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SENATE BILL 179

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO CHILDREN; PROVIDING FOR THE CREATION AND
ENFORCEMENT OF CURFEW ORDINANCES BY COUNTIES AND
MUNICIPALITIES; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-1-6 NMSA 1978 (being Laws 1993,
Chapter 77, Section 15, as amended) is amended to read:

"32A-1-6. CHILDREN'S COURT ATTORNEY. --

A. The "office of children's court attorney" is
established in each judicial district. Except as provided by
Subsection C, D or E of this section, each district attorney is
the ex-officio children's court attorney for the judicial
district of the district attorney.

B. Except as provided by Subsection C, D or E of

1 this section, the children's court attorney may represent the
2 state in any matter arising under the Children's Code when the
3 state is the petitioner or complainant. The children's court
4 attorney shall represent the petitioner in matters arising
5 under the Children's Code when, in the discretion of the judge,
6 the matter presents legal complexities requiring representation
7 by the children's court attorney, whether or not the state is
8 petitioner or complainant, but not in those matters when there
9 is a conflict of interest between the petitioner or complainant
10 and the state. A petitioner or complainant may be represented
11 by counsel in any matter arising under the Children's Code.

12 C. In cases involving civil abuse or civil neglect
13 and the periodic review of their dispositions, the attorney
14 selected by and representing the department is the children's
15 court attorney. The attorney selected by and representing the
16 department shall provide the district attorney of the
17 appropriate judicial district with a copy of any abuse or
18 neglect petition filed in that judicial district. Upon the
19 request of the district attorney, the attorney selected by and
20 representing the department shall provide the district attorney
21 with reports, investigations and pleadings relating to any
22 abuse or neglect petition.

23 D. In cases involving families in need of services,
24 the periodic review of their dispositions and voluntary
25 placements, the attorney selected by and representing the

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1 department is the children's court attorney. The attorney
2 selected by and representing the department shall provide the
3 district attorney of the appropriate judicial district with a
4 copy of any family in need of court-ordered services petition
5 filed in that judicial district. Upon the request of the
6 district attorney, the attorney selected by and representing
7 the department shall provide the district attorney with
8 reports, investigations and pleadings relating to any family in
9 need of court-ordered services petition.

10 E. In cases involving a child subject to the
11 provisions of the Children's Mental Health and Developmental
12 Disabilities Act that also involves civil abuse, civil neglect
13 or a family in need of court-ordered services, the attorney
14 selected by and representing the department is the children's
15 court attorney. In cases involving a child subject to the
16 provisions of the Children's Mental Health and Developmental
17 Disabilities Act that does not also involve civil abuse, civil
18 neglect or a family in need of court-ordered services, the
19 district attorney is the ex-officio children's court attorney.

20 F. In those counties where the children's court
21 attorney has sufficient staff and the workload requires it, the
22 children's court attorney may delegate children's court
23 functions to a staff attorney.

24 G. In a county or municipality that has enacted a
25 curfew ordinance, the district attorney having jurisdiction for

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1 that county or municipality may delegate the children's court
2 attorney function to a county or municipal attorney or that
3 attorney's designee for the purpose of enforcing a curfew
4 ordinance. "

5 Section 2. Section 32A-3B-3 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 75) is amended to read:

7 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH
8 PROTECTIVE CUSTODY--PENALTY. --

9 A. A child may be taken into protective custody by
10 a law enforcement officer without a court order when the
11 officer has reasonable grounds to believe that:

12 (1) the child has run away from the child's
13 parent, guardian or custodian;

14 (2) the child without parental supervision is
15 suffering from illness or injury;

16 (3) the child has been abandoned; [or]

17 (4) the child is endangered by his
18 surroundings and removal from those surroundings is necessary
19 to ensure the child's safety; or

20 (5) the child is in violation of a county or
21 municipal curfew ordinance.

22 B. A child may be taken into protective custody
23 pursuant to a court order issued after an agency legally
24 charged with the supervision of the child has notified a law
25 enforcement agency that the child has run away from a

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1 placement.

2 C. When a child is taken into protective custody,
3 the department shall make a reasonable effort to determine
4 whether the child is an Indian child.

5 D. Any person, other than the child taken into
6 protective custody, who interferes with placing the child in
7 protective custody is guilty of a petty misdemeanor and shall
8 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
9 1978. "

10 Section 3. A new section of the Children's Code, Section
11 32A-3B-3.1 NMSA 1978, is enacted to read:

12 "32A-3B-3.1. [NEW MATERIAL] CURFEW ORDINANCES. --

13 A. Curfew ordinances may be enacted by counties and
14 municipalities for the purpose of restricting the hours that a
15 child under the age of eighteen years shall be allowed to
16 remain in a public place or establishment. Curfew ordinances
17 may provide for circumstances where a child under the age of
18 eighteen years shall be allowed in a public place or
19 establishment.

20 B. Curfew ordinances may provide for penalties that
21 include community service or suspension or limitation of the
22 use of a motor vehicle license and may provide for monetary
23 civil fines. These penalties may be imposed on both the child
24 or the child's parent or guardian.

25 C. A children's court and the department may enter

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1 into joint powers agreements with counties and municipalities,
2 including the magistrate, municipal or metropolitan courts in
3 those jurisdictions, for the purpose of allowing jurisdiction,
4 supervision, probation and intervention with the child and the
5 child's parent or guardian. Absent an agreement, jurisdiction
6 shall remain with the children's court. A children's court may
7 designate a special master or commissioner for administering
8 and adjudicating the curfew ordinances.

9 D. A child under the age of eighteen years may be
10 taken into custody by a law enforcement officer without a court
11 order for violation of a curfew ordinance. Violation of a
12 curfew ordinance shall subject the child to protective custody
13 and shall subject the child and the child's parent or guardian
14 to any applicable civil penalties. "

15 Section 4. A new section of the Children's Code, Section
16 32A-3B-4.1 NMSA 1978, is enacted to read:

17 "32A-3B-4.1. [NEW MATERIAL] PROTECTIVE CUSTODY FOR
18 VIOLATION OF A CURFEW ORDINANCE. --

19 A. If a child is taken into protective custody for
20 violation of a county or municipal curfew ordinance, the child
21 shall not be held in a detention facility or jail, but may be
22 held in one of the following until a parent or guardian can
23 pick up the child and claim custody of the child:

24 (1) community center or other building owned,
25 leased or used by a county or municipality that is not a

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detention facility;

(2) shelter-care home or shelter-care center
as provided for in the Children's Shelter Care Act; or

(3) other non-secured facility for the purpose
of holding a child in temporary custody.

B. If a child has not been released to custody of a
parent or guardian by 11:00 a.m. the morning after being placed
into protective custody, the county or municipality shall
contact the department and the appropriate provisions of
Chapter 32A, Article 3B NMSA 1978 shall be followed. "