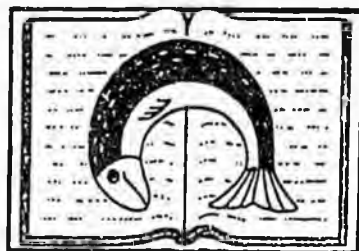


ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86/2

11143 SENATE HEALTH, EDUCATION & SOCIAL SERVICES



# Lower Kuskokwim School District

Personnel and Student Services Department  
P.O. Box 305 • Bethel, Alaska 99559  
907 543-4885/4886/4887  
FAX 907 543-4500

1/23/04

Representative Mary Kapsner  
State Capitol  
Juneau, Alaska 99801

Dear Representative Kapsner,

This letter is in support of HB 353 dealing with jury duty for teachers in schools that have not met the Adequate Yearly Progress requirements of the No Child Left Behind Act. In the Lower Kuskokwim School District we have several schools that are severely impacted by the amount of jury duty that our teachers are required to perform. From September 1 to December 15, 2003, for example, our payroll records show a total of 107.5 days that our teachers were out of the classroom performing jury duty. The negative impact on student learning is further compounded by the fact that certified substitutes are virtually non-existent in our district and in some cases it is not possible to find subs at all.

Quality instruction is the most important component in meeting the high academic standards brought about by legislation at the state and federal levels. The NCLB act recognizes this with its heavy emphasis on "highly qualified" teachers. HB 353 will help ensure that our highly qualified teachers remain in the classroom where they can help our students reach these standards.

Educating our children is the most important responsibility of the State of Alaska. Teachers have the greatest impact on the quality of education, but only when they are in the classroom. Legislators can help to ensure that teachers stay in the classroom by their support of HB 353.

Sincerely,

A handwritten signature in cursive script that reads "Gary Baldwin". The signature is written in black ink and is positioned above the printed name.

Gary Baldwin

Assistant Superintendent of Personnel and Student Services

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

**HB 353 – Jury duty exemption for certain teachers  
Email comment in support\* (emphasis added)**

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*I believe all of our teachers need to be in the classroom to get ready for testing, as none of our substitutes are trained teachers. Out of 11 certified teachers, 5 have already been requested for jury duty, which is close to half, and the year is not over.*

Marie Wierema  
Lower Kuskokwim School District

*Many of my school staff have been called for jury duty, and often, more than one each quarter. I, myself, have been called several times for service in Bethel, and more recently for federal service in Anchorage.*

*My experience with the Bethel jury service is that it is not possible for teachers to make "real" lesson plans for the duration of their service. The system is set so that one cannot know until 4:30 if jury members need to appear in Bethel the following morning. By the time you get notice that you have to go to Bethel in the evening to be present for an 8:30 jury call, there isn't time to alter one's lesson plans for a substitute. Therefore, teachers tend to write plans for easy to follow activities for a non-certified substitute.*

*Village teachers are faced with two problems. First, airplanes must fly in the daylight, and during much of the school year there isn't a great deal of that after school is dismissed. By the time a teacher calls in to Bethel and discovers that s/he must fly to Bethel, there is barely time to grab a change of clothes and run to the airport to catch the mail plane. The second issue is that we don't have any people with teaching certificates sitting around the village waiting to be called in as a substitute. When a teacher is out, the best we can manage is to bring in a recent high school graduate who isn't otherwise employed. The students are the ones who suffer from interruption of their learning.*

*I've always felt that a well-educated population is less likely to commit crimes, and that effective teachers in the classroom contribute to a lower crime rate. Let the teachers teach, and the students learn, and we might not have need for so many trials and juries.*

Felicia Griffith-Kleven  
Lower Kuskokwim School District

*I just finished the three month long stint of jury duty service last month. I can assure you that it did have a negative impact on my students and our school. Partly because I missed many of my classes and partly because of the stress it caused. I never knew until the morning if I would have to fly into Bethel for jury duty or not. Several times the jury was cancelled at the last minute, sometimes before I left the village and sometimes after I arrived in Bethel. Sometimes ice or weather conditions made it impossible to go and all the time I worried that ice or weather conditions would prevent me from returning home if I did make it in. In the end I was never selected to be on a jury.*

Franklin A. Cook  
Nunapitchuk

*I would like to voice my support of the Jury Duty Bill. As the site administrator at Eek School I am very concerned about the impact of having teachers, administrators, and other staff members pulled away from their duties at the school for jury duty. This has a negative impact on our instructional program in terms of student academic growth and achievement.*

*It is almost impossible to find qualified substitute teachers to fill these vacancies. If we are serious about improving student academic growth and achievement we need to seriously consider exempting school staff (teachers, administrators, aides) from jury duty. It is extremely difficult to run an effective educational program with the constant disruption of having our highly qualified staff members pulled away from their duties.*

Daniel Walker  
Eek

*I am the Director of Special Education for LKSD, which includes 21 village schools and four schools in Bethel and have been in this position for 6 years.*

*Jury duty has a tremendous impact when a special education teacher or district office special education specialist is called to serve. As you know, special education services are mandated by law. There are times when a student must, by law, be served by a certified special education teacher, not a sub or an aide. When a certified special education teacher is gone, we are out of compliance on some of our students' IEP's. This means that the parents can file a complaint against us with EED or file for due process. Both of these options are extremely costly to the district and stressful to the people involved.*

*We do the best we can to serve the student appropriately within the law and per their IEP's, but if the certified sp ed teacher or district office specialis is absent for any length of time, then it puts the district into situation of potential liability.*

Linae Sanger  
Special Education Director  
Lower Kuskokwim School District

*Serving for one month instead of three would be a great improvement for the teacher and his/her students, but would not eliminate the impact, and it would not in itself reduce the total burden of missing staff serving jury duty. The burden would just be spread around to more teachers and classrooms.*

Larry Ctibor, Site Administrator  
M.E. Primary School  
Lower Kuskokwim School District

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: HB 353  
 (H) Publish Date: 2/18/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Jury Duty For Teachers BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative Kapsner  
 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 353.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
 Division Alaska Court System Date/Time 2/12/04 9:54 AM  
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/12/2004  
 Agency Alaska Court System

# FISCAL NOTE

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

Fiscal Note Number: 2  
 Bill Version: HB 353  
 (H) Publish Date: 2/18/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Education & Early Development  
 Title "An Act relating to jury duty and amending RDU Education Support Services  
Rule 15(k), Alaska Rules of Administration." Component Executive Administration  
 Sponsor Representative Kapsner  
 Requester \_\_\_\_\_ Component No. 2736

**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	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0
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 allows a teacher to be exempt from serving as a juror if they are a teacher at a school that failed to make AYP.

Prepared by: Erdy Jeans, School Finance Manager Phone 465-8679  
 Division: Education and Support Services Date/Time 2/17/04 9:21 AM  
 Approved by: \_\_\_\_\_ Date 2/17/2004  
 Agency: Education & Early Development

# SENATE COMMITTEE REPORT

DATE: 5/1/04

FURTHER:

DATE TURNED  
IN TO OFFICE: 5.07.04

Health, Education and Social Services Committee considered CS FOR HOUSE BILL NO. 353(JUD)

## HB 353 JURY DUTY EXEMPTION FOR CERTAIN TEACHERS

"An Act exempting certain teachers at certain schools from jury service during school terms; and amending Rule 15(k), Alaska Rules of Administration."

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#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Acs	2/12			✓	1
EED	2/17			✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Richard L. Lutz</i>	✓			
<i>Betty Davis</i>	✓			
<i>Gary Miller</i>			✓	
CHAIR: <i>John Brown</i>	✓			

**HB**

**381**

# Alaska State Legislature

*Session:*  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
Fax: (907) 465-6592



*Interim:*  
716 W 4<sup>th</sup> Avenue, Suite 300  
Anchorage, AK 99501-2133  
Phone: (907) 269-0250  
Fax: (907) 269-0249

**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

---

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.

# Alaska State Legislature

*Session:*  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
Fax: (907) 465-6592



*Interim:*  
716 W 4<sup>th</sup> Avenue, Suite 430  
Anchorage, AK 99501-2133  
Phone: (907) 269-0250  
Fax: (907) 269-0249

**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.

# Alaska State Legislature

*Session:*  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
Fax: (907) 465-6592



*Interim:*  
716 W 4<sup>th</sup> Avenue, Suite 430  
Anchorage, AK 99501-2133  
Phone: (907) 269-0250  
Fax: (907) 269-0249

Representative Lesil McGuire  
Chair, Judiciary Committee

## 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

---

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

---

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

---

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>	✓			

**HB**

**385**

# Alaska State Legislature

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Juneau, AK 99801  
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Representative Lesil McGuire  
Chair, Judiciary Committee

## SPONSOR STATEMENT

### HB 385

*"An Act relating to awarding child custody; and providing for an effective date."*

Domestic violence is often a significant factor in divorce and child custody proceedings. According to the Administration for Children and Families, U.S. Department of Health and Human Services, domestic violence is the leading cause of injury to women in the United States. The American Psychological Association, the American Medical Association, the American Bar Association Center on Children and the Law, and numerous other organizations have recommended that if domestic violence has occurred in a relationship, the offender should not receive sole or joint legal or physical custody of children. A unanimous Joint Resolution of Congress, H. Con. Res. 172, adopted in 1990, urged states to adopt the statutory presumption "that it is detrimental to the child to be placed in the custody of the abusive spouse."

When children witness violence in the home, they have been found to suffer many of the symptoms that are experienced by children who are directly abused. Children exposed to domestic violence face increased risks that they will be killed or injured by the violence, that their emotional, physical and mental development will be adversely affected, and that they will be neglected or abused. We commonly encounter the mistaken assumption among professionals, including judges and custody evaluators, that children are in less danger from a batterer once a couple is no longer living together, when the reality is often the opposite.

By the end of the 2002 legislative session, 23 states had adopted the approach of the Model Code of the Family Violence Project of the National Council of Juvenile and Family Court Judges. This model state statute clearly states that there should be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. It emphasizes that the safety and well-being of the child and the parent who is the victim must be primary.

Unfortunately, courts sometimes apply psychological pressures that keep women tied to their abusers. "Friendly parent" statutes ask courts to assess each parent's willingness to co-parent when making custody decisions. Despite their reasonable reluctance to co-parent, battered women may end up being labeled "uncooperative," with an increased risk of losing their children to theirs and their children's abuser. This perpetuates family violence from one generation to the next at great social cost to Alaskan society. Amazingly, "Studies show batterers are able to convince authorities that the victim is unfit or undeserving of sole custody in approximately 70% of challenged cases." (American Judges Association). Friendly parent statutes are often the tool used by abusive parents against the protective parent.

# Alaska State Legislature

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

Chair, Judiciary Committee

HB 385 serves to better protect children from the effects of domestic violence by achieving consistency between Alaska child protection statutes and child custody statutes. This bill incorporates the sense of the legislature in AS 47.10.011 (6), (7) & (8) and 1999's House Joint Resolution No. 36 that the effects of witnessing domestic violence is harmful to children, that parenting by a perpetrator of domestic violence places a child at a substantially higher risk of being directly abused, and that the sexual molestation of a child by their parents makes them unfit.

The bill also modifies our statutes "friendly parent" provision that inadvertently harms children, particularly in circumstances involving domestic violence, child abuse/sexual abuse and neglect. Alaska is in the minority of states that still have a "friendly parent" provision that inadvertently harms children, particularly in circumstances involving domestic violence, child abuse/sexual abuse and neglect. Also, while Alaska's child custody statutes specifically mention domestic violence as a factor to be considered, they allow wide discretion and do not give it special weight. It is simply one additional factor when considering the best interests of the child.

