

Private and Home Educators of California

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A Threat to Your Freedom: Local Daytime Curfews

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Daytime curfews are sweeping our cities and counties like a firestorm. Though they vary, these local ordinances generally make it illegal for a child under 18 years of age to be in any public place during normal public school hours unless he falls under one of the listed exemptions. Exemptions differ from city to city. Some daytime curfew ordinances are disguised by using other legal terms such as daytime loitering and are only applicable to compulsory school-age children during school hours, making them effectively daytime curfews.

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 would make it illegal for school age children to be out in public during the hours from 8:00 a.m. until 2:30 p.m. "Out in public" is often 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 ordinance applies to all juveniles under 18 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. Students in public schools, private schools, and home schools are all affected.

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. At least one ordinance allows up to 6 months jail time for parents.

On the Battle Front

The battle is at both the local level, where city and county ordinances are being considered, and at the state legislative level. Many parents have diligently and successfully fought to stop local 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 remains vital to work together in local communities in order to stay informed of and oppose daytime curfews in any form.

On the state level, we have been battling statewide daytime curfew-type legislation. Some liberal and conservative legislators have routinely supported bills which increase the authority of the state at the expense of individual freedoms, parental authority, and Constitutional freedoms. See our *Legislative Alerts* and Daytime Curfew background papers for more information.

Nationally, this issue will remain a primary concern. Education is a major issue and the "crisis" of truancy will continue to receive national attention and funding. Congress has made millions of dollars of grant funds available to school districts to fight truancy, money that has been used to fund local daytime curfew programs.

"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 home schooler in Norwalk was cited for violating Norwalk's ordinance when he was 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, where the family was required to show attendance records as proof that their child was not truant. This particular ordinance even requires "off track" public school students to stay in their homes between 8:00 a.m. to 2:00 p.m.

Daytime Curfew provisions are unsalvageable with amendments and must be defeated. Neither exemptions nor exclusions will help. They will not keep thousands of innocent children and youth from being repeatedly stopped and questioned by the police.

Reasons for Opposing Daytime Curfew Ordinances

(A four page more detailed explanation of the following points is available to all who receive our newsletter.)

1. Daytime curfews violate the Constitutional right of "presumption of innocence," by shifting the burden of proof to the child to try to *prove* his innocence.
2. Daytime curfews cast too broad a net. The overwhelming majority of children who are out during "school hours" are innocent and not truant. Any of the following could be stopped and questioned when out in public during the day:
 - students in schools with double sessions each day
 - students in work-study/ROP who must travel to and from work
 - students whose school day ends earlier or begins later than the curfew ordinance hours
 - minors who graduated from high school before age 18
 - students in year-round schools who are "off track"
 - students on different schedules and whose schools have unusual days off (e.g. "staff development" days, etc.)
 - students who are out of school for winter, spring, or summer break
 - young adults over age 18 who look younger

3. Daytime curfews use "prior restraint." Daytime curfews violate the 5th and 14th Amendments 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 probable cause or reasonable suspicion of the commission of a specific crime.
4. 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."
5. The state already has laws which deal comprehensively with truancy.
6. Daytime curfews will condition children to become easy targets for criminals posing as police officers. With daytime curfews in place, all a would-be predator 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 stopped and taken in for truancy.
7. Daytime curfews are a move in the wrong direction for a free society. Peace officers already have the authority to stop and question anyone suspected of committing a crime. In addition, the schools already know the names and addresses of the students who are truant. If intervention is needed, it should be directed only at those students who are known truants. When the overwhelming majority of children are not truant, it is a mistake to reduce them to the status of criminal suspects simply for being on public property during the day.

What Should You Do?

Before beginning any opposition to a local daytime curfew ordinance, contact HSLDA. 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 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 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. Request information from HSLDA (540) 338-5600 and educate your home school group.
- 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 HSLDA and then with others in your community. Begin now to organize a coordinated, well-informed opposition. Be prepared for your municipality to ask you to provide amendment language to exempt home schoolers 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.
- Find 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.] You can create your own school's pupil identification card using a passport photo and lamination. The Department of Motor Vehicles also can provide a personal photo identification card before your child gets a driver's license. Contact your local DMV office for information about a DMV ID card for your child.
- 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 fund raiser 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.

Children should be taught the following:

- 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.