

**HB**

**381**

# Alaska State Legislature

*Session:*  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
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**Representative Lesil McGuire**  
Chair, Judiciary Committee

## MEMORANDUM

To: Sen. Fred Dyson, Chair – Senate HESS  
Cc:  
From: Rep. Lesil McGuire  
Date: May 3, 2004  
Re: Hearing Request for HB 381

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Attached you will find a sponsor statement, sectional analysis, most current version of the bill, and support material from the National Conference of State Legislatures and Mothers Against Drunk Driving (MADD).

I am requesting a committee hearing for this bill at the earliest possible convenience of the House Health, Education, and Social Services Committee.

You can contact me directly at extension 2995 with questions or to notify me of what date will be most convenient for the committee. Heath Hilyard is my staff contact on this bill.

I appreciate your time and look forward to having this bill heard in your committee.

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**Representative Lesil McGuire**  
Chair, Judiciary Committee

## SPONSOR STATEMENT

**CSHB 381(RLS)**

*"An Act relating to child endangerment"*

HB 381 addresses loopholes in Alaska Statute regarding vehicular related child endangerment. This bill includes specific provisions to our existing child endangerment statutes pertaining to transporting a child in a motor vehicle while intoxicated.

Currently, 27 states or territories have similar laws in effect. This bill will demonstrate Alaska's commitment to protecting our children, and our commitment to making adults responsible for their actions while transporting children.

HB 381 amends AS 11.51.100 (a) by adding one element to the crime of child endangerment. This bill specifies that a person commits the crime of child endangerment if they transport a child in a motor vehicle while under the influence of an intoxicant.

HB 381 will further help protect children from vehicular related injury or death, and because of this I encourage your support for this bill.

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## SECTIONAL ANALYSIS

CSHB 381(RLS)

*"An Act relating to child endangerment"*

**Section 1** – Amends AS 11.51.100(a) by adding one subsection to include transporting a child in a motor vehicle while under the influence of an intoxicant.

**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 A misdemeanor.

**Section 3** – Is a technical amendment to AS 11.51.100(d) clarifying that the structural changes made to the statute are as a result of the changes made due to the inclusion of the new charge of transporting a child while under the influence.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 381(HES)  
 (H) Publish Date: 4/8/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Child Endangerment Driving Offenses BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative McGuire  
 Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 381.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
 Division Alaska Court System Date/Time 4/2/04 12:22 PM  
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 4/2/2004  
 Agency Alaska Court System

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: CSHB 381(RLS)  
(H) Publish Date: 4/30/2004

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title An Act relating to child endangerment BRU Criminal  
Component CDCO  
Sponsor Representative McGuire  
Requester House Rules Committee Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Janet S. Seitz, Staff  
Division: House Rules Committee  
Approved by: Representative Norman Rokeberg  
Agency: Chairman, House Rules Committee

Phone: 465-3764  
Date/Time: 4/29/04 8:56 PM  
Date: 4/29/2004

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5  
Bill Version: CSHB 381(RLS)  
(H) Publish Date: 4/30/2004

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Adm  
Title An Act relating to child endangerment BRU Legal & Advocacy Services  
Public Defender Agency  
Sponsor Representative McGuire  
Requester House Rules Committee Component No. 1631

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Janet S. Seitz, Staff Phone 465-3764  
Division House Rules Committee Date/Time 4/29/04 9:00 PM  
Approved by: Representative Norman Rokeberg Date 4/29/2004  
Agency Chairman, House Rules Committee



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 \$2,500; 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	
TN	§§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(1) & 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 6 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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EVERY  
CHILD  
DESERVES  
A DESIGNATED  
DRIVER

Child  
Endangerment  
Report



MADD  
1000  
1000  
1000  
1000

## ON THE COVER

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There are very real cases in which a child's life is placed in danger by a parent or other caregiver's choice to drink and drive. Yet, as dangerous as it is, driving impaired with children in the vehicle is not a commonly acknowledged form of child endangerment or child abuse.

Carlie McDonald, 5 years old, was killed on January 1, 1998 by her intoxicated mother who was driving with a blood alcohol content (BAC) of .22 percent, over twice the illegal limit. Carlie had been placed in the front seat of the car; her unused booster seat was found in the back. Carlie's mother had been specifically court-ordered not to consume alcohol in Carlie's presence. This was not enough to save Carlie's life.

