

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 254a (Revised)

50th Legislature, 1st Session, 2011

Tracking Number: .183662.2

Short Title: Curfew Ordinances

Sponsor(s): Representative Dennis J. Kintigh and Others

Analyst: Kevin Force

Date: February 24, 2011 (Revised)

AS AMENDED

The House Education Committee amendment changes the act's purpose and section as follows:

- clarifies that any curfew adopted by a county or municipality may require children to be present on school premises, "when the public, private or home school program that the child is attending is in session."; and
- adds another exception to the list of "reasonable exceptions" in subsection (C), providing that a curfew ordinance shall not apply when a child is "enrolled in or receives instruction in a private school or home school program and that school or program does not require the child to be in attendance at a particular time."

Original Bill Summary:

HB 254 proposes to add a new section to the *Children's Code* to provide counties and municipalities with authority to enact curfew ordinances that:

- regulate the actions of children during nighttime hours;
- establish reasonable curfews that are age appropriate;
- regulate children's activities during the day on school days;
- require the child to be on school premises subject to the *Public School Code*; and
- provide reasonable exceptions to the curfew ordinance, when a child is:
 - accompanied by a parent or legal guardian;
 - accompanied by an adult who is authorized by the child's parent or guardian to have custody of the child;
 - travelling interstate; or
 - going to or returning home from:
 - a school or civic organization sponsored function;
 - religious function; or
 - work;
 - involved in a bona fide emergency;

- on a public street or sidewalk in front of the child’s home, or the home of a consenting adult neighbor; and
- exercising the child’s constitutional right to freedom of speech;
- require a law enforcement officer, or other government employee authorized to enforce the curfew, to:
 - promptly contact the child’s parent or guardian;
 - deliver the child to the parent or guardian’s residence, or request the parent or guardian come to take custody of the child, unless returning the child to the parent or guardian would endanger the child;
 - if the officer or employee is unable to contact the child’s parent or guardian within 2 hours, take the child to a protective custody facility, separate from a juvenile or adult detention facility or jail; and
 - take the child to their parent or guardian’s residence, or to their school, the day after being detained;
- reserve original jurisdiction to the municipal, magistrate, or metropolitan court, who, in cases of willful violation of the curfew, may order:
 - the child to perform 40 hours of community service for each violation; and
 - the parent or legal guardian to pay a civil fine of not more than \$300, plus costs incurred by the authorities;
- require the court to report the matter to the Children, Youth and Families Department (CYFD) when a child is adjudicated for ordinance violations three times within 6 months; and
- require CYFD to investigate the matter to determine if it is necessary to file a petition with the children’s court alleging neglect or abuse, or that the child’s family needs family services.

HB 254 further amends the *Children’s Code* to allow law enforcement officers to take a child into protective custody, without a court order, when the child is in violation of curfew, and the officer cannot contact the child’s parent or guardian.

Fiscal Impact:

HB 254 does not contain an appropriation.

Fiscal Issues:

According to the Administrative Office of the Courts (AOC):

- there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes;
- new laws, amendments, and hearings may increase caseloads in the courts, requiring additional resources; and
- the fiscal impact of providing a protective facility appears to fall on the county or municipality.

According to the Department of Public Safety:

- HB 254 requires law enforcement to take specific action when encountering a child in violation of curfew;
- action the bill requires of law enforcement may necessitate full-time equivalent position hours for which law enforcement may not be currently responsible; and
- it is impossible to be certain of the costs incurred by law enforcement under the bill.

According to CYFD:

- HB 254 creates additional fiscal demands upon CYFD that may be significant depending upon the number of counties/municipalities that create ordinances in response to the bill;
- costs would be incurred to provide staff response to curfew violations as well as for housing children who were placed in protective custody;
- the bill fails to account for costs incurred when children are placed but are not found to be in violation. These costs might be assumed by the municipality; and
- it also fails to provide a mechanism for CYFD to recoup costs when the department assumes initial cost for shelter and placement.

Revised Substantive Issues:

According to new information received from the Deputy Director for Probation, CYFD, as of February 24, 2011:

- **HB 254 proposes merely to vest authority in counties or municipalities to enact curfew ordinances. Counties and municipalities only have authority to adjudicate traffic code violations, but not other criminal or delinquent matters. Therefore, curfew violations would remain, by definition, municipal in nature and could not be considered criminal or delinquent;**
- **According to 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; and**
- **to make a curfew violation a criminal or delinquent matter, language would need to be added to the bill indicating that the state specifically defines it to be so.**

According to the CYFD analysis:

- not all counties and municipalities have “protective custody facilities,” so law enforcement may seek to place children in CYFD’s protective custody for placement into foster homes, creating additional stress on the foster care system and limiting placement resources for abused and neglected children;
- the bill does not provide for a procedure if there is no protective custody facility in a jurisdiction that adopts a curfew law, or if there is a facility and the facility is at capacity;
- the bill may result in more juveniles having initial contact with law enforcement, which may result in ongoing contact;
- by requiring a referral to the CTFD’s Protective Services Division for three adjudications for violating curfew within a six month period, the bill will add to protective services caseloads;

- there are few, if any, empirical studies that demonstrate that curfew laws have any impact on reducing juvenile crime, and some have found that they actually increase crime; and
- curfew laws have been found to be unconstitutional in jurisdictions throughout the United States, including in 1999 in Albuquerque, unless the statutes are narrowly tailored to meet a compelling state interest:
 - 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 that was not unlawful when committed by adults; and
 - assuming that children apprehended under the city's juvenile curfew ordinance were taken into protective custody rather than “arrested,” the program was still inconsistent with 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 children;¹ and
- while it is uncertain if HB 254 conflicts with that ruling, by granting each municipality the authority to pass their own curfew laws, the bill may be setting each one up for constitutional challenge.

