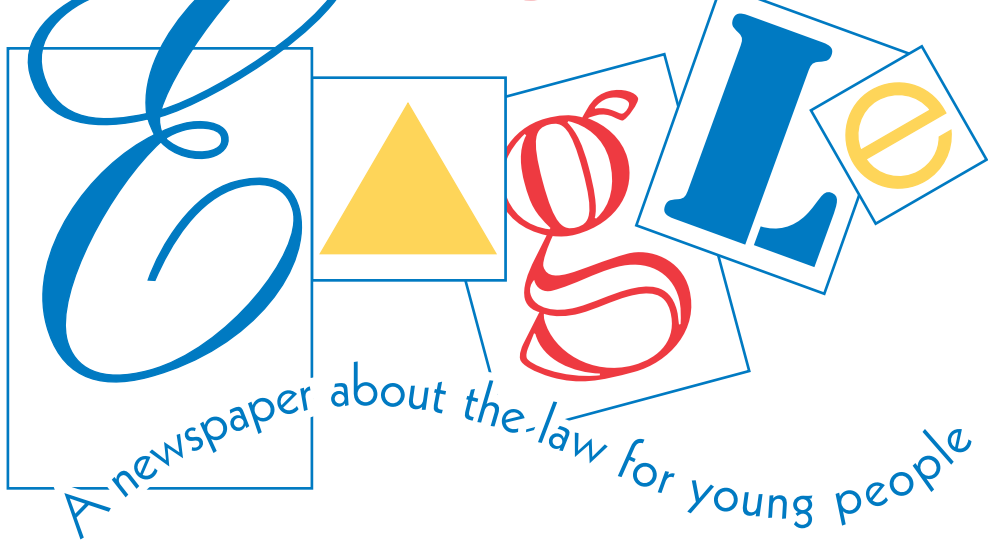


LEGAL



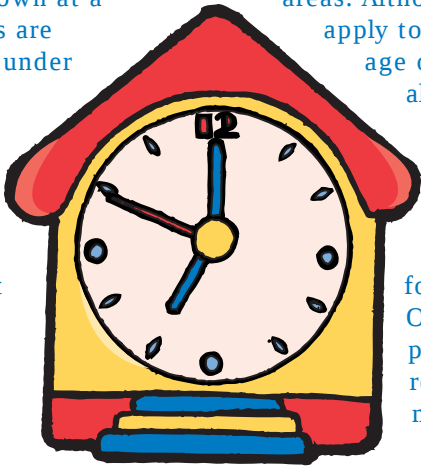
SPRING 2002

When's Your Curfew? Depends Where You Live

by Karen M. Spring

You have probably heard the word “curfew” before. Perhaps your parents have instituted one in your house and you have to be home by a certain hour. Did you know that the government can also enforce a curfew for young people?

A curfew is a rule that requires a specific group of people to be off the streets of a town at a certain time. Curfews are often used for those under the age of 18, but sometimes there is no age limit. Many parents impose curfews to restrict their children’s activities at a certain hour. The reason for curfews is to help keep kids safe and protected.



Fighting crime with curfews

While curfews date back to the 1890s, in the past few years, the practice has gained popularity in towns across the United States. Some local city governments have imposed curfew laws so that individuals are off the streets by a specific time. Many town officials believe that by enforcing curfew laws, they will limit the number of crimes committed in their areas. Although curfews often apply to **minors** under the age of 18, such laws can also be enforced for people of all ages.

For instance, the city of Camden strictly enforces a curfew for all residents each October 30 and 31 to prevent Halloween-related pranks and mischief. Other

towns impose curfews during school hours from September through June to help eliminate classroom absences among students. Many county officials like the idea of a curfew.

“As an educator and a mother of three teenagers, I absolutely support the establishment and enforcement of curfews,” says Annette Castiglione-Degan, a freeholder in Camden County. “In my mind there can be no logical reason for a teenager to be on the street after 10 p.m. during the week and 11 p.m. on the weekend.”

