



GASP

7 Cedar Street, Suite A
Summit, NJ 07901
Phone: (908) 273-9368
Fax: (908) 273-9222
Email: info@njgasp.org
www.njgasp.org

Karen Blumenfeld, Director
Tobacco Control Policy and Legal Resource Center
Karen.Blumenfeld@verizon.net
(908) 377-3900

December 11, 2009

Protecting Foster/Resource Family Children From Secondhand Smoke in Homes and Cars

The right to privacy is an important tenet of the American way of life. But certainly, when others, especially children that are wards of the State, are harmed by an activity, to the point where their health is compromised because of exposure to a class A carcinogen like secondhand smoke, then require foster public health and safety take precedence over smoking.

Here is background information to support the requirement that homes, and cars transporting foster/resource family children be smokefree, in order for a state to qualify to receive federal funds for their foster care/resource family programs.

I. JURISDICTIONS REQUIRING SMOKEFREE FOSTER CARE HOMES/CARS TO TRANSPORT FOSTER CHILDREN

U.S.A. - Fourteen states and three California counties require smokefree foster care homes/cars:

- **Alaska:** bans foster parents from smoking in vehicles that transport foster children; bans foster parents from smoking in the home, but can smoke in a well-ventilated area away from the immediate living area; bans smoking in child care home while children are in care. Alaska Admin. Code tit. 7 § 10.1085 (2007).
http://www.hss.state.ak.us/dpa/programs/ccare/files/Omnibus_Safety-Sanitation-7AAC_10-2006.pdf
- **Arizona:** bans foster parents from smoking in ANY enclosed area with a foster child, implying a car, any public or private place. Ariz. Admin. Code § 6-5-7465 (2006).
http://www.azsos.gov/public_services/Title_06/6-05.htm
http://www.boston.com/news/local/vermont/articles/2005/08/18/state_moves_to_protect_foster_children_from_secondhand_smoke/
- **Colorado:** bans foster parents or caregiver from smoking in home and vehicles transporting foster child (August 1, 2007).
[http://stateboard.cdhs.state.co.us:8008/CDHS/rule_display\\$.DisplayVolume?p_vol_num=7700](http://stateboard.cdhs.state.co.us:8008/CDHS/rule_display$.DisplayVolume?p_vol_num=7700); or <http://www.cdhs.state.co.us/policies.htm> and click on rules and regulations, and scroll to #7 - Social Services, then click on 7.700.
- **Indiana:** partially bans smoking in resource family child homes: "if a resource parents or household member must smoke inside the home", then smoking is limited to rooms with windows and/or air purifiers that can be used; bans smoking in vehicles when resource parents or DCS workers transport a resource family child. See Administrative letter dated October 1, 2009, from James W. Payne, Director of Indiana's Department of Child Services, dated October 1, 2009 and effective January 1, 2010, at http://www.in.gov/dcs/files/Smoking_in_Resource_Homes.pdf
Updates to be made to Chapter 8 Out-of-Home Services, and Chapter 12 Foster Family Home Licensing

