

# Children and Cars A Potentially Lethal Combination





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This document was produced thanks to grant DTNH22-98-H-05881 from the National Highway Traffic Safety Administration (NHTSA). This information is offered for educational purposes only and is not legal advice.

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2005 by the American Prosecutors Research Institute, the nonprofit research, training, and technical assistance affiliate of the National District Attorneys Association.

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## Child Endangerment and Motor Vehicles

The existence of child abuse and neglect extends as far back in history as children themselves. Sadly, the history of the recognition of forms of abuse and neglect, as well as the laws designed to protect children from them, is not nearly as long. Author L. DeMause; in his book The History of Childhood: The Untold History of Child Abuse, stated, “the history of child abuse is a nightmare from which we have only begun to awaken.”<sup>1</sup>

The United States followed its European counterparts’ views of children well into the Industrial Revolution, disregarding massive poverty, child labor, and neglected youth. Not until the late 19<sup>th</sup> century did reform begin. Ironically, it started in 1874 with the Society to Prevent Cruelty to Children, founded nine years *after* the Society to Prevent Cruelty to Animals. In the mid 20<sup>th</sup> century, child abuse became a recognized medical diagnosis, and later this concept was expanded to include child neglect.

These efforts of over a century have led to our current understanding that child maltreatment includes physical, sexual, and emotional abuse, as well as neglect and endangerment. The risk to a child’s physical, mental, or emotional well-being is endangerment. It is this recognition of child endangerment that implicates minors and motor vehicles most often. Today, child abuse statutes encompass child endangerment in several states. In many other states, such crimes are charged under the “reckless” provisions of traditional criminal charges.

Child safety in motor vehicles is more than a traffic issue. Many cases of minor occupant protection are intertwined with child abuse and neglect. Prosecutors must evaluate each of these tragedies for possible criminal charges; failing to do so disregards the value of many lost lives.

Mary Leary  
Attorney





# **Children and Cars – A Potentially Lethal Combination**

## **Introduction**

Children are our most precious resource. Unfortunately, they do not have the skills to protect themselves. Adults can, and must, protect them. Most States codify this obligation in various child abuse and endangerment statutes. Still, many States fail to statutorily recognize the relationship in the traffic safety context. For example, though virtually every State recognizes the inherent dangers of driving under the influence of alcohol or drugs (DUI or DWI), many do not articulate special sanctions for DWI/DUI drivers with minor passengers.

Like several other implements of child abuse, motor vehicles are household necessities. If not used properly, however, they can be deadly weapons. A ride in the family van, sports utility vehicle (SUV), pickup truck or sedan can become lethal if adults do not take appropriate precautions, including using proper child restraints and avoiding DUI restraints. Further, when an adult leaves an unsupervised child in an automobile, the adult takes an almost unconscionable risk, subjecting the child to a myriad of life-threatening situations, including heat exhaustion, suffocation, and physical injury.

This monograph addresses motor vehicle occupant protection issues concerning children. The document discusses the dangers children face and identifies relevant laws and criminal prosecutions. It identifies these incidents for what many of them truly are: important, if often overlooked forms of child abuse.

## **Child Restraints and Safety Belts**

### **Identifying the Problem**

Motor vehicle crashes remain the number one cause of death in the United States among young people. In 2003, the Insurance Institute for Highway Safety reported, “motor vehicle crashes still cause about 1 of every 3 injury deaths among children. Among those 4-12 years old, crash injuries are the leading cause of death. Most of the deaths are passenger vehicle occupants, and proper restraint use can reduce these fatalities.”<sup>2</sup>

### **Child Restraint Devices**

According to NHTSA, child restraint use has increased to record-breaking levels; however, “nearly 73 percent of child restraints are improperly used, needlessly exposing children to an increased risk of death or injury.”<sup>3</sup> To reduce the problem, many local law enforcement agencies offer parents and other caregivers training on the proper way to use and install child restraint systems. Additionally, NHTSA created and published guidelines to help adults understand how to protect their young passengers, as shown in figure 1.

Figure 1

| <b>General Child Seat Use Information</b><br>Buckle Everyone. Children Age 12 and Under in Back! |   |  |  |
|--|---|--|--|
|  | AGE /<br>WEIGHT   | SEAT TYPE /<br>SEAT POSITION   | USAGE TIPS   |
| <b>INFANTS</b>   | Birth to at least 1 year <b>and</b> at least 20 pounds. | Infant-Only Seat/rear-facing or Convertible Seat/used rear-facing.<br><br><i>Seats should be secured to the vehicle by the safety belts or by the LATCH system.</i>                                | <ul style="list-style-type: none"> <li>▪ Never use in a front seat where an air bag is present.</li> <li>▪ Tightly install child seat in rear seat, facing the rear.</li> <li>▪ Child seat should recline at approximately a 45 degree angle.</li> <li>▪ Harness straps/slots at or below shoulder level (lower set of slots for most convertible child safety seats).</li> <li>▪ Harness straps snug on child; harness clip at armpit level.</li> </ul> |
|  | Less than 1 year/ 20-35 lbs.                            | Convertible Seat/used rear-facing (select one recommended for heavier infants).<br><br><i>Seats should be secured to the vehicle by the safety belts or by the LATCH system.</i>                   | <ul style="list-style-type: none"> <li>▪ Never use in a front seat where an air bag is present.</li> <li>▪ Tightly install child seat in rear seat, facing the rear.</li> <li>▪ Child seat should recline at approximately a 45 degree angle.</li> <li>▪ Harness straps/slots at or below shoulder level (lower set of slots for most convertible child safety seats).</li> <li>▪ Harness straps snug on child; harness clip at armpit level.</li> </ul> |
| <b>PRESCHOOLERS /TODDLER</b>   | 1 to 4 years/ at least 20 lbs. to approximately 40 lbs. | Convertible Seat/forward-facing or Forward-Facing Only<br><br><i>Seats should be secured to the vehicle by the safety belts or by the LATCH system.</i>  | <ul style="list-style-type: none"> <li>▪ Tightly install child seat in rear seat, facing forward.</li> <li>▪ Harness straps/slots at or above child's shoulders (usually top set of slots for convertible child safety seats).</li> <li>▪ Harness straps snug on child; harness clip at armpit level.</li> </ul>   |
| <b>YOUNG CHILDREN</b>  | 4 to at least 8 years/unless they are 4'9" (57") tall.  | Belt-Positioning Booster (no back, only) or High Back Belt-Positioning Booster.<br><br><i>NEVER use with lap-only belts—belt-positioning boosters are always used with lap AND shoulder belts.</i> | <ul style="list-style-type: none"> <li>▪ Booster used with adult lap and shoulder belt in rear seat.</li> <li>▪ Shoulder belt should rest snugly across chest, rests on shoulder; and should NEVER be placed under the arm or behind the back.</li> <li>▪ Lap-belt should rest low, across the lap/upper thigh area—not across the stomach.</li> </ul>   |

While these guidelines are useful in helping parents protect child passengers from injury in the event of a crash or incident, State laws rarely incorporate them.

Many adults place children in the front seat. Fifteen percent of infants and a third of 4- to 7-year-olds are seated in the front of motor vehicles, according to NHTSA's National Center for Statistical Analysis (NCSA).<sup>4</sup> This is problematic. Adults should require all children 12 and younger to sit in the back seat: "Sitting in a rear seat instead of the front seat reduces fatal injury risk by 36 percent among children 12 and younger."<sup>5</sup>

Adults also need to be cognizant of the need for older children to use safety belts. In September 2004, prosecutors charged a mother with three counts of injury to a child after not requiring her children to wear their safety belts prior to a deadly car crash.<sup>6</sup>

### **Loopholes and Exemptions in the Law**

Child passenger safety laws (better known as "car seat laws" or "child restraint laws") exist in all 50 States, the District of Columbia, and all U.S. territories. However, gaps or loopholes in the laws and certain exemptions in coverage leave holes in the protective blanket the legislature intended these statutes to create.

#### ***Loopholes***

Many States do not prescribe the age-specific child restraints people should use. Thus, these States allow adults to restrain children with a safety belt when a safety or booster seat is more appropriate and safer. In addition, most States do not impose restraint requirements on children older than 12. Many States even allow 10-year-old children to ride in the back seat without safety belts.

Additionally, many states place sole responsibility for child restraints on the parents or guardians. This means that non-parental, non-guardian drivers may not be sanctioned for not restraining children.<sup>7</sup>

#### ***Exemptions***

There are several exemptions in many State laws that leave children unprotected in vehicles.<sup>8</sup> In nearly half of the States, children can ride unsecured if all safety belts are in use. This means that if a vehicle is overcrowded and other occupants are using all of the safety belts, nobody can be cited if children are unbelted. Another common exemption allows parents, guardians, or other adults to "attend to the personal needs of the child." This exemption permits an adult to carry a child on his or her lap, while the vehicle is in motion, for the purposes of feeding or other similar activities. Many States do not require that children be restrained if the operator of that vehicle is from a different State. These exemptions may allow parents or guardians to legally endanger their children. See Appendices.

## Public Awareness

Child restraint device use is largely a matter of public awareness. Many children killed in car crashes would have survived if they were restrained properly. Not surprisingly, there is a correlation between the use of driver safety belts and child restraints. NCSA reports that 92 percent of buckled drivers restrain child passengers, while only 72 percent of unbuckled drivers restrain children passengers.<sup>9</sup>

Impaired drivers are particularly problematic. One study reports that only about 30 percent of children killed while riding with impaired drivers were properly restrained at the time of the crash.<sup>10</sup>

## Potential Criminal Liability

Law enforcement and prosecutors can play an important role in ensuring compliance with restraint laws through effective enforcement and appropriate sanctions. Under appropriate circumstances, prosecutors should consider charging parents or guardians who fail to buckle their children with child endangerment or other offenses.

In *Suarez v. State*, 2003 Tex. App. LEXIS 10799 (Tx. App. December 30, 2003), the defendant placed her daughter in the back seat of her car and drove home. There was a factual dispute as to whether the defendant buckled the child; however, witnesses testified that the child knew how to unbuckle herself. Thirty minutes later, the defendant arrived home and noticed that the child was not in the car. Apparently, the child fell out of the car as it crossed a bridge. Another car struck the child, who eventually died from head injuries. The state charged the defendant with reckless endangerment and secured a conviction after trial by jury. The trial judge sentenced the defendant to two years in prison. On appeal, the court found “a reasonable trier of fact could have found that Suarez’s reckless failure to supervise A.E. as to her seatbelt, an omission, placed A.E. in imminent danger of death, bodily injury, or physical or mental impairment beyond a reasonable doubt.” Similarly, a court had little difficulty affirming the legality of a defendant’s sentence for criminally negligent homicide in *State v. Simpson*, after the defendant crashed his truck, killing his unrestrained 11-month-old son. 2005 Tenn. Crim. App. LEXIS 19 (Tenn. Crim. App. January 7, 2005), *rehearing denied*, 2005 Tenn. Crim. App. LEXIS 286 (Tenn. Crim. App. Mar. 28, 2005).

However, in *State v. Jones*, 151 S.W.3d 494 (Tenn. 2004), the court ruled that a passenger’s conduct in holding her 2-year-old child in her lap was **not** a gross deviation from ordinary care under the facts of this case. The court reasoned that adult drivers routinely fail to safely restrain child passengers. The court cited a recent survey finding that only 60 percent of child passengers were restrained and that State law “permitted a mother to remove her child from its car seat to nurse the child or to ‘attend to its other physiological needs.’”<sup>11</sup> Likewise, in *State v. Mitchell*, 41 S.W.3d 434 (Ky. 2001), the court held that the defendant’s failure to buckle his young daughter who was killed in a car crash did not amount to manslaughter. The court reasoned that if the legislature “recognized that failure to restrain did not constitute civil negligence per se, then the violation could not satisfy the gross deviation requirement of recklessness.”

In October 2005, an Angelina County, Texas, court held a woman accountable in an automobile crash that resulted in the death of her 1-month-old son who was not properly restrained in the vehicle. The woman forgot the child's car seat and let a friend hold the child in her lap while a 14-year-old, unlicensed, uninsured driver drove the vehicle. The car slammed into an oncoming pickup truck and rolled over, killing the boy. The woman pleaded guilty to negligent homicide charges and was sentenced to a deferred three-year prison sentence and is required to attend parenting classes and submit to drug testing as a part of her probation.<sup>12</sup>

Again, prosecutors should consider the totality of circumstances in determining whether to file criminal charges in terms of child endangerment or neglect. Considerations should include those described above and others, including:

- The child's age;
- The child's height and weight;
- The child's location in the car;
- The restraints used, if any;
- The length of the trip;
- Vehicle speed; and
- The roads traveled and to be traveled.

## **Child Endangerment and Driving While Impaired/Intoxicated (DWI) or Driving Under the Influence (DUI)**

### **Identifying the Problem**

The Fatality Analysis Reporting System (FARS) estimated that between 1985 and 1996 463 children 14 and younger were killed in alcohol-related car crashes. Sixty-four percent of these children were killed in the hands of their guardians; they were passengers in the impaired driver's vehicle. More than 16,000 other children were injured. Unfortunately, the situation is worsening. The Centers for Disease Control and Prevention's study, *Child Passenger Deaths Involving Drinking Drivers – United States, 1997-2002*, reported that 2,335 children were killed in alcohol related crashes between 1997 and 2002. Sixty-eight percent of them were passengers in the impaired driver's car. Interestingly, 68 percent of the impaired drivers survived.<sup>13</sup>

Impaired driving is inherently dangerous; people who drive under the influence with children in their vehicles place the children in situations that endanger their lives. In March 2003, Mothers Against Drunk Driving (MADD) released *Every Child Deserves a Designated Driver*, a report urging the public to recognize impaired driving as a form of child endangerment or abuse.<sup>14</sup> MADD advocated enhanced penalties for those who drive impaired with a child passenger. As MADD

recognized, child abuse and neglect include a failure to provide necessary physical, emotional, and medical care. Still, most States fail to explicitly recognize DWI/child endangerment cases as forms of child abuse or endangerment, treating them the same way they treat every other DWI/DUI case. Regardless, prosecutors have some tools at their disposal, depending on jurisdiction.

