

## **NMDPS - CHILD ABUSE – DWI – MOVING VEHICLE**

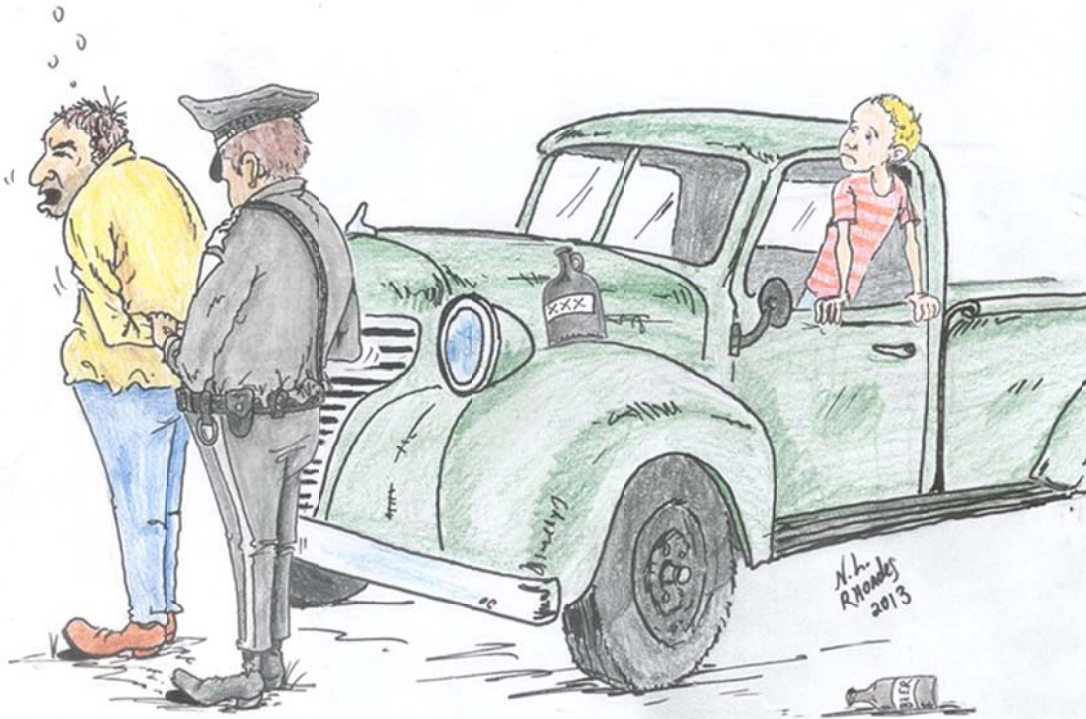
In Eddy County, an intoxicated person drove a vehicle with his nine-year-old son. He did not challenge his DWI conviction but sought to overturn his child abuse by endangerment conviction on the basis that there was no bad driving. NMSA 1978, Section 30-6-1.

Child abuse by endangerment, unlike child abuse, doesn't require physical harm. It occurs when a child is exposed to a significant risk of harm. An example would be placing a child in a situation that endangers life and health, with a substantial and foreseeable risk of injury, and with a reckless disregard to consequences.

But is driving while intoxicated – standing alone – sufficient to support child abuse by endangerment? Court of Appeals said yes, holding that driving a moving vehicle in and of itself exposes a child to a substantial risk of harm. The Defendant, driving while intoxicated, put his son within a moving zone of danger.

One may be convicted of DWI with safe driving; it is the threat to the safety of the general public that is at stake. Here, not only did the driver threaten the general public, he also posed an immediate, substantial, and foreseeable threat to a specific member of the public who was a child and a passenger in his vehicle. Conviction affirmed. State v. Orquiz (2012).

ADA Elliott Guttman, Law Enforcement Academy



**Why don' you go out an arres' speeders and jay walkers instead of pickin on us good people?!**