

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86 / 2

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HHESS

HB 262

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in question at 20 miles per hour, the trial court did not err in instructing the jury that the applicable speed limit was the state-wide limit of 30 miles per hour since the city did not post speed limit signs as required by the Alaska Administrative

Code. *Bailey v. Lenord*, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).
Cited in *Anderson v. Municipality of Anchorage*, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

Chapter 05. Administration.

Article 1. Powers and Duties of Department of Public Safety.

Section

11. Duty of commissioner to adopt regulations

Sec. 28.05.011. Duty of commissioner to adopt regulations. The commissioner shall, unless otherwise provided by statute, adopt regulations in compliance with the Administrative Procedure Act (AS 44.62) necessary to carry out the provisions of this title and other statutes the administration of which is vested in the department. The regulations shall include, but not be limited to:

(1) rules of the road relating to the driving, stopping, standing, parking and other conduct of vehicles, to pedestrians and to official traffic control devices;

(2) minimum equipment for vehicles, including, but not limited to, minimum standards of compliance to be met by manufacturers and vehicle sales and repairs businesses;

(3) inspection of vehicles, and the removal of vehicles from areas of public use when they are found to be in a defective or unsafe condition;

(4) registration, titling, transfer and abandonment of vehicles;

(5) licensing of drivers of vehicles;

(6) financial responsibility relating to vehicles;

(7) management of records of the department required for the administration of this title and regulations adopted under this title, including provisions for insuring the accuracy of information contained in automated and manual information retrieval systems;

(8) Repealed by § 3 ch 77 SLA 1982, effective July 1, 1982;

(9) definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute;

(10) registration of motor vehicle, trailer, and semi-trailer dealers; and

(11) certification and regulation of junk yards. (§ 6 ch 178 SLA 1978; am § 3 ch 77 SLA 1982)

Effect of amendments. — The 1982 amendment, effective July 1, 1982, repealed paragraph (8) as set out in the

main pamphlet. For present provisions covering the subject matter of the repealed paragraph, see AS 44.33.020 (25).

Cited in *Anderson v. Municipality of Anchorage*, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

Section 28.05.011

The notice provisions are valid, since they were received actual notice will not be precluded as a defense to a claim.

Section 28.05.011

This section covers the regulation of a...

Section 28.05.011

This section covers the regulation of a...

Chapter 05

Article 1. Powers and Duties of Department of Public Safety.

Cited in *Anderson v. Municipality of Anchorage*, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

I. REQUEST

Bill/Resolution No.: 262
 Title: Use of Child Safety devices in motor, etc
 Sponsor: Clocks, Szymanski & Koponen
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: _____
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Vernellia Randall
 Division: Public Health

Phone: 465-3104
 Date: 3/22/83

Approved by Commissioner: Robert Gordon Smith, M.D.
 Department: Health & Social Services

Date: 3/30/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 262
 Title: "...child safety devices..."
 Sponsor: Clocks in
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Admin/Justice
 BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponsor

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact is anticipated.

Prepared By: Francis C. Allan *F.C.A.* Phone: 269-5691
 Division: Alaska State Troopers *ACK* Date: 3-22-83
 Approved by Commissioner: R.J. Sundberg *R. Sundberg* Date: 3/29/83
 Department: Public Safety

Distribution:

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3/8/83

House Bill No. 262

"An act relating to the use of child safety devices in motor vehicles; providing for a child safety device loan program; and providing for an effective date."

BACKGROUND INFORMATION:

More Alaskan children are killed or injured in car accidents than any other single disease or type of accident. The Alaskan accidental mortality rate for children ages 1-4 years is 105% higher than the rest of United States; and 40% of these deaths are due to car accidents. National statistics have shown that the majority of deaths and injuries to children resulting from car accidents could be prevented if parents would "buckle up" their children.

POSITION:

Because children can't protect themselves, the Department fully supports mandatory child restraint laws. The Department believes that this bill is enhanced by its support for community education programs and car seat loaner programs.

Since the focus of this law is to encourage utilization of approved child restraints, the Department recommends that there be a designated minimum fine; and that the fine be sufficiently high enough to encourage violaters to purchase a car seat rather than pay the fine.

RECOMMENDED BY: E. S. Rabeau
E.S. Rabeau, M.D.
Director
Division of Public Health

DATE: March 21, 1983

APPROVED BY: Robert London Smith
Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

DATE: 3/30/83

Compiler's Notes. For table of U.S. decennial population of Tennessee counties, see the supplement to volume 16 (tables).

Amendments. The 1982 amendment added subsection (c).

Effective Dates. Acts 1982 (Adj.S.), ch. 850, § 4, April 22, 1982.

Section to Section References. This section is referred to in § 55-9-402.

55-9-214. Safety belts and child passenger restraint systems required — Violations — Penalties. — (a) It shall be unlawful for any person to buy, sell, lease, trade or transfer from or to Tennessee residents, at retail, an automobile which is manufactured or assembled commencing with the 1964 models, unless such automobile is equipped with safety belts installed for use in the left front and right front seats thereof. All such safety belts shall be of such type and be installed in a manner approved by the department of safety of the state of Tennessee. The department shall establish specifications and requirements of approved types of safety belts and attachments. The department will accept, as approved, all seat belt installations and the belt and anchor meeting the specifications of the Society of Automotive Engineers. Provided that in no event shall failure to wear seat belts be considered as contributory negligence, nor shall such failure to wear said seat belt be considered in mitigation of damages on the trial of any civil action.

(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; provided, however, nothing in this section shall restrict a mother from removing the child from such system and holding the child when the mother is nursing the child, or attending to its other physiological needs. 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 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.

(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 twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each violation of subsection (a) of this section and not less than two dollars (\$2.00) nor more than ten dollars (\$10.00) for each violation of subsection (b) of this section. Provided, however, that no court costs shall be imposed or assessed against anyone convicted of a violation of this section. [Acts 1963, ch. 102, §§ 1, 2; 1977, ch. 114, §§ 1, 2; T.C.A., § 59-930; Acts 1981, ch. 86, §§ 1, 2.]

Amendments. The 1981 amendment deleted the words "or assuring that such child is held in the arms of an older person riding as a passenger in the motor vehicle" at the end of the first sentence of subsection (b), added at the end of

the first sentence of subsection (b) the proviso beginning "provided, however," and ending with "other physiological needs", and added the second sentence of subsection (c).

House Bill No. 262

"An act relating to the use of child safety devices in motor vehicles; providing for a child safety device loan program; and providing for an effective date."

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Since the focus of this law is to encourage utilization of approved child restraints, the Department recommends that there be a designated minimum fine; and that the fine be sufficiently high enough to encourage violaters to purchase a car seat rather than pay the fine.

✓

RECOMMENDED BY:

E. S. Rabeau
E.S. Rabeau, M.D.
Director
Division of Public Health

DATE:

March 21, 1983

APPROVED BY:

Robert London Smith
Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

DATE:

3/30/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 262
 Title: "...child safety devices..."
 Sponsor: Clocksie
 Requestor: _____

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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
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GENERAL FUND						
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POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponsor

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact is anticipated.

Prepared By: Francis C. Allan *F.C.A.* Phone: 269-5691
 Division: Alaska State Troopers *ACK* Date: 3-22-83
 Approved by Commissioner: R.J. Sundberg *RJS* Date: 3/29/83
 Department: Public Safety *1/*

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	-0-	-0-	-0-	-0-	-0-	-0-

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Prepared By: Vernellia Randall *[Signature]* Phone: 465-3104
 Division: Public Health Date: 3/22/83
 Approved by Commissioner: [Signature] Date: 3/30/83
 Department: Health & Social Services

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Alaska Statutes

Title 28. Motor Vehicles.

NOTES TO DECISIONS

Stated in *Buckalew v. Holloway*, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Chapter 01. Scope and Interpretation of Title.

Sec. 28.01.010. Provisions uniform throughout state.

NOTES TO DECISIONS

Similarity to Uniform Vehicle Code.

— Subsection (a) is similar in substance and purpose to the provisions of § 15-101 of the Uniform Vehicle Code Annotated adopted by the National Committee on Uniform Traffic Laws and Ordinances in 1962. *Simpson v. Municipality of Anchorage*, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981).

Under the express terms of subsection (a) it is clear that inconsistency is the standard that governs the validity of a local ordinance regulating the operation of a motor vehicle. *Simpson v. Municipality of Anchorage*, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981).

Nature of inconsistency. — When the question of inconsistency between a local ordinance and state law under subsection (a) is raised, the issue is not whether there is a mere discrepancy between the state law and local ordinance; rather, the inquiry must focus on whether any discrepancy in the ordinance impedes or frustrates policy expressed by state law. *Simpson v. Municipality of Anchorage*, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981).

The saving provisions of subsection (b) by their express terms, require a twofold showing to be made before an ordinance inconsistent under subsection (a) can be upheld. First, it is incumbent upon the municipality to demonstrate the existence of a "specific local requirement." Second, the municipality must show that its ordinance was "necessary," in other words, that the specific local problem could not be addressed in a manner consistent with the provisions of this title. *Simpson v. Municipality of Anchorage*, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981).

Posting of state-wide speed limits not required. — Although subsection (d) of this section states that a municipality shall erect signs, the effectiveness of the 30 mile per hour limit set by the state in the Alaska Administrative Code is not conditioned upon the posting of signs. *Bailey v. Leonard*, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Ordinance held inconsistent. — See *Simpson v. Municipality of Anchorage*, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981).

Jury instructions. — Although a city ordinance set the speed limit on the streets

...miles per hour, the trial in instructing the jury that the applicable speed limit was the limit of 30 miles per hour since there were no posted speed limit signs as required by the Alaska Administrative

Code. Bailey v. State, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981). Cited in Anderson v. Municipality of Anchorage, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

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Chapter 05. Administration.

