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**HOUSE BILL 406**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Mimi Stewart**

**AN ACT**

**RELATING TO CHILDREN; PROVIDING COUNTIES AND MUNICIPALITIES  
WITH AUTHORITY TO ADOPT CURFEW ORDINANCES; PROVIDING  
SANCTIONS; ENACTING A NEW SECTION 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. If adopted, an ordinance  
shall set reasonable, age-appropriate time limitations.**

**B. The governing body of a county or municipality**

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1 may adopt a curfew ordinance to regulate the actions of  
2 children during daytime hours on school days. If adopted, the  
3 curfew may require children subject to the provisions of the  
4 Compulsory School Attendance Law to be present on school  
5 premises.

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

10 (1) when a child is accompanied by a parent  
11 or legal guardian;

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

15 (3) when a child is traveling interstate;

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

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

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

23 (7) when a child is on a public street or  
24 sidewalk in front of his own home or the home of a consenting  
25 adult neighbor; and

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underscored material = new  
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1 (8) when a child is exercising his right to  
2 freedom of speech pursuant to the provisions of Article 2,  
3 Section 17 of the constitution of New Mexico or his rights  
4 pursuant to the provisions of the first amendment to the  
5 constitution of the United States.

6 D. A curfew ordinance adopted by the local  
7 governing body of a county or municipality shall comply with  
8 the following procedures. If a child is detained by a law  
9 enforcement officer or any other employee designated by a  
10 county or municipality to enforce a curfew ordinance, the law  
11 enforcement officer or employee shall promptly attempt to  
12 contact the child's parent or legal guardian. Upon contacting  
13 the child's parent or legal guardian, the law enforcement  
14 officer or employee shall deliver the child to the parent's or  
15 legal guardian's residence or request that the child's parent  
16 or legal guardian come and take custody of the child, unless  
17 returning the child to the custody of the child's parent or  
18 legal guardian would endanger the health or safety of the  
19 child. If the law enforcement officer or employee is unable  
20 to contact the child's parent or legal guardian within a two-  
21 hour time period, the child shall be transported to a  
22 protective custody facility that is separate from a juvenile  
23 detention facility, an adult detention facility or an adult  
24 jail. A child detained in a protective custody facility shall  
25 be taken the following day to the residence of the child's

1 parent or legal guardian or to the child's school if school is  
2 in session.

3 E. Subject to the provisions of Subsection F of  
4 this section, the municipal court, magistrate court or  
5 metropolitan court shall have original exclusive jurisdiction  
6 over curfew violations. If a child willfully and  
7 intentionally violates a curfew ordinance, the municipal  
8 court, magistrate court or metropolitan court may order:

9 (1) the child to perform forty hours of  
10 community service for each violation of the ordinance; and

11 (2) the parent or legal guardian of the child  
12 to pay a civil fine in an amount not to exceed three hundred  
13 dollars (\$300), plus the actual costs incurred by the county  
14 or municipality by providing shelter for the child in a  
15 protective custody facility.

16 F. If a child is adjudicated three times within a  
17 six-month period for violating a curfew ordinance, the  
18 municipal court, magistrate court or metropolitan court shall  
19 report the matter to the department. The department shall  
20 conduct an investigation to determine the necessity of filing  
21 a petition with the children's court alleging neglect or abuse  
22 or that the child's family needs family services."

23 Section 2. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 2002.