Jeffrey L. Nash, also a Camden County freeholder and a parent, agrees.

“The benefits of a curfew for the children, parents, and community far outweigh any constitutional concerns that may arise from mere time restrictions,” Nash said.

CONTINUED ON PAGE 2

Treason: A Country's Ultimate Betrayal

by Roberta K. Glassner, Esq.

Since September 11, 2001, the open expression of patriotism in the United States has taken on new energy. The American flag, the symbol of our pride in and love for our country is everywhere.

But not every American shares this pride of country. In the past, a few have betrayed the United States as spies for foreign governments, and some have joined in wars on the side of America’s enemies. These acts are considered **treason**.

Today, in the aftermath of the first foreign attack on U.S. soil since Pearl Harbor, the U.S. is faced with an American who

chose loyalty to the foreign forces who brought about that horrific attack—John Walker Lindh (see sidebar on page 3). This high-profile case has brought the issue of treason to the forefront and back in the headlines.

What is treason?

Considered the greatest of all offenses against the United States, the U.S. Constitution describes treason as the act of taking up arms against the United States or helping its enemies. It is the only crime identified specifically in the U.S. Constitution.



Under federal law, a person convicted of treason is considered a traitor, and may be punished with a sentence of as little as five years in prison and as severe as death.

Treason is very difficult to prove in a court of law.

The founding fathers of our country established the standard for proving the crime of treason high to avoid the abuses of British law, which they left England to escape. Under Article III of the U.S. Constitution, a person can be convicted of treason in the following

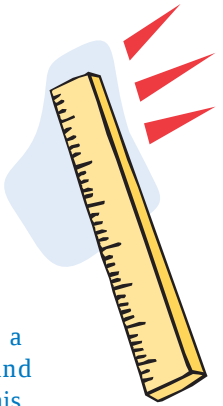
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Spare the Rod and Spoil the Child?

by Dale Frost Stillman

During his third period math class, Tom fell asleep. Instead of calling his name to rouse him, the teacher walked over to Tom’s seat, and smacked the desk with a ruler. That got Tom’s attention.

“Tom, up to the blackboard now,” the teacher instructed. Tom immediately rose from his seat, and took his position facing the board; he knew what was coming next. The teacher picked up a wooden paddle, and began whacking his backside. Why didn’t Tom become indignant, and inform his teacher that his parents would sue? Because Tom lives in Georgia, one of 23 states where **corporal punishment** in schools is permitted.



What is corporal punishment?

Corporal punishment is the intentional inflicting of pain upon a child because he or she has exhibited unacceptable behavior. When an adult in authority hits a child with a hand, cane, paddle or belt to inflict pain, that adult is using corporal punishment. Slapping, punching, kicking, and choking are also included under the definition of corporal punishment.

The immediate goal of this type of punishment is to stop a child’s unacceptable behavior. In states where it is legal, local school districts are allowed to ban corporal punishment. In districts where it is legal, some teachers try to mold their students’ behavior to conform to classroom expectations by using physical consequences. For example, a student who fails to hand in a homework assignment might be punished in the same way Tom was. Corporal punishment is also used to discourage other students from engaging in the same type of behavior, by causing them to fear the same punishment.

“Schools should not physically discipline students,” says Deborah Jacobs, executive director of the American Civil Liberties Union of New Jersey. “It’s a matter for parents to decide. There are serious implications for taking that decision out of the hands of parents,” she contends.

Jacob notes that hitting another person is a very serious act and disciplining students in that manner takes the decision of what is humane punishment for their child away from the parents.

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This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

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Spare the Rod and Spoil the Child?

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Can they do that in New Jersey?