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- (9) definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute;
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- (11) certification and regulation of junk yards. (§ 6 ch 178 SLA 1978; am § 3 ch 77 SLA 1982)

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Article 6. Registration

Cited in N. Ct. Op. No. 2 (1982); Anderson v. Municipality of Anchorage, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

CORRECTION

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Article
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Cited in N
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(1982); And

Alaska State Legislature

REP. MAETISCHER
CO-CHAIRMAN

REP. MILO FRITZ
CO-CHAIRMAN

MEMBERS:
REP. MIKE MILLER
VICE CHAIRMAN
REP. BETTE CATO
REP. MIKE DAVIS
REP. PETER GOLL
REP. NIILLO KOPONEN

House of Representatives

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

M E M O R A N D U M

TO: House H.E.S.S. Committee

FROM: Linda Otey, Committee Aide

SUBJ: HB 262 "An act relating to child safety devices for motor vehicles: providing a child safety device loan program and providing for an effective date."

DATE: April 28, 1983

This legislation is similar to CSSB 163 currently in Senate Judiciary. CSSB 163 contains provisions for exemptions of commercial vehicles as well as a 30 day time frame for dismissal of the infraction upon proof of purchase or acquisition of an approved safety device or seatbelt. (CSSB 163 attached)

SECTION 1

28.05.095 Child Safety Devices (New section) HB 262 would require the use of child safety devices in motor vehicles in Alaska and would establish a loan program to make the devices available to the public through hospitals and birthing centers.

A person who is convicted of driving without having his child properly secured in a child safety device or seatbelt (depending on age) would be guilty of an infraction. If a person issued proof of having purchased a device within ten days, the court would dismiss the citation.

28.05.096 Child Safety Device Loan Program Established in the Department of Public Safety, Highway Safety Planning Agency directs the head of that agency to:

1. Provide to all hospitals and birthing centers the devices (subject to availability of funds) to be loaned at nominal fees;
2. Advertise the program to the public to educate about risks of injury or death when children are unrestrained; and
3. Police officers would be required to explain and advise (when stopping a driver) of the loan program.

28.05.097 Sale of Child Safety Devices Prohibits sale or installation of devices not in conformity with all federal standards.

SECTION 2

Effective one year after enactment.

Folger Content

<u>Left</u>	<u>Right</u>
Bill	Summary
Statutes	Memo from Director Smith, Highway Safety Planning
Fiscal Note/Public Safety	Alaska Child Passenger Safety Association
Fiscal Note/Dept. H&SS	Alaska Chapter of American Academy of Pediatrics
CSSB 163 (Transportation)	Misc. Professional Reports
Tennessee Statute	University of Colorado law review/mandatory restraint-use laws

Introduced: 3/11/83
Referred: Health, Education &
Social Services, Judiciary
and Finance

1 IN THE HOUSE

BY CLOCKSIN, SZYMANSKI AND KOPONEN

2

HOUSE BILL NO. 262

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to child safety devices for motor
7 vehicles; providing for a child safety device loan
8 program; and providing for an effective date."

8

9

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10

* Section 1. AS 28.05 is amended by adding new sections to read:

11

Sec. 28.05.095. CHILD SAFETY DEVICES. (a) A driver may not
12 transport a child in a motor vehicle [other than an emergency vehicle
13 or a bus] unless the driver has provided and properly secured each
14 child

15

Revised (1) less than four years of age in a child safety device
16 approved for infants by the United States Department of Transporta-
17 tion;

18

(2) between four and six years of age in a child safety
19 device approved for a child of that age and size by the United States
20 Department of Transportation, or in a seatbelt, as is appropriate for
21 the particular child.

22

(b) A person convicted of a violation of (a) of this section is
23 guilty of an infraction.

24

(c) If a person who violates (a) of this section by failing to
25 provide a child safety device or seatbelt files with the court, within
26 10 days after the issuance of a citation, proof of purchase or acqui-
27 sition of an approved child safety device or seatbelt, the court shall
28 dismiss the citation.

29

(d) Evidence of the conviction of a person for a violation of

1 (a) of this section or evidence of the failure to use a child safety
2 device or seatbelt as required by (a) of this section may be admitted
3 in a civil action as evidence of negligence.

4 Sec. 28.05.096. CHILD SAFETY DEVICE LOAN PROGRAM. (a) There is
5 established a child safety device loan program in the Department of
6 Public Safety, highway safety planning agency.

7 (b) The director of the highway safety planning agency shall

8 (1) provide to every hospital and birthing center in the
9 state, subject to the availability of funds, child safety devices to
10 be loaned to the public at nominal fees;

11 (2) disseminate materials, printed advertisements, and
12 radio and television messages

13 (A) to educate the public about the risks of injury to
14 and death of unrestrained infants and children in motor vehicles;

15 (B) to explain to the public the provisions of AS 28.-
16 05.095.

17 (c) A peace officer who stops a driver for an alleged violation
18 of AS 28.05.095 shall advise the driver of the loan program.

19 Sec. 28.05.097. SALE OF CHILD SAFETY DEVICES. A person may not
20 sell, offer for sale, or install in any motor vehicle a child safety
21 device not conforming to all applicable federal standards for the
22 device on the date of the sale or installation.

23 * Sec. 2. This Act takes effect one year after enactment.

Original sponsors: V.Fischer, Moss,
Josephson, et al

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE
2 CS FOR SENATE BILL NO. 163 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the use of child safety devices
7 in motor vehicles; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 28.05 is amended by adding new sections to read:

11 Sec. 28.05.095. CHILD SAFETY DEVICES. (a) Except as provided
12 in (b) of this section, a driver may not transport a child in a motor
13 vehicle unless the driver has provided and properly secured each
14 child

15 (1) less than four years of age in a child safety device
16 meeting the standards ^{approved by} of the United States Department of Transporta-
17 tion for a child safety device for infants;

18 (2) between four and six years of age in a child safety
19 device approved for a child of that age and size by the United States
20 Department of Transportation, or in a seatbelt, as is appropriate for
21 the particular child.

22 (b) This section does not apply to

23 (1) a mass transit vehicle, a school bus, an emergency
24 vehicle, or a taxicab or other commercial vehicle;

25 (2) a motor vehicle designed for and used primarily off the
26 highway;

27 (3) a child or class of children exempted by regulation
28 under AS 28.05.096;

29 (4) a child riding as a passenger in a motor vehicle in

1 or seatbelt and has forfeited the bail required by the citation; or
2 (3) provided the proof required by this subsection on a
3 prior occasion.

4 * Sec. 2. This Act takes effect one year after enactment.

Karen M. Crist
6260 E. 41st Court
Anchorage, AK 99504

April 20, 1983

APR 25 1983

Honorable Mae H. Tischer, Co-Chairman
House, Education & Social Services Committee
Fouch V
State Capitol
Juneau, AK 99811

Re: House Bill 262 - Child safety devices for motor vehicles

Dear representative Tischer:

You have information and statistics relative to the above-referenced bill so you should already be aware of the significant threat to young children posed by riding unrestrained in automobiles. It is our understanding that the main opposition to this bill is that "we do not need another law forcing people to protect themselves."

As concerned citizens, we would like to point out to you that we do not consider this a proposed requirement for people to protect themselves. This bill provides for the protection of small children who are unable to make decisions for themselves concerning their safety. There is a big difference. Since auto accidents are the leading cause of death for children, it is apparent that at present children are not being adequately protected in car travel. They should not be the victims of their parents' negligence.

We ask that you share this letter with the HESS Committee and do all that you can to facilitate passage of this bill.

Sincerely,

Karen M. Crist
Deborah A. McCall
Michael F. Shannon
Victoria Jones
Susan Evans
Susan McCall
Tom Heinzen
Roland Lemieux
Mary N. Ewart

Susan Maffa
Kimberly A. McCall
Kary Jay
K M Crist

Author has requested that this letter be read into the minutes of the mtg re/ HB 262

d.

Alaska State Legislature

Representative Mae Tischer
District 11
3305 Oregon Drive
Anchorage, Alaska 99503



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3759

House of Representatives

MAE TISCHER

25 March 1983

*Called 4/27
344-5478*

Robin Haetlieb
1331 W. 7th
Anchorage, AK. 99501

Dear Robin:

I appreciate your taking the time to inquire about my reasons for opposing SB 163. As my aide mentioned in her telephone conversation with you earlier, I share your concern regarding the number of children's deaths that could have been prevented through proper use of child restraint devices. I find it appalling that some parents thoughtlessly allow their children to ride in motor vehicles without adequate protection; however, our reaction to this problem appears to be different.

At face value, HB 262 and SB 163 would seem to correct the problem; in reality each of these bills would probably make some headway but in turn they would also create additional problems. For example, in order to determine if people were in compliance with the law, police officers would have to stop cars without "probable cause", meaning no observable violation of the law, such as a missing headlight, speeding, etc., had been noted. If the police were authorized to do this it would probably violate our constitutional rights; yet if they don't have this authority there really is no way to enforce the law. In short, a catch twenty-two.

I believe a better response to this dilemma would be for "concerned citizens" to work to make car seats available for loan through hospitals, doctors' offices, day care centers, etc., and attempt to make the public aware of the very real danger of not using safety devices for their children.

You also asked if a bill had been introduced which would provide infant seats on a loan basis to use in transporting babies home from the hospital. That provision is included in HB 262 and I have enclosed a copy of the bill for your review.

Thanks again for responding to my newsletter. I really appreciate your input and hope you will continue to inform me of your views regarding subjects of concern or of special interest to you.

Sincerely,

A handwritten signature in cursive script that reads "Mae".

Representative Mae Tischer
District 11

P.S. I'm sorry to have missed your call Robin. It would have been great to talk to you. Give my best to your Dad.

MEMORANDUM

State of Alaska

TO: Kevin K. Bruce, Special Assistant
Office of the Governor

DATE: December 21, 1982

FILE NO: 7:00 a.m.
apt.

TELEPHONE NO: 465-4371

FROM: Charles A. Smith, Director
Highway Safety Planning Agency
Department of Public Safety

SUBJECT: Letter from Dr. Lillibridge
Re: Mandatory Child Restraint
Use Legislation

We appreciate the opportunity to comment on Dr. Lillibridge's letter and to better acquaint you with issues with which you may not be familiar.

Dr. Lillibridge has nearly single-handedly brought the issue of mandatory child restraint usage to the attention of the public and the legislature. He is a dedicated physician and a champion of the welfare of Alaska's children. Highway Safety endorses Dr. Lillibridge's position and has supported his efforts to promote child restraint use. We are in total agreement with him that mandatory use legislation will have an impact that no other countermeasure can be hoped to equal.

