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Nneka Ugwu

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## Chicago is not a Sundown Town: A Closer Look at Youth Curfews

Nneka Ugwu

Curfew laws have a long history of oppressing Black individuals and restricting their movement in the name of safety. Despite the purported rationale for these laws, curfew laws are the direct descendants of Anti-Black “sundown town” laws.<sup>1</sup> Most recently, various cities in the United States have enacted curfews to silence and suppress Black-led community rebellions, protests, and movements.<sup>2</sup>

Sparked by the traffic stop of twenty-one-year-old Marquette Frye, the Watts Rebellion or Watts Uprising is considered to be the largest and costliest urban rebellion of the Civil Rights Era.<sup>3</sup> When protestors took to the streets, so did law enforcement. In order to contain the Watts Rebellion, “Los Angeles deployed more than 14,000 National Guardsmen alongside the local police force to patrol the 46-square mile ‘curfew zone’—bigger than the size of Manhattan—that the city had imposed on poor and predominantly Black neighborhoods.”<sup>4</sup>

After the Watts Rebellion in 1965, curfew laws were also used to quell social unrest in the Los Angeles Uprising of 1992, and in Ferguson, Missouri in 2014.<sup>5</sup> Once again, curfews were enforced in the summer of 2020, following the murders of George Floyd and Breonna Taylor, to repress rebellions across America. On May 25, 2020, George Floyd, a forty-six-year-old Black man, was murdered in Minneapolis, Minnesota by Derek Chauvin, a forty-four-year-old white police officer. Consequently, on May 30, 2020, millions marched and protested across the United States. That evening in Chicago, Mayor Lori Lightfoot held a press conference announcing that, until further notice, there would be an emergency curfew from 9 PM – 6 AM.<sup>6</sup> The mayor

<sup>1</sup> Andrew Lee, *Why Taco Stands Might Fix What Curfews Cannot*, Anti-Racism Daily (July 19, 2022), <https://the-ard.com/2022/07/19/why-taco-stands-might-fix-what-curfews-laws-cannot/>.

<sup>2</sup> Christopher Petrella, *How curfews have historically been used to restrict the physical and political movements of black people in the US*, THE WASHINGTON POST (June 3, 2020).

<sup>3</sup> Civil Rights Digital Library, “Watts Riots,” [https://crdl.usg.edu/events/watts\\_riots/](https://crdl.usg.edu/events/watts_riots/).

<sup>4</sup> Linda Poon, *The Racist History of Curfews in America*, BLOOMBERG (June 18, 2020), <https://www.bloomberg.com/news/articles/2020-06-18/the-racist-history-of-curfews-in-america>.

<sup>5</sup> Lee, *supra* note 1.

<sup>6</sup> Alison Martin and Mitchell Armentrout, *Lightfoot imposes curfew starting at 9 P.M. on Saturday*, CHI. SUN-TIMES (May 30, 2020).

enacted this curfew, stopped CTA service, and lifted most of the drawbridges spanning the Loop and River North.<sup>7</sup>

On May 14, 2022, sixteen-year-old Seandell Halliday was shot and killed in Millennium Park. Among a string of violent incidents in downtown Chicago, Mayor Lori Lightfoot swiftly responded with an executive order directed at Chicago youth.<sup>8</sup> Lightfoot signed an executive order in May to temporarily move the city's curfew for minors up an hour to 10 PM.<sup>9</sup> On May 25, 2022, the City Council voted on the proposed curfew moving the city's curfew to 10 PM and applying it to seventeen-year-olds.<sup>10</sup> Despite pushback, the ordinance passed, making the curfew a permanent change.<sup>11</sup> Critics of the new curfew cited class and racial disparities in its enforcement.<sup>12</sup> Chicago is not alone. In July 2022, the city of Philadelphia also strengthened their youth curfew law.<sup>13</sup> In August 2022, Prince George's County, Maryland, located outside of Washington D.C., did the same.<sup>14</sup> When the expanded curfew ordinances were rolled out in Chicago, Philadelphia, and Prince George's County, each of these officials cited similar rationales—promoting safety and reducing violence in the community.<sup>15</sup> Several studies have shown that youth curfews do not deter crime, and yet in America's major cities, “more local leaders and police are turning to curfews for teenagers in an effort to tamp down violent crime, which has surged across the country since 2020.”<sup>16</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Mariah Woelfel, *What you need to know about Chicago's new curfew for minors*, WBEZ CHI. (May 25, 2022), [https://www.wbez.org/stories/what-you-need-to-know-about-chicagos-new-curfew/f288a82d-df68-483a-9254-d3596af715dc?utm\\_source=ourcommunitynow&utm\\_medium=web](https://www.wbez.org/stories/what-you-need-to-know-about-chicagos-new-curfew/f288a82d-df68-483a-9254-d3596af715dc?utm_source=ourcommunitynow&utm_medium=web).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Josiah Bates, *Curfews Don't Reduce Crime, but Cities Still Enforce Them*, TIME MAG. (Sept. 22, 2022), <https://time.com/6215779/curfews-teens-cities-rising-crime/>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