- **Kansas:** bans smoking in foster home; outside the home, bans smoking foster family members from smoking within 10 feet of foster child, K.A.R. 28-4-819. Bans smoking in vehicles that transport foster child regardless if child is inside the vehicle, K.A.R. 28-4-816 (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective 3/28/08). http://www.kdheks.gov/bcclr/reggs/familyfosterhome/Regulations_for_Family_Foster_Homes_or_Children.pdf (pg. 52 for cars, pg. 59 homes).
- **Maine:** bans smoking in a foster home within 12 hours of the child arriving there and in a vehicle within 12 hours of transporting a foster child. Code Me. CMR. 10-148 Ch. 16 Section 9 (2004). http://www.state.me.us/dhhs/boh/rules_documents/148c016.doc
- **Montana:** bans smoking in foster home and vehicles that transport foster children. Mont. Admin. R. 37.51.825 (June 6, 2006). <http://www.mtrules.org/gateway/ruleno.asp?RN=37.51.825>
- **New Jersey:** bans smoking in all resource family homes (foster homes, adoptive homes, family friend homes and relative care homes), cars that transport a resource family child, and outdoors when a resource family child is present. N.J.A.C. 10:122C-7.2(a)(3) was adopted by the Department of Human Services on December 19, 2005, effective February 6, 2006 (Manual of Requirements for Resource Family parents at <http://www.state.nj.us/dcf/divisions/licensing/RFmanual.pdf>).
- **Oklahoma:** bans smoking in foster care home and vehicles transporting foster children. Oklahoma Administrative Code 340 75-8-6, Licensing Requirements for Family Child Care Homes and Large Child Care Homes. Okla. Admin. Code § 340:75-7-12 (2007). http://www.oar.state.ok.us/oar/codedoc02.nsf/frmMain?OpenFrameSet&Frame=Main&Src=_75tnm2shfcdnm8pb4dthj0chedppmcbq8dtmmak31ctijujrgcln50ob7ckj42tbkdt374obdcli00
- **Oregon:** foster parents must ensure that children in state custody not be exposed to secondhand smoke in the foster parent's home or vehicle. Parents would be allowed to smoke outside and away from children but not in the presence of children. Or. Admin. R. 413-200-0346(3)(b)(initially 413-200-0335)(2001). http://www.dhs.state.or.us/policy/childwelfare/manual_2/ii-b1.pdf
- **Pennsylvania:** prohibits smoking in private homes and vehicles being used for child-care or "services related to the care of children and youth in state and county custody", Pennsylvania Clean Indoor Air Act (Senate bill 246), effective Sept. 11, 2008. \$250 fine. <http://www.post-gazette.com/pg/08293/921162-454.stm>
- **Texas:** prohibits foster parents and other adults from exposing children to secondhand smoke in their homes and cars that transport a foster child. Effective January 1, 2007, adopted by the Texas Department of Family and Protective Services. 40 Tex. Admin. Code § 749.2931 (2007)(Title 40, Part 19, Chapter 749, Subchapter O, Division 2, rule 749.2931. [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac)
- **Vermont:** prohibits foster parents from exposing children to secondhand smoke in their homes and vehicles. Parents would be allowed to smoke outside and away from children but not in the presence of children. Vermont Department for Children and Families, Family Services Division, Licensing Regulations for Foster Care No. 403 (2005). See url below, p. 12, #403: <http://www.dcf.state.vt.us/fsd/pubs&reports/fostercareregs.pdf> or http://www.dcf.state.vt.us/fsd/pubs&reports/index_publications.html#Licensing
- **Washington:** Foster parents must ensure that children in state custody not be exposed to secondhand smoke in the foster parent's home or vehicle. Parents would be allowed to smoke outside and away from children but not in the presence of children. Wash Admin. Code § 388-148-0185, effective 12/8/05 at <http://apps.leg.wa.gov/WAC/default.aspx?cite=388-148-0185>. Also, the state smokefree air law's definition section requires private homes be smokefree, if the home provides social services, like foster care: "... A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises." Wash. Rev. Code § 70.160.010 (2005) at <http://www.tobacco-facts.net/usa-tobacco-policy/washington>

- **Wyoming:** Prohibits smoking in foster homes and vehicles while transporting foster child. If home was certified prior to July 1, 2006, may be granted an exemption, by written approval of district manager. Effective November 2007. Family Foster Care Foster Parent Responsibilities, Policy number 5.12.5. <http://dfsweb.state.wy.us/childprotection/5.12.5FamilyFosterCare-FosterParentResponsibilities.pdf>
- **Monterey, San Luis Obispo, and Santa Cruz counties in California** ban smoking in both foster care homes and cars that transport foster children. San Luis Obispo also bans smoking within 20 feet of the child in all other places that the foster parent controls; and cars that transport the children must be smokefree for a minimum of 12 hours before a child enters.

