

CRIMINAL LAW: CRIMES AGAINST PERSONS

ONLINE

PRESENTED BY:

DPS - Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

Students will learn the elements of crimes against persons.

By review and study of New Mexico case law, students will gain an understanding of crimes against persons.

OBJECTIVES

Upon completion of this course, students will be able to:

Know what homicide is and the difference between murder and manslaughter.

Know the difference between an assault and a battery.

Explain the difference between a misdemeanor battery and a felony battery.

Explain under what circumstances of parental discipline a battery can be charged.

State the difference when the victim of a battery is a police officer.

Know the difference between harassment and stalking.

List the circumstances when injury to a pregnant woman can be charged.

Understand the difference between false imprisonment and kidnapping.

State circumstances when contributing to a minor applies.

Explain what CSP (Criminal sexual penetration) is, including “position of authority.”

Explain how criminal sexual contact is different when the victim is a minor.

Explain the significance of “public view” as an element of indecent exposure.

State the age of consent in New Mexico.

SOURCES

New Mexico Criminal and Traffic Manual.

New Mexico Statutes Annotated.

State and federal case law.

ESTIMATED TIME Included in a ten hour block on Criminal Law.

PREPARED BY

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Santa Fe, New Mexico

DATE APPROVED _____

ACCREDITATION NUMBER _____

INTRODUCTION

Crimes against Persons are physical, violent, and often high profile. Murder, rape, child abuse, domestic violence, assault and battery - these are just a few of the crimes against persons. We will not discuss all the crimes; some are better understood when discussed in separate blocks of instruction.

The statutes may seem dry but these are real people and almost all of them are from New Mexico. Much of our focus is on the offender but we need to remember the victim and why we became officers.

Before we begin . . .

He was one of the most evil persons to ever live in New Mexico. His name was David Parker Ray and he would kidnap and torture women. One woman, Cynthia Vigil, held captive at Elephant Butte, escaped and testified against him. Prosecutors and law enforcement have high praise for her, especially her courage and efforts to help others.

Years later, she wrote an article for the Albuquerque Journal, December 17, 2012. Part of the article follows:

Sex Workers are Human Beings, Not ‘Less-Thans’

“When I was 21 years old, I was kidnapped off a street in Albuquerque and tortured for three days. There are some that might say that was to be expected since I was a sex worker at the time.

People who hear my story might shrug and say, “That’s too bad.” They might feel a little sorry for me, but not too sorry.

If I were kidnapped now – a married, mother of three – those same people would be appalled. They would be outraged that such a crime could be committed against a wife and a homemaker.

I am the same person now as I was when I was 21 years old – with the same hair, the same smile, and the same personality. Yet, my value in the eyes of others has gone up.

I am somewhat “more” of a person now and was “less” of one when I was a sex worker.

It is this way of thinking that the Albuquerque West Mesa murderer used to his advantage when he started killing in 2001. The murderer – whoever he was – knew his 11 victims were considered “less than.” He knew he could take them and, if someone reported them missing, the authorities would shrug and say, “That’s too bad.”

After all, the women were sex workers or drug addicts; such things were to be expected.

And that is exactly what happened.

Eleven years ago, those of us with connections to the street life knew women were disappearing. Our friends were suddenly gone and there was no one to tell – at least no one who would care.

While the West Mesa killer may have moved on, others have taken his place.”

She concludes by saying she is hopeful the “less than” attitude is changing . . .

HOMICIDE

There are a limited number of ways in which a person can die: natural causes, an accident, suicide, etc. Another way is homicide although it may come as a surprise to learn that there is no crime called homicide. Instead, it is an umbrella term – death of a human being caused by another - that includes the four categories of murder and manslaughter.

Which category a homicide belongs to is usually determined by the intent of the offender and mitigating (excusable homicide, justifiable homicide) circumstances.

Murder

First degree Murder (Most serious)

Second degree Murder

Manslaughter

Voluntary Manslaughter

Involuntary Manslaughter (least serious)

MURDER

FIRST DEGREE MURDER - NMSA 1978, Section 30-2-1

The penalty for first degree murder is thirty years. In 2009, the death penalty was abolished in New Mexico. A new penalty of life without parole was added for certain offenses.

There are three different ways to commit first degree murder:

(1) **Willful, deliberate and premeditated.** (most common form of first degree murder)

- Intention or decision to kill arrived after careful thought.

- 2) Felony Murder - in the commission or attempt to commit a felony
 - Felony murder elevates a killing that would otherwise be second degree murder to first degree murder if it's done during a felony that is inherently dangerous.

- 3) Depraved mind, without regard for human life
 - by any act greatly dangerous to the lives of others, indicating a depraved mind acting regardless of human life.
 - This involves extremely reckless conduct which a reasonable person would know to be unjustifiable, and which creates a very great risk of death or serious injury, and which actually causes the death of another.

