


# Juvenile Curfews



Use or Abuse?




# What are we trying to achieve with juvenile curfews?

- Does keeping juveniles off the streets during certain times prevent them from engaging in undesirable/illegal activities?
  - Is there a need to keep them off the street during certain times to keep them safe?
  - Does a daytime curfew keep them in school?
  - Curfews enjoy strong public support
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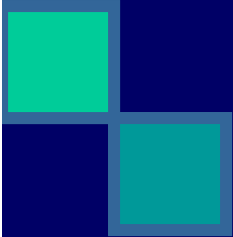



# Source of the law:

- Texas Local Government Code
    - Sec. 351.903 Juvenile Curfew - County
      - Allows county to adopt curfew
      - Regulate persons under 17 years of age
      - During night-time hours or during school hours
      - Can place liability on parents or businesses
      - Can establish exemptions
    - Sec. 351.095 Juvenile Curfew - Municipality
      - Allows cities the same authority as counties
    - Sec. 370.002 Review of Juvenile Curfew
      - Must review & reenact ordinance before 3<sup>rd</sup> anniversary
      - Failure to review & reenact causes ordinance to expire
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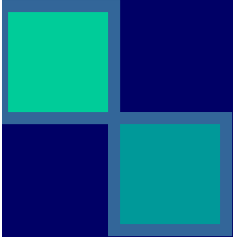



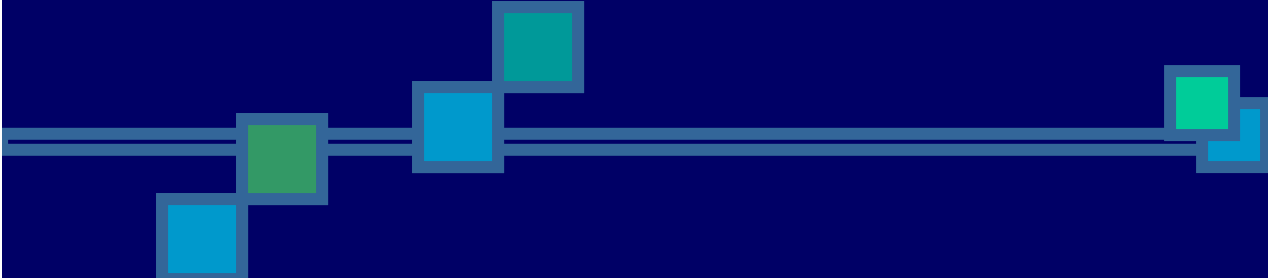
## Other laws affecting curfews:

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- Local Ordinances
  - Code of Criminal Procedure Section 45.059: prescribes procedure officers must follow in enforcing curfew
  - Family Code Section 52.01: Describes when an officer can take a juvenile into custody and under what circumstances
  - Family Code Section 52.02: Describes what officers must do after taking child into custody
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# Process of a Curfew Case

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- Code of Criminal Procedure Art. 45.059 prescribes procedure officer must follow after taking child into custody for curfew violation. ...officer SHALL without unnecessary delay
    - Release child to parent/guardian/custodian
    - Take child before JP or municipal court
    - Take child to designated juvenile curfew processing office
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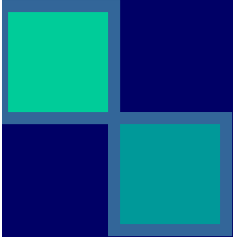



## The curfew processing office (CCP 45.059(b))

- Must be unlocked – cannot be secured detention area
  - Child may not be secured physically
  - May not be held longer than necessary to accomplish prescribed processing and
  - Return to parent or to school
  - May not be a residential facility
  - Child must be under continuous visual supervision by a peace officer
  - May not be held in office longer than 6 hours
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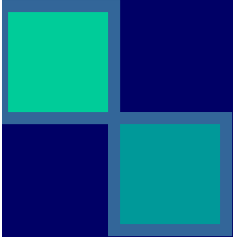