## Potential Criminal Liability

### General Child Endangerment Statutes

In DWI/DUI cases involving child passengers or victims, traffic prosecutors should consider the applicability of generic child endangerment or abuse statutes. In *People v. Cruz*, 576 N.Y.S. 978 (N.Y. Criminal Ct. 1991), the defendant drove his car with a blood alcohol concentration (BAC) of .18 grams per deciliter with his two children in the car. The court recognized the inherent dangers of impaired driving and held that there was sufficient evidence to find the defendant guilty of endangering the welfare of a child. Similarly, in *State v. Miller*, 1995 Ohio App. LEXIS 3523 (Ohio App. 1995), the defendant drove his car while under the influence of a controlled substance (Tuinal, the brand name of a drug containing two barbiturates) with his 7-year-old son in the car. The jury found the defendant guilty of child endangerment. The appellate court noted that the defendant “created a substantial risk to [the] health and safety” of his son and upheld the conviction.<sup>15</sup>

Unfortunately, not all courts recognize the special and seemingly obvious dangers that DUI drivers pose to their passengers. In *State v. Mastomatteo*, 719 A.2d 1081 (Pa. App. 1999), *appeal denied*, 1999 Pa. LEXIS 1040 (Pa. April 13, 1999), a police officer observed the defendant drift over the middle line three times at a slow rate of speed. When the officer stopped the defendant, she noted that defendant was accompanied by her young son. The officer also saw a glass containing what appeared to be an alcoholic beverage on the front seat and that the defendant appeared to be impaired. The officer administered field sobriety tests to the defendant, which she failed. The officer arrested the defendant and took her to the hospital for toxicological testing. Blood analysis revealed the defendant had a .168 blood alcohol level; urinalysis found 570 nanograms per deciliter of marijuana in her urine. A jury convicted the defendant of driving under the influence and reckless endangerment of another person. The appellate court overturned the reckless endangerment conviction, concluding that DUI does not amount to recklessness absent other indicia of unsafe driving to a degree that creates a substantial risk of injury that is consciously ignored (the court affirmed the DUI conviction). Despite the jury’s conclusion to the contrary, the *Mastomatteo* court castigated the prosecutor and trial judge, stating that while it does not condone or advocate drinking and driving:

[N]either do we favor attempts of zealous prosecutors and the judiciary to expand criminal definitions to encompass criminal conduct which the offense was not designed for, nor the supplanting of the democratic process that such a practice involves. If the penalties for DUI are thought of as too lenient then the legislature can increase them. If there should be additional offenses tied to DUI, say DUI

with passenger, then they likewise can be implemented by the legislature through the democratic process.

*Id.* at page 1084.

In an even more extreme example, an Ohio court reached a similar result in *State v. Graves*, 598 N.E.2d 914 (Ohio 1992). In *Graves*, an officer stopped the defendant because he was weaving and his lights were off. The officer discovered that the defendant had two unrestrained children in the back of the vehicle. The officer also observed that the defendant was impaired. The officer arrested the defendant and charged him with DWI and two counts of child endangerment. At the station, the defendant provided a breath sample of .159, almost twice the illegal limit. The Municipal Court found the defendant not guilty of child endangerment because the court believed that his actions did not create a “strong possibility” that a crash would occur and that the children would be injured.

These last two rulings are disturbing. Operating a vehicle under the influence of alcohol is dangerous per se; there is no truly “safe” blood or breath alcohol concentration (BAC or BrAC) at which people can drive.<sup>16</sup> Indeed, studies demonstrate that impairment begins at the *lowest recordable levels*.<sup>17</sup> The American Medical Association’s (AMA) Council on Scientific Affairs recognizes that, “significant alcohol involvement in injury-causing road crashes begins at a driver BAC of 0.05.”<sup>18</sup> Thus, the AMA<sup>19</sup> and the American College of Emergency Physicians (ACEP)<sup>20</sup> advocate an illegal limit of .05. The defendants in *Grave* and *Mastromatteo* were over twice the illegal limit of .08 and over three times the AMA recommended illegal limit of .05.

### Special DUI/Child Endangerment Statutes

There currently are 38 States and territories with statutes that include special sanctions for DWI or DUI cases with child passengers. (See Appendices.) These statutes fall into three categories:

#### Enhanced Penalties

Some statutes add specific mandatory sanctions to the standard DUI or DWI penalties when a defendant drives impaired with a child in the car.<sup>21</sup>

Michigan has a child endangerment law that carries a 93-day misdemeanor penalty, with a fine of \$200 to \$1,000, for the first offense of driving impaired with a passenger up to the age of 16. The second offense carries a penalty of 1 to 5 years, a fine of \$500 to \$5,000, and is considered a felony offense. In 2001, police officers and prosecutors charged 377 defendants with child endangerment DUI. Judges or prosecutors dismissed 63 of these cases; jurors acquitted 2 defendants. The remaining 312 (82.75%) were convicted. In 2002, those numbers increased. Officers and prosecutors charged 425 defendants; 57 cases were dismissed and the remaining 368 (86.5%) resulted in conviction.

## Separate Offenses

Some States have statutes establishing DUI or DWI with a minor in the car as a distinct offense from regular DUI or DWI.<sup>22</sup>

Texas's *Child Endangerment – Drunk Driving Child Protection Act* provides a separate mechanism for charging and punishing a person who drives while impaired with a passenger under the age of 13. The statute's penalties are more severe than Texas' traditional DWI penalties. If no injury occurs, the act punishes a first offense as a Class A misdemeanor, punishable by a minimum incarceration of 30 days and a minimum fine of \$1,000. Penalties increase depending on a person's prior offenses and any injuries or death.

## Aggravating Circumstances

Some States do not prescribe specific enhancements or penalties for DUI or DWI with a child passenger. However, these States allow judges or jurors to consider the existence of a child passenger as an aggravating factor for sentencing purposes.

North Carolina law considers an impaired person driving with a passenger up to the age of 16, a "grossly aggravated factor." This statute carries a "level two" punishment with a penalty of 7 days to 12 months in jail along with a fine of \$2,000.<sup>23</sup>

It is difficult to track the provisions' use and effectiveness because offenses typically are entered into the computer system according to the offense, without details about the particular circumstances. Therefore, a DUI or DWI with a child passenger usually is recorded as a simple DUI or DWI.

## Related Problem: Children as Designated Drivers

Among the most disturbing cases of DUI child endangerment are those in which guardians demand that their children "cover for them" after becoming intoxicated. These cases include situations where guardians request that young children serve as designated drivers and cases where guardians ask children to blow into their vehicles' ignition interlock devices so that they can start their cars.

On March 6, 2004, police arrested a father in Dallas, Texas, after pulling over his speeding vehicle and finding his 11-year-old son driving the car. The defendant was en route to his ex-wife's house to drop off his son. On the way, he stopped at a local bar and became so intoxicated that he was unable to drive safely. He asked his son to drive the vehicle for the remainder of the trip and his son agreed. Police charged him with child endangerment, public intoxication, and having an open container of alcohol in his vehicle.<sup>24</sup>



In February 2003 police arrested a Wisconsin mother after she asked her 12-year-old son to blow into the ignition interlock device installed in her vehicle. The defendant had three prior arrests for driving under the influence; the ignition interlock was installed to prevent her from committing a fourth offense. Not only did the defendant take advantage of her son, but she was also transporting four of her other children, all younger than 10, in the middle of the night. The defendant was given a \$6,000 fine and had her license revoked for 6 years.<sup>25</sup>

In all of these cases, prosecutors should consider filing appropriate criminal charges, such as child endangerment, allowing unauthorized minors to drive, and contributing to the delinquency of a minor. See e.g. *State v. Grooms*, 2003 Tenn. LEXIS 1265 (Tenn. Aug. 1, 2003), *appeal denied*, 2003 Tenn. Crim. App. LEXIS 671 (Tenn. Crim. App. Dec. 29, 2003) (affirming convictions for DUI and child endangerment). As discussed above, prosecutors should consider the totality of circumstances in reaching a charging decision.

## Unattended Children and Cars

### Identifying the Problem

“It’s such a hassle to get the kids out of their car seats. I’m just going to run in and out real quick!”

“I’ll crack the windows and they’ll be fine.”

“I’ll lock the doors, nothing will happen.”

Many States have laws that make it illegal to leave a pet in a vehicle. Ironically, only a few have laws that prohibit leaving a *child* in a vehicle unattended. Every day adults place countless children’s lives at risk by leaving them unattended in, or around, automobiles. The cases that are reported typically attract widespread media attention. Accordingly, it is difficult to understand how anyone could be unaware of the risks. Prosecutors should consider filing child endangerment or manslaughter charges in appropriate cases.

### Hot Cars

A car’s windows act like a greenhouse, trapping sunlight and heat. A May 2004 report by the National Highway Traffic Safety Administration indicated that approximately twenty-five children a year die as a result of being left or becoming trapped in hot vehicles.<sup>26</sup> “Cars parked in direct sunlight can reach internal temperatures up to 131° F - 172° F (55° C - 78° C) when outside temperatures are 80° F - 100° F (27° C - 38° C).”<sup>27</sup> Even outside temperatures in the 60s can cause a car temperature to rise well above 110° F. When the outside temperature is 83° F, even with the window rolled down 2 inches, the temperature inside the car can reach 109° F in only 15 minutes. “Within the first 10 minutes the temperature in an enclosed vehicle will rise an average of 19

degrees or 82 percent of its eventual one hour rise.”<sup>28</sup> In warm weather, a vehicle can warm to dangerous, life-threatening levels in only 10 minutes.

Very young children (age 4 and under) are particularly susceptible to hyperthermia. According to the Medical College of Wisconsin,

Children’s bodies have greater surface area to body mass ratio, so they absorb more heat on a hot day (and lose heat more rapidly on a cold day). Further, children have a considerably lower sweating capacity than adults, and so they are less able to dissipate body heat by evaporative sweating and cooling.<sup>29</sup>

The Centers for Disease Control report that very high body temperatures can cause damage to the brain and other vital organs, as well as heat stroke and death. “Heatstroke occurs when the body temperature reaches 104 degrees Fahrenheit;”<sup>30</sup> essentially, “the body becomes unable to control its temperature: the body’s temperature rises rapidly, the sweating mechanism fails, and the body is unable to cool down. Body temperature may rise to 106 degrees F or higher within 10 to 15 minutes.”<sup>31</sup> A “body temperature of 107 degrees is lethal.”<sup>32</sup> In many cases of hyperthermia, the child’s body temperature is reported to be 108 degrees, even an hour after they are discovered. It is important to note, however, that most thermometers will only measure temperatures up to 108° F. Therefore it is likely that the body temperatures of these children were well above 108° F.

Notwithstanding the obvious risk to children, caregivers continue to endanger them. In one survey, 25 percent of mothers interviewed admitted to leaving infants and toddlers in motor vehicles. Perhaps even more shocking, only one-third of these mothers favored leaving the windows half or fully opened.<sup>33</sup> Some of these mothers apparently were more concerned about potential abductions than heatstroke.

In June 2000, a mother in New Jersey left her son in the car with the windows rolled up for two hours. During that time span, she checked on him several times without realizing the temperature of the vehicle was nearing deadly temperatures. On her final check, she found her son passed out. She rushed him to the hospital, but he later died of heatstroke. An hour after his death, the boy’s body temperature was 108 degrees. *The temperature outside the vehicle was in the low 60s.*<sup>34</sup>

Some of the most tragic incidents happen when adult caretakers forget a child is in the vehicle. This frequently happens when a parent or guardian breaks a well-established routine and leaves a child in the car. Many of these adults do not even realize that they left the child in the vehicle until hours later. These cases pose significant moral questions for prosecutors who face the dilemma of determining whether the tragedy of losing a child is sufficient punishment. Still, while we may prefer to label these deaths as “freak accidents,” their preventability belies this claim.<sup>35</sup>

In the summer of 2003, a postal worker in Essex County, New Jersey, forgot to drop his two sons at a day care center. The boys stayed in the car for approximately two and a half hours. Witnesses alerted the father to the situation. The father rushed the boys to a medical building, but it was too late. The boys died from heat exhaustion. The father was charged with two counts of involuntary manslaughter and was ultimately sentenced to one year's probation for the death of his two sons. United States Attorney Christopher J. Christie commented, "It is beyond understanding how anyone could be so careless, so preoccupied as to leave children forgotten in the back seat of a steaming-hot car. This was a preventable tragedy."<sup>36</sup>

Not all children who die in hot cars are left there by adults. Many children climb into unlocked vehicles without their parents' or guardians' knowledge. Once in the car, they may become confused by the door handle's configuration and be unable to open the door from the inside. Also, children may accidentally lock doors by leaning on a power control device and be unable to get out. According to a National SAFE KIDS Campaign survey, only half of all parents lock their cars when they park at home.<sup>37</sup>

### **Trunk Entrapment**

Children are innately curious; they like to explore. When left unattended in a vehicle, their exploration can turn deadly. Many vehicles, especially newer models, allow easy access to the trunk through a panel in the back seat. Many vehicles also have a trunk release inside the car that allows for external access. An active child can easily pull the release, get out of the car, enter the trunk and be trapped.

