

# HIGHWAY TO JUSTICE

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From The ABA and The National Highway Traffic Safety Administration

## EVENT DATA RECORDERS: BEST EVIDENCE OR INVASION OF PRIVACY?

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### Background

Although we often hear about the recovery of an aircraft flight data recorder (a.k.a. “black box”) following an aviation disaster, it is not common knowledge that many of the vehicles we drive on our highways are equipped with a similar device, often known as a “crash” or “event” data recorder (EDR). These terms refer to “a device installed in a motor vehicle to record technical vehicle and occupant information for a brief period of time (seconds, not minutes) before, during and after a crash.”<sup>1</sup> This information may include a vehicle’s speed and acceleration, whether air bags were deployed, if brakes were applied, and whether seatbelts were being worn. This data can be downloaded from the EDR’s memory to help crash investigators, police and others understand not only what happened to the vehicle and how its safety systems performed, but in some cases, responsibility for the crash. EDRs can have “a major impact on highway safety, assisting in real-world data collection to better define the auto safety problem, aiding in law enforcement, and understanding the specific aspects of a crash.”<sup>2</sup> In addition, this data may assist “automakers improve occupant restraint systems and vehicle structures.”<sup>3</sup>

In the functioning of an EDR, the device’s “data recording function is secondary to its primary function which is to collect and interpret certain data about a vehicle’s behavior and make a decision whether to deploy the vehicle’s passenger restraint system (airbags and belt pre-tensioners).”<sup>4</sup> The development of the technology that allows for this data to be recorded and retrieved “is an outgrowth of airbag and computer technology.”<sup>5</sup>

Earlier this year, *USA Today* reported that more than 130 million vehicles are now equipped with EDRs and 96% of all new vehicles would come standard with an EDR.<sup>6</sup> This past December, the National Highway Traffic Safety Administration

(NHTSA) proposed a rule to require EDRs in all 2015 and later model motor vehicles. Similar devices are mandatory in airplanes, ships, trains, buses and motor coaches.<sup>7</sup> Addressing privacy concerns, NHTSA Administrator David Strickland recently wrote that EDRs provide “critical crash data that might not otherwise be available. . . . Yet it’s important for the public to understand what an event data recorder doesn’t do. When a crash occurs, an event data recorder takes a snapshot of a few seconds of information, such as how fast the vehicle was moving or whether the brakes were applied. An event data recorder does not record conversations, personal information, or video – and it doesn’t track a vehicle’s location.”<sup>8</sup>

The U.S. Congress and State legislatures have addressed some of the privacy concerns arising out of the use of event data recorders by enacting legislation that requires manufacturers to disclose to customers whether an EDR is installed in their vehicle. The legislation also provides that only the owner of a vehicle would have access to the EDR data unless the owner consents, a court authorizes another to obtain access to the data, or certain types of investigations require the information.<sup>9</sup>

### Forensic Use of EDR Data

Oftentimes in the prosecution of a vehicle manslaughter case, or the trial of a civil claim for damages, the prosecution or civil litigants need to rely upon an accident reconstruction expert to analyze data from the crash scene and render an opinion regarding factors that contributed to the cause of a crash. In the past, an opinion of an accident reconstruction expert would be based on projections regarding speed and other factors that were dependent upon skid marks, physical evidence and scientifically reliable calculations and assumptions. With event data recorders, some of the critical data regarding an accident is readily available and can better assist the accident reconstruction expert in determining causation. Simply put, information from EDRs “makes accident reconstruction more objective.”<sup>10</sup> To use that information, however, it is incumbent

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## Editor's Note

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We would like to hear from other judges. If you have an article that you would like to share with your colleagues, please feel free to submit it for inclusion in the next edition of *Highway to Justice*.

To submit an article, please send it to the editor, Hon. Earl Penrod, penrod26d01@msn.com with a copy to the staff liaison, Gena.Taylor@americanbar.org.

The deadline for submission of articles for the Summer 2013 issue is May 8.

## DATES TO REMEMBER

**April 14-16, 2013**

Lifesavers Conference

<http://www.lifesaversconference.org/>

**August 16 - September 2, 2013**

Drive Sober or Get Pulled Over, National Enforcement Crackdown

<http://www.nhtsa.gov/drivesober/>



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upon the prosecution or civil litigant to be able to (1) obtain and analyze the EDR, and (2) present its data into evidence at trial.