U.S.A. - One state requires smokefree foster care homes (not cars):

- **North Dakota:** bans smoking in a foster care home in circumstances which present a hazard to the health of a foster child. Chapter 75-03-14 Family Foster Care Homes, Qualifications of persons residing in the home. N.D. Admin. Code 75-03-14-04 (2007). <http://www.legis.nd.gov/information/acdata/html/..%5Cpdf%5C75-03-14.pdf>. <http://72.14.203.104/search?q=cache:jarwoZHbqAcJ:www.legis.nd.gov/information/acdata/html/..%255Cpdf%255C75-03-14.pdf+%22north+dakota%22+smoking+foster+care&hl=en&gl=us&ct=clnk&cd=8>

Laws outside U.S.A. that ban smoking in foster homes and cars that transport foster children:

- **Alberta, Canada's** policy bans smoking in cars transporting foster children (Section 10.23 of Alberta's Children's Services Enhancement Act Policy Manual)
- **United Kingdom communities** that ban smoking in both foster care homes and cars include Sheffield, Redbridge, Barnsley and Rotherham.

II. JURISDICTIONS THAT REQUIRE SMOKEFREE CARS FOR CHILDREN IN GENERAL (NOT ONLY FOR FOSTER CHILDREN)

U.S.A:

- Arkansas – under age 6 or 60 pounds in weight
- California – under age 18, 2008
- Monroe County, Indiana (only unincorporated areas) under age 14, 2009
- Louisiana – under age 13, 2006
- Maine – under age 16, 2008
- Bangor, Maine – under age 18, 2007
- Keyport, NJ – under age 18, 2007
- West Long Branch, NJ - under age 18, 2007
- Rockland County, NY – under age 18, 2007

Canada:

- British Columbia, under age 16, in effect 4/7/09
- New Brunswick, under age 16, effective 1/1/10
- Nova Scotia, Canada, under age 19, in effect 4/1/08
- Wolfville, Nova Scotia, Canada, under age 19, broader definition of smoking, in effect 1/1/08
- Okotoks, Alberta, Canada, under age 16, in effect 9/1/08
- Ontario, Canada – under age 16, in effect 1/21/09
- Prince Edward Island, under age 19, effective September 15, 2009
- Victoria, Canada – under age 16, effective 2009
- Yukon, Canada – under age 18, in effect 5/01/08

Other:

- New South Wales, Australia, under 16 effective July 1, 2009
- South Australia – under age 16, enacted May, 2007
- Queensland, Australia, under age 16, effective January 1, 2010
- Victoria, Australia – under age 18, in effect on January 2010

- Cyprus – under age 16, in effect since 2004
- Puerto Rico – under age 13, in effect in March, 2007
- South Africa – under age 12, in effect September, 2009
- Tasmania – under age 18, in effect January, 2008

Legislation banning smoking in cars when children are present has been introduced in:

- 26 states in USA
- 3 towns in USA
- 1 county in USA
- 5 Canadian provinces
- 4 Australian territories
- Ireland
- Rome, Italy

III. WHY SUPPORT SMOKEFREE FOSTER/RESOURCE FAMILY HOMES AND CARS

1. Legal/Ethical/Moral: Foster children are wards of the state, county or town. The government has an obligation and responsibility to ensure that these children are in safe and healthy foster homes, e.g. fed well, not abused. Foster care homes are tested for the presence of harmful chemicals, like class A carcinogens asbestos and benzene. Secondhand smoke, also a class A carcinogen, should be added to that list of prohibited substances in a foster care home and/or car.
2. No effect on applications: Foster parents applications did no decline in states and counties that have smokefree foster homes regulations. According to a March 2006 research paper on smokefree foster care (Erica L. Gartner, Protecting the Children – An Argument for Smokefree Foster Homes, pp. 80-81 (March 2006) (unpublished note, on file with the Tobacco Public Policy Center at Capital University Law School)):

In Vermont, children services coordinators in one county notified 107 foster families of proposed regulations prohibiting smoking and did not receive 'any negative feedback.' In fact, members of that county's Foster and Adoptive Parent Association, supported the rule change and said that it was overdue. Robin Scott of the Addison County Foster and Adoptive Parent Association said, 'I am very, very glad we've taken a step in the direction of providing a higher quality of care for our children.'

