

# CURFEW CRAZE

BY JOHN HOOD

**I**t's a teenager's fantasy: Violate your curfew, and your parents, not you, get punished for it. But in a growing number of cities, especially in the South, it isn't a fantasy—it's the law.

In Atlanta, youths under 17 years old now have a legal curfew of 11 P.M. on weeknights and midnight on weekends, with a few exceptions for work trips or school activities. Under the city law, passed last November amid a flurry of national press attention, parents are held responsible for repeated violations of curfew by their children. They face up to 60 days in jail and \$1,000 in fines.

Soon after Atlanta's law went into effect, the city police department began getting calls from other cities across the South. Police chiefs, city council members, and civic leaders wanted to know how the Atlanta curfew worked and how best to enact similar laws in their own towns. Not all cities plan to mimic Atlanta's penalties on parents—some prefer to slap penalties on the violators themselves—but most curfew proponents say their goals are the same as Atlanta's: to protect teens from random street violence and to limit teen involvement in the "drug culture."

So far, the strongest and most predictable opposition to the curfew craze has come from the American Civil Liberties Union. "It is our view that the [Atlanta curfew] law restricts youngsters' rights of association and gathering," says Ellen Spears of the Georgia ACLU. The arguments Spears and other civil libertarians use fall into roughly three categories: racial discrimination, police conduct, and constitutional issues.

The fear that the enforcement of curfews will unjustly target black youths and codify festering white racist attitudes about crime is the most controversial, the most publicized, and the weakest argument made against curfews. One reason



curfews are making a re-emergence in the South—after 20 to 30 years of late-night freedom for youths in many cities—is that blacks have begun to make serious inroads into local political power. During the 1970s and mid-1980s, white mayors and city councils shied away from measures, such as curfews, that might have appeared racist.

Today's curfew proposals are being made, with few exceptions, by black leaders. (In northern cities, such as Detroit, where blacks have long dominated city hall and police departments, curfews were already frequently used.) Daveeta Johnson, a Democrat on the Atlanta city council, sponsored that city's curfew with support from Mayor Maynard Jackson and Police Chief Eldrin Bell. In Charleston, South Carolina, City Councilman Robert Ford, another black Democrat, has proposed a similar curfew.

Ford counters arguments about race by saying that white leaders hesitate to impose restrictions on their children when the only teen crime victims are black. "I'm not going to wait for the white kid to get beat up," he says.

It's the victims of crime, not snooty city residents wanting lily-white and

adult-only streets, who form the strongest bloc of votes for ideas like curfews. In most cities, that vote originates in minority communities racked with crime. Gary Alan Fine, a sociologist at the University of Georgia, says that public support for curfews and other generalized responses to crime come in waves—corresponding less to actual blips in crime rates than to heightened concern about children.

"In the late '80s and into the 1990s," he says, "we are witnessing a mini-baby boom, so issues surrounding children are becoming especially salient." And much of the birth boomlet has occurred in the black community. Whatever the motivation,

urban blacks tend to favor more drastic anticrime measures than whites do, at least in the South.

Concerns about racial discrimination, however, do put curfew enforcers in something of a bind. To avoid charges of targeting black youths, police departments in Atlanta and elsewhere have promised to enforce statutes equally across the whole city. But, in fact, some areas are more dangerous than others—and the dangerous ones, for various reasons, tend to be poor, black neighborhoods. So police chiefs can either target their enforcement on high-crime areas, and submit to charges of discrimination, or they can spread their enforcement widely, and potentially dilute the effect of the curfew.

Some city governments have recognized this potential dilemma. A report prepared for the Charlotte, North Carolina, city council by that city's police department stated that a curfew that could escape legal challenge while still being strong enough to affect crime "will be difficult to write."

The ACLU's Spears and other curfew opponents say that one of the most dangerous effects of the laws would be to give enormous power and discretion to

police officers. Indeed, many police officials welcome curfews because such laws can help them fight the war on drugs. Just as sodomy statutes give prosecutors grounds to convict suspected rapists when evidence of the rape itself is scant, so curfews give police officers the ability to break up "questionable" liaisons on the street and the right to stop and detain underage teens. Civil libertarians worry that using curfews this way reduces the burden on police to have probable cause before confronting citizens—after all, probable cause for stopping a guy becomes, "He looks young."

