

Kids, Cars and Cigarettes:

Policy Options for Smoke-Free Vehicles

A Policy Options Brief
December 2010



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AT WILLIAM MITCHELL COLLEGE OF LAW

Suggested citation: Susan R. Weisman, Public Health Law Center, *Kids, Cars and Cigarettes: Policy Options for Smoke-Free Vehicles* (2010).

Public Health Law Center
875 Summit Avenue
St. Paul, Minnesota 55105-3076
651.290.7506 · Fax: 651.290.7515
www.publichealthlawcenter.org

November 2010

This publication was prepared by the Public Health Law Center at William Mitchell College of Law, St. Paul, Minnesota, with financial support provided by the American Lung Association of Minnesota.

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Acknowledgements

The author thanks Rebecca Ireland, Desmond Jenson, and Brennan Furness for their research assistance. The author also thanks Doug Blanke and Kerry Cork for editing and production assistance.

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Executive Summary

The dangers of secondhand smoke are exceedingly well documented and have led to the successful enactment of smoke-free workplace laws in many nations and more than half of all U.S. states. Leading health authorities throughout the world concur that there is no risk-free level of exposure to secondhand smoke and that the only effective way to protect people from harm is to eliminate smoking in enclosed spaces.

Where enacted, smoke-free workplace laws have proved to be very popular with the public and largely self-enforcing. Unfortunately, these laws fail to protect children from secondhand smoke in the two settings where they commonly face exposure—homes and cars. Recent scientific studies have produced irrefutable evidence that kids, cars and cigarettes are a very dangerous combination, leading researchers and policymakers to conclude that voluntary smoke-free vehicle policies do not and cannot adequately protect children from harm in this contained environment.

This policy brief presents a concise overview of the public health rationale for regulating secondhand smoke in vehicles. It summarizes scientific research on the dangers of exposure to secondhand smoke in vehicles and documents its particularly deleterious effect on children and youth. It analyzes the legal authority for regulatory action, evaluates key policy components, and draws upon the experiences of jurisdictions that have exercised leadership in the legislative arena to provide insights on potential enactment, implementation and enforcement issues. Finally, this analysis suggests that the process of enactment may lack major controversy—and, most importantly, that the public understands and respects the reasons for these laws and obeys them once they are in place.

Introduction

Community norms about tobacco use and exposure to secondhand smoke have shifted dramatically over the past decade—so much so that city, state, and national smoke-free workplace laws have become commonplace. In the U.S., twenty-six states, the District of Columbia and the Commonwealth of Puerto Rico, have enacted comprehensive smoke-free workplace policies.¹ Internationally, the world's first global public health treaty, the Framework Convention on Tobacco Control, calls for effective workplace protections against secondhand smoke, and cities as diverse as Hong Kong and Mexico City, as well as an equally diverse list of nations, including France, Iran, Ireland, Italy, Turkey and Uruguay, have adopted policies.² Because these laws enjoy strong public support, they typically become self-enforcing shortly after taking effect.³ While most jurisdictions have yet to enact such legislation, the global movement in this direction appears to be unstoppable.

Despite these substantial gains, tobacco use continues to be the single most preventable cause of disease, disability and premature death in the U.S.⁴ and the *Healthy People 2010* national goal to reduce adult smoking rates to 12 percent has been met by only one state (Utah) and one territory (the U.S. Virgin Islands).⁵ Approximately 46 million U.S. adults still smoke, with the result that more than 126 million nonsmoking Americans, including children, continue to be exposed regularly to secondhand smoke.⁶ Children, in particular, remain vulnerable to involuntary exposure to secondhand smoke and suffer acute and chronic medical consequences, including Sudden Infant Death Syndrome (SIDS), acute respiratory infections, ear problems, and more frequent and severe asthma attacks.⁷ Because nonsmokers inhale many of the same carcinogens and toxins from cigarettes as smokers, even brief exposure puts nonsmokers at risk. Each year, 150,000 to 300,000 children under 18 months of age contract lower respiratory tract infections caused by exposure to secondhand smoke.⁸

For these reasons, public health advocates continue to pursue policies to further reduce exposure to tobacco smoke. Legislation to prohibit smoking in vehicles when children are present is viewed increasingly as critical, given that the scientific basis supporting these laws is now unequivocal. Medical associations, including the American Academy of Pediatrics,⁹ and health advocacy groups, such as the American Lung Association, have taken the position that these laws are needed to protect children, whose developing bodies are especially vulnerable to health harms caused by exposure to tobacco smoke—particularly in small confined spaces, such as cars.

In jurisdictions where smoke-free workplace laws have been enacted, concerted efforts, often including sophisticated, multi-year advocacy campaigns, have typically been required to overcome initial opposition primarily from affected businesses. The widespread popularity of these laws, once implemented, suggests that expanding them to further protect children by enacting smoke-free vehicle legislation may encounter considerably less resistance from the public. In fact, this has been the experience in the few jurisdictions that have enacted smoke-free car policies.^{10,11,12} It appears that the public, once having experienced and accepted smoke-free workplace laws, embraces them, and is unlikely to view this additional evidence-based regulation as an unreasonable governmental intrusion into their private affairs.¹³ Indeed, analyses of the ethics of government prohibitions on smoking in vehicles when children are present indicate that enacting such prohibitions is the most ethically justifiable way to protect the best interests of children in this setting.^{14,15}

This policy brief summarizes the public health rationale for prohibiting smoking in vehicles when children are present; documents the evidence supporting prohibitions; reviews the legal authority for these policies; outlines their key components; summarizes laws currently in effect; describes indicators of public support; and addresses implementation issues.

Public Health Rationale

State legislatures have a long history of enacting policies to protect the public's health and safety, including numerous policies affecting individual conduct in cars. Seatbelt requirements, prohibitions on drunk driving, prohibitions on leaving children unattended in hot or cold cars, infant and booster seat requirements and, more recently, prohibitions on hand-held cell phone use and texting, are just a few examples. Until recently, however, legislators have been reluctant to expand regulation of secondhand smoke to individuals' cars, paying apparent homage to the strongly-held belief that one's home—or, by extension, one's car—is one's castle. As scientific evidence of harm from exposure to smoke in this setting continues to mount, though, a growing number of jurisdictions are taking action to protect children's health by regulating smoking in vehicles.¹⁶

Secondhand smoke consists of a mixture of gases and fine particles that is either emitted from a burning cigarette, cigar, or pipe, or exhaled by smokers. In all, secondhand smoke contains at least 250 toxic chemicals, including more than 50 carcinogens.¹⁷ In a seminal report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* (2006), the U.S. Surgeon General concluded that there is no risk-free level of contact with secondhand smoke and that even brief exposure is hazardous.¹⁸ The Surgeon General found that the only way to fully protect individuals from exposure to secondhand smoke is to eliminate smoking in enclosed spaces—and that merely separating smokers and nonsmokers, filtering or cleaning air, or ventilating buildings cannot eliminate exposure.¹⁹ Similarly, the official guidelines for the implementation of the Framework Convention on Tobacco Control—adopted unanimously by most nations—clearly reject arguments that ventilation or dilution of smoke can protect health and declare unequivocally that the only effective protection against exposure is to eliminate smoking entirely in affected areas.²⁰

The U.S. population's exposure to secondhand smoke has declined in recent years due, in large part, to the passage of laws that prohibit smoking in indoor workplaces.²¹ National health advocacy organizations, including the American Cancer Society, the American Heart Association and the American Lung Association, have contributed to this progress by mounting educational campaigns about the dangers of exposure to secondhand smoke.

Despite these gains and continued educational efforts, smoking persists as the nation's leading cause of preventable disease and death. Nearly 21 percent of U.S. adults aged 18 or older are smokers.^{22,23} In addition, about 20 percent of high school students and about 6 percent of middle school students in the U.S. smoke.²⁴ Every day, about 3,900 U.S. youth between the ages of 12 and 17 smoke their first cigarettes; of these, approximately 1,000 become daily smokers.²⁵

A particular concern is that of the approximately 126 million nonsmokers in the U.S. who are exposed regularly to secondhand smoke in homes, vehicles, workplaces, and public venues,²⁶ certain subsets of the population are affected disproportionately:

- An estimated 60 percent of U.S. children are exposed to secondhand smoke;²⁷
- Approximately 25 percent of all U.S. children reside with at least one smoker;²⁸
- Cotinine levels, which indicate exposure, have consistently been found to be higher in African Americans than in whites and Mexican Americans;²⁹
- Secondhand smoke exposure, including in homes, tends to be higher among lower income persons;³⁰
- Exposure to secondhand smoke is particularly high among some workers in comparison with others—those at greatest risk include African Americans, hospitality workers, and blue-collar workers, especially those in the building trades.^{31,32}

Children Are at Greater Risk than Adults

For children, exposure to secondhand smoke has serious and costly health implications. Tobacco smoke causes ear infections, including build-up of fluid, a sign of chronic middle ear disease; more frequent and severe asthma attacks; respiratory symptoms, including coughing, sneezing and shortness of breath; and upper and lower respiratory infections.³³ Moreover, secondhand smoke places children at greater risk for SIDS.³⁴ Among U.S. children aged 18 months or younger, secondhand smoke is responsible for an estimated 150,000 to 300,000 new cases of bronchitis and pneumonia and 7,500 to 15,000 hospitalizations per year.³⁵ In 2008, the Environmental Protection Agency reported that the direct medical costs associated with exposure to secondhand smoke among U.S. children total more than \$700 million per year.³⁶ Although levels of exposure to secondhand smoke within the general population declined between 1988-1994 and 1999-2004, children were the sub-group with the lowest rate of decline.³⁷

Children are especially vulnerable to the contaminants in secondhand smoke because their bodies are still developing. Because their bronchial tubes are smaller and their immune systems are less developed than those of adults, exposure to secondhand smoke slows the growth of their lungs, resulting in a small, but significant reduction in lung function.^{38,39} In addition, moderate exposure to tobacco smoke is associated with decreased elasticity of the abdominal aorta in otherwise healthy 11-year olds, an early marker of atherosclerosis.⁴⁰

