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1436 SHESS 1982 INTERIM: CHILD RESTRAINT DEVICES ANCH & FAIR

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# UNIVERSITY OF COLORADO LAW REVIEW

MEMORIAL TO JUSTICE BRONSON  
EDWARD J. COFF

DEPARTMENT OF LAW AND PUBLIC AFFAIRS  
AMERICAN BAR ASSOCIATION  
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A RELATIVISTIC CONCEPTION  
OF THE LAW  
JUDITH S. WISNICK

LEGISLATING AND JUDICIAL REVIEW  
MICHAEL J. WAGGONER

THE FEDERAL COURTS AND THE  
CONSTITUTION  
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## CHILD SAFETY IN AUTOMOBILES: MANDATORY RESTRAINT-USE LAWS

Automobile safety is an issue of long-standing concern, but only recently has special attention been focused on the safety needs of young children, to whom cars pose one of the largest public health threats in the country.<sup>1</sup> This threat would be greatly diminished if each pre-school aged child were properly secured in a child restraint device (CRD) each time he or she traveled in a motor vehicle.

A CRD is a car seat, padded shell, or harness which is designed to protect infants and young children in the event of an accident, and which is usually secured in place by a vehicle's existing lap belts.<sup>2</sup> These devices are fairly inexpensive and readily available, yet they are rarely used. In fact, a leading study found that less than ten percent of children transported in motor vehicles were adequately protected against the possibility of injury.<sup>3</sup>

A growing awareness of this public health problem has resulted in passage of legislation mandating the use of CRDs in two states<sup>4</sup> and proposed legislation in twenty-eight others.<sup>5</sup> This Comment will examine the laws mandating the use of CRDs and the legal issues which may arise from them. The efficacy of the various statutes will be analyzed as well as their constitutional validity under state police powers. An evaluation of the potential impact of CRD laws on auto-

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1. See text accompanying notes 6-8 *infra*.

2. Some CRDs are designed solely for use by infants while others protect only toddlers capable of sitting alone. Many restraint devices are convertible and can be used from birth until the child weighs more than forty to fifty pounds, at four or five years of age. For a complete description and evaluation of many of the CRDs marketed today, see MICHIGAN'S MOTOR VEHICLE OCCUPANT PROTECTION PROGRAM, MICHIGAN TRAFFIC SAFETY INFORMATION COUNCIL, A DETAILED REVIEW OF CURRENTLY MARKETED INFANT AND CHILD RESTRAINTS (1979); *Child Restraint Systems*, 42 CONSUMER REPORTS 314 (1977).

3. See Williams, *Observed Child Restraint Use in Automobiles*, 130 AM. J. DISEASES OF CHILDREN 1311 (1976).

4. CRD-use laws are in effect in Tennessee and Rhode Island. See notes 33 and 41 *infra*.

5. Child restraint bills have been proposed in the following states: Alabama, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington, West Virginia, and Wisconsin. See ACTION FOR CHILD TRANSPORTATION SAFETY, SUMMARY OF PROPOSED CHILD RESTRAINT LEGISLATION AND ALTERNATIVE MODEL LAWS (1979, updated May, 1980) [hereinafter cited as ACTS].

mobile accident litigation will follow. Before turning to those issues, however, the problem to which CRD laws are addressed will be more fully described.

#### THE PROBLEM

Motor vehicle accidents cause death and injury to more children than any other single cause, including childhood diseases.<sup>6</sup> In 1979 alone, 1159 children under the age of five died, and at least fifty times that number were injured, in such accidents in the United States.<sup>7</sup> Colorado contributed fourteen fatalities and 835 recorded injuries to that toll.<sup>8</sup> These high numbers are due primarily to two factors: the physical characteristics of young children and the positions they usually occupy as unrestrained passengers in motor vehicles.

The unique center of gravity and small size of young children make them particularly vulnerable to serious injuries in automobile crashes.<sup>9</sup> A child's head makes up a great proportion of his overall body weight, and this, coupled with an inability to brace himself with his short arms and legs, greatly increases the likelihood that he will be propelled head-first in the direction of any impact point. The result is a high incidence of head injuries and related deaths among accident victims in this age group.<sup>10</sup> In fact, such injuries can occur even in the absence of an actual accident when an unsecured child is thrown against the automobile's interior by a sudden swerve or application of the brakes.<sup>11</sup> Larger and heavier passengers, on the other hand, are less likely to be shifted by abrupt driving maneuvers.

The physical characteristics of very young children also tend to

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6. Automobile accidents are the leading cause of death and serious injury for all children beyond one month of age. See Shelness & Charles, *Children as Passengers in Automobiles: The Neglected Minority on the Nation's Highways*, 56 *PEDIATRICS* 271 (1975).

7. DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA), *HIGHWAY SAFETY 1979: REPORT ON ACTIVITIES UNDER THE HIGHWAY SAFETY ACT OF 1966* (1980). This report contains only death statistics. Injury statistics are not published but are kept on file by NHTSA. The National Electronic Injury Surveillance System file kept at NHTSA shows that 60,408 pre-schoolers injured by motor vehicles were transported to emergency rooms in 1979. Telephone interview with Grace Hazard, data retrieval specialist, National Center for Statistics and Analysis, NHTSA, Sept. 16, 1980.

8. MOTOR VEHICLE DIV., COLO. DEP'T OF REV., *STANDARD SUMMARY OF MOTOR VEHICLE TRAFFIC ACCIDENTS* (1979).

9. See Karwacki & Baker, *Children in Motor Vehicles: Never Too Young to Die*, 242 *J. AM. MED. ASSOC.* 2848 (1979); Alter, *Unsafe at Any Age? Children and Car Safety*, *PARENT'S MAGAZINE* Feb. 1979, reprinted in *INSURANCE INSTITUTE FOR HIGHWAY SAFETY (IIHS) STATUS REPORT 8* (Mar. 19, 1979).

10. Karwacki & Baker, *supra* note 9.

11. Alter, *supra* note 9, at 9.

and the forward-moving weight of the person holding him.<sup>18</sup> This same crushing action can occur when a seatbelt is fastened around both the adult and the child on his lap. In a collision, the weight of the adult is forced against the child penned in the seatbelt with him, and the probability of serious abdominal injury to the child is greatly increased.<sup>19</sup>

The final variation of on-lap travel is a seatbelted adult holding an unrestrained child on his lap. In this position, the adult does not crush the child in an accident, but is powerless in most cases to prevent other harm to the child, for even the smallest infant weighs the equivalent of several hundred pounds at the instant of impact, and is likely to be torn from even the strongest of human arms.<sup>20</sup> In short, holding a child can never be an adequate safety alternative to the use of an appropriate restraint device.

The need for CRDs will not be obviated by the automatic restraint systems which federal legislation will require on all new cars by 1984.<sup>21</sup> While manufacturers will be able to satisfy the requirements by providing either automatic seatbelts or airbags in their vehicles, neither option is fully adequate for child safety needs. Automatic seatbelts designed for average sized adults will not offer even minimal protection to infants. Airbags, on the other hand, will diminish the threat to children riding in the front seat, but present legislation does not require airbag installation for the protection of rear seat passengers, a class composed largely of children.<sup>22</sup> Furthermore, airbags will provide little protection in side- and rear-impact collisions and rollovers.<sup>23</sup>

Finally, unlike a CRD, an airbag would not play a role in preventing the occurrence of an accident. A study conducted at the University of North Carolina concluded that more than two hundred

18. *Id.* at 3.

19. *Id.* at 4.

20. The force that a child will exert upon impact can be roughly calculated by multiplying the child's weight and the vehicle's speed together. For instance, a fifteen pound infant will exert a force of three hundred pounds in a twenty mile per hour collision. See HHS, *An Evaluation of Adult Clasping Strength for Restraining Lap-Held Infants*, discussed in HHS STATUS REPORT 6 (Mar. 19, 1979).

21. Automatic restraint systems are being phased in over several years with large cars being targeted first. All new cars will have to meet the requirement by the 1984 model year. 49 C.F.R. § 371.204 (1979).

22. One survey found that about seventy percent of the nearly 9000 children observed in motor vehicles were riding in the back seat. Riksinger & Williams, *Evaluation of Programs Designed to Increase the Protection of Children in Cars*, 62 PEDIATRICS 280, 286 (1978).

23. See Comment, *Occupant Protection in Automobiles*, 27 AM. U. L. REV. 635 (1978) for a thorough discussion of automatic restraint systems.

of that state's traffic accidents in 1977 were caused by unrestrained children who had distracted the driver of the vehicle in which they were riding. Children who fell off the seat or interfered with the operation of the motor vehicle were, in many instances, found to have been the direct cause of a crash.<sup>24</sup>

All of the problems discussed above would be greatly alleviated by the use of CRDs. Experts in the field generally agree that the number of children killed and injured in automobile accidents would be minimized—some claim by as much as ninety percent—if CRDs were consistently and properly used.<sup>25</sup> Yet recent data shows that only seven percent of the children riding on the nation's roads are adequately secured for protection against possible harm.<sup>26</sup> Parents who wear their own seatbelts while transporting their children have been found to use child restraints more than any other group. Yet even in that situation, only twenty-two percent of the passenger children were secured by a CRD or seatbelt.<sup>27</sup> The great number of children harmed, coupled with the low voluntary usage rate of adequate restraints, has led to a growing interest in a statutory solution to this public health problem.

#### THE STATUTES

The field of automobile safety is one which legislators enter with trepidation. Traditional public hostility toward regulation of individual driving habits has led to a reluctance to impose safety requirements on individual drivers. Public sentiment was so strong against the federally mandated seatbelt-ignition interlock system,<sup>28</sup> for example, that Congress was forced to repeal the measure less than a

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24. This study was summarized in MICHIGAN ASSOCIATION FOR TRAFFIC SAFETY, FORMATS, *Child Passenger Safety News* (Feb. 1980).

25. A study of crashes done in Washington state by Dr. Robert G. Scherz, for example, concludes that "[t]he difference between deaths and disabling injuries between the restrained and unrestrained pre-school children was highly significant. If all of the children in the 0-5 age group had been restrained at the time of the accident, then the . . . deaths may have been reduced from 124 to 13 (down 90%) and disabling injuries reduced from 716 to 238."

Alter, *supra* note 9, at 10.

The reduction in injuries in the Washington study is about 33%, a rate very similar to that obtained by analyzing accidents involving children under fifteen years of age in North Carolina. The North Carolina study found that "[u]se of restraints reduced the injury rate by 39% in the front seat and by 31% in back." Williams & Zador, *supra* note 16, at 10.

26. Williams, *supra* note 3.

27. *Id.* at 1314.

28. The seatbelt-ignition interlock system prevented a vehicle's engine from being started until seatbelts were buckled. An annoying buzzer sounded if seatbelts were unfastened while the seat was occupied.

year after it went into effect.<sup>29</sup> This public hostility explains the absence of mandatory seatbelt-use laws in any of the states.

The somewhat warmer reception given to CRD-use laws in state legislatures is undoubtedly due to the age of those who would benefit from such legislation. Because infants and young children are completely dependent on others for their well-being, state law has historically provided for their health and safety when those charged with their care fail adequately to do so.<sup>30</sup> The effectiveness and practicality of extending state protection to children as automobile passengers will be evaluated by examining the various CRD statutes which have been proposed.

### *The Existing Laws*

Two states have succeeded in passing CRD legislation: Tennessee<sup>31</sup> and Rhode Island.<sup>32</sup> The pioneering Tennessee statute, which went into effect at the beginning of 1978, requires that all children under the age of four be secured in a CRD when riding in a vehicle owned and operated by their parents.<sup>33</sup> Exemptions are allowed for children riding on other passengers' laps, and for children riding in recreational vans and certain trucks.<sup>34</sup> The penalty for breaking this law is a moderate fine; and proof of the violation cannot be raised in civil suits for negligence.<sup>35</sup>

29. 15 U.S.C. § 1410b(b)(1)(B) (1976).

30. See text accompanying notes 83-92 *infra*.

31. TENN. CODE ANN. § 55-9-214(b) (1980).

32. R. I. GEN. LAWS § 31-22-22 (1980).

33. TENN. CODE ANN. § 55-9-214 (1980):

(b) Effective January 1, 1978, every parent or legal guardian of a child under the age of four (4) years residing in this state shall be responsible, when transporting his child in a motor vehicle owned by that parent or guardian operated on the roadways, streets or highways of this state, for providing for the protection of his child and properly using a child passenger restraint system meeting federal motor vehicle safety standards, or assuring that such child is held in the arms of an older person riding as a passenger in the motor vehicle. Provided that the term "motor vehicle" as used in this paragraph shall not apply to recreational vehicles of the truck or van type. Provided further that the term "motor vehicle" as used in this paragraph shall not apply to trucks having a tonnage rating of one (1) ton or more. Provided that in no event shall failure to wear a child passenger restraint system be considered a contributory negligence, nor shall such failure to wear said child passenger restraint system be admissible as evidence in the trial of any civil action.

(c) Violation of any provision of this section is hereby declared a misdemeanor and anyone convicted of any such violation shall be fined . . . not less than two dollars (\$2.00) nor more than ten dollars (\$10.00) for each violation of subsection (b) of this section.

34. *Id.*

35. *Id.*

From a safety standpoint, the most controversial provision of this law is the so-called "bates-in-arms" exemption.<sup>36</sup> Holding a child in a passenger's arms has been shown to be an entirely inadequate substitute for the use of a restraint,<sup>37</sup> and there is hope among the original sponsors of the Tennessee law that this exemption will be repealed at some future date.<sup>38</sup> Unfortunately, similar provisions were included in bills introduced in four other states.<sup>39</sup>

has been  
repealed

A second aspect of the Tennessee law which may lessen its effectiveness is that it applies only to parents who are transporting their own children. Although the majority of children less than four years old are likely to be driven by a parent whenever they ride in a vehicle, the provision may nevertheless lead to enforcement problems. Since most children carry no identification, the temptation for any parent or guardian to simply assert that he is, for example, the child's uncle or babysitter when stopped for a possible violation is evident. A police officer faced with such a statement would in many cases lack probable cause to go forward and issue a citation.<sup>40</sup>

Tennessee's final exempting provision, which excludes trucks and vans from the law's application, was probably viewed as a practical necessity because of the limited seating which is available in those vehicles. The addition of a further provision requiring that restraints be used if seating were available would strengthen the protective purpose of the law while still acknowledging those practical concerns.

A CRD-use law with quite different provisions went into effect in Rhode Island in July of 1980.<sup>41</sup> Unlike the Tennessee statute, this

36. The exemption allowed for children who ride on another passenger's lap was added as an amendment by one of the bill's opponents. He argued that the happiest day of his daughter's life was when she brought her new baby home from the hospital in her arms and that the law would deny this pleasure to other new mothers. It was feared that the law would not be passed if the exemption were removed. R. Sanders, *Effective Intervention With State Legislatures* (paper presented at the Child Passenger Safety Conference, U. of Tenn. Transp. Center, May 10, 1978, available from Action for Child Transportation Safety).

37. See text accompanying notes 17-20 *supra*.

38. Sanders, *supra* note 36.

39. This language was included in bills introduced in Illinois, Louisiana, New Hampshire, and New Jersey, none of which passed. ACTS, *supra* note 5.

40. Probable cause exists when the facts and circumstances within the officer's knowledge are sufficient in themselves to warrant a belief by a man of reasonable caution that an offense has been committed. *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949). More than mere suspicion is required. *Henry v. United States*, 361 U.S. 98, 101 (1959).

41. R. I. GEN. LAWS § 31-22-22 (1980):

Child Passenger Restraint Systems. Any person transporting a child three (3) years of age or under in the front seat of a motor vehicle operated on the roadways, streets or highways of this state, will provide for the protection of the child and

law applies to all persons driving in Rhode Island and therefore avoids the potential enforcement problems posed by a "parents-only" provision. The unique feature of Rhode Island's law is that it requires CRD use by children under the age of four only while they are riding in the front seat of a vehicle.<sup>43</sup> The law thus addresses the most hazardous practices of unrestrained, or on-lap, front seat travel, but fails to provide protection for the majority of child passengers: those who ride in the back seat.<sup>44</sup> A more stringent bill, to be introduced in the South Dakota legislature,<sup>45</sup> would provide the added protection. That bill would require that children ride in the back seat *and* be secured in the vehicle's available seatbelts whenever possible. Should it be necessary for a child to be transported in the front seat, a restraint device appropriate for the child's age and size, such as is required in Rhode Island, would have to be used.

*Pending Legislation: Some Further Options*

The majority of CRD legislation introduced in other states is similar to the Tennessee law, but without the "babes-in-arms" exemption.<sup>46</sup> These statutes typically would require that a parent who is driving his own vehicle must have his young children secured in CRDs. The protected class of children is most often limited to those younger than four years, or alternatively, to those who weigh less than forty pounds.<sup>47</sup> These age and weight limitations provide convenient lines for the legislators to draw, since they encompass the class

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properly use a child passenger restraint system approved by the United States Department of Transportation under Federal Standard 213, provided that in no event [shall] failure to wear a child passenger restraint system be considered as contributory negligence, nor [shall] such failure to wear said child passenger restraint system be admissible as evidence in the trial of any civil action.

Any person deemed to be in violation of this section shall be issued a citation with a fine of fifteen (\$15.00) dollars and it will be recorded on said person's driving record within the rules and regulations governing Section 31-43.

42. *Id.*

43. While one study found that a "back seat location reduced the injury rate by 28% among unrestrained child passengers and by 18% among restrained children," it further concluded that restrained children are safer than those who are unrestrained, regardless of their position in a vehicle. Williams & Zador, *supra* note 16, at 71.

44. The South Dakota proposal is described in ACTS, *supra* note 5.

45. Arizona H.B. 2418 (defeated in committee); Colorado H.B. 1440 (defeated in the House); Michigan substitute for H.B. 5327; Minnesota H.B. 136 and S.B. 274; Nebraska Leg. B. 79; North Carolina H.B. 1018 (defeated); North Dakota H.B. 1490 (defeated); Oregon H.B. 2667 (defeated in the House); Washington H.B. 199 and S.B. 2895 (withdrawn by sponsor); Wisconsin Asmb. B. 747. The sponsors of many of the defeated bills plan to reintroduce their respective proposals, ACTS, *supra* note 5.

46. *Id.*

of passengers for whom CRDs are typically designed.<sup>47</sup> Also, by drafting legislation concerned with CRD use only, legislators can minimize the political and public opposition which would accompany a more far-reaching restraint-use law.

The four year age limit is not universal, however. California has a bill pending which would encourage the use of appropriate restraint systems for all children under the age of sixteen.<sup>48</sup> This bill is designed primarily to educate the public and would allow law enforcement officers to issue verbal hazard warnings, but not citations, to non-complying motorists. Other age variations are found in the South Dakota legislation mentioned above,<sup>49</sup> which would apply to children up to thirteen years of age, and in a Maryland bill which would require restraint use for the protection of children who are less than eight.<sup>50</sup>

Proposed CRD laws also vary in their determination of who will be responsible for complying with their respective terms. As noted, the majority would hold only parents or legal guardians liable for the failure to use restraint devices. Statutes with broader coverage usually are written to apply to all resident drivers,<sup>51</sup> or to the drivers of all vehicles which are registered in the enacting state.<sup>52</sup> One novel variation is the New York proposal,<sup>53</sup> which would impose a penalty on both the driver of a vehicle in which an unrestrained child was riding, and the vehicle owner who knowingly permitted a child to be transported in that manner.