## THE ORIGINS AND DEVELOPMENT OF THE JUVENILE LEGAL SYSTEM

In 1899, the very first juvenile court was established in Cook County, Illinois.<sup>17</sup> This court was created by Progressive Era women in Chicago who strongly believed that children required a different response than adults.<sup>18</sup> These women “envisioned, advocated for and created bold new solutions, including a separate justice system that would be designed specifically to meet the unique needs of kids and families.”<sup>19</sup> By 1925, juvenile courts had spread to 46 states and 16 countries.<sup>20</sup>

Since the establishment of the Illinois Juvenile Court, the American juvenile justice system has evolved through four distinct periods: the Progressive Era (1899–1960s), the Due Process Era (1960s–70s), the Get-Tough Era (1980s–90s), and contemporary reaffirmation of the Kids Are Different Era (2005–present).<sup>21</sup> This article has already briefly discussed the significance of the Progressive Era. Notably, this time period includes the establishment of the first juvenile court in Chicago and the wave of juvenile courts being created around the country.<sup>22</sup>

### DUE PROCESS ERA

For the first sixty years following the creation of the juvenile court, very few policies and practices made substantive changes to the original design.<sup>23</sup> The purpose of the juvenile court was to promote rehabilitation for youth in civil proceedings.<sup>24</sup> The original proponents of the juvenile court believed the criminal court focused more on retribution, which was apt for adult offenders, but not well-suited for juvenile offenders.<sup>25</sup> During the 1960s, juvenile advocates realized that despite the intended purpose of the court, youth were being

<sup>17</sup> Quinn Myers, *How Chicago Women Created the World's First Juvenile Justice System*, WBEZ CHI. (May 11, 2019), <https://www.gopopai.org/how-chicago-women-created-the-worlds-first-juvenile-justice-system/>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Vincent Schiraldi and Bruce Western, *Time to raise the juvenile age limit*, THE CHI. TRIB. (Oct. 5, 2015).

<sup>21</sup> Barry C. Feld, *Juvenile Justice*, 1 REFORMING CRIM. JUST.: INTRO. AND CRIMINALIZATION (2017).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Myers, *supra* note 17.

sent to facilities that resembled adult prisons.<sup>26</sup> In some cases, juvenile offenders were even transferred to criminal court without the due process protections common to criminal proceedings.<sup>27</sup> The following five Supreme Court cases helped reform the juvenile court: *Kent v. United States*, *In re Gault*, *In re Winship*, *McKeiver v. Pennsylvania*, and *Breed v. Jones*.<sup>28</sup>

In *Kent v. United States* (1966), the Supreme Court ruled that the juvenile court had not conducted a sufficient investigation before waiving jurisdiction.<sup>29</sup> The Court wrote: “The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.”<sup>30</sup> In *Gault* (1967), the Court extended the Due Process Clause of the Fourteenth Amendment protections to juvenile defendants.<sup>31</sup> Similarly, in *Winship* (1970), the Court ruled that proof beyond a reasonable standard is required to establish guilt of criminal charges for juvenile defendants because “the same considerations that demand extreme caution in factfinding to protect the innocent adult apply as well to the innocent child.”<sup>32</sup> *McKeiver v. Pennsylvania* (1971) departs from the trend established by the previous three cases of the Due Process Era.<sup>33</sup> The *McKeiver* Court declined to extend the right to a jury trial because a jury is not a “necessary component of accurate factfinding.”<sup>34</sup> Lastly, *Breed v. Jones* (1975) expanded the rights of juvenile offenders by prohibiting them from being prosecuted twice for the same crime.<sup>35</sup>

<sup>26</sup> Feld, *supra* note 21.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Kent v. United States*, 86 S. Ct. 1045, 1054 (1966).

