

FROM: LEGAL ASSOCIATE
TO: TEAM SUPERVISOR
DATE: JUNE 17, 2013
RE: FIVE-STATE MEMORANDUM FOR CHILD RESTRAINT LAWS

Introduction

This memo summarized the child restraint laws for five states across the United States; Minnesota, New York, Michigan, Florida, and Utah. The summary for each state extracts relevant and important elements each state has included. There are some general similarities across these states including age requirements for safety seats along with height and weight as well as exceptions to these age requirements. States generally create an exception for disabled children. When being in a child restraint seat would not be safe for a child due to a physical disability, a physician's certification can create an exception to the child restraint system requirement. Fines, and waivers of fines, will also be discussed. Unique features of certain states include creation of child car seat safety grant program and a three-year independent study on effectiveness of child restraint laws as primary enforcement.

MINNESOTA

Statutes: Minn. Stat. § 169.6; Minn. Stat. § 245A.18 – Effective August 1, 2012
Regulations: Minn. R. 8820.5950; Minn. R. 8840.5925

Under Minnesota Transportation Law, a child passenger restraint system is defined as any device that meets the standards of the United States Department of Transportation; is designed to restrain, seat, or position children; and includes a booster seat.¹ Under this law, it is a violation to transport a child less than eight years old and less than four feet nine inches tall if the child is not secured in a child restraint system.² If the vehicle does not have factory-installed seat belts which meet federal motor vehicle safety standards, a safety restraint system may not be required.³ Any driver who violates this requirement is guilty of a petty misdemeanor, and may be subject to a fine of no more than fifty dollars.⁴ The fine may be reduced or waived if within two weeks following the date of violation the motor vehicle operator shows the purchase of a child restraint system for exclusive use of the operator.⁵ When issuing a citation under this section, peace officers are allowed to provide information on obtaining a free or low-cost child restraint system.⁶ All fines collected in violation of this law are deposited into a special account called the Minnesota child passenger restraint and education account.⁷

Subdivision seven of the Minnesota transportation law requires all fines acquired from violation of this law be deposited into the Minnesota child passenger restraint and education account of the state treasury.⁸ The money is to be used to provide child passenger restraint systems to families in financial need, school

¹ Minn. Stat. § 169.685(5)(e); a booster seat is defined under 49 CFR 571.213, but the state law does not define a booster seat.

² Minn. Stat. § 169.685(5)(a)

³ Id.

⁴ Minn. Stat. § 169.685(5)(b)

⁵ Id.

⁶ Minn. Stat. § 169.685(5)(c)

⁷ Minn. Stat. § 169.685(5)(d)

⁸ Minn. Stat. § 169.685(7)

districts and child care providers that provide for the transportation of pupils to and from school using type III vehicles or school buses with a gross vehicle weight rating of 10,000 pounds or less, and to provide an educational program on the need for and proper use of child passenger restraint systems.⁹

Minnesota transportation law has carved out specific exceptions to the child restraint law.¹⁰ Exceptions include: children transported in an emergency medical vehicle while in the performance of official duties;¹¹ when a child's physical or medical needs make the use of a child passenger restraint system unreasonable, or when the child passenger restraint system is not available;¹² when a peace officer transports a child while in the performance of official duties;¹³ when a child passenger restraint system is not available provided that a seat belt must be substituted;¹⁴ when a driver operates a motor vehicle for hire, including a taxi, airport limousine, and bus, but excluding a rented, leased, or borrowed motor vehicle;¹⁵ and when a driver operates a school bus that has a gross vehicle weight rating of greater than 10,000 pounds.¹⁶ A child passenger restraint system is not required for a child who has a medical condition, or due to body size or physical disability cannot use a child restraint system may be exempt if the condition is certified by a physician statement.¹⁷ The physician statement must give the name and birth date of the child, be dated within the previous six months, and be made on the physician's letterhead or contain the physician's name, address, and telephone number. This statement may be produced during the time of citation or later during a court appearance.¹⁸ When renting or leasing a motor vehicle, if a customer requests a child restraint system, the owner must provide that system, and is allowed to charge a reasonable fee for rental of the device.¹⁹

