

Curfews for Minors and Other Special Responses to Crime

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Nighttime crime in your community is up. Shopping centers and the downtown area draw large numbers of young people during the evening. The local news features street assaults, robberies, fighting, gunfire, vandalism, and drunk and disorderly conduct. The police report that both adults and minors are contributing to the growing problems. Whether you are a law enforcement officer, a town manager, a member of a town council, a county commissioner—or an ordinary citizen—this problem affects you.

You may wonder if ordinary law enforcement and existing laws are adequate to deal with the problem. And you may ask: Can't we pass a special ordinance to help us get a handle on crime?

Depending on the precise nature of your community's concern, you might consider any of the following crime-response ordinances: (1) curfews for everyone in the community, (2) curfews for *adults* only, (3) curfews for minors only, (4) "no cruising" ordinances, and (5) laws prohibiting loitering in specific situations.

This article will discuss legal and practical issues surrounding each of these special responses to crime, covering local government authority to create such ordinances, the constitutional issues at stake, possible specific ordinance provisions, and enforcement considerations.

Local Authority to Create Crime-Response Ordinances

The first question a local government must address in considering one of these ordinances is whether it has the authority to create such a law.

The authority of North Carolina local governments is limited in two principal ways. First, they have only the authority that the North Carolina General Assembly delegates to them. Without such a delegation, authority to act in a particular area lies in the state government. And second, the General Assembly has put some areas of law exclusively into the hands of state government, explicitly providing that local governments may not act in those areas; this occupation of particular areas of regulation is generally referred to as *preemption*. For example, a local government may not make illegal by local ordinance an activity already prohibited by state law. Burglary is prohibited by statute, so a local government may not also punish that conduct.

The North Carolina General Assembly has delegated to local governments some general police powers that may provide the authority necessary for adoption of special responses to crime. North Carolina General Statute (G.S.) 160A-174 empowers *cities* to prohibit and regulate "acts, omissions, or conditions, detrimental to the . . . safety, or welfare of its citizens and the peace and dignity of the city." G.S. 153A-121 provides almost identical authority for *counties* to enact such ordinances in their jurisdictions. This language appears broad enough to permit a wide assortment of local government ordinances, including curfews and laws regulating cruising or loitering, as long as they are otherwise legally valid.

G.S. 14-288.12 and G.S. 14-288.13 empower municipalities and counties, respectively, to enact ordinances to protect their communities in "times of riot or other grave civil disturbance or emergency." G.S. 14-288.12(c) explicitly states that the statute's provisions "supplement" general ordinance-making powers.

With these statutes as a backdrop, a local govern-

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ment must decide whether it has the authority to create special responses such as a curfew for minors. North Carolina has no case law or statute that definitively says whether local governments have the authority. There are two viable opposing points of view. One says that the general legislative grants of authority to local governments to protect safety, welfare, and peace are broad enough to empower governments to enact curfews or other ordinances that achieve those goals. A 1994 North Carolina Supreme Court decision casts favor on this point of view. In *Homebuilders Association of Charlotte v. City of Charlotte*,¹ the court said that legislative grants of power to municipalities should be construed broadly to include “any additional

or supplementary powers reasonably necessary or expedient” to carry a particular legislative mandate into execution.² The opposing point of view maintains that without specific legislative authorization to enact these kinds of ordinances, local governments may not create them. Supporters of this point of view might argue that general legislative grants of authority to safeguard safety, welfare, and peace, coupled with specific grants of authority to deal with emergencies allow local governments to enact curfews and other restrictive ordinances only during emergencies. In this interpretation, the General Assembly provided emergency power statutes because it viewed local government authority as limited under G.S. 160A-174 and G.S. 153A-121.



It is not clear which of these views would prevail in the courts if a special-response ordinance were to be challenged on the grounds that the local government created the ordinance without legislative authority. The arguments favoring authorization of such local government actions seem strong, but a government should still weigh for itself the risks and potential costs of judicial challenge to its authority before proceeding with a curfew for minors or other special response to crime. (See “Judicial Rulings Concerning Curfews for Minors,” page 6.)

Note that the General Assembly, if it chose, could pass a law specifically authorizing local governments to create ordinances such as a curfew for minors. New Jersey adopted such a law in 1992.³

General Constitutional Considerations

These special crime-response ordinances inevitably affect constitutional rights and are subject to the scrutiny of state and federal courts to assure that such rights are not overburdened or violated.

One set of rights affected by these ordinances involves travel. The U.S. Supreme Court has recognized a right to travel between states—interstate travel—that is protected by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.⁴ The North Carolina Supreme Court has recognized a right to travel within the state—intrastate travel—on the public streets of a city, as a part of every individual’s liberty. It is protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and by Article 1, Section 19, of the Constitution of North Carolina (the Law of the Land Clause). The freedom to travel may be subject to reasonable time and manner restrictions.⁵

A second set of constitutional rights affected involves freedom of speech, assembly, and association. The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble. . . .” Many courts have derived a freedom of association from the explicit rights of speech and assembly. These rights are not limitless, of course. They may be subject to reasonable time, place, and manner restrictions. And they are subject to limitations imposed by the courts. The U.S. Supreme Court appears to have limited the scope of the right of free association, for example, in a case from Texas.⁶ There a majority of the Court said that purely social gatherings do not involve the assertion of any

protected First Amendment associational rights. The primary ruling was that a city ordinance limiting the use of certain areas in dance halls to persons between fourteen and eighteen was constitutional.

