

**HB**

**381**

# Alaska State Legislature

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## Representative Lesil McGuire

Chair, Judiciary Committee

### SECTIONAL ANALYSIS

#### HB 381

*"An Act relating to child endangerment"*

**Section 1** – Amends AS 11.51.100(a) by adding two subsections to include transporting a child in a motor vehicle while under the influence of an intoxicant; and failure to use proper seat restraints while transporting a child in a motor vehicle and the failure to restrain leads to the injury of death of the child.

**Section 2** – Amends AS 11.51.100(c) by making the crime of child endangerment by transporting a child while under the influence a class C felony.

**Section 3** – Amends AS 11.51.100(d) by making the crime of child endangerment by failing to use proper seat restraints and that failure to restrain results in the death of a child a class B felony.

**Section 4** – Specifies that "intoxicant" has the meaning given in AS 47.10.990.

OFFERED IN THE HOUSE HESS COMMITTEE

TO: HB381

DATE: April 6, 2004

**AMENDMENT #1** BY REP. WOLF (Conceptual Amendment)

1 Page 2, Line 8:

2 Insert after (a) "operates the vehicle that"

**AMENDMENT #2** BY REP. SEATON

3 Page 2, Line 10, 11, 12:

4 Delete entire lines



National Conference of State Legislatures  
 Drunk Driving Child Endangerment Laws

as of December 2003

State	Citation	Provisions
AL	§32-5A-191(n)	Minimum sentences are double the usual sanction if an offender over age 21 was transporting a minor under age 14 at the time of the offense.
AK	none	
AS	none	
AZ	§§13-604(A), (C) & (U)(1) (a), 13-701(C), 13-801, & 28-1383(A)(3), (F), (G) & (L)(2)	A person commits a class 6 felony (aggravated DUI) if they violate the drunk driving laws while transporting a passenger under age 15. Sanctions: 1 <sup>st</sup> offense: 1 year; conviction with one prior felony: 1 to 2.5 years; conviction with two or more prior felonies: 3 to 4.5 years and fine \$150,000.
AR	none	
CA	Veh Code §23572	For non-injury offenses where a minor under 14 years old was a passenger, the following mandatory jail sanctions are imposed: 1 <sup>st</sup> offense: 48 continuous hours; 2 <sup>nd</sup> offense: 10 days; 3 <sup>rd</sup> offense: 30 days; 4 <sup>th</sup> offense: 90 days. (these sanctions are not imposed if the driver has been convicted of endangering the life or health of a child under Penal Code §273a)
CO	§§18-1-105(1)(a)(III) & (V)(A), and 18-6-401(1), (2), (7)(a)(I) & (III)	A person is guilty of child abuse if they knowingly or recklessly commit an act that either kills or injures a child under 16 years old. A person commits a class 2 felony where death results from such abuse and is subject to 8 to 24 years in jail and a fine of \$5,000 to \$1,000,000. A person commits a class 3 felony where injury results from such abuse and is subject to 4 to 12 years in jail and a fine of \$3,000 to \$750,000. For abuse resulting in either injury or death, a parole of 5 years is mandatory. In <i>People v. Deskins</i> , 927 P.2d 368 (Colo. 1996), it was held that a drunk driver is guilty of child abuse if they kill or injure a child riding in another vehicle that is involved in a collision with the offender's vehicle at the time of the offense.
CT	none	
DE	21 §4177(d)(5)	A person who commits a drunk driving offense while transporting a child under 17 years old is subject to the following sanctions, in addition to the standard sanctions for drunk driving offenses: 1 <sup>st</sup> offense: an additional fine of \$230 to \$1,150 and 40 hours of community service benefiting children; for subsequent offenses: an additional \$575 to \$2,300 and 80 hours of community service benefiting children.