Since colonial times corporal punishment has been used as a method for disciplining children. Its roots in the United States can be traced back to England, where it still remains legal. Organizations such as the National Education Association, the American Psychiatric Association, and the National Committee to Prevent Child Abuse are working to abolish corporal punishment across the country. While the movement to abolish corporal punishment in the rest of United States did not begin until almost 20 years ago, New Jersey banned the practice in public schools in 1867, becoming the first state to do so.

"We're against it," says Ed Gallagher, director of communications for the New Jersey Education Association. "We support New Jersey's no corporal punishment law which has been on the books forever."

One student at East Brunswick High School noted that corporal punishment addresses the symptom, not the problem and contends that children receiving this type of punishment learn to act through their fear of physical pain rather than an understanding of why their actions are inappropriate.

According to a 1992 article in the *Journal of Adolescent Health*, states with the highest incidence of corporal punishment tend to be in the south and southwest, while the lowest incidence is in the northeastern part of the United States. The article notes that corporal punishment is more commonly used on children in kindergarten through eighth grade. Boys and disadvantaged children also suffer more episodes of corporal punishment according to the article.

What do the courts say?

Over the years the courts in our country have heard many cases about the legality of corporal punishment. In *Ingraham v. Wright* (1977) the U.S. Supreme Court considered whether the

paddling of two male students in Florida violated their right to be free from "cruel and unusual punishment," as stated in the Eighth Amendment to the U.S. Constitution. In siding with Dade County school officials, the Court decided that the Eighth Amendment was designed to protect persons charged and/or convicted of a crime, not children in school.

Ten years later, however, in *Garcia v. Miera* (1987) the Court decided that school officials could be sued. In the case, a nine-year-old girl from New Mexico had been scarred as a result of beatings at school with a broken wooden paddle. The Tenth Circuit Court of Appeals found that the girl's Fifth Amendment right of substantive **due process** had been violated because the officials had used excessive force when they paddled her.

What about the kids?

The American Academy of Child and Adolescent Psychiatry (AACAP) believes that corporal punishment in general is not an effective discipline method and can be harmful to children. In fact, AACAP believes that victims of corporal punishment learn violence and **hypocrisy** from those inflicting the punishment. When children witness adults hitting or otherwise inflicting pain on a child in an effort to alter his or her behavior, the lesson the child might learn is that violence is an acceptable way of handling problems. Some children may resort to physical ways of settling problems because of what they have learned, the AACAP concluded.

According to the National Mental Health Association, children who have been subjected to corporal punishment exhibit low self-esteem and lack

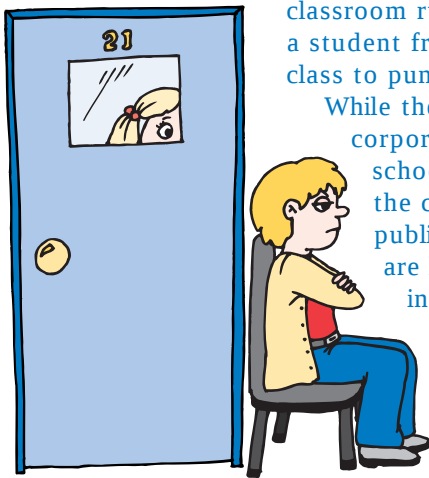
of trust in adults. Such punishment also encourages children to be victims.

If so many organizations view corporal punishment as harmful, why is it legal in so many states? According to another article in the *Journal of Adolescent Health*, supporters of corporal punishment state that children learn the appropriate appreciation for authority, are better controlled, learn to discipline themselves, develop better social skills, and improve moral character. Without the threat of corporal punishment, advocates speculate that discipline problems in school would increase, jeopardizing teacher safety. Supporters of corporal punishment in schools include various **fundamentalist** churches, the National Association of Secondary School Principals and the American Federation of Teachers.

Are there effective alternatives to corporal punishment? Think about the methods of discipline used in your school. Depending on your grade level and the severity of the offense, teachers may give extra homework, assign detention, or call your parents. Experts have found that positive reinforcement techniques, such as praising a student for completing homework, are more effective than punishing a student for not completing homework.

