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HOUSE BILL 89

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Dennis J. Kintigh

AN ACT

RELATING TO CHILDREN; PROVIDING COUNTIES AND MUNICIPALITIES WITH AUTHORITY TO ENACT CURFEW ORDINANCES; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE CHILDREN'S CODE.

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

SECTION 1. A new section of the Children's Code is enacted to read:

"~~[NEW MATERIAL]~~ LOCAL GOVERNMENTS--AUTHORITY TO ADOPT CURFEW ORDINANCES--TIME LIMITATIONS FOR CURFEWS--EXCEPTIONS TO CURFEWS--PROCEDURES--SANCTIONS.--

A. The governing body of a county or municipality may adopt a curfew ordinance to regulate the actions of children during nighttime hours.

B. The governing body of a county or municipality may adopt a curfew ordinance to regulate the actions of

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1 children during daytime hours on school days. If adopted, the  
2 curfew may require children, subject to the provisions of the  
3 Compulsory School Attendance Law, to be present on school  
4 premises when the public, private or home school program that  
5 the child is attending is in session.

6 C. A curfew ordinance adopted by the local  
7 governing body of a county or municipality shall provide lawful  
8 exceptions to the ordinance. The ordinance shall, at a  
9 minimum, exempt the following:

10 (1) a child accompanied by a parent, guardian  
11 or custodian;

12 (2) a child accompanied by an adult who is  
13 authorized by the child's parent, guardian or custodian to have  
14 custody of the child;

15 (3) a child traveling interstate;

16 (4) a child going to or returning home from a  
17 school-sponsored function, a civic organization-sponsored  
18 function or a religious function;

19 (5) a child going to work or returning home  
20 from work;

21 (6) a child involved in a bona fide emergency;  
22 and

23 (7) a child who is enrolled in or is receiving  
24 instruction in a private school or home school program and that  
25 school or program does not require the child to be in

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1 attendance at a particular time.

2 D. A curfew ordinance adopted by the local  
3 governing body of a county or municipality shall comply with  
4 the following procedures:

5 (1) if a child is detained by a law  
6 enforcement officer or any other employee designated by a  
7 county or municipality to enforce a curfew ordinance, the law  
8 enforcement officer or employee shall promptly attempt to  
9 contact the child's parent, guardian or custodian;

10 (2) upon contacting the child's parent,  
11 guardian or custodian, the law enforcement officer or employee  
12 shall deliver the child to the parent's, guardian's or  
13 custodian's residence or request that the child's parent,  
14 guardian or custodian come and take custody of the child,  
15 unless returning the child to the custody of the child's  
16 parent, guardian or custodian would endanger the health or  
17 safety of the child; and

18 (3) if the law enforcement officer or employee  
19 is unable to contact the child's parent, guardian or custodian  
20 within a six-hour time period, the law enforcement officer or  
21 employee shall follow the procedures for protective custody  
22 outlined in Section 32A-3B-3 NMSA 1978.

23 E. No child shall be placed in a secured setting  
24 pursuant to this section."

25 SECTION 2. Section 32A-3B-3 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 75) is amended to read:

2 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH  
3 PROTECTIVE CUSTODY--PENALTY.--

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

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

9 (2) the child without parental supervision is  
10 suffering from illness or injury;

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

12 (4) the child is endangered by ~~[his]~~ the  
13 child's surroundings and removal from those surroundings is  
14 necessary to ensure the child's safety; or

15 (5) the child is in violation of a curfew  
16 ordinance and the officer is unable to contact the child's  
17 parent, guardian or custodian.

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

23 C. When a child is taken into protective custody,  
24 the department shall make a reasonable effort to determine  
25 whether the child is an Indian child.

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

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2012.