



## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

#### **Synopsis:**

House Bill 182 amends Section 32A-2-3 NMSA 1978, the definitions section of the Delinquency Act, to reorganize the definition of “delinquent act”, explicitly include activities that would not be unlawful if committed by an adult, move the offense of attempting to buy, receiving, possessing or being served alcoholic liquor to that part of the definition, and add that violating a curfew ordinance adopted by the governing body of a county or municipality qualifies as a delinquent act.

### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

### **SIGNIFICANT ISSUES**

In 1999, the Supreme Court of New Mexico struck down a curfew ordinance enacted by the City of Albuquerque, holding that “the Children's Code preempts the City from drafting a Curfew ordinance which criminalizes behavior by children which is not unlawful if committed by adults.” *American Civil Liberties Union v. Albuquerque*, 1999-NMSC-044, available here: <https://law.justia.com/cases/new-mexico/supreme-court/1999/24763-0.html>. HB 182 resolves this barrier to curfews for juveniles by reorganizing Section 32A-2-3 NMSA 1978 to include activities that would not be unlawful if committed by an adult, and designating curfew violations as a delinquent acts under that part of the definition.

However, the offense of violating a curfew, and any future curfew ordinances themselves, may still be challenged under the U.S Constitution and the Constitution of New Mexico. Curfews in other states have faced constitutional challenges, with mixed results. *See, e.g., Schleifer v. City of Charlottesville*, 159 F.3d 843 (4th Cir. 1998), available here: <https://caselaw.findlaw.com/court/us-4th-circuit/1281235.html> (upholding a curfew ordinance), and *Hodgkins v. Peterson*, 355 F.3d 1048 (7<sup>th</sup> Cir. 2004), available here: <https://law.justia.com/cases/federal/appellate-courts/F3/355/1048/500490/> (striking down a curfew ordinance).

It also may be worthwhile to note that the Court in *ACLU v. Albuquerque* opined in dicta that curfew violations may be more like truancy or other less-serious violations, rather than delinquent acts:

“The Delinquency Act includes the serious conduct of children which is criminal in nature for all citizens, while other sections of the Children's Code, such as the Families in Need of Court-Ordered Services article, NMSA 1978, §§ 32A-3B-1 to 22 (1993, as amended through 1995), address behavior which, while not criminal, is not in the best interests of the child, such as truancy and running away from home. . . . Certainly, had the City not created a criminal offense

with the Curfew, restriction of night-time activities of children would seem more like truancy and running away than delinquent behavior.” *American Civil Liberties Union v. Albuquerque*, 1999-NMSC-044, ¶ 21.

**PERFORMANCE IMPLICATIONS**

**ADMINISTRATIVE IMPLICATIONS**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

**AMENDMENTS**