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HOUSE BILL 29

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Nate Gentry and Carl Trujillo and Paul A. Pacheco

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;  
DECLARING AN EMERGENCY.

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 between midnight and 5:00 a.m.

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 when the public, private or home school program that  
6 the child is attending is in session.

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

- 11 (1) a child sixteen years old or older;
- 12 (2) a minor who is emancipated pursuant to the  
13 Emancipation of Minors Act;
- 14 (3) a child accompanied by a parent, guardian  
15 or custodian;
- 16 (4) a child accompanied by an adult who is  
17 authorized by the child's parent, guardian or custodian to have  
18 custody of the child;
- 19 (5) a child traveling interstate;
- 20 (6) a child going to or returning home from a  
21 school-sponsored function, a civic organization-sponsored  
22 function or a religious function;
- 23 (7) a child going to work or returning home  
24 from work;
- 25 (8) a child involved in a bona fide emergency;

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1 and

2 (9) a child who is enrolled in or is receiving  
3 instruction in a private school or home school program and that  
4 school or program does not require the child to be in  
5 attendance at a particular time.

6 D. A curfew ordinance adopted by the local  
7 governing body of a county or municipality shall comply with  
8 the following procedures:

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

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

22 (3) if the law enforcement officer or employee  
23 is unable to contact the child's parent, guardian or custodian  
24 within a six-hour time period, the law enforcement officer or  
25 employee shall follow the procedures for protective custody

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1 outlined in the Family in Need of Court-Ordered Services Act.

2 E. A curfew ordinance adopted pursuant to this  
3 section shall not impose criminal penalties for a violation of  
4 the curfew ordinance.

5 F. No child shall be placed in a secured setting  
6 pursuant to this section.

7 G. For the purposes of this section, "municipality"  
8 means any incorporated city, town or village, whether  
9 incorporated under general act, special act or special  
10 charter."

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

13 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH  
14 PROTECTIVE CUSTODY--PENALTY.--

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

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

20 (2) the child without parental supervision is  
21 suffering from illness or injury;

22 (3) the child has been abandoned; ~~or~~

23 (4) the child is endangered by ~~his~~ the  
24 child's surroundings and removal from those surroundings is  
25 necessary to ensure the child's safety; or

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

4                   B. A child may be taken into protective custody  
5 pursuant to a court order issued after an agency legally  
6 charged with the supervision of the child has notified a law  
7 enforcement agency that the child has run away from a  
8 placement.

9                   C. When a child is taken into protective custody,  
10 the department shall make a reasonable effort to determine  
11 whether the child is an Indian child.

12                   D. Any person, other than the child taken into  
13 protective custody, who interferes with placing the child in  
14 protective custody is guilty of a petty misdemeanor and shall  
15 be sentenced pursuant to the provisions of Section 31-19-1 NMSA  
16 1978."

17                   SECTION 3. EMERGENCY.--It is necessary for the public  
18 peace, health and safety that this act take effect immediately.