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| LFC Requester: | |
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 3-9-17
Original **Amendment** **Bill No:** HB463s
Correction **Substitute**

Sponsor: Maestas, Chasey & Martinez **Agency Code:** 264
Short Title: Child Abuse & Abandonment **Person Writing:** Gail MacQuesten
Phone: 466-0532 **Email:** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY17 | FY18 | | |
| 0 | 0 | n/a | n/a |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY17 | FY18 | FY19 | | |
| 0 | 0 | 0 | n/a | n/a |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | Minimal | Minimal | Minimal | Minimal | Recurring | General |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB45, SB159, HB13, HB54
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

The House Consumer and Public Affairs Committee Substitute for HB463 restructures NMSA 1978, Section 30-6-1, Abandonment or Abuse of a Child. It amends the existing statute to turn it into a definition section, and provides definitions of “intentionally” and “recklessly.” It deletes from the existing statute provisions that describe the crimes of abandonment and abuse, and creates new sections for three crimes: abandonment of a child, reckless abuse of a child, and intentional abuse of a child. It adds new material regarding prima facie evidence in abuse cases, and recognizing that compliance with the Safe Haven for Infants Act shall not be prosecuted as abandonment.

Definitions

- HB463s defines “intentionally” as acts that are done purposefully and with a conscious objective to endanger or abuse a child, even if the person did not intend the resulting harm.
- HB463s defines “recklessly” as criminal negligence: acts that disregard a substantial, foreseeable risk, where the person knew of the danger involved and acted with a reckless disregard for the safety or health of the child.

Abandonment of a Child

New Section 30-6-1.1 defines abandonment as “knowingly or intentionally leaving or abandoning the child without an intent to return with reasonable promptness and under circumstances whereby the child is at a foreseeable risk of suffering neglect or does suffer neglect.” The crime is a fourth degree felony, unless the abandonment results in the child’s death or great bodily harm, in which case it is a second degree felony. Abandonment may be a lesser included offense of abuse of a child.

Reckless Abuse of a Child

New Section 30-6-1.2 defines reckless abuse of a child as “recklessly, and without justifiable cause, causing a child to be placed in a situation knowing that it may endanger the child’s life or health, thereby creating or disregarding a substantial and foreseeable risk of significant harm to the child.” The crime is a misdemeanor, unless it results in the child’s death or great bodily harm. If the crime results in physical injury not constituting great bodily harm it is a fourth degree felony. If it results in great bodily harm, it is a second degree felony if the child is under thirteen, and a third degree felony if the child is thirteen to eighteen. If the crime results in the child’s death, it is a first degree felony if the child is under thirteen, and a

second degree felony if the child is thirteen to eighteen.

Intentional Abuse of a Child

New Section 30-6-1.3 defines intentional abuse of a child as knowingly and intentionally, and without justifiable cause, causing a child to be placed in a situation that endangers the child's life or health, intending such endangerment, or causes the child to be tortured, cruelly confined or cruelly punished. The crime is a fourth degree felony if it does not result in physical injury. If it results in physical injury that does not constitute great bodily harm it is a third degree felony. If it results in great bodily harm, the crime is a second degree felony if the child is under thirteen, and a third degree felony if the child is thirteen to eighteen, with a basic sentence of six years. If the crime results in death, the crime is a "first degree felony resulting in the death of a child" if the child is under thirteen, and a first degree felony if the child is thirteen to eighteen. If the person commits the crime with intent to kill the child, and that results in the child's death, the crime is a "first degree felony resulting in the death of a child."

Prosecution of Abandonment or Abuse of a Child.

New Section 30-6.1.4 provides that evidence demonstrating that a child has been recklessly or intentionally exposed to the inclemency of the weather that presents a substantial and foreseeable risk of harm to the child's life or health shall be deemed prima facie evidence of abuse of the child. Evidence that demonstrates that a person has knowingly and intentionally exposed a child to the use or consumption of methamphetamine shall be deemed prima facie evidence of abuse of the child. A person leaving an infant younger than ninety days old in compliance with the Safe Haven for Infants Act shall not be prosecuted for abandonment of a child.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB463s restructures the crimes of abuse and abandonment, giving more detailed definitions of the crimes and imposing different knowledge requirements than the knowledge requirements in the existing statute. Litigants and the courts will likely have additional costs interpreting the new laws, meeting the new proof requirements, and writing new jury instructions. HB463s both raises the penalties of some crimes, and lowers the penalties of other crimes. It is not clear whether this will result in an increase in costs of litigation and incarceration, or a decrease in costs.

SIGNIFICANT ISSUES

HB463s defines crimes against children in terms of whether the act was done "intentionally" or "recklessly," and does away with describing acts done "negligently." In *State v. Consaul*, 2014-NMSC-30, the New Mexico Supreme Court took issue with the wording of the existing statute, writing that "...what has long been called criminally negligent child abuse should be hereafter labeled reckless child abuse without any reference to negligence." *Consaul*, 2014-NMSC-30, ¶137. See also *State v. Montoya*, 2015-NMSC-10.

