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FISCAL IMPACT REPORT

SPONSOR SPAC DATE TYPED 2/14/04 HB _____

SHORT TITLE Curfew Enforcement Act SB 330/SPACS

ANALYST Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	NFI		See Narrative	Recurring	General Fund and Local Municipal and County Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bills 166 and 165.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- *Administrative Offices of the Courts
- *Department of the Public Defender
- *Children, Youth and Families Department

*Responses received for original bill applicable to committee substitute.

No Responses Received From

Administrative Offices of the District Attorneys
Department of Public Safety

SUMMARY

Synopsis of Bill

The Senate Public Affairs Committee Substitute for Senate Bill 330 amends the Children’s Code to include a new section defining “neglected child.” A neglected child is defined as:

- a child without proper parental care and control, or subsistence, education, medical or other care or control necessary for the child's wellbeing because of the faults or habits of the child's parent, guardian, or custodian, when able to provide such care and control;
- a child who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known and failed to take reasonable steps to protect the child from further harm; or
- a child whose parent, guardian or custodian is unable to discharge his responsibilities to the child as a result of incarceration, hospitalization or physical or mental disorder or incapacity.

The bill also states the purpose of the Curfew Enforcement Act as follows:

- to protect children from dangerous circumstances resulting from being without proper supervision during the hours of 12 a.m. and 5 a.m.; and
- to provide for the general protection of children and the community.

The bill grants municipalities and counties the authority to adopt local curfew ordinances, providing the ordinance:

- applies only to children less than sixteen years of age;
- applies only between 12 a.m. and 5 a.m.; and
- the municipality or county has established a family education program that informs residents of the purpose of the ordinance and the availability of local community services.

The bill further provides that the local ordinance must have exceptions for:

- school, church or community organization activities;
- verified employment, including a work-related errand;
- instances where the child's parent, guardian or custodian has provided the child with permission to be out between 12 a.m. and 5 a.m.

Thereafter, the bill establishes the penalties for curfew violations as follows:

- Second Violation: The second violation shall result in the issuance of a citation. The citation shall include notice of the child's right to appeal the citation to a hearing officer appointed by the department. The citation shall also include notice that, unless the citation is appealed, the child and the child's parents or legal guardians, are required to attend a family education program no later than 30 days after issuance of the citation.

- Second Citation: Upon issuing a second citation, the law enforcement officer shall contact the department's juvenile justice call center and attempt to contact the child's parents or legal guardian.
- If the child and the child's parents or legal guardian fail to attend the required family education program, and the parents or legal guardians received actual notice of the required attendance, the child shall be referred to the department for an assessment of whether the child is a victim of abuse or is a neglected child.
- Third violation: The third violation of a curfew ordinance shall result in the child being referred to the department for an assessment of whether the child is a victim of abuse of a neglected child.

Finally, the bill requires the department to adopt rules regarding the collection of data for evaluation from the municipalities and counties adopting curfew ordinances.

Significant Issues

- Local curfew ordinances, if effectively implemented, may significantly impact the activities of New Mexico's young people and enhance their safety. It may result in less drinking and driving, less drug use, less violence, less theft, less teenage prostitution, and the like.
- Similarly, such ordinances could result in considerable economic savings to local communities, as well as the state as a whole, due to fewer personal injuries, incidents of property damage, arrests, prosecutions, and detentions and/or probation or parole. When accountability for a child's whereabouts in night is achieved, there will likely be improved school attendance and academic performance.
- Many parents who struggle with their children may find curfew ordinances helpful in curbing undesirable teenage behaviors.
- The merits of this legislation are dependent upon how well children's and communities' welfare and safety are balanced with the fundamental rights of parents and children within the sacred parent-child relationship.

The Administrative Offices of the Courts notes:

- This bill appears to respond to *ACLU v. City of Albuquerque* (S.Ct. 1999) 1999-NMSC-044, 128 N.M. 315, 992 P.2d 866, which struck down Albuquerque's curfew ordinance. The court ruled that the city's ordinance took children into protective custody without statutory authority to take these children into legal custody. This bill allows children to be taken into protective custody only when the law enforcement officer has a reasonable belief that this is a "neglected child."