Generally, proof of the use, or in turn failure to use, seat belts, or a child restraint system shall not be admissible as evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.²⁰ The exception to this general rule is when a person wishes to bring an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system.²¹

In conclusion, Minnesota's laws are thorough. The general age and weight requirements are present, as are the fines associated with the violations. The law further describes exactly where the money received from these fines goes and what the money can be used towards. The law also describes when information can be introduced as evidence in court.

NEW YORK

Statutes: NY CLS Veh & Tr § 1229-c – Effective July 15, 2010

⁹ Id.

¹⁰ Minn. Stat. § 169.685(6)(a)

¹¹ Minn. Stat. § 169.685(6)(a)(1)

¹² Id.

¹³ Minn. Stat. § 169.685(6)(a)(2)

¹⁴ Id.

¹⁵ Minn. Stat. § 169.685(6)(a)(3)

¹⁶ Minn. Stat. § 169.685(6)(a)(4)

¹⁷ Minn. Stat. § 169.685(6)(b)

¹⁸ Id.

¹⁹ Minn. Stat. § 169.685(6)(c)

²⁰ Minn. Stat. § 169.685(4)(a)

²¹ Minn. Stat. § 169.685(4)(b)

Regulations: 17 NYCRR § 720.4, 17 NYCRR § 720.8.

New York State Vehicle and Traffic Law defines child restraint system to mean any device, used in conjunction with safety belts, designed for use in a motor vehicle to restrain, seat, or position children and which meets the applicable Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213.²² The child restraint system is appropriate when the occupant meets the manufacturer's occupant size and weight recommendations.²³

Under New York State Vehicle and Traffic Law §1229-c, it is illegal for any person to operate a motor vehicle if a passenger of the motor vehicle under the age of four and below forty pounds is not secured in a specially designed child safety restraint seat in the front passenger or back seats.²⁴ The seat itself must conform to the federal standards set in 49 CFR 571.213.²⁵ If a passenger under the age of four exceeds forty pounds, a child restraint system should be used in combination with lap and shoulder harnesses.²⁶ If all seats with a lap and shoulder belts are occupied by passengers under the age of 16, a seat with a lap belt only will suffice.²⁷

It is further illegal for any person to operate a motor vehicle when any front or back seat passengers four years or older but under age eight are not restrained with a seat in combination with a lap and shoulder safety belt.²⁸ If all seats with both lap and shoulder harness system are taken by children under the age of sixteen, a seat with only a lap safety belt will suffice.²⁹

Under subsection 3 of the statute, Children in the front seat under the age of sixteen must be restrained by a commissioner-approved safety belt.³⁰ Subsection three also requires that if a seat is equipped with both a shoulder and lap belt, both must be used as required by this law.³¹ Finally, subsection three specifies that drivers with a learner's permit are to be held to the same standards and sanctions as licensed drivers.³²

Subsection five defines the fines to be assessed for violation of the transportation law.³³ Any violation under subsection three changes a fine for fifty dollars.³⁴ Any other violation of this law requires a fine of a minimum value of twenty-five dollars and a maximum value of one hundred dollars.³⁵ One affirmative defense is available to drivers.³⁶ If the child is above age four and below age eight, the child's wearing a seat belt is an affirmative defense as long as the child is longer than four feet nine inches and/or weighs more than one hundred pounds.³⁷ These fines can be waived for a violation for a child under age eight if

²² NY CLS Veh & Tr § 1229-c(4)(b)

²³ NY CLS Veh & Tr § 1229-c(4)(c)

²⁴ NY CLS Veh & Tr § 1229-c(1)

²⁵ Id.

