

1 **14-606. Abandonment of a child resulting in great bodily harm or death.**

2 For you to find _____ (*name of defendant*) guilty of
3 abandonment of a child resulting in great bodily harm, [as charged in Count _____],¹ the
4 state must prove to your satisfaction beyond a reasonable doubt each of the following elements of
5 the crime:

6 1. _____ (*name of defendant*) was a [parent]²
7 [guardian] [or] [custodian] of _____ (*name of child*);

8 2. _____ (*name of defendant*) intentionally³ [left]² [or]
9 [abandoned] _____ (*name of child*);

10 3. As a result of _____ (*name of defendant*) [leaving]²
11 [or] [abandoning] _____ (*name of child*),
12 _____ (*name of child*) was without proper parental care and control
13 necessary to prevent harm to _____ (*name of child*);

14 4. At the time that _____ (*name of defendant*) [left]² [or]
15 [abandoned] _____ (*name of child*), the circumstances exposed
16 _____ (*name of child*) to a risk of harm;

17 [5. _____ (*name of defendant*) had the ability to
18 provide proper parental care and control necessary for _____'s
19 (*name of child*) well-being];⁴

20 6. _____'s (*name of defendant*) failure to provide
21 proper parental care and control necessary for _____'s (*name of*
22 *child*) well-being resulted in [the death of]² [great bodily harm to⁵]
23 _____ (*name of child*);

1 harm. *Stephenson*, 2017-NMSC-002, ¶ 16. In *Stephenson*, the Supreme Court reversed the
2 defendant's conviction for abandonment of ~~[her]~~ defendant's child, finding that the evidence
3 adduced at trial was insufficient to show that, at the time the defendant locked ~~[her son]~~ the child
4 in ~~[his room]~~ the bedroom at bedtime, ~~[he]~~ the child was exposed to harm. The committee added
5 Paragraph 4 to this instruction to reflect the Supreme Court's conclusion that ~~["the]~~ "'the
6 Legislature did not intend to criminalize conduct creating 'a mere possibility, however remote, that
7 harm may result' to a ~~[child.]~~ child." *Id.* ¶ 28 (quoting *State v. Graham*, 2005-NMSC-004, ¶ 9,
8 137 N.M. 197, ~~[109 P.3d 285]~~ 109 P.3d 285 (internal quotation marks omitted)).

9 The Supreme Court in *Stephenson* also held that there are two possible legal theories under Section
10 30-6-1(B). *Stephenson*, 2017-NMSC-002, ¶ 14. The state may prove either that the defendant
11 "abandoned" the child or that the defendant "left" the child. ~~[Id.]~~ *Id.* ¶¶ 14, 23. This is consistent
12 with the Court's ruling that "abandonment" and "leaving" are legally distinct from one another. *Id.*
13 ¶¶ 14, 16 ("We conclude that a principled distinction exists between 'leaving' and 'abandoning,'
14 and therefore, to avoid rendering either word superfluous, each word must be construed consistent
15 with the Legislature's intent, which was to create independent theories of criminal culpability for
16 both 'leaving' and 'abandoning.'").

17 [Adopted by Supreme Court Order No. 18-8300-012~~], effective for all cases pending or filed on~~
18 ~~or after December 31, 2018~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]