Because children also breathe more rapidly than adults, they inhale more harmful chemicals per pound of their weight than do adults in the same amount of time. Not surprisingly, children are especially vulnerable to secondhand smoke exposure in small confined spaces, such as cars.⁴¹

Exposure to secondhand smoke is particularly damaging to children with asthma. The Environmental Protection Agency estimates that 200,000 to 1,000,000 children with asthma have their condition worsened by exposure to secondhand smoke. These children experience more severe symptoms and more frequent episodes. In addition, secondhand smoke is a risk factor in the development of new cases of asthma in children with no prior symptoms.⁴² A 2007 Australian study found that 14-year-olds exposed to cigarette smoke in cars are more than twice as likely as other youth to develop asthma.⁴³ Another study, which examined the degree to which children with asthma in urban areas are protected from smoke, found that among households with smokers, only about half of the parents of children with asthma maintain smoke-free cars, leading the authors to suggest that protecting children in this environment should be a public health priority.⁴⁴

Secondhand smoke is also a neurotoxic substance, meaning that it alters the normal activity of the nervous system. Consequently, even at very low levels, secondhand smoke can damage a child's cognitive functions. According to one estimate, nearly 22 million children in the U.S. are at risk of reading deficits because of exposure to secondhand smoke.⁴⁵ High levels of exposure have also been associated with risks of deficits in math and visual-spatial reasoning.⁴⁶

Adults Are Also Vulnerable

Secondhand smoke causes heart disease and lung cancer in adults who have never smoked; in addition, it has immediate harmful effects on the cardiovascular system, which increases the risk for heart attacks. Individuals who already have heart disease are at especially high risk—each year, exposure to secondhand smoke in the U.S. causes approximately 46,000 deaths from heart disease among adult nonsmokers. A 2009 Institute of Medicine report confirmed that even brief secondhand smoke exposure can trigger a heart attack and that smoke-free laws prevent heart attacks and save lives.⁴⁷ Nonsmokers who are exposed to secondhand smoke at home or work increase their heart disease risk by 25 to 30 percent and their lung cancer risk by 20 to 30 percent. In addition, approximately 3,400 lung cancer deaths per year among adult nonsmokers in the U.S. are caused by secondhand smoke exposure. Pregnant women who are exposed to secondhand smoke are 20 percent more likely to give birth to low birthweight babies than women who are not exposed to secondhand smoke during pregnancy.⁴⁸

Thirdhand Smoke

The term, *thirdhand smoke*, describes the cocktail of toxins that builds up over time and clings to upholstery, carpets, clothing, hair and other materials and surfaces long after visible, secondhand smoke has dissipated from the air—for hours, days, or even months after a cigarette or other combusted form of tobacco has been extinguished.^{49,50,51} Although scientists have had concerns about lingering tobacco toxins for some time, a recent study shows that the public is far less aware of health risks posed by thirdhand smoke than by secondhand smoke. While the vast majority of study participants agreed that secondhand smoke is dangerous, only 65 percent of nonsmokers and 43 percent of smokers agreed that breathing air in a room one day after people had smoked in it could harm the health of infants and children.⁵²

Exposure to thirdhand smoke is dangerous for children. Children's developing brains are uniquely susceptible to extremely low levels of toxins. Infants and young children, through early physical exploration of their environments, frequently touch and put their lips to contaminated surfaces and materials. Because of their more rapid respiration and their close proximity to dusty surfaces, including floors, furniture, walls and upholstery, infants ingest about twice the amount of dust as do adults.⁵³ Studies suggest that exposure to tobacco toxins may be the leading cause of SIDS, due to suppression of respiration.⁵⁴

Scientists at the Lawrence Berkeley National Laboratory recently examined how much nicotine from cigarette smoke is absorbed onto common household surfaces and the interior surfaces of vehicles. The study demonstrates that nicotine from thirdhand smoke reacts with nitrous acid, a common indoor air pollutant, to form carcinogens called tobacco-specific nitrosamines (TSNAs) that are among the most potent carcinogens present in unburned tobacco and tobacco smoke.⁵⁵ Given that the most common source of exposure to TSNAs is through inhalation of dust and skin contact with contaminated surfaces (e.g., skin, clothing, upholstery and carpeting), the study concludes that thirdhand smoke in homes and vehicles poses substantial health risks to infants and children.⁵⁶ Study results indicate that ventilating a room does not eliminate the dangers of thirdhand smoke and that even smoking outdoors cannot eliminate the risk. This is because the nicotine residues from tobacco smoke cling to a smoker's clothing and skin after a smoker returns inside and are then spread through the interior environment.

Dangers of Exposure to Secondhand and Thirdhand Smoke in Vehicles

Health risks of exposure to secondhand smoke depend on the duration of exposure, the concentration of chemicals in the secondhand smoke—which depends largely on the number of smokers present—the proximity of smokers and nonsmokers, and the size and ventilation of the confined space where smoking occurs.⁵⁷ For children, especially young children and infants, the two primary sources of exposure to secondhand smoke in confined spaces are homes and vehicles where smoking is not regulated. Research on secondhand smoke in homes has shown that the contaminants from tobacco smoke settle on surfaces, such as carpeting, upholstery and walls, or remain in the air, and can take days, weeks or months after smoking has occurred to dissipate fully.⁵⁸

Although ventilation can mask the presence of secondhand smoke, studies have demonstrated that no feasible air exchange rates or technologies can eliminate the risk—hence the Surgeon General’s 2006 pronouncement that there is no safe level of exposure to secondhand smoke.⁵⁹ The official guidelines for implementation of the global tobacco treaty, the Framework Convention on Tobacco Control, adopted by most nations of the world in 2007, specifically declare:

There is no safe level of exposure to tobacco smoke, and notions such as a threshold value for toxicity from second-hand smoke should be rejected, as they are contradicted by scientific evidence. Approaches other than 100% smoke free environments, including ventilation, air filtration, and the use of designated smoking areas (whether with separate ventilation systems or not), have repeatedly been shown to be ineffective and there is conclusive evidence, scientific and otherwise, that engineering approaches do not protect against exposure to tobacco smoke.⁶⁰

Similarly, in 2005, the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), a leading authority on ventilation standards, took a formal position that no engineering approaches, including advanced dilution ventilation or air-cleaning technologies, have been shown or should be relied on to control health risks from secondhand smoke in spaces where smoking occurs.⁶¹

Smoke Concentrations in Vehicles Are Worse Than in Homes

Recent studies have examined vehicles under various driving, ventilation and smoking conditions to detect levels of respirable particulate matter—the pollution inhaled from tobacco smoke. These studies have confirmed what many researchers had predicted: pollution levels generated by secondhand smoke in vehicles rapidly reach dangerously high levels and pose potentially serious health risks for nonsmokers, children and adults alike.^{62,63,64} In comparisons of in-car smoking experiments and similar air quality tests in other environments, secondhand smoke concentrations have been found to be greater in vehicles than in any of the other micro-environments tested similarly, including tests in smoke-free homes, smokers’ homes, and smoke-filled bars, and tests that have examined ambient outdoor air—even with vehicle windows open and the fan set on high.⁶⁵

In 2005, the California Air Resources Board compared a number of studies measuring secondhand smoke particle concentrations in different environments and found that concentrations in vehicles with smoking and no ventilation were up to 60 times greater than in a smoke-free home and, shockingly, *up to 27 times greater than in a smoker’s home*.⁶⁶ Even when fully ventilated, the concentrations inside a car were at least 13 times that of outdoor concentrations.⁶⁷ The 2007 study by Ott et al., analyzed concentrations of tobacco smoke in a minivan and found that, for an average five-hour automobile trip during which two cigarettes were smoked per hour while the minivan was in motion, the interior particle exposure would be *25 times higher than the same exposure in a residence*.⁶⁸

In a 2006 study, Harvard researchers found “alarming” levels of pollution from tobacco smoke were generated in cars under varying conditions within just five minutes of time, leading the authors to conclude that the health of children could be seriously threatened by exposure to secondhand smoke in cars driven by typical drivers under normal driving conditions. *The average levels of respirable particulate matter in the vehicles tested were higher than the levels found in smoke-filled bars in similar studies*, and exceeded the levels described by the U.S. Environmental Protection Agency as “unhealthy for sensitive groups,” including children.⁶⁹ Significant increases in the presence of carbon monoxide—which can induce lethargy and loss of alertness among infants, even in small amounts—were also detected in the vehicles tested.⁷⁰

Additional studies from 2006 yielded similar results. In one study, researchers found unhealthy levels of secondhand smoke in cars under all conditions tested, including ventilation.⁷¹ Detection of extremely high levels of respirable particulate matters led researchers to conclude that exposure increased the health risks for all riders, especially children.⁷² A New Zealand study from the same year found similarly that smoking in a car, even with the windows open, yielded unhealthy levels of secondhand smoke, reaching air quality levels that were five times worse than on the poorest air quality days in the region where the testing took place; *when the windows were closed, air quality levels were 100 times worse*. Not surprisingly, the study’s authors concluded that enactment of smoke-free car regulations would protect children and all nonsmokers.⁷³

In a 2008 examination of air pollution from secondhand smoke in cars, unhealthy levels of respirable particulate matter were reached in cars ventilated under varying, realistic conditions. This study found that the smoke from just one cigarette could result in fine particulate matter levels that greatly exceed the limits set by the U.S. Environmental Protection Agency and are substantially higher than levels detected in smoky bars and restaurants. The researchers concluded that the public needs to be better informed about the potentially high levels and risks of exposure, even under optimal ventilation conditions. They also concluded that the findings “...when combined with current biological and epidemiological evidence on the effects of tobacco smoke exposure, contribute to the evidence base justifying the implementation of personal and public policies to eliminate exposure to tobacco smoke in cars in the presence of children.”⁷⁴

