

COUNTERPRODUCTIVE AND WASTEFUL:
**Los Angeles' Daytime Curfew Pushes Students Away From School
and Diverts Resources Away From Real Community Safety**



A REPORT BY:
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Introduction

In 1995, the Los Angeles City Council passed an ordinance establishing a daytime curfew for the city's youth. Promulgated as Los Angeles Municipal Code (LAMC) § 45.04, the law as currently written makes it unlawful, with limited exceptions, for any youth under the age of 18 to be in a public place during hours of the day when the youth's school is in session. Between 2005 and 2009, the Los Angeles Police Department (LAPD) and the Los Angeles School Police Department (LASPD) issued more than 47,000 tickets under the ordinance.¹

This report – based on a review of scientific research, interviews with and surveys of thousands of students, and data obtained from LAPD, LASPD, and other public agencies – argues that LAMC § 45.04 is a fundamentally misguided policy. The curfew, which has increasingly been used as an enforcement tool to improve student attendance, in fact causes students to miss school. The curfew's economic burdens – which include hefty fines, missed days of school to attend court hearings, and lost earnings by parents who must accompany their children to court – fall most heavily on low-income communities and families that are least able to afford them. And the law has been applied in a manner that disproportionately affects black and Latino youth, who have been issued curfew citations under LAMC § 45.04 in numbers that far exceed their percentage of the population – a fact which, among others, exposes the city and other agencies to legal liability.

Moreover, substantial research shows that curfew laws are ineffective in achieving their stated purpose of reducing crime. LAMC § 45.04 diverts resources away from addressing serious crime, forcing police to address student attendance matters which are properly addressed by schools and families, not the penal system.

In response to a multi-year campaign by community organizations, LAPD and LASPD have agreed to modify their enforcement protocols for the daytime curfew to address some of the law's most deleterious consequences. These changes, reflected in recently issued guidance directives, represent meaningful steps forward. The law enforcement agencies with primary responsibility for enforcing the daytime curfew have demonstrated leadership by curtailing the unnecessary criminalization of youth and ensuring that their limited resources are instead focused on investigating and preventing crime.

Nonetheless, serious problems remain. Among other things, the new enforcement protocols are internal guidelines and thus can be revised at any time; they leave substantial discretion to individual officers (for example officers maintain discretion to handcuff and cite students who are simply running late to school); and they do not apply to the Los Angeles Sheriff's Department, which also has authority to cite students under the ordinance. The reality is that as long as LAMC § 45.04 is on the books, the potential for youth to be caught up unnecessarily in the penal system remains and limited resources for addressing real crime will continue to be misallocated.

As we discuss in these pages, the time has come to repeal this failed and counterproductive policy and to establish in its place a sensible and sustainable approach for ensuring that children stay in school. In place of the current approach, we encourage the City of Los Angeles to work with the many agencies within Los Angeles County with a stake in ensuring that our youth are engaged in school – school districts, county agencies such as the Department of Children and Family Services and the Probation Department, the juvenile courts, and law enforcement officials and prosecutors – to implement a research-based approach to engage students in school and to ensure that students are connected with appropriate resources if they begin to disconnect from the education system. This report concludes with recommendations for a comprehensive set of reforms drawing from evidence-based practices and research evaluating the effectiveness of various programs from around the country.

Methodology

In 2007, the Community Rights Campaign began working with youth, parents, and community leaders to give voice to concerns expressed by youth and communities throughout Los Angeles regarding the daytime curfew. A report published by the Community Rights Campaign, entitled Problems of the Los Angeles Daytime Curfew Law, documented clearly the negative consequences of how the daytime curfew was being enforced in Los Angeles.² The Community Rights Campaign, Public Counsel, and the ACLU of Southern California joined forces to investigate the use of the curfew ordinance, its impact on young people in Los Angeles and their families, and to advocate for research-based alternatives to improve student attendance throughout Los Angeles County. This comprehensive, multi-year investigation has included:

- More than 2,000 youth interviewed and surveyed by organizers and student and parent leaders working with the Community Rights Campaign;³
- More than 75 youth who received daytime curfew citations represented by Public Counsel, the ACLU, and their pro bono attorneys in the Informal Juvenile Traffic Court from 2009-2011;
- Twelve California Public Records Act requests sent to the Los Angeles Unified School District (LAUSD), LASPD, LAPD, and the Los Angeles Juvenile Court to obtain data and information regarding the daytime curfew and its impact;
- Thousands of pages of responsive documents and data reviewed by our organizations to understand the issues and analyze the impact;
- A comprehensive literature review evaluating the effectiveness of curfew statutes on reducing crime and increasing student education outcomes, and effective alternatives to criminalization; and
- Multiple meetings held with leadership at LAUSD, the Juvenile Court, LASPD, LAPD, and the City of Los Angeles to push for reform.

In short, the findings and recommendations in this report are grounded in a comprehensive review of relevant social science research, multiple years of data and other documentation related to curfew enforcement by public agencies, and the first-hand experiences of students, parents, family members, and community members who have been impacted by the daytime curfew law in Los Angeles.

Unintended Consequences:

LAMC § 45.04 Causes Students to Miss School

Although Los Angeles' daytime curfew has been held up as a means of keeping young people in school, it often has precisely the opposite effect. Students who are ticketed under LAMC § 45.04 must appear in court to address the infraction. This typically requires the student to miss at least an entire day of school – and often two or three days if the initial hearing is rescheduled or if the student elects to challenge the citation. Needless to say, a policy purporting to encourage student attendance should not require that the student miss class.

Additionally, by penalizing being in public during school hours, the law encourages students who are running late to simply stay home from school. There are scores of reasons a young person may not get to school on time on a given day: the student missed a bus, she had to help her brothers and sisters get ready for school, she had a doctor's appointment, or she simply overslept. The current law discourages students in such circumstances from attending school. As one twelfth grade female student described, "I take the bus to school. So if the bus is running late, I sometimes turn around and go home because I do not want to risk getting a truancy ticket."