Third is the constitutional right of “family autonomy,” a right found by many courts in the Due Process Clause of the Fourteenth Amendment, protecting parental decisions concerning how to supervise and raise their families.⁷ This right is not as firmly recognized by courts as are the two discussed above.

Other constitutional concerns stemming primarily from the Due Process Clause of the Fourteenth Amendment are also at stake in the creation of a crime-response ordinance. An ordinance must be clear enough, for example, for reasonable individuals of ordinary intelligence to understand which activities are illegal. Clarity limits the possibility of an ordinance being arbitrarily or discriminatorily enforced.⁸ And an ordinance must be drawn narrowly enough to avoid placing too much burden on law-abiding behavior. A stated purpose in an ordinance that specifies the problems and activities it addresses may be crucial to whether the ordinance survives judicial scrutiny in the face of a challenge that it was unduly burdensome to law-abiding behavior.

After confronting the issues of local authority and constitutional rights, a local governmental unit must weigh the relative merits of each crime-response option.

Curfews for Everyone in the Community

Communities throughout the country have tried different approaches to curfews with varying success in the courts. While it seems clear that under North Carolina law a curfew on everyone in the community could be imposed in a time of actual emergency, it is by no means clear that such a curfew could be imposed at other times.

In Times of Emergency

As already mentioned, North Carolina statutes permit local governments to impose prohibitions and restrictions “in times of riot or other grave civil disturbance or emergency.”⁹ The statutes permit governments to restrict the movement of people in public places during an emergency. Governments may impose a curfew during such a state of civil disorder.

In 1971 the North Carolina Supreme Court upheld the city of Asheville's use of these statutes in proclaiming a state of emergency and imposing a curfew and other restrictive measures for three days after a violent confrontation between high school students and police.¹⁰ In a federal case arising out of the Asheville situation, the United States Fourth Circuit Court of Appeals ruled that North Carolina's statutory scheme authorizing local governments to declare states of emergency and impose restrictions is not unconstitutionally vague or overbroad.¹¹ The court ruled that there must be a factual basis for a government's decision to proclaim that an emergency exists and the government must act in good faith.

In Times Other Than Emergency

Justice Thurgood Marshall once said that "absent a genuine emergency a curfew aimed at all citizens could not survive constitutional scrutiny."¹² It is a nearly universal view among commentators that Justice Marshall's statement is correct, that a general curfew against all citizens is unconstitutional.

Curfew for Adults Only

Since the mid-1970s most legal commentators have accepted Justice Marshall's view that a curfew may not be invoked against "all citizens," except in a state of emergency. Commentators expand that view to say that a curfew aimed exclusively at adults also is not constitutional.

Curfew for Minors Only

At the turn of the century, about 3,000 U.S. municipalities had implemented curfews for minors. Throughout the twentieth century, communities have continued to employ them to promote community order. In 1957 more than 50 percent of cities with populations greater than 100,000 had such laws.¹³ Today 146 of the United State's 200 major cities have teen curfews.¹⁴ Among these cities are Atlanta, Buffalo, Dallas, Detroit, Milwaukee, Phoenix, Roanoke, Sacramento, San Antonio, and Washington, D.C. Countless other communities across the country have considered such curfews in the 1990s. Despite this popularity, significant and difficult legal issues may arise with passage of

a curfew. Consequently, some curfews have been—or currently are being—legally challenged.

Atlanta's curfew has generated community criticism and occasional lawsuits yet remains in effect. Dallas's was upheld by a federal court of appeals in November 1993. Washington, D.C.'s passage of a curfew effective in June 1995 came after a previous curfew in that city was invalidated by a federal district court in 1989. Florida's local government curfews for minors have faced considerable legal challenges. In November 1995 Dade County's ordinance was upheld by a state appellate court, after first being struck down by a state trial court as violating the Florida constitution.¹⁵ Earlier in the year, a request for a preliminary injunction barring Orlando from enforcing its curfew for minors was denied.¹⁶

North Carolina has seen similar attention to curfews among its local governments. In February 1995 Charlotte became one of the most recent North Carolina local governments to pass a curfew for minors.

Authority to Adopt a Curfew for Minors

There are some specific ordinance-making authority issues that any government considering a curfew for minors must contemplate.

In 1960 the North Carolina attorney general wrote an opinion that ". . . a municipality in this State does not have authority under the general law to adopt curfew ordinances regulating the hours when young people must be off the street."¹⁷ The opinion provides no rationale for its position, so it does not provide much guidance, especially in light of changes in constitutional law made by the U.S. Supreme Court since 1960 and in light of today's climate of heightened public concern about crime. This opinion was issued before the statutes authorizing local governments to create laws to maintain public peace and safety were passed by the General Assembly, and it makes no reference to statutes providing local governments with police authority that were in place in 1960. Ultimately, a local government that is contemplating creating a curfew for minors will have to decide whether it considers this opinion to still accurately state the applicable law. It is not clear that it does.

Whether local governments have authority to promulgate curfews for minors has not been tested in North Carolina's appellate courts, so it is impossible to predict precisely how the state supreme court or the court of appeals would respond to such a curfew if it was asked to review it for validity.

Judicial Rulings Concerning Curfews for Minors

State and federal courts have been all over the board on the issue of curfews for minors. There is no clear majority position on their constitutional validity.

