

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Criminalizing the victims

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The Appellate Division, Fourth Department on Oct. 10 declared that the City of Rochester's youth curfew was unenforceable in *Anonymous v. City of Rochester*, 2008 N.Y. Slip Op. 07724.

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

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

The "findings and purpose" of the youth curfew are found in section 45-1 of the ordinance, which provides that: "A. A significant number of minors are victims of crime and are suspects in crimes committed during the nighttime hours, hours during which minors should generally be off the streets and getting the sleep necessary for their overall health and quality of life. Many of these victimizations and criminal acts have occurred on the streets at night and have involved violent crimes, including the murders of teens and preteens.

"B. While parents have the primary responsibility to provide for the safety and welfare of minors, the City also has a substantial interest in the safety and welfare of minors. Moreover, the City has an interest in preventing crime by minors, promoting parental supervision through the establishment of reasonable standards, and in providing for the well-being of the general public.

"C. A curfew will help reduce youth victimization and crime and will advance the public safety, health and general welfare of the citizens of the City."

The court balanced the government's interests in enacting the statute with the constitutional rights of the plaintiffs and concluded the ordinance was inconsistent with state law as it applied to minors younger than 16 and imposed unconstitutional restrictions on both the parents and minors affected by the curfew.



In reaching its decision, the court noted that the city failed to establish that the imposition of the curfew actually achieved the stated objectives behind its implementation: "The Mayor and the Chief of Police expressed their opinions and beliefs concerning the particular vulnerability of juveniles during nighttime hours, but those opinions and beliefs are insufficient to demonstrate a

substantial relationship between the ordinance and its goals. ...[T]he information concerning the results of the implementation of juvenile curfews in other municipalities is equivocal at best and does not establish the necessary relationship between the ordinance and the goals of reducing juvenile crime and victimization."

I find it particularly ironic that one of the primary goals of the youth curfew was to reduce the victimization of our city's youth since, for some, it may have had the exact opposite effect.

During the four years that I was a Monroe County assistant public defender, I was entrenched in the lives of a certain segment of the city's population. Many of the people I represented were involved in the criminal justice system as a result of horrible drug addictions. And, many of these people, most of whom were barely able to take care of themselves, had children.

I can only imagine the state of the home lives of their children. Physical and sexual abuse is commonplace in such households, as the addicts perpetuate the cycles of abuse to which they were subjected as children.

When your caregiver is addicted to drugs, the streets may seem a far safer alternative than being trapped in a small apartment with an addict, subject to their unpredictable, erratic and abusive behavior.

Where the objectives of a youth curfew are unproven and unrealized, it is unforgivable to jail children for taking to the streets as a form of escape and self-preservation. Criminalizing attempts to avoid victimization simply is not the answer.

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