

Drug Endangered Children A Prosecutor's View

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In 2000, the Utah Legislature passed the Endangerment of a Child or Elder Adult Statute, which gives law enforcement a new tool in their efforts to protect vulnerable victims from the destructive effects of drug abuse. According to Utah Code Ann. § 76-5-112.5, it is unlawful for any person to knowingly or intentionally cause or permit a child or elder adult to be exposed to, to ingest or inhale, or have contact with a controlled substance, chemical substance, or drug paraphernalia. A violation of this subsection is a Third Degree Felony if the victim is merely placed at risk of injury; a Second Degree Felony if the victim actually suffers injury; and a First Degree Felony if the victim dies.

In the statute, a “child” is defined as a human being who is under 18 years of age. Cases involving parents who expose their children to drugs are the most common type of endangerment case however, the statute does not restrict its application to those having the care or custody over the victim. Anyone who places a victim at risk of harm can be held liable under the statute. While children are the most vulnerable victims when it comes to drugs, the statute also applies to the endangerment of an “elderly adult,” defined as a person who is 65 years of age or older.

The statute applies regardless of whether the child or elder adult is exposed to controlled substances, drug paraphernalia or chemical substances. However, the Child Endangerment statute does not apply if the controlled substance was provided by lawful prescription for the child or elder adult and was administered in accordance with the prescription directions. A chemical substance is defined as a substance intended to be used as a precursor in the manufacture of a controlled substance. Intent can be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or to manufacturing equipment.

Some of the circumstances that demonstrate exposure include: drugs that are left out and accessible to the victim; the victim's physical ability to access the drugs; statements from the victim regarding the use of drugs, and evidence that the drugs were produced or used in the presence of the victim. Exposure can also be found in the results from a drug test conducted on child victims. When children are found in a drug house, they often test positive for drugs in their system.

Protecting victims from drug abuse often requires the involvement of law enforcement and child protective services. In fact, Utah Code Ann. § 62A-4a-403(1) requires that when any person has reason to believe that a child has been subjected to physical abuse or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in physical abuse or neglect, they are required to immediately notify law enforcement and DCFS.

However, when officers find children in a situation that does not rise to the level of felony child endangerment there are other provisions in the law that protect children including the Reckless Endangerment statute. Utah Code Ann. § 76-5-112 makes it a Class A Misdemeanor for a person to recklessly engage in conduct that creates a substantial risk of death or serious bodily injury to another person. Moreover, the Utah Controlled Substances Act provides that individuals who commit a drug crime in the immediate presence of a person under 18 years of age, is subject to a one-degree enhancement in the level of offense for that crime.