In August 1998, in West Valley City, Utah, five young girls ranging in age from 2 to 6 played in a car owned by one of the girl's parents. It appears the girls discovered the trunk release next to the driver's seat and activated it. The girls entered the trunk and closed it. The outside temperature was 100 degrees. The trunk's temperature rose well above that, and all five girls died. Their bodies were discovered one and a half hours later. The girls' temperatures ranged from 99 to 107 degrees.<sup>38</sup>

As of January 1, 2001, auto manufacturers were required to equip all new vehicle trunks with a release latch inside the trunk compartment.<sup>39</sup>

### **Power Window Strangulation**

Caregivers often leave children in cars unattended when they run into a store. The adult may roll down the power windows to "keep the car cool" or "give the child some air." This situation could turn tragic in a matter of minutes. The child may become excited about something outside and stand or lean on the rocker window control, causing it to move upward, and strangle the child (*if* the key is left in the ignition and is turned to the "on" or "accessory" position).

In April 2006, NHTSA published a new final rule that enhances the safety of power window switches to prevent child deaths and injuries caused by inadvertent closing of car windows based, in part, on a study that indicated power-window associated deaths had occurred.<sup>40</sup> The measure requires “that all passenger vehicles manufactured for sale in the United States, on or after October 1, 2008, be equipped with a safer switch.” The rule prohibits “rocker” or “toggle” switches in favor of pull up-push down switches.

### **Vehicle Set in Motion**

Many parents leave a child unattended in a running motor vehicle. It takes very little strength to set a vehicle in motion, accidentally or otherwise. Children have caused dozens of accidents by putting cars in gear.

In August 1999, two young girls were crushed by a neighbor’s car in Russellville, Arkansas. The girls were looking at a book in the front yard of their home when their neighbor’s two-year-old son accidentally put the car in gear. The car rolled down a 90-foot incline and struck the two girls at a speed between 10 and 15 miles per hour. The boy was not injured; however, both girls died instantly.<sup>41</sup>

### **Public Awareness**

With increased public awareness, many future incidents can be averted. Prosecutors, law enforcement, advocacy organizations, retailers, educational organizations, and the general public all have the ability to make clear that leaving children unsupervised in or around motor vehicles is dangerous. In 2000, the Idaho Department of Health and Welfare worked with retailers and other business “to inform parents that the temperature inside the parked car can jump to 105 degrees F in a matter of 10 minutes.” Decals bearing the statement “Please bring your kids inside” were distributed to parents and caregivers throughout the State.<sup>42</sup> Prosecutors can and should participate in educational campaigns informing parents of the need to supervise their children in and around cars and to keep their vehicles locked at all times.

### **Potential Criminal Liability**

Despite the technological “solutions” to the above risks, the issue remains one of parental guidance and supervision. In appropriate cases, prosecutors should consider child endangerment or manslaughter charges.

In *People v. Stansell*, 2004 Cal. App. Unpub. LEXIS 6745 (Cal. Ct. App. July 20, 2004),<sup>43</sup> a security guard found a 19-month-old child in a parked car outside a shopping mall in California. The guard summoned the police, and an officer responded with a tow truck operator. They entered the car and removed the child. The officer noted that the child’s “cheek was warm and wet against [the officer’s] neck, her hair was wet and matted to her forehead, and she was sweating. [Her] face was dirty, her clothing appeared to be covered with dried food and mucous....” The officer subsequently located the defendant, the child’s mother, and questioned her. The mother

admitted leaving the child in the car and she said that she did not expect to be in the mall very long. She indicated that she locked the windows and doors to protect the child. She was arrested and charged with one count of felony child endangerment. A jury acquitted the defendant of the more serious felony child endangerment count, but found her guilty of the lesser included offense of misdemeanor child endangerment. The appellate court affirmed. See also *State v. Kolzow*, 703 N.E.2d 424 (Ill. Ct. App. 1998) (upholding the defendant’s conviction and sentence for involuntary manslaughter in a case where the defendant’s three-month-old son died from heat stroke after she left him alone in a car for four hours); *People v. Mitchell*, 1998 Mich. App. LEXIS 1772 (Mich. Ct. App. June 19, 1998) (unpublished opinion) (upholding the defendant’s conviction for involuntary manslaughter in a case where the defendant’s nine-month-old child died after the defendant left the baby unattended in a car for over three hours); *Ducker v. State*, 27 S.W.2d 889 (Tenn. 2000), *cert. denied*, 531 U.S. 1197 (2001) (upholding the defendant’s conviction for aggravated child abuse where the defendant’s two children died after the defendant left them in a car for nine hours); *Randall v. Dunbar, Commissioner of DCF*, 2004 Conn. Super. LEXIS 3831 (Conn. Super. Ct. December 29, 2004) (unpublished opinion); *Lindsay v. Dept. Soc. Serv.*, 791 N.E.2d 866 (Ma. 2003).

In *State v. Voland*, 716 N.E.2d 299 (Ohio County Court 1999), the defendant drove her 4-year-old daughter and her 12-year-old cousin to a park, where the defendant played volleyball while her cousin watched her daughter. The defendant gave her cousin car keys so that the cousin and the young girl could get into the car, start the air conditioning, and cool off. The two children got into the car. The 4-year-old inadvertently put the car in gear. The car struck a fence post, which fell on a man, killing him. The state charged the defendant with manslaughter and child endangerment. The court noted, “Children of this age can easily operate an automatic shift automobile but have very little experience in controlling powerful and potentially dangerous instrumentality. Luckily the children were unhurt, but nevertheless, such omissions and lack of supervision placed the 12-year-old child’s safety at substantial risk in that there was a strong possibility that out of boredom this car would eventually be put in gear.” Thus, the court had no difficulty determining that the defendant was reckless and found the defendant guilty of child endangerment. However, the court found the defendant not guilty of manslaughter because the court believed that the 4-year-old child’s action was unforeseeable.

As these cases reflect, prosecutors should consider the totality of circumstances in determining whether to file charges. Considerations include:

- the child’s age, maturity level, and physical prowess (including the ability to protect himself or herself);
- the relationship between the child and the guardian;
- the guardian’s age and experience with children;
- prior cases or reports of neglect or abuse;
- the extent (or lack) of supervision;
- the location of the vehicle;
- the exposure to (including the foreseeability of) harm;

- possible excuses; and
- the actual harm inflicted (if any).

## **Conclusion**

Child endangerment in motor vehicles is a serious problem that, until recently, was widely ignored. NHTSA and advocacy organizations are struggling to improve public awareness of this issue. As awareness increases, so will culpability and criminal liability. Prosecutors can assist the cause by engaging in proactive educational measures and awareness campaigns, charging appropriate cases, and by obtaining appropriate convictions and sanctions.

## Appendix A Motor Vehicle Statutes That Address Child Endangerment

As indicated above, many States have child endangerment/impaired driving statutes. These statutes are compiled below:

### ALABAMA

Ala.Code § 32-5A-191(a) and (n) (2005)

*Driving under the influence*

- (a) A person shall not drive or be in actual physical control of any vehicle while:
  - (1) There is 0.08 percent or more by weight of alcohol in his or her blood;
  - (2) Under the influence of alcohol;
  - (3) Under the influence of a controlled substance to a degree which renders him or her incapable of safely driving;
  - (4) Under the combined influence of alcohol and a controlled substance to a degree which renders him or her incapable of safely driving; or
  - (5) Under the influence of any substance which impairs the mental or physical faculties of such person to a degree which renders him or her incapable of safely driving.
- (n) When any person over the age of 21 years is convicted pursuant to this section and a child under the age of 14 years was present in the vehicle at the time of the offense, the defendant shall be sentenced to double the minimum punishment that the person would have received if the child had not been present in the motor vehicle.

### ALASKA

Alaska Stat § 28.35.030

*Operating a Vehicle, Aircraft or Watercraft While Under the Influence of an Alcoholic Beverage, Inhalant, or Controlled Substance*

- (a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft
  - (1) while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance, singly or in combination; or
  - (2) and if, as determined by a chemical test taken within four hours after the alleged operating or driving, there is 0.08 percent or more by weight of alcohol in the person's blood or 80

milligrams or more of alcohol per 100 milliliters of blood, or if there is 0.08 grams or more of alcohol per 210 liters of the person's breath.

Alaska Stat. § 11.51.100(b) (2005)

*Endangering the welfare of a child in the first degree*

(b) A person commits the crime of endangering the welfare of a minor in the first degree if the person transports a child in a motor vehicle, aircraft, or watercraft while in violation of AS 28.35.030.

## ARIZONA

Ariz. Rev. Stat. § 28-1383 (A)(3) (2005)

*Aggravated driving or actual physical control while under the influence; violation; classification; definition*

A. person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person does any of the following:...

3. While a person under fifteen years of age is in the vehicle, commits a violation of either:

(a) Section 28-1381 [*Driving or actual physical control while under the influence*]

(b) Section 28-1382 [*Driving or actual physical control while under the extreme influence of intoxicating liquor*]

## CALIFORNIA

Cal. Veh. Code § 23572 (2004)

*Minor passenger in vehicle*

(a) If any person is convicted of a violation of Section 23152 and a minor under 14 years of age was a passenger in the vehicle at the time of the offense, the court shall impose the following penalties in addition to any other penalty prescribed:

(1) If the person is convicted of a violation of Section 23152 punishable under Section 23536, the punishment shall be enhanced by an imprisonment of 48 continuous hours in the county jail, whether or not probation is granted, no part of which shall be stayed.

(2) If a person is convicted of a violation of Section 23152 punishable under Section 23540, the punishment shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(3) If a person is convicted of a violation of Section 23152 punishable under Section 23546, the punishment shall be enhanced by an imprisonment of 30 days in the county jail, whether or not probation is granted, no part of which may be stayed.



- (4) If a person is convicted of a violation of Section 23152 which is punished as a misdemeanor under Section 23550, the punishment shall be enhanced by an imprisonment of 90 days in the county jail, whether or not probation is granted, no part of which may be stayed.
- (b) The driving of a vehicle in which a minor under 14 years of age was a passenger shall be pled and proven.
- (c) No punishment enhancement shall be imposed pursuant to this section if the person is also convicted of a violation of Section 273a of the Penal Code arising out of the same facts and incident.

## DELAWARE

Del. Code Ann. Tit. 21, §4177 (2005)

*Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties*

- (a) No person shall drive a vehicle:
  - (1) When the person is under the influence of alcohol;
  - (2) When the person is under the influence of any drug;
  - (3) When the person is under the influence of a combination of alcohol and any drug;
  - (4) When the person's alcohol concentration is .08 or more; or
  - (5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more. Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving. . . .
- (d) Whoever is convicted of a violation of subsection (a) of this section shall:
  - (1) For the first offense, be fined not less than \$ 230 nor more than \$ 1,150 or imprisoned not more than 6 months or both, and shall be required to complete an alcohol evaluation and a course of instruction and/or rehabilitation program pursuant to § 4177D of this title, which may include confinement for a period not to exceed 6 months, and pay a fee not to exceed the maximum fine. Any period of imprisonment imposed under this paragraph may be suspended. . . .

- (6) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's 17th birthday is on or within the vehicle shall:
- a. For the first offense, be fined an additional minimum of \$ 230 and not more than an additional \$ 1,150 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.
  - b. For each subsequent like offense, be fined an additional minimum of \$ 575 and not more than an additional \$ 2,300 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.
  - c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.

**DISTRICT OF COLUMBIA**  
DC Code § 50-2201.05 (2006)

*Fleeing from scene of accident; driving under the influence of liquor or drugs*

- (b) (1) No individual shall, when the individual's blood contains .08% or more, by weight, of alcohol (or when .38 micrograms or more of alcohol are contained in 1 milliliter of his breath, consisting of substantially alveolar air), or the individual's urine contains .10% or more, by weight, of alcohol, or under the influence of intoxicating liquor or any drug or any combination thereof, operate or be in physical control of any vehicle in the District. No individual under 21 years of age shall, when the individual's blood, breath, or urine contains any measurable amount of alcohol, operate or be in physical control of any vehicle in the District. Any individual violating any provision of this paragraph, upon conviction for the first offense, unless the individual has previously been convicted for a violation of paragraph (2) of this subsection, shall be fined \$ 300 and may be imprisoned for not more than 90 days. In addition, if the individual's blood contains at least .20%, but not more than .25%, by weight, of alcohol, the individual shall be imprisoned for an additional mandatory minimum period of 5 days, or if the level is more than .25%, by weight, of alcohol, for an additional mandatory minimum period of 10 days. The additional mandatory minimum period shall not be suspended by the court. . . .

- (D) In addition to the penalties otherwise authorized by this section, any individual convicted for a violation of paragraphs (1) and (2) of this subsection while transporting an individual 17 years of age or younger shall be fined an additional minimum of \$ 500 and not more than \$ 1000 and sentenced to perform 48 hours of community service benefiting children or, for a subsequent offense, 80 hours of community service in such program.

## FLORIDA

Fla. Stat. Ann. § 316.193(1) and (4) (2005)

*Driving under the influence; penalties*

- (1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:
  - (a) The person is under the influence of alcoholic beverages, any chemical substance set forth in §877.111, or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired;
  - (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
  - (c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.
- (4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.20 or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vehicle by a person under the age of 18 years, shall be punished:
  - (a) By a fine of:
    1. Not less than \$500 or more than \$1,000 for a first conviction.
    2. Not less than \$1,000 or more than \$2,000 for a second conviction.
    3. Not less than \$2,000 for a third or subsequent conviction.
  - (b) By imprisonment for:
    1. Not more than 9 months for a first conviction.
    2. Not more than 12 months for a second conviction.