<sup>30</sup> *Id.*

<sup>31</sup> *In re Gault*, 87 S. Ct. 1428 (1967) (where the Court ruled that juvenile defendants have a right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination.).

<sup>32</sup> *In re Winship*, 90 S. Ct. 1068, 1071 (1970) (before this ruling, some juvenile courts used the preponderance of evidence standard of proof which requires a greater than 50% chance that the defendant is guilty.).

<sup>33</sup> *McKeiver v. Pennsylvania*, 91 S. Ct. 1976, 1985 (1971) (where the Court explained “the requirements of notice, counsel, confrontation, cross-examination, and standard of proof naturally flowed from this [factfinding] emphasis. But one cannot say that in our legal system the jury is a necessary component of accurate factfinding.”).

<sup>34</sup> *Id.*

<sup>35</sup> *Breed v. Jones*, 95 S. Ct. 1779, 1791 (1975) (where the Court held that the Double Jeopardy Clause of the Fifth Amendment applied to juvenile court proceedings.).

## GET-TOUGH ERA

If the juvenile legal system is a house, the Get-Tough Era is responsible for severe damage that actively devalues the home, despite the home's robust renovations and repairs. The "tough-on-juvenile crime" stance was a product of Princeton professor John DiIulio's "superpredator theory," which purported to find "evidence that juveniles are doing homicidal violence in wolf packs."<sup>36</sup> As a result, the Clinton administration urged cities and municipalities to be tough on crime to deter "superpredators."<sup>37</sup> Therefore, this era is marked by a departure from rehabilitation as well as an increase in racist and overly retributive policies. Prosecutors were encouraged to try these juvenile offenders as adults and as a result, municipalities were urged to enforce youth curfews—two policies that primarily impacted Black boys.<sup>38</sup>

## KIDS ARE DIFFERENT ERA

Many legal scholars recognize the harsh and racist rhetoric of the Get-Tough Era to be problematic and counterproductive to the original purpose of the first juvenile court. Fortunately, present-day American courts and policies are largely influenced by what juvenile justice scholars call "the contemporary reaffirmation of the Kids Are Different Era."<sup>39</sup> During this era, which dates back to 2005, the Supreme Court rendered three pivotal decisions regarding juveniles: *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*.<sup>40</sup>

In 2005, the Supreme Court ruled it unconstitutional for a youth under eighteen years old at the time of their crime to receive a death penalty sentence.<sup>41</sup> In reaching this holding, the *Roper* Court reversed the 1989 *Stanford v. Kentucky* ruling, which allowed youth who were at least sixteen years old at the time of their crimes to receive death penalty sentences.<sup>42</sup> Five years after *Roper*, the Supreme Court rendered a landmark decision in *Graham v. Florida*, holding that life without parole violates the Eighth Amendment for juveniles

<sup>36</sup> Ivonne Roman, *The Curfew Myth*, THE MARSHALL PROJECT (July 31, 2018), <https://www.themarshallproject.org/2018/07/31/the-curfew-myth>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Feld, *supra* note 21.

<sup>40</sup> *Id.*

<sup>41</sup> *Roper v. Simmons*, 125 S. Ct. 1183, 1185 (2005).

<sup>42</sup> *Id.*

who commit non-homicide offenses.<sup>43</sup> In 2012, *Miller v. Alabama* symbolized a continued departure from the “superpredator” rhetoric from the previous decade.<sup>44</sup> Accordingly, the Supreme Court held that it was unconstitutional to sentence someone under the age of eighteen at the time of a crime to mandatory life without parole.<sup>45</sup>

The Juvenile Delinquency Prevention and Control Act of 1968 recommended that children charged with noncriminal (status) offenses be handled outside the court system.<sup>46</sup> The most common status offenses regarding juveniles are truancy, violating a city or county curfew, running away from home, and underage consumption and possession of alcohol.<sup>47</sup>

Challenges have been mounted to some curfew laws on the basis that they violate juveniles’ First Amendment rights to free speech and association.<sup>48</sup> One recent example involved a curfew law imposed by the city of Rochester, New York.<sup>49</sup> In 2009, the New York Court of Appeals struck down the law as unconstitutional, but several other curfew ordinances have been upheld after being challenged in court.<sup>50</sup> Many courts will, however, uphold curfew ordinances if they provide a First Amendment defense, whether specifically for the right of assembly, the free exercise of religion, or for expressive activities in general.<sup>51</sup> In other words, if the curfew law includes an affirmative defense allowing for such First Amendment activities, many courts will uphold the youth curfew and find it to be constitutional.