²⁶ NY CLS Veh & Tr § 1229-c(4)

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ NY CLS Veh & Tr § 1229-c(3)

³¹ NY CLS Veh & Tr § 1229-c(3-a)(1)

³² NY CLS Veh & Tr § 1229-c(3-a)(2)

³³ NY CLS Veh & Tr § 1229-c(5)

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id.

an approved child restraint system is purchased or rented between the date of violation and the court appearance date.³⁸ This waiver can only be used for the first violation, for any subsequent violation, the fees cannot be reduced or waived.³⁹

The law also defines exceptions. Children with physical disabilities are an exception to the requirement of child restraints if the disability would prevent appropriate restraint, and must be certified by a physician.⁴⁰ Other vehicle exceptions include taxis, delivery, and buses (not including school buses), rural letter carrier which are not held to the standards of this law.⁴¹

Non-compliance with these provisions is not admissible as evidence, but may be used for mitigation of damages if certain conditions are met.⁴²

In conclusion, New York's child restraint law is more general and not very descriptive. Fines, exceptions, and general age, height and weight restrictions are all addressed in the statute. However, the specifics of where the fine money goes are not discussed, and the evidence rules are not descriptive in the language of the law.

MICHIGAN

Statutes: MCLS § 257.710d; MCLS § 257.710e; MCLS § 257.710g – Effective June 26, 2009; July 1, 2008.

Regulations: None.

Under Michigan Vehicle Code, all motor vehicle drivers must properly secure a child under the age of four in a child restraint system which conforms to 49 CFR 571.213.⁴³ The child restraint system must be secured in the rear seat of the motor vehicle.⁴⁴ If all rear seats are occupied by children under the age of four, a child restraint system for a child under the age of four may be installed in the front seat.⁴⁵ A rear facing child restraint system may only be used on the front seat only if the front passenger air bag is deactivated.⁴⁶ Michigan enacted child restraint law(s) with the intent to save lives in a manner that does not result in police harassment of the citizens.⁴⁷

This law does not apply if the motor vehicle driven is a bus, school bus, taxi, moped, motorcycle, or other motor vehicle not required to be equipped with safety belts under federal law or regulations.⁴⁸ Another exception is for vehicles that stop frequently for the pickup or delivery of goods or services.⁴⁹

³⁸ NY CLS Veh & Tr § 1229-c(6)

³⁹ Id.

⁴⁰ NY CLS Veh & Tr § 1229-c(7)

⁴¹ NY CLS Veh & Tr § 1229-c(9); NY CLS Veh & Tr § 1229-c(10)

⁴² NY CLS Veh & Tr § 1229-c(8)

⁴³ MCLS § 257.710d(1)

⁴⁴ MCLS § 257.710d(2)

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ MCLS § 257.710e(12)

⁴⁸ MCLS § 257.710d(3)

⁴⁹ MCLS § 257.710d(3); MCLS § 257.710e(1)

The Secretary of State may exempt classes of children from these rules if restraint is impractical due to physical unfitness, medical problems, or body size, but must also specify an alternate means of protection for these children.⁵⁰ A child between the ages of four and eight and who is less than four feet nine inches in length should be properly secured in a child restraint system according to their manufacturer's instructions and standards described in 49 CFR 571.213.⁵¹

If there are more passengers than safety belt seats and all safety belts are being used in compliance with this section, then the operator of the motor vehicle is in compliance with this section.⁵²

An operator transporting a child from age four to under age sixteen in a motor vehicle must secure the child with a properly fastened safety belt and be seated according to this section.⁵³ When the motor vehicle is transporting more children than there are safety belts available, all safety belts available in the motor vehicle are being utilized in compliance with this section, and the operator and all front seat passengers comply with subsection three, the operator of a motor vehicle transporting a child eight years of age or older but less than sixteen years of age for which there is not an available safety belt is in compliance with this subsection as long as the child is not in the front seat.⁵⁴ When the motor vehicle is a pickup truck without an extended cab or jump seats, and all safety belts in the front seat are being used, the operator may transport the child in the front seat without a safety belt.⁵⁵

