

## Curfews and Homeschooling

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From the Home Education Magazine forum on America Online:

Subj: Re:ALERT: Curfew Law in Houston

Date: 98-03-13 08:45:31 EST

From: [Wrensong@aol.com](mailto:Wrensong@aol.com)

When we were getting geared up for our local battle, an acquaintance sent me this note below. I hadn't been able to get to any of the meetings, and then the curfew was abruptly dropped, so I don't know if this strategy was being pursued by anyone, but here it is. My understanding is that the end came to it when a group of anti-curfew leaders got together with the official who was proposing the curfews and diplomatically enlightened him on the facts of how the curfews don't actually accomplish what he hoped for. I might add that that meeting was the result of an enormous barrage of letters and phone calls they had brought down onto the board of supervisors. People from across the whole spectrum of ages and society are against the suppression of civil liberties - find them, and get them to speak up. Elders are especially impressive supporters of the anti-curfew stance. One idea I had was to hand out small flyers at places where teens can be found, and get them to turn out - they were stunned when they heard what was in the works. Make the officials have to look them in the face when they make decisions about these kids' lives! The kids were really looking forward to giving speeches they had written - but it ended before the hearings. Anyway, here's the note - Lillian:

Curfews made the front page of the L.A. Times this week. Some survey of officials turned up the "surprising" fact that they mostly think curfews have been a good idea in their towns. More discouraging, few of them are being challenged in court. Fear of a court challenge seems to be the one biggest perceived downside. So curfews are getting good press and they're spreading. The article also quoted a woman from the ACLU who said it isn't surprising that crime is down in cities with curfews since crime is down everywhere. This ties in with an article in the opinion section last Sunday in which some fellow from UCLA explained that much we think we know about urban violence is either false or inconclusive. He also mentioned crime being on the downturn all over the country. He says New York claims their community policing program worked for them (and I've heard their curfew laws did it), but Chicago's violent crime has also dropped and they don't have community policing. So threaten a lawsuit and get in touch with the ACLU. Make it look like more of a political hassle to dump curfews than to keep them.

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From Home Education Magazine, Jan/Feb, 1997:

Truancy, Curfews and Our Response

by Janie Levine

Many of us grew up in communities with Truant Officers - the men and women in charge of assuring that all children were in school each day. The Truant Officer in our town made regular early morning visits to the bowling alley, the doughnut shop and other teen "hang-outs," then made his way out into the community, checking on unexcused absences and kids turned in by friends and neighbors. My community also had a curfew: kids under 18 were not supposed to be on the streets after 10 pm on weekdays, midnight on weekends. White middle class kids were seldom cited for violating these laws, and by the early 1970's curfew laws and the Truant Officer had all but disappeared from the scene. But a publication from the federal government this past summer has brought back the notion that law enforcement and schools should work hand-in-hand to combat truancy. It recommends creating tough new policies to deal with children and

young people who, under compulsory attendance laws, should be in school.

In July, 1996, the U.S. Department of Education in cooperation with the U.S. Department of Justice issued a "Manual to Combat Truancy." The manual speaks of truancy as "the first sign of trouble," and "a gateway to crime." It encourages communities to involve parents, ensure that students face firm sanctions for truancy, create meaningful incentives for parental responsibility, establish ongoing truancy prevention programs in school, and involve local law enforcement in truancy reduction efforts. The manual then goes on to describe what it calls "successful models of new anti-truancy initiatives" in communities across the nation. Statistics are provided that hold up truancy prevention efforts beside crime reduction figures. Sources for funding, training and technical assistance to communities are offered. In response, communities across the country are setting in place ordinances and regulations. In early October, we asked families to tell us what they were seeing and how the new regulations were affecting their families and communities.

Will Shaw of Virginia Home Education Association wrote, "The Town Council of Front Royal, Virginia recently passed a day-time curfew to go along with its long-standing night-time curfew. The proposed ordinance was strongly opposed by homeschoolers. It passed anyway, with some modifications that exempt homeschoolers. But it leaves all minors, including homeschoolers, guilty until they prove otherwise. That is they must satisfy the local constable that they are homeschoolers. "He went on to say that this curfew is tied to public school days and hours to address what is nearly a non-existent problem in their community: daytime juvenile crime.

A Chicago mother told us about the daylight curfew proposals in her community, then states "I believe that the curfew restrictions are an absolute violation of rights. My daughter now attends a private school with different days off than the public schools. Curfew laws would restrict her from walking downtown for ice cream or groceries during the school day."

