

1 H.498

2 Introduced by Representative Christie of Hartford

3 Referred to Committee on

4 Date:

5 Subject: Motor vehicles; operating under the influence; child in vehicle

6 Statement of purpose of bill as introduced: This bill proposes to create
7 additional penalties for driving under the influence with a child in the vehicle
8 and driving with a BAC of 0.16 or greater.

9 An act relating to penalties for DUI with aggravating circumstances

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 23 V.S.A. § 1210 is amended to read:

12 § 1210. PENALTIES

13 (a) Screening. Before sentencing a defendant under this section, the ~~Court~~
14 court may order that the defendant submit to an alcohol assessment screening.
15 Such a screening report may be considered at sentencing in the same manner as
16 a presentence report. At sentencing, the defendant may present relevant
17 evidence, including the results of any independent alcohol assessment ~~which~~
18 that was conducted at the person's own expense. Evidence regarding any such
19 screening or an alcohol assessment performed at the expense of the defendant
20 shall not be admissible for any other purpose without the defendant's consent.

1 (b) First offense. A person who violates section 1201 of this title may be
2 fined not more than \$750.00, or imprisoned for not more than two years, or
3 both.

4 (c) Second offense. A person convicted of violating section 1201 of this
5 title who has been convicted of another violation of that section shall be fined
6 not more than \$1,500.00 or imprisoned not more than two years, or both. At
7 least 200 hours of community service shall be performed, or 60 consecutive
8 hours of the sentence of imprisonment shall be served and may not be
9 suspended or deferred or served as a supervised sentence, except that credit for
10 a sentence of imprisonment may be received for time served in a residential
11 alcohol facility pursuant to sentence if the program is successfully completed.

12 (d) Third offense. A person convicted of violating section 1201 of this title
13 who has previously been convicted two times of a violation of that section
14 shall be fined not more than \$2,500.00 or imprisoned not more than five years,
15 or both. At least 96 consecutive hours of the sentence of imprisonment shall
16 be served and may not be suspended or deferred or served as a supervised
17 sentence, except that credit for a sentence of imprisonment may be received for
18 time served in a residential alcohol facility pursuant to sentence if the program
19 is successfully completed. The ~~Court~~ court may impose a sentence that does
20 not include a term of imprisonment or that does not require that the 96 hours of
21 imprisonment be served consecutively only if the ~~Court~~ court makes written

1 findings on the record that such a sentence will serve the interests of justice
2 and public safety.

3 (e)(1) Fourth or subsequent offense. A person convicted of violating
4 section 1201 of this title who has previously been convicted three or more
5 times of a violation of that section shall be fined not more than \$5,000.00 or
6 imprisoned not more than 10 years, or both. At least 192 consecutive hours of
7 the sentence of imprisonment shall be served and may not be suspended or
8 deferred or served as a supervised sentence, except that credit for a sentence of
9 imprisonment may be received for time served in a residential alcohol
10 treatment facility pursuant to sentence if the program is successfully
11 completed. The ~~Court~~ court shall not impose a sentence that does not include a
12 term of imprisonment unless the ~~Court~~ court makes written findings on the
13 record that there are compelling reasons why such a sentence will serve the
14 interests of justice and public safety.

15 (2) The Department of Corrections shall provide alcohol and substance
16 abuse treatment, when appropriate, to any person convicted of a violation of
17 this subsection.

18 (f) Aggravated offense.

19 (1) Death resulting.

20 (A) If the death of any person results from a violation of section 1201
21 of this title, the person convicted of the violation shall be fined not more than

1 \$10,000.00 or imprisoned not less than one year nor more than 15 years, or
2 both. The provisions of this subsection do not limit or restrict prosecutions for
3 manslaughter.

4 ~~(2)~~(B) If the death of more than one person results from a violation of
5 section 1201 of this title, the operator may be convicted of a separate violation
6 of this subdivision for each decedent.

7 ~~(3)~~~~(A)~~(C) Death resulting; third or subsequent offense.

8 (i) If the death of any person results from a violation of section
9 1201 of this title and the person convicted of the violation previously has been
10 convicted two or more times of a violation of that section, a sentence ordered
11 pursuant to this subsection (f) shall, except as provided in subdivision (B) of
12 this subdivision ~~(3)~~(1), include at least a five-year term of imprisonment. The
13 five-year minimum term of imprisonment required by this subdivision (i) shall
14 be served and may not be suspended, deferred, or served as a supervised
15 sentence. The defendant shall not be eligible for probation, parole, furlough,
16 or any other type of early release until the expiration of the five-year term of
17 imprisonment.

18 ~~(B)~~(ii) Notwithstanding subdivision ~~(A)~~(i) of this subdivision ~~(3)~~(C),
19 if the death of any person results from a violation of section 1201 of this title
20 and the person convicted of the violation previously has been convicted two or
21 more times of a violation of that section, the ~~Court~~ court may impose a

1 sentence that does not include a term of imprisonment or ~~which~~ that includes a
2 term of imprisonment of less than five years if the ~~Court~~ court makes written
3 findings on the record that such a sentence will serve the interests of justice
4 and public safety.

5 (2) Injury resulting.

6 (A) If serious bodily injury, as defined in 13 V.S.A. § 1021(2),
7 results to any person other than the operator from a violation of section 1201 of
8 this title, the person convicted of the violation shall be fined not more than
9 \$5,000.00 or imprisoned not more than 15 years, or both.