HB463s's definition of Abandonment of a Child is more detailed than the existing statute, which requires only that the child be intentionally left or abandoned under circumstances whereby the child may or does suffer neglect. HB463s requires that the child be knowingly or intentionally left or abandoned without an intent to return with reasonable promptness and under circumstances whereby the child is at a foreseeable risk of suffering neglect or does suffer neglect. HB463s raises the basic offense from a misdemeanor to a fourth degree felony. If the crime results in death or great bodily harm, HB463s keeps the crime a second degree felony.

HB463s replaces the existing statutory provisions for "Abuse of a Child." The existing statute defines abuse of a child, and then imposes penalties based on whether the crime was a first or subsequent offense and imposes penalties based on whether the crime results in death or great bodily injury, whether the conduct was negligent or intentional, and the age of the child. The existing statute punishes the crime as a third degree felony up to a first degree felony resulting in the death of a child. HB463s provides separate statutes for Reckless Abuse of a Child, and Intentional Abuse of a Child. Penalties imposed under HB463s range from misdemeanor to first degree felony resulting in the death of a child.

Section 30-6-1.2's Reckless Abuse of a Child requires the conduct to be reckless, *i.e.*, a form of criminal negligence, disregarding a substantial foreseeable risk, where the person knew of the danger involved and acted with a reckless disregard for the safety or health of the child. This replaces language in the existing statute that punished "negligent" conduct. HB463s provides for lower penalties, starting at a misdemeanor if the crime does not result in death or great bodily harm, and a fourth degree felony if the crime results in physical injury. It does away with the distinction made in the existing statute between first and subsequent offenses, and makes the crime a second degree felony if it results in great bodily harm to a child under thirteen, and a third degree felony if the child is thirteen to eighteen. If the crime results in death, it is a first degree felony if the child is under thirteen, and a second degree felony if the child is thirteen to eighteen.

HB463s's Intentional Abuse of a Child consists of knowingly and intentionally, and without justifiable cause, causing a child to be placed in a situation that endangers the child's life or health, intending such endangerment, placing the child in a situation in which the child is tortured, cruelly confined or cruelly punished. Penalties start at a fourth degree felony and go up to a first degree felony resulting in the death of a child.

HB463s changes the legal presumptions regarding abuse. HB463s deletes the provision in the existing statute that states that evidence demonstrating that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse. HB463s keeps a presumption of abuse when a child has been knowingly and intentionally exposed to the use of methamphetamine. HB463s creates a presumption of abuse when evidence demonstrates that a child has been recklessly or intentionally exposed to the inclemency of the weather that presents a substantial and foreseeable risk of harm to the child's life or health. (Language regarding exposing a child to inclement weather is built into the current statute's definition of abuse.)

HB463s provides that leaving an infant younger than ninety days old in compliance with the Safe Haven for Infants Act is not abandonment. The existing statute refers to leaving the infant at a hospital. The Safe Haven for Infants Act is broader, defining a safe haven as a hospital, law enforcement agency or fire station that has staff on-site at the time an infant is left at the site.

NMSA 1978, Section 24-22-2(F).

PERFORMANCE IMPLICATIONS

As discussed in Significant Issues, above, HB463s changes the definitions of the crimes of abandonment and abuse, changes the knowledge requirements for the crimes, and changes the legal presumptions for the crimes. The district attorneys and courts will need to analyze each new crime to determine the elements to be proved, and to develop new jury instructions.

ADMINISTRATIVE IMPLICATIONS

Jury instructions on abandonment and abuse will need to be revised.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB45 also amends Section 30-6-1. It increases the penalty for intentional abuse of a child twelve to eighteen years of age that results in the death of the child to a first degree felony resulting in the death of a child. It removes the distinction in the existing statute based on age: the crime is a “first degree felony” (which carries a basic sentence of 18 years) if the child is twelve to eighteen years of age, but a “first degree felony resulting in the death of a child” (which carries a basic sentence of life) if the child is less than twelve.

SB159 increases the penalties that apply to intentional abuse of a child that does not result in the child’s death, increasing the penalties if the abuse is intentional.

HB12 and HB54 each add one or more of the crimes defined in HB463s to the definition of “violent felony” in NMSA 1978, Section 31-18-23(E)(2).

TECHNICAL ISSUES

There is no definition of “knowingly,” although the word is used in two of the crimes set out in HB463s. New Section 30-6-1.1, Abandonment of a Child, uses the phrase “knowingly or intentionally.” New Section 30-6-1.3, Intentional Abuse of a Child, uses the phrase “knowingly and intentionally.” The definition of “intentionally” appears to include a knowledge element, because it requires that the act be done purposefully and with a conscious objective to endanger or abuse a child, even if the person did not intend the resulting harm. If the definition of “intentionally” covers the knowledge requirement for the crime, the undefined word “knowingly” should be left out of the definition of the crime. If “knowingly” is an alternative to “intentionally,” or something required in addition to the requirement that the act be done “intentionally,” then the word “knowingly” should be defined.

New Section 30-6-1.2 makes distinctions between reckless abuse that results in “physical injury” and reckless abuse that does not result in “physical injury.” The term “physical injury” is not defined.

The definition of “reckless” in the definition section is inconsistent with the use of the term in the statute defining reckless child abuse. The definition section refers to reckless disregard for a child’s safety or health, while the criminal statute itself refers to the child’s life or health.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current statutes on abandonment or abuse of a child will remain in place.

AMENDMENTS

None proposed.