While many communities have listened to homeschool families and private schools and have made exemptions, some have set into place regulations that affect every school-aged child. In Tulsa, OK, the situation has already confronted one homeschool family and has the potential to affect all families, regardless of where their children are being educated. Oklahoma is the only state in the union that has a constitutional amendment making homeschooling a "right." The burden of proof falls to the state when they accuse a family of not providing an education to their children. For this reason we were more than a little surprised to receive the following note regarding a 5th grade homeschooler:

"The boy was out riding his bike taking a break for P.E., about 1:00 in the afternoon. A neighbor called the local board of education and in turn, they called the local police department. When the police arrived, the boy was back in the house. The mother had run to the store and the two children were at home with the father, who sleeps during the day as he works nights. Not knowing any better, the children let the policeman in and woke their father up. The police asked what books and curriculum they were using and was shown this by the children. When they were satisfied that the parents were homeschooling, they communicated to the father that the children needed to stay in the house during school hours."

Upon calling a support group after hearing this story, a Tulsa mother shares: "What he said still confounds me. First off, he informed me of a new law either on the books or about to be. A child found without a parent can now be detained and taken into custody awaiting the parents coming to get him Secondly, he had just been contacted by a police officer in a small surrounding community in which they suspected the parents were not homeschooling and were considering what action to take. He expressed the fact that there was a real threat that children reported for truancy and sufficient records not available could mean trouble and possible conviction by the local DA. In closing he said he really didn't see what the problem was. The mother should just keep her child in during school hours and there wouldn't be any further problems. This really bothered me."

In Alaska, the Anchorage Municipal Assembly continues to work on their proposed truancy ordinance. One

citizen writes that while they are working with families to avoid problems, if passed this ordinance will "subject homeschool children and parents to possible citations and fines if a child is picked up by the Anchorage police during public school hours. If you have an exemption from the States' compulsory public school attendance status, you will not be cited or fined, although you may have to go through some process to prove that your family is exempt. If you do not have an exemption, you may be cited, fined and may, at the discretion of the police officer, receive a home visit from an intake worker from the Office of Alaska Department of Family and Youth Services." The last word we received from Alaska was that the term "excused absence" was being replaced with simply "absence," giving school authorities the power to investigate any child who is not at school, whether the parents called in and stated that the child was ill or not.

"Curfew Fever" is the term we've heard from those in California who are fighting either proposed or current daytime curfew ordinances. According to Diana Ausick of San Jose, an ISP student in Norwalk was cited for curfew violation as he rode his skateboard in front of his own home last spring. His ISP, the HCL Boston School, spoke on his behalf as a private school authority and fines were avoided. Other California communities are also confronting truancy and curfew ordinances.

From Fairfield, CA - "We have truancy regulations: They've just started their daytime hours curfew (8:30 -1:30) where the kids can not be out. They have exceptions such as a school pass for a doctor's appointment or if the kids are escorted by a parent. The thing that really bugs me about this is that it covers all public areas such as the library and community centers. The superintendent in our area had a "it doesn't matter what type of program the kids are in, they should be studying during these hours" quote in the papers. We were hoping to have our kids continue to be out in the community at all hours, but I find I'm not sure how far I want to push this. Most of all I wish they'd leave the library alone. Curfews are not the answer."

From Orange County, CA - "Here in Orange County nearly every city has a daytime curfew ordinance either recently passed or in the process of hearings. The argument is that the education code that contains the truancy law is too clumsy and difficult to enforce, so this is a way to give police the chance to pick up kids who are just "hangin' out" during school hours. "

Some homeschool families have accepted these new regulations as a part of life and necessary for curbing crime in their communities. I received a note from one homeschooler stating, "It's not really a big deal to get around the curfew. All I have to do in my area is get a little picture ID from the police department that says I'm homeschooled. I never worry about the curfew, even when I'm out alone without my ID."

Is this a "homeschool" problem? We are seeing how many homeschool families and groups have worked hand-in-hand with local officials to ensure that homeschoolers are not negatively affected by these regulations. Should we not, however, be concerned with freedom for all young people, regardless of where they are being educated? According to many, these new regulations are once again being enforced disproportionately against children and teens of color and those who look "different."

Those who support civil liberties for young people are taking stands opposing these curfew regulations. As the mother of a homeschooled teenager, I oppose any ordinance or regulation that would keep my son or any other young person from accepting a daytime job, visiting the public library or simply going to the store to buy milk. Once again, we need to stand together and fight these regulations which will essentially put all children under "house arrest" until they reach the acceptable age.

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From Home Education Magazine, Jan/Feb, 1998:

Nighttime Curfews  
Or  
You Wanna do What to my Kid?

by Mary McCarthy

Last July 10, my local weekly newspaper carried a front page article about the efforts of the local PTA and police to institute a curfew on the those under 18 between 10 p.m. and 5:30 a.m. Touted as a way to prevent trouble from occurring and not as a punishment, it would protect our young people from being "exposed to drugs, criminal activity and other" (unspecified) "threats to their physical and mental health." The Mayor offered these comforting words, "There are provisions. It's not like as soon as 10 p.m. comes you're going to be locked away and that's it. If there is a public function and the police are notified, things will be taken care of appropriately."

