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# Health and Welfare / Sit Right Here Honey, I'll Be Right Back: The Unattended Child in Motor Vehicle Safety Act

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# Sit Right Here Honey, I'll Be Right Back: The Unattended Child in Motor Vehicle Safety Act

Jaeson D. White

## Code Sections Affected

Vehicle Code §§ 15600, 15602, 15603, 15620, 15630, 15632  
(new).  
SB 255 (Speier); 2001 STAT. Ch. 855.

## I. INTRODUCTION

Six month old Kaitlyn died of hyperthermia after her babysitter left her unattended in a van for more than two hours in over one-hundred-degree weather.<sup>1</sup> Since 1985, sixty children have died in California as a direct result of being left unattended in or near motor vehicles.<sup>2</sup> These children died as a result of exposure to extreme heat or because they accessed the vehicle's controls and caused the vehicle to move.<sup>3</sup> Unfortunately, as society becomes more fast-paced, incidents of children left unattended in or near motor vehicles could increase.<sup>4</sup> The increased exposure to extreme conditions, such as high temperatures, could also lead to further tragedies.<sup>5</sup>

Prior to the enactment of Chapter 855, California law prohibited endangering the person or health of a child.<sup>6</sup> Under the old statutory provisions, a person had to act with criminal negligence in order to be held accountable.<sup>7</sup> Chapter 855 adds provisions to the California Vehicle Code that will prohibit a person from leaving a child six years of age or younger unattended in a motor vehicle under certain specified conditions.<sup>8</sup> Collectively, the new provisions will be known and

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1. C.J. Schexnayder, *Using a Tragedy to Save Others*, THE PRESS-ENTERPRISE (Riverside), Oct. 31, 2000, at 1, available at 2000 WL 25668007 (copy on file with the *McGeorge Law Review*).

2. Kevin Yamamura, *Kids Left in Cars Focus of New Bill: Speier Says Goal to Prevent Deaths*, SACRAMENTO BEE, Feb. 16, 2001, at 1, available at [http://www.capitolalert.com/news/capalert04\\_20010216.html](http://www.capitolalert.com/news/capalert04_20010216.html) (copy on file with the *McGeorge Law Review*).

3. Center for Disease Control, *Injuries and Deaths Among Children Left Unattended in or Around Motor Vehicles – United States, July 2000-June 2001* (July 5, 2002), at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm512693.htm> (copy on file with the *McGeorge Law Review*).

4. See Aurelio Rojas, *Death of Baby in Car Spotlights Penalty Bill*, CAPITOL ALERT (Sacramento) July 27, 2001, at 1, available at [http://www.capitolalert.com/news/capalert04\\_200010727.html](http://www.capitolalert.com/news/capalert04_200010727.html) (stating that “the San Francisco-based vehicle safety group says the problem is getting worse”) (copy on file with the *McGeorge Law Review*).

5. *Id.*

6. CAL. PENAL CODE § 273a (West 2000).

7. See *People v. Superior Court*, 205 Cal. App. 3d 51, 60, 252 Cal. Rptr. 335, 340 (1988) (providing that section 273a of the Penal Code requires proof of criminal negligence).

8. CAL. VEH. CODE § 15620 (enacted by Chapter 855).

cited as “Kaitlyn’s Law.”<sup>9</sup> As Chapter 855 is classified as a strict liability offense,<sup>10</sup> a person committing any act prohibited by Chapter 855 does not need to act with any criminal intent in order to be found guilty.<sup>11</sup> The California Legislature enacted Chapter 855 in order to help prevent further needless “tragedies” from occurring.<sup>12</sup>

## II. EXISTING LAW

California Penal Code Section 273a prohibits a person from endangering the health or safety of a child. Sub-section (a) of section 273a makes it a felony to “willfully” cause or permit any child to be placed in a situation where his “person or health is endangered.”<sup>13</sup> The maximum penalty for violating sub-section (a) of section 273a is imprisonment in the state prison for six years.<sup>14</sup> If the person subjects a child to conditions other than those likely to produce great bodily harm or death, then the person can be charged with only a misdemeanor.<sup>15</sup> A person found guilty of a misdemeanor offense may be subject to confinement in the county jail for up to six months or a fine of up to one thousand dollars, or by both.<sup>16</sup>

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9. *Id.* § 15600 (enacted by Chapter 855).

10. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 225 at C (July 9, 2001).

11. See *People v. Neal*, 40 Cal. 3d 115, 117, 104 P.2d 555, 557 (1940) (providing that “[i]t is only when the intent is not made an affirmative element of the crime that the law presumes that the act, if knowingly done, was done with a criminal intent”).

12. Office of State Senator Speier, *Speier Bill to Prevent Injuries to Kids Signed by Governor* (Oct. 15, 2001), at <http://www.4rkidssake.org/Kaitlyn'slawsigned.htm> (copy on file with the *McGeorge Law Review*).

13. See CAL. PENAL CODE § 273a(a) (West 2000) (providing in full:

Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.).

14. *Id.*

15. *Id.* § 273a(b) (West 2000) (providing in full:

Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.).

16. *Id.* § 19 (West 2000).

A violation of section 273a of the Penal Code requires proof of criminal negligence.<sup>17</sup> Criminal negligence, within the meaning of section 273a is described as follows:

[T]he defendant's conduct must amount to a reckless, gross or culpable departure from the ordinary standard of due care; it must be such a departure from what would be the conduct of an ordinarily prudent person under the same circumstances as to be incompatible with a proper regard for human life.<sup>18</sup>

Courts interpreted this standard as encompassing the notion that "parents and caretakers should be able to distinguish criminal behavior from non-criminal behavior."<sup>19</sup> Section 273a of the Penal Code holds every person to an objective standard of reasonableness regarding endangerment to a child's person or health.<sup>20</sup> In order to determine if criminal negligence existed at the time of the offense, courts ask whether a reasonable person in the defendant's position would have been aware of the risk to the child's health and well-being.<sup>21</sup> The law recognizes that parents and caretakers occasionally make mistakes which are detrimental to their children's health and safety.<sup>22</sup> Thus, parents and caretakers will not be charged with and convicted of violating section 273a unless they are criminally negligent.<sup>23</sup>

### III. CHAPTER 855

Chapter 855 adds the "Unattended Child in Motor Vehicle Safety Act" to the California Vehicle Code.<sup>24</sup> The new division of the Vehicle Code is known as "Kaitlyn's Law."<sup>25</sup> By creating an educational program and imposing monetary fines, Kaitlyn's Law deters parents from leaving their children unattended in motor vehicles under circumstances that create a "significant risk" to the child's health or safety.<sup>26</sup> Additionally, Kaitlyn's Law includes an educational component to assure that parents and caretakers understand the safety risks of

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17. *People v. Superior Court*, 205 Cal. App. 3d 51, 60, 252 Cal. Rptr. 335, 340 (1988).

18. *People v. Peabody*, 46 Cal. App. 3d 43, 48-49, 119 Cal. Rptr. 780, 783 (1975) (citing *People v. Penny*, 44 Cal. 2d 861, 879, 285 P.2d 926, 937 (1955)).

19. *People v. Deskin*, 10 Cal. App. 4th 1397, 1402, 13 Cal. Rptr. 391, 394 (1992).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*; see also Ben Goad and C.J. Schexnader, *Heat Claims Life of Another Infant*, THE PRESS-ENTERPRISE (Corona), August 22, 2000, at 1, available at 2000 WL 25661276 (relating that a father, who had just returned home from a day at the Colorado River, accidentally left his 4-month old son in a car for 3 hours in 115-degree heat was not arrested for child endangerment) (copy on file with the *McGeorge Law Review*).

24. See 2001 Cal. Stat. ch. 855, sec. 2, at 3 (adding Division 6.7 to the Vehicle Code).

25. CAL. VEH. CODE § 15600 (enacted by Chapter 855).

26. *Id.* § 15603 (enacted by Chapter 855).

leaving a young child unattended in a motor vehicle.<sup>27</sup> Kaitlyn's Law applies to motor vehicles on highways<sup>28</sup> and elsewhere throughout the State, unless expressly provided otherwise.<sup>29</sup>