Other provisions which may be incorporated into some proposed statutes include a ban on carrying passengers in the cargo areas of hatchbacks, station wagons, and pickup trucks,<sup>54</sup> and on the practice of buckling one seatbelt around two people.<sup>55</sup> One exemption under consideration in some states allows children with medical problems

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47. See note 2 *supra*.

48. California Asmb. B. 1198, ACTS, *supra* note 5.

49. See note 44 and accompanying text *supra*.

50. Maryland H.B. 33, ACTS, *supra* note 5.

51. See, e.g., Maryland H.B. 33, ACTS, *supra* note 5.

52. See, e.g., Colorado H.B. 1440, ACTS, *supra* note 5.

53. New York S.B. 2623, ACTS, *supra* note 5.

54. See, e.g., Massachusetts S.B. 1269 which would prohibit the carrying of passengers in open trucks. ACTS, *supra* note 5. This particular provision has been enacted by city ordinance in Ogden, Utah. This five year old law forbids persons from riding in any portion of a motor vehicle not designed or intended for use by passengers. It further makes it illegal to operate a motor vehicle while any person is standing on the vehicle's seats. MICHIGAN ASSOCIATION FOR TRAFFIC SAFETY, FORMATS, *Child Passenger Safety News* 4 (Apr. 1980).

55. See, e.g., Maryland H.B. 33; Washington H.B. 199 and S.B. 2895, ACTS, *supra* note 5.

which may make the use of a CRD impossible, to travel without being secured in such a device.<sup>56</sup> To avoid possible abuse of this provision, a doctor's certificate of exemption would be required by some statutes.<sup>57</sup>

In combining any of these provisions into a workable child restraint law, the interest in maximizing safety should be balanced against considerations of fairness and practicality. The statutes must be flexible. For example, a large family that can afford only a small car with inadequate seating for all family members should not be subject to a penalty each time they venture onto the public roads. A law which requires the use of CRDs for available seating and which further requires all unrestrained children to ride in the back seat might best accommodate both safety concerns and tight family budgets.

Flexibility and compromise is also necessary in striking a reasonable balance between the strictness of a restraint law's provisions and the determination of who will be subject to the law's terms. For example, a requirement that CRDs be obtained and used would be less controversial under a law that applies only to parents and legal guardians, rather than to all in-state drivers. Conversely, statutes which apply to all drivers might require only that the vehicle's available seatbelts be used for the protection of children. Under a law of the latter type, parents could still be encouraged to obtain CRDs by other means, such as by allowing a tax credit as an incentive for their purchase. The tax credit incentive is presently under consideration in some states.<sup>58</sup>

### *Costs and Enforcement*

The burden which would be imposed on members of the public by requiring them to obtain CRDs should not be viewed as an insurmountable problem. The cost of these devices, generally between twenty and forty-five dollars,<sup>59</sup> is not unreasonable when it is consid-

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56. Members of Action for Child Transportation Safety find exemptions for "physical or medical" reasons unacceptable and argue that children unable to sit in the typical car seat style CRD — because of a bulky cast or perhaps some birth defect — are nevertheless entitled to protection. They suggest larger shield or harness type restraints as alternatives. ACTS, *supra* note 5. See also L. Schneider, J. Melvin, C.E. Cowney, *Impact Sled Test Evaluation of Restraint Systems Used in Transportation of Handicapped Children* (paper presented to the Society of Automotive Engineers, Detroit 1979) discussed in IIHS STATUS REPORT 5 (Mar. 19, 1979).

57. See, e.g., Colorado H.B. 1440; Massachusetts S.B. 1097, ACTS, *supra* note 5.

58. See, e.g., Michigan S.B. 394, ACTS, *supra* note 5.

59. See note 2 *supra*.

ered that a CRD provides up to four years of protection and that each CRD can be re-used by several children. The price of the device could simply be considered, along with license plates, safety inspections, and insurance, as one of the costs of owning and operating a motor vehicle.

On the other hand, CRD legislation would probably receive greater public acceptance if it were accompanied by programs designed to minimize the cost of compliance. Legislative efforts toward this end could include the tax credit mentioned above and, possibly, Medicaid coverage of CRD purchases for the poor. It has been suggested that Medicaid payments for CRDs could be justified under the same theory that applies to childhood vaccinations—that such devices constitute effective preventive medicine.<sup>60</sup>

As an alternative to government help, many innovative private programs offer means of keeping compliance costs down. Examples include CRD rental programs which have been successfully established in several parts of the country, as well as programs which offer used restraint devices for sale at minimal cost.<sup>61</sup> A different approach has been implemented by one insurance company which provides CRDs to its insured families without charge, thereby spreading the cost of the devices among all of its policy holders.<sup>62</sup> Thus, several possibilities exist in both the government and private sectors which could minimize the financial burden imposed by CRD-use laws.

A final concern about the practicality of these statutes centers on the enforcement problems that they may present, although these problems appear to be no greater than those which accompany many other traffic regulations. As in the case of driving without a valid license, which is against the law<sup>63</sup> but usually goes undetected, CRD violations might often be found only after the driver of the car is stopped for another infraction. More likely, an officer would simply

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60. Action for Child Transportation Safety is among those groups exploring the possibility of Medicaid payments for CRD purchases. Allowing such payments was urged by the safety coordinator of a pediatric preventive medicine program in testimony before the House Commerce Subcommittee on Oversight and Investigation. IIHS STATUS REPORT 7 (May 17, 1979).

61. Several such programs are described in *Child Passenger Safety News*, *supra* note 24.

62. Robert E. Vanderbeck, president of the League General Insurance Companies of Southfield, Michigan told the House Commerce Subcommittee on Oversight and Investigation that "[t]he program . . . makes economic sense and we believe will be cost effective — it will pay for itself through reduced claims." IIHS STATUS REPORT 6 (May 17, 1979).

63. See, e.g., *COLU. REV. STAT.* § 42-2-101 (1973).

notice a child standing on the seat of a vehicle or riding on another person's lap and then pull that vehicle over in order to issue a ticket to the driver. Children traveling in dangerous positions are often visible to other motorists on the road and no extraordinary surveillance techniques would be needed by police charged with halting that practice.

### THE POLICE POWER

Each state possesses authority to pass laws which protect the health, safety, or welfare of the public.<sup>64</sup> This authority is an inherent aspect of the state's sovereignty and is known as its police power.<sup>65</sup> In determining the validity of any legislation passed pursuant to this power, courts typically employ a two-step analysis. Such a law will be upheld if it furthers a legitimate state objective and if the means employed to attain it are reasonably related to that end.<sup>66</sup>

#### *A Legitimate Objective*

An appropriate state objective has been held to be any one which promotes or protects the public welfare.<sup>67</sup> This definition is elastic enough to encompass the wide variety of laws which are enacted in response to changing public needs. The shift from an agrarian to an industrial society, for example, created the need for regulations such as workmen's safety, pure food, and urban housing and sanitation laws.<sup>68</sup> More recently, the public welfare concept has been expanded to include rent control laws,<sup>69</sup> anti-deceptive credit practice laws,<sup>70</sup> and anti-billboard and landmark preservation statutes

64. See *Berman v. Parker*, 348 U.S. 26, 32 (1954); *East New York Bank v. Hahn*, 326 U.S. 230, 232 (1945); *Nebbia v. New York*, 291 U.S. 502, 523 (1934); *License Cases*, 46 U.S. (5 How.) 504, 583 (1847).

65. The term "police power" appears to have been first used by Justice Marshall in *Brown v. Maryland*, 25 U.S. (12 Wh.) 419, 433 (1827). It is a residuary power, one which was retained by the states after certain enumerated powers had been transferred to the new federal government.

66. "To justify the state in . . . interposing its authority in behalf of the public, it must appear, first, that the interests of the public . . . require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." *Goldblatt v. Hempstead*, 369 U.S. 590, 594-95 (1962) quoting *Lawton v. Steele*, 152 U.S. 133, 137 (1894).

67. See, e.g., *In re Interrogatories of the Governor*, 97 Colo. 587, 595, 52 P.2d 663, 667 (1933) which notes that this power is as "broad as the public welfare."

68. See *Morissette v. United States*, 342 U.S. 246, 253-54 (1952).

69. *Hutton Park Gardens v. West Orange Town Council*, 68 N.J. 543, 350 A.2d 1 (1973).

70. *Birkenfield v. City of Berkeley*, 17 Cal.3d 129, 50 P.2d 1001, 130 Cal. Rptr. 465 (1976).

designed to protect the aesthetic features of an area.<sup>71</sup>

Regulations such as these can be viewed as an attempt to redress an unequal balance of power. When members of the public are faced with some threat with which they cannot deal on an individual level, the constitutional niche known as the police power has enabled the state to attempt to protect their well-being by regulating the conduct of those who do have the power and ability to mitigate the potential harm. Thus, the acts of the employer, the manufacturer, and the polluter may be regulated for the benefit of the worker, the consumer, and the public at large.

The CRD statutes fit easily into this pattern. In passing these laws, states are seeking to protect a particularly powerless class of people by regulating the behavior of those in the best position to minimize the risk to that class. Insofar as they seek to promote safety, these statutes are at the core of the police power doctrine.<sup>72</sup>

*Highway Regulations.* Specifically, CRD legislation is addressed to the problem of highway safety, an area in which the states have extensively exercised their rule-making powers.<sup>73</sup> Since the arrival of the automobile, both drivers and vehicles have been subjected to a variety of statutory requirements designed to protect the driving and riding public. In evaluating the validity of CRD laws as highway safety regulations, a useful analogy can be drawn from the motorcycle helmet laws which, like CRD laws, mandated the use of specialized equipment.

The controversial helmet laws, which swept the country approximately a decade ago, were sustained as valid police power legislation by the overwhelming majority of courts which faced the issue.<sup>74</sup> The Colorado Supreme Court's discussion in the case of *Love v. Bell*<sup>75</sup> is typical of many of these opinions. As with most of the courts across the country which addressed the problem, the Colorado

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71. *Penn Central Transp. Co. v. New York*, 438 U.S. 104, 129 (1978); *John Donnelly & Sons v. Mallar*, 453 F. Supp. 1272 (S.D. Me. 1978).

72. *Kelley v. Johnson*, 425 U.S. 238, 247 (1976).

73. *South Carolina Highway Dep't v. Barnwell Bros.*, 303 U.S. 177 (1938); *Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959); *People v. Brown*, 174 Colo. 513, 485 P.2d 500 (1971); *Zaba v. Motor Vehicle Div.*, 183 Colo. 335, 516 P.2d 634 (1973).

74. Helmet statutes were struck down in only two of the thirty-three states in which they were challenged: Illinois, *People v. Fries*, 42 Ill.2d 446, 250 N.E.2d 149 (1969) and Michigan, *American Motorcycle Association v. Davids*, 11 Mich. App. 351, 158 N.W.2d 72 (1968). The Michigan Supreme Court upheld a very similar municipal law several years later in *City of Adrian v. Poucher*, 398 Mich. 316, 247 N.W.2d 798 (1976). The helmet cases are collected in 32 A.L.R.3d 1270.

75. 171 Colo. 27, 465 P.2d 118 (1970).

court studiously avoided the most salient issue which grew out of the helmet legislation, the issue of whether mandatory self-protection and of regulating a person for his own good was a valid state objective.<sup>76</sup> Instead, the court sought to find some benefit which the helmet statutes provided to other highway users in order to sustain the law. It found one such benefit in the economic area, noting the "laws may be passed within the police power to protect the public from financial loss."<sup>77</sup> In drawing upon a record which showed a higher frequency of serious head injuries and deaths among bare-headed riders than among those who wore helmets, the court ruled that the law protected the public's financial health since it prevented motorists involved in accidents with motorcycles "from being required to respond in damages more heavily than might be the case if the motorcycle driver and passenger were wearing helmets."<sup>78</sup> Other courts also employed the "financial health" argument and cited increased public medical and welfare costs which would have to be paid to disabled cyclists, as well as higher insurance rates.<sup>79</sup>

Most of the helmet law opinions did not rest solely on this economic protection analysis, but also sought some connection between helmets and the public's physical well-being. Many courts found such a connection in the "flying debris" theory, which is based upon the hypothesis that an unprotected cyclist might be struck in the head by loose gravel or other objects thrown up by passing vehicles, thereby causing the cyclist to lose control and possibly cause an accident.<sup>80</sup> The courts were unswayed by the argument that such a chain of events had never been known to have occurred.

If CRDs are substituted for helmets in the analysis above, the reasoning employed in the typical helmet case not only remains valid but is, in fact, strengthened. As with helmets, CRDs offer the potential for mitigating physical, and therefore, financial damages resulting from highway accidents. More importantly, a CRD law would not leave a court having to strain for a "loose gravel" rationale in

76. Few courts were willing to ground their opinions on the self-protecting aspect of helmet legislation. Two cases which did discuss this issue were *People v. Carmichael*, 30 Misc. 2d 388, 288 N.Y.S.2d 931 (1968) (state has an interest in preserving strong, healthy citizens) and *State v. Mels*, 103 N.J. Super. 353, 247 A.2d 176 (1968) (state has an interest in protecting people from their own carelessness).

77. 171 Colo. at 33, 465 P.2d at 121.

78. 171 Colo. at 33, 465 P.2d at 121-22.

79. See, e.g., *State v. Anderson*, 3 N.C. App. 124, 164 S.E.2d 48 (1968), *aff'd*, 275 N.C. 168, 166 S.E.2d 49 (1969).

80. See 171 Colo. at 33-34, 465 P.2d at 122 and the cases cited therein.

searching for a connection between the regulation and the physical safety of non-regulated members of the public. In contrast to the helmet law discussions on this point, the potential beneficiaries of CRD legislation are not hypothetical; their existence is clearly documented in the "0-4 years" column of each state's accident reports.

The mandatory helmet statutes are perhaps on the periphery of valid police legislation. They raise the difficult problem of the extent to which an individual can be regulated for his own good. Shifting political attitudes on just this point have resulted in the repeal of helmet laws in twenty-eight of the forty-nine states which originally enacted them.<sup>81</sup> The notion of protecting a person against himself is not a factor in CRD legislation, however, for in requiring the use of child restraints the state is attempting to protect those too young to make rational choices in their own best interest. In this vein, it is interesting to note that of those states which repealed helmet laws, nearly two-thirds reenacted such legislation applicable only to minors.<sup>82</sup>

*Pax Patriae*. The state's interest in the well-being of its youth of ancient origin. Plato believed that the good of the state as a whole justified the regulation of child-rearing practices.<sup>83</sup> His pupil, Aristotle, differed on this point, suggesting that regulations were necessary only to protect the interests of the individual child.<sup>84</sup> These two theories have survived to the present and are often meshed with a third concern, an interest in preserving the family structure as the basic unit in society.<sup>85</sup>

81. California is the only state never to have enacted helmet legislation. A summary of the recent status of helmet laws in this country, including dates of enactment, repeal and pending legislation is compiled in ILLIS STATUS REPORT 5-8 (Apr. 30, 1979).

82. *Id.*

83. PLATO, REPUBLIC Bk. V (E. Hamilton & H. Cairns, eds., THE COLLECTED DIALOGUES OF PLATO 1961, at 698-707), mentioned in *Meyer v. Nebraska*, 262 U.S. 390, 401-2 (1923).

84. ARISTOTLE, POLITICS 32-33 discussed in Kikinfeld, *The Balance of Power Among Infants, Their Parents and the State*, 4 FAM. L. Q. 410-412 (1970).

85. See text accompanying notes 105-08, *infra*. An example of the interweaving of these ideals is the preamble to the Colorado Children's Code. C.O. REV. STAT. § 19-1-102 (1973): The general assembly declares that the purposes of this title are:

- (a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;
- (b) To preserve and strengthen family ties whenever possible, including improvement of home environment;
- (c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered; and
- (d) To secure for any child removed from the custody of his parents the necessary

The Platonic theory was mentioned more often in early cases dealing with child-related legislation than it is today. For instance, in sustaining the state's compulsory schooling law, the Colorado Supreme Court in 1927 stated flatly that "[t]he state, for its own protection, may require children to be educated. This needs no citation."<sup>86</sup> This "good-of-the-state" approach is also reflected in statutory provisions, such as those which override parental objections to immunization whenever a community is threatened with an epidemic.<sup>87</sup>

Statutes usually demonstrate a more Aristotelian concern for the welfare of individual children, rather than for the state as a whole. Examples are child abuse laws,<sup>88</sup> child labor laws,<sup>89</sup> and those mandating specific medical procedures to prevent blindness<sup>90</sup> and mental retardation<sup>91</sup> in newborns. The "child protection" rationale is also cited frequently by state courts since the United States Supreme Court has stated that "[t]he well-being of its children is of course a subject within the State's constitutional power to regulate. . . ."<sup>92</sup>

Although CRD legislation arguably benefits the state as a whole by preserving the health of future productive citizens and by reducing the number of those who might require long-term public aid because of automobile injuries, its primary purpose is to prevent needless harm from being inflicted upon young children. This latter goal is an entirely appropriate one, as has previously been shown. The question that remains is whether requiring individual drivers to obtain and use child restraints is a reasonable method of attaining that objective.

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care, guidance, and discipline to assist him in becoming a responsible and productive member of society.

86. *Yellmer v. Stanley*, 81 Colo. 276, 280, 255 P. 610, 613 (1927).

87. See, e.g., COLO. REV. STAT. §§ 25-4-303 to -305 (1973) & Supp. 1978.

88. See, e.g., COLO. REV. STAT. §§ 19-10-101 to -115 (1973) which deal with reporting abuse, and COLO. REV. STAT. § 18-5-401 (1973) & Supp. 1979 describing the crime of child abuse.

89. See, e.g., COLO. REV. STAT. §§ 8-12-101 to -117 (1973) & Supp. 1979, the Colorado Youth Employment Opportunity Act of 1971, which details the types of employment that youths of various ages may engage in.

90. See, e.g., COLO. REV. STAT. §§ 25-4-303 to -305 (1973), requiring that the eyes of all newborns be treated with a prophylaxis within one hour of birth.

91. See, e.g., COLO. REV. STAT. § 25-4-801 (1973): "The general assembly declares that, as a matter of public policy of this state and in the interest of public health, every newborn infant should be tested for phenylketonuria and other metabolic defects in order to prevent mental retardation resulting therefrom. . . ."

92. *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

### *Reasonable Means*

The legislature is given wide discretion in implementing its goals, and a presumption of validity attaches to each statute it enacts.<sup>93</sup> In order to rebut this presumption, an opponent must prove that a law, when applied, violates some provision of the state or federal constitution,<sup>94</sup> or that the law does not reasonably relate to the state's objective in passing it.<sup>95</sup> The question of its "reasonableness" is, in fact, the central issue in any challenge to a police power regulation.<sup>96</sup>

Most statutes promulgated under the police power seek to protect public welfare by regulating conduct in the manufacturing and professional sectors. Individual behavior may also legitimately be regulated so long as the burden imposed does not infringe on a fundamental right.<sup>97</sup> A mere showing "that in its operation a police measure may increase their labor, decrease the value of their property or otherwise inconvenience individuals" will not suffice to render a law void.<sup>98</sup> Securing a child in a CRD before each automobile trip may at times be inconvenient, but the question of concern to a reviewing court would be whether a law mandating that action infringes upon a fundamental right.

An opponent of CRD legislation could claim that any one of several rights are infringed upon by such a law: the right to parental autonomy<sup>99</sup> and privacy;<sup>100</sup> the right to equal protection under the

93. *Kelly v. Johnson*, 425 U.S. 238 (1976); *Day-White Lighting, Inc. v. Missouri*, 342 U.S. 421, 423 (1952); *Prince v. Massachusetts*, 321 U.S. 158, 168-70 (1944).

