

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 Park DATE TYPED 2/4/04 HB 166  
 SHORT TITLE Local Government Curfew Authority SB \_\_\_\_\_  
 ANALYST Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 165.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

### SUMMARY

#### Synopsis of Bill

House Bill 166 amends existing law defining the duties of the Children’s Court Attorney. The change permits a district attorney in a locality that has enacted a curfew ordinance to delegate duties to a county or municipal attorney.

The bill also creates a new statute authorizing local governments to enact curfews for minors. The new provision allows local governments to fine a violating minor’s parent(s) up to \$25. It also allows the state Children’s Court, the Children Youth and Families Department and local law enforcement and court entities to enter into joint powers agreements to establish enforcement jurisdiction.

Significant Issues

**The Public Defender Department states:**

- This type of statute is generally held to be unconstitutional unless strict limitations are placed on the curfew ordinances, in order to assure that they are narrowly drawn to allow it to pass the strict scrutiny standard applied in cases such as these. Just yesterday, January 22, 2004, the United States Court of Appeals for the Seventh Circuit ruled a much more narrowly drawn ordinance was unconstitutional. *Hodgkins v. Peterson*, 2004 U.S. App. LEXIS 910. The proposed statutory scheme set forth in HB 166 would certainly be challenged. This bill would very likely be stricken down as 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 (9<sup>th</sup> Cir. 1997).
- The law specifies that fines up to \$25.00 may be levied against the parents of violating children, but does not specify whether punishment is appropriate for the children – or what such punishment should be. By placing jurisdiction in the Children’s Court, the bill raises the specter of contempt, which might require counsel to be assigned. The bill does not make clear whether the Children’s Court is permitted to direct the Department of the Public Defender to represent the violating children and their parents – some judges are likely to do so.

**The Children, Youth and Families Department notes:**

- While this bill is proposed to be part of the Children’s Code, the curfew offense set forth is not included within the definition of a delinquent act. Therefore it appears only a fine will be authorized as opposed to any intervention by the Department’s Juvenile Justice Services or Protective Services.

**The Administrative Offices of the Courts asks:**

- Can Jurisdiction be created by agreement? What recourse will the court have if the civil fine is not paid?

**FISCAL IMPLICATIONS**

This bill does not contain an appropriation. Its enactment would, however, result in administrative costs to the various state and local agencies involved.

**The Public Defender Department states:**

- Because the bill opens so many doors without stepping through them, it is difficult to ascertain the performance implications on the Public Defender Department. If a Children’s Court judge were to order the Department to represent the violating children and their parents, it is likely other judges would follow suit. Depending on the number of these cases brought, there could be a need for additional mid-level Public Defender positions and support.

**The Administrative Office of the Courts states:**

- This measure may increase court caseloads, which may create a need for increased resources.

**TECHNICAL ISSUES**

**The Public Defender Department notes:**

- This bill would be subject to constitutional challenge, and there is a strong likelihood that it would be overturned as unconstitutional. Additionally, the law is silent as to whether the accused children and their parents are entitled to representation by the Public Defender Department.

**ALTERNATIVES**

**The Public Defender Department states:**

- HB 165 appears to be an alternative curfew bill, albeit also likely to be held unconstitutional.

**POSSIBLE QUESTIONS**

What can be changed about this bill, or any other curfew bill introduced, that will allow such a bill to pass the constitutional test?

**SJM/njw**