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SENATE BILL 461

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Lisa A. Torraco

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~~]  
younger 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~~] younger than ninety days old in compliance with  
15 the Safe Haven for Infants Act shall not be prosecuted for  
16 abandonment 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 negligent abuse of a child

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1 that does not result in the child's death or great bodily harm  
2 is, for a first offense, guilty of a third degree felony and  
3 for a second and subsequent ~~[offenses is]~~ offense, guilty of a  
4 second degree felony. If the abuse results in great bodily  
5 harm to the child, the person is guilty of a first degree  
6 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 G. A person who commits intentional abuse of a  
14 child that does not result in the child's death or great bodily  
15 harm is, for a first offense, guilty of a second degree felony  
16 and for a second and subsequent offense, guilty of a first  
17 degree felony. If the abuse results in great bodily harm to  
18 the child, the person is guilty of a first degree felony.

19 H. A person who commits intentional abuse of a  
20 child ~~[less than twelve years of age]~~ that results in the death  
21 of the child is guilty of a first degree felony resulting in  
22 the death of a child.

23 I. Evidence that demonstrates that a child has been  
24 knowingly, intentionally or negligently allowed to enter or  
25 remain in a motor vehicle, building or any other premises that

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1 contains chemicals and equipment used or intended for use in  
2 the manufacture of a controlled substance shall be deemed prima  
3 facie evidence of abuse of the child.

4 J. Evidence that demonstrates that a child has been  
5 knowingly and intentionally exposed to the use of  
6 methamphetamine shall be deemed prima facie evidence of abuse  
7 of the child.

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

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

14 "30-9-11. CRIMINAL SEXUAL PENETRATION.--

15 A. Criminal sexual penetration is the unlawful and  
16 intentional causing of a person to engage in sexual  
17 intercourse, cunnilingus, fellatio or anal intercourse or the  
18 causing of penetration, to any extent and with any object, of  
19 the genital or anal openings of another, whether or not there  
20 is any emission.

21 B. Criminal sexual penetration does not include  
22 medically indicated procedures.

23 C. Aggravated criminal sexual penetration consists  
24 of all criminal sexual penetration perpetrated on a child  
25 [~~under~~] younger than thirteen years of age with an intent to

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1 kill or with a depraved mind regardless of human life. Whoever  
2 commits aggravated criminal sexual penetration is guilty of a  
3 first degree felony for aggravated criminal sexual penetration.

4 D. Criminal sexual penetration in the first degree  
5 consists of all criminal sexual penetration perpetrated:

6 (1) on a child [~~under~~] younger than thirteen  
7 years of age; or

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

11 Whoever commits criminal sexual penetration in the first  
12 degree is guilty of a first degree felony.

13 E. Criminal sexual penetration in the second degree  
14 consists of all criminal sexual penetration perpetrated:

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

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

20 [~~(2)~~] (3) on an inmate confined in a  
21 correctional facility or jail when the perpetrator is in a  
22 position of authority over the inmate;

23 [~~(3)~~] (4) by the use of force or coercion that  
24 results in personal injury to the victim;

25 [~~(4)~~] (5) by the use of force or coercion when

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1 the perpetrator is aided or abetted by one or more persons;

2 [~~(5)~~] (6) in the commission of any other  
3 felony; or

4 [~~(6)~~] (7) when the perpetrator is armed with a  
5 deadly weapon.

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

19 F. Criminal sexual penetration in the third degree  
20 consists of all criminal sexual penetration perpetrated through  
21 the use of force or coercion not otherwise specified in this  
22 section.

23 Whoever commits criminal sexual penetration in the third  
24 degree is guilty of a third degree felony.

25 G. Criminal sexual penetration in the fourth degree

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1 consists of all criminal sexual penetration:

2 (1) not defined in Subsections D through F of  
3 this section perpetrated on a child thirteen to sixteen years  
4 of age when the perpetrator is [~~at least~~] eighteen years of age  
5 or older and is at least four years older than the child and  
6 not the spouse of that child; or

7 (2) perpetrated on a child thirteen to  
8 eighteen years of age when the perpetrator, who is a licensed  
9 school employee, an unlicensed school employee, a school  
10 contract employee, a school health service provider or a school  
11 volunteer, and who is [~~at least~~] eighteen years of age or older  
12 and is at least four years older than the child and not the  
13 spouse of that child, learns while performing services in or  
14 for a school that the child is a student in a school.

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

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

19 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

20 A. Criminal sexual contact of a minor is the  
21 unlawful and intentional touching of or applying force to the  
22 intimate parts of a minor or the unlawful and intentional  
23 causing of a minor to touch one's intimate parts. For the  
24 purposes of this section, "intimate parts" means the primary  
25 genital area, groin, buttocks, anus or breast.

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1           B. Criminal sexual contact of a minor in the second  
2 degree consists of all criminal sexual contact of the unclothed  
3 intimate parts of a minor perpetrated:

4                   (1) on a child [~~under~~] younger than thirteen  
5 years of age; or

6                   (2) on a child thirteen to eighteen years of  
7 age when:

8                           (a) the perpetrator is in a position of  
9 authority over the child and uses that authority to coerce the  
10 child to submit;

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

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

15                           (d) the perpetrator is armed with a  
16 deadly weapon.

