPHY

- "Assessing the Scope of Minors' Fundamental Rights: Juvenile Curfews and the Constitution." Harvard Law Review. 1984: 1163-1182.
- "Crime and Justice in Texas." Criminal Justice Center, Sam Houston State University. 1995: 137-139.
- "Crime In Texas 1992". Texas Department of Public Safety 1992: 63
- "Crime In Texas 1993". Texas Department of Public Safety 1993: 63
- "Crime In Texas 1994". Texas Department of Public Safety 1994: 75
- "Curfews Working To Reduce Juvenile Crime." Counter Attack March/April 1996: 3.
- Garrett, Chief Dennis A., and Asst. Chief David Brewster, Phoenix Police Department. "It's 10 p.m....Do You Know where Your Children Are?." The Police Chief December 1994: 29 + .
- "Juvenile Curfews." TELEMASP Bulletin September 1994: 1-11.
- "Juvenile Curfew Ordinances." Criminal Law Update. 1994: 2-3.
- "Juvenile Curfew Ordinances and the Constitution." Michigan Law Review November 1977: 109-153.
- Longview Police Department. 1992 Crime Statistics. Longview: Longview, Texas Police Department, 1996.
- Longview Police Department. 1993 Crime Statistics. Longview: Longview, Texas Police Department, 1996.
- Longview Police Department. 1994 Crime Statistics. Longview: Longview, Texas Police Department, 1996.
- Longview Police Department. 1995 Crime Statistics. Longview: Longview, Texas Police Department, 1996.
- Morial, Marc D., Mayor, City of New Orleans, Louisiana. "Our Juvenile Curfew Is Working". January 1995: 2.
- Nolan, Chief William P., North Little Rock Police Department, Arkansas. "Innovative Curfew Enforcement." The Police Chief December 1994: 59 + .

Pratcher, Chief Samuel D., Wilmington Department of Police, Delaware. "A Response to Juvenile Curfew Violations." The Police Chief December 1994: 58 + .

"Uniform Crime Reports for the United States 1992." Federal Bureau of Investigation, U.S. Department of Justice 1992: 227.

"Uniform Crime Reports for the United States 1993." Federal Bureau of Investigation, U.S. Department of Justice 1993: 227.

"Uniform Crime Reports for the United States 1994." Federal Bureau of Investigation, U.S. Department of Justice 1994: 227.

LEGAL CITATIONS

Bykofsky v. Borough of Middletown, 401 F.Supp. 1242 (M.D. Pen 1975), aff'd, 535 F.2d 1245 (3rd Cir. 1975), cert. denied, 429 U.S. 964 (1976).

Johnson v. City of Opelousas, 658 F.2d 1065 (1981).

McCollester v. City of Keene, 586 F.Supp. 1381 (D.N.H. 1981).

Naprstek v. City of Norwich, 545 F.2d 815 (2nd Cir. 1976).

Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993).

Waters v. Barry, 711 F.Supp. 1125 (D.D.C. 1989).