

# Utah Justice Research Brief

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## ***Child Endangerment and Driving Under the Influence***

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**H**ouse Bill 128, Amendments to Operating Under the Influence, passed during the 2004 General Legislative Session. In part, this legislation lowered the threshold in certain cases for a finding of driving under the influence (DUI) when a child is a passenger in the vehicle. The legislation also called upon the Commission on Criminal and Juvenile Justice (CCJJ) to study child endangerment for driving under the influence and report the findings to the Legislature in the fall of 2004.

### **Current and New Law**

Prior to the passage of House Bill 128, there was an enhanced penalty for DUI cases where child endangerment was involved. If the driver of the vehicle had a blood alcohol concentration (BAC) of .08 grams or greater or was under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to any degree that rendered them incapable of safely operating the vehicle, that person was guilty of a class B misdemeanor. However, if the person had a passenger under 16 years of age in the vehicle or was 21 years of age or older and had a passenger under 18 years of age in the vehicle, that person was guilty of a class A misdemeanor.

The primary addition to child endangerment in cases of DUI that was added via HB 128 was a reduction in the allowable BAC from .08 to .05 grams or greater. This new .05 BAC standard only applies in cases where the driver is 21 years of age or older, there is a passenger in the vehicle that is under 16 years of age, and the driver had a previous DUI conviction within the prior 10 years.

### **Current Research**

CCJJ approached the research component of HB 128 from several directions. First, researchers at CCJJ gained access to and reviewed over 1,000 DUI reports from 2002. Second, data was extracted from the Fatality Analysis Reporting System (FARS), housed at the National Highway Traffic Safety Administration (NHTSA) on Utah children killed in accidents where they were passengers in the vehicle and the driver was intoxicated. Finally, researchers reviewed recommended approaches and other state's laws focusing on child endangerment in DUI cases.

### **Utah DUI Review**

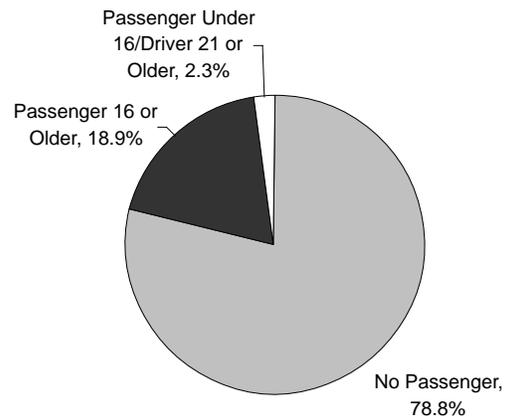
The Driver License Division (Driver License) at the Utah Department of Public Safety provided a complete listing of reported DUI cases from the year 2002. Driver License also provided CCJJ access to their automated document management system, from which researchers were able to extract information related to individual DUI cases.

From the list of DUI cases from 2002, researchers at CCJJ made a random selection of 1,054 cases for review. The goal was to gather information on at least 1,000 cases, but, in some instances, the documentation associated with a DUI case on the list was missing. For that reason, researchers randomly selected 1,054 cases rather than 1,000 cases. Of the 1,054 cases selected for review, documentation could not be found for 49 cases, or 4.6% of the total selection. This left 1,005 cases with documentation available for review. For each case reviewed, researchers attempted to identify if there were passengers in the vehicle, the age of the passengers when there were passengers in the vehicle, the age of the driver of the vehicle, the BAC of the driver of the vehicle, and whether or not the driver was involved in an accident as a result of the DUI behavior. Most often, researchers were able to determine if there were passengers in the vehicle. However, in many cases, it was not possible to discover the BAC of the driver of the vehicle. Most generally, this data was missing either because the driver of the vehicle refused BAC testing or the results of the test were still pending at the time the report was made.

For an overwhelming majority of DUI cases reviewed there was no passenger in the vehicle at the time of the offense. In 764 cases (76.0%) there was no passenger in the vehicle, and in 241 cases (24.0%) there was a passenger in the vehicle. Looking specifically at the 241 cases where there was a passenger in the vehicle, in 36 cases (14.9%) of these 241, there was no documentation of the passenger's age. This left 205 cases where analysis of both driver and passenger age was possible.

Focusing on the issue of child endangerment, the most pertinent passenger age group for review are those passengers under the age of 16. Those under 16 years of age accounted for 2.6% of the 969 DUI cases analyzed where researchers had both case documentation and passenger age when a passenger was in the vehicle. When the scope is narrowed to cases where the driver was 21

### Examination of Passengers in Vehicles Where the Driver Was Intoxicated



Source: Random sample of 2002 DUI Reports provided by the Drivers License Division of the Utah Department of Public Safety.

