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## F I S C A L   I M P A C T   R E P O R T

<b>SPONSOR</b>	Kintigh	<b>ORIGINAL DATE</b>	02/09/11	<b>LAST UPDATED</b>	02/25/11	<b>HB</b>	254/aHHGAC
<b>SHORT TITLE</b>	Curfew Ordinances				<b>SB</b>		
					<b>ANALYST</b>	Hanika-Ortiz	

### **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>3 Year Total Cost</b>	<b>Recurring or Non-Rec</b>	<b>Fund Affected</b>
<b>Total</b>		*See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)  
Department of Public Safety (DPS)  
Children, Youth & Families Department (CYFD)  
Administrative Office of the Courts (AOC)  
New Mexico Municipal League

### SUMMARY

#### Synopsis of HHGAC Amendment

The Health and Government Affairs Committee Amendment clarifies that the child be required to be on school premises when in session, and if attending a private or home school program, then only when the child is required to be in attendance.

#### Synopsis of Original Bill

HB 254 enacts a new section of the Children's Code providing counties and municipalities with the authority to adopt curfew ordinances. More specific provisions of Section 1:

- (A): regulates children's nighttime hours;
- (B): regulates children's school day hours, including being required to be on school premises;
- (C): describes allowable exceptions that include being in the presence of an adult, traveling interstate, going to or returning home from school, civic, religious function or work, in an emergency, in front of their home or their adult neighbor's home, or when exercising their right to freedom of speech;

(D): requires that a person first contact the child's parent to take custody of the child, if unable to contact the parent the child is transported to a protective custody facility and the next day taken to the home of the parent, or to school if in session;

(E): sanctions for curfew violations include (1) requiring the child to perform 40 hours of community service and (2) the parent or guardian to pay a fine not to exceed \$300 plus actual costs of sheltering the child in the protective facility; and

(F): if a child is adjudicated three times within six months for curfew violations, the court shall request CYFD assess the need to petition the children's court for neglect, abuse or the need for family services.

Section 2 amends the Family in Need of Court-Ordered Services Act to provide that a law enforcement officer may take a child into protective custody without a court order when a child is in violation of a curfew and the parents cannot be contacted.

## **FISCAL IMPLICATIONS**

\*The fiscal impact will be dependent upon how many counties/municipalities will seek to adopt a curfew ordinance.

CYFD reports an operating budget impact to provide staff response to curfew violations as well as for housing children who are placed in protective custody.

DPS also reports an operating budget impact for enforcement and transportation of children in violation of the curfew ordinance who are encountered by law enforcement.

CYFD notes that the bill provides for a mechanism for the county/municipalities to collect for costs incurred for housing children found to be in violation of a curfew ordinance. These costs may or may not be recoverable depending upon the resources of the parents. Costs for maintaining the operations of facilities will presumably be assumed by the county/municipalities.

## **SIGNIFICANT ISSUES**

The bill proposes that a law enforcement officer, or any other employee designated by a county or municipality to enforce a curfew ordinance, has the authority to detain a child who is violating the ordinance. The person detaining the child must attempt to contact the child's parent or other legal custodian, and failing that within a two-hour period, to take the child into protective custody until the parent or other legal guardian is located.

The bill also proposes that a child may be taken into protective custody by a law enforcement officer without a court order *when the child is in violation of a curfew ordinance and the officer is unable to contact the child's parent or guardian*. The bill also increases penalties from a "petty misdemeanor" to a "misdemeanor" for any person who interferes with placing the child in protective custody.

Protective custody facilities do not exist in all counties/municipalities. Absent of these facilities, law enforcement may need to place children in CYFD's protective custody for placement in foster homes overnight.

## **PERFORMANCE IMPLICATIONS**

AOC notes that the bill purports to give original and exclusive jurisdiction over curfew violations to the municipal, magistrate or metropolitan court. This grant of jurisdiction appears to conflict with the exclusive original jurisdiction of the children's court division of district court established in the Children's Code.

The New Mexico Municipal League notes that the penalties outlined in the bill do not comport with the penalties that municipal courts typically are authorized to impose. Municipal courts may impose fines and community service for criminal violations of municipal traffic ordinances (for children) and traffic and criminal ordinances (for adults). Criminal acts and delinquent acts fall within the exclusive jurisdiction of the Children's court.

## **ADMINISTRATIVE IMPLICATIONS**

The administration implications of the bill would depend upon the number of counties or municipalities that enacted curfew ordinances in accordance with the bill. As the bill does not provide for additional administrative resources, efforts would have to be absorbed by existing law enforcement and CYFD staff.

The bill may also add to the burden of CYFD's Youth and Family Services Division by involving juvenile probation officers in referrals for violating an ordinance, as well as community service that may be ordered by a court that is given jurisdiction by the bill; similarly, by requiring a referral to the Department's Protective Services Division for three adjudications for violating a curfew ordinance in a six month period, the bill may add to protective services caseloads.

There may also be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 254 (especially the penalty provisions) may conflict with or duplicate provisions of SB 311, Parent Accountability for Child Truancy.

## **TECHNICAL ISSUES**

The bill provides no guidance as to the specifications for protective custody facilities and how they should be staffed, operated and maintained.

## **OTHER SUBSTANTIVE ISSUES**

CYFD further notes that curfew laws have been found to be unconstitutional in different jurisdictions throughout the United States, including in 1999 in Albuquerque. In the Albuquerque case, the New Mexico Supreme Court found that the Children's Code preempted the city from enacting a 1996 juvenile curfew ordinance that established criminal sanctions of incarceration and fines for juvenile activity which was not unlawful when committed by adults. The Court further held that even assuming that children apprehended under the city's juvenile curfew ordinance were taken into protective custody rather than "arrested," the program was

inconsistent with and invalid under the Children's Code, where police officers did not make particularized finding that the children were in danger and instead relied on the mere lateness of the hour as being inherently dangerous to the children.

Truancy prevention and intervention efforts protect youth from risk factors and help reduce juvenile delinquency and other related problems. Programs that prevent a young person from becoming involved in the juvenile justice system may save taxpayers money, prevent more people from becoming victims of crime and help prevent the development of future criminal offenders.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Counties/municipalities will have their current authority to enforce truancy.

**QUESTIONS**

What is to be done with the child in the two hour waiting period between the initial detainment and being taken into protective custody?

AHO/mew:bym