

2013 Curfew Ordinance Review

Introduction

On November 9, 1991, the city of Houston enacted a juvenile crime ordinance in response to growing concerns about trends of violent crime and gang activity involving juveniles and young adults. When enacting the curfew ordinance, City Council mandated that a review be conducted six months after passage of the ordinance in order to evaluate its effectiveness. The Juvenile Division of the Houston Police Department conducted that review in 1992, concluding that the curfew was accomplishing goals envisioned by City Council.

Effective May 31, 1995, Section 370.002 of the Texas Local Government Code required that municipalities review their curfew ordinances every three years.

- The first review mandated by the Local Government Code was conducted by the Juvenile Division in 1998, after which City Council continued the juvenile curfew by adopting Ordinance #98-366, effective May 19, 1998.
- After a second review in 2001, City Council again continued the juvenile ordinance curfew by adoption of Ordinance #01-409, effective May 15, 2001.
- A third review was conducted in 2004, after which City Council continued the juvenile curfew by adopting Ordinance #04-384, effective May 11, 2004.
- A fourth review, in which several changes were made to the existing ordinance, was conducted in 2007, after which City Council modified and continued the juvenile curfew by adopting Ordinance #07-563.

- A fifth review was conducted in 2010, City Council again continued the juvenile curfew by adopting Ordinance #07-563.

Under terms of Section 370.002, a new three-year review must be completed in April 2013, in order to maintain the curfew as current law. The Houston Police Department has once again been delegated the task of evaluating the continued need for a juvenile curfew ordinance and developing a plan for the review process, including public hearings. Failure to perform this required review will result in the expiration of the Houston curfew ordinance.

The following study summarizes Texas law, Houston's curfew ordinance, the Houston Police Department's juvenile curfew enforcement guidelines, the curfew reviews of 1992, 1998, 2001, 2004, 2007 and 2010, Uniform Crime Report (UCR) Part One summaries for juvenile suspect and victim incidents, and other relevant information in order to determine the effectiveness of the curfew ordinance.

Texas State Law

Section 370.002, Local Government Code, **titled Review of Juvenile Curfew Order or Ordinance** requires a review of the local curfew ordinance every third year. It specifically states:

- Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing

body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:

- review the ordinance or order's effects on the community and on problems the ordinance or order was intended to remedy;
- conduct public hearings on the need to continue the ordinance or order; and
- abolish, continue, or modify the ordinance or order.

Failure to act in accordance with Subsections (a) (1)-(3) shall cause the ordinance or order to expire.

Houston Juvenile Curfew Ordinance

The city of Houston Juvenile Curfew Ordinance is found in the Code of Ordinances under Article V, Section 28-171, 28-172, 28-173, 28-174, and 28-175. This ordinance defines a minor as a person under seventeen (17) years of age. Section 28-172, *Offenses*, states:

Sec. 28-171. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Adult means an individual who has attained the age of 18.

Curfew hours means the period between the hours of 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday and 6:00 a.m. of the following day, between the hours

of 12:00 a.m. (midnight) and 6:00 a.m. on any Friday or Saturday, or between the hours of 9:00 a.m. and 2:30 p.m. on a Monday, Tuesday, Wednesday, Thursday or Friday.

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term shall include but not be limited to a fire, natural disaster, vehicular accident, or a serious medical condition of sudden onset.

Guardian means the person who, under a court order, is the guardian of the person of a minor or the public or private agency with whom a minor has been placed by a court.

Minor means any person under 17 years of age.

Parent means the natural mother or father or adoptive mother or father of a minor.

Public place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartments, office buildings, transport facilities, restaurants, theaters, game rooms, shops and shopping centers.

(Ord. No. 91-1543, § 2, 10-30-91; Ord. No. 07-563, § 3, 5-9-07)

Sec. 28-172. - Offenses.

