

NMDPS - CHILD ABUSE - MARIJUANA

Officers in Otero County served a search warrant at defendant's house where he lived with his girlfriend and two children, ages one and three. Just prior to entry the children, still in diapers, were running around the house. A lot of drugs were found, throughout the house, including a marijuana roach on the floor in front of the sofa. In a crib, located in the master bedroom, they saw a marijuana bud – the most potent part of the marijuana plant – underneath a teddy bear.

Defendant was charged with abuse of a child which “consists of a person . . . negligently . . . causing or permitting a child to be (1) placed in a situation that **may** endanger the child's life or health.” NMSA 1978, Section 30-6-1 (D). “Negligently” means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

The definition – “may endanger” – is pretty broad but the courts have narrowed it somewhat. It is more than a “mere possibility” of harm; it requires a “reasonable possibility” that the child will be endangered. In other words, the risk of harm has to be substantial; the legislature did not intend to criminalize every harm that might possibly come a child's way.

Do the facts here amount to child abuse? Supreme Court said yes. The children were in the immediate vicinity of marijuana, it was easily accessible to them, and there was a reasonable possibility that they would come in contact with the marijuana. State v. Graham (2005).

- - ADA Elliott