The Fourth Circuit Court of Appeals upheld a city curfew for juveniles in *Schleifer v. City of Charlottesville* (1998): “We decline to punish the City for its laudable effort to respect the First Amendment. A broad exception from the curfew for such activities fortifies, rather than weakens, First Amendment val-

<sup>43</sup> *Graham v. Florida*, 130 S. Ct. 2011, 2015 (2010) (where the court required states to allow juveniles to have “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”).

<sup>44</sup> *Miller v. Alabama*, 132 S. Ct. 2455, 2458 (2012) (Court required a judge to take into consideration the age of the offender before sentencing him or her to life without parole.).

<sup>45</sup> *Id.*

<sup>46</sup> Vera Institute, *Keeping Kids Out of Court: Rethinking Our Response to Status Offenses*, STATUS OFFENSE REFORM CENTER (Oct. 8, 2014), [https://www.modelsforchange.net/publications/648/Keeping\\_Kids\\_Out\\_of\\_Court\\_Rethinking\\_Our\\_Response\\_to\\_Status\\_Offenses.pdf](https://www.modelsforchange.net/publications/648/Keeping_Kids_Out_of_Court_Rethinking_Our_Response_to_Status_Offenses.pdf).

<sup>47</sup> *Id.*

<sup>48</sup> David Hudson Jr., *Curfews*, THE FIRST AMEND. ENCYCLOPEDIA (2009) (last updated June 3, 2020).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

ues.”<sup>52</sup> A year later, the D.C. Circuit Court of Appeals upheld a youth curfew with similar reasoning in *Hutchins v. District of Columbia* (1999).<sup>53</sup> However, in *Hodgkins v. Peterson* (2004), the Seventh U.S. Circuit Court of Appeals struck down Indiana’s curfew law.<sup>54</sup> In contrast to the previous courts, this appellate court did not view the affirmative defense as compelling enough to defeat the constitutional challenge.<sup>55</sup> The *Hutchkins* court found the youth curfew to be unconstitutional because the inclusion of the affirmative defense “does not significantly reduce the chance that a minor might be arrested for exercising his First Amendment rights.”<sup>56</sup> Although lower courts have made decisions regarding the constitutionality of curfew laws, the Supreme Court has not done so. According to David L. Hudson, Jr., law professor and First Amendment scholar, until the Supreme Court weighs in, confusion regarding the constitutionality of curfew laws will persist.<sup>57</sup> The Court had an opportunity to review the constitutionality of a curfew in *Bykofsky v. Middleton* (1976), but the Court denied certiorari.<sup>58</sup> Justice Thurgood Marshall dissented, writing that the Court should take the case to examine whether “the due process rights of juveniles are entitled to lesser protection than that of adults.”<sup>59</sup>

#### YOUTH CURFEW ENFORCEMENT AND RACE

In 2018, The Marshall Project completed a report to investigate the correlation between race and youth curfew laws.<sup>60</sup> The report showed that curfew laws in various cities resulted in profiling of Black and Brown youth because police tended to stop them at a higher rate than their white peers.<sup>61</sup> The Marshall Project also discussed a study from the Rutgers University School of Criminal Justice.<sup>62</sup> The criminal justice scholars at Rutgers described the inherent racism embedded in how youth curfews are enforced by police officers.<sup>63</sup> The study found: “encounters are initiated by police officers who are making on-the-spot assessments of young people’s proclivity for delinquency,

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Ivonne Roman, *supra* note 36.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

prospects for rehabilitation, and overall moral character, . . . with limited information, often falling back on racial and ethnic stereotypes.”<sup>64</sup> Dr. Rod Brunson, dean of the Rutgers School of Criminal Justice, found that police stops are unevenly enforced, and thus, are “consistently exposing youth of color to a wide range of harms.”<sup>65</sup>