DC	none	
FL	§§316.193(3) & (4), 775.082, 775.083 & 775.084	For a drunk driving offense with a passenger under age 18 in the vehicle, the following sanctions apply: 1 <sup>st</sup> offense: not more than 9 months in jail and a fine of \$500 to \$1,000; 2 <sup>nd</sup> offense: not more than 12 months in jail and a fine of \$1,000 to \$2,000; 3 <sup>rd</sup> offense: not more than 12 months in jail and a fine of \$2,000 to \$5,000.
GA	§§16-12-1(d) & 40-6-391 (1)	It is a separate offense to transport a child under age 14 while drunk. Sanctions: 1 <sup>st</sup> offense (misdemeanor): jail 1 to 5 months, fine \$200 to \$500; 2 <sup>nd</sup> offense (misdemeanor) jail 3 months to 1 year, fine \$400 to \$1,000; 3 <sup>rd</sup> and subsequent offenses (felony) jail 1 to 3 years, fine \$1,000 to \$5,000.
GU	none	
HI	§291-4(b)(4)	A driver 18 years of age or older who is convicted of an alcohol offense while transporting a passenger under 15 years old is subject to the following additional sanctions: mandatory jail term of 48 hours (total jail term not to exceed 30 days) and a mandatory fine of \$500.
ID	§§18-113 & 18-1501(3)	It is an offense for a person over 18 years of age to operate a motor vehicle in violation of the drunk driving laws while transporting a minor. If there is no injury or death associated with the offense, it is a misdemeanor with a jail term of not more than 6 months and/or a fine of not more than \$300. If the minor is injured or killed, it is a felony with imprisonment of 1 to 10 years.
IL	625 ILCS 5/11-501(c)	If at the time of the offense, the defendant was transporting a person under 16 years of age, jail sanctions are enhanced as follows: 1 <sup>st</sup> offense: 2 days; 2 <sup>nd</sup> offense: 10 days; 3 <sup>rd</sup> offense: 30 days; 4 <sup>th</sup> or subsequent offense: 90 days. For a 1 <sup>st</sup> or 2 <sup>nd</sup> offense within 5 years, a fine of \$500 is mandatory. The defendant is also subject to mandatory community service: 1 <sup>st</sup> offense: 5 days; 2 <sup>nd</sup> offense within 5 years: 10 days.
IN	none	
IA	§§702.5, 726.3 & 726.6	Iowa's criminal law provides for sanctions against persons who either abuse or neglect a child or 14 years or younger, who is under their control. The Iowa Supreme Court has held that a parent can be charged with child neglect, recklessly exposing their child to a danger, a class c felony, if, while transporting their child, they operate a motor vehicle in an intoxicated condition. <i>State v. Caskey</i> , 539 N.W. 2d 176 (Iowa 1995) There is also the possibility that general criminal child endangerment laws may apply, which make it an offense to create a situation where a child is exposed to substantial risk.
KS	none	
KY	none	
LA	§14:98(J)	A DUI offender is subject to the following mandatory sanctions if a child 12 years old or younger was a passenger in the vehicle at the time of the

		offense: 1 <sup>st</sup> offense: 10 days in jail and \$125 fine; 2 <sup>nd</sup> offense: 30 days in jail and \$300 fine; 3 <sup>rd</sup> offense: 6 months in jail; 4 <sup>th</sup> offense: 2 years in jail.
ME	29-A MRSA §§2451(5), 2472(4), 2411(5)	For persons over age 21 who refuse to take a breath test and had a passenger under age 21 in the vehicle at the time of the refusal, an additional mandatory 275 day license suspension applies. For persons under age 21 who refuse to take a breath test and had a passenger under age 21 in the vehicle at the time of the refusal, an additional mandatory 180 day license suspension applies. Upon conviction for DUI, the following mandatory jail terms apply: 1 <sup>st</sup> offense: not less than 48 hours (96 hours for refusal); 2 <sup>nd</sup> offense within 10 years: 7 days (12 days for refusal); 3 <sup>rd</sup> offense: 30 days (40 days for refusal); 4 <sup>th</sup> or subsequent offenses within 10 years: 6 months (6 months and 20 days for refusal).
MD	Tran. §27-101(q)	For conviction of an illegal per se drunk driving offense, while transporting a minor under age 18, the following sanctions apply: 1 <sup>st</sup> offense: jail not more than 2 years and fine not more than \$2,000; 2 <sup>nd</sup> offense: jail not more than 3 years and fine not more than \$3,000; 3 <sup>rd</sup> and subsequent offenses: jail not more than 4 years and fine not more than \$4,000. For conviction of driving under the influence of alcohol, drugs or a controlled dangerous substance while transporting a minor under age 18, the following sanctions apply: 1 <sup>st</sup> offense: jail not more than 6 months and fine not more than \$1,000; 2 <sup>nd</sup> offense: jail not more than 1 year and fine not more than \$2,000.
MA	none	
MI	§§257.319(8)(e) & 257.625(7)	For conviction of any DUI offense while carrying a passenger under age 16, the following sanctions apply: 1 <sup>st</sup> offense (misdemeanor): jail 1 to 5 years (with either mandatory 48 consecutive hours in jail or 30 days (mandatory) to 90 days of community service) and a fine of \$200 to \$1,000 and license suspension of 180 days (90 days mandatory); for subsequent offenses within 7 years (felony): 1 to 5 years in jail or with probation, 30 days (48 consecutive hours mandatory) to 1 year in jail and community service for 60 to 180 days, and a fine of \$500 to \$5,000. For conviction of the .02 (zero tolerance) law by persons under age 21, while carrying a passenger under age 16, the following sanctions apply: 1 <sup>st</sup> offense: not more than 93 days in jail, not more than 60 days community service, a fine of not more than \$500, and license suspension of not more than 180 days (90 days mandatory); for subsequent offenses: jail of 5 days to 1 year (48 consecutive hours mandatory), community service for 30 to 90 days, and a fine of \$200 to \$1,000. For either type of violation, vehicle forfeiture or immobilization sanctions may also apply.
MN	§§169.121, subd 3(a) and 169.1217	Driving while intoxicated with a child under 16 years of age in the vehicle, where the driver was at least 36 months older than the child, is a gross misdemeanor. In addition to the standard penalties for a DUI-related gross misdemeanor, the vehicle used in the offense may be subject to forfeiture.
MS	none	
MO	none	

