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HOUSE BILL 296

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

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL LAW; CLARIFYING AND AMENDING THE ELEMENTS OF RECKLESS ABUSE OF A CHILD AND INTENTIONAL ABUSE OF A CHILD; ADJUSTING PENALTIES; PROVIDING THAT INTENTIONAL ABUSE OF A CHILD BY THE CHILD'S PARENT, GUARDIAN OR CUSTODIAN THAT RESULTS IN THE CHILD'S DEATH IS A FIRST DEGREE FELONY RESULTING IN THE DEATH OF A CHILD.

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~~]
younger than eighteen years of age;

[~~(2)~~] "~~neglect~~" means that a child is without proper

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1 ~~parental care and control of subsistence, education, medical or~~
2 ~~other care or control necessary for the child's well-being~~
3 ~~because of the faults or habits of the child's parents,~~
4 ~~guardian or custodian or their neglect or refusal, when able to~~
5 ~~do so, to provide them;]~~

6 B. "intentionally" describes acts that are done
7 purposefully and with a conscious objective to endanger or
8 abuse a child, even if the person did not intend the resulting
9 harm; and

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

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

23 ~~G. A parent, guardian or custodian who leaves an~~
24 ~~infant less than ninety days old in compliance with the Safe~~
25 ~~Haven for Infants Act shall not be prosecuted for abandonment~~

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1 of a child.

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

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

7 ~~(2) tortured, cruelly confined or cruelly~~
8 ~~punished; or~~

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

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

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

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

22 ~~H. A person who commits intentional abuse of a~~
23 ~~child less than twelve years of age that results in the death~~
24 ~~of the child is guilty of a first degree felony resulting in~~
25 ~~the death of a child.~~

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

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

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

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

17 "30-6-1.1. [NEW MATERIAL] RECKLESS ABUSE OF A CHILD.--

18 A. Reckless abuse of a child consists of a person
19 recklessly, and without justifiable cause, causing or
20 permitting a child to be placed in a situation knowing that it
21 may endanger the child's life or health, thereby creating or
22 disregarding a substantial and foreseeable risk of significant
23 harm to the child.

24 B. A person who commits reckless abuse of a child
25 that does not result in physical injury to the child is guilty

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1 of a fourth degree felony.

2 C. A person who commits reckless abuse of a child
3 that results in physical injury to the child that does not
4 constitute great bodily harm is guilty of a third degree
5 felony.

6 D. A person who commits reckless abuse of a child
7 that results in great bodily harm to the child if the child is:

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

10 (2) twelve to eighteen years of age is guilty
11 of a third degree felony and, notwithstanding the provisions of
12 Section 31-18-15 NMSA 1978, the basic sentence of imprisonment
13 is six years.

14 E. A person who commits reckless abuse of a child
15 that results in the death of the child if the child is:

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

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

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

23 "30-6-1.2. [NEW MATERIAL] INTENTIONAL ABUSE OF A CHILD.--

24 A. Intentional abuse of a child consists of a
25 person knowingly and intentionally, and without justifiable

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1 cause, causing a child to be:

2 (1) placed in a situation that endangers the
3 child's life or health, intending such endangerment; or

4 (2) tortured, cruelly confined or cruelly
5 punished.

6 B. A person who commits intentional abuse of a
7 child that does not result in physical injury to the child is
8 guilty of a third degree felony.

9 C. A person who commits intentional abuse of a
10 child that results in physical injury to the child that does
11 not constitute great bodily harm is guilty of a third degree
12 felony and, notwithstanding the provisions of Section 31-18-15
13 NMSA 1978, the basic sentence of imprisonment is six years.

14 D. A person who commits intentional abuse of a
15 child that results in great bodily harm to the child if the
16 child is:

17 (1) under the age of twelve is guilty of a
18 second degree felony; and

19 (2) twelve to eighteen years of age is guilty
20 of a third degree felony and, notwithstanding the provisions of
21 Section 31-18-15 NMSA 1978, the basic sentence of imprisonment
22 is six years.

23 E. A person who commits intentional abuse of a
24 child that results in the death of the child:

25 (1) if the person is the parent, guardian or

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1 custodian of the child, is guilty of a first degree felony
2 resulting in the death of a child; or

3 (2) if the person is not the parent, guardian
4 or custodian of the child and the child is:

5 (a) under the age of twelve, is guilty
6 of a first degree felony resulting in the death of a child; or

7 (b) twelve to eighteen years of age, is
8 guilty of a first degree felony."

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

11 "30-6-1.3. [NEW MATERIAL] PROSECUTION OF ABUSE OF A
12 CHILD.--

13 A. Evidence that demonstrates that a child has been
14 recklessly or intentionally exposed to the inclemency of the
15 weather that presents a substantial and foreseeable risk of
16 harm to the child's life or health shall be deemed prima facie
17 evidence of abuse of the child.

18 B. Evidence that demonstrates that a person has
19 knowingly and intentionally exposed a child to the use or
20 consumption of methamphetamine shall be deemed prima facie
21 evidence of abuse of the child.

22 C. A parent, guardian or custodian who leaves an
23 infant ninety days of age or less in compliance with the Safe
24 Haven for Infants Act shall not be prosecuted for abuse of a
25 child."

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SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.