Furthermore, the Marshall Project discussed the work of the Campbell Collaboration, a nonprofit that synthesizes research studies for policymakers.<sup>66</sup> In 2016, the Campbell Collaboration published a systematic review of research literature on juvenile curfew programs.<sup>67</sup> To conduct this systematic review the Campbell Collaboration examined 7,000 studies on juvenile curfews and synthesized the 12 most rigorous studies.<sup>68</sup> The report stated the following:

“Evidence suggests that juvenile curfews are ineffective at reducing crime and victimization. The average effect on juvenile crime during curfew hours was slightly positive — that is a slight increase in crime — and close to zero for crime during all hours. Similarly, juvenile victimization also appeared unaffected by the imposition of a curfew ordinance.”<sup>69</sup>

On May 25, 2022, during the City Council vote, aldermen were clearly divided on this issue and many aldermen were vocal about the reasoning as well as the rationale for their vote.<sup>70</sup> The ordinance passed with a 30–19 vote.<sup>71</sup> Proponents of the expansion emphasized public safety and crime reduction, despite the strong research that suggests youth curfews do not reduce crime.<sup>72</sup> Alderman Raymond Lopez (15th) was a fierce opponent to the expanded curfew. Lopez pointed to the “80 percent drop” in curfew citations in recent years—from 2,453 citations in 2018 to 1,804 in 2019 and 635 citations in 2020.<sup>73</sup> There were 364 last year and just 98 so far this year.<sup>74</sup> Lopez argued that the curfew failed to address “what’s going on in the community,” as he explained that this expanded curfew will exacerbate and “escalate [existing]

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Fran Spielman, *Stricter curfew approved by divided City Council*, THE CHI. SUN-TIMES, (May 25, 2022), <https://chicago.suntimes.com/city-hall/2022/5/25/23141190/curfew-law-city-council-lightfoot-downtown-crime-violence-shootings-millennium-park>.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

tension between our youth, our city, and our police officers.”<sup>75</sup> Many aldermen who opposed the curfew echoed similar sentiments to Lopez—that the curfew failed to address the root causes at issue. Alderman Leslie Hairston (5th) voted no and emphasized the need to involve family and community stakeholders.<sup>76</sup> In lieu of expanding the curfew, Hairston advocated “for teaching young people conflict-coping and resolution skills, at home, in school, in after-school programs.”<sup>77</sup>

Alderman Andre Vasquez (40th) echoed concerns about the efficacy of the curfew but spoke directly about his own experiences growing up in Chicago and being targeted for his race. Vasquez, the son of two Guatemalan immigrants, is a former rapper and community organizer. Before the vote, Vasquez recalled how he was kicked out of Grant Park or Navy Pier every weekend because he was a person of color, sitting outside and “literally just playing music with friends.”<sup>78</sup> In Vasquez’ eyes, the expansion of the curfew is problematic because the policy “criminalizes children of color and further segregates our city.”<sup>79</sup>

Vasquez’s anecdote is particularly compelling when considering how often youth of color have made complaints of being profiled and targeted downtown, not only by law enforcement, but also by businesses. In January 2019, Water Tower Place, a shopping center located in Chicago’s Magnificent Mile neighborhood, implemented a new rule banning unaccompanied minors on weekend evenings.<sup>80</sup> In April 2018, Erick Johnson of *The Crusader*, authored an article detailing a visceral experience of racial profiling at Water Tower Place. Six Black boys were escorted out of the shopping mall by a security guard for innocuous behavior.<sup>81</sup> A bystander who witnessed the disturbing incident sought out a manager and was told that the teenagers were escorted out of the mall because they were not making any purchases, which put them in violation of the mall’s code of conduct.<sup>82</sup> The manager accused the boys of “loitering” and not being “engaged in the shopping experience.”<sup>83</sup> Assuming best intent, perhaps Water Tower Place management had valid reasoning for

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Erick Johnson, *Racial Profiling hits Water Tower Place*, CHI. CRUSADER (Apr. 12, 2018).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

using such vague language. However, from a legal perspective, this article would be remiss to not emphasize the dangers of vague language in the context of policing in America.

