

HOUSE BILL REPORT

SHB 2521

As Passed House:
February 13, 1998

Title: An act relating to curfews.

Brief Description: Providing for curfews.

Sponsors: By House Committee on Law & Justice (H) (originally sponsored by Representatives Benson, Sheahan, O'Brien, Quall, Cairnes, Mielke, Lambert, Hickel, Zellinsky, Delvin, Sterk, Robertson, D. Sommers, Schoesler, Carrell, Thompson and Sullivan).

Brief History:

Committee Activity:

Law & Justice: 1/27/98, 2/4/98 [DPS];
Appropriations: 2/7/98 [DPS(LJ)].

Floor Activity:

Passed House: 2/13/98, 80-17.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 2 members: Representatives Constantine, Assistant Ranking Minority Member; and Mulliken.

Staff: Bill Perry (786-7123).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Law & Justice be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson;

Chopp; Cody; Cooke; Crouse; Grant; Keiser; Kenney; Kessler; Lambert; Lisk; Mastin; Parlette; Poulsen; Regala; D. Schmidt; Sehlin; Sheahan; Talcott.

Minority Report: Do not pass. Signed by 1 member: Representative Tokuda.

Staff: Deborah Frazier (786-7152).

Background:

CURFEW ORDINANCES

The presence of unsupervised minors in public places during nighttime hours has been a concern for many communities. In response to this concern, various local jurisdictions have enacted curfew ordinances. A reported 55 cities in the state had some form of juvenile curfew in place as of September 1997. In 1994, the Legislature explicitly authorized counties, cities, and towns to enact local curfew ordinances "for the purpose of preserving the public safety or reducing acts of violence by or against juveniles that are occurring at such rates as to be beyond the capacity of the police to assure public safety." This state law prohibits any local curfew ordinance from containing criminal penalties.

The state has also enacted the Family Reconciliation Act which requires police to take minors into custody in certain situations. One such situation is an officer's reasonable belief that "considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety or that a child is violating a local curfew ordinance." The act requires that a child so taken into custody is to be taken to his or her parent at home or at work, or, at the direction of the parent, to an extended family member or other responsible adult, or a licensed youth center. In some situations the minor may be taken to a secure or semi-secure crisis residential center. There is also a state statute authorizing the Governor to impose a temporary curfew as part of a declaration of an emergency.

The Washington State Institute for Public Policy recently surveyed and evaluated local curfews. (See "Juvenile Curfew Practices in Washington State," November 1997.) The institute's report reveals a variety of responses from local officials when asked about the effectiveness of their curfew ordinances. Some reported "no effect" some reported quite dramatic reductions in crime. Almost all of the reporting was apparently based on anecdotal evidence.

CONSTITUTIONAL ISSUES

Local curfew laws have been the subject of litigation. In Seattle v. Pullman, the state supreme court declared Seattle's curfew ordinance unconstitutional. The decision struck down the curfew law on two grounds. The court found that the law violated due process

because it was too vague, and found that it violated the police powers of the city because it failed to distinguish between innocent and harmful behavior.

The Seattle ordinance imposed a curfew from 10:00 p.m. to 4:00 a.m. on persons under the age of 18. It made it illegal to "loiter, wander or play" on streets, sidewalks, highways, alleys, parks or other public places, or to be in an automobile, during the curfew. Three exceptions were provided. First, the curfew did not apply to a minor who was accompanied by a parent or guardian. Second, it did not apply to a minor who was traveling by "direct route" to work while carrying evidence that his employment was approved by the proper authorities. Third, the curfew did not apply to a minor who was traveling by direct route to a religious or educational activity while carrying written permission from a parent or guardian.

In holding the Seattle ordinance unconstitutionally vague, the court declared that the words "loiter, idle, wander or play" did not provide "ascertainable standards" so that a reasonable person could know what behavior is prohibited. In holding the ordinance unconstitutionally beyond the city's police powers, the court declared that the ordinance was not reasonably related to some permissible goal. The court noted that there was not the "requisite connection" between a *legitimate end*, which was the goal of protecting minors from abuse, and the *means employed*, which was "the invasion of protected freedoms."

In a 1990 decision upholding a Seattle panhandling ordinance, the state supreme court distinguished Pullman. In Seattle v. Webster, the court upheld the panhandling law because, unlike the curfew ordinance in Pullman, it did not ban "mere sauntering or loitering on a public way." The panhandling ordinance required proof of specific intent to violate a law, *i.e.*, to obstruct pedestrian or vehicular traffic.

In the most recent state appellate court decision on curfews, a Bellingham curfew ordinance was found to be unconstitutional. The curfew prohibited minors under 16 from being in the central business area during specified hours. In State v. J.D., the court of appeals held that the city's ordinance unconstitutionally interfered with freedom of movement and expression and also that it was unconstitutionally vague. The Bellingham City Council had found that the city's central business area was a "magnet for juvenile gatherings," that drugs and alcohol were commonly used at those gatherings, and that as a result of these factors, assaults and disorderly conduct were an increasing problem. The court found this evidence could be sufficient to establish a compelling governmental interest. However, the court held that the city had failed to narrowly tailor its ordinance to meet that compelling interest. The court cited Pullman for the proposition that a curfew must be specific in its prohibition and "necessary in curing a demonstrable social evil." The court noted that the city's own statistics showed that the curfew had no effect on juvenile crime.

Summary of Bill: A model curfew ordinance is provided. A local jurisdiction that adopts a curfew may request that the attorney general defend the ordinance against a legal attack on its constitutionality. The request is to be granted if the attorney general finds that the ordinance was adopted in accordance with the act and in substantially the same form as the model. The state is not liable for actions of a local jurisdiction in enacting or enforcing a curfew.

In order to adopt an ordinance under this act, a local jurisdiction must establish the need for the ordinance by making specific findings:

- o The incidence of nighttime crime by or against juveniles in the affected area is disproportionately high;
- o That same nighttime criminal activity is a substantial threat to the safety of minors or the public in general; and
- o The curfew is a necessary part of a plan to reduce that criminal activity.

The ordinance must be subject to periodic review by the local governing authority to determine if it has had the desired effect.

The model curfew ordinance itself prohibits minors from being in a public place during hours prescribed by the local jurisdiction. The model ordinance provides exceptions for:

- o Accompaniment by a parent or person over 21 who is designated by a parent;
- o Written parental permission;
- o Religious, political, or school events;
- o Constitutionally protected expressive activities such as study groups, vigils, and protests;
- o Employment; and
- o Emergencies.

A law enforcement officer may stop and detain a person reasonably believed to be in violation of the curfew in order to ascertain the person's name, age, and address. A violation of the curfew is a civil infraction with a maximum fine of \$25.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For: (Law & Justice) Small jurisdictions cannot afford to defend a curfew. Once one is upheld it will be easier for other jurisdictions. Many communities want a curfew. They have been shown to be very effective.

(Appropriations) Communities in the state have received letters from the American Civil Liberties Union indicating that they face litigation because of their curfew ordinances for minors. These ordinances, enacted to protect public health and safety, are challenged on constitutional grounds. This bill provides a model ordinance. If communities adopt this ordinance, the bill provides that they may have the Attorney General's Office defend them against litigation on constitutional grounds.

Testimony Against: (Law & Justice) No court in the state has ever upheld a non-emergency curfew. This act is a blank check of state money.

(Appropriations) None.

Testified: (Law & Justice) Representative Benson, prime sponsor; Terry Miller, Everett Police Department (pro); and Jerry Sheehan, American Civil Liberties Union (con).

(Appropriations) Representative Benson, prime sponsor.