In addition to rewarding appropriate behavior, other methods of discipline that don't involve physical punishment, include verbal reprimands to students for failure to follow classroom rules or isolation of a student from the rest of the class to punish bad behavior.

While the merits of using corporal punishment in schools continue across the country, New Jersey public school students are lucky to be living in a state that does not utilize physical punishment as a method of disciplining its students.



Curfew

CONTINUED FROM PAGE 1

Curfews imposed by cities and towns offer both pros and cons. In towns where there is a high crime rate, the curfew laws protect good kids from crime while helping to eliminate the opportunity for young people to take part in criminal activity. The laws also provide parents with the legal responsibility to restrict the activities of their children. The downside to government-enforced curfews is that the laws take action against innocent people who are not criminals. Also, studies such as the one conducted by the Justice Policy Institute as a project of the Center on Juvenile and Criminal Justice have shown that curfews do not prevent juvenile crime.

While people must obey curfew laws, there are some exceptions to the rules. If individuals are traveling to or from a school-sponsored event (a school dance, for instance) or a religious function (a Bible study class), are in the company of an adult, are on their way to or from work, or are on their way to an emergency situation, they can be exempt from the curfew law.

When cities impose curfews for minors, there are punishments for those who break the law. Minors who break curfew laws are not severely punished, although they may end up spending a couple of hours at the local police station or may be driven home by the police. Parents are the ones who receive fines or, in rare cases, a brief jail sentence.

Curfews and the Fourteenth Amendment

The issue of curfews falls under the freedoms outlined in the Fourteenth Amendment to the U.S. Constitution. This Amendment was ratified in 1868 in an effort to give citizenship privileges to African-Americans who were freed from slavery after the Civil War. The Fourteenth Amendment defined equal national citizenship for Americans, making countrywide rights the most important over all other privileges. What this means is that Americans are citizens of the United States first and of their individual states second. Nationwide citizenship takes priority over state or local citizenship. Within the Amendment is an equal protection clause. This clause requires that, among other things, all U.S. citizens regardless of age receive the same freedoms from these laws.

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Treason

CONTINUED FROM PAGE 1

two ways: (1) on the testimony of two eyewitnesses to the same act, or (2) by a confession from the accused in open court. Because the crime is so difficult to prove, there have been fewer than 40 federal prosecutions for treason in America’s history and even fewer convictions. Following are a few interesting cases involving treason.

Forever a traitor

The most famous treason trial in this country was held in 1807 and involved Aaron Burr after he left office as Vice President of the United States under Thomas Jefferson. Burr and his comrades were accused of conspiring to capitalize on a possible war with Spain by attempting to take possession of what is now the city of New Orleans. Although Burr was **acquitted** of the crime, he was forever regarded as a traitor in the court of public opinion.

Treason or taxation without representation?

Another well-known treason trial was held in 1794, when several Pennsylvania men took up arms against the government to protest a tax on whiskey. Known in history as the Whiskey Rebellion, the conflict not only protested the whiskey tax, but also brought the issue of states’ rights to the forefront and prevented the U.S. from becoming an elitist society.

The people of western Pennsylvania believed that the newly formed U.S. government did not adequately represent them in part because they were so far away from Pennsylvania’s “seat of government,” separated by a large mountain range. These settlers were not willing to submit to the principles of a central government steeped in **aristocracy** and many historians credit them with the democratic society we enjoy today.

Two of the rebels involved in the Whiskey Rebellion were convicted of treason, but were

A poet’s act of treason

During times of war, sympathizers are often caught giving “aid and comfort to the enemy.” Ezra Pound, the famous poet and a U.S. citizen, was charged with treason after World War II. Pound often praised Benito Mussolini and Adolph Hitler during speeches he gave over Italy’s shortwave broadcasts to North America. The poet also spoke openly about his opposition to America’s wartime agenda and its political leadership.

