

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Swisstack DATE TYPED 2/9/04 HB 165/aHGUAC

SHORT TITLE Curfew Enforcement Act SB _____

ANALYST Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	NFI		See Narrative	Recurring	General Fund and Local Municipal and County Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 166.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Offices of the Courts
 Department of the Public Defender
 Children, Youth and Families Department

No Responses Received From

Administrative Offices of the District Attorneys
 Department of Public Safety

SUMMARY

Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee amended House Bill 165 to allow a youth violating a local curfew law to be issued a “warning” before being issued a citation (i.e., the **first citation** is issued on the **second curfew violation**).

The amendment also provides that the youth will be referred to the Children, Youth and Families Department on the third violation, instead of the second violation.

Significant Issues

There appears to be a drafting error in the amendment at page 4, line 6 where “second” is to be inserted before “citation”. Seemingly, the intent is that the word “**citation**” should be “**violation**”.

The amended paragraph is addressing issuance of a **first citation** at the **second violation**. If page 4, line 6 is left to say “after issuance of the **second citation**”, then it appears there would be a third offense / violation required.

Without resolving this inconsistency, it is unclear whether the youth and his/her parent or guardian must attend the family education program no later than 30 days after a second citation (on a third offense) or after a first citation (on the second offense).

This inconsistency also casts doubt on the intended amended meaning of paragraph C, page 4, line 1. Is the intended meaning that the youth will be referred to the Children, Youth and Families Department on the third violation (**presumably, at the second citation**)?

Synopsis of Original Bill

House Bill 165 amends the Children’s Code to include a new section defining “neglected child.” A neglected child is defined as:

- a child without proper parental care and control, or subsistence, education, medical or other care or control necessary for the child’s wellbeing because of the faults or habits of the child’s parent, guardian, or custodian, when able to provide such care and control;
- a child who has been physically or sexually abused, when the child’s parent, guardian or custodian knew or should have known and failed to take reasonable steps to protect the child from further harm; or
- a child whose parent, guardian or custodian is unable to discharge his responsibilities to the child as a result of incarceration, hospitalization or physical or mental disorder or incapacity.

The bill also states the purpose of the Curfew Enforcement Act as follows:

- to protect children from dangerous circumstances resulting from being without proper supervision during the hours of 12 a.m. and 5 a.m.; and
- to provide for the general protection of children and the community.

The bill grants municipalities and counties the authority to adopt local curfew ordinances, providing the ordinance:

- applies only to children less than eighteen years of age;
- applies only between 12 a.m. and 5 a.m.; and
- the municipality or county has established a family education program that informs residents of the purpose of the ordinance and the availability of local community services.

The bill further provides that the local ordinance must have exceptions for:

- school activities;
- legitimate employment;
- instances where the child's parent, guardian or custodian has provided the child with permission to be out between 12 a.m. and 5 a.m.

Thereafter, the bill establishes the penalties for curfew violations as follows:

- First Violation: The first violation shall result in the issuance of a citation, which the child must sign. The citation shall include notice that the child and the child's parent, guardian, custodian are to attend a family education program within thirty days of issuance of the citation. Also, upon contact with the child and issuance of the citation, the enforcement officer shall contact the department's call center and attempt to contact the child's parent or legal guardian.

If the child and the parent, or legal guardian, fail to attend the family education program, the child shall be referred to the department and the department shall conduct an investigation to determine the best interest of the child pursuant to the Abuse and Neglect Act.

- Second Violation: Upon a second violation, the child shall be referred to the department immediately for a determination regarding the best interest of the child pursuant to the Abuse and Neglect Act.

The bill also allows an enforcement officer to take a child into custody immediately and contact the department if, upon contact with the child, the officer has reasonable grounds to believe the child is a neglected child.

Finally, the bill requires the department to adopt rules regarding the collection of data for evaluation from the municipalities and counties adopting curfew ordinances.

Significant Issues

- Local curfew ordinances, if effectively implemented, may significantly impact the activities of New Mexico's young people and enhance their safety. It may result in less drinking and driving, less drug use, less violence, less theft, less teenage prostitution, and the like.
- Similarly, such ordinances could result in considerable economic savings to local communities, as well as the state as a whole, due to fewer personal injuries, incidents of property damage, arrests, prosecutions, and detentions and/or probation or parole. When accountability for a child's whereabouts in night is achieved, there will likely be improved school attendance and academic performance.
- Many parents who struggle with their children may find curfew ordinances helpful in

curbing undesirable teenage behaviors.

- The merits of this legislation are dependent upon how well children's and communities' welfare and safety are balanced with the fundamental rights of parents and children within the sacred parent-child relationship.

The Administrative Offices of the Courts notes:

- This bill appears to respond to *ACLU v. City of Albuquerque* (S.Ct. 1999) 1999-NMSC-044, 128 N.M. 315, 992 P.2d 866, which struck down Albuquerque's curfew ordinance. The court ruled that the city's ordinance took children into protective custody without statutory authority to take these children into legal custody. This bill allows children to be taken into protective custody only when the law enforcement officer has a reasonable belief that this is a "neglected child."