94. *Day-White Lighting, Inc. v. Missouri*, 342 U.S. 421 (1952); *Jackson v. Massachusetts*, 197 U.S. 11, 25 (1905); *City of El Paso v. Simmons*, 379 U.S. 497, 508-09, *reversing denied*, 360 U.S. 926 (1964).

95. See *Paris Adult Theatre I v. Slayton*, 413 U.S. 49 (1973); *NAACP v. Alabama*, 377 U.S. 288 (1964); *Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962).

96. "The legislature may devise reasonable schemes for regulations of activities which affect the health and safety of the public." *People ex rel. Dunbar v. Kagul*, 179 Colo. 394, 399, 501 P.2d 738, 740 (1973) (emphasis in original).

97. Fundamental rights are those rights "implicit" in the concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

98. *In re Interrogatories of the Governor*, 97 Colo. 387, 396, 52 P.2d 643, 647 (1935). One example of a law which puts the burden of compliance on individuals is Colo. Rev. Stat. § 33-31-153 (1973) & Supp. 1979. This law makes it the duty of a boat owner or operator — not of the boat manufacturer — to provide an adequate life preserver for each person on board.

99. Parental rights are afforded constitutional protection against unwarranted or unreasonable interference by the state. *Planned Parenthood v. Danforth*, 428 U.S. 52, 73 (1976); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Meyer v. Nebraska*, 262 U.S. 390 (1923). See also *Smith v. Organization of Foster Families*, 431 U.S. 816, 843-44 (1977); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

law;<sup>101</sup> and the right to free and unrestricted travel between the states.<sup>102</sup> The last claim can be quickly dispensed with by once again analogizing to the helmet cases, which consistently held that the right to travel was not unreasonably restricted by requiring motorcyclists to obtain and use a relatively inexpensive piece of safety equipment.<sup>103</sup> This right was not infringed even though the helmet statutes were written to apply to all, and not just resident, motorcyclists travelling on the enacting state's roads.<sup>104</sup> The CRD laws are not as broad as the helmet statutes since they typically apply only to resident parents or to those driving vehicles registered in the enacting state. Non-resident tourists therefore would not be subject to the law's provisions.

*Parental Autonomy and Privacy.* The allocation of power between parent and state in making decisions concerning the best interests of the child is always a sensitive issue. Supreme Court cases have "consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."<sup>105</sup> Indeed, the integrity of the family unit has found protection in the Due Process<sup>106</sup> and Equal Protection<sup>107</sup> Clauses of the fourteenth amendment and in the ninth amendment.<sup>108</sup>

Despite this high regard for the family unit, laws which restrict parental autonomy in order to further the welfare of children are usually sustained. Such laws are struck down only if they are arbitrary and capricious. For example, a law attempting to promote good citizenship by banning the teaching of foreign languages in elementary schools was struck down in *Meyer v. Nebraska* on these grounds.<sup>109</sup> Similarly, if the state's objective in passing the law is not sufficiently compelling to overcome a parental objection based on a

100. Fundamental rights include the "right of personal privacy, or a guarantee of certain areas or zones of privacy." *Roe v. Wade*, 410 U.S. 113, 152 (1973). The source of this right is not specifically defined, but is derived from the first, third, fourth, fifth, and ninth amendments, the penultimate of the Bill of Rights, and the guarantee of liberty in the fourteenth amendment. *Griswold v. Connecticut*, 381 U.S. 479, 481-83 (1965).

101. U.S. Const. amend. XIV.

102. The states may not enact rules and regulations which unreasonably burden the right to travel freely between the states. *Shapiro v. Thompson*, 394 U.S. 618 (1969).

103. See, e.g., *Love v. Bell*, 171 Colo. 27, 36, 465 P.2d 118, 123 (1970).

104. See, e.g., *Conn. Rev. Stat. § 47-6-231* (1973) (repealed 1977).

105. *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

106. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

107. *Shiner v. Oklahoma*, 316 U.S. 535, 541 (1942).

108. *Griswold v. Connecticut*, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring).

109. 262 U.S. 390 (1923).

freedom of religion claim it will be held void.<sup>110</sup>

CRD statutes could not be invalidated under either theory. These laws are narrowly drawn, requiring the use of an effective, readily available device designed specifically for the purpose of protecting children in motor vehicles, and are therefore not vulnerable to charges of arbitrariness or caprice. Nor could these laws, which are essentially traffic safety regulations, conceivably be subject to any objections based on religious grounds. In short, the statement that it is "fundamental . . . that parental rights must yield to the interest and welfare of the child"<sup>111</sup> would appear to be particularly uncontroversial when applied to the issue of highway safety.

Parental rights are based to a large extent on the broader claim of a right to privacy—the "right to be let alone."<sup>112</sup> This broader right itself is not unreasonably infringed upon by traffic regulations, as aptly pointed out by the Wisconsin Supreme Court:

There is no place where any such right to be let alone would be less assertible than on a modern highway. . . . When one ventures onto such a highway, he must be expected and required to conform to public safety regulations and controls, including some that would neither have been necessary nor reasonable in the era of horse-drawn vehicles.<sup>113</sup>

*Equal Protection.* CRD statutes distinguish between children less than four years old and all other highway users. If a court were convinced that no rational basis existed for this distinction, it could void such legislation on the ground that it denies the public equal protection under the law. A statutory discrimination will not be invalidated, however, if any state of facts reasonably can be conceived to justify it.<sup>114</sup>

When reviewing CRD legislation, a court could rely on several supporting factors to sustain the legislature's classification. A court could find that members of the statutorily created class of children four years of age or younger face a greater risk of injury or death than do others in accident situations, are incapable of making ra-

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110. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

111. *Stjerneholen v. Mazaheri*, 180 Colo. 352, 356, 506 P.2d 155, 157 (1973). *See also* *Fulton v. Mertenaca*, 129 Colo. 125, 267 P.2d 658 (1954); *Graham v. Francis*, 83 Colo. 346, 265 P. 690 (1928).

112. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

113. *Biancos v. Karna*, 42 Wis. 2d 42, 55, 165 N.W.2d 377, 384 (1969), *appeal dismissed*, 395 U.S. 709 (1969).

114. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970), *rehearing denied*, 398 U.S. 914 (1970).

tional choices to further their self-preservation, and are not afforded the same degree of protection by existing safety belts as are older passengers for whom such belts are designed.<sup>115</sup> Furthermore, although all legislatively imposed age restrictions are arbitrary to some extent, the class delineated by CRD legislation is not unreasonable since it corresponds to that class for which CRDs are designed and manufactured.<sup>116</sup> These factors could support a finding that a state of facts sufficient to justify the statutory distinction exists.

Finally, it should be noted that although all automobile passengers could benefit by mandatory seatbelt laws, the fact that such laws have not been enacted is insufficient to void CRD laws under the Equal Protection Clause. A law will not be invalidated for violating that Clause merely because the legislature has not "comprehensively remedied all problems at once—it is entitled to proceed one step at a time."<sup>117</sup>

In sum, CRD legislation is valid under both the "ends" and the "means" prongs of the police powers analysis. The state is operating in traditional areas when it seeks further highway and child safety, and no fundamental rights are threatened when the state mandates the use of appropriate equipment in attempting to attain that safety objective.

#### CIVIL PROCEEDINGS

Aside from the constitutional issues, the legal ramifications which could attend CRD legislation in certain civil cases remain to be examined.<sup>118</sup> Although the only two CRD laws currently in force expressly provide that a breach of their respective terms may not be

115. See text accompanying notes 9-25 *supra*.

116. See note 2 *supra*.

117. *Bushnell v. Sapp*, 194 Colo. 273, 280, 571 P.2d 1100, 1104 (1977).

118. CRD statutes could also have an impact on certain criminal proceedings, particularly vehicular homicide and vehicular assault cases. Drunk driving typically is a misdemeanor, but if death to another results, it may be filed as vehicular homicide, a felony. If a drunk driver collides with a vehicle in which an unsecured child is riding and the collision results in the death of that child, a decision to file a felony charge against the drunk driver may pose problems. In Colorado, for example, such a charge can be brought only against a person whose wrongful acts were the "sole proximate cause" of a highway death. *Goodell v. People*, 137 Colo. 507, 509, 327 P.2d 279, 280 (1958). If the child would not have died had he been properly secured in a CRD, then the failure to use that device would be another proximate cause of his death. Hence, felony charges could not be lodged against the drunk motorist.

The problem is not merely a speculative one, for prosecutors in Michigan have contacted state highway officials to seek advice on this particular issue. Telephone interview with David Shinn, Driver and Vehicle Admin., Mich. Dep't of State, July 1980.

raised in any civil action,<sup>119</sup> future enacting states may pass such laws without this limitation. The discussion below evaluates the impact which a CRD statute without a "no liability" clause could have in negligence lawsuits.

### *Civil Liability*

*Negligence per se.* In the absence of CRD legislation, a suit for negligence brought on behalf of a child injured in an automobile accident against the child's driver would face serious obstacles. Typically, in order to support a negligence claim, the burden is on the plaintiff to establish by a preponderance of the evidence that the defendant owed him a certain standard of care, that the standard was breached, and that the breach was a cause of the harm suffered.<sup>120</sup> Without a CRD law in force the plaintiff's burden on the question of "standard of care" would be substantial. He would have to assume the burden of educating and persuading six or twelve peers from the community on the practicality and wisdom of CRDs. The fact that the community as a whole has shown little inclination to use child restraints indicates the size of the plaintiff's task in proving this element of the case.

Were a CRD-use law in existence, however, the mere fact of its enactment would greatly lessen the plaintiff's burden. In passing that law, the legislature would have established in specific language the appropriate standard of care which was owed by the defendant, and that question would be removed from the jury's consideration.<sup>121</sup> In other words, the plaintiff could show that the defendant acted negligently simply by showing that the defendant breached the statute. The only further burden the plaintiff would have in this negligence *per se* claim would be to show a causal link between the harm suffered and the negligent act or omission.<sup>122</sup>

As previously shown,<sup>123</sup> proof of causation should not be difficult, particularly if the child's injuries resulted from his ejection from the vehicle, or from his collision with some portion of its inte-

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119. See notes 33 and 61 *supra*.

120. See cases cited in W. PROSSER, HANDBOOK OF THE LAW OF TORTS 143 (4th ed. 1971).

121. See, e.g., *Martin v. Herzog*, 228 N.Y. 164, 126 N.E. 814 (1920); *Konow v. Southern Pacific*, 105 Ariz. 386, 463 P.2d 366 (1970); *Zerby v. Warren*, 297 Minn. 134, 210 N.W.2d 58 (1973); *Stahl v. Cooper*, 117 Colo. 458, 190 P.2d 891 (1948).

122. See, e.g., *Plains Transport of Kansas v. Baldwin*, 217 Kan. 2, 535 P.2d 865 (1975); *Frell v. Thomas*, 80 Wash. 2d 117, 491 P.2d 1285 (1971); *Hamilton v. Gravinaky*, 26 Colo. App. 408, 474 P.2d 185 (1970), *modified*, 174 Colo. 206, 483 P.2d 365 (1971).

123. See text accompanying notes 10-25 *supra*.

rior. The issue of failure to use a CRD would be irrelevant in only a small percentage of negligence suits, where such factors as excessive speed or gross disproportionality in the size of the vehicles involved would have rendered any restraint system useless.<sup>124</sup>

*Joint Liability.* If an unrestrained child were injured in an accident caused by a second automobile,<sup>125</sup> compensation could be sought from the drivers of both vehicles involved. Joint tort liability is imposed on those whose independent acts or omissions combine to cause a single injury to a third person.<sup>127</sup> It is the contribution to the harm suffered and not to the cause of the accident itself which determines liability in such cases. The otherwise blameless driver who failed to secure the child would share responsibility with the accident-causing driver for the injuries which the child sustained.

If a suit were brought only against the driver of the second vehicle, that defendant could bring the child's driver into the action as a third party defendant "who is or may be liable to him for all or part of the plaintiff's claim against him."<sup>127</sup> This impleading action can be accomplished in any state which has adopted the Uniform Contribution Among Tortfeasors Act<sup>128</sup> and procedural rules which facilitate joinder.<sup>129</sup>

By bringing the child's driver into the suit the defendant at-

124. An analysis of Maryland accident reports for the years 1973 through 1977 showed that only one of the thirty-eight pre-schoolers killed during that time was properly secured in a restraint device. That fatality was the result of a collision between the child's car and a tractor trailer. Karwacki & Baker, *supra* note 9, at 2849.

125. The Maryland study found that,

[a]lmost ninety percent of all children less than ten years old and half of the older children were killed in multiple vehicle crashes. The majority of the multiple vehicle crashes appeared to have been initiated by vehicles other than those in which the children were killed (for example, by vehicles that crossed into the wrong lane or failed to yield right of way). . . .

*Id.* at 2850.

126. *Dunham v. Kampman*, 37 Colo. App. 233, 547 P.2d 263 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

127. COLO. R. CIV. PRO. 14.

128. COLO. REV. STAT. §§ 13-50.5-101 to -106 (1973 & Supp. 1979). This statute reads in part:

(1) Except as otherwise provided in this article, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgement has not been recovered against all or any of them.

(2) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

129. *See, e.g.*, COLO. R. CIV. PRO. 14.

tempts to shift some of the responsibility for the harm done to the injured child to that third party, but no doctrine would provide this original defendant with complete immunity from liability. Contributory or comparative negligence statutes which limit or totally bar the payment of compensation to a plaintiff would be inapplicable to CRD related lawsuits. Those statutes apply only when the plaintiff has been shown to have contributed to his injuries by his own careless actions.<sup>130</sup> A pre-school aged child is, in many states, legally incapable of negligence,<sup>131</sup> and his failure to look out for his own safety cannot be raised as a defense in any suit in which that child is a plaintiff.<sup>132</sup>

Nor can the defendant obtain complete immunity from liability by claiming contributory negligence due to the carelessness of a plaintiff child's parents. The "doctrine that the negligence of the parents of a child of tender years shall be imputed to the child" was dismissed in one early case as "not only unsound, but absurd and inhuman,"<sup>133</sup> and that doctrine is universally rejected today.

The child's driver, on the other hand, stands a better chance of claiming immunity if he is brought into the negligence case as a third party defendant. If he is unrelated to the plaintiff he can seek to avoid liability under any guest statutes which exist in that state. These laws, which are no longer as prevalent as they once were, prevent a person from suing his "host" driver for any injuries sustained while riding as a non-paying passenger in that driver's vehicle.<sup>134</sup> The laws have been justified in part by an "assumption of the risk" type of theory and for that reason have often been held inapplicable to young children.<sup>135</sup> The child's driver has a much better chance of claiming immunity, and therefore of imposing the full cost of compensating the child on any other defendants, if he is the plaintiff

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130. See, e.g., COLO. REV. STAT. § 13-21-111 (1973 & Supp. 1979). The Colorado court has made it clear that "[t]he comparative negligence statute is inapplicable where no negligence on the part of the plaintiff can be proven." *Dunham v. Kampman*, 37 Colo. App. 233, 236, 547 P.2d 263, 266 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

131. See, e.g., *Lewis v. Buchsitz*, 156 Colo. 46, 396 P.2d 933 (1964) (children of "very tender years" are incapable of negligence and assume no risks).

132. See, e.g., *Majors v. J.C. Penney Co.*, 31 Colo. App. 368, 506 P.2d 399 (1973) (six year old child incapable of contributory negligence).

133. *Denver City Tramway Co. v. Brown*, 57 Colo. 484, 493, 143 P. 364, 368 (1914). See also W. PROSSER, HANDBOOK OF THE LAW OF TORTS 490 (4th ed. 1971).

134. See *Brown v. Merlo*, 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

135. See, e.g., *Burhan v. Witbeck*, 373 Mich. 253, 134 N.W.2d 225 (1965); *Wood v. Morris*, 109 Ga. App. 148, 135 S.E.2d 484 (1964); *Green v. Jones*, 136 Colo. 512, 319 P.2d 1081 (1957).

such lawsuits will tend to preserve family harmony.<sup>142</sup> In any CRD related action, the plaintiff would necessarily be a very young child, incapable of maliciously plaguing his parents with lawsuits. The decision to bring a suit on his behalf will most likely be made by the child's parents, with an awareness that their liability insurer will be the true defendant. Under those circumstances, commencing an action is not evidence of a family's internal strife, but rather of the "provident management of its affairs."<sup>143</sup>

The invalidity of the first two arguments, which ignore the existence of liability insurance, must be conceded before credence can be given to the third argument: allowing children to sue their parents will lead to widespread collusion and fraud against insurance companies.<sup>144</sup> A trust in the jury system and its ability to distinguish between valid and fraudulent claims is the first step which must be taken to reject the argument. The courts have consistently reaffirmed that trust and have relied on juries to prevent injustice to insurance companies in automobile cases between husbands and wives<sup>145</sup> and between close friends.<sup>146</sup> No readily apparent reason exists for refusing to extend that trust to cases involving a parent and child.<sup>147</sup> Indeed, an attempt by a parent to defraud an insurance company in a case which centered on the lack of CRD use would be quite difficult. Because of his age, the plaintiff could not be an active participant in the scheme and could not be counted on to convincingly fake a non-existent harm.

The strongest reason for abrogating parental immunity, at least under the limited circumstances of a CRD law, is largely unrelated

142. The family harmony argument originated in *Roller v. Roller*, 37 Wash. 242, 79 P. 788 (1905), a much maligned case in which a daughter was prevented from bringing a civil action for rape against her father based on the family harmony theory.

143. *Badigan v. Badigan*, 9 N.Y.2d 472, 479, 174 N.E.2d 718, 723, 215 N.Y.S.2d 35, 41 (1961) (Fuld, J., dissenting).

144. See *Windauer v. O'Connor*, 13 Ariz. App. 442, 477 P.2d 1157 (1971), modified, 107 Ariz. 267, 485 P.2d 561 (1971); *Bremmecke v. Kilschick*, 336 S.W.2d 68 (Mo. 1960); *Small v. Rockfield*, 66 N.J. 231, 333 A.2d 335 (1974).

145. See, e.g., *Raim v. Rains*, 97 Colo. 19, 46 P.2d 740 (1935) (abrogated interspousal immunity in the context of an automobile negligence case).

146. See, e.g., *Johnson v. Hasett*, 217 N.W.2d 771 (N.D. 1974) in which the court noted the "good sense of the juries" as a protection against fraud in the absence of a guest statute.

147. In abrogating parental immunity, one court stated: "Even assuming that a few fraudulent and collusive claims will slip through judges and juries (and there is no empirical [sic] evidence that the assumption is valid) we believe that this price would not be too great since the alternative is to continue a prophylactic rule which indiscriminately bars all claims." *Francis v. A.P.A. Transp. Corp.*, 56 N.J. 500, 505, 267 A.2d 490, 493 (1970).

American  
Academy of  
Pediatrics



Alaska  
Chapter

Chairman  
Marian T. Witt, M.D.  
3300 Providence Drive  
Anchorage, 99504  
907/279-6481

August 25, 1982

Senator Charles Parr  
Chairman  
Senate Health, Education,  
and Social Services Committee  
950 Cowles  
Suite 224  
Fairbanks, AK 99701

Dear Senator Parr:

Child Auto Safety Legislation

Background. The number one cause of death and of injury for children in the United States is accidents. The majority of these are automobile-related. Nine other states have enacted legislation requiring children under age five to be appropriately restrained. In those states, the death rate and the injury rates were reduced greatly. Programs for public education and awareness had little impact in protecting the children, however. Most significantly, the cost to the state for treatment and for rehabilitation of these injured children was significantly reduced.

