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**HOUSE BILL 568**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

Joseph Cervantes

**AN ACT**

**RELATING TO CHILDREN; PROVIDING FOR THE CREATION AND  
ENFORCEMENT OF CURFEW ORDINANCES BY COUNTIES AND  
MUNICIPALITIES; AMENDING AND ENACTING SECTIONS OF THE NMSA  
1978.**

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

**Section 1. Section 32A-1-6 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 15, as amended) is amended to read:**

**"32A-1-6. CHILDREN'S COURT ATTORNEY. --**

**A. The "office of children's court attorney" is  
established in each judicial district. Except as provided by  
Subsection C, D or E of this section, each district attorney is  
the ex-officio children's court attorney for the judicial  
district of the district attorney.**

**B. Except as provided by Subsection C, D or E of**

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1 this section, the children's court attorney may represent the  
2 state in any matter arising under the Children's Code when the  
3 state is the petitioner or complainant. The children's court  
4 attorney shall represent the petitioner in matters arising  
5 under the Children's Code when, in the discretion of the judge,  
6 the matter presents legal complexities requiring representation  
7 by the children's court attorney, whether or not the state is  
8 petitioner or complainant, but not in those matters when there  
9 is a conflict of interest between the petitioner or complainant  
10 and the state. A petitioner or complainant may be represented  
11 by counsel in any matter arising under the Children's Code.

12 C. In cases involving civil abuse or civil neglect  
13 and the periodic review of their dispositions, the attorney  
14 selected by and representing the department is the children's  
15 court attorney. The attorney selected by and representing the  
16 department shall provide the district attorney of the  
17 appropriate judicial district with a copy of any abuse or  
18 neglect petition filed in that judicial district. Upon the  
19 request of the district attorney, the attorney selected by and  
20 representing the department shall provide the district attorney  
21 with reports, investigations and pleadings relating to any  
22 abuse or neglect petition.

23 D. In cases involving families in need of services,  
24 the periodic review of their dispositions and voluntary  
25 placements, the attorney selected by and representing the

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1 department is the children's court attorney. The attorney  
2 selected by and representing the department shall provide the  
3 district attorney of the appropriate judicial district with a  
4 copy of any family in need of court-ordered services petition  
5 filed in that judicial district. Upon the request of the  
6 district attorney, the attorney selected by and representing  
7 the department shall provide the district attorney with  
8 reports, investigations and pleadings relating to any family in  
9 need of court-ordered services petition.

10 E. In cases involving a child subject to the  
11 provisions of the Children's Mental Health and Developmental  
12 Disabilities Act that also involves civil abuse, civil neglect  
13 or a family in need of court-ordered services, the attorney  
14 selected by and representing the department is the children's  
15 court attorney. In cases involving a child subject to the  
16 provisions of the Children's Mental Health and Developmental  
17 Disabilities Act that does not also involve civil abuse, civil  
18 neglect or a family in need of court-ordered services, the  
19 district attorney is the ex-officio children's court attorney.

20 F. In those counties where the children's court  
21 attorney has sufficient staff and the workload requires it, the  
22 children's court attorney may delegate children's court  
23 functions to a staff attorney.

24 G. In a county or municipality that has enacted a  
25 curfew ordinance, the district attorney having jurisdiction for

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1 that county or municipality may delegate the children's court  
2 attorney function to a county or municipal attorney or that  
3 attorney's designee for the purpose of enforcing a curfew  
4 ordinance. "

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

7 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH  
8 PROTECTIVE CUSTODY--PENALTY. --

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

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

14 (2) the child without parental supervision is  
15 suffering from illness or injury;

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

17 (4) the child is endangered by his  
18 surroundings and removal from those surroundings is necessary  
19 to ensure the child's safety; or

20 (5) the child is in violation of a county or  
21 municipal curfew ordinance.

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

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1 placement.

2 C. When a child is taken into protective custody,  
3 the department shall make a reasonable effort to determine  
4 whether the child is an Indian child.

5 D. Any person, other than the child taken into  
6 protective custody, who interferes with placing the child in  
7 protective custody is guilty of a petty misdemeanor and shall  
8 be sentenced pursuant to the provisions of Section 31-19-1 NMSA  
9 1978. "

10 Section 3. A new section of the Children's Code, Section  
11 32A-3B-3.1 NMSA 1978, is enacted to read:

12 "32A-3B-3.1. [NEW MATERIAL] CURFEW ORDINANCES. --

13 A. Curfew ordinances may be enacted by counties and  
14 municipalities for the purpose of restricting the hours that a  
15 child under the age of eighteen years shall be allowed to  
16 remain in a public place or establishment. Curfew ordinances  
17 may provide for circumstances where a child under the age of  
18 eighteen years shall be allowed in a public place or  
19 establishment.

20 B. Curfew ordinances may provide for penalties that  
21 include community service or suspension or limitation of the  
22 use of a motor vehicle license and may provide for monetary  
23 civil fines. These penalties may be imposed on both the child  
24 or the child's parent or guardian.

25 C. A children's court and the department may enter

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1 into joint powers agreements with counties and municipalities,  
2 including the magistrate, municipal or metropolitan courts in  
3 those jurisdictions, for the purpose of allowing jurisdiction,  
4 supervision, probation and intervention with the child and the  
5 child's parent or guardian. Absent an agreement, jurisdiction  
6 shall remain with the children's court. A children's court may  
7 designate a special master or commissioner for administering  
8 and adjudicating the curfew ordinances.

9 D. A child under the age of eighteen years may be  
10 taken into custody by a law enforcement officer without a court  
11 order for violation of a curfew ordinance. Violation of a  
12 curfew ordinance shall subject the child to protective custody  
13 and shall subject the child and the child's parent or guardian  
14 to any applicable civil penalties. "

15 Section 4. A new section of the Children's Code, Section  
16 32A-3B-4.1 NMSA 1978, is enacted to read:

17 "32A-3B-4.1. [NEW MATERIAL] PROTECTIVE CUSTODY FOR  
18 VIOLATION OF A CURFEW ORDINANCE. --

19 A. If a child is taken into protective custody for  
20 violation of a county or municipal curfew ordinance, the child  
21 shall not be held in a detention facility or jail, but may be  
22 held in one of the following until a parent or guardian can  
23 pick up the child and claim custody of the child:

24 (1) community center or other building owned,  
25 leased or used by a county or municipality that is not a

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detention facility;

(2) shelter-care home or shelter-care center as provided for in the Children's Shelter Care Act; or

(3) other non-secured facility for the purpose of holding a child in temporary custody.

B. If a child has not been released to custody of a parent or guardian by 11:00 a.m. the morning after being placed into protective custody, the county or municipality shall contact the department and the appropriate provisions of Chapter 32A, Article 3B NMSA 1978 shall be followed. "