Section 15620 of the Vehicle Code delineates the specific offense created by Kaitlyn's Law.<sup>30</sup> Sub-section (a) states that "[a] parent, legal guardian, or other person responsible for a child who is [six] years of age or younger may not leave that child inside a motor vehicle without being subject to the supervision of a person who is [twelve] years of age or older" under either of the two following conditions.<sup>31</sup> First, the child cannot be left unattended in a motor vehicle when there is a significant risk to the child's health or safety.<sup>32</sup> Second, the child cannot be left unattended when the vehicle's engine is running, or when the vehicle's keys are in the ignition.<sup>33</sup> The Legislature classifies a violation of sub-section (a) of section 15620 as an infraction punishable by a fine of one hundred dollars.<sup>34</sup> The court may reduce or waive the fine if the defendant demonstrates an inability to pay the fine.<sup>35</sup> Should the court decide to reduce or waive the fine, the defendant will be referred to a community education program.<sup>36</sup> The court may also refer any defendant to a program that includes education on the dangers of leaving young children unattended in a motor vehicle.<sup>37</sup> Sub-section (c) of section 15620 of the Vehicle Code provides that nothing in section 15620 precludes a person from being prosecuted under either its provisions or any other provision of law, including manslaughter<sup>38</sup> or child endangerment statutes.<sup>39</sup> According to the author, this provision is included in Kaitlyn's Law to prevent a prosecuting attorney from reducing a misdemeanor or felony child endangerment charge to the infraction contained in Chapter 855.<sup>40</sup>

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27. *Id.* § 15630 (enacted by Chapter 855).

28. *Id.* § 360 (West 2000) (defining "highway" as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.").

29. *Id.* § 15602 (enacted by Chapter 855).

30. *Id.* § 15620 (enacted by Chapter 855).

31. CAL. VEH. CODE § 15620(a) (enacted by Chapter 855).

32. *Id.* § 15620(a)(1) (enacted by Chapter 855).

33. *Id.* § 15620(a)(2) (enacted by Chapter 855).

34. *Id.* § 15620(b) (enacted by Chapter 855).

35. *See id.* § 15620(b) (enacted by Chapter 855) (providing that a court may reduce or waive the fine if the defendant establishes, to the satisfaction of the court, that he or she is economically disadvantaged).

36. CAL. VEH. CODE § 15620(b).

37. *Id.*

38. *See* CAL. PENAL CODE § 192 (West 2000) (providing that "manslaughter is the unlawful killing of a human being without malice").

39. *Id.* § 273a (West 2000).

40. *See* SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 255, at D-E (Apr. 17, 2001) (providing a statement by Senator Jackie Speier that the provision was included to prevent district attorneys from reducing a felony or misdemeanor child endangerment charge to a violation of Kaitlyn's Law).

The educational component in Chapter 855 assists parents and caretakers in understanding the dangers of leaving children unattended in motor vehicles.<sup>41</sup> The county or city health department where the violation takes place will receive seventy percent of the funds collected for a violation of Kaitlyn's Law.<sup>42</sup> That health department is required to use those funds to implement a community education program on the dangers of leaving young children unattended in motor vehicles.<sup>43</sup> An additional fifteen percent of the revenue will be given to the county or city to administer the educational programs.<sup>44</sup> The remaining fifteen percent of the revenue will be placed in the general fund of the city or county where the violation takes place.<sup>45</sup> Kaitlyn's Law also requires the Department of Motor Vehicles (DMV) to include information concerning the dangers of leaving children unattended in motor vehicles and the penalties associated with violating Kaitlyn's Law in the educational materials it distributes.<sup>46</sup>

#### IV. ANALYSIS

##### A. *Kaitlyn's Law Versus Existing California Law*

Chapter 855 differs from existing child endangerment statutes because criminal intent is not required.<sup>47</sup> Typically, when a state establishes that certain acts are criminal, the commission of the act is sufficient to constitute the crime, unless the statute contains express language requiring criminal intent.<sup>48</sup> Because Chapter 855 does not contain any language requiring a person to willfully, intentionally, or knowingly commit the prohibited acts, it is a strict liability offense.<sup>49</sup> A strict liability offense eliminates the requirement of criminal intent with respect to an element of a crime.<sup>50</sup> A parent, guardian, or other responsible party merely has to commit the act prohibited by Chapter 855 in order to face

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41. CAL. VEH. CODE § 15630 (enacted by Chapter 855).