Exposure to Thirdhand Smoke in Vehicles Puts Children at Risk

Emerging research on thirdhand smoke also supports regulation. A 2010 study on absorption of thirdhand smoke by Sleiman et al., examined the interior surfaces of a light-duty truck of a heavy smoker during three days of testing, and found that high levels of carcinogenic TSNAs (tobacco-specific nitrosamines) lingered hours after cigarette smoke had dispersed.⁷⁵ In vehicles, engines emit nitrous acid, which then combines with the nicotine in exhaled vapor to produce the carcinogenic TSNAs. While the authors of this study acknowledge that further research is needed to better understand the health implications, they state explicitly that infants and children “are particularly at risk” and emphasize that even low levels of exposure to TSNAs “may represent a potential long-term health hazard” to infants, given that they have higher respiration rates and lower body weights than adults.⁷⁶ The study’s authors recommend consideration of remedial approaches, including smoke-free regulation or voluntary restrictions to eliminate the prime pollution source.⁷⁷

The Limited Value of Voluntary Measures

When there is insufficient evidence to compel legislative action, public health advocates tend to focus, instead, on voluntary measures and educational campaigns. For years, the Centers for Disease Control and Prevention (CDC), the American Lung Association, the American Cancer Society, and the American Heart Association have waged educational campaigns urging smokers—parents and caregivers—not to expose children to tobacco smoke in vehicles and homes. Ultimately, voluntary measures fail to protect all children. Although educational campaigns have informed large sectors of the public about the dangers of secondhand smoke, misconceptions persist about health risks from smoking in vehicles and this practice continues unchecked in most states.^{78,79,80} In one study, researchers who interviewed low-income families in rural Georgia about smoking rules in cars found a widespread belief among study participants that secondhand smoke was not hazardous as long as car windows remained open.⁸¹

Educational campaigns about smoking in cars can help shape community norms and impact individual behavior; however, in the absence of a legislative mandate, those who are most vulnerable—particularly children—remain powerless to avoid exposure or protect themselves from harm. The CDC reported in 2008 that despite significant reductions in exposure to secondhand smoke nationwide—due largely to enactment of smoke-free workplace laws—declines in exposure have been smallest among very young children and highest among adults. This phenomenon is explained, in part, by the fact that prohibitions on smoking in workplaces affect adults far more than children. This report emphasizes the need to reduce children’s exposure to secondhand smoke in settings where they remain at risk.⁸²

A 2008 survey of middle school (grades 6-8) and high school students attending Minnesota public schools indicates that young people strongly endorse smoke-free rules. In the survey, 31.6 percent of students in grades 6-12—about 137,000 students—reported that they were exposed to secondhand smoke in a car on more than one day within the past week.⁸³ Non-smokers were three times as likely as smokers to report smoke-free rules in vehicles.⁸⁴ Notably, more than 70 percent of high school students believed smoking should never be allowed in their vehicles. Support among middle school students was even stronger, with close to 90 percent indicating support for smoke-free rules in homes, workplaces and cars.⁸⁵

Studies consistently show that smoke-free policies decrease exposure to secondhand smoke by 80 to 90 percent in high-exposure settings and can lead to widespread decreases in exposure of up to 40 percent.⁸⁶ The International Agency for Research on Cancer recently concluded that “there is sufficient evidence that implementation of smoke-free policies substantially decreases second-hand smoke exposure.”⁸⁷

Given the recent studies demonstrating substantial health risks to children from exposure to secondhand smoke in cars—and the knowledge that children are typically powerless to protect themselves—most states are, arguably, falling short of protecting children’s health in this very confined environment. In all but a few jurisdictions, prohibitions against smoking are limited to indoor workplaces. Although some states prohibit smoking in a variety of work vehicles and the guidelines for implementation of the global tobacco treaty call for such measures,⁸⁸ smoke-free workplace laws are inadequate to protect children, whose principal sources of exposure are family homes and cars. In only the few jurisdictions that have enacted prohibitions on smoking in vehicles when children and youth are present are our youngest citizens truly protected.

Legal Authority

Opposition to government regulation of smoking in vehicles is typically rooted in arguments about government invasion of privacy, as well as concerns about whether such laws might be difficult to enforce or might divert increasingly scarce law enforcement resources from more pressing needs. The most vocal opposition centers on privacy arguments, and is often accompanied by characterizations of the laws as examples of a *nanny state* mentality.

There is No Constitutional Right to Smoke

Those who oppose the regulation of smoking altogether may argue that such laws: (1) discriminate against smokers as a group, in violation of the Constitution’s Equal Protection Clause;⁸⁹ and (2) violate their fundamental right to privacy under the Due Process Clause.⁹⁰ Courts have consistently held, though, that there is no constitutional right to smoke. In multiple jurisdictions, courts have determined that the Constitution extends no special protections to smokers under the Equal Protection Clause, holding that smoking is not an “immutable characteristic determined solely by the accident of birth”—people do not smoke from the moment of birth and have the capacity to quit.⁹¹ The only groups of people given special protection under the Equal Protection Clause are those based on race, national origin, ethnicity, gender, illegitimacy and, most recently, sexual orientation.^{92,93} If a law discriminates against a group of people on one of these bases without compelling justification, it may well violate the Constitution. Smokers, however, are not recognized as a specially protected group, and a law that regulates smoking will be found constitutional as long as it is rationally related to a legitimate government purpose.⁹⁴ Smoking restrictions have been determined to be rationally related to the legitimate government purpose of protecting the public’s health and, in particular, the health of children and youth from the dangers of secondhand smoke.

Similarly, courts have held that there is no fundamental right to smoke under the privacy rights guaranteed by the Due Process Clause of the Constitution.⁹⁵ The right to privacy is not absolute. The only fundamental rights to privacy recognized by the U.S. Supreme Court concern individual decisions about reproduction and familial relationships, including decisions about marriage, contraception, abortion, procreation, and the raising and education of children.⁹⁶ Even where smoking in private settings is concerned, courts have held that there is no constitutional right to smoke.

In a 1987 Oklahoma case challenging a city’s prohibition against its firefighters smoking while off-duty, the court held that the regulation was rationally related to the legitimate government interest of maintaining a healthy roster of firefighters.⁹⁷ In a 2002 Ohio custody and visitation case, the parents of an 8-year old were banned from smoking in the presence of their child, the court holding that the right to privacy “does not include the right to inflict health-destructive secondhand smoke upon other persons, especially children who have no choice in the matter.”⁹⁸

Legal Authority to Regulate Smoking in Private Vehicles

Government regulation in the otherwise private domain of one’s vehicle is neither new nor uncommon, and is justified by the government’s legitimate interest in protecting public health and safety. Laws requiring drivers and passengers to wear seatbelts and young children to be restrained in booster seats, and laws that forbid drivers and passengers from drinking alcoholic beverages or having open bottles of alcohol in moving vehicles, are ubiquitous in society. Recent examples, reflective of the times, include laws that prohibit texting and the use of hand-held cell phones while driving. Accoutrements that reflect personal preferences, such as tinted windows, fog lights, tire chains, and even small items dangled from rearview mirrors inside cars, are

also regulated to protect the common good. Laws that prohibit individuals from engaging in otherwise legal activities in vehicles simply restrict the settings where these activities may take place. The legitimacy of these laws and government rationales for their enactment—to ensure safe transportation and protect health—are widely recognized and well-accepted by the citizenry.^{99,100}

The Doctrine of *Parens Patriae*: Protecting the Best Interests of the Child

In court, the legal doctrine of *parens patriae* embodies the principle that the state must act as “the ultimate parent” of children who are under the court’s jurisdiction. Similarly, courts view the state—acting as the ultimate parent or protector of children—as having the duty to protect the welfare of children when the interests of children and parents conflict, to the extent that children are threatened with harm. As already noted, this principle has been applied to protect children from parental smoking in child custody and visitation cases.¹⁰¹ The same principle pertains to the regulation of smoking in personal vehicles and supports legislative action to protect the health of children, whose exposure is involuntary and profound in its potential to cause harm.

Some legal and medical experts argue that intentionally subjecting children to tobacco smoke in a motor vehicle may constitute child abuse.¹⁰² Should a parent or guardian who smokes in a car while transporting children who suffer from chronic or acute conditions such as asthma, middle ear infections, or other respiratory illnesses or diseases, face charges of child abuse after having been warned by medical or other health practitioners about the specific health risks children face in this contained environment? Should physicians and nurses be required to warn parents not to smoke in vehicles when transporting children, and should they be required to report such instances of parental smoking to authorities? While no specific child abuse legislation relating to smoking in cars has been introduced in the U.S.—and while there may be no political appetite for pursuing such a measure at this time—it bears noting that the standards for reporting instances of child abuse in some states are, arguably, already phrased broadly enough to encompass smoking in vehicles while transporting children. In Nebraska, for example, medical care providers, school employees, and social workers are required to file a report when they observe a child being subjected to conditions or circumstances that reasonably would result in abuse and, in Massachusetts, a report must be filed when a reporter, in his or her professional capacity, has reasonable cause to believe that a child is suffering injury from abuse or neglect that inflicts harm or a substantial risk of harm.¹⁰³ Notably, the issue of children’s exposure to tobacco smoke is being raised more frequently in custody and visitation disputes in U.S. family courts and, with increasing frequency, courts are issuing orders protecting children from exposure to secondhand smoke.¹⁰⁴ Several respected medical organizations in the U.S. and other countries, including the American Academy of Pediatrics,¹⁰⁵ Britain’s Royal College of General Practitioners,¹⁰⁶ and the Canadian Medical Association,¹⁰⁷ have issued formal policy positions supporting smoke-free vehicle legislation. The American Academy of Pediatrics supports prohibiting smoking in vehicles to protect all children and youth under the age of 18.¹⁰⁸

Because smokers have no fundamental right to smoke, and because governments have the legal authority to regulate smoking in personal vehicles if the law in question is rationally related to the advancement of a legitimate government purpose, policymakers must balance the best interests of children, i.e., protecting their health, against the desire of adult smokers to smoke in their vehicles. Any such analysis favors the government’s steps to protect children by restricting smoking, given the indisputable evidence that exposure to secondhand smoke in these small confined spaces significantly endangers those present, particularly children and youth, as well as adults.