Ineffective: There is Little Evidence that Juvenile Curfew Laws Reduce Crime

Notwithstanding whatever intuitive appeal there is for the argument that reducing the number of youth on the street at certain hours will reduce criminal activity, the evidence does not support the contention that youth curfews reduce crime. A systematic review of published and unpublished research on the effectiveness of curfew laws across the United States by Kenneth Adams of Indiana University reached the following conclusion⁴:

Overall, the weight of the scientific evidence, based on ten studies with weak to moderately rigorous designs, fails to support the argument that curfews reduce crime and criminal victimization. Studies consistently report no change in crime in relation to curfews. When changes in crime are observed, they are almost equally likely to be increases in crime as opposed to decreases. Furthermore, curfew enforcement rarely leads to discovery of serious criminal behavior precipitating arrest. For the most part, curfew violators tend to be arrested for curfew-related offenses, such as lying about one's age, and it could be argued that these arrests needlessly add to the criminal histories of some juveniles.

The significance of this conclusion is buttressed by the diversity of the studies surveyed, which included small- and large-scale investigations, micro- and macro- units of analysis, and short and long time periods.

One peer-reviewed study, by Mike Males and Dan Macallair of the Center on Juvenile and Criminal Justice, examined the effect of curfew laws in California, including a selected night and area curfew in Los Angeles.⁵ Analyzing official data, the authors compared the relative crime and death rates of jurisdictions with greater and lesser curfew enforcement, and assessed the effects of curfew enforcement on particular crimes and juvenile crime rates relative to adults. This study found:

Statistical analysis provides no support for the proposition that stricter curfew enforcement reduces youth crime or risk of violent fatality either absolutely or relative to adults, by location, by city, or by type of crime. Curfew enforcement generally has no discernible effect on youth crime. In those few instances where a significant effect is identified, it is more likely to be positive (that is, greater curfew enforcement is associated with higher rates of juvenile crime) than negative.

Moreover, the study found that certain widely touted anecdotal claims that curfews have caused crime reductions in particular locales have not held up to scrutiny. For example, Monrovia, California, the site of the nation's first daytime curfew, enacted with fanfare in 1994, was cited by political figures and in media reports as having substantially reduced crime.⁶ Yet these findings were later acknowledged by the police to have been the product of data entry errors.⁷ A scientific review of the data found the crime reduction that did occur in Monrovia was merely the echo of broader trends in

“My sister and I were late for school after we decided to eat breakfast at McDonalds. When we were leaving two male police officers said that we were late for school and told us to meet them outside. Once we were outside, one police officer searched our purses and the other searched us. I was really shocked that I was being searched and I know that I could have said that I do not consent to the search but I was too afraid to tell the officers that. I still can't believe that two male officers searched us! They escorted my sister and I to school in the police car and took us to the Dean's Office. The police officer asked for our names and then gave us tickets... My parents cannot afford these tickets!”

—11th grade Latina student

California, bearing no relationship to the daytime curfew.⁸

The researchers also examined claims that Los Angeles' curfew for selected nights and areas reduced crime. One of several reports issued by LAPD during July 1997-July 1998 concerning its Enhanced Curfew Enforcement Effort found that the curfew "impacted" violent crime, youth arrests, and youth victimization.⁹ However, a subsequent report in the series found curfew enforcement "has not greatly impacted" crime rates.¹⁰ Notably, undermining the proposition that the curfew reduced crime, the six-month period in which curfew enforcement was most aggressive produced no discernable reduction in crime, but there was a significant decline in youth crime and victimization during a subsequent period in which enforcement was substantially reduced.¹¹

The key reason youth curfews do not appear to have any significant impact on crime rates is simple: Curfews, by their nature, apply in a sweeping fashion to all young people. However, most young people are law abiding. Indeed, there is little overlap between the group of individuals targeted by curfews and the group of people responsible for committing most crime. In most cases in which young people are cited for curfew violations, there is no indication that the minor has committed or is about to commit any crime (apart from the violation of the curfew itself).¹²

This reality is vividly illustrated in the experience of the many Los Angeles youth interviewed by the Community Rights Campaign who have been affected by the daytime curfew. As one student described:

I have gotten three truancy tickets since I started high school 3 years ago. The first was when I was in 9th grade. I was a few minutes late and on the same block as school, and the police pulled us over and ticketed us. Then I got another one sophomore year – I had a track and field race off campus that day and a school pass that allowed me to be out of classes early, but I still got a ticket. After two tickets, I felt very distrustful at police. And then, a few months later, I got a third ticket. I had to take my niece to daycare that day because all my family members had to be at work early. I was 20 minutes late.

“

“I got a ticket at 8:15 a.m. as I was getting off the bus a few blocks from school.

I then had to miss a day of school and go to court with my mother, who had to miss a day of work.” – 11th grade black female

”

Harmful:

An Economic Burden on Low-Income Communities

The daytime curfew law imposes great burdens on the families of children who receive curfew tickets. LAMC § 45.04 establishes a fine of up to \$250.00 for each curfew violation. In certain cases, courts have imposed additional fees for second and third citations. Moreover, the student must be accompanied to court to address the infraction by the student's parent or guardian, causing the parent or guardian to miss at least one and up to several days of work for each ticket.

The citation costs fall heavily on low-income families (and, as discussed below, Latino and Black communities). Not only are a majority of LAUSD students in families near or below the poverty line,¹³ but daytime curfew enforcement inherently targets lower income students. This is because students from poorer families are less likely to drive cars than their higher income peers and are more likely to walk or take public transit, where they may be ticketed. Moreover, as demonstrated in Figures 1 and 2, our research demonstrates that the schools where curfew enforcement has been most aggressive are concentrated in lower income communities. The curfew law thus constitutes an arbitrary penalty – one that is applied to one group but not another for the same behavior – on the families least able to afford it.