3. Practical: Children are not able to communicate, and not free to leave a home or car that is smoke-filled. Some are infants or toddlers that cannot communicate that the smoking is harming them, other than to cough, exhibit respiratory distress, and show other symptoms. Others are youngsters or early teens, who can communicate verbally, but do not speak up, for fear of parental wrath.
4. Complimentary: Many state laws require specific child restraints in vehicles. Protecting children from smoke in vehicles augments that health and safety practice.
5. Reasonable: Smokefree foster home and car laws do not require a parent to quit smoking, just to forego smoking in the foster home and car. At a minimum, the need of a child should take precedence over any rights to privacy of a parent who smokes in the presence of a child while in a motor vehicle.
6. Consistency: Children are taught in school and by other public education that smoking and secondhand smoke are bad. Allowing smoking around children in foster homes and cars sends inconsistent messages to children.
7. Economic: Children who are exposed to ETS in foster homes and cars may have increased medical and healthcare costs that are covered by the state or federal government. Smoking in cars also devalues the asset for resale.

8. Similarity to other restrictions on drivers' behaviors that are required for public health and safety: prohibitions on driving while impaired by alcohol or other causes, requirements that seat belts be used.
9. Judicial notice of the harms of ETS should be applied to foster care, just as in child custody and visitation matters. Foster care children should be entitled to the same healthy, smokefree environment as a child in a custody or guardianship matter, especially since foster care children are wards of the state, and do not have a parent to advocate on their behalf.
10. Judicial notice of the National Fire Protection Association's data (NFRA), which shows that smoking materials are the leading cause of fire deaths in the United States, that 803 people died in 2001 from smoking material-related fires, and that the NFRA encourages smokers to smoke outside.

IV. NEW JERSEY LAW REQUIRES OTHER PRIVATE SETTINGS TO BE SMOKEFREE (SOME RECEIVE FEDERAL FUNDING)

- Foster care (resource family) homes and cars, and outdoors when children are present (N.J.A.C, effective February 6, 2006)
- All college dormitories, public and private, per state law, effective October 2005 (see section III C, above.)
- Faculty housing, rectories, and convents when open to public, students, or used as a workplace (NJ SFAA)
- Common areas of multi-unit housing (NJ SFAA)
- Ocean City Housing Authority residential units
- Nursing homes (NJ SFAA)
- Residential healthcare facilities (NJ SFAA)
- Drug treatment facilities (NJ SFAA, also regulations)
- Correctional Facilities (NJ SFAA)

V. CONCLUSIONS AND RECOMMENDATIONS OF HEALTH AUTHORITIES

- The U.S. Surgeon General issued his report on June 27, 2006, entitled, The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General, U.S. Department of Health and Human Services. The section on Secondhand Smoke Exposure in the Home concluded that, **although secondhand smoke exposure among children has declined over the past 15 years, children remain more heavily exposed to secondhand smoke than adults.**
 - Almost 60 percent of U.S. children aged 3-11 years—or almost 22 million children—are exposed to secondhand smoke.
 - About 25 percent of children aged 3-11 years live with at least one smoker, as compared to only about 7 percent of nonsmoking adults.

Smoke-free rules in homes and vehicles can reduce secondhand smoke exposure among children and nonsmoking adults. Some studies indicate that these rules can also help smokers quit and can reduce the risk of adolescents becoming smokers.

- "The home remains the most serious venue for secondhand smoke exposure." Ch. 10, p. 350. <http://surgeongeneral.gov/library/secondhandsmoke/report/chapter10.pdf>
- "... the home tends to be a greater source of secondhand smoke exposure than the workplace." Ch. 5, p. 170. <http://surgeongeneral.gov/library/secondhandsmoke/report/chapter5.pdf>
- U.S. Surgeon General's June 2006 report lists the health effects of ETS on sudden infant death syndrome, preterm delivery, low birth weight, and childhood cancer risks. Ch. 5, pp. 242-243.

