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HOUSE BILL 361

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL LAW; CLARIFYING AND AMENDING THE ELEMENTS OF ABANDONMENT OF A CHILD, RECKLESS ABUSE OF A CHILD AND INTENTIONAL ABUSE OF A CHILD; REQUIRING COUNSELING AND PARENTING EDUCATION UPON A CONVICTION OF RECKLESS ABUSE OF A CHILD OR INTENTIONAL ABUSE OF A CHILD; PROVIDING THAT ABANDONMENT OF A CHILD IS A LESSER INCLUDED OFFENSE OF RECKLESS ABUSE OF A CHILD AND INTENTIONAL ABUSE OF A CHILD BY ENDANGERMENT; ADJUSTING PENALTIES.

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

SECTION 1. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended) is amended to read:

"30-6-1. [~~ABANDONMENT OR ABUSE OF A CHILD~~] DEFINITIONS.--
[A.] As used in [~~this section~~] Chapter 30, Article 6 NMSA 1978:

[~~(1)~~] A. "child" means a person who is less than

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1 eighteen years of age;

2 [~~(2)~~] B. "intentionally" refers to acts that are
3 done purposefully and means that the person knew the danger
4 involved and acted with purpose, even if the person did not
5 intend the resulting harm;

6 C. "neglect" means that a child is without proper
7 parental care and control of subsistence, education, medical or
8 other care or control necessary for the child's well-being
9 because of the faults or habits of the child's parents,
10 guardian or custodian or their neglect or refusal, when able to
11 do so, to provide them; and

12 [~~(3)~~—~~"negligently"~~] D. "recklessly" refers to
13 criminal negligence and [means that a] describes acts that
14 disregard a substantial, foreseeable risk, where the person
15 knew [or should have known] of the danger involved and acted
16 with a reckless disregard for the safety or health of the
17 child.

18 [~~B. Abandonment of a child consists of the parent,~~
19 ~~guardian or custodian of a child intentionally leaving or~~
20 ~~abandoning the child under circumstances whereby the child may~~
21 ~~or does suffer neglect. A person who commits abandonment of a~~
22 ~~child is guilty of a misdemeanor, unless the abandonment~~
23 ~~results in the child's death or great bodily harm, in which~~
24 ~~case the person is guilty of a second degree felony.~~

25 G. A parent, guardian or custodian who leaves an

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1 ~~infant less than ninety days old in compliance with the Safe~~
2 ~~Haven for Infants Act shall not be prosecuted for abandonment~~
3 ~~of a child.~~

4 ~~D. Abuse of a child consists of a person knowingly,~~
5 ~~intentionally or negligently, and without justifiable cause,~~
6 ~~causing or permitting a child to be:~~

7 ~~(1) placed in a situation that may endanger~~
8 ~~the child's life or health;~~

9 ~~(2) tortured, cruelly confined or cruelly~~
10 ~~punished; or~~

11 ~~(3) exposed to the inclemency of the weather.~~

12 ~~E. A person who commits abuse of a child that does~~
13 ~~not result in the child's death or great bodily harm is, for a~~
14 ~~first offense, guilty of a third degree felony and for second~~
15 ~~and subsequent offenses is guilty of a second degree felony.~~
16 ~~If the abuse results in great bodily harm to the child, the~~
17 ~~person is guilty of a first degree felony.~~

18 ~~F. A person who commits negligent abuse of a child~~
19 ~~that results in the death of the child is guilty of a first~~
20 ~~degree felony.~~

21 ~~G. A person who commits intentional abuse of a~~
22 ~~child twelve to eighteen years of age that results in the death~~
23 ~~of the child is guilty of a first degree felony.~~

24 ~~H. A person who commits intentional abuse of a~~
25 ~~child less than twelve years of age that results in the death~~

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1 of the child is guilty of a first degree felony resulting in
2 the death of a child.

3 I. Evidence that demonstrates that a child has been
4 knowingly, intentionally or negligently allowed to enter or
5 remain in a motor vehicle, building or any other premises that
6 contains chemicals and equipment used or intended for use in
7 the manufacture of a controlled substance shall be deemed prima
8 facie evidence of abuse of the child.

9 J. Evidence that demonstrates that a child has been
10 knowingly and intentionally exposed to the use of
11 methamphetamine shall be deemed prima facie evidence of abuse
12 of the child.

13 K. A person who leaves an infant less than ninety
14 days old at a hospital may be prosecuted for abuse of the
15 infant for actions of the person occurring before the infant
16 was left at the hospital.]"

17 SECTION 2. A new Section 30-6-1.1 NMSA 1978 is enacted to
18 read:

19 "30-6-1.1. [NEW MATERIAL] ABANDONMENT OF A CHILD.--

20 A. Abandonment of a child consists of the parent,
21 guardian or custodian of a child knowingly or intentionally
22 leaving or abandoning the child without an intent to return
23 under circumstances whereby the child is at a foreseeable risk
24 of suffering neglect or does suffer neglect.

25 B. A person who commits abandonment of a child is

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1 guilty of a misdemeanor, unless the abandonment results in the
2 child's death or great bodily harm, in which case the person is
3 guilty of a second degree felony.