FIGURE 1

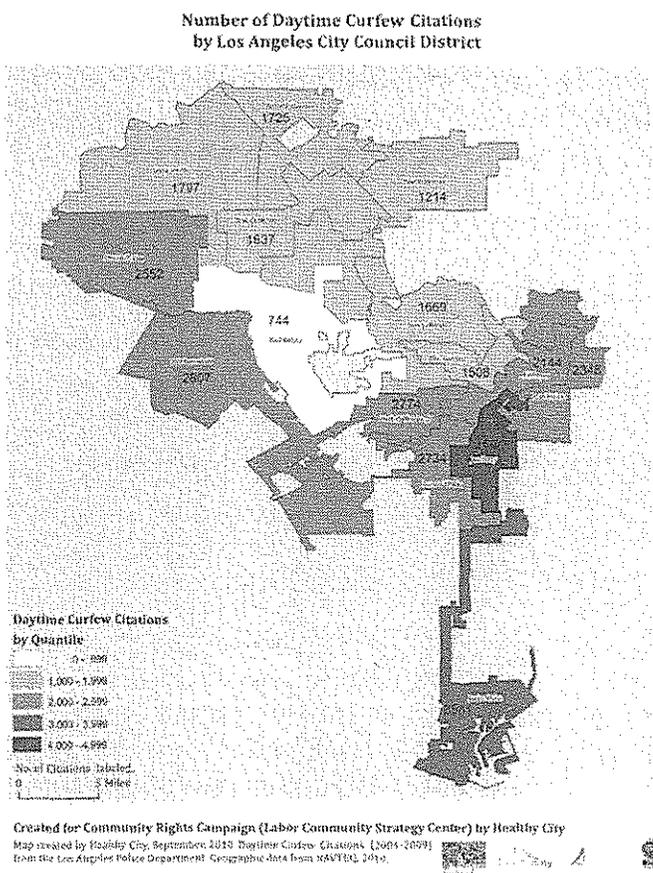
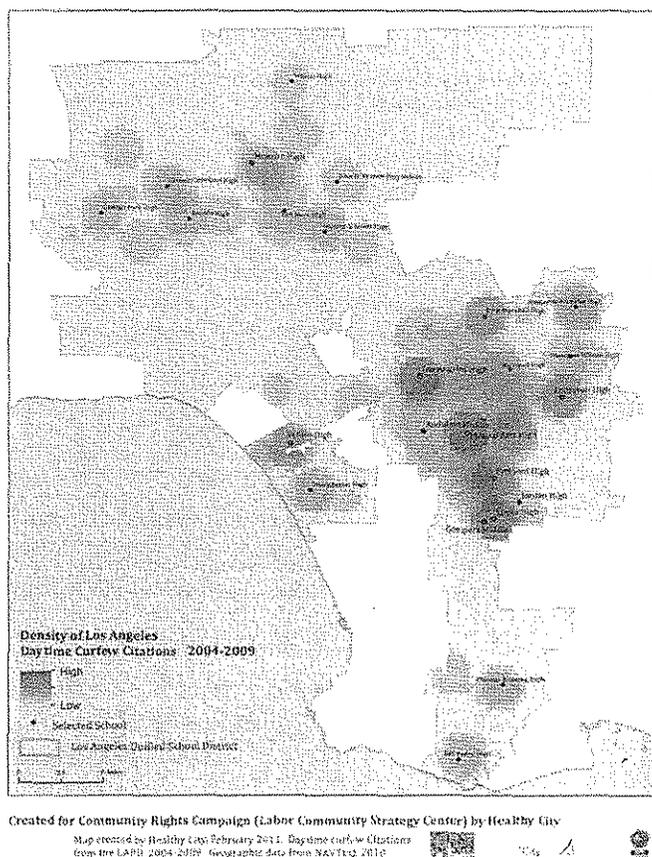


FIGURE 2



Counterproductive: Research Shows Harshly Punitive and Penal System-Based Approaches to Student Behavior Undermine Student Engagement

Los Angeles' daytime curfew lies at the nexus of two national trends. The first is the practice of mandating predetermined consequences or punishments for specified misconduct in school, a practice that has gained widespread traction nationally over the past two decades. Under this approach, sometimes called "Zero Tolerance" or "Get-Tough," minor and sometimes trivial misconduct is treated with harsh penalties, such as suspension and expulsion, under the theory that more serious misconduct can be deterred by giving youth a "wake-up call." The second trend, which has taken root nationally over the same period, is a dramatically increased presence of police in schools and increased reliance on the penal system to address youth behavioral issues that traditionally have been addressed by schools, families, and the community.

Although no studies have analyzed specifically the impact of daytime curfews on student behavior and academic outcomes, a large body of research has been developed concerning these broader practices. This research indicates that punitive and penal system-based approaches to school disciplinary matters not only do not work but actively undermine student achievement and engagement in school.

Research on the use of inflexible and exclusionary discipline strategies – such as mandating school suspension and expulsion for relatively minor infractions – has found the policies to be counterproductive in addressing student behavioral concerns.¹⁴ Indeed, the most well-documented consequence of suspension for troubled or at-risk students appears to be further suspensions of the same individuals and ultimately the students dropping-out of school.¹⁵ Higher rates of school suspension are also associated with lower student test scores.¹⁶ Rather than serving as a "wake-up call," inflexible, exclusionary policies tend to alienate students from the educational system, in effect pushing them out of schools.