MT	none	
NE	none	
NV	§484,3792(7)	If a child 15 years old or younger was present in the vehicle at the time of the DUI offense, such fact shall be considered an aggravating factor when determining sentence.
NH	§265:82-b, VIII	If the DUI offender was transporting a person under age 16 at the time of the offense, the offender must have their driving privileges revoked for the maximum time period provided by law.
NJ	none	
NM	none	
NY	none	
NC	§20-179	Upon conviction, the level of punishment is determined by weighing aggravating and mitigating factors (child endangerment is an aggravating factor), with Level 1 being more severe punishment and Level 2 being less severe sanctions. The court must impose Level 2 punishment if there was a child under 16 years old riding with the offender at the time of the offense. The court must impose Level 1 punishment if there was a child under 16 years old riding with the offender at the time of the offense and there was any additional aggravating factor involved.
ND	§§12.1-32-1 & 39-08-01.4	It is a class A misdemeanor, with a jail term for not more than 1 year and /or a fine of not more than \$1,000, for a person 21 of age or older to commit a drunk driving offense while transporting a minor (the specific age is not defined in the law but generally defined in ND to be anyone under age 18).
OH	§§2919.22, 2929.14, 2929.18 & 2929.21	It is a separate offense to operate a motor vehicle in violation of the drunk driving laws while carrying a passenger who is under 18 years old. Sanctions: 1 <sup>st</sup> offense (1 <sup>st</sup> degree misdemeanor): imprisonment for not more than 6 months and/or a fine of not more than \$1,000; on a 1 <sup>st</sup> offense where there has been serious physical harm to the child or for subsequent offenses (5 <sup>th</sup> degree felony): imprisonment of 6 to 12 months and /or a fine of not more than \$2,5000; subsequent child endangerment offense where there has been serious physical harm to the child or where there has been serious harm to the child and the offender has a prior drunk driving conviction (4 <sup>th</sup> degree felony): imprisonment of 6 to 18 months and/or a fine of not more than \$5,000. In addition to the above, offenders are subject to not more than 200 hours of community service, which is not in lieu of community services that may be imposed via probation, and license suspension for 90 days, which is consecutive to any other licensing action.
OK	none	
OR	none	