10 (B) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results
11 to more than one person other than the operator from a violation of section
12 1201 of this title, the operator may be convicted of a separate violation of this
13 subdivision (2) for each person injured.

14 (C) Injury resulting; third or subsequent offense.

15 (i) If serious bodily injury as defined in 13 V.S.A. § 1021(2)
16 results to any person other than the operator from a violation of section 1201 of
17 this title and the person convicted of the violation previously has been
18 convicted two or more times of a violation of section 1201, a sentence ordered
19 pursuant to this subsection (f) shall, except as provided in subdivision (B) of
20 this subdivision (2), include at least a five-year term of imprisonment. The
21 five-year minimum term of imprisonment required by this subdivision shall be

1 served and may not be suspended, deferred, or served as a supervised sentence.

2 The defendant shall not be eligible for probation, parole, furlough, or any other
3 type of early release until the expiration of the five-year term of imprisonment.

4 (ii) Notwithstanding subdivision (i) of this subdivision (C), if
5 serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person
6 other than the operator from a violation of section 1201 of this title and the
7 person convicted of the violation previously has been convicted two or more
8 times of a violation of section 1201, the court may impose a sentence that does
9 not include a term of imprisonment or which includes a term of imprisonment
10 of less than five years if the court makes written findings on the record that
11 such a sentence will serve the interests of justice and public safety.

12 (3) Minor in the vehicle. A person who violates section 1201 of this
13 title while a child under 16 years of age is in the person's vehicle shall, in
14 addition to any other penalty imposed by law, be fined not more than \$500.00
15 or imprisoned for not more than six months, or both.

16 (4) A person who violates section 1201 of this title when the person's
17 blood alcohol concentration is 0.16 or more shall, in addition to any other
18 penalty imposed by law, be fined not more than \$300.00 or imprisoned for not
19 more than three months, or both.

20 ~~(g)(1) Injury resulting. If serious bodily injury, as defined in 13 V.S.A. §~~
21 ~~1021(2), results to any person other than the operator from a violation of~~

1 ~~section 1201 of this title, the person convicted of the violation shall be fined~~
2 ~~not more than \$5,000.00, or imprisoned not more than 15 years, or both.~~

3 ~~(2) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to~~
4 ~~more than one person other than the operator from a violation of section 1201~~
5 ~~of this title, the operator may be convicted of a separate violation of this~~
6 ~~subdivision for each person injured.~~

7 ~~(3)(A) Injury resulting; third or subsequent offense. If serious bodily~~
8 ~~injury as defined in 13 V.S.A. § 1021(2) results to any person other than the~~
9 ~~operator from a violation of section 1201 of this title and the person convicted~~
10 ~~of the violation previously has been convicted two or more times of a violation~~
11 ~~of section 1201, a sentence ordered pursuant to this subsection shall, except as~~
12 ~~provided in subdivision (B) of this subdivision (3), include at least a five-year~~
13 ~~term of imprisonment. The five-year minimum term of imprisonment required~~
14 ~~by this subdivision shall be served and may not be suspended, deferred, or~~
15 ~~served as a supervised sentence. The defendant shall not be eligible for~~
16 ~~probation, parole, furlough, or any other type of early release until the~~
17 ~~expiration of the five-year term of imprisonment.~~

18 ~~(B) Notwithstanding subdivision (A) of this subdivision (3), if serious~~
19 ~~bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than~~
20 ~~the operator from a violation of section 1201 of this title and the person~~
21 ~~convicted of the violation previously has been convicted two or more times of~~

1 ~~a violation of section 1201, the Court may impose a sentence that does not~~
2 ~~include a term of imprisonment or which includes a term of imprisonment of~~
3 ~~less than five years if the Court makes written findings on the record that such~~
4 ~~a sentence will serve the interests of justice and public safety. [Repealed.]~~

5 (h) Determination of fines. In determining appropriate fines under this
6 section, the ~~Court~~ court may take into account the total cost to a defendant of
7 alcohol screening, participation in the ~~Alcohol and Driving Education Program~~
8 Impaired Driver Rehabilitation Program and therapy, and the income of the
9 defendant.

10 (i) A person convicted of violating section 1201 of this title shall be
11 assessed a surcharge of \$60.00, which shall be added to any fine imposed by
12 the ~~Court~~ court. The ~~Court~~ court shall collect and transfer such surcharge to
13 the Department of Public Safety for deposit in the Blood and Breath Alcohol
14 Testing Special Fund established by section 1220b of this title.

15 (j) A person convicted of violating section 1201 of this title shall be
16 assessed a surcharge of \$50.00, which shall be added to any fine or surcharge
17 imposed by the ~~Court~~ court. The ~~Court~~ court shall collect and transfer the
18 surcharge assessed under this subsection to the Office of Defender General for
19 deposit in the Public Defender Special Fund specifying the source of the
20 monies being deposited. The collection procedures described in 13 V.S.A.
21 § 5240 shall be utilized in the collection of this surcharge.

1 (k) A person convicted of violating section 1201 of this title shall be
2 assessed a surcharge of \$50.00, which shall be added to any fine or surcharge
3 imposed by the ~~Court~~ court. The ~~Court~~ court shall collect and transfer the
4 surcharge assessed under this subsection to be credited to the DUI
5 Enforcement Fund. The collection procedures described in 13 V.S.A. § 5240
6 shall be utilized in the collection of this surcharge.

7 Sec. 2. EFFECTIVE DATE

8 This act shall take effect on passage.