The statewide traffic records system is in such disarray that we are unable to cite reliable traffic data here to support our position, but at the national level, anywhere from 800 to 1,000 children under 5 are killed every year in highway accidents. Perhaps even more dismaying are those children who are not killed outright but whose lives are damaged by permanently disabling and disfiguring injuries. As many as 90% of the fatalities and 70% of the severe injuries could be prevented by the proper use of child restraint devices.

At present, there are child restraint loaner programs active in Juneau, Sitka and Anchorage. These programs lend automobile restraints to parents of infants for a nominal fee, usually \$5.00, until the child reaches 20 pounds at, approximately, one year. The fee is waived in cases of extreme hardship. The source of funds for all three programs is the Federal Highway Safety Act of 1966, Section 402. The Highway Safety Planning Agency administers these funds for the State of Alaska. The Anchorage program, though funded through the "402" program, is administered through the Commissioner of Indian Affairs' highway safety program and is restricted to participation by Native Americans.

Recently, the Alaska Child Passenger Safety Association was formed and is in the process of incorporating. The ACPSA hopes to organize various groups around the State into one cohesive unit in order to better direct and intensify efforts on behalf of child passenger protection.

Other Alaskan organizations supporting these activities include the Alaska Chapter of the American Academy of Pediatrics (Dr. Lillibridge's group), the Alaska Medical Society, the Alaska Medical Auxiliary and the Alaska Nurses' Association. All the hospitals in the Anchorage area have representatives at the ACPSA meetings, and Bartlett Memorial is the agent for lending infant seats to newborns locally.

Kevin K. Bruce
December 21, 1982
Page 2

On December 10 and 11, public hearings on this subject were conducted in Anchorage and Fairbanks by Senate HESS. Attached is a list of those who were in attendance.

Under the 1983 Highway Safety Plan, this agency awarded a grant to the Municipality of Anchorage in excess of \$43,000 to develop a comprehensive education program on safety belt and child restraint use that we hope to be able to implement statewide after completion with a minimum of tailoring for various locales. In addition, we are co-sponsoring, with the Division of Public Health, a statewide teleconference in March to encourage the use of child restraints and to explain the possible consequences of failing to use the devices.

In summary, this agency supports Dr. Lillibridge's stance and applauds his efforts and the efforts of all those who are actively seeking child restraint legislation. We urge the Governor to give every consideration to sponsoring this legislation himself.

CAS:vkm

cc: Commissioner Sundberg
Department of Public Safety

Attachment

Form 01-006(a)

STATE OF ALASKA
OFFICE OF THE GOVERNOR

TO: Department of

- Administration
- Commerce & Economic Devel.
- Community & Reg. Affairs
- Education
- Environ. Conservation
- Fish & Game
- Health & Social Services
- Labor
- Law
- Military Affairs
- Natural Resources
- Public Safety
- Revenue
- Transportation & P.F.

ATTN: Highway SAFETY

- Correspondence Track. Sys.
- Return letter w/draft
- Return letter w/comment
- Reply direct
- Your information
- Call me
- Appropriate action
- As requested
- _____

REMARKS:

From: KEVIN L. BRUCE
Date: 5/2-15-82

American
Academy of
Pediatrics



Alaska Chapter

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

Alternate Chairman
Tom Porter, M.D.
Dept. of Pediatrics
Box 7-741
Anchorage 99510

Secretary-Treasurer
Charles Ryan, M.D.
3300 Providence Drive,
Suite 206
Anchorage 99504

RECEIVED

DEC 14 1982

RECEIVED
December 14 1982

GOVERNOR'S OFFICE

Mr Sheffield, please help us! HIGHWAY SAFETY
we little children are being killed and maimed
by our parents. They won't buckle us up when
we ride in the car. We are too little to do
it ourselves. Our parents think they own us.
When they stop the car quickly to avoid an
accident, we smash our faces on the dashboard.
It's not fair! Our right to live and to
have an intact face is ignored by our parents.

Our friends, the pediatricians, in 22 other
states have already persuaded their legislatures to
pass mandatory child auto restraint laws. Please
read the enclosed "Elements Desired for Legislation"
drawn from the best of other state's experience.
Our own Alaska State Troopers have helped draw up
these "Elements", also.

The programs do work - documentation enclosed.
Please help us!

Sincerely
The little children of Alaska

translated by CBS Lillibridge MD
State Chairman

RECEIVED
DEC 14 1982

ALASKA
CHILD PASSENGER SAFETY ASSOCIATION

GOVERNOR'S OFFICE

Fatal motor accident analysis. (1)

Washington State 1970-1979

39,500 accidents in which children were passengers.

6,300 were restrained; 2 killed. Death rate 0.0317%

33,200 were not restrained; 146 killed. Death rate 0.4397%

The death rate for unrestrained children was 13-fold increased over restrained children.

Twenty per cent of the unrestrained children were being held on an adult's lap but were killed. Nine out of every ten adults holding the child were not killed.

If all of the children had been properly restrained, how many would have died? Twelve, instead of 148.

One hundred thirty six children died needlessly because they were not properly restrained.

Profile of an accident.

The "typical" child who was killed would be a one year old male infant riding in the front seat of a passenger car without a restraint. The driver of the car was the mother, who was also not wearing a seat belt. The accident occurred between 8 a.m. and 3 p.m. within a few miles of home. The mother had not been drinking an alcoholic beverage. There were no defects in the family car that contributed to the accident. The accident occurred during daylight hours on a state route. The weather was clear or overcast and the surface was dry. In summary, the fatal accident involving a young child in Washington State usually occurred under ordinary conditions. (1)

- (1) "Fatal Motor Vehicle Accidents of Child Passengers from Birth through 4 Years of Age in Washington State" by Robert G. Scherz, Pediatrics, Vol. 68(4), October 1981, pg. 572-575.

CHILD PASSENGER SAFETY ASSOCIATION

Elements Desirable for Legislation

Every driver (parent, car pool driver, people from out of state. It is not the responsibility of the car rental agency, or taxicab driver, bus driver, etc.).

Transporting a child.

Under age five.

Any child unable to sit unaided shall be properly restrained in a child restraint system which meets the federally approved standards prescribed in 49 CFR 571.213. (This covers infants without specifying a specific age or level of development or weight. This is to make it easy for the enforcing officers to make that judgment).

Child must be properly secured according to the manufacturer's recommendation.

Any child who is able to sit unaided but under the age of five and transported in the front seat must be properly restrained in a child restraint system which meets the federal standards prescribed in 49 CFR 571.213.

Any child who is able to sit unaided but under the age of five transported in the rear seat must be properly restrained in a child restraint system which meets the federal standards prescribed in 49 CFR 571.213.

Children shall be carried only in seats intended for passengers.

Within the State of Alaska (statute not limited just to streets, highways, roads, byways, but off-road use as well, which is even more dangerous).

Infractions do not constitute contributory negligence. Infractions are not admissible as evidence.

Page 2

Seats must be properly installed.

People violating this statute are guilty of an infraction and assessed two points per occurrence (not per child).

Violators of this section shall be fined not to exceed \$60. A person found in violation of this section may, instead of paying the fine, submit proof of purchase subsequent to the violation or rental for not less than one year of an approved infant or child restraint system to the court. This shall be acceptable only for the first violation and if the acquisition of the restraint was subsequent to the violation. This option applies only to the first offense.

Exemptions to this statute include mass transit vehicles, school bus, taxi.

Children unable to use safety belts or child passenger restraints because of physical or mental handicaps. In this instance they shall be secured in their own specially designed apparatus.

Motorcycle, moped, other vehicles not required to be equipped with seat belts. Transport in a vehicle in which all seat belts are occupied but extra passengers are being carried. Emergency vehicles during an emergency.

DOCUMENTATION OF EFFECTIVENESS

TENNESSEE

User Rates for Children Under Four

1977 pre-law	9%
1978 (with law)	20%
1980 (with law)	29%

Deaths

pre-law	20-25/year
1980	14
1981	10 (only 1 fatality was in a child who was in an approved child restraint system)

Health Cost Containment

E.R. visit for car accident	\$50
Hospitalization	\$7-10,000
Funeral	\$2,000

MASSACHUSETTS

Usage of Seat Restraints	Education Only (1979)	Mandatory Use Laws (1980)
Age 1 year	41%	70%
2 years	22%	49%
3 years	12%	40%

Estimated savings to the family

\$1,100-\$55,000 per injury

American
Academy of
Pediatrics



February 10, 1983

Alaska Chapter

Chairman

Clinton B. Lillibridge,
M.D.
4001 Dale Street,
Suite 213
Anchorage, 99508

Alternate Chairman

Tom Porter, M.D.
Dept. of Pediatrics
Box 7-741
Anchorage 99510

Secretary-Treasurer

Charles Ryan, M.D.
3300 Providence Drive,
Suite 206
Anchorage 99504

FEB 14 1983

The Honorable Betty Cato
Pouch Y
Juneau, AK 99811

Dear Representative Cato:

Would it be possible for you to invite the legislators or their aids to meet directly with Christy Hughes while she is here in Alaska for the state-wide teleconference on child passenger safety?

Have you listened to the tapes or read the transcript of Senator Charlie Parr's hearing on this issue, which was held in December 1982 in Anchorage and in Fairbanks? A lot of important data and background information was presented at those hearings. The broad based support from the state troopers, the Academy of Pediatrics, the Medical Society, and the public health nurses is reflected in that report.

How can we get a bill presented? The elements which the Academy of Pediatrics at a national level, and the Alaska State Troopers feel would be important are included in that hearing.

There appears to be a great deal of support among the public for this legislation. How can we get it accomplished?

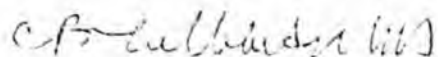
Senator Pat Rodey has indicated that he is interested. I have received letters from 43 senators and legislators this August which indicate their understanding of the magnitude of the problem.

Would you please telephone me at the office on

Representative Betty Cato
Page 2
February 10, 1983

my private line (561-1186) at your earliest convenience so that we may discuss this further.

Sincerely yours,



Clinton B. Lillibridge, M.D.
State Chairman

CL:sh

cc: Peggy Wilson, Child Passenger Safety Assoc.
Mrs. Carolyn Crouch, Anch. Medical Society Aux.
Sergeant Wm. Farber, Alaska State Troopers
Mrs. Sandra Mowrer, PHN

American Academy of Pediatrics



In support of Senate Bill 163
and House Bill 262

WHY DOES ALASKA NEED TOUGH CHILD PASSENGER SAFETY LEGISLATION?

