

EVERY CHILD DESERVES A DESIGNATED DRIVER

Children have no choice...they have no voice

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

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

GROWING CONCERN FOR A WIDESPREAD PROBLEM

Mothers Against Drunk Driving (MADD) continues to receive an increasing number of alarming calls from concerned individuals regarding children riding with alcohol impaired drivers. These calls are not from victims of drunk driving crashes, but from potential victims. Many of these calls indicate that

reports filed with state agencies are slipping through the cracks of the system, putting children at greater risk of victimization. There does not seem to be relief for the problem because of the lack of public awareness of child endangerment as it relates to Driving Under the Influence or Driving While Intoxicated (DUI/DWI).

MADD has identified common problems surrounding this type of child endangerment.

The most common problems are:

- Cases are not properly charged, resulting in a lack of prosecution;
- Properly charged cases are often plea bargained down or dismissed;
- Reports made to child protective agencies are not documented or investigated;
- There is a general lack of awareness of the breadth and scope of the issue;
- Divorced parents who are confronted with this issue face legal challenges and the financial risk of subjecting themselves to civil contempt actions by refusing visitation privileges;
- Many lack the financial resources to seek relief in the civil court system.

CHILD ENDANGERMENT AND CHILD ABUSE

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

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

Child endangerment as it pertains to impaired driving falls into the above legal definition of child abuse. An impaired parent or caregiver who knowingly puts a child in the car with the intent to drive is making a choice. This choice falls under the “improper care...as to endanger his or her [the child/children's] morals or health.”

Child endangerment laws protect innocent children from child abusers, not just those who are physically or emotionally abusive, but also those who victimize a child by driving impaired. Driving impaired is not an accident or a mistake. It is a choice, just as blatant physical child abuse is a choice. Rather than a fist, the weapon is a motor vehicle.

CHILD ENDANGERMENT LAWS AND STATUTES

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

Child endangerment statutes fall into the following categories:

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

Within each state, it is the legislature that decides how child endangerment statutes are applied. States with child endangerment laws vary widely in provisions and enforcement. Additionally, the general public seems to lack awareness that such statutes exist.

For individuals, the situation is even more complicated because families with child endangerment issues are often already coping with the legal ramifications of separation, divorce, and visitation/custody issues. After a court has accepted custody

arrangements, concerned parents and adults have very few options for protecting a child from a parent who drives impaired. Even worse, if a parent attempts to prevent the child from riding with their impaired parent, breach of the custody agreement could be enforced leading to further victimization.

There are difficulties and inconsistencies in enforcing the child endangerment statutes.

Many of the laws are too complex, and it is difficult to interpret the existing DUI/DWI child endangerment laws. As a result, these laws are not being uniformly enforced. In addition to criminal statutes, there is difficulty enforcing civil remedies absent a restraining order or request of participation from child protective services.

Generally, there appears to be a lack of education on all aspects of the laws and the problem of child endangerment. There is critical need for judicial education programs addressing all of the issues. Judges need to ask convicted DUI/DWI offenders at sentencing if they have children and if they have ever driven impaired with their children in their vehicle. Civilly, violation of terms of a divorce decree as it relates to impaired driving with minor child/children in the car should be clearly tied to change in custody or visitation.

THE FACTS

In May 2000, the *Journal of the American Medical Association* (JAMA) published “Characteristics of Child Passenger Deaths and Injuries Involving Drinking Drivers.” This study shows that from 1985 to 1996, there were 5555 child passenger deaths involving a drinking driver. Of these deaths, 3556 (64 percent) occurred while the child was riding with a drinking driver (Quinlan, et al., 2000).

In 2003, 21 percent of the children under 15 years old who were killed in motor vehicle crashes were killed in alcohol-related crashes (NHTSA, 2004).

Of the children 0-14 years old who were killed in alcohol-related crashes during 2003, 47 percent (209) were passengers in vehicles with drivers who had been drinking (NHTSA, 2004).

From 1988 through 1996, an estimated 149,000 child passengers were non-fatally injured in crashes involving a drinking driver. Of these, 58,000 (38.9 percent) were riding with a drinking driver when injured in the crash (Quinlan, et al., 2000).

WHAT CAN BE DONE TO HELP PROTECT CHILDREN?

As these startling statistics sadly demonstrate, aggressive tactics need to be taken with impaired drivers when children are riding in the vehicle. Possible solutions may be found in public education, research, legislation, enforcement, prosecution, and

judicial arenas. Specific solutions to address appropriate measures to reduce incidents of child endangerment need to be developed on local and state levels.

In developing specific solutions, MADD and a panel of experts reviewed existing state laws that relate to DUI/DWI child endangerment. Their analysis revealed the following:

- Current state laws are complex and vary greatly from state to state. There is a need for the DUI/DWI child endangerment laws to be simplified to make it easier for the laws to be enforced and prosecuted;
- There is a variance in the age of children when these laws apply and therefore there is a clear need for a uniform age;
- There is no clear consensus on whether or not the best approach is to have laws with enhanced penalties under existing DUI/DWI law, or if the best approach is to have separate child endangerment statutes;
- There should be minimum mandatory penalties for violations of child endangerment laws.

