

HOUSE RULES AND ORDER OF BUSINESS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 326

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
CLARIFYING AND AMENDING THE ELEMENTS OF ABANDONMENT AND ABUSE
OF A CHILD; INCREASING PENALTIES FOR ABANDONMENT AND ABUSE OF A
CHILD THAT RESULTS IN INJURY; PROVIDING THAT INTENTIONAL ABUSE
OF A CHILD OF ANY AGE THAT RESULTS IN THE CHILD'S DEATH IS A
FIRST DEGREE FELONY RESULTING IN THE DEATH OF A CHILD; REVISING
THE DEFINITION OF "SERIOUS VIOLENT OFFENSE" TO INCLUDE
ADDITIONAL OFFENSES.

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~~]

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underscored material = new
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1 younger than eighteen years of age;

2 B. "intentionally" describes a person's act that is
3 done purposefully and that endangers a child, even if the
4 person did not intend a resulting harm;

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~I. Evidence that demonstrates that a child has been~~

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

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

10 ~~K. A person who leaves an infant less than ninety~~
11 ~~days old at a hospital may be prosecuted for abuse of the~~
12 ~~infant for actions of the person occurring before the infant~~
13 ~~was left at the hospital.] parent, guardian or custodian of a~~
14 ~~child or another person who has been entrusted with the care~~
15 ~~and physical custody of a child fails to provide the child with~~
16 ~~the care and supervision necessary to maintain the child's~~
17 ~~physical and mental health, including nutrition, clothing,~~
18 ~~shelter and medical care that a prudent person would consider~~
19 ~~to be essential to a child's well-being;~~

20 ~~D. "physical injury" means damage to any tissue of~~
21 ~~the body that is not likely to cause death or great bodily~~
22 ~~harm, but that does cause physical pain, illness, painful~~
23 ~~temporary disfigurement or temporary loss or impairment of the~~
24 ~~function of any member or organ of the body; and~~

25 ~~E. "recklessly" describes:~~

1 (1) a person's act that disregards, without
2 justifiable cause, a substantial and unjustifiable risk of
3 serious harm to the welfare, safety or health of a child; and
4 (2) a level of culpability that is greater
5 than negligence or carelessness."

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

8 "30-6-1.1. [NEW MATERIAL] ABANDONMENT OF A CHILD.--

9 A. Abandonment of a child consists of a parent,
10 guardian or custodian of a child or a person who has been
11 entrusted with the care and physical custody of a child
12 intentionally leaving or abandoning the child under
13 circumstances whereby the child may or does suffer neglect.

14 B. A person who commits abandonment of a child
15 that:

16 (1) does not result in physical injury to the
17 child is guilty of a misdemeanor;

18 (2) results in physical injury to the child
19 that does not constitute great bodily harm is guilty of a
20 fourth degree felony; and

21 (3) results in great bodily harm to or the
22 death of the child is guilty of a second degree felony."

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

25 "30-6-1.2. [NEW MATERIAL] RECKLESS ABUSE OF A CHILD.--

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underscored material = new
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1 A. Reckless abuse of a child consists of a person
2 recklessly, without justifiable cause, causing or permitting a
3 child to be placed in a situation that creates a substantial
4 and unjustifiable risk of serious harm to the safety or health
5 of the child.

6 B. A person who commits reckless abuse of a child
7 that:

8 (1) does not result in physical injury to
9 the child is:

10 (a) for a first offense, guilty of a
11 third degree felony; and

12 (b) for second and subsequent offenses,
13 guilty of a second degree felony;

14 (2) results in physical injury to the child
15 that does not constitute great bodily harm is:

16 (a) for a first offense, guilty of a
17 third degree felony and, notwithstanding the provisions of
18 Section 31-18-15 NMSA 1978, the basic sentence of imprisonment
19 is six years; and

20 (b) for second and subsequent offenses,
21 guilty of a second degree felony; and

22 (3) results in great bodily harm to or the
23 death of the child, is guilty of a first degree felony."

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

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1 "30-6-1.3. [NEW MATERIAL] INTENTIONAL ABUSE OF A CHILD.--

2 A. Intentional abuse of a child consists of a
3 person knowingly and intentionally, and without justifiable
4 cause, causing or permitting a child to be:

5 (1) placed in a situation that endangers the
6 child's health or safety; or

7 (2) tortured, cruelly confined or cruelly
8 punished.