Request. Please hold a hearing regarding introduction of legislation to protect these helpless Alaskans in automobiles.

Sincerely,

A handwritten signature in cursive script that reads "Clinton B. Lillibridge M.D.".

Clinton B. Lillibridge, M.D.  
State Chairman  
American Academy of Pediatrics  
Chairman  
Legislative Committee  
Alaska Child Auto Safety Association

CL:sh

950 Cowles, Rm 224  
Fairbanks, AK 99701  
(907) 452-5392

August 30, 1982

Clinton B. Lillibridge, M.D.  
State Chairman  
American Academy of Pediatrics  
3300 Providence Drive  
Anchorage, AK 99504

Dear Mr. Lillibridge:

Thank you for your letter of Aug. 25, 1982. Can you tell me which states have passed the child restraint legislation you refer to?

Sincerely,

Charles H. Parr

CHIP:cmk



ALASKA CHAPTER  
American Academy of Pediatrics

September 29, 1982

CHAIRMAN  
MARIAN T. WITT, M.D.  
3300 PROVIDENCE DRIVE  
ANCHORAGE, ALASKA 99504

Senator Charles H. Parr  
950 Cowles, Room 224  
Fairbanks, AK 99701

Dear Senator Parr:

I was away at Academy meetings in Chicago when your letter arrived. At that meeting, I learned that now twenty-two states have child restraint legislation signed into law and an additional five have legislation pending. A brief description and list of the states is enclosed. In addition, an article from the University of Colorado Law Review is enclosed which explains much of the background and should be helpful to the committee.

In addition, I have the text of statutes passed by several states and some explanatory comments by their proponents. Again this is enclosed and I hope you will find it useful.

Sincerely,

A handwritten signature in cursive script that reads "Clinton B. Lillibridge".

Clinton B. Lillibridge, M.D.  
Alaska State Chairman  
4001 Dale Street, Suite 213  
Anchorage, AK 99508

CL:sh



NAME (please print)	ADDRESS	ZIP CODE	PHONE #
Peggy Wilson	SCHFD. 1135 W 8th Ave. #1 Anch 9	99501	278-3631
STELIE HEIMEL	KTNX RADIO TUDOR RD	99501	277-0591
<del>Mark Scully</del>	SRA 45	99507	349-2047
<del>Marilyn Merchant</del>	SRA 2532	99507	345-4511
David Spence	<del>SRA</del> Pouch H-060 Juneau	99801	465-3100
Barbara Braki	4156 Mackinac (Herman Hoop)	Andover, Ala	264-1332
Marge Merrill	33301 Welch Circle <sup>prey</sup> <del>Inti</del> 99509		337-16004
James Norcott M.D.	4001 Oak St. Anch. AK <sup>anch</sup> 99504		275-8571
Crouch MD			
James Scully MD			

S I G N - I N S H E E T

FILL-IN THE INFORMATION BELOW.

PLEASE PRINT

Senate Health, Education and Social Services Committee  
 Public Hearing on Child Restraint Devices  
 December 10, 1982  
 Anchorage, Alaska

NAME (please print)	ADDRESS	ZIP CODE	PHONE #
<del>Polacoma</del>			
Bronda Rodgers	3011 Sanctuary Rd. Anchorage AK	99577	694-3392
ELLEN MOORE ✓	Pouch N. JUNEAU 99811	99811	465-4375
LYNNE JOHNSON-JOSEPH ✓	4850 Bryn Mawr, Anchorage AK	99504	338-0465
Kathy Wolgemuth ✓	P.O. Box 6188 Annex Anchorage	99502	269-5654
Clinton B. Lillibridge ✓	4001 Dale, Suite 217, Anchorage AK	99504	279-8571
MIKE BALOWIN ✓	3140 FEDERAL BLDG SEATTLE	98174	206-442-5934
Roxann Lamar ✓	2510 Papa Circle, Anchorage AK	99502	349-5620
Michelle Flinn ✓	1670 W/FIREWOOD LN. ANCHORAGE AK	99503 → 99503	265-1832
Allen M. Bailey ✓	310 K St., Suite 508 Anchorage AK	99501 →	279-6546
Peggy MacInnis ✓	4400 Jade	99502	243-2755
Carmen Fisher ✓	3017 Alder Circle	99504	279-7264
Loree Horning ✓	2047 Duke Drive	99504	276-8776
Marian Clark ✓	1450 Garden St	99508	272-7773
Carolyn Clouch ✓	SRD Dr 2003	99507	344-9879
Lesley Morrison ✓			
Rae Sully ✓			
Jimmy Kamath ✓			
Karen Guthrie	9530 Albatross Dr. <del>Morning Day ↑</del>	99502	243-7766
- Evening HEARING -			
John Decker ✓	7601 LOTUS DR.	99502	243-7181
Alice Samuelson ✓	9231 Atelier Dr	99507	333-5601
Peggy Wilson ✓	<del>2247 Vandahl Cir</del>	99504	279-9246
MORRIS HORNING, MD ✓	3710 E. 20th ANCH. AK	"	276-8776

Fairbanks Dec 11, 1982  
10:30 AM

000-START

001 - Senator Parr

op. service introduction  
in favor of <sup>mand.</sup> CRD

car accidents mjr. cause of Death

can significantly reduce deaths & injury  
Public Health Nurse - <sup>try to an</sup> do educational  
program.

80% of children are immunized but only  
7% are restrained in a car

need to have car seats available for low income  
families

Need money for learner programs: ed. program

Insurance Co. <sup>medicaid</sup> should make CRD's

Fbks starting a stipend program for low income  
families on a sliding scale & eligibility  
requirements

working toward a learner program

liability <sup>may be</sup> ~~is~~ problem absence of litigation

116-

Informal group affiliated w/ AK Child Passenger Safety

Trying to get \$ from other than public  
funds <sup>group?</sup>

Need to have a back-up system  
for low income families, but not  
necessarily from the public

Pick-ups: many times it's difficult to  
fit car seats

0-5  
Cumberseome to include taxis & buses  
Any vehicle w/children

What about when the car seat is not properly installed

Sherry fine w/waiver

Seat substitution if child above <sup>a certain weight</sup> 40 lbs

100 - ~~side~~ and in the back seat

Buses

Now time spent in buses

Pipple effect

077 Mtg. Adjourned until 1pm

~~1:00~~ ~~re~~-called the meeting to order

2:07

179 Dr. Rundquist <sup>Pediatrician</sup> - in support of

infant, & Toddlers <sup>0-40 lbs</sup> are the group  
not protected & need safety seats

Fine which is dropped if you  
bring a CD

## CHILD RESTRAINT LAWS (MAY 7, 1982)

STATE	DESCRIPTION	STATUS
ALABAMA S24	All children less than 3yrs old must be in C.R. when riding in m.v. registered in state. Fine not to exceed \$10.00	Signed by Gov. 4/30/82 Effective 7/1/82.
CONN. S42	All children less than 4yrs old must be in C.R. when riding in passenger m.v. in the state. Safety belt may be substituted for children between 1-4yrs if riding in the back seat only. Exemption for R.V.'s, trucks weighing over 1 ton. Fine \$15-100, waived upon acquisition & installation of seat.	Effective 10/1/82.
FLORIDA SB289	All children less than 6yrs old must be in C.R. when riding in passenger m.v. or pick-up truck registered in Florida and owned/operated by parent/legal guardian. Safety belt may be substituted for children 4-5 yrs. seat belt may be substituted. \$15 fine, waivable upon proof of purchase.	Signed by Gov. early 4/82. Effective 7/1/83.
KANSAS HB2208	All children less than 2yrs must be in C.R. when riding in front seat of passenger m.v. owned/operated by parent/legal guardian. Oral warning only. Sec. of Transportation to develop program of public information.	Signed by Gov. 4/81. Effective 1/1/82.
KENTUCKY SB2	All children less than 40 inches tall must be in C.R. when riding in m.v. owned/operated by parents/legal guardian. No fine.	Signed by Gov. early April 82. Effective 7/15/82.
MASS. HB7162	All children less than 5yrs old must be in C.R. or safety belt when riding in m.v. Exemption for taxis, vehicle not equipped with safety belts, if all other seating positions equipped with safety belts are occupied, or if child is physically unable to use restraints. Fine not to exceed \$25, waived upon proof of purchase.	Signed by Gov. 12/23/81 Effective 1/1/82.
MICHIGAN SB115	All children less than 4yrs. old must be in C.R. when riding in m.v. operated by resident driver. From 1-4yrs, safety belt may be substituted if riding in back seat. Exemption for nursing mothers. Fine not to exceed \$15 waived upon proof of acquisition.	Signed by Gov. 7/17/81. Effective 4/1/82.
MINNESOTA SP263	All children less than 4yrs old must be in C.R. when riding in m.v. owned/operated by parents/l.g. No fine, hazard warning only.	Signed by Gov. 4/28/81. Effective 1/1/82.
NEW YORK S3639  Amend. S8679	Originally all children less than 3yrs old must be in C.R. when riding in passenger motor vehicle registered in state. Amended this past session to children less than 4yrs old in C.R. and 4 to 5yrs old in C.R. or seat belt. Also amended to remove emergency vehicles from compliance. Fine of not more than \$25, waived upon proof of purchase or rental of seat.	Initially signed by Gov. 7/7/81. Effective 4/1/82.

<p><b>NORTH CAROLINA</b> HB93</p>	<p>All children less than 2yrs old must be C.R. when riding in m.v. registered in state and owned/operated by parent/l.g. Between 1-2yrs. old, safety belt may be substituted. Exemption if child is occupying seat where safety belts are not required, and while attending to personal needs of the child. Warning ticket from 7/1/82 to 6/30/84. Thereafter \$10 fine. UNC-BSRC will conduct effectiveness study.</p>	<p>Signed by Gov. 7/81. Effective 7/1/82 to 6/30/85.</p>
<p><b>RHODE ISLAND</b> RS730</p>	<p>All children less than 3yrs old must be in C.R. when riding in front seat of m.v. \$15 fine.  Amended to include back seat. Fine waived upon proof of purchase.</p>	<p>Orig. law effective 7/1/80. Amend. effect April 1981.</p>
<p><b>TENNESSEE</b> HB300</p>	<p>All children less than 4yrs old must either be in C.R. or held in the arms of older passenger when riding in m.v. owned/operated by parents/l.g. Exemption for trucks, r.v.'s. \$2-10 fine.  Amended to exclude being held in arms except when mother is attending to needs of child.</p>	<p>Orig. law effective 1/1/78. Amendment effective 4/1/81.</p>
<p><b>VIRGINIA</b> HB413</p>	<p>All children less than 4yrs old must be in C.R. when riding in m.v. registered in state and owned/operated by parent/l.g. Between ages of 3-4yrs safety belt may be substituted. \$25 fine waived upon proof of acquisition or for financial inability. Fine money earmarked for state loaner program.</p>	<p>Signed by Gov. 4/12/82 Effective 1/1/83</p>
<p><b>WEST VIRGINIA</b> HB517</p>	<p>All children less than 3yrs old must be in C.R. when riding in m.v. registered in State. Safety belt can be substituted for 3 and 4yrs. olds. \$10-20 fine waived upon proof of purchase.</p>	<p>Effective 7/10/81.</p>
<p><b>WISCONSIN</b> AB400</p>	<p>All children less than 2yrs old must be in C.R. when riding in m.v. owned/operated by parent or l.g. From 2yrs to 4yrs safety belt may be substituted. Fine if child is under 2yrs old is \$30-75. Fine if child is between 2-4yrs old is \$10-25 and if second offense within three years \$25-200.</p>	<p>Signed by Gov. 5/1/82. Effective 12/1/82 with no fine. Fine provision effective 5/1/82.</p>
<p><b>NEBRASKA</b> LB49</p>	<p>Any person furnishing child care must use C.R. when transporting all children less than 1yr old. Seat belt can be substituted for children over 1yr old. No upper age limit. Driver subject to fine and Child Care Center subject to license (to furnish child care) suspension/revocation.</p>	<p>Signed by Gov. 3/19/82. Effective 7/17/82.</p>
<p><b>CALIF.</b> A1198</p>	<p>Sec. of Business/Transportation to conduct education program about importance of restraint use for children less than 13yrs. old. Hazard Warnings given to people operating m.v. with unrestrained children. Fresno County area chosen for pilot survey.</p>	<p>Signed by Gov. 9/80. Effective 9/80-1/83.</p>
<p><b>INDIANA</b> SB88</p>	<p>Dept. of Highways shall develop and implement information program on use of C.R.</p>	<p>Effective 9/1/82. to 9/1/84.</p>

MAINE H1560	Commissioner of Pub. Safety shall develop/implement program to increase restraint use of children. Hazard Warnings given if vehicle stopped for another reason and unrestrained children are observed. Study of usage rates to be undertaken.	Signed by Gov. 6/9/81. Effective 7/1/81 to 6/80/83.
HAWAII HB2742	\$25.00 income tax credit for purchase of child restraints.	Passed both Houses, 4/28/82. Gov. has 45 days to sign.
DELAWARE HB154	All children less than 4 yrs. old must be in C.R. when riding in m.v. owned/operated by resident parent/l.g. \$25 fine waived upon acquisition of C.R.	Passed both Houses, 6/25/82.
ILLINOIS HB608	All children less than 5 yrs. old must be in C.R. when riding in m.v. or r.v. owned/operated by resident parent/l.g. First offense is \$25. Subsequent offenses \$50.  (C.R. means any device approved by U.S. DOT designed to restrain, seat or position child. If child is over 40 lbs., this would mean safety belts are an acceptable restraint)	Passed both Houses, 6/25/82. Gov. has 45 days to sign.

CHILD RESTRAINT LEGISLATION STILL PENDING (JULY, 1982)

STATE	DESCRIPTION	STATUS
CALIF. SBS37	All children less than 4 yrs. old or weighing less than 40 lbs. must be in C.R. when traveling in m.v. or truck weighing less than 6,001 lbs. registered in California and operated by parent/l.g. If child is not riding w/ parents, must be in C.R. or rear seat safety belt. No fine but must appear in court for violation unless economic impossibility and no loaner program near by can be demonstrated, or upon acquisition of C.R. within 30 days.  No retailer may sell or install C.R. not in conformance with federal safety standard.	Intro. by Sen.  Senate 1/18/82. Passed first Assembly Comm. Picked up 12 co-authors. In Ways and Means Comm. may be reported out around May 10.
NEW JERSEY S_____	Will be Intro. by Sen. Bassano (member Trans. Comm.). Provides protection for children less than 16 yrs. old when riding in m.v. in N.J. If under 1 year old, must be in C.R. From 1 to 4 yrs., safety belt may be substituted in rear seat only. From 4 to 16 yrs. must wear seat belt in all seating positions. \$25-50 fine.	May be Intro. week of May 10th. Current Bassano bill S1163 contains child-crusher amendment and will be withdrawn.
S1182	Intro. by Sen. Laskin. Has similar child crusher amendment as S1163 and will also be withdrawn.	
ABS1	Assemblywoman Garvin. All children less than 4 yrs. old must be in C.R. when riding in m.v. owned/operated by resident parent/l.g. Fine of \$10-25.	Intro. 2/22/82. In Committee on Jud. Law, Public Safety & Defense.

<p>HIO H605</p>	<p>All children less than 4yrs old or weighing less than 40lbs must be in C.R. when traveling in m.v. owned/operated by resident parent/l.g. or day care center. If riding in m.v. other than those listed above but driven by resident of state, less than 1yr must be in C.R. From 1-4yrs, safety belt may be substituted. Exemptions for taxis, and life-threatening emergencies. \$10 fine waived upon acquisition of seat.</p>	<p>Intro. by Rep. Fisher. Passed House, 3/3/82. Has run into trouble in Senate. In Senate Agriculture Commerce and Labor Committee.</p>
<p>OKLAHOMA H1612</p>	<p>All children less than 5yrs old must be in C.R. when riding in passenger m.v. operated by resident of state. Safety belt may be substituted between ages of 4 and 5 yrs. No fine, warning only. A tax credit will be allowed for total purchase price of C.R.</p>	<p>Intro. by Rep. Brown, et al. Passed House on 3/4/82. Passed Senate in amended form: children less than 3yrs only and no warning notice, and allowing tax credit only for people claiming at least 1 minor dependant. In Joint Conference Committee now.</p>
<p>PENN. S592</p>	<p>All children less than 4yrs old or 40lbs must be in C.R. when riding in m.v. equipped with safety belts and registered in state. \$25 fine, waived upon proof of acquisition.</p>	<p>Intro. by Sen. Gekas. Passed Senate 38-10 in early Oct. 1981. Passed House Committee, amended on floor of and recommitted to 2nd House Committee Action not likely.</p>
<p>WASHINGTON D.C.</p>	<p>All children less than 5yrs old must be in C.R. when riding in m.v. From 3-5yrs old, safety belt may be substituted. \$25 fine for first offense, \$50 for subsequent offenses.</p>	<p>Intro. by Councilman Ray in mid-March.</p>

A B I L L

To amend section 4507.40 and to enact sections 1.14  
 4511.81 and 5747.054 of the Revised Code to 1.15  
 require persons transporting a child under four 1.16  
 years of age in certain types of motor vehicles 1.17  
 to utilize a child restraint system, and to 1.18  
 provide a tax credit to persons who purchase a 1.19  
 child restraint system.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: 1.21

Section 1. That section 4507.40 be amended and sections 1.23  
 4511.81 and 5747.054 of the Revised Code be enacted to read as 1.24  
 follows:

Sec. 4507.40. (A) Every county court judge, mayor, and 1.26  
 clerk of a court of record shall keep a full record of every case 1.28  
 in which a person is charged with any violation of sections  
 4511.01 to 4511.771, 4511.81, 4511.99, and 4513.01 to 4513.36 of 1.30  
 the Revised Code, or of any other law or ordinance regulating the 1.31  
 operation of vehicles, streetcars, and trackless trolleys on 1.32  
 highways or streets.

(b) Within ten days after the conviction or forfeiture of 1.33  
 bail of a person upon a charge of violating any of such sections 1.34  
 or other law or ordinance regulating the operation of vehicles, 1.35  
 streetcars, and trackless trolleys on highways or streets, the 1.36  
 county court judge, mayor, or clerk shall prepare and immediately 2.1  
 forward to the Bureau of Motor Vehicles an abstract of the court 2.2  
 record covering the case in which the person was convicted or 2.3  
 forfeited bail, which abstract shall be certified by the person 2.4  
 required to prepare the same to be true and correct. 2.5

(c) The abstract shall be made upon a form approved and furnished by the bureau and shall include the name and address of the party charged, the number of his operator's or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited, and the amount of the fine or forfeiture.

(d) Every court of record shall also forward a like report to the bureau upon the conviction of any person of homicide by vehicle or other felony in the commission of which a vehicle was used.

(e) The failure, refusal, or neglect of the officer to comply with this section constitutes misconduct in office and is ground for removal therefrom.

(f) The bureau shall record within ten days and keep all abstracts received under this section at its main office and shall maintain records of convictions and bond forfeitures for any violation of law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways and streets, except as to parking a motor vehicle.

