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SENATE BILL 96

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Gregory A. Baca

AN ACT

RELATING TO CRIMINAL LAW; INCREASING THE PENALTY FOR
INTENTIONAL ABUSE OF A CHILD TWELVE TO EIGHTEEN YEARS OF AGE
THAT RESULTS IN THE DEATH OF THE CHILD TO A FIRST DEGREE FELONY
RESULTING IN THE DEATH OF A CHILD; INCREASING THE PENALTY FOR
ENTICEMENT OF CHILD; EXTENDING THE AGE RANGE FOR ENTICEMENT OF
CHILD; PROVIDING A PENALTY FOR ELECTRONIC COMMUNICATION OF
IMAGES OF ANY PERSON'S INTIMATE PARTS TO A CHILD; DECLARING AN
EMERGENCY.

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~~]

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1 younger than eighteen years of age;

2 (2) "neglect" means that a child is without
3 proper parental care and control of subsistence, education,
4 medical or other care or control necessary for the child's
5 well-being because of the faults or habits of the child's
6 parents, guardian or custodian or their neglect or refusal,
7 when able to do so, to provide them; and

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

12 B. Abandonment of a child consists of the parent,
13 guardian or custodian of a child intentionally leaving or
14 abandoning the child under circumstances whereby the child may
15 or does suffer neglect. A person who commits abandonment of a
16 child is guilty of a misdemeanor, unless the abandonment
17 results in the child's death or great bodily harm, in which
18 case the person is guilty of a second degree felony.

19 C. A parent, guardian or custodian who leaves an
20 infant [~~less than~~] ninety days [~~old~~] of age or less in
21 compliance with the Safe Haven for Infants Act shall not be
22 prosecuted for abandonment of a child.

23 D. Abuse of a child consists of a person knowingly,
24 intentionally or negligently, and without justifiable cause,
25 causing or permitting a child to be:

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

3 (2) tortured, cruelly confined or cruelly
4 punished; or

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

6 E. A person who commits negligent abuse of a child
7 that does not result in the child's death or great bodily harm
8 is, for a first offense, guilty of a third degree felony and,
9 for a second [~~and~~] or subsequent [~~offenses~~] offense, is guilty
10 of a second degree felony. [~~If the~~]

11 F. A person who commits negligent abuse of a child
12 that results in great bodily harm to the child [~~the person~~] is
13 guilty of a first degree felony.

14 [~~F.~~] G. A person who commits negligent abuse of a
15 child that results in the death of the child is guilty of a
16 first degree felony.

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

20 H. A person who commits intentional abuse of a
21 child that does not result in the child's death or great bodily
22 harm is, for a first offense, guilty of a second degree felony
23 and, for a second or subsequent offense, guilty of a first
24 degree felony.

25 I. A person who commits intentional abuse of a

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1 child that results in great bodily harm to the child is guilty
2 of a first degree felony.

3 [H.] J. A person who commits intentional abuse of a
4 child [~~less than twelve years of age~~] that results in the death
5 of the child is guilty of a first degree felony resulting in
6 the death of a child.

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

13 [J.] L. Evidence that demonstrates that a child has
14 been knowingly and intentionally exposed to the use of
15 methamphetamine shall be deemed prima facie evidence of abuse
16 of the child.

17 [K.] M. A person who leaves an infant [~~less than~~
18 ninety days [~~old at a hospital~~] of age or less at a safe haven
19 site may be prosecuted for abuse of the infant for actions of
20 the person occurring before the infant was left at the
21 [~~hospital~~] safe haven site."

22 SECTION 2. Section 30-9-1 NMSA 1978 (being Laws 1963,
23 Chapter 303, Section 9-10) is amended to read:

24 "30-9-1. ENTICEMENT OF CHILD.--

25 A. Enticement of child consists of:

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1 ~~[A.]~~ (1) enticing, persuading or attempting to
2 persuade a child under the age of ~~[sixteen]~~ eighteen years to
3 enter any vehicle, building, room or secluded place with intent
4 to commit an act ~~[which]~~ that would constitute a crime under
5 Chapter 30, Article 9 ~~[of the Criminal Code]~~ NMSA 1978; or

6 ~~[B.]~~ (2) having possession of a child under
7 the age of ~~[sixteen]~~ eighteen years in any vehicle, building,
8 room or secluded place with intent to commit an act ~~[which]~~
9 that would constitute a crime under Chapter 30, Article 9 ~~[of~~
10 ~~the Criminal Code]~~ NMSA 1978.

11 B. Whoever commits enticement of child is guilty of
12 a ~~[misdemeanor]~~:

13 (1) fourth degree felony if the child is at
14 least thirteen but under eighteen years of age; or

15 (2) third degree felony if the child is under
16 thirteen years of age."

17 **SECTION 3.** Section 30-37-3.3 NMSA 1978 (being Laws 2007,
18 Chapter 67, Section 1) is amended to read:

19 "30-37-3.3. CRIMINAL SEXUAL COMMUNICATION WITH A CHILD--
20 PENALTY.--

21 A. Criminal sexual communication with a child
22 consists of a person knowingly and intentionally communicating
23 directly with a specific child under sixteen years of age by
24 ~~[sending]~~ providing the child obscene images of ~~[the]~~ any
25 person's intimate parts by means of an electronic communication

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1 device when the perpetrator is at least four years older than
2 the child.

3 B. Whoever commits sexual communication with a
4 child is guilty of a fourth degree felony.

5 C. As used in this section:

6 (1) "electronic communication device" means a
7 computer, video recorder, digital camera, fax machine,
8 telephone, pager or any other device that can produce an
9 electronically generated image; and

10 (2) "intimate parts" means the primary genital
11 area, groin, buttocks, anus or breast."

12 SECTION 4. EMERGENCY.--It is necessary for the public
13 peace, health and safety that this act take effect immediately.