Kristin Henning is a nationally recognized legal scholar, professor, and activist in juvenile justice reform.<sup>84</sup> Henning is the author of *The Rage of Innocence: How America Criminalizes Black Youth*, a new book published in September 2021.<sup>85</sup> Blending data, history, anecdotes, and adolescent brain science, Henning asserts a compelling argument: the crisis in racist American policing begins with its relationship to Black children.<sup>86</sup>

On October 3, 2022, Block Club Chicago published an article about youth-led activism regarding the disparate enforcement of the curfew. According to the article, officers made one curfew-related arrest, issued seven curfew citations, and made 119 reports in relation to the curfews from May 27 to August 8, covering Memorial Day weekend through Lollapalooza weekend.<sup>87</sup> A report is when an officer has contact with a minor regarding the city's curfew but does not issue a citation or an arrest.<sup>88</sup>

Unfortunately, the enforcement data confirmed the fears that some aldermen expressed regarding race. Looking at the report, curfew-related police activity clearly impacted areas where Black and Brown children lived the most.<sup>89</sup> The neighborhoods with the most curfew citations and reports are in the 8th, 7th, 9th, and 25th police districts. Grand Central (25th) Police District, which covers part of the Northwest and West Sides, recorded the most citations by far with 28 reports.<sup>90</sup> More affluent, white populations, such as the Near North Side's 18th District, only had one curfew report.<sup>91</sup> Notably, crime in the districts that saw the most curfew reports have kept pace with last year, which included the 8th and 25th districts.<sup>92</sup>

On July 28, 2022, Chicago youth members of GoodKids MadCity and Brighton Park Neighborhood Collective held a protest across from Grant Park

<sup>84</sup> Stuart Miller, *How can we stop treating children of color like criminals? One step at a time, a lawyer says*, THE L.A. TIMES (Sept. 27, 2021).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Melody Mercado, *Lightfoot's 10 PM Youth Curfew Was Mostly Enforced On The South And West Sides — And It Had Little Effect On Crime, Data Shows*, BLOCK CLUB CHI. (Oct. 21, 2022).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

during Lollapalooza.<sup>93</sup> Both youth-centered community social justice organizations demanded that the City Council rescind the curfew.<sup>94</sup> Youth organizers of both groups felt unfairly targeted and unwelcome to come downtown because of the color of their skin.<sup>95</sup>

Kara Crutcher, a lifelong Chicagoan, and the lawyer who represents Good-Kids MadCity, adamantly opposes the expansion of the curfew and the racist implications of its enforcement.<sup>96</sup> According to Crutcher, “There’s no rational relationship between the alleged goals of the curfew and the way it’s being implemented and enforced and the impact that it’s having.”<sup>97</sup>

#### AN INTERVIEW ON JUVENILE JUSTICE: LOOKING BACK AT BLACK CODES AND LOOKING AHEAD TO ALTERNATIVE APPROACHES

Professor Maria Hawilo, a former public defender, currently teaches a Juvenile Justice course at Loyola University Chicago School of Law. Hawilo’s interview affirms the common themes discussed in this article regarding youth curfews and race. Hawilo explained, “Curfews oftentimes disproportionately fall on Black and Brown kids. Curfews can provide another reason for increased police intervention with certain populations disproportionately.”<sup>98</sup> During the interview, Hawilo emphasized the importance of this trend in curfew policing. She wondered, “How can we actually put guidelines in place that would prevent certain communities, in certain parts of the city from being disproportionately targeted?”<sup>99</sup>

Hawilo is a mother and a proud parent. Hawilo also used to be a lawyer for youth at the Public Defender Service in Washington, D.C. Speaking from her experience in both roles, Hawilo understood the sentiment behind the policy. For her, the sentiment is not a bad one because the teenage brain is challenging—the less busy kids are, the less structured their time is, and the larger the group settings, there is a greater likelihood for trouble to occur.<sup>100</sup>

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Zoom Interview with Maria Hawilo, Distinguished Professor in Residence, Loyola University Chicago School of Law (Oct. 13, 2022).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

Hawilo recognized these truths, but still expressed reasonable concerns about the curfew's disparate effects on Black and Brown communities.<sup>101</sup>