Curfew advocates essentially grant this argument. "We are trying to give police officers as many tools as possible to approach people selling or using drugs," says Pat McCrory, a Charlotte city councilman who plans to sponsor that city's curfew ordinance. The burden of proof is *expected* to shift to young people out at night. After all, says Sheriff Allen Sloan of Richland County, South Carolina, where a curfew passed earlier this year, "What good can possibly come out of a 13-year-old kid out at 2 o'clock in the morning?"

But some police departments are less than enthusiastic about the prospect of enforcing curfews. Foes point out that many hard-pressed police forces can ill afford to spend their time enforcing curfews when serious crimes are occurring throughout the city. Some officers and police chiefs agree.

"When you catch a kid, you've got police tied up trying to find the parents," Bill Myers, a Birmingham city councilman and former police chief, told Cox News Service. "Personally, I'd rather have that police officer out on the street trying to prevent crime."

Curfews, however, have received a mixed message from the nation's courts. In one of the most celebrated curfew cases of recent years, a federal judge struck down—the night before it was to go into effect—a curfew ordinance passed by the District of Columbia's city council in 1989 and signed by Mayor Marion Barry. The judge, who said that the law "gives me the chills," noted that

the curfew raised "serious constitutional claims" for juveniles, due to the breadth of teen activity it prohibited and the lack of clear evidence that suspending teens' rights would reduce crime.

The Atlanta curfew bears some resemblance to the ill-fated Washington law—which also fined parents and empowered police officers to detain youths at police stations until their parents picked them up. Spears says the ACLU will challenge the Atlanta ordinance on much the same grounds it did the Washington curfew.

But even the clarity and notoriety of the Washington decision didn't deter cities from enacting curfews. A few months later, the nearby Virginia town of Quantico imposed a 10 P.M. curfew on minors, and in that state some 40 cities and towns have curfews on the books—though few are really enforced.

The problem is that most courts haven't ruled out the use of curfews in general, just questioned breadth or procedure of specific laws. While curfews in D.C., Clarksdale, Mississippi, and other municipalities have been struck down by courts or Constitution-minded city councils, curfew and antiloitering laws in Detroit, Newark, and Camden, New Jersey, have survived legal challenge. Though controversial when enacted three years ago, the New Orleans curfew last September got a vote of support from the city council, which also appropriated money to expand enforcement efforts.

One explanation for the failure of some constitutional challenges to curfews may be overreliance on slippery-slope arguments. When curfew advocates make a clear distinction between the rights of children and the rights of adults, and portray a curfew as a case of a government helping to "guide and nurture" children, they sound reasonable. Imposing a curfew on children seems to create, at most, a slight incline, not a steep cliff, pointing in the direction of authoritarianism.

A stronger argument is that while juveniles aren't equivalent to adults in legal rights, they still enjoy strong constitutional protections. "The [Atlanta] curfew makes exceptions for people ex-

ercising First Amendment rights," says Spears, "but our argument is that the First Amendment also protects their rights to associate and gather."

Furthermore, where children's rights end, parents' rights traditionally begin. Instead of strengthening parental authority, curfews usurp parental prerogatives, since under most ordinances teens can't violate curfew *even with parental permission*. One curious aspect of the Atlanta law is that it lacks specific provisions for taking care of teen violators should their parents be jailed.

Even more curiously, "there are no data on curfew laws which indicate that they are effective as crime-fighting tools," says sociologist Fine. As then D.C. Police Chief Maurice Turner pointed out during that city's curfew debate, "the average [murder] victim is 31 and the average perpetrator is over the age of 18."

In fact, the only pertinent data sociologists do have is that children are more likely to be hurt or killed by their parents than by strangers on the street. If government wants to protect children by painting with a broad brush, a more statistically sound approach would be to forbid children from staying at home between 7 P.M. and midnight—the prime time for child abuse.