9 B. A person who commits intentional abuse of a
10 child that:

11 (1) does not result in physical injury to the
12 child is:

13 (a) for a first offense, guilty of a
14 third degree felony; and

15 (b) for second and subsequent offenses,
16 guilty of a second degree felony;

17 (2) results in physical injury to the child
18 that does not constitute great bodily harm is:

19 (a) for a first offense, guilty of a
20 third degree felony and, notwithstanding the provisions of
21 Section 31-18-15 NMSA 1978, the basic sentence of imprisonment
22 is six years; and

23 (b) for second and subsequent offenses,
24 guilty of a second degree felony;

25 (3) results in great bodily harm to the child,

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1 is guilty of a first degree felony; and

2 (4) results in the death of the child, is
3 guilty of a first degree felony resulting in the death of a
4 child."

5 SECTION 5. A new Section 30-6-1.4 NMSA 1978 is enacted to
6 read:

7 "30-6-1.4. [NEW MATERIAL] PROSECUTION OF ABANDONMENT OF A
8 CHILD OR ABUSE OF A CHILD.--

9 A. Evidence that a child has been knowingly,
10 intentionally or recklessly allowed to enter or remain in a
11 motor vehicle, building or any other premises that contains
12 chemicals and equipment used or intended for use in the
13 manufacture of a controlled substance shall be deemed prima
14 facie evidence of abuse of the child.

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

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

23 SECTION 6. Section 33-2-34 NMSA 1978 (being Laws 1999,
24 Chapter 238, Section 1, as amended) is amended to read:

25 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS

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1 DEDUCTIONS.--

2 A. To earn meritorious deductions, a prisoner
3 confined in a correctional facility designated by the
4 corrections department must be an active participant in programs
5 recommended for the prisoner by the classification supervisor
6 and approved by the warden or the warden's designee.

7 Meritorious deductions shall not exceed the following amounts:

8 (1) for a prisoner confined for committing a
9 serious violent offense, up to a maximum of four days per month
10 of time served;

11 (2) for a prisoner confined for committing a
12 nonviolent offense, up to a maximum of thirty days per month of
13 time served;

14 (3) for a prisoner confined following
15 revocation of parole for the alleged commission of a new felony
16 offense or for absconding from parole, up to a maximum of four
17 days per month of time served during the parole term following
18 revocation; and

19 (4) for a prisoner confined following
20 revocation of parole for a reason other than the alleged
21 commission of a new felony offense or absconding from parole:

22 (a) up to a maximum of eight days per
23 month of time served during the parole term following
24 revocation, if the prisoner was convicted of a serious violent
25 offense or failed to pass a drug test administered as a

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1 condition of parole; or

2 (b) up to a maximum of thirty days per
3 month of time served during the parole term following
4 revocation, if the prisoner was convicted of a nonviolent
5 offense.

6 B. A prisoner may earn meritorious deductions upon
7 recommendation by the classification supervisor, based upon the
8 prisoner's active participation in approved programs and the
9 quality of the prisoner's participation in those approved
10 programs. A prisoner may not earn meritorious deductions unless
11 the recommendation of the classification supervisor is approved
12 by the warden or the warden's designee.

13 C. If a prisoner's active participation in approved
14 programs is interrupted by a lockdown at a correctional
15 facility, the prisoner may continue to be awarded meritorious
16 deductions at the rate the prisoner was earning meritorious
17 deductions prior to the lockdown, unless the warden or the
18 warden's designee determines that the prisoner's conduct
19 contributed to the initiation or continuance of the lockdown.

