

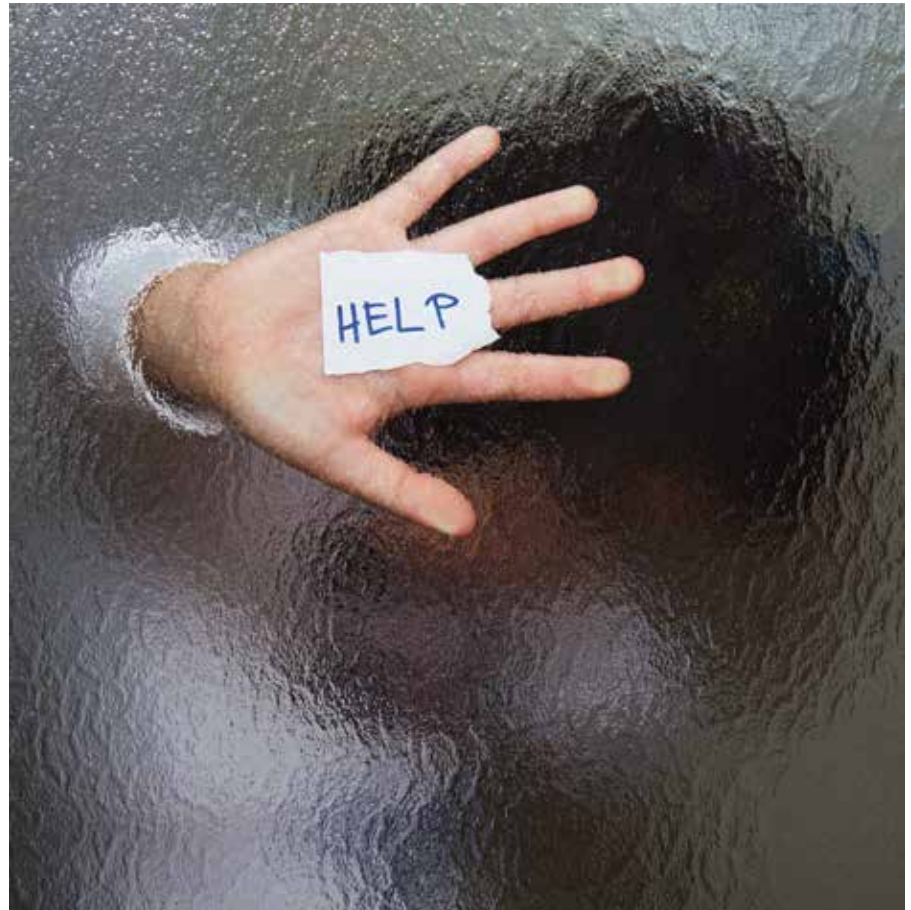


## The Legal Contours of Child Endangerment

Adults who care for children have a legal obligation to ensure those children avoid unreasonably dangerous situations. Failing to adequately protect a child may result in the caregiver being charged with “child endangerment” or “endangering the welfare of a child.”

Examples of child endangerment may include:

- Driving while intoxicated with a child in the vehicle
- Leaving a child alone and unsupervised with available dangerous weapons
- Leaving a child unattended in an unsafe area or vehicle
- Hiring a person with a known history of sexual offenses to supervise a child
- Leaving a young child unsupervised or in the care of another young child
- Providing drugs or alcohol to an underage driver
- Opting for spiritual healing rather than conventional medicine when a child’s life is in danger
- Failing to report suspected child abuse
- Domestic violence episodes that take place in front of children



The Supreme Court of Nebraska recently had the opportunity to explore the contours of this concept in *State v. Mendez-Osorio*, 297 Neb. 520 (2017). The case revolved around a domestic incident between defendant Abel Mendez-Osorio and his partner Katia Santos-Velasquez. Santos-Velasquez testified that “from the bedroom door, she observed Mendez-Osorio sharpening his machete. Santos-Velasquez testified that Mendez-Osorio said to her, “this machete, I want it for you,” and that he came toward her and told her he was going to kill her. She testified that she felt threatened and

afraid. Without pausing to put on shoes, Santos-Velasquez picked up her two youngest children from the home’s larger bedroom and fled the home to seek help. Her third child was asleep on a couch in the living room, and she did not have time to bring him. Santos-Velasquez testified that she was concerned for the safety and well-being of her children, “[b]ecause if he was thinking of doing something to me, he was going to do it to the children too.” She was especially concerned for the child she left behind.