Courts That Have Approved Curfews

When courts have approved curfews for minors, they have relied on two major justifications. Sometimes they have found that the ordinance was narrowly drawn, providing for specific exceptions that inform parties about what conduct is impermissible; and sometimes they have held that limitation on minors' right to be on the street does not infringe on basic constitutional rights. These same courts might invalidate curfews they view as overly restrictive. Consider the following:

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

The Dallas, Texas, curfew for minors was upheld as narrowly tailored to further compelling government interest of reducing crime and victimization by minors. The court held that the resulting regulation of the right of travel was for permissible purposes—the ordinance included exemptions for minors accompanied by adults; returning home from work and school, civic, or religious functions; running parental errands; and exercising First Amendment rights—and that parents' right to raise children was only minimally burdened. Note, this same court disapproved of a curfew in *Johnson v. City of Opelousas*, discussed in the next section.

Bykofsky v. Borough of Middletown, 401 F. Supp. 1242 (M.D. Pa. 1975), *cert. denied*, 429 U.S. 964, 97 S. Ct. 394, 50 L. Ed. 2d 333 (1976).

A curfew for minors with numerous exceptions was held valid. It allowed minors to exercise free speech and association rights and to travel with minimal regulation, and, the court ruled, parents' rights to raise children were only modestly burdened.

Panora v. Simmons, 445 N.W.2d 363 (Iowa 1989).

A curfew for minors with exceptions for travel to and from work, church, community, or a school function was upheld. The court ruled that the municipality's interest in protecting minors against nighttime hazards of the city justified restric-

tion of minors' right to travel. Note that this same court invalidated a curfew for minors in *City of Maquoketa v. Russell and Campbell*, discussed in the next section.

People in the Interest of J.M., 768 P.2d 219 (Colo. 1989).

A curfew prohibiting people under eighteen from loitering between certain hours on any street, sidewalk, gutter, curb, parking lot, alley, vacant lot, park, playground, etc., without the owner's permission was upheld. The court noted that the ordinance contained exceptions for travel to and from employment, religious activities, or school events; and the court ruled that it was reasonable for the city to reinforce parental authority in regulating minors, who are more susceptible to peer pressure and immature judgment than are adults.

City of Milwaukee v. K.F., 426 N.W.2d 329 (Wi. 1989).

A curfew prohibiting any person under seventeen from loitering between certain hours unless accompanied by a parent, guardian, or other adult responsible for the minor's care, control, or custody was upheld. The ordinance was a reasonable attempt to control juvenile behavior, the court ruled, with no undue restraint on minors' First Amendment rights or interference with constitutional rights of "family autonomy."

City of Eastlake v. Ruggiero, 220 N.E.2d 126 (Ohio 1966).

An ordinance making it unlawful for persons under sixteen to be on the streets or sidewalks during certain hours unless accompanied by a parent, guardian, or "some responsible" adult, or unless the minor has a "legitimate excuse," was upheld. The court described the curfew as necessary to control juvenile crime and as valid because it was not an absolute restriction on minors' right to be in public.

Courts That Have Invalidated Curfews

When courts have invalidated curfews for minors, they have relied on a variety of grounds. Historically, more courts disapproved curfews than approved them, but some courts that have disapproved curfews may well find other curfews permissible if they are narrowly drawn and take careful steps to safeguard constitutional rights. Consider the following cases.

Constitutional Issues in Curfews for Minors

Even though there is no North Carolina case law about curfews for minors, cases from other states and federal courts provide some guidance on the relevant constitutional concerns. This case law may also give a sense of what issues would be important to North Carolina's trial and appellate courts. (See "Judicial Rulings Concerning Curfews for Minors," above.)

The general constitutional considerations de-

scribed earlier in this article apply in this context. How a court views the constitutional rights of minors will have a significant impact on whether the court finds curfews for this group constitutional. Some courts rule that minors have the same constitutional rights as adults and that those rights may not be infringed. Such courts rule unconstitutional virtually any curfew for minors.¹⁸

Other courts rule that minors have constitutional

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

The court held that a curfew for minors unconstitutionally infringed minors' rights of free speech, assembly, association, and travel, by invalidly requiring that activities be registered and that work permits be issued and by invalidly prohibiting minors from being out with adults. The worthwhile objectives of protecting minors from exposure to drugs and violence and protecting the community from criminal activities did not justify the restrictions.

McColester v. City of Keene, 514 F. Supp. 1046 (D.N.H. 1981), *reversed on other grounds*, 668 F.2d 617 (1st Cir. 1982).

A curfew prohibiting minors from being on a public street or in any public place between certain hours was struck down, with the court noting that the only exception was for a minor accompanied by a parent or guardian, that the ordinance unduly restricted minors' right to travel, and that the ordinance was invalid also because it penalized parental action that would normally be reasonable—that is, it hindered rather than promoted the parenting role. The court held that the exceptions were insufficient, and prevailing public need was insufficient, to justify a curfew.

Johnson v. City of Opelousas, 658 F.2d 1065 (5th Cir. 1981).

A curfew prohibiting any person under seventeen from being on the streets without supervision during certain hours was struck down because it did not allow minors to participate in employment, religious activities, or educational events. It hindered rather than promoted parenting.

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

A curfew for minors was invalidated because it did not state an ending time for the curfew—in other words, a reasonable person could not know when his or her actions were illegal.

City of Maquoketa v. Russell and Campbell, 484 N.W.2d 179 (Iowa 1992).