**FLORIDA**

Fla. Stat. § 316.193

*Driving Under the Influence; Penalties*

- (1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:
  - (a) The person is under the influence of alcoholic beverages, any chemical substance set forth in §877.111, or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired;
  - (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
  - (c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.
- (2) (a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of subsection (1) shall be punished:
  1. By a fine of:
    - a. Not less than \$ 250 or more than \$ 500 for a first conviction.
    - b. Not less than \$ 500 or more than \$ 1,000 for a second conviction; and
  2. By imprisonment for:
    - a. Not more than 6 months for a first conviction.
    - b. Not more than 9 months for a second conviction.
  3. For a second conviction, by mandatory placement for a period of at least 1 year, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with § 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.
- (4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.20 or higher, or any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.20 or higher, or

any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vehicle by a person under the age of 18 years, shall be punished:

(a) By a fine of:

1. Not less than \$ 500 or more than \$ 1,000 for a first conviction.
2. Not less than \$ 1,000 or more than \$ 2,000 for a second conviction.
3. Not less than \$ 2,000 for a third or subsequent conviction.

(b) By imprisonment for:

1. Not more than 9 months for a first conviction.
2. Not more than 12 months for a second conviction.

## GEORGIA

Ga. Code Ann. § 40-6-391(a) and (l) (2005)

*Driving under the influence of alcohol, drugs, or other intoxicating substances; penalties; publication of notice of conviction for persons convicted for second time; endangering a child*

(a) A person shall not drive or be in actual physical control of any moving vehicle while:

- (1) Under the influence of alcohol to the extent that it is less safe for the person to drive;
- (2) Under the influence of any drug to the extent that it is less safe for the person to drive;
- (3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to drive;
- (4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person to drive;
- (5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended; or
- (6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

- (l) A person who violates this Code section while transporting in a motor vehicle a child under the age of 14 years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or drugs. The offense of endangering a child by driving under the influence of alcohol or drugs shall not be merged with the offense of driving under the influence of alcohol or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section Code Section 16-12-1, relating to the offense of contributing to the delinquency, unruliness, or deprivation of a child.

Ga. Code Ann. § 16-12-1(d) (2005)

*Contributing to the delinquency, unruliness, or deprivation of a minor.*

- (d.1) A person convicted pursuant to paragraph (3) of subsection (b) of this Code section shall be punished as follows:

- (1) Upon conviction of an offense which resulted in the serious injury or death of a child, without regard to whether such offense was a first, second, third, or subsequent offense, the defendant shall be guilty of a felony and shall be punished as provided in subsection (e) of this Code section;

- (2) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the first conviction, the defendant shall be guilty of a misdemeanor and shall be fined not more than \$1,000.00 or shall be imprisoned for not more than 12 months, or both fined and imprisoned;

- (3) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the second conviction, the defendant shall be guilty of a high and aggravated misdemeanor and shall be fined not less than \$1,000.00 nor more than \$5,000.00 or shall be imprisoned for not less than one year, or both fined and imprisoned; and

- (4) Upon the conviction of an offense which does not result in the serious injury or death of a child and which is the third or subsequent conviction, the defendant shall be guilty of a felony and shall be fined not less than \$10,000.00 or shall be imprisoned for not less than one year nor more than five years, or both fined and imprisoned.

- (e) A person convicted pursuant to paragraph (4) or (5) of subsection (b) or paragraph (1) of subsection (d.1) of this Code section shall be guilty of a felony and punished as follows:

- (1) Upon conviction of the first offense, the defendant shall be imprisoned for not less than one nor more than five years; and

## ILLINOIS

625 Ill. Comp. Stat. 5/11-501 (2005)

*Driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof*

- (a) A person shall not drive or be in actual physical control of any vehicle within this State while:
- (1) the alcohol concentration in the person's blood or breath is 0.08 or more based on the definition of blood and breath units in Section 11-501.2 [625-5/11-501.2];
  - (2) under the influence of alcohol;
  - (3) under the influence of any intoxicating compound or combination of intoxicating compounds to a degree that renders the person incapable of driving safely;
  - (4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;
  - (5) under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that renders the person incapable of safely driving; or
  - (6) there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act [720 ILCS 550/1 et seq.], a controlled substance listed in the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.], or an intoxicating compound listed in the Use of Intoxicating Compounds Act 720 ILCS 690/0.01 et seq. . . .
- (c-5)(1) A person who violates subsection (a), if the person was transporting a person under the age of 16 at the time of the violation, is subject to an additional mandatory minimum fine of \$ 1,000, an additional mandatory minimum 140 hours of community service, which shall include 40 hours of community service in a program benefiting children, and an additional 2 days of imprisonment. The imprisonment or assignment of community service under this subdivision (c-5)(1) is not subject to suspension, nor is the person eligible for a reduced sentence.
- (2) Except as provided in subdivisions (c-5)(3) and (c-5)(4) a person who violates subsection (a) a second time, if at the time of the second violation the person was transporting a person under the age of 16, is subject to an additional 10 days of imprisonment, an additional mandatory minimum fine of \$ 1,000, and an additional mandatory minimum 140 hours of community service, which shall include 40 hours of community service in a program benefiting children. The imprisonment or assignment of community service under this subdivision (c-5)(2) is not subject to suspension, nor is the person eligible for a reduced sentence.
- (3) Except as provided in subdivision (c-5)(4), any person convicted of violating subdivision (c-5)(2) or a similar provision within 10 years of a previous violation of subsection (a) or a similar provision shall receive, in addition to any other penalty imposed, a mandatory

minimum 12 days imprisonment, an additional 40 hours of mandatory community service in a program benefiting children, and a mandatory minimum fine of \$ 1,750. The imprisonment or assignment of community service under this subdivision (c-5)(3) is not subject to suspension, nor is the person eligible for a reduced sentence.

- (4) Any person convicted of violating subdivision (c-5)(2) or a similar provision within 5 years of a previous violation of subsection (a) or a similar provision shall receive, in addition to any other penalty imposed, an additional 80 hours of mandatory community service in a program benefiting children, an additional mandatory minimum 12 days of imprisonment, and a mandatory minimum fine of \$ 1,750. The imprisonment or assignment of community service under this subdivision (c-5)(4) is not subject to suspension, nor is the person eligible for a reduced sentence.
  - (5) Any person convicted a third time for violating subsection (a) or a similar provision, if at the time of the third violation the person was transporting a person under the age of 16, is guilty of a Class 4 felony and shall receive, in addition to any other penalty imposed, an additional mandatory fine of \$ 1,000, an additional mandatory 140 hours of community service, which shall include 40 hours in a program benefiting children, and a mandatory minimum 30 days of imprisonment. The imprisonment or assignment of community service under this subdivision (c-5)(5) is not subject to suspension, nor is the person eligible for a reduced sentence.
  - (6) Any person convicted of violating subdivision (c-5)(5) or a similar provision a third time within 20 years of a previous violation of subsection (a) or a similar provision is guilty of a Class 4 felony and shall receive, in addition to any other penalty imposed, an additional mandatory 40 hours of community service in a program benefiting children, an additional mandatory fine of \$ 3,000, and a mandatory minimum 120 days of imprisonment. The imprisonment or assignment of community service under this subsection (c-5)(6) is not subject to suspension, nor is the person eligible for a reduced sentence.
  - (7) Any person convicted a fourth or subsequent time for violating subsection (a) or a similar provision, if at the time of the fourth or subsequent violation the person was transporting a person under the age of 16, and if the person's 3 prior violations of subsection (a) or similar provision occurred while transporting a person under the age of 16 or while the alcohol concentration in his or her blood, breath, or urine was 0.16 or more based on the definition of blood, breath, or urine units in Section 11-501.2 [625 ILCS 5/11-501.2], is guilty of a Class 2 felony, is not eligible for probation or conditional discharge, and is subject to a minimum fine of \$ 3,000.
- (d)(1) Every person convicted of committing a violation of this Section shall be guilty of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof if: . . .



- (B) the person committed a violation of subsection (a) while driving a school bus with persons 18 years of age or younger on board; . . .
  
- (E) the person, in committing a violation of subsection (a) while driving at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect under subsection (a) of Section 11-605 of this Code [625 ILCS 5/11-605], was involved in a motor vehicle accident that resulted in bodily harm, other than great bodily harm or permanent disability or disfigurement, to another person, when the violation of subsection (a) was a proximate cause of the bodily harm. . . .

## KANSAS

Kan. Stat. Ann. § 8-1567(h) (2003)

*Driving under influence of alcohol or drugs; blood alcohol concentration; penalties*

- (a) No person shall operate or attempt to operate any vehicle within this state while:
  - (1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;
  - (2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;
  - (3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
  - (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or
  - (5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.
  
- (b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.
  
- (h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

**KENTUCKY**

**KRS § 189A.010**

*Operating motor vehicle with alcohol concentration of or above 0.08, or of or above 0.02 for persons under age twenty-one, or while under the influence of alcohol or other substance which impairs driving ability prohibited - Admissibility of alcohol concentration test results - Presumptions - Penalties - Aggravating circumstances*

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
  - (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
  - (b) While under the influence of alcohol;
  - (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
  - (d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; . . .
  
- (5) Any person who violates the provisions of paragraph (a), (b), (c), or (d) of subsection (1) of this section shall:
  - (a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$ 200) nor more than five hundred dollars (\$ 500), or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days, or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
  - (b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$ 350) nor more than five hundred dollars (\$ 500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.

- (2) Upon conviction of the second or subsequent offense, the defendant shall be imprisoned for not less than three years nor more than 20 years.

## HAWAII

Haw. Rev. Stat. Ann. §291E-61(a) and (b)(4) (2005)

*Operating a vehicle under the influence of an intoxicant*

- (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;

- (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;

- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or

- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

- (b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence: . . .

- (4) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph and paragraph (1), (2), or (3) shall not exceed thirty days.

## IDAHO

Idaho Code § 18-1501(3) (2004)

*Injury to children*

- (3) A person over the age of eighteen (18) commits the crime of injury to a child if the person transports a minor in a motor vehicle or vessel as defined in section 67-7003, Idaho Code, while under the influence of alcohol, intoxicating liquor, a controlled substance, or any combination thereof, in violation of section 18-8004 or 67-7034, Idaho Code. Any person convicted of violating this subsection is guilty of a misdemeanor. If a child suffers bodily injury or death due to a violation of this subsection, the violation will constitute a felony punishable by imprisonment for not more than ten (10) years, unless a more severe penalty is otherwise prescribed by law.

(c) For a third offense within a five (5) year period, be fined not less than five hundred dollars (\$ 500) nor more than one thousand dollars (\$ 1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be sixty (60) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.

(d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release.

(11) For purposes of this section, aggravating circumstances are any one (1) or more of the following: . . .

(f) Operating a motor vehicle that is transporting a passenger under the age of twelve (12) years old.

## LOUISIANA

La. Rev. Stat. Ann. 14:98(J) (2005)

A. (1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when:

(a) The operator is under the influence of alcoholic beverages; or

(b) The operator's blood alcohol concentration is 0.08 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood; or

(c) The operator is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964; or

(d) (i) The operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription. . . .

(e) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the operator knowingly consuming quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug. . . .

- (j) This Subsection shall be cited as the "Child Endangerment Law". When the state proves in addition to the elements of the crime as set forth in Subsection A of this Section that a minor child twelve years of age or younger was a passenger in the motor vehicle, aircraft, watercraft, vessel, or other means of motorized conveyance at the time of the commission of the offense, of the sentence imposed by the court, the execution of the minimum mandatory sentence provided by Subsection B or C of this Section, as appropriate, shall not be suspended. If imprisonment is imposed pursuant to the provisions of Subsection D, the execution of the minimum mandatory sentence shall not be suspended. If imprisonment is imposed pursuant to the provisions of Subsection E, at least two years of the sentence shall be imposed without benefit of suspension of sentence.

## MAINE

Me. Rev. Stat. Ann. Tit. 29-A § 2411 (2004)

*Criminal OUI*

1-A. OFFENSE. A person commits **OUI** if that person:

A. Operates a motor vehicle:

- 1) While under the influence of intoxicants; or
- 2) While having a blood-alcohol level of 0.08% or more;

5. PENALTIES. Except as otherwise provided, violation of this section is a Class D crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The following minimum penalties apply and may not be suspended:

G. The court shall order an additional period of license suspension of 275 days for a person sentenced under paragraph A, B, C, D or D-1 if the person was operating the motor vehicle at the time of the offense with a passenger under 21 years of age.

## MARYLAND

Md. Code Ann., Transp. I § 21-902 (2003)

*Driving while under the influence of alcohol, while under the influence of alcohol per se, while impaired by alcohol, or while impaired by a drug, a combination of drugs, a combination of one or more drugs and alcohol, or while impaired by a controlled dangerous substance*

(a) Driving while under the influence of alcohol or under the influence of alcohol per se.

- (1) A person may not drive or attempt to drive any vehicle while under the influence of alcohol.

(2) A person may not drive or attempt to drive any vehicle while the person is under the influence of alcohol per se.

(3) A person may not violate paragraph (1) or (2) of this subsection while transporting a minor.

(b) Driving while impaired by alcohol. –

(1) A person may not drive or attempt to drive any vehicle while impaired by alcohol.

(2) A person may not violate paragraph (1) of this subsection while transporting a minor.

(c) Driving while impaired by drugs or drugs and alcohol. –

(1) A person may not drive or attempt to drive any vehicle while he is so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that he cannot drive a vehicle safely.

(2) It is not a defense to any charge of violating this subsection that the person charged is or was entitled under the laws of this State to use the drug, combination of drugs, or combination of one or more drugs and alcohol, unless the person was unaware that the drug or combination would make the person incapable of safely driving a vehicle.

(3) A person may not violate paragraph (1) or (2) of this subsection while transporting a minor.

(d) Driving while impaired by controlled dangerous substance. –

(1) A person may not drive or attempt to drive any vehicle while the person is impaired by any controlled dangerous substance, as that term is defined in § 5-101 of the Criminal Law Article, if the person is not entitled to use the controlled dangerous substance under the laws of this State.