(g) Every court of record or mayor's court before which a person is charged with a violation for which points are chargeable by this section, shall assess and transcribe to the abstract of conviction report, furnished by the bureau, the number of points chargeable by this section in the correct space assigned on the reporting form. The points shall be assessed based on the following formula:

(1) Violation of section 4507.38 or 4507.39 of the Revised Code or any ordinance prohibiting the operation of a motor vehicle while the operator's license is under suspension or revocation ..... 6 points

(2) Violation of section 2913.03 of the Revised Code, except the provisions relating to use or operation of an aircraft or motorboat, or any ordinance prohibiting the operation of a

(3) Aggravated vehicular homicide or vehicular homicide, when either involves the operation of a vehicle, streetcar, or trackless trolley on a highway or street . . . . .	6 points	3.6
(4) Violation of section 4511.19 of the Revised Code or any ordinance prohibiting the operation of a motor vehicle while under the influence of alcohol or drugs . . . .	6 points	3.7
(5) Violation of section 4549.02 or 4549.021 of the Revised Code or any ordinance requiring the driver of a vehicle to stop and disclose identity at the scene of an accident. . . . .	6 points	3.8
(6) Violation of section 4511.02 of the Revised Code or any ordinance prohibiting the willful fleeing or eluding of a police officer . . . . .	6 points	3.9
(7) Any crime punishable as a felony under the motor vehicle laws of this state, or any other felony in the commission of which a motor vehicle was used . . . . .	6 points	3.10
(8) Operating a motor vehicle in violation of a restriction imposed by a registrar . . . . .	2 points	3.11
(9) Violation of section 4511.251 of the Revised Code or any ordinance prohibiting drag racing . . . . .	6 points	3.12
(10) Violation of section 4511.20 of the Revised Code or any ordinance prohibiting the reckless operation of a motor vehicle . . . . .	4 points	3.13
(11) Violation of any law or ordinance pertaining to speed . . . . .	2 points	3.14
(12) All other moving violations pertaining to the operation of motor vehicles reported under this section except any violations under Chapter 5577. of the Revised Code . . . . .	2 points	3.15
(13) VIOLATION OF SECTION 4511.81 OF THE REVISED CODE . . . . .	2 POINTS	3.16
(14) Upon receiving notification from the proper court, the bureau shall delete any points entered for bond forfeiture in the event the driver is acquitted of the offense for which he posted bond.		4.3
		4.4
		4.5

(1) In the event a person is convicted of, or forfeits 4.6  
 bail for two or more offenses, arising out of the same facts, and 4.7  
 points are chargeable for each of the offenses, points shall be 4.8  
 charged for only the conviction or bond forfeiture for which the 4.10  
 greater number of points is chargeable, and if the number of  
 points chargeable for each offense is equal, only one offense 4.12  
 shall be recorded and points charged therefor.

(2) Whenever the points charged against any person exceed 4.13  
 five, the registrar shall forward to the person at his last known 4.15  
 address, via regular mail, a warning letter listing the reported 4.16  
 violations, along with the number of points charged for each, and 4.17  
 outlining the suspension provision of this section.

(3) When, upon determination of the registrar, any person 4.19  
 has charged against him a total of not less than twelve points 4.20  
 within a period of two years from the date of the first  
 conviction within the two-year period, the registrar shall notify 4.22  
 the person by registered mail to the licensee's last known 4.23  
 address, that his driver's license shall be suspended for six  
 months effective on the twentieth day after mailing the notice 4.24  
 unless the licensee files a petition in the municipal court or 4.25  
 the county court, or in case such person is under the age of 4.26  
 eighteen years to the juvenile court, in whose jurisdiction such 4.27  
 person resides, agreeing to pay the cost of the proceedings and 4.28  
 alleging that the licensee can show cause why his driving 4.29  
 privileges should not be suspended for a period of six months. 4.30

(4) (any) (1) EXCEPT AS PROVIDED IN DIVISION (1) (2) OF 4.32  
 THIS SECTION, ANY person who has charged against him more than 4.33  
 five and not more than eleven points, may, for the purpose of 4.34  
 obtaining a deletion of two points from his driving record, 4.35  
 enroll for one time only in a course of remedial driving  
 instruction, as approved by the director of highway safety. SUCH 5.1  
 COURSE SHALL INCLUDE THE SHOWING OF A FILM ON THE EFFECTS OF A 5.2  
 COLLISION ON A CHILD NOT RIDING IN A CHILD RESTRAINT SYSTEM  
 DURING AN ACCIDENT. Such deletion, subject to successful 5.4

completion of an approved remedial driving course, shall be 5.5  
approved by the registrar of motor vehicles. 5.6

121. ANY PERSON WHO HAS CHARGED AGAINST HIM TWO POINTS FOR 5.8  
VIOLATION OF SECTION 4511.81 OF THE REVISED CODE, MAY, FOR THE 5.9  
PURPOSE OF OBTAINING A DELETION OF THOSE TWO POINTS FROM HIS  
DRIVING RECORD, EITHER ENROLL IN AN APPROVED COURSE OF REMEDIAL 5.10  
DRIVING INSTRUCTION AS PROVIDED IN DIVISION (L) (1) OF THIS 5.11  
SECTION OR PURCHASE A CHILD RESTRAINT SYSTEM THAT MEETS FEDERAL 5.12  
MOTOR VEHICLE SAFETY STANDARDS AS PROVIDED IN SECTION 4511.81 OF 5.13  
THE REVISED CODE. SUBJECT TO SUCCESSFUL COMPLETION OF THE COURSE 5.14  
OF REMEDIAL DRIVING INSTRUCTION OR PRESENTATION OF SUCH EVIDENCE 5.15  
OF PURCHASE OF A CHILD RESTRAINT SYSTEM AS THE REGISTRAR REQUIRES 5.16  
BY RULE, THE DELETION OF THE TWO POINTS FROM THE PERSON'S DRIVING 5.17  
RECORD SHALL BE APPROVED BY THE REGISTRAR. 5.18

(M) When the driving privileges of any person are 5.19  
suspended by any trial judge of any court of record pursuant to 5.21  
section 4507.16 of the Revised Code, and points are charged  
against the person under this section for the offense which 5.22  
resulted in the suspension, that period of suspension shall be 5.24  
credited against the time of any subsequent suspension under this 5.25  
section for which the points were considered in making the  
subsequent suspension. 5.26

(N) The registrar shall upon written request of a licensee 5.27  
petitioning under division (A) of this section, furnish the 5.28  
licensee a copy of the registrar's record of the convictions and 5.29  
bond forfeitures of the person certified by the registrar. This 5.30  
record shall include the name, address, and birthdate of the 5.31  
person so charged; the number of his operator's or chauffeur's 5.32  
license, the name of the court in which each conviction or bail 5.33  
forfeiture took place; the nature of the offense; the date of 5.34  
hearing; the number of points charged against each conviction or 5.35  
bail forfeiture; and such other information as the registrar of 6.1  
motor vehicles may deem necessary. When the record includes not 6.2  
less than twelve points charged against the person within a two- 6.3  
year period, it is prima-facie evidence that the person is a 6.4

repeat traffic offender and his driving privilege shall be suspended as provided in this section. 6.5

At hearing the matter and determining whether the person has shown cause why his driving privileges should not be suspended, the court shall decide the issue upon the record certified by the registrar and such additional relevant, competent, and material evidence as either the registrar or the person whose license is sought to be suspended submits. 6.6  
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At such proceedings the registrar shall be represented by the prosecuting attorney of the county in which the person resides if the petition is filed in the county court, except where the petitioner is a resident of a city or village within the jurisdiction of a county court in which case the city director of law or village solicitor shall represent the registrar. If the petition is filed in the municipal court, the registrar shall be represented as provided in section 1901.34 of the Revised Code. 6.12  
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If the court finds from the evidence submitted that the person has failed to show cause why his driving privileges should not be suspended then the court shall assess the cost of the proceeding against the person and shall impose the suspension provided in division (K) of this section or withhold the suspension, or part thereof, and provide such conditions or probation as the court deems proper. If the court finds that the person has shown cause why his driving privileges should not be suspended the cost of the proceedings shall be paid out of the county treasury or the county in which the proceedings were held. 6.20  
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Any person whose license is suspended under this section is not entitled to apply for or receive a new license during the effective date of the suspension. 6.32  
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Upon termination of any suspension or other penalty imposed under this section involving surrender of a license or permit and upon request of the person whose license or permit was so suspended or surrendered, the registrar shall return the license 6.34  
6.36  
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section 4507.41 of the Revised Code have been met.

Any person whose license or permit or privilege to operate  
a motor vehicle has been suspended as a repeat traffic offender  
under this section and who during such suspension drives any  
motor vehicle upon any highway is guilty of a misdemeanor of the  
first degree, and no court shall suspend the first three days of  
any such sentence.

(O) The privilege of driving a motor vehicle on the  
highways or streets of this state, given to nonresidents under  
section 4507.04 of the Revised Code, shall be subject to  
suspension by the registrar.

Sec. 4511.81. (A) WHEN ANY CHILD WHO IS LESS THAN FOUR  
YEARS OF AGE OR WEIGHS LESS THAN FORTY POUNDS IS BEING  
TRANSPORTED IN A MOTOR VEHICLE OWNED BY HIS PARENT OR LEGAL  
GUARDIAN AND REGISTERED IN THIS STATE, AND THE MOTOR VEHICLE IS  
REQUIRED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION TO BE  
EQUIPPED WITH SEAT BELTS AT THE TIME OF MANUFACTURE OR ASSEMBLY,  
THE OPERATOR OF THE MOTOR VEHICLE SHALL HAVE THE CHILD PROPERLY  
SECURED IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS IN A  
CHILD RESTRAINT SYSTEM THAT MEETS FEDERAL MOTOR VEHICLE SAFETY  
STANDARDS.

(B) WHEN ANY CHILD WHO IS LESS THAN ONE YEAR OF AGE IS  
BEING TRANSPORTED IN A MOTOR VEHICLE AS PROVIDED IN DIVISION (A)  
OF THIS SECTION THAT IS NOT OWNED BY HIS PARENT OR LEGAL  
GUARDIAN, THE OPERATOR OF THE MOTOR VEHICLE SHALL HAVE THE CHILD  
PROPERLY SECURED IN ACCORDANCE WITH THE MANUFACTURER'S  
INSTRUCTIONS IN A CHILD RESTRAINT SYSTEM THAT MEETS FEDERAL MOTOR  
VEHICLE SAFETY STANDARDS.

(C) WHEN ANY CHILD WHO IS ONE YEAR OF AGE OR OLDER BUT  
LESS THAN FOUR YEARS OF AGE IS BEING TRANSPORTED IN A MOTOR  
VEHICLE AS PROVIDED IN DIVISION (A) OF THIS SECTION THAT IS NOT  
OWNED BY HIS PARENT OR LEGAL GUARDIAN, AND A CHILD RESTRAINT  
SYSTEM IS NOT AVAILABLE, THE OPERATOR OF THE MOTOR VEHICLE SHALL  
HAVE THE CHILD PROPERLY SECURED IN A SEAT BELT.

(2) WHEN ANY CHILD AS PROVIDED IN DIVISION (A) OF THIS SECTION IS BEING TRANSPORTED IN A MOTOR VEHICLE THAT IS REGISTERED IN THIS STATE AND IS OWNED, LEASED, OR HIRED BY A NURSERY SCHOOL, KINDERGARTEN, OR DAY-CARE CENTER, THE OPERATOR OF THE MOTOR VEHICLE SHALL HAVE THE CHILD PROPERLY SECURED IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS IN A CHILD RESTRAINT SYSTEM THAT MEETS FEDERAL MOTOR VEHICLE SAFETY STANDARDS.

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(2) THE DIRECTOR OF HIGHWAY SAFETY SHALL ADOPT SUCH RULES AS ARE NECESSARY TO CARRY OUT THIS SECTION.

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(2) FAILURE TO SECURE A CHILD IN A CHILD RESTRAINT SYSTEM IS NOT NEGLIGENCE IMPUTABLE TO THE CHILD, NOR IS SUCH FAILURE ADMISSIBLE AS EVIDENCE IN ANY CIVIL ACTION INVOLVING THE RIGHTS OF THE CHILD AGAINST ANY OTHER PERSON ALLEGEDLY LIABLE FOR INJURIES TO THE CHILD.

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(2) ANY PERSON WHO VIOLATES THIS SECTION SHALL BE ASSESSED TWO POINTS AS PROVIDED UNDER SECTION 4507.40 OF THE REVISED CODE. NO FINE MAY BE IMPOSED FOR A VIOLATION OF THIS SECTION, EXCEPT THAT COURT COSTS MAY BE IMPOSED.

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SEC. 5747.054. IN ADDITION TO ALL OTHER CREDITS ALLOWED UNDER THIS CHAPTER, THERE SHALL BE ALLOWED AS A CREDIT AGAINST THE TAX IMPOSED BY SECTION 5747.02 OF THE REVISED CODE, A CREDIT FOR EACH CHILD RESTRAINT SYSTEM, AS PROVIDED IN SECTION 4511.01 OF THE REVISED CODE, PURCHASED BY THE TAXPAYER DURING THE TAXABLE YEAR. THE AMOUNT OF THE CREDIT ALLOWED FOR EACH SUCH PURCHASE SHALL EQUAL THE LESSER OF FIVE DOLLARS OR TEN PER CENT OF THE AMOUNT EXPENDED FOR THE CHILD RESTRAINT SYSTEM, PLUS THE COST, IF ANY, OF INSTALLATION. THE TAX COMMISSIONER MAY REQUIRE A TAXPAYER TO FURNISH ANY INFORMATION NECESSARY TO SUPPORT A CLAIM FOR CREDIT UNDER THIS SECTION, INCLUDING A COPY OF THE RECEIPT FOR THE PURCHASE OF THE CHILD RESTRAINT SYSTEM, AND NO CREDIT SHALL BE ALLOWED UNLESS SUCH INFORMATION IS PROVIDED.

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TOTAL SUM OF THE CREDITS ALLOWED BY THIS SECTION SHALL NOT EXCEED THE TAX OTHERWISE DUE AFTER APPLICATION OF ALL OTHER

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NO PERSON SHALL KNOWINGLY MAKE A FALSE STATEMENT FOR THE	8.35
PURPOSE OF OBTAINING A CREDIT UNDER THIS SECTION.	8.36
Section 2. That existing section 4507.40 of the Revised	9.1
Code is hereby repealed.	9.2
Section 3. Sections 1 and 2 of this act shall take effect	9.3
January 1, 1982.	9.4

H. 246 By Turnham  
2/3/81  
RFD Highway Safety



SUMMARY: This bill requires that children under the age of four use a passenger restraint system in certain instances, and to provide penalties for violation of this act.

A B I L L  
T O B E E N T I T L E D  
A N A C T

To require that children under the age of four use a passenger restraint system in certain instances; to provide penalties for violation of the act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Every parent or legal guardian of a child under the age of four (4) years residing in this state shall be responsible, when transporting his child in a motor vehicle owned by that parent or guardian operated on the roadways, streets or highways of this state, for providing for the protection of his child and properly using a child passenger restraint system meeting federal motor vehicle safety standards, or assuring that such child is held in the arms of an older person riding as a passenger in the motor vehicle.

Provided that the term "motor vehicle" as used in this act shall not apply to recreational vehicles of the truck or van type. Provided further that the term "motor vehicle" as used in this act shall not apply to trucks having a tonnage rating of one ton or more.

Provided that in no event shall failure to wear a child passenger restraint system be considered as contributory

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4 negligence, nor shall such failure to wear said child  
5 passenger restraint system be admissible as evidence  
6 in the trial of any civil action.

7 Section 2. Any person violating the provisions  
8 of this act shall be guilty of a violation as defined  
9 by Section 13A-5-3, Code of Alabama 1975 and may be fined  
10 not less than \$2.00 nor more than \$10.00 for each offense.

11 Section 3. All laws or parts of laws which  
12 conflict with this act are hereby repealed.

13 Section 4. The provisions of this act are  
14 severable. If any part of this act is declared invalid  
15 or unconstitutional, such declaration shall not affect  
16 the part which remains.

17 Section 5. This act shall become effective  
18 immediately upon its passage and approval by the Governor,  
19 or upon its otherwise becoming a law.  
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BY Messrs. Carey and Whittle and Representatives Grisham and  
Simmons

1 AN ACT

2 To amend Subpart L of Part IV of Chapter 1 of Title 32 of the Louisiana  
3 Revised Statutes of 1950, by adding thereto a new Section to be  
4 designated as R.S. 32:295, to require use of passenger restraint  
5 systems for children under the age of four years who are passengers  
6 in motor vehicles owned by the parent or guardian, to provide  
7 penalties for violations, and otherwise to provide with respect  
8 thereto.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Section 295 of Title 32 the Louisiana Revised  
11 Statutes of 1950 is hereby enacted to read as follows:

12 §295. Use of passenger restraint systems for children  
13 under age four

14 A. Every parent or legal guardian of a child under the age  
15 of four years residing in this state shall be responsible, when  
16 transporting that child in a motor vehicle owned by the parent  
17 or guardian operated on the roadways, streets, or highways of  
18 this state, for providing for the protection of that child and  
19 properly using a child passenger restraint system meeting federal  
20 motor vehicle safety standards. In no event shall failure to wear  
21 a child passenger restraint system be considered as negligence, nor  
22 shall such failure to wear said child passenger restraint system be  
23 admissible as evidence in the trial of any civil action.

24 B. Whoever violates this Section shall be fined not more than

Section 3. Any person violating the provisions of this act shall be issued a written warning, a copy of which will be forwarded to the Drivers License Division of the Department of Public Safety, and the Director, at his discretion, may award point(s) against that person's driver's license record. The second and subsequent offenses shall be a violation as defined by Section 11A-5-3 Code of Alabama 1975 and may be fined not more than ten dollars for each offense.

Section 4. All laws or parts of laws which conflict with this act are hereby repealed.

Section 5. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 6. This act shall become effective within sixty days after its passage and approval by the Governor.

# Public Act 117 of 1981

AN ACT to amend section 907 of Act No. 309 of the Public Acts of 1979, entitled as amended "An act to provide for the registration, title, sale, transfer, and regulation of vehicles operated upon the public highways of this state or any other place open to the general public and licensed vehicles to provide for the licensing of drivers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles and the levy and collection of sales and use taxes, license fees, and personal fees; to provide for the regulation and use of private and highways; to provide for the creation of a Michigan Department of State Publications Fund; to provide penalties and sanctions for a violation of this act; to provide for the full liability of owners and operators of vehicles and service of process on franchise and owners; to provide for the enforcement of this act; and to amend all other acts or parts of acts inconsistent with this act or necessary to this act," as amended by Act No. 439 of the Public Acts of 1980, being section 907 of the Compiled Laws of 1979, and to add section 704d.

## The People of the State of Michigan enact:

Section 1. Section 907 of Act No. 309 of the Public Acts of 1979, as amended by Act No. 439 of the Public Acts of 1980, being section 907 of the Compiled Laws of 1979, is amended and section 704d is added to read as follows:

Sec. 704d. (1) Except as provided in this section, or as otherwise provided by law, a title manufactured pursuant to Act No. 309 of the Public Acts of 1979, as amended, being sections 24.301 to 24.345 of the Michigan Compiled Laws, or Federal regulation, such as the Department of Motor Vehicles shall properly receive title in a child restraint system as follows:

(A) Any child less than 4 years of age in a child restraint system as follows: the standard provided in 49 C.F.R. 571.221.

(B) Any child 4 years of age or over but less than 4 years of age, when transported in the front seat, in a child restraint system as follows: the standard provided in 49 C.F.R. 571.223.

(C) Any child 4 years of age or over: but less than 4 years of age, when transported in the rear seat, in a child restraint system when the standard provided in 49 C.F.R. 571.221, unless the child is secured by a safety belt provided on the motor vehicle.

(D) This section does not apply to a manufacturer device bearing title a child in the state on the day a child being moved.