17           Whoever commits criminal sexual contact of a minor in the  
18 second degree is guilty of a second degree felony for a sexual  
19 offense against a child and, notwithstanding the provisions of  
20 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum  
21 term of imprisonment of three years, which shall not be  
22 suspended or deferred. The imposition of a minimum, mandatory  
23 term of imprisonment pursuant to the provisions of this  
24 subsection shall not be interpreted to preclude the imposition  
25 of sentencing enhancements pursuant to the provisions of

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1 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

2 C. Criminal sexual contact of a minor in the third  
3 degree consists of all criminal sexual contact of a minor  
4 perpetrated:

5 (1) on a child [~~under~~] younger than thirteen  
6 years of age; or

7 (2) on a child thirteen to eighteen years of  
8 age when:

9 (a) the perpetrator is in a position of  
10 authority over the child and uses this authority to coerce the  
11 child to submit;

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

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

16 (d) the perpetrator is armed with a  
17 deadly weapon.

18 Whoever commits criminal sexual contact of a minor in the  
19 third degree is guilty of a third degree felony for a sexual  
20 offense against a child.

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

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1                   ~~(2) of a minor perpetrated on a child thirteen~~  
2 ~~to eighteen years of age when the perpetrator, who is a~~  
3 ~~licensed school employee, an unlicensed school employee, a~~  
4 ~~school contract employee, a school health service provider or a~~  
5 ~~school volunteer, and who is at least eighteen years of age and~~  
6 ~~is at least four years older than the child and not the spouse~~  
7 ~~of that child, learns while performing services in or for a~~  
8 ~~school that the child is a student in a school]~~ when the  
9 perpetrator is eighteen years of age or older and at least four  
10 years older than the child and not the spouse of the child.

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

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

15           "30-9-14.3. AGGRAVATED INDECENT EXPOSURE.--

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

19                   (1) a child younger than eighteen years of  
20 age, in a lewd and lascivious manner, when the perpetrator is  
21 eighteen years of age or older and is at least four years older  
22 than the child and not the spouse of that child; or

23                   (2) public view in a lewd and lascivious  
24 manner, with the intent to threaten or intimidate another  
25 person, while committing one or more of the following [~~acts or~~]

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1 criminal offenses:

2 [~~(1)~~] ~~exposure to a child less than eighteen~~  
3 ~~years of age;~~

4 ~~(2)~~] (a) assault, as provided in Section  
5 30-3-1 NMSA 1978;

6 [~~(3)~~] (b) aggravated assault, as  
7 provided in Section 30-3-2 NMSA 1978;

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

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

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

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

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

18 B. As used in this section, "primary genital area"  
19 means the mons pubis, penis, testicles, mons veneris, vulva or  
20 vagina.

21 C. Whoever commits aggravated indecent exposure is  
22 guilty of a fourth degree felony. Whoever commits aggravated  
23 indecent exposure to a child younger than eighteen years of age  
24 is guilty of a third degree felony.

25 D. In addition to any punishment provided pursuant

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1 to the provisions of this section, the court shall order a  
2 person convicted for committing aggravated indecent exposure to  
3 participate in and complete a program of professional  
4 counseling at [~~his~~] the person's own expense."

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

7 "66-8-101. HOMICIDE BY VEHICLE--GREAT BODILY HARM BY  
8 VEHICLE.--

9 A. Homicide by vehicle is the killing of a human  
10 being in the unlawful operation of a motor vehicle.

11 B. Great bodily harm by vehicle is the injuring of  
12 a human being, to the extent defined in Section 30-1-12 NMSA  
13 1978, in the unlawful operation of a motor vehicle.

14 C. A person who commits homicide by vehicle or  
15 great bodily harm by vehicle while under the influence of  
16 intoxicating liquor or while under the influence of any drug or  
17 while violating Section 66-8-113 NMSA 1978, provided that  
18 violation of speeding laws as set forth in the Motor Vehicle  
19 Code shall not per se be a basis for violation of Section  
20 66-8-113 NMSA 1978, is guilty of:

21 (1) a third degree felony and shall be  
22 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
23 1978 [~~provided that violation of speeding laws as set forth in~~  
24 ~~the Motor Vehicle Code shall not per se be a basis for~~  
25 ~~violation of Section 66-8-113 NMSA 1978~~]; or

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1                   (2) if the homicide or great bodily harm is to  
2 a child younger than thirteen years of age, a second degree  
3 felony and shall be sentenced pursuant to the provisions of  
4 Section 31-18-15 NMSA 1978.

5                   D. 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,  
8 as provided in Subsection C of this section, and who has  
9 incurred a prior DWI conviction within ten years of the  
10 occurrence for which ~~[he]~~ the person is being sentenced under  
11 this section shall have ~~[his]~~ the person's basic sentence  
12 increased by four years for each prior DWI conviction.

13                   E. For the purposes of this section, "prior DWI  
14 conviction" means:

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

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

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

25                                 (1) thirteen years of age or older, is guilty

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1 of a third degree felony and shall be sentenced pursuant to the  
2 provisions of Section 31-18-15 NMSA 1978; or

3 (2) younger than thirteen years of age, is  
4 guilty of a second degree felony and shall be sentenced  
5 pursuant to the provisions of Section 31-18-15 NMSA 1978.

6 G. The provisions of this section shall not be  
7 interpreted to prevent a person from being charged with  
8 intentional or negligent child abuse."

9 SECTION 6. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2013.