Enforceability

Opponents of legislation restricting smoking in vehicles may contend that these laws will be difficult or impossible to enforce or that they will result in racial profiling. In light of the many vehicular traffic laws already on the books that regulate activity for health and safety reasons—including seatbelt laws, laws that prohibit texting or other use of cell phones while driving, child-restraint/booster seat laws and laws that prohibit leaving children unattended—such arguments lack merit. Ultimately, recognition of a need to protect children’s health and convincing evidence that a proposed law will achieve its intended goal will guide legislative action.

While enforcement challenges can and do exist with regard to virtually all traffic-related laws, those challenges are not insurmountable barriers to enactment or successful implementation. Mandatory seatbelt laws, for example, have proved very effective in increasing seatbelt use and decreasing traffic fatalities, despite ongoing enforcement challenges.¹⁰⁹ With all such laws, the challenge of enforceability hinges, in large part, on securing support of law enforcement officials. This can be accomplished by strengthening officers' awareness of the need for regulation and by ensuring that officers receive training on implementation. In the four U.S. states that have enacted smoke-free vehicle laws, enforcement has not been problematic.¹¹⁰

Opponents may also contend that legislation prohibiting smoking in cars when children are present will divert already strained law enforcement resources. While safeguarding limited law enforcement resources is an important consideration when shaping any law enforcement policy, the evidence, to date, demonstrates that smoke-free vehicle laws, like smoke-free workplace laws, are embraced by the public and typically become self-enforcing soon after enactment.^{111,112} Implementation efforts that focus on educating the public about the purpose of the law have helped achieve rapid acceptance and compliance. As with seatbelt laws, regulatory experience with smoke-free laws has shown, time and again, that the public respects the health and safety rationales for these laws and obeys them.¹¹³

What *is* at issue with regard to enforceability, though, is whether to structure a violation of a smoke-free vehicle law as a primary or secondary offense. When a violation of a vehicular traffic law is categorized as a primary offense, a law enforcement officer is authorized to conduct a traffic stop for that violation alone. Alternatively, when a violation is classified as a secondary offense, an officer may pull a vehicle over only when there is a legitimate basis for stopping a driver for a separate primary offense (e.g., speeding or driving under the influence of alcohol). Evidence with regard to seatbelt laws suggests that primary enforcement yields higher compliance with the law and, consequently, succeeds in achieving the goal of protecting more lives.¹¹⁴ As discussed later in this report, state and local jurisdictions differ on how to classify smoke-free vehicle violations.

Policies in Effect

Global Perspectives

Recognition of a need to protect children and youth from secondhand and thirdhand smoke in vehicles has led to the enactment of policies around the world, including South Africa, Cyprus, the Emirate of Dubai in the United Arab Emirates, several Canadian provinces, and five of the six states of Australia (New South Wales, Queensland, South Australia, Tasmania and Victoria). While the primary purpose of these laws is to reduce the harms associated with exposure to tobacco smoke, the prohibition in New Delhi, India, is unique in that its main purpose is to reduce safety hazards caused by distracted drivers in one of India's most congested cities.^{115,116}

Internationally, jurisdictions vary on the age of children protected. Four of the five Australian states that have enacted policies prohibit smoking in vehicles carrying children under age 16, and one, Tasmania, protects all children under the age of 18. In Canada, prohibitions are in effect in five of its ten provinces, as well as in the territory of Yukon.¹¹⁷

United States

Four states—Arkansas, Louisiana, California and Maine—and the Commonwealth of Puerto Rico prohibit smoking in private cars when children are present. Arkansas and Louisiana enacted and implemented laws in 2006, followed by California (enacted in 2007, implemented in 2008), and Maine (enacted and implemented in 2008). Several municipalities have also enacted policies,¹¹⁸ and statewide legislation has been proposed, but not yet enacted, in at least 20 states, plus the District of Columbia.¹¹⁹ As discussed in the following section on key policy components, these laws vary regarding the age of children protected, the type of enforcement mechanism, and the severity of the penalties for violations.

In addition, several states, including Arizona, Maine, New Jersey, Oregon, Texas, Vermont and Washington, prohibit smoking in vehicles that transport foster children.^{120,121} (Arizona prohibits smoking in any enclosed area with a foster child, which presumably includes vehicles.) Three California counties—Monterey, San

Luis Obispo and Santa Cruz—prohibit smoking in foster care homes and in vehicles that transport foster children.¹²²

No U.S. states have enacted a law like the one in New Delhi, India, that prohibits smoking in cars for strictly safety reasons, although arguments could be made in support of this approach. Proposing such a law involves essentially the same arguments that pertain to laws like prohibitions on texting while driving. Smoking while driving, e.g., lighting or extinguishing a cigarette, dumping ashes, or accidentally dropping a cigarette, distracts a driver, raising legitimate safety concerns. Yet, the public health rationale provides a stronger foundation for prohibiting smoking in cars—to protect the health of vulnerable passengers, especially children and youth, who are involuntarily exposed to harmful toxins while being transported in a vehicle shared by a smoker, regardless of whether it is the driver or another passenger who smokes. Indeed, an important distinction between these two regulatory rationales is that a safety-based prohibition logically applies only to smoking by the driver, whereas a prohibition premised on protection of health applies to both the driver and passengers, prohibiting smoking whenever children are present.

Key Policy Components

Among the four U.S. states that have enacted smoke-free vehicle policies, key variables include: (1) the age of children and youth to whom the law applies (ranging from under 6 years and under 60 pounds to under age 18); (2) the classification of the offense as either primary or secondary enforcement; and (3) the fine level (ranging from \$25 to \$250).¹²³ This type of legislation has generated bipartisan support. In Arkansas and Maine, for example, the bills were sponsored by Republicans, whereas in Louisiana and California, the bills were sponsored by Democrats.

Age of Child

Among jurisdictions worldwide, the age of children and youth protected by smoke-free vehicle laws has been edging upward, reaching to age 19 in the Canadian provinces of Nova Scotia and Prince Edward Island, and age 18 in California and in the municipalities of Bangor, Maine; Keyport and West Long Branch, New Jersey; and Rockland County, New York. This can be a difficult issue to resolve and it has been the subject of debate in states that have passed laws. Questions may arise, for example, about the difficulty of determining the age of a child at the time of enforcement. In Louisiana, this issue was resolved by matching the age restriction with the state's existing child restraint/seatbelt law, which requires all children under age 13 to be restrained by car seat, booster seat, or safety belt. The prohibition on smoking was limited to the presence of children who, by statute, were required to be restrained in vehicles.¹²⁴

The issue of determining the age range to which the prohibition should apply was also debated in Maine. Some policymakers contended that the age cut-off should correspond to the legal driving age in Maine, which is set at age 16, while others contended that youth between the ages of 16 and 18 could defend themselves by voicing their opposition to parental smoking in vehicles. A compromise resulted in changing the age in the bill from 18 to 16, the age at which youth can legally drive in Maine.¹²⁵

This issue was also the subject of debate in California, where proponents of the bill found it difficult to advance a convincing argument for protecting one child or another based on an arbitrary age cut-off. Given that there was no clear evidence that children become less susceptible to health risks from exposure to tobacco smoke upon reaching a certain age, this issue was resolved by applying the law to protect all children and youth under age 18, the age at which Californians can legally possess and smoke tobacco.¹²⁶

The position taken by California's legislature recognizes that all children and youth, no matter what their age, are at risk when exposed to tobacco smoke in vehicles, and does not presume that youths of a certain age, say 14 or 16, can stop adults from smoking simply by asking. It recognizes that while youths may feel comfortable voicing an opinion or making a request, they lack power to effect permanent change. Protecting all children and youth who are under the legal age for tobacco use and possession would appear to provide a clear-cut enforcement mechanism for law enforcement officers, one that is consistent with their responsibility to enforce laws prohibiting youth access to tobacco. This approach is supported by the American Academy of Pediatrics, which calls for smoke-free vehicle legislation to protect all children and youth under age 18.¹²⁷

Classification of an Offense as Primary or Secondary Enforcement

A jurisdiction's decision about whether to classify an offense as primary or secondary tends to mirror the way similar types of laws within the jurisdiction are structured. If, for example, a state treats seatbelt laws, restrictions on use of cell phones, or child restraint laws as primary offenses, it is more likely than not that a law regulating smoking in cars will be categorized the same way. If, on the other hand, a state classifies similar vehicular traffic violations as secondary offenses, a smoke-free vehicle law will likely be classified as a secondary offense.