Effects of this violence on children have high costs in human lives and to our communities. Research has consistently shown that children who witness violence suffer a wide range of short and long-term emotional and behavioral problems that often follow them for life. These children are at higher risk for psychosomatic disorders, stuttering, anxiety and fears, sleep disruption, excessive crying, problems in school, drug and alcohol abuse, sexual acting out, running away, and even suicide. Boys who witness their fathers' abuse of their mothers or siblings are more likely to inflict severe violence as adults. Data suggest that girls who witness abuse may tolerate abuse as adults more than girls who do not.

Alaska ranks in the top 5 states in the nation for per capita rates of domestic violence. The rate of Alaskan women being killed by a partner is 1.5 times the national average. Alaska has 6 times the national average of reported child sexual assault. In 3 out of 4 reported cases, the victim knew the offender; the most commonly reported type of sexual abuse is a father who commits incest with his daughter--usually the eldest daughter. (AK Dept. of Health & Social Services)

HB 385 sends a clear message that we wish to halt the perpetuation of family violence from generation to generation and that perpetrators will be held accountable.

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Chair, Judiciary Committee

## SPONSOR STATEMENT

### CSHB 385(JUD)

*"An Act relating to awarding child custody; and providing for an effective date."*

EXPLANATION OF CHANGES  
(Between Version Q and Version W)  
ADOPTED BY THE HOUSE JUDICIARY COMMITTEE

**Amendment 1** - Page 4, lines 7  
Delete "only"

Page 4, lines 7, after "by"  
Delete, "clear and convincing"  
Insert "a preponderance of the evidence"

*Explanation* - These changes amend the original language found in the original version of HB 385 which set the evidentiary requirement to overcome the rebuttable presumption at "clear and convincing evidence". The amendment adopted by the House Judiciary Committee reduced that requirement to "a preponderance of the evidence" which comports to the general evidentiary standard in other civil proceedings. The intent of the amendment is to maintain the rebuttable presumption, but to make the standard more reasonable to overcome.

**Amendment 2** - Page 5, line 2, after "parent"  
Insert "unless the court finds that the domestic violence renders the parent unable to safely parent the child"

*Explanation* - The intent of this change was only to recognize the possibility that the abuse by one parent to the other could be so severe as to render the non-abusive parent physically incapable of their parenting responsibilities while recognizing other effects of the abuse do not constitute grounds for denying custody to the non-abusive parent.

**Amendment 3** - Page 5, line 2, after "constitute"  
Delete "a"  
Insert "the sole"

*Explanation* - The intent of this amendment was to clarify that, in general, suffering from the effects of abuse (psychological, emotional, or otherwise) do not constitute any basis for denying custody to the non-abusive parent except when the court deems those effects to be so severe that the parent is completely incapable of their parental duties.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: CSHB 385(JUD)  
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Awarding Child Custody 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 385.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
 Division Alaska Court System Date/Time 2/25/04 4:33 PM  
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/25/2004  
 Agency Alaska Court System



AUG./SEPT. 2003

National Conference of State Legislatures

# LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

VOL. 11, No. 36

## When Children Witness Domestic Violence

By Stephanie Walton

*Children exposed to violence at home also are more likely to become perpetrators or victims of domestic abuse as adults.*

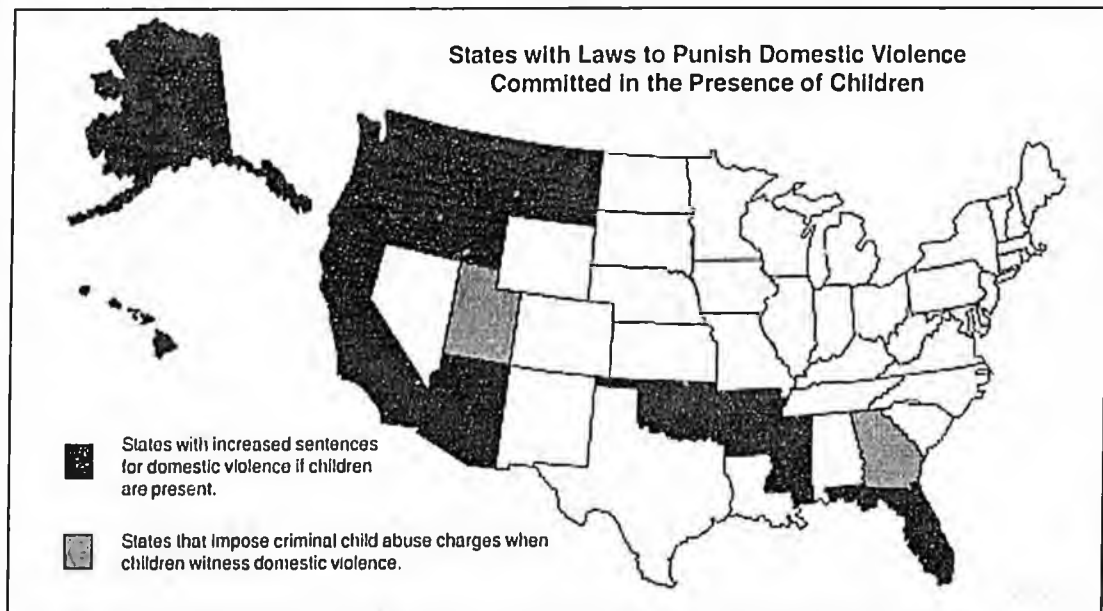
In homes where one partner abuses the other, children also are more likely to be abused. Hundreds of studies have documented the negative effects for children exposed to violence. Even when they aren't physically abused, they can show symptoms of trauma, which include:

- Increased aggression.
- Depression, anxiety and fear.
- Lower scores on verbal, motor and cognitive skills tests.
- Physical symptoms, including headaches, stomach aches, ulcers and asthma.

Children exposed to violence at home also are more likely to become perpetrators or victims of domestic abuse as adults, according to the American Psychological Association.

### State Action

At least 12 states allow or mandate increased penalties for a perpetrator if a child witnessed the domestic violence. Most of these laws allow courts to increase sentences, while a few require stiffer sentences. Oklahoma law, for example, requires the minimum penalty for domestic violence to be increased to a six-month sentence if a child is present. There is a one-year sentence for a second or subsequent violation in the presence of a child. In Oregon, a fourth-degree domestic violence assault is raised from a Class A misdemeanor to a Class C felony if a child is present. Delaware, Georgia and Utah can charge defendants with a separate crime of child abuse when children witness a violent episode.



In most states, these laws are only a few years old, but their effects are already apparent. In Multnomah County, Ore., felony domestic violence charges rose nearly 150 percent after the stricter sentencing law was passed. Prosecutors in Georgia and Utah report they use the child abuse charges as additional "bargaining chips," leading to more convictions. Law enforcement officers in these states also are more likely to note in their crime reports whether children were present during a domestic violence incident. In addition, prosecutors are more likely to report the affected families to child welfare agencies, even though the laws don't require it.

**Advantages and Disadvantages.** Proponents of stiffer laws argue that criminal laws for violence in the presence of a child increase batterer accountability. In some states children become eligible for crime victim services and compensation. The laws also increase public awareness of the harm on children. Also, prosecutors have another way to pursue charges if the adult victim doesn't cooperate. Finally, a study commissioned by the National Institute of Justice suggests that such laws educate prosecutors, police and the courts about the harmful effects on children.

Opponents argue that prosecutors who use these laws as bargaining chips trivialize the real damage inflicted on children. They also note that since prosecutors are more likely to report families to child welfare agencies in states with these laws, workers need to be trained to understand the dynamics of family violence. Without training, they may hold victims responsible for exposing children to violence and remove them from the family. This can further traumatize both the children and the victim parent—although in some instances, the removal may be warranted. Children also may be required to testify against the batterer in court. This can frighten and confuse them, especially if the batterer is a parent. Finally, opponents say these laws increase the burden on the criminal justice system when state budgets already are severely strained.

**Other Approaches.** Some states have taken different approaches. Alaska law includes witnessing domestic violence as civil child maltreatment, and authorizes child welfare intervention. Advocates claim, however, that, in some cases, removing children penalizes the victim for the perpetrator's behavior. She may be held responsible for failing to protect her children. Child welfare agencies are removing children from homes even under more general "failure to protect" regulations.

Other states, including Alaska, focus efforts at the local level, providing cross-training for domestic violence workers, child welfare agencies, police officers, prosecutors, judges, probation officers and others who need to understand how witnessing domestic violence affects children. Localities in Colorado, Massachusetts and a number of other states place domestic violence advocates in child welfare offices to increase communication and understanding between the two systems.

It will take time to understand how states can best respond to help domestic violence victims and their children, but everyone agrees on the ultimate goal: keeping families safe.

### Selected References

- Christian, Steve. "Children's Exposure to Domestic Violence: Is It Child Abuse?" *State Legislative Report* (National Conference of State Legislatures) 27, no. 1 (January 2002).
- Schechter, Susan, and Jeffrey L. Edleson. *Effective Interventions in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*. Reno, Nev: National Council of Juvenile and Family Court Judges, 1999.
- Whitcomb, Debra. "Prosecutors, Kids, and Domestic Violence Cases." *NIJ Journal*, no. 248 (2002).

### Contact for More Information

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*Proponents of stiffer laws argue that they increase batterer accountability.*

*Opponents argue that prosecutors may hold victims responsible for exposing children to violence.*

*Other states focus efforts at the local level.*

domestic violence; and community organizing. The conclusion, Part VI, notes that while the passage of such statutes is not a "quick fix" to the fundamental problems presented by these cases, the process of enactment and implementation of the presumption statutes is worthwhile, as another step on the long road toward the elimination of domestic violence.

## II. DEVELOPMENT OF REBUTTABLE PRESUMPTION STATUTES

### A. *Historical Custody Standards*

Until the 1970s and the advent of no-fault divorce, abuse by one parent of the other was considered quite relevant to custody decisions throughout the United States, as this was evidence of the abuser's poor morals.<sup>2</sup> While the rate of divorce was low, victims of domestic violence were usually awarded custody of the parties' children.<sup>3</sup>

A significant change in custody decisions took place in the 1970s, as most U.S. states amended their divorce laws from fault-based divorce to no-fault divorce.<sup>4</sup> Under the new regime, domestic violence was no longer seen as relevant by divorce courts; judges were trained to look toward the future, not admit evidence of past misdeeds, and to consider the parents as generally equally qualified to be custodians of children.<sup>5</sup> Unless the children were physically harmed, what a husband did to his wife<sup>6</sup> was not seen as relevant to his ability to parent.<sup>7</sup>

No-fault divorce was generally hailed as a progressive move,

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2. Naomi R. Cahn, *Civil Images Of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1043 (1991).

3. *Id.*

4. *Id.* See also Note, *Developments in the Law: Legal Response to Domestic Violence, VI. Battered Women and Child Custody Decisionmaking*, 106 HARV. L. REV. 1597, 1597 (1993).

5. Lynne R. Kurtz, *Protecting New York's Children: An Argument for the Creation of a Rebuttable Presumption Against Awarding a Spouse Abuser Custody of a Child*, 60 ALB. L. REV. 1345, 1347 (1997).

6. While domestic violence can be committed by either sex, most domestic violence is committed by men against women. The U.S. Dept. of Justice reported in 1998 that a woman is seven to fourteen times more likely to be severely injured by an intimate than a man is. Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey*, NATIONAL INSTITUTE OF JUSTICE, at <http://www.ncjrs.org/pdffiles/172837.pdf> (last visited Oct. 3, 2001).