(2) A person may not violate paragraph (1) of this subsection while transporting a minor.

Md. Code Ann., Transp. I § 27-101 (2005)

*Penalties for misdemeanor*

(a) Violation of vehicle laws a misdemeanor. – It is a misdemeanor for any person to violate any of the provisions of the Maryland Vehicle Law. . .

(q) Violation of § 21-902. –

(1) Any person who is convicted of a violation of § 21-902(a)(3) or (d)(2) of this article is subject to:

- (i) For a first offense, a fine of not more than \$ 2,000 or imprisonment for not more than 2 years or both;
  - (ii) For a second offense, a fine of not more than \$ 3,000 or imprisonment for not more than 3 years or both; and
  - (iii) For a third or subsequent offense, a fine of not more than \$ 4,000 or imprisonment for not more than 4 years or both.
- (2) Any person who is convicted of a violation of § 21-902(b)(2) or (c)(3) of this article is subject to:
- (i) For a first offense, a fine of not more than \$ 1,000 or imprisonment for not more than 6 months or both; and
  - (ii) For a second or subsequent offense, a fine of not more than \$ 2,000 or imprisonment for not more than 1 year or both.

## **MICHIGAN**

Mich. Comp. Laws § 257.625 (2005)

- (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means either of the following applies:
- (a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
  - (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- (3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered. . . .
- (7) A person, whether licensed or not, is subject to the following requirements:

- (a) He or she shall not operate a vehicle in violation of subsection (1), (3), (4), (5), or (8) while another person who is less than 16 years of age is occupying the vehicle. A person who violates this subdivision is guilty of a crime punishable as follows:
  - (i) Except as provided in subparagraph (ii), a person who violates this subdivision is guilty of a misdemeanor and shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and to 1 or more of the following:
    - (A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.
    - (B) Community service for not less than 30 days or more than 90 days.
  - (ii) If the violation occurs within 7 years of a prior conviction or within 10 years of 2 or more prior convictions, a person who violates this subdivision is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:
    - (A) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.
    - (B) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.
- (b) He or she shall not operate a vehicle in violation of subsection (6) while another person who is less than 16 years of age is occupying the vehicle. A person who violates this subdivision is guilty of a misdemeanor punishable as follows:
  - (i) Except as provided in subparagraph (ii), a person who violates this subdivision may be sentenced to 1 or more of the following:
    - (A) Community service for not more than 60 days.
    - (B) A fine of not more than \$500.00.
    - (C) Imprisonment for not more than 93 days.
  - (ii) If the violation occurs within 7 years of a prior conviction or within 10 years of 2 or more prior convictions, a person who violates this subdivision shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and to 1 or more of the following:



- (A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.
  - (B) Community service for not less than 30 days or more than 90 days.
  - (c) In the judgment of sentence under subdivision (a)(i) or (b)(i), the court may, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (a)(ii) or (b)(ii), the court shall, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d.
- (8) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

## MINNESOTA

Minn. Stat. § 169A.03 (Subd. 3)(2003)

### *Definitions*

Subd. 3. Aggravating factor. "Aggravating factor" includes: . . .

- (3) having a child under the age of 16 in the motor vehicle at the time of the offense if the child is more than 36 months younger than the offender.

Minn. Stat. § 169A.20

### *Driving While Impaired*

Subdivision 1. Driving while impaired crime. It is a crime for any person to drive, operate, or be in physical control of any motor vehicle within this state or on any boundary water of this state:

- (1) when the person is under the influence of alcohol;
- (2) when the person is under the influence of a controlled substance;
- (3) when the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to drive or operate the motor vehicle;

- (4) when the person is under the influence of a combination of any two or more of the elements named in clauses (1), (2), and (3);
- (5) when the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.08 or more;
- (6) when the vehicle is a commercial motor vehicle and the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the commercial motor vehicle is 0.04 or more; or
- (7) when the person's body contains any amount of a controlled substance listed in schedule I or II other than marijuana or tetrahydrocannabinols.

## NEVADA

Nev. Rev. Stat. § 484.379(1) and (2)(2004)

*Driving under the influence of intoxicating liquor or controlled or prohibited substance: Unlawful acts; affirmative defense; additional penalty for violation committed in work zone.*

1. It is unlawful for any person who:

- (a) Is under the influence of intoxicating liquor;
- (b) Has a concentration of alcohol of 0.10 or more in his blood or breath; or
- (c) Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.10 or more in his blood or breath,

to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.

2. It is unlawful for any person who:

- (a) Is under the influence of a controlled substance;
- (b) Is under the combined influence of intoxicating liquor and a controlled substance; or
- (c) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle,

to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this state is not a defense against any charge of violating this subsection.

3. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his blood or urine that is equal to or greater than: (lists levels).

Nev. Rev. Stat. 484.3792(7) (2004)

*Driving under the influence of intoxicating liquor or controlled or prohibited substance: Penalties; segregation of offender; probation, suspension of sentence and plea bargaining restricted; intermittent confinement; consecutive sentences*

7. If the defendant was transporting a person who is less than 15 years of age in the motor vehicle at the time of the violation, the court shall consider that fact as an aggravating factor in determining the sentence of the defendant.

## **NEW HAMPSHIRE**

N.H. Rev. Stat. Ann. § 265:82-a (2005)

*Aggravated Driving While Intoxicated*

A person shall be guilty of a violation of this section if the person drives or attempts to drive a vehicle upon any way:

- I. While under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drug and, at the time alleged:

(d) Carries as a passenger a person under the age of 16;

- II. While having an alcohol concentration of 0.08 or more or, in the case of a person under the age of 21 at the time of the offense, 0.02 or more or, in the case of a person driving a commercial motor vehicle and licensed pursuant to RSA 263:86 at the time of the offense and notwithstanding the provisions of RSA 263:94, 0.04 or more and, at the time alleged:

(d) Carries as a passenger a person under the age of 16.

N.H. Rev. Stat. Ann. §265:82-b(VIII) (2005)

*Driving Under Influence of Drugs or Liquor; Driving with Excess Alcohol Concentration*

- VIII. Any person convicted of a violation of RSA 215-A:11, RSA 265:82, or RSA 265:82-a, and who at the time of driving a vehicle or off highway recreational vehicle was transporting a person under the age of 16, shall have the driver's license or privilege to drive revoked for the maximum time period under the section violated and the person's license or privilege to drive shall not be restored until the offender has successfully completed a 7-day program at the state-operated multiple DWI offender program or an equivalent 7-day residential intervention program approved by the commissioner at the person's own expense.

## NEW JERSEY

N.J. Stat. Annotated § 39:4-50

### *Driving While Intoxicated*

(a) Except as provided in subsection (g) of this section, a person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood shall be subject:

(1) For the first offense:

(i) if the person's blood alcohol concentration is 0.08% or higher but less than 0.10%, or the person operates a motor vehicle while under the influence of intoxicating liquor, or the person permits another person who is under the influence of intoxicating liquor to operate a motor vehicle owned by him or in his custody or control or permits another person with a blood alcohol concentration of 0.08% or higher but less than 0.10% to operate a motor vehicle, to a fine of not less than \$ 250 nor more than \$ 400 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of three months;

N.J. Stat. Ann. § 39:4-50.15 (2004)

### *Additional penalty for driving under the influence with a minor as a passenger*

a. As used in this act:

"Minor" means a person who is 17 years of age or younger.

"Parent or guardian" means any natural parent, adoptive parent, foster parent, stepparent, or any person temporarily responsible for the care, custody or control of a minor or upon whom there is a legal duty for such care, custody or control.

b. A parent or guardian who is convicted of a violation of R.S.39:4-50 and who, at the time of the violation, has a minor as a passenger in the motor vehicle is guilty of a disorderly persons offense.

c. In addition to the penalties otherwise prescribed by law, a person who is convicted under subsection b. of this section shall forfeit the right to operate a motor vehicle over the highways of

this State for a period of not more than six months and shall be ordered to perform community service for a period of not more than five days.

## **NORTH CAROLINA**

N.C. Gen. Stat. § 20-138.1 (2004)

*Impaired driving*

(a) Offense. ~ A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more.

N.C. Gen. Stat. § 20-179(c) (2004)

*Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments*

(c) Determining Existence of Grossly Aggravating Factors. ~ At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. The judge must impose the Level One punishment under subsection (g) of this section if the judge determines that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if the judge determines that only one of the grossly aggravating factors applies. The grossly aggravating factors are:...

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

## **NORTH DAKOTA**

N.D. Cent. Code, §39-08-01(2005)

*Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.*

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:

a. That person has an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.

b. That person is under the influence of intoxicating liquor.

- c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
- d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

- 2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.

N.D. Cent. Code, § 39-08-01.4 (2005)

*Driving while under the influence of alcohol while being accompanied by a minor - Penalty.*

It is a class A misdemeanor for an individual who is at least twenty-one years of age to violate section 39-08-01 if the violation occurred while a minor was accompanying the individual in a motor vehicle.

## **OHIO**

Ohio Rev. Code Ann. §2919.22(A)-(C) (2004)

*Endangering children*

- (C) (1) No person shall operate a vehicle, streetcar, or trackless trolley within this state in violation of division (A) of §4511.19 of the Revised Code when one or more children under eighteen years of age are in the vehicle, streetcar, or trackless trolley. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division and a violation of division (A) of §4511.19 of the Revised Code that constitutes the basis of the charge of the violation of this division. For purposes of §§4511.191 to 4511.197[4511.19.7 and all related provisions of law, a person arrested for a violation of this division shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine.

**OREGON**

Or. Rev. Stat. §813.010 (2005)

*Driving under the influence of intoxicants; penalty*

- (1) A person commits the offense of driving while under the influence of intoxicants if the person drives a vehicle while the person:
  - (a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;
  - (b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or
  - (c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled substance. . . .
- (5) Except as provided in subsection (5) of this section, the offense described in this section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon any premises open to the public. . . .
- (6) In addition to any other sentence that may be imposed, the court shall impose a fine on a person convicted of driving while under the influence of intoxicants as follows:
  - (a) For a person's first conviction, a minimum of \$ 1,000.
  - (b) For a person's second conviction, a minimum of \$ 1,500.
  - (c) For a person's third or subsequent conviction, a minimum of \$ 2,000 if the person is not sentenced to a term of imprisonment.
- (7) Notwithstanding ORS 161.635, \$ 10,000 is the maximum fine that a court may impose on a person convicted of driving while under the influence of intoxicants if:
  - (a) The current offense was committed in a motor vehicle; and
  - (b) There was a passenger in the motor vehicle who was under 18 years of age and was at least three years younger than the person driving the motor vehicle.

**PENNSYLVANIA**

**75 Pa.C.S. § 3802**

*Driving under influence of alcohol or controlled substance*

- (f) **COMMERCIAL OR SCHOOL VEHICLES.**— An individual may not drive, operate or be in actual physical control of the movement of a commercial vehicle, school bus or school vehicle in any of the following circumstances:
- (1) After the individual has imbibed a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is:
    - (i) 0.04% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a commercial vehicle other than a school bus or a school vehicle.
    - (ii) 0.02% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a school bus or a school vehicle.
  - (2) After the individual has imbibed a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.
  - (3) While the individual is under the influence of a controlled substance or combination of controlled substances, as defined in section 1603 (relating to definitions).

**Pa.C.S. § 3804**

*Penalties*

- (b) **HIGH RATE OF BLOOD ALCOHOL; MINORS; COMMERCIAL VEHICLES AND SCHOOL BUSES AND SCHOOL VEHICLES; ACCIDENTS.**— Except as set forth in subsection (c), an individual who violates section 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a vehicle or other property or who violates section 3802(b), (e) or (f) shall be sentenced as follows:
- (1) For a first offense, to:
    - (i) undergo imprisonment of not less than 48 consecutive hours;
    - (ii) pay a fine of not less than \$ 500 nor more than \$ 5,000;
    - (iii) attend an alcohol highway safety school approved by the department; and
    - (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.



(2) For a second offense, to:

- (i) undergo imprisonment of not less than 30 days;
- (ii) pay a fine of not less than \$ 750 nor more than \$ 5,000;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(3) For a third offense, to:

- (i) undergo imprisonment of not less than 90 days;
- (ii) pay a fine of not less than \$ 1,500 nor more than \$ 10,000; and
- (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(4) For a fourth or subsequent offense, to:

- (i) undergo imprisonment of not less than one year;
- (ii) pay a fine of not less than \$ 1,500 nor more than \$ 10,000; and
- (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

## RHODE ISLAND

R.I. Gen. Laws § 31-27-2 (2004)

*Driving under influence of liquor or drugs*

- (a) Whoever drives or otherwise operates any vehicle in the state while under the influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination of these, shall be guilty of a misdemeanor except as provided in subdivision (d)(3) and shall be punished as provided in subsection (d) of this section.
- (b)(1) Any person charged under subsection (a) of this section whose blood alcohol concentration is eight one-hundredths of one percent (.08%) or more by weight as shown by a chemical analysis of a blood, breath, or urine sample shall be guilty of violating subsection (a) of this section. This provision shall not preclude a conviction based on other admissible evidence.

Proof of guilt under this section may also be based on evidence that the person charged was under the influence of intoxicating liquor, drugs, toluene, or any controlled substance defined in chapter 28 of title 21, or any combination of these, to a degree which rendered the person incapable of safely operating a vehicle. The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a drug shall not constitute a defense against any charge of violating this section.