Carlie's father, Lieutenant Carl McDonald of the Wyoming Highway Patrol, had primary custody of his daughter. He was helpless to protect and ensure that Carlie would be safe when visiting her mother. His life has been forever changed.

Carlie loved playing with her dog, Sadie, and reading bedtime stories. Her favorite movie was *The Lion King*. Because her mother made the choice to drive while impaired with Carlie in the car, Carlie will never be able to live her life and attain her dreams. Her father must learn to live without her and continue his journey of grief.

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## EVERY CHILD DESERVES A DESIGNATED DRIVER

Protecting children is a value Americans cherish. Yet, despite the fact drunk driving is a violent crime, driving while impaired with children riding in a vehicle is not a commonly acknowledged form of child endangerment or child abuse. No one should have to choose to ride with an impaired driver. However, minor children have little choice when the driver is a parent or other adult who is their caregiver.

Child endangerment laws protect innocent children from child abusers, not only those who are physically or emotionally abusive, but those who victimize a child by driving impaired. An impaired driver makes the choice to drink and drive. Minor children often have no choice in whether they ride with an impaired driver. Caregivers that drink and drive with children in the vehicle are child abusers in their own right and account for the majority of drunk driving fatalities among children.

Mothers Against Drunk Driving (MADD) twice convened a panel of experts in the nation's capital to develop practical policy solutions to one of the nation's most pressing child endangerment problems: children riding in vehicles with impaired drivers. The Child Endangerment Expert Panel, supported by a grant awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, consisted of child and victim advocates, attorneys, judges, law enforcement officials, policy specialists and a bereaved parent victim of child endangerment.

The panel of experts offered specific knowledge and expertise and helped to identify possible solutions. Examination of the issues surrounding child endangerment was conducted by eliciting input from each panel member on their area of expertise. Issues were examined from research, advocacy, law enforcement, judicial, prosecutorial and civil family law and victim perspectives.

MADD's Child Endangerment Report is based on recommendations of this expert panel. The report will be distributed to MADD state offices and chapters, state law enforcement agencies, Governor's Highway Safety Offices, court personnel and key child protective agencies. It contains helpful guidelines and measures that will inform parents, child advocates, medical personnel, law enforcement officials, victim advocates, policymakers and the general public on how to provide greater protection of children from impaired drivers.

This report illustrates the heartache that public awareness, training, education and effective child endangerment laws can prevent. A video documentary of a child endangerment case produced by the Wyoming Department of Public Safety is included with the report. The video tells the true story of the death of a State Highway Patrol Officer's five-year-old daughter whom his intoxicated ex-wife killed while driving with a BAC of .22 percent.

# CHILD ENDANGERMENT AND CHILD ABUSE

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Child abuse or neglect is defined in Black's Law Dictionary as:

*"When a child's parent or custodian, by reason of cruelty, mental capacity, immorality or depravity, is unfit to properly care for him or her, neglects or refuses to provide necessary physical, affectional, medical, surgical or institutional care for him or her or is under such improper care or control as to endanger his or her morals or health."*

Child endangerment as it pertains to impaired driving falls into the above legal definition of child abuse when a parent or caregiver knowingly puts a child in the car after drinking alcohol with the intention to drive. This choice falls under the "improper care...so as to endanger his or her morals or health." However, driving while impaired with a child in the vehicle is rarely, if ever, charged as child abuse.

## CHILD ENDANGERMENT LAWS

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Child endangerment is a term used to collectively identify laws that create a separate offense or enhance an existing penalty for an offender who endangers a minor. Endangerment is any action that might place a minor in jeopardy of physical, moral or mental well being.

While most states now have some kind of endangerment statute, 35 states currently have statutes that create special sanctions for cases of driving under the influence / driving while intoxicated (DUI/DWI) while the offender is transporting a child at the time of the offense. (See Appendix A.)

Child endangerment statutes fall into the following categories:

- **Enhanced penalties:** Penalties that are added to the penalties for a DUI/DWI law violation.
- **Separate offenses:** An offense for DUI/DWI with a minor in the vehicle that is separate from the DUI/DWI laws.
- **Aggravating circumstances:** Laws that allow the fact that a child was in the vehicle to be used by the judge/jury in sentencing as an aggravating factor, but not necessarily mandating a specific enhanced penalty.

