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SENATE BILL 326

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE PENALTY FOR  
ABUSE OF A CHILD THAT RESULTS IN THE CHILD'S DEATH; AMENDING  
SECTIONS OF THE NMSA 1978.

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 by Laws 2001, Chapter 31,  
Section 9 and by Laws 2001, Chapter 132, Section 9) 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,

1 medical or other care or control necessary for his well-being  
2 because of the faults or habits of his parents, guardian or  
3 custodian or their neglect or refusal, when able to do so, to  
4 provide them; and

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

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

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

20 D. Abuse of a child consists of a person knowingly,  
21 intentionally or negligently, and without justifiable cause,  
22 causing or permitting a child to be:

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

25 (2) tortured, cruelly confined or cruelly

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1 punished; or

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

3 E. Whoever commits abuse of a child that does not  
4 result in the child's death or great bodily harm is, for a  
5 first offense, guilty of a third degree felony and for second  
6 and subsequent offenses is guilty of a second degree felony.

7 [~~If the abuse results in great bodily harm or death to the~~  
8 ~~child, he is guilty of a first degree felony.~~]

9 F. Whoever commits abuse of a child that results in  
10 great bodily harm to the child is guilty of a first degree  
11 felony.

12 G. Whoever commits abuse of a child that results in  
13 the child's death is guilty of a first degree felony resulting  
14 in the death of a human being.

15 [~~E.~~] H. A person who leaves an infant less than  
16 ninety days old at a hospital may be prosecuted for abuse of  
17 the infant for actions of the person occurring before the  
18 infant was left at the hospital. "

19 Section 2. Section 31-18-15 NMSA 1978 (being Laws 1977,  
20 Chapter 216, Section 4, as amended) is amended to read:

21 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
22 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS  
23 DEDUCTIONS.--

24 A. If a person is convicted of a noncapital felony,  
25 the basic sentence of imprisonment is as follows:

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1                                    (1) for a first degree felony resulting in the  
2 death of a human being, twenty-four years imprisonment;

3                                    [~~(1)~~] (2) for a first degree felony, eighteen  
4 years imprisonment;

5                                    [~~(2)~~] (3) for a second degree felony resulting  
6 in the death of a human being, fifteen years imprisonment;

7                                    [~~(3)~~] (4) for a second degree felony, nine  
8 years imprisonment;

9                                    [~~(4)~~] (5) for a third degree felony resulting  
10 in the death of a human being, six years imprisonment;

11                                    [~~(5)~~] (6) for a third degree felony, three  
12 years imprisonment; or

13                                    [~~(6)~~] (7) for a fourth degree felony, eighteen  
14 months imprisonment.

15                                    B. The appropriate basic sentence of imprisonment  
16 shall be imposed upon a person convicted of a first, second,  
17 third or fourth degree felony or a first, second or third  
18 degree felony resulting in the death of a human being, unless  
19 the court alters such sentence pursuant to the provisions of  
20 Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

21                                    C. The court shall include in the judgment and  
22 sentence of each person convicted of a first, second, third or  
23 fourth degree felony or a first, second or third degree felony  
24 resulting in the death of a human being and sentenced to  
25 imprisonment in a corrections facility designated by the

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1 corrections department authority for a period of parole to be  
2 served in accordance with the provisions of Section 31-21-10  
3 NMSA 1978 after the completion of any actual time of  
4 imprisonment and authority to require, as a condition of  
5 parole, the payment of the costs of parole services and  
6 reimbursement to a law enforcement agency or local crime  
7 stopper program in accordance with the provisions of that  
8 section. The period of parole shall be deemed to be part of  
9 the sentence of the convicted person in addition to the basic  
10 sentence imposed pursuant to Subsection A of this section  
11 together with alterations, if any, pursuant to the provisions  
12 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA  
13 1978.

14 D. When a court imposes a sentence of imprisonment  
15 pursuant to the provisions of Section 31-18-15.1, 31-18-16,  
16 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the  
17 basic sentence of imprisonment provided pursuant to the  
18 provisions of Subsection A of this section, the period of  
19 parole shall be served in accordance with the provisions of  
20 Section 31-21-10 NMSA 1978 for the degree of felony for the  
21 basic sentence for which the inmate was convicted. For the  
22 purpose of designating a period of parole, a court shall not  
23 consider that the basic sentence of imprisonment was suspended  
24 or deferred and that the inmate served a period of imprisonment  
25 pursuant to the provisions of Section 31-18-15.1, 31-18-16,

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1 31-18-16.1 or 31-18-17 NMSA 1978.

2 E. The court may, in addition to the imposition of  
3 a basic sentence of imprisonment, impose a fine not to exceed:

4 (1) for a first degree felony resulting in the  
5 death of a human being, seventeen thousand five hundred dollars  
6 (\$17,500);

7 [~~(1)~~] (2) for a first degree felony, fifteen  
8 thousand dollars (\$15,000);

9 [~~(2)~~] (3) for a second degree felony resulting  
10 in the death of a human being, twelve thousand five hundred  
11 dollars (\$12,500);

12 [~~(3)~~] (4) for a second degree felony, ten  
13 thousand dollars (\$10,000);

14 [~~(4)~~] (5) for a third degree felony resulting  
15 in the death of a human being, five thousand dollars (\$5,000);

16 or

17 [~~(5)~~] (6) for a third or fourth degree felony,  
18 five thousand dollars (\$5,000).

19 F. When the court imposes a sentence of  
20 imprisonment for a felony offense, the court shall indicate  
21 whether or not the offense is a serious violent offense, as  
22 defined in Section 33-2-34 NMSA 1978. The court shall inform  
23 an offender that the offender's sentence of imprisonment is  
24 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37  
25 and 33-2-38 NMSA 1978. If the court fails to inform an

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1 offender that the offender's sentence is subject to those  
2 provisions or if the court provides the offender with erroneous  
3 information regarding those provisions, the failure to inform  
4 or the error shall not provide a basis for a writ of habeas  
5 corpus.

6 G. No later than October 31 of each year, the  
7 criminal and juvenile justice coordinating council shall  
8 provide a written report to the secretary of corrections, all  
9 New Mexico criminal court judges, the administrative office of  
10 the district attorneys and the chief public defender. The  
11 report shall specify the average reduction in the sentence of  
12 imprisonment for serious violent offenses and nonviolent  
13 offenses, as defined in Section 33-2-34 NMSA 1978, due to  
14 meritorious deductions earned by prisoners during the previous  
15 fiscal year pursuant to the provisions of Sections 33-2-34,  
16 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections  
17 department shall allow the coordinating council access to  
18 documents used by the department to determine earned  
19 meritorious deductions for prisoners. "

20 Section 3. EFFECTIVE DATE. --The effective date of the  
21 provisions of this act is July 1, 2003.