7. Cahn, *supra* note 2, at 1044; Kurtz, *supra* note 5, at 1347.

both by feminists and by fathers' rights groups.<sup>8</sup> Fathers' rights groups celebrated this as a move away from what they saw as gender bias, whereby mothers were allegedly awarded custody solely by virtue of their sex. However, the emphasis on no longer making findings of fault set the stage for courts refusing to consider domestic violence as a relevant factor in custody decisions. Domestic violence was not seen as affecting the best interests of the child unless the child was also physically abused.<sup>9</sup> And even though the overlap between partner abuse and physical child abuse is great,<sup>10</sup> courts often failed to acknowledge this connection in making custody decisions.<sup>11</sup>

*B. Move To Allow, Then Require Courts To Consider Domestic Violence In Custody Decisions*

By the 1980's, the domestic violence movement had become a vocal presence, and was developing some sophistication in terms of changing entrenched policies. Advocates began to call for legislators and courts to protect children from batterers.<sup>12</sup> Feminists stressed the harmful effects of exposure to domestic violence on children, and stated that it is not actually possible to be a violent husband and a good father.<sup>13</sup>

At the same time, there was a strong trend toward trying to keep fathers close to their children. Father's rights groups pushed for, and succeeded in getting, legislation stressing the importance of joint custody.<sup>14</sup> Families were no longer seen as "broken," but

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8. LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION* (1985); MICHAEL WHEELER, *NO-FAULT DIVORCE* (1974); Erin R. Melnick, *Reaffirming No-Fault Divorce: Supplementing Formal Equality with Substantive Change*, 75 *IND. L. J.* 711, 714 (2000); Herma Hill Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, 56 *U. CIN. L. REV.* 1, 2 (1987). See generally, Herma Hill Kay, *An Appraisal of California's No-Fault Divorce Law*, 75 *CAL. L. REV.* 291 (1987); Howard Krom, *California's Divorce Law Reform: A Historical Analysis*, 1 *PAC. L. J.* 156 (1970).

9. Charlotte Germane et al., *Mandatory Custody Mediation and Joint Custody Orders in California: The Danger for Victims of Domestic Violence*, 1 *WOMEN'S L.J.* 175, 179 (1985).

10. PETER G. JAFFE ET AL., *CHILDREN OF BATTERED WOMEN*, 20-21 (1990); see *infra* note 35 (citing social science literature about effects of domestic violence on children).

11. Germane et al., *supra* note 9.

12. *Id.*

13. *Id.*

14. Nancy K. Lemon, *Joint Custody as a Statutory Presumption: California's New Civil Code Sections 4600 and 4600.5*, 11 *GOLDEN GATE U. L. REV.* 485, 505, 510, 516 (1981); Germane et al., *supra* note 9, at 181-182.

instead were "in transition," with the goal being that both parents were still involved in their children's lives.<sup>15</sup> In some cases, courts gave fathers more time with their children than they had generally spent with them while living with the children's mother; in these cases the goal was not merely to continue the father/child relationship, but to try to strengthen it.

Legislatures started to respond to both these groups. Some states enacted laws stating that domestic violence could be taken into account in making custody decisions, but leaving the decision up to the judge whether or not to even admit such evidence.<sup>16</sup> Other states went further, actually mandating that judges consider domestic violence.<sup>17</sup>

A few states passed laws stating that perpetration of domestic violence was detrimental to children.<sup>18</sup> Others required that judges state their reasons for awarding custody to alleged or proven batterers on the record<sup>19</sup> or make findings of fact that joint custody is not detrimental to the children despite the violence, if joint custody were granted in a domestic violence case.<sup>20</sup>

Meanwhile, many states were also enacting laws allowing for or preferring joint custody of children. Some states created presumptions favoring joint custody if the parents agreed to it<sup>21</sup> or required judges to state their reasons for denying joint custody.<sup>22</sup>

In all too many cases, these two trends worked at cross-purposes. Given the high rates of domestic violence in the U.S.,<sup>23</sup> especially among divorcing couples,<sup>24</sup> there were many cases in

15. Germane et al., *supra* note 9, at 181-82.

16. See Barbara J. Hart, *Custody and Visitation Decision-Making When There are Allegations of Domestic Violence*, at <http://www.mincava.umn.edu/hart/telecon.htm>.

17. See, e.g., ALASKA STAT. § 25.20.090 (Michie 2000); OHIO REV. CODE ANN. § 3109.04 (West 2000).

18. The Family Violence Project of the Nat. Council of Juv. & Fam. Ct. Judges, *Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice*, 29 FAM. L. Q. 199, 225-227 (1995) [hereinafter Family Violence Project].

19. See, e.g., CAL. FAM. CODE § 3011 (West 1994), N.H. REV. STAT. ANN. § 458:17(II)(c) (1992).

20. See, e.g., N.H. REV. STAT. ANN. § 458:17(II)(c) (1992); OHIO REV. CODE ANN. § 3109.04 (West 2000).

21. See, e.g., CONN. GEN. STAT. ANN. § 46b-56a (1995); N.H. REV. STAT. ANN. § 458:17(II)(c) (1992); see also Lemon, *supra* note 14, at 500 (discussing the legislative history of the first joint custody statute in the U.S.).

22. See, e.g., CONN. GEN. STAT. ANN. § 46b-56a (1995); N.H. REV. STAT. ANN. § 458:17(II)(c) (1992).

23. Tjaden & Thoennes, *supra* note 6.

24. Estimates of the incidence of wife-beating range from at least one in three marriages to up to one-half of all marriages. M. STRAUS ET AL., BEHIND CLOSED

which courts were presented with one parent arguing for joint custody and the other parent arguing that the history of domestic violence should preclude such a decision. Starting in 1991, some states resolved this conflict by enacting statutes creating a presumption against custody to batterers.<sup>25</sup>

### III. INCREASING SUPPORT FOR ENACTMENT OF REBUTTABLE PRESUMPTIONS AGAINST CUSTODY TO BATTERERS

#### A. Policy Statements

There were several bases for this new trend. The first U.S. national policy statement supporting a rebuttable presumption in domestic violence cases was H. R. Congressional Resolution 172: "It is the sense of Congress that, for purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse."<sup>26</sup> While Congress does not have the authority to tell states how to handle custody decisions, this Resolution was intended to encourage states to pass their own statutes establishing such presumptions.

In 1994, the National Council of Juvenile and Family Court Judges released the Model Code on Domestic and Family Violence.<sup>27</sup> This Code was developed in conjunction with legislators, the American Bar Association, the American Medical Association, domestic violence experts, prosecutors, and defense counsel over a period of three years.<sup>28</sup> Section 401 of the Model Code states:

In every proceeding where there is at issue a dispute as to

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DOORS: VIOLENCE IN THE AMERICAN FAMILY 31 (1980); Eisenberg & Micklow, *The Assaulted Wife: 'Catch 22' Revisited*, 3 WOMEN'S RTS. L. REP. 138 (1977); Laurie Woods, *Litigation on Behalf of Battered Women*, 7 WOMEN'S RTS. L. REP. 39, 41 (1981). See also HOFF ET AL., INTERSTATE CHILD CUSTODY DISPUTES AND PARENTAL KIDNAPPING: POLICY, PRACTICE AND LAW 3-15 (1982) (scope of wife battering and the extent of underreporting).

25. Family Violence Project, *supra* note 18, at 208.

26. H.R.J. Res. 172, 101st Cong. (1994) (sponsored by Rep. Constance Morella and passed unanimously on Oct. 25, 1990).

27. NAT. COUNCIL OF JUV. AND FAM. CT. JUDGES, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE (1994), [hereinafter MODEL CODE].

28. Christine L. Bailey & Maureen Sheeran, *The Model Code on Domestic and Family Violence: A Call for Legislative Action and Community Response*, NEV. PUB. AFF. REV. 24 (Legis. Issues: 1995).

the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.<sup>29</sup>

The American Bar Association (ABA) passed a resolution in August 1989 that joint custody is inappropriate in cases in which spouse abuse, child abuse, or parental kidnapping is likely to occur.<sup>30</sup> In 1994, the ABA published a report to its president suggesting the adoption of statutes creating a presumption against custody to batterers.<sup>31</sup> In July 2000 the ABA adopted new policy statements with respect to domestic violence and custody, and recommended that states and lawyers take action to provide for the safety of adult and child domestic violence victims during visitation and visitation exchanges.<sup>32</sup>

In 1996, the American Psychological Association also recommended that states adopt such statutes:

In matters of custody, preference should be given to the nonviolent parent whenever possible, and unsupervised visitation should not be granted to the perpetrator until an offender-specific treatment program is successfully completed, or the offender proves that he is no longer a threat to the physical and emotional safety of the child and the other parent.<sup>33</sup>

Similarly, the Uniform Adoption Act provides for terminating a father's rights if "the respondent has been convicted of a crime of violence or of violating a restraining or protective order, and the facts of the crime or violation and the respondent's behavior indicate that the respondent is unfit to maintain a relationship of

29. MODEL CODE, *supra* note 28, § 410, at 33.

30. A.B.A. HOUSE OF DELEGATES, APPROVED RESOLUTIONS RELATED TO DOMESTIC VIOLENCE (1989); *see also* A.B.A. Model Joint Custody Statute, 15 FAM. L. REV. 1494, 1495 (1989) (requiring courts to consider domestic violence in making joint custody awards).

31. Howard Davidson, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE A.B.A. (1994).

32. Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Redefining Families, Reforming Custody Jurisdiction, and Refining Support Issues*, 34 FAM. L.Q. 607, 626 (Winter, 2001). For content of new A.B.A. policies, see <http://www.abanet.org> (last visited Oct. 3, 2001).

33. A.B.A., VIOLENCE AND THE FAMILY, 99 (1996).

parent and child with the minor . . . ."<sup>34</sup>

### 1. Social Science Literature

Another reason statutes establishing a presumption against custody to batterers were enacted was the growing body of social science literature showing the often severe and long-lasting effects of domestic violence on children.<sup>35</sup> This literature also argued that joint custody was contraindicated when there has been family violence.<sup>36</sup>

### 2. Mothers Losing Custody

Furthermore, studies and articles started to show that when fathers in general or batterers in particular fought for custody, they usually won.<sup>37</sup> There are also many cases in which mothers initially

34. UNIFORM ADOPTION ACT § 3-504 (1994).

35. ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN (E. Peled et al., eds., 1995); P.G. JAFFE ET AL., CHILDREN OF BATTERED WOMEN (1990); D.A. Wolfe et al., *Children of Battered Women: The Relation of Child Behavior to Family Violence and Maternal Stress*, 53 J. CONSULTING & CLINICAL PSYCHOL. 657 (1985); N.Z. Hilton, *Battered Women's Concerns About their Children Witnessing Wife Assault*, 7 J. INTERPERSONAL VIOLENCE 77 (1992); J.R. Johnston & L.E.G. Campbell, *Parent-child Relationships in Domestic Violence Families Disputing Custody*, 31 FAM. & CONCILIATION CTS. REV. 282, 282-83 (1993); M. Roy, *Children in the Crossfire*, HEALTH COMM. (1988); P.G. Jaffe et al., *Child Witnesses of Woman Abuse: How Can Schools Respond?*, 14 RESPONSE TO VICTIMIZATION OF WOMEN AND CHILDREN 12 (1992); D. G. Saunders, *Child Custody Decisions in Families Experiencing Wife Abuse*, 39 SOC. WORK 51 (1994).

36. L. Crites & D. Coker, *What Therapists See That Judges May Miss: A Unique Guide to Custody Decisions When Spouse Abuse is Charged*, JUDGES J. 9-13 (Spring, 1988); Germane et al., *supra* note 9; M. D. Pagelow, *Justice for Victims of Spouse Abuse in Divorce and Child Custody Cases*, 8 VIOLENCE & VICTIMS 69 (1993); Pauline Quirion, *Increased Protection for Children from Violent Homes: The Presumption Against Awarding Child Custody to a Batterer*, 16 MASS. FAM. L. J. 67 (1998); Saunders, *supra* note 35, at 56 (citing R. E. Emery and M. M. Wycer, *Divorce Mediation*, 42 AM. PSYCHOLOGIST 472 (1987)).