In the context of a criminal prosecution, these challenges may also involve issues of search and seizure. Generally the application of the Fourth Amendment's right to be free from unreasonable warrantless searches is based upon whether the person claiming protection can claim a justifiable, reasonable, or legitimate expectation of privacy that has been invaded by governmental action.

In both civil and criminal cases, as with any scientific evidence, in order to be admissible, the scientific evidence must be determined to be valid and reliable such as by being generally accepted as reliable in the relevant scientific community.<sup>11</sup>

### Admissibility of EDR Data

In *Matos v. State*,<sup>12</sup> a Florida appellate court considered whether data from an EDR in an automobile was new or novel scientific evidence that has been generally accepted in the relevant scientific fields so to be admissible in a criminal prosecution for vehicular manslaughter.<sup>13</sup> The trial court conducted a hearing and determined that the process of recording and downloading data from an EDR was not a new or novel scientific method and that the evidence was properly admissible under the *Frye*<sup>14</sup> standard as a generally accepted scientific method when used as a tool of automobile accident reconstruction.

In *People v. Ferguson*,<sup>15</sup> the defendant was charged with second degree murder and driving under the influence causing great bodily injury. At trial, the prosecution called an accident reconstruction expert who testified that the event data recorder recovered from the defendant's vehicle indicated that his vehicle was traveling at 75 miles per hour and accelerating just prior to the accident. The Court of Appeals of California held that there was no Fourth Amendment issue raised in that the EDR was lawfully obtained from the defendant's vehicle pursuant to a search warrant. The Court distinguished its holding from the case of *People v. Xinos*<sup>16</sup> which held that the warrantless downloading of the EDR data one year after the accident and unsupported by probable cause violated the defendant's Fourth Amendment rights. Although often cited, in law review articles and elsewhere, it is important to note that on May 18, 2011, after the issuance of the opinion in *People v. Ferguson*, the Supreme Court of California denied review in *Xinos* and on its own motion ordered the *Xinos* opinion to be withdrawn from publication.

In a case recently litigated in the Circuit Court for Howard County, Maryland, the prosecution successfully argued that when police arrived at the scene of a fatal crash, and after a preliminary investigation at the scene, police had probable cause to believe that the driver of one of the vehicles was involved in a collision resulting in life threatening injuries and that there was probable cause to believe that her vehicle contained evidence of a crime.<sup>17</sup> The trial court applied the *Carroll* doctrine<sup>18</sup> and held the warrantless seizure by police of the vehicle and its EDR was reasonable. The trial court further held that the defendant had no reasonable expectation of privacy in the event data recorder or its data.

In the case of *People v. Slade & Soukup*<sup>19</sup> a New York trial court upheld the warrantless seizure of an event data recorder from a vehicle lawfully

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impounded following a fatal accident. The Court initially noted that once “properly impounded the police may conduct an inspection of the vehicle to fulfill their investigatory and reporting duties under [State law].” The Court went on to analyze one’s expectation of privacy in an event data recorder. Citing *Katz v. United States*,<sup>20</sup> the trial judge noted that to define what constitutes a legitimate expectation of privacy, there are two factors: (1) whether the person manifests or exhibits an actual or subjective expectation of privacy, and (2) whether that expectation of privacy is one that society recognizes as reasonable. The Court concluded that the limited data from an EDR is no different from what one knowingly exposes to the public in the manner in which they operate a motor vehicle on the public highways, and therefore is not subject to Fourth Amendment protection.

However, this conclusion did not end the Fourth Amendment analysis in this case because to retrieve the EDR, the police had to enter the passenger compartment of the vehicle, where there is a legitimate expectation of privacy. After recovering the EDR, but based on information possessed prior to the warrantless entry of the vehicle, the police obtained a search warrant for the vehicle and its contents based upon probable cause. The trial court ultimately upheld the search and seizure based upon the independent source doctrine.<sup>21</sup>

After denying the motion to suppress, the trial judge in *Slade & Soukup* conducted a *Frye* hearing and concluded

[t]he technology upon which the . . . EDR is based dates back to the 1980’s. Aside from the automobile industry, the same type of recording technology has been used in aviation, cruise ships, cargo ships and trains. The technology involved has been relied upon for years. In the field of aviation, event data recorders, called “flight data recorders” have been used since the 1940’s. Further the same type of technology has been used for years in automobiles for engine diagnostics.

