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## FISCAL IMPACT REPORT

SPONSOR: HGUAC DATE TYPED: 3/10/03 HB 568/HGUACS

SHORT TITLE: Curfew Ordinances SB \_\_\_\_\_

ANALYST: Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 179.

### SOURCES OF INFORMATION

Responses Received From  
 Children, Youth and Families Department  
 Administrative Offices of the Courts  
 Administrative Offices of the District Attorney  
 Attorney Generals Office  
 Public Defender Department

### SUMMARY

#### Synopsis of Bill

The House Government and Urban Affairs Committee Substitute for House Bill 568 seeks to create a lawful manner whereby children under the age of eighteen years can be removed from public places and establishments during certain hours of the day, i.e., “after curfew”.

The bill is likely to respond to the New Mexico Supreme Court’s unanimous decision in ACLU v. CITY OF ALBUQUERQUE (S.Ct. 1999) 1999-NMSC-044, 128 N.M. 315, 992 P.2d. 866, which struck down the City of Albuquerque curfew ordinance on a number of grounds.

Specifically, the bill proposes the following:

1. The children's court attorney function may be delegated for the purpose of enforcing a curfew ordinance.
2. A child may be taken into protective custody without a court order when the enforcement officer has reasonable grounds to believe that the child is in violation of a county or municipal curfew ordinance.
3. Enactment of a new section (Section 3) of the Children's Code wherein counties and municipalities are granted the authority to:
  - a. Enact curfew ordinances for children under age eighteen;
  - b. Provide for penalties, which may include community service, suspension of a driver's license, or monetary fines;
  - c. Provide that these penalties may be imposed on a child, or the child's parent or guardian;
  - d. Enter into joint powers agreements between the counties and municipalities, including magistrate, municipal or metropolitan courts in those jurisdictions, for the purpose of allowing jurisdiction, supervision, counseling and intervention with the child and the child's parent or guardian (where such an agreement does not exist, the jurisdiction shall remain with the children's court);
  - e. Provide that a child under the age of 18 years may be taken into protective custody without a court order when the enforcement officer has reasonable grounds to believe that the child is in violation of a county or municipal curfew ordinance.
4. The bill enacts another new section (Section 4) of the Children's Code providing the following protective custody options for violation of curfew:
  - a. Community center, or other building owned, leased or used by a county or municipality that is not a detention facility; or
  - b. Other non-secured facilities for the purpose of holding a child in temporary custody.
5. Section 4 also provides that a county or municipality shall provide in its curfew ordinance mechanisms and stated requirements mandating the county or municipality's requirement to attempt to contact the parent or guardian of the child. This attempted contact must be prompt, and must include a mechanism or process for dealing with a parent or guardian who does not have a phone.
6. Finally, if the child has not been retrieved from protective custody by his or her parent by 11:00 a.m. the morning after being placed in protective custody, the county or municipality shall provide a means for the child's return home.

Significant Issues

1. This bill promotes the protection of children, and will also likely benefit property owners by curbing access to commit vandalism, burglary, and other such crimes.
2. Does the mere amendment to the Children's Code result in municipalities having the legal authority to enact curfew ordinances? If the answer to this question is yes, do the curfew ordinances meet the constitutionality tests enunciated by the New Mexico Supreme Court in ACLU v. CITY OF ALBUQUERQUE?
3. Will the language characterizing the "penalties" imposed against both the child or the child's parents as "civil" in nature be regarded by the New Mexico Supreme Court as nevertheless "criminalizing" the prohibited conduct? Will the language characterizing the taking of a child into "protective custody" be regarded by the New Mexico Supreme Court as nevertheless "arresting" the child? (i.e., Will the New Mexico Supreme Court regard the new provisions as nothing more than a subterfuge for arresting children because the new bill provides for community service, limitation of use of a motor vehicle license, and a monetary fine, all of which are traditional criminal penalties? )

Does the express statement in the bill regarding the types of facilities to which a child may be taken for "protective custody" (a community center or other *non-secure* building) impact/lessen the "arrest" factor?

It is noted that this provision does effectively address existing law at 32A-3B-4.1(A)(1) – (3) which prohibits a child from being held in a detention facility or jail, and from being held in a police station, sheriff's office, or state police office.

4. Upon the adoption of curfew ordinances by counties or municipalities, local police departments will have an additional burden of enforcement. This bill does not address duties for juvenile probation and parole officers, implying that enforcement is strictly a function of local government unless a joint powers agreement is developed with a specific role or function for juvenile probation and parole officers.
5. There may be possible constitutional issues relating to freedom of association.

**FISCAL IMPLICATIONS**

Under this bill, children taken into protective custody must be held in permissible, non-secure facilities. This means that appropriate buildings will have to be found or built, and must be staffed on a continuous basis. These costs will be the responsibility of the local governing bodies.

Local governing bodies will also be required to dedicate the staff and budget resources necessary for enforcement. However, monetary civil fines associated with charges of violating a curfew ordinance will go to the local governing body's general fund.

Finally, there will likely be an increase in the workload of the Children's Courts throughout New Mexico.

## CONFLICT

New Mexico Supreme Court's unanimous decision in ACLU v. CITY OF ALBUQUERQUE (S.Ct. 1999) 1999-NMSC-044, 128 N.M. 315, 992 P.2d. 866, which struck down the City of Albuquerque curfew ordinance on a number of grounds, must be of paramount importance in the Analysis, drafting, and consideration of this bill.

## TECHNICAL ISSUES

32A-3B-3(A)(5) adds an additional reason a child may be taken into protective custody, as follows:

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

In ACLU v. CITY OF ALBUQUERQUE, the Court stated:

“{22} In order to take children into protective custody, the Family in Need of Services article requires, among other circumstances, that the officer has reasonable grounds to believe that "the child is endangered by his [of her] surroundings and removal from those surroundings is necessary to ensure the child's safety." Section 32A-3B-3(A)(4). As Plaintiffs observe, the police officers who took the children into custody under the STOP program did not note any particularized finding that these children were in danger. The City argues that the lateness of the hour is inherently dangerous to children. We disagree. {23} We conclude that the City cannot take children into protective custody without a fact-specific showing that one or more of the specific statutory conditions within Section 32A-3B-3 are met. **We reject the City's attempt to create a bright-line rule which automatically defines a child in violation of the Curfew as a child endangered by his or her surroundings.** Such a rule is clearly over-inclusive, penalizes innocent conduct, and presents too great a danger that the police or municipalities will use "protective custody" as a subterfuge to avoid constitutional protections that would otherwise apply to warrantless arrests. **(Emphasis added)**

There is a significant technical hurdle to clear since the Supreme Court may apply the same rule to the legislature's attempt to add curfew violation as a reason for protective custody under 32A-3B-3.

SJM/yr/njw