



April 27th, 2020

Mayor and Members of Bastrop City Council
P.O. Box 427 - 1311 Chestnut Street
Bastrop, Texas 78602
Sent Electronically

Dear Mayor and Members of Bastrop City Council,

We have partnered with other statewide advocacy organizations to urge you all to let the juvenile curfew ordinance expire, or at the very least, postpone any decision until a proper study and public hearings can be done in person. We strongly believe that a sound and fair decision cannot be made at this time, especially during the pandemic crisis of COVID-19.

As mentioned before, in light of the current restrictions in place due to COVID-19, it is important to evaluate whether meaningful participation from impacted communities is possible as required under the law. Under the Texas Local Government Code Sec. 370.002, Bastrop is required to conduct public hearings on the need to continue the ordinance before renewing it.^[1] However, holding at least two public hearings with meaningful and full participation from impacted communities is nearly impossible given the health concerns and current restrictions in place. In addition, Chapter 551 of the Texas Government Code which covers open meetings requirements and public testimony applies.^[2] We urge the City Council of Bastrop to delay considering renewal of the ordinance until at least two public hearings with full public participation and an open meeting of the City Council are all possible.

Background on the Use of Curfew Ordinances

Curfew ordinances were once thought to be an effective way to reduce crime and victimization, but over time this has not been proven to be true. In fact, there is evidence to suggest that citing minors and funneling them into the court process for

^[1] Tex. Local. Gov't Code Sec. 370.002(a)(2).

^[2] Tex. Gov't Code Sec. 551 (detailing the requirements for open meetings and when and how emergency meetings can be called).

merely being out of their homes or school ultimately harms them more than helps them. Juvenile curfews undermine success for young people by bringing them into contact with the criminal justice system.

In Bastrop, data obtained from the Bastrop Municipal Court gave the number of citations and the location of where the citation was issued. From 2014-2020, 265 curfew citations were issued. Based on this data, Texas Appleseed included any citation issued by Bastrop ISD police or physically near a school campus as daytime and any other locations or violations issued on a Saturday or Sunday were assumed to be nighttime. Below is the breakdown of citations.

Year	Total # of Curfew Citations	Daytime	Nighttime
2014	17	5	12
2015	25	2	23
2016	38	10	28
2017	52	44	8
2018	80	44	35
2019	38	26	11
2020 (until March 15)	15	5	10

Note: There were two curfew violations that did not have an address associated with them, therefore they are not counted in the daytime and nighttime tally but are included in the total number of citations.

The Curfews Impact Youth’s Future

The Curfew makes it a Class C misdemeanor to be out of home or school^[3] during curfew hours. Young people who receive Class C misdemeanor tickets are sent to adult criminal court and are not provided legal representation, which can prove difficult for youth with disabilities and youth with language barriers. Research demonstrates that youth who come into contact with the criminal justice system are more likely to drop out of school.^[4] A conviction also mars a person’s record, making it harder—and in some instances impossible—to secure a job, obtain advanced education, enroll in the armed forces or find housing. The curfew also has a disproportionate impact on homeless

^[3] The Texas Legislature decriminalized truancy in 2015 with House Bill 2398. Yet, local curfew ordinances criminalize children for the same behavior--being out of school during the day. Every school district in the state is required to implement meaningful truancy prevention and intervention measures, but curfew ordinances could allow districts to skirt these requirements.

^[4] The Vera Institute of Justice, *When Misbehaving is a Crime*, 2017, available at <https://www.vera.org/when-misbehaving-is-a-crime#introduction>.

youth who might not have a place to go during certain hours; giving them a Class C misdemeanor is an additional burden in achieving housing and stability.

There is also a potentially significant financial burden when youth are stopped for curfew violations: convictions can result in up to \$500 in fines plus court fees. Many families would not have the resources to pay the fine without significant strain or at all. And failure to pay of course ushers a separate host of negative consequences for families, such as suspended drivers' licenses and future warrants. The collateral consequences attendant to the Curfew warrant reconsidering the usefulness of having the Curfew in place.

Curfews Impact Youth of Color Disproportionately

Just as research has indicated that discrepancies in school discipline and truancy offenses disparately impact youth of color, juvenile curfews disproportionately impact communities of color. In San Antonio, Dallas, and Austin, where data on curfew citations was released, children of color were disproportionately cited. For example, in Dallas, during half of 2017 and 2018, Latinos were issued 70.83% of the curfew violations while African Americans are issued 18.38% and White youth were issued 10.05%.^[5] At the time, the City of Dallas Office of Economic Development reported the demographic breakdown of the city as: Latinos comprise 41.4% of the population, African Americans comprise 24%, and White people comprise 29.2%.^[6]

In fact, the City of Austin chose to let its juvenile curfew lapse in part for its concern about the impact it was having on its youth of color. In the year after the curfew lapsed, Austin saw a 21% decrease in juvenile victimization. While acknowledging it was hard to be certain, Austin Assistant Police Chief Troy Gay speculated that the decrease was because “youth aren’t hiding from the police anymore, in places they weren’t supposed to be. Now they can be in a public place and not fear the police, and maybe that makes everyone safer.”^[7]

We were unable to obtain the racial breakdown of curfew citations in Bastrop; the absence of this data further necessitates the need to hear from the Bastrop community about their experiences as it could reveal racial disparities in the curfew’s enforcement.