(E) This section does not apply if the motor vehicle being driven is a bus, school bus, truck, aircraft, motorcycle, or other motor vehicle not required to be equipped with safety belts under section 704b, or Federal law or regulations.

(10) A person who violates this section is guilty of a misdemeanor.

(11) This section shall not be amended unless section 309b has a violation of the system. No person assigned under section 702 shall not be authorized to the secretary of state regarding a violation of this section.

(12) The secretary of state may exempt the entire manufacturer's permit for Act No. 309 of the Public Acts of 1979, as amended, a class of vehicles from the requirements of this section if the secretary of state determines that the use of the child restraint system required under section 704d is not necessary for the safety of the child, or a child restraint system, or both, if the secretary of state may specify otherwise necessary if the system has different equipment under the section.

Sec. 901. (1) A violation of this act or a local ordinance substantially corresponding to a provision of this act, which is designated as a violation shall not be considered a lesser or higher offense of a person offender.

(2) If a person is determined guilty of a violation of this act or a local ordinance substantially corresponding to a provision of this act, the judge, referee, or clerk of court may order the person to pay a fine of not more than \$1000 and costs as provided in section 901. If a violation of section 704d the usual fine or bond under the provisions shall not exceed \$500. A conviction may be granted the provision of a

civil fine and costs to be made with specified period of time or in specified installments, but in the absence of permission being included in the order or judgment, the civil fine and costs shall be payable immediately.

(3) If a civil fine is ordered to be paid under subsection (2), the judge, referee, or magistrate shall summarily tax and determine the costs of the action, which shall not be limited to the costs taxable in ordinary civil actions, and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction, up to the entry of judgment. Except in a civil infraction for a parking violation, costs of not less than \$5.00 shall be ordered. Costs shall not be ordered in excess of \$100.00. Except as otherwise provided by law, costs shall be payable to the general fund of the plaintiff.

(4) In addition to a civil fine and costs ordered under subsection (2), the judge, referee, or magistrate may order the person to attend and complete a program of treatment, education, or rehabilitation.

(5) A referee or district court magistrate shall impose the sanctions permitted under subsections (2) and (4) only to the extent expressly authorized respectively by the chief judge of the recorder's court of the city of Detroit—traffic and ordinance division or by the chief judge, presiding judge, or only judge of the district court district.

(6) The recorder's court of the city of Detroit—traffic and ordinance division, each district of the district court, and each municipal court may establish a schedule of civil fines and costs to be imposed for civil infractions which occur within the respective city or district. If a schedule is established, it shall be promulgated, posted and readily available for public inspection. A schedule need not include all violations which are designated by law or ordinance as civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses.

(7) The state court administrator shall annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions. This recommendation shall not be binding upon the courts having jurisdiction over civil infractions but is intended to act as a normative guide for judges, referees, and magistrates and a basis for public evaluation of disparities in the imposition of civil fines and costs thereon, out the state.

(8) If a person has received a civil infraction citation for defective safety equipment on a vehicle pursuant to section 683, the court shall waive a civil fine and costs upon receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appropriate date on the citation.

(9) If a person has received a civil infraction citation pursuant to section 228 for failure to produce evidence that a motor vehicle is insured under chapter 31 of Act No. 218 of the Public Acts of 1929, as amended, the court shall waive a civil fine and costs upon receipt of certification by a law enforcement agency that the defendant, before the appropriate date on the citation, has produced evidence that the vehicle was insured on the date of issuance of the citation as required.

(10) A default in the payment of a civil fine or costs ordered under subsection (2) or an installment of the fine or costs may be collected by a warrant authorized for the enforcement of a judgment under a chapter 69 of Act No. 236 of the Public Acts of 1961, as amended, having sections 600-603 to 600-605 of the Michigan Compiled Laws, or under chapter 66 of Act No. 236 of the Public Acts of 1961, as amended, having sections 606-608 to 608-609 of the Michigan Compiled Laws.

(11) If a person fails to comply with an order or judgment issued pursuant to this section, or when the same prescribed by the court, the driver's license of that person shall be suspended pursuant to section 221a until full compliance with that order or judgment occurs. In addition to this suspension, the court may also proceed under section 606.

(12) The court shall waive any civil fine or cost against a person who received a civil infraction citation for a violation of section 210d of the present, before the appropriate date on the citation, supplies the court with evidence of acquisition, possession, or control of a child safety system meeting the requirements of section 210d.

SECTION 3. This statute hereby not shall take effect August 1, 1962.

STATE OF MICHIGAN



DEPARTMENT OF STATE POLICE  
OFFICE OF HIGHWAY SAFETY PLANNING

3000 WASHINGTON SQUARE, ANN ARBOR, MICHIGAN 48106  
LANSING, MICHIGAN 48201  
PHONE: (313) 541-1000

**American  
Academy of  
Pediatrics**



**Michigan Chapter**

**Chairman**  
Robert S. Holm, M.D.  
Pediatric Education  
Coordinator  
Southwestern Michigan  
Area Health Education  
Center  
12 E. Lovell Street  
Lansing, 48207  
15383 6360

**Immediate Chairman**  
Lester J. Standy, M.D.  
Ionia Professional Plaza  
3010 Farmington Road  
Ionia, 48132  
13476 3730

**Secretary**  
Lillian M. Tanner, M.D.  
727 St. Antoine,  
Suite 303  
Detroit, 48201  
13821 1300

**Treasurer**  
John E. Alejos, M.D.  
1012 East 13 Mile Road  
Suite 206  
Farmington, 48093  
13791 6070

February 5, 1982

Clinton B. Lillibridge, M.D.  
Marion T. Witt, M.D.  
3300 Providence Drive  
Anchorage, Alaska 99504

Dear Clinton and Marion:

I am responding to your letter regarding child automobile restraint legislation. As you know, we were successful in helping to obtain passage of Michigan's first child passenger restraint law in June 1981. I have several thoughts to share with you as to how this was accomplished. In addition, I will be enclosing a copy of our law and point out the strong points and what we might write differently next time.

In 1980, a freshman member of the Michigan House of Representatives was somehow convinced that he should introduce a bill which would require the use of a car passenger safety seat by all children riding in Michigan automobiles. The law was brought before the House of Representatives and amazingly enough passed by an overwhelming majority of something like 75 to 10. This bill reached the floor of the Michigan House on the day before the Easter recess and I suspect that this kind of timing had much to do with its overwhelming passage. Unfortunately, when the law reached the Senate, it was defeated by a vote of 19 to 15. The objections that we heard were probably similar to the objections that have been heard all over the country by those who oppose such legislation. The main objection to the law was that it violated the rights of parents to transport their children in any manner that they wish. We argued subsequently that this law ignored the child's right to live and pointed out that the child was certainly not in a position, at age four or less to make an intelligent decision about how it might be most safe to be transported in an automobile. In addition, the counter argument to the violation of individual rights is that the citizens of the state are entitled to be protected from this unnecessary and preventable waste of tax money, for it was shown that a child who was injured in an automobile accident very likely would be picked by a state-supported vehicle, taken to a hospital, which again received state funds and if the child was unfortunate to be left paraplegic, would require taxpayer monies for the rest of its life to help provide support for this child. Thus, we argue citizens are entitled to resist unnecessary use of their tax money, which is indeed preventable. As you know, 90% of all car crash fatal accidents would have been prevented had the child been wearing a car passenger safety seat or seat belt.

In 1981, we really became much more well-organized in our efforts to get a law passed in Michigan. To begin with, the law came out of the

Clinton B. Lillibridge, M.D.  
Marion T. Witt, M.D.  
Page Two

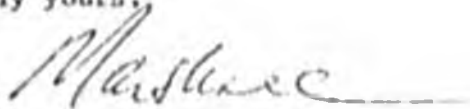
Senate, which is our senior legislative body as opposed to the house. Secondly, we were able to obtain a bipartisan group of four senators, two Democrats and two Republicans to introduce the law in the Senate. This, I would strongly recommend to you gentlemen. Having it bipartisan and having it come from the senior house, and especially from senior members in the Senate, made a tremendous difference this time. Additionally, we really became much more well-organized in our lobbying efforts. A coalition was formed made up of members of the Michigan Chapter of the American Academy of Pediatrics, as well as including people from all areas of the community. We were able to obtain cooperation from automobile dealers, automobile manufacturers, AAA, certain insurance companies, as well as other interested parties, including a group of women who were organized throughout the state in the day care nursery school segment of our population. These women proved to be invaluable in terms of their lobbying efforts. They apparently had had past experience impacting on the state legislature and were very helpful in influencing the vote to go in a positive direction.

May I suggest that you also have a petition drawn up and circulated among pediatricians throughout the state of Alaska for their patients' parents to sign, urging legislators to vote in support of mandatory car restraint legislation. The legislators certainly listen to the people in their district and again, we felt that these petitions circulated by pediatricians were very helpful. Additionally, individual pediatricians should try to contact their legislators to convince them of the importance of car restraint legislation.

The weak points in the Michigan law have to do with two things in my opinion. First, I don't think there should be an exemption for a baby who is being breastfed on its mother's lap. Secondly, although studies by Susan Baker, et al out of the University of Maryland have shown that infants over the age of 12 months are safely transported in a back seat of a car in a seat belt, I am, in my own mind, not convinced that this is true. I wished that we had been able to avoid that hitch in our legislation, but as you'll find, there has to be some give and take in dealing with the state legislators.

I would be happy to help you in your goal of obtaining child car passenger restraint legislation in Alaska. Please feel free to call or write if there is anything else I can do.

Sincerely yours,



Marshall J. Blundy, M.D.  
Alternate Chapter Chairman  
Michigan Chapter, American Academy of Pediatrics

MJB:nw

American  
Academy of  
Pediatrics



Rhode Island Chapter

Chairman  
Henry B. Freye, M.D.  
7 Wells Street  
Westerly, 02891  
401/596-2242

Alternate Chairman  
John E. Farley, Jr., M.D.  
343 Willett Avenue  
Riverside, 02915  
401/433-3473

Secretary  
Alfred Toselli, M.D.  
293 Governor Street  
Providence, 02908  
401/421-5126

Treasurer  
Mario Vigilani, M.D.  
1525 Atwood Avenue  
Johnston, 02919  
401/274-2910

EXECUTIVE COMMITTEE

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401/789-6402

Edwin N. Forman, M.D.  
Rhode Island Hospital  
Providence, 02902  
401/277-5171

Betty B. Mathieu, M.D.  
255 Waterman Street  
Providence, 02906  
401/521-3231

Joseph R. Pettier, M.D.  
929 Main Street  
Warwick, 02886  
401/737-4262

January 28, 1982

Clinton B. Lillibridge, M. D.  
Alternate Chairman, Alaska Chapter  
American Academy of Pediatrics  
4001 Dale Street  
Suite 213  
Anchorage, Alaska

Dear Clint,

I am sending you the following:

- 1) copies of bill #1 and its subsequent revision
- 2) a broad recommendation of the Insurance Institute for Highway Safety, ie, a model bill
- 3) a random of bills and their provisions

There is an angle on rear seat seat belt use in the infant who can sit unsupported. There was a hassle between IIHS and Physicians for Automotive Safety re this which appeared to me to be a power struggle.

Dave Shinn told me that the idea is this: No question that infants who cannot sit up should be in restraints. Back seat safer than front seat. Any age when can sit unsupported is a second best situation to be restrained by seat belts but this is better than nothing. Carrier restraints are best for all ages to an age when you can no longer convince a child to stay there.

Points to appeal to with parents are: Children can see better and they stay in one place and don't distract the driver.

This segment of a law may be the most difficult to sell to legislators and you do the best you can.

Surveys are still being done but we know injuries have gone down and deaths have not occurred. Usage has gone up and most parents are quite aware of the law and the reasons for the law. A loaner system is in planning stages.

Police were apparently only charging when there was an accident but lately are monitoring.

The strong point I think, is the revision of the original law which gives parents time to purchase one and also inclusion of the back seat.

American  
Academy of  
Pediatrics



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401/598-2242

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401/433-3473

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255 Waterman Street  
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401/521-3231

Joseph R. Pellier, M.D.  
929 Main Street  
Warwick, 02886  
401/737-4262

C. B. Lillibridge, M. D.

- 2 -

January 28, 1982

I'm not so sure about the provision applying the penalties to drivers who are passing through the state. I think that would only be effective if motorists were notified before they came into the state about that provision.

We think we have the best law at present and do not think we will revise it.

See you in September.

Sincerely yours,

John E. Farley, Jr., M. D.  
Alternate Chairman

JEF/mg  
Encs.

P.S. I originated both bills.

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 1981

A N A C T

REQUIRING THAT CHILDREN ~~FOUR (4)~~ *THREE* YEARS OF AGE OR UNDER USE CHILD PASSENGER RESTRAINT SYSTEMS

Introduced By: Representatives Connors, Durand, Carciari and Boyle

Date Introduced: March 4, 1981

Referred To: Joint Committee on Highway Safety

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 31-22-22 of the General Laws in Chapter  
2 31-22 entitled "Miscellaneous Rules" is hereby amended to read as  
3 follows:

4 31-22-22. Child Passenger Restraint Systems. -- Any person  
5 transporting a child ~~three-(3)~~ *Three (3)* ~~four-(4)~~ years of age or under in  
6 the front or back seat of a motor vehicle operated on the road-  
7 ways, streets or highways of this state, will provide for the  
8 protection of the child and properly use a child passenger  
9 restraint system approved by the United States Department of  
10 Transportation under Federal Standard 213, provided that in no  
11 event shall failure to wear a child passenger restraint system be  
12 considered as contributory negligence, nor such failure to wear  
13 said child passenger restraint system be admissible as evidence  
14 in the trial of any civil action.

1           Any person deemed to be in violation of this section shall  
2 be issued a citation, with a fine of fifteen (\$15.00) dollars and  
3 ~~it will be recorded on said person's driving record within the~~  
4 ~~rules and regulations governing Section 31-43.~~ If said cited  
5 person presents proof of purchase of a federally approved child  
6 restraint system under Standard 213 to the issuing police depart-  
7 ment within seven (7) days of issuance, said department shall  
8 void the violation. If said individual fails to present proof of  
9 purchase, he or she shall be required to appear for a hearing  
10 with a minimum fine of fifteen (\$15) dollars, and it will be  
11 recorded on said person's driving record within the rules and  
12 regulations governing Section 31-43.

13           SECTION 2. This act shall take effect upon passage.

\*\*\*\*\*  
LMS20/OD  
\*\*\*\*\*

## **An Effective Child Restraint Law**

The Insurance Institute for Highway Safety does not involve itself in the drafting of child restraint or any other type of legislation. However, the Institute has looked comprehensively at the problem of child death and injury in motor vehicle crashes, as well as at attempts to increase restraint use by both mandatory and voluntary means. These studies, and evaluations of the Tennessee and Rhode Island laws, suggest that the elements of an effective child restraint law are these:

- Children younger than one year old should be required to be transported in an infant carrier which meets Department of Transportation standards.
- Child passengers who can sit up unassisted in a vehicle should be required to use special child restraint devices or be restrained by car seat belts.
- Child passengers should be required to ride in the back seat, in restraints, unless other children are already occupying all of the rear seating positions that have seat belts. Children should ride in the front seat only when there are not enough seating positions with restraints in the rear.
- The holding of children on the laps of adults in vehicles is a hazardous practice which should be prohibited instead of encouraged.
- Children should be prohibited from ever being carried in the cargo area of any motor vehicle. Children should specifically be banned from the cargo areas of station wagons, trucks, vans and hatchbacks.
- The driver should be responsible for insuring that children being transported in a motor vehicle are restrained according to the law. Drivers of recreational vehicles and trucks, as well as cars, should be covered.

EXPLANATION

OF

AN ACT  
REQUIRING THAT CHILDREN FOUR (4)  
YEARS OF AGE OR UNDER USE CHILD  
PASSENGER RESTRAINT SYSTEMS

\*\*\*

1           This act would increase the age for mandatory child  
2 restraint usage from three (3) years of age to four (4) years of  
3 age and extends mandatory usage to the rear seat. Additionally,  
4 this act would provide that any individual cited could have the  
5 option of having the violation voided upon presentation of proof  
6 of purchase of a federally approved child restraint system to the  
7 issuing police department. This could be opted for in lieu of an  
8 administrative hearing and a fine of fifteen (\$15) dollars.

9           This act shall take effect upon passage.

\*\*\*\*\*  
LMS20/OD  
\*\*\*\*\*

# Child Auto Safety

MASSACHUSETTS CHILD PASSENGER SAFETY RESOURCE CENTER NEWS UPDATE

Dr. Alfred L. Frechette  
Public Health Commissioner

Edward J. King  
Governor

William T. Hogan Jr.  
Secretary of Human Services

Department of Public Health

Division of Preventive Medicine

September 1981

## Introduction

Child Passenger Safety is the concern of many groups and individuals across Massachusetts. Because of the efforts of nurses, physicians, health educators, and community volunteers, more children are riding safely than ever before. The number of hospitals, for instance, with education programs for new parents, has grown from a handful in 1976, to virtually 100 percent. This success has brought with it an increasing need for communication among child passenger safety advocates to coordinate and share resources.

Therefore, the Child Passenger Safety Resource Center is publishing this informational bulletin, to be sent periodically to key contact persons throughout Massachusetts, to report significant state and national news in child passenger safety. The Update will not be a regularly scheduled newsletter, but a bulletin, appearing several times a year to report important developments. Please keep the Child Passenger Safety Resource Center abreast of your activities, problems and solutions, so that we may act as a clearing house and others may benefit from your experience.

## Child Passenger Safety Directory

### National Highway Traffic Safety Administration (NHTSA)

Federal agency which provides leadership and funding for all highway safety programs

Administrator: Raymond Peck

408 7th Street, SW

Washington, D.C. 20590

(302) 426-2120

Toll-Free Hotline for Consumer Information: (800) 424-9393

### National Highway Traffic Safety Administration (NHTSA) Region I, New England

Director: John J. Connors

Massachusetts Program Coordinator: John McCallrey

55 Broadway

Cambridge, Massachusetts 02142

(617) 494-2690

### Governor's Highway Safety Bureau (GHSB)

State agency which administers NHTSA programs, including the Child Passenger Safety Resource Center

Acting Director: Paul McHugh

CPSHC Program Coordinator: Joseph Hagan

100 Charles River Park

Boston, Massachusetts 02114

(617) 727-5074

(continued on 2)



□ Passed    ✗ Failed    ( ) Pending    ■ Education Program

## CHILD PASSENGER SAFETY LEGISLATION

Many state legislatures recognize the need for legislation requiring the use of car seats or safety belts. The map illustrates the current status of this legislation nationwide.

## Massachusetts Child Passenger Safety Act

For the past two decades, motor vehicle accidents have been the number one cause of death and serious injury to children. In the early 1970's, crashworthy car seats were developed that could prevent 60 to 90 percent of these tragedies. Private organizations, Physicians for Automotive Safety and Action for Child Transportation Safety, pioneered in child passenger safety education. They were joined gradually by state agencies and various departments of the federal government. The Massachusetts Child Auto Safety program was initiated in 1976 by the Department of Public Health's newly created Division of Preventive Medicine.

By 1979 most states were developing child passenger safety programs. These educational efforts were recognized as extremely valuable but not sufficient to overcome the problem: a very low rate of car seat and safety belt usage. In 1978, largely through the efforts of a dedicated pediatrician, Tennessee enacted its historic Child Passenger Protection Act, requiring parents to protect children up to age four in car seats. In 1980, Rhode Island followed suit.