Alaska Chapter

Chairman

Clinton B. Lillibridge,
M.D.
4001 Dale Street,
Suite 213
Anchorage, 99508

Alternate Chairman

Tom Porter, M.D.
Dept. of Pediatrics
Box 7-741
Anchorage 99510

Secretary-Treasurer

Charles Ryan, M.D.
3300 Providence Drive,
Suite 206
Anchorage 99504

1. THE GREATEST KILLER of KIDS is the CAR/TRUCK
 - a. More children are killed by motor vehicles than by the next two greatest killers combined--more than birth defects, congenital heart lesions, brain malformations, leukemia, cancer, etc. together.
 - b. Children under age 6 are PHYSICALLY more susceptible to HEAD INJURY. Twenty-five percent of children's weight is in their head (compared to 9 percent for adult). When the vehicle slows suddenly, the child is thrown HEADFIRST into the dashboard like an arrow. The child's SKULL is more FRAGILE, and BRAIN DAMAGE occurs more easily.
2. WOULD INTENSE EDUCATION ACHIEVE GOOD RESULTS?
 - a. No. Several other states have spent hundreds of thousands of dollars on TV, newspaper, pediatric office teaching, etc. with NO MEASURABLE DIFFERENCE IN USAGE or death rate, because young people (parents) naively believe accidents always happen only to other people.

3. WOULD A TOUGH LAW INCREASE USAGE and SAVE LIVES?

	<u>Pre-Law</u>	<u>With Law</u>
<u>Yes.</u> Massachusetts Usage:	14%	70%

	<u>Pre-Law</u>	<u>With Law</u>
<u>Yes.</u> Tennessee: 12 deaths/year		1 death/year

Yes. Washington: Death rate over 10 years and 39,600 accidents is 13 times greater for children riding loose than restrained.

Clinton B. Lillibridge, MD

MEMORANDUM

State of Alaska

TO: Kevin K. Bruce, Special Assistant
Office of the Governor

DATE: December 21, 1982

FILE NO:

TELEPHONE NO: 465-4371

FROM: Charles A. Smith, Director
Highway Safety Planning Agency
Department of Public Safety

SUBJECT: Letter from Dr. Lillibridge
Re: Mandatory Child Restraint
Use Legislation

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Kevin K. Bruce
December 21, 1982
Page 2

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~~Under the 1983 Highway Safety Plan, this agency awarded a grant to the Municipality of Anchorage in excess of \$43,000 to develop a comprehensive education program on safety belt and child restraint use that we hope to be able to implement statewide after completion with a minimum of tailoring for various locales. In addition, we are co-sponsoring, with the Division of Public Health, a statewide teleconference in March to encourage the use of child restraints and to explain the possible consequences of failing to use the devices.~~

In summary, this agency supports Dr. Lillibridge's stance and applauds his efforts and the efforts of all those who are actively seeking child restraint legislation. We urge the Governor to give every consideration to sponsoring this legislation himself.

CAS:vkm

cc: Commissioner Sundberg
Department of Public Safety

Attachment

Form 01-006(a)

STATE OF ALASKA
OFFICE OF THE GOVERNOR

TO: Department of

- Administration
- Commerce & Economic Devel.
- Community & Reg. Affairs
- Education
- Environ. Conservation
- Fish & Game
- Health & Social Services
- Labor
- Law
- Military Affairs
- Natural Resources
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- Revenue
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ATTN: Highway SAFETY

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REMARKS:

From: Kevin L. Grace

Date: 5/2-15-82

American
Academy of
Pediatrics



Alaska Chapter

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RECEIVED

DEC 14 1982

RECEIVED
December 14 1982

GOVERNOR'S OFFICE

Mr Sheffield, please help us! HIGHWAY SAFETY
we little children are being killed and maimed
by our parents. They won't buckle us up when
we ride in the car. We are too little to do
it ourselves. Our parents think they own us.
When they stop the car quickly to avoid an
accident, we smash our faces on the dashboard.
It's not fair! Our right to live and to
have an intact face is ignored by our parents.

Our friends, the pediatricians, in 22 other
states have already persuaded their legislatures to
pass mandatory child auto restraint laws. Please
read the enclosed "Elements Desired for Legislation"
drawn from the best of other states' experience.
Our own Alaska state troops have helped draw up
these "Elements", also.

The programs do work - documentation enclosed.

Please help us!

Sincerely

The little children of Alaska

translated by CB Lillibridge M.D.
State Chairman

RECEIVED
DEC 14 1982

ALASKA
CHILD PASSENGER SAFETY ASSOCIATION GOVERNOR'S OFFICE

Fatal motor accident analysis. (9)

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Any child unable to sit unaided shall be properly restrained in a child restraint system which meets the federally approved standards prescribed in 49 CFR 571.213. (This covers infants without specifying a specific age or level of development or weight. This is to make it easy for the enforcing officers to make that judgment).

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Any child who is able to sit unaided but under the age of five and transported in the front seat must be properly restrained in a child restraint system which meets the federal standards prescribed in 49 CFR 571.213.

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Children shall be carried only in seats intended for passengers.

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DOCUMENTATION OF EFFECTIVENESS

TENNESSEE

User Rates for Children Under Four

1977 pre-law	9%
1978 (with law)	20%
1980 (with law)	29%

Deaths

pre-law	20-25/year
1980	14
1981	10 (only 1 fatality was in a child who was in an approved child restraint system)

Health Cost Containmentment

E.R. visit for car accident	\$50
Hospitalization	\$7-10,000
Funeral	\$2,000

MASSACHUSETTS

Usage of Seat Restraints	Education Only (1979)	Mandatory Use Laws (1980)
Age 1 year	41%	70%
2 years	22%	49%
3 years	12%	40%

Estimated savings to the family

\$1,100-\$55,000 per injury

the only secure place
for a child in a car is in a crash-tested
safety seat...and that's a fact!

Where you can buy
child safety seats:

Regular or dis-
count department
stores Juvenile
furniture or baby
needs shops Some



new car dealers
Some hospital gift
shops Automobile
parts and accessory
dealers Catalog
sales through major
retailers

& facts



myth: A child riding in a car is safest in its mother's arms.

fact: In a sudden stop or crash, momentum will cause a 20 pound baby to weigh 400 pounds or more. You can't hold back that much weight. And if you're not wearing a seat belt, your body could crush a child against the dashboard.

myth: Regular seat belts are effective for protecting children.

fact: Children need restraints designed especially for them, because of their delicate bone structure. Fortunately, effective, crash-tested child restraining systems are available. Some models are safer than others, so buy carefully and make sure to follow enclosed instructions for attachment. If a safety seat is not available, however, be sure to use the car's regular safety belt system. Your child's safety depends on it.

myth: Childhood diseases pose a greater threat to my child's health than car accidents.

fact: Car accidents are the leading cause of death for children under five. Almost 1,000 children die each year and thousands more are seriously injured, some permanently. One survey showed that a large majority of those killed or injured in crashes could have been saved if they had been properly secured in a safety seat. It's ironic that so many parents who protect their children with inoculations and worry about every little sniffle or fever, still fail to protect them from the greatest threat to children's health – car accidents.



myth: In a serious car accident nothing will really protect a child.

fact: Elana Nailor of Falls Church, Virginia, was hit by another driver and rolled her car over three times. She was hospitalized and the car totaled. But her younger passenger, secured in a child safety seat, did not receive a scratch. Hundreds of incidents like this have demonstrated the effectiveness of child safety seats in serious car accidents. These reports are evidence that car seats really work to protect children in crashes – but they must be used, and used correctly.

myth: I cannot get my child to ride in a safety seat.

fact: Since safety seats elevate children from the car's regular seat, children in safety seats have a better view of their surroundings. One study showed that children riding in safety seats were better behaved and more contented than children who were allowed to roam around the car.

But it may take some persistence. You're best able to understand the risks involved when a child is not properly belted in. Your child's safety and your own peace of mind are at stake. You can set an example by always wearing your own seatbelt.

myth: I don't need to put my child in a safety seat for short trips.

fact: Most accidents happen within 25 miles of home. Even at low speeds a sudden stop or "fender-bender" can cause severe injury to a child who is not properly belted in. Placing your child in a safety seat every time can save a lot of heartbreak.



POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 262

"An act relating to the use of child safety devices in motor vehicles; providing for a child safety device loan program; and providing for an effective date."

BACKGROUND INFORMATION:

More Alaskan children are killed or injured in car accidents than any other single disease or type of accident. The Alaskan accidental mortality rate for children ages 1-4 years is 105% higher than the rest of United States; and 40% of these deaths are due to car accidents. National statistics have shown that the majority of deaths and injuries to children resulting from car accidents could be prevented if parents would "buckle up" their children.

POSITION:

Because children can't protect themselves, the Department fully supports mandatory child restraint laws. The Department believes that this bill is enhanced by its support for community education programs and car seat loaner programs.

Since the focus of this law is to encourage utilization of approved child restraints, the Department recommends that there be a designated minimum fine; and that the fine be sufficiently high enough to encourage violaters to purchase a car seat rather than pay the fine.

The Department is opposed to the exclusion of taxicabs and commercial vehicles because this action weakens the protection of children. Taxicabs are used primarily for short city driving. Most injuries to children in cars occur in short stop-and-go driving. In addition, the Department is opposed to allowing children who are not family members to ride in a vehicle that does not have enough seat belts. This action will allow the transporting of large numbers of children in car pools. Under this provision, five or more children could be legally crowded into one vehicle.

Recommended By:

E. S. Rabeau
E.S. Rabeau, M.D., Director
Division of Public Health

Date:

5/10/93

Approved By:

Robert London Smith
Robert London Smith, Ph.D.,
Commissioner, Department of
Health & Social Services

Date:

5/14/93

STATE OF ALASKA

FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHB 262
 Title: Child care restraints
 Sponsor: Rep. Clocksin et al
 Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: Health
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LANDS & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Vernellia Randall, MCH Nursing Coordinator Phone: 465-3104
 Division: Public Health Date: 5-10-83

Approved by Commissioner: Robert Gordon Smith, Ph.D. Date: 5/14/83
 Department: Health and Social Services

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

RECEIVED
DEC 14 1982

ALASKA
CHILD PASSENGER SAFETY ASSOCIATION

GOVERNOR'S OFFICE

Fatal motor accident analysis. (9)

Washington State 1970-1979

39,500 accidents in which children were passengers.