- (a) It shall be unlawful for any minor to knowingly remain, walk, run, stand, drive or ride about, in or upon any public place in the city during curfew hours.
- (b) It shall be unlawful for the parent or guardian having legal custody of a minor to knowingly allow or permit the minor to be in violation of the curfew imposed in section 28-172(a) of this Code.
- (c) Violations of this section shall be punishable as provided in section 1-6 of this Code.

(Ord. No. 91-1543, § 2, 10-30-91; Ord. No. 07-563, § 4, 5-9-07)

Sec. 28-173. - Defenses.

It is a defense to prosecution under section 28-172 of this Code that:

- (1) The minor was accompanied by his or her parent or guardian;
- (2) The minor was accompanied by an adult designated by his or her parent or guardian;
- (3) The minor was on an errand made necessary by an emergency;
- (4) The minor was attending a school, religious, or government-sponsored activity or was traveling to or from a school, religious, or government-sponsored activity;
- (5) The minor was engaged in a lawful employment activity or was going directly to or coming directly from lawful employment;
- (6) The minor was on the sidewalk directly in front of the place where he or she resides;
- (7) The minor was on an errand directed by his or her parent or guardian;
- (8) The minor was in a motor vehicle involved in intrastate or interstate transportation;
- (9) The minor was engaged in, participating in, or traveling to or from any event, function or activity for which the application of section 28-172 of this Code would contravene his or her rights protected by the Texas or United States Constitution;
- (10) The minor was married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code;

- (11) With respect to the hours between 9:00 a.m. and 2:30 p.m., the offense occurred during the school summer vacation break period of the school in which the minor is enrolled or on a holiday observed by the closure of classes in the school in which the minor is enrolled or that the minor has graduated from high school or received a high school equivalency certificate;
- (12) With respect to the hours between 11:00 p.m. and 12:00 a.m. (midnight), the day following the offense is a holiday observed by the closure of classes in the school in which the minor is enrolled; or
- (13) The minor was attending or was traveling to or from a recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor.

(Ord. No. 91-1543, § 2, 10-30-91; Ord. No. 07-563, § 5, 5-9-07)

Sec. 28-174. - Supplemental effect.

The provisions of this article are supplemental and shall be cumulative with all other laws and ordinances applicable in any manner to juveniles.

(Ord. No. 91-1543, § 2, 10-30-91)

Sec. 28-175. - Enforcement.

Notwithstanding the penal effect of this article the chief of police is encouraged to develop alternative enforcement strategies, which may include but need not be limited to the return of minors to their residences or schools, counseling with minors and their parents or guardians, the issuance of warning citations to minors or their parents or

guardians, or the referral of instances that appear to also involve the violation of school attendance laws to those officers who are responsible for the enforcement of those laws. The enforcement strategies shall be promulgated in writing to members of the police department so that this article may be enforced in a uniform manner.

(Ord. No. 91-1543, § 2, 10-30-91)

In summary, the Houston Juvenile Curfew Ordinance includes both a daytime and nighttime curfew. It also includes a provision to cite parents having legal custody who knowingly allow or permit violations of the ordinance. The penalty for violation of curfew falls under Section 1-6, which provided for a fine not to exceed \$500.00.

Houston Police Department Juvenile Curfew Guidelines

On February 13, 1992, former Police Chief Elizabeth Watson issued Houston Police Department Circular #92-02113-1, titled Juvenile Curfew Guidelines. This circular provides background information, provisions of the ordinance, policy, and enforcement guidelines. Portions of this circular are discussed below.

The **Background** section states:

Houston City Council enacted a juvenile curfew ordinance effective November 9, 1991. The expressed purpose of the ordinance is to deter juvenile violence and gang activity, reduce crime committed by persons under the age of eighteen (*since changed to under the age of seventeen*), prevent victimization of minors and

provide for the enforcement of parental control and responsibility for their children.

