



## CHILD RESTRAINT SEAT LEGISLATION: ARE THE LAWS CONSTITUTIONAL? DO THEY WORK?

by LAWRENCE E. SAVELL

If the readers of this magazine have observed an increase in the usage of child restraint seats in cars they pass on the highway, they should not be surprised. At the present time, every state in the Union (except for Wyoming, which is expected to pass such a law this year) and the District of Columbia has passed legislation requiring the use of child restraint devices in passenger automobiles and, in some cases, other vehicles as well. In all likelihood, most drivers and parents view such laws, despite the added inconvenience and cost (generally from \$25 to \$80) incurred in the purchase and use of such seats, as acts within the power of their local governments, done in the interests of increasing public safety. But are they? Two recent efforts have been made to answer such a question. First, in California, the courts have examined the constitutional propriety of that state's restraint law. In addition, a study reported last November in the pages of a leading medical journal provided a scientific assessment of the effectiveness of such legislation in the state of Tennessee.

### INVASION OF PRIVACY?

Terri Lynn Thomas received a citation from a police officer for failing to restrain her two children, one of whom was two-and-a-half years old and the other under 40 pounds, who were

travelling in her car with her. The relevant provision of the California Vehicle Code provided that it was "unlawful for the parent or legal guardian, when present in a passenger vehicle or motor truck of less than 6,001 pounds unladen weight which is owned by him or her and registered in this state, to permit his or her child or ward under the age of four years or weighing less than 40 pounds to be transported upon a highway in the motor vehicle without providing and properly using, for each such child or ward, a child passenger seat restraint system meeting applicable federal motor vehicle safety standards." Ms. Thomas admitted that she had not restrained her children in child seats, but defended herself on the grounds that the statutory provision was an unconstitutional interference with her fundamental rights of family privacy and parental autonomy. She was convicted of violating the statute by the Municipal Court of Los Angeles.

On appeal, Ms. Thomas again raised her constitutional defense, arguing that there had been insufficient justification for the statute and, moreover, even assuming such a compelling interest on the part of California, the state legislature had drawn the statute too broadly. In its decision in *People v. Thomas*, the California Superior Court, Appellate Department of Los Angeles, disagreed and affirmed the lower court's decision.

The appellate court based its ruling on a two-step analysis. First, it examined whether the statute impinged on a "fundamental right" of the defendant. This question is significant because if such a right is involved, a "strict scrutiny" standard will be applied by the court, under which the state must show it had a "compelling interest" in enacting the statute. A review of prior decisions recognizing a right of privacy which was guaranteed by the Constitution indicated that such a right was found to be "fundamental" only in limited settings. Specifically, the protected privacy right was found to encompass and protect only "the personal intimacies of the home, the family, marriage, motherhood, and child rearing." Thus, according to the court, the right was directed to the "integrity of the family unit," and therefore would only be applicable to situations where a state attempted to regulate the "custody, care, and nurturing of a child."

On the other hand, the court noted, the right would not be violated where the state's regulation dealt with an area where there was "no necessary or legitimate expectation of family privacy." The court found this latter classification to apply to the present case. Although requiring Ms. Thomas to see to it that her children use seat restraints did relate to their "care" in terms of ensuring their safe transportation, the court found that since the regulation did not affect the integrity of her family unit, this was not the type of "care" encompassed by the fundamental right to family privacy. Moreover, given the state's extensive regulation over motor vehicles, defendant could not argue that she had a necessary or legitimate expectation of family privacy with regard to her determining whether to provide safe transportation for her children.

## EJAG LEGAL CLINIC

Since the court had determined that Ms. Thomas' asserted right was not a fundamental one, the court only had to apply a "reasonable relationship" test to the statute: in other words, was the legislation "reasonably related" to its purpose. According to a provision in the statute itself, the intent of the state legislature in enacting the law was "to insure that children, who are, because of their tender years, helpless dependent passengers, are provided with the safest transportation possible." A review of prior decisions regarding regulations on drivers and their vehicles indicated that given the state's traditionally broad police power authority to enact measures reasonably relating to public health or safety, "[a]ny appropriate means adopted by the states to insure competence and care" on the part of those driving on public highways and "to protect others using the highway[s]" was proper. Thus, the court held that the required use of seat restraints for child passengers was a reasonable safety regulation under the police power in the interest of public safety and welfare.

Given this finding, the court found no need to evaluate whether the statute could, while still achieving its goal, have been drawn more narrowly. The court emphasized that in its capacity as analyzer of the products of the legislature, it would limit itself to assessing the constitutionality of the statutes, and not whether or not less drastic remedies were available.

### THE EFFECTIVENESS OF CHILD RESTRAINT DEVICES

In its opinion in *People v. Thomas*, the appellate court noted that both the state and the defendant had made reference to "certain empirical studies" relating to the effectiveness of the restraint seats. Since such evidence had not been presented at the trial level, the court refused to consider it. Fortunately for the reader of this column, the rules of evidence do not apply in this forum.

Faced with the tragic fact that motor vehicle accidents were the leading cause of death of children in their state, the Tennessee legislature passed the nation's first Child Passenger Protection Act ("CPPA"), effective in January 1978. The statute mandated the utilization of approved child restraint devices for resident children under the age of four while driven by their parent or guardian in a private automobile.

In the November 9, 1984 issue of 'The Journal of the American Medical Association', four researchers, led by Dr. Michael D. Decker of the Center for Disease Control in Atlanta and the Tennessee Department of Health and Environment, reported on the results of their analysis of traffic accident data compiled by the Tennessee Department of Safety for the years 1982 and 1983. Their study came to the clear conclusion that, for children under the age of four, the use of child restraint seats can markedly lower the risk of death or serious injury in an automobile accident.

Based on a review of accident statistics since the CPPA went into effect, Dr. Decker and his associates noted that in the

years 1978 to 1983, only two of 81 children under the age of four who died in traffic accidents were wearing a restraint device at the time. Over that period, the use of such devices rose from eight percent to 30 percent, while the deaths of children under four declined more than 50 percent. This last dramatic fact was found not to be due to any changes in the overall pattern of traffic accidents or fatalities, the size of the population at risk, or the number of vehicle miles driven. moreover, there was a strong inverse relation between the incidence of fatalities and the issuance of citations by police in enforcement of the CPPA.

### RESULTS OF THE STUDY

Dr. Decker and his associates concluded from their study of accidents in 1982 and 1983 that child restraint devices are highly effective in preventing death and avoiding serious injury. The efficacy of such devices became even more apparent as the severity of the accident increased. In 1982 and 1983 in Tennessee, no child under the age of four using a restraint device died in an accident; 17 who did not use such a device did die. The researchers noted that the magnitude of the results of their study closely paralleled those of a 1981 project conducted by others and reported in the journal 'Pediatrics' assessing the effect of restraint seat usage in the state of Washington. Over the period from 1970 to 1979, children riding unrestrained in that state faced an elevenfold greater risk of death compared to those using restraint seats.

On January 27, Ms. Patricia Goldman, Vice Chairperson of the National Transportation Safety Board, addressed this issue in Washington at a symposium held by the Board to determine why parents were not using the seats and to develop strategies to increase such usage. according to Ms. Goldman, as quoted in the 'New York Times', "less than 40 percent of all Americans use safety seats for their children, and 70 percent of those seats are not being used correctly." Ms. Goldman reported statistics revealing that nearly 600 infants and children under the age of five die in highway accidents annually, with 50,000 more suffering injuries. As Ms. Goldman noted, frustratingly, many of these deaths and injuries were "needless" and merely the product of negligence or carelessness in failing to obtain and use proper safety seats as required by law.

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