- U.S. Surgeon General's June 2006 report also lists the reasons to have smokefree homes: to protect children from ETS, protect pregnant women, protect nonsmoking adults in the home, especially those with health conditions, to set a good example for children, etc. Ch. 10, p. 616.
- The U.S. Surgeon General website: Fact Sheet #4 lists the most recent data on how ETS affects children (updated on June 27, 2006; excellent resource; see last page of this document for copy).
<http://www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet4.html>
- Published studies show the harmful effects of ETS on children:

- *Pediatrics Journal*, January 2009. Study by Professor Jonathan Winickoff, Center for Child and Adolescent Health Policy, Massachusetts General Hospital in Boston, surveyed 1,500 households to assess health beliefs of adults regarding thirdhand smoke exposure of children and whether smokers and nonsmokers differ in those beliefs. The study found that increasing awareness of how third-hand smoke harms the health of children may encourage home smoking bans. It also will be important to incorporate knowledge about third-hand smoke contamination into current tobacco control campaigns, programs, and routine clinical practice. Professor Winickoff is also concerned about new mothers who smoke, saying: 'When you're near your baby, even if you are not smoking, the child comes into contact with those toxins. And if you breastfeed, the toxins will transfer to your baby in the breast milk.' See press release on study at <http://www.massgeneral.org/about/pressrelease.aspx?id=1091>.

The study referenced the dangers from third-hand smoke that lingers beyond extinguishing a cigarette or cigar, on upholstery, carpeting, clothing, hair, skin, etc. The concern is that carcinogens and toxins in third-hand smoke may affect brain development in babies and young children. Young children crawl on carpeting and suck on clothing, upholstery, skin, etc. that has third-hand smoke residue. See NY Times January 3, 2009 newsclip is at http://nigasp.org/third-hand_smoke_2009.pdf, and Daily Mail newsclip at <http://www.dailymail.co.uk/health/article-1211825/How-cigarette-smoke-carpet-harm-baby.html>

- Matt, G.E., Quintana, P.J.E., Hovell, M.F., Bernert, J.T., Song, S., Novianti, N., Juarez, T., Flora, J., Gehrman, C., Garcia, M. and Larson, S. Households contaminated by environmental tobacco smoke: sources of infant exposures. *Tobacco Control*, 13:29-37, 2004. Parents who smoke outside the home still subject their children to passive smoking. San Diego State University researchers studied 49 households, and found that secondhand smoke can contaminate a house even if cigarettes are smoked outside. Nicotine, a major ingredient of secondhand smoke, can be detected in the dust and air inside the homes of smokers who deliberately go outside for a puff. Children in such homes have up to eight times more nicotine in their bodies than the offspring of non-smokers. Moreover, nicotine levels in babies who live in houses where people smoke outside are much higher than in babies who live with non-smokers.

Babies who live with smokers may be exposed to contaminated particles from secondhand smoke in several ways. First, infants may inhale the smoke from a cigarette or the exhaled air from a smoker. Even if cigarettes are not smoked near a baby, cigarette fumes may contaminate dust that settles in carpets, on toy and furniture surfaces and on the floor. Because babies spend a lot of time crawling on the floor and put toys in the mouths, they are especially at risk to ingest this contaminated dust. Smokers may also contaminate their homes by bringing in clothing exposed to smoke. Cited from <http://faculty.washington.edu/chudler/shs.html>. Although all smoking was outdoors, children had nicotine in their hair and urine, and mothers who smoked away from their children were found to have nearly as much nicotine on their hands as smokers who made no special effort. Cited from http://www.thestressoflife.com/smoking_outside_may_not_protect.htm.