42. *Id.* § 15630(a) (enacted by Chapter 855).

43. *Id.*

44. *Id.* § 15630(b) (enacted by Chapter 855).

45. *Id.* § 15630(c) (enacted by Chapter 855).

46. *See id.* § 15632 (enacted by Chapter 855) (requiring the DMV to include information concerning the dangers of leaving children unattended in motor vehicles in the following educational materials: California Driver's Handbook, driver's license examination, any driver's education materials, courses and examinations for traffic violator schools, secondary and post-secondary schools and educational institutions, and any community educational campaigns undertaken by the DMV or any other state agency).

47. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at D (July 9, 2001); CAL. PENAL CODE §§ 192 and 273a (West 2000).

48. *See People v. Bachrach*, 114 Cal. 3d Supp. 8, 12, 170 Cal. Rptr. 773, 775 (1980) (noting that whether a legislative body intended the doctrine of absolute liability to apply to a given statute is determined by the subject matter, the language, and the evil sought to be prevented by the enactment of the statute).

49. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at C (July 9, 2001).

50. *People v. Rubalcava*, 23 Cal. 4th 322, 331, 96 Cal. Rptr. 2d 735, 742, 1 P.3d 52, 58 (2000).

criminal liability.<sup>51</sup>

Furthermore, Chapter 855 differs from existing child endangerment statutes because a violation of Chapter 855 is an infraction, not a felony or misdemeanor.<sup>52</sup> Generally speaking, crimes and public offenses are classified as felonies, misdemeanors, and infractions.<sup>53</sup> If a person is convicted of a felony, they may face a punishment of death or imprisonment in state prison.<sup>54</sup> If a person is convicted of a misdemeanor, they may face a punishment of confinement in the county jail for not more than six months, or by a fine not to exceed one thousand dollars, or by both.<sup>55</sup> However, a person who commits an infraction cannot be punished by imprisonment.<sup>56</sup>

Chapter 855 is premised on the belief that an educational campaign on the dangers of leaving children unattended in motor vehicles will not work unless it is coupled with an enforcement mechanism.<sup>57</sup> The idea that an educational campaign alone does not effect the behavior of drivers was recently reinforced by the Insurance Institute for Highway Safety (IIHS).<sup>58</sup> The IIHS found that the answer to affecting driver behavior is to combine an educational program with enforcement of traffic law.<sup>59</sup> Chapter 855 contains both an education component and an enforcement mechanism.<sup>60</sup> The education component requires the DMV to provide information regarding the dangers of leaving children unattended in motor vehicles in various departmental publications.<sup>61</sup>

Additionally, city and county health departments are required to develop and implement educational programs for persons convicted of violating Kaitlyn's Law.<sup>62</sup> The classification of Kaitlyn's Law as an infraction allows for enforcement of the prohibited activity and the imposition of a monetary fine if the law is violated.<sup>63</sup> A monetary fine is important because the fine will help raise compliance with the provisions of Kaitlyn's Law.<sup>64</sup> A study on seat belt usage

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51. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at C (July 9, 2001).

52. CAL. VEH. CODE § 15620(b) (enacted by Chapter 855); CAL. PENAL CODE § 273a (West 2000).

53. CAL. PENAL CODE § 16 (West 2000).

54. *Id.* § 17 (West 2000).

55. *Id.* § 19 (West 2000).

56. *Id.* § 19.6.

57. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at C (July 9, 2001).

58. HIGHWAY & VEHICLE/SAFETY REPORT, IIHS: ALL TYPES OF DRIVER EDUCATION ARE INEFFECTIVE WITHOUT ENFORCEMENT, at 3 (July 30, 2001) [hereinafter IIHS REPORT] (on file with the *McGeorge Law Review*).

59. *Id.* at 3-4.

60. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at C (July 9, 2001).

61. CAL. VEH. CODE § 15632(a) (enacted by Chapter 855).

62. *Id.* § 15630(a) (enacted by Chapter 855).

63. *Id.* § 15620(b) (enacted by Chapter 855).