6,300 were restrained; 2 killed, Death rate 0.0317%

33,200 were not restrained; 146 killed, Death rate 0.4397%

The death rate for unrestrained children was 13-fold increased over restrained children.

Twenty per cent of the unrestrained children were being held on an adult's lap but were killed. Nine out of every ten adults holding the child were not killed.

If all of the children had been properly restrained, how many would have died? Twelve, instead of 148.

One hundred thirty six children died needlessly because they were not properly restrained.

Profile of an accident.

The "typical" child who was killed would be a one year old male infant riding in the front seat of a passenger car without a restraint. The driver of the car was the mother, who was also not wearing a seat belt. The accident occurred between 8 a.m. and 3 p.m. within a few miles of home. The mother had not been drinking an alcoholic beverage. There were no defects in the family car that contributed to the accident. The accident occurred during daylight hours on a state route. The weather was clear or overcast and the surface was dry. In summary, the fatal accident involving a young child in Washington State usually occurred under ordinary conditions. (1)

- (1) "Fatal Motor Vehicle Accidents of Child Passengers from Birth through 4 Years of Age in Washington State" by Robert G. Scherz, Pediatrics, Vol. 68(4), October 1981, pg. 572-575.

CHILD PASSENGER SAFETY ASSOCIATION

Elements Desirable for Legislation

Every driver (parent, car pool driver, people from out of state. It is not the responsibility of the car rental agency, or taxicab driver, bus driver, etc.).

Transporting a child.

Under age five.

Any child unable to sit unaided shall be properly restrained in a child restraint system which meets the federally approved standards prescribed in 49 CFR 571.213. (This covers infants without specifying a specific age or level of development or weight. This is to make it easy for the enforcing officers to make that judgment).

Child must be properly secured according to the manufacturer's recommendation.

Any child who is able to sit unaided but under the age of five and transported in the front seat must be properly restrained in a child restraint system which meets the federal standards prescribed in 49 CFR 571.213.

Any child who is able to sit unaided but under the age of five transported in the rear seat must be properly restrained in a child restraint system which meets the federal standards prescribed in 49 CFR 571.213.

Children shall be carried only in seats intended for passengers.

Within the State of Alaska (statute not limited just to streets, highways, roads, byways, but off-road use as well, which is even more dangerous).

Infractions do not constitute contributory negligence. Infractions are not admissible as evidence.

Page 2

Seats must be properly installed.

People violating this statute are guilty of an infraction and assessed two points per occurrence (not per child).

Violators of this section shall be fined not to exceed \$60. A person found in violation of this section may, instead of paying the fine, submit proof of purchase subsequent to the violation or rental for not less than one year of an approved infant or child restraint system to the court. This shall be acceptable only for the first violation and if the acquisition of the restraint was subsequent to the violation. This option applies only to the first offense.

Exemptions to this statute include mass transit vehicles, school bus, taxi.

Children unable to use safety belts or child passenger restraints because of physical or mental handicaps. In this instance they shall be secured in their own specially designed apparatus.

Motorcycle, moped, other vehicles not required to be equipped with seat belts. Transport in a vehicle in which all seat belts are occupied but extra passengers are being carried. Emergency vehicles during an emergency.

DOCUMENTATION OF EFFECTIVENESS

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American
Academy of
Pediatrics



February 10, 1983

Alaska Chapter

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

Alternate Chairman
Tom Porter, M.D.
Dept. of Pediatrics
Box 7-741
Anchorage 99510

Secretary-Treasurer
Charles Ryan, M.D.
3300 Providence Drive,
Suite 206
Anchorage 99504

FEB 14 1983

The Honorable Betty Cato
Pouch Y
Juneau, AK 99811

Dear Representative Cato:

Would it be possible for you to invite the legislators or their aids to meet directly with Christy Hughes while she is here in Alaska for the state-wide teleconference on child passenger safety?

Have you listened to the tapes or read the transcript of Senator Charlie Parr's hearing on this issue, which was held in December 1982 in Anchorage and in Fairbanks? A lot of important data and background information was presented at those hearings. The broad based support from the state troopers, the Academy of Pediatrics, the Medical Society, and the public health nurses is reflected in that report.

How can we get a bill presented? The elements which the Academy of Pediatrics at a national level, and the Alaska State Troopers feel would be important are included in that hearing.

There appears to be a great deal of support among the public for this legislation. How can we get it accomplished?

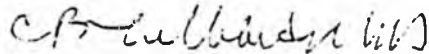
Senator Pat Rodey has indicated that he is interested. I have received letters from 43 senators and legislators this August which indicate their understanding of the magnitude of the problem.

Would you please telephone me at the office on

Representative Betty Cato
Page 2
February 10, 1983

my private line (561-1186) at your earliest convenience so that we may discuss this further.

Sincerely yours,



Clinton B. Lillibridge, M.D.
State Chairman

CL:sh

cc: Peggy Wilson, Child Passenger Safety Assoc.
Mrs. Carolyn Crouch, Anch. Medical Society Aux.
Sergeant Wm. Farber, Alaska State Troopers
Mrs. Sandra Mowrer, PHN

AP 502

Fatal Motor Vehicle Accidents of Child Passengers from Birth Through 4 Years of Age in Washington State

Robert G., Scherz, MD

From the Mary Bridge Children's Health Center, Tacoma, Washington

ABSTRACT. During the decade beginning Jan 1, 1970 and ending Dec 31, 1979, approximately 39,500 child passengers aged 0 to 4 years were in motor vehicle accidents reported and investigated in the State of Washington; 148 (0.4%) of the children were killed outright or subsequently died. Of the 39,500 children, approximately 6,300, or 16%, were wearing some type of safety restraint and only two, or 1:3,150, were killed. On the other hand, 33,200 were not wearing restraints and 146, or 1:227, were killed. If these ratios are extrapolated, one might conclude that if all the children had been wearing restraints, there would have been 93% fewer deaths. A detailed analysis was performed on 39 fatalities for the years 1977, 1978, and 1979. Fatal accidents involving young children in Washington State usually occurred under ordinary circumstances on dry roads at low speeds during daylight hours and were unrelated to alcohol usage. *Pediatrics* 68: 572-575, 1981; *motor vehicle accidents, child restraints.*

passengers from birth through 4 years of age in investigated accidents was approximately 39,500 during that period.²⁻⁵

Review of data collected from the Washington State Seat Belt study suggests that the cumulative number of children aged 0 to 4 years wearing some sort of restraint at the time of the accident was approximately 6,300 or 16% of the passengers. Approximately 33,200 were not wearing a restraint. During the last ten years, only two of the children wearing a restraint were killed (ratio of fatal injuries to total passengers 1:3,150). On the other hand, there were 146 children aged 0 to 4 years not restrained who were killed (ratio of fatal injuries to total passengers 1:227). If all of them had worn restraints, there might have been 93% fewer deaths.

Motor vehicle accidents are the leading cause of accidental death of young children in the United States. In the 1970s, 16,820 children 0 to 4 years of age were killed in motor vehicle-related accidents.¹ The data in this article were tabulated from reports and investigations generated by the Washington State Patrol for motor vehicle accidents involving children in Washington State from 1970 through 1979.

During the last ten years, from Jan 1, 1970 through Dec 31, 1979, 148 children 0 to 4 years of age received fatal injuries as passengers in motor vehicles in Washington State. Although the exact number of child passengers involved in the accidents is not known, data collected by the Washington State Patrol indicate that the number of child

MATERIALS AND METHODS

Investigation of motor vehicle accidents in Washington State is required for all injury-producing accidents and for accidents that entail property damage of \$300 or more. The report form includes information relative to the use of seat belts by the driver and all other passengers. Prior to 1979, the report form did not differentiate between seat belt, seat belt and shoulder belt, and child restraint. The reports did not indicate whether the restraints were used properly or whether a child was restrained properly within the seat. The author reviewed all computer printouts relating to the use of seat restraints by children for the period 1970 through 1979.

To gain additional insight into characteristic features of the accidents that result in fatalities, the State of Washington Uniformed Police Traffic Collision Reports of 39 fatalities of children under age 5 years (that occurred during the years 1977, 1978, and 1979) were reviewed in detail.

Received for publication July 21, 1980, accepted Feb 11, 1981. Reprint requests to (R.G.S.) Mary Bridge Children's Health Center, 311 South L St. Tacoma, WA 98405. PEDIATRICS (ISSN 0031 4005). Copyright © 1981 by the American Academy of Pediatrics.

PROFILE OF FATAL ACCIDENTS

The profile for the "typical" child who was killed is as follows. The child was a 1-year-old male infant riding in the front seat of a passenger car without a restraint. The driver of the car was the mother who was not wearing a seat belt. The accident occurred between 8 AM and 3 PM within a few miles of home. The mother had not been drinking an alcoholic beverage. There were no defects in the family car that contributed to the accident. The accident occurred during daylight hours on a state route. The weather was clear or overcast, and the surface was dry (Tables 1 to 4).

The fatal accident involving a young child in Washington State usually occurred under ordinary conditions.