When a driver is in violation of this statute, failing to wear a safety belt may be considered evidence of negligence and could reduce recovery for damages, but cannot be reduced more than five percent.⁵⁶

The duties of the secretary of state include appointing an independent organization to conduct a 3-year study to determine the effect of primary enforcement of this section with relation to police harassment of motor vehicle operators⁵⁷, and promote compliance with the safety belt requirements through print or visual media.⁵⁸

The Michigan Vehicle Code requires the Department of Community Health to establish a child car seat safety grant program to provide grants for training, promotion, and education concerning the child restraint system use requirements.⁵⁹ Grants shall be provided to persons that the department of community health considers eligible.⁶⁰ Further, a person who violates this section is responsible for a civil infraction⁶¹, and no points shall be assessed.⁶²

In conclusion, Michigan's law is very comprehensive. While all the details of exceptions, fees, age,

⁵⁰ MCLS § 257.710d(6)

⁵¹ MCLS § 257.710e(3)

⁵² MCLS § 257.710e(4)

⁵³ MCLS § 257.710e(5)

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ MCLS § 257.710e(7)

⁵⁷ MCLS § 257.710e(10)

⁵⁸ MCLS § 257.710e(11)

⁵⁹ MCLS § 257.710g

⁶⁰ Id.

⁶¹ MCLS § 257.710e(8)

⁶² MCLS § 257.710e(13)

height and weight restrictions are discussed, this law discusses the specifics of considering evidence for negligence and the impact it could have on damages. It also discusses front and rear seat preferences for not only children without safety seats, but for children using safety seats. This law further discusses distinctions in the law for front versus rear facing child restraint systems.

FLORIDA

Statutes: Fla. Stat. § 316.613; Fla. Stat. § 316.003; Fla. Stat. § 318.18, Effective January 1, 2013;

Regulations: None.

Under Florida motor vehicle Law, every motor vehicle operator transporting a child five years old or younger must provide for protections of the child by using a crash-tested, federally approved child restraint device.⁶³ For children aged 0 through three years, a separate carrier or vehicle manufacturer's integrated car seat must be used.⁶⁴ However, for children of the ages of four through five, a seat belt may also be used in addition to a separate carrier and an integrated child seat.⁶⁵

The Florida legislature enacted a child safety restraint statute in recognition of the problems with child death and injury from unrestrained occupancy in motor vehicles and to conduct a continuing safety and public awareness campaign as to the magnitude of the problem.⁶⁶

In order to notify drivers of this child safety requirement, the department of highway safety and motor vehicles (the department) will deliver notification of these requirements along with the delivery of each motor vehicle license tag.⁶⁷ For further public education of these requirements, the department may authorize funding.⁶⁸ These funds may be used to purchase educational materials for public information and education campaigns promoting highway safety and awareness.⁶⁹

The Florida statute defines a "motor vehicle" as a self-propelled vehicle that is operated on the roadways, streets, and highways of the state⁷⁰ but not operated upon rails or guideway (sic),⁷¹ but excludes school buses⁷² and other buses used for transportation of persons for compensation⁷³, farm tractors or implements of husbandry⁷⁴, trucks weighing more than 26,000 pounds⁷⁵, motorcycles, mopeds, and bicycles⁷⁶, and any other chauffeur-driven vehicle if the operator is hired and using the transportation for compensation.⁷⁷ In the case of chauffeur-driven vehicles, it is the parent, guardian, or

⁶³ Fla. Stat. § 316.613(1)(a)

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Fla. Stat. § 316.613(4)

⁶⁷ Fla. Stat. § 316.613(1)(b)

⁶⁸ Fla. Stat. § 316.6131

⁶⁹ Id.