37. Pagelow, *supra* note 36 (citing R. Geffner & M. Pagelow, *Victims of Spouse Abuse*, in TREATMENT OF FAMILY VIOLENCE: A SOURCEBOOK 81-97 (R. T. Ammerman & M. Hersen, eds.) (1990)); L. A. Marks, *Mandatory Mediation of Family Law and Domestic Violence Cases*, NCADV VOICE, 18-22 (Winter, 1988); M. B. Liss & G. B. Stahly, *Domestic Violence and Child Custody*, in BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE 175 (M. Hansen & M. Harway, eds., 1993); J. Zorza, *Protecting the Children: Custody Disputes When One Parent Abuses the Other*, 29 CLEARINGHOUSE REV. 1113 (April 1996) (citing R. I. ABRAMS AND J. M. GREANEY, REPORT OF THE GENDER BIAS STUDY OF THE SUPREME JUDICIAL COURT [OF MASSACHUSETTS] 62-63 (1989) that stated fathers won in seventy percent of contested custody cases and noting that this report also cites similar findings from California and the entire nation); M. A. Mason & A. Quirk, *Are Mothers Losing Custody? Read My Lips: Trends*

or eventually lost custody due to their inability to get along with the fathers. In some of these, in which there were no allegations of partner abuse, the court first awarded joint custody, then found after awhile that this was unworkable due to continued conflict between the parents.<sup>38</sup>

In other cases, there was extensive evidence of partner abuse. The fact that a formerly battered mother and her former batterer are not able to co-parent effectively is not at all surprising. However, it is very unfortunate that many courts are still so unaware of how domestic violence dynamics enter into custody cases. One wonders why the court ever expected people in this situation to suddenly be able to cooperate.

An example of such a case is found in *In re Marriage of Devilbiss*.<sup>39</sup> In that case, the evidence included fifteen police reports, testimony by the daughter that the father used to hit the mother, and allegations that he also choked the daughter.<sup>40</sup> However, the court ignored this evidence in its order changing the joint custody order to "rotating custody."<sup>41</sup> Under this arrangement, the daughter was ordered to live with her mother for seven months each year and with her father for five months.<sup>42</sup> The court noted that the parents had not been able to cooperate as required by the joint custody order.<sup>43</sup> Another example is found in

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*in Judicial Decision-Making in Custody Disputes—1920, 1960, 1990, and 1995*, 31 FAM. L. Q. 215 (1997) (citing a study finding that fathers won in sixty-three percent of contested custody cases, Lisa Genasci, *Increasingly, Working Mothers Lose in Custody Fights*, L.A. TIMES, January 20, 1995, at D8); Mary Lynne Vellinga, *Custody Laws Under Fire: Parents Who Batter Often Allowed to Retain Joint Care*, SACRAMENTO BEE, March 23, 1997, at A1.

38. See, e.g., *In re Marriage of Cobb*, 988 P.2d 272, 273 (Kan. Ct. App. 1999) (court briefly mentions without comment allegations that father abused child, then changed joint custody award to sole custody to father due to parents' inability to co-parent); *Brown v. Brown*, 19 S.W.3d 717, 722-23 (Mo. Ct. App. 2000) (without any allegations of abuse, the court modified the joint custody arrangement to sole custody to the father because of the mother's unwillingness to co-parent and that the father is best suited to make decisions in the best interests of the child); *Thomas v. Thomas*, 991 P.2d 7, 10 (N.M. Ct. App. 1999) (noting no allegations of abuse, the court changed joint custody to sole to father due to parents' inability to co-parent).

39. 719 N.E.2d 375 (Ill. App. Ct. 1999).

40. *Id.* at 378-80.

41. *Id.* at 383.

42. *Id.* at 380 (affirming the trial court's ruling that the daughter live with the father from the first Saturday after the end of the school year to the first Saturday of November).

43. *Id.* at 385.

*Canty v. Canty*,<sup>44</sup> in which the trial court modified the joint legal and split physical custody award to sole physical custody with the father, in spite of his admitting that he had committed domestic violence on the mother.<sup>45</sup> The appellate court upheld this order, noting that the evidence of domestic violence was merely one factor in the best interests analysis.<sup>46</sup>

In all too many cases, batterers are in effect using the family courts to re-victimize their victims.<sup>47</sup> Instead of preventing this, courts sometimes collude with this behavior by awarding the batterer joint custody, sole custody, or extensive unsupervised visitation. While examining appellate cases decided in states without such a presumption or before the enactment of the presumption is beyond the scope of this article, it is noteworthy that in many such cases judges clearly ignored extensive histories of domestic violence in making custody decisions.<sup>48</sup>

#### IV. DESCRIPTION OF STATUTES ESTABLISHING PRESUMPTIONS AGAINST CUSTODY TO BATTERERS

##### A. Overview

In response to the growing body of policy statements, studies, articles and cases, states started to adopt statutes establishing a rebuttable presumption against custody to batterers.<sup>49</sup> As of January 2001, there were sixteen states plus the District of

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44. 874 P.2d 1000 (Ariz. Ct. App. 1994).

45. *Id.* at 1005.

46. Arizona later amended its custody statute to provide that domestic violence created a presumption against custody to the batterer. ARIZ. REV. STAT. § 25-403 (2000).

47. This problem is described at length in Leigh Goodmark, *From Property to Personhood: What the Legal System Should do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237 (1999). See also, Quirion, *supra* note 36, at 67.

48. See cases described in Goodmark, *supra* note 47, at 254-75. See also, NANCY K. D. LEMON, DOMESTIC VIOLENCE & CHILDREN: RESOLVING CUSTODY AND VISITATION DISPUTES, FAMILY VIOLENCE PREVENTION FUND, 39-40 (1995). But see *Bruscato v. Bruscato*, 593 So. 2d 838 (La. Ct. App. 1992) (remanding case for more thorough evaluation and retrial where batterer father was awarded sole custody even though rebuttable presumption was not yet in effect).

49. For an argument in favor of the adoption of such a presumption in Massachusetts, see Pauline Quirion et al., *Commentary: Protecting Children Exposed To Domestic Violence In Contested Custody And Visitation Litigation*, 6 B.U. PUB. INT. L.J. 501 (1997). A similar argument in New York is found in Kurtz, *supra* note 6, at 1346.



American Bar Association

Return to: <http://www.abanet.org/domviol/stats.html>

## *American Bar Association Commission on Domestic Violence*

### **PREVALENCE**

Domestic violence crosses ethnic, racial, age, national origin, sexual orientation, religious and socioeconomic lines.

- by the most conservative estimate, each year 1 million women suffer nonfatal violence by an intimate.  
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesignated Survey (NCJ-154348), August 1995, p. 3.
- by other estimates, 4 million American women experience a serious assault by an intimate partner during an average 12-month period.  
American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.
- nearly 1 in 3 adult women experience at least one physical assault by a partner during adulthood.  
American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.
- 28% of all annual violence against women is perpetrated by intimates.  
Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women (NCJ-145325), January 1994.
- 5% of all annual violence against men is perpetrated by intimates.  
Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women (NCJ-145325), January 1994.
- during 1994, 21% of all violent victimizations against women were committed by an intimate, but only 4% of violent victimizations against men were committed by an intimate.  
Bureau of Justice Statistics Special Report: Sex Differences in Violent Victimization, 1994 (NCJ-164508), September, 1997, pp. 1-3.
- in 1993, approximately 575,000 men were arrested for committing violence against women. approximately 49,000 women were arrested for committing violence against men.  
American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.

### **RACE**

Race is not indicative of who is at risk of domestic violence.

- domestic violence is statistically consistent across racial and ethnic boundaries.  
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesignated Survey (NCJ-154348), August 1995, p. 3.

## AGE

Batterers and victims may experience domestic violence at any age.

- women ages 19-29 reported more violence by intimates than any other age group.  
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4.
- women aged 46 or older are least likely to be battered by an intimate.  
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4.
- in a 1990 restraining order study, the age of abusers ranged from 17 - 70. two-thirds of the abusers were between the ages 24 and 40.  
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? (1996), p.195.

## GENDER

An overwhelming majority of domestic violence victims in heterosexual relationships are women.

- 90 - 95% of domestic violence victims are women.  
Bureau of Justice Statistics Selected Findings: Violence Between Intimates (NCJ-149259), November 1994.
- as many as 95% of domestic violence perpetrators are male.  
A Report of the Violence against Women Research Strategic Planning Workshop sponsored by the National Institute of Justice in cooperation with the U.S. Department of Health and Human Services, 1995.
- much of female violence is committed in self-defense, and inflicts less injury than male violence.  
Chalk & King, eds., Violence in Families: Assessing Prevention & Treatment Programs, National Resource Council and Institute of Medicine, p. 42 (1998).
- during 1992-1993, women were 6 times more likely to experience violence by an intimate partner than men.  
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 1.
- the chance of being victimized by an intimate is 10 times greater for a woman than a man.  
Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women, 1994.
- 70% of intimate homicide victims are female.  
Bureau of Justice Statistics Selected Findings: Violence Between Intimates (NCJ-149259), November 1994.
- male perpetrators are 4 times more likely to use lethal violence than females.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.44, table 7.

## SAME-SEX BATTERING

Domestic violence occurs within same-sex relationships with the same statistical frequency as in heterosexual relationships.

- the prevalence of domestic violence among Gay and Lesbian couples is

approximately 25 - 33%.

Barnes, *It's Just a Quarrel*, American Bar Association Journal, February 1998, p. 25.

- **battering among Lesbians crosses age, race, class, lifestyle and socio-economic lines.**  
Lobel, ed., *Naming the Violence: Speaking Out About Lesbian Battering*, 183 (1986).
- **each year, between 50,000 and 100,000 Lesbian women and as many as 500,000 Gay men are battered.**  
Murphy, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 Val. U. L. Rev. 335 (1995).
- **while same-sex battering mirrors heterosexual battering both in type and prevalence, its victims receive fewer protections.**  
Barnes, *It's Just a Quarrel*, American Bar Association Journal, February 1998, p. 24.
- **seven states define domestic violence in a way that excludes same-sex victims; 21 states have sodomy laws that may require same-sex victims to confess to a crime in order to prove they are in a domestic relationship.**  
Barnes, *It's Just a Quarrel*, American Bar Association Journal, February 1998, p. 24.
- **many battered Gays or Lesbians fight back to defend themselves - it is a myth that same-sex battering is mutual.**  
Murphy, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 Val. U. L. Rev. 335 (1995).
- **by 1994, there were over 1,500 shelters and safe houses for battered women. many of these shelters routinely deny their services to victims of same-sex battering.**  
Murphy, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 Val. U. L. Rev. 335 (1995).
- **same-sex batterers use forms of abuse similar to those of heterosexual batterers. they have an additional weapon in the threat of "outing" their partner to family, friends, employers or community.**  
Lundy, *Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts*, 28 New Eng. L. Rev. 273 (Winter 1993).

## BATTERED IMMIGRANT WOMEN

Battered immigrant women face unique legal, social and economic problems.

- **domestic violence is thought to be more prevalent among immigrant women than among U.S. citizens.**  
Anderson, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 Yale L. J. 1401 (April 1993).
- **immigrant women may suffer higher rates of battering than U.S. citizens because they come from cultures which accept domestic violence, or because they have less access to legal and social services than U.S. citizens. in addition, immigrant batterers and victims may believe that the penalties and protections of the U.S. legal system do not apply to them.**  
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).
- **a battered woman who is not a legal resident, or whose immigration status depends on her partner, is isolated by cultural dynamics which may prevent her from leaving her husband or seeking assistance from the legal system. these factors contribute to the higher incidence of abuse among immigrant women.**  
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).