- (2) Whoever drives or otherwise operates any vehicle in the state with a blood presence of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as provided in subsection (d) of this section. .
- (d) (1) (i) Every person found to have violated subdivision (b)(1) of this section shall be sentenced as follows: for a first violation whose blood alcohol concentration is eight one-hundredths of one percent(.08%) but less than one-tenth of one percent(.1%) by weight or who has a blood presence of any scheduled controlled substance as defined in subdivision (b)(2) shall be subject to a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars(\$300), shall be required to perform ten(10) to sixty(60) hours of public community restitution, and/or shall be imprisoned for up to one year. The sentence may be served in any unit of the adult correctional institutions in the discretion of the sentencing judge and/or shall be required to attend a special course on driving while intoxicated or under the influence of a controlled substance, and his or her driver's license shall be suspended for thirty(30) days up to one hundred eighty(180) days. . . .
- (4) (i) For purposes of determining the period of license suspension, a prior violation shall constitute any charge brought and sustained under the provisions of this section or § 31-27-2.1.
- (ii) Any person over the age of eighteen (18) who is convicted under this section for operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of these, while a child under the age of thirteen (13) years was present as a passenger in the motor vehicle when the offense was committed may be sentenced to a term of imprisonment of not more than one year and further shall not be entitled to the benefit of suspension or deferment of this sentence. The sentence imposed under this section may be served in any unit of the adult correctional institutions in the discretion of the sentencing judge.

## **SOUTH CAROLINA**

S.C. Code Ann. § 56-5-2947 (2003)

*Child endangerment; definition; penalties; jurisdiction; evidence for taking child into protective custody*

(A) A person eighteen years of age or over is guilty of child endangerment when:

- (1) the person is in violation of:
  - (a) Section 56-5-750 (failure to stop when signaled by law enforcement);
  - (b) Section 56-5-2930 (driving under the influence); or
  - (c) Section 56-5-2945 (causing great bodily injury or death while under the influence; and
- (2) the person has one or more passengers under sixteen years of age in the motor vehicle when the violation occurs.

If more than one passenger under sixteen years of age is in the vehicle when a violation of subsection (A)(1) occurs, the person may be charged with only one violation of this section.

(B) Upon conviction the person must be punished by:

- (1) a fine of not more than one-half of the maximum fine allowed for committing the violation enumerated in subsection (A)(1), when the person is fined for that offense;
- (2) a term of imprisonment of not more than one-half of the maximum term of imprisonment allowed for committing the violation enumerated in subsection (A)(1), when the person is imprisoned for the offense; or
- (3) both a fine and imprisonment as prescribed in items (1) and (2) when the person is fined and imprisoned for the offense.

(C) No portion of the penalty assessed under subsection (B) may be suspended or revoked and probation may not be awarded.

(D) In addition to imposing the penalties for offenses enumerated in subsection (A)(1) and the penalties contained in subsection (B), the department must suspend the person's driver's license for sixty days. Sections 56-1-1320 and 56-5-2990 as they relate to enrollment in an alcohol and drug safety action program and to the issuance of a provisional driver's license will not be effective until the sixty-day suspension period is completed.

## TENNESSEE

Tenn. Code Ann. § 55-10-414 (2004)

*Child endangerment - Drunk Driving Child Protection Act*

A person who violates § 55-10-401 (driving under the influence), and who at the time of the offense was accompanied by a child under thirteen (13) years of age:

- (1) Commits the offense of child endangerment, a Class A misdemeanor, punishable by a mandatory minimum incarceration of thirty (30) days and a mandatory minimum fine of one

thousand dollars (\$1,000), which incarceration and fine shall be in addition to any other incarceration and fine required by law;

- (2) Commits the Class D felony of aggravated child endangerment when the child suffers serious bodily injury as a result of the violation of § 55-10-401; and
- (3) Commits the Class C felony of especially aggravated child endangerment when the death of the child is the result of the violation of § 55-10-401.

#### TEXAS

Tex. Penal Code Ann. § 49.045 (2005)

*Driving while intoxicated with a child passenger*

(a) A person commits an offense if:

- (1) the person is intoxicated while operating a motor vehicle in a public place; and
- (2) the vehicle being operated by the person is occupied by a passenger who is younger than 15 years of age.

(b) An offense under this section is a state jail felony.

#### UTAH

Utah Code Ann. § 41-6-44(2005)

*Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration ~ Measurement of blood or breath alcohol ~ Criminal punishment ~ Arrest without warrant ~ Penalties ~ Suspension or revocation of license*

- (2)(a) A person may not operate or be in actual physical control of a vehicle within this state if the person:
  - (i) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;
  - (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or
  - (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control;
  - (iv) (A) is 21 years of age or older;

- (B) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;
  - (C) has a passenger under 16 years of age in the vehicle at the time of operation or actual physical control; and
  - (D) committed the offense within ten years of a prior conviction; or
- (v) (A) is 21 years of age or older;
- (B) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation or actual physical control;
  - (C) has a passenger under 16 years of age in the vehicle at the time of operation or actual physical control; and
  - (D) committed the offense within ten years of a prior conviction.
- (3) (a) A person convicted the first or second time of a violation of Subsections (2)(a)(i) through (iii) is guilty of a:
- (i) class B misdemeanor; or
  - (ii) class A misdemeanor if the person: . . .
    - (B) had a passenger under 16 years of age in the vehicle at the time of the offense; or
    - (C) was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense.

## **VIRGINIA**

Va. Code Ann. §18.2-266

*Driving Motor Vehicle, Engine, etc., While Intoxicated, etc.*

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train (i) while such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath as indicated by a chemical test administered as provided in this article, (ii) while such person is under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely, or (iv) while such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to drive

or operate any motor vehicle, engine or train safely. A charge alleging a violation of this section shall support a conviction under clauses (i), (ii), (iii) or (iv).

Va. Code Ann. § 18.2-270(D) (2004)

*Penalty for driving while intoxicated; subsequent offense; prior conviction*

D. In addition to the penalty otherwise authorized by this section or §16.1-278.9, any person convicted of a violation of §18.2-266 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1,000 and (ii) sentenced to a mandatory minimum period of confinement of five days.

## WASHINGTON

Wash. Rev. Code § 46.61.502(2004)

*Driving under the influence*

- (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:
  - (a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or
  - (b) While the person is under the influence of or affected by intoxicating liquor or any drug; or
  - (c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

Wash. Rev. Code § 46.61.5055(4) (2005)

*Alcohol violators ~ Penalty schedule*

- (4) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:
  - (a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and
  - (b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.
- (5) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

- (a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and
- (b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

#### **WEST VIRGINIA**

W. Va. Code § 17C-5-2(i)(j) (2005)

*Driving under influence of alcohol, controlled substances or drugs; penalties*

- (i) Any person who:
  - (1) Drives a vehicle in this state while he or she:
    - (A) Is under the influence of alcohol; or
    - (B) Is under the influence of any controlled substance; or
    - (C) Is under the influence of any other drug; or
    - (D) Is under the combined influence of alcohol and any controlled substance or any other drug; or
    - (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
  - (2) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than two days nor more than twelve months, which jail term is to include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.
- (j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

#### **WISCONSIN**

Wis. Stat. §346.63

*Operating under influence of intoxicant or other drug*

- (1) No person may drive or operate a motor vehicle while:

- (a) Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or
- (am) The person has a detectable amount of a restricted controlled substance in his or her blood.
- (b) The person has a prohibited alcohol concentration.

Wis. Stat. §346.65

*Penalty for violating sections 346.62 to 346.64*

- (f) If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under §346.63(1) , the applicable minimum and maximum forfeitures, fines or imprisonment under par. (a) , (b) , (c) , (d) or (e) for the conviction are doubled. An offense under §346.63(1) that subjects a person to a penalty under par. (c) , (d) or (e) when there is a minor passenger under 16 years of age in the motor vehicle is a felony and the place of imprisonment shall be determined under §973.02



## Appendix B Unattended Vehicles Statutes

Ten States have laws prohibiting adults from leaving unattended children in motor vehicles. Two States have laws specifically related to injury or death caused by leaving a child in a vehicle. Thirty-Eight States have no laws specifically protecting children from this vehicle occupancy neglect. Legislators have proposed bills addressing this issue in twelve of these States. Existing State statutes are listed found below:

### CALIFORNIA

Cal. Veh. Code § 15620 (2004)

*Leaving a child unattended inside a motor vehicle prohibited*

- (a) A parent, legal guardian, or other person responsible for a child who is 6 years of age or younger may not leave that child inside a motor vehicle without being subject to the supervision of a person who is 12 years of age or older, under either of the following circumstances:
  - (1) Where there are conditions that present a significant risk to the child's health or safety.
  - (2) When the vehicle's engine is running or the vehicle's keys are in the ignition, or both.
- (b) A violation of subdivision (a) is an infraction punishable by a fine of one hundred dollars (\$100)

### CONNECTICUT

Conn. Gen. Stat. Ann. § 53-21a (2003)

*Leaving child unsupervised in place of public accommodation or motor vehicle*

- (a) Any parent, guardian or person having custody or control, or providing supervision, of any child under the age of twelve years who knowingly leaves such child unsupervised in a place of public accommodation or a motor vehicle for a period of time that presents a substantial risk to the child's health or safety, shall be guilty of a class A misdemeanor.
- (b) Any parent, guardian or person having custody or control, or providing supervision, of any child under the age of twelve years who knowingly leaves such child unsupervised in a place of public accommodation, which holds a permit issued under chapter 545 for the sale of alcoholic liquor for consumption on the premises, for a period of time that presents a substantial risk to the child's health or safety, shall be guilty of a class D felony.
- (c) Any parent, guardian or person having custody or control, or providing supervision, of any child under the age of twelve years who knowingly leaves such child unsupervised in a place of public accommodation or a motor vehicle between the hours of eight o'clock p.m. and six

o'clock a.m. for a period of time that presents a substantial risk to the child's health or safety, shall be guilty of a class C felony.

## FLORIDA

Fla. Stat. Ann. § 316.6135 (2003)

*Leaving children unattended or unsupervised in motor vehicle; penalty; authority of law enforcement officer*

- (1) No parent, legal guardian, or other person responsible for a child younger than 6 years of age shall leave such child unattended or unsupervised in a motor vehicle for a period in excess of 15 minutes; however, no such person shall leave a child unattended for any period of time if the motor of the vehicle is running or the health of the child is in danger.
- (2) Any person who violates the provisions of subsection (1) is guilty of a noncriminal traffic infraction, punishable by a fine of:
  - (a) Not more than \$100; or
  - (c) Not less than \$50 and not more than \$500 if the motor of the vehicle was running or the health of the child was in danger at the time of the violation.
- (3) Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle in violation of subsection (1) may use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.
- (4) If the child is removed from the immediate area notification should be placed on the vehicle.
- (5) The child shall be remanded to the custody of the Department of Children and Family Services pursuant to chapter 39, unless the law enforcement officer is able to locate the parents or legal guardian or other person responsible for the child.

## ILLINOIS

720 Ill. Comp. Stat. 5/12-21.6 (2004)

*Endangering the life or health of a child*

- (a) It is unlawful for any person to willfully cause or permit the life or health of a child under the age of 18 to be endangered or to willfully cause or permit a child to be placed in circumstances that endanger the child's life or health, except that it is not unlawful for a person to relinquish a child in accordance with the Abandoned Newborn Infant Protection Act [ 325 ILCS 2/1 et seq.].
- (b) There is a rebuttable presumption that a person committed the offense if he or she left a child 6 years of age or younger unattended in a motor vehicle for more than 10 minutes.

- (c) "Unattended" means either: (i) not accompanied by a person 14 years of age or older; or (ii) if accompanied by a person 14 years of age or older, out of sight of that person.
- (c) A violation of this Section is a Class A misdemeanor. A second or subsequent violation of this Section is a Class 3 felony. A violation of this Section that is a proximate cause of the death of the child is a Class 3 felony for which a person, if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 2 years and not more than 10 years.

## LOUISIANA

La. R.S. § 32:295.3.

*Leaving children unattended and unsupervised in motor vehicles; prohibition; penalties*

- A. It is unlawful for any driver or operator to leave a child or children under the age of six years unattended and unsupervised in a motor vehicle.
- B.(1) The term "unattended" as used in this Section means a child who has been left in a motor vehicle when the driver or operator of the vehicle is more than ten feet from the vehicle and unable to continuously observe the child.
  - (2) The term "unsupervised" as used in this Section means an unattended child when a person ten years of age or older is not physically present in the motor vehicle.
- C. (1) A law enforcement officer who observes a child left unattended and unsupervised for a period in excess of ten minutes in violation of the provisions of this Section shall use whatever means are reasonably necessary to protect the child and remove the child from the motor vehicle.
  - (2) If the child is removed from the immediate area by a law enforcement officer pursuant to the provisions of this Section, the law enforcement officer shall place notification on the motor vehicle. The law enforcement officer shall hold the child until the parent or guardian returns.
- D. Whoever violates this Section shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both. For each second or subsequent offense, the defendant shall be subject to imprisonment, with or without hard labor, of not less than one year nor more than two years and a fine of not less than one thousand dollars nor more than two thousand dollars, or both.
- E. Any law enforcement officer acting in good faith pursuant to the provisions of this Section shall have immunity from any civil liability that otherwise might be incurred or imposed.

## MARYLAND

Md. Code Ann. Fam. Law § 5-801 (2003)

*Confinement in dwelling, building, enclosure, or motor vehicle*

- (a) In general - A person who is charged with the care of a child under the age of 8 years may not allow the child to be locked or confined in a dwelling, building, enclosure, or motor vehicle while the person charged is absent and the dwelling, building, enclosure, or motor vehicle is out of sight of the person charged unless the person charges provides a reliable person at least 13 years old to remain with the child to protect the child.
- (d) Penalties for Violation- A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 30 days, or both.

## NEBRASKA

R.R.S. Neb. § 28-710.