A curfew prohibiting minors from being in public during certain hours, with exceptions, was held to be unconstitutionally overbroad because it did not provide exceptions for emancipated minors or for First Amendment activities by minors. Additionally, the exception for minors who

were involved in “parentally approved supervised activity” was so vague as to allow too much opportunity for selective enforcement of the curfew.

K.L.J. v. State of Florida, 581 So. 2d 920 (Fla. App. 1991).

A curfew for minors under sixteen during certain hours was struck down because it did not provide exceptions for otherwise constitutionally protected behavior. An exception for conducting “legitimate business” was too vague to be understood, the court held.

Brown v. Ashton, 611 A.2d 559 (Md. Ct. of Spec. App. 1992).

A curfew prohibiting minors from remaining in any public place between certain hours was held to be an invalid burden on fundamental rights. The court concluded that the ordinance was not justified by the *Belotti* factors (see below for a discussion of these factors). The ordinance included numerous exceptions for travel by minors, including one for children “attending a cultural, scholastic, athletic or recreational activity supervised by a bona fide organization.” The court ruled that the term “bona fide organization” was unconstitutionally vague.

Allen v. City of Bordentown, 524 A.2d 478 (N.J. Super. Ct. 1987).

A curfew prohibiting any person under nineteen from being in public during restricted hours and charging parents with responsibility for the minor's behavior was struck down on two grounds. First, the ordinance failed to adequately define exceptions for “emergency business” and “on legitimate business.” And second, it improperly interfered with parental authority by restricting parents' right to guide their children in understanding and using rights of free speech, assembly, religion, and travel.

Wadsworth v. Owens, 536 N.E.2d 67 (Ohio 1987).

An ordinance prohibiting any person under the age of eighteen from being on the streets during certain hours unless accompanied by a person over eighteen was struck down as being overbroad in prohibiting legitimate activities such as returning from employment, attending religious services, or attending social activities, which are a part of “the growing-up process.”

rights just as adults do but say that minors' rights may be regulated to a greater extent than the rights of adults.¹⁹ Many of these courts rely on the U.S. Supreme Court's ruling in *Belotti v. Baird*²⁰ for treating the groups differently. In *Belotti*, in the context of an abortion rights issue, the Court said the government may more strictly regulate minors' rights because of “the peculiar vulnerability of children,” minors' “inability to make critical decisions in an informed, ma-

ture manner,” and “the importance of the parental role in child rearing.”

A court adopting this view of minors' constitutional rights of movement, speech, and association is likely to evaluate a curfew for minors less rigorously than it would a curfew for adults. However, before applying the *Belotti* standard, a court is likely to require that there be evidence of the need for the curfew based on the three *Belotti* reasons for regulating

minors. No North Carolina appellate opinion clearly states our appellate courts' position concerning the constitutional rights of minors, so it is not possible to say whether they would adopt the *Belotti* position, or whether they would be inclined to view the constitutional rights of minors and adults as being the same.

Possible Provisions in Curfew for Minors

A local government may decide that it has the authority to create a curfew for minors and that its crime problems justify running the risk of judicial review. At this stage, the government must consider what the language of a curfew should be. What follows are suggestions for provisions in a curfew for minors. The suggestions are designed in part to address potential constitutional concerns and to limit to the greatest extent possible the burden that the curfew places on legitimate activity.

1. A section stating why a curfew is necessary. This section is important for demonstrating that the local government has authority to create the curfew. It should clearly state how the curfew protects community safety, welfare, and peace. The section is important also for demonstrating that there is sufficient reason for regulating minors' rights of movement, speech, and association. A government may wish to frame its reasons for implementing a curfew in terms of the factors listed in *Belotti*. For example, you may say that minors are particularly vulnerable to nighttime crime and drug abuse, that minors do not always make good decisions concerning whether they should take part in crime or drug use, and that the curfew will be used in a way that reinforces the parental role in raising and guiding children. This may also be an appropriate place to describe a community's crime problem with statistical or anecdotal information.²¹

2. A section defining terms, such as "public place," "guardian," and "minor." In defining "minor," consider that eighteen is the age of majority in North Carolina. Minors sixteen or older but not yet eighteen may be penalized as adults, but they must be afforded special treatment in arrest and interrogation procedures. Trial of a minor under sixteen must begin in juvenile court and is subject to the provisions of the North Carolina Juvenile Code.

3. A section stating what is illegal and to whom the ordinance applies. For example: "It is unlawful for any minor to be in or remain in any public place as defined in this ordinance in [name of local government unit] between midnight and five o'clock a.m.

of the following morning." The illegal acts may also include aiding and abetting, being a negligent parent, or knowingly allowing minors on business premises during curfew hours.