The **Policy** section states:

It is the policy of the Houston Police Department to utilize the juvenile curfew as a positive tool to accomplish the intents and purposes expressed in the Ordinance. Upon finding a minor in violation of the curfew, an officer may, at his/her discretion and, depending on the circumstances of the violation, issue appropriate citations. HOWEVER, in exercising his/her discretion, the officer should consider such factors as:

- the age of the minor
- the location where the minor was encountered (i.e., the nature of the place, proximity to the minor's residence, the presence of other persons)
- the time of day/night the minor was encountered in relation to the curfew hours; and
- whether returning the minor to his/her parents or to school or removing the minor from potentially or actually harmful surroundings would be more appropriate than taking the minor into custody or issuing a citation.

The emphasis in utilizing the Juvenile Curfew Ordinance is to:

- return the minor to his/her parent or guardian and gain parental support for proper supervision
- return the minor to school, if appropriate, where proper school administrative action can be taken by school officials
- remove the minor from potential or actual harmful circumstances

Under the section titled **Enforcement Guidelines**, it is important to note that citations may be issued to minors ages ten through sixteen. Minors so cited are required to attend municipal court with at least one parent. Citations are not to be issued to minors younger than ten years of age.

1992 Study of Curfew Ordinance

On November 16, 1992, the Juvenile Division submitted a **Study of Effect of Curfew Ordinance** to former Police Chief Sam Nuchia. Three months in 1991, before the curfew ordinance was adopted, were selected for comparison to the same three months in 1992 after enforcement of the ordinance had commenced. The 1992 study determined that the victimization rate of juveniles increased almost 2% during the daytime curfew hours but decreased 21% during the nighttime hours. Simultaneously, there was a 15% increase in the victimization rate of persons ten through seventeen years-of-age during non-curfew hours. The number of juvenile suspects brought into the Juvenile Division increased 23% during the daytime curfew hours, but decreased 17% during the nighttime curfew hours. When the daytime and nighttime curfew hours were combined, the juvenile arrest rate decreased by 0.1%. This compared to a 12.1% increase during non-curfew hours.

1998 Study of Curfew Ordinance

The 1998 curfew study states that the number of citations issued for violations of the juvenile curfew ordinance rose steadily from 1992 (9359) to a peak in 1996 (14325). Little change was noted in 1997 (14168). By this time, Houston police officers were

actively enforcing the curfew ordinance and a general decline in juvenile crime, juvenile victimization, and the number of juveniles processed by the Juvenile Division Intake section were observed. Statistics regarding the ethnicity of those who received curfew citations indicated a strong correlation to the student demographics of the Houston Independent School District. Records for the Harris County Juvenile Probation Department revealed declines beginning in 1995 for:

- the number of youths charged
- the number of property crimes
- the number of crimes against persons, and
- the number of serious offenses of homicide, arson, sexual assault, felony assault, robbery, burglary, felony theft, auto theft, and felony drug offenses.

At the time of the 1998 review, no legal challenges had been attempted against the curfew ordinance, and public support seemed solid.

2001 Study of Curfew Ordinance

A study of the three years included in the 2001 Review of the Juvenile Curfew Ordinance (1998, 1999, and 2000) showed that juvenile crime and victimization rates had generally demonstrated steady decreases. Review of enforcement activity indicated that the ethnicity of juveniles cited for violation of the curfew ordinance closely paralleled the demographics of the Houston Independent School District. The number of citations issued for violations of the juvenile curfew ordinance, both daytime and nighttime, decreased during this period. This decrease is believed, by some, to be due to voluntary compliance resulting from aforementioned enforcement efforts. It is believed that

enforcement of the juvenile curfew ordinance is one factor in the reduced levels of juvenile crime and victimization experienced during the period covered in the 2001 review.

2004 Study of Curfew Ordinance

Study of the three years included in the 2004 Review of the Juvenile Curfew Ordinance (2001, 2002, and 2003) indicated declines for juvenile crime and victimization rates in Part I violent crimes following an increase from 2000-2001. Juvenile suspect Part I non-violent incidents also declined during this period. Review of enforcement activity indicated that the ethnicity of juveniles cited for violation of the curfew ordinance closely paralleled the demographics of the Houston Independent School District. The number of citations issued for violations of the juvenile curfew ordinance, both daytime and nighttime, increased during this period. It is believed that enforcement of the juvenile curfew ordinance is one factor in the reduced levels of juvenile crime and victimization.

