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DAYTIME CURFEWS

And Why the ACLU of OREGON opposes them

Recent moves to consider or enact daytime curfews in Oregon are part of a national trend to authorize greater numbers of stops and detention of young people by police solely based on age. We share the goal of preventing "at-risk" youth from dropping out of school and turning to a life of crime. However, curfews are unconstitutional, apply a "scatter-gun" approach, and are not a cost-effective option for identifying at-risk youth. For both legal and policy reasons, we believe daytime curfews should be rejected.

Juvenile Curfews Are Unconstitutional

*** Juvenile curfews violate the right against unreasonable searches and seizures because they assume all young people are guilty until they prove their innocence.**

The primary constitutional defect of curfews is that they permit police to stop and detain any person the officer suspects is a juvenile who is in the wrong place at the wrong time. The burden then falls on the person stopped to prove his/her innocence to the satisfaction of the police officer. This aspect of curfew laws violates the constitutional requirement that police have probable cause-or at least reasonable suspicion-that an individual has committed a crime prior to being detained by the police.

*** Juvenile curfews violate due process because they give police unbridled discretion to decide who should be taken into custody.**

Most juvenile curfews, including the ordinance currently in effect in Salem, provide exceptions for juveniles who can convince a police officer that they "are engaged in a lawful pursuit or activity which requires [their] presence" in that place at that time. This vague standard gives too much discretion to individual police officers and violates due process.

*** Juvenile curfews violate principles of equal protection under the law.**

Juvenile curfews violate principles of equal protection for two reasons. First, they create an offense based on age alone. Second, they invite selective enforcement against those whom police believe are potential "troublemakers," but who commit no wrongdoing. Giving this expanded authority to police is the whole point behind curfew laws. No one seriously expects that curfews will be enforced against all juveniles-that would be far too costly and a waste of police resources.

Other Reasons to Oppose Curfews

*** Daytime curfews are a poor use of limited resources.**

It would be very expensive for the schools and the police to administer a daytime curfew. As proposed, the ordinance would rely on schools issuing & maintaining current ID cards on all students which would divert



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time and money that is desperately needed for other programs. The police would spend a lot of time stopping children to determine whether they have a legitimate reason for being on the streets which would also be time that is not spent on other critical policing activities. If the goal is to help "at risk" children from dropping out of school, stopping all children is an expensive way to find the ones "at risk".

*** Other more cost-effective alternatives exist.**

While many programs exist for juveniles who have already begun committing crimes, there is currently inadequate funding for programs designed for "at-risk" youth. If increased financial resources are allocated to this population, those resources should be spent on programs that will reach only that population, rather than wasting already-scarce resources on detaining law-abiding youths.

Here are two options:

1) Increase funding for and expand the authority of truant officers. Truant officers currently have no authority to detain young people they suspect should be in school. It would be far better to expand the authority and funding for truant officers rather than divert police from enforcing criminal laws.

2) Juvenile courts currently have legal authority to intervene in the lives of young people who are "at-risk" but have not committed a crime. The primary reason juvenile authorities are currently ignoring this authority is because of a lack of resources-not because they lack legal authority. Cities and counties could develop programs aimed at this population if they earmarked the money to fund such a program.