4. A section stating possible exceptions to the curfew. Exceptions are important indicators of a local government's interest in restricting minors' rights no more than necessary. A strong exceptions section is likely to be crucial for successfully defending a constitutional challenge in the courts. Consider the following examples:

- a. Exempting travel between place of residence and work. The exemption may be limited, for example, to no longer than one hour before the minor's work period begins and no longer than one hour after the minor's work period ends.
- b. Exempting travel in emergencies. Define emergency.
- c. Exempting travel with parents, guardians, or other adults authorized to have control over the minor.
- d. Exempting travel done with written parental permission.
- e. Exempting bona fide interstate movement by motor vehicle through the county, or beginning or ending in the county. (Such a provision is included in the Charlotte curfew.)
- f. Exempting situations in which a minor is outdoors but attending activities involving the First Amendment free exercise of religion, freedom of speech, or the right of assembly.
- g. Exempting travel in instances of reasonable necessity, if the minor possesses a written statement signed by the parent, which describes the minor, states the facts establishing such reasonable necessity, specifies the streets, the time, and the origin and destination of travel. (Proposed 1991 Cumberland County ordinance.)
- h. Exempting situations in which a minor is on the sidewalk of the place where the minor resides, or on the sidewalk of a next-door neighbor not communicating an objection to a law enforcement officer, or is congregating outdoors on another person's private property with the express permission of the owner or other person in lawful control of the property. (Proposed 1991 Cumberland County ordinance.)
- i. Exempting travel, by a direct route, between a minor's place of residence and a school, religious, recreational, entertainment, or any other organized community activity, including activities

involving the free exercise of religion, speech, or assembly. (Proposed 1991 Cumberland County ordinance.) Again the time for this exemption may be limited to a time period around an activity's beginning and end.

5. A section providing punishments. Minors who are at least sixteen but not yet eighteen may be punished as adults. Therefore they may be punished for a curfew violation by fine or imprisonment, as otherwise permitted by law. The North Carolina Juvenile Code does not permit local governments to punish minors under sixteen by fine or imprisonment. However, they may be adjudicated delinquent juveniles.²² A curfew may direct law enforcement officers to take temporary custody of minors under sixteen.²³

Given the limitations that state law imposes on the treatment of minors, a local government may wish to punish parents or guardians for curfew violations by minors in their custody. For example, a curfew ordinance might punish parents of repeat offenders by fine or imprisonment.²⁴ It is unclear whether to be lawful this punishment must be only for "knowingly permitting" a violation or whether the punishment may result from the simple fact that a minor over which the parent has custody violates the curfew as some courts have held.²⁵ Other courts have invalidated punishing parents in this manner, saying either that it violated the parents' due process rights or that such punishments interfere with the constitutional right to family autonomy.²⁶ North Carolina's appellate courts have not ruled on this issue.

Some curfews contain punishments for persons who aid and abet violations of curfew, and others contain punishments for businesses that knowingly allow minors to be on their premises during curfew hours.

6. A section providing law enforcement procedures. An ordinance may specify steps that officers are to take to determine ages of suspected offenders, and it may spell out rules concerning what to do with minors in custody.

7. A severability provision. Such a provision may allow remaining portions of the ordinance to be valid if a court holds any other section of the ordinance invalid or unconstitutional.

Practical Issues in Enforcing and Applying a Curfew for Minors

There are also significant practical problems in enforcing such a curfew. Does local law enforcement

have the time and resources to effectively enforce a curfew for minors? Remember, with minors, officers cannot always simply issue citations or make arrests, as they do with much of the crime they encounter. Meaningful enforcement of a curfew requires great resources. If resources for combating crime are limited, would you be better served by dedicating more resources to traditional law enforcement, rather than to enforcing a curfew? Law enforcement resources were significant political issues in consideration of curfews in both Buffalo and Phoenix. Phoenix has dedicated more than one-half million dollars annually to enforce its curfew.²⁷

Do you need to worry about selective enforcement or pretextual stops by law enforcement—or allegations of such actions—in your community? If a government creates a curfew for minors, the curfew should be applied in all neighborhoods. If it is applied in only some, it raises potential constitutional equal protection claims for persons who have the curfew used against them. A pretextual stop is one in which a law enforcement officer uses a curfew as an excuse to stop people, hoping to find evidence of other criminal wrongdoing. Such stops can invalidate prosecutions for the discovered crimes.

Local governments should ask several other practical questions before enacting a curfew for minors. Are they satisfied that a curfew will deter crime? Will a curfew clear the street of a troublemaking element or only serve to chill the activities of normally law-abiding youths and their parents? Do the community and police force support a curfew for minors? If not, it may be difficult to enforce the ordinance, and the local government may face swift legal challenges to the curfew.

Ordinance Prohibiting "Cruising"

Perhaps a community has a less general crime problem. Instead, it has a particular problem with people hanging out in the streets or parking lots, or driving vehicles slowly in groups through the streets, snarling traffic. The local government might want to consider an ordinance that prohibits "cruising."

It will face the same issues of authority and constitutionality that apply to the other crime-response ordinances discussed in this article. Some courts have upheld "no cruising" ordinances,²⁸ and others have invalidated them.²⁹

If after considering issues of authority and constitutionality, a local government decides to promulgate an

ordinance prohibiting cruising, it should consider provisions like the following ones, derived from Modesto, California, and York, Pennsylvania, ordinances.

1. A section stating why such an ordinance is necessary. See the discussion of this same provision under the section of this article about curfews for minors.

2. A definitions section.

- a. Defining “cruising.” For example, it may mean “the repetitive driving of any motor vehicle past a traffic control point in traffic which is congested at or near the traffic control point.”
- b. Defining “repetitive driving.” For example, it may mean “operating a motor vehicle past a traffic control point more than twice within an hour.”
- c. Defining “congested traffic” precisely. For example, a definition may include “when motor vehicles cannot move through a 100-yard approach corridor to an intersection controlled by a traffic light within two complete green light cycles where the delay in forward movement is due to the position of other motor vehicles.”
- d. Defining other terms such as “green light cycle” and “traffic control point” precisely. For example, “traffic control point” may be “a location along a public street, alley, or highway used by a police officer on duty in the affected area as an observation point in order to monitor traffic conditions for potential ‘cruising’ violations.”