⁷⁰ Fla. Stat. § 316.613(2)

⁷¹ Fla. Stat. § 316.003(21)

⁷² Fla. Stat. § 316.613(2)(a)

⁷³ Fla. Stat. § 316.613(2)(b)

⁷⁴ Fla. Stat. § 316.613(2)(c)

⁷⁵ Fla. Stat. § 316.613(2)(d)

⁷⁶ Fla. Stat. § 316.613(2)(e)

⁷⁷ Fla. Stat. § 316.613(6)

other responsible person's obligation and responsibility to care for the child's welfare by complying with the requirements of this statute.⁷⁸

The Florida statute also discusses penalties for violations.⁷⁹ Violating this child restraint statute constitutes a moving violation, and three points will be assessed on the operator's driver's license.⁸⁰ A fine of sixty dollars will also result from a violation.⁸¹ With the court's approval, the violator can participate in child restraint safety training in lieu of the fine and driver's license points, but the violator must complete the training.⁸² The child restraint safety training program must be approved by the department, and its fee must bear a reasonable relationship to the cost of providing the course.⁸³ Furthermore, an operator who violates this statute shall not be considered comparative negligent, and the violation will not be admissible as evidence in the civil trial regarding negligence.⁸⁴

Florida's statute on child restraint laws is fairly general. Florida's age maximum age for a child required in a restraint is three. This is the lowest among all 50 states. This shows generally that Florida's laws on child restraint laws are narrow. Exemptions to the statute requirement, fines, rules of evidence, and other penalties are discussed. Public education and safety awareness are also mentioned in the statute.

UTAH

Statutes: Utah Code Ann. § 41-6a-1803; Utah Code Ann. § 41-6a-1804; Utah Code Ann. § 41-6a-1805; Effective May 5, 2008.

Regulations: 2006 UT 28733, 2006 UT Regulation Text 28733.

Under Utah's Motor Vehicle Safety Belt Usage Act⁸⁵, "child restraint systems" are defined as any device, except type I or II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 30 kilograms less.⁸⁶ The weight maximum will be increased⁸⁷ to 36 kilograms on February 27, 2014.⁸⁸ A "motor vehicle" as applies to this statute is defined as a self-propelled vehicle intended primarily for use and operation on the highways⁸⁹ and does not include any off-highway vehicle.⁹⁰ Sometimes helpful when defining a word to put it in quotation marks as I marked above- but not necessary.

Under Utah motor vehicle law, any motor vehicle operated on a highway is required to provide any child younger than eight years old with a child restraint device,⁹¹ and each person eight years of age up

⁷⁸ Id.

⁷⁹ Fla. Stat. § 316.613(5)

⁸⁰ Id.

⁸¹ Fla. Stat. § 318.18(3)(a)

⁸² Fla. Stat. § 316.613(5)

⁸³ Id.

⁸⁴ Fla. Stat. § 316.613(3)

⁸⁵ Utah Code Ann. § 41-6a-1801

⁸⁶ 49 CFR 571.213(s4)

⁸⁷ Id.

⁸⁸ Utah Code Ann. § 41-6a-1802(1)

⁸⁹ Utah Code Ann. § 41-1a-102(33)(a)

⁹⁰ Utah Code Ann. § 41-1a-102(33)(b)

⁹¹ Utah Code Ann. § 41-6a-1803(1)(a)(ii)

to sixteen years of age with a properly adjusted and fastened safety belt.⁹²

However, if a child under eight years old is fifty-seven inches or taller, a child restraint device will not be required⁹³, but the child must wear a properly adjusted and fastened safety belt while in a motor vehicle.⁹⁴

Further exceptions in the statute discuss motor vehicles.⁹⁵ A motor vehicle is exempt from the child restraint device requirements if it was manufactured before July 1, 1966,⁹⁶ if its operator or passengers possess a written verification from a licensed physician that the person is unable to wear a safety belt for physical or medical reasons⁹⁷, or if a motor vehicle or seating position is not required to be equipped with a safety belt system under federal law.⁹⁸ These exceptions extend to vehicles in which all seating positions are occupied by other passengers.⁹⁹

