



## **Senate Bill 114 --- Page 2**

The bill also outlines provisions for detaining a child and adjudicating a child in violation of the curfew ordinance. The adjudicatory provisions for the child and the child's parent include:

- who has original jurisdiction (municipal, magistrate or metropolitan court), and
- the penalty that the judges may impose (forty hours of community service per violation, a fine not to exceed \$300 and recompense to the county or municipality for the cost incurred for housing the child).

Furthermore, the bill requires that the court of original jurisdiction report any child adjudicated for a curfew violation three (3) times in a six month period to the Children, Youth and Families Department (CYFD). CYFD would determine if an abuse and neglect petition needs to be initiated.

### Significant Issues

This bill is a response to the 1999 New Mexico Supreme Court decision that found the Albuquerque curfew ordinance preempted by a legislative intent to limit the criminalization of youthful behavior to only those acts that would be crimes if committed by an adult.

There are possible constitutional implications.

### **FISCAL IMPLICATIONS**

The Public Defender reports that although the curfew ordinances would not require a constitutional entitlement to representation by counsel, the Public Defender is likely to see an increased number of delinquency petitions filed for crimes such as possession for controlled substances, paraphernalia and concealed weapons as a result of probable increased searches and seizures during curfew stops. The Public Defender would be required to provide representation for many of these petitions. The Public Defender estimates that it will require 5 additional attorneys for its juvenile department and \$5.0 for contract fees.

The creation of protective custody facilities will certainly have an indeterminate fiscal impact on counties and municipalities.

### **ADMINISTRATIVE IMPLICATIONS**

If the bill is enacted and counties and municipalities adopted curfew ordinances, there would be an increase in the caseload for courts of original jurisdiction, municipal, metropolitan and magistrate courts. Additional cases would require more funds to adjudicate. The fiscal implications would be commensurate with the number of cases adjudicated and cannot be determined at this time.

Moreover, the origination of a petition for an abuse and neglect case by CYFD creates a greater fiscal impact to the judiciary. The courts would incur the cost of appointing a guardian ad litem (GAL) for the child from the Children's and Protected Persons Representation Fund. If there is an increase in abuse and neglect cases, the AOC may have to increase funds to the Court Appointed Special Advocate (CASA) program to train more CASA volunteers.

### **OTHER SUBSTANTIVE ISSUES**

The bill requires that youth whose parents cannot be located be detained in a "protective custody facility". However, the bill does not specify what constitutes a "protective custody facility", other than that it is to be separate from a juvenile detention facility, adult detention facility or adult jail. It

**Senate Bill 114 --- Page 3**

is conceivable that the facility could be part of the local law enforcement building, a school, church or community recreational facility, shelter care facility or any other location identified by the local community or county. The bill should be identify the setting in which the youth may be placed.

CYFD believes the remedies available to CYFD are too intrusive for the violation of a curfew. Curfew violations should not be a gateway offense to the juvenile justice or abuse/neglect system. Some courts in other states, and a New Mexico Supreme Court Justice consider curfew ordinances to place an unconstitutional burden on a parent's fundamental rights and are not reasonable time, place and manner restrictions under the First Amendment.

FAR/lrs:ar