

1 HOUSE BILL 221
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY
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10 AN ACT

11 RELATING TO CRIME; PROVIDING FOR EXPOSURE OF A CHILD TO A
12 SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE TO CONSTITUTE
13 CHILD ABUSE; PROVIDING FOR TAKING NEWBORN CHILDREN INTO
14 TEMPORARY PROTECTIVE CUSTODY UNDER CERTAIN CIRCUMSTANCES.
15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 30-6-1 NMSA 1978 (being Laws 1973,
18 Chapter 360, Section 10, as amended) is amended to read:

19 "30-6-1. ABANDONMENT OR ABUSE OF A CHILD.--

20 A. As used in this section:

21 (1) "child" means a person who is less than
22 eighteen years of age;

23 (2) "neglect" means that a child is without
24 proper parental care and control of subsistence, education,
25 medical or other care or control necessary for the child's

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1 well-being because of the faults or habits of the child's
2 parents, guardian or custodian or their neglect or refusal,
3 when able to do so, to provide them; and

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

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

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

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

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

24 (2) tortured, cruelly confined or cruelly
25 punished; [ø†]

underscoring material = new
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1 (3) exposed to the inclemency of the weather;
2 or

3 (4) exposed to the extent that the child tests
4 positive at birth for either a Schedule I controlled substance
5 pursuant to the Controlled Substances Act, including opiates,
6 opiate derivatives, hallucinogens, stimulants and depressants
7 that have no legitimate medical use, or a Schedule II
8 controlled substance pursuant to the Controlled Substances Act,
9 including any potentially addictive substance that is used or
10 manufactured contrary to its current accepted medical use,
11 unless the child tests positive for a Schedule II controlled
12 substance pursuant to the Controlled Substances Act as a result
13 of the mother's lawful intake of such substance as prescribed.

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

20 F. A person who commits negligent abuse of a child
21 that results in the death of the child is guilty of a first
22 degree felony.

23 G. A person who commits intentional abuse of a
24 child twelve to eighteen years of age that results in the death
25 of the child is guilty of a first degree felony.

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1 H. A person who commits intentional abuse of a
2 child less than twelve years of age that results in the death
3 of the child is guilty of a first degree felony resulting in
4 the death of a child.

5 I. Evidence that demonstrates that a child has been
6 knowingly, intentionally or negligently allowed to enter or
7 remain in a motor vehicle, building or any other premises that
8 contains chemicals and equipment used or intended for use in
9 the manufacture of a controlled substance shall be deemed prima
10 facie evidence of abuse of the child. It shall be no defense
11 to the crime of child abuse that the defendant did not know
12 that a child was present, a child could be found, a child
13 resided on the premises or a vehicle contained a child.

14 J. Evidence that demonstrates that a child has been
15 knowingly and intentionally exposed to the use of
16 methamphetamine shall be deemed prima facie evidence of abuse
17 of the child. It shall be no defense to the crime of child
18 abuse that the defendant did not know that a child was present,
19 a child could be found, a child resided on the premises or a
20 vehicle contained a child.

21 K. A person who leaves an infant less than ninety
22 days old at a hospital may be prosecuted for abuse of the
23 infant for actions of the person occurring before the infant
24 was left at the hospital."

25 SECTION 2. A new section of the Abuse and Neglect Act is
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1 enacted to read:

2 "[NEW MATERIAL] TAKING NEWBORN CHILDREN INTO TEMPORARY
3 PROTECTIVE CUSTODY.--

4 A. A newborn child who is in a hospital setting
5 shall not be taken into temporary protective custody without a
6 court order that includes findings that an emergency situation
7 exists and that the newborn child is seriously endangered. A
8 newborn child may be detained in a hospital by a law
9 enforcement officer upon the recommendation of the human
10 services department, children, youth and families department or
11 a physician, registered nurse, licensed practical nurse or
12 physician assistant while a court order is being pursued, but
13 the newborn child must be released if a court order is denied.

14 B. A newborn child who is not in a hospital setting
15 shall not be taken into temporary protective custody for a
16 period of longer than twenty-four hours without a court order
17 that includes findings that an emergency situation exists and
18 that the newborn child is seriously endangered.

19 C. A newborn child may be taken into temporary
20 protective custody without a court order in the following
21 circumstances:

22 (1) when a newborn child is identified by a
23 physician, registered nurse, licensed practical nurse or
24 physician assistant engaged in the admission, care or treatment
25 of patients as being affected by substance abuse or

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underscoring material = new
~~[bracketed material] = delete~~

1 demonstrating withdrawal symptoms resulting from prenatal drug
2 exposure; or

3 (2) when the newborn child is subject to an
4 environment exposing the newborn child to a laboratory for
5 manufacturing controlled substances.

6 D. The taking of a newborn child into temporary
7 custody under this section shall not be deemed an arrest, nor
8 shall it constitute a police record.

9 E. For purposes of this section, "newborn child"
10 means a child who is less than seventy-two hours old."