Of course, this is a silly idea, but no more silly than shepherding all teenagers home at 11 P.M. because a scant minority might be "sucked into the drug trade" or shot in drive-by shootings. Penalizing crime, not potential victims, is not only the approach most consistent with our legal and constitutional traditions, but also the only one that targets scarce resources toward the actual problem of violent crime. But if the problem, as city councils and police forces perceive it, is that probable cause and constitutional protections hamper their ability to wage war on drugs, then curfews do indeed represent an advance—an advance in government power.

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# PEOPLE'S CAPITALISM

BY JOHN H. FUND

**I**t seems that half the political jokes in Prague center around Václav Klaus, the country's hard-charging, free-market finance minister. A favorite has a group of people, including Klaus, being asked to identify an upturned bottle top. All except the finance minister give the expected reply. But Klaus, who favors dispensing with food subsidies, says confidently, "It's a pan for frying steak."

Many Czechoslovakian intellectuals and political leaders oppose Klaus and his bold plans for "a market economy without any adjectives." In December, seven of the 10 ministers in the Civic Forum government founded a Liberal Club to support policies that "lessen the effect of the economic reforms on socially weak groups."

But Klaus seems to have surprising popular support. In the June 1990 elections, he won more votes than any other candidate (President Václav Havel was not on the ballot). In October he won a stunning 70-percent victory among Civic Forum delegates to become chairman of the group. And in a tempestuous conference in January, he won approval for his vision of Civic Forum as a real political party with a firm, antisocialist platform. A recent Czechoslovakian TV poll places him only 5 percentage points below President Havel in popularity.

In January, the first "Klauskrieg" on socialism began when the government removed price controls on 85 percent of goods, restricted the money supply, and made the Czechoslovakian crown largely convertible. Many predict the inevitable short-term decline in living standards will undermine Klaus's political support.

For now, though, he is riding high. Foreign Minister Jiri Dienstbier, a leading reform Communist during the 1968 Prague Spring and a leader of the Liberal Club, is despondent at the direction Civic Forum is taking. "We have come once again to having a party run by people who issue membership cards and advocate ad-

herence to an ideological program," he mourns. By European standards, the new Civic Forum platform is certainly an ideological, laissez-faire document. "We mean to totally depart from socialism in all its forms," it proclaims. "A symbiosis of central planning and the market is not possible....We reject 'perestroika' types of regulated market economics."

The platform goes on to say that its vision of Czechoslovakia is a society, the

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"pillars of which are individual citizens, families, townships, counties, and the state, in the above order. Free citizens are the source of political, economic, and moral initiative." A section on social justice calls for help to "the poor, sick, old, or otherwise handicapped individuals," but stresses that help should not destroy individual initiative or discourage private aid. As for foreign policy, "The principal guarantor of freedom and peace in Europe has been and continues to be the NATO alliance."

The platform also includes a rousing endorsement of Klaus's plans for "radical privatization in all fields of industry, agriculture and services." In January, the auction of all state-owned small businesses began. For larger firms, Klaus wants to follow the 1989 Velvet Revolution for political freedom with an economic one: a giveaway of much of the nation's capital to its citizens.

The first offering, for 20 percent of state assets, will give every Czechoslovakian vouchers representing the right to buy shares in state companies. The remaining 80 percent will be offered next to Czechoslovakian investors, with employees in state firms and the former owners of nationalized companies allowed to buy at a discount.

But the lack of domestic capital will mean that many of the assets will then be offered to foreign investors. "The irony is that the only way not to sell things too cheaply is to give some of them to the people," Klaus says. The voucher program would be a bold maneuver around many of the hurdles facing privatization in Eastern Europe.

**O**ne advantage of a voucher system is that there is no need for time-consuming asset valuations—an overnight market in shares would develop. And, notes former Klaus adviser Jan Tauber, "Concern about foreign investment will weaken when people, and not the state, are allowed to sell to foreigners. Then people no longer think you are selling the family silver; it is making a good business deal."

After a speech last fall outlining his privatization plans at a meeting of the Mont Pelerin Society in Munich, Germany, Klaus was surrounded by German business reporters. One, openly skeptical of the voucher idea, noted that West Germany became a capitalist giant even though only 2 percent of its people own shares.

"Oh yes, your great social market economy," Klaus teased. "We plan to go beyond it. It is insufficiently dynamic for what we want to create. We Czechs hope to have the courage to try something the world can learn from—a genuine people's capitalism."

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