Deciding how to classify the offense has been relatively noncontroversial in states that have enacted smoke-free vehicle laws. According to the sponsor of Louisiana's legislation, Rep. Gary Smith, Jr., (D) District 56, this component was presented as a primary offense, did not raise any conflicts, and the idea of making a violation a secondary offense was not debated.¹²⁸ In Maine, a violation was proposed as a secondary offense, and this approach was never questioned, apparently buoyed by state legislators' collective knowledge that the city of Bangor's ordinance, adopted earlier, had been touted by a local law enforcement official as largely self-enforcing.¹²⁹

California legislators also debated this issue. According to the office of the bill's sponsor, Senator Jenny Oropeza (D), District 28, Sen. Oropeza advocated for secondary enforcement because the stated purpose of the legislation was to raise awareness and not to generate revenue or burden law enforcement officers. Supporters of the bill felt that classifying the violation as a primary offense might negatively impact the duties of law enforcement officers or send the message that the intent of the law was to issue tickets.¹³⁰

Questions about whether to categorize a violation as a primary or secondary offense may trigger community concerns about the potential for racial- or bias-based profiling under either scenario. Profiling occurs when a law enforcement officer who is motivated by racial bias or other bias (ethnicity, gender, etc.) improperly detains a driver, using suspicion of a crime as a pretext for a stop. Profiling can affect any type of traffic stop violation. Given that law enforcement officers lack authority to stop a driver solely for a secondary offense, incidents of profiling may be less likely to occur when a violation of a law (such as one designed primarily to protect children's health) is categorized as a secondary offense. Notably, in interviews conducted with legislative leaders, staff members, and advocates in the four states that currently prohibit smoking in vehicles when children are present, profiling was not mentioned as an impediment to enactment or implementation.¹³¹ In light of the potential for profiling to occur in connection with any traffic stop, policymakers may want to address these concerns separately to enhance law enforcement skills regarding all vehicular traffic stop laws, e.g., by mandating law enforcement training on this topic for all officers.^{132,133}

Fines and Penalties

Fines in the four states that have enacted provisions range from up to \$25 in Arkansas, where a fine is waived for a first offense if the violator enters a smoking cessation program, to \$150 or at least 24 hours of community service in Louisiana. California imposes a fine of up to \$100. Maine issued written warnings the first year after enactment, and now issues warnings or imposes fines of \$50. The Commonwealth of Puerto Rico imposes the highest fine among U.S. jurisdictions, \$250.¹³⁴

Other Considerations Regarding Enactment and Implementation

Informal interviews conducted in 2010 with legislative sponsors, co-sponsors, committee chairs, other elected representatives, and legislative staff persons in the four states that have enacted policies shed light on common political challenges and issues debated prior to enactment, as well as common enforcement concerns.¹³⁵ The primary political challenge faced by bill sponsors was the need to educate fellow legislators about the severity of the health risks to children from exposure to tobacco smoke toxins in vehicles. Sponsors found that their fellow legislators had misconceptions about this issue. Not surprisingly, some legislators in all four states initially viewed these legislative proposals as unnecessary governmental interference. However, in each state, bill sponsors and advocates eventually succeeded in amassing support to pass the legislation by emphasizing the health risks to children, the strength of the evidence of harm (demonstrating the rapid growth of the evidence base), and the vulnerability of children and youth who are unable to fend for themselves or avoid exposure in this setting—and are unable to advocate for themselves at the legislature.

No formal opposition to the proposals was evident in these four states, although there was a general awareness of the tobacco industry's presence during legislative sessions and the industry's opposition to other tobacco-related legislation was certainly felt. Instead, opposition came from libertarian-oriented individual citizens and legislators—claims of governmental interference were debated on the floor in at least one state prior to passage. Concerns about enforcement were also debated. In Louisiana, legislators debated whether to use signage to make drivers aware of the law when entering the state and were ultimately persuaded that there was no need to mandate signage requirements. The bill's sponsor, Rep. Gary Smith, argued that the public is accustomed to living with many jurisdictional differences in traffic laws that are not addressed with signage.¹³⁶

Additional considerations may include whether a smoke-free vehicle law should apply to vehicles regardless of whether they are moving or stationary, or whether a law should apply to both drivers and passengers, or to drivers only. While such issues are unlikely to impede enactment, they may merit analysis, including an examination of how laws of a similar nature have been handled within a jurisdiction.

Public Support

A recent review of fifteen studies from North America, Australia and the United Kingdom that probed public attitudes toward smoke-free private vehicle laws dating back to 1988 found that, in jurisdictions with data, the majority of the public supports such laws. Notably, the study results indicate that support for these laws appears to have increased over time and that even smokers support them. In the five studies conducted after 2004 in California, New Zealand and Australia, support among smokers was 77 percent or more. The high level of public support, including support among smokers, suggests that smoke-free car legislation may be relatively non-controversial.¹³⁷

A telephone survey of adult homeowners in the northeastern region of Minnesota was conducted by the American Lung Association in December 2008, at a time when no local smoke-free vehicle prohibitions were in effect or under consideration. Of 396 respondents, two-thirds reported that they would definitely support smoke-free vehicle regulations to reduce children's exposure to secondhand smoke and an additional seven percent indicated that they might be likely to support such measures.¹³⁸

Conclusion

The matter of prohibiting smoking in vehicles when children are present is an issue that is ripe for widespread enactment. Many tobacco control prevention advocates have long believed that a prohibition against smoking in cars is prudent and necessary to protect children and youth from serious health risks. There is now compelling scientific evidence of substantial health risks associated with exposure. There is also a wealth of support for such legislation among respected medical organizations, health advocacy organizations, and the general public alike, including smokers. Despite inevitable outcries of some citizens about unwanted governmental interference into their private affairs, public support for smoke-free legislation, in general, and for smoke-free vehicle legislation, in particular, is strong. This support is rooted in acceptance of the documented public health rationale for the law, as well as in an abiding awareness of the vulnerability of children, their inability both to protect themselves in the confined setting of a vehicle and to represent themselves in the legislative arena.

Smoking in Cars with Children Legislation: U.S. States*

	Arkansas	Louisiana	California	Maine
Statute	ARK. CODE ANN. § 20-27-1903 (2006)	LA. REV. STAT. ANN. § 32:200.4 (2006)	CAL. HEALTH & SAFETY CODE § 118948 (2007)	ME. REV. STAT. ANN. tit. 22 § 1549 (2008)
Sponsor	Rep. Bob Mathis (R)	Rep. Gary Smith, Jr. (D)	Sen. Jenny Oropeza (D)	Rep. Brian Duprey (R)
Enactment Date	2006	2006	2007	2008
Effective Date	2006	2006	2008	2008
Legislative Sessions	1 (special session)	1	1	1
Offense Type	Primary	Primary	Secondary	Secondary
Applicable Age	Under 6 years and under 60 lbs. and restrained in a child safety seat	Under 13	Under 18	Under 16
Fine	Up to \$25: Fine waived for 1 st violation if violator enters smoking cessation program	\$150 or 24-plus hours of community service	Up to \$100	1 st year after enactment: written warning only; \$50 warning thereafter

* As of 11/2010

Endnotes

- ¹ AM. LUNG ASS'N, STATE LEGISLATED ACTIONS ON TOBACCO ISSUES 2009 (2010), *available at* http://slati.lungusa.org/reports/SLATI_2009_Final_Web.pdf (noting that Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Utah, Vermont, Washington and Wisconsin have comprehensive smoke-free workplace policies); *see also* AM. CANCER SOCIETY ACTION CANCER NETWORK, News Releases and Statements. *South Dakota 'Yes' Vote on Smoke-Free Law is Victory for Public Health*, Nov. 2, 2010, <http://www.acscan.org/mediacenter/view/id/350> (last visited November 19, 2010) (noting the addition of South Dakota to the list of states with a comprehensive smoke-free workplace policy).
- ² WORLD HEALTH ORG., WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL (2003), *available at* <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>.
- ³ Andrew Hyland et al., *Attitudes and Beliefs About Secondhand Smoke and Smoke-Free Policies in Four Countries: Findings from the International Tobacco Control Four Country Survey*, 11 NICOTINE & TOBACCO RES. 642 (2009), *available at* <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2688606/pdf/ntp063.pdf>.
- ⁴ CTRS. FOR DISEASE CONTROL AND PREVENTION, TOBACCO USE: TARGETING THE NATION'S LEADING KILLER: AT A GLANCE, 2010 (2010), *available at* http://www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2010/tobacco_2010.pdf [hereinafter CDC Tobacco Use].
- ⁵ Ctrs. for Disease Control and Prevention, *State-Specific Prevalence and Trends in Adult Cigarette Smoking—United States, 1998–2007*, 58 MORBIDITY AND MORTALITY WKLY. REP. 221(2009), *available at* <http://www.cdc.gov/mmwr/pdf/wk/mm5809.pdf> [hereinafter CDC State-Specific].
- ⁶ CDC Tobacco Use, *supra* note 4.
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ Am. Acad. of Pediatrics, *Policy Statement—Tobacco Use: A Pediatric Disease*, 124 PEDIATRICS 1474 (2009), *available at* <http://aappolicy.aapublications.org/cgi/reprint/pediatrics;124/5/1474.pdf>.
- ¹⁰ Jake Bleed & Michael R. Wickline, *Lighting Up With Young Kids in Vehicle Banned Under Bill*, ARKANSAS DEMOCRAT GAZETTE, Apr. 8, 2006 (noting, to the surprise of many, that Arkansas' state legislature overwhelmingly passed legislation in less than two days, prohibiting smoking in vehicles when passengers include a child under six (6), weighing fewer than sixty (60) pounds, and restrained in a safety seat); *see also* ARK. CODE ANN. § 20-27-1903 (2006).
- ¹¹ CAL. DEP'T OF PUB. HEALTH, SMOKE-FREE CARS (2008), *available at* <http://www.tobaccofreeca.com/Cars-FAQs.pdf> (“No groups registered their opposition. . . . In the 2005 California Tobacco Survey, 92.3% of California adults agreed that smoking should not be allowed inside cars when children are in them.”).
- ¹² George Thomson & Nick Wilson, *Public Attitudes to Laws for Smokefree Private Vehicles: A Brief Review*, 18 TOBACCO CONTROL 256 (2009), *available at* http://www.ash.org.nz/site_resources/library/Secondhand_smoke/Public_atttudes_to_laws_for_smokefree_private_vehicles.pdf.
- ¹³ AM. LUNG ASS'N OF MINN., REDUCING CHILDREN'S EXPOSURE TO SECONDHAND SMOKE IN VEHICLES, THE SUMMARY REPORT (2008) (on file with author), *available at* susan.weisman@wmitchell.edu. In a survey conducted in northeastern Minnesota after implementation of that state's comprehensive smoke-free workplace legislation, two-thirds of respondents reported that they would support smoke-free vehicle regulations to reduce children's exposure to secondhand smoke.
- ¹⁴ Miranda R. Jones et al., *Secondhand Tobacco Smoke Concentrations in Motor Vehicles: A Pilot Study*, 18 TOBACCO CONTROL 399, 403, 404 n.27 (2009).
- ¹⁵ Jill A. Jarvie & Ruth E. Malone, *Children's Secondhand Smoke Exposure in Private Homes and Cars: An Ethical Analysis*, 98 AM. J. PUB. HEALTH 2140 (2008), *available at* <http://ajph.aphapublications.org/cgi/reprint/AJPH.2007.130856v1.pdf>.
- ¹⁶ *See* ARK. CODE ANN. § 20-27-1903 (2006); CAL. HEALTH & SAFETY CODE § 118948 (2007); LA. REV. STAT. ANN. § 32:300.4 (2006); ME. REV. STAT. ANN. tit. 22 § 1549 (2008); P.R. LAWS ANN. tit. 24 § 892 (2006); *see also* GLOBAL ADVISORS SMOKEFREE POLICY, SMOKE-FREE VEHICLES WHEN CHILDREN ARE PRESENT (2010), *available at* http://www.njgasp.org/f_SF%20cars,kids,%20info,%20arguments.pdf (noting that smoke-free car policies have been enacted in several local jurisdictions within the United States and in several Canadian provinces and Australian states, as well as other international jurisdictions, including South Africa and Cyprus).
- ¹⁷ Ctrs. for Disease Control and Prevention, Fact Sheet, *Secondhand Smoke*, CDC, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Nov. 10, 2010) [hereinafter CDC Fact Sheet: SHS] (citing U.S. DEP'T OF HEALTH AND HUMAN SCIENCES, NAT'L INST. OF ENVTL. HEALTH SCIENCES, NATIONAL TOXICOLOGY PROGRAM, REPORT ON CARCINOGENS (2005), *available at* <http://ntp.niehs.nih.gov/ntp/roc/eleventh/profiles/s176toba.pdf>).
- ¹⁸ *Id.* at n.2 (citing U.S. DEP'T OF HEALTH AND HUMAN SERVICES, OFFICE OF THE SURGEON GENERAL, THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL (2006), *available at* <http://www.surgeongeneral.gov/library/secondhandsmoke/report/fullreport.pdf>).
- ¹⁹ *Id.*
- ²⁰ WORLD HEALTH ORG., WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: GUIDELINES FOR IMPLEMENTATION (2009), *available at* http://whqlibdoc.who.int/publications/2009/9789241598224_eng.pdf.