3. A section defining what is illegal. “No person shall engage in the activity known as ‘cruising’ as defined in this ordinance, on the public streets, alleys, or highways of this city in any area which has been posted as a no-cruising zone,” for example.

4. A section outlining punishments, including the possibility of issuing warning tickets.

5. A severability provision.

A “no cruising” ordinance may be more easily enforced and the public will receive greater warning about what activity is prohibited if signs labeling particular areas as “no-cruising zones” are posted.

Ordinance Prohibiting “Loitering”

In the 1960s and 1970s, courts invalidated many general loitering and vagrancy laws on the grounds that they were vague, infringed on law-abiding activity, and permitted arbitrary and discriminatory enforcement. In an Oregon case, for instance, the

court ruled that a law making it unlawful to roam or be on the streets between certain nighttime hours without a lawful purpose was unconstitutionally vague and violated constitutional due process; the court said that government cannot make the mere presence of people criminal.³⁰

Courts have split on the validity of modern-day loitering statutes and ordinances, which tend to be more specific than their predecessors.³¹ Modern antiloitering laws are often patterned after Model Penal Code section 250.6. They punish individuals who “loiter or prowl in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity.” The laws list specific circumstances that may warrant alarm. These include taking flight on the arrival of an officer and attempting to conceal oneself or an object. Before arrest, officers must give a suspect an opportunity to dispel any alarm by identifying himself or herself and explaining his or her presence or conduct.

North Carolina’s appellate courts have not addressed the issue of general loitering ordinances directly. However, in 1985, the North Carolina Court of Appeals indicated its sense that courts in the United States have “overwhelmingly upheld” loitering crimes that “include an element of criminal intent.”³² This may mean that an offender must have a specific criminal intent (such as engaging in prostitution or drug-related activity). As a result, North Carolina governments may be on firmer legal grounds in considering a specific-intent loitering ordinance (discussed below), rather than a general-intent loitering ordinance.

Ordinance Prohibiting Loitering for Drug-Related Activity

Several North Carolina cities, including Charlotte, Durham, Fayetteville, Wilson, and Winston-Salem have adopted ordinances prohibiting “loitering for the purpose of engaging in drug-related activity” to combat the increasing incidence of open one-on-one drug sales in public places. Such ordinances are based in part on the approach used in G.S. 14-204.1, which prohibits loitering for the purpose of engaging in prostitution. That statute was upheld in 1985.³³ A similar law was approved in Washington,³⁴ but several Florida courts have ruled that such ordinances violate both the Florida state constitution and the First Amendment.³⁵

The general ordinance-making authority issues discussed under curfews for minors also apply to consideration of this type of ordinance. Again a government must address and be comfortable with how the constitutional issues described under curfews for minors are addressed in the writing and enforcement of this type of ordinance.

If a government is satisfied about the authority and constitutionality issues, it may decide to create a loitering ordinance prohibiting particular kinds of specific-intent criminal activity. It may consider the following as possible provisions in a loitering-for-the-purposes-of-engaging-in-drug-related-activity ordinance (derived from ordinances in Durham and Fayetteville).³⁶

1. A section stating why such an ordinance is necessary. See the earlier discussion of the need for a similar provision in a curfew for minors.

2. A section defining where the ordinance applies. For example, “public place” may mean “any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility, or the doorways and entranceways to any building that fronts on any of these places, or a motor vehicle in or on any of these places or any property owned by [name unit of local government].”

3. A section stating the prohibited act. For example, it is “unlawful for a person to remain in or wander about a public place in a manner and under circumstances manifesting the purpose to engage in a violation of any subdivision of the North Carolina Controlled Substances Act, North Carolina General Statutes, Chapter 90, Article 5.”

4. A section outlining circumstances that may manifest that a person has a purpose to commit a drug offense. Potential circumstances include

- a. repeatedly beckoning to, stopping, or attempting to stop passers-by, or repeatedly attempting to engage passers-by in conversation; or
- b. repeatedly stopping or attempting to stop motor vehicles; or
- c. repeatedly interfering with the free passage of other persons; or
- d. repeatedly passing to or receiving from passers-by, whether on foot or in vehicle, money or objects; or
- e. taking flight on the approach or appearance of a police officer.

5. A section outlining how law enforcement officers are to use the factors laid out above. For example, if an ordinance includes provisions concerning

prior drug crime involvement, officers might be instructed to make an arrest only if several of the listed factors are present.

6. A punishment section outlining potential fine or imprisonment.

7. A severability provision.

Validity Issues to Consider

There may be special validity issues a local government should consider before creating this kind of ordinance. In May 1990 North Carolina Superior Court Judge E. Lynn Johnson invalidated several provisions of Fayetteville’s drug-loitering ordinance.³⁷ Judge Johnson ruled that the provisions violate the evidentiary rule that evidence of other crimes is generally inadmissible on the issue of guilt if its only relevance is to show a defendant’s bad character or disposition to commit an offense similar to the one charged.³⁸ Such provisions may also be viewed as invalid because they allow officers to arrest, and courts to convict, persons for violating this ordinance based only on loitering and past involvement in drug-related activity. Judge Johnson invalidated another provision because it was too vague to allow reasonable persons to understand the prohibited behavior. There was no appellate court decision concerning Judge Johnson’s ruling. As a result, the case produced no law of precedential value applicable to other communities or in other courts. However, it raised legitimate legal concerns.

