

# ADA ELLIOTT - CHILD ABUSE (DWI)

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 which endangered the child's life or health. (Jury instruction)  
This is known as child abuse by endangerment. NMSA 1978, Section 30-6-1 (D) (1).

What about the DWI offender who has a child in the vehicle? In Dona Ana County, a DWI offender was stopped for making an illegal turn and driving in the wrong lane. Three children in the car, ages of 8, 9, and 14, were not wearing a seat belt. We have a DWI. Can we also charge child abuse?

Court of Appeals said yes. Although one act, this is not double jeopardy because the two statutes have two distinct purposes; the child abuse statute protects children from abuse, and the DWI statute protects the general public (including children) from intoxicated drivers. Adults have a greater responsibility to children, under the child abuse statute, because children are more vulnerable. It does not mean, however, that child abuse can be charged for ordinary traffic violations such as speeding or failure to yield. This is because child abuse requires criminal negligence which is not an element of ordinary traffic violations.

What is criminal negligence? It means that "a person knew or should have known of the danger involved and acted with reckless disregard for the safety or health of the child." Section 30-6-1 (D). The Defendant, drinking, driving on the wrong side of the road, and with children in her car, was negligent. Convictions for child abuse and DWI affirmed. State v. Castaneda (2001).

Case law permits charging DWI and child abuse where a child does not have a seat belt or there is erratic driving in addition to DWI. Actual harm or injury to the child is not required. While the opinions do not say that DWI plus a child in the vehicle automatically converts to child abuse, the courts appear to be headed in that direction.

