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## FISCAL IMPACT REPORT

**SPONSOR** Gentry/Trujillo, CA      **ORIGINAL DATE** 01/22/16      29/aHRPAC/aHFI#1/a  
**LAST UPDATED** 02/12/16      **HB** SPAC

**SHORT TITLE** Allow Local Government Curfew Ordinances      **SB** \_\_\_\_\_

**ANALYST** Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	See Narrative	See Narrative	See Narrative		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General’s Office (AGO)  
 Children, Youth & Families Department (CYFD)  
 Department of Public Safety (DPS)  
 Municipal League (ML)  
 Public Education Department (PED)

#### Other Response Received From

Youth Development Inc. (YDI)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to HB 29 restores the original language authorizing a school-time curfew ordinance “to regulate the actions of” a child “during daytime hours on school days”. It also strikes the HFI#1 amendment provisions exempting children attending private schools or open campus high schools or are home-schooled under certain circumstances, or who may be concurrently enrolled specified higher education programs from a school-time curfew. It rewrites that exemption (in subsection C (9)) so that it applies to either type of ordinance, but only to a child who is 13 years old or older who is homeless and is at that child’s permanent or temporary place of abode.

Synopsis of HFI#1 Amendment

House Floor Amendment #1 strikes the phrase “to regulate the actions of” in describing a school-time curfew ordinance and replaces it with “regarding”. It also modifies three of the exemptions that must be included in a curfew ordinance. The first two modifications exempt 1) a child attending, as well as going to or returning home from, a school-sponsored or religious function; and 2) a child at work, as well as going to or returning home from work.

The third change clarifies the exemption for children enrolled in private or being home-schooled who are not required to be in attendance a particular time as being applicable only for the purpose of a curfew “during school hours on weekdays”, which phrase replaces “during daytime hours on school days.” This exemption also is reorganized to include two other exemptions from a school hours on weekdays curfew: 1) a child attending a high school with an open campus rule that applies at the time the child otherwise would be detained; and 2) a child concurrently enrolled at a high school and a post-secondary educational institution, a career enrichment center or the equivalent.

Synopsis of HRPAC Amendment

The House Regulatory and Public Affairs Committee amendment to House Bill 29 attempts to clarify that, once a child is detained by a law enforcement officer or an employee of a county or municipality for violation of a curfew ordinance and that officer or employee has been unable to contact the child’s parent, guardian or custodian within six hours, that officer or employee must fill out a police report and submit it immediately to CYFD as the first step in taking that child into protective custody.

The issue raised in this new language is that because it includes non-law enforcement employees of local governments in its directive, the term police report may be too restrictive, since those employees likely cannot file a police report. A phrase like “police or other report” may more accurately describe the action to be taken. Further, as PED advises, according to the Bernalillo County Sheriff’s Office, this report would become a permanent record of the event.

Synopsis of Original Bill

House Bill 29 authorizes counties and municipalities to adopt youth curfew ordinances regulating and restricting the actions of children between midnight and 5 a.m., as well as during the school day. A school day curfew ordinance may require children subject to the compulsory school attendance law to be present on public, private or home school program premises when that school or program is in session.

There are nine delineated exemptions that must be included in either type of youth curfew ordinance which excuse these children from its provisions:

- (1) a child 16 or older;
- (2) a lawfully emancipated minor;
- (3) a child accompanied by a parent, guardian or custodian;
- (4) a child accompanied by an adult authorized by the child’s parent, guardian or custodian to have custody of the child;
- (5) a child traveling interstate;

- (6) a child going to or returning home from a school-sponsored function, a civic organization-sponsored function or a religious function;
- (7) a child going to work or returning home from work;
- (8) a child involved in a bona fide emergency; and
- (9) a child enrolled in or receiving instruction in a private school or home school program that does not require the child to be in attendance at a particular time.

Upon detaining a child, the law enforcement officer or any other county or city employee designated by that public body to enforce an ordinance must:

- promptly attempt to contact the child’s parent, guardian or custodian;
- upon contact, deliver the child to the parent’s, guardian’s or custodian’s residence or request that the 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
- if unable to contact parent, guardian or custodian within a six-hour time period, follow the procedures for protective custody outlined in the Family in Need of Court-Ordered Services Act (FINCOS) (which authorizes placement in a licensed foster care home or other community-based shelter care facility or a relative’s home). The bill prohibits placement in a “secured setting.”

This bill contains an emergency clause.

