

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 130

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO FIREARMS; INCLUDING IN THE DEFINITION OF "NEGLECTED  
CHILD" A CHILD WHOSE PARENT STORES A FIREARM WHERE THE CHILD  
CAN GAIN ACCESS TO THE FIREARM.

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

SECTION 1. Section 32A-4-2 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 96, as amended) is amended to read:

"32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect  
Act:

A. "abandonment" includes instances when the  
parent, without justifiable cause:

(1) left the child without provision for the  
child's identification for a period of fourteen days; or

(2) left the child with others, including the  
other parent or an agency, without provision for support and

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1 without communication for a period of:

2 (a) three months if the child was under  
3 six years of age at the commencement of the three-month period;  
4 or

5 (b) six months if the child was over six  
6 years of age at the commencement of the six-month period;

7 B. "abused child" means a child:

8 (1) who has suffered or who is at risk of  
9 suffering serious harm because of the action or inaction of the  
10 child's parent, guardian or custodian;

11 (2) who has suffered physical abuse, emotional  
12 abuse or psychological abuse inflicted or caused by the child's  
13 parent, guardian or custodian;

14 (3) who has suffered sexual abuse or sexual  
15 exploitation inflicted by the child's parent, guardian or  
16 custodian;

17 (4) whose parent, guardian or custodian has  
18 knowingly, intentionally or negligently placed the child in a  
19 situation that may endanger the child's life or health; or

20 (5) whose parent, guardian or custodian has  
21 knowingly or intentionally tortured, cruelly confined or  
22 cruelly punished the child;

23 C. "aggravated circumstances" includes those  
24 circumstances in which the parent, guardian or custodian has:

25 (1) attempted, conspired to cause or caused

1 great bodily harm to the child or great bodily harm or death to  
2 the child's sibling;

3 (2) attempted, conspired to cause or caused  
4 great bodily harm or death to another parent, guardian or  
5 custodian of the child;

6 (3) attempted, conspired to subject or has  
7 subjected the child to torture, chronic abuse or sexual abuse;  
8 or

9 (4) had parental rights over a sibling of the  
10 child terminated involuntarily;

11 D. "educational decision maker" means an individual  
12 appointed by the children's court to attend school meetings and  
13 to make decisions about the child's education that a parent  
14 could make under law, including decisions about the child's  
15 educational setting, and the development and implementation of  
16 an individual education plan for the child;

17 E. "fictive kin" means a person not related by  
18 birth, adoption or marriage with whom a child has an  
19 emotionally significant relationship;

20 F. "great bodily harm" means an injury to a person  
21 that creates a high probability of death, that causes serious  
22 disfigurement or that results in permanent or protracted loss  
23 or impairment of the function of a member or organ of the body;

24 G. "neglected child" means a child:

25 (1) who has been abandoned by the child's

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1 parent, guardian or custodian;

2 (2) who is without proper parental care and  
3 control or subsistence, education, medical or other care or  
4 control necessary for the child's well-being because of the  
5 faults or habits of the child's parent, guardian or custodian  
6 or the failure or refusal of the parent, guardian or custodian,  
7 when able to do so, to provide them;

8 (3) who has been physically or sexually  
9 abused, when the child's parent, guardian or custodian knew or  
10 should have known of the abuse and failed to take reasonable  
11 steps to protect the child from further harm;

12 (4) whose parent, guardian or custodian keeps,  
13 stores or leaves a firearm, whether loaded or unloaded, in any  
14 location where the parent, guardian or custodian knows or  
15 reasonably should know that the child could gain access to the  
16 firearm and possess the firearm without appropriate adult  
17 supervision unless the parent, guardian or custodian takes  
18 reasonable action to secure the firearm against access by the  
19 child;

20 [~~(4)~~] (5) whose parent, guardian or custodian  
21 is unable to discharge that person's responsibilities to and  
22 for the child because of incarceration, hospitalization or  
23 physical or mental disorder or incapacity; or

24 [~~(5)~~] (6) who has been placed for care or  
25 adoption in violation of the law; provided that nothing in the

1 Children's Code shall be construed to imply that a child who is  
2 being provided with treatment by spiritual means alone through  
3 prayer, in accordance with the tenets and practices of a  
4 recognized church or religious denomination, by a duly  
5 accredited practitioner thereof is for that reason alone a  
6 neglected child within the meaning of the Children's Code; and  
7 further provided that no child shall be denied the protection  
8 afforded to all children under the Children's Code;

9 H. "physical abuse" includes any case in which the  
10 child suffers strangulation or suffocation and any case in  
11 which the child exhibits evidence of skin bruising, bleeding,  
12 malnutrition, failure to thrive, burns, fracture of any bone,  
13 subdural hematoma, soft tissue swelling or death and:

14 (1) there is not a justifiable explanation for  
15 the condition or death;

16 (2) the explanation given for the condition is  
17 at variance with the degree or nature of the condition;

18 (3) the explanation given for the death is at  
19 variance with the nature of the death; or

20 (4) circumstances indicate that the condition  
21 or death may not be the product of an accidental occurrence;

22 I. "relative" means a person related to another  
23 person by birth, adoption or marriage within the fifth degree  
24 of consanguinity;

25 J. "sexual abuse" includes criminal sexual contact,

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1 incest or criminal sexual penetration, as those acts are  
2 defined by state law;

3 K. "securing a firearm" means taking steps that a  
4 reasonable person would take to prevent access to the firearm  
5 by the child, including placing a firearm in a locked container  
6 or temporarily rendering the firearm inoperable by a trigger  
7 lock or other means;

8 [~~K.~~] L. "sexual exploitation" includes:

9 (1) allowing, permitting or encouraging a  
10 child to engage in prostitution;

11 (2) allowing, permitting, encouraging or  
12 engaging a child in obscene or pornographic photographing; or

13 (3) filming or depicting a child for obscene  
14 or pornographic commercial purposes, as those acts are defined  
15 by state law;

16 [~~L.~~] M. "sibling" means a brother or sister having  
17 one or both parents in common by birth or adoption;

18 [~~M.~~] N. "strangulation" has the same meaning as set  
19 forth in Section 30-3-11 NMSA 1978;

20 [~~N.~~] O. "suffocation" has the same meaning as set  
21 forth in Section 30-3-11 NMSA 1978; and

22 [~~O.~~] P. "transition plan" means an individualized  
23 written plan for a child, based on the unique needs of the  
24 child, that outlines all appropriate services to be provided to  
25 the child to increase independent living skills. The plan

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1 shall also include responsibilities of the child, and any other  
2 party as appropriate, to enable the child to be self-sufficient  
3 upon emancipation."

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