*Child Protection Act, how cited; terms, defined*

- (2) For purposes of the Child Protection Act:
  - (a) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be: . . .
  - (iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

## PENNSYLVANIA

75 Pa. Cons. Stat. § 3701.1 (2004)

*Leaving an unattended child in a motor vehicle*

- (a) General rule-A person driving or in charge of a motor vehicle may not permit a child under six years of age to remain unattended in the vehicle when the motor vehicle is out of the person's sight and under circumstances which endanger the health, safety, or welfare of the child.
  - (1) Applicability-This section shall apply to the highways and trafficways of this Commonwealth and, for the purpose of this section only, the tem "trafficways" shall include but not be limited to, parking lots.
  - (b) Penalty- A person who violates this section commits a summary offense.

## TEXAS

Tex. Penal Code Ann. § 22.10 (2004)

*Leaving a Child in a Vehicle*

- (a) A person commits an offense if he intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is:
  - (1) younger than seven years of age; and
  - (2) not attended by an individual in the vehicle who is 14 years of age or older.
- (b) An offense under this section is a Class C misdemeanor.

## WASHINGTON

Rev. Code Wash. § 46.61.685 (2005)

*Leaving children unattended in standing vehicle with motor running ~ Penalty*

- (1) It is unlawful for any person, while operating or in charge of a vehicle, to park or willfully allow such vehicle to stand upon a public highway or in a public place with its motor running, leaving a minor child or children under the age of sixteen years unattended in the vehicle.
- (2) Any person violating this section is guilty of a misdemeanor. Upon a second or subsequent conviction for a violation of this section, the department shall revoke the operator's license of such person.

*Below are state laws that carry penalties only if a child was injured or killed after being left alone in a motor vehicle.*

## KENTUCKY

Ky. Rev. Stat. Ann. § 507.040 (2004)

*Manslaughter in the second degree*

- (1) A person is guilty of manslaughter in the second degree when he wantonly causes the death of another person, including, but not limited to, situations where the death results from the person's:
  - a. Operation of a motor vehicle; or
  - b. Leaving a child under the age of eight (8) years in a motor vehicle under circumstances which manifest an extreme indifference to human life and which create grave risk of death, thereby causing the death of a child.

Manslaughter in the second degree is a Class C felony

## MISSOURI

Mo. Ann. Stat. §568.052 (2004)

*Leaving a child unattended in a motor vehicle who causes an accident – first and second degree, penalties*

1. As used in this section, the following terms mean:
  - (1) "Collision", the act of a motor vehicle coming into contact with an object or a person;
  - (2) "Injury", physical harm to the body of a person;
  - (3) "Motor vehicle", any automobile, truck, truck-tractor, or any motor bus or motor-propelled vehicle not exclusively operated or driven on fixed rails or tracks;
  - (4) "Unattended", not accompanied by an individual fourteen years of age or older.
2. A person commits the crime of leaving a child unattended in a motor vehicle in the first degree if such person knowingly leaves a child ten years of age or less unattended in a motor vehicle and such child fatally injures another person by causing a motor vehicle collision or by causing the motor vehicle to fatally injure a pedestrian. Such person shall be guilty of a class C felony.
3. A person commits the crime of leaving a child unattended in a motor vehicle in the second degree if such person knowingly leaves a child ten years of age or less unattended in a motor vehicle and such child injures another person by causing a motor vehicle collision or by causing the motor vehicle to injure a pedestrian. Such person shall be guilty of a class A misdemeanor.

## Appendix C List of Child Endangerment Statutes

### ALABAMA

Ala. Code § 13A-13-6 (2003)

*Endangering Welfare of Child*

He or she, as a parent, guardian or other person legally charged with the care or custody of a child less than 18 years of age, fails to exercise reasonable diligence in the control of such child to prevent him or her from becoming a "dependent child" or a "delinquent child," as defined in Section 12-15-1.

### ALASKA

Alaska Stat. § 11.51.100 (Michie 2003)

*Endangering the welfare of a child in the first degree*

A person commits the crime of endangering the welfare of a child in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person intentionally deserts the child in a place under circumstances creating a substantial risk of physical injury to the child or leaves the child with another person who is not a parent, guardian, or lawful custodian of the child knowing that the person has previously physically mistreated or had sexual contact with any child, and the other person causes physical injury or engages in sexual contact with the child.

### ARIZONA

Ariz. Rev. Stat. § 13-3619 (2003)

*Permitting life, health or morals of minor to be imperiled by neglect, abuse or immoral associations; classification*

A person having custody of a minor under sixteen years of age who knowingly causes or permits the life of such minor to be endangered, its health to be injured or its moral welfare to be imperiled, by neglect, abuse or immoral associations, is guilty of a class 1 misdemeanor.

### ARKANSAS

Ark. Code Ann. § 5-27-203, 204 (Michie 2003)

*Endangering welfare of minor*

A person commits the offense of endangering the welfare of a minor in the first degree if, being a parent, guardian, person legally charged with care or custody of a minor, or a person charged with supervision of a minor, he or she purposely deserts a minor less than ten (10) years old under circumstances creating a substantial risk of death or serious physical injury. A person commits the offense of endangering the welfare of a minor in the second degree if he knowingly

engages in conduct creating a substantial risk of serious harm to the physical or mental welfare of one known by the actor to be a minor.

## **CALIFORNIA**

Cal. Penal Code § 273a (West 2003)

*Endangering child or causing or permitting child to suffer physical pain, mental suffering, or injury;  
Conditions of probation*

Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished....

## **COLORADO**

Colo. Rev. Stat. 18-6-401 (2003)

*Child abuse*

A person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.

## **CONNECTICUT**

Conn. Gen. Stat. § 53-21 (2003)

*Injury or risk of injury to, or impairing morals of, children. Sale of children.*

Any person who willfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child ... shall be guilty...

## **DELAWARE**

Del. Code Ann. Tit. 11. § 1102 (2003)

*Endangering the welfare of a child*

A person is guilty of endangering the welfare of a child when being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child less than 18 years old, the person knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or intentionally does or fails to do any act, with the result that the child becomes a neglected child.



## **DISTRICT OF COLUMBIA**

D.C. Code Ann. § 22-1101 (2003)

*Definition and penalty*

A person commits the crime of cruelty to children in the second degree if that person intentionally, knowingly, or recklessly maltreats a child or engages in conduct which causes a grave risk of bodily injury to a child.

## **FLORIDA**

Fla. Stat. Ann. § 827.03 (2003)

*Abuse, aggravated abuse, and neglect of a child; penalties*

"Neglect of a child" means a caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child.

## **GEORGIA**

Ga. Code Ann. § 16-5-70 (2002)

*Cruelty to children*

A parent, guardian, or other person supervising the welfare of or having immediate charge or custody of a child under the age of 18 commits the offense of cruelty to children in the first degree when such person willfully deprives the child of necessary sustenance to the extent that the child's health or well-being is jeopardized. Any person commits the offense of cruelty to children in the first degree when such person maliciously causes a child under the age of 18 cruel or excessive physical or mental pain.

## **HAWAII**

Haw. Rev. Stat. § 709-904 (2003)

*Endangering the welfare of a minor in the second degree*

A person commits the offense of endangering the welfare of a minor in the second degree if, having care or custody of a minor, the person recklessly allows another person to inflict serious or substantial bodily injury on the minor.

## **IDAHO**

Idaho Code § 18-1501 (2003)

*Injury to children*

Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits

the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable....

## **ILLINOIS**

720 Ill. Comp. Stat. 5/12-21.6 (West 2003)

*Endangering the life or health of a child*

It is unlawful for any person to willfully cause or permit the life or health of a child under the age of 18 to be endangered or to willfully cause or permit a child to be placed in circumstances that endanger the child's life or health.

## **INDIANA**

Ind. Code § 35-46-1-4 (2004)

*Neglect of a dependent - Child selling*

A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally places the dependent in a situation that endangers the dependent's life or health; abandons or cruelly confines the dependent; deprives the dependent of necessary support; or deprives the dependent of education as required by law commits a felony.

## **IOWA**

Iowa Code § 726.6 (2005)

*Child endangerment*

A person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person does any of the following: Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety; By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in bodily injury, or that is intended to cause serious injury; By an intentional act or series of intentional acts, evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor; Willfully deprives a child or minor of necessary food, clothing, shelter, health care or supervision appropriate to the child or minor's age, when the person is reasonably able to make the necessary provisions and which deprivation substantially harms the child or minor's physical, mental or emotional health; Knowingly permits the continuing physical or sexual abuse of a child or minor; or Abandons the child or minor to fend for the child or minor's self, knowing that the child or minor is unable to do so.

## **KANSAS**

Kan. Stat. Ann. § 21-3608 (2002)

*Endangering a child*

Endangering a child is intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be injured or endangered.

## **KENTUCKY**

Ky. Rev. Stat. Ann § 530.060 (2003)

*Endangering welfare of minor*

A parent, guardian or other person legally charged with the care or custody of a minor is guilty of endangering the welfare of a minor when he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming a neglected, dependent or delinquent child.

## **MAINE**

Me. Rev. Stat. Ann. Tit. 17, § 554 (West 2003)

*Endangering the welfare of a child*

A person is guilty of endangering the welfare of a child if that person, being a parent, foster parent, guardian or other person responsible for the long-term general care and welfare of a child under 16, recklessly fails to take reasonable measures to protect the child from the risk of further bodily injury or otherwise recklessly endangers the health, safety or welfare of a child under 16 years of age by violating a duty of care or protection.

## **MASSACHUSETTS**

Mass. Gen. Laws Ch. 265, § 13L (2003)

*Reckless Endangerment of Children*

Whoever wantonly or recklessly engages in conduct that creates a substantial risk of serious bodily injury or sexual abuse to a child or wantonly or recklessly fails to take reasonable steps to alleviate such risk where there is a duty to act shall be punished by imprisonment in the house of correction for not more than 2½ years.

## **MICHIGAN**

Mich. Comp. Laws § 750.136b (2003)

*Definitions; child abuse*

A person is guilty of child abuse in the second degree if the person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child, if he person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results, or if the person

knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

### **MINNESOTA**

Minn. Stat. § 609.378 (2003)

*Neglect or endangerment of a child*

Endangerment occurs when a parent, legal guardian, or caretaker who endangers the child's person or health by intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death.

### **MISSISSIPPI**

Miss. Code Ann. § 97-5-39 (2003)

*Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child*

Any parent, guardian or other person who willfully commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child or which act or omission results in the abuse and/or battering of any child shall be guilty of a misdemeanor.

### **MISSOURI**

Mo. Rev. Stat. § 568.050 (2003)

*Endangering the welfare of a child in the second degree*

A person commits the crime of endangering the welfare of a child in the second degree if he with criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen years old; or being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen years old, he recklessly fails or refuses to exercise reasonable diligence in the care or control of such child.

### **MONTANA**

Mont. Code. Ann. § 45-5-622 (2003)

*Endangering welfare of children*

A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly endangers the child's welfare by violating a duty of care, protection, or support.

## NEBRASKA

Neb. Rev. Stat. § 28-707 (2003)

*Child abuse; privileges not available; penalties*

A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be placed in a situation that endangers his or her life or physical or mental health.

## NEVADA

Nev. Rev. Stat. § 200.508 (2003)

*Abuse, neglect or endangerment of child: Penalties; definitions*

A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect

## NEW HAMPSHIRE

N.H. Rev. Stat. § 639:3 (2003)

*Endangering Welfare of Child or Incompetent*

A person is guilty of endangering the welfare of a child or incompetent if he knowingly endangers the welfare of a child under 18 years of age or of an incompetent person by purposely violating a duty of care, protection or support he owes to such child or incompetent, or by inducing such child or incompetent to engage in conduct that endangers his health or safety.

## NEW JERSEY

N.J. Stat. Ann. § 2C:24-4 (West 2001)

*Endangering welfare of children*

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child is guilty of a crime.

## NEW MEXICO

N.M. Stat. Ann. § 30-6-1 (Michie 2003)

*Abandonment or abuse of a child*

Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be placed in a situation that may endanger the child's life or health.

## **NEW YORK**

N.Y. Penal Law § 260.10 (McKinney 2003)

*Endangering the welfare of a child*

A person is guilty of endangering the welfare of a child when being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming an "abused child," a "neglected child," a "juvenile delinquent" or a "person in need of supervision," as those terms are defined in articles ten, three and seven of the family court act.

## **NORTH CAROLINA**

N.C. Gen. Stat. § 14-318.2 (2003)

*Child abuse a Class 1 misdemeanor*

Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty.

## **OHIO**

Ohio Rev. Code Ann. §2919.22(A)-(C) (2004)

*Endangering children*

No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.

## **OKLAHOMA**

Okla. Stat. Tit. 21, § 852.1 (2002)

*Child endangerment-Knowingly permitting physical or sexual abuse-Good faith reliance on spiritual healing-Penalties*

A person who is the parent, guardian, or person having custody or control over a child commits child endangerment when the person knowingly permits physical or sexual abuse of a child.

## **OREGON**

Or. Rev. Stat. § 163.575 (2001)

*Endangering the welfare of a minor*

A person having custody or control of a child under 10 years of age commits the crime of child neglect in the second degree if, with criminal negligence, the person leaves the child

unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child.

#### **PENNSYLVANIA**

18 Pa. Cons. Stat § 4304 (2003)

*Endangering welfare of children*

A parent, guardian, or other person supervising the welfare of a child under 18 years of age commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection, or support.

#### **RHODE ISLAND**

R.I. Gen. Laws § 11-9-5 (2003)

*Cruelty to or neglect of child*

Every person having the custody or control of any child under the age of eighteen (18) years who shall abandon that child, or who shall treat the child with gross or habitual cruelty, or who shall wrongfully cause or permit that child to be an habitual sufferer for want of food, clothing, proper care, or oversight, or who shall use or permit the use of that child for any wanton, cruel, or improper purpose...shall be guilty....