The information provided by the technology underpinning event data recorders has been relied on for years by the government that regulates air bag safety, vehicle manufacturers in making safer air bag systems and crash researchers and reconstructionists.<sup>22</sup>

Accordingly, the Court held that that the EDR technology was generally accepted in the scientific community as reliable.

## Conclusion

Data from an event data recorder may represent the best evidence of what occurred in the seconds prior, during and after a serious collision. This objective evidence can be more

reliable than evidence that is otherwise dependent upon a witness’ perception and recollection of events that occurred suddenly and unexpectedly. As in all criminal cases, the use of a search warrant to seize an event data recorder and its contents is preferable. However, exceptions to the Fourth Amendment warrant requirement (*Carroll* doctrine, exigency, inventory search) may provide legally sufficient basis for the reasonableness of a warrantless search and seizure of the EDR. In both civil and criminal litigation, event data recorders have consistently satisfied scrutiny as to their reliability and general acceptance as a tool of automobile crash reconstruction.

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1 NHTSA Event Data Recorder Research Web site, available at [http://www.nhtsa.gov/Research/Event+Data+Recorder+\(EDR\)/Welcome+to+the+NHTSA+Event+Data+Recorder+Research+Web+site](http://www.nhtsa.gov/Research/Event+Data+Recorder+(EDR)/Welcome+to+the+NHTSA+Event+Data+Recorder+Research+Web+site) (last visited Feb. 25, 2013)

2 *Id.*

3 Q&A: *Event data recorders*, available at <http://www.iihs.org/research/qanda/edr.aspx> (citations omitted).

4 Philip G. Gardner, *Motor Vehicle Crash Data Recording Systems*, 13 *Litigation news 1* (Litigation Section of the Virginia State Bar, Spring 2007).

5 *Id.*

6 Editorial: “Black boxes” are in 96% of new cars, *USA Today* (January 6, 2013) available at <http://www.usatoday.com/story/opinion/2013/01/06/black-boxes-cars-edr/1566098/> (last visited Feb. 25, 2013)

7 *Matos v. State*, 899 So.2d 403, 405 (2005).

8 David Strickland, *Opposing View: Event data recorders help keep roads safe*, *USA Today* (January 6, 2012) available at: <http://www.usatoday.com/story/opinion/2013/01/06/event-data-recorders-nhtsa/1566096/> (last visited Feb. 25, 2013)

9 These states include California, Colorado, Maine, New Hampshire, Virginia and others.

10 Andrew Askland, *The Double Edged Sword that is the Event Data Recorder*, 25 *Temp. J. Sci. Tech. & Envtl. L.* 1, 8 (Spring 2006)

11 See *E.G. Frye v. United States*, 293 F.1013 (D.C.Cir. 1923); *Daubert v. Merrell Dow Pharmaceuticals*, 43 F.3d 1311 (9<sup>th</sup> Cir. 1995).

12 899 So.2d 403 (Fla. Dist. Ct. App. 2005)

13 The vehicle’s EDR recorded the vehicle’s speed at 114 miles per hour 4 seconds prior to the accident and a speed of 103 miles per hour 1 second prior to the accident and showed that the defendant’s airbag was working properly at the time of the accident.

14 *Frye v. United States*, 293 F.1013 (D.C.Cir. 1923).

15 194 Cal.App.4<sup>th</sup> 1070, 124 Cal.Rptr.3d 182 (2011).

16 192 Cal.App.4<sup>th</sup> 637, 121 Cal.Rptr.3d 496 (2011).

17 *State of Maryland v. Tristian Johnson*, Case No. 13-K-110-51575 (Circuit Court for Howard County, MD),

18 *Carroll v. United States*, 267 U.S. 132 (1925).