- ²¹ CDC Fact Sheet: SHS, *supra* note 17, at nn.7 & 8.
- ²² CTRS. FOR DISEASE CONTROL AND PREVENTION, EARLY RELEASE OF SELECTED ESTIMATES BASED ON DATA FROM THE 2008 NATIONAL HEALTH INTERVIEW SURVEY 52 (2008), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/200812_08.pdf (Figure 8.1. Prevalence of current smoking among adults aged 18 and over: United States, 1997–June 2008).
- ²³ CDC State-Specific, *supra* note 5 (reporting that, in Minnesota, 17.6 percent of adults (ages 18+)—more than 695,000 persons—are current smokers. In addition, 11.7 percent of the state’s youth (ages 12-17) are current smokers. Minnesota ranks 32nd among all states in its youth smoking rate (range of 6.5 to 15.9 percent)).
- ²⁴ Ctrs. for Disease Control and Prevention, Fact Sheet, *Youth and Tobacco Use*, CDC, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last visited Nov. 11, 2010)(noting that although youth cigarette use showed sharp declines between 1997 and 2003, rates have experienced a plateau effect over the past several years); *see also id.* at n.3.
- ²⁵ *Id.* at n.5.
- ²⁶ CDC Fact Sheet: SHS, *supra* note 17, at n.2.
- ²⁷ *Id.* at n.2.
- ²⁸ *Id.* at n.2.
- ²⁹ *Id.* at nn.6-8.
- ³⁰ *Id.* at nn.2, 6.
- ³¹ *Id.* at n. 9.
- ³² U.S. DEP’T OF HEALTH AND HUMAN SERVICES, THE NATIONAL SURVEY ON DRUG USE AND HEALTH REPORT, CIGARETTE USE AMONG ADULTS EMPLOYED FULL TIME, BY OCCUPATIONAL CATEGORY (2009), *available at* <http://www.oas.samhsa.gov/2k9/170/170OccupationHTML.pdf>.
- ³³ CDC Fact Sheet: SHS, *supra* note 17.
- ³⁴ *Id.* at n.2.
- ³⁵ *Id.* at n.3.
- ³⁶ ENVTL. PROTECTION AGENCY, CHILDREN’S ENVIRONMENTAL HEALTH DISPARITIES: HISPANIC AND LATINO AMERICAN CHILDREN AND SECONDHAND SMOKE (2008), *available at* [http://yosemite.epa.gov/ochp/ochpweb.nsf/content/HD_Hispanic_Smoke.htm/\\$File/HD_Hispanic_Smoke.pdf](http://yosemite.epa.gov/ochp/ochpweb.nsf/content/HD_Hispanic_Smoke.htm/$File/HD_Hispanic_Smoke.pdf) (citing E. KATHLEEN ADAMS ET AL., WORLD HEALTH ORG., THE COSTS OF ENVIRONMENTAL TOBACCO SMOKE (ETS): AN INTERNATIONAL REVIEW (1999), *available at* <http://www.who.int/tobacco/media/en/adams.pdf>).
- ³⁷ AM. FOR NONSMOKERS’ RIGHTS, HEALTH EFFECTS OF SECONDHAND SMOKE ON CHILDREN, at 1, 4 n.2 (2009), *available at* http://no-smoke.org/pdf/shs_children.pdf [hereinafter AM. FOR NONSMOKERS’ RIGHTS](citing Susan E. Schober et al., *Disparities in Secondhand Smoke Exposure—United States, 1988-1994 and 1999-2004*, 57 MORBIDITY AND MORTALITY WKLY. REP. 744 (2008), *available at* <http://www.cdc.gov/mmwr/PDF/wk/mm5727.pdf>).
- ³⁸ U.S. DEP’T OF HEALTH AND HUMAN SERVICES, OFFICE OF THE SURGEON GENERAL, THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL 11 (2006), *available at* <http://www.surgeongeneral.gov/library/secondhandsmoke/report/fullreport.pdf>.
- ³⁹ Env’tl. Protection Agency, *Fact Sheet: Respiratory Health Effects of Passive Smoking*, EPA, <http://www.epa.gov/smokefree/pubs/etsfs.html> (last visited Nov. 10, 2010).
- ⁴⁰ AM. FOR NONSMOKERS’ RIGHTS, *supra* note 37, at 3, 5 n.24 (citing Katariina Kallio et al., *Decreased aortic elasticity in healthy 11-year-old children exposed to tobacco smoke*, 123 PEDIATRICS e267, e 267-73 (2009)).
- ⁴¹ NON-SMOKERS’ RIGHTS ASS’N, SMOKING AND HEALTH ACTION FOUNDATION, SECOND-HAND SMOKE IN HOMES AND CARS 3-4 (2007) *available at* http://www.nsra-adnf.ca/cms/file/pdf/DOCU_07_02_22_SHS_HomeCarsFinalUpdate.pdf; *see also id.* at ii n.22, iii n.35.
- ⁴² Env’tl. Protection Agency, *supra* note 39.
- ⁴³ Peter D. Sly et al., *Exposure to Environmental Tobacco Smoke in Cars Increases the Risk of Persistent Wheeze in Adolescents*, 186 MED. J. OF AUSTRALIA 322 (2007), *available at* http://www.mja.com.au/public/issues/186_06_190307/letters_190307_fm.pdf.
- ⁴⁴ Jill S. Halterman et al., *Do Parents of Urban Children with Persistent Asthma Ban Smoking in Their Homes and Cars?* 6 AMBULATORY PEDIATRICS 115 (2006).
- ⁴⁵ AM. FOR NONSMOKERS’ RIGHTS, *supra* note 37, at 2, 4 n.7 (citing Kimberly Yolton et al., *Exposure to Environmental Tobacco Smoke and Cognitive Abilities of U.S. Children and Adolescents*, 113 ENVTL. HEALTH PERSP. 98, 98-103 (2005), *available at* http://ehp03.niehs.nih.gov/article_fetchObjectAttachment.action?uri=info%3AAdoi%2F10.1289%2Fehp.7210&representation=PDF).

