

How Daytime Curfews Impact Home Schoolers

By Tim Lambert

A home school student in Houston was separated from his father and while waiting for a bus was stopped by city police and given a citation for violating the daytime curfew of the city. His parents were forced to go to court to prove that he was a home school student.

A home school student in San Antonio was finished with his school work for the day and, with his parent's permission, went to a local mall. While there, he was stopped by police officers and cited for violating the city's daytime curfew. He had to appear in court with his family to prove that he was a home school student.

A home school student in Lubbock was riding his bicycle around a city park close to noon one day as part of his physical education. According to the family, a police officer stopped him and asked why he was not in school. The young man explained that he was home schooled. The officer then told the boy that the city daytime curfew required that he stay indoors until 2:30 p.m.

These are all real examples of the problems that daytime curfews pose for students who homeschool or attend private schools on a different schedule from the local public schools.

The Problem with Daytime Curfews

In 1995 the Texas legislature passed a statute allowing Texas cities to adopt daytime curfews to deal with crime related to truants. Such ordinances usually prohibit a person under the age of 18 from being in public during the hours from 8:30 a.m. to 2:30 or 3:00 p.m. when public school is in session. They usually make some allowances for a juvenile to be in public at these times, such as permission from school or parents, an emergency, or the presence of a parent. Some even have home school exemptions. However, a child in public outside these parameters can be cited and fined for violating the curfew.

Daytime curfews are often difficult to understand and enforce. They can easily be challenged legally for vagueness. Terms such as "loitering," "idling," or even "being in" can be interpreted at an officer's or court's discretion, giving juveniles no clear idea of what they can or cannot do in public during the curfew hours. Some cities have decided to repeal the daytime curfews because of the very real chance of expensive litigation.

The supporters of these measures often point to crime statistics to show a need for such a harsh approach. Very often police push for such an ordinance because it gives them a great deal of authority with little or no due process. In fact, most law enforcement supporters cite what they call the need for "zero tolerance" against crime as a major reason for daytime curfews. As a case in point, when seeking to reinstate League City's daytime curfew, the police chief stated that the ordinance removes the need for probable cause.

What Can Be Done?

In spite of all the talk about crime, Texas city or county officials have yet to produce actual statistics to demonstrate a link between an increase in crime and truancy rates in a city or county. Therefore, one of the most effective arguments against daytime curfews is to challenge proponents to show the need for such a measure by producing evidence of the link between truancy and crime and to show evidence of success from other cities or counties that have adopted such measures.

With daytime curfews the police officers only have to determine that the student is compulsory attendance age and is in public during school hours to give a citation. Once that happens, the family must prove that the student is innocent rather than the city or county being required to prove that he is guilty.

Recently some Texas cities have begun to argue for daytime curfews simply as an easier means to enforce the compulsory attendance laws. They argue that school districts are losing money and children are not being educated, so a daytime curfew is needed to enforce the compulsory attendance laws.

However, the solution to truancy issues is very simple: the school district should aggressively enforce the compulsory attendance laws. Texas statutes, which also include due process to protect the rights of students and parents, are available to give school districts all the tools they need to do this. In 2007 the Texas legislature amended the Family Code, Section 52.01, Subsection (e) to allow law enforcement officers to return a truant child to his school. This change undermines the argument made by cities for the need of daytime curfews to give police the authority to stop children during school hours.

Due process requires that no one be deprived of their liberty (e.g. forced to stay in their homes) without being convicted of an actual crime. Law enforcement officers already have the authority to stop and question anyone suspected of committing a crime. The real need is to have tougher sanctions on serious or repeat juvenile criminals and stronger enforcement of current laws that already address juvenile crimes and truancy. There is no reason for schools to push for daytime curfews to help lower crime rates; the solution to their truancy problem is to aggressively prosecute and punish those guilty of criminal activities—not to pass ordinances that take freedom from the innocent.

Many concerned home educators have been able to convince their elected officials to repeal or reject such curfews. In 2006 in Murphy, Texas, home schoolers were successful in defeating a proposed daytime curfew by lobbying their city council members and explaining the problems associated with the proposed ordinance and with daytime curfews in general, making use of the argument in this article and the legal opinion on the constitutionality of daytime curfews. When Waco city officials sought a daytime curfew in 2007, home schoolers defeated that effort by pointing to the 2007 legislative change allowing police to return truants to their school. In 2008, Caldwell home schoolers were also successful in convincing their city officials to drop a daytime curfew proposal and brought attention to heavy handed actions by local police in talking to home schoolers in public during school hours. Freedom-loving citizens who are willing to make the commitment can accomplish the same in their communities.

http://www.thsc.org/Getting_Started/CurfewsImpact.asp