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HOUSE BILL 183

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Al Park

AN ACT

RELATING TO CRIMINAL LAW; INCREASING PENALTIES FOR CRIMES
COMMITTED AGAINST CHILDREN.

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.--

A. As used in this section:

(1) "child" means a person who is less than
eighteen years of age;

(2) "neglect" means that a child is without
proper parental care and control of subsistence, education,
medical or other care or control necessary for the child's
well-being because of the faults or habits of the child's
parents, guardian or custodian or their neglect or refusal,

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1 when able to do so, to provide them; and

2 (3) "negligently" refers to criminal
3 negligence and means that a person knew or should have known of
4 the danger involved and acted with a reckless disregard for the
5 safety or health of the child.

6 B. Abandonment of a child consists of the parent,
7 guardian or custodian of a child intentionally leaving or
8 abandoning the child under circumstances whereby the child may
9 or does suffer neglect. A person who commits abandonment of a
10 child is guilty of a misdemeanor, unless the abandonment
11 results in the child's death or great bodily harm, in which
12 case the person is guilty of a second degree felony.

13 C. A parent, guardian or custodian who leaves an
14 infant less than ninety days old in compliance with the Safe
15 Haven for Infants Act shall not be prosecuted for abandonment
16 of a child.

17 D. Abuse of a child consists of a person knowingly,
18 intentionally or negligently, and without justifiable cause,
19 causing or permitting a child to be:

20 (1) placed in a situation that may endanger
21 the child's life or health;

22 (2) tortured, cruelly confined or cruelly
23 punished; or

24 (3) exposed to the inclemency of the weather.

25 E. A person who commits abuse of a child that does

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1 not result in the child's death or great bodily harm is, for a
2 first offense, guilty of a [~~third~~] second degree felony and for
3 second and subsequent [~~offenses is~~] offense, guilty of a
4 [~~second~~] first degree felony. If the abuse results in great
5 bodily harm to the child, the person is guilty of a first
6 degree felony.

7 F. A person who commits negligent abuse of a child
8 that results in the death of the child is guilty of a first
9 degree felony.

10 [~~G. A person who commits intentional abuse of a~~
11 ~~child twelve to eighteen years of age that results in the death~~
12 ~~of the child is guilty of a first degree felony.~~

13 H.] G. A person who commits intentional abuse of a
14 child [~~less than twelve years of age~~] that results in the death
15 of the child is guilty of a first degree felony resulting in
16 the death of a child.

17 [~~F.~~] H. Evidence that demonstrates that a child has
18 been knowingly, intentionally or negligently allowed to enter
19 or remain in a motor vehicle, building or any other premises
20 that contains chemicals and equipment used or intended for use
21 in the manufacture of a controlled substance shall be deemed
22 prima facie evidence of abuse of the child.

23 [~~J.~~] I. Evidence that demonstrates that a child has
24 been knowingly and intentionally exposed to the use of
25 methamphetamine shall be deemed prima facie evidence of abuse

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1 of the child.

2 [K-] J. A person who leaves an infant less than
3 ninety days old at a hospital may be prosecuted for abuse of
4 the infant for actions of the person occurring before the
5 infant was left at the hospital."

6 SECTION 2. Section 30-9-11 NMSA 1978 (being Laws 1975,
7 Chapter 109, Section 2, as amended) is amended to read:

8 "30-9-11. CRIMINAL SEXUAL PENETRATION.--

9 A. Criminal sexual penetration is the unlawful and
10 intentional causing of a person to engage in sexual
11 intercourse, cunnilingus, fellatio or anal intercourse or the
12 causing of penetration, to any extent and with any object, of
13 the genital or anal openings of another, whether or not there
14 is any emission.

15 B. Criminal sexual penetration does not include
16 medically indicated procedures.

17 C. Aggravated criminal sexual penetration consists
18 of all criminal sexual penetration perpetrated on a child under
19 thirteen years of age with an intent to kill or with a depraved
20 mind regardless of human life. Whoever commits aggravated
21 criminal sexual penetration is guilty of a first degree felony
22 for aggravated criminal sexual penetration.

23 D. Criminal sexual penetration in the first degree
24 consists of all criminal sexual penetration perpetrated:

25 (1) on a child under thirteen years of age; or

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1 (2) by the use of force or coercion that
2 results in great bodily harm or great mental anguish to the
3 victim.

4 Whoever commits criminal sexual penetration in the first
5 degree is guilty of a first degree felony.

6 E. Criminal sexual penetration in the second degree
7 consists of all criminal sexual penetration perpetrated:

8 (1) by the use of force or coercion on a child
9 thirteen to eighteen years of age;

10 (2) on a child thirteen to eighteen years of
11 age when the perpetrator is in a position of authority over the
12 child and uses this authority to coerce the child to submit;

13 [~~(2)~~] (3) on an inmate confined in a
14 correctional facility or jail when the perpetrator is in a
15 position of authority over the inmate;

16 [~~(3)~~] (4) by the use of force or coercion that
17 results in personal injury to the victim;

18 [~~(4)~~] (5) by the use of force or coercion when
19 the perpetrator is aided or abetted by one or more persons;

20 [~~(5)~~] (6) in the commission of any other
21 felony; or

22 [~~(6)~~] (7) when the perpetrator is armed with a
23 deadly weapon.