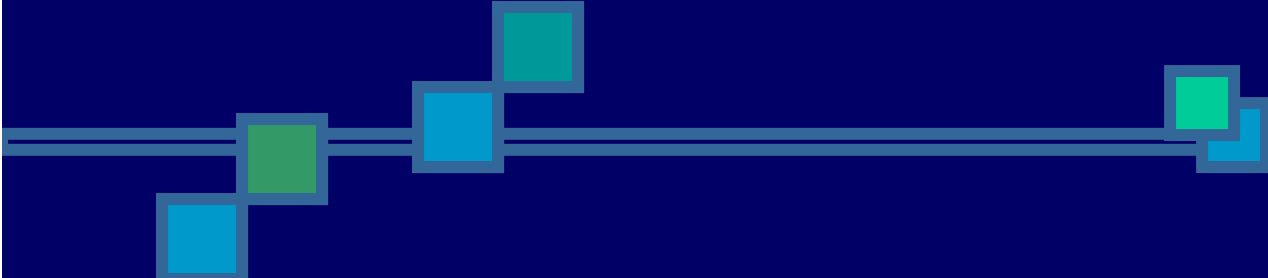
# Objections to curfews

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- Do juveniles have a constitutional right to be out on the street during the night and/or during school hours?
  - Many oppose juvenile curfews
  - Law unfairly restricts law abiding youth
  - Curfews often challenged by civil rights groups
  - ACLU is most vocal opponent
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# Constitutional issues

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- Does the state have the right to restrict the constitutional rights of children?
  - Bellotti v. Baird 443 U.S.622(1979): said yes, since children are vulnerable and have an inability to make good decisions, but requires strict scrutiny. Set out a two pronged test for laws limiting child's constitutional rights:
    - Demonstrate a compelling state interest
    - Narrowly tailor the law to achieve objective
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# Most frequent Constitutional challenges to curfew laws:

- 1<sup>st</sup> amendment right of free speech, religion and peaceful assembly
  - 4<sup>th</sup> amendment right against unreasonable searches and seizures and protection against unreasonable stops and detentions
  - 5<sup>th</sup> amendment right to due process
  - 9<sup>th</sup> amendment right to privacy – which includes family autonomy and parent's rights
  - 14<sup>th</sup> amendment protection against depriving persons of their liberty without due process – includes right to travel
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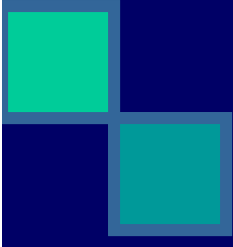



## Other objections to juvenile curfews:

- Equal protection issues
  - Criminalization of youth
  - Infringement on parental authority
  - Can punish parents and others
  - Profiling and targeting of juveniles
  - Selective enforcement
  - Use as a “pretext”
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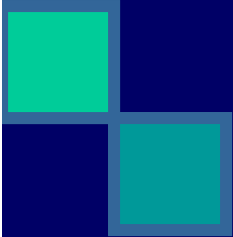



# Case law on juvenile curfews

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- Bykofsky v. Borough of Middletown 401 F. Supp. 1242 (1975)
    - Held conduct of minors may be constitutionally regulated to a greater extent than that of adults
  - Ramos 353 F3d 171 (2<sup>nd</sup> Cir 2003) – state's interest must address vulnerabilities particular to minors and intended beneficiary must be children, not society in general
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## The biggie: the Dallas case

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- Qtub v. Strauss, 11F.3<sup>rd</sup>488(5thCir.1993)
  - 5<sup>th</sup> Cir. Upheld Dallas ordinance, saying that the city had satisfied the strict scrutiny test by demonstrating a compelling state interest and because ordinance was narrowly tailored to meet goals while respecting rights...
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## How did Dallas do it?

- City held hearings which featured testimony regarding the increases in juvenile late-night violence
  - Provided statistical data regarding increases in juvenile crime/delinquency
  - Law was narrowly tailored to target specific needs
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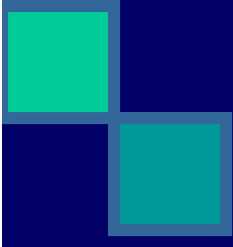



## Dallas's curfew ordinance included exemptions:

- Accompanied by adult
  - Engaged in 1<sup>st</sup> amendment-protected activity
  - Traveling to or from work
  - Responding to emergency
  - Married
  - Attending supervised school, religious, or recreational activity
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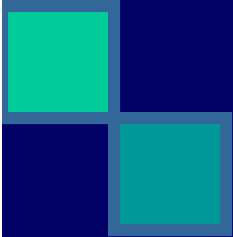