In 1981, influenced by reports of success of the Tennessee and Rhode Island laws, six more states passed child passenger safety laws (see map). Massachusetts will do so this fall. After a public hearing where strong bipartisan support was given to the seven bills submitted by Representative Hermann, Representative White (for the Registry of Motor Vehicles), Senators Hackman, Hall, Pollard and Timilty and Lieutenant Governor O'Neil, a composite bill H 6798 was reported out of the Public Safety Committee favorably.

(continued on 2)

**Directory (continued)**

**Child Passenger Safety Resource Center (CPSRC)**  
 Three-year program administered through the Massachusetts Department of Public Health, Division of Preventive Medicine. Services offered include technical information, education programs and multi-media materials for professionals and consumers.

Director: Pat Bartoszesky  
 Assistant Director: Dennis Sterzin  
 600 Washington Street, Room 705  
 Boston, Massachusetts 02111  
 (617) 727-2882

**Child Auto Passenger Safety Advisory Board**  
 Since 1976, a committee of dedicated health professionals, educators, consumer advocates, government representatives, who have participated in the development of the Massachusetts statewide child auto passenger safety program. Meetings are held quarterly at 600 Washington Street, Boston.

Co-Chairmen: Thomas Lynch, Paul Schreiber, M.D.  
 Membership list and more information are available from CPSRC.

**HIGHLIGHTS OF FEDERAL MOTOR VEHICLE SAFETY STANDARD 213-80**

- ALL devices intended to restrain children in cars must be **DYNAMICALLY TESTED** in a simulated 30 mph crash test.
- The device must retain its structural integrity and must retain the childlike dummy with certain limits.
- Each device must pass a 20 mph "misuse" test, for example, without the tether anchored or with only the armrest in place to restrain the dummy.
- Harness buckles must require a 12-pound force to open them. Thus children will find them more difficult to open, but adults can do so easily in an emergency.
- Labeling is improved and more visible and instructions must be contained in an attached pouch or slot on the device.

**Mass. Child Passenger Safety Act (continued)**

As a result of lengthy budget discussions, the bill remained in the House when the legislature recessed for vacation. Immediately after reconvening, however, the House passed H 6798 with minor language changes which made the provisions of the bill clearer and gave it a new number H

7102 (see box). Advocates should now contact their Representatives to express appreciation, and State Senators asking them to approve the bill with the same speed, so it may be sent to the Governor for signing.

Naturally many questions arise concerning the legislation. Several common queries are addressed here and a major public information effort will be begun as soon as the law is signed to prepare the public for its implementation.

- Q. Can the police really enforce such a law?**
  - A.** The Tennessee experience has been very successful. The police who were skeptical at first have become the law's staunchest supporters. It is easy to determine if children are buckled-up or not. Police welcome this as a way to keep children from causing accidents by distracting the driver. In fact, both the State Police and the Massachusetts Chiefs of Police Association testified in support of the bill and are cooperating in planning training sessions for police.
- Q. Is this not too great a hardship for poor parents who may have to buy two or three cars?**
  - A.** This is a question that has been asked in the past and therefore certain alternatives are provided. Parents will definitely need a safety seat for an infant, but more than a dozen hospital or community based programs offer infant car seats for free loan or low cost rental. When a child is able to sit up unaided, the driver may use a safety seat or a properly adjusted seat belt to protect the child. This choice allows the use of a seat belt (1) for children who are young but who may weigh more than the limit for a car seat, and (2) in situations when the car seat normally used is not available. A car seat offers more protection to a young child, but it is crucial that all drivers know the importance of using a seat belt rather than placing a child in the back.
- Q. Why does this law stop at age five? Don't older children need the same protection?**
  - A.** All the parent legislators are willing to contribute the weight of infants and young children who are totally unable to protect themselves. After the 5th grade of a law for the youngest group of children have been demonstrated, it is very likely that the public will seek to extend the law to cover other children. This year both Pennsylvania and Florida (I am) approved upon their child passenger safety laws.

**HOUSE . . . . . No. 7162**

Enacted by the House, on notice of Mr. Speaker, on a bill with the title "An Act Relative to the Regulation of Motor Vehicle Seats for Children," September 11.

**The Commonwealth of Massachusetts**

In the Year of the Republic the Second and Eighth

An Act Relative to the Regulation of Motor Vehicle Seats for Children.

Enacted by the Senate and House of Representatives in Conference on the 11th day of September, 1980.

**SECTION 1.** Section 7 of chapter 90A of the General Laws is hereby amended by inserting after the definition of "Child Passenger Seat" the following definition:—

1. "Child passenger restraint", a device manufactured for the purpose of restraining children under five years of age in a motor vehicle equipped with seat belts in accordance with the provisions of this chapter and regulations promulgated by the State Police.

**SECTION 2.** Section 7 of chapter 90A is hereby further amended by

1. inserting after section 7 of the following section:—
2. Section 7A. No child under five years of age shall be transported in any motor vehicle on any way which will result in
3. wearing a safety belt which is properly fastened and secured in
4. motor vehicle which is properly fastened and secured by a child passenger restraint as defined in section one.
5. The provisions of the section shall not apply to any child—
6. who is sitting in a passenger in a motor vehicle in which all
7. motor vehicle restraint seats belts or child passenger
8. restraints are approved by other passengers who are sitting and
9. restraints, sitting in a passenger in a motor vehicle used to
10. transport passengers for hire, sitting in a passenger in a motor
11. vehicle not equipped with seat belts in accordance with the
12. safety belts in child passenger restraint, the operator of a motor
13. vehicle who makes the provisions of the paragraph shall be
14. subject to a fine of not more than twenty-five dollars, provided,
15. however, that such fine may be waived upon satisfactory proof
16. being presented to the court that the defendant has purchased a
17. child passenger restraint as defined in section one.
18. A violation of the section shall not be considered unless any
19. measurements to be contributing to a citation for such violation of
20. such a violation is attributable to any such case.

**SECTION 3.** The first paragraph of section 711F of chapter 90A of the General Laws, as appearing in section 711 of chapter 90A of the acts of 1978, is hereby amended to read as follows:—

1. Section 711F. In addition to the following cases:—
2. a. Failure to follow the following rules:—
3. a. Failure to follow the following rules:—
4. a. Failure to follow the following rules:—
5. a. Failure to follow the following rules:—
6. a. Failure to follow the following rules:—
7. a. Failure to follow the following rules:—
8. a. Failure to follow the following rules:—
9. a. Failure to follow the following rules:—
10. a. Failure to follow the following rules:—
11. a. Failure to follow the following rules:—
12. a. Failure to follow the following rules:—
13. a. Failure to follow the following rules:—
14. a. Failure to follow the following rules:—
15. a. Failure to follow the following rules:—
16. a. Failure to follow the following rules:—
17. a. Failure to follow the following rules:—
18. a. Failure to follow the following rules:—
19. a. Failure to follow the following rules:—
20. a. Failure to follow the following rules:—

PASSED



GODDARD MEDICAL ASSOCIATES, P.C.

ONE PEARL STREET, BROCKTON, MASSACHUSETTS 02401 • 617-586-3600

January 20, 1982

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Paul A. Sargl, M.D.

**Obstetrics and Gynecology**

Earl P. Gelman, M.D.  
Donald G. Shroy, M.D.  
Arthur J. Heyman, M.D.  
Jeffrey M. Good, M.D.

**Family Practice**

Michael C. Randon, M.D.  
Michael L. Dem, M.D.

**Internal Medicine**

Ronald P. Caputo, M.D.  
Jeremiah P. McDonnell, M.D.  
Stanley J. Mazurka, M.D.  
Andrew A. Nowak, M.D.  
Paul R. Conic, M.D.

**Gastroenterology**

Fredrick V. F. Ng, M.D.

**Pediatrics**

Philip A. Hourigan, M.D.  
Richard H. King, M.D.  
Paul C. Schreiber, M.D.  
Steven A. Fels, M.D.

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Edward R. Mulaly, M.D.  
Arthur P. Carlson, M.D.

**Psychiatry**

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Jerald T. Draine, M.D.

**Pathological Services**

**Laboratory Services**

**Executive Director**

Robert C. Crozier, C.P.A.

Marian T. Witt, M.D.  
3300 Providence Drive  
Anchorage, Alaska 99504

Dear Dr. Witt:

Thank you very much for your interest in Massachusetts Child Passenger Protection Law. I believe a copy has been sent to you already by Dr. Pendleton.

We feel that the Massachusetts law has eliminated some of the weaknesses in other legislation which incidently other states have been able to correct after passage and public acceptance of a flawed law. Ideally we would like all children to be covered by mandatory car restraints. Age five was chosen as a reasonable cutoff because this covered the age during which available carseats were most effective and seatbelts first become a reasonable alternative. Permitting children under five to ride in seatbelts is a weakness but far superior to riding unrestrained.

Incidently, our Bill was a number of years in the pushing and not an irresistable sweep through the legislature. Two important items in convincing the legislators were that a violation would not constitute a "moving violation" with implications toward license suspension or insurance penalties and that the failure to use a proper restraint would not be considered contributory negligence.

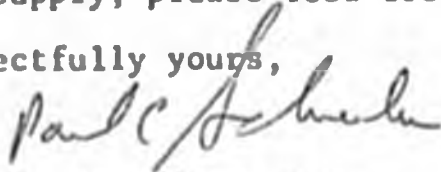
Our success came I believe because of a broad based coalition of advocates working on publicity and personal legislative contact over a long period of time. I think that David Shin at the Academy's main office could provide further aid for your efforts and I am also passing your request on to Pat Bartoshefsky who has worked tirelessly for many years as a private citizen

Page 2  
January 20, 1982

and state worker to promote child automotive safety and this particular bill.

Good luck to you and if there is any other information I can supply, please feel free to call upon me.

Respectfully yours,



Paul C. Schreiber, M.D.

*Chairman: Accident Prevention Committee*

PCS:cg

*Mass. Chapter AAP*

# HOUSE . . . . . No. 7162

Substituted by the House, on motion of Mr. White of Worcester, for a bill with the same title (House, No. 6728) and passed by the House to be engrossed. September 15.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-One.

### AN ACT REQUIRING THE USE OF CHILD PASSENGER RESTRAINTS IN AUTOMOBILES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of chapter 90 of the General Laws is  
2 hereby amended by inserting after the definition of "Certified  
3 inspector" the following definition: —

4 "Child passenger restraint", a device manufactured for the pur-  
5 pose of transporting children under five years of age in a motor  
6 vehicle equipped with seat belts in accordance with the provisions  
7 of federal laws and regulations, and approved by the United States  
8 Department of Transportation pursuant to Federal Motor Vehicle  
9 Safety Standard #213.

1 SECTION 2. Said chapter 90 is hereby further amended by  
2 inserting after section 72 the following section: —

3 Section 7AA. No child less than five years of age shall ride as a  
4 passenger in any motor vehicle on any way unless said child is  
5 wearing a safety belt which is properly adjusted and fastened or  
6 unless such child is properly fastened and secured by a child  
7 passenger restraint as defined in section one.

8 The provisions of this section shall not apply to any such child  
9 who is riding as a passenger in a motor vehicle in which all  
10 seating positions equipped with safety belts or child passenger

2

HOUSE — No. 7162 [September 1981]

11 restraints are occupied by other passengers who are using said  
12 restraints; (2) riding as a passenger in a motor vehicle used to  
13 transport passengers for hire; (3) riding as a passenger in a motor  
14 vehicle not equipped with safety belts; (4) physically unable to use  
15 safety belts or child passenger restraints. Any operator of a motor  
16 vehicle who violates the provisions of this paragraph shall be  
17 subject to a fine of not more than twenty-five dollars; provided,  
18 however, that such fine may be waived upon satisfactory proof  
19 being presented to the court that the defendant has purchased a  
20 child passenger restraint as defined in section one.

21 A violation of this section shall not be considered under any  
22 circumstances to be contributory negligence nor shall evidence of  
23 such a violation be admissible in any civil action.

1 SECTION 3. The first paragraph of section 113P of chapter  
2 175 of the General Laws, as appearing in section 18 of chapter 266  
3 of the acts of 1976, is hereby amended by striking out clause (r) and  
4 inserting in place thereof the following clause: —

5 (r) Twenty-five dollars — speeding and other moving traffic  
6 violations but excluding operating without possession of a license  
7 or registration or operating a motor vehicle in violation of section  
8 seven AA of chapter ninety and such other exclusions as provided  
9 by the commissioner.

1 SECTION 4. This act shall take effect on January first, nine-  
2 teen hundred and eighty-two.

# American Academy of Pediatrics



Louisiana Chapter  
5825 Airline Hwy.  
Baton Rouge, LA 70805

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John Moore, M.D.  
Jefferson  
Herbert Rothschil, M.D.  
James Reynolds, M.D.  
Judi Gates, M.D.  
Orleans

January 26, 1982

Marian T. Witt, M. D.  
3300 Providence Drive  
Anchorage, Alaska 99504

Dear Dr. Witt:

Enclosed is a copy of the law we introduced during 1980 and 1981 Louisiana legislatures. Unfortunately, it failed. We did successfully get it onto the Senate floor.

I don't think we can change any of it so it can pass. Our legislature opposes it in general terms of "control of lives" instead of letting people decide their future.

We are planning to try again this year. Please send me a copy of your proposed law.

Sincerely,

Larry J. Hebert, M. D.  
Chairman

# THE PEDIATRIC CLINIC

888 TARA BOULEVARD

(904) 926-4400

BARON HOUSE, LAURENSBURG 29054

JOHN RAY POWERS, M.D.  
DAVID W. VAN GELDER, M.D.  
BEN F. THOMPSON, JR., M.D.  
GLENN G. GIBSON, M.D.  
WALLACE H. DUNLAP, M.D.  
THOMAS B. NEFLIN, M.D.

JAMES L. STEPHENS, M.D.  
CONSULTANT IN PEDIATRICS


January 19, 1982

Marian T. Witt, M.D.  
Chairman  
Alaska Chapter  
American Academy of Pediatrics  
3300 Providence Drive  
Anchorage, Alaska 99504

Dear Dr. Witt:

Thank you for your letter about child restraints legislation. Unfortunately we were not successful in obtaining final passage of our intended legislation so must start over again next year also. I am not sure what is the most successful approach to use but I lean towards a bill that is educational instead of punitive or perhaps a bill that would require the parent to show proof of purchase in order to satisfy a fine requirement.

Sincerely,

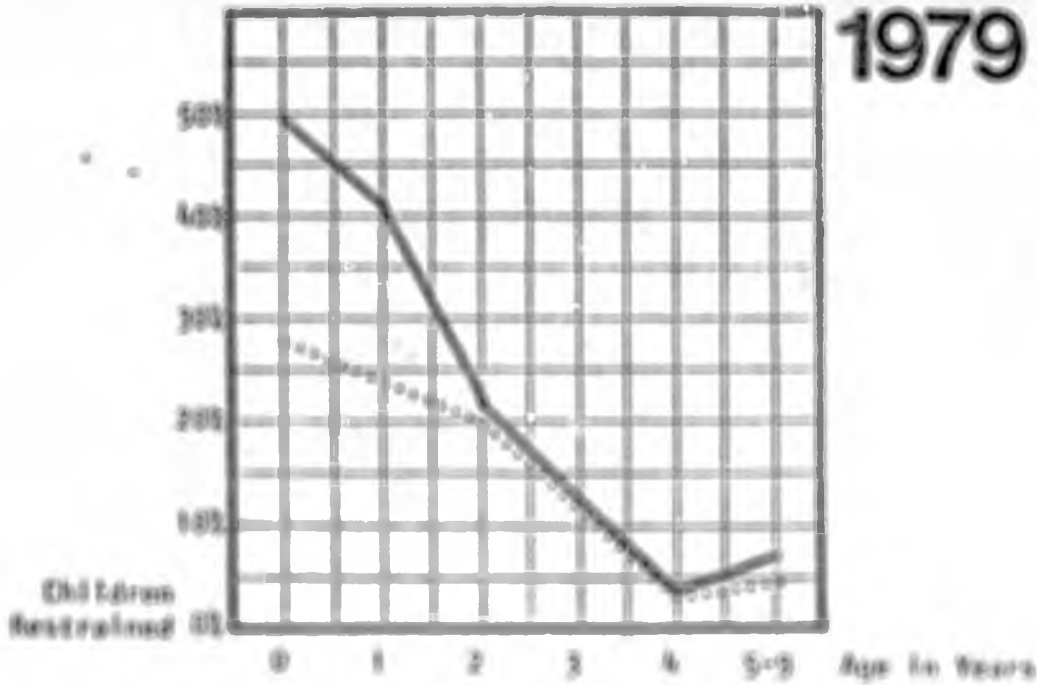


Wallace H. Dunlap, M.D.

KHD/vc

# Observed Child Restraint Usage in Massachusetts

## 1979



— Safe Devices  
 ..... Age Appropriate Safe Devices

## 1980

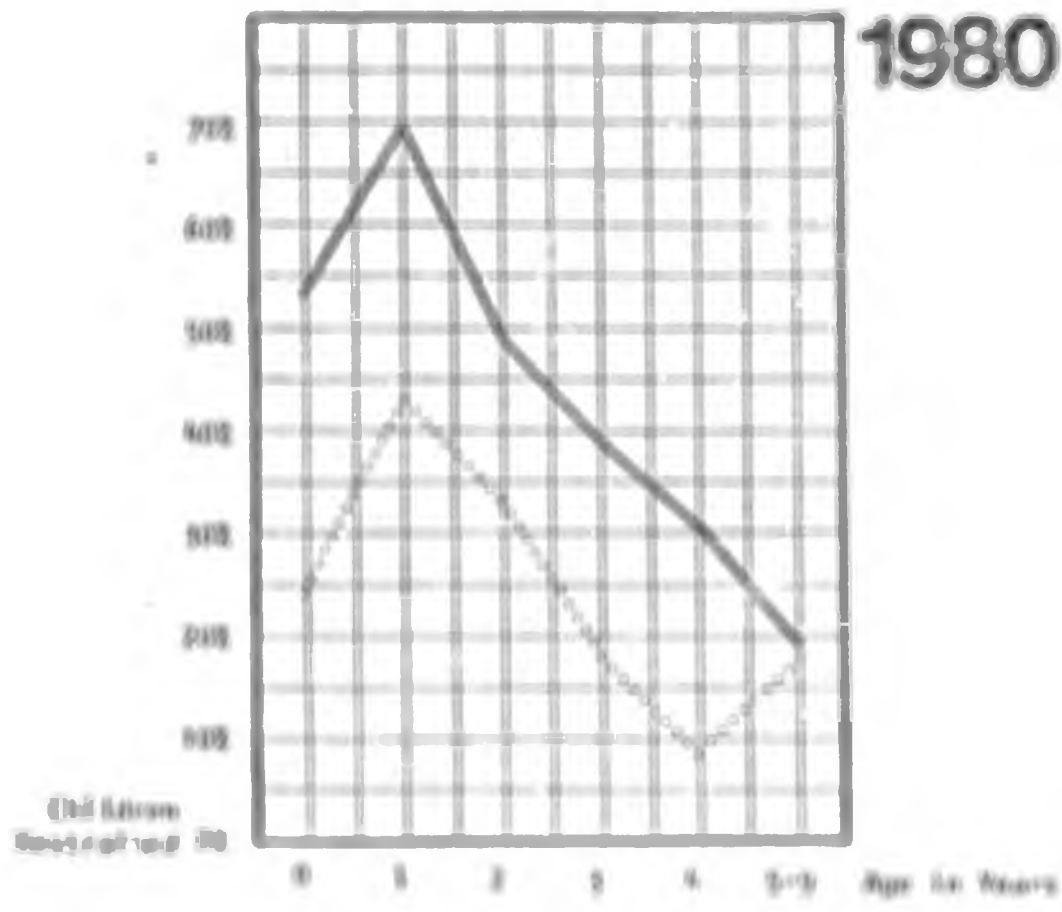


TABLE 1

AVERAGE STATE COSTS PER HIGHWAY FATALITY AND INJURY

COST COMPONENT	FATALITY		PERMANENT & TOTAL DISABILITY		PARTIAL DISABILITY		NO PERMANENT DISABILITY	
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Loss State Taxes	\$11,000	\$4500	\$900	140				
Police Agencies	160	70	70	20				
Legal and Court Costs	400	200	200	50				
Probation Offices	115	115	115	115				
Corrections/Medical Examiners	180	-	-	-				
Motor Vehicle Departments	15	15	15	5				
Hospital/Medical Costs	35	900	350	60				
(Borne by State)								
Public Welfare Overhead	435	435	435	435				
Rehabilitation	-	400	240	-				
TOTAL	\$12,500	\$6,810	\$1,375	185				

- (A) Based on loss of 10 years income
- (B) Based on loss of 6 years income
- (C) Based on loss of 10 months income
- (D) Based on loss of 45 days income

Sources: 1175 National Costs of Motor Vehicle Accidents, (National Highway Traffic Safety Administration (DOT-HSA-1175), 1976).