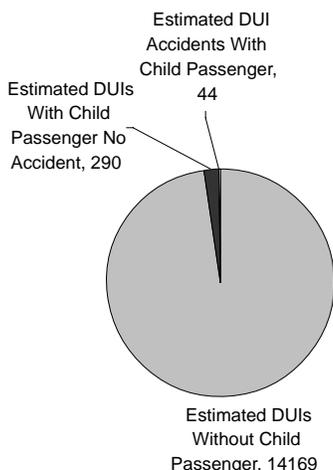
years of age or older and the passenger was under 16 years of age, 22 cases remained which accounted for 2.3% of all DUI cases analyzed. Although BAC level of the driver was collected, the BAC of the driver was not available in any of these 22 cases.

Looking at accidents, 15.8% of all DUIs were involved in an accident. It was not determined if the accidents were single car accidents or if multiple vehicles were involved. In many cases, the accident was how the DUI behavior was discovered. There was an accident in only three cases, or 0.3% of the total DUIs reviewed, where the driver was 21 years of age or older and there was a passenger who was under 16 years of age.

According to the *First Annual DUI Report to the Utah Legislature-2003*, there were a total of 14,503 DUI arrests in 2002.<sup>1</sup> Using this figure, we can estimate that 334 of these DUI arrests involved a situation where the driver of the vehicle was 21 years of age or older and at least one passenger in the vehicle was under 16 years of age. In addition, we can estimate that in 44 cases the vehicle was involved in an accident, the driver was 21 years of age or older, and there was a passenger in the vehicle who was under 16 years of age.

<sup>1</sup> *First Annual DUI Report to the Utah Legislature-2003*. Utah Commission on Criminal and Juvenile Justice, 2003. p. 10.

## Estimated Number of Child Passengers in DUI Cases in 2002, Including Those Involved in Accidents



**Source:** Random sample of 2002 DUI Reports provided by the Drivers License Division of the Utah Department of Public Safety. 2002 DUI arrests from which estimates were derived came from the *First Annual DUI Report to the Utah Legislature - 2003*, p. 10.

It is important to note that without knowing the BAC of the driver and the prior DUI history of the driver, we cannot determine which DUI child endangerment provision these drivers would fall under. For example, if the driver's BAC was .08 or higher, it might be a class A misdemeanor violation. If the driver's BAC was .05 or higher and not at the .08 threshold and the driver had a prior DUI with the past 10 years, it might be a class B misdemeanor. Finally, if this was the driver's third DUI conviction, the offense would qualify as a Third Degree Felony. It is likely that none of the drivers in this study fell under the new .05 BAC provision. This new provision became effective in July 2004, whereas the data analyzed was from 2002. Because this new provision was enacted so recently, it was not possible to analyze data specific to the new .05 BAC provision for this report.

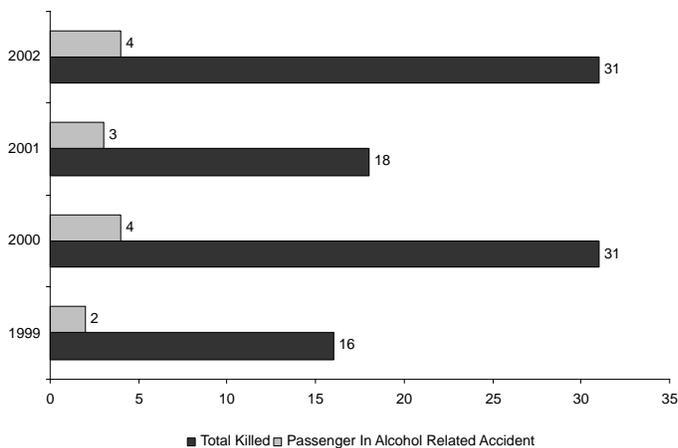
### National Highway Traffic Safety Data Analysis

A second way of examining child endangerment in Utah is to review the child fatalities that were the result of the child riding in a vehicle where the driver was under the influence of

alcohol. CCJJ requested this data from the National Highway Traffic Safety Administration's Fatality Analysis Reporting System. This system is a census of the police-reported motor vehicle crashes on public roads that result in the death of at least one occupant or non-motorist, such as a pedestrian or a person on a bicycle. NHTSA provided CCJJ with information on the number of children killed in automobile accidents that did and did not involve alcohol for 1999 through 2002.

The total number of children between zero and 16 years of age that were killed in Utah in motor vehicle crashes varied from a low of 16 in 1999 to a high of 31 in both 2000 and 2002. A total of 96 Utah children between the ages of zero and 16 were killed in motor vehicle crashes during these four years combined, according to the NHTSA data. Of these 96 children killed, 13 (13.5%) were passengers in vehicles where the driver was under the influence of alcohol. Of these, 11 (84.6%) were passengers in vehicles where the driver had a BAC level at or above the .08 level. With the exception of 2001, it appears that in Utah approximately 13% of children

### Utah Children 0-16 Years of Age Killed in Motor Vehicle Crashes as Passengers Where the Driver Was Intoxicated: 1999 - 2002



**Source:** Data provided by the National Highway Safety Administration. This information was extracted from the Fatality Analysis Reporting System (FARS).

between zero and 16 years of age who are killed in traffic accidents are passengers in vehicles where the driver is intoxicated.