(Examples: shooting into a bus or train)

SECOND DEGREE MURDER

Main difference between first and second degree murder:

The two types of murder are determined by the level of intent the State must prove. A person who commits first degree murder has more premeditation than a person who commits second degree murder. Maximum sentence for second degree murder is fifteen years.

MANSLAUGHTER

NOTE: Manslaughter is the unlawful killing of a human being without malice.

VOLUNTARY MANSLAUGHTER - NMSA 1978, Section 30-2-3

- Voluntary manslaughter consists of manslaughter committed upon a sudden quarrel or in the heat of passion.
- Defendant must have acted upon sufficient provocation to excite in the mind such emotions as anger, rage, sudden resentment or terror as may be sufficient to obscure the reason of an ordinary person.
- Defendant must be incapable of cool reflection.
- Third degree felony (six years).

Example: husband finds wife sleeping with another man, becomes enraged, and kills them both.

INVOLUNTARY MANSLAUGHTER

- Manslaughter committed in the commission of an unlawful act not amounting to a felony, or

- in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection.

Intent is not an element of involuntary manslaughter. This has led some people to refer to involuntary manslaughter as accidental homicide but that is incorrect.

A person using ordinary caution may be involved in an accident. A person involved in involuntary manslaughter is more: his or her actions are based upon criminal negligence which is a willful disregard of the risk of his or her actions that causes the unintentional killing of another. Negligent homicide is more appropriate. (Fourth degree felony) State v. Henley (2010).

Example: Person playfully points gun at best friend, pulls trigger, and kills best friend.

Example: Person is cleaning gun, it goes off, and kills person in the apartment next door.

In 2011, Doctor Conrad Murray, after a six-week jury trial, was found guilty of involuntary manslaughter. He gave the singer Michael Jackson a powerful anesthetic every night for his insomnia. Propofol is supposed to be used in hospitals only. The Judge said his gross negligence killed the King of Pop.

ADDITIONAL HOMICIDE ISSUES

JUSTIFIABLE HOMICIDE BY POLICE - NMSA 1978, Section 30-2-6

- This involves police officers using deadly force and is covered in more detail in a separate class.

JUSTIFIABLE HOMICIDE BY CITIZEN - NMSA 1978, Section 30-2-7

As with officers, there are certain situations where citizens are justified in committing a homicide. This is covered in more detail in a separate class.

ASSAULT AND BATTERY

- What is the difference between assault and battery?

Answer:

Assault is pointing your fist at someone. Battery is hitting someone with your fist.

ASSAULT - ELEMENTS NMSA 1978, Section 30-3-1

- An attempt to commit a battery upon the person of another; or
- any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he or she is in danger of receiving an immediate battery.

Assault is a petty misdemeanor.

- A person over the phone tells you he/she is going to beat you up.

Is this an assault? If not, why not?

Answer:

This is not an assault because you're not in fear of an immediate battery.

AGGRAVATED ASSAULT NMSA 1978, Section 30-3-2

- assaulting or striking at another with a deadly weapon;
- willfully and intentionally assaulting another with intent to commit any felony.
- Aggravated assault is a fourth degree felony.

Example: A person pointing a gun at another.

ASSAULT - SCHOOL PERSONNEL NMSA 1978, Section 30-3-9

- If the victim is school personnel, the elements remain the same but the penalty is increased.

BATTERY

BATTERY - NMSA 1978, Section 30-3-4

- unlawful, intentional or application of force to the person of another, when done in a rude, insolent or angry manner.
- Petty misdemeanor (also called simple battery)

Example: hitting or slapping someone.

- Can there be a battery without an assault?

Answer:

Yes. A person, without warning, hits you in the back of your head.

- Does there have to be a physical touching?

Answer:

No. A person could throw a rock or bottle and hit another.

Could throwing water on someone be a battery?

Answer:

Yes, if done in a rude, insolent or angry manner.

BATTERY - ONE COUNT OR TWO?

FACTS:

At about 3:00 a.m., on a cold winter night in Grant County, a young mother was suddenly awakened by screaming in the next room. Her boyfriend was punching her thirteen-month-old son. When she tried to intervene, he punched her in the chest. Some time later, Defendant walked past her son and kicked him in the face. When she tried to help her child, Defendant punched her in the jaw. State v. Stewart (2005).

In regard to the mother as victim, one count of domestic violence battery or two?

Answer:

If one person shoots at another three times, with intent and no intervening event, we have one count of Aggravated Battery, not three. If one person hits another ten times in a row, with intent and no intervening event, we have one count of battery, not ten.

A difference here is the intervening battery against the Child. His first intent was when he committed a battery against her. He then decided to go after the Child. Later, he formed a second intent, a distinct act, when he decided to commit a second battery against her. Court of Appeals upheld his convictions of two counts of domestic violence battery.