- A 2006 *Pediatrics* journal study on perceptions about smoking around children in urban settings found:

- Smoking is allowed in 75% of smoking-permitted homes where children live
 - All caregivers believed smoking is harmful.
 - 1/2 of caregivers that smoke want smoking cessation advice.
 - 1/2 of nonsmoking caregivers want smoking cessation advice to help others quit smoking.
- <http://www.nchh.org/Portals/0/Contents/Article0495.pdf>
- *Pediatrics Journal*, Volume 117, Number 5, May 2006 – Environmental Tobacco Smoke Exposure: Prevalence and Mechanisms of Causation of Infections in Children. The report concluded that ETS plays a role in causing infections in children.
<http://pediatrics.aappublications.org/cgi/content/abstract/117/5/1745>
 - *American Journal of Respiratory and Critical Care Medicine*, June 2006. Study by Medical University in Vienna, Austria, studied more than 20,000 children, and concluded that “exposure to cigarette smoke before and after birth impairs their lung function and that parental smoking remains a serious public health issue.”
<http://ajrccm.atsjournals.org/cgi/content/short/173/11/1255>
 - *American Journal of Respiratory and Critical Care Medicine*, August 2006. Study by UC Davis shows how ETS damages babies’ lungs. This study was done with rhesus macaque monkeys.
http://www.news.ucdavis.edu/search/printable_news.lasso?id=7836&table=news
 - *Clinical Infectious Diseases*, Vo. 42, April 1, 2006. This Ben Gurion University study showed that children who live with smokers carry *Streptococcus pneumoniae* more often than children in smokefree homes.
<http://www.journals.uchicago.edu/CID/journal/issues/v42n7/37523/37523.web.pdf#search=%22streptococcus%20smoking%22>
- Prior to the most recent Surgeon General’s report, other recognized health authorities have documented the hazards of secondhand smoke effects on children:
 - 1986 U.S. Surgeon General’s report that cites the EPA findings. “The children of parents who smoke, compared with the children of nonsmoking parents, have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.” Cited in the 2006 U.S. Surgeon General’s Report, Ch. 10, p. 571.
 - July 1997 study published in *Archives of Pediatrics and Adolescent Medicine* shows that parental smoking kills at least 6,200 children per year, and causes 5.4 million serious ailments such as ear infection and asthma. <http://archpedi.ama-assn.org/cgi/content/abstract/151/7/648>
 - The California Dept. of Health Services 2001 report states that, “recent data also suggest that smokefree homes are associated with lower smoking initiation rates in adolescents, even in homes where parents smoke.” Gilpin, E.A.; Emery, S.L.; Farkas, A.J.; Distefan, J.M.; White, M.M.; Pierce, J.P., “The California Tobacco Control Program: a decade of progress, results from the California Tobacco Survey, 1990-1999 - final report,” Sacramento: California Department of Health Services, Tobacco Control Section (TCS) La Jolla: University of California, San Diego, December 26, 2001, footnote 9. <http://www.no-smoke.org/document.php?id=262>

VI. SUPPORTING DATA FOR SMOKEFREE VEHICLES WHEN CHILDREN ARE PRESENT

A. Health studies and conclusions

- The U.S. Surgeon General on June 27, 2006, issued *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. The section on Secondhand Smoke Exposure in the Home concluded that smokefree rules in vehicles and homes can reduce secondhand smoke exposure

among children and nonsmoking adults. (See Section IV, for additional conclusions from the U.S. Surgeon General, on secondhand smoke exposure to children.)

