

HOME SCHOOL LEGAL DEFENSE ASSOCIATION

New Threat to Your Freedom: Daytime Curfews

This memo is provided courtesy of Roy Hansen, Private Home Educators of California.

Daytime curfews are sweeping the state like a firestorm. Though they vary, these new ordinances generally make it illegal for a person under 18 years of age to be in any public place during set "school hours" unless he falls under one of the listed exemptions.

Daytime curfews are usually the result of an ill-conceived attempt to control gangs and juvenile crime and to reduce truancy. However, they single out a class of citizens, children from 6 to 18 years old, and make it illegal for them to be out in public during specified hours without an approved exemption. For example, Orange County's model ordinance makes it illegal to be out in public during the hours from 8:00 a.m. until 2:30 p.m. "Out in public" is defined as "any place to which the public or a substantial group of the public has access including, but not limited to, streets, highways, beaches, parks, playgrounds, and common areas of schools, hospitals, apartment houses, office buildings, transport facilities, theaters, game rooms, shops, shopping malls, or any other place of business." The city of Buena Park even proposed including "houses" in its list of public places.

The City of San Diego's new ordinance applies to all juveniles under 13 years old during the hours from 8:30 a.m. to 1:30 p.m. on days that the student's school is in session. San Diego's ordinance also targets parents who either knowingly permit or by insufficient control allow their child to violate the curfew.

Some of the other cities which have already passed daytime curfews are Chino, Claremont, Fairfield, Fontana, Los Angeles, Monrovia, Montclair, Ontario, Pomona, Rialto, Redondo Beach, Riverside, Upland, and West Palm Beach. Cities that have considered daytime curfew ordinances include San Mateo, Milbrae, Fremont, Sacramento, and most Orange County Cities.

Proposed penalties for curfew violations also vary, but range from \$50 to \$1000, with some cities adding community service hours, driver's license suspensions, or court-approved parenting classes and juvenile counseling. One proposal even allowed up to 6 months jail time for parents upon a second offense.

On the Battle Front

The primary battle is at the local level, where city and county ordinances are being considered. Many parents have diligently and successfully fought to stop daytime curfews before they have passed. Others have been able to slow down their local city councils or county boards of supervisors, forcing them to consider the implications of their proposed ordinances. In other cities and counties, the new curfew laws have been passed quietly, before most of the people in the community even became aware of the proposal. It will be vital in the upcoming months to work together in local communities to stay informed of and oppose the daytime curfews in any form.

On the state level, we have been closely monitoring attempts at passing daytime curfew legislation during the past year. Both liberal and conservative legislators have routinely supported bills which increase the authority of the state at the expense of individual freedoms and parental authority. By God's grace, all state bills addressing daytime curfews were either defeated or amended to remove the daytime curfew language. Currently, there are no changes in the sections of the California Education Code governing penalties and enforcement of truancy laws. Although there is a law which allows municipalities to establish "after hours" curfews, there is no state law imposing or allowing daytime curfews.

Nationally this issue promises to be a prime concern during the next few years, as the crisis of truancy continues to receive national recognition and funding. President Clinton has praised daytime curfews and

has made \$10 million in grants available to school districts to fight truancy. Our California Legislature has provided \$2 million for programs which deal with the crisis of at-risk youth and juvenile offenders.

"Welcome to Sea World. Your Papers, Please."

Most of us will not have to travel very far to run afoul of a daytime curfew. Will our children be cited for running in to buy a Coke while Dad is filling up the gas tank during the family vacation? Can we take our children to visit Orange County's Knott's Berry Farm or San Diego's Sea World during off-season vacations?

One homeschool mother in Norwalk was cited for violating Norwalk's ordinance when he was riding his skate board in front of his home at about 1:00 p.m. The L.A. County sheriff issued a citation requiring him to appear in Juvenile Traffic court. When his family went to court, they were required to show attendance records from their school as proof that their child was not truant. The particular ordinance even requires "off track" public school students to stay in their homes during the hours of 8:00 a.m. to 2:00 p.m.

