

NMDPS - CHILD ABUSE – FETUS

A new born baby in Hobbs, New Mexico, suffered drug withdrawal. Screening revealed a high level of cocaine. Her mother had told Health Department staff a month before she was a drug addict and drank alcohol all day. Later, she told a Hobbs police detective she had used crack cocaine two days prior to the birth of the Child.

Abuse of a child consists of a person knowingly, intentionally or negligently . . . causing or permitting a child to be . . . placed in a situation that may endanger the child's life or health." NMSA 1978, Section 30-6-1 (D). The issue on appeal was: Can a mother be prosecuted for felony child abuse when she uses cocaine during her pregnancy?

Court of Appeals said no. It reviewed legislative intent and noted that the child abuse statute defines a child as "a **person** who is less than eighteen years of age." NMSA 1978, Section 30-6-1 (A)(1). Further review of the criminal code indicates a "person" as "any human being or legal entity." The definition of **person** does not include a fetus.

Since the fetus is not a person or Child, the mother cannot be charged with felony child abuse. Her conviction was reversed. Supreme Court upheld the Court of Appeals. State v. Martinez (2006). - - - ADA Elliott



You said no one enters the scene so I thought I'd bring ya the body.