According to the New Mexico Municipal League analysis:

- HB 254 vests enforcement authority of curfew ordinances in either the municipal or magistrate courts;
- municipal courts are vested with authority to adjudicate violations of municipal traffic code violations, but not with other acts that are delinquent or criminal in nature;
- criminal and delinquent acts fall within the exclusive jurisdiction of the Children’s Court;
- curfew violations under the proposed bill are not traffic offenses and are therefore not within the jurisdiction of the municipal courts; and
- penalties outlined in the bill are inconsistent with the penalties that municipal courts are otherwise authorized to impose, such as:
 - fines and community service for children’s violations of traffic ordinances; and
 - fines and community service for adults’ violations of criminal and traffic ordinances;
- detention procedures in the bill are potentially problematic, because a law enforcement, or other enforcement designee:
 - has the authority to detain a child for violating curfew;
 - must attempt to contact the child’s parent or guardian; and
 - failing to locate the child’s parent within 2 hours, must take the child into protective custody until the parent or guardian can be located;
- the bill makes no provision for the disposition of the child during the period between the initial detention and the transport to the protective custody facility; and
- the bill states that the detention facility must be separate from a juvenile or adult detention facility or jail, but gives no criteria for the protective custody facility.

¹ *ACLU v. City of Albuquerque*, Sup. Ct. No. 24, 763 (November 17, 1999)

The AOC also raises the issue of potentially conflicting jurisdiction:

- constitutional issues may arise because HB 254 purports to give original and exclusive jurisdiction of curfew violations to municipal, magistrate or metropolitan courts;
- this grant of jurisdiction appears to conflict with other sections of the *Children's Code*, of which HB 254 would be a part, because:
 - the *Children's Code* defines “court” as the “children’s court division of the district court;” and
 - the involvement of multiple courts in curfew violations:
 - raises the possibility of conflicting court orders; and
 - appears to conflict with one of the state purposes of the *Children's Code*: “to provide continuity for children and families appearing before the children’s court by assuring that, whenever possible, a single judge hears all successive cases or proceedings involving a child or family.”

Technical Issues:

CYFD notes “New Material, Section D” provides that if law enforcement is unable to contact the child’s parent or legal guardian, the child shall be transported to a protective custody facility, which appears to conflict with the amended Section 32A-3B-3 NMSA 1978 that the law enforcement officer may place the child in the protective custody of the department.

Background:

The Public Education Department (PED), in their analysis, cites the *Juvenile Justice Reform Initiatives in the United States: 1994-1996 Report*:

- Curfews have reemerged recently as a popular option for policymakers in their efforts to deter juvenile victimization and delinquency. Imposed on and off since the turn of the century, curfews tend to receive increased attention when there is a perceived need for more stringent efforts at social control.
- The stated goal of most curfew laws is twofold: to prevent juvenile crime and to protect youth from victimization.
- By keeping youth under the age of 18 off the street, curfews are expected to reduce the incidence of crime among the cohort most likely to offend, according to the Federal Bureau of Investigation's (FBI's) 1994 Uniform Crime Report.
- Effective curfew programs share several key components, such as sustained enforcement and community involvement, according to a report by the Office of Juvenile Justice and Delinquency Prevention.

However, a study conducted by the Center on Juvenile and Criminal Justice, *The Impact of Juvenile Curfew Laws in California*² suggested that the actual effects of curfew ordinances might be counter to expectations:

- Data from jurisdictions throughout California were analyzed to determine the impact of juvenile curfew laws on youth crime.
- Analyses used curfew arrest and youth crime rates for the 12 most populous counties, and rates for cities with a population of over 100,000.
- It was hypothesized that:
 - jurisdictions with strict curfew enforcement would experience lower overall and serious crime arrests than jurisdictions with less strict curfew enforcement; and
 - jurisdictions with strict youth curfews would have accelerated rates of youth crime reduction in relation to adult crime.
- However, statistical analyses provided no support for the proposition that stricter curfew enforcement reduced youth crime either absolutely or relative to adults by location, city, or type of crime.
- Curfew enforcement generally had no discernible effect on youth crime.
- In the few instances where a significant effect was found, curfew enforcement was more likely to be associated with higher rates of juvenile crime.

Related Bills:

None as of February 4, 2011.

² Dan Macallair and Mike Males, Center for Juvenile and Criminal Justice, San Francisco, CA 1998