Research on the effect of the use of the police to enforce school discipline is even more troubling. The dramatic increase in the number of police officers stationed at schools nationwide has been attended by a similarly dramatic increase in arrests of minors and referrals to the criminal justice system, often for minor or trivial offenses.¹⁷

Aggressive use of school-based arrests and referrals to law enforcement can have devastating consequences for young people, damaging student self-perceptions and radically altering life outcomes.¹⁸ One peer-reviewed study found, controlling for a range of variables, that a first-time arrest during high school doubles the likelihood that a student will drop-out.¹⁹ When the student must also appear in court, the student's likelihood of drop-out nearly quadruples.²⁰ Another study found that any juvenile justice system involvement for males from ages 13.5 to 16.5 increased the student's odds of dropping out 3.6 times.²¹ Dropping-out is, of course, associated with a number of other negative outcomes, including unemployment²² and increased criminal involvement.²³

I got a ticket when I was late to school waiting for the bus. I'll be honest – I was pretty late – it was already like 9:30 am, but I was going to school. I was late because I had gotten home at 11:30 pm from work – since I take the bus home it takes me like an hour to get home. Then, I had to stay up finishing a school project 'till 2:00 am. The police asked me if I was on my way to the beach – I told them I was late going to school but they didn't believe me and put me in the cop car. It was embarrassing being seen in the cop car by other people at school. I didn't want to tell my parents about the ticket because we were having serious problems at home. My sister went with me to court but they turned me away because she is not my legal guardian. I know I need to tell them now so they can come with me but I am also scared because they are undocumented.” – 11th grade Latino student

As noted above, the reality is that there are dozens of reasons why students arrive late to school or miss school on any given day that relate in no way to criminal conduct.²⁴ These reasons range from emotional and mental health problems, school environment, academic challenges, special education needs, economic pressures, physical or emotional abuse in the home, a lack of adequate transportation, fear of being harmed at school, bullying, lack of engagement in school, and more. A child might be under stress because her parents lost their jobs. She might have to be doing more to take care of her brothers and sisters. She might be suffering from untreated depression or mental illness. Students with extreme attendance issues frequently have unmet special education needs, and schools are obligated under federal and state law to help those students, not to subject them to criminal punishment.

For students who are not engaged in school or who may not see the benefit of an education, issuing a ticket that carries a fine is not going to alter those attitudes. In fact, as already noted, numerous studies have documented that aggressive criminal-justice-centered policies in and around schools are likely to cause students to feel alienated from the educational system, causing further disengagement from school for at-risk youth. Although disengagement from school is certainly a problem, a tactic that is likely to further that disengagement and does nothing to connect the student to resources that may help identify and address the causes of disengagement from school is not a viable solution.

Although LAMC § 45.04 mandates the issuance of tickets rather than arrests, in issuing such tickets officers have detained students, handcuffed them, put them in the back of police cars, searched their property, and used demeaning and threatening language. Moreover, as discussed above, students who are ticketed are required to attend mandatory court appearances. Many students have described these experiences – particularly being handcuffed in front of other students for arriving late to school – as humiliating or as being treated “like a criminal.”

Inequitable: Disparate Impact on Students of Color

An analysis of data concerning daytime curfew citations reflects that black and Latino students are ticketed at rates exceeding their representation in the population. The data, which is summarized in Figures 3 and 4, was obtained through California Public Records Act requests from LASPD and LAPD and included figures for daytime curfew citations for the period 2004-2009.

If enforcement of the law were carried out impartially, one would expect that the number of tickets issued to members of any one race would be commensurate with the baseline population of school-aged individuals of that race.²⁵ However, a comparison of the proportion of youth of certain subgroups in the underlying population to the proportion of daytime curfew tickets issued to members of that subgroup reveals significant disparity. The most striking of these disparities are the proportions of white and black students issued tickets with respect to their baseline populations.

Figure 3

Daytime Curfew Tickets Issued by the Los Angeles Police Department, 2004-2009
Geographic Area: City of Los Angeles

Race	Population of 5-17 Year Olds*	Proportion of Total Population	Number of Tickets Issued**	Proportion of Total Tickets	Ticket v. Population Proportionality
White	114,771	17.5%	2,466	7.3%	-10.2%
Black	64,504	9.8%	7,488	22.0%	12.2%
Latino	421,081	64.2%	22,576	66.4%	2.2%
Other	55,729	8.5%	1,043	3.1%	-5.4%
Unknown	--	--	426	1.2%	n/a
Total	656,085	100.0%	33,999	100.0%	--

*City of Los Angeles population was derived from the U.S. Census Bureau, 2006-2008 American Community Survey 3-Year Estimates. Accordingly, the population numbers reflected here are for all 5-17 year olds within the Los Angeles City boundaries, regardless of school enrollment or district of attendance.

** These data were provided by the Los Angeles Police Department in response to California Public Records Act Requests.

Figure 4

Daytime Curfew Tickets Issued by the Los Angeles School Police Department, 2004-2009
Geographic Area: Los Angeles Unified School District

Race	Population of Total Relevant Children*	Proportion of Total Population	Number of Tickets Issued**	Proportion of Total Tickets	Ticket v. Population Proportionality
White	112,075	13.2%	0	0.0%	-13.2%
Black	83,995	9.9%	2,103	16.0%	6.1%
Latino	576,235	67.7%	9,414	71.8%	4.1%
Asian	46,415	5.5%	226	1.7%	-3.7%
Other	31,730	3.7%	1,331	10.1%	6.5%
Unknown	--	--	44	0.1%	n/a
Total	850,450	100.0%	13,118	100.0%***	--

*This population data was derived from the NCES School District Demographics System, 2008 American Community Survey, for the Los Angeles Unified School District. Accordingly, the population numbers reflected here are for all "total relevant children" who reside within the Los Angeles Unified School District boundaries, regardless of whether they are enrolled in Los Angeles Unified School District. "Total relevant children" reflects all K-12 age children who are eligible to enroll in Los Angeles Unified School District.

"I got my second ticket last semester in 10th grade. My school starts really early – at like 7:26 am. I depend on my brother to take me to school and sometimes he is running late, so I get there late. It was around 8:30 am – I know I was late – but I was going to school! . . . My mom and I missed the court date for this ticket because we just don't have the money. She was recently laid off and we rely entirely on my brother – but he owes money for a traffic violation. I want to stop relying on my brother to get to school but then the problem is that my mom doesn't have enough for bus fare and the school told me I didn't qualify for a free bus pass. Plus, school starts so early that if I take the bus I have to walk two long blocks in the dark. I am fine with being punished for being late – but we already lose grade points. Why do they need to add so much stress by giving us a ticket we can't afford?"

