



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

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: This bill proposes to make it a delinquent act for a child to violate “a curfew ordinance adopted by the governing body of a county or municipality.” It specifically proposes to add such violations to the Children’s Code’s Delinquency Act’s definition of “delinquent act”.

**FISCAL IMPLICATIONS**

The creation of a new “delinquent act” in the Children’s Code is likely to have some fiscal impact on the Law Offices of the Public Defender (“LOPD”). It is difficult to predict the specific impact given that no statistics exist to suggest how much the previously legal behavior presently occurs, and how frequently youths would be prosecuted for curfew violations. The impact on workload is all the more difficult to determine in this instance because the “delinquent act” that would be created by this bill is tied to an undetermined number of local curfew ordinances in an unknown number of communities statewide.

Because enactment of this law would declare to be a delinquent act an ordinary activity that has previously not been subject to prosecution for youths in New Mexico, any such enactment should come with profound fanfare, advertising and education to prevent children from inadvertently becoming “delinquents” by simply continuing behavior they have previously done without consequence.

It is important to remember that indigent criminal defense is a constitutionally mandated right, and that LOPD does not control the decision to charge or the number of resultant cases assigned to the agency. All that can be said at this time is that if more charges, case assignments and trials result, LOPD may need to hire more attorneys and staff, and specifically prepare those individuals for practice in the children’s court. Accurate prediction of the fiscal impact is impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed new delinquent act.

**SIGNIFICANT ISSUES**

*Purposes of the Delinquency Act*

The purpose of the Children’s Code is “to provide for the care, protection and wholesome mental and physical development of children” as well as “to provide judicial and other procedures

through which the provisions of the Children’s Code are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced.” NMSA 1978 § 32A-1-3. The purposes of the Delinquency Act specifically includes, “remov[ing] from children committee delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions[.]” NMSA 1978 § 32A-2-2. Consistent with those purposes, the New Mexico legislature has not historically seen fit to make curfew violations “delinquent acts” for juveniles despite the issue having previously been presented in our Supreme Court.

In 1999, the New Mexico Supreme Court held that the Children’s Code preempted the City of Albuquerque’s juvenile curfew ordinance, which criminalized the violation of the local curfew and made it punishable by a fine or imprisonment. *Am. C.L. Union of New Mexico v. City of Albuquerque*, 1999-NMSC-044, ¶ 18, 128 N.M. 315. In reaching that decision, the Court noted that the “Legislature has clearly expressed that acts committed by children which would not be unlawful if committed by adults are not delinquent,” and that “the Legislature has balanced the need to control the behavior of minors against the serious label of ‘delinquent’. . . and chosen to reserve these penalties for behavior which is unlawful when committed by adults.” *Id.* ¶ 18. Albuquerque’s ordinance which authorized criminal sanctions for juvenile curfew violators was therefore found to be preempted by the Children’s Code, and the Legislature has not seen fit to amend the Delinquency Act to encompass curfew violations in the intervening 26 years. To now make it a delinquent act for a child to violate a local curfew ordinance would be a significant departure from the principle that youths should not be criminalized for actions that would be legal for adults.

#### *Increasing the number of delinquent youth*

Depending on its level of enforcement, the creation of a new status offense for the violation of a local curfew ordinance has the potential to bring large numbers of children into the juvenile justice system who would otherwise have no involvement. *See ACLU of New Mexico v. City of Albuquerque*, 1999-NMSC-044, ¶ 15 (challenged curfew “designates previously lawful behavior of young people as criminal in nature.”). Because the time a child must arrive at home is traditionally within the purview of their parents or guardians, it is more appropriate for the consequences for curfew violations to be determined in the home rather than adjudicated in the courts.

Making a curfew violation a delinquent act is likely to cause children to be labeled “delinquent” for engaging in normal adolescent behavior—many children will at some point in their teenage years will stay out later than they are permitted. Additionally, making it a delinquent act to violate a local curfew risks punishing children experiencing homelessness and children living in unstable home environments who may not have a safe place to go at the time the curfew dictates.

#### *Potential constitutional challenges*

Making curfew violations a delinquent act potentially implicates numerous constitutional issues and may draw a variety of constitutional challenges. Moreover, making curfew violations a delinquent act is likely to draw constitutional scrutiny to the local ordinances themselves, particularly if they are not drafted to include exceptions for religious gatherings, work, or family events.

Potential constitutional issues with curfew violations as delinquent acts may include:

- Issues related to free speech, religion, and assembly under the First Amendment to the United States Constitution and Article II §§ 11 and 17 of the New Mexico Constitution;
- Issues related to unlawful search and seizure for youths not engaged in criminal activity under the Fourth Amendment to the United States Constitution and Article II § 10 of the New Mexico Constitution;
- Issues related to the rights of parents and privacy rights under the Ninth Amendment to the United States Constitution;
- Issues related to equal protection and the right to freely travel under the Fourteenth Amendment to the United States Constitution and Article II § 18 of the New Mexico Constitution.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

## **AMENDMENTS**