

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 568

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO CHILDREN; PROVIDING FOR THE CREATION AND  
ENFORCEMENT OF CURFEW ORDINANCES BY COUNTIES AND  
MUNICIPALITIES; AMENDING AND ENACTING SECTIONS OF THE NMSA  
1978.

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

Section 1. Section 32A-1-6 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 15, as amended) is amended to read:

"32A-1-6. CHILDREN'S COURT ATTORNEY. --

A. The "office of children's court attorney" is  
established in each judicial district. Except as provided by  
Subsection C, D or E of this section, each district attorney is  
the ex-officio children's court attorney for the judicial  
district of the district attorney.

B. Except as provided by Subsection C, D or E of

1 this section, the children's court attorney may represent the  
2 state in any matter arising under the Children's Code when the  
3 state is the petitioner or complainant. The children's court  
4 attorney shall represent the petitioner in matters arising  
5 under the Children's Code when, in the discretion of the judge,  
6 the matter presents legal complexities requiring representation  
7 by the children's court attorney, whether or not the state is  
8 petitioner or complainant, but not in those matters when there  
9 is a conflict of interest between the petitioner or complainant  
10 and the state. A petitioner or complainant may be represented  
11 by counsel in any matter arising under the Children's Code.

12 C. In cases involving civil abuse or civil neglect  
13 and the periodic review of their dispositions, the attorney  
14 selected by and representing the department is the children's  
15 court attorney. The attorney selected by and representing the  
16 department shall provide the district attorney of the  
17 appropriate judicial district with a copy of any abuse or  
18 neglect petition filed in that judicial district. Upon the  
19 request of the district attorney, the attorney selected by and  
20 representing the department shall provide the district attorney  
21 with reports, investigations and pleadings relating to any  
22 abuse or neglect petition.

23 D. In cases involving families in need of services,  
24 the periodic review of their dispositions and voluntary  
25 placements, the attorney selected by and representing the

1 department is the children's court attorney. The attorney  
 2 selected by and representing the department shall provide the  
 3 district attorney of the appropriate judicial district with a  
 4 copy of any family in need of court-ordered services petition  
 5 filed in that judicial district. Upon the request of the  
 6 district attorney, the attorney selected by and representing  
 7 the department shall provide the district attorney with  
 8 reports, investigations and pleadings relating to any family in  
 9 need of court-ordered services petition.

10 E. In cases involving a child subject to the  
 11 provisions of the Children's Mental Health and Developmental  
 12 Disabilities Act that also involves civil abuse, civil neglect  
 13 or a family in need of court-ordered services, the attorney  
 14 selected by and representing the department is the children's  
 15 court attorney. In cases involving a child subject to the  
 16 provisions of the Children's Mental Health and Developmental  
 17 Disabilities Act that does not also involve civil abuse, civil  
 18 neglect or a family in need of court-ordered services, the  
 19 district attorney is the ex-officio children's court attorney.

20 F. In those counties where the children's court  
 21 attorney has sufficient staff and the workload requires it, the  
 22 children's court attorney may delegate children's court  
 23 functions to a staff attorney.

24 G. In a county or municipality that has enacted a  
 25 curfew ordinance, the district attorney having jurisdiction for

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1 that county or municipality may delegate the children's court  
2 attorney function to a county or municipal attorney."

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

5 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH  
6 PROTECTIVE CUSTODY--PENALTY. --

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

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

12 (2) the child without parental supervision is  
13 suffering from illness or injury;

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

15 (4) the child is endangered by his  
16 surroundings and removal from those surroundings is necessary  
17 to ensure the child's safety; or

18 (5) the child is in violation of a county or  
19 municipal curfew ordinance.

20 B. A child may be taken into protective custody  
21 pursuant to a court order issued after an agency legally  
22 charged with the supervision of the child has notified a law  
23 enforcement agency that the child has run away from a  
24 placement.

25 C. When a child is taken into protective custody,

1 the department shall make a reasonable effort to determine  
2 whether the child is an Indian child.