The Department of the Public Defender notes:

- Just last week, January 22, 2004, the United States Court of Appeals for the Seventh Circuit ruled a similar ordinance was unconstitutional. *Hodgkins v. Peterson*, 2004 U.S. App. LEXIS 910. The proposed statutory scheme would certainly be challenged. These laws are almost always stricken down for being unconstitutional. *See, e.g., Ramos v. Town of Vernon*, 2003 U.S. App. LEXIS 25851; *Nuñez by Nuñez v. City of San Diego*, 114 F.3d 945 (9th Cir. 1997).
- HB 165 does contain clear and considered exceptions to enforcement of the law, which could possibly allow it to pass the strict scrutiny standard applied in cases such as these. *See Hutchins v. District of Columbia*, 188 F.3d 531 (D.C. Cir. 1999); *Qutb v. Strauss*, 11 F.3d 488 (5th Cir. 1993). However, the Indianapolis ordinance ruled unconstitutional as violative of First Amendment rights of minors in *Hodgkins* contained exemption provisions almost identical (although more numerous) to the ones in HB 165, and they were not sufficient to render the law constitutional.
- This would be subject to constitutional challenge, and there is a fair likelihood that it would be overturned as unconstitutional.

The Children, Youth and Families Department notes:

- This bill holds parents/guardian accountable for their children's curfew violation using the Abuse and Neglect Act by expanding the definition of neglect and authorizing counties and municipalities to enact curfew ordinances.
- A curfew ordinance was enacted by the City of Albuquerque to establish the STOP program in 1996. It was declared unconstitutional by the New Mexico Supreme Court in 1999. The Supreme Court case was *ACLU v. City of Albuquerque*, 128 N.M. 315 (1999). Part of the reason that the STOP program was declared unconstitutional was because it was not authorized by the Children's Code. HB165 appears to circumvent all of the problems that the majority of the Supreme Court had with Albuquerque's ordinance.

FISCAL AND ADMINISTRATIVE IMPLICATIONS

The bill does not include an appropriation. The bill will result in recurring administrative costs in staff and operational resources. These costs will affect the general fund and local municipal and county funds.

However, as noted above, savings to the general fund and local municipal and county funds be seen if lower drug and alcohol use, crime, injury, and legal action rates are achieved, and better school attendance and performance is seen.

CONFLICT OR RELATIONSHIP

HB 166 is an alternative curfew bill. The Department of the Public Defender asserts HB 166 is “even more likely to be held unconstitutional.”

OTHER SUBSTANTIVE ISSUES

1. This bill will likely result in legal difficulties for many parents and legal guardians who try to be attentive and to provide appropriate supervision. Seventeen-year-olds have been known to “sneak out” in the night, or to not return home by the hour set by a parent or guardian. It is difficult for parents to “control” *some* teenagers. According to this bill at Section 2, Paragraph B, a child is deemed abused or neglected when a parent fails to “properly control” the child.

There may be instances where a parent is doing the very best they can. Seemingly, it is unfair to deem such parents as abusive or neglectful.

2. The bill requires a citation be issued upon the first offense and that the citation contain notice where and when the child and parent, or legal guardian, are to attend a family education program. Failure to appear at the program will result in the child being referred to the Children, Youth and Families Department and a best interest “investigation” being initiated.

Undoubtedly, children receiving a citation may be unwilling to share the citation (containing the program notice) with their parent or legal guardian. A parent or guardian should not be snarled into “the system” and subject to immediate “investigation” because a child does not want trouble at home and does not share the citation. Rather, efforts need to be made to make sure the parent or guardian is actually notified before department involvement and investigations. Those efforts need to go beyond simply trying to contact the parent through the enforcement officer’s call center at the time the citation is issued. Further, unless other risk factors are present, there should be at least one middle “step” between missing the family education program and initiation of an investigation by the Children, Youth and Families Department.

What if the parent is not contacted at the time the citation is issued? The bill does not set forth what happens to the child. Is he or she simply told to go home? Is he or she taken home by the enforcement officer? Is he or she taken into custody?

How a state actor addresses what happens to a child when a parent cannot be contacted

has significant legal liability issues. What if a child is told to go home, but he or she does not make it home safely?

3. Where are children who are taken into custody to be detained—at the local police station, in a detention facility, in a community program facility? Do the local entities and agencies have the capacity to responsibly handle children found in violation of a curfew ordinance?
4. Is too much power being given to law enforcement at Section 6, Paragraph D wherein a law enforcement officer may automatically make the determination (even on a first offense) that a child is a neglected child, should be taken into custody, and should be referred to the department for a best interest “investigation”?

What qualifies as “reasonable grounds” for such a determination on the part of a state actor? What happens to children and parents if a law enforcement officer is over-zealous in such determination? There must be protections to ensure the fundamental child and parent.

SJM/sb:njw