Reasons for Opposing Daytime Curfew Ordinances

1. The state already has laws which deal with truancy.

Daytime curfew ordinances are often presented as a way to catch truants. Visalia's proposal stated, "the purpose of this article is to...reduce the problem of truancy..." But current laws already address truancy. For example:

"The attendance supervisor or his or her designee, a peace officer, a school administrator or his or her designee, or a probation officer may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full time education or to compulsory continuation education found away from his or her home and who is absent from school without valid excuse within the county, city, or city and county, or school district." (California Education Code 48264)

2. Daytime curfews violate California's "preemption doctrine."

According to the "preemption doctrine," local governments cannot pass laws addressing a subject already dealt with by the California Legislature. City and county governments can only adopt regulations affecting municipal affairs, not matters covered by state legislation. Since there are already *state* laws on truancy, cities and counties are prohibited from passing local truancy laws. This "preemption doctrine" protects citizens from having local ordinances which conflict with state laws.

3. Daytime curfews cast too broad a net.

The majority of children who are out during "school hours" are not truant. Any of the following individuals could be stopped and questioned when out in public during the day:

- minors who graduated from high school before age 18;
- students in year-round school who are "off track";
- students whose schools have unusual days off (i.e. "staff development" days);
- students who are out of school for winter, spring, or summer break;
- homeschooled students on flexible schedules;
- young adults over age 18 who look younger; and
- students whose school day ends earlier or begins later than the curfew ordinance hours.

4. Daytime curfews violate the Constitutional right of "presumption of innocence."

Any person who appears to be under age 18 can be stopped and questioned while walking down the street, and asked to produce papers showing he has permission to be there. Minors, like adults, should have the peace of mind of knowing they will not be stopped by police officers unless there is a reasonable suspicion to believe the minor has committed a crime. In a legal memo, HSLDA states, "The daytime curfew ordinance...shifts the burden of proof to the child to prove his innocence, rather than leaving it upon the officers to prove his guilt.

5. Daytime curfews weaken the authority of parents and the family unit.

Parents will no longer have the authority to give their children permission to go anywhere unaccompanied, in some cases, even during winter, spring, or summer breaks. The authority will belong to the child's school, whether public or private, which will be the provider of letters or permission slips showing the child is allowed to be out.

6. Daytime curfews waste the time of police officers.

Police officers' time is far too valuable to waste on stopping every person who appears to be under 18 and who is out in public during the day. Police officers in nearly every locale are already overburdened with real criminals.

7. Daytime curfews will cause children to fear or lose respect for police officers.

Only those engaged in criminal conduct should be afraid of the police. By making it a criminal activity to simply be on public property during the day, we place all children in the category of suspected criminals. Even with a legitimate need to be out during the day, children will learn to dread seeing a police officer approach.

8. Daytime curfews make children easy targets for criminals posing as police officers.

All would-be molesters will have to do is look for any child out in public during the day, pose as an officer, and tell the child he is being taken in for violation of a curfew. Children will be more easily duped into getting into a stranger's car, since they will have to be trained to expect possible citations or arrests simply for walking down the street. Even a child who has a valid exemption becomes easy prey, as he must take the time to produce his "papers."

9. Daytime curfews violate the 4th Amendment of the U.S. Constitution.

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." Daytime curfews violate the Fourth Amendment by allowing unreasonable searches of persons simply for being out in public. Identification papers, notes from parents or school officials, doctor appointment reminders, etc. are private property, not subject to search or seizure unless there is "probable cause" that a crime occurred.

10. Daytime curfews violate the 5th Amendment of the U.S. Constitution.

"No person shall...be deprived of life, liberty, or property without due process of law..." "Due process" requires that no one be deprived of their liberty (i.e. forced to stay in their homes),

without being convicted of an actual crime.

11. Daytime curfews use "prior restraint," common in totalitarian police states.

Instead of needing "probable cause" that a crime has taken place, curfews allow police to intervene before there is any evidence of a crime. Simply looking young and being in public are enough to warrant an investigation, because of the concern that a crime might be committed. This is preventive government, establishing a law that restricts everyone in order to prevent crime by a few. Daytime curfews have the effect of putting innocent people under "house arrest."

