

ADA ELLIOTT - CHILD ABUSE/NEGLIGENCE

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 life or health;
- (2) tortured, cruelly confined or cruelly punished; or
- (3) exposed to the inclemency of the weather. NMSA 1978, Section 30-6-1(C).

A STRICT LIABILITY STATUTE

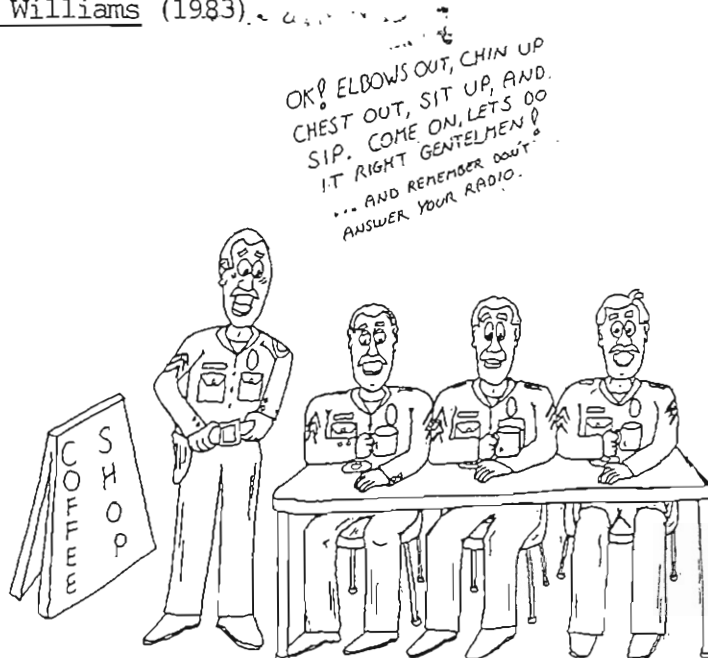
Ordinarily, there are two components to a crime: an intent or mental state plus an overt act. Child abuse is one of the few areas where a person's mental state is immaterial. It does not matter whether the abuse was committed knowingly, intentionally, or negligently - the punishment is still the same.

This is a strict liability (liability without fault) statute. A strict liability statute is one which imposes criminal sanctions for an unlawful act without requiring a showing of criminal intent. This has been upheld by the courts because children are in need of greater protection than adults. State v. Lucero (1975).

EXAMPLES OF NEGLIGENCE

1. Mother struck the fatal blow that killed her daughter Charlotte. The father was also found guilty of child abuse because he was negligent in failing to take action to prevent the abuse. State v. Adams (1976).
2. The sole question for a jury in a strict liability offense is whether the jury believes defendant committed the act. Defendant argued at trial that she acted under duress in not obtaining help for her child. She said she was afraid her husband would beat her and the child even more. Her conviction was affirmed. The only question is whether she permitted the abuse to occur - what she thinks is immaterial. State v. Lucero (1982).
3. The mother argued that because she was five months pregnant at the time of the child abuse and had been beaten and threatened by the husband that she could do nothing to prevent the beating of her child.

Court of Appeals disagreed. She was not required to physically stop her husband from beating her child, but she could have sought help, called neighbors, or taken other action. She knew of her husband's violent nature, his use of drugs, and previous abuse. Conviction upheld. State v. Williams (1983).



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