BATTERY – PARENTAL DISCIPLINE

FACTS:

A twelve year old daughter was acting rude and sarcastic to her father. At one point he told her not to look into her younger brother's backpack but she ignored him. As she was reaching into her brother's backpack, her father came from behind, squeezed her hand, and said, "I told you not to do that." An officer was called and observed a dark red mark the size of a dime. State v. Lefevre (2005).

You're the officer called to this situation. What do you do?

Answer:

Court of Appeals reversed his conviction for battery. They noted that a parental discipline privilege exists and held that a parent has a privilege to use moderate or reasonable physical force when engaged in the discipline of his or her child.

An isolated instance of moderate or reasonable physical force that results in nothing more than temporary marks or bruises is protected under the parental discipline privilege.

AGGRAVATED BATTERY - NMSA 1978, Section 30-3-5

Whoever commits aggravated battery, inflicting an injury to the person which is not likely to cause death or great bodily harm, but does cause painful temporary disfigurement or temporary loss or impairment of any member or organ of the body, is guilty of a misdemeanor.

Example: a black eye or a bruise.

Whoever commits aggravated battery inflicting great bodily harm or does so with a deadly weapon or does so in any manner whereby great bodily harm or death can be inflicted is guilty of a third degree felony.

Examples of deadly weapon: hitting someone with a baseball bat or stabbing someone with a knife.

Three categories of battery:

Aggravated Battery	(deadly weapon or great bodily harm)	Third degree felony
Aggravated Battery	temporary disfigurement	Full misdemeanor
Simple Battery	a push or a shove	Petty Misdemeanor

WHAT CHARGE IN THE FOLLOWING CASE?

FACTS

A fight occurred in Eddy County, inside of a moving vehicle. Defendant bit the victim, saying, "I hope you die, I hope you die." Victim was taken to the emergency room where she was treated for two bite marks where the skin had been cut. Defendant admitted having hepatitis C and said he did not expect to live much longer. State v. Neatherlin (2007).

The human mouth is not listed as a deadly weapon, NMSA 1978, Section 30-1-12 (B).

Attempted murder? Aggravated battery, deadly weapon? Aggravated battery, misdemeanor? You're the officer dispatched to the hospital. What would you charge?

Answer:

Court of Appeals affirmed Defendant's conviction of Aggravated Battery (Deadly Weapon). It held that a jury could reasonably conclude that the human mouth is a deadly weapon

if used in a manner that could cause death or great bodily harm. It is the potential for harm that is significant, not the actual harm inflicted.

STATUS OF VICTIM CHANGES CRIME/PENALTY

ASSAULT & BATTERY - LAW ENFORCEMENT

- If the victim is a law enforcement officer, the elements are the same but the penalty is increased.
- For example, a simple battery upon a citizen is a petty misdemeanor. The same act on a peace officer would be a fourth degree felony. However, the courts have modified the Battery upon a Peace Officer statute in recent years.

NOTE:

There are three ways to commit a battery upon a peace officer: (1) actual injury to an officer, or (2) an actual threat to the officer's safety, or (3) a "meaningful challenge" to the officer's authority. Uniform Jury Instruction 14-2211, amended by the Supreme Court in 2010.

FACTS

Defendant was arrested for DWI and placed in the back seat of a police car. He leaned forward and spit on the officer. Two charges are available: Simple Battery (a misdemeanor) or Battery on a Peace Officer. Which is more appropriate?

Answer:

Battery on a Peace Officer. Spitting on the officer was a "meaningful challenge" to his authority.

FACTS

Farmington Police Officers went to a domestic violence call. A female, intoxicated and upset, answered the door. She tried to close the door on the officers. A male voice from inside yelled out, "What . . . do you want? You don't need to see the inside of the . . . apartment." The officers, because of his "very aggressive tone," entered the apartment. Defendant committed a battery upon one of the officers. State . Travison B. (2006).

For the sake of argument, let's assume that the officers' entry into the house was illegal.

Would the evidence – hitting the officer – be admissible?

Answer:

Court of Appeals held that the evidence of what the child did, even if the entry was illegal, would be admissible. The rationale is simple. A victim of a search – even one that's illegal – cannot be permitted to harm an officer. Their rights lie in a civil action, not physically attacking an officer.

News item: Ex-Burger King Workers Guilty

Two former Los Lunas Burger King employees charged with putting

marijuana on the hamburgers of two Isleta police officers pled guilty to two counts of aggravated battery on a peace officer. Both officers found several small pieces of a green leafy substance on their hamburgers which later tested positive for marijuana. Albuquerque Journal (October 17, 2007).