Did I read that right? My child would need to notify the police department if he was going to be out of his own home after 10 p.m.? Otherwise he will be locked away? Will the police department have the power to grant or withhold permission? I don't think so.

Time was a factor here. The local paper is published on Thursday, the council meeting was scheduled for the following Tuesday. Knowing I needed to reach a lot of people quickly I decided to write a 'letter to the editor'. But what would I say? I didn't want to defend the criminal behavior of a very small minority, nor did I want to sound like a hysterical parent. My son has never been in trouble with the police, nor does he wander the streets of this .75 square mile metropolis at night. However, occasionally he loses track of the time and has to walk home from his friend's house late. So I did some research and figured the details would come to me.

One of the first things I found on the Internet was a Justice Department Report on Curfews from the White House. "President Clinton believes that curfews, when they are backed by a community of support and are a part of a larger plan to help fight juvenile crime, can play an important role in keeping our children safe." I also found a Juvenile Justice Bulletin from April 1996 which included a lot of information about various curfews around the country.

I also found a wealth of information, which I ultimately used to write my letter, at the American Civil Liberties Union's (ACLU) web site. They have successfully challenged nighttime curfews in courts all over the country. They even have a handy 'bust card' you can download for your young people to carry with them. It gives instructions for what they should and shouldn't do if arrested or detained by authorities.

I wrote my letter from the standpoint that I am a taxpayer and that if the Borough arrested or detained a youth for curfew violation it could very well be sued for violating the youth's Constitutional rights, including their civil rights. As a taxpayer I would end up paying the financial penalties of such illegal actions. It avoided my having to personally attack the Mayor, the Council, the Borough, the PTA, the police department, and any individual who was pressuring the Council to enact the curfew. It also enabled me to avoid taking a stand against political pressure from the White House.

At the ACLU web site I found not just legal references, but some very good reasons why curfews are unconstitutional. I chose three cases because they had some good points and, with Letters to the Editor, space is a consideration. There are many different cases with some great points; I selected ones I liked.

The first is *Hutchins v. District of Columbia*. U. S. District Judge Emmet G. Sullivan issued a permanent injunction against D.C.'s curfew, ruling that minors "possess a fundamental right to free movement to participate in legitimate activities that do not adversely impact the rights of others." He also noted that curfews violate the rights of parents to make responsible decisions about how to raise their own children, and in doing so do nothing to make the streets safer. Arthur Spitzer, Legal Director of the ACLU of the National Capital Area, further noted, "The proper response to juvenile crime is to arrest the criminals, not to put thousands of law-abiding young people under house arrest."

I also found some good points in the 1996 decision declaring Henderson, Kentucky's curfew law unconstitutional. U.S. District Judge Joseph H. McKinley found that the city could not offer any proof that

minors were subject to a greater threat of violence and abuse between 1:00 a.m. and 5:00 a.m., therefore it could not be said that a curfew ordinance served a compelling government interest, therefore it "constitutes an unconstitutional infringement on the rights of minors." He also noted that the religious and civil exceptions written into the law were so vague as to be "susceptible to the moment-to-moment opinions of a policeman on the beat and to arbitrary and discriminatory enforcement."

Perhaps the most interesting case is *Nunez v. City of San Diego*. San Diego's curfew prohibited children 17 and under from being out in public to "loiter, wander, idle, stroll and play" after 10 p.m. Exceptions included school-sponsored events, supervision by a parent or while on an emergency errand for a parent. The court determined that the law unfairly blocked teens from exercising their right to free speech. They could not, for example, stay out late to attend a political rally, or to pray at midnight Mass. San Francisco Federal Appeals Court Judge Charles Wiggins noted that the curfew burdened parents as well as minors by usurping their rights as guardians, "Without proper justification, it violated the fundamental right to rear children without undue interference."

Almost all curfew proposals include provisions for parental fines. For example, Dallas, Texas can fine a parent up to \$500 for their child's curfew violation. New Orleans, Louisiana can also fine the parent up to \$500 and order 60 hours of community service in addition to court costs.

Some curfews have withstood legal challenges because they include more than a curfew. The Dallas program includes youth activities including Law Enforcement Explorers, a school liaison unit, Law Enforcement Teaching Students (LETS), midnight basketball and the Police Athletic League (PAL). Most successful curfews include a staffed center where children can be held until parents can pick them up. Staff can include law enforcement personnel, ministers and counselors. The New Orleans program includes staff from LSU Medical Center's Department of Psychiatry. These appear to be very expensive programs.

I used this information, got it down to around 400 words, and faxed the letter to both local weekly papers on Sunday afternoon. I chose both because they have the same publisher and fax number.