64. See ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at C (July 9, 2001) (noting that a monetary penalty is important in raising the level of compliance with the law because

found that a monetary penalty was instrumental in raising the level of compliance with the law. The results of that study reflected the ineffectiveness of the use of publicity or educational campaigns alone.<sup>65</sup>

*B. Can Chapter 855 be Enforced "Elsewhere Throughout the State?"*

The express language of Chapter 855 states that the provisions of Kaitlyn's Law will apply to highways and elsewhere throughout the State.<sup>66</sup> The Legislature defined a "highway" as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel."<sup>67</sup> The term "elsewhere" could imply that Kaitlyn's Law applies to private property, as well as public.<sup>68</sup> An analysis prepared by the Assembly Committee on Transportation indicates that, under Chapter 855, a person can be convicted of violating the provisions of Kaitlyn's Law in a privately-owned driveway.<sup>69</sup> In fact, the majority of the violations of Kaitlyn's Law will occur on private property, such as parking lots and driveways.<sup>70</sup> The main problem with applying Kaitlyn's Law to situations that occur on private property is enforcement of the new statute by law enforcement officials.<sup>71</sup>

In the case of Kaitlyn's Law, a law enforcement officer may have to enter private property to enforce the law.<sup>72</sup> Entry upon private property requires a warrant or a set of circumstances that alleviate the warrant requirement.<sup>73</sup> An exigent circumstance would exist, for example, if the child was unattended in a motor vehicle and the outside temperature was high. This set of circumstances requires a law enforcement officer to react swiftly to prevent imminent danger to life.

In its determination whether exigent circumstances exist, the court will first examine the gravity of the underlying offense.<sup>74</sup> Courts have struggled to find exigent circumstances where the underlying offense is minor.<sup>75</sup> Instead, these

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publicity and educational campaigns alone were ineffective in encouraging seat belt usage).

65. IIHS REPORT, *supra* note 58, at 3.

66. CAL. VEH. CODE § 15602 (enacted by Chapter 855); *see id.* § 360 (West 2000) (defining a "highway" as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.").

67. *Id.* § 360 (West 2000).

68. *See* ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at 3 (July 9, 2001) (stating that the law would apply to private property).

69. *Id.*

70. *Id.* at E.

71. *Id.*

72. *See* ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at 3 (July 9, 2001) (pointing out that the law would apply at all times, including when a person is in their own private driveway).

73. *People v. Ramey*, 16 Cal. 3d 263, 276, 127 Cal. Rptr. 629, 636 (1976).

74. *People v. Mitchell*, 222 Cal. App. 3d 1306, 1312, 272 Cal. Rptr. 440, 444 (1990).

75. *See Welsh v. Wisconsin*, 466 U.S. 740, 750-53 (1984) (providing that when the government interest



courts tend to presume that entry upon private property based upon exigent circumstances is unreasonable where the underlying offense is minor.<sup>76</sup> Kaitlyn's Law is classified as an infraction.<sup>77</sup> This classification is the lowest classification of crime and generally represents a minor offense.<sup>78</sup> Therefore, a law enforcement officer will have to overcome the weighty presumption that the entry upon someone's private property, for the purposes of enforcing Kaitlyn's Law, is unreasonable.<sup>79</sup>

The second part of a court's analysis will assist the law enforcement officer in overcoming the presumption that the entry upon private property is unreasonable.<sup>80</sup> In the second part of a court's analysis, the threat to public safety is considered.<sup>81</sup> A court will consider the gravity of the underlying offense and the jeopardy to public safety.<sup>82</sup> The higher the potential for harm or injury, the more likely the court will find the entry upon private property to be reasonable.<sup>83</sup> Children left unattended in motor vehicles can die or be subjected to serious bodily injury.<sup>84</sup> Courts are more apt to find that exigent circumstances exist when the purpose of entering on private property by the law enforcement officer is to preserve life.<sup>85</sup>

### C. Chapter 855's Use of "Significant Risk"

Chapter 855 provides that a person can be charged with a violation of Kaitlyn's Law "where there are conditions that present a significant risk to the child's health and safety."<sup>86</sup> However, Chapter 855 does not define the term "significant risk."<sup>87</sup> According to the author's office, the term "significant risk" was left undefined to give law enforcement officers more latitude when making a determination as to whether or not a violation of Kaitlyn's Law has occurred.<sup>88</sup> The theory behind the absence of a precise definition is that it is too difficult to

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is in a minor offense, the presumption that a warrantless search is unreasonable is difficult to rebut).