- A 2005 study of 1,770 parents and guardians in New Jersey and New York found that children were exposed to secondhand smoke in more than 50% of family cars and 40% of homes, despite health warnings about the hazards of secondhand smoke. *Families, Systems & Health, Spring 2005* (published by the American Psychological Association). Medical Research News, April 5, 2005.
- A 2009 Johns Hopkins University study tested the air in 22 vehicles for a 24-hour period. At the end of the sampling period with 17 smokers and five non-smokers, airborne nicotine was analyzed by gas chromatography. After adjustment for vehicle size, window opening, air conditioning and sampling time, there was a 1.96-fold increase (95% CI 1.43 to 2.67) in air nicotine concentrations per cigarette smoked. Air nicotine concentrations in motor vehicles were much higher than air nicotine concentrations generally measured in public or private indoor places, and even higher than concentrations measured in restaurants and bars. These high levels of exposure to SHS support the need for education measures and legislation that regulate smoking in motor vehicles when passengers, especially children, are present. To read the study *Secondhand tobacco smoke concentrations in motor vehicles*, Tobacco Control, August 25, 2009 go to <http://www.njgasp.org/2009TobaccoControl-Jonesetal.pdf>
- A 2006 Harvard School of Public Health study tested the air during 45 driving trials with a smoker smoking at different times along an hour-long route. The secondhand smoke level was 272 micrograms per cubic meter when the driver's window was opened slightly, and 51 micrograms when the windows were wide open. Both levels exceeded the Environmental Protection Agency's Air Quality Index, which states that levels greater than 40 micrograms are unhealthy for sensitive people, which can include children, and levels greater than 250 micrograms are hazardous to everyone. "There is the argument that even exposure for very short periods of time, perhaps even 10 seconds, can precipitate asthmatic episodes in children." Measuring Air Quality to Protect Children from Secondhand Smoke in Cars. *American Journal of Preventive Medicine* 2006;31(5).
- A 2006 University of Waterloo and Roswell Park Cancer Institute study tested the air during 30 minute driving trials, with a smoker smoking during those intervals. Exposure levels measured inside the cars exceeded background levels, at times rising to greater than 5900 micrograms per cubic meter in cars with the least airflow and exceeding 75 micrograms in cars with the greatest airflow. The Hazard of Tobacco Smoke Pollution in Cars, presented at the World Conference on Tobacco or Health, July 2006.
- In 2004, the Ontario Medical Association concluded that secondhand smoke exposure in cars may be 23 times greater than in a home. Cited in University of Waterloo presentation, see above.
- A 2006 New Zealand study by the Wellington School of Medicine, "found being in a car with a smoker was equivalent to sitting in a smoky bar, even with the smoker's car window fully wound down." The exposure levels of secondhand smoke measured up to 2,926 micrograms per cubic meter when the windows were up, and were 199 micrograms when the window was down. Associated Press, October 27, 2006.
- A New Zealand study that observed 16,055 found that, in cars that had a person smoking, 23.7% had other occupants being exposed to secondhand smoke, and that smoking in cars appeared to occur at a higher rate in deprived populations. Observed smoking in cars: a method and differences by socioeconomic area. *Tobacco Control* 2006;15:409-411.

B. Public support for protecting children from secondhand smoke in vehicles

- A western Australian survey found support for banning smoking in vehicles with children under 18: 87% of nonsmokers, and 80% of smokers supported protection. "Enforcement of legislation banning smoking in vehicles would be far easier than enforcing such legislation in homes, following precedents such as policing of seat belt, baby restraints, etc." Is there public support for banning smoking in motor vehicles? *Tobacco Control*;15(1):71.
- An Ontario survey found support for banning smoking in vehicles with children under 18: 81% of nonsmokers, and 66% of smokers supported a ban. "Our results show substantial and increasing public support in Ontario for banning smoking in motor vehicles carrying children."

VII. JUDICIAL NOTICE OF THE HARMFUL EFFECTS OF SECONDHAND SMOKE

Since the harmful effects of SHS are so well documented by health authorities, courts have taken judicial notice of SHS, especially in child custody matters. Giving judicial notice means that the court no longer considers it a question of fact; the hazards of SHS to children are deemed to be an undisputed fact.

In many of these cases, the courts rely on the veracity of the source of the information, which is usually a governmental public health organization. In fact, the U.S. Supreme Court has held that: "*the views of public health authorities, such as the U.S. Public Health Service, CDC, and the National Institutes of Health, are of special weight and authority.*" See *Bragdon v. Abbott*, 524 U.S. 624, 650, 118 S.Ct. 2196, 2211 (1998)(emphasis added).