The Department of the Public Defender notes:

- Just last week, January 22, 2004, the United States Court of Appeals for the Seventh Circuit ruled a similar ordinance was unconstitutional. *Hodgkins v. Peterson*, 2004 U.S. App. LEXIS 910. The proposed statutory scheme would certainly be challenged. These laws are almost always stricken down for being unconstitutional. *See, e.g., Ramos v. Town of Vernon*, 2003 U.S. App. LEXIS 25851; *Nuñez by Nuñez v. City of San Diego*, 114 F.3d 945 (9th Cir. 1997).
- HB 165 does contain clear and considered exceptions to enforcement of the law, which could possibly allow it to pass the strict scrutiny standard applied in cases such as these. *See Hutchins v. District of Columbia*, 188 F.3d 531 (D.C. Cir. 1999); *Qutb v. Strauss*, 11 F.3d 488 (5th Cir. 1993). However, the Indianapolis ordinance ruled unconstitutional as violative of First Amendment rights of minors in *Hodgkins* contained exemption provisions almost identical (although more numerous) to the ones in HB 165, and they were not sufficient to render the law constitutional.
- This would be subject to constitutional challenge, and there is a fair likelihood that it would be overturned as unconstitutional.

The Children, Youth and Families Department notes:

- This bill holds parents/guardian accountable for their children's curfew violation using the Abuse and Neglect Act by expanding the definition of neglect and authorizing counties and municipalities to enact curfew ordinances.
- A curfew ordinance was enacted by the City of Albuquerque to establish the STOP program in 1996. It was declared unconstitutional by the New Mexico Supreme Court in 1999. The Supreme Court case was *ACLU v. City of Albuquerque*, 128 N.M. 315 (1999). Part of the reason that the STOP program was declared unconstitutional was because it was not authorized by the Children's Code. HB165 appears to circumvent all of the problems that the majority of the Supreme Court had with Albuquerque's ordinance.

FISCAL AND ADMINISTRATIVE IMPLICATIONS

The bill does not include an appropriation. The bill will result in recurring administrative costs in staff and operational resources. These costs will affect the general fund and local municipal and county funds.

However, as noted above, savings to the general fund and local municipal and county funds be seen if lower drug and alcohol use, crime, injury, and legal action rates are achieved, and better school attendance and performance is seen.

CONFLICT OR RELATIONSHIP

HB 166 is an alternative curfew bill. The Department of the Public Defender asserts HB 166 is "even more likely to be held unconstitutional."

TECHNICAL ISSUES

There appears to be a drafting error at page 4, lines 4, 12 and 21. Line 4 references issuance of the **first citation** at the **second violation**. Thus, presumably, on the first violation an oral warning is given. At line 12, the bill references contacting the department for an assessment at the time of issuing a **second citation**. This is presumably on the **third violation**. Then, at line 21, the bill references contacting the department for an assessment at the time of the “third violation”. This is repetitive of the previous statements at lines 11 – 14 regarding the **second citation**.

Seemingly, there is confusion regarding the numbers of violations and citations, and what is to happen at each stage.

OTHER SUBSTANTIVE ISSUES

1. This bill will likely result in legal difficulties for many parents and legal guardians who try to be attentive and to provide appropriate supervision. Fifteen-year-olds have been known to “sneak out” in the night, or to not return home by the hour set by a parent or guardian. It is difficult for parents to “control” *some* teenagers. According to this bill at Section 2, Paragraph B, a child is deemed abused or neglected when a parent fails to “properly control” the child.

There may be instances where a parent is doing the very best they can. Seemingly, it is unfair to deem such parents as abusive or neglectful.

2. What happens to the child found by an officer in violation of a curfew ordinance? Is he or she simply told to go home? Is he or she taken home by the enforcement officer? Is he or she taken into custody?

How a state actor addresses what happens to a child when a parent cannot be contacted has significant legal liability issues. What if a child is told to go home, but he or she does not make it home safely?

Where are children who are taken into custody to be detained—at the local police station, in a detention facility, in a community program facility? Do the local entities and agencies have the capacity to responsibly handle children found in violation of a curfew ordinance?

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