2007 Study of Curfew Ordinance

A study of the three years included in the 2007 Review of the Juvenile Curfew Ordinance (2004, 2005, and 2006) indicate the number of juvenile curfew citations decreased 57.4%, from 2003 to 2005, an indication that trends rise and fall in response to crime problems, with crime patterns in three categories fluctuating in relationship to juvenile curfew enforcement. Review of enforcement activity indicated that the ethnicity of juveniles cited for violation of the curfew ordinance closely paralleled the demographics of the Houston Independent School District.

After the 2007 Review, the Juvenile Curfew Ordinance was amended as of May 9, 2007, defining the age of a minor as under 17 years old, and adding several defenses to the code (see pages 3-7).

2010 Study of Juvenile Curfew Ordinance

A study of the three years included in the 2010 Review of the Juvenile Curfew Ordinance (2007, 2008, and 2009) indicate the number of juvenile curfew citations decreased from 2007 to 2009 by 33.7%.

2013 Study of Juvenile Curfew Ordinance

Table 1 Juvenile Division - Intake

	2010	2011	2012
Days	3125	2605	2284
Evenings	2797	2466	2449
Nights	1049	1036	835
Totals	6971	6107	5568

Table 2 HISD Student Profile by Race

Ethnicity	2009-2010		2010-2011	
	Number	Percent	Number	Percent
American Indian/Alaskan	531	0.3%	463	0.2%
Asian or Pacific Islander	6,235	3.1%	6,826	3.4%
African American	53,380	26.5%	50,778	25.2%
Hispanic	125,097	61.7%	126,156	62.6%
White/Not of Hispanic Origin	15,889	7.8%	15,871	7.9%
2 or more	1,241	0.6%	1,500	0.7%
Totals	202,373	100%	201,594	100%

As a comparison, Tables 3 and 4 indicate the attendance and drop out rates for the Houston Independent School District.

Table 3 HISD Attendance Rates by Race

Year	District	African American	Hispanic	White	Native American	Asian Pacific Islander
2009-2010	94.9%	94.3%	95.1%	95.6%	95.6%	97.5%
2010-2011	95.2%	94.5%	94.9%	95.7%	95.7%	97.2%
2011-2012	95.1%	94.1%	95.4%	95.6%	94.9%	97.1%

Table 4 HISD Drop Out Rates by Race

Year	District	African American	Hispanic	White	Native American	Asian Pacific Islander
2009-2010	2.6%	3.2%	2.4%	1.2%	2.6%	0.9%
2010-2011	3.2%	3.1%	3.8%	1.4%	2.5%	0.8%
2011-2012	2.5%	2.8%	2.4%	0.9%	1.8%	0.7%

Harris County Juvenile Probation

Part I & II Crimes

	2010	2011	2012
Number of Criminal Charges Filed (MB and above)	11630	10313	9239
Person (Felony)	837	736	694
Person (Misd)	1388	1273	1089
Total Crimes Against Persons	2225	2009	1783
Property (Felony)	831	849	804
Property (Misd)	2149	1782	3088
Total Property Crimes	2980	2631	3892

Homicide	18	10	8
Arson	52	43	47
Sexual Assault	351	303	295
Felony Assault	142	142	128

Robbery	324	282	263
Burglary	552	542	514
Felony Theft	84	99	110
Auto Theft	22	32	32
Felony Drugs	309	232	183
Total Serious Offenses	1854	1685	1580

