

Child On Board

Easter weekend. Six-year-old Santana Sneed was buckled in the back seat of a car driven by her aunt, nineteen-year-old Versie Levette Gray. Returning from an Easter family get-together in Milwaukee just before 1:00 am on April 1, 2002, Gray's car allegedly ran a red light and was struck by two other cars. Santana was killed. No one else was seriously injured. Ms. Gray faces charges of homicide by intoxicated use of an automobile and homicide by use of a vehicle while operating with a prohibited blood-alcohol concentration. The criminal complaint says Gray's BAC was 0.101. Wisconsin is a .10 BAC state.

The medical reports indicate Santana's injuries included a broken neck and a bruised spine. Some argue the fatal injuries were caused by the combination shoulder harness-seat belt worn by the child, who was not in a booster seat. (The National Highway Traffic Safety Administration recommends children over 40 pounds and less than 4 feet 9 inches tall should be strapped into a booster seat to allow for better belt positioning. Santana weighed 78 pounds and was just 4 feet 2 inches.)

Whatever the ultimate legal outcome of this case, two things are certain: young Santana Sneed is dead, and many other children are killed or injured while riding as passengers in cars driven by impaired adults. Does your state allow for additional charges in a basic DUI arrest if an impaired driver has children in the car?

The answer may surprise you: only 31 states have statutory language which specifically addresses the issue, and of those, the definition of "child" ranges from "under 18" to "under 9 years old".¹ Other states have a more general "child endangerment" statute with language similar to "if a person knowingly engages in conduct that creates a substantial risk of harm to a child" and courts may thus hold that driving while impaired qualifies as endangerment. However, this is not always the case.

Consider *Pennsylvania v. Mastromatteo*, 719 A.2d 1081 (1998), app den 1999 Pa. LEXIS 1040. There, where police observed defendant's car cross the centerline three times and an open container of alcohol in the car, and later determined that her BAC was above the legal limit (.168) with 579 nanograms per deciliter of marijuana, the appellate court nevertheless reversed the conviction for recklessly endangering another person—the defendant's young son—holding that:

[D]riving under the influence of intoxicating substances does not create legal recklessness per se but must also be accompanied with other tangible indicia of unsafe driving to a degree that creates a substantial risk of injury which is consciously disregarded. *Id.* at 1083.

At the opposite end of this legal spectrum are those states with statutes that create a per se offense, with no requisite showing of recklessness or endangerment. The mere presence of the child in the car while driving in an impaired condition is sufficient to sustain the charge. Granted, in many instances, there will also be overt signs of impaired driving, but those indicia are not always present even when the individual is so impaired as to drive less safely than he or she otherwise would. Isn't that the real purpose of both impaired driving and child endangerment statutes—the conduct could result in injury or worse, so let's hold the person accountable in an attempt to prevent these outcomes?

Michigan is an example of a state which has enacted a DUI child endangerment statute. There, Section 257.625(7) makes it a misdemeanor offense for a person to operate a vehicle while under the influence of an intoxicating liquor or controlled substance, or both, while "another person who is less than 16 years of age is occupying the vehicle." There is no requirement, as in the Pennsylvania case, above, that the operation itself be reckless.

If your state is not one of the 31 with a DUI child endangerment statute, you may wish to consider working with your legislature to pass such legislation. For more information, you can access MADD's website at www.madd.org or contact the National Traffic Law Center.

Arresting Developments

Florida.— A 7-year-old boy, who witnesses say was behind the wheel of a car with the permission of the drunk, adult passenger, drove with no headlights through a stop sign and crashed into another car. No serious injuries were reported, but property damage estimates were \$3,500. Barry Colbert, 38 years old, was attempting to back the car away from the scene when officers arrived. He has been charged with DUI, driving with a suspended license, and allowing an unlicensed driver to drive. Colbert told deputies he let the boy drive as a reward for good behavior.

Massachusetts.—A 22-year-old Brockton man has been charged with drunken driving and vehicular homicide resulting from an April 9, 2002 crash that killed Malcolm Kalp, a retired CIA Officer and decorated veteran of the Vietnam War. Kalp's pickup truck was hit by a vehicle driven by Richard Clinch a short time after Clinch and his friends were turned away from a popular bar by bouncers who felt the group appeared intoxicated. According to a state trooper, Clinch "had no reaction whatsoever" when advised at the scene of Kalp's death. Kalp, who had earned two Purple Hearts while in Vietnam, was taken hostage at the US Embassy in Tehran in November 1979 and spent most of the next 444 days in solitary confinement for escape attempts.

Footnote

1 Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Illinois, Kansas, Kentucky, Louisiana, Maryland, Maine, Michigan, Minnesota, North Carolina, North Dakota, New Hampshire, New Jersey, Nevada, Ohio, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Wisconsin, and West Virginia.