19 *People v. Slade & Soukup*, 2005 N.Y. Misc. LEXIS 3217, 233 N.Y.L.J. 11 (Supreme Court of NY, Nassau County, Case No. 0666-03, January 18, 2005).

20 389 U.S. 347, 88 S.Ct. 507 (1967)

21 Under the independent source doctrine, evidence initially obtained by an unlawful search but later obtained independently from lawful activities untainted by the initial illegality is admissible into evidence. *Murray v. United States*, 487 U.S. 533, 108 S.Ct. 2529 (1988).

## RED, WHITE AND TROUBLED

Hon. Mary Jane Knisely  
Judicial Outreach Liaison, NHTSA Region 10  
Yellowstone County Thirteenth District Court  
Billings, MT

Imagine for an instant you are stopped momentarily in a road construction zone. You hear the sounds of machinery grinding, thumping and scraping, the roar of engines, the yells of workers as they call back and forth to one another across the steaming asphalt. After a short delay, you're on your way without another thought.

Now imagine you are a former active-duty veteran stopped in the same zone. Every thump brings back the memory of exploding ordnance. The shaking ground instantly transports you to air strikes you hoped you'd forget. Every yell reminds you of a buddy calling for help. Your head aches, heart pounds, you begin to sweat. The minutes seem to stretch into hours. When you finally can drive on, you have to pull over ahead to try to collect yourself. If you're like many combat veterans—especially those suffering from Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI)—you want nothing more than a good stiff drink.

### Veterans at Risk for Vehicle Crashes

According to the Returning Warriors Driving Safety Report 2012 conducted by USAA, there is a 13 percent increase in at-fault accidents for troops within the first 6 months of returning from deployment. Most often, veterans self-reported losing control of the vehicle, but there were 12 other causes tracked by the study, including “objects in the road,” which increased dramatically after deployment than any of the other 12 other causes.

The most dramatic rise in at-fault crashes exists for veterans under the age of 22, an age group already deemed to be at higher risk for vehicle crashes. Of perhaps even greater interest is the correlation between a veteran's number of deployments and the increase in their percentage of at-fault crashes. Those with three or more deployments had 36 percent more at-fault crashes than non-deployed drivers with matched demographics. This is compared to a 27 percent increase for those deployed twice and 12 percent for those deployed only once.

The USAA report cites research conducted by Professor Erica Stern of the University of Minnesota. Stern found that returning soldiers had “carryover” driving behaviors developed while serving in military combat zones. While in combat, soldiers are trained to drive away from the edge of the road where Improvised Explosive Devices (IEDs) are often located, drive quickly, stay moving and change direction and lanes unexpectedly. Back home, these

behaviors are dangerous at best and can be life-threatening. As a result, 30 percent of the veterans she surveyed reported that they had been called a dangerous driver within 30 days of returning home.<sup>1</sup>

As noted in the *Austin Statesman*, the USAA study is also supported by a 2010 U.S. Department of Veterans Affairs (VA) poll which indicated 36 percent of Iraq and Afghanistan veterans surveyed reported others had called them a dangerous driver.<sup>2</sup> However, the veterans in the VA study had been home three years or more, a clear indication that it may be the combat experience itself, and not the relative proximity to it, that leads to dangerous driving behaviors.

The *Statesman* article also reports that 2006 data indicates returning veterans were 75 percent more likely to die in traffic crashes than their civilian peers of comparable age, race and sex. They are also more likely to be killed on motorcycles.

### Prevalence of PTSD, TBI, and Substance Abuse Disorders

It is not only risk taking behind the wheel affecting veterans after they return home but also drug and alcohol addiction often resulting from self medication for significant trauma, physical and emotional pain. Further, a 2008 RAND study found that 20 percent of the 2 million servicemen and women who have returned from Iraq and Afghanistan have PTSD and/or major depression.<sup>3</sup> That figure does not account for the other 21 million veterans of other foreign conflicts, wars and operations.