Pound never stood trial on the treason charge because a group of psychiatrists declared him insane and, therefore, **incompetent** to stand trial. Instead, he was confined to a governmental hospital for 12 years and released in 1958.

Tokyo’s Rose

The case of “Tokyo Rose” is another famous wartime treason case. Ikuko Toguri, later dubbed “Tokyo Rose” by U.S. troops in Japan, was a Japanese-American U.S. citizen who found herself stranded in Japan without a passport when Pearl Harbor was attacked and the U.S. entered the war. In November 1943, she began a career as a broadcaster for Radio Tokyo. Her radio program, the Zero Hour, was designed to lower the morale of U.S. Armed Forces stationed in Japan by making derogatory comments about the families the American soldiers left behind. Among other things, Tokyo Rose would claim that the soldiers’ wives were being unfaithful while they were gone. The Zero Hour became part of Japan’s psychological warfare against the United States.

After the war, Toguri was charged with treason for “adhering to, and giving aid and comfort to, the Imperial Government of Japan during World War II.” Toguri was convicted, and in 1949 she was sentenced to 10 years in prison and fined \$100,000.

Selling secrets

A legendary spy case in the early 1950s involved Julius and Ethel Rosenberg, who were accused of selling the secret of the atomic bomb to Russia during the Korean War. Although not charged with treason, the Rosenbergs were convicted on the charge of “conspiring to commit **espionage**.” Both were sentenced to death and executed in 1953.

In his sentencing speech justifying the death penalty, Federal Judge Irving R. Kaufman said, “I consider your crimes worse than murder... I believe your conduct... has already caused, in my opinion, the communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows how many millions more innocent people may pay the price for your treason.”

Although today the Rosenbergs’ guilt or innocence is the subject of debate, the case illustrated how seriously the U.S. government and the American people view disloyalty to their country.



later pardoned by President George Washington. The events before and after the Whiskey Rebellion are said to have informally redefined the word treason, allowing for disagreement with the U.S. government without being considered treasonous.

A Case of Modern-day Treason?

Sometimes called the “American Taliban,” John Walker Lindh is a 20-year-old native of California who became a devout convert to Islam at the age of 16. According to published reports, he left home in 1999, at the age of 18, to study the Islamic religion, first in Yemen, then in Pakistan. In May 2001, he is said to have traveled to Afghanistan, where he made contact with Al Qaeda, the terrorist organization led by Osama bin Laden, and allegedly became a Taliban fighter.

Al Qaeda and the Taliban, Afghanistan’s former ruling party, are **allies** in the Taliban’s battle with Northern Alliance forces. The Northern Alliance is comprised of Afghan tribes rebelling against the Taliban’s strict Islamic rule.

After the September 11th attacks, U.S. Armed Forces joined with Northern Alliance fighters in Afghanistan to fight against Taliban and Al Qaeda forces. The American mission was to eliminate the Taliban for aiding and supporting Al Qaeda terrorists and to put an end to Al Qaeda itself, whom the U.S. holds responsible for the World Trade Center and Pentagon attacks. After a bloody battle, U.S. and Northern Alliance troops captured Lindh, along with 80 Taliban warriors in a prison fortress in Afghanistan on December 2, 2001.

The American Taliban’s Story

Lindh was questioned in an Afghanistan hospital after his capture, first by CNN, then by the U.S. military, and then by the Federal Bureau of Investigations about his involvement with Al Qaeda and the Taliban.

Lindh told a CNN reporter that Al Qaeda leaders gave him a choice of either undergoing terrorist training or joining the Taliban in its fight against the Northern Alliance. Lindh chose to fight as a “jihadi,” a fighter of holy wars, under the name of Abdul Hamid. He claims he avoided the terrorist training that could have led to killing Americans. In the CNN interview, Lindh admitted his group of fighters were funded by Osama bin Laden, who is credited with planning the attacks on the World Trade Center and the Pentagon.