PA	none	
PR	none	
RI	§31-27-2(d)(4)	An offender who is over age 18 is subject to an imprisonment term of not more than 1 year if they were transporting a passenger under age 13 years at the time of the offense.
SC	§56-5-2947	A person over 18 years old who commits either a drunk driving offense or a death/serious bodily injury drunk driving offense while transporting a child under 16 years old is subject to additional jail and fine sanctions which are equal to not more than half the maximum jail and fine sanctions for these offenses. There additional sanctions are mandatory if jail or fine sanctions have been imposed for the original offense. In addition, the offender's driving privileges must be suspended for 60 days.
SD	none	
TM	§§40-35-111(b)(3) & (4), 40-35-111(e)(1) & 55-10-414	A person commits a class A misdemeanor if they commit a drunk driving offense and at the time were accompanied by a child under 13 years old. Sanctions: jail term of not more than 11 months and 29 days (30 days are mandatory) and a fine of not more than \$2,500 (\$1,000 is mandatory). If the child was injured at the time of the offense, the person commits a class D felony. Sanctions: jail term of 2 to 12 years and a fine of not more than \$5,000. If the child was killed at the time of the offense, the person commits a class C felony. Sanctions: jail term of 3 to 15 years and a fine of not more than \$10,000.
TX	none	
UT	none	
VT	none	
VA	§18.2-270	A person convicted of a drunk driving offense while carrying a child 17 years of age or younger is subject to the following additional sanctions: 1 <sup>st</sup> offense: a fine of \$500 to \$1,000 (\$500 mandatory) and 40 hours of mandatory community service benefiting children; for subsequent offenses, a fine of \$500 to \$1,000 (\$500 mandatory) and 80 hours of mandatory community service benefiting children. Under <i>Commonwealth v. Carter</i> , 462 S.E.2d 582 (Va.App. 1995), a drunk driving offender who operates a motor vehicle while transporting a child under 18 years of age may be subject to prosecution for child abuse and neglect under §18.2-371.1
VI	none	
WA	none	
WV	§§17C-5-2(I) & 17C-5A-2 (m)	A person who violates the drunk driving law while transporting a child under 16 years old commits a misdemeanor and is subject to a jail term of 2 days

		to 12 months (48 hours mandatory) and/or a fine of \$200 to \$1,000 (\$200 mandatory). A person who violates the administrative per se law while transporting a child under 16 years old is subject to a mandatory 2 year license revocation. If the person has a previous administrative per se suspension or revocation within 10 years, the revocation period is 10 years (mandatory); if the person has more than one previous administrative per se suspension or revocation within 10 years, the revocation period is for life (mandatory).
WI	§§343.305(10)(b)(4m), 343.31(3)(f), 346.65(2)(f) & (3), 343.31(3)(c) and 940.09(1b)	For refusal to take an implied consent breath test while transporting a child under 16 years old at the time of the refusal offense, the minimum and maximum license revocation periods are doubled. For conviction of a drunk driving offense while transporting a child under 16 years old at the time of the offense, the offender's drivers license is revoked for 4 years. For conviction of either injury or non-injury drunk driving offenses while transporting a child under 16 years old at the time of the offense, the maximum and minimum imprisonment, forfeiture and fine sanctions are doubled. For conviction of homicide by vehicle while transporting a child under 16 years old at the time of the offense, the maximum imprisonment and fine sanctions are doubled and the revocation period is 10 years.
WY	none	

Source: Digest of State Alcohol/Highway Safety Related Legislation, U.S. Dept. of Transportation, National Highway Traffic Safety Administration.

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FEB 02 2004

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Date: \_\_\_\_\_ 1-26-04 \_\_\_\_\_

Please accept the enclosed original(s) of written testimony for the \_\_\_HHESS \_\_\_\_\_ teleconference hearing that was scheduled on \_\_\_\_\_.

A copy of this testimony was transmitted to your committee via fax on \_\_\_\_\_ 1-26-04 \_\_\_\_\_.

Thank You,

Kenai LIO



# Alaska State Legislature

Please enter into the record my testimony to the House Health, Education & Social services  
committee name

Committee on \_\_\_\_\_  
bill # / subject

HB 381

Date, JANUARY 24, 2004

Alaska has a serious problem with alcohol. On the Dept. of Transportation web site there are statistics graphs, which show in the year 2001, alcohol/drug use was a contributing factor in 8.1% of the accidents reported. Statistics from DOT show that 33.1 % of the fatal accidents in the year 2001 had alcohol/drug use as a contributing factor. In 2001 there were 42 alcohol-related fatalities. It's very unfortunate that four Alaskan children lost their lives from fatal accidents that involved alcohol. Alaska had a total of 1,146 accidents in the year of 2001, which were determined to be alcohol-related.

We need stronger penalties for people who are endangering children in motor vehicles when the driver is impaired by drugs/alcohol. Icy road conditions make driving hazardous, when you add alcohol as another factor it's a recipe for disaster. We need to have stiffer penalties for people who are knowingly placing children at risk, so there are serious consequences if they are caught driving in vehicles while under the influence of drugs/alcohol.

Vote YES on HB 381. Allow HB 381 to pass through the House, as these provisions in HB 381 will benefit the citizens of Alaska. Our children are our most valuable resource. We need to protect them.

Signed: LAURIE CHURCHILL  
Testifier

SELF  
Representing (optional)

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