

1 IN THE JUSTICE COURT OF THE STATE OF MONTANA,
2 IN AND FOR THE COUNTY OF MISSOULA
BEFORE John E. Odlin JUSTICE OF THE PEACE

3
4
5 STATE OF MONTANA
6 Plaintiff,
7 -VS-
8 THERESA BIRDSLEY
Defendant.

Cause No. CR-2013-10925-CJ

COMPLAINT

10 JORDAN KILBY, Deputy Missoula County Attorney, deposes and says
11 that on or about the 5th day of June, 2013 , in Missoula County, the
12
13 Defendant committed the offense of COUNT I: CRIMINAL CHILD
14
15 ENDANGERMENT, a Felony, in violation of Montana law, namely: 45-5-628
16 (2013), otherwise known as Montana Senate Bill 160, which was signed into
17 law by the Governor on April 25, 2013, and went into effect upon passage
18 and approval (attached hereto), punishable by 10 years MSP and/or \$50,000
19 fine.
20

21 The facts constituting the offense are:

22
23 COUNT I: On or about the 5th day of June, 2013, the above-named
24 Defendant committed the offense of criminal child endangerment by
25
26 purposely, knowingly, or negligently causing substantial risk of death or
27 serious bodily injury to a child under 14 years of age by operating a motor
28

1 vehicle under the influence of alcohol or dangerous drugs in violation of 61-
2 8-401 with a child in the vehicle.
3

4
5 DATED this 5th day of June, 2013.
6

7 Jordan Kilby
8 JORDAN KILBY
9 Deputy Missoula County Attorney

10 Subscribed and sworn to before me this 5th day of June, 2013.
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12 JUSTICE OF THE PEACE
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14 COMPLAINT 13-1350
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AN ACT CREATING THE OFFENSE OF CRIMINAL CHILD ENDANGERMENT; PROVIDING THAT A PERSON COMMITS THE OFFENSE OF CRIMINAL CHILD ENDANGERMENT IF THE PERSON PURPOSELY, KNOWINGLY, OR NEGLIGENTLY CAUSES SUBSTANTIAL RISK OF DEATH OR SERIOUS BODILY INJURY TO A CHILD UNDER 14 YEARS OF AGE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Criminal child endangerment. (1) A person commits the offense of criminal child endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily injury to a child under 14 years of age by:

- (a) failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;
- (b) placing a child in the physical custody of another who the person knows has previously purposely or knowingly caused bodily injury to a child;
- (c) placing a child in the physical custody of another who the person knows has previously committed an offense against the child under 45-5-502 or 45-5-503;
- (d) manufacturing or distributing dangerous drugs in a place where a child is present;
- (e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-465 with a child in the vehicle; or
- (f) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive.

(2) A person may not be charged under subsection (1)(b) or (1)(c) if the person placed the child in the other person's custody pursuant to a court order.

(3) A person convicted of the offense of criminal child endangerment shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 0160, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 160

INTRODUCED BY TROPILA, ARNTZEN, T. BROWN, HOLLENBAUGH, MACDONALD, NOONAN, O'HARA,
THOMAS, VAN DYK, WANZENRIED

AN ACT CREATING THE OFFENSE OF CRIMINAL CHILD ENDANGERMENT; PROVIDING THAT A PERSON
COMMITS THE OFFENSE OF CRIMINAL CHILD ENDANGERMENT IF THE PERSON PURPOSELY,
KNOWINGLY, OR NEGLIGENTLY CAUSES SUBSTANTIAL RISK OF DEATH OR SERIOUS BODILY INJURY
TO A CHILD UNDER 14 YEARS OF AGE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE AND AN APPLICABILITY DATE.

1 IN THE JUSTICE COURT OF THE STATE OF MONTANA,
2 IN AND FOR THE COUNTY OF MISSOULA
3 BEFORE John E. Ollin, JUSTICE OF THE PEACE

4
5 STATE OF MONTANA,
6 Plaintiff,

Cause No. CR-2013-10925-C1

7 -vs-

AFFIDAVIT OF PROBABLE
CAUSE

8
9 THERESA BIRDSLEY,
10 Defendant.

11 STATE OF MONTANA)
12 : ss
13 County of Missoula)

14 JORDAN KILBY, Deputy County Attorney of Missoula County,
15 Montana, being first duly sworn upon oath, deposes and says:

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17 I have read the official law enforcement reports regarding the
18 investigation of THERESA BIRDSLEY for allegedly committing the offense(s)
19 set forth in the complaint in and based upon the information contained in the
20 reports, if true, believe probable cause exists to justify charging the above-
21 named defendant as specified in the accompanying complaint.
22

23
24 On or about the 5th day of June, 2013, at approximately 2:45 a.m.
25 Missoula City Police Officer Ethan Smith was driving on South Ave in
26 Missoula County when he observed a gray minivan drifting towards a
27 parked car on the north side of the road. The vehicle then drifted back
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1 towards the center double line. Officer Smith then observed the vehicle do
2 this one more time. Due to the time of night and driving behavior, Officer
3 Smith was concerned about the driver being impaired and performed a u-
4 turn to follow the driver. Officer Smith noted the license plate started with a
5 7C.
6
7


8 The minivan took an immediate right onto Hollis ave. Officer Smith
9 turned on Hollis and observed a grey minivan with 7C plates on the side of
10 the road with its lights out. Officer Smith looked to see if there were any
11 other minivans in the area and did not see any. Officer Smith approached
12 the side of the vehicle and saw that the driver was lying down on her back,
13 after fully reclining the driver's seat. He identified the driver as Theresa
14 Birdsley. She stated she was trying to hide from Officer Smith because she
15 was scared.
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19 Officer Smith smelled an odor of an alcoholic beverage coming from
20 the vehicle. He observed an infant in the back seat of the vehicle. He
21 asked Theresa if anyone in the vehicle had been drinking and she stated,
22 "No."
23
24

25 Worried about her driving and the odor of alcohol, Officer Smith
26 asked Theresa to complete the standardized field sobriety tests. On the
27 side of the road Theresa showed 6 of 6 indicators on the HGN, 6 out of 8
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1 indicators on the Walk and Turn, and 3 of 4 indicators on the One Leg
2 Stand. She provided a breath sample and the PBT registered .093.
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4 At the jail, Theresa showed 4 out of 8 indicators of impairment on the
5 Walk and Turn and 3 out of 4 indicators of impairment on the One Leg
6 Stand. She submitted a breath sample for the Intoxilyzer and registered a
7 .086 and .076.
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10 
11 JORDAN KILBY
12 Deputy Missoula County Attorney

13 SUBSCRIBED AND SWORN TO before me this 5th day of June,
14 2013.
15

16 JUSTICE OF THE PEACE
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19 ORDER
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21 Upon reading the foregoing Affidavit, the Court finds that there is
22 probable cause to believe the above-named Defendant committed the crimes
23 charged.
24

25 DATED this _____ day of _____, 2013 at _____ a.m./p.m.
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28 JUSTICE OF THE PEACE