24 Whoever commits criminal sexual penetration in the second
25 degree is guilty of a second degree felony. Whoever commits

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1 criminal sexual penetration in the second degree when the
2 victim is a child who is thirteen to eighteen years of age is
3 guilty of a second degree felony for a sexual offense against a
4 child and, notwithstanding the provisions of Section
5 31-18-15 NMSA 1978, shall be sentenced to a minimum term of
6 imprisonment of three years, which shall not be suspended or
7 deferred. The imposition of a minimum, mandatory term of
8 imprisonment pursuant to the provisions of this subsection
9 shall not be interpreted to preclude the imposition of
10 sentencing enhancements pursuant to the provisions of the
11 Criminal Sentencing Act.

12 F. Criminal sexual penetration in the third degree
13 consists of all criminal sexual penetration perpetrated through
14 the use of force or coercion not otherwise specified in this
15 section.

16 Whoever commits criminal sexual penetration in the third
17 degree is guilty of a third degree felony.

18 G. Criminal sexual penetration in the fourth degree
19 consists of all criminal sexual penetration:

20 (1) not defined in Subsections D through F of
21 this section perpetrated on a child thirteen to sixteen years
22 of age when the perpetrator is at least eighteen years of age
23 and is at least four years older than the child and not the
24 spouse of that child; or

25 (2) perpetrated on a child thirteen to

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1 eight years of age when the perpetrator, who is a licensed
2 school employee, an unlicensed school employee, a school
3 contract employee, a school health service provider or a school
4 volunteer, and who is at least eight years of age and is at
5 least four years older than the child and not the spouse of
6 that child, learns while performing services in or for a school
7 that the child is a student in a school.

8 Whoever commits criminal sexual penetration in the fourth
9 degree is guilty of a fourth degree felony."

10 **SECTION 3.** Section 30-9-13 NMSA 1978 (being Laws 1975,
11 Chapter 109, Section 4, as amended) is amended to read:

12 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

13 A. Criminal sexual contact of a minor is the
14 unlawful and intentional touching of or applying force to the
15 intimate parts of a minor or the unlawful and intentional
16 causing of a minor to touch one's intimate parts. For the
17 purposes of this section, "intimate parts" means the primary
18 genital area, groin, buttocks, anus or breast.

19 B. Criminal sexual contact of a minor in the second
20 degree consists of all criminal sexual contact of the unclothed
21 intimate parts of a minor perpetrated:

- 22 (1) on a child under thirteen years of age; or
23 (2) on a child thirteen to eighteen years of
24 age when:

25 (a) the perpetrator is in a position of

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1 authority over the child and uses that authority to coerce the
2 child to submit;

3 (b) the perpetrator uses force or
4 coercion [~~that results in personal injury to the child~~];

5 (c) the perpetrator uses force or
6 coercion and is aided or abetted by one or more persons; or

7 (d) the perpetrator is armed with a
8 deadly weapon.

9 Whoever commits criminal sexual contact of a minor in the
10 second degree is guilty of a second degree felony for a sexual
11 offense against a child and, notwithstanding the provisions of
12 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum
13 term of imprisonment of three years, which shall not be
14 suspended or deferred. The imposition of a minimum, mandatory
15 term of imprisonment pursuant to the provisions of this
16 subsection shall not be interpreted to preclude the imposition
17 of sentencing enhancements pursuant to the provisions of
18 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

19 C. Criminal sexual contact of a minor in the third
20 degree consists of all criminal sexual contact of a minor
21 perpetrated:

22 (1) on a child under thirteen years of age; or

23 (2) on a child thirteen to eighteen years of
24 age when:

25 (a) the perpetrator is in a position of

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1 authority over the child and uses this authority to coerce the
2 child to submit;

3 (b) the perpetrator uses force or
4 coercion [~~which results in personal injury to the child~~];

5 (c) the perpetrator uses force or
6 coercion and is aided or abetted by one or more persons; or

7 (d) the perpetrator is armed with a
8 deadly weapon.

9 Whoever commits criminal sexual contact of a minor in the
10 third degree is guilty of a third degree felony for a sexual
11 offense against a child.

12 D. Criminal sexual contact of a minor in the fourth
13 degree consists of all criminal sexual contact [~~(1)~~] not
14 defined in Subsection C of this section, of a child thirteen to
15 [~~eighteen~~] sixteen years of age [~~perpetrated with force or~~
16 ~~coercion; or~~

17 ~~(2) of a minor perpetrated on a child thirteen~~
18 ~~to eighteen years of age when the perpetrator, who is a~~
19 ~~licensed school employee, an unlicensed school employee, a~~
20 ~~school contract employee, a school health service provider or a~~
21 ~~school volunteer, and who is at least eighteen years of age and~~
22 ~~is at least four years older than the child and not the spouse~~
23 ~~of that child, learns while performing services in or for a~~
24 ~~school that the child is a student in a school] when the
25 perpetrator is at least eighteen years of age and at least four~~

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1 years older than the child and not the spouse of the child.