A juvenile apprehended for a curfew violation in Dallas may:

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- Be taken into custody and taken to a curfew center and/or:
  - Given a verbal warning
  - Returned home
  - Issued a ticket with a fine up to \$500
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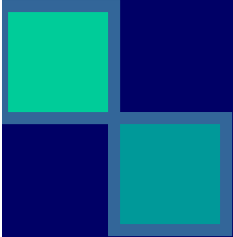



## Additional sanctions allowed:

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- If repeated curfew violations, parents could be fined up to \$500
  - Business establishments who allow minors to remain after curfew hours could be cited and fined
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# Compelling governmental interest

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- Keep kids safe
  - Prevent crime
  - Prevent other social problems
  - Increasing parental responsibility
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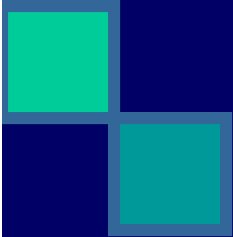



## Additional features contribute to success of a program:

- Comprehensive community-based youth programs
  - Social services provided with staff available to provide advice, assistance and counsel
  - Outreach to parents providing help with parenting issues
  - Midnight basketball/recreational/social activities
  - Dallas kept good statistics to demonstrate effectiveness of program in showing drop in juvenile victimization and drop in juvenile arrests for offenses during curfew hours
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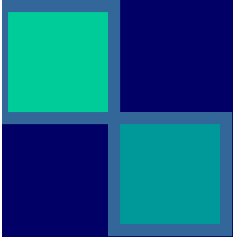



# It can be done

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- Curfew laws – drafted properly – can survive constitutional challenge
  - Key is to have an ordinance that is narrowly drafted and contains sufficient exceptions and defenses to provide for legitimate activity
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# Court process

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- Pleadings
  - Elements of charge
  - Means of proof
  - Diversion programs
  - Referrals to juvenile court
  - Right to seal/expunge records
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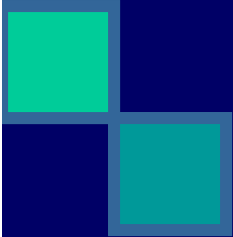



# Daytime curfews

- Keeping the kids in school
  - Why that is a compelling interest
    - Society's interest in getting them educated
    - Avoiding failures and dropouts
    - Avoiding resulting burden on system
  - New legislation – just take 'em back to school – avoids criminal involvement FC 52.01(e)
  - Homeschool students
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# Related crimes

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- Underage drinking
  - Public Intoxication
  - Drug usage
  - Vandalism
  - Gang activity
  - Theft and burglary
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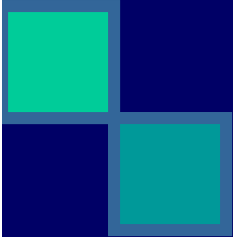



# Public Policy Issues

- Uneven enforcement
  - Targeting certain populations and areas
  - Disproportionate representation of minorities
  - Criminalizing law abiding juveniles
  - Infringement on parents rights
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# Problems from use/misuse

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- Pretext arrests
  - Zero tolerance
  - Problems caused by overreaching
  - What lesson do the kids really learn?
  - Use common sense!!
  - Using up resources that might be better used elsewhere – it costs a lot and the police have other – more urgent - duties
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# Strategies for handling the cases in court

- Develop what you have
  - Police responding to specific problems
  - High crime area
  - Gang activity area
  - What are we protecting the youth from?
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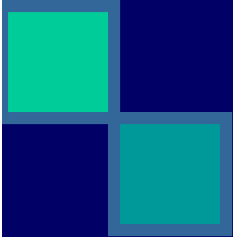


# Responding to the “blame the prosecutor” criticism

- It's all the prosecutor's fault because they filed too many cases, or
  - Prosecutors are just looking for “convictions”
  - IT'S AN ETHICAL ISSUE!
  - Prosecutors are the only lawyers who have their own special ethics rules
  - That includes seeing that “justice” is done AND the duty to follow the law
  - Again, there has to be a balance
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# Other Strategies

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- Train the officers
    - Understand the law, reasons behind it, and the limitations on this type of case
    - The “judge’s daughter” rule
    - Officer “Friendly”
  - See if you can get a “diversion” program
  - Dealing with the problem child/case – get a social worker to assist with the cases
  - Referral to the juvenile court
- 