Driving impaired is not an "accident" or a mistake. It is a choice, just as blatant physical child abuse is a choice. Rather than a fist, the weapon is a motor vehicle.

MADD is concerned about the increasing number of calls MADD victim advocates receive from distraught parents and other loved ones regarding allegations of an adult driving impaired with a child in the vehicle. In polling MADD chapters during the last year, MADD victim advocates across the nation received approximately 17,000 child endangerment calls. Many of these calls indicate that reports filed as child endangerment to state agencies are slipping through the cracks of the system, putting children at a greater risk of victimization.

These calls are not from victims of drunk driving crashes, but from potential victims of drunk driving. Often victim advocates feel helpless and frustrated with these calls for help. There seems to be no relief for the problem due in part to the lack of public awareness of the extent of the DUI/DWI child endangerment problem and the reluctance to accept that to drive impaired with a child in the vehicle is a form of child abuse.

Victim advocates on the panel identified common problems that victims report in calls of frustration and desperation. The following issues and concerns were raised:

- Cases are not being properly charged, resulting in lack of prosecution.
- Cases that are charged are often plea bargained down or dismissed.
- Reports made to child protective agencies are not being documented or investigated.
- A general lack of awareness of the seriousness of the problem.
- Divorced parents who are confronted with the problem of an ex-spouse who drives while impaired face legal challenges and the financial risk of subjecting themselves to civil contempt actions if they refuse visitation privileges to protect their children.
- Many victims do not have the financial resources to seek relief in the civil court system.

## WHY IS THERE A NEED FOR A CHILD ENDANGERMENT STATUTE?

Within each state, it is the legislature that determines the structure of child endangerment laws. Statutes of this nature are important because motor vehicle crashes outrank all other injuries and diseases as the major cause of death for children ages 1 and above. In 2002, alcohol-related vehicle crashes accounted for 22 percent of motor vehicle crash deaths of children.

States with child endangerment laws widely vary in provisions and enforcement. Additionally, public awareness is often so low many people do not know such statutes exist. Individually, the situation is even more complicated because families with child endangerment issues are often already coping with the legal ramifications of separation, divorce, and visitation/custody issues. After a court has accepted custody arrangements, concerned parents and adults have very few options for protecting a child from a parent who drives impaired. Even worse, if a parent attempts to prevent the child from riding with their impaired parent, breach of the custody agreement could be enforced leading to further victimization.

The law enforcement officers, judge, civil attorney and prosecutor on the panel identified difficulties in enforcing the child endangerment statutes. The following issues were identified:

- There is difficulty in interpreting the existing DUI/DWI child endangerment laws; many of the laws are too complex.
- There is a lack of education on all aspects of the laws and the problem of child endangerment in general.
- There is difficulty in not being able to enforce civil remedies absent a restraining order or request of participation from child protective services.
- Laws are not being uniformly enforced.
- Violation of terms of the divorce decree as it relates to impaired driving with minor children in the car should be clearly tied to change in custody or visitation.
- There is a critical need for judicial education programs addressing all the issues surrounding child endangerment.
- DUI/DWI offenders' parental status should be a consideration at sentencing in terms of probation restrictions against driving after drinking with children in the vehicle.

## RESEARCH AND STATISTICS

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A 1999 national telephone survey, sponsored by the National Highway Traffic Safety Administration (NHTSA), estimates that between 46 and 102 million drinking-driving trips are made each year with children under the age of 15 in the vehicle.

In May 2000, the Journal of the American Medical Association (JAMA) published "Characteristics of Child Passenger Deaths and Injuries Involving Drinking Drivers." The study found that from 1985 to 1996, there were 5,555 child passenger deaths involving a drinking driver. Of these deaths, 3,556 (64 percent) occurred while the child was riding with a drinking driver; 67 percent of these drinking drivers were old enough to be the parent or caregiver of the child. \*1 footnote

Of all drivers transporting a child who died, drinking drivers were more than twice as likely as non-drinking drivers to have had a previous license suspension (17.1 percent vs. 7.1 percent) and more than six times as likely to have a conviction for driving while intoxicated (7.9 percent vs. 1.2 percent). These findings underscore the serious risk that persons arrested for alcohol-impaired driving pose to others and to themselves.