– 11th grade Latina student

White youth. White school-aged youth are significantly under-ticketed by both the LAPD and the LASPD. In the case of the LAPD, white school-aged individuals comprise 17.5% of all 5 to 17 year olds in the city of Los Angeles but received a disproportionately low 7.25% of daytime curfew tickets. The ratio in the case of the LASPD ticketing is even more startling. According to LASPD's internal data, white youth within the LAUSD area received 0 tickets, although they represent 13.18% of total relevant youth.

Black youth. Black school-aged youth are significantly over-ticketed by both the LAPD and the LASPD. In the case of the LAPD, black school-aged youth comprise only 9.83% of all 5 to 17 year olds in the city of Los Angeles but received a disproportionately high 22.02% of daytime curfew tickets. The disparity in the case of the LASPD is also substantial, with black youth receiving 16.03% of tickets while representing 9.88% of the underlying population.

Latino youth. Latino school-aged youth are over-ticketed by both LAPD and LASPD, although the disparities are not as substantial. In the case of LAPD, Latino school-aged youth comprise 64.18% of all 5 to 17 year olds in the city of Los Angeles but received 66.40% of the daytime curfew tickets. With respect to LASPD, Latino youth received 71.76% of tickets while representing 67.76% of total youth within LAUSD's boundaries.

New LAPD and LASPD Enforcement Directives: A Step in the Right Direction, But Problems Remain

On Thursday, March 31, 2011, LAPD issued a directive to clarify the objective, scope, and application of LAMC § 45.04. The directive was issued after a series of meetings involving LAPD officials, the Mayor's office, administrators from the Partnership for Los Angeles Schools, and advocates from the Community Rights Campaign, Public Counsel Law Center, and the ACLU of Southern California. LASPD followed suit on October 19, 2011, issuing a similar directive following a series of meetings with community advocates including Community Rights Campaign, Public Counsel Law Center, and the ACLU of Southern California.

The directives make several important changes in how LAPD and LASPD intend to enforce LAMC § 45.04, including:

- The departments generally will not initiate coordinated daytime curfew enforcement sweeps during the first hour of classes;
- Officers are encouraged (though not required) not to issue a ticket if a student is clearly headed toward school;
- Daytime curfew sweeps should not be conducted without objective indicators that coordinated curfew enforcement is necessary to respond to suspected criminal activity by youth in that area; and
- Officers must document that they asked whether students have a legitimate excuse before writing a ticket.

These changes represent a significant step forward and, if carried out consistently, will address many of LAMC § 45.04's most damaging consequences. In fact, preliminary data provided by LAPD, which compare data on daytime curfew citations from the first three months after its directive was issued to the same three month period during the preceding year, reflect a more than 50 percent reduction in daytime curfew citations, with the reductions distributed fairly evenly among subgroups. These data are summarized in Figure 5.

Figure 5

Daytime Curfew Tickets Issued by the Los Angeles Police Department,
4/1/10-7/31/10 vs. 04/11/10-7/31/11

	4/1/10-7/31/10	04/11/10-7/31/11	Percent Change*
Total Tickets	1544	744	-51.8%
White	102	39	-61.7%
Black	218	86	-60.6%
Latino	1172	592	-49.5%
Chinese	0	0	--
Filipino	2	0	--
Korean	1	1	--
Other Asian	8	2	--
Samoan	1	0	--
American Indian	0	0	--
Other	40	24	-40.0%

* Percent Change is not reported where the underlying sample is 10 citations or less.
Source: Data provided by LAPD on August 29, 2011.

On March 10, 2009, I committed my first crime. I got to school late. I was walking down Mathew and 4th to school (right next to the pool, by the main entrance), when I was stopped by a cop. I couldn't believe the fact that it was only 8:30, and I was going to school! At that moment, everything hit me. I cried like a kid. I couldn't face it all by myself. My mom was in Mexico, due to my grandfather almost dying. I was handling so many responsibilities, which include taking care of my 5-year-old sister. I felt humiliated; people that were passing by inside their car, as well as walking were looking at me like if I was a criminal ... The officer took me back into school and walked me to the Dean's office and said, 'Don't worry it's not that big of a stitch.' He made it seem like it's nothing big to give out tickets to students that are late to school! I kill to have good grades and make my parents proud every day. Due to this incident, I'm going to have to miss one entire day of school, and my dad is going to have miss one entire day at his job, because he has to accompany me to court."

-12th grade Latina student

The directives, however, address only a limited piece of the problems caused by the daytime curfew and are not sufficient to ensure long-term change. First, the directives themselves are internal LAPD and LASPD policy guidance and are therefore subject to revision should there be a change in LAPD or LASPD leadership. Moreover, both directives leave substantial discretion to police officers in deciding whether to issue citations in a given circumstance. Additionally, because officers may still stop a student for suspected curfew violations, neither directive eliminates the chance that students will be searched, handcuffed, or transported in handcuffs in the back of a police car merely for running late for school. Finally, the directives do not apply to the Los Angeles Sheriff's Department, which may also enforce LAMC § 45.04.

For these reasons, as long as LAMC § 45.04 is on the books, and even with these new policies, officers may still ticket students, even in circumstances when it is clear the student was not engaged or about to engage in criminal activity, but rather was simply late to school. This is something that should simply never happen. Accordingly, the repeal or substantial revision of LAMC § 45.04 is necessary to address fully the negative consequences that daytime curfew enforcement has on youth and families in Los Angeles.

Civil Rights Implications of the Daytime Curfew

Apart from the compelling public policy reasons to repeal LAMC § 45.04, the law exposes the City and County of Los Angeles, LAUSD, and LAPD to legal liability in several areas.