ASSAULT & BATTERY - HOUSEHOLD MEMBER (DOMESTIC VIOLENCE)

If the victim is a household member, as defined in NMSA 1978, Section 30-3-11, it will be a domestic violence case. Domestic violence is covered in a separate class.

- “Household member means a spouse, former spouse or family member, including a relative, parent, present or former step-parent, present or former in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member.

ASSAULT & BATTERY - SCHOOL PERSONNEL, SPORTS OFFICIALS, HEALTH CARE

Other groups where the penalty is increased include school personnel (NMSA 1978, Section 30-3-9), sports officials (NMSA 1978, Section 30-3-9.1) and health care personnel (NMSA 1978, Section 30-3-9-.2)

FACTS:

Defendant struck three private security guards while visiting Gallup High School. Battery on school personnel is a fourth degree felony. And so the question becomes: Do these security guards fall under the definition of “school employees” or are they simply private citizens? State v. Johnson (2009).

Answer:

Supreme Court held that contracted security guards providing services for a school are “school employees” within the meaning of Section 30-3-9. Defendant was properly charged with three counts of battery on school personnel.

HARASSMENT AND STALKING

HARASSMENT - NMSA 1978, Section 30-3A-2

- Knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress. (misdemeanor)

STALKING - NMSA 1978, Section 30-3A-3

- Knowingly pursuing a pattern of conduct that poses a credible threat to another and is intended to place that person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint.
- First offense, misdemeanor. Second offense, fourth degree felony.

AGGRAVATED STALKING NMSA 1978, Section 30-3A-3.1

When do we have aggravated stalking?

Answer:

Aggravated stalking occurs when the perpetrator:

knowingly violates a permanent or temporary order of protection;
in violation of a court order setting conditions of release and bond;
when the person is in possession of a deadly weapon, or
when the victim is less than sixteen years of age.

FACTS:

Defendant became angry when the victim tried to end their relationship. He made numerous threats against her and left threatening letters in her mailbox. He was served with a TRO (temporary restraining order). The very next morning he left another threatening message. He was arrested for violating the TRO and aggravated stalking.

He argued aggravated stalking didn't apply because there was no "pattern of conduct." State v. Smile (2009).

Answer:

Court of Appeals felt a stalker who ignores a TRO or court order poses a more serious threat to a victim. They held that if a restraining order is violated by stalking, only one incident is needed. Stalking had occurred prior to the TRO; a new pattern of conduct is not needed to charge aggravated talking. His conviction for aggravated stalking was affirmed.

INJURY TO PREGNANT WOMAN

Injury to pregnant woman can occur in two ways:

THE CRIMINAL CODE: Injury to pregnant woman.

Injury to a pregnant woman consists of a person other than the woman injuring a pregnant woman in the commission of a felony causing her to suffer a miscarriage or stillbirth as a result of that injury. NMSA 1978, Section 30-3-7.

THE TRAFFIC CODE: Injury to pregnant woman by vehicle.

Injury to pregnant woman by vehicle is injury to a pregnant woman by a person other than the woman in the unlawful operation of a motor vehicle causing her to suffer a miscarriage or stillbirth as a result of that injury. NMSA 1978, Section 66-8-101.1.

Offender was involved in a head-on automobile collision that killed a woman who was seven months pregnant. The unborn child also died. We have a vehicular homicide. State v. Begay (1987). Do we have injury to pregnant woman? Also, do we have one victim of vehicular homicide or two?

Answer:

One count of vehicular homicide and one count of injury to pregnant woman by vehicle.

Boyfriend had fight with pregnant girlfriend and hit her in the face, knocking loose two of her teeth. Do we have injury to pregnant woman?

Answer:

No. The girlfriend did not suffer a miscarriage or stillbirth as a result of the injury.

KIDNAPPING

KIDNAPPING - NMSA 1978, Section 30-4-1

- Unlawful taking, restraining, transporting or confining of a person, by force, intimidation or deception, with intent to:
- hold victim for ransom.
- hold victim as hostage or shield and confined against will.
- hold victim for service against victim's will.
- to inflict death, physical injury or a sexual offense on victim.

NOTE:

Generally the FBI will do kidnapping cases involving a ransom. Most other kidnapping cases are done by state and local officers.

FALSE IMPRISONMENT - NMSA 1978, Section 30-4-3

- Consists of intentionally confining or restraining another person without his or her consent with knowledge that he or she had no lawful authority to do so.

Examples:

A person robs a convenience store and puts someone into the freezer. A

husband forces a wife into a room and won't let her leave.

The main difference between kidnapping and false imprisonment
With kidnapping, there is generally another purpose: to hold someone for ransom or as a hostage or to commit another crime. With false imprisonment, the offender wants to confine someone to a certain area or space.

