Teen Curfew Laws Must Respect Constitutional Rights

Are Teen Curfews Effective?, 2009

The Pennsylvania General Assembly, Local Government Commission is a subcommittee of the Pennsylvania state legislature.

Teen curfew ordinances affect the personal autonomy of minors—whether religious, political, or civic—as well as the parent-child relationship. Therefore, when a municipality drafts or imposes a teen curfew, its constitutional implications must be carefully considered. A curfew must not impinge a minor's First Amendment rights, which include protected speech, such as religious and political activity. With respect to parents, a teen curfew must not interfere with a family's right to privacy and the freedom from government interference, according to the Ninth Amendment. Lastly, minors' freedom of movement and travel, as protected by the Fourteenth Amendment, must not be violated.

The common understanding of the term "curfew" is defined in Black's Law Dictionary as "a regulation that forbids people (or certain classes of them) from being outdoors between certain hours." The vast majority of existing municipal curfews are juvenile curfews, requiring that children of a specified age be indoors or otherwise in the presence of a guardian during night hours. According to one authority, the first juvenile curfew in the United States was enacted in 1880 in Omaha, Nebraska. Curfews gained prominence in the 1890s as a response to rising crime attributed to immigrant children, and according to a 1995 survey by the United States Conference of Mayors, 70 percent of 387 cities responding had curfew ordinances in place. Juvenile curfews have historically attained a similar level of prominence in Pennsylvania municipalities.

Municipalities and their solicitors should carefully research and draft curfews in a manner designed to weather any number of potential challenges, usually founded on alleged constitutional violations.

Absent a specific statutory delegation of power to enact curfews, Pennsylvania municipalities enact juvenile curfews pursuant to their general police powers for the following purposes:

- To reduce juvenile crime and thus promote the community welfare,
- To reduce perpetration of crime on juveniles that may be vulnerable during curfew hours, and
- To promote and support the parent-child relationship and provide an additional layer of supervision when appropriate.

Juvenile curfew ordinances typically have a number of characteristics in common, including an age threshold, a time period within which the regulation applies, exceptions, administrative provisions, and penalties.

While juvenile curfews in Pennsylvania are prevalent and have not been subject to an inordinate number of court challenges, municipalities and their solicitors should carefully research and draft curfews in a manner designed to weather any number of potential challenges, usually founded on alleged constitutional violations. The need for caution is based on several factors, the foremost of which is that the United States Supreme Court has yet to establish clear guidelines regarding the constitutional validity of juvenile curfews.
Furthermore, the various federal circuits that have passed on the question have established a broad spectrum of approaches. In these cases, many federal constitutional provisions have been invoked to challenge juvenile curfews.

**Constitutional Implications**

Curfews impact the personal autonomy of juveniles, the ability of juveniles to engage in religious, political, or civic endeavors, the relationship between parents and their children, and the arrest powers of the government. Issues involving unconstitutional vagueness may also be raised. Many of these issues may involve "fundamental rights," which are afforded great protection by the courts. Of the various constitutional provisions implicated by challenges to curfews, the following are of some prominence:

- **First Amendment Interests—Speech, Association and Expression**: Although the First Amendment to the United States Constitution has been interpreted as not providing a right to generally "socialize," it could be impermissibly infringed upon when a curfew provides no exceptions for purposes of "protected speech," such as religious or political activities. Furthermore, a curfew ordinance could be challenged as unconstitutionally overbroad when it adversely affects a substantial amount of protected activities.

- **The Ninth Amendment—the Fundamental Right of Parents to Raise Children Without Undue Interference**: The Ninth Amendment to the United States Constitution has been construed to contain a right to privacy that protects family autonomy and is related to substantive due process under the Fifth and Fourteenth Amendments. While there is disagreement in the federal circuits whether a curfew promotes or interferes with parental rights, a challenge under this amendment is more likely when a curfew ordinance prohibits activities that would be permitted or encouraged by a responsible parent.

- **Fourteenth Amendment Interests—Due Process and Equal Protection—the "Right of Locomotion"/Freedom of Movement**: To the extent that a curfew may affect interstate travel, freedom of movement, or other fundamental rights, the Fourteenth Amendment to the United States Constitution is implicated. The Equal Protection Clause of this Amendment is sometimes invoked by challengers asserting that a juvenile curfew creates an impermissible classification based on age. This Amendment is used as justification for the more rigorous "strict scrutiny" standard of judicial review when an ordinance infringes on fundamental rights.

- **"Vagueness" Issues**: Related to the guarantees of Due Process and the Fourth Amendment, an ordinance may be facially challenged on the basis of unconstitutional vagueness. This occurs where a citizen must speculate as to what constitutes a violation of the regulation, and where law enforcement officials are impermissibly delegated too much discretion as to what constitutes a violation of the regulation. This doctrine appears to be one of the major methods by which curfew regulations are challenged.

**Drafting Municipal Curfews**

Given the history of challenges to juvenile curfews both within and outside of Pennsylvania, a prudent municipality would be well-advised to prepare for a "strict scrutiny" standard to be applied to their curfew ordinance. In other words, "strict scrutiny" implies that courts will deem a curfew unconstitutional unless it "is narrowly tailored to serve a compelling governmental interest." The potential application of this standard largely stems from the fact that curfews impact the fundamental rights of minors and many federal courts have determined that those rights deserve the same level of protection as those of adults. While preventing juvenile crime and protecting juveniles generally satisfy the "compelling interest" prong of the test, a lack of a statistical basis for the curfew and exceptions that inadequately allow for the exercise of constitutional rights often cause ordinances to fail the "narrow tailoring" requirement. Furthermore, strict scrutiny demands that a sufficient "nexus" exist between the goals of the ordinance and the means used.
In reviewing a curfew ordinance, a municipality should consider, among others, the following questions:

- Can the municipality point to specific statistics that warrant the imposition of a curfew?
- Is the proposed ordinance drafted to address these issues in the least intrusive manner possible?
- Are there adequate exceptions for legitimate activities or situations that may inadvertently be unauthorized by the proposed ordinance?
- Does the proposed ordinance contain terms that are too vague?

The number of municipalities that have enacted curfews and the lack of challenges to such ordinances indicate that they remain a popular public safety tool in Pennsylvania, despite any potential constitutional difficulties. Because curfews represent a restriction on personal freedom by the state and require municipalities, in essence, to insinuate themselves in the parent/child relationship, they have sometimes been met by public resistance. As one commentator suggests, "[c]urfews place not only limitations on the activities of the two-tenths of 1 percent of youths who commit serious offenses, but also on the 99.8 percent who seek to engage in legitimate interests during nighttime hours."

Further Readings

Books


Periodicals

- Caitlin Carpenter "For Teens, It's Curfew Time ... at the Mall," *Christian Science Monitor*, June 6, 2007.
- Brian Johnson "Driving While Young: Why the City's Curfew Isn't All That," *Jackson Free Press*, October 12, 2005.


• Anusha Mohan and Molly Henning #Teen Time Check: Curfews Can be a Sticking Point Between Parents and Teens," *Contra Costa Times*, February 9, 2006.


• Jayne O'Donnell "Deadly Teen Auto Crashes Show a Pattern," *USA Today*, March 1, 2005.


• Kevin A. Wilson "Focus on Teen Drivers Bears Fruit," *AutoWeek*, September 8, 2008.


**Full Text:** COPYRIGHT 2009 Greenhaven Press, a part of Gale, Cengage Learning.

---

**Source Citation**