Discrimination. California Government Code § 11135(a) provides, in relevant part, that “[n]o person in the State of California shall, on the basis of ... color ... be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that ... receives any financial assistance from the state.” Additionally, California Code of Regulations § 98101 prohibits any program that has a discriminatory purpose or effect. Given what is presently known concerning the disparate impact § 45.04 has had on students of color in Los Angeles, the public agencies that enforce the curfew risk potential legal liability from a challenge that curfew enforcement is discriminatory in its effect.

Due Process. Under our constitutional jurisprudence, laws that affect fundamental rights must be narrowly tailored to minimize the law’s burden on such rights. If a law fails to meet this test, it may be struck down as unconstitutional. The Ninth Circuit Court of Appeals struck down San Diego’s nighttime curfew law, in part, because the law was not narrowly tailored to minimize its burden on minors’ fundamental right to free movement.²⁶ Although the law contained various exceptions, it nevertheless unnecessarily restricted minors’ participation in, and travel to or from, many legitimate recreational activities, with or without parental permission.²⁷ LAMC § 45.04 is similarly vulnerable to legal challenge because the law’s blanket coverage restricts young people’s right to free movement when they are attempting to travel to attend school, even though they may be running late. Attempting to get to school is obviously a legitimate activity for youth.

First Amendment. A third area in which LAMC § 45.04 may expose public agencies to liability is the law’s restrictions on First Amendment rights. Minors, like adults, have a constitutionally protected right to freedom of expression.²⁸ Yet, under the law as currently written, students are not able to be in public or to travel to a public place to participate in protected speech during school hours unless they are accompanied by their parents. The San Diego nighttime curfew noted above, which, like the Los Angeles curfew lacked a free speech exception, was struck down because of its restrictions on youth’s free speech rights.²⁹

Conclusions and Recommendations

The bottom line is that the best place for students to get the help they may need is in school and in the community, not a courtroom. School staff can help identify and support a student under stress, find services that will help youth and their families, and steer young people toward a positive and healthy future. Partnering community organizations can provide tutoring, mentoring, mental health services, after-school programs and other positive supports that help keep students on track to graduate.

Appendix A includes a set of recommendations for implementing a comprehensive, evidence-based approach that research has demonstrated will, if implemented with fidelity, improve student attendance and ensure resources are directed to the students who most need interventions to address attendance and other needs, without the counterproductive consequences of the current punitive approach. Research has demonstrated that there is no “silver bullet” that will lead to the outcomes we all want for our community’s youth – this is a complex issue that calls for interventions that cut across a number of government agencies and require community input and support to succeed. But that is no excuse to continue to rely on failed policies that research and experience have demonstrated harm the youth and communities they were purportedly designed to help.

There is a solution. With appropriate coordination, attention from high-level policymakers and the community to assure faithful implementation of best practices, and development of broad-based reforms

that help all students together with targeted interventions for students who are most at-risk, there is no reason why we can't deliver for our youth.

When it comes to ensuring our youth stay in school, Los Angeles should be a leader. Yet our current approach, represented by LAMC § 45.04, is costly, wasteful, and counterproductive. It is time that Los Angeles lives up to its promise by dismantling the current failed policy and beginning the hard work of building a sensible and sustainable attendance and graduation-promotion policy. Our school children deserve no less.

Endnotes

¹ See "Map of LAMC 45.04 Day-Time Curfew Citations," available at <http://www.thestrategycenter.org/blog//07/30/mapping-lamc-4504-truancy-tickets-geographical-area-race-and-gender>.

² See "Problems of Los Angeles Daytime Curfew Law," Community Rights Campaign (August 2009), available at <http://www.thestrategycenter.org/report/problems-los-angeles-daytime-curfew-law>.

³ The quotes that are interspersed throughout this report are taken from interviews with youth conducted by the Community Rights Campaign. See "Voices from the Students: Testimonies from Students Receiving Daytime Curfew 'Truancy Tickets,'" Community Rights Campaign (October 2009), available at <http://www.thestrategycenter.org/report/voices-students-testimonies-daytime-curfew-truancy-tickets>.

⁴ Kenneth Adams, The Effectiveness of Juvenile Curfews at Crime Prevention, 587 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 136, 155 (2003), available at <http://ann.sagepub.com/cgi/content/abstract/587/1/136>.

⁵ Mike Males and Dan Macallair, An Analysis of Curfew Enforcement and Juvenile Crime in California, WESTERN CRIMINOLOGY REVIEW 1(2) (1999), available at <http://wcr.sonoma.edu/v1n2/males.html>.

⁶ E.g., Nicholas Ricardi, Small-Town Success, L.A. TIMES, June 5, 1997, at B14-15; William Ruefle et al., Curfews Can Be Effective and Constitutional, JUVENILE CRIME: OPPOSING VIEWPOINTS, 187-192 (D. Bender and B. Leone, ed., 1997) (claiming "Monrovia, California's curfew adoption was followed by a 32 percent decline in residential burglaries").

⁷ R. Johnson, Deposition Testimony, January 8, 1998, Harrahill v. Santoro, California Superior Court, County of Los Angeles, Case Number BC 170089, Volume II, 94-105.

⁸ Males & Macallair, supra note 4, at Appendix A (finding, inter alia, that the decline in crime in Monrovia was stronger during the summer months and during those days and hours of the school year when the curfew was not in effect than during the school day hours when it was in effect; that cities neighboring Monrovia without daytime curfews experienced similar declines in crime, particularly those most likely to be committed by juveniles; and that Monrovia's most substantial decline in crime was in a category of crime mostly committed by adults).

⁹ Males & Macallair, supra note 4 at 2.

¹⁰ Id.; Matthew Lait, Study Finds Curfew Law Fails to Curb Violent Crime, L.A. TIMES, February 10, 1998, available at <http://articles.latimes.com/1998/feb/10/local/me-17512>.