2 Whoever commits criminal sexual contact in the fourth
3 degree is guilty of a fourth degree felony."

4 SECTION 4. Section 30-9-14.3 NMSA 1978 (being Laws 1996,
5 Chapter 84, Section 2) is amended to read:

6 "30-9-14.3. AGGRAVATED INDECENT EXPOSURE.--

7 A. Aggravated indecent exposure consists of a
8 person knowingly and intentionally exposing [~~his~~] the person's
9 primary genital area to:

10 (1) a child under eighteen years of age, in a
11 lewd and lascivious manner, when the perpetrator is at least
12 eighteen years of age and is at least four years older than the
13 child and not the spouse of that child; or

14 (2) public view in a lewd and lascivious
15 manner, with the intent to threaten or intimidate another
16 person, while committing one or more of the following [~~acts or~~]
17 criminal offenses:

18 ~~(1) exposure to a child less than eighteen~~
19 ~~years of age;~~

20 (2)] (a) assault, as provided in Section
21 30-3-1 NMSA 1978;

22 ~~(3)]~~ (b) aggravated assault, as
23 provided in Section 30-3-2 NMSA 1978;

24 ~~(4)]~~ (c) assault with intent to commit
25 a violent felony, as provided in Section 30-3-3 NMSA 1978;

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1 [~~(5)~~] (d) battery, as provided in
2 Section 30-3-4 NMSA 1978;

3 [~~(6)~~] (e) aggravated battery, as
4 provided in Section 30-3-5 NMSA 1978;

5 [~~(7)~~] (f) criminal sexual penetration,
6 as provided in Section 30-9-11 NMSA 1978; or

7 [~~(8)~~] (g) abuse of a child, as provided
8 in Section 30-6-1 NMSA 1978.

9 B. As used in this section, "primary genital area"
10 means the mons pubis, penis, testicles, mons veneris, vulva or
11 vagina.

12 C. Whoever commits aggravated indecent exposure is
13 guilty of a fourth degree felony. Whoever commits aggravated
14 indecent exposure to a child under eighteen years of age is
15 guilty of a third degree felony.

16 D. In addition to any punishment provided pursuant
17 to the provisions of this section, the court shall order a
18 person convicted for committing aggravated indecent exposure to
19 participate in and complete a program of professional
20 counseling at [~~his~~] the person's own expense."

21 SECTION 5. Section 66-8-101 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 509, as amended) is amended to read:

23 "66-8-101. HOMICIDE BY VEHICLE--GREAT BODILY HARM BY
24 VEHICLE.--

25 A. Homicide by vehicle is the killing of a human

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1 being in the unlawful operation of a motor vehicle.

2 B. Great bodily harm by vehicle is the injuring of
3 a human being, to the extent defined in Section 30-1-12 NMSA
4 1978, in the unlawful operation of a motor vehicle.

5 C. A person who commits homicide by vehicle or
6 great bodily harm by vehicle while under the influence of
7 intoxicating liquor or while under the influence of any drug or
8 while violating Section 66-8-113 NMSA 1978, provided that
9 violation of speeding laws as set forth in the Motor Vehicle
10 Code shall not per se be a basis for violation of Section
11 66-8-113 NMSA 1978, is guilty of:

12 (1) a third degree felony and shall be
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA
14 1978 [~~provided that violation of speeding laws as set forth in~~
15 ~~the Motor Vehicle Code shall not per se be a basis for~~
16 ~~violation of Section 66-8-113 NMSA 1978~~]; or

17 (2) if the homicide or great bodily harm is to
18 a child under eighteen years of age, a second degree felony and
19 shall be sentenced pursuant to the provisions of Section
20 31-18-15 NMSA 1978.

21 D. A person who commits homicide by vehicle or
22 great bodily harm by vehicle while under the influence of
23 intoxicating liquor or while under the influence of any drug,
24 as provided in Subsection C of this section, and who has
25 incurred a prior DWI conviction within ten years of the

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1 occurrence for which [~~he~~] the person is being sentenced under
2 this section shall have [~~his~~] the person's basic sentence
3 increased by four years for each prior DWI conviction.

4 E. For the purposes of this section, "prior DWI
5 conviction" means:

6 (1) a prior conviction under Section 66-8-102
7 NMSA 1978; or

8 (2) a prior conviction in New Mexico or any
9 other jurisdiction, territory or possession of the United
10 States, including a tribal jurisdiction, when the criminal act
11 is driving under the influence of alcohol or drugs.

12 F. A person who willfully operates a motor vehicle
13 in violation of Subsection C of Section 30-22-1 NMSA 1978 and
14 directly or indirectly causes the death of or great bodily harm
15 to a human being:

16 (1) eighteen years of age or over, is guilty
17 of a third degree felony and shall be sentenced pursuant to the
18 provisions of Section 31-18-15 NMSA 1978; or

19 (2) under eighteen years of age, is guilty of
20 a second degree felony and shall be sentenced pursuant to the
21 provisions of Section 31-18-15 NMSA 1978."

22 SECTION 6. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2012.