Widdowson, H.B., Johnson, H.C., National Estimates of Motor Vehicle Accidents (Vol. 1), Federal Highway Administration (DOT-HSA-11-7173), 1973.

Joseph C. Smith, et al., Federal Consequences of Serious Injury, Highway Safety Research Institute, University of Michigan (UMHSI-77-27), 1977.



Alfred L. Froschets, M.D., M.P.H.  
Commissioner

# The Commonwealth of Massachusetts

## Department of Public Health

600 Washington Street

Boston 02111

### Analysis of H7162 "An Act Requiring the Use of Child Passenger/Restraints in Automobiles"

GOALS:

- An increase in car seat and seat belt use from under 20% to 70-80%.
- A dramatic reduction in death and injury to child passengers under the age of five.

DEFINITION:

"Child passenger restraint" is the technical name for a child safety seat or "car seat" manufactured according to federal regulations. Devices which do not fulfill the requirements of H7162 include: household infant carriers, car beds or portacribs, homemade booster cushions or pillows.

SUMMARY:

-All children up to age five riding in a motor vehicle must be protected by a properly adjusted child safety seat or seat belt.

Examples include:

- Vehicles not equipped with seat belts.
- Vehicles with all seat belts and not used in use.
- Children riding in "vehicle free areas" (beaches, amusement parks, etc.)
- Children physically unable to use any mode of seat belt.

The bill may not be subject to point of order and jurisdiction to proceed.

IMPLEMENTATION:

-This bill has been successfully introduced and is being carried and H7162 has passed from first to second reading and is now in the House of Representatives. All necessary and proper provisions have been made.

NOTE:

-There is no appropriation for child passenger safety to be funded by the operating budget of the Department of Public Health and Human Services.

3  
Sec. 2. 23 V.S.A. § 1258 is added to read:

§ 1258. CHILD RESTRAINT SYSTEM

(a) Every parent or legal guardian operating a motor vehicle registered in this state on a public highway in which his or her child under the age of three years is a passenger, shall properly secure the child in an infant or child passenger restraining system of a type approved by the commissioner.

(b) Violators of this section shall be fined \$10.00. A person found in violation of this section may, instead of paying a fine, submit proof of ownership, or rental for not less than one year, of an approved infant or child restraint system to the traffic ticket center. This shall be acceptable only for first violations and if the acquisition of the restraint system was subsequent to the violation. No points shall be assessed for violations of this section.

Sec. 3. EFFECTIVE DATE

This act shall apply to children born on or after January 1, 1982.

THE COMMONWEALTH OF MASSACHUSETTS

Advance Copy

1981

Acts and Resolves

MICHAEL JOSEPH CONNOLLY, State Secretary

Chap. 680. AN ACT REQUIRING THE USE OF CHILD PASSENGER RESTRAINTS IN CERTAIN MOTOR VEHICLES.

Be It enacted, etc., as follows:

SECTION 1. Section 1 of chapter 90 of the General Laws is hereby amended by inserting after the definition of "Certified inspector" inserted by section 1 of chapter 761 of the acts of 1979, the following definition:-

"Child passenger restraint", a device manufactured for the purpose of transporting children under five years of age in a motor vehicle equipped with seat belts in accordance with the provisions of federal laws and regulations, and approved by the United States Department of Transportation pursuant to Federal Motor Vehicle Safety Standard, inserted by section 4 of chapter 761 of the acts of 1979, Number 213.

SECTION 2. Said chapter 90 is hereby further amended by inserting after section 72 the following section:-

Section 7AA. No child less than five years of age shall ride as a passenger in said motor vehicle on any way unless said child is wearing a safety belt which is properly adjusted and fastened or unless such child is properly fastened and secured by a child passenger restraint as defined in section one.

The provisions of this section shall not apply to any such child who is: (1) riding as a passenger in a motor vehicle in which all seating positions equipped with safety belts or child passenger restraints are occupied by other passengers who are using said restraints; (2) riding as a passenger in a motor vehicle used to transport passengers for hire; (3) riding as a passenger in a motor vehicle not equipped with safety belts; (4) physically unable to use safety belts or child passenger restraints. Any operator of a motor vehicle who violates the provisions of this section shall be subject to a fine of not more than twenty-five dollars; provided, however, that such fine may be waived if the court is satisfied that the defendant has purchased a child passenger restraint as defined in section one.

A violation of this section shall not be used as evidence of contributory negligence in any civil action.

SECTION 3. The first paragraph of section 112P of chapter 17B of the General Laws, as appearing in section 18 of chapter 206 of the acts of 1976, is hereby amended by striking out clause (c) and inserting in place thereof the following clause:-

(c) Twenty-five dollars - speeding and other moving traffic violations but excluding operating without possession of a license or registration or operating a motor vehicle in violation of section seven AA of chapter ninety and such other exclusions as provided by the commissioner.

SECTION 4. This act shall take effect on January first, nineteen hundred and eighty-two.

Approved December 23, 1981.

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MASSACHUSETTS-CHILD PASSENGER SAFETY LAW

In explaining the new Massachusetts Child Passenger Safety Law, we have reacted to those who feel that such legislation is unnecessary, that education alone should be pursued, as well as to advocates who feel that the law should be even stronger. We will present our rationale for the various provisions point by point and will suggest where the law might have been written differently.

The main argument for Child Passenger Safety legislation is that the level of car seat/seat belt usage achievable by education alone is unacceptably low. A car seat/seat belt law is itself a form of education, with an added dimension of association with other highway regulations; such as limiting speed or stopping at red lights.

At all stages, from the public hearing to final vote, it helps to have statistics to back-up arguments for the legislation.

We used, for example, data from two statewide observation studies, performed by college student volunteers, in determining "current" car seat/seat belt usage levels. (Table I) We then projected a level that we hope can be reached by education retained by legislation. We are striving for 60-65 percent usage.

We used injury data and projections from the National Highway Traffic Safety Administration (Table 2), as well as data from the same the law in other states (Table of Major Health Impairments by Motor Vehicle and Injury to roughly estimate and savings to the state from injuries and deaths prevented. We also want estimates of the effect on costs of car seat/seat belt legislation and on contribution and Rhode Island.

In December 1980, seven different sponsors submitted child car seat/seat belt bills. Our law, as finally passed, represents a composite or compromise of these based on political, as well as logical considerations. The bill submitted by our Lt. Governor, for example, had the most radical proposal, a tax credit for car seat purchase. This did not withstand our current preoccupation with reducing state spending.

We were fortunate to have the age of children covered by the law be set at five years rather than two, three or four. We feel that this will help us persuade most parents to "graduate" their children from car seats to seat belts. The seat belt option underlines the important principle that when a car seat is not available, even a very young child should use a seat belt rather than ride loose.

Obviously, we should have stipulated that seat belt use is possible only for children able to sit unaided, but we feel that this is not a major problem, that drivers would not attempt to place an infant in a seat belt. When we able to re-write the bill, we would use the phrase "able to sit unaided" rather than set an arbitrary age for moving from infant carrier to child car seat/seat belt. It takes into account different rates of growth and requires the police officer of the area to try to determine the age of the child.

We were very happy to be able to have the bill apply to all drivers rather than just parents or guardians. Police will naturally use discretion in stopping cars with out-of-state license plates, but this provision enables them to avoid any young child being transported in a hazardous manner.

The exemption of "children for hire" was allowed because we found that operators from out of state were likely to be the most likely to transport children in hazardous manner. The bill also provides that children for hire are not to be transported in a hazardous manner. We do hope to see more and more children transported in a hazardous manner by parents, grandparents, and other relatives of these children.

Children in cars not equipped with seat belts are exempted because we greatly feared that the bill would be defeated if it required people with older cars to have belts installed. We know that the supply of older cars will decrease. It is illegal in Massachusetts to remove seat belts from cars and we do not expect that people will do so simply to escape obeying the Child Passenger Safety Law.

In a similar vein, we did not want to put ourselves in the position of mandating that families with too few belts in their cars buy larger cars; hence, the exemption for drivers of vehicles with all belts in use. This exemption is criticized on the grounds that it permits the carpooling of too many children at a time. Given that we could not find a compromise suitable for accommodating both situations, we chose to favor the route that would seem least likely to penalize or antagonize low-income parents.

The exemption for children unable to use belts due to physical condition (handicap) or an emergency situation, is self-explanatory. We just received a sample Britax Handicapped Child Seat and hope to work with agencies who serve children with special needs.

Unsurprisingly, we have had complaints both that the fine is too high and that it is too low. The staff of the Joint Public Safety Committee, which drafted the compromise bill, was adamant in inserting the exemption from an insurance surcharge as essential for winning passage. Compelling violation as grounds for negligence is based on the same matter.

As of the beginning of February, we have given about 20 public safety and safety officers special workshops on the new law. We are not sure of what effect these workshops will have on the number of violations that will occur in the future. If we were to have the law, we would probably qualify for the percentage of violations that we are currently receiving. It is the goal to reduce the number of violations to a level that is acceptable to the public.

He also did not specify whether a driver carrying two or more unrestrained children under the age of five would be fined for each child or in toto for the trip. States drafting legislation should determine exactly which office or agency will rule on such ambiguities. Also, people not involved with the issue should read the proposed bill and be asked as many questions as possible so as to try to resolve potential conflicts or political problems. Some of the police at the workshops objected to the waiver because it requires them to use too much time going to court and seems to weaken the law unduly. On the other hand, the waiver does seem to have been a strong selling point for the law in Tennessee. We will have to wait and see how this unrolls here.

# The University of Vermont

COLLEGE OF MEDICINE, DEPARTMENT OF PEDIATRICS  
 CIVIL BUILDING, BURLINGTON, VERMONT 05405  
 802/656-2296



Fred Holmes, M.D.  
 114 Fairfield Street  
 St. Albans, Vermont 05478

Dear Fred:

As promised, this letter summarizes my thoughts about our campaign to pass child restraint legislation.

Obviously, initially I was greatly disappointed, but I now feel that our effort, in itself, was useful and will have long-term benefits that are yet to become apparent.

I think we made two major mistakes. The first was that we did not get an accurate vote count before the final vote. If we knew that it was going to be defeated, it would have been preferable to have it sent back to committee so that we could continue to work on it next year. We did attempt to determine the likelihood of passage; however, the Lt. Governor suggested about a week before the final vote that it would be hard to vote against the bill, and she thought there was a good chance of passage. In addition, the Democratic floor leader in the House, about a week before the final vote, also thought there were enough votes for passage. In addition, the day before the final vote it was approved 70-65. However, we were not prepared for the high pressure counter-campaign tactics that would force 10 Representatives to change their votes.

The second major mistake was that we did not get bipartisan support. You may recall about a year ago when the highway episode was on the front page of the newspapers with the highest highway fatality rates in years, Lt. Governor Rubin set up a committee to investigate the problem. After hearing of this, the Governor became terribly upset that the Lt. Governor had moved into the problem area of him, so he set up his own committee and presented government agencies from congressional committees with the Lt. Governor. In a sense, it was a poor eye that was affected and never been closed. At that time the highway episode became a problem rather than a bipartisan problem. A representative of the Governor's highway safety program, Barbara Johnson, who is also the secretary of Vermont DASH, did contact their secretary of Transportation

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Fred Holmes, M.D.  
May 17 1981  
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In January 1981 to determine the Governor's position on the child restraint bill. Crisman said there was no problem with the bill, and so we thought we had surprisingly the tacit approval of the Governor. As you now know, this turned out to be a big mistake and a big problem for us.

I had not really intended to promote the car seat bill during this legislative session. I did not think we were adequately prepared since we hadn't developed a massive media campaign, and we did not have an extensive network throughout the state. However, at the encouragement of the Lt. Governor and subsequently, of course, with passage of the bill by the Senate, there was reason to believe it might be passed this legislative session.

In preparing for our next campaign for child passenger legislation, I suggest we make improvements in the following ways.

- 1) We need a broader network of constituents which is better organized in each county and has more constituents in each county. Our network this year consisted largely of volunteers of the car seat rental programs developed through Vermont 501. Unfortunately, most of those programs had just started and we did not have time to develop an effective network around the car seat rental program.
- 2) We need greater involvement and more organized involvement of the pediatricians in the State. I must say that quite a few pediatricians became involved throughout the State and were effective. In the future, I think it would be effective to send a list of Senator and Representative names, addresses and phone numbers to each pediatrician. It may be useful at future chapter meetings to have practice sessions in calling legislators. It would also be helpful to have fact sheets about each issue distributed to each pediatrician as well as a copy of the bill in its most recent or advanced form.
- 3) I think we need a lobbyist, someone who can spend a lot of time talking to representatives and pushing our program.
- 4) It would be helpful to send me called early in the legislative session to each Representative and Senator. A letter from the funding agency by Assembly officials prior to or at the start of the legislative session would be useful. It would be useful to

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the future during campaigns for office to ask candidates to state their position on issues relevant to the Academy. In addition, in the next year, it may be helpful to send letters to representatives reminding them of our continued desire for a child restraint bill, perhaps including copies of newspaper clippings reporting preventable infant fatalities.

- 5) Work with the Vermont State Medical Society getting support from them through resolutions and perhaps using their lobbyist.
- 6) Initiate legislation in both the House and the Senate simultaneously at the start of the year. Get strong, experienced leaders in each House to carry the banner and gather support.

We did have a number of strengths in this campaign. We had a good news machine to send out our argument. Furthermore, we were fortunate in having the contact and support of Dr. Bob Sanders, the pediatrician in Tennessee, who provided us with good arguments, a lot of ammunition, and graphic materials to make our points. I think our fact sheets were well-presented, dramatic and succinct.

In addition, we do have a nucleus of a network which was effective in dealing with the smaller Senate, but was inadequate to effectively campaign against the larger House. I think it's important in the future to have one person assigned as a leader who can oversee all the activities, process the feedback and coordinate the distribution of materials and telephone calling.

I feel I learned a lot in my first political effort. One thing I learned is that logical or factual arguments are not as good as emotional arguments which are not as good as consultants ringing telephones, and ringing telephones, and ringing telephones. I also learned that the telephone and the news machine are our secret weapons.

As you know, I greatly appreciated your support and enjoyed working with you and other pediatricians who were willing to pick up the phone to argue with a legislator. I look forward to having all of us work together again, and with success.

Best wishes,

Yours truly,

Jack Callahan, M.D.

# Vermont SEEA

Seatbelts Eliminate Automobile Tragedies

133 State Street  
Montpelier, Vermont 05602  
(802) 828-2665

Marion T. Witt, M.D.  
3300 Providence Drive  
Anchorage Alaska 99504

Dear Doctor Witt:

Dick Morkevice has asked me to respond to your letter regarding our experience with attempts to pass a child restraint bill in Vermont. As he indicated, although we got a bill passed by the Vermont Senate it was narrowly defeated by the House on the last day of the legislature.

For your assistance I have enclosed the following: 1) a proposed model law for mandated car seat usage that I developed at a conference with Doctor Bob Sanders in Tennessee, 2) the Vermont Child Restraint Bill as it was introduced to the Senate, 3) the Vermont Child Restraint Bill as it was passed by the Senate and defeated by the House, 4) a copy of a letter to Fred Holmes that summarizes our efforts in 1981, 5) a summary of the Tennessee Child Passenger Protection Act prepared by Bob Sanders. In addition I have also enclosed some materials that we circulated to legislators.

An update of child restraint legislation in the United States summarizing the bills passed in nine states appears in the summer-fall 1981 issue of the newsletter of Physicians for Automotive Safety, 50 Union Avenue, Irvington, New Jersey 07111. You can see from that summary that each state legislature is willing to reinvent the wheel and that wheels come in a variety of sizes, shapes, and forms. Most workers in this area feel that any wheel is better than no wheel at all and compromise is a usual part of political necessity.

We plan to try again in Vermont in the next legislative session beginning in 1983. Our best wishes to you in Alaska.

Yours truly,

*Dick*

Richard B. Colletti, M.D.  
President & Chairman  
Accident Prevention Committee  
Vermont Chapter  
American Academy of Pediatrics

cc: Richard Morkevice, M.D.  
Timber Lane, So. Burlington, VT

1 February 1982



Seatbelts Eliminate Automobile Tragedies

133 State Street  
Montpelier, Vermont 05602  
(802) 828-2665

**The Vermont Child Passenger Protection Act  
Protects Children's Rights Without Violating Parental Rights**

1. Driving on a public road is a privilege, not a right, subject to state regulation.
2. The child is not chattel. Parents are required to provide for the health and safety of their children ("parentis patriae").  
Examples: immunizations, children can't be left home alone unsupervised.
3. Car seats help keep the family together by reducing the stress of injury, disability, financial loss or death.
4. Cost is not excessive, and car seats are available. There is precedent for legislated costs including driver's license, car registration, semiannual car inspections, snow tires; immunizations; smoke detectors. The public is responsible for rescuing, treating, and rehabilitating injured children, and, if there is a permanent disability, of providing life-long support. With this responsibility goes the right to attempt injury reduction.
5. Children do not have the knowledge or ability to protect themselves.
6. The Act would not increase parental liability. A child could not sue a parent. Parents would still be eligible for insurance and other protection.
7. Children unrestrained in cars cause accidents by distracting the driver. The Vermont Child Passenger Protection Act will also protect occupants of other cars from collisions.

# SEAT

Seatbelts Eliminate Automobile Tragedies

Montpelier, Vermont 05602

(802) 828-2665

## The Vermont Child Passenger Protection Act Car Seat Cost and Availability

1. Rental of infant car seats  
Use 9-12 months, cost 55¢ to \$1 per month
2. Purchase toddler car seat  
Use 2-3 years, cost as little as \$18.95
3. Seat belts already installed in cars  
Are acceptable for infants 20 lbs. or more  
Cost: none
4. Passage of a law would stimulate development of toddler car seat rental program, possibly through hospital rental programs, volunteer groups, church organizations, the Health Department, police programs, and Vermont SEAT.
5. Vermont SEAT will stimulate and promote programs to assist individuals and ensure universal availability.
6. Car seat costs are comparable to or less than the cost of:  
immunizations  
snow tires or chains  
car radio  
smoke detector  
a tank full of gas per year  
driver's license - car inspections per year  
auto insurance
7. The cost of not using a car seat can be disastrously high.