¹¹ Males & Macallair, supra note 4 at Appendix A. One recent unpublished academic article, by Patrick Kline of UC Berkeley, concluded that curfews are effective at reducing violent and property crimes committed by juveniles. Patrick Kline, The Impact of Juvenile Curfew Laws, UC Berkeley (unpublished manuscript) (2010), available at <http://www.econ.berkeley.edu/~pkline/papers/Youth%20curfews%20latest.pdf>. Similar to the LAPD reports discussed above, however, the study did not control for the general national trend of arrests declining much faster among younger teens than among older teens or young adults that occurred in the 1980s, 1990s, and 2000s, as well as other confounding variables. Accordingly, that study's findings are vulnerable and may reflect broader national trends rather than changes attributable to or caused by curfew enforcement.

¹² See, e.g., Mike Males, Vernon, Connecticut's Juvenile Curfew: The Circumstances of Youths Cited and Effects on Crime, 11(3) CRIMINAL JUSTICE POLICY REVIEW 254-267 (2000) (noting that a review of curfew stop reports found no indication that that the vast majority of juveniles stopped were engaged in

¹³ California Department of Education DataQuest (based on 2010 STAR results for economically disadvantaged subgroups).

¹⁴ See American Psychological Association Zero Policy Task Force, Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations, AMERICAN PSYCHOLOGIST (December 2008) (finding, inter alia, that “zero tolerance policies may create, enhance, or accelerate negative mental health outcomes for youth by creating increases in student alienation, anxiety, rejection, and breaking of healthy adult bonds”); Cecil R. Reynolds & Randy W. Kamphaus, BEHAVIOR ASSESSMENT SYSTEM FOR CHILDREN (2nd ed.), American Guidance Service (2004); Virginia K. Costenbader & Samia Markson, School Suspension: A Survey of Current Policies and Practices, 78 NASSP BULLETIN 103-107 (1994); Russell Skiba, Zero Tolerance: The Assumptions and the Facts, 2(1) EDUCATION POLICY BRIEFS, at 3, Center for Evaluation & Education Policy, (2004); M. Karega Rausch & Russell Skiba, Unplanned Outcomes: Suspensions and Expulsions in Indiana, 2(5) EDUCATION POLICY BRIEFS 5, Center for Evaluation & Education Policy (2004).

¹⁵ Tary Jeanne Tobin, et al., Patterns in middle school discipline records, 4(2) JOURNAL OF EMOTIONAL AND BEHAVIORAL DISORDERS 82-94 (1996).

¹⁶ Linda Raffaele-Mendez, Predictors of suspension and negative school outcomes: A longitudinal investigation, NEW DIRECTIONS FOR YOUTH DEVELOPMENT: DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE (J. Wald & D.J. Losen, Eds.), 17-34 (2004).

¹⁷ See, e.g., Judith A. Browne, Derailed! The Schoolhouse to Jailhouse Track, The Advancement Project (2003), available at <http://www.advancementproject.org/digital-library/publications/derailed-the-schoolhouse-to-jailhouse-track>.

¹⁸ Johanna Wald and Michal Kurlaender, Connected in Seattle? An Exploratory Study of Student Perceptions of Discipline and Attachments to Teachers, NEW DIRECTIONS FOR YOUTH DEVELOPMENT: DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE, at 38 (2003).

¹⁹ ³Gary Sweeten, Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement, 23 JUSTICE QUARTERLY 462, 473, 478-79 (2006).

²⁰ Id.

²¹ Jon Gunnar Bernburg & Marvin D. Krohn, Labeling, life chances, and adult crime: The direct and indirect effects of official intervention in adolescence on crime in early adulthood. 41 CRIMINOLOGY 1287-1318 (2003).

²² Roger G. Jarjoura, Does dropping out of school enhance delinquent involvement? Results from a large-scale national probability sample, 31 CRIMINOLOGY 149-172 (1993); Roger G. Jarjoura, The conditional effect of social class on the dropout-delinquency relationship, 33 JOURNAL OF RESEARCH IN CRIME AND DELINQUENCY 232-255 (1996).

²³ Terence P. Thornberry et al., The effect of dropping out of high school on subsequent criminal behavior, 23 CRIMINOLOGY 3-18 (1985).

²⁴ See, e.g., Doug Rohrman, Combating truancy in our schools—a community effort, 76(549) NASSP BULLETIN 40-51 (1993).

²⁵ The baseline population for City of Los Angeles includes all 5-17 year old individuals within the city limits, regardless of school enrollment status. See U.S. Census Bureau, 2006-2008 American Community Survey 3-Year Estimates. The baseline population for LAUSD includes all “total relevant children” within LAUSD boundaries, regardless of school enrollment status. See NCES School District Demographics System, 2008 American Community Survey. “Total relevant children” represents all K-12 age children eligible to enroll in LAUSD, even if they attend a non-LAUSD school. Thus, this number includes some individuals under 5 and over 17.

²⁶ Nunez v. City of San Diego, 114 F.3d 935 (9th Cir. 1997).

²⁷ Id. at 948-49.

²⁸ Id. at 950 (citing Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 511 (1969)).

²⁹ Id.