20 D. A prisoner confined in a correctional facility
21 designated by the corrections department is eligible for lump-
22 sum meritorious deductions as follows:

23 (1) for successfully completing an approved
24 vocational, substance abuse or mental health program, one month;
25 except when the prisoner has a demonstrable physical, mental

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1 health or developmental disability that prevents the prisoner
2 from successfully earning a high school equivalency credential,
3 in which case, the prisoner shall be awarded three months;

4 (2) for earning a high school equivalency
5 credential, three months;

6 (3) for earning an associate's degree, four
7 months;

8 (4) for earning a bachelor's degree, five
9 months;

10 (5) for earning a graduate qualification, five
11 months; and

12 (6) for engaging in a heroic act of saving
13 life or property, engaging in extraordinary conduct for the
14 benefit of the state or the public that is at great expense or
15 risk to or involves great effort on the part of the prisoner or
16 engaging in extraordinary conduct far in excess of normal
17 program assignments that demonstrates the prisoner's commitment
18 to self-rehabilitation. The classification supervisor and the
19 warden or the warden's designee may recommend the number of days
20 to be awarded in each case based upon the particular merits, but
21 any award shall be determined by the director of the adult
22 institutions division of the corrections department or the
23 director's designee.

24 E. Lump-sum meritorious deductions, provided in
25 Paragraphs (1) through (6) of Subsection D of this section, may

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1 be awarded in addition to the meritorious deductions provided in
2 Subsections A and B of this section. Lump-sum meritorious
3 deductions shall not exceed one year per award and shall not
4 exceed a total of one year for all lump-sum meritorious
5 deductions awarded in any consecutive twelve-month period.

6 F. A prisoner is not eligible to earn meritorious
7 deductions if the prisoner:

8 (1) disobeys an order to perform labor,
9 pursuant to Section 33-8-4 NMSA 1978;

10 (2) is in disciplinary segregation;

11 (3) is confined for committing a serious
12 violent offense and is within the first sixty days of receipt by
13 the corrections department; or

14 (4) is not an active participant in programs
15 recommended and approved for the prisoner by the classification
16 supervisor.

17 G. The provisions of this section shall not be
18 interpreted as providing eligibility to earn meritorious
19 deductions from a sentence of life imprisonment or a sentence of
20 life imprisonment without possibility of release or parole.

21 H. The corrections department shall promulgate rules
22 to implement the provisions of this section, and the rules shall
23 be matters of public record. A concise summary of the rules
24 shall be provided to each prisoner, and each prisoner shall
25 receive a quarterly statement of the meritorious deductions

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1 earned.

2 I. A New Mexico prisoner confined in a federal or
3 out-of-state correctional facility is eligible to earn
4 meritorious deductions for active participation in programs on
5 the basis of the prisoner's conduct and program reports
6 furnished by that facility to the corrections department. All
7 decisions regarding the award and forfeiture of meritorious
8 deductions at such facility are subject to final approval by the
9 director of the adult institutions division of the corrections
10 department or the director's designee.

11 J. In order to be eligible for meritorious
12 deductions, a prisoner confined in a federal or out-of-state
13 correctional facility designated by the corrections department
14 must actively participate in programs that are available. If a
15 federal or out-of-state correctional facility does not have
16 programs available for a prisoner, the prisoner may be awarded
17 meritorious deductions at the rate the prisoner could have
18 earned meritorious deductions if the prisoner had actively
19 participated in programs.

20 K. A prisoner confined in a correctional facility in
21 New Mexico that is operated by a private company, pursuant to a
22 contract with the corrections department, is eligible to earn
23 meritorious deductions in the same manner as a prisoner confined
24 in a state-run correctional facility. All decisions regarding
25 the award or forfeiture of meritorious deductions at such

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1 facilities are subject to final approval by the director of the
2 adult institutions division of the corrections department or the
3 director's designee.

4 L. As used in this section:

5 (1) "active participant" means a prisoner who
6 has begun, and is regularly engaged in, approved programs;

7 (2) "program" means work, vocational,
8 educational, substance abuse and mental health programs,
9 approved by the classification supervisor, that contribute to a
10 prisoner's self-betterment through the development of personal
11 and occupational skills. "Program" does not include
12 recreational activities;

13 (3) "nonviolent offense" means any offense
14 other than a serious violent offense; and

15 (4) "serious violent offense" means:

16 (a) second degree murder, as provided in
17 Section 30-2-1 NMSA 1978;

18 (b) voluntary manslaughter, as provided
19 in Section 30-2-3 NMSA 1978;

20 (c) third degree aggravated battery, as
21 provided in Section 30-3-5 NMSA 1978;

22 (d) third degree aggravated battery
23 against a household member, as provided in Section 30-3-16 NMSA
24 1978;