## **FISCAL IMPLICATIONS**

As discussed more fully under Significant Issues, AOC anticipates a constitutional challenge to any ordinance adopted under HB 29, which will adversely impact the judiciary’s budget. Additionally, AOC warns that the Court Appointed Attorney Fee Fund (CAAFF) likely will be impacted, and if FINCOS cases begin to be regularly filed, the strain on court resources and the CAAFF could be substantial, since attorneys are appointed for children in Family In Need of Court Services (FINCOS) cases, are on contract with AOC and paid through the CAAFF. AOC reports that the statewide increase in the abuses/neglect caseload has already strained CAAFF: in the Second Judicial District, court appointed attorneys have reached caseloads of over 100. In FY 15, AOC had to request two supplemental appropriations which funded eight additional contract attorneys in an effort to cap caseloads at 70 cases. The continued increase in the number of abuse and neglect cases, however, has prevented that cap to be met.

Numerous agencies also indicate additional resources may be needed at the local level to care for curfew violators before they are released to a parent, guardian or custodian or taken into protective custody, as well as after being taken into protective custody, which need may result in additional operating budget impact to the state.

## **SIGNIFICANT ISSUES**

PED provides these observations as to youth curfews generally:

The arguments for youth curfews are generally threefold: they reduce the number of crimes committed by juveniles; they protect children from becoming victims of crime and they reduce truancy. Although some local curfew ordinances in some states provide for

civil penalties such as fines or community service for the juveniles and/or the parents, and some classify curfew violations as misdemeanor crimes, HB 29 contains a provision that prohibits criminal penalties for a violation of a curfew ordinance. Several states have passed laws similar to that which is being proposed by HB 29, and many municipalities have imposed youth curfews.

Youth curfews can be popular ways to stem public concern over crime rates, or as a reaction to a major event, because they are relatively inexpensive compared to other crime-fighting tools and have an easy-to-understand logic: If children are home, they won't commit crimes or be victims of crimes. However, there is little empirical evidence that curfews deter crime and/or reduce juvenile victimization. Curfews are also often challenged in court on constitutional grounds, with mixed outcomes, which can be time consuming and costly.

AOC echoes the concern as to litigation when it advises that it can be anticipated that a nighttime curfew enacted pursuant to HB 29 will be challenged on constitutional grounds as being in violation of the constitutional protections of due process and equal protection, as an infringement upon the rights of free speech and assembly, and even, perhaps, as a violation of the right to be protected from unreasonable searches and seizures. It reaches this conclusion after reviewing the New Mexico Supreme Court's decision in *American Civil Liberties Union of New Mexico v. City of Albuquerque*, 1999-NMSC-044, where the Court ruled that the City's curfew was preempted by the Delinquency Act of the Children's Code because the ordinance designated previously lawful behavior of young people as criminal in nature and created a penal offense by authorizing incarceration and a fine for each occurrence of an individual under the age of 17 who remained in a public place or on the premises of any establishment within Albuquerque during curfew hours. Although, as AOC notes, the curfews authorized in HB 29 are much different than that rejected by the Court—they cannot create a penal offense nor impose criminal penalties—AOC calls attention to a concurring opinion which addressed the issue on constitutional grounds and found that the ordinance was overbroad in the encroachment on parental rights and vague in the attempt to define conduct by generalized reference to the First Amendment.

As to the school time curfew provisions of HB 29, AOC advises it is unclear whether such a curfew would face the same constitutional challenges as a nighttime juvenile curfew, but concludes that this type of curfew may be challenged as an unconstitutional violation of the right to be presumed innocent, and likely will be challenged as being preempted by existing state truancy laws.

As to those laws, PED points out that the exemption for youth 16 and over contained in Section 1(C) (1) conflicts with the provision in the Compulsory School Attendance Act (which it specifically incorporates in Section 1(B)) that a school-age child must attend a public or private school or home school program until that child is at least 18, unless that child has graduated from high school or received a high school equivalency credential.

Additionally, the exemption contained in Section 1 (C)(9) for a privately or home-schooled student who is not required to be attendance at a particular time include within its scope the hours from midnight to 5 am. To that extent, it is overbroad by exempting these students from any nighttime curfew ordinance, which may raise equal protection challenges from students attending public schools.