Drivers who have been arrested for driving while impaired are known to be at substantially increased risk of future death in alcohol-related motor vehicle crashes compared with drivers who have not been arrested for this offense. \*2 footnote

In addition, studies have shown that 70 percent of the drivers arrested for driving while impaired have alcohol abuse problems and between 10 and 50 percent are alcohol dependent. \*3 footnote

Taken together, these findings emphasize the importance of aggressive intervention with persons convicted of DUI/DWI, including evaluation and treatment for alcohol problems, to prevent future deaths in alcohol-related crashes.

From 1988 through 1996, an estimated 149,000 child passengers were non fatally injured in crashes involving a drinking driver. Of these, 58,000 (38.9 percent) were riding with a drinking driver when injured in the crash. \*4 footnote

\*1 footnote Royal, D. National Survey of Drinking and Driving Attitudes and Behavior: 1999, Volume 1: Findings. Washington, DC: US Dept of Transportation, National Highway Traffic Safety Administration; 2000. DOT Report HS 809 190

\*2 footnote Brewer RD, Morris PD, Cole TB, Watkins S, Patetta MJ, Popkin C. The risk of dying in alcohol-related automobile crashes among habitual drunk drivers. *The New England Journal of Medicine*. 1994; 331:513-517.

\*3 footnote Wieczorek W, Miller B., Nochajski T. Multiple and Single Location Drinking Among DWI Offenders Referred for Alcoholism Evaluation. *American Journal of Drug and Alcohol Abuse* 1992; 18, no. 1: 103-116.

\*4 footnote Quinlan KP, Brewer RD, Sleet DA, Dellinger AM. Characteristics of Child Passenger Deaths and Injuries Involving Drinking Drivers. *Journal of the American Medical Association* 2000; 283: 2249-2252.

During the five-year period of 1997-2001, 1,385 child passengers died and an estimated 87,226 were injured in alcohol-related crashes. Sixty-eight (60) percent of the deaths and 38 percent of the injuries occurred among children who were riding in the same vehicle with the drinking driver.

Of the children who died while riding in the same vehicle with the drinking driver, only 29 percent were known to have been restrained (restraint use was unknown for another 9 percent of child passenger deaths). As the BAC of the child's driver increased, child restraint use decreased.

Although restraint use in this group of children remains unacceptably low, restraint use has increased in recent years. The May 2000 JAMA study found that only 18 percent of children who were riding with the drinking driver at the time of the crash were known to have been restrained. The increase in restraint use seen among child passenger deaths is consistent with the increase in child restraint use over time in the general population. Strong enforcement of child safety seat laws and passage of primary enforcement seat belt laws in all states could further reduce child passenger deaths. The safety benefits of stricter enforcement of restraint laws may be even greater for children who are transported by drinking drivers because these drivers are known to have higher rates of serious crashes.

During the five-year period of 1997-2001, 58 percent of the alcohol-related crashes in which a child passenger died while riding with the drinking driver occurred during daytime or evening hours (6AM to 9PM). This finding adds further support for the need to increase high visibility enforcement of child safety seat, primary seat belt, and DUI/DWI laws, especially during daytime hours.

The MADD child endangerment panel of experts agreed that there is not any empirical research that has been done to determine scientifically if child endangerment laws that have been enacted have reduced alcohol-related deaths and injuries among child passengers. Funding for research needs to be acquired to evaluate the effectiveness of current child endangerment laws.

## WHAT CAN BE DONE TO HELP PROTECT CHILDREN?

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As these startling statistics sadly point out, much more aggressive tactics need to be taken with impaired drivers when children are riding in the vehicle. Possible solutions may be found in public education, research, legislation, enforcement, prosecution and judicial arenas. Specific solutions to address appropriate measures to reduce incidences of child endangerment need to be developed on local and state levels.