According to a national study looking at data from 1985 to 1996, there were 19,768 child passengers, between the ages of 0 and 14, killed in motor vehicle crashes in the United States. Of these, 3,556 child deaths occurred while the child was in the vehicle with a drunk driver.<sup>2</sup> This would indicate that nationally, 17.9% of children killed in vehicle crashes are passengers in vehicles where the driver is intoxicated. The national percentage of 17.9% is higher than the 13.5% recorded for Utah. It is important to note that Utah's count included a larger age range (0 to 16) than the national data (0 to 14) which means Utah's count may include a larger number of child deaths than the national data. Thus, if Utah's data included children in the same age range as the national data (0 to 14), the 13.5% killed in Utah may be even lower.

Restraint use was also included in the data provided to CCJJ. An alarming 84.6% of the children killed who were passengers in vehicles where the driver was drunk were not in a restraint such as a seat belt or child safety seat. Looking at the children killed in traffic crashes where alcohol was not involved, 71.1% were not restrained. These figures are very comparable to data reported in national studies. In the study previously cited, 82.0% of the children killed who were passengers in vehicles where the driver was intoxicated were not restrained. Similarly, 69.5% of children killed in traffic crashes where the driver was not intoxicated were not restrained.<sup>3</sup>

**Two significant conclusions** can be drawn from this information. **First**, this data sends a clear message about the importance of keeping children either in a seat belt or a child safety seat. In Utah, less than a third of those children killed in vehicle crashes were properly restrained. One would have to imagine that many of these children would still be alive had they been properly restrained. **Second**, it does appear that individuals driving drunk with children in the vehicle are

even less likely to place the child in the proper restraint. This places the child at greater risk of death or injury in the event of a traffic accident, which is compounded by the fact that drunk drivers are, themselves, at greater risk to become involved in a traffic accident due to their decreased capacity. This information should be kept in mind when considering previously reported estimates that 334 DUIs per year involve a drunk driver with a passenger under the age of 16 in the vehicle. It can be assumed that most of these children were not properly restrained.

### Discussion of Sanctions

Laws in Utah that address child endangerment in DUI cases have previously been discussed. The following is a review of approaches taken in other states, as well as suggestions made by advocacy groups to address the issue of child endangerment in DUI cases.

According to an inventory compiled by the National Conference of State Legislatures, just over half of the states have laws regarding drunk driving child endangerment.<sup>4</sup> A cursory review of approaches taken by these states reveals a pattern. In most states, child endangerment associated with DUI is addressed with an enhanced penalty structure. This includes an escalating penalty structure for offenders with prior DUI offenses, prior DUIs associated with child endangerment, or when injuries to the child passenger are sustained. Utah's laws regarding DUI and child endangerment follow this pattern. There is variance in each state's approach when looking at the threshold age of the minor in the vehicle and/or the threshold age of the driver of the vehicle.

In Georgia and Ohio, child endangerment can be charged as a separate offense in addition to the DUI

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<sup>2</sup> "Characteristics of Child Passenger Deaths and Injuries Involving Drinking Drivers." *Journal of the American Medical Association*. Volume 283, Number 17. May 3, 2000. p. 2250.

<sup>3</sup> *Ibid.*, p. 2250.

<sup>4</sup> "National Conference of State Legislatures Drunk Driving Child Endangerment Laws as of December 2003". <http://www.ncsl.org/programs/lis/Dui/childdanger.htm>

offense. It appears that in these states, the offender can be charged with two distinct crimes if they are DUI and transporting children. In both Nevada and North Carolina, having a child in the vehicle while the driver is drunk can be used as an aggravating factor when the judge is determining the sentence for the offender.

A few states, either by statute or case law, allow for the charging of child abuse or child endangerment when a drunk driver has a child passenger in the vehicle. Groups such as Mothers Against Drunk Driving (MADD) appear to support this approach.<sup>5</sup> These groups argue that DUI child endangerment is akin to abuse in that the child is involuntarily placed in this very dangerous situation. The parent, or other adult, chooses to drink and drive, but the child has little or no choice about riding in the vehicle. In California, a driver can be convicted of endangering the life or health of a child if he or she is drunk and has a child in the vehicle. In Colorado, a person can be convicted of child abuse if they knowingly or recklessly kill or injure a child under 16 years of age, and they are driving drunk. In Iowa, the Supreme Court held that parents can be convicted of child neglect if they operate a vehicle while intoxicated with a child passenger. Finally, in Virginia, a drunk driver can be convicted of child abuse and neglect if they are transporting a child under 18 years of age.