HUMAN TRAFFICKING

Relationship of human trafficking and promoting prostitution

Human trafficking is a serious problem. Law enforcement agencies sometimes charge trafficking for those who promote prostitution (commonly known as “pimps”) or accept the earnings of prostitution. The charges are similar.

Human trafficking targets (among other things) those “recruiting, soliciting, enticing, or transporting . . . another person with the . . . knowledge that force, fraud or coercion will be used to subject the person to . . . commercial sexual activity.” NMSA 1978, Section 30-52-1.

News item: ABQ pimp gets one year

A man who forced a 17-year-old girl into prostitution has been sentenced to one year behind bars. Dante McKay pled guilty to human trafficking and will serve his time at the Metro Detention Center. KOB News, January 13, 2012.

News item: Albuquerque man pleads guilty to human trafficking

An Albuquerque man who forced a 17-year-old girl into prostitution pled guilty to human trafficking. Kendell Morrel was sentenced to three years in prison and two years probation when he is released. KOB News, January 19, 2012.

News item: Prostitution Sting Results in 2 Arrests

Santa Fe police, running a sting operation in a downtown hotel, arrested a teenage girl and an adult woman.

A police sergeant said the sting was not intended to ensnare prostitutes, but to find out whether young women or juveniles offering sex services on the internet were victims of human trafficking. Albuquerque Journal, December 21, 2012.

Lesson to be learned:

It's a new approach to prostitution. The “pimp” is charged with trafficking and the prostitute is treated as a victim. Efforts are made to assist the victim.

CRIMES AGAINST CHILDREN

New item: Homicide is 2nd leading cause of deaths for New Mexico Infants

Albuquerque, NM. A new study reveals that the second leading cause of deaths for NM children under 4 is homicide. “. . . you don’t think about that as a cause of death,” said NM Secretary of Health Catherine Torres. “I think that to me was the most shocking thing.”
KOAT News, April 13, 2012.

INTRODUCTION

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). The terms “negligence” and “may endanger” are unclear to many. By discussing a number of cases, and seeing how the courts look at these terms, we’ll gain a better understanding of what these terms mean.

Before we go into the child abuse cases, however, we’re going to review an interesting case that provides useful knowledge for law enforcement officers.

CHILD – SAFE HAVEN

FACTS:

A nineteen year old female told her boyfriend that she was pregnant. He offered to quit school to support her and their baby. A few months later, alone in her dorm room at Eastern New Mexico State University in Portales, she gave birth to the child. Because she wanted her boyfriend to continue his education, she told him she has miscarried.

The day after giving birth, she took the baby to a park and pretended she found the baby. Eventually, she admitted to the police that she was the baby’s mother and was charged with abuse and neglect. As an officer, is there any advice you can give young women in this situation? In the Matter of the Adoption Petition of Fogerson, Vigil and Allen (2005).

Answer:

It’s no longer necessary for parents to tell an officer (or hospital personnel) that they found a baby or leave their baby in a dumpster or worse. In 2001, the legislature created the Safe Haven for Infants Act to provide immunity for a parent who leaves “an infant, ninety days of age or less, at a hospital.” NMSA 1978, Section 24-22-1.

CHILD ABUSE - ENDANGER

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 back to her bedroom. Daughter told officer she was scared that her dad would kill her mom. State v. Trujillo (2002).

Answer:

What does the term “may endanger” 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 points a gun at child’s mother but the child is standing behind her. The child is directly in the face of physical danger, creating a significant risk of harm.

Do we have child abuse by endangerment in this case?

Answer:

Court of Appeals did not find child endangerment in this case. Mere proximity to a dangerous situation does not support child abuse by endangerment.

CHILD ABUSE - AGE

FACTS:

Before he disappeared, a fifteen-year-old went to Defendant’s home in Moriarty every day for at least two weeks. The home was absolutely filthy with animal feces, rodent droppings, and rotten food all about. Defendant gave alcohol to Child every day, to the point where he got sick. State v. Jensen (2006).

Is there enough for child abuse by endangerment?

Answer:

Although it is not necessary that a child actually suffer physical harm, there must be a reasonable probability or possibility – more than mere speculation – that a child will be endangered. A filthy house by itself isn’t necessarily child endangerment but this situation, combined with rodent droppings and the consistent serving of alcohol, was more than enough.

What about the argument that a fifteen-year-old should know better?

Answer:

When child abuse or endangerment comes to mind, we think of a small child or infant. The legislature has made it clear that child abuse applies to any child under the age of eighteen. NMSA 1978, Section 30-6-1(A)(1).

Supreme Court upheld conviction for child abuse.

CHILD ABUSE - DWI

CHILD ABUSE – DWI – NON MOVING VEHICLE

State police officers in Farmington approached a pickup truck parked outside of a residence. Sitting in the driver's seat was the Defendant, his wife in the middle, and his four-year-old child on the other end. The vehicle was not running but Defendant held the keys in his hand. He said they had just stepped out of the house and he was getting ready to drive. His breath alcohol test was .15.