- ⁴⁶ *Id.*
- ⁴⁷ NAT'L ACADEMY OF SCIENCES, INST. OF MED., SECONDHAND SMOKE EXPOSURE AND CARDIOVASCULAR EFFECTS: MAKING SENSE OF THE EVIDENCE (2009).
- ⁴⁸ CTRS. FOR DISEASE CONTROL AND PREVENTION, PREVENTING SMOKING AND EXPOSURE TO SECONDHAND SMOKE BEFORE, DURING AND AFTER PREGNANCY (2007), available at <http://www.cdc.gov/nccdphp/publications/factsheets/prevention/pdf/smoking.pdf>.
- ⁴⁹ Jonathan P. Winickoff et al., *Beliefs About the Health Effects of "Thirdhand" Smoke and Home Smoking Bans*, 123 PEDIATRICS e74 (2009), available at <http://pediatrics.aappublications.org/cgi/reprint/123/1/e74.pdf>.
- ⁵⁰ Maggie Fox, *Even Third-hand Smoke Carries Carcinogens: Study*, REUTERS, Feb. 8, 2010, <http://www.reuters.com/article/idUSTRE61753920100208>.
- ⁵¹ Mohamad Sleiman et al., *Formation of Carcinogens Indoors by Surface-Mediated Reactions of Nicotine with Nitrous Acid, Leading to Potential Thirdhand Smoke Hazards*, 107 PROC. OF THE NAT'L ACAD. OF SCI. OF THE U.S. 6576 (2010), available at <http://www.pnas.org/content/107/15/6576.full.pdf+html>.
- ⁵² Winickoff et al., *supra* note 49.
- ⁵³ Sleiman et al., *supra* note 51.
- ⁵⁴ Coco Ballantyne, *What is Third-Hand Smoke? Is It Hazardous?*, SCI. AM., January 6, 2009, available at <http://www.scientificamerican.com/article.cfm?id=what-is-third-hand-smoke>. In this *Scientific American* interview, Dana-Farber Cancer Institute researcher and pediatrician, Jonathan Winickoff, explains the concept of third-hand smoke and why it constitutes a health risk for children. *See also* Winickoff et al., *supra* note 49.
- ⁵⁵ Andy Evangelista, *Thirdhand Smoke Worries Researchers*, UNIVERSITY OF CALIFORNIA – UC NEWSROOM, September 20, 2010 (citing Sleiman et al., *supra* note 51).
- ⁵⁶ Sleiman et al., *supra* note 51, at 6579.
- ⁵⁷ NON-SMOKERS' RIGHTS ASS'N, *supra* note 41, at 2, ii n.12 (citing U.S. DEP'T OF HEALTH AND HUMAN SERVICES, THE HEALTH CONSEQUENCES OF INVOLUNTARY SMOKING A REPORT OF THE SURGEON GENERAL (1986), available at http://profiles.nlm.nih.gov/NN/B/C/P/M/_/nnbcm.pdf).
- ⁵⁸ Georg E. Matt et al., *Households Contaminated by Environmental Tobacco Smoke: Sources of Infant Exposures*, 13 TOBACCO CONTROL 29, 29, 36 (2004).
- ⁵⁹ U.S. DEPT OF HEALTH AND HUMAN SERVICES, *supra* note 38.
- ⁶⁰ WORLD HEALTH ORG., GUIDELINES ON PROTECTION FROM EXPOSURE TO TOBACCO SMOKE (2007), available at http://www.who.int/fctc/cop/art%208%20guidelines_english.pdf.
- ⁶¹ AM. SOCIETY OF HEATING, REFRIGERATING AND AIR-CONDITIONING ENGINEERS, INC., ENVIRONMENTAL TOBACCO SMOKE: POSITION DOCUMENT (2005), available at http://www.ashrae.org/doclib/20058211239_347.pdf.
- ⁶² Wayne Ott, Neil Klepeis & Paul Switzer, *Air Change Rates of Motor Vehicles and In-Vehicle Pollutant Concentrations from Secondhand Smoke*, 18 J. OF EXPOSURE SCI. AND ENVTL. EPIDEMIOLOGY 312 (2007), available at http://tobaccosmoke.org/pub/reprints/Ott_CarStudy.pdf.
- ⁶³ Vaughan W. Rees & Gregory N. Connolly, *Measuring Air Quality to Protect Children from Secondhand Smoke in Cars*, 31 AM. J. PREVENTATIVE MED. 363 (2006), available at <http://dist28.casen.govoffice.com/vertical/Sites/%7BFF9FB4A1-CC0F-49C2-A2A9-B86C0D0B20F8%7D/uploads/%7B8B3CB411-3ACF-4E51-8C55-515FCA1B99D5%7D.PDF>.
- ⁶⁴ *See* CAL. ENVTL. PROTECTION AGENCY, CAL. AIR RESOURCES BD., SECONDHAND SMOKE IN CARS FACTSHEET, available at http://www.arb.ca.gov/toxics/ets/documents/ets_cars.pdf.
- ⁶⁵ ONTARIO MEDICAL ASS'N, TOBACCO SMOKE CONCENTRATION IN CARS (2008), available at <https://www.oma.org/Resources/Documents/TobaccoSmokeConcentrationsInCars.pdf>.
- ⁶⁶ *Id.* at 1 n.2 (citing Cal. Env'tl. Protection Agency, Cal. Air Resources Bd., *Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant* (2005), available at <http://www.arb.ca.gov/regact/ets2006/ets2006.htm> (last visited 11/24/10)).
- ⁶⁷ Ontario Medical Association, *supra* note 65, at 1 n.3 (citing Ott, *supra* note 62).
- ⁶⁸ Ott, *supra* note 62.
- ⁶⁹ Rees, *supra* note 63.
- ⁷⁰ *Id.*
- ⁷¹ JESSICA KUEHNE, CAMPAIGN FOR TOBACCO-FREE KIDS, SECONDHAND SMOKE, KIDS AND CARS 4 n.5 (2009), available at <http://www.tobaccofreekids.org/research/factsheets/pdf/0334.pdf> (citing TARYN SENDZIK ET AL., THE HAZARD OF TOBACCO SMOKE POLLUTION IN CARS: EVIDENCE FROM AN AIR QUALITY MONITORING STUDY, 13th World Conference on Tobacco or Health, Washington D.C. (July 12-15, 2006), available at <http://www.arts.uwaterloo.ca/~gfong/smokefree/Senzik-Car-WCTOH-2006.pdf>).

- ⁷² *Id.* at 4 n.5.
- ⁷³ Richard Edwards, Nick Wilson & Nevil Pierse, *Highly Hazardous Air Quality Associated With Smoking in Cars: New Zealand Pilot Study*, J. OF THE N.Z. MED. ASS'N, Oct. 27, 2006, available at <http://www.nzma.org.nz/journal/119-1244/2294/content.pdf>.
- ⁷⁴ Taryn Sendzik et al., *An Experimental Investigation of Tobacco Smoke Pollution in Cars*, 11 NICOTINE & TOBACCO RES. 627, 627-634 (2009), available at http://www.otru.org/pdf/special/special_mar_2008.pdf.
- ⁷⁵ Sleiman et al., *supra* note 51, at 6579.
- ⁷⁶ *Id.*
- ⁷⁷ *Id.*
- ⁷⁸ Halterman et al., *supra* note 44 (noting that among urban area households with children with asthma and smokers, less than half (49 percent) maintained smoke-free cars, signaling that protecting children in this environment is a public health priority).
- ⁷⁹ Michelle Crozier Kegler, Cam Escoffery & Susan Butler, *A Qualitative Study on Establishing and Enforcing Smoking Rules in Family Cars*, 10 NICOTINE AND TOBACCO RES. 493 (2008).
- ⁸⁰ Winickoff et al., *supra* note 49.
- ⁸¹ Kegler, *supra* note 79.
- ⁸² Susan E. Schober, et al., *Disparities in Secondhand Smoke Exposure-United States, 1988-1994 and 1999-2004*, 57 MORBIDITY AND MORTALITY WKLY. REP. 744 (2008), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5727.pdf>.
- ⁸³ MINN. DEP'T OF HEALTH, DIV. OF HEALTH POLICY, CTR. FOR HEALTH STATISTICS, *TEENS AND TOBACCO IN MINNESOTA, THE VIEW FROM 2008, RESULTS FROM THE MINNESOTA YOUTH TOBACCO AND ASTHMA SURVEY 27* (2008).
- ⁸⁴ *Id.* at 30.
- ⁸⁵ *Id.* at 31.
- ⁸⁶ WORLD HEALTH ORG., WHO REPORT ON THE GLOBAL TOBACCO EPIDEMIC 25, 67 n.47 (2009), available at http://whqlibdoc.who.int/publications/2009/9789241563918_eng_full.pdf.
- ⁸⁷ *Id.* at 25, 67 n.46 (citing John P. Pierce & Maria E. León, *Effectiveness of Smoke-free Policies*, 9 THE LANCET ONCOLOGY 614 (2008)).
- ⁸⁸ WORLD HEALTH ORG., *supra* note 60.
- ⁸⁹ *See* U.S. CONST. amend. XIV.
- ⁹⁰ *See* U.S. CONST. amend. V; U.S. CONST. amend. XIV.
- ⁹¹ *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).
- ⁹² SAMANTHA K. GRAFF, TOBACCO CONTROL LEGAL CONSORTIUM, *THERE IS NO CONSTITUTIONAL RIGHT TO SMOKE: 2008* 7 n.35 (2008), available at http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-constitution-2008_0.pdf (citing *e.g.*, *Brown v. Board of Education*, 347 U.S. 483 (1954) (addressing race); *Sugarman v. Dougall*, 413 U.S. 634 (1973) (addressing national origin); *Craig v. Boran*, 429 U.S. 190 (1976) (addressing gender)).
- ⁹³ *Log Cabin Republicans v. United States*, CV 04-08425-VAP (Ex) (C.D. Cal. Oct. 12, 2010), available at [http://www.cacd.uscourts.gov/CACD/RecentPubOp.nsf/bb61c530eab0911c882567cf005ac6f9/4f03e468a737002e8825779a00040406/\\$FILE/2CV04-8425-VAP.pdf](http://www.cacd.uscourts.gov/CACD/RecentPubOp.nsf/bb61c530eab0911c882567cf005ac6f9/4f03e468a737002e8825779a00040406/$FILE/2CV04-8425-VAP.pdf).
- ⁹⁴ GRAFF, *supra* note 92, at 2, 6 n.16 (2008), (noting that when evaluating claims of undue government interference with individual liberties that are *not* specially protected, including smoking, courts usually apply a *rational relationship* test, evaluating whether the law in question is “rationally related” to a “legitimate” government purpose).
- ⁹⁵ *See* U.S. CONST. amend. V; U.S. CONST. amend. XIV.
- ⁹⁶ *See* *Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965) (recognizing married couples’ right to use contraceptives); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (recognizing parents’ right to determine how best to educate their children); *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (protecting the sanctity of family relationships).
- ⁹⁷ *Grusendorf v. City of Oklahoma City*, 816 F.2d 539 (10th Cir. 1987).
- ⁹⁸ *See In re Julie Anne*, 780 N.E.2d 635, 659 (Ohio Com. Pl. 2002).
- ⁹⁹ WORLD HEALTH ORG., *supra* note 86, at 25, 67 n.47.
- ¹⁰⁰ Hyland et al., *supra* note 3.

