



Issue Brief Child Endangerment Statutes

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Forty-four states plus the District of Columbia have statutes which provide for additional punishment for intoxicated drivers who are transporting children while they are driving under the influence. These states have generally taken three different statutory approaches to punishing offenders: imposing a mandatory minimum sentence, enhancing punishments for the underlying impaired driving offenses, or creating a new and separate offense for which the offenders can be charged. Twelve states also have specific statutory provisions which increase the punishment for repeat offenders of the child endangerment statute. Other remedies for child endangerment include installing an ignition interlock in the offender's car and considering child endangerment as an aggravating circumstance when sentencing for the base impaired driving conviction. States also differ greatly on the age requirement for the passenger; the least restrictive law punishes those who are transporting children under the age of twelve, while the most restrictive imposes an upper age limit of twenty-one.

Ten states plus the District of Columbia have imposed mandatory minimum sentences on impaired drivers who are carrying child passengers: Arkansas, Florida, Illinois, Kentucky, Maryland, New Hampshire, Pennsylvania, West Virginia, Wisconsin, and Wyoming. These mandatory minimum sentences usually take the form of either a fine or a term of imprisonment, and sometimes both are imposed. Most of the states that impose mandatory minimum sentences also include provisions in the statute increasing the severity of the punishment for repeat offenses.

The most popular option on how to deal with child endangerment by impaired drivers is to enhance already-existing punishments.



Seventeen states do this: Alabama, California, Delaware, Hawaii, Kansas, Maine, Massachusetts, Montana, New Jersey, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Washington, and Wisconsin. Most states add an additional fine or period of imprisonment to the end of the offender's sentence, if not both. The degree of the increase varies greatly from state to state. Some states (Alabama and Wisconsin) double the minimum punishment for the base offense while others just add forty-eight hours to the term of imprisonment. Other states choose to impose community service, suspend the offender's license, and/or revoke his or her license for an additional term.

Fifteen states consider this form of child endangerment to be a separate crime from any other offense the driver may have committed. These states include: Alaska, Arizona, Georgia, Idaho, Illinois (only upon repeat), Indiana, Mississippi, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Texas, and Utah. Five of these states—Alaska, Arizona, Indiana, New York, and Texas—treat vehicular child endangerment as a felony. The rest of the states treat the crime as a misdemeanor, but many states place child endangerment in the most serious class of misdemeanors they have established. Most states label the crime specifically as child endangerment, but in New Jersey, the charge is a disorderly persons offense, and in Arizona, child endangerment is an aggravated driving offense. Oklahoma also treats child endangerment as a separate felonious offense if the person driving the car while under the influence is the parent or guardian of a child or has custody of the child passenger.

Other states have figured out alternative treatments of child endangerment. In addition to the other punishments imposed, Florida and Wisconsin both require the offender to have an ignition interlock device installed in his or her car for at least six months post-conviction. Three states—Minnesota, Nevada, and North Carolina—allow the judge to consider child endangerment as an aggravating circumstance in sentencing offenders. The District of Columbia doubles the incarceration period (per child) if the passengers are not wearing age-appropriate safety equipment. Louisiana's statute simply prevents the suspension of any part of the base impaired driving conviction. New Hampshire mandates that drivers undergo screening for substance abuse which could potentially lead to further evaluation and/or counseling. Six states (Colorado, Connecticut, Iowa, New Mexico, South Dakota, and Vermont) do not have statutes specifically treating driving while intoxicated with children in the car, although other general child endangerment statutes may be triggered if a child is injured or killed.

States also vary on the maximum age for the passenger in order for the law to take effect. Kentucky has the lowest maximum age in the country, requiring the passenger to be under twelve years of age. Maine has the highest maximum age in the country, punishing intoxicated drivers with any passengers under the age of twenty-one. The most common provision is that the passenger must be under the age of eighteen (found in sixteen states), but the average age (both mean and median) limit for passengers is sixteen.



<u>Treatment</u>	<u>List of States</u>
Mandatory Minimum Sentence	(10 states + DC) Arkansas, District of Columbia* (doubled if underage passengers are not in appropriate restraints), Florida, Illinois, Kentucky, Maryland, New Hampshire, Pennsylvania, West Virginia, Wisconsin, Wyoming
Separate Offense	(15 states) Alaska (felony), Arizona (aggravated driving; felony), Georgia, Idaho, Illinois* (upon repeat), Indiana (felony), Mississippi, Missouri, Nebraska, New Jersey (disorderly persons offense), New York (felony), North Dakota (repeat offense is a felony), Ohio, Texas (felony), Utah
Sentence Enhancement	(17 states) Alabama, California, Delaware, Hawaii, Kansas, Maine, Massachusetts, Montana, New Jersey, Oklahoma* (if parent/guardian/custodian, also guilty of separate felony), Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Washington, Wisconsin
Ignition Interlock	(2 states) Florida, Washington
Aggravating Factor in Sentencing	(3 states) Minnesota, Nevada, North Carolina
Other	Louisiana (prevents suspension of sentence), New Hampshire (license revoked until screening is completed/potential counseling)
None	(6 states) Colorado, Connecticut, Iowa, New Mexico, South Dakota, Vermont
Punishment Increases with Repetition	(12 states) Arkansas, Florida, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Montana, North Dakota, Pennsylvania, Washington, Wyoming

More specific information can be found on the [attached spreadsheet](#).

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