

HOUSE BILL 29

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

INTRODUCED BY

Nate Gentry and Carl Trujillo

This document incorporates committee amendments adopted during standing committee(s) consideration of this measure. In addition, it shows changes proposed by Gentry floor amendment .203422.2. It is a tool to show the amendments in context and is not to be used for introduction, amendment or substitution.

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

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language deleted = deleted by HRPAC amendment  
New amended language = new by HRPAC amendment  
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children between midnight and 5:00 a.m.

B. The governing body of a county or municipality may adopt a curfew ordinance ~~to regulate the actions of~~ **regarding** children during ~~daytime hours on school days~~ **school hours on weekdays**. If adopted, the curfew may require children, subject to the provisions of the Compulsory School Attendance Law, to be present on school premises when the public, private or home school program that the child is attending is in session.

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

- (1) a child sixteen years old or older;
- (2) a minor who is emancipated pursuant to the Emancipation of Minors Act;
- (3) a child accompanied by a parent, guardian or custodian;
- (4) a child accompanied by an adult who is authorized by the child's parent, guardian or custodian to have custody of the child;
- (5) a child traveling interstate;
- (6) a child **attending**, going to or returning home from a school-sponsored function, a civic

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organization-sponsored function or a religious function;

(7) a child at work, going to work or returning home from work;

(8) a child involved in a bona fide emergency;  
and

(9) for the purposes of a curfew during school hours on weekdays:

(a) a child who is enrolled in or is receiving instruction in a private school or home school program and that school or program does not require the child to be in attendance at a particular time;

(b) a child attending a high school operating under an open campus rule to whom that rule applies;  
and

(c) a child who is concurrently enrolled at a high school and a post-secondary educational institution, a career enrichment center or the equivalent.

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

(1) if a child is detained by a law enforcement officer or any other employee designated by a county or municipality to enforce a curfew ordinance, the law enforcement officer or employee shall promptly attempt to

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contact the child's parent, guardian or custodian;

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

(3) if the law enforcement officer or employee is unable to contact the child's parent, guardian or custodian within a six-hour time period, the law enforcement officer or employee shall fill out a police report, to be immediately submitted to the department, and follow the procedures for protective custody outlined in the Family in Need of Court-Ordered Services Act.

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

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

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

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charter."

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

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

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

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

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

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

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

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

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

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

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

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

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