In developing specific solutions, MADD reviewed existing state laws that relate to DUI/DWI child endangerment. Analysis of this data revealed the following:

- Current state laws are complex and vary greatly from state to state.
- A variance in the age of children when these laws apply and therefore there is a need for a uniform age.
- The need for a simplification in the DUI/DWI child endangerment laws to make enforcement and prosecution easier.
- There is no clear consensus on whether separate child endangerment statutes or enhanced penalties under existing DUI/DWI law is better.
- A need for minimum mandatory penalties for violations of child endangerment laws.

The panel discussed in great detail the need for the criminal, civil, and family courts to gain an understanding of the severity of this crime and the need to impose significant sanctions on the offender who drives impaired with children in the vehicle, thus reducing the number of children who are injured and killed as passengers.

# MADD RECOMMENDATIONS

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The input and suggestions of the child endangerment panel were crucial in bringing possible solutions into focus. After extensive examination and consideration of all the complex issues regarding child endangerment, MADD makes the following recommendations in Criminal Cases for Statutes, Criminal Penalties, Civil Cases, and Administrative Sanctions in DUI/DWI Child Endangerment Cases.

## Uniform Age Requirement

A "child" for purposes of applying a child endangerment DUI/DWI statute should be minimally defined as a child under the age of 16 years. States that currently have a definition of over 16 years of age are encouraged to keep their existing definition.

## Child Restraint Laws

State child passenger safety laws should be thorough in their coverage and must provide for primary enforcement. Law enforcement agencies are encouraged to give high priority to enforcement of these laws. Consideration should be given to adding driver license points for violations of child passenger restraint laws. Further consideration should be given to administrative revocation/suspension for drivers who commit a second or subsequent offense of any child passenger safety occupant protection laws.

## Child Endangerment DUI/DWI Statutes

The penalties for violation of child endangerment provisions should be substantially higher than the penalties imposed in DUI/DWI cases where children are not involved and should include the following:

- In addition to criminal penalties imposed upon conviction, state law should provide for the administrative license revocation/suspension of licenses for alcohol-related child endangerment offenses and for those who refuse to take the state administered test of their breath, blood, urine or other bodily substance with children in the vehicle.
- Mandatory alcohol/drug assessment and treatment as indicated by the assessment.
- A required installation of an alcohol ignition interlock device on any vehicle that may be used by the defendant to transport children under the age of 16 years.
- License reinstatement or issuance of a limited driving permit following license suspension/revocation should be contingent upon installation of an alcohol ignition interlock device and, if treatment is required as a result of the court ordered alcohol/drug assessment, completion of the treatment program should be required for full license reinstatement.
- A second offense for violation of the child endangerment DUI/DWI statute should be a felony.
- An offender charged with violation of the child endangerment statute should not be eligible for pre-trial diversion, deferred adjudication, probation before judgment (PBJ) or similar programs and a conviction should remain on the offenders driving record permanently and would not "age off" or be expunged.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB381CS-DPS-ASTD-4-12-04  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title Act Relating to Child Endangerment RDU Alaska State Troopers  
 Component AST Detachments  
 Sponsor Rep. McGuire  
 Requester (H) Health, Education & Social Services Component No. 2325

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill will add another element to AS 11.51.100(a), Endangering the Welfare of a Child, by making it illegal to "transport a child in a motor vehicle, aircraft, or watercraft while operating that vehicle, aircraft, or watercraft under the influence of an intoxicant".

Violation of this new statute would be a class C felony.

This is not expected fiscal impact to the Alaska State Troopers.

Prepared by: Lt. Al Storey Phone 907-269-4532  
 Division Alaska State Troopers Date/Time 4/12/04 9:27 AM  
 Approved by: Commissioner William Tandeske Date 4/12/2004  
 Agency Department of Public Safety

# SENATE COMMITTEE REPORT

DATE: 5/1/04

FURTHER: Judiciary

DATE TURNED  
IN TO OFFICE: 5.07.04

Health, Education and Social Services Committee considered CS FOR HOUSE BILL NO. 381(RLS)

## HB 381 CHILD ENDANGERMENT DRIVING OFFENSES

"An Act relating to child endangerment."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**  
 Same Title  
 New Title

**House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DPS	4/12			✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
ACS	4/02			✓	1
LAW	4/29			✓	4
ADM	4/29			✓	5

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>Betty Davis</i>	✓			
<i>Gary [Signature]</i>			✓	
CHAIR: <i>[Signature]</i>	✓			