Utah has a separate statute which defines most of the penalties and violations.¹⁰⁰ Firstly, a motor vehicle operator found in violation is guilty of an infraction and shall be fined a maximum of forty-five dollars.¹⁰¹ Secondly, this fine is reducible to fifteen dollars if the violator shows evidence of attending a two-hour course approved by the commissioner of the Department of Public Safety that includes the benefits of using a safety belt and child restraint device.¹⁰² If the violation is under 1803(1)(b), the violator must also prove the acquisition, rental, or purchase of a child restraint device.¹⁰³ Points cannot be assessed for a violation of this statute.¹⁰⁴ Furthermore, if there is more than one child not using the child restraints as required by this statute, it is only one offense against the driver.¹⁰⁵ If the violation is against someone nineteen years of age or older, enforcement will only be secondary as opposed to primary (meaning an officer cannot stop this vehicle for this violation alone, a primary enforcement stop must be made).¹⁰⁶

Finally, in terms of civil litigation, the failure to use a child restraint does not constitute contributory or comparative negligence¹⁰⁷ and may not be introduced as evidence in any civil litigation on the issue of negligence, injuries, or the mitigation of damages.¹⁰⁸

Utah's child restraint laws are descriptive. Utah's law defines and discusses fines and in turn, points to be assessed, child restraints, motor vehicles, negligence, and mitigation of damages. Generally, all usual components of child restraints laws such as age and exceptions are discussed, as well as some additional features unique to this state.

⁹² Utah Code Ann. § 41-6a-1803(1)(a)(iii)

⁹³ Utah Code Ann. § 41-6a-1803(1)(b)(i)

⁹⁴ Utah Code Ann. § 41-6a-1803(1)(b)(ii)

⁹⁵ Utah Code Ann. § 41-6a-1804(1)

⁹⁶ Utah Code Ann. § 41-6a-1804(1)(a)

⁹⁷ Utah Code Ann. § 41-6a-1804(1)(b)

⁹⁸ Utah Code Ann. § 41-6a-1804(1)(c)

⁹⁹ Utah Code Ann. § 41-6a-1804(2)

¹⁰⁰ Utah Code Ann. § 41-6a-1805

¹⁰¹ Utah Code Ann. § 41-6a-1805(1)(a)

¹⁰² Utah Code Ann. § 41-6a-1805(1)(b)(i)

¹⁰³ Utah Code Ann. § 41-6a-1805(1)(b)(ii)

¹⁰⁴ Utah Code Ann. § 41-6a-1805(2)

¹⁰⁵ Utah Code Ann. § 41-6a-1803(3)

¹⁰⁶ Utah Code Ann. § 41-6a-1805(4)

¹⁰⁷ Utah Code Ann. § 41-6a-1806(1)

¹⁰⁸ Utah Code Ann. § 41-6a-1806(2)

Conclusion

States: Minnesota, New York, Michigan, Florida, Utah

Overall, the states have some variability as to how descriptive their laws are written. Whereas Florida seems to have the law to address the problem for children only up to three years old, other states like Utah and Michigan are addressing the problem of child injury in motor vehicles up to the age of eight. Of these five states, Michigan's laws were the most comprehensive while Florida's were least descriptive. While New York and Florida both have exceptions for height and weight restrictions, Minnesota only uses weight exceptions and Utah only uses height exceptions. Many times, however, the manufacturer sets these exceptions. The federal regulations in 49 CFR 571.213 discuss this, however the uniformity throughout the states do not exist. Each of these five states discuss bringing the facts of this case into a court room as evidence, but only Michigan, Florida, and Utah discuss negligence in any capacity. While Michigan's laws are the most comprehensive, along with Utah, Michigan does not describe fines, penalties, and waivers or reductions. Perhaps this information is in another code of the state. New York is the only state which did not include education programs as part of its statute. In conclusion, even though all 50 states have enacted child restraint laws, there is a wide variation in the descriptiveness of each states law, in the elements each state chose to include, as well as the height and/or weight exceptions.