Likewise, the number of Iraq and Afghanistan veterans returning to the United States with TBI has soared in recent years. According to statistics from the VA, as of 2008 about 1800 U.S. troops have suffered penetrating head wounds during tours in Iraq or Afghanistan, and as many as 30 percent of troops who engaged in combat having suffered at least a mild TBI as a result of concussive blast effects from IEDs. While TBI does not automatically equate with a substance abuse disorder, it may increase risk of drug abuse in psychologically vulnerable individuals following TBI.<sup>4</sup>

Almost 2 million American veterans who

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served in Korea, Vietnam and the Middle East are fighting a drug or alcohol addiction. Although PTSD does not absolutely translate into drug or alcohol use or abuse, those with PTSD are also more likely than their peers to have drinking problems.<sup>5</sup>

According to an April 2011 research update from the National Institute on Drug Abuse, prescription drug abuse among U.S. military personnel tripled between 2005 and 2008. In addition, a study of Army soldiers screened 3 to 4 months after returning from deployment to Iraq showed that 27 percent met criteria for alcohol abuse and were at increased risk for related harmful behaviors, drinking and driving.

Initial findings of the Millennium Cohort Study suggest that Reserve and National Guard personnel who deploy with reported combat exposures are at increased risk of heavy weekly drinking, binge drinking and other alcohol-related problems.<sup>6</sup> Among veterans of Operation Enduring Freedom and Operation Iraqi Freedom, alcohol dependence is the most common substance use disorder.<sup>7</sup>

Of equal concern, however, is the use and abuse of opiates, including those prescribed for chronic pain. According to a study published in the *Journal of the American Medical Association*, veterans of Iraq and Afghanistan who have been diagnosed with PTSD and other mental health disorders are associated with an increased risk of high-risk opioid use, crashes, overdoses, self-inflicted injuries and injuries related to violence.<sup>8</sup> These risky behaviors, addictions and the association with homelessness, lack of employment, and few civilian life skills in turn lead them into contact with the justice system.

## No State Is Immune

There are those who may presume rural states such as the one in which I reside, Montana, are somewhat immune to the problems faced in larger metropolitan areas. In some respects, they would be correct. When it comes to substance abuse and mental health issues among military veterans, however, no place is exempt.

In a state with a population of just over one million, there are an estimated 108,000 military veterans. According to the Montana Department of Corrections (MDOC), which operates the only state-funded inpatient treatment program for DUI offenders, over 10 percent of participants are veterans. This is consistent with 2002 Bureau of Justice Statistics (BJS) data indicating that 9.3 percent of the jailed population in the U.S. are veterans. That same data indicated that a majority of underlying offenses (70 percent) which resulted in incarceration were non-violent. Veterans everywhere are broken and scarred by their military service.

## The Case for Veterans Courts

The needs of veterans entangled in the criminal justice

system are unique when compared to non-combat veterans charged with the same offenses. Combat veterans have seen, done and experienced realities far different than non-veterans; thus, their treatment must also address their inimitable difficulties.

Until relatively recently, veteran offenders faced the same prospects of minimal treatment as others do in countless courts across the U.S. The traditional adversarial court system provided lengthy incarceration. Justice involved veterans would return to society with little or no aftercare programs, case management, mental health services or the structure they crave.

Fortunately, 2013 marks the fifth year of the establishment of veterans' courts in the U.S., the first having been created in Buffalo, New York. Early reports are indicating that these courts are reducing recidivism and providing needed re-entry services to veterans. Most follow the 10 Key Components of Drug Courts as established by the National Association of Drug Court Professionals (NADCP) and, as with other specialty courts, they require participant accountability, intensive drug and alcohol testing and treatment, and counseling. Veterans are assisted in finding safe and sober housing, suitable employment and are connected with public and private services, even mentors, to support them in managing both physical and emotional injuries.

With more military members returning home from active duty in Afghanistan and Iraq, it is essential that the number of veterans' courts continue to increase nationwide. More cities and states are taking notice of these courts and evaluating the cost/benefit of establishing one in their own jurisdictions. Veterans' courts do not provide an easy way out or treat those members of the Armed Services with leniency. Most importantly, justice involved vets are shown respect for their service to our country and given the forum to restore honor, health, and safety as they return to civilian life.