The Curfew Fails to Help Youth in Distress

Criminalizing young people who are not at home or at school during curfew hours fails to address underlying issues that some of our youth face, including homelessness, abuse/neglect, and other challenges that could lead to curfew violations. A curfew is not necessary to have police help youth, just as a criminal law is not necessary for officers to interact with and help any other person who needs assistance, whether they

^[5] See City of Dallas Public Safety and Criminal Justice Committee Meeting, June 25, 2018, video available at <https://dallastx.swagit.com/play/06252018-1626>.

^[6] See City of Dallas Office of Economic Development Demographics at <https://www.dallasecocodev.org/490/Demographics>.

^[7] Roman, Ivonne, *The Curfew Myth: How a 90’s panic spawned an anti-crime measure that doesn’t make you safer*, The Marshall Project (Jul. 31, 2018), available at <https://www.themarshallproject.org/2018/07/31/the-curfew-myth>.

are a motorist stranded on the side of the road or a person in need of medical care. The same strategies and resources that officers use to assist young people during non-curfew hours can be used to assist them during the times of the Curfew. But, instead of encouraging assistance, the Curfew encourages citations and justice system involvement. And this in turn, discourages young people from turning to police. Rather than further harm or marginalize vulnerable youth, Bastrop should find proactive ways to help them, including coordinating and utilizing existing city agencies and community-based organizations.

The Curfew Encourages Negative Police Interaction

Police best serve our youth and community when officers are trusted rather than feared. Youth who genuinely need assistance should be able to turn to police officers for help without fear of being arrested or cited. However, the Curfew discourages such positive interactions by encouraging police to cite youth between the ages of 10 and 17 for doing nothing other than not being home or at school during Curfew hours. Police interactions can be scary for anyone, but in particular for youth. We should not provide an additional reason to make them more fraught. Further, curfew ordinances may be used inappropriately as pretext stops, with officers stopping young people they believe to be suspicious, using the curfew ordinance as a justification for an otherwise unlawful stop. In Austin, Assistant Police Chief Troy Gay noted that the curfew ordinance “turns into giving the officers an ability to stop youth at night, check them out, seeing what they are up to, but that in itself causes friction. We want our officers to make stops based on suspicious activity or a crime, not just stopping [youth] by arbitrarily judging someone’s age.”^[8]

The Curfew Supplants a Parent’s Right to Direct the Upbringing of their Child

The U.S. Constitution undisputedly protects a parent’s right to direct the upbringing of their child. *Troxel v. Granville*, 530 U.S. 57, 65, (2000) (“The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.”) The Curfew, however, overrides this right during curfew hours. There are several reasons a parent might permit a minor to be out of the house after curfew hours but the Curfew places the burden on the minor and/or parent to prove this to avoid citation. For example, a minor may be returning from a babysitting job and get stopped by the police. What sort of proof does one need to show to prove one was babysitting? Furthermore, the Curfew criminalizes—without a defense—perfectly acceptable behavior that parents would allow. The same minor returning from a babysitting job, for instance, violates the Curfew if they stop at a fast food restaurant to buy food, or use the bathroom, en route home. This unnecessary interference with a parent’s right to direct the upbringing of their child provides another reason why the Curfew should not be renewed.

^[8] Roman, Ivonne, *The Curfew Myth: How a 90’s panic spawned an anti-crime measure that doesn’t make you safer*, The Marshall Project (Jul. 31, 2018), available at <https://www.themarshallproject.org/2018/07/31/the-curfew-myth>.

Bastrop Should Allow the Curfew Ordinance to Lapse

Instead of further criminalizing our youth, the City of Bastrop should end the harmful Curfew ordinance and take steps to reduce the collateral consequences of curfew violations that have already been issued. Put simply, juvenile curfew ordinances encourage a criminal justice response to situations that do not merit contact with law enforcement and the court. Juvenile curfews are an outdated approach. Truancy reform statewide represents a similar move away from criminalization of youth. Several cities have ended the practice of citing youth, including Austin^[9] and San Antonio.

As stated previously, the curfew ordinance requires the city to have two public hearings prior to voting on whether to renew it or not. Given the current constraints under the stay-at-home orders and ban on mass gatherings during COVID-19, hearing from the community and those affected by the curfew ordinance will be difficult, if not impossible. Many of the individuals that are most affected and vulnerable lack the resources required to participate virtually at this time. Without their voices and input, the city of Bastrop won't be able to honor their experiences and consider them in its decision. Again, we urge you all to let the juvenile curfew ordinance expire, or at the very least, postpone any decision until a proper study and public hearings can be done in person.

We thank you for your time and consideration on this matter.

Sincerely,

Texas Appleseed
Texas Criminal Justice Coalition
Grassroots Leadership
Texas Advocates for Justice
MEASURE
JUST-US Participatory Defense
Austin Justice Coalition
Texas Freedom Network
Texas Rising
Austin Community Law Center
Juvenile and Children's Advocacy Project
Texas Jail Project
Intercultural Development Research Association (IDRA)
Texas RioGrande Legal Aid Public Defender Division

^[9] See Report: Austin's Juvenile Curfew Ordinance: Recommendations for Non-Criminal Ways to Support and Ensure the Safety of Young People in Austin, *available at* <http://www.austintexas.gov/edims/document.cfm?id=285194> .