Further, while Section 1(D) (3) requires a six hour period for making contact with a parent or other guardian or custodian before a child picked up under either form of curfew is taken into protective custody, Section 2’s amendment to the existing law governing protective custody does not require that that six hour contact period elapse prior to taking a curfew violator into protective custody. In analyzing changes to that law, AOC notes that the definition of “family in need of court-ordered services” is not amended to include curfew violators who are authorized to be taken into protective custody under the law governing such families. See Section 32A-3B-2, NMSA 1978. Further, as AGO notes, there is a disconnect between Section 1(D)’s language allowing a designated county or municipal employee to take a curfew violator into protective custody and the existing protective custody law which, even as amended in Section 2 of HB 29, authorizes only law enforcement officers to take that child into protective custody.

That six hour contact period also raises another question noted by ML and several other agencies concerning how or where the child is to be cared for during this period of time. AOC anticipates that children will be treated differently and cared for differently, depending upon a variety of factors, including location, and this disparity in treatment is likely to spur legal claims. DPS also comments that resources will need to be in place to allow its officers to take curfew violators into protected custody (and during the six hour contact period preceding such action) without tying up the officer who need to be out on the streets protecting the community.

More generally, allowing any county or municipal employee to detain a child for curfew violation may raise concerns regarding the safety and well-being of the child during such detention, if, for instance, that employee has not been subject to a background check. Liability issues may also arise in terms of actions by that employee, such as care that is or is not provided and vehicle transport.

## **PERFORMANCE IMPLICATIONS**

PED suggests this bill may support Strategic Lever 3: Ready for Success by discouraging truancy and increasing attendance. CYFD has performance measures regarding the safety and permanency of children in its custody that may be impacted.

## **ADMINISTRATIVE IMPLICATIONS**

Since communities may have differing curfew ordinances, given its state-wide coverage, DPS will need specific training on each ordinance adopted.

## **TECHNICAL ISSUES**

The term “secured setting” in line 5 on page 4 is unclear: is it meant to describe secured juvenile facilities (where adjudicated delinquents may be transferred upon sentencing)? And is it meant to include local facilities in which children facing allegations of delinquency are held in custody pending adjudication and sentencing?

## **OTHER SUBSTANTIVE ISSUES**

AOC also advises:

The U.S. Supreme Court has not weighed in on the juvenile curfew issue and circuits have been split on the constitutionality of such curfews over the years. In their 2015

Saint Louis University Journal of Health Law and Policy article, *Guidelines For Avoiding Pitfalls When Drafting Juvenile Curfew Laws: A Legal Analysis*, Vol. 8, p. 301, Elyse R. Grossman and Kathleen S. Hoke address the following:

- a specific Montgomery County, MD curfew law;
- the history of curfew laws;
- claims challenging curfew laws brought by minors and parents;
- the history of cases involving curfew laws (they report that overall, as of the publishing of the article in 2015, there have been 41 cases reported examining the constitutionality of nighttime juvenile curfew laws, with 25 of them (or 60%) finding the laws to be unconstitutional (See p. 310 and footnotes 81 and 82)); and
- recommendations for policy makers wishing to enact juvenile curfew ordinances. (See, [www.law.slu.eu/sites/default/files/Journals/grosman-hoke\\_article.pdf](http://www.law.slu.eu/sites/default/files/Journals/grosman-hoke_article.pdf))

PED provides this additional information:

At least 500 US cities have curfews on teenage youth, including 78 of the 92 cities with a population greater than 180,000. In most of these cities, curfews prohibit children under 18 from being on the streets after 11:00 pm during the week and after midnight on weekends. About 100 cities also have daytime curfews to keep children off the streets during school hours. (2009: <http://www.citymayors.com/society/usa-youth-curfews.html>)

One of several municipalities that have specific youth curfew laws of note is in Hennepin County, Minnesota (MN), which passed a youth curfew law initially as one part of a comprehensive safety net for youth. The City of Minneapolis' curfew not only provides for punitive consequences to children, but connects them to counseling, social, and recreational programs. The City offers mentoring and positive adult role models and leadership in schools and neighborhoods and promotes good communication between police, parents, schools, social agencies, and youth. However, due to the huge influx of detainees under this ordinance, Minneapolis also had to establish a Curfew Center to serve as a holding area for youth in violation of the curfew statute, waiting for parents or guardians to retrieve them.

<http://www.hennepin.us/your-government/ordinances/ordinance-16>

## OTHER RESPONSES

In a letter to LFC staff dated January 19, 2016, Dr. Diego Gallegos, President and CEO of Youth Development, Inc. (YDI) notes that once a child is placed in protective custody in a shelter, a protected hold may be in place for 24 hours, and only CYFD can release a child, not a parent. Further, YDI reports that Albuquerque schools have over 6,000 children enrolled in its homeless project.

MD/jle/jo/jle