3 D. Any person, other than the child taken into  
4 protective custody, who interferes with placing the child in  
5 protective custody is guilty of a petty misdemeanor and shall  
6 be sentenced pursuant to the provisions of Section 31-19-1 NMSA  
7 1978. "

8 Section 3. A new section of the Children's Code, Section  
9 32A-3B-3.1 NMSA 1978, is enacted to read:

10 "32A-3B-3.1. [NEW MATERIAL] CURFEW ORDINANCES. --

11 A. Curfew ordinances may be enacted by counties and  
12 municipalities for the purpose of restricting the hours that a  
13 child under the age of eighteen years shall be allowed to  
14 remain in a public place or establishment. Curfew ordinances  
15 may provide for circumstances where a child under the age of  
16 eighteen years shall be allowed in a public place or  
17 establishment.

18 B. Curfew ordinances may provide for penalties that  
19 include community service and for monetary civil fines. These  
20 penalties may be imposed on a child or the child's parent or  
21 guardian. Curfew ordinances may provide for penalties that  
22 suspend or limit the use of a motor vehicle license by the  
23 child.

24 C. A children's court and the department may enter  
25 into joint powers agreements with counties and municipalities,

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1 including the magistrate, municipal or metropolitan courts in  
2 those jurisdictions, for the purpose of allowing jurisdiction,  
3 supervision, counseling and intervention with the child and the  
4 child's parent or guardian. Absent an agreement, jurisdiction  
5 shall remain with the children's court. A children's court may  
6 designate a special master or commissioner for administering  
7 and adjudicating the curfew ordinances.

8 D. A child under the age of eighteen years may be  
9 taken into custody by a law enforcement officer without a court  
10 order for violation of a curfew ordinance. Violation of a  
11 curfew ordinance shall subject the child to protective custody  
12 and shall subject the child and the child's parent or guardian  
13 to any applicable civil penalties."

14 Section 4. A new section of the Children's Code, Section  
15 32A-3B-4.1 NMSA 1978, is enacted to read:

16 "32A-3B-4.1. [NEW MATERIAL] PROTECTIVE CUSTODY FOR  
17 VIOLATION OF A CURFEW ORDINANCE. --

18 A. If a child is taken into protective custody for  
19 violation of a county or municipal curfew ordinance, the child  
20 shall not be held in a detention facility, police station,  
21 sheriff's facility or jail, but may be held in one of the  
22 following until a parent or guardian can pick up the child and  
23 claim custody of the child:

24 (1) community center or other building owned,  
25 leased or used by a county or municipality that is not a

1 detention facility; or

2 (2) other non-secured facility for the purpose  
3 of holding a child in temporary custody.

4 B. The county or municipality shall provide in its  
5 curfew ordinance mechanism and requirement mandating the city  
6 or county's requirement to attempt to contact the parent or  
7 guardian of the child taken into protective custody. Attempts  
8 to contact the parent or guardian shall be conducted promptly  
9 after taking the child into custody and provision shall be made  
10 in the ordinance for ongoing attempts to contact the parent or  
11 guardian, including provisions for attempts to contact a parent  
12 or guardian of a child who does not have a telephone.

13 C. A law enforcement officer who takes a child into  
14 protective custody pursuant to a violation of a curfew  
15 ordinance shall not be required to contact the department as  
16 provided in Section 32A-3B-4 NMSA 1978 but shall with all  
17 reasonable speed attempt to contact the parent or guardian of  
18 the child, and the law enforcement officer shall inform the  
19 child that the child is being taken into protective custody for  
20 violation of a curfew ordinance.

21 D. The child may be released to the custody of an  
22 adult designated by the parent or guardian of the child.

23 E. If a child has not been released to custody of a  
24 parent or guardian by 11:00 a.m. the morning after being placed  
25 into protective custody, the county or municipality shall

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1 provide for a means for the child to be returned to the child's  
2 home or to an adult designated by the parent or guardian of the  
3 child. "

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