A variety of non-statutory approaches are also available. For example, one study suggests teaching school children techniques to avoid risky behavior. This would include riding in a vehicle when the driver has been drinking. This is particularly important for young adults, 14 to 17 years of age, who may risk riding in the vehicle of a drinking peer who is the same age or marginally older. This study also suggests educating parents in alcohol treatment settings about the danger their children face when they choose to drink and drive with them in the vehicle.<sup>6</sup> As demonstrated in this research, restraint use for children should be included in any curriculum on how to avoid risky behavior.

Public service announcements or other public awareness campaigns also may be used to inform the

public about the dangers both of not properly restraining children in vehicles and of driving drunk with children in vehicles.

When parents are divorced and one parent is aware of drinking behavior of the other parent, MADD suggests the possibility of adding language to the divorce decree prohibiting the drinking parent from DUI behavior while transporting their children. Consequences for not following these provisions should also be spelled out in the divorce decree. Another approach in similar situations is to attempt to modify visitation agreements if a parent is convicted of driving intoxicated while transporting the children.

### Conclusion

The data reviewed in this study are not particularly conclusive. A few observations can be made from both the Utah Drivers License data and the NHTSA data. It is difficult to comment about the magnitude of driving under the influence with child passengers in Utah. Looking at the Utah DUI data, a very small fraction of DUIs in our state involve a driver 21 years of age or older with a passenger under the age of 16. An even smaller percentage of these are involved in accidents. According to the NHTSA data and the cited research sources, Utah appears to have a lower level of child fatalities in traffic crashes where the driver is intoxicated.

Although the numbers don't necessarily paint a picture of DUI child endangerment run amuck in Utah, they certainly do demonstrate that there are intoxicated drivers in Utah with child passengers, and that children in Utah die every year when they are passengers in vehicles where the driver is drunk. Using estimates, there are over 300 DUIs each year where a child passenger is present in the vehicle. According to NHTSA data, three to four children die each year in Utah as passengers in

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<sup>5</sup> "Impaired Drivers, Child Passengers: An Unacknowledged Form of Child Endangerment." [http://www.madd.org/activism/0,1056,1645\\_\\_print,00.html](http://www.madd.org/activism/0,1056,1645__print,00.html).

<sup>6</sup> "Alcohol and Motor Vehicle-Related Deaths of Children as Passengers, Pedestrians, and Bicyclists." *Journal of the American Medical Association*. Volume 283, Number 17. May 3, 2000. p. 2248.

vehicles where the driver was drunk. In most of these cases, the child was not restrained.

It is difficult to determine the impact increased sanctions may or may not have on child endangerment behavior in DUI cases. A general deterrence effect would require those engaged in the behavior knowing the legal consequences associated with the behavior, and their willingness to curtail the behavior if they did know and understand the consequences. Specific deterrence effect may be realized if those arrested of this behavior become aware of the behavior's seriousness. Sanctions, when combined with treatment and education, may have a significant impact on the children associated with a specific driver who had previously been prone to drive drunk. In Utah, laws are already on the books addressing child endangerment in DUI cases. These laws are, in some respects, similar to laws in other states across the nation.

In Utah, the crime of child abuse requires victim injury. Child abuse could be charged in DUI cases if the child was injured as a result of the driver being intoxicated. However, child abuse is not charged in these cases because Utah's laws provide for enhanced penalties if injuries result from the DUI. If the DUI results in bodily injury, the crime is a class A misdemeanor. If the DUI results in serious bodily injury, the crime is a Third Degree Felony.

Policy makers may look into the possibility of using Utah's reckless endangerment law for some DUI child endangerment behavior. Reckless endangerment is a class A misdemeanor. In cases where the driver is intoxicated below the .08 BAC level and has a child passenger under 16 years of age, there would not be a criminal violation unless the driver has a prior DUI conviction or if the prosecution can prove impairment. Even if the driver had a prior DUI conviction, the violation would be a class B misdemeanor. If prosecutors were allowed to charge under the reckless endangerment statute, it might be possible to get a conviction on a class A misdemeanor. This is an approach policy makers and prosecutors would need to evaluate.

Finally, it is critical that we do not overlook the importance of child restraint in motor vehicles. The public should be aware of the danger children are in when they are not properly restrained in motor vehicles, whether the driver is drunk or not. However, this danger is increased significantly when the driver of the vehicle is drunk, due both to the decreased capacity to control the vehicle and the decreased tendency to properly restrain children when driving drunk. Data in this report shows that three-quarters of Utah children killed in traffic accidents each year are not properly restrained, and nearly 85% of children killed while riding with a drunk driver are not properly restrained.