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HOUSE BILL 53

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Nate Gentry

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  
children between midnight and 5:00 a.m.

B. The governing body of a county or municipality

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1 may adopt a curfew ordinance regarding children during school  
2 hours on weekdays. If adopted, the curfew may require  
3 children, subject to the provisions of the Compulsory School  
4 Attendance Law, to be present on school premises when the  
5 public, private or home school program that the child is  
6 attending is in session.

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

- 11 (1) a child sixteen years old or older;
- 12 (2) a minor who is emancipated pursuant to the  
13 Emancipation of Minors Act;
- 14 (3) a child accompanied by a parent, guardian  
15 or custodian;
- 16 (4) a child accompanied by an adult who is  
17 authorized by the child's parent, guardian or custodian to have  
18 custody of the child;
- 19 (5) a child traveling interstate;
- 20 (6) a child attending, going to or returning  
21 home from a school-sponsored function, a civic organization-  
22 sponsored function or a religious function;
- 23 (7) a child at work, going to work or  
24 returning home from work;
- 25 (8) a child involved in a bona fide emergency;

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1 and

2 (9) for the purpose of a curfew during school  
3 hours on weekdays:

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

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

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

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

17 (1) if a child is detained by a law  
18 enforcement officer or any other employee designated by a  
19 county or municipality to enforce a curfew ordinance, the law  
20 enforcement officer or employee shall promptly attempt to  
21 contact the child's parent, guardian or custodian;

22 (2) upon contacting the child's parent,  
23 guardian or custodian, the law enforcement officer or employee  
24 shall deliver the child to the parent's, guardian's or  
25 custodian's residence or request that the child's parent,

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1 guardian or custodian come and take custody of the child,  
2 unless returning the child to the custody of the child's  
3 parent, guardian or custodian would endanger the health or  
4 safety of the child; and

5 (3) if the law enforcement officer or employee  
6 is unable to contact the child's parent, guardian or custodian  
7 within a six-hour time period, the law enforcement officer or  
8 employee shall follow the procedures for protective custody  
9 outlined in the Family in Need of Court-Ordered Services Act.

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

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

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

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

21 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH  
22 PROTECTIVE CUSTODY--PENALTY.--

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

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

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

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

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

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

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

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

20 D. Any person, other than the child taken into  
21 protective custody, who interferes with placing the child in  
22 protective custody is guilty of a petty misdemeanor and shall  
23 be sentenced pursuant to the provisions of Section 31-19-1 NMSA  
24 1978."

25 SECTION 3. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect immediately.

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