Harris County Juvenile Probation Department

**Juvenile Suspect (Age 16 and Under)
UCR Part I & II Crimes**

Crime Type	2010	2011	2012
	18	10	18
Murder and Non-Negligent Manslaughter	0	1	2
Manslaughter by Negligence	50	54	56
Forcible Rape	50	54	56
Robbery	840	830	817
Aggravated Assault	800	805	1034
Total Violent	1708	1700	1927
Burglary	840	815	808
Larceny-Theft	2501	2540	2595
Auto Theft	250	198	165
Arson	35	39	42
Total Non-Violent	3626	3592	3610
Total Part I Crime	5334	5292	5537
Other Assaults	3320	3175	3215
Forgery & Counterfeiting	36	29	39
Fraud	42	46	49
Embezzlement	22	18	17
Stolen Property: Buying, Receiving, Possessing	1	3	2
Vandalism	1398	1421	1502
Weapons: Carry, Possess, Etc.	165	172	169
Prostitution and Commercialized Vice	25	19	27
Sex Offenses (Except Forcible Rape and Prostitution)	101	221	219
Narcotics Drug Laws	801	750	795
Gambling	11	14	15
Offenses Against Family and Children	27	25	22
Driving While Intoxicated	19	17	14

Liquor Laws	14	23	18
Drunkenness	45	73	89
Disorderly Conduct	2201	2175	2098
Vagrancy	1	0	1
All Other Offenses (Except Traffic)	1001	989	973
Total Part II Crime	8429	9170	9264
Total Part I & II Crime	13763	14462	14801

**Juvenile Complainant (Age 16 and Under)
UCR Part I & II Crimes**

Crime Type	2010	2011	2012
Murder and Non-Negligent Manslaughter	55	43	36
Manslaughter by Negligence	0	0	0
Forcible Rape	247	282	225
Robbery	798	672	827
Aggravated Assault	1718	1700	1395
Total Violent	2818	2697	2493
Burglary	496	486	493
Larceny-Theft	993	984	999
Auto Theft	57	49	50
Arson	7	8	10
Total Non-Violent	1553	1527	1552
Total Part I Crime	4365	4224	4035
Other Assaults	4893	4515	4193
Forgery & Counterfeiting	17	13	15
Fraud	36	22	39
Embezzlement	0	0	2
Stolen Property: Buying, Receiving, Possessing	1	1	4
Vandalism	286	301	248
Weapons: Carry, Possess, Etc.	61	53	43
Prostitution and Commercialized Vice	36	41	47
Sex Offenses (Except Forcible Rape and Prostitution)	1030	987	817
Narcotics Drug Laws	125	126	123
Gambling	1	1	2

Offenses Against Family and Children	789	1029	1336
Driving While Intoxicated	55	71	49
Liquor Laws	7	19	19
Drunkenness	35	41	42
Disorderly Conduct	897	707	707
Vagrancy	3	1	1
All Other Offenses (Except Traffic)	284	239	301
Total Part II Crime	8556	8158	7988
Total Part I & II Crime	12919	12382	12023

Legal Challenges

There have been no legal challenges to the City of Houston juvenile curfew ordinance. The Houston curfew ordinance was modeled after the Dallas. That city's ordinance was upheld in a ruling by the Fifth Circuit Court of Appeals (*Qutb v. Strauss*), and allowed to stand by the United States Supreme Court.

An earlier ruling by the Fifth Circuit Court of Appeals found that a juvenile curfew ordinance infringed on a minor's fundamental right to association. To justify a curfew in the Fifth Circuit, a significant state interest must be demonstrated. The most commonly cited state interests used in justifying juvenile curfews were (1) helping parents control their children, (2) protecting juveniles from criminal activity, (3) protecting juveniles from improper influences that may prevail during the curfew hours, and (4) protecting the public from the criminal acts of juveniles. The juvenile ordinance of the City of Houston was styled to address these interests.

Crime Reduction Factors

As stated in the 2004 Juvenile Curfew Review, criminologists and law enforcement professionals debate the reasons and factors involved in crime reduction. Both groups

agree that a variety of factors working together account for a decrease in crime. Some of these factors include education, family values, religion, economic conditions, laws, curfew ordinances, police programs, corrections programs, and youth programs. All these factors are vital in decreasing adult and juvenile crimes.