25 (e) first degree kidnapping, as provided

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1 in Section 30-4-1 NMSA 1978;

2 (f) first and second degree criminal
3 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

4 (g) second and third degree criminal
5 sexual contact of a minor, as provided in Section 30-9-13 NMSA
6 1978;

7 (h) first and second degree robbery, as
8 provided in Section 30-16-2 NMSA 1978;

9 (i) second degree aggravated arson, as
10 provided in Section 30-17-6 NMSA 1978;

11 (j) shooting at a dwelling or occupied
12 building, as provided in Section 30-3-8 NMSA 1978;

13 (k) shooting at or from a motor vehicle,
14 as provided in Section 30-3-8 NMSA 1978;

15 (l) aggravated battery upon a peace
16 officer, as provided in Section 30-22-25 NMSA 1978;

17 (m) assault with intent to commit a
18 violent felony upon a peace officer, as provided in Section
19 30-22-23 NMSA 1978;

20 (n) aggravated assault upon a peace
21 officer, as provided in Section 30-22-22 NMSA 1978; [~~or~~]

22 (o) reckless abuse of a child, as
23 provided in Paragraph (3) of Subsection B of Section 30-6-1.2
24 NMSA 1978;

25 (p) intentional abuse of a child, as

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1 provided in Paragraph (2) or (3) of Subsection B of Section
2 30-6-1.3 NMSA 1978; or

3 ~~(f)~~ (q) any of the following offenses,
4 when the nature of the offense and the resulting harm are such
5 that the court judges the crime to be a serious violent offense
6 for the purpose of this section: 1) involuntary manslaughter,
7 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree
8 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
9 third degree assault with intent to commit a violent felony, as
10 provided in Section 30-3-3 NMSA 1978; 4) fourth degree
11 aggravated assault against a household member, as provided in
12 Section 30-3-13 NMSA 1978; 5) third degree assault against a
13 household member with intent to commit a violent felony, as
14 provided in Section 30-3-14 NMSA 1978; 6) third and fourth
15 degree aggravated stalking, as provided in Section 30-3A-3.1
16 NMSA 1978; 7) second degree kidnapping, as provided in Section
17 30-4-1 NMSA 1978; 8) ~~[second degree]~~ abandonment of a child, as
18 provided in Paragraph (2) or (3) of Subsection B of Section
19 ~~[30-6-1]~~ 30-6-1.1 NMSA 1978; 9) ~~[first, second and third degree]~~
20 reckless abuse of a child, as provided in Paragraph (2) of
21 Subsection B of Section ~~[30-6-1]~~ 30-6-1.2 NMSA 1978; 10)
22 intentional abuse of a child, as provided in Paragraph (1) of
23 Subsection B of Section 30-6-1.3 NMSA 1978; ~~[10]~~ 11) third
24 degree dangerous use of explosives, as provided in Section
25 30-7-5 NMSA 1978; ~~[11]~~ 12) third and fourth degree criminal

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1 sexual penetration, as provided in Section 30-9-11 NMSA 1978;
2 [~~12~~] 13) fourth degree criminal sexual contact of a minor, as
3 provided in Section 30-9-13 NMSA 1978; [~~13~~] 14) third degree
4 robbery, as provided in Section 30-16-2 NMSA 1978; [~~14~~] 15)
5 third degree homicide by vehicle or great bodily harm by
6 vehicle, as provided in Section 66-8-101 NMSA 1978; or [~~15~~] 16)
7 battery upon a peace officer, as provided in Section 30-22-24
8 NMSA 1978.

9 M. Except for sex offenders, as provided in Section
10 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a
11 correctional facility designated by the corrections department
12 who has been released from confinement and who is serving a
13 parole term may be awarded earned meritorious deductions of up
14 to thirty days per month upon recommendation of the parole
15 officer supervising the offender, with the final approval of the
16 adult parole board. The offender must be in compliance with all
17 the conditions of the offender's parole to be eligible for
18 earned meritorious deductions. The adult parole board may
19 remove earned meritorious deductions previously awarded if the
20 offender later fails to comply with the conditions of the
21 offender's parole. The corrections department and the adult
22 parole board shall promulgate rules to implement the provisions
23 of this subsection. This subsection applies to offenders who
24 are serving a parole term on or after July 1, 2004."