- some obstacles faced by battered immigrant women include: a distrust of the legal system arising from their experiences with the system in their native countries; cultural and language barriers; and fear of deportation.  
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).
- a battered immigrant woman may not understand that she can personally tell her story in court, or that a judge will believe her. based on her experience in her native country, she may believe that only those who are wealthy or have ties to the government will prevail in court. batterers often manipulate these beliefs by convincing the victim he will prevail in court because he is a male, a citizen or that he has more money.  
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).
- although a victim may be in the country legally by virtue of her marriage to the batterer, their status may be conditional; in this situation it is common for a batterer to exert his control over his wife's immigration status in order to force her to remain in the relationship.  
Jang, *Caught in a Web: Immigrant Women and Domestic Violence*, National Clearinghouse (Special Issue 1994), p. 400.
- undocumented women may be reported to Immigration and Naturalization Services by law enforcement or social services personnel from whom they may seek assistance.  
Jang, *Caught in a Web: Immigrant Women and Domestic Violence*, National Clearinghouse (Special Issue 1994), p. 397-399.
- a battered immigrant woman is often trapped in an abusive relationship by economics. she may have legal or practical impediments to obtaining employment or public assistance.  
Jang, *Caught in a Web: Immigrant Women and Domestic Violence*, National Clearinghouse (Special Issue 1994), p. 403.
- battered immigrant women who attempt to flee may have no access to bilingual shelters, financial assistance or food. it is unlikely that she will have the assistance of a certified interpreter in court, when reporting complaints to police or a 911 operator, or even in acquiring information about her rights and the legal system.  
Orloff et al., *With No Place to Turn: Improving Advocacy for Battered Immigrant Women*, Family Law Quarterly, vol. 29, no. 2, 313 (Summer 1995).

## WELFARE RECIPIENTS

Domestic violence may affect a woman's ability to financially support herself and her children.

- past and current victims of domestic violence are over-represented in the welfare population. the majority of welfare recipients have experienced domestic abuse in their adult lives, and a high percentage are currently abused.  
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 20 (1997).
- abused (past or current) welfare recipients experience higher levels of health or mental health problems such as a physical disability, or serious or acute depression.  
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 21 (1997).
- 15 - 50% of abused women report interference from their partner with education, training or work.  
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 22 (1997).

- welfare studies show that abused women do seek employment, but are unable to maintain it. it is possible that domestic violence presents a barrier to sustained labor market participation.  
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 22 (1997).
- examples of abusers' sabotage of their victims' attempts to work include: calling her employer and ordering the victim to quit; making allegations requiring the victim to appear before the police, court or social services; threatening to kill the victim; committing suicide in front of the victim; sabotaging the victim's car; beating her up on the way to an interview; stealing her work uniforms; starting fights each day before school or work; breaking the victim's writing arm repeatedly; manipulating her schedule by demanding visitation with the children; stalking; starting fights or threatening abuse which affects her ability to concentrate at work; or encouraging continued drug addiction.  
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, pp. 10-14 (1997).
- between one- and two-thirds of welfare recipients reported having suffered domestic violence at some point in their adult lives; between 15 - 32% reported current domestic victimization.  
Raphael & Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, p. 21 (1997).

## RECIDIVISM

Battering tends to be a pattern of violence rather than a one-time occurrence.

- during the six months following an episode of domestic violence, 32% of battered women are victimized again.  
Bureau of Justice Statistics: *Preventing Domestic Violence Against Women*, 1986.
- 47% of men who beat their wives do so at least 3 times per year.  
AMA Diagnostic & Treatment Guidelines on Domestic Violence, SEC: 94-677:3M:9/94 (1994).
- short term (6-12 week) psycho-educational batterer-intervention programs helped some batterers stop immediate physical violence but were inadequate in stopping abuse over time. some batterers became more sophisticated in their psychological abuse and intimidation after attending such programs.  
American Psychl. Ass'n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996), p. 85.
- six months after obtaining a protection order: 8% of victims reported post-order physical abuse; 26% reported respondent came to or called their home or workplace; 65% reported no further problems.  
CPOs: *the Benefits and Limitations for Victims of Domestic Violence*, National Center for State Courts Research Report, 1997.

## CHILDREN

Domestic violence has immediate and long term detrimental effects on children.

- each year, an estimated 3.3 million children are exposed to violence by family members against their mothers or female caretakers.  
American Psychl. Ass'n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996), p. 11.

- in homes where partner abuse occurs, children are 1,500 times more likely to be abused.  
Department of Justice, Bureau of Justice Assistance, Family Violence: Interventions for the Justice System, 1993.
- 40-60% of men who abuse women also abuse children.  
American Psychol. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 80.
- fathers who batter mothers are 2 times more likely to seek sole physical custody of their children than are non-violent fathers.  
American Psychol. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 40.
- in one study, 27% of domestic homicide victims were children.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p. 45, table 11.
- when children are killed during a domestic dispute, 90% are under age 10; 56% are under age 2.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.51, table 28.

## DATING VIOLENCE

Violence against intimates may occur even though the victim does not live with her abuser.

- violence against women occurs in 20% of dating couples.  
American Psychol. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.
- an average of 28% of high school and college students experience dating violence at some point.  
Brustlin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol. 29, no. 2, 331 (Summer 1995) (citing Levy, In Love & In Danger: a teen's guide to breaking free of an abusive relationship, 1993).
- 26% of pregnant teens reported being physically abused by their boyfriends. about half of them said the battering began or intensified after he learned of her pregnancy.  
Brustlin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol. 29, no. 2, 333-334 (Summer 1995) (citing Worcester, A More Hidden Crime: Adolescent Battered Women, The Network News, July/Aug., national Women's Health Network 1993).
- victims of dating violence report the abuse takes many forms: insults, humiliation, monitoring the victim's movements, isolation of the victim from family and friends, suicide threats, threats to harm family or property, and physical or sexual abuse. their abusers also blamed them for the abuse, or used jealousy as an excuse.  
Brustlin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol. 29, no. 2, 336 (Summer 1995) (citing Gamache, Domination and Control: The Social Context of Dating Violence, in Dating Violence, Young Women in Danger, Levy, ed. 1991).
- 25 - 33% of adolescent abusers reported that their violence served to "intimidate," "frighten," or "force the other person to give me something."  
Brustlin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol. 29, no. 2, 335 (Summer 1995).

## SELF-DEFENSE

Many battered women attempt to physically defend themselves

from abuse.

- marital homicide differs significantly by gender: a large proportion of the killings by women are acts of self-defense, while almost none of the killings by men are acts of self-defense.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project: Executive Summary, 1997.
- defensive action by battered women to protect themselves or their children is often interpreted by law enforcement as an act of domestic violence. the number of battered women arrested for committing acts of violence against their partners has disproportionately increased in communities that overuse "dual arrest."  
Promising Practices Initiatives Report on the Expert Panels on Domestic Violence, Sexual Assault and Stalking Technical Assistance Project, U.S. Department of Justice, 1997.

## PHYSICAL INJURY AND MEDICAL TREATMENT

Victims of domestic violence often require medical care, although they may conceal the cause of their injuries.

- female victims of violence are 2.5 times more likely to be injured when the violence is committed by an intimate than when committed by a stranger.  
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4.
- because domestic abuse is an ongoing cycle producing increasingly severe injuries over time, battered women are likely to see physicians frequently.  
Children's Safety Network, Domestic Violence: A Directory of Protocols for Health Care Providers (1992) p. (I).
- the rate of domestic violence detection by emergency room doctors is low.  
Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, Journal of the American Medical Association, vol.273, no. 22, 1763, 1766 (June 1995).
- although battered women comprise 20 - 30% of ambulatory care patients, only 1 in 20 is correctly identified as such by medical practitioners.  
Hyman et al., Laws Mandating Reporting of Domestic Violence: Do They Promote Patient Well-Being?, Journal of the American Medical Association, vol. 273, no. 22, 1781 (June 1995).
- one study found that less than 3% of women visiting emergency rooms disclosed or were asked about domestic violence by a nurse or physician.  
Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, Journal of the American Medical Association, vol. 273, no. 22, 1763, 1766 (June 1995).
- the use of emergency room protocols for identifying and treating victims of domestic violence has been found to increase the identification of victims by medical practitioners from 5.6% to 30%.  
Children's Safety Network, Domestic Violence: A Directory of Protocols for Health Care Providers (1992) p. (I).
- 17% of those who visit emergency rooms for treatment are documented as having come as a result of being injured by an intimate.  
Bureau of Justice Statistics: Violence-Related Injuries Treated in Hospital Emergency Departments (NCJ-156921), August 1997. p. 5.
- 37% of women injured by violence and treated in an emergency room were injured by an intimate; less than 5% of men injured by violence and treated in an emergency room were injured by an intimate.  
Bureau of Justice Statistics: Violence-Related Injuries Treated in Hospital Emergency Departments (NCJ-156921), August 1997. p. 5.

- 243,000 people receiving emergency room treatment for violence-related injuries in 1994 had been injured by an intimate. female victims outnumbered males 9 to 1.  
Bureau of Justice Statistics: Violence-Related Injuries Treated in Hospital Emergency Departments (NCJ-156921), August 1997, p. 5.
- "acute domestic violence" was the reason for 1 out of 9 patients emergency room visit among women with a current partner.  
Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, *Journal of the American Medical Association*, vol. 273, no. 22, 1763, 1765 (June 1995).
- one study of women visiting emergency rooms for treatment found that 54% had been threatened or injured by an intimate partner at some time in their lives, and 24% reported having been injured by their current partner in the past.  
Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, *Journal of the American Medical Association*, vol. 273, no. 22, 1763, 1765 (June 1995).

## LAW ENFORCEMENT

Intervention of the police and the court system can be improved in domestic violence cases.

- every state allows its police to arrest perpetrators of misdemeanor domestic violence incidents upon probable cause, and more than half of the states and the District of Columbia have laws requiring police to arrest on probable cause for at least some domestic violence crimes.  
Zorza, Mandatory Arrest for Domestic Violence: Why it may prove the best first step in curbing repeat abuse, *Criminal Justice*, vol. 10, no. 3, p. 66 (Fall 1995).
- only about one-seventh of all domestic assaults come to the attention of the police.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p. 3.
- female victims of domestic violence are 6 times less likely to report crime to law enforcement as female victims of stranger violence.  
American Psychol. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.
- when an injury was inflicted upon a woman by her intimate partner, she reported the violence to the police only 55% of the time. she was even less likely to report violence when she did not sustain injury.  
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 5.
- some studies indicate that arresting a batterer increases recidivism, while some studies indicate that arrest serves as a deterrent for future domestic violence.  
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 46 (1996).
- arresting a batterer may reduce violence in the short term, but may increase violence in the long term.  
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 43, 49 (1996).
- the varying effect of arrest on abusers may be related to the amount the batterer has to lose from facing the social consequences of arrest. the single most consistent result of studies of the effect of arrest on batterers is that unemployed suspects become more violent after an arrest, and employed suspects do not.  
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? pp. 48-49 (1996).
- even if arrest may not deter unemployed abusers, arrest still deters the vast majority of abusers.  
Zorza, The Criminal Law of Misdemeanor Domestic Violence, 1970-1990. *The Journal of Criminal Law & Criminology* (Northwestern School of Law), vol. 83, no. 1, p. 66 (1992).

- possession of a gun by anyone subject to a protection order is prohibited by federal law.  
The Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. 922(g)(8).
- purchase or ownership of a gun by anyone convicted of a misdemeanor domestic violence offense is prohibited by federal law.  
Domestic Violence Offenders Gun Ban (1996), 18 U.S.C. 922(g)(9).

## PROTECTION ORDERS

Protection orders decrease, but do not eliminate, the risk of continuing abuse or homicide.