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1 [https://content.usaa.com/mcontent/static\\_assets/Media/Returning\\_Warriors\\_report\\_summary.pdf](https://content.usaa.com/mcontent/static_assets/Media/Returning_Warriors_report_summary.pdf)

2 "Uncounted Casualties: Accidents" Austin Statesman (Sept. 30, 2012)

3 "Invisible Wounds of War" (2008) RAND Corporation

4 James M. Bjork and Steven J. Grant, Does Traumatic Brain Injury Increase Risk for Substance Abuse?, *Journal of Neurotrauma*, 2009 July; 26(7): 1077-1082.

5 PTSD and Problems with Alcohol, U.S. Department of Veterans Affairs – National Center for PTSD ([www.ptsd.va.gov](http://www.ptsd.va.gov))

6 Topics in Brief: Substance Abuse among the Military, Veterans, and their Families (Revised April 2011) National Institute on Drug Abuse

7 Erin Bagalman, Mental Disorders Among OEF/OIF Veterans Using VA Health Care: Facts and Figures (Feb. 4, 2013)

8 Association of mental health disorders with prescription opioids and high-risk opioid use in US veterans of Iraq and Afghanistan. *JAMA* 2012;307(9):940-7.

# THE ART OF RECOVERY

*Hon. Harvey J. Hoffman  
Former Judicial Fellow  
56A District Court  
Charlotte, MI*

Juan had a major marijuana addiction. He wound up on probation for a “Drugged Driving” charge. With several violations for continued use, he struggled in the 56-A District DWI Court program. Finally at a Review Hearing, he told me that he just wanted to go to jail. I ordered his jail term but I was very upset about it. Juan is a very bright, talented, yet troubled young man. While he was sitting in the jury box waiting to be taken to jail, I turned to him and asked him what it was that he wanted out of life.

Juan said: “I want to be heard through my art.”

Drug addicts and alcoholics view themselves, their addictions, and the world at large very differently than most of the rest of us. This makes communication between the courts and the alcoholics and addicts very difficult, especially in the early stages of recovery. It’s like we are speaking English and they are listening in Greek.

Art on the other hand, speaks in a nearly universal language.

A few weeks before my exchange with Juan, members of the 56-A District Court Drug Court Team attended the Michigan Association of Drug Court Professionals Annual Meeting. One of the presentations at the conference was the unveiling of a web site entitled Addiction and Art. A project of the John’s Hopkins University Press, it featured a series of slides showing

art pieces created by persons in recovery. We found the slides to be very powerful and began talking about how we might make use of them in our program.

The morning after Juan went to jail, I met with our Probation Department to talk about what we should do about him. None of us wanted him to spend a long stretch in jail. We decided to let him ponder his future and then give him the option of suspending his jail term with certain conditions. He had to agree to stay in the program, create a piece of art that he felt depicted his addiction, and then lead a group of our program participants who would review the Addiction and Arts slides and then select a group of them to make up a gallery to be placed on the wall leading into our probation office.

Juan accepted our offer. He created an oil painting of an American Eagle with a blood red tear in one eye. Our gallery entitled “The Art of Recovery” opened a few weeks ago as an educational tool to the public and a means of communicating with our program participants. Juan and his team walked our County Commissioners through the gallery, explaining why each print had been selected. Since that time, program participants have been observed viewing the prints individually or in small groups.

One of the art pieces are reproduced below.

No public funds were utilized for the framing and hanging of the pictures. The original Addiction and Art pictures are free to the public at: [www.addictionandart.org](http://www.addictionandart.org).

Juan has had no further probation violations.



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## CHILDREN LEFT IN CARS: THE OTHER DISTRACTED DRIVING

*Hon. Mary Celeste  
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On June 29, 2012, Congress approved the Federal Transportation Bill, Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), which extended federal highway programs through September 30, 2014. The surface transportation portion of that Bill has two provisions addressing child passenger safety. According to Janette Fennell, President and Co-Founder of KidsandCars.org, "these provisions will improve the safety of our children who travel in the back seat of vehicles by... conducting a study to prevent children from being unknowingly left unattended in the rear seat of a vehicle resulting in injury or death."<sup>1</sup> The study is an attempt to address the continued problem of children being injured or dying as a result of being unknowingly left in vehicles. In a particularly deadly six day period between August 2-7, 2012, eight children ranging in age from five months to four years died from heat stroke inside unattended vehicles. Seven of these children were left unattended in the vehicles by parents, grandparents or care providers while one child died after getting into a vehicle and being unable to escape.<sup>2</sup>