Police leaders and proponents on City Council made the argument that the expansion of the curfew serves legitimate law enforcement interests, citing the value of investigatory stops.<sup>102</sup> If police officers see a group of young people, who are obviously underage, congregating downtown after hours, the curfew law gives police authority to approach them and conduct an investigatory stop.<sup>103</sup> Hawilo worried about this type of “governmental intervention” and its unintended consequences.<sup>104</sup> Curfews can potentially serve as a pathway that allows police to conduct more arrests, which could then lead to interrogations. Hawilo explained how arrests and citations “get tallied” in the system.<sup>105</sup> When we look at future police encounters, there may be a youth who has multiple curfew violations on their legal record. Hawilo made a compelling case for how mere status violations, in the eyes of law enforcement, can “paint a more nefarious portrait” for youth who violate the curfew.<sup>106</sup>

There is a trajectory between the Black Codes, which contained laws prohibiting freed slaves from being out after sundown, and modern curfew laws.<sup>107</sup> This article recognizes that the expanded youth curfew is not explicitly linked to the Black Codes. Chicago's youth curfew is color-blind and applies evenly throughout the city, even though data shows it is not enforced evenly. However, as Hawilo eloquently articulated, “there is no way to truly disaggregate the history of curfews being a tool of racist oppression from the present moment.”<sup>108</sup>

Back on May 25th, 2022, Alderman Jeanette Taylor (20th) spoke from the council floor against the ordinance, saying the curfew would be disproportionately directed at Black youth.<sup>109</sup> Taylor declared:

“I don't have a skating rink. I don't have a Chuck E. Cheese. I don't have anything for my young people in my ward. And so, they wouldn't be downtown if we invested in them . . . this country [will] wait until something

<sup>101</sup> *Id.*

<sup>102</sup> Spielman, *supra* note 70.

<sup>103</sup> *Id.*

<sup>104</sup> Hawilo, *supra* note 98.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Poon, *supra* note 4.

<sup>108</sup> Hawilo, *supra* note 98.

<sup>109</sup> Spielman, *supra* note 70.

dramatic happens, and then we blame the young people who we didn't invest in."<sup>110</sup>

Taylor, like many critics of the ordinance, encouraged the council to consider how expanding the curfew failed to address the underlying problems that led to the ordinance in the first place.<sup>111</sup> Like Taylor, Hawilo emphasized that alternative approaches should be centered on harnessing community engagement.<sup>112</sup>

### CONCLUSION

How can adult policymakers reimagine legislative responses that refrain from over criminalizing underrepresented youth? Before passing ordinances affecting youth, Chicago's policymakers should center community needs and incorporate youth voices. Philadelphia's expanded youth curfew has met similar opposition and pushback. Unlike Chicago, Philadelphia issues fines of up to \$500 for certain curfew violations.<sup>113</sup> Andrew Lee, a writer for *Anti-Racism Daily*, published an article in July 2022 after the youth curfew expansion hit the streets of Philadelphia. Lee eloquently wrote, "non-punitive interventions are sometimes dismissed as utopian dreams, nice in theory but dangerous to rely on given the realities of life."<sup>114</sup> However, Lee explains why non-punitive interventions rooted in creating safe public spaces for the community provide considerably more benefits than police intervention.<sup>115</sup> Writer and comedian Vanessa Guerrero argues that a new taco stand "improved the morale and safety" of her Los Angeles neighborhood far better than the ubiquitous police helicopters circling above.<sup>116</sup>

In the fall of 2020, the Peace Book was developed by youth working with the advocacy organization Good Kids Mad City ("GKMC") to serve as a catalyst to reduce gun violence and promote the well-being of Chicago's communities.<sup>117</sup> The Peace Book Ordinance calls for a shift away from punitive

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Hawilo, *supra* note 98.

<sup>113</sup> Bates, *supra* note 13.

<sup>114</sup> Lee, *supra* note 1.

<sup>115</sup> *Id.*

<sup>116</sup> Maggie Hennessey, *When your downstairs neighbor is a Chicago restaurant, there's noise, wafting smells and 'sweet, shared-building stuff'*, THE CHI. TRIB. (Oct. 26, 2022).

<sup>117</sup> Asha Ransby-Sporn, *Chicago doesn't need more curfews and criminalization*, CHI. READER (May 25, 2022), <https://chicagoreader.com/columns-opinion/opinion/chicago-doesnt-need-more-curfews-and-criminalization/>.

systems and for restorative, trauma-responsive violence interruption strategies.<sup>118</sup> While there are a myriad of steps the mayor can take to create better outcomes for youth across Chicago, passing the Peace Book Ordinance is a necessary first step.

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<sup>118</sup> *Id.*