This profile is different from the general configuration for fatal accidents in the State of Washington during 1978.⁵ For instance, during 1978, 27% of the drivers of motor vehicles involved in fatal accidents in Washington State were women; however, in fatal accidents relating to children in this study, 65% of the drivers were women, and 60% of the women were mothers. In general, 22% of the drivers involved in motor vehicle accidents wore restraints; however, in this study only 10% of the drivers of the motor vehicles involved in fatal accidents were wearing a restraint of some kind. In general, 41% of the fatal accidents in the state occurred during daylight hours; however, 75% of the child-related

TABLE 1. Children Involved in Fatal Motor Vehicle Accidents in Washington State, 1977-1979

Age	No. of Children
<1 yr	14
1 yr	6
2 yr	11
3 yr	2
4 yr	6
Total	39

TABLE 2. Profile of Fatal Motor Vehicle Accidents Involving Children in Washington State, 1977-1979

Vehicles	
Family car and another motor vehicle	
Neither vehicle had significant mechanical defects	
Driver	
Mother or father a driver	
Driver had not been drinking	
Driver was not using a seat belt	
Child	
Riding unrestrained in front seat	
Accident conditions	
Low speed (<65 kph or 40 mph)	
State route	
Near home	
Daylight (between 8 AM and 3 PM)	
Dry weather	

TABLE 3. Fatal Motor Vehicle Accidents Involving 39 Children in Washington State, 1977-1979

Child Fatality Data	No. of Children
Sex	
Male	21
Female	18
Seat position	
2 Front	9
3 Front	15
4 Back	6
5 Back	3
6 Unknown	0
Ejected	14
Held in lap	8
Restrained	2
Not restrained	37

TABLE 4. Driver Data in Fatal Motor Vehicle Accidents Involving 39 Children in Washington State, 1977-1979

Driver Data in Fatal Accidents	Total
Relationship to child	
Mother	22
Father	6
Grandfather	3
Friend	8*
Alcohol consumption	
Had been drinking	4
Driving while intoxicated	3
Wearing seat belt	
Yes	3
No	32
Unknown	4

* Two of eight were women whose names were different from the victim, but lived at same address and "could" have been the mother.

accidents were during daylight hours. In general, 27% of the fatal accidents occurred on state routes; however, in the child-related fatalities, 62% were on state routes. Of all fatal accidents in 1978, 48% included at least one driver who had been drinking and 38% of the drivers were driving while intoxicated. In 29% of the accidents in which children were fatally injured, one of the drivers had been drinking; in only 12% of the accidents, the driver of the car in which the child was killed had been drinking (Table 4).

FATALITIES OF YOUNG CHILDREN WEARING RESTRAINTS

Two of 39 children in this study were killed while wearing a restraint of some type. Actually, these were the only two children aged 0 to 4 years reported by the Washington State Patrol who were wearing restraints and were involved in fatal accidents during the ten years from January 1970 through December 1979.

The first case involved a 1-year-old child in a

restraint that was not defined, and it is not known whether or not it was an approved child restraint system. In the second fatality, the 2-year-old child was not wearing an approved restraint system, but rather a lap belt with a pillow between the belt and his abdomen. It is conceivable that if the child had been in a child restraint device with a shell-like protection on the sides, he might not have been fatality injured.

The proper use of approved crash-tested car seats provides the best currently available protection for infants and young children in motor vehicles.⁷ However, in order to provide adequate protection, it is essential that they be installed and used according to manufacturers' instructions.⁸

LAP PASSENGER

Another interesting observation was that eight of 39 fatalities occurred when the child was held in the lap of another passenger. In seven of eight instances, the person holding the child survived, and in one instance the grandmother and the child she was holding were killed. Five of the eight children who were crushed were less than 1 year of age. In fact, five of 14 infants less than age 1 year were killed by being crushed by the person on whose lap they were sitting at the time of the crash. The bias in mortality in this survey was toward the infant in that 20 of 39 children killed were 1 year of age and younger (Table 1). The lap position appears to be an important factor in this bias. The increased risk of death with decreasing age of the child is compatible with observations by Baker,⁹ who reported extremely high death rates in the first year of life, especially for children less than 6 months of age.

This study supports the concept that on-lap travel places the child at increased risk of being injured or killed. In a large observational survey, Williams¹⁰ found 145 of 344 (42%) infants less than 1 year of age traveling on a lap.

ADDITIONAL OBSERVATIONS

In the investigated accidents only one of the motor vehicles involved in a fatal accident had a defect that contributed to the accident. The accidents were more likely to occur during the week than on the weekend (29/39) and during daylight hours (28/39). The weather was clear or cloudy and the road surface was usually dry (30/39). The location was usually a state route (26/39); the least common site for a fatality was an interstate highway (2/39).

Of the children involved in the car accidents, 64% were retained within the motor vehicle; however, 36% were ejected from the motor vehicle or fell out: nine from the front seat, four from the back seat,

and one child's position at the time of the accident was unknown. Of the children killed, 28 were riding in the front seat; ten were in the back seat, and one child's position was not stated. Although fewer children in the rear seat were killed in motor vehicle accidents, it is apparent that riding unrestrained in the back seat does not assure survival (Table 3).

DISCUSSION AND COMMENT

This survey indicates that the restraint of young children in motor vehicles may be accompanied by a significant reduction in their fatal injuries. In Washington State during the last ten years, no child passengers less than 1 year of age who were restrained at the time of the accident have died. Furthermore, no children aged 0 to 4 years who were restrained in the back seat of a vehicle have died. The Washington Seat Belt Study did not provide information about the type of restraint used. Undoubtedly a variety of restraints were used; however, the types of restraints were not well documented and therefore could not be determined by review of the data.

Programs aimed to increase usage of restraint systems for young children should be directed at parents who are most often the operators of the motor vehicles involved in fatal accidents (Table 4). It should be emphasized to them that accidents fatal to young infant/child passengers usually occur in circumstances in which the family automobile is used for ordinary travel near home. Preferred infant/child automobile restraints for children who weigh 18 kg (40 lb) or less are those that meet or exceed the critical elements of the National Highway Traffic Safety Administration's 1978 proposed revision to the Federal Motor Vehicle Safety Standard 213. The revision went into effect Jan 1, 1981.¹¹ The restraint selected should perform satisfactory in dynamic tests or simulated crash tests.¹²

Children who weigh less than 9 kg or who are less than 9 to 11 months old should be strapped into a carrier that is then belted to the vehicle. The infant rides in a semireclining position, facing the rear of the vehicle. Infants and toddlers aged more than 9 to 11 months or weighing more than 9 kg should ride in an approved automotive safety seat. Current lists of approved automotive seats and infant carriers may be obtained from a variety of organizations such as the American Academy of Pediatrics, Physicians for Automotive Safety, and Action for Child Transportation Safety.

For children who weigh more than 18 kg (40 lb), the standard seat belt is adequate as a primary protection device. The shoulder belt should be used when the child is large enough for it to fit properly over the shoulder and chest. If the shoulder belt

crosses the face or neck, it should be placed behind the child.

Beginning in the 1980s, according to the National Highway Traffic Safety Administration, a branch of the Department of Transportation, newly manufactured cars sold in the United States will be required to have built-in passenger restraints, either air bags or seat belts, that do not have to be buckled. However, the passive restraint systems were devised primarily for front seat occupants who are of adult size. Passive restraints in lieu of child restraint systems designed specifically for young children should not be relied on for protection.¹³

Therefore, it is imperative that the pediatrician accept the responsibility for helping to educate parents to obtain and use available and proven child passenger restraints; in this way the number one cause of disabling injury and death to infants and children may be prevented.

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MY COLD

Gag
cough
sneeze
wheeze

I have a cold!
I just can't, please!
No matter what they
have me take.
I have a cold!
I just can't take.

Cough
wheeze
gag
sneeze

I have a cold!
I just can't, Please!!!

—Lori Anderson

Children Killed in Falls from Motor Vehicles

Allan F. Williams, PhD

From the Insurance Institute for Highway Safety, Washington, DC

ABSTRACT. In 1978 in the United States, 38 children aged 5 years or younger were killed when they fell from the passenger compartments of moving motor vehicles not involved in crashes. Twenty-eight children (74%) were boys. Eighteen (47%) were 2 years old; 35 (92%) were aged 1 to 3 years. Thirty-six children fell out through doors, one fell out of a window, and one fell through a hole in the floor. Sixteen falls occurred when the driver was making a turn or going around a curve, nine when someone opened the door, seven when the driver was proceeding straight ahead, five when the driver was backing out of a driveway, and one when the driver was swerving. All 38 children killed in falls from vehicles were unrestrained. Use of seat belts or child restraint systems would prevent falls even if doors came open, as well as providing protection in crashes. A recent study has shown that pediatricians, by routinely counseling parents to restrain children in cars, can have some effect in increasing child restraint use. Pediatricians should also encourage parents to transport children in rear seats and to check at the start of trips to ensure that all doors are completely closed and locked. *Pediatrics* 68:576-578, 1981; *motor vehicles, falls, injuries.*

In 1978, 345 deaths in the United States resulted from people falling or jumping from moving motor vehicles not involved in crashes.¹ These cases were identified through the Fatal Accident Reporting System.² Information on the cases was obtained from the Fatal Accident Reporting System file and from police reports.

Of the 345 people killed in falls and jumps, 201 had been traveling on motor vehicle exteriors and the other 144 had been in passenger compartments. Only five of the 201 falls or jumps from vehicle exteriors involved children aged 5 years or younger. However, a large percentage of people who fell from passenger compartments were children of these ages. Of the 144 people who fell or jumped from

passenger compartments, no children aged 5 years or younger were included in the 40 who jumped, but 38 (48%) of the 79 who fell were in this age group. For 25 people, including six children aged 5 years and younger, it was not known whether they fell or jumped. This paper presents information on the 38 incidents in which children were killed in falls from the passenger compartments of moving vehicles.

Of the 38 children 28 (74%) were male; 18 (47%) of the children were 2 years old; and 35 of 38 incidents involved children who were aged 1 to 3 years.

It should be noted that very few children older than age 5 were killed in falls from passenger compartments in 1978. Only three of the other 41 people killed in falls were aged 6 to 14.

Information on seating position in the vehicle was known for 35 of 38 children: 27 (77%) were in front seats and eight (23%) were in rear seats.

The Table summarizes actions that preceded falls from passenger compartments. Sixteen (42%) of the falls occurred when the drivers were making a turn or going around curves, so that there was lateral inertial loading of the door that opened. In 2 of the 14 cases in which seating position was known, the child was located next to the door that came open. Ten children were in the right front seat of vehicles being steered to the left; two were in the right rear seat of vehicles turning left; one was in the left rear seat of a vehicle making a right turn; and in one case the driver's door opened during a right turn and a child in the right front seat fell out. In many of these incidents it is likely that in addition to the lateral inertial loading, the door was also loaded by the child as the car turned. However, in only one case was there indication of this in the police reports. In another case, it was noted that the child had been playing with the door; in a third case, the door reportedly was not closed.