76. *Id.*

77. CAL. VEH. CODE § 15620(b) (enacted by Chapter 855).

78. CAL. PEN. CODE §§ 16, 19.6 (West 2000).

79. *Welsh*, 466 U.S. at 749-50.

80. *Mitchell*, 222 Cal. App. 3d at 1312.

81. *Id.*

82. *Id.*

83. *Id.*

84. See 2001 Cal. Stat. ch. 855, sec. 1(c), at 3 (setting forth the uncoded intent language of Chapter 855).

85. *Mitchell*, 222 Cal. App. 3d at 1312-14 (analyzing the dangers that may occur if law enforcement could not enter private property when alerted to a life-threatening situation).

86. CAL. VEH. CODE § 15620(a)(1) (enacted by Chapter 855).

87. See ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at E (July 9, 2001) (discussing concerns over the vagueness of the term "significant risk").

88. Telephone Interview with Manny Hernandez, Legislative Aid, Senator Jackie Speier (June 5, 2001) [hereinafter Hernandez Interview] (notes on file with the *McGeorge Law Review*).

present all of the possible scenarios in which a child's health or safety would be compromised by being left unattended in a motor vehicle.<sup>89</sup> The courts have found that a "significant risk" does not require a showing of actual harm.<sup>90</sup> A standard that is less than actual harm allows the State to step in to prevent or minimize the harm presented by a person's conduct.<sup>91</sup> In the context of Kaitlyn's Law, the parent or guardian of a child left unattended in a motor vehicle could be charged with a violation of the law before any harm actually occurs to the child.<sup>92</sup>

This open definition of "significant risk" requires a law enforcement officer to articulate to the court every observation made in order to present sufficient evidence for the court to determine whether a "significant risk" to the child's health and safety existed at the time of the offense. The uncodified legislative intent language of Chapter 855 provides some insight into factors that could be considered by a law enforcement officer in determining "significant risk."<sup>93</sup> The two factors presented by this uncodified language are the "child[']s access to the vehicle's controls" and the "exposure of the child to extreme cold or heat."<sup>94</sup> The uncodified language also references "other dangers," but it does not elaborate as to what these "dangers" might be.<sup>95</sup> The open ended definition allows any situation that presents a significant risk to the child to be covered by Kaitlyn's Law.<sup>96</sup>

However, the codified language contained in the General Provisions of Kaitlyn's Law appears to place a limit on what types of dangers may be considered.<sup>97</sup> Within these general provisions, the language states that Kaitlyn's Law authorizes "a monetary fine to be imposed on a person for leaving a young child alone in a motor vehicle in circumstances that pose a life safety risk."<sup>98</sup> Therefore, according to the codified language of Kaitlyn's Law, a fine may be imposed only when there is a *life* safety risk.<sup>99</sup> This level of risk indicates that the potential harm of leaving the child unattended in the vehicle is life-threatening.<sup>100</sup> A "life risk" standard appears to be a higher danger than the "significant risk"

89. *Id.*

90. *See Machado v. State Water Res. Control Bd.*, 90 Cal. App. 4th 720, 727, 109 Cal. Rptr. 2d 116, 121 (2001) (discussing the definition of "significant risk" in the context of threats to public health and safety from waste discharge).

91. *Id.*

92. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 255, at D (July 9, 2001).

93. 2001 Cal. Stat. ch. 855, sec. 1(b), at 2 (setting forth the uncodified intent language of Chapter 855).

94. *Id.*

95. *Id.*

96. Hernandez Interview, *supra* note 88.

97. CAL. VEH. CODE § 15603 (enacted by Chapter 855).

98. *Id.*

99. *See id.* (stating that the purpose is to "help prevent injuries to and the death of young children").

100. *See* 2001 Cal. Stat. ch. 855, sec. 1, at 2-3 (emphasizing the dangers associated with leaving a young child unattended in a vehicle).

standard.<sup>101</sup> This higher standard is restrictive on the application of Kaitlyn's Law and would appear to defeat the Legislature's intent to have Chapter 855 cover a broader set of circumstances to prevent both death and injury to the child.