- a protection order issued by one U.S. state or Indian tribe is valid and enforceable in any other U.S. state or Indian tribe.  
Violence Against Women Act of 1994, 18 U.S.C. 2265.
- in cases of marital or dating violence, which accounted for 82% of all protection order cases, 90% of defendants were male.  
Adams & Powell, Tragedies of Domestic Violence: A qualitative analysis of civil restraining orders in Massachusetts, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 9 (1995).
- 35% of women with temporary protection orders did not return for a protection order because respondent stopped battering her; 17% because service of process was not achieved.  
CPOs: the Benefits and Limitations for Victims of Domestic Violence, National Center for State Courts Research Report, 1997.
- more than 17% of domestic homicide victims had a protection order against the perpetrator at the time of the killing.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.46, table 15.
- although the majority of batterers do not have criminal records, the majority of batterers brought to court by their victims for a protection order had criminal records.  
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 10 (1996).
- protection order defendants who had prior criminal histories were more likely to violate the order than those who did not.  
Adams & Powell, Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 17 (1995).
- in one study, nearly half of the victims who obtained a protection order were re-abused within two years.  
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 10 (1996).
- the majority of women who seek temporary protection orders have complaints of serious abuse: physical assaults, threats to kill or harm her, or attempts or threats to take the children.  
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 216 (1996).
- in one study of women seeking temporary protection orders, 56% has sustained physical injuries.  
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 216 (1996).
- 60% of women in one study reported acts of abuse after the entry of a protection order, and 30% reported acts of severe violence.  
Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 223 (1996).
- entry of a protection order did not appear to deter most types of abuse, but it did

significantly reduce the likelihood of acts of psychological abuse such as preventing the victim from leaving her home, going to work, using a car or telephone, and stalking and harassing behaviors.

Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 228-229 (1996).

- one study showed 80% of women with temporary protection order said the order was somewhat or very helpful in sending the batterer a message that his actions were wrong. less than 50% of the women thought that the batterer believed he had to obey the order.  
Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 218 (1996).
- most violations of protection orders leading to an arrest occurred within 90 days of the entry of the order.  
Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 200 (1996).
- 60% of those obtaining protection orders in one study reported violations within one year.  
Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 240 (1996).
- calls to police due to violations of protection orders were high, but the arrests were rare.  
Buzawa & Buzawa ed., *Do Arrests and Restraining Orders Work?* p. 239 (1996).
- 17% of protection order defendants in a 1995 study were arraigned for a violation of the order within one year.  
Adams & Powell, *Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts*, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 15 (1995).<
- 6% of protection order defendants were convicted of violating the order.  
Adams & Powell, *Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts*, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 17 (1995).

## STALKING

Batterers may attempt to frighten or control their victims through stalking.

- some advocates believe up to 80% of stalking cases occur within intimate relationships.  
*Domestic Violence, Stalking and Anti-Stalking Legislation, an Annual Report to Congress under the Violence Against Women Act*, National Institute of Justice Research, April 1996, p. 3.
- if stalking occurs within an intimate relationship, it typically begins after the woman attempts to leave the relationship.  
*Domestic Violence, Stalking and Anti-Stalking Legislation, an Annual Report to Congress under the Violence Against Women Act*, National Institute of Justice Research, April 1996, p. 1.

## SEPARATION VIOLENCE

When a woman leaves her batterer, her risk of serious violence or death increases dramatically.

- separated/divorced women are 14 times more likely than married women to report having been a victim of violence by their spouse or ex-spouse.  
Bureau of Justice Statistics: *Female Victims of Violent Crime*, 1991.
- women separated from their husbands were 3 times more likely to be victimized by spouses than divorced women, and 25 times more likely to be victimized by spouses

than married women.

Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4.

- 65% of intimate homicide victims physically separated from the perpetrator prior to their death.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.47, table 17.

## HOMICIDE

Domestic homicide is often the culmination of an escalating history of abuse.

- female homicide victims are more than twice as likely to have been killed by an intimate partner than are male homicide victims.  
Bureau of Justice Statistics: Female Victims of Violent Crime, December, 1996.
- 88% of victims of domestic violence fatalities had a documented history of physical abuse.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, pp.46-48, tables 14-21.
- 44% of victims of intimate homicides had prior threats by the killer to kill victim or self. 30% had prior police calls to the residence. 17% had a protection order.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, pp.46-48, tables 14-21.
- for homicides in which the victim-killer relationship was known, 31% of female victims were killed by an intimate. 4% of male victims were killed by an intimate.  
Bureau of Justice Statistics Special Report: Sex Differences in Violent Victimization, 1994 (NCJ-164508), September, 1997, p. 1.
- 70% of intimate-partner homicide victims are women.  
Bureau of Justice Statistics Selected Findings: Violence Between Intimates (NCJ-149259) November, 1994.
- a woman is the perpetrator in 19% of domestic homicides.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.44, table 7.
- when a woman is the perpetrator of a domestic homicide, typically the abuser was killed during an assaultive incident in which the woman was the victim.  
Browne, When Battered Women Kill, pp. 135-137 (1987).
- in a 1967 study, 60% of husbands who were killed by their wives precipitated their own deaths by being the first to use physical force or threaten with a weapon.  
Browne, When Battered Women Kill, p. 10 (1987).
- homicides committed by victims during a battering incident were often committed with the abuser's own weapon.  
Browne, When Battered Women Kill, p. 140 (1987).
- a 1978 study found that almost all of the wives who had killed their husbands had previously been beaten by their husbands.  
Browne, When Battered Women Kill, p. 10 (1987).
- of women killed in 1992, their relationship to the killer was known in 69% of homicides. of this percent, 28% were killed by spouse, ex-spouse, boyfriend or ex-boyfriend.  
Bureau of Justice Statistics: National Crime Victimization Survey, 1995.

- of men killed in 1992, their relationship to the killer was known in 59% of homicides. of this percent, 3% were killed by spouse, ex-spouse, girlfriend or ex-girlfriend.  
Bureau of Justice Statistics: National Crime Victimization Survey, 1995.

## MULTIPLE-VICTIM HOMICIDE

In some domestic homicides, the perpetrator kills more than one person.

- in 1994, 38% of domestic homicides were multiple-victim, usually combining a spouse homicide and suicide, or child homicide.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.45, table 12.
- where there are multiple victims in a domestic homicide, 89% of perpetrators are male.  
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.52, table 29.

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# SENATE COMMITTEE REPORT

DATE: 04/02/04

FURTHER: Judiciary

DATE TURNED  
IN TO OFFICE: 4.16.04

Health, Education and Social Services Committee considered CS FOR HOUSE BILL NO. 385(JUD)

## HB 385 AWARDDING CHILD CUSTODY

"An Act relating to awarding child custody; and providing for an effective date."

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#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
ACS	2/25			✓	1

APPROPRIATION - no fiscal note

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



# Alaska State Legislature

Please enter into the record my testimony to the Senate HESS  
committee name

Committee on HB 385, dated 4-16-04  
bill # / subject public hearing date

Senators,

My name is Ronda Blough, I live in Kenai, Alaska. I am the mother of 3 children and step-mother of 2 children. I have been divorced and am now remarried with a combined family of 7. I give you this background information so it will be easier to understand why I am writing you.

My basic issue is with the initial custody placement of children where by precedence the mother generally gets the benefit of the doubt as to who can provide the best home for the child resulting in the standard 70/30 split of custody. Very rarely in disputed cases does the father get to even be considered as a candidate for equal custody in disputed cases, therefore attorneys generally will not advise them to even try, no matter how good of a person the father is.

The system points to the poor mother left at home to raise the children with no income or help, however in society today that is rarely the case. Women are dominant in the workforce today and divorced or not usually are pursuing a career in the midst of raising a family, just as the men are. Women want equality in every ,and more power to them, but in this area there are some that would like a double standard. Both parents deserve the right to equal time with the child if that is what either parent wants.

Instituting an opportunity for both parents to be equally be involved in a childs life as a matter of precedence at the inception of a divorce or separation would promote a more peaceable and cooperative relationship with regards to the children. As it is now women have this sense of empowerment, if they are so inclined, simply because precedence has dictated policy. The legal system needs to have the tools necessary to ensure that the parents have an equal opportunity to parent a child. The only reference in any of the custody statutes that mention anything equal is the temporary custody Sec. 25.20.070.

I know that there are other issues that this affects, but the fact is that there are changes needed in a lot of areas. The placement and best interest of the child should be considered before anything else. A child will only be a child for so long, the other issues surrounding this revision will always be there and be able to be dealt with at some point in time, but the ability to have the much desired influence and involvement in a child's life by either parent will not, and should not in any way harm that ever-so-important time in life. A case can always be argued if there is a prevailing problem, and many are, like ours. Parents do not as far as I know go to court to fight for less custody and they do not fight over custody if they can agree. What is there to fight over when shared custody starts at equal.

The following should be added to HB 385, under Section 1. AS 25.20.060, and below (a)

**AS 25.20.060**

(c) The court **shall primarily provide for equal access to both parents** if shared custody is determined by the court to be in the best interest of the child, **unless the presumption under AS 25.24.150(g) is present.** An award of shared custody shall assure that the child has frequent and continuing contact with each parent to the maximum extent possible.

The language is consistent with that of Section 2 HB 385 and Sec. 25.20.070 referring to temporary custody. At some point in time it was considered to be in the best interest of the child to be with both parents equally for the interim. There is no reason for that not to be considered primarily in the best interest of the child when initially determining permanent custody of a child.

The additional language is of course pointing towards the obvious need to protect the welfare of the child if that need in fact exists.


This would give parents the option, should they want it, to be as involved in their child's every day life as much as possible, while establishing grounds for cooperation between the parents immediately as opposed to one parent having "control" over the other and mis-using their custody award to cause harm to the relationship between the child and the other parent.

This bill speaks a lot for the establishment or re-establishment of custody on behalf of offenders of violent crimes, but it does not give either parent the benefit of having equal custody if there are no grounds to establish that the parents are otherwise not qualified.

Please feel free to call me at any time to discuss this issue and I will be happy to persuade you should you have any doubts as to the necessity of this revision.

Thank you,

Ronda A. Blough

Signed:  Ronda Blough

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Testifier

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Self

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Representing (optional)

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PO Box 1630 Kenai, AK 99611

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Address

---

Phone number

**HB**

**405**

# *Alaska State Legislature*

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## **House Special Committee on Education**

Representative Carl Gatto, Chair

May 2, 2004

To: Senator Dyson – Chairman (S) HESS

RE: HB 405

---

Dear Senator Gary Stevens,

May I officially request that you schedule HB 405 for hearing before your committee at your earliest convenience?

Enclosed are:

- 1) Sponsor Statement
- 2) Text of HB 405
- 3) Fiscal Note
- 4) Supporting documentation

Thank you for your time and consideration.

Alaska State Capitol, Room 411 • Juneau, Alaska 99801  
Chairman – House Special Committee on Education  
Vice-Chair – Labor and Commerce Committee  
Vice-Chair – Health Education and Social Services Committee  
(907) 465-3743 phone • (907) 465-2381 fax  
Representative\_Carl\_Gatto@legis.state.ak.us

# *Alaska State Legislature*

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## House Special Committee on Education

Representative Carl Gatto, Chair

### **SPONSOR STATEMENT**

HOUSE BILL 405

"AN ACT RELATING TO ACCOUNTABILITY OF PUBLIC SCHOOLS AND SCHOOL DISTRICTS, AND REPORTS CONCERNING ASSISTANCE TO IMPROVE SCHOOL PERFORMANCE; AND PROVIDING FOR AN EFFECTIVE DATE."

Alaska currently has two systems of school designators, a state system and a system applied under the NCLB act. Current Alaska law would require that schools be given the designations "distinguished," "successful," "deficient," or "in crisis," whereas federal law uses terms such as "distinguished," "proficient," "in improvement," "corrective action," and "restructuring." To avoid confusion, Alaska law should be amended to delete the requirement that a school or district performance designation be given a specific label, while retaining the requirement that the state board fashion performance designations based on state assessments.

The purpose of this bill is to hold districts and public schools accountable but not to increase their administrative burden. Thus, although this bill retains the requirement that a school not meeting adequate performance must draft a school improvement plan, the bill would remove from statute the detailed descriptions of a school improvement plan. Federal laws, and the regulations adopted by the state board, comprehensively and satisfactorily prescribe the required contents of an improvement plan.