His conviction for DWI was upheld. What about child abuse? Court of Appeals said no. Stopped a few moments later, a conviction for child abuse probably would have been upheld. But the child was simply sitting in a non moving vehicle. The child could have been in danger but that's not the standard. State v. Etsitty (2012).

NOTE:

Child abuse by endangerment is a third degree felony. The statute is meant for children placed in dangerous situations, not potential or possible situations of danger.

CHILD ABUSE – DWI – MOVING VEHICLE

FACTS:

In Eddy County, an intoxicated person drove a vehicle with his nine-year-old son. Is driving while intoxicated – standing alone – sufficient to support child abuse by endangerment?

ANSWER:

Court of Appeals said yes, holding that driving a moving vehicle in and of itself exposes a child to a substantial risk of harm. Defendant, driving while intoxicated, put his son within a moving range 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. Orquiza (2012).

CHILD ABUSE – KNOWING THE VICTIM

FACTS:

A person in Albuquerque, drunk and driving recklessly, plowed into the back of a vehicle.

A child in the backseat of the other vehicle was killed. Vehicular homicide is an obvious charge (six years), but what about child abuse resulting in death (18 years)? State v. Gonzales (2011).

ANSWER:

Child abuse requires specific criminal negligent intent directed towards children or a particular child. It involves a Defendant placing a child within a zone of danger and knowing the child is in a zone of danger.

Had the child been a passenger in Defendant's vehicle, child abuse would have been an appropriate charge. But the child wasn't her passenger and she wasn't even aware of the child in the other vehicle. Court of Appeals reversed the jury conviction of negligent child abuse.

CHILD ABUSE –FETUS

FACTS:

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. State v. Martinez (2006).
Child abuse?

Answer:

The Court of Appeals 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 fetus.

Since a fetus is not a person or Child, the mother cannot be charged with felony child abuse. Supreme Court upheld the Court of Appeals.

CHILD ABUSE - MARIJUANA

FACTS:

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. State v. Graham (2005).

The definition of “may endanger” means more than a “mere possibility” of harm; it requires a “reasonable possibility” that the child will be endangered. Do we have enough for child abuse?

Answer:

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.

CHILD ABUSE - DIRTY HOUSE

FACTS:

A mobile home in Tularosa, New Mexico was absolutely filthy. The shower leaked and appeared to have mold. In the yard was glass from a broken window. A collapsed shed contained exposed, rusty nails sticking out of lumber. Defendant was charged with child abuse by endangerment. One child was two, another four years old. State v. Chavez (2009).

Is a filthy house alone sufficient for child abuse by endangerment? (no)

Answer:

In past years, terms like a “reasonable probability or possibility” have been used to describe the point where endangerment **may** occur. The Supreme Court, however, felt a higher standard was needed. They adopted the jury instruction which says endangerment occurs when defendant’s conduct creates a “substantial and foreseeable risk” of harm to a child.

There was no hint of criminal activity here. For a filthy house to be endangerment there must be exceptional circumstances. Civil remedies could have been tried first, including removing the children from the home. To show child abuse, the state must now meet a higher standard of a “substantial and foreseeable risk” of harm to a child. Conviction overturned.

Lesson learned:

The standard for many years for child endangerment to occur was a “reasonable probability or possibility.” With this case the Supreme Court set a higher standard: there must now be a “substantial and foreseeable risk” of harm to a child.

CHILD ABUSE – PARENTS

In Dona Ana County, Defendant and her boyfriend had a fifteen-month-old son. He abused their son on numerous occasions but she did nothing to stop or prevent the abuse. As a result of the abuse, their son died. She claimed she was a battered spouse and afraid to report the child abuse.

State v. Vasquez (2010).

Should Defendant be charged with failure to report child abuse? (no)

Answer:

If child abuse occurs, and a parent, guardian or custodian doesn't try to prevent it, they face the same charge as the actual abuser. She knew or should have known her inaction created a substantial and foreseeable risk of death or great bodily harm. Court of Appeals upheld her conviction for child negligence resulting in death as well as her eighteen-year sentence.

Lesson learned

For most people, the proper charge would be Failure to Report Child Abuse. A parent, guardian or custodian, however, has a higher responsibility. Failure to prevent child abuse can result in the observer facing the same charges as the abuser.

Being a battered spouse is not a defense. All the Defendant had to do was use the telephone or contact a police officer.

CHILD ABUSE – SPEEDING

FACTS:

Defendant, with three children in his car, was driving down Main Street in Farmington, New Mexico. Radar clocked him going 72 in a 35 and police began pursuit. Defendant slowed down but continued driving. At one intersection he didn't use his turn signals and at another he didn't come to a complete stop. When police finally blocked him in, he took off running but was soon apprehended. State v. Clemonts (2006).

