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HOUSE BILL 254

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Dennis J. Kintigh

AN ACT

RELATING TO CHILDREN; PROVIDING COUNTIES AND MUNICIPALITIES  
WITH AUTHORITY TO ENACT CURFEW ORDINANCES; PROVIDING PENALTIES;  
AMENDING AND ENACTING SECTIONS OF THE CHILDREN'S CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Children's Code is  
enacted to read:

"~~[NEW MATERIAL]~~ LOCAL GOVERNMENTS--AUTHORITY TO ADOPT  
CURFEW ORDINANCES--TIME LIMITATIONS FOR CURFEWS--EXCEPTIONS TO  
CURFEWS--PROCEDURES--SANCTIONS.--

A. The governing body of a county or municipality  
may adopt a curfew ordinance to regulate the actions of  
children during nighttime hours. If adopted, an ordinance  
shall set reasonable, age-appropriate time limitations.

B. The governing body of a county or municipality

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1 may adopt a curfew ordinance to regulate the actions of  
2 children during daytime hours on school days. If adopted, the  
3 curfew may require children, subject to the provisions of the  
4 Compulsory School Attendance Law, to be present on school  
5 premises.

6 C. A curfew ordinance adopted by the local  
7 governing body of a county or municipality shall provide lawful  
8 exceptions to the ordinance. The ordinance shall apply except  
9 when a child is:

- 10 (1) accompanied by a parent or legal guardian;
- 11 (2) accompanied by an adult who is authorized  
12 by the child's parent or legal guardian to have custody of the  
13 child;
- 14 (3) traveling interstate;
- 15 (4) going to or returning home from a school-  
16 sponsored function, a civic organization-sponsored function or  
17 a religious function;
- 18 (5) going to work or returning home from work;
- 19 (6) involved in a bona fide emergency;
- 20 (7) on a public street or sidewalk in front of  
21 the child's own home or the home of a consenting adult  
22 neighbor; and
- 23 (8) exercising the child's right to freedom of  
24 speech pursuant to the provisions of Article 2, Section 17 of  
25 the constitution of New Mexico or the first amendment to the

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1 constitution of the United States.

2 D. A curfew ordinance adopted by the local  
3 governing body of a county or municipality shall comply with  
4 the following procedures. If a child is detained by a law  
5 enforcement officer or any other employee designated by a  
6 county or municipality to enforce a curfew ordinance, the law  
7 enforcement officer or employee shall promptly attempt to  
8 contact the child's parent or legal guardian. Upon contacting  
9 the child's parent or legal guardian, the law enforcement  
10 officer or employee shall deliver the child to the parent's or  
11 legal guardian's residence or request that the child's parent  
12 or legal guardian come and take custody of the child, unless  
13 returning the child to the custody of the child's parent or  
14 legal guardian would endanger the health or safety of the  
15 child. If the law enforcement officer or employee is unable to  
16 contact the child's parent or legal guardian within a two-hour  
17 time period, the child shall be transported to a protective  
18 custody facility that is separate from a juvenile detention  
19 facility, an adult detention facility or an adult jail. A  
20 child detained in a protective custody facility shall be taken  
21 the following day to the residence of the child's parent or  
22 legal guardian or to the child's school if school is in  
23 session.

24 E. Subject to the provisions of Subsection F of  
25 this section, the municipal court, magistrate court or

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1 metropolitan court shall have original, exclusive jurisdiction  
2 over curfew violations. If a child willfully and intentionally  
3 violates a curfew ordinance, the municipal court, magistrate  
4 court or metropolitan court may order:

5 (1) the child to perform forty hours of  
6 community service for each violation of the ordinance; and

7 (2) the parent or legal guardian of the child  
8 to pay a civil fine in an amount not to exceed three hundred  
9 dollars (\$300), plus the actual costs incurred by the county or  
10 municipality in providing shelter for the child in a protective  
11 custody facility.

12 F. If a child is adjudicated three times within a  
13 six-month period for violating a curfew ordinance, the  
14 municipal court, magistrate court or metropolitan court shall  
15 report the matter to the department. The department shall  
16 conduct an investigation to determine the necessity of filing a  
17 petition with the children's court alleging neglect or abuse or  
18 that the child's family needs family services."

19 SECTION 2. Section 32A-3B-3 NMSA 1978 (being Laws 1993,  
20 Chapter 77, Section 75) is amended to read:

21 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH  
22 PROTECTIVE CUSTODY--PENALTY.--

23 A. A child may be taken into protective custody by  
24 a law enforcement officer without a court order when the  
25 officer has reasonable grounds to believe that:

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1 (1) the child has run away from the child's  
2 parent, guardian or custodian;

3 (2) the child without parental supervision is  
4 suffering from illness or injury;

5 (3) the child has been abandoned; ~~[or]~~

6 (4) the child is endangered by ~~[his]~~ the  
7 child's surroundings and removal from those surroundings is  
8 necessary to ensure the child's safety; or

9 (5) the child is in violation of a curfew  
10 ordinance and the officer is unable to contact the child's  
11 parent or guardian.

12 B. A child may be taken into protective custody  
13 pursuant to a court order issued after an agency legally  
14 charged with the supervision of the child has notified a law  
15 enforcement agency that the child has run away from a  
16 placement.

17 C. When a child is taken into protective custody,  
18 the department shall make a reasonable effort to determine  
19 whether the child is an Indian child.

20 D. Any person ~~[other than the child taken into~~  
21 ~~protective custody]~~ who interferes with placing the child in  
22 protective custody is guilty of a ~~[petty]~~ misdemeanor and shall  
23 be sentenced pursuant to the provisions of Section 31-19-1 NMSA  
24 1978."

25 SECTION 3. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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