Nine children fell out of doors that were opened by someone. In six cases, the child who fell opened the door, but in three cases the doors were opened

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TABLE. Actions That Preceded Children Falling from Passenger Compartments

Action	N (%)
Vehicle turning corner or going around curve	16 (42)
Someone opened the door	9 (24)
Vehicle proceeding straight ahead	7 (18)
Vehicle backing from driveway	5 (13)
Vehicle swerving	1 (3)
Total	38 (100)

by someone else. In one such case, a 4-year-old child in the rear seat opened the door and a 2-year-old child fell out. In another case, the driver opened the door to scare a pursuing dog, and his 3-year-old daughter went out the door. In the third case, a car that had been parked in a parking lot began to move backwards. A bystander opened the door and applied the brakes, and the lone occupant of the car, a 3-year-old boy, fell out and was killed.

In seven instances, children fell from vehicles that were being driven straight ahead on the road. One child went out a window, another through a hole in the floor. In the other five incidents, it was reported only that the door "came open." One of these doors was found to be defective.

Five falls occurred when the driver was backing out of a driveway at the start of a trip. It is likely in these cases that doors had not been closed completely. In one case, it was noted in the police report that the child was leaning against the door.

One incident occurred when the brakes failed and the driver attempted to stop the car by driving over a curb and up an embankment. The driver fell out as the car swerved, and the child subsequently fell.

COMMENT

Preventing doors from opening through changes in vehicle designs and vehicle inspection programs have been discussed elsewhere.¹ Pediatricians can do the following to increase the protection of children in cars.

1. Encourage parents to ensure that all children they transport are restrained by vehicle seat belts or properly used child restraints. All 38 children killed in falls from vehicles were unrestrained. Use of seat belts and child restraint systems is effective in providing protection against crash injuries. Their use would also prevent falls from noncrashing vehicles, even if doors came open. Restraints provide other benefits as well. They are important in preventing noncrash injuries that occur when children fall *within* vehicles during swerves and sudden turns, or when they strike the dashboard in sudden stops.³ Children traveling in restraint systems have been shown to be better behaved and more man-

ageable than unrestrained children,⁴ and restraints prevent crashes that occur when the driver is distracted by the child's movement or actual physical interference with the driver or with vehicle controls.⁵

Surveys have shown that very few children traveling in vehicles are restrained⁵ and that very few pediatricians counsel parents to use restraints when transporting their children.⁷ There is now scientific evidence that pediatricians can have some effect in increasing the use of child restraints⁶; they should routinely encourage parents to protect their children in cars and instruction should be provided. Pediatricians should also support child restraint laws, which have been shown to be somewhat effective in increasing child restraint use.^{9,10}

2. Encourage parents to transport children in rear seats. Children restrained in rear seats are provided the greatest crash protection.¹¹ When vehicles are in motion, children in rear seats are more difficult for drivers to supervise than are those in front. However, restraints greatly reduce the necessity for close supervision of children, and many automobiles do not have rear doors. Children in front seats apparently have a higher risk of falling from vehicles. More than 75% of the fatal falls in the present study involved children in front seats, whereas observational surveys have indicated that the majority of children aged 1 to 3 years travel in rear seats.^{6,12}

3. Encourage parents transporting children to check at the start of trips to make certain that all doors are completely closed and locked. This is important when the children being transported are aged 1 to 3 years, and especially for 2-year-old children, and boys. Fatal falls from passenger compartments predominantly involved boys; they are probably more active and exploratory in vehicles than girls.

Motor vehicle travel results in more deaths to children than any single disease. Adoption of these three practices would greatly reduce this toll.

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A NEW BREED OF NURSES NEEDS TO BRING NURSING BACK TO THE BEDSIDE

What are we offered today by the aggressive new breed of leaders and educators in nursing? An angry, dwindling profession, failing with increasing frequency to meet the needs of patients and physicians and in the process making themselves and everyone else miserable. The idealistic young people who come into the profession to actually nurse patients are sometimes made to feel like Aunt Jemimas, become discouraged and leave, or, if they remain, are denied status, promotions and raises.

The "new model" nursing leaders and educators pursue higher status, higher incomes, more respect and recognition—as indeed most of us do. There's nothing wrong with that. What is damaging is the mode of attack.

By striving to capture some independent middle ground between classical nursing and medical practice, nursing leaders threaten to make of their professionals neither nurses nor physicians, fit only to cause trouble: trouble for people who really want to nurse, trouble for physicians and administrators who can't get the help they need and, most of all, trouble for patients, who often cannot get timely medicines and competent ministrations without hiring a private-duty nurse. And even then competence is far from assured.

Many nursing leaders and educators seem intent on abandoning a badly needed profession in the search for a new category of health-care professional that no one has asked for and hardly anyone needs. They have not merely neglected and downgraded classical, basic nursing; they have also sought to restrict entry into the profession by raising the standards of accreditation of schools of nursing and of licensure of individuals in many instances beyond what is necessary for the basic skills that are in such short supply.

In short, they want not only to take nursing away from the bedside but also to see that no one else steps in to take their place. And all this is done, predictably, "to improve patient care"—the patient is being abandoned for his own benefit.

The manifold discontents consequent upon such policies and actions are blamed—where else?—on The Doctors, those overpaid, arrogant, narcissistic chauvinists who stand between the new breed of nurses and the fulfillment of their goals, which I take to include something akin to professional equality with physicians, patient care to be decided by consensus and rendered by—who? Indeed, the more adamant members of the new breed will forthrightly state that their real mission is to protect patients from physicians, along with, if I have scanned their literature fairly, a great deal of gratuitous psychologizing and administrative theory.

No wonder nursing is a troubled profession. Small wonder that doctors and administrators are getting upset and that patients are confused. One can only hope that common sense and the plain need for basic nursing will somehow bring us back to calm reality and some measure of comity.

Nursing is a noble profession, and an essential one. Nurses deserve decent salaries and more realistic pay structures, along with status, recognition and security. If we do our best to provide these things, and if the more strident leaders of the new breed of nurses will quiet down and let doctors doctor and nurses nurse, we'll all be a lot better off, especially patients.

A. D. Roberts, MD
Associate Dean
Southwestern Medical School
University of Texas Science Center Dallas
June 5, 1981

From *The New York Times*, June 25, 1981.

AGE DISTRIBUTION VERSUS INJURY SEVERITY AND RESTRAINT ANALYSIS
 THE DATA USED IS ALL ACCIDENT PARTICIPANTS WHO EXPERIENCED AN
 INJURY OR FATALITY AND FOR WHOM THE AGE WAS KNOWN FOR THE
 YEARS 1977, 1978, 1979

17:00 TUESDAY, MARCH 22, 1983

FREQUENCY BAR CHART

SAFEQT	AGE		FREQ	CUM. FREQ	PERCENT	CUM. PERCENT
ADULT RESTRAINT	UNDER 5 YEARS		17	17	0.12	0.12
	5 TO 9 YEARS		13	30	0.09	0.21
	10 TO 14 YEARS		11	41	0.08	0.28
	15 TO 19 YEARS	XX	122	163	0.84	1.13
	20 TO 24 YEARS	XXX	169	332	1.17	2.29
	25 TO 29 YEARS	XXX	162	494	1.12	3.41
	30 TO 34 YEARS	XXX	146	640	1.01	4.42
	35 TO 39 YEARS	XX	76	716	0.53	4.95
	40 TO 44 YEARS	X	35	751	0.24	5.19
	45 TO 49 YEARS	X	39	790	0.27	5.46
	50 TO 54 YEARS	X	34	824	0.23	5.69
	55 TO 59 YEARS	X	39	863	0.27	5.96
	60 TO 64 YEARS		15	878	0.10	6.07
	65 TO 69 YEARS		9	887	0.06	6.13
	70 TO 74 YEARS		4	891	0.03	6.16
75 AND OVER		1	892	0.01	6.16	
CHILD RESTRAINT	UNDER 5 YEARS		12	904	0.08	6.24
	5 TO 9 YEARS		0	904	0.00	6.24
	10 TO 14 YEARS		0	904	0.00	6.24
	15 TO 19 YEARS		0	904	0.00	6.24
	20 TO 24 YEARS		0	904	0.00	6.24
	25 TO 29 YEARS		0	904	0.00	6.24
	30 TO 34 YEARS		1	905	0.01	6.25
	35 TO 39 YEARS		0	905	0.00	6.25
	40 TO 44 YEARS		0	905	0.00	6.25
	45 TO 49 YEARS		0	905	0.00	6.25
	50 TO 54 YEARS		0	905	0.00	6.25
	55 TO 59 YEARS		0	905	0.00	6.25
	60 TO 64 YEARS		0	905	0.00	6.25
	65 TO 69 YEARS		0	905	0.00	6.25
	70 TO 74 YEARS		0	905	0.00	6.25
75 AND OVER		0	905	0.00	6.25	
HELMET USED	UNDER 5 YEARS		0	905	0.00	6.25
	5 TO 9 YEARS		4	909	0.03	6.28
	10 TO 14 YEARS	X	36	945	0.25	6.53
	15 TO 19 YEARS	XXX	149	1094	1.03	7.56
	20 TO 24 YEARS	XX	102	1196	0.70	8.26
	25 TO 29 YEARS	X	48	1244	0.33	8.59
	30 TO 34 YEARS		13	1257	0.09	8.68
	35 TO 39 YEARS		15	1272	0.10	8.79
	40 TO 44 YEARS		4	1276	0.03	8.81
	45 TO 49 YEARS		6	1282	0.04	8.86
	50 TO 54 YEARS		1	1283	0.01	8.86
	55 TO 59 YEARS		1	1284	0.01	8.87
	60 TO 64 YEARS		0	1284	0.00	8.87
	65 TO 69 YEARS		0	1284	0.00	8.87
	70 TO 74 YEARS		1	1285	0.01	8.88
75 AND OVER		0	1285	0.00	8.88	

$\frac{17}{12} = \frac{210}{239}$
 7.1%
 5.0%
 12%

AGE DISTRIBUTION VERSUS INJURY SEVERITY AND RESTRAINT ANALYSIS
 THE DATA USED IS ALL ACCIDENT PARTICIPANTS WHO EXPERIENCED AN
 INJURY OR FATALITY AND FOR WHOM THE AGE WAS KNOWN FOR THE
 YEARS 1977, 1978, 1979

