

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SJM 31

50th Legislature, 1st Session, 2011

Tracking Number: .185493.1

Short Title: Study Local Daytime Juvenile Curfews

Sponsor(s): Senator Mary Jane M. García

Analyst: James Ball

Date: March 15, 2011

Bill Summary:

SJM 31 requests that the Interim Courts, Corrections and Justice Committee, or its successor, collaborate with representatives from the Public Education Department, Children, Youth and Families Department (CYFD), Administrative Office of the Courts (AOC), and the New Mexico Municipal League (NMML) to:

- examine the feasibility of and procedures for allowing local governments to enact juvenile curfew laws to combat school truancy; and
- determine the law enforcement entities that are best equipped to enforce juvenile curfew laws.

Fiscal Impact:

Legislative memorials do not contain appropriations.

Technical Issues:

While one of the background statements in SJM 31, as well as the short title of the memorial, refers to daytime juvenile curfews, the instructions in the resolution section make no mention of daytime curfews. Clearly, local governments can and do enact nighttime juvenile curfews laws. Constitutional challenges to curfew ordinances appear to arise primarily when those laws refer to daytime hours.

No timeline is established to report the results of the study requested in SJM 31, nor is any report required or entity named to receive a report.

Substantive Issues:

A January 10, 2011 article in the *Wall Street Journal* (WSJ) reported that juvenile daytime curfews to combat truancy and crime are being debated by a growing number of local governments around the nation. The WSJ story reports that, while these daytime curfews can be effective in combating juvenile crime and truancy, they are also drawing protests from groups such as the American Civil Liberties Union and from the parents of homeschooled children who, along with some parents of public school students, object on grounds that such laws in effect criminalize otherwise law-abiding kids who may have good reasons for not being in school.

The WSJ story also states that daytime curfew laws have long been popular in a handful of states, including California and Ohio, and opponents say that they are becoming increasingly common. Benicia, California, near San Francisco, and Kennesaw, Georgia, north of Atlanta, began enforcing daytime juvenile curfews recently. Bedford, Texas, near Fort Worth, adopted a curfew last year, and the city council in Philadelphia was set to vote on one at the time of the WSJ report.

A study of the issue of daytime juvenile curfews by the Pennsylvania Legislature in 2006 concluded that, given the history of challenges to juvenile curfews both within and outside of Pennsylvania, a prudent municipality would be well-advised to prepare for a “strict scrutiny” standard to be applied to their curfew ordinance “Strict scrutiny” implies that courts will deem a curfew unconstitutional unless it “is narrowly tailored to serve a compelling governmental interest.” The potential application of this standard largely stems from the fact that curfews affect the fundamental rights of minors and many federal courts have determined that those rights deserve the same level of protection as those of adults. While preventing juvenile crime and protecting juveniles generally satisfy the “compelling interest” prong of the test, a lack of a statistical basis for the curfew and exceptions that inadequately allow for the exercise of constitutional rights often cause ordinances to fail a “narrow tailoring” requirement. Furthermore, strict scrutiny demands that a sufficient “nexus” exist between the goals of the ordinance and the means used to achieve it.

The most significant constitutional challenge to curfews of any kind appears to be based on the ninth amendment to the US Constitution, which states that “the enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.” In other words, powers not granted by the constitution are retained in the great residuum of rights of the people, which may include the right of parents to raise their children without undue interference by the government.

According to the analysis by CYFD of similar legislation this session (HB 252), under provisions of the *Children’s Code*, children cannot be detained for violations, including violations of municipal curfew ordinances, unless they are delinquent or criminal in nature. CYFD, therefore, has no authority or jurisdiction with respect to these matters, which remain merely violations of municipal or county ordinances. Additionally, making curfew violations criminal or delinquent matters would require statutory language indicating that the state specifically defines it to be so.

Similar analyses by AOC and NMML of HB 252a point out numerous issues with daytime curfews of juveniles that may need further study.

Background:

According to the website of the City of Dallas, Texas, the City Council adopted an ordinance, in May, 2009 which prohibits students under age 17 from being in a public place or business between 9:00 a.m. and 2:30 p.m. when school is in session. Violators will be returned to school, and they can be given a citation. The Class C misdemeanor carries a maximum fine of \$500. The Dallas Police Department has been enforcing the daytime juvenile curfew since August 24, 2009, the first day of classes for area public schools. The ordinance has three aims:

1. Keep students in school.
2. Protect minors from becoming victims of crime.
3. Protect the public from juvenile offenders.

The website further states that, upon encountering a possible violator, the police officer is obliged to determine if the student has a legitimate reason to be off campus, as allowed in the ordinance. For example, the student's school may not be in session, or the student is on an approved field trip. If one of the numerous exceptions applies, and no other reason exists to detain the student, he or she is free to go.

Recognizing that the goal is to change truant behavior, City of Dallas prosecutors plan to recommend to the courts that most minors and their parents or guardians be given the opportunity to take relevant courses or workshops in lieu of paying a fine.

Owners, operators, or employees of a business can also be cited for knowingly allowing a minor to be on the premises during curfew hours. Violators will be warned first and cited only after repeat offenses.

Related Bills:

HB 254a *Curfew Ordinances*

SB 311 *Parent Accountability for Child Truancy*