On December 9, 2001, FBI agents read Lindh his **Miranda Rights** and, according to the agents, he **waived** his right to a lawyer, both verbally and in writing. Lindh freely told the agents about his six months fighting alongside the Taliban, before and after the September 11th attacks.

On the day of his capture, Lindh stated that he and fellow Taliban fighters, all armed, were in the basement of the prison fortress before it was taken by American forces. When other Taliban captives in the prison rioted and CIA agent Mike Spann was killed by a hand grenade, Lindh said, “I didn’t see what was going on. I just heard.”

The government’s case

John Walker Lindh’s case poses a challenge to the American justice system. Should he be regarded as a prisoner of war, with Geneva Convention protection? Or, should he be considered a traitor against his country and tried for treason in a federal court with the possibility of a death sentence? The question is whether he conspired with foreign terrorist groups committed to attacking the U.S.

In his statements to the FBI, Lindh said he trained in explosives and firearms at Al Qaeda camps. He also said that in June 2001, he and his comrades learned of bin Laden’s planned terrorist attack on the United States. He found out about the destruction of the World Trade Center while serving on the front line fighting against the Northern Alliance.

The charges

On January 15, 2002, the Department of Justice filed a criminal complaint in the Federal District Court of Virginia charging John Walker Lindh with conspiring to kill U.S. citizens and supporting terrorist groups. He was not charged with the crime of treason, and none of the charges against him carries the death penalty. If convicted, Lindh could spend from 15 years to life in prison, with no possibility of early release.

In a public statement, U.S. Attorney General John Ashcroft said the basis for the charges came from the statements Walker made to FBI agents. One of the attorneys hired by Lindh’s family, George C. Harris, issued a protest, stating that Lindh had been “interrogated for 54 days without access to an attorney.”

Attorney General Ashcroft replied that Lindh signed a waiver of his right to an attorney and voluntarily gave his statement to the FBI.

The indictment

On February 5, 2002, the Justice Department presented its case to a **grand jury**. The grand jury **indicted** John Walker Lindh on 10 counts. U.S. Magistrate W. Curtis Sewell denied **bail** in the case on the grounds that Lindh represents a flight risk and a danger to the community. On February 13, 2002, Lindh appeared in court and pleaded not guilty to all 10 counts in the indictment.

The trial

At a hearing on February 15, 2002, the trial judge set jury selection in Lindh’s case for August 26, 2002, with the trial to begin on August 28.

On July 15, Lindh’s attorneys will make a **pre-trial motion** to the court to **suppress** the statements he made to the FBI in Afghanistan. The attorneys claim the FBI interview was conducted under “highly **coercive** circumstances” and should be thrown out. The government considers the statements crucial to its case, so the court’s decision in July will be extremely important to the fate of John Walker Lindh.

