



Safety of Florida's Children Ignored During Legislative Session

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This year, the Florida Legislature decided that it does not want Florida to be an outlier when it comes to products liability law, and therefore passed Senate Bill 142 in order to expressly overrule *D'Amario v. Ford Motor Co.*, 806 So.2d 424 (Fla. 2001), which adopted a minority view regarding the allocation of liability in crashworthiness cases. The legislature did not see fit to do the same thing when it comes to the safety of Florida's children, instead allowing Florida to remain an outlier as one of only three states that have yet to enact booster seat use requirements.¹ Indeed, the legislature completely overlooked the safety of Florida's children by failing to enact Senate Bill 238, which would have revised the State's child restraint requirements in order to bring them more in line with the current safety recommendations of the American Academy of Pediatrics and the National Highway Traffic Safety Administration.

Currently, Florida requires that children three and younger must be in a crash-tested, federally approved child restraint device consisting of a separate carrier or vehicle manufacturer's integrated child seat when riding in a motor vehicle.² Four and five-year-old children must be restrained in a separate carrier, integrated child seat, or just the auto manufacturer's seat belt.³ There are no safety requirements for children six and older, or any requirements that children too small for lap and shoulder seat belts be placed in booster seats.

In March 2011, the American Academy of Pediatrics surprised many parents when it revised its policy on child restraints. Noting "[m]otor vehicle crashes represent the leading cause of death for children and youth older than three years in the United States,"⁴ the Academy made the following best-practice recommendations:

1. All infants and toddlers should ride in a rear-facing car seat until two years of age or until they reach the highest weight or height allowed by the car seat manufacturer;
2. All children two years or older, and those that have outgrown a rear-facing car seat, should ride in a forward-facing car seat with a harness for as long as possible, up to the highest weight or height allowed by the car seat manufacturer; and
3. All children whose weight and height is above the forward-facing car seat limit should use a belt-positioning booster seat until they can be properly fitted with a vehicle lap-and-shoulder seat belt, which typically occurs between 8 and 12 years of age.⁵

The Academy based these recommendations on crash test data that shows children under two years of age are significantly more likely to be seriously injured in auto accidents, particularly in side-impact

crashes, when riding in forward-facing, rather than rear-facing, car seats,⁶ and studies that demonstrate forward-facing car seats, when compared to seat belts, significantly reduce fatal and nonfatal injuries to children between two and six years old.⁷ The booster seat recommendation was based on evidence that most seat belts do not correctly fit until a child is at least four feet nine inches tall and between 8 and 12 years old, and that improperly fitting seat belts cause serious cervical and lumbar spinal cord injuries and intra-abdominal injuries to children involved in crashes.⁸ Use of belt-positioning booster seats instead of seat belts reduces the chance of injury to children between four and seven years old by 59 percent.⁹

In line with the Academy's recommendations, NHTSA revised its car seat recommendations for children as of March 21, 2011. It now recommends:

1. Children under one year old should always ride in a rear-facing car seat;
2. Children should remain in a rear-facing car seat for as long as possible, until reaching the maximum height and weight limit set by the car seat manufacturer;
3. Children that have outgrown a rear-facing car seat should ride in a forward-facing car seat for as long as possible, until reaching the maximum height and weight limit set by the car seat manufacturer;
4. Children that have outgrown a forward-facing car seat should ride in a booster seat placed in the back seat until big enough to properly fit a seat belt (the belt should lie snugly across the upper thighs, not stomach, and across the shoulder and chest, not neck or face); and
5. Children should not transition from the back to front seat until at least age 13.¹⁰

After reviewing the AAP and NHTSA recommendations, it is clear that Florida's child restraint law is woefully inadequate. Senate Bill 238 would have helped bring Florida law closer to requiring parents to meet these recommendations by mandating the use of child restraint devices for children through age seven that are less than four feet nine inches tall.¹¹ Children three and younger would still have been required to be seated in a separate carrier or integrated car seat, while children four through seven and less than four feet nine inches tall would have to be seated in a separate carrier, integrated seat, or child booster seat.¹² The addition of this booster seat requirement would have helped reduce injuries to a segment of the population dubbed "the Forgotten Child" by the automotive and safety community—kids between four and eight years old that are graduated prematurely to seat belts.¹³ Booster seat regulations that cover children from four to seven years of age have been found to increase the use of child restraints within that age group by 39 percent.¹⁴ "Children four to five years of age in states with booster seat laws were 23 percent more likely to be reported as appropriately restrained than were children in other states, and those six to seven years of age were twice as likely to be reported as appropriately restrained. For six- to seven-year olds, the effect was much stronger when the law included children

through seven years of age than when it included only those four to five years of age."¹⁵ Unfortunately for Florida's children, the legislature decided to overlook these statistics when failing to enact Senate Bill 238, thereby ignoring an opportunity to protect our children by increasing child restraint requirements.

¹ See Senate Bill 238 Bill Analysis and Fiscal Impact Statement prepared by the Professional Staff of the transportation Committee, available at <http://www.flsenate.gov/Session/Bill/2011/0238/Analyses/r22Du rU5SBfyR2yEextpFEgXyAE=%7C7/Public/Bills/0200-0299/0238/Analysis/2011s0238.tr.PDF>.

² §316.613(1)(a), Fla. Stat.

³ *Id.*

⁴ Dennis R. Durbin, *Technical Report—Child Passenger Safety*, 127 PEDIATRICS 4, E1050 (APRIL 2011), AVAILABLE AT [HTTP://PEDIATRICS.AAPPUBLICATIONS.ORG/CONTENT/EARLY/2011/03/21/PEDS.2011-0215.FULL.PDF](http://PEDIATRICS.AAPPUBLICATIONS.ORG/CONTENT/EARLY/2011/03/21/PEDS.2011-0215.FULL.PDF).

⁵ *Id.* at e1054-e1055.

⁶ *Id.* at e1054.

⁷ *Id.* at e1054-e1055.

⁸ *Id.* at e1055.

⁹ *Id.*

¹⁰ NHTSA Car Seat Recommendations for Children, available at <http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/4StepsFlyer.pdf>.

¹¹ Senate Bill 238, available at <http://www.flsenate.gov/Session/Bill/2011/0238/BillText/Filed/PDF>.

¹² *Id.*

¹³ See Safety Research & Strategies, *Industry and the Federal Government Ignore Safety Needs of Older Children; a Disturbing Legacy for the "Forgotten Child"*, <http://www.safetyresearch.net/safety-issues/child-restraints/> (last visited May 12, 2011).

¹⁴ Durbin at e1061.

¹⁵ *Id.* ¶



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