

These are the cases upon which specific amendments to the elements are based:

- A. that endangerment requires a “substantial foreseeable risk” of a harm and is “reserved for the most serious occurrences, and not for minor or theoretical dangers, *State v. Chavez*, 2009-NMSC-035, ¶¶ 16, 26, 146 N.M. 434;
<http://www.nmcompcomm.us/nmcases/NMSC/2009/09sc-035.pdf>
- B. that intentional child abuse cannot include a failure to act that is considered “permitting” abuse; only negligence culpability may lie, *State v. Cabezueta*, 2011-NMSC-041, ¶¶ 36-37, 150 N.M. 654;
(unless there is evidence of accessory liability, of course)
<http://www.nmcompcomm.us/nmcases/NMSC/2011/11sc-041.pdf>
- C. that to fall within criminal law, negligent child abuse by endangerment must in fact be reckless child abuse, requiring actual knowledge of the risks, not just a civil negligence standard of “should have known,” *State v. Consaul*, 2014-NMSC-030, 332 P.3d 850;
<http://www.nmcompcomm.us/nmcases/NMSC/2014/14sc-030.pdf>
- D. that negligent child abuse actually *is* a lesser offense of intentional because – as clarified in *Consaul*, the elements of “reckless” abuse are a subset of the elements of intentional abuse, *State v. Montoya*, 2015-NMSC-010, abrogating *State v. Schoonmaker*, 2008-NMSC-010, ¶ 46 n.4, 143 N.M. 373, on that point;
<http://www.nmcompcomm.us/nmcases/NMSC/2015/15sc-010.pdf>
- This holding means that separating reckless and intentional entirely into two crimes may be unnecessary, although it can still be a lesser-included in separate sections, so it’s fine to keep the bill-draft as-is, so long as you’re aware that the idea that these are completely separate is now no longer the Supreme Court’s thinking.
 - *Montoya* and *Granillo* work well together, nonetheless, where *Granillo* sufficiently raised the bar on intentionality so that it now makes sense to have reckless be a lesser included. The problem before *Granillo* was that it was actually *harder* to prove recklessness before, functionally rendering intentional as the lesser crime (in that it required only “general intent”). *Granillo* is awesome.
- E. that abandonment may be a lesser-included offense of abuse, see *State v. Garcia*, 2014-NMCA-006, ¶¶ 45-50 (Vigil, J., dissenting), *cert. quashed* (a case that more strongly stands for the proposition that – for causation purposes – endangerment requires some sort of overt act, not just the act of falling asleep, thereby leaving your child unattended);
<http://www.nmcompcomm.us/nmcases/NMCA/2014/14ca-006.pdf>

F. that abandonment requires either (1) intentionally leaving *with an intent not to return* whereby the child may or does suffer neglect, or (2) intentionally departing from a child, *leaving the child under circumstances* whereby the child may or does suffer neglect, *State v. Stephenson*, Slip op., 2016-NMSC-___, N.M. S-1-SC-35035, ¶ 2, 2016 WL 5385848 (Sep. 26, 2016);

<http://www.nmcompcomm.us/nmcases/nmsc/slips/SC35,035.pdf>

- We were working off of the Ct App opinion before, which identified only the first option here, not the second. So, abandonment either needs to be updated, or by requiring an intent not to return, just know that the Legislature would be abrogating the SCT's interpretation

G. that intentional abuse by endangerment means more than acting with general intent; it requires that the endangerment itself be the conscious objective of the defendant's conduct. *State v. Granillo*, Slip op., 2016-NMCA-___, ¶¶ 13-22 (Aug. 22, 2016), *cert. denied*, 2016-NMSC-___

see <http://www.nmcompcomm.us/nmcases/nmca/slips/CA33,637.pdf>

(NOTE: this holding is – for now – limited to endangerment, not affirmative abusive conduct such as hitting, cruelly punishing, or torture).

- This is where I want to take the language from to add a definition of “intentional” - “We hold that intentional child abuse by endangerment requires a conscious objective to endanger the child.” ¶ 1.

Other recent child abuse cases of note:

- *State v. Webb*, 2013-NMCA-027, 296 P.3d 1247, *cert denied*
<http://www.nmcompcomm.us/nmcases/NMCA/2013/13ca-027.pdf>
 - Evidence was not sufficient to support defendant's conviction for child abuse by endangerment; defendant signed written consent form to allow a piercing to occur on minor without obtaining authorization or permission from minor's parent, and, although piercing was successful, the minor was injured as result of fall in tattoo parlor, and no one could have foreseen that minor would have or develop allergy to penicillin which would complicate her treatment, body piercing was legal and body piercing was not the type of most serious occurrence from which legislature intended to protect children, and owner of tattoo parlor had sufficient knowledge and experience to perform tongue piercing
- *State v. Gonzales*, 2011-NMCA-081, 150 N.M. 494, 263 P.3d 271, *aff'd on other grounds*, 2013-NMSC-016, 301 P.3d 380 (retrial barred by joinder, not double jeopardy)
<http://www.nmcompcomm.us/nmcases/NMCA/2011/11ca-081.pdf>
 - Evidence was insufficient to support convictions for negligent child abuse by endangerment absent any evidence that defendant's behavior endangered a particular child that was foreseeable at the time of the accident

- *State v. Orquiz*, 2012-NMCA-080, 284 P.3d 418, *cert quashed*
<http://www.nmcompcomm.us/nmcases/NMCA/2012/12ca-080.pdf>
 - Defendant's conduct of driving a moving vehicle with his child as a passenger while intoxicated was sufficient, even absent any additional “plus factor” of indicia of unsafe driving, to support his conviction for **negligent** child abuse by endangerment (*contrast the intentional theory in Granillo*)
- *State v. Etsitty*, 2012-NMCA-012, 270 P.3d 1277
<http://www.nmcompcomm.us/nmcases/NMCA/2012/12ca-012.pdf>
 - Despite underlying DWI based on “actual physical control,” without evidence of **actual driving**, defendant had not yet put the child in real peril, such that crime of negligent child abuse had not yet been completed
- *State v. Nichols*, 2016-NMSC-001, 363 P.3d 1187
<http://www.nmcompcomm.us/nmcases/NMSC/2016/16sc-001.pdf>
 - Extensive discussion of differing/conflicting theories of child abuse, holding insufficient evidence of causation of death by father’s failure to seek medical treatment sooner, and sufficient evidence that such delay was criminally negligent