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Curfew fails abused children

The Rochester youth curfew was defeated once again last week when the New York State Court of Appeals issued its decision in *Jivon Anonymous v. City of Rochester*.

At issue in the case was the legality of the youth curfew law, which became effective September 2006. The ordinance made it unlawful for those younger than 17 to be in a public place Sundays through Thursdays between 11 p.m. and 5 a.m., and between 12 and 5 a.m. Fridays and Saturdays.

A minor accused of violating curfew could be taken into custody immediately, and a conviction of the ordinance constituted a "violation," as defined in the Penal Law, punishable by a sentence of up to 15 days in jail.

The court limited its review to the constitutional issues raised on appeal and concluded that intermediate scrutiny, rather than strict scrutiny, was the appropriate level of analysis. Thus, in order to prevail, the City of Rochester was required to show that the curfew ordinance was "substantially related" to the achievement of "important" government interests.

The court applied the test to the constitutional claims of both the minors and parents affected by the law and determined that the Appellate Division, Fourth Department concluded correctly that Rochester's curfew law was unconstitutional.

The court emphasized that the city failed to offer sufficient evidence to establish that the imposition of a curfew significantly reduced juvenile crime or victimization: "Without support from the City's own empirical data, we conclude that the justifications made by the Mayor and the Chief of Police for the nighttime curfew, based primarily on opinions, are insufficient since they do not show a substantial relationship between the curfew and goals of reducing juvenile crime and victimization during nighttime hours."

Similarly, the court concluded that the curfew law impermissibly interfered with parental due process rights, arguably interfering with stated goal of promoting parental supervision rather than supporting it: The "curfew 'does not allow an adult to pre-approve even a specific activity after curfew hours unless a custodial adult actually accompanies the minor. Thus, parents cannot allow their children to function independently at night,

which some parents may believe is part of the process of growing up' (*Nunez*, 11 F3d at 952). Consequently, we conclude that the challenged curfew is not substantially related to the stated goals of promoting parental supervision."

The court then implied that the law would have had a better chance of passing constitutional muster if it had included a parental consent exception.

As I've noted in the past, my concern with youth curfews is that they effectively prevent children from escaping traumatic home environments. The inherent assumption behind curfews is that all guardians are caring, selfless and emotionally stable individuals.

Unfortunately, that is not always the case.

For children with drug-addicted or abusive guardians, their homes are anything but safe. In many cases, the safest recourse for these children is to go elsewhere; sometimes the street simply is the safest alternative.

Arguably, curfew laws that include a parental consent exception at least provide a neglected child with some flexibility, since it's safe to assume that drug-addicted or otherwise neglectful parents are more than happy to have their children out of their sight.

The parental consent exception does little to protect the well being of abused children, however, since many abusers refuse to allow their child to leave the home. The home is the abuser's playground and the child is their toy.

Any type of curfew law, then, is harmful to abused children. Such laws effectively imprison children in their abuser's lair, actually encouraging — rather than preventing — victimization.

Any initiative that results in harm to a percentage of the population it is intended to protect is a failure.

Accordingly, rather than appealing the Court of Appeal's decision or attempting to amend the curfew law, the city should simply abandon its failed initiative.

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