The ruling invalidated the following sections:

1. In the definitions section:

- a. Defining a “known, unlawful drug user, possessor, or seller” who may violate the ordinance. The definition used was “a person who has, within the knowledge of the arresting officer, been convicted in any court within this State of any violation involving the use, possession, or sale of any substance” covered by the North Carolina Controlled Substances Act.

2. In the circumstances section:

- a. the person “is a known unlawful drug user, possessor, seller or member of a ‘gang’ or other association which has as its purpose illegal drug activity”; or
- b. the person is in a place frequented by persons who use, possess, or sell drugs and that place is by public repute known to be an area of unlawful drug use, sale, purchase or delivery; or

Any local government considering one of the special ordinances discussed here should also consult other resources on this issue. The following list may prove helpful.

On Curfews for Minors

“Curfew,” *Ordinance Law Annotations*, Volume 2A, Shepard’s/McGraw-Hill (1990), and supplements in succeeding years, provides brief summaries of curfew cases from around the nation.

“Validity, Construction, and Effect of Juvenile Curfew Regulations,” 83 A.L.R. 4th 1056 (1990), and succeeding supplements, provides an exhaustive discussion of cases concerning curfews for minors from around the nation.

“Model Juvenile Curfew Ordinance,” National Institute of Municipal Law Officer (NIMLO) Model Ordinance Service (1995), at pp. 13-1.1 through 13-1.22, provides ordinance text and discussion of some of the legal issues. Of course, a community should flesh out such language to fit its own needs and concerns.

Matthews Municipal Ordinances, §§ 53.06, 53.07, and 53.08 (2d ed., 1994), Thomas A. Matthews and Byron S. Matthews, also provides sample ordinances that may be adapted to a community’s needs.

“Criminal Responsibility of Parents for Act of Child,” 12 A.L.R. 4th 673 (1982), and succeeding supplements.

On Anticruising Ordinances

“Validity, Construction, and Effect of Statutes or Ordinances Forbidding Automotive ‘Cruising’ Practice of Driving Repeatedly through Loop of Public Roads through City,” 87 A.L.R. 4th 1110 (1991), and succeeding supplements.

On General and Specific-Purpose Loitering Laws

“Validity of Loitering Statutes and Ordinances,” 25 A.L.R. 3d 836 (1969), and succeeding supplements.

“Validity, Construction and Application of Statutes Prohibiting Loitering for the Purpose of Using or Possessing Dangerous Drugs,” 48 A.L.R. 3d 1271 (1973), and succeeding supplements.

- c. any vehicle involved is registered to a known unlawful drug user, possessor, or seller, or is

known to be or have been involved in drug-related activity; or

- d. the “person behaves in such a manner as to raise a reasonable suspicion that he or she is about to engage in or is engaged in an unlawful drug-related activity.”

A local government should use a drug-loitering ordinance cautiously. Law enforcement officer training about this kind of law is important for permitting successful prosecution of ordinance violations, reducing arbitrary enforcement, and defending legal challenges to the law. Useful approaches include training officers about the kinds of surveillance required to establish probable cause for an ordinance violation, and implementing rules for how arrests can be made. For example, a law enforcement agency could adopt a policy recommending that officers make an arrest for violation of a drug-loitering ordinance only if several (or, a particular number) of the circumstances indicating possible drug offenses are present, and only if the officer can describe specific behavior or specific indications of criminal conduct.³⁹

Summary

This article discussed several types of ordinances a local government might adopt in addressing crime problems: (1) curfews for *everyone* in a community, (2) curfews for *adults* only, (3) curfews for minors only, (4) “no cruising” ordinances, and (5) laws prohibiting loitering in specific situations. Curfews for adults only is the single proposal that is clearly not constitutionally viable. Of the remaining four kinds of law, a curfew for everyone in a community is almost certainly permissible only during a state of civil emergency (such as during and in the aftermath of a hurricane). Curfews for minors have received great national attention in the last three to five years; several North Carolina local governments have implemented them. The legal viability of such curfews in North Carolina is still uncertain. Nationally, there is no consensus among courts about their legality, though the recent trend has been toward finding such curfews valid. North Carolina’s local governments should create such measures warily, after considering all options for responding to crime. Loitering ordinances and “no cruising” measures also present legal peril, and their positive and negative characteristics should be explored thoroughly before any implementation.