On July 17, the newspaper published not just my letter, but a tiny little legal notice that the Borough had adopted ordinance # 97-09, a juvenile curfew on July 15, 1997. The other paper published the letter on July 23. I figured that was the end of it, but I had made it clear that I knew the law, and a lawsuit was a possibility if my child were harassed for a curfew violation.

A few weeks later my son informed me that he had heard the curfew had been repealed. Not having seen anything in the paper and not being interested enough to attend Council meetings, I wasn't sure it wasn't just wishful teenage thinking, but it was hopeful news.

On September 18, the same weekly newspaper carried another front page story indicating the curfew ordinance was up for adoption on the Council's agenda for the following Tuesday. Oh. Something must have happened to void the July 17th adoption of the ordinance.

The following week's paper carried a page 3 article that explained the council had voted unanimously to table the ordinance indefinitely following a councilman's recommendation on behalf of the Laws and Licenses Committee to do so. The Mayor was quoted as saying, "I doubt very much if it will be brought up again by the end of this year because we see an improvement with our police patrolling the streets."

I don't know if it was my letter that turned the tide but it couldn't have hurt. While researching this issue I found a quote from Martin Luther King's "Letter from the Birmingham Jail." In it he wrote, "An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself." Good point.

And I'm happy to report that even though we have no curfew my son's mental and physical health seems to be intact.

"Garwood Curfew Sought", Cranford Chronicle, July 10, 1997, page 1. "Justice Department Report on Curfews: A Strong Part of a Community's Efforts to Keep our Children Safe", May 30, 1996. <<http://www.whitehouse.gov/WH/dispatch/053096.html>> "A Summary of Curfew: An Answer to Juvenile Delinquency and Victimization?", April 1996. <<http://www.tyc.state.tx.us/prevention/curfew-1.htm>> <<http://www.aclu.org>>  
"D. C. Curfew Law Struck Down" ACLU press release, Tuesday October 29, 1996. "KT City Curfew Declared Unconstitutional; Federal Court Blocks Henderson Measure", ACLU press release, July 19, 1996. Nunez v. City of San Diego, U. S. 9th Circuit Court of Appeals. A Summary of Curfew: An Answer to Juvenile Delinquency and Victimization? Op cit.

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From the American Homeschool Association Networking & Discussion List, March, 1998:

Subj: Re: Day curfew in Newark, OH  
Date: Thu, Mar 5, 1998 10:34 AM PST From: [oofers@earthlink.net](mailto:oofers@earthlink.net) (Emily Austin) To: [AHAonline@aol.com](mailto:AHAonline@aol.com)

The Safety committee of the Newark, Ohio city council is considering a daytime curfew law.

One important point is that this is not a Democrat vs. Republican issue. President Clinton endorsed this idea during his last campaign. But here in California, it was the Republican governor and a conservative Republican Assemblyman who introduced the statewide daytime curfew last year. It died in committee after much unanticipated (and bi-partisan) opposition, but first it won approval of a Democratic public safety committee. So there was bi-partisan support for it too.

This is not a homeschooling issue only, but a civil rights issue. Making it into a hs issue marginalizes it. There are too many allies out there who are more numerous and influential than we are. The Catholic schools don't like these day curfews either.

Here are some talking points you might consider.

Some night curfews, which use the same Constitutional justifications, have been overturned in Washington, D.C. and San Diego. Most juvenile crime occurs in the hours after school before parents get home from work, not during school hours. The city has not produced evidence that the day curfew is needed. State truancy law is sufficient. Taking attendance at school and reporting unexcused absences to the proper truancy authorities should be an effective means of combatting truancy under existing law.

The curfew discriminates against private school students who follow a different schedule than the public schools. Some parochial schools go on staggered schedules--one month on, one month off, in order to deal with overcrowding. Some public schools are on year-round schedules for the same reason, with students out of school at non-traditional periods of time.

It invites police harassment of students who are not doing anything wrong, maybe just hanging around in the parks on their days off. It would require kids who have every right to be out and about to carry identity papers provided by their parents, a repugnant policy in a democracy. It interferes with parental rights to direct the upbringing of their children. It creates a nightmare for troubled teens, such as homeless teenagers on the streets, as well as foster children who may not be capable of maintaining a regular schedule and whose foster parents have successfully lobbied against day curfews elsewhere. It discriminates against racial minorities, because where curfews are in place, they tend to be disproportionately enforced against minority kids.

Finally, the daytime curfew in Monrovia, CA is being challenged in a lawsuit, and it is foolish public policy to move forward until that lawsuit is settled. This was recently a successful argument in Sonoma County, California, where a daytime curfew proposal was shelved after community opposition.

Emily A.

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For additional information visit the Californians Against Daytime Curfews  
website at <http://cadc.aurdev.com>