There is a need for the criminal, civil, and family courts to gain an understanding of the severity of this crime and enforce stiffer penalties on the impaired driver, thus reducing the number of children who are injured and killed as passengers of impaired drivers.

LEGAL RECOMMENDATIONS RELATED TO CHILD CUSTODY AND VISITATION

A separation agreement or divorce decree may include mandatory provisions that:

- Prohibit drunk driving, or driving under the influence of other drugs, by either parent when they are transporting their minor children.
- Prohibit friends of the parent from driving the child after using alcohol and/or other drugs.
- Prohibit the child from blowing into an ignition interlock device, if the parent has the device on his/her vehicle.
- Prohibit the parent from exercising their visitation privileges if there is evidence of impairment when the child is picked up or delivered.

Parents who believe that the child's other parent may show up impaired often choose a local police station as the location for dropping off and picking up the children. General consequences for failing to abide by the agreement should be stipulated in writing.

Motion to Modify

The issue is more complex in cases of divorce, if one parent is trying to protect the child from the drinking and driving behavior of the other parent.

Some parents have successfully modified custodial and visitation agreements due to an ex-spouse's history of drunk driving; others have

found the courts reluctant to amend previously negotiated arrangements.

Depending on state law, child endangerment may specifically impact custody and visitation rights. It is important to consult with a family attorney to explore options when requesting a motion to modify.

If you are a divorced parent investigating a motion to modify, you need an attorney to help you. The attorney who handled your divorce would be a logical first choice. If that's not possible, look for a family law attorney in the phone book or ask for a referral from your local Bar Association. Potential modifications include:

- The parent with the problem is not to use alcohol or other drugs 24 hours before or during visitation; and/or
- Ordering an alcohol/drug assessment and treatment as indicated by the assessment;
- Limitations on visitations including requiring supervised visitation;
- Requiring a third party, the other parent, or a trusted family member or friend, to transport the child or children for the purpose of visitation.

HELPFUL STRATEGIES FOR CONCERNED PARENTS, GRANDPARENTS, AND FAMILY MEMBERS

The following strategies may be helpful to you as you seek court intervention to protect your child or children from a parent who has a history of violations of impaired driving. Keep in mind that courts want to see a pattern of behavior, therefore documentation and accurate record keeping is important.

Keep your focus. Your goal is to protect your child, not to prevent your child from having a relationship with the other parent. Whether or not it's fair, judges may assume that efforts to modify custody or visitation are motivated by anger or revenge.

Be factual. Your word will probably not be enough. Factual evidence includes driving records, criminal history, and the observations of unbiased witnesses. Some courts will accept the testimony of family members and friends, older children willing to talk about their concerns, or private investigators.

Calmly suggest alternative transportation. Recommend the driver postpone travel or offer to drive the child, if appropriate. Avoid a heated altercation that may put the child in further danger.

Call 911. Be prepared to provide as much information as possible (such as name of the impaired driver, vehicle description and/or license plate, and

destination). Give them your name and contact information for responding officers.

Provide a summary. Document all contacts with the police with a follow-up written summary. Request a copy of your complaint from the law enforcement agency.

Call Child Protective Services. Some agencies will conduct an investigation if they believe that a child's life is in danger. Most courts will seriously consider the finding of Child Protective Services. Keep in mind that both parents and the children will probably be evaluated and evaluations include home visits. If you do contact Child Protective Services, obtain a copy of the written complaint for your records.

Maintain a log. Document each time your child tells you the other parent consumed alcohol or other drugs while in the role of custodial parent.

CHILDREN – OUR MOST PRECIOUS CARGO

It is clear that innocent children who count on parents and caregivers to protect them from danger are being placed at risk when an impaired driver has made the decision to drink and drive with a child passenger.

Children should be taught to never get into a vehicle if they are afraid for their safety. Strategies should be discussed for managing uncomfortable

situations. Teach your children techniques for keeping themselves safe by instructing them to:

- Sit in the back seat;
- Buckle-up tight and use their booster seat, if needed;
- Put all of their belongings on the floor;
- Do not bother the driver and stay quiet.
- Tell a trusted grown-up immediately about the unsafe ride.

Children are our greatest resource and our future. MADD is taking action to help protect the children who are needlessly put in danger every day in this country. It is irresponsible to endanger an innocent child and should not be tolerated by a society that puts children first. If you need assistance, please don't hesitate to call MADD at 1-800-GET-MADD.

For information about state laws and child endangerment, please refer to our website at:
<http://www3.madd.org/laws/law.cfm?LawID=YDAN>

MADD'S POSITION STATEMENT ON CHILD ENDANGERMENT

Mothers Against Drunk Driving supports the enhancement of sanctions against convicted drunk drivers when the offender was driving with a minor child in the vehicle. MADD also supports amendments to State Family Codes indicating that evidence of driving while intoxicated with children in the vehicle is considered against the “best interest of the child” in suits affecting the parent-child relationship.

REFERENCES

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BROCHURES

- Closed Head Injury**
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