Notes

1. Homebuilders Ass'n of Charlotte v. City of Charlotte, 336 N.C. 37 (1994).
2. The court was applying G.S. 160A-4, which covers municipalities. G.S. 153A-4 is the companion legislation applicable to counties.
3. 1992 N.J. Pub. Law Ch. 132.
4. See, e.g., Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), *overruled on other grounds*, Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974) (*Shapiro* ruled unconstitutional statutes that denied welfare assistance to residents who had not lived in the jurisdiction for at least one year immediately before application for assistance).
5. State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971) (ruling valid a city's emergency curfew).
6. City of Dallas v. Stanglin, 490 U.S. 19, 109 S. Ct. 1591, 104 L. Ed. 2d 18 (1989).
7. See, e.g., Moore v. City of Cleveland, 431 U.S. 494, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977) (holding unconstitutional a city ordinance that limited occupancy of any dwelling to members of the same "family" and defined who could be a part of such a "family").
8. See Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 110 (1972).
9. G.S. 14-288.12 and G.S. 14-288.13.
10. State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).
11. U.S. v. Chalk, 441 F.2d 1277 (4th Cir.), cert. denied, 404 U.S. 943, 92 S. Ct. 292, 30 L. Ed. 2d 257 (1971). See Chalk for an example of an emergency ordinance.
12. Justice Thurgood Marshall wrote that in an opinion dissenting from the denial of *certiorari* to Bykofsky v. Borough of Middletown, 401 F. Supp. 1242 (M.D. Pa. 1975), cert. denied, 429 U.S. 964, 97 S. Ct. 394, 50 L. Ed. 2d 333 (1976).
13. Note, "Assessing the Scope of Minors' Fundamental Rights: Juvenile Curfews and the Constitution," *Harvard Law Review* 97 (March 1984): 1164.
14. Mark Potok, "Teen Curfews 'the Norm' in More Cities," *USA Today*, June 26, 1995, 1A.
15. Metropolitan Dade County v. Pred, Fla. 3d Dist. Ct. App., No. 94-2595, 1995 Fla. App. LEXIS 11440 (Nov. 1, 1995).
16. Sansbury v. City of Orlando, 654 So. 2d 965 (Fla. 5th Dist. Ct. App. 1995).
17. 36 Op. N.C. Att'y Gen. 122 (1960).
18. See, e.g., Waters v. Barry, 711 F. Supp. 1125 (D.C. 1989).
19. See, e.g., Stanglin v. City of Dallas, 490 U.S. 19 (1989), and Bykofsky v. Borough of Middletown, 401 F. Supp. 1242 (M.D. Pa. 1975), cert. denied, 429 U.S. 964, 97 S. Ct. 394, 50 L. Ed. 2d 333 (1976).
20. 443 U.S. 622, 99 S. Ct. 3035, 61 L. Ed. 2d 797 (1979).
21. See, for example, the preamble of City of Charlotte Ordinance No. 15-145.
22. See G.S. 7A-517(12).
23. G.S. 7A-571 and G.S. 7A-572.
24. See, e.g., Jacksonville, N.C. Code § 15-35, Curfew for Minors (1991).
25. See City of Eastlake v. Ruggiero, 220 N.E.2d 126 (Ohio 1966) and City of Milwaukee v. K.F., 426 N.W.2d 329 (Wi. 1989).
26. See, e.g., McColleston v. City of Keene, 514 F. Supp. 1046 (D.N.H. 1981), *reversed on other grounds*, 668 F.2d 617 (1st Cir. 1982), and Allen v. City of Bordentown, 524 A.2d 478 (N.J. Super. Ct. 1987).
27. Abraham Kwok, "Phoenix Tightening Budget Belt," *Arizona Republic*, May 16, 1993, A4.
28. In Lutz v. City of York, 899 F.2d 255 (3d Cir. 1990), a York, Pennsylvania, ordinance prohibiting cruising was held valid. The court ruled that the ordinance was a valid time, place, and manner restriction on the right of localized intrastate travel.
29. A court invalidated a similar Modesto, California, measure in Aguilar v. Municipal Court, 130 Cal. App. 3d 34, 181 Cal. Rptr. 516 (Ca. 1st Dist. 1982), on the grounds that the local government improperly promulgated a law in a field of legal regulation occupied exclusively by the state government.
30. City of Portland v. James, 444 P.2d 554 (Or. 1968).
31. Cases in which such loitering ordinances have been declared invalid include Fields v. City of Omaha, 810 F.2d 830 (8th Cir. 1987); City of Bellevue v. Miller, 536 P.2d 603 (Wash. 1975); and City of Portland v. White, 495 P.2d 778 (Or. App. 1972). Cases in which they have been upheld as valid include State v. Nelson, 439 N.W.2d 562 (Wis. 1989), cert. denied, 493 U.S. 858 (1989); Watts v. State, 463 So. 2d 205 (Fla. 1985); State v. Ecker, 311 So. 2d 104 (Fla. 1975), cert. denied, 423 U.S. 1019, 96 S. Ct. 455, 46 L. Ed. 2d 391 (1975); and Bell v. State, 313 S.E.2d 678 (Ga. 1984).
32. State v. Evans, 73 N.C. App. 214, 218, 326 S.E.2d 303 (1985).
33. State v. Evans, 73 N.C. App. 214, 326 S.E.2d 303 (1985).
34. City of Tacoma v. Luvenc, 827 P.2d 1374 (Wash. 1992).
35. Wyche v. State, 619 So. 2d 231 (Fla. 1993); Holliday v. City of Tampa, 619 So. 2d 244 (Fla. 1993); and E.L. and R.W. v. State, 619 So. 2d 252 (Fla. 1993).
36. Durham City Code § 12.62 (1991); Fayetteville City Code § 21-55 (1989).
37. As an unpublished order, Judge Johnson's ruling is not generally available for consideration. However, a summary of the ruling is available from the author.
38. State v. Weldon, 314 N.C. 401, 333 S.E.2d 701 (1985).
39. The Winston-Salem Police Department trains its officers in a manner similar to that described in the text, and it has policy recommendations about what evidence should be gathered for an arrest to be made under the city's drug-loitering ordinance Telephone interview with Claire McNaught, public safety attorney, Winston-Salem Police Department (Nov. 21, 1995). ☐

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