*D. Chapter 855's Lack of Funding for the Educational Component*

The Legislature's intent is to educate the public about the dangers of leaving a child unattended in a motor vehicle.<sup>102</sup> Chapter 855 accomplishes this goal by providing two educational components.<sup>103</sup> Kaitlyn's Law authorizes county and city health departments to develop community education programs.<sup>104</sup> These programs are designed to educate the public on the dangers associated with leaving a child unattended in a motor vehicle.<sup>105</sup> Kaitlyn's Law also mandates that the DMV distribute information, in a variety of departmental publications, regarding the "dangers of leaving a child unattended in a motor vehicle" and the "penalties for noncompliance" with Kaitlyn's Law.<sup>106</sup>

Chapter 855 provides only one funding mechanism for the county and city health departments.<sup>107</sup> The county or city health department in which the violation of Kaitlyn's Law occurred receives seventy percent of the collected fine.<sup>108</sup> This is the only money the health department will receive to develop, implement, and maintain the education programs.<sup>109</sup> This method of funding the educational program actually requires people to violate Kaitlyn's Law, thereby subjecting the child to potential harm, in order to have the funds to educate the public about the dangers of leaving a child unattended in a motor vehicle.<sup>110</sup> It is counter-intuitive to require violation of the law in order to have the necessary funding to educate the public about the dangers of leaving a child unattended in the motor vehicle.<sup>111</sup>

V. CONCLUSION

Chapter 855 assists the government in protecting the safety and welfare of children.<sup>112</sup> While the provisions of Chapter 855 provide an effective means to

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101. *Machado v. State Water Res. Control Bd.*, 90 Cal. App. 4th 720, 727, 109 Cal. Rptr. 2d 116, 121 (2001).

102. CAL. VEH. CODE § 15603 (enacted by Chapter 855).

103. *Id.* §§ 15630, 15632 (enacted by Chapter 855).

104. *Id.* § 15630(a) (enacted by Chapter 855).

105. *Id.*

106. *Id.* § 15362 (enacted by Chapter 855).

107. *Id.* § 15630 (enacted by Chapter 855).

108. CAL. VEH. CODE § 15630(a).

109. *Id.*

110. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 255, at H-I (Apr. 17, 2001) (questioning the appropriateness of using fines collected from violations for the education section of the Bill).

111. *Id.*

112. CAL. VEH. CODE § 15603 (enacted by Chapter 855).

achieve the intent of the Legislature, two areas should be developed to enhance the effectiveness of the law.

First, the courts will have to provide a workable definition of “significant risk.”<sup>113</sup> While Chapter 855 provides some insight into factors that may be considered in determining a “significant risk,” until a court articulates a definition of “significant risk” as it applies to Chapter 855, this provision of the law may be difficult to enforce.<sup>114</sup>

The Legislature declared that its intent is to improve vehicle safety for children by educating the public about the danger of leaving a young child alone in a motor vehicle.<sup>115</sup> However, Chapter 855 provides limited revenue for this purpose.<sup>116</sup> The only funding source for developing and implementing any educational campaign is derived from a percentage of the fine for violating section 15630 of the California Vehicle Code.<sup>117</sup> This funding source for educating the public about the dangers of leaving a child unattended in a motor vehicle requires someone to subject a child to the potential risk of harm. If the Legislature was truly motivated to provide a program to educate the public about the dangers of leaving children unattended in motor vehicles, it would have provided the funding up-front rather than after-the-fact.

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113. See *supra* notes 86-101 and accompanying text (discussing “significant risk”).

114. See 2001 Cal. Stat. ch. 855, sec. 1, at 2 (providing that a child’s access to the vehicle’s controls, exposure to extreme temperatures, and other dangers are factors used to determine the danger to a child left unattended in a motor vehicle).

115. CAL. VEH. CODE § 15603 (enacted by Chapter 855).

116. See *supra* notes 102-11 and accompanying text (discussing the educational component of Chapter 855).

117. CAL. VEH. CODE § 15630(a)(1) (enacted by Chapter 855).

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