17:00 TUESDAY, MARCH 22, 1983

TABLE OF AGE BY INJURY

AGE	INJURY				TOTAL
	UNKNOWN	FATAL	MINOR IN JURY	MAJOR IN JURY	
FREQUENCY					
PERCENT					
ROW PCT					
COL PCT					
UNDER 5 YEARS	0	9	259	60	328
	.	0.06	1.79	0.41	2.27
	.	2.74	78.96	18.29	
	.	2.45	2.31	2.08	
5 TO 9 YEARS	0	6	328	87	421
	.	0.04	2.27	0.60	2.91
	.	1.43	77.91	20.67	
	.	1.63	2.92	3.02	
10 TO 14 YEARS	1	13	430	163	606
	.	0.09	2.97	1.13	4.19
	.	2.15	70.96	26.90	
	.	3.54	3.83	5.65	
15 TO 19 YEARS	0	70	2325	644	3039
	.	0.48	16.07	4.45	21.01
	.	2.30	76.51	21.19	
	.	19.07	20.73	22.34	
20 TO 24 YEARS	1	87	2445	663	3195
	.	0.60	16.90	4.58	22.08
	.	2.72	76.53	20.75	
	.	23.71	21.80	23.00	
25 TO 29 YEARS	0	55	1769	436	2260
	.	0.38	12.23	3.01	15.62
	.	2.43	78.27	19.29	
	.	14.99	15.77	15.12	
30 TO 34 YEARS	3	31	1190	248	1469
	.	0.21	8.23	1.71	10.15
	.	2.11	81.01	16.88	
	.	8.45	10.61	8.60	
35 TO 39 YEARS	1	20	713	169	902
	.	0.14	4.93	1.17	6.23
	.	2.22	79.05	18.74	
	.	5.45	6.36	5.86	
40 TO 44 YEARS	0	19	487	112	618
	.	0.13	3.37	0.77	4.27
	.	3.07	78.80	18.12	
	.	5.18	4.34	3.88	

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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.¹ 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.² 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.³

A growing awareness of this public health problem has resulted in passage of legislation mandating the use of CRDs in two states⁴ and proposed legislation in twenty-eight others.⁵ 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-

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.⁶ 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.⁷ Colorado contributed fourteen fatalities and 835 recorded injuries to that toll.⁸ 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.⁹ 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.¹⁰ 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.¹¹ 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

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 60,400 pre-schoolers injured by motor vehicles were transported to emergency rooms in 1979. Telephone interview with Grace Hazzard, 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.¹⁸ 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.¹⁹

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.²⁰ 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 1984.²¹ 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.²² Furthermore, airbags will provide little protection in side- and rear-impact collisions and rollovers.²³

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 NHTSA, *An Evaluation of Adult Clasp Strength for Restraining Lap-Held Infants*, discussed in NHTSA 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. § 571.208 (1979).

22. One survey found that about seventy percent of the nearly 9000 children observed in motor vehicles were riding in the back seat. Riesinger & 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.²⁴

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.²⁵ 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.²⁶ 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.²⁷ 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,²⁸ for example, that Congress was forced to repeal the measure less than a

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 1114.

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.²⁹ 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.³⁰ 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: Tennessee³¹ and Rhode Island.³² 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.³³ Exemptions are allowed for children riding on other passengers' laps, and for children riding in recreational vans and certain trucks.³⁴ The penalty for breaking this law is a moderate fine; and proof of the violation cannot be raised in civil suits for negligence.³⁵

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 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.

(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 "babes-in-arms" exemption.³⁶ Holding a child in a passenger's arms has been shown to be an entirely inadequate substitute for the use of a restraint,³⁷ and there is hope among the original sponsors of the Tennessee law that this exemption will be repealed at some future date.³⁸ Unfortunately, similar provisions were included in bills introduced in four other states.³⁹

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.⁴⁰

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 1980.⁴¹ 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 Interaction 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.⁴³ 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.⁴⁴ A more stringent bill, to be introduced in the South Dakota legislature,⁴⁵ 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.⁴⁶ 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.⁴⁶ These age and weight limitations provide convenient lines for the legislators to draw, since they encompass the class

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. 156 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 sponsors); 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.⁴⁷ 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.⁴⁸ 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,⁴⁹ 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.⁵⁰

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,⁵¹ or to the drivers of all vehicles which are registered in the enacting state.⁵² One novel variation is the New York proposal,⁵³ 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,⁵⁴ and on the practice of buckling one seatbelt around two people.⁵⁵ One exemption under consideration in some states allows children with medical problems

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.⁵⁶ To avoid possible abuse of this provision, a doctor's certificate of exemption would be required by some statutes.⁵⁷

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.⁵⁸

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,⁵⁹ is not unreasonable when it is consid-

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 3. See also L. Schneider, J. Melvin, C. E. Cooney, *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.⁶⁰

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.⁶¹ 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.⁶² 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 law⁶³ 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

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. HHS STATUS REPORT 7 (May 17, 1979).

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

62. Robert E. Vanderbeek, 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." HHS STATUS REPORT 6 (May 17, 1979).

63. See, e.g., CALIF. 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.⁶⁴ This authority is an inherent aspect of the state's sovereignty and is known as its police power.⁶⁵ 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.⁶⁶

A Legitimate Objective

An appropriate state objective has been held to be any one which promotes or protects the public welfare.⁶⁷ 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.⁶⁸ More recently, the public welfare concept has been expanded to include rent control laws,⁶⁹ anti-deceptive credit practice laws,⁷⁰ and anti-billboard and landmark preservation statutes

64. See *Berman v. Parker*, 348 U.S. 26, 32 (1954); *First 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 (1935) 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 (1975).

70. *Birkenfield v. City of Berkeley*, 17 Cal.3d 129, 550 P.2d 1001, 130 Cal. Rptr. 465 (1976).

designed to protect the aesthetic features of an area.⁷¹

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.⁷²

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.⁷³ 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.⁷⁴ The Colorado Supreme Court's discussion in the case of *Love v. Bell*⁷⁵ is typical of many of these opinions. As with most of the courts across the country which addressed the problem, the Colorado

71. *Penn Central Transp. Co. v. New York*, 438 U.S. 104, 129 (1978); *John Dannelly & 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. 511, 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.⁷⁶ 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."⁷⁷ 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."⁷⁸ 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.⁷⁹

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.⁸⁰ 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*, 56 Misc. 2d 388, 288 N.Y.S.2d 931 (1968) (state has an interest in preserving strong, healthy citizens) and *State v. Mele*, 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.⁸¹ 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.⁸²

Parens Patriae. The state's interest in the well-being of its youth is of ancient origin. Plato believed that the good of the state as a whole justified the regulation of child-rearing practices.⁸³ His pupil, Aristotle, differed on this point, suggesting that regulations were necessary only to protect the interests of the individual child.⁸⁴ 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.⁸⁵

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 IIHS 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 698-702), mentioned in *Meyer v. Nebraska*, 262 U.S. 390, 401-2 (1923).

84. ARISTOTLE, POLITICS 32-33 discussed in Kleinfeld, *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, COLO. 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."⁸⁶ 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.⁸⁷

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,⁸⁸ child labor laws,⁸⁹ and those mandating specific medical procedures to prevent blindness⁹⁰ and mental retardation⁹¹ 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. . . ."⁹²

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.

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

86. *Vollmar 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. § 18-6-401 (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.⁹³ In order to rebut this presumption, an opponent must prove that a law, when applied, violates some provision of the state or federal constitution,⁹⁴ or that the law does not reasonably relate to the state's objective in passing it.⁹⁵ The question of its "reasonableness" is, in fact, the central issue in any challenge to a police power regulation.⁹⁶

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.⁹⁷ 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.⁹⁸ 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 autonomy⁹⁹ and privacy;¹⁰⁰ the right to equal protection under the

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

94. *Day-Brite 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, *rehearing denied*, 380 U.S. 926 (1964).

95. See *Paris Adult Theatre I v. Slayton*, 413 U.S. 49 (1973); *NAACP v. Alabama*, 377 U.S. 283 (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. Kogul*, 179 Colo. 394, 399, 501 P.2d 738, 740 (1972) (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. 587, 596, 52 P.2d 663, 667 (1935). One example of a law which puts the burden of compliance on individuals is COLO. REV. STAT. § 33-31-105 (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, 842-44 (1977); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

law;¹⁰¹ and the right to free and unrestricted travel between the states.¹⁰² 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.¹⁰³ 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.¹⁰⁴ 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."¹⁰⁵ Indeed, the integrity of the family unit has found protection in the Due Process¹⁰⁶ and Equal Protection¹⁰⁷ Clauses of the fourteenth amendment and in the ninth amendment.¹⁰⁸

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.¹⁰⁹ 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 penumbra of the Bill of Rights, and the guarantee of liberty in the fourteenth amendment. *Griswold v. Connecticut*, 381 U.S. 479, 481-85 (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., *CULO REV STAT* § 47-4-231 (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. *Skinner 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.¹¹⁰

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"¹¹¹ 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."¹¹² 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.¹¹³

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.¹¹⁴

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-

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

111. *Stjernholm v. Mazaheri*, 180 Colo. 352, 356, 506 P.2d 155, 157 (1973). *See also* *Fulton v. Martensen*, 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. *Bisenius v. Karns*, 42 Wis. 2d 42, 55, 165 N.W.2d 177, 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.¹¹⁵ 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.¹¹⁶ 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."¹¹⁷

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.¹¹⁸ 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,¹¹⁹ 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.¹²⁰ 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.¹²¹ 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.¹²²

As previously shown,¹²³ 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-

119. See notes 33 and 41 *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, 465 P.2d 366 (1970); *Zerby v. Warren*, 297 Minn. 134, 210 N.W.2d 58 (1973); *Stahl v. Cooper*, 117 Colo. 468, 190 P.2d 891 (1948).

122. See, e.g., *Plains Transport of Kansas v. Baldwin*, 217 Kan. 2, 535 P.2d 865 (1975); *Pratt v. Thomas*, 80 Wash. 2d 117, 491 P.2d 1285 (1971); *Hamilton v. Gravinsky*, 28 Colo. App. 408, 474 P.2d 185 (1970), *modified*, 174 Colo. 206, 483 P.2d 385 (1971).

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