—Roberta K. Glassner

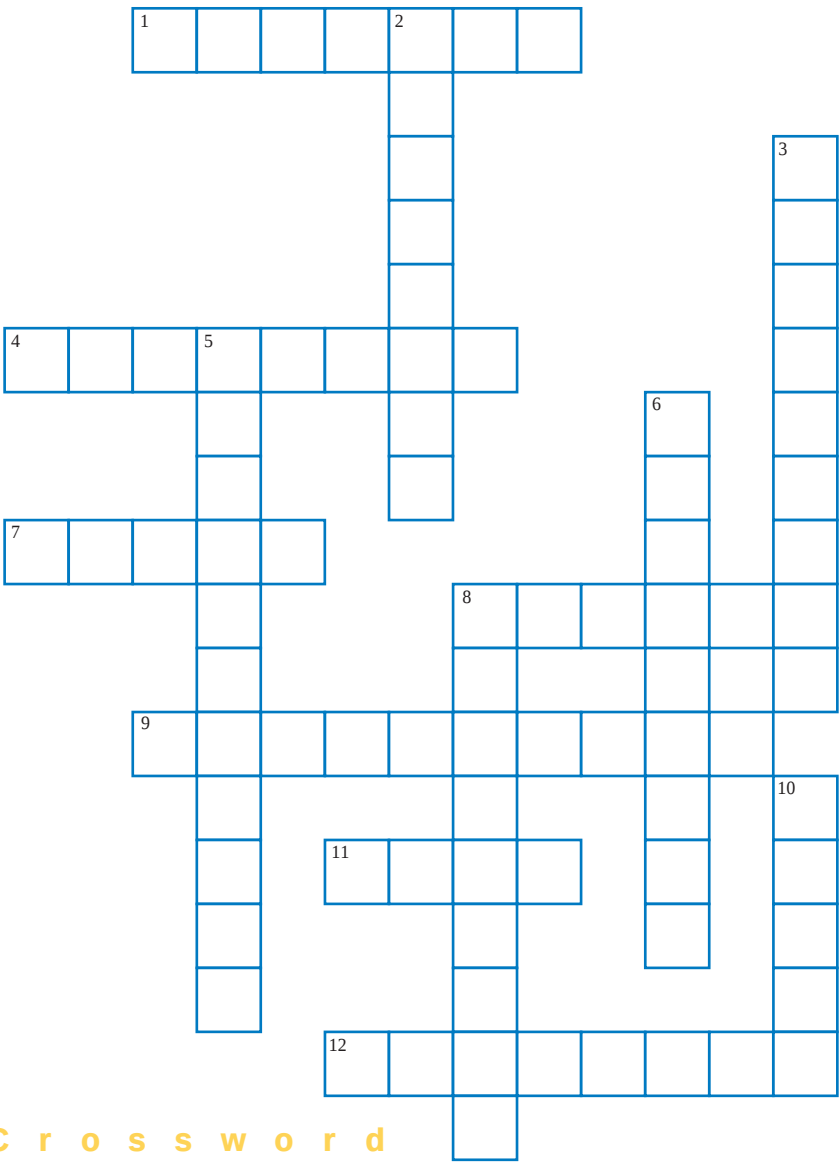
Crossword

ACROSS

- 1 the offense of attempting to overthrow the government.
- 4 to be charged with a criminal act by a grand jury.
- 7 a person under 18 years of age.
- 8 two individuals or entities who are associated with one another as friends or helpers.
- 9 a person who has been guilty of a crime or offense.
- 11 a thing of value (money, deed to a house, etc.) given to a court to ensure a defendant's appearance in court.
- 12 to be persuasive in a negative way or to force a person to think or act in a given way by pressure, threats or intimidation.

DOWN

- 2 to exclude evidence from a criminal proceeding.
- 3 a false appearance of virtue or claiming to be what one is not.
- 5 not legally qualified.
- 6 the crime of gathering, transmitting or losing information with regard to the national defense with the intent to use that information to the injury of the United States.
- 8 cleared from a charge.
- 10 to give up.



Crossword solution below

Curfew

CONTINUED FROM PAGE 2

The American Civil Liberties Union (ACLU) argues that curfew laws are unconstitutional under the Fourteenth Amendment. The group says that basic freedoms guaranteed to all U.S. citizens — regardless of age — are being violated by these laws. Even though children and teenagers are considered minors, they are still citizens of the United States and are entitled to the rights and freedoms established by the U.S. Constitution, argues the ACLU. The ACLU also finds that such regulations label all young people as criminals or **delinquents** — even the innocent, law-abiding citizens who do not engage in criminal activity. These laws can then result in discrimination against young people. In some cases throughout the country, courts have sided with the ACLU and stated that laws that impose a curfew on minors are illegal and discriminatory.

Wasting time

Curfew laws have resulted in other issues as well. According to Camden County Sheriff Michael W. McLaughlin, law enforcement officials spend precious time looking for people violating the curfew laws, patrolling the streets of towns, when they could be devoting that time to preventing serious crimes or capturing offenders.