In addition, this bill would eliminate unnecessary and unhelpful reports, but keep the school report card system intact. For example, current law requires below-proficient schools report to the state board. Yet, the state board already has the school report card from these schools. This requirement is a paperwork and time burden on schools, districts, and the state board, while failing to substantially aid in the goal of educating children. Similarly, current state law requires the Department of Education and Early Development to provide the legislature with a report - separate from the school report card- on the progress of schools and districts. Preparation of this report does little to advance the understanding of the legislature or the public not already accomplished by the school report card. A better approach is to eliminate these unnecessary reporting burdens, ensure that accountability information is contained in the school report card, and to continue to refine and rely on this valuable reporting tool.

I urge your consideration and support for this measure.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 405(EDU)  
(H) Publish Date: 3/18/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Education & Early Development  
Title "An Act relating to reports on school and RDU  
school district performance; and relating to accountability of..." Component \_\_\_\_\_  
Sponsor Representative Gatto Component No. \_\_\_\_\_  
Requester \_\_\_\_\_

**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		0.0	0.0	0.0	0.0	0.0
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>						
-----------------------------	--	--	--	--	--	--

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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: Eddy Jeans, School Finance Manager  
Division: Education and Support Services  
Approved by: \_\_\_\_\_  
Agency: Education & Early Development

Phone 465-8679  
Date/Time 2/27/04 1:58 PM  
Date 2/27/2004

HB 405  
Eliminating the "Thick Report"

There are nine components of the report that is required in AS 14.03.070. These components are listed below with an explanation of why EED believes this report is no longer necessary.

1. **School Report Card Information**
  - a. This information is already located on the EED website.
2. **Number and Percentage of students in each school who pass the examination and the number who pass each section**
  - a. This information is already located on the EED website.
3. **Progress of the department a) toward implementing the school accountability provisions and b) in assisting high schools to become accredited**
  - a. Much of the current information included in this report can be found on the EED website. EED already posts Adequate Yearly Progress (AYP) school and district designations and state goals, state Annual Measurable Objectives and testing participation rates.
4. **Description of the resources provided to each school and district for school improvement activities and staff training**
  - a. EED receives copies of all school and district School Improvement Plans. EED, by federal law, does not have any authority to approve these plans, but does have some Title I funding to issue to Level 2 or higher School Improvement sites. Grant information can be posted on the EED website.
5. **Description of each district's and each school's progress in aligning curriculum with state standards**
  - a. Almost all districts, if not all by the end of this fiscal year, report they have aligned their curricula to state standards. The bigger question is, "Have districts aligned their instructional practices to the standards?" Answering this question, without relying on self-reported data, would be difficult to impossible.
6. **Description of efforts by the department to assist a public school that receives a designation of deficient or in crisis**
  - a. Because NCLB requires that we have only one comprehensive state assessment system, EED has proposed that these state school designations be eliminated in statute. Instead, the department would post, annually, school and districts not meeting AYP and at which levels each is at.
7. **Description of intervention efforts by each school district and school for students not meeting state standards**
  - a. This report of the activities of the Quality School Grants would be done annually and could be posted on the EED website.
8. **Number and percentage of turnover in certificated personnel and superintendents**
  - a. This data is self-reported by districts and would not be compiled if not for the requirement in AS14.03.070.
9. **Number of teachers by district and school who are teaching outside the teacher's area of endorsement, but in areas tested by the high school competency examination**
  - a. This information will be included in each school report card, which is already located on the EED website



February 23, 2004

**PRINCIPLE 1. A single statewide Accountability System applied to all public schools and LEAs.**

CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
<p>1.1 How does the State Accountability System include every public school and LEA in the State?</p>	<p>Every public school and LEA is required to make adequate yearly progress and is included in the State Accountability System.</p> <p>State has a definition of "public school" and "LEA" for AYP accountability purposes.</p> <ul style="list-style-type: none"> <li>The State Accountability System produces AYP decisions for all public schools, including public schools with variant grade configurations (e.g., K-12), public schools that serve special populations (e.g., alternative public schools, juvenile institutions, state public schools for the blind) and public charter schools. It also holds accountable public schools with no grades assessed (e.g., K-2).</li> </ul>	<p>A public school or LEA is not required to make adequate yearly progress and is not included in the State Accountability System.</p> <p>State policy systematically excludes certain public schools and/or LEAs.</p>
<p><b>STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS</b></p>		

**1.1-** The State of Alaska defines a school in Alaska Administrative Code AAC 05.900(5). A school is also being defined under the revised regulations governing Report Cards to the Public. Charter schools, correspondence schools, alternative and special mission schools are included as public schools. Alaska's accountability system treats all these types of schools the same way in determining Adequate Yearly Progress (AYP).

The accountability system produces an AYP decision for each public school in the state. Schools with any and all combinations of grade configurations are included in calculating AYP and making an AYP decision in the same manner.

The standards-based student assessment system in Alaska consists of testing all students in grades 3 to 10 annually. The AYP calculation will aggregate test data across grade levels within each school. The **Performance Score** (overall percent of students enrolled for the full academic year who are proficient across grades) will be compared to the Annual Measurable Objective (AMO) for each year. More details on determining AYP are presented in later parts of this plan.

All schools in Alaska participate in the assessment system with the exception of a few schools who only serve students in grades K-2. The AYP decision made on the school that receives students from the K-2 schools will be applied to the K-2 school, so that all schools (including the K-2 schools) will receive an annual AYP determination.

Charter schools are considered public schools in Alaska and are required to participate in the state's assessment system and will receive an annual AYP determination. Alternative, Special Mission, Correspondence, Boarding schools, and schools located in youth correctional facilities also participate in state assessments and will receive an annual AYP determination using the same procedures as for all other schools.

During the 2003/2004 and 2004/2005 school years Alaska will study the validity of the statewide accountability system when applied to Alternative and Special Mission Schools. If the results of this study indicate that the accountability system is not valid for these types of schools Alaska will propose an alternate system to the US Department of Education. Until that occurs, these schools will receive an annual AYP determination using the same system as other schools.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

This section describes the statutory and regulatory requirements concerning AYP, as well as ED's less formal interpretations that became apparent through the peer review process.

### ***A. Single Statewide Accountability System***

Every state must demonstrate in its state plan that it has developed and is implementing a single, statewide accountability system that will be effective in ensuring that all LEAs, public elementary schools and public secondary schools make AYP. The regulations clarify that this single system must be in place for the 2002-03 school year.

This single system must be the same accountability system the state uses for all public elementary schools and secondary schools and for all LEAs in the state, and must take into account the achievement of all public school students. It must be based on the state's standards, assessments, and "other academic indicators," as explained in this chapter. In its attempt to hold LEAs and public schools accountable for student achievement and for ensuring AYP, the accountability system must include both sanctions and rewards (such as teacher bonuses and school recognition).

This statutory and regulatory language suggests that states cannot continue the dual systems of accountability that often arose under IASA. However, states with well-established accountability systems vehemently objected to having to dismantle state systems that worked seemingly well. After considering formal comments submitted on the proposed regulations and negotiating informally with states, ED agreed that a state may continue to use its current state accountability system, consistent with earlier Dear Colleague letters released by ED, if that system integrates the federally-mandated AYP into its system. States were required to submit evidence through the peer review process that thoroughly described the state's accountability system and demonstrated how it integrated the AYP provisions required under Title I.

(Note that while all public schools must be included in AYP determinations, only public schools receiving Title I allocations are subject to sanctions under §1116 for school improvement, corrective action and restructuring. See Chapter 2.)

### ***B. Defining the Measure of Adequate Yearly Progress***

#### ***1) General requirements***

Under NCLB, AYP is measured separately at the level of school, district, and state performance. (The requirement to set AYP for the *state* as a whole is new under NCLB.) The measures must be designed to narrow the achievement gaps among groups of students in the schools, LEAs and the entire state. A state must craft its AYP measure so that the same high standards of academic achievement apply to *all* public elementary school and secondary school students in the state, not just Title I students. The measure must be statistically valid and reliable, and result in continuous and substantial academic improvement for all students.

The state assessments must be the primary factor in the state's measure of AYP, as under IASA. Among many other topics, peer reviewers had to report whether the state's definition of AYP was based primarily on the academic assessments. Although

through other entities such as school support teams or educational service agencies.

"(8) ADMINISTRATIVE COSTS.—A State educational agency that receives a grant award under this subsection may reserve not more than 5 percent of such grant funds for administration, evaluation, and technical assistance expenses.

"(9) LOCAL AWARDS.—Each local educational agency that applies for assistance under this subsection shall describe how it will provide the lowest-achieving schools the resources necessary to meet goals under school and local educational agency improvement, corrective action, and restructuring plans under section 1116.

20 USC 6304.

**"SEC. 1004. STATE ADMINISTRATION.**

"(a) IN GENERAL.—Except as provided in subsection (b), to carry out administrative duties assigned under parts A, C, and D of this title, each State may reserve the greater of—

"(1) 1 percent of the amounts received under such parts;

or

"(2) \$400,000 (\$50,000 in the case of each outlying area).

"(b) EXCEPTION.—If the sum of the amounts appropriated for parts A, C, and D of this title is equal to or greater than \$14,000,000,000, then the reservation described in subsection (a)(1) shall not exceed 1 percent of the amount the State would receive, if \$14,000,000,000 were allocated among the States for parts A, C, and D of this title.

**"PART A—IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES****"Subpart 1—Basic Program Requirements**

20 USC 6311.

**"SEC. 1111. STATE PLANS.**

"(a) PLANS REQUIRED.—

"(1) IN GENERAL.—For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan, developed by the State educational agency, in consultation with local educational agencies, teachers, principals, pupil services personnel, administrators (including administrators of programs described in other parts of this title), other staff, and parents, that satisfies the requirements of this section and that is coordinated with other programs under this Act, the Individuals with Disabilities Education Act, the Carl D. Perkins Vocational and Technical Education Act of 1998, the Head Start Act, the Adult Education and Family Literacy Act, and the McKinney-Vento Homeless Assistance Act.

"(2) CONSOLIDATED PLAN.—A State plan submitted under paragraph (1) may be submitted as part of a consolidated plan under section 9302.

"(b) ACADEMIC STANDARDS, ACADEMIC ASSESSMENTS, AND ACCOUNTABILITY.—

"(1) CHALLENGING ACADEMIC STANDARDS.—

"(A) IN GENERAL.—Each State plan shall demonstrate that the State has adopted challenging academic content standards and challenging student academic achievement

standards that will be used by the State, its local educational agencies, and its schools to carry out this part, except that a State shall not be required to submit such standards to the Secretary.

"(B) SAME STANDARDS.—The academic standards required by subparagraph (A) shall be the same academic standards that the State applies to all schools and children in the State.

"(C) SUBJECTS.—The State shall have such academic standards for all public elementary school and secondary school children, including children served under this part, in subjects determined by the State, but including at least mathematics, reading or language arts, and (beginning in the 2005-2006 school year) science, which shall include the same knowledge, skills, and levels of achievement expected of all children.

"(D) CHALLENGING ACADEMIC STANDARDS.—Standards under this paragraph shall include—

"(i) challenging academic content standards in academic subjects that—

"(I) specify what children are expected to know and be able to do;

"(II) contain coherent and rigorous content; and

"(III) encourage the teaching of advanced skills; and

"(ii) challenging student academic achievement standards that—

"(I) are aligned with the State's academic content standards;

"(II) describe two levels of high achievement (proficient and advanced) that determine how well children are mastering the material in the State academic content standards; and

"(III) describe a third level of achievement (basic) to provide complete information about the progress of the lower-achieving children toward mastering the proficient and advanced levels of achievement.

"(E) INFORMATION.—For the subjects in which students will be served under this part, but for which a State is not required by subparagraphs (A), (B), and (C) to develop, and has not otherwise developed, such academic standards, the State plan shall describe a strategy for ensuring that students are taught the same knowledge and skills in such subjects and held to the same expectations as are all children.