These deaths came on the heels of a study conducted by the National Highway Traffic Safety Administration (NHTSA) and the Children's Hospital of Philadelphia (CHOP) on heat stroke prevention technology. The study tested several consumer products designed to prevent a child from being left unintentionally in a hot vehicle. The purpose of each technology tested was to help remind drivers that a child had been left alone in the vehicle. It was concluded that these products were not always effective. However, Ms. Fennell believes that the products, when used in conjunction with education about the issue, do add a safety layer to the issue.<sup>3</sup>

To raise public awareness about this serious issue NHTSA launched the *Where's Baby? Look Before You Lock* campaign. KidsAndCars.org has been educating the public about these dangers for years with their Look Before You Lock BESAFE<sup>4</sup> education program. Included in the KidsAndCars.org program materials are safety tip cards that hospitals can request free of charge.<sup>5</sup>

Numerous states have laws that make it illegal to leave a pet in a vehicle. Ironically, only a few states have specific laws that prohibit leaving a child in a vehicle unattended. There are motor vehicle statutes which address child endangerment, but they are most commonly related to an adult committing a crime such as driving under the influence (DUI) while a child is a passenger. Eighteen states have laws prohibiting adults from leaving unattended children in motor vehicles and every law is different. Two states have laws that can be applied only if the child dies when left in a vehicle unattended. Thirty-eight states have no laws specifically protecting children from vehicle occupancy neglect. Legislators have proposed bills addressing

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this issue in twelve of these states. Those states without specific “unattended children” laws typically apply Child Endangerment Statutes or Ordinances, i.e., Wrongs to Minors, Child Abuse. The charges can be a municipal violation, a misdemeanor, or a felony depending upon the facts and circumstances of the case. The challenge is in determining the appropriate charge: some defendants may be undercharged, some may be overcharged, while some may not be charged at all.<sup>6</sup>

“According to statistics compiled by the national child’s safety advocacy group, KidsAndCars.org, in about 40 percent of cases authorities examine the evidence, determine that the child’s death was a terrible accident -- a mistake of memory that delivers a lifelong sentence of guilt far greater than any a judge or jury could mete out -- and file no charges. In the other 60 percent of the cases, parsing essentially identical facts and applying them to essentially identical laws, authorities decide that the negligence was so great and the injury so grievous that it must be called a felony, and it must be aggressively pursued.”<sup>7</sup> Short of a nation-wide campaign to create specific unattended children laws in the remaining thirty-eight states without them, we are left in a gray area of the law.

Who are the adults who endanger children? They may be parents, grandparents or caregivers and span all socio-economic ranges and educational levels. Research suggests that non-parents are prosecuted more frequently than parents and those in higher socio-economic circumstances are

prosecuted five times less than those in lower socio-economic categories. “Parents of all ages and ethnicities do it. Mothers are just as likely to do it as fathers. It happens to the chronically absent-minded and to the fanatically organized, to the college-educated and to the marginally literate.”<sup>8</sup> It could happen to you.

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1 <http://www.kidsandcars.org/upload/pdfs/newsletters/2012-06-29-newsletter-transportation-bill-passed.pdf>

2 <http://www.kidsandcars.org/upload/press-release/pr-2012-08-08.pdf>

3 Ibid

4 **Back seat** - Put something in the back seat so you have to open the door when leaving the vehicle - cell phone, employee badge, handbag, etc.

Every child should be correctly restrained in the back seat.

**Stuffed animal** - Move it from the car seat to the front seat to remind you when your baby is in the back seat.

**Ask your babysitter or child-care provider** to call you within 10 minutes if your child hasn’t arrived on time.

**Focus on driving** - Avoid cell phone calls and texting while driving.

Every time you park your vehicle open the back door to make sure no one has been left behind

5 The organization has sent out more than 150,000 cards to hospitals nationwide and continues to provide them to birthing centers.

6 <http://www.kidsandcars.org/state-laws.html>

7 [http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022701549\\_2.html?sid=ST2009030602446](http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022701549_2.html?sid=ST2009030602446) (last visited 10/19/12)

8 Ibid