The court reasoned that the relevant statute states in relevant part, “A

person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be: (a) [p]laced in a situation that endangers his or her life or physical or mental health.” The court wrote: “We have previously considered §28-707(1)(a) and stated that under that section, “‘endangers’ means to expose a minor child’s life or health to danger or the peril of probable harm or loss.” *State v. Crowdell*, 234 Neb. 469, 474, 451 N.W.2d 695, 699 (1990). We have further stated that

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the purpose of criminalizing conduct under the statute is that where “a child is endangered, it may be injured; it is the likelihood of injury against which the statute speaks.” *Id.* at 475, 451 N.W.2d at 699 (quoting *State v. Fisher*, 230 Kan. 192, 631 P.2d 239 (1981)). Although courts strictly construe criminal statutes...we have recognized the breadth of conduct addressed in §28-707(1)(a) and have stated that “[a]s a matter of practicality for general application, child abuse statutes, by virtue of the nature of their subject matter and the nature of the conduct sought to be prohibited, usually contain broad and rather comprehensive language.” (*State v. Crowdell*, 234 Neb. at 474, 451 N.W.2d at 699). Accordingly, the court held that Mendez-Osorio’s conviction was supported by the evidence.

Other states have similar statutes comparable to the one in Nebraska, articulating their resolve to criminalize child abuse that results from

conduct that exposes a child to harm despite the fact that the child was not the direct object of the defendant’s behavior. For instance, the Supreme Court of Delaware, in *Mubrouca Allison v. State of Delaware*, 148 A.3d 688 (2016), held that the “child endangerment statute provides that a person is guilty of endangering the welfare of a child if she has assumed responsibility over the child and [i]ntentionally, knowingly or recklessly acts in a manner likely to be injurious to the physical, mental, or moral welfare of the child.” It held that “an ordinary person could easily understand that leaving two young children alone in an unlocked car in near triple-digit heat for at least fifteen minutes with the windows almost rolled up could be ‘injurious to the physical, mental, or moral welfare’ of the children.”

Like false allegations of child abuse, false allegations of child endangerment are illegal. In Colorado, for instance, a person whom the court

finds has brought a motion that is “frivolous, substantially groundless, or substantially vexatious” may be required to pay reasonable attorney’s fees and the costs of the opposing party (C.R.S. 14-10-129(5)).

Child endangerment charges are highly fact specific. A legal analysis of sufficiency of evidence supporting a child endangerment conviction will depend upon the specific circumstances of each case. Human services workers and others who believe they have encountered child endangerment, and individuals who have been charged with child endangerment, should seek the advice of an experienced attorney. The attorney should be able to discuss what options are available under the circumstances. 📧

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interoperability of our data. Through NIEM we can ensure that we are naming, defining, and structuring our data consistently to enable seamless cross-program communication.

We are also examining existing technical architecture frameworks, including the National Human Services Interoperability Architecture (NHSIA), to promote effective planning and design of integrated systems. Ideally, NHSIA will provide the basis for interoperability with other communities, such as with those organizations leveraging the Medicaid Information Technology Architecture. Alignment of both architectural and data standards frameworks across human services and critical partners is a major attribute of the ACF Interoperability Initiative.

We recognize these are early steps on a long journey, but we hope it is evident

that ACF is committed to working hard to improve the way we and our partners are able to fully leverage data as a strategic asset and enabler of more effective and efficient services to the people we serve.

Interoperability represents the opportunity to modernize our programs and service delivery models, and fully support data-informed decision-making. It is the cornerstone for achieving scalable data sharing and data integration. Too often we cast interoperability as an IT problem. Instead, we propose that interoperability should refer to “The alignment of business, policy, and technical factors to enable efficient and flexible data sharing and integration.” This means interoperability is both a challenge and an opportunity that we must address holistically across the human services community.

We invite you to join us on this journey and hope you will tell us openly, directly, and honestly how we can do better. If you have questions about data sharing or interoperability activities at ACF, please contact us at the ACF Data Sharing Assistance Center at [DataRx@acf.hhs.gov](mailto:DataRx@acf.hhs.gov). Let’s get started! 📧

**Reference Notes**

1. See <https://www.acf.hhs.gov/about/interoperability>
2. See [https://www.acf.hhs.gov/sites/default/files/assets/acf\\_confidentiality\\_toolkit\\_final\\_08\\_12\\_2014.pdf](https://www.acf.hhs.gov/sites/default/files/assets/acf_confidentiality_toolkit_final_08_12_2014.pdf)
3. See <http://www.pewtrusts.org/en/research-and-analysis/reports/2018/02/how-states-use-data-to-inform-decisions>
4. See reference note #1.
5. See <https://www.acf.hhs.gov/pre/research/topic/overview/interoperability-and-data-sharing>
6. See <https://www.niem.gov/communities/human-services>