12. Daytime curfews miss the point.

Juvenile crime is on the rise. But daytime curfews are not the answer. Daytime curfews treat all teens as potential criminals in the name of "preventing crime." What is needed are tougher sanctions on serious or repeated juvenile crimes, and enforcement of current laws which already address juvenile crimes and truancy. Juvenile criminals should be punished according to the law, not treated like "victims" and allowed to go free.

What Should You Do?

Before beginning any opposition, order a copy of the packet listed on page 4. If your community has a daytime curfew ordinance, parents must be prepared. Parents should train their children in how to respond to police officers. While we may oppose curfew ordinances, our children should not be placed in jeopardy. Parents should do the following:

- Keep your membership current in the Home School Legal Defense Association. If your child is cited for a curfew violation contact HSLDA immediately.
- If your community does not yet have a daytime curfew ordinance, now is the time for you to prepare. Find out whether a daytime curfew is being considered (be careful not to appear to be suggesting one!). If your community is not working on this issue now, it may be soon. Learn how your City Council and County Board of Supervisors work and how you can keep up-to-date on proposed ordinances so you will know when the issue arises. Get the information packet and educate your homeschool group. Work with HSLDA (540-338-5600).
- If your community is currently considering a daytime curfew ordinance, take the lead in opposing it before it passes. Gather all available information about the ordinance being proposed in your city or county. It will be vital to work in a concerted effort with others in your community. Send for the information packet below and begin now to organize a coordinated, well-informed opposition. Be prepared for your municipality to ask you to provide amendment language to exempt homeschoolers and remove your opposition to their proposed ordinance. This is not advised and will not solve the problems. Call HSLDA for counsel at this point. Never allow anyone to pressure you to give your support without first taking time to seek counsel.
- If your community already has a daytime curfew ordinance, consider making an appeal to your city or county authorities to reconsider their ordinance.
- Found out exactly what is required by your community's ordinance. If your children will be away from home during the curfew hours, have them carry identification along with required permission slips and a phone number where you can be reached. A sample permission slip might say, "[student's name] is enrolled in [name of your private school]. He/she is excused from attendance for [purpose]. If verification is needed, please call [parent's phone number]."
- Remember that you are opposing daytime curfews, not police officers. Consider showing the difference by supporting your local police or sheriff's department. Perhaps your group can help build a good relationship by hosting a fundraiser for needed equipment. After receiving approval, several hundred dollars were raised for a local police department at a one-day barbecue hot dog and hamburger lunch held in a high-traffic downtown area.
- Train your children how to respond to police officers. The goal should be to protect our children

from arrest and from fear. There is a proper place and time for the arguments against daytime curfews, but a child who is not with his parents and is confronted by a police officer should not argue.

Informing Your Children

- Make sure you have identification and other necessary papers with you. (Parents note: If your student is stopped or cited, and you wish to complain or file suit you should contact HSLDA. The time for complaint or suit is after your child is safe at home.)
- If stopped or questioned by a police officer, do not panic. A calm, respectful attitude will help show that you are not a criminal. For your safety, politely ask for identification proving the person is indeed a police officer.
- Look at the officer when he speaks to you. Avoiding eye contact or fidgeting may make the officer think you have something to hide.
- Say, "I am enrolled in [private school name] and I have permission to be away from school for [tell him your activity and destination]. I have my identification and a permission slip with me." Or say, "I am enrolled in [private school name] and we are out of school [this afternoon, today, this week, etc.]."
- Make no sudden movements, especially when reaching for your identification. Do not give the officer any reason to think his own safety might be in jeopardy.

Resources Available

- Robyn Nordell has created a packet of information that is essential for anyone working in opposition to daytime curfews. Included in this packet are suggestions for how to organize parents in your community, sample petitions, sample letters, examples of what actions were successful in other areas, detailed reasons for opposition to daytime curfews, text of existing laws focusing on truancy and juvenile crime, and more. Write to Robyn Nordell at 223 Ventura Place, Fullerton, CA 92833, to request a packet. (Please include \$10.00 to cover costs.)
- Private School I.D. is a business which provides photo school identification cards for homeschoolers. For information send a self-addressed, stamped envelope to Mark and Yvonne Glines, PSID, P.O. Box 18933, San Jose, CA 95158.
- The Department of Motor Vehicles can provide a personal photo identification card before your child gets a driver's license. Contact your local DMV office for information.

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