APPENDIX A

THE TOP 30: THE CORE COMPONENTS OF A RESEARCH-BASED, COMPREHENSIVE STRATEGY TO IMPROVE SCHOOL ATTENDANCE IN LOS ANGELES COUNTY

1. Repeal or significantly curtail this failed and counterproductive ordinance and the method of court enforcement:
 1. The ordinance should not be applied to public sidewalks immediately adjacent to school grounds, school entrances, or school grounds;
 2. The ordinance should apply only to youth who are intentionally avoiding school, or are loitering in public places at times when they are required to be in school;
 3. The ordinance should not apply to young people going directly to or returning directly home from a public meeting or a school sporting event, dance or activity;
 4. The ordinance should not apply to a young person who is traveling on his or her way to school, regardless of tardiness;
 5. Tickets should be dismissed if the police officer does not document that he or she assessed whether one of the statutory exceptions apply before issuing the citation;
 6. Violations should not be punishable by a fine, but rather students should be directed to participate in community or school resource-based programs, such as a tutoring, mentoring, credit recovery, an after-school program, or a Teen or Peer Court program.
2. Establish a sensible and sustainable school district-wide approach for ensuring students stay in school by adopting the research-based approach currently being implemented in Baltimore, Maryland, which includes focusing on:
 7. Real-time, accurate data on attendance for schools and community partners and data-based decision-making;
 8. Recovery, intervention, and prevention rather than punishment and legal intervention;
 9. Effective and engaging instruction, including alternative school models, like Big Picture, for students with different needs;
 10. An inter-system program, which would help to identify at-risk and truant youth and provide a multitude of services, as appropriate;
 11. Intentionally inviting family participation early on, including by making person-to-person contact on the same day of the absence;
 12. Building an early warning system that considers multiple measures of attendance, including suspension;
 13. Reducing absences by reducing suspensions;
 14. Establish a school-going culture, but recognize that the basis of good attendance is having a good school to attend;
 15. Utilizing attendance incentives;
 16. Developing an individualized, comprehensive plan for students who need it with incentives, prevention, intervention, and recovery strategies and services, relationship building, case management, and other strategies to address the root causes of truancy.
3. Reform the current court process, which relies on the Informal Juvenile Traffic Court, to focus on solutions and supports rather than fines and court appearances.
 17. Students who preemptively engage in community and resource-based programs should be able to submit proof of participation to the court and obtain a dismissal without court appearance to avoid missing further school time and court involvement;
 18. Youth, including those over 18, who cannot afford to pay existing fines, which can be in the thousands of dollars under the current statute, should be given an opportunity to provide

- proof of graduation from high school, a GED, or engagement in a community program or community service to eliminate the fines;
19. The Juvenile Court should provide a packet of information to youth and families that includes a revised statement of legal rights, notice of the charge and defenses, and a survey of interventions and supports received in relation to truancy (English & Spanish);
 20. The Juvenile Court should ensure that the referees explain to every student that they have a right to a hearing before asking whether the student admits guilt;
 21. The Juvenile Court should ensure that each hearing is recorded, if not transcribed, and that rights are explained consistently and accurately to the students and families to ensure that students' due process rights are protected;
 22. The Juvenile Court should ensure that there is a written decision explaining the factual bases for the finding that the student violated LAMC § 45.04, finding that none of the valid exceptions in § 45.04(b) apply, finding that the citing police officer complied with § 45.04(c) before issuing the citation, and acknowledging all arguments the student provided why the ticket should be dismissed;
 23. The Juvenile Court should ensure the referee explains the right to appeal, and timelines for doing so, if the student contests guilt and is found guilty;
4. **Ensure accurate and regular public dissemination of statistics from public agencies with roles in implementing or enforcing policies that affect student attendance.**
24. Collect and publish data from LAPD, LASPD, the Juvenile Court, and the Sheriff's Department regarding the number of minors cited for daytime curfew offenses, along with the location and time of the citation and the age, ethnicity, race and gender of the youth cited;
 25. Collect and publish data from school districts regarding student attendance, specifically with a focus on chronic absences and severe chronic absences;
 26. Analyze data with stakeholders from multiple agencies to evaluate effectiveness of programs and interventions and to replicate effective models and modify programs, where necessary.

APPENDIX B

LOS ANGELES MUNICIPAL CODE § 45.04

SECTION 45.04. DAYTIME CURFEW RESTRICTIONS FOR MINORS.

(a) **CURFEW.** It is unlawful for any minor under the age of 18, who is subject to compulsory education or to compulsory continuation education, alone or in concert with others, to be present in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, public buildings, places or amusement and eating places, vacant lots or any place open to the public during the hours of the day when the school, which the minor would normally attend, is in session, on days when that school is in session.

(b) **EXCEPTIONS.** The provisions of this section shall not apply when:

- (1) The minor is accompanied by his or her parent, guardian, other adult person authorized by the parent or guardian having the care or custody of the minor; or
- (2) The minor is on an emergency errand directed by his or her parent, guardian or other adult person having the care or custody of the minor; or

- (3) The minor is going directly to or coming directly from their place of gainful employment; or
- (4) The minor is going directly to or coming directly from a medical appointment; or
- (5) The minor has permission to leave campus for lunch and has in his or her possession a valid, school-issued off-campus permit; or
- (6) The presence of the minor in one or more of the places identified in Subsection (a) is connected with or required with respect to a business, trade, profession or occupation in which the minor is lawfully engaged; or
- (7) The minor is involved in an emergency such as a fire, natural disaster, automobile accident, a situation requiring immediate action to prevent serious bodily injury or loss of life, or any unforeseen combination of circumstances or the resulting state, which calls for immediate action; or
- (8) The minor is in a motor vehicle involved in interstate travel; or
- (9) The minor is authorized to be absent from his or her school pursuant to the provisions of California Education Code Section 48205, or any other applicable state or federal law.

(c) ENFORCEMENT. Before taking any action to enforce the provisions of this section, police officers shall ask the apparent offender's age and reason for being in the public place during curfew hours. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any responses and other circumstances, no exceptions to this section apply.

(d) VIOLATION. Each violation of the provisions of this section shall constitute a separate offense and shall be an infraction unless the minor requests that a petition be filed under Section 601 and 602 of the Welfare and Institutions Code.

(e) PENALTIES FOR VIOLATION. Any person convicted of willfully violating this ordinance is guilty of an infraction punishable by a fine not exceeding \$250.00 and/or perform community service for a total time not to exceed 20 hours over a period not to exceed 30 days, during times other than his or her hours of school attendance or employment.

(f) SEVERABILITY OF PROVISIONS. If any severable provision of this ordinance or any application thereof is held invalid, that invalidity shall not affect other provisions or applications of the ordinance which can be given effect notwithstanding such invalidity.