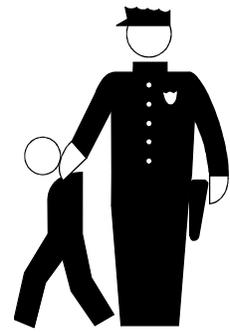


ELIMINATING DAYTIME CURFEWS:

The unusual story behind the headlines



by Ellen Neal

"Sometimes the truth is stranger than fiction" certainly applies to the recent passage of HB1064 as amended, patroned by Del. William Barlow, (D) from Smithfield. This curfew bill puts sharp teeth into the penalty for violators of curfew and loitering ordinances, while at the same time protecting homeschoolers and other minors from being subject to curfews during the day.

As a result of over two years of VHEA lobbying against daytime curfews, and joined this session by Home Educators Association of Virginia (HEAV), the amendment to HB1064 allows local jurisdictions to enact curfews only between the hours of 10 p.m. and 6 a.m. This came about after VHEA's bill to do the same, HB1092 died in committee.

The concept of preventing daytime curfews was quietly added later in the session to HB1064 in an unusual team effort by five delegates from opposite sides of the political spectrum and strangely, by some of the same legislators who earlier shot down VHEA's bill.

The victorious HB1064's life began last summer when Del. Barlow, a moderate Democrat, ran into a friend who is a Juvenile and Domestic Relations Judge back home in Smithfield, while they were attending a funeral. Del. Barlow asked the judge to suggest any legislation that would improve the justice system. His friend responded, "Judges around the state are unclear about their authority to take action against minors who are repeat curfew violators and involved in drugs. They need something to get the minor's attention. Some [judges] feel powerless as the law is unclear."

Current law allows localities to prohibit loitering in and around public places on public or private property and allows localities to establish curfews for minors not attended by their parents in public or private places at any time the governing body deems proper. The law, however, does not specify penalties for such loitering or curfew violations. Del. Barlow patroned HB1064 to address this apparent need for "broader discretion to dispose of cases concerning minor or repeated curfew violation."

In the bill's original form, loitering and curfew law violation, would be subject to the Children In Need of Services (CHINS) provision of the law. This provision allows that, "If a child is found to be in need of services or a status offender, the juvenile court or the circuit court may make any of the following orders of disposition for

the supervision, care and rehabilitation of the child." Those orders range from mandatory rehabilitation treatment of the child and parent, or required participation in a public service project to transfer of legal custody of the child to a relative, other individual, child welfare agency, or social services. That's a pretty sharp-toothed penalty for a kid who may just be in the wrong place at the wrong time. But, despite its severity, HB1064 sailed through the House Committee for Courts of Justice with unanimous support and sat ready for apparent House approval in the next few days. VHEA did not support HB1064 in it's original form.

Meanwhile, Del. Jay Katzen, a conservative Republican from Warren County, patroned for the second time (on behalf of VHEA) an anti-daytime curfew bill, HB1092. He described his bill as one to "curb the enactment of hideous Orwellian laws, that turn our Commonwealth into a police state."

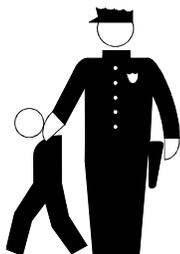
Over the past two years VHEA and other homeschoolers have been battling moves to enact daytime curfew ordinances in the city of Front Royal and Warren County, both in Del. Katzen's district, and in the City of Suffolk. While VHEA did not take a position on night time curfew ordinances, VHEA feels that these proposed daytime ordinances by local officials, intended to curb local crime and truancy problems, had the effect of casting huge nets. In addition to capturing truants, they also would have landed unsuspecting minor tourists visiting the Commonwealth, private school students who would be forced to follow the public school calendar, and homeschool students going about their lawful day-to-day activities. A child under a daytime curfew could be challenged by local authorities while going to their mailbox, jogging beside a road, walking to church, or playing in the park during public school hours.

The first attempt by VHEA to limit the state law authorizing counties and cities to enact daytime curfews was in the 1997 legislative session with legislation patroned by Del. Katzen. At the close of last year's session, Del. Katzen admitted that despite the hard work that VHEA put forth on behalf of his legislation, it probably had not had a chance because he was considering running for Lt. Governor that year and the Democrats were killing all the bills he patroned. He invited VHEA to come to him the next year to try again with the same anti-daytime curfew bill.