Instead of looking for ways to deter crime in the community, Sheriff McLaughlin notes, these officers are bringing in minors who may not be involved in any type of criminal behavior. The added cost for enforcing these laws can sometimes outweigh any benefits, making police officers spend countless hours filling out paperwork and making courtroom appearances for curfew offenders.

Sheriff McLaughlin believes that police officers should selectively use curfews as a mechanism when they suspect a problem. For instance, if teenagers are causing a disturbance, they can then be considered in violation of the curfew law. The sheriff also believes that curfews should only be instituted in locations where there are problems.

“Curfews can be used as a control mechanism to watch over young people who are not being properly monitored by their parents or guardians,” Sheriff McLaughlin said.

Gloucester County freeholder Dr. Warren S. Wallace agrees.

“We have created a juvenile court system and social agencies that ‘act in the interest of the child,’ recognizing that the child is not a miniature adult but is in need of certain protections and guidance,” Dr. Wallace said.

Gloucester County Prosecutor Andrew N. Yurick supports curfew laws for minors as long as they

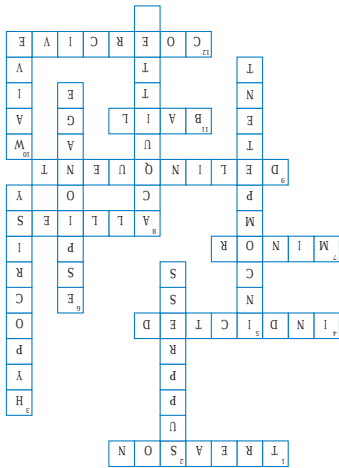
are “reasonable and not overly burdensome.”

“While I certainly think the best way to monitor and control criminal and inappropriate behavior on behalf of minors is through their parents,” Yurick said, “it is a sad reality that many of the young people we deal with in our office do not have parents who are effectively involved in their lives.”

The debate rages on

The Supreme Courts of Washington, Iowa, and Hawaii have all deemed curfews unconstitutional. In New Jersey, the debate over curfews will likely rage on until there is a definitive ruling by its Supreme Court. Until then, it is up to your individual township whether you need to be home by a certain time or not. Minors should contact their township police department to determine if their town has a curfew and if so, when it is, because ignorance of the law is not a defense to a violation.

Crossword solution



acquitted — cleared from a charge.

allies — two individuals or entities who are associated with one another as friends or helpers.

aristocracy — a government that is made up of a small privileged class.

bail — a thing of value (money, deed to a house, etc.) given to a court to ensure a defendant's appearance in court.

coercive — to be persuasive in a negative way or to force a person to think or act in a given way by pressure, threats or intimidation.

corporal punishment — the intentional inflicting of pain upon a child because he or she has exhibited unacceptable behavior.

delinquent — a person who has been guilty of a crime or offense.

due process — legal safeguards that a citizen may claim if a state or court makes a decision that could affect any right of that citizen.

espionage — the crime of gathering, transmitting or losing information with regard to the national defense with the intent to use that information to the injury of the United States.

fundamentalist — a person who adheres to a strict and literal interpretation of a set of basic principles.

grand jury — a jury consisting of 12 to 23 impartial people who decide if the evidence in a criminal case is strong enough to warrant a trial. This jury does not determine an individual's guilt or innocence.

hypocrisy — a false appearance of virtue or claiming to be what one is not.

incompetent — not legally qualified.

indicted — to be charged with a criminal act by a grand jury.

minor — a person under 18 years of age.

Miranda Rights — the rights that a person taken into custody has (i.e., the right to remain silent, the right to have an attorney present before questioning).

pre-trial motion — an application made to a judge before a trial begins.

suppress — to exclude evidence from a criminal proceeding.

treason — the offense of attempting to overthrow the government.

waive — to give up.