- ¹⁰¹ See *In re Julie Anne*, 780 N.E.2d at 659.
- ¹⁰² E-mail from John Banzhaf II, Executive Director, Action on Smoking and Health, to Doug Blanke, Director, Public Health Law Center (August 12, 2010, 08:05:10 AM CDT) (noting that smoking in car can be “child abuse” as Royal College reported) (on file with author); Steve Field, *Stay Alive and Healthy*, THE OBSERVER, August 8, 2010, available at <http://www.guardian.co.uk/commentisfree/2010/aug/08/steve-field-patient-responsibility-health/print>.
- ¹⁰³ DEP’T OF HEALTH AND HUMAN SERVICES, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT: SUMMARY OF STATE LAWS 27-28 (2008) (citing NEB. REV. STAT. § 28-711; MASS. GEN. LAWS ch. 119 § 51A).
- ¹⁰⁴ KATHLEEN HOKE DACHILLE & KRISTINE CALLAHAN, TOBACCO CONTROL LEGAL CONSORTIUM, SECONDHAND SMOKE AND THE FAMILY COURTS: THE ROLE OF SMOKE EXPOSURE IN CUSTODY AND VISITATION DECISIONS (2005), available at <http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-family-2005.pdf>.
- ¹⁰⁵ Am. Acad. of Pediatrics, *supra* note 9.
- ¹⁰⁶ ROYAL COLL. OF GENERAL PRACTITIONERS, LEADING THE WAY: HIGH QUALITY CARE FOR ALL THROUGH GENERAL PRACTICE: A MANIFESTO FOR PATIENT CARE 2010 (2010), available at http://www.rcgp.org.uk/pdf/RCGP_Political_Manifesto.pdf.
- ¹⁰⁷ Jack Keating, *Doctors Call for Smoking Ban in Cars*, CANADA.COM (Aug. 23, 2007), <http://www.canada.com/theprovince/news/story.html?id=fa2fa42c-899f-48df-b40e-6b93643e81cd>.
- ¹⁰⁸ Am. Acad. of Pediatrics, *supra* note 9.
- ¹⁰⁹ Toni Glantz & Gretchen Henkle, Prevention Institute, *Seatbelts: Current Issues*, http://www.preventioninstitute.org/traffic_seatbelt.html (last visited Nov. 11, 2010) (noting that the Centers for Disease Control and Prevention reports that seatbelt use nationwide increased from 11% in 1981 to 68% in 1997. NHTSA reports that the motor vehicle fatality rate measured per 100,000 population decreased from 21.49 in 1981 to 1.6 in 1997, and also decreased as measured by 100 million vehicle miles traveled, from 3.2 in 1981 to 1.6 in 1997. While these decreased cannot be attributed to the use of seatbelts alone, seatbelts are credited with playing a significant role in these advancements).
- ¹¹⁰ Scripted telephone interviews were conducted by the Public Health Law Center (research assistant, Rebecca Ireland) between January and April, 2010. Interviewees were asked to comment on the challenges they faced in passing the law and how they were overcome; lessons learned; the timeframe from introduction to passage and the legislative committees involved; key stakeholders; opponents, if any; tobacco industry and other organizational positions; issues debated; political arguments that prevailed; and implementation issues. Interviewees included: Rep. Gary Smith, Jr. (D), District 56, Louisiana (bill sponsor); Sean Henschel, Legislative Director for Sen. Jenny Oropeza (D), District 28, California (bill sponsor); Speaker of the House, Rep. Robbie Wills (R), Arkansas [the bill’s sponsor, Rep. Bob Mathis (R) was no longer in office at the time of the interview]; and Rep. Lisa Miller (D), District 52, Maine [the bill’s sponsor, Rep. Brian Duprey (R) was no longer in office at the time of the interview; Rep. Miller served on the Health & Human Services Committee at the time of enactment].
- ¹¹¹ CAL. DEP’T OF PUB. HEALTH, *supra* note 11.
- ¹¹² Thomson & Wilson, *supra* note 12.
- ¹¹³ *Id.*
- ¹¹⁴ Glantz & Henkle, *supra* note 109.
- ¹¹⁵ Gavin Rabinowitz, *New Delhi Bans Smoking While Driving*, USA TODAY, March 29, 2007, available at http://www.usatoday.com/news/world/2007-03-29-new-delhi-ban_N.htm.
- ¹¹⁶ *Driving While Smoking Banned for New Delhi’s 14 Million*, MED. NEWS TODAY, March 29, 2007, available at <http://www.medicalnewstoday.com/articles/66594.php>.
- ¹¹⁷ GLOBAL ADVISORS SMOKEFREE POLICY, *supra* note 16 (noting that policies are in effect in several Canadian jurisdictions: Provinces: British Columbia (under age 16, effective April 2009); New Brunswick (under age 16, effective January 2010); Nova Scotia (under age 19, effective April 2008); Ontario (under age 16, effective January 2009); Prince Edward Island (under age 19, effective September 2009). Territory: Yukon (under age 18, effective May 2008)).
- ¹¹⁸ *Id.* (noting that each of the following four jurisdictions’ policies apply to and protect children and youth under the age of 18: Bangor, Maine (2007); Keyport, New Jersey and West Long Branch, New Jersey (2007); and Rockland County, New York (2007)).
- ¹¹⁹ *Id.* (noting that Arizona, Connecticut, Illinois, Indiana, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Oregon, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Washington, and West Virginia have introduced legislation).
- ¹²⁰ CAL. DEP’T OF PUB. HEALTH, *supra* note 11.
- ¹²¹ The Public Health Law Center’s companion policy brief on regulating smoking in foster care homes and cars will be released in 2011.
- ¹²² GLOBAL ADVISORS SMOKEFREE POLICY, *supra* note 16 (noting that the San Luis Obispo County prohibition requires that a vehicle must be smoke-free for at least 12 hours before a foster care child enters the vehicle).
- ¹²³ Public Health Law Center telephone interviews, *supra* note 110.

- ¹²⁴ Telephone interview by Rebecca Ireland with Gary Smith, Jr., La. State Representative (Feb. 4, 2010).
- ¹²⁵ Telephone interview by Rebecca Ireland with Lisa Miller, Me. State Representative (Feb. 4, 2010).
- ¹²⁶ Telephone interview by Rebecca Ireland with Sean Henschel, Legislative Dir. for Cal. State Senator Jenny Oropeza (Feb. 19, 2010).
- ¹²⁷ Am. Acad. of Pediatrics, *supra* note 9.
- ¹²⁸ Telephone interview by Rebecca Ireland with Gary Smith, Jr., La. State Representative (Feb. 4, 2010).
- ¹²⁹ Telephone interview by Rebecca Ireland with Lisa Miller, Me. State Representative (Feb. 4, 2010).
- ¹³⁰ Telephone interview by Rebecca Ireland with Sean Henschel, Legislative Dir. for Cal. State Senator Jenny Oropeza (Feb. 19, 2010).
- ¹³¹ Public Health Law Center telephone interviews, *supra* note 110.
- ¹³² Two of the four states that have smoke-free car laws, California and Maine, have racial- or bias-based profiling legislation in place. California's racial profiling law predates the state's enactment of its smoke-free car law. The law mandates that instruction and training about racial profiling be included in basic training courses for law enforcement officers, stressing "understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment." In developing the training, the Commission on Peace Officer Standards for Recruitment and Training is required to consult with individuals and groups having expertise on this topic. CAL. PENAL CODE § 13519.4 (2010) (effective January 1, 2005). Maine's bias-based profiling provision took effect after its smoke-free vehicle law was enacted. The legislation created a committee comprised of the Commissioner of Public Safety, representatives from law enforcement, the Attorney General, the state's Criminal Justice Academy, Indian tribes, and civil rights organizations. The advisory committee is charged with developing a model policy on bias-based profiling, recommending how to address any evidence of bias-based profiling found in the state, and recommending content for law enforcement curricula and training. The committee, which sits for three-year terms, is also charged with establishing a mechanism for outreach and public awareness campaigns and is required to report to the legislature annually and as needed. ME. REV. STAT. tit. 25, § 3001 (2010).
- ¹³³ UNIVERSITY OF MINNESOTA INSTITUTE ON RACE & POVERTY, MINNESOTA STATEWIDE RACIAL PROFILING REPORT: ALL PARTICIPATING JURISDICTIONS, REPORT TO THE MINNESOTA LEGISLATURE (2003), available at <http://www.irpumn.org/uls/resources/projects/aggregate%20report%2092303.pdf>. A study on racial profiling, conducted in Minnesota and reported to the state legislature in 2003, addressed racial bias in two related areas of enforcement – the decision to stop drivers and the decision to search drivers or their vehicles when stopped—based on data collected by 65 law enforcement jurisdictions. Results indicated that people of color—particularly Blacks, Latinos, and American Indians—have been subjected to a disproportionate number of stops for minor, seldom-enforced violations of traffic laws (e.g., underinflated tires, failure to signal a lane change) as a pretext for investigating whether drivers are engaged in criminal activity (e.g., excessive speeding, reckless driving or responses to externally generated reports of crimes, such as contraband-related crimes). Provisions such as those enacted in Maine and California that mandate or encourage specific law enforcement policies and officer training establish a systemic approach that aims to eradicate this behavior.
- ¹³⁴ See ARK. CODE ANN. § 20-27-1903 (2006); CAL. HEALTH & SAFETY CODE § 118948 (2007); LA. REV. STAT. ANN. § 32:300.4 (2006); ME. REV. STAT. ANN. tit. 22, § 1549 (2008); P.R. LAWS ANN. tit. 24 § 892 (2006).
- ¹³⁵ Public Health Law Center telephone interviews, *supra* note 110.
- ¹³⁶ Public Health Law Center telephone interviews, *supra* note 110.
- ¹³⁷ Thomson & Wilson, *supra* note 12.
- ¹³⁸ AM. LUNG ASS'N OF MINN., *supra* note 13.



Public Health Law Center
875 Summit Avenue
St. Paul, Minnesota 55105-3076
651.290.7506 · Fax: 651.290.7515
www.publichealthlawcenter.org