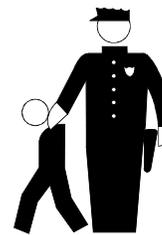
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In this year's session, VHEA was joined by HEAV in lobbying efforts for HB1092, the repeat bill limiting curfews to nighttime hours. In the House Committee on Counties, Cities & Towns (CC&T) that considered the bill, despite the testimony and presence of VHEA lobbyists, Ellen Neal and Suzanne Mehfoud, VHEA member Richard Pleasant, several VHEA member's children, and HEAV's lobbyist Shannon Sperte, the bill was unanimously carried over to the 1999 session. This action is sometimes termed "a polite way to kill a bill." CC&T, chaired by liberal Democrat Frank Hall of Midlothian, while sympathetic to the idea that curfews should not be used for curbing truancy, was NOT receptive to limiting the curfew-making authority of localities. Del. Hall grilled Del. Katzen and each testifying participant with difficult and confusing questions. This 'grilling' strategy is sometimes employed by legislators who are hostile to a particular lobbying group or in combat against bills they've heard before, which they aren't interested in changing their minds about.

The committee suggested VHEA and HEAV identify those localities where daytime curfews were a problem and meet with the delegates from those districts for further discussion. Upon VHEA's approval, Del. Katzen agreed that the bill be carried over to the 1999 Session. Del. Katzen then offered to patron another VHEA drafted anti-daytime curfew bill next year. It appeared at that point, VHEA would be required to continue efforts on the local level and lobby in Richmond for the third year to stop Virginia's daytime curfews.



In a dramatic and unpredictable turn of events days later, Del. Gladys Keating, Democrat from Franconia in northern Virginia and member of CC&T, and Del. Hall, chair of the CC&T Committee, went to Del. Katzen on the floor of the House while HB1064 was in its second reading. Together they suggested that an amendment be added to Del. Barlow's curfew penalty bill, HB1064, to accomplish what Del. Katzen had tried to achieve in his HB1092 anti-daytime curfew bill! Additionally, they discussed the benefit of finding a different delegate to add the amendment because of the difficulty Del. Katzen's bills have experienced due to partisan politics. In an interview with Del. Keating, VHEA learned that Keating has many homeschooling constituents, including the minister of her



church. She had suggested the amendment because "sometimes bills that are seen later [in the session] prevail" and she felt "it was not fair in Del. Barlow's bill to undo Del. Katzen's work." Del. Katzen then went to Del. Marshall, a very conservative Republican, who readily agreed to the amendment. Del. Marshall, a homeschool father, had been alerted to the curfew problem previously by homeschoolers in Front Royal. He then went to Del. Barlow to enlist his support. Del. Barlow immediately requested that his bill be passed by for the day. Del. Barlow, later told VHEA, "I was not aware that there were daytime curfews in the state. I can't see justification for daytime curfews. I think it's overkill to have curfews during the day." When Del. Marshall explained the problem to Del. Barlow and they found that the amendment would not affect any curfews currently in affect around the state, Del. Barlow thought the amendment was a "reasonable factor." On the following day he agreed to Del. Marshall's amendment.

The House quietly and without controversy passed HB1064 with the amendment and it proceeded to the Senate. Del. Barlow presented the bill to the Senate Local Government committee, with VHEA and HEAV attending to support the amendment, and it again was reported without discussion. Two days later HB1064 passed the Senate in a unanimous block vote, mixed in with numerous other uncontested bills as VHEA looked on with mixed satisfaction.

The bill, upon Gov. Gilmore's signature, will do two things. First, it will elevate the penalty of curfew and loitering violations to the potential for CHINS action. Second, it will limit the ability of localities in establishing curfews for minors to the night time hours of "not earlier than 10:00 p.m., nor later than 6:00a.m." While VHEA is not supportive of the penalty part of the bill, Del. Katzen advised we support passage of the bill in its current form and not request an additional amendment to reduce the penalty. In Del. Katzen's own words responding to an unknown individual who insisted that the bill be amended, "Too many fine people have worked hard for too long on this daytime curfew problem to risk drawing attention by requesting an [additional] amendment. They [potential opponents] haven't noticed our amendment yet, and I believe Gov. Gilmore will sign it."

HB1064 now moves to Governor Gilmore's desk for signature before becoming a law, July 1, 1998.