#### **TENNESSEE**

Tenn. Code Ann. § 39-15-401 (2003)

*Child abuse and neglect*

Any person who knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury or neglects such a child so as to adversely affect the child's health and welfare commits a Class A misdemeanor; provided, however, that if the abused or neglected child is six (6) years of age or less, the penalty is a Class D felony.

#### **TEXAS**

Tex. Penal Code Ann § 22.041 (West 2004)

*Abandoning or Endangering Child*

A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.

#### **UTAH**

Utah Code Ann. § 76-5-109 (2003)

*Child Abuse*

Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of a felon if done recklessly, and a misdemeanor if done with criminal negligence.

## VERMONT

Vt. Stat. Ann. Tit. 13 § 1305 (2003)

*Cruelty by person having custody of another*

A person having the custody, charge, care or control of another person, who inflicts unnecessary cruelty upon such person, or unnecessarily and cruelly fails to provide such person with proper food, drink, shelter or protection from the weather, or unnecessarily and cruelly neglects to properly care for such person, shall be imprisoned.

## VIRGINIA

Va. Code Ann. § 18.2-371.1 (Michie 2003)

*Abuse and neglect of children; penalty; abandoned infant*

Any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton and culpable as to show a reckless disregard for human life shall be guilty.

## WEST VIRGINIA

W. Va. Code § 61-8D-3 (2003)

*Child abuse resulting in injury; child abuse or neglect creating risk of injury; criminal penalties*

Any person who abuses a child and by the abuse creates a substantial risk of serious bodily injury or of death to the child is guilty of a felony and, upon conviction thereof, shall be fined not more than three thousand dollars and confined to the custody of the division of corrections for not less than one nor more than five years.

## WISCONSIN

Wis. Stat. § 948.03 (2003): *Physical abuse of a child*

Whoever recklessly causes great bodily harm, bodily harm, or causes bodily harm to a child by conduct that creates a high probability of great bodily harm is guilty of a felony. A person responsible for the child's welfare is guilty of a felony if that person fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by another person or facilitates the great bodily harm to the child that is caused by another person.

## WYOMING

Wyo. Stat. Ann. § 6-4-403 (Michie 2003)

*Abandoning or endangering children; penalties; "child"; disclosure or publication of identifying information; "minor victim"*

No parent, guardian or custodian of a child shall knowingly or with criminal negligence cause, permit or contribute to the endangering of the child's life or health by violating a duty of care, protection or support.



## Resources

**American Prosecutors Research Institute  
National Traffic Law Center**  
99 Canal Center Plaza, Suite 510  
Alexandria, VA 22314  
Phone: 703-549-4253  
Fax: 703-549-6259  
E-mail: [Trafficlaw@ndaa-apri.org](mailto:Trafficlaw@ndaa-apri.org)  
[www.ndaa-apri.org](http://www.ndaa-apri.org)

**U.S. Department of Transportation  
National Highway Traffic Safety Administration**  
400 Seventh Street, SW.  
Washington, DC 20590  
Phone: 888-327-4236  
[www.nhtsa.gov](http://www.nhtsa.gov)

**Kids In Cars**  
918 Glenn Avenue  
Washington, MO 63090  
Phone: 636-390-8268  
Fax: 636-390-9412  
E-mail: [ContactUs@kidsincars.org](mailto:ContactUs@kidsincars.org)  
[KidsInCars.org](http://KidsInCars.org)

**Kids And Cars**  
2913 West 113<sup>th</sup> Street  
Leawood, KS 66211  
Phone: 913-327-0013  
Fax: 913-327-0014  
E-mail: [email@kidsandcars.org](mailto:email@kidsandcars.org)  
[www.KidsAndCars.org](http://www.KidsAndCars.org)

## Endnotes

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- <sup>1</sup> L. DeMause, The History of Childhood: The Untold History of Child Abuse (1998).
- <sup>2</sup> “Fatality Facts 2003: Children,” Insurance Institute for Highway Safety, [www.iihs.org/research/fatality\\_facts/pdf/children.pdf](http://www.iihs.org/research/fatality_facts/pdf/children.pdf)
- <sup>3</sup> “Survey Finds Nearly 73 Percent of Child Restraints Misused: NHTSA Launches New Campaign to Promote Booster Seat Use,” National Highway Traffic Safety Administration, February 11, 2004
- <sup>4</sup> D. Glassbrenner, The Use of Child Restraints in 2002, NHTSA Research Note, DOT HS 809 555, National Highway Traffic Safety Administration, February 2003
- <sup>5</sup> “Fatality Facts: Children 2002,” Insurance Institute for Highway Safety: Highway Loss Data Institute, June 11, 2004
- <sup>6</sup> M. Terrell, “Woman charged in fatal accident,” Times Record News, September 18, 2004, [www.timesrecordnews.com/trn/local\\_news/article/0,1891,TRN\\_57843191522,00.ht](http://www.timesrecordnews.com/trn/local_news/article/0,1891,TRN_57843191522,00.ht).
- <sup>7</sup> “Strengthening Child Passenger Safety Laws – Increase Child Safety Seat and Belt Use, Decrease Crash Fatalities and Injuries,” Traffic Safety Facts, National Highway Traffic Safety Administration, March 2004.
- <sup>8</sup> *Id.*
- <sup>9</sup> D. Glassbrenner, The Use of Child Restraints in 2002, NHTSA Research Note, DOT HS 809 555, National Highway Traffic Safety Administration, February 2003.
- <sup>10</sup> “Characteristics of Child Passenger Deaths and Injuries Involving Drinking Drivers,” 283 Journal of the American Medical Association 3 (May 2000); “Child Passenger Deaths Involving Drinking Drivers – United States 1997-2002,” Centers for Disease Control and Prevention, February 6, 2004.
- <sup>11</sup> The *Simpson* majority wrote that the case was “distinguishable” from *Jones*. The court did not explain how the cases were different, but one may presume that the court based its ruling on the fact that the defendant in *Simpson* was the driver and caused the crash while the defendant in *Jones* was a passenger. The value of this “distinction” is questionable in light of the *Jones* rationale. In a separate concurring opinion, Judge Williams indicated that he was “unable to find any material distinction between the two cases.” *Simpson*, 20005 Tenn. Crim. App. LEXIS 19 (Tenn. Crim. App. January 7, 2005).
- <sup>12</sup> “Mother gets probation in death of child,” The Lufkin Daily News, October 2, 2005, [www.lufkindailynews.com/hp/content/news/stories/2005/10/02/20051002LDNcourt.html](http://www.lufkindailynews.com/hp/content/news/stories/2005/10/02/20051002LDNcourt.html).
- <sup>13</sup> “Child passenger deaths involving drinking drivers-United States, 1997-2002,” 53(5) MMWR Weekly 109 (Centers for Disease Control and Prevention), February 6, 2004).
- <sup>14</sup> Mothers Against Drunk Driving, Every Child Deserves a Designated Driver: Child Endangerment Report (2004).
- <sup>15</sup> See also *State v. D’Ambrosia*, 746 N.Y.S.2d 556 (N.Y. County Ct. 2002) and *State v. Castaeda*, 30 P.3d 368 (N.M. App. 2000). In *D’Ambrosia*, the defendant drove 19 mph over the speed limit with a BAC of .18 and a child in the car. The court determined that the defendant’s conduct “create[d] a serious risk, significantly beyond the realm of speculative, that defendant [would] lose control of the car and cause an accident resulting in injury to his young passenger.” Thus the court held that the facts were sufficient to sustain a charge of endangering the welfare of a child. In *Castaeda*, the defendant drove on the wrong side of the road while impaired by alcohol with his children in the car. The court found the facts sufficient to support a finding of reckless endangerment.
- <sup>16</sup> M. Valaske, A Safe-Driving Level of Blood Alcohol, 39 Pathologist 36 (March 1985) (advocating a zero tolerance DUI law). See also J. Peterson, J. Rothfleisch, P. Zelazo, and R.O. Pihl, Acute Alcohol Intoxication and Cognitive Functioning, 51 J. Stud Alcohol 114 (1990).
- <sup>17</sup> See e.g., G.C. Drew, W.P. Colquhoun, and H.A. Long, Effect of Small Doses of Alcohol on a Skill Resembling Driving, 1958 British Medical Journal. 993 (October 25, 1958) (researchers finding that “there is a measurable increase in mean error [on a driving simulator] as soon as there is a measurable quantity of alcohol in the blood”); H. Moskowitz and M. Burns, Effects of Alcohol on Driving Performance, 14 Alcohol Health and Research World 12 (1990) (“[c]ertain skills important for driving are impaired at 0.01 and 0.02 percent BAC or, in other words, at the lowest levels that can be measured reliably”). See also M. Valaske, A Safe-Driving Level of Blood Alcohol, 29 Pathologist 36 (March 1985) (advocating a zero-tolerance DUI law)
- <sup>18</sup> Council on Scientific Affairs, Council Report: Alcohol and the Driver, 255 Journal of the American Medical Association 522 (Jan. 24/31. 1986). See also Medical Conditions Affecting Drivers (T.Doege and A. Engleberg, ed., American Medical Association (1986)(drivers with blood alcohol concentrations of 60mg% are twice as likely to be involved in a fatal crash as a sober driver”); Council on Scientific Affairs, Council Report: Automobile-Related

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Injuries, 249 *Journal of the American Medical Association* 3216 (June 17, 1983) (“most authorities agree [that BACs of .05 or greater] cause impairment of physical and mental functioning and interfere with the task of driving vehicles safely”); H. Moskowitz and C. Robinson, *Effects of Low Doses of Alcohol on Driving-Related Skills: A Review of the Evidence*, National Highway Traffic Safety Administration, HS 807 280 (July 1988).

<sup>19</sup> Council on Scientific Affairs, Council Report: Alcohol and the Driver, 255 *Journal of the American Medical Association* 522 (January 24/31, 1986).

<sup>20</sup> “Blood Alcohol Concentration and Driving,” 17 *Annals of Emergency Medicine*. 1252 (November 1988)

<sup>21</sup> Every Child Deserves a Designated Driver (Mothers Against Drunk Driving, 2004).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> “Designated Driver Means Trouble for Dad,” ABC News, March 18, 2004, [www.abc7chicago.com](http://www.abc7chicago.com)

<sup>25</sup> J. Bock, “Drunken mother drove with 5 kids,” Wausau Herald, April 2, 2004,

[www.wausaudailyherald.com/wdhlocal/283243560984945.shtml](http://www.wausaudailyherald.com/wdhlocal/283243560984945.shtml).

<sup>26</sup> Non-Traffic Death and Injury Data Collection Study, National Highway Traffic Safety Administration (May 2004)

<sup>27</sup> Editorial Note, “Fatal Car Trunk Entrapment Involving Children – United States, 1987-1998,” 47 *MMWR Weekly* 1019 (Centers for Disease Control and Prevention , December 4, 1998).

<sup>28</sup> Department of Geosciences, San Francisco State University, “Fact Sheet.” Golden Gate Weather Services, June 17, 2004. [ggweather.com/heat/](http://ggweather.com/heat/).

<sup>29</sup> “Preventing Heat Stress in Children and Adolescents.” Medical College of Wisconsin Health Link, July 23, 2001. [healthlink.mcw.edu/article/963335058.html](http://healthlink.mcw.edu/article/963335058.html).

<sup>30</sup> Department of Geosciences, San Francisco State University, “Fact Sheet.” Golden Gate Weather Services, June 17, 2004. [ggweather.com/heat/](http://ggweather.com/heat/).

<sup>31</sup> “Emergency Preparedness & Response: Frequently Asked Questions,” Centers for Disease Control and Prevention, June 14 2004.

<sup>32</sup> Department of Geosciences, San Francisco State University, “Fact Sheet.” Golden Gate Weather Services, June 17, 2004. [ggweather.com/heat/](http://ggweather.com/heat/).

<sup>33</sup> K. Roberts and E. Roberts, The Automobile and Heat Stress; 58 *Pediatrics* 101 (July 1976).

<sup>34</sup> “Tragedy Can Strike Quickly for Kids Left Alone in Cars,” Keep Kids Safe (Summer 2003), [www.ockeepkidssafe.org/pdfs/IPP\\_news\\_Summer.pdf](http://www.ockeepkidssafe.org/pdfs/IPP_news_Summer.pdf).

<sup>35</sup> See, e.g., A. Gathright, “Children’s Safety,” San Francisco Chronicle, July 29, 2001, at A4.

<sup>36</sup> “Father Admits Causing Death of Sons by Leaving Them in Hot SUV,” PhillyBurbs.com, May 25, 2004, [www.phillyburbs.com/pb-dyn/articlePrint.cfm?id=306169](http://www.phillyburbs.com/pb-dyn/articlePrint.cfm?id=306169).

<sup>37</sup> Don’t Leave Children Unattended in Cars. *USAA Magazine*. May/June 2001.

<sup>38</sup> Editorial Note, “Fatal Car Trunk Entrapment Involving Children – United States, 1987-1998,” 47 *MMWR Weekly* 1019 (Centers for Disease Control and Prevention , December 4, 1998).

<sup>39</sup> 66 FR 43121, August 17, 2001, as amended at 67 FR 19523.

<sup>40</sup> Non-Traffic Death and Injury Data Collection Study, National Highway Traffic Safety Administration (May 2004)

<sup>41</sup> “Car Crushes Children to Death,” Times Daily, August 26, 1999.

<sup>42</sup> “Summer Heat Makes It Dangerous to Leave Children in Cars” State of Idaho Department of Health and Welfare Press Release, July 28, 2000.

<sup>43</sup> Note that LexisNexis “red-flagged” this case for unknown reasons. Additionally, the court did not certify the case for publication so it has no precedential value. We present it here for informative purposes only.

DOT HS 810 636  
August 2006



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of Transportation  
**National Highway  
Traffic Safety  
Administration**

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