

# ADA ELLIOTT - CHILD ABUSE (ENDANGER)

Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be: (1) placed in a situation that may endanger the child's health or life. NMSA 1978, Section 30-6-1 (D).

When abuse of a child does not result in death or great bodily harm, a first offense is a third degree felony.

## FACTS:

Defendant and girlfriend had lived together eleven years and had two children (8 and 3). Defendant, drinking throughout the day, entered bedroom and hit wife with a belt. Tried to strangle her with the belt and said he was going to kill her. Eight year old daughter woke up, came to bedroom door, and saw father hitting mother. Father ordered her to go back to her bedroom. Daughter testified she was "sad" and scared that her dad would kill her mom. Court had to decide whether this was child abuse under the endangerment theory.

What does the term "may endanger" really mean? It is not a mere possibility, however remote, that harm may result from defendant's acts. The legislature intended "may endanger" to convey a more restrictive meaning in child abuse cases, i.e., a reasonable probability or possibility that the child will be endangered. It is helpful to ask whether the defendant's conduct caused the child to be exposed to a significant risk of harm.

An example of child endangerment would be where defendant pointed a gun at child's mother but the child was standing behind her. The child was placed directly in the face of physical danger. A significant risk of harm existed, whether or not it actually occurred. But mere proximity to a dangerous situation does not support child abuse by endangerment. Another defendant left his wife and child in a car, approximately ten or fifteen away, while he bought heroin. Court of Appeals held this wasn't child abuse by endangerment.

The Court of Appeals did not find child endangerment in this case. There was insufficient evidence that child "was in fact placed in danger." State v. Trujillo (2002).