Does speeding and regular traffic violations add up to felony child abuse?

Answer:

Court of Appeals said no. The State had to show that Defendant caused children under the age of eighteen to be placed in a situation that may have endangered their life or health **and did so with reckless disregard for their safety.**

But here the children were restrained and there was no evidence that Defendant was wholly indifferent or acting with a reckless disregard for their safety. Speeding alone does not mean a person is showing a reckless disregard for others or operating a vehicle recklessly.

CHILD ABUSE - VEHICLE

Reminder:

Negligent child abuse means more than simply being absent minded or careless; it means placing a child in a situation which endangers the life or health of the child. The individual who does this has a reckless disregard for the child's safety, knows that their conduct creates a substantial and foreseeable risk to the child, but remains indifferent to the consequences.

FACTS:

It was the month of July, early Sunday morning, about 1:30 a.m. Defendant left her twenty-one-month old child alone and asleep on the seat of her unlocked truck with the windows slightly open in the parking lot of Cowboy's. There were about 200-240 people in the bar, a place known for frequent fights and vandalism.

A Gallup police officer observed the child holding a bottle of spoiled milk, smelling foul, with numerous alcohol containers in the interior of the truck. State v. Watchman (2005).

Based upon these facts, do we have enough for negligent child abuse?

Answer:

The child was directly in the path of danger because the Cowboy's parking lot was a dangerous place. Furthermore, it was reasonably foreseeable that the child could have climbed out of the truck and endangered himself. Court of Appeals held there was negligent child abuse.

CONTRIBUTING TO DELINQUENCY OF MINOR - NMSA 1978, Section 30-6-3

- Committing any act or omitting the performance of any duty, which act or omission causes, or tends to cause or encourage the delinquency of any person under 18. (fourth degree felony)

FACTS

Defendant was a high school teacher. One of his students – a minor - gave a party at her house while her parents were out of town. She invited Defendant. Twenty or so students were at the party. Defendant attended and drank one shot of tequila while demonstrating how to drink tequila with a lemon. He later said he was teaching the students how to “drink socially.” State v. Cuevas (1980).

He didn't serve or give alcohol to anyone. Do we have contributing?

Answer:

Yes. His action of teaching the students how to “drink socially” encouraged the delinquency of minors.

Note:

The contributing statute is designed to “extend the broadest possible protection to children.” A violation occurs not only when a minor is encouraged to commit a delinquent act but also encouraged to conduct himself/herself in a manner injurious to his or her morals. State v. Corbin (1991).

FACTS:

Defendant drove her daughter and her friend Nicole (age fifteen) to a tattoo parlor in Ruidoso. Nicole had never met Defendant before. She said her mother had given her permission to have her tongue pierced (not true). New Mexico law (NM Admin Code 16.36.5.11) requires a minor to have a parent to have a parent or guardian’s consent and their presence during a piercing.

It seemed like a cool thing to do. Defendant signed a release form indicating she was Nicole’s parent or guardian. Nicole got her tongue pierced and Defendant’s daughter got her belly button pierced. Defendant did not inform Nicole’s mother about the piercing. Contributing?

Answer:

It’s not illegal for a juvenile to get a tattoo, but it’s something else for an adult of ignore New Mexico law to help a juvenile get a tattoo (or piercing).

True, Defendant did not encourage the piercing. But in transporting Nicole to the tattoo parlor, and falsely signing the release form, she helped Nicole get a piercing by deceiving her mother. Court of Appeals upheld the jury verdict of contributing to the delinquency of a minor. State v. Webb (2012).

SEXUAL OFFENSES

We will discuss only a few cases since sex offenses are covered in more detail in another class.

What is the difference between rape and CSP (Criminal sexual penetration)?

Answer:

Rape is the popular term but usually people think of a man on a dark street who knocks a woman down and rapes her. In fact, there are numerous ways for “rape” to occur. One way: a person in a position of authority. NMSA 1978, Section 30-9-11 (B). The following newspaper articles give an example of this:

News item: Ex-Deputy Gets 5 Years

Portales. A former Roosevelt County sheriff’s deputy was sentenced to five years in prison after being convicted of criminal sexual penetration for checking a female inmate out of the county jail and having sex with her. Gary Adkins, 47, will be on parole for at least five years after he is released and must register as a sex offender. Albuquerque Journal, July 7, 2006.

News item: Former Inmates Awarded over \$3M

Corrections officer Anthony Townes is serving sixteen-years for having sex with female inmates. The relationships initially were on a consensual basis. Some of the females sued. The result:

A federal jury ordered over \$3 million in damages to three former inmates raped by a prison guard at Camino Nuevo Women's Correctional Facility in Albuquerque. Albuquerque Journal, February 17, 2012.