"(F) EXISTING STANDARDS.—Nothing in this part shall prohibit a State from revising, consistent with this section, any standard adopted under this part before or after the date of enactment of the No Child Left Behind Act of 2001.

"(2) ACCOUNTABILITY.—

"(A) IN GENERAL.—Each State plan shall demonstrate that the State has developed and is implementing a single, statewide State accountability system that will be effective in ensuring that all local educational agencies, public

*Standards  
Single  
Acts  
SJS*

elementary schools, and public secondary schools make adequate yearly progress as defined under this paragraph. Each State accountability system shall—

"(i) be based on the academic standards and academic assessments adopted under paragraphs (1) and (3), and other academic indicators consistent with subparagraph (C)(vi) and (vii), and shall take into account the achievement of all public elementary school and secondary school students;

"(ii) be the same accountability system the State uses for all public elementary schools and secondary schools or all local educational agencies in the State, except that public elementary schools, secondary schools, and local educational agencies not participating under this part are not subject to the requirements of section 1116; and

"(iii) include sanctions and rewards, such as bonuses and recognition, the State will use to hold local educational agencies and public elementary schools and secondary schools accountable for student achievement and for ensuring that they make adequate yearly progress in accordance with the State's definition under subparagraphs (B) and (C).

"(B) ADEQUATE YEARLY PROGRESS.—Each State plan shall demonstrate, based on academic assessments described in paragraph (3), and in accordance with this paragraph, what constitutes adequate yearly progress of the State, and of all public elementary schools, secondary schools, and local educational agencies in the State, toward enabling all public elementary school and secondary school students to meet the State's student academic achievement standards, while working toward the goal of narrowing the achievement gaps in the State, local educational agencies, and schools.

"(C) DEFINITION.—'Adequate yearly progress' shall be defined by the State in a manner that—

"(i) applies the same high standards of academic achievement to all public elementary school and secondary school students in the State;

"(ii) is statistically valid and reliable;

"(iii) results in continuous and substantial academic improvement for all students;

"(iv) measures the progress of public elementary schools, secondary schools and local educational agencies and the State based primarily on the academic assessments described in paragraph (3);

"(v) includes separate measurable annual objectives for continuous and substantial improvement for each of the following:

"(I) The achievement of all public elementary school and secondary school students.

"(II) The achievement of—

"(aa) economically disadvantaged students;

"(bb) students from major racial and ethnic groups;

"(cc) students with disabilities; and

"(dd) students with limited English proficiency;

except that disaggregation of data under subclause (II) shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

"(vi) in accordance with subparagraph (D), includes graduation rates for public secondary school students (defined as the percentage of students who graduate from secondary school with a regular diploma in the standard number of years) and at least one other academic indicator, as determined by the State for all public elementary school students; and

"(vii) in accordance with subparagraph (D), at the State's discretion, may also include other academic indicators, as determined by the State for all public school students, measured separately for each group described in clause (v), such as achievement on additional State or locally administered assessments, decreases in grade-to-grade retention rates, attendance rates, and changes in the percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

"(D) REQUIREMENTS FOR OTHER INDICATORS.—In carrying out subparagraph (C)(vi) and (vii), the State—

"(i) shall ensure that the indicators described in those provisions are valid and reliable, and are consistent with relevant, nationally recognized professional and technical standards, if any; and

"(ii) except as provided in subparagraph (I)(i), may not use those indicators to reduce the number of, or change, the schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 if those additional indicators were not used, but may use them to identify additional schools for school improvement or in need of corrective action or restructuring.

"(E) STARTING POINT.—Each State, using data for the 2001-2002 school year, shall establish the starting point for measuring, under subparagraphs (G) and (H), the percentage of students meeting or exceeding the State's proficient level of academic achievement on the State assessments under paragraph (3) and pursuant to the timeline described in subparagraph (F). The starting point shall be, at a minimum, based on the higher of the percentage of students at the proficient level who are in—

"(i) the State's lowest achieving group of students described in subparagraph (C)(v)(II); or

"(ii) the school at the 20th percentile in the State, based on enrollment, among all schools ranked by the percentage of students at the proficient level.

"(F) TIMELINE.—Each State shall establish a timeline for adequate yearly progress. The timeline shall ensure that not later than 12 years after the end of the 2001-2002 school year, all students in each group described

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Mischel  
5/7/04

SENATE CS FOR CS FOR HOUSE BILL NO. 405( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GATTO, Lynn, Wilson

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to reports on school and school district performance; relating to  
2 accountability of public schools and school districts; and providing for an effective  
3 date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. AS 14.03.120(b) is amended to read:

6 (b) The department shall summarize the reports submitted under (a) of this  
7 section and include all revenue received by each school district organized in easily  
8 sortable categories including ADM and district, as a statewide report, provide a  
9 copy to the governor, publish the report on the department's Internet website, and  
10 notify the legislature that the report is available; in this section, "revenue" means all  
11 money reported to the department as receipts from any source, including state,  
12 federal, local, special, and other funding.

13 \* Sec. 2. AS 14.03.120(d) is amended to read:

14 (d) Annually, before the date set by the district under (e) of this section, each

1 public school shall deliver to the department for posting on the department's  
2 website and provide, in a public meeting of parents, students, and community  
3 members, a report on the school's performance and the performance of the school's  
4 students. The report shall be prepared on a form prescribed by the department and  
5 must include

6 (1) information on accreditation;

7 (2) results of norm-referenced achievement tests;

8 (3) results of state standards-based assessments in reading, writing, and  
9 mathematics;

10 (4) a description, including quantitative and qualitative measures, of  
11 student, parent, community, and business involvement in student learning;

12 (5) a description of the school's attendance, retention, dropout, and  
13 graduation rates, including the number and percentage of students who received a  
14 diploma under a waiver from the competency examination required under  
15 AS 14.03.075(a), as specified by the state board;

16 (6) the annual percent of enrollment change, regardless of reason, and  
17 the annual percent of enrollment change due to student transfers into and out of the  
18 school district;

19 (7) if Native language education is provided, a summary and  
20 evaluation of the curriculum described in AS 14.30.420; [AND]

21 (8) the number and percentage of students in each school who take and  
22 who successfully complete an alternative assessment program in reading, English, or  
23 mathematics; and the number and percentage of pupils in each school who  
24 successfully complete the alternative assessment program but who do not reach the  
25 state performance standards at the competency exam level in reading, English, or  
26 mathematics; a school may not report results under this paragraph unless the school  
27 complies with the family educational rights and privacy requirements of 34 C.F.R. 99;

28 (9) the performance designation assigned the school under  
29 AS 14.03.123 and the weight of the measures used to assign the performance  
30 designation; and

31 (10) other information concerning school performance and the

1 performance of the school's students as required by the state board in regulation.

2 \* Sec. 3. AS 14.03.120(e) is amended to read:

3 (e) By a date set by the district, each public school in the district shall provide  
4 the report described in (d) of this section to the district's governing body. Along with  
5 the report, each public school shall submit a summary of comments made on the report  
6 by parents, students, and community members. By July 1 of each year, [BEGINNING  
7 IN 2000,] each district shall provide to the department a report on the performance of  
8 each public school and the public school students in the district. The district's report  
9 must

10 (1) be entitled "School District Report Card to the Public"; and

11 (2) include

12 (A) copies of the reports and summaries of comments  
13 submitted under this section by each public school in the district; [AND]

14 (B) a compilation of the material described in (A) of this  
15 paragraph by each public school in the district;

16 (C) the designation assigned the district under AS 14.03.123  
17 and the weight of the measures used to assign the performance  
18 designation; and

19 (D) other information concerning school performance and  
20 the performance of the school's students as required by the state board in  
21 regulation.

22 \* Sec. 4. AS 14.03.123 is repealed and reenacted to read:

23 **Sec. 14.03.123. School and district accountability.** (a) By September 1 of  
24 each year, the department shall assign a performance designation to each public school  
25 and school district and to the state public school system in accordance with (f) of this  
26 section.

27 (b) The department shall inform the governing body of each district of the  
28 performance designation assigned under (a) of this section.

29 (c) The state board shall adopt regulations implementing this section,  
30 providing for a statewide student assessment system, and providing for the process of  
31 assigning a designation under (a) of this section, including

- 1 (1) the criteria that will be used for assignment of each designation;  
2 (2) high achievement and low achievement designations that are based  
3 on the accountability system under this section;  
4 (3) a procedure for appealing a designation that may be used by the  
5 principal of a public school or by the superintendent of a public school district;  
6 (4) additional measures that may be progressively implemented by the  
7 commissioner to assist schools or districts to improve performance in accordance with  
8 this section and with federal law; to the extent necessary to conform to federal law the  
9 additional measures may be unique to a certain school or district if that school or  
10 district receives federal funding that is not available to all schools or districts in the  
11 state.

12 (d) A public school or district that receives a low achievement designation  
13 under this section shall prepare and submit to the department a school or district  
14 improvement plan, as applicable, in accordance with regulations adopted by the board.  
15 The improvement plan must be prepared with the maximum feasible public  
16 participation of the community including, as appropriate, interested individuals,  
17 teachers, parents, parent organizations, students, tribal organizations, local government  
18 representatives, and other community groups.

19 (e) The department shall establish a program of special recognition for those  
20 public schools that receive a high achievement designation.

21 (f) In the accountability system for schools and districts required by this  
22 section, the department shall

23 (1) implement 20 U.S.C. 6301 - 7941 (Elementary and Secondary  
24 Education Act of 1965), as amended;

25 (2) implement state criteria and priorities for accountability including  
26 the use of

27 (A) measures of student performance on standards-based  
28 assessments in reading, writing, and mathematics, and including competency  
29 tests required under AS 14.03.075;

30 (B) measures of student improvement; and

31 (C) other measures identified that are indicators of student

1 success and achievement; and

2 (3) to the extent practicable, minimize the administrative burden on  
3 districts.

4 (g) In this section,

5 (1) "district" has the meaning given in AS 14.17.990;

6 (2) "state public school system" means the combination of all public  
7 schools, public school districts, and state-operated schools.

8 \* **Sec. 5.** AS 36.30.850(b)(40) is repealed.

9 \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 **TRANSITION: REGULATIONS.** The Board of Education and Early Development  
12 may proceed to adopt regulations to implement the changes made by this Act. The  
13 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
14 effective date of the statutory change.

15 \* **Sec. 7.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

16 \* **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect July 1, 2004.

# SENATE COMMITTEE REPORT

DATE: 5/2/04

FURTHER:

DATE TURNED  
IN TO OFFICE: 5.08.04

Health, Education and Social Services Committee considered CS FOR HOUSE BILL NO. 405(EDU)

## HB 405 SCHOOL PERFORMANCE DESIGNATION/REPORT

"An Act relating to reports on school and school district performance; and relating to accountability of public schools and school districts; and providing for an effective date."

and recommends:

- be replaced with S CS for CS for HB 405 (HES)
- 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#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
EED	2/27			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Julia J. [Signature]</i>	✓			
<i>Bettye Davis</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

**HB**

**425**

# ALASKA STATE HOUSE OF REPRESENTATIVES

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Fax# (907)-488-4271



Session Contact:  
(907)-465-3719  
FAX# (907)-465-3258  
State Capitol  
Room 204

## REPRESENTATIVE JOHN COGHILL

Date: April 27, 2004

To: Representative Fred Dyson, Chairman  
Senate HESS Committee

From: Representative John Coghill

Re: HB 425 Secondary Boarding Schools

*JASON*

*LETS SCHEDULE*

*THIS ASAP. THANKS*

*Fred*

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I am requesting a hearing for HB 425 "relating to funding for school districts operating secondary school boarding programs" before the House Finance Committee.

Attached is the sponsor statement and other information.