4 C. Abandonment of a child is a lesser included
5 offense of reckless abuse of a child and intentional abuse of a
6 child by endangerment."

7 SECTION 3. A new Section 30-6-1.2 NMSA 1978 is enacted to
8 read:

9 "30-6-1.2. [NEW MATERIAL] RECKLESS ABUSE OF A CHILD.--

10 A. Reckless abuse of a child consists of a person
11 recklessly, and without justifiable cause, causing a child to
12 be placed in a situation knowing that it may endanger the
13 child's life or health, thereby creating or disregarding a
14 substantial and foreseeable risk of significant harm to the
15 child.

16 B. A person who commits reckless abuse of a child
17 that does not result in the child's death or great bodily harm
18 is guilty of a misdemeanor.

19 C. A person who commits reckless abuse of a child
20 that results in physical injury not constituting great bodily
21 harm is guilty of a fourth degree felony.

22 D. A person who commits reckless abuse of a child
23 that results in great bodily harm to a child:

24 (1) under the age of thirteen is guilty of a
25 second degree felony; and

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1 (2) thirteen to eighteen years of age is
2 guilty of a third degree felony.

3 E. A person who commits reckless abuse of a child
4 that results in the death of a child:

5 (1) under the age of thirteen is guilty of a
6 first degree felony; and

7 (2) thirteen to eighteen years of age is
8 guilty of a second degree felony resulting in the death of a
9 human being.

10 F. Upon a conviction pursuant to this section, an
11 offender shall be required to participate in counseling and
12 parenting education. The corrections department shall provide
13 the counseling and parenting education required pursuant to
14 this subsection to inmates in custody of the corrections
15 department. If an offender is placed on probation or parole,
16 the corrections department shall provide ongoing parenting
17 education or shall require the offender to participate in
18 ongoing parenting education as a condition of release."

19 SECTION 4. A new Section 30-6-1.3 NMSA 1978 is enacted to
20 read:

21 "30-6-1.3. [NEW MATERIAL] INTENTIONAL ABUSE OF A CHILD.--

22 A. Intentional abuse of a child consists of a
23 person knowingly and intentionally, and without justifiable
24 cause, causing a child to be:

25 (1) placed in a situation that endangers the

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1 child's life or health, intending such endangerment; or

2 (2) tortured, cruelly confined or cruelly
3 punished.

4 B. A person who commits intentional abuse of a
5 child that does not result in the child's death or great bodily
6 harm is, for a first offense, guilty of a fourth degree felony.

7 C. A person who commits intentional abuse of a
8 child that results in great bodily harm to a child:

9 (1) under the age of thirteen is guilty of a
10 second degree felony; and

11 (2) thirteen to eighteen years of age is
12 guilty of a third degree felony.

13 D. A person who commits intentional abuse of a
14 child that results in the death of a child:

15 (1) under the age of thirteen is guilty of a
16 first degree felony; and

17 (2) thirteen to eighteen years of age is
18 guilty of a second degree felony resulting in the death of a
19 human being.

20 E. A person who commits intentional abuse of a
21 child with intent to kill the child and that results in the
22 death of the child is guilty of a first degree felony resulting
23 in the death of a child.

24 F. If a person who commits intentional abuse of a
25 child has incurred a prior conviction for intentional abuse of

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1 a child within ten years, the basic sentence of imprisonment
2 may be increased by two years for each prior conviction for
3 intentional abuse of a child.

4 G. Upon a conviction pursuant to this section, an
5 offender shall be required to participate in anger management
6 counseling and parenting education. The corrections department
7 shall provide the anger management counseling and parenting
8 education required pursuant to this subsection to inmates in
9 custody of the corrections department. If an offender is
10 placed on probation or parole, the corrections department shall
11 provide ongoing anger management counseling and parenting
12 education or shall require the offender to participate in
13 ongoing anger management counseling or parenting education as a
14 condition of release."

15 SECTION 5. A new Section 30-6-1.4 NMSA 1978 is enacted to
16 read:

17 "30-6-1.4. [NEW MATERIAL] PROSECUTION OF ABANDONMENT OR
18 ABUSE OF A CHILD.--

19 A. Evidence that demonstrates that a child has been
20 recklessly or intentionally exposed to the inclemency of the
21 weather that presents a substantial and foreseeable risk of
22 harm to the child's life or health shall be deemed prima facie
23 evidence of abuse of the child.

24 B. Evidence that demonstrates that a person has
25 knowingly and intentionally exposed a child to the use or

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1 consumption of methamphetamine shall be deemed prima facie
2 evidence of abuse of the child.

3 C. A parent, guardian or custodian who leaves an
4 infant less than ninety days old in compliance with the Safe
5 Haven for Infants Act shall not be prosecuted for abandonment
6 of a child; provided, however, that a person who leaves an
7 infant less than ninety days old at a hospital may be
8 prosecuted for abuse of the infant for actions of the person
9 occurring before the infant was left at the hospital."

10 SECTION 6. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2015.