CRIMINAL SEXUAL PENETRATION - NMSA 1978, Section 30-9-11

- What is the age of consent in New Mexico?

Answer:

NMSA 1978, Section 30-9-11 (F) prohibits criminal sexual penetration of a child thirteen to sixteen years of age if the perpetrator is at least eighteen years old and at least four years older than the child.

Note:

What the statute seems to be saying is that teenagers may have consensual sex with one another and not be charged with rape. This statute is directed towards older offenders; one over eighteen years old and at least four years older than the victim.

A victim under the age of thirteen cannot legally have consensual sex. To have sex with someone under the age of thirteen is a first degree felony, also known as statutory rape.

If you're going into extortion, it helps to know the law . . .

News item: Teen is accused in sexual extortion

A 43-year-old man in Santa Fe had sex with a 17-year-old girl, but she's the one who got arrested (for extortion).

She demanded \$1,500 or she would claim rape for having sex with a minor. She was unaware 16 is the age of consent in New Mexico.

Had the man been in a position of authority, it would have been a criminal offense. Depending upon the age of the couple, the age of consent can be even less. Albuquerque Journal, May 17, 2013.

CRIMINAL SEXUAL CONTACT NMSA 1978, Section 30-9-12

Criminal sexual contact is the unlawful and intentional touching or application of force, without consent, to the unclothed intimate parts of another who has reached his or her eighteenth birthday

...

CRIMINAL SEXUAL CONTACT OF A MINOR NMSA 1978, Section 30-9-13

Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of the minor . . .

For both of the above sections, “intimate parts” means the primary genital area, groin, buttocks, anus or breast.

Note the difference:

An older man is walking down a street and grabs the breast of a minor. The charge would be criminal sexual contact of a minor, even if the victim is fully clothed. But if the victim is over eighteen and fully clothed, the charge would be a battery. This is because the law gives more protection to children or those under the age of eighteen.

INDECENT EXPOSURE - NMSA 1978, Section 30-9-14

- Knowingly and intentionally exposing primary genital area (essentially groin area of male or female) to public view. (misdemeanor)

FACTS

Defendant lived with his girlfriend and her two daughters, ages eight and twelve. The eight-year-old was in the living room when defendant entered the room and opened his robe. He wasn't wearing any clothes under his robe and appeared to deliberately open the robe to her view. He later did the same thing to the older daughter. State v. Romero (1985). Indecent exposure?

Answer:

Public view means the act must intentionally be perpetrated in a place accessible or visible to the general public. There was no indecent exposure since it occurred in a private residence and was not subject to being viewed by the public or persons situated outside the home. Court of Appeals overturned his conviction.

A child was walking down the street when a pickup truck pulled up alongside next to her. The man in the pickup offered her money if she could assist him to locate an address. When the child went to the side of the truck, she saw a man's penis sticking up outside his pants. It was daylight and the vehicle had windows low enough for an eleven-year-old to look in. State v. Artrip (1991). Do we have indecent exposure?

Answer:

Court of Appeals affirmed defendant's conviction. The cab of a pickup truck parked on a public street in daylight hours is open to “public view.” People walking on the sidewalk could have seen into defendant's truck without a special effort. Defendant was exposing himself in a place that was accessible or visible to the general public.

AGGRAVATED INDECENT EXPOSURE - NMSA 1978, Section 30-9-14.3

- If the victim is a child less than eighteen years old, it's a fourth degree

felony.

HUMAN TRAFFICKING

Human trafficking is sometimes used when one person forces or coerces another into prostitution. Human trafficking consists of a person knowingly . . .

Recruiting, soliciting, enticing, transporting . . . another person with the . . . knowledge that force, fraud or coercion will be used to subject the person to . . . commercial sexual activity.

Benefiting, financially or by receiving anything of value, from the . . . commercial sexual activity of another person with the knowledge that force, fraud or coercion was used to obtain . . . commercial sexual activity. NMSA 1978, Section 30-52-1. (Third degree felony – can be higher depending upon age).

Other possible charges are:

Promoting prostitution. NMSA 1978, Section 30-9-4 (Fourth degree felony)

Accepting earnings of a prostitute. NMSA 1978, Section 30-9-4.1 (Fourth degree felony).

News item: Albuquerque pimp gets one year

A man who forced a 17-year-old girl into prostitution has been sentenced to one year behind bars. Dante McKay pled guilty to human trafficking and will serve his time at the Metro Detention Center. KOB.com, January 12, 2012.

Lesson learned

Human trafficking charges are more frequently being used against the “pimp” in prostitution cases. This means the victim will be a witness for the State.

CONCLUSION

This class has been an introduction for crimes against persons. Reading state statutes, keeping up with current events, taking additional classes in the future, will give you more insight into this fascinating area.