Several examples of child custody cases that granted judicial notice on ETS are found in a *British Medical Journal* research paper entitled *Lawsuits and Secondhand Smoke*, by Edward L. Sweda, Jr., Senior Attorney, Tobacco Control Resource Center, Northeastern University School of Law, Boston, MA. http://tc.bmjournals.com/cgi/content/full/13/suppl_1/i61. Two examples are:

- *In Re. Julie Anne, A Minor Child*, 121 Ohio Misc. 2d 20 (Ohio Court of Common Pleas 2002), the court wrote a thorough analysis on why it granted judicial notice relating to facts that ETS effects are harmful, dating back to the World Health Organization, from 1989. It concluded that, "The overwhelming authoritative scientific evidence leads to the inescapable conclusion that a family court that fails to issue court orders restraining people from smoking in the presence of children under its jurisdiction is failing the children whom the law has entrusted to its care." The court granted a restraining order that the parents not allow any person, including themselves, to smoke tobacco in the presence of their child. <http://216.239.51.104/search?q=cache:KpLG7XusSpoJ:www.sconet.state.oh.us/rod/documents/98/2002/2002-ohio-4489.doc+%22judicial+notice%22+ets+harm&hl=en>
- *In re. Guardianship of a Minor Child*, Probate and Family Court Dept., No. 01P1072 (Hampden (MA) Division, 2003), the paternal grandparents of a seven-year-old child were appointed as the child's guardians. The court granted the maternal grandmother's request to remove the paternal grandparents as guardians, and appoint her instead, on the grounds that the child "is constantly exposed to dangers of secondhand smoke" while in the guardians' home. The court took "judicial notice of current research that shows second-hand smoke or environmental tobacco smoke (ETS) can cause respiratory problems, including asthma and reactive airway disease, in children" and made a finding that exposing this child "to a smoking environment is contrary to his best interest".

VIII. ETS EXPOSURE AS A FACTOR IN NEW JERSEY CHILD CUSTODY MATTERS

New Jersey Family Courts are required to review a checklist when determining child custody and visitation matters, to determine what is "in the best interest of the child". One category on that checklist concerns the health and welfare of the child. New Jersey courts have decided that whether a parent or grandparent smokes is a factor in determining child custody and visitation.

Two precedent-setting cases were decided by New Jersey courts, and relied upon by courts:

- In 1994, the judge in *Unger v. Unger* modified a consent order and required that smoking be stopped in the home or vehicle when the children were present, and that no one smoke in the home or vehicle at least 10 hours before the children were present. *Unger v. Unger*, 644 A.2d 691, 9.4 TPLR 2.145, 63 U.S.L.W. 2132 (Sup. Ct. Ch. Div. 1994), NJ Super. Ct., Burlington Cty., Chancery Division, No. FM-03-103-93, (1994).
- In 2003, the judge in *Montufar v. Montufar* ordered the mother to keep the child free of all secondhand smoke in the mother's home, car and the grandparent's home. *Montufar v. Montufar*, No. FM-04-02187-89 (Camden Cty. (NJ) Ct. 1993).

New Jersey State Statute *N.J.S.A.* 9:2-4 on child custody refers to the checklist for determining custody and visitation. See Notes of Decisions #8.5 "Health and Safety", which states that a court may consider the effects of environmental tobacco smoke in custody determinations, citing the *Unger v. Unger*.

IX. SAMPLE REGULATION TO REQUIRE SMOKEFREE FOSTER CARE/RESOURCE FAMILY HOMES AND CARS, AND OUTDOORS NEAR RESOURCE FAMILY CHILDREN

Since February 6, 2006, New Jersey regulations require:

- (1) all resource family homes to be smokefree,
- (2) cars that transport the resource family child to be smokefree, and
- (3) and no smoking outdoors if a resource family child is present.

The term resource family homes, rather than foster homes, is now used in New Jersey. Resource family homes include homes previously categorized as foster homes, adoptive homes, family friend homes and relative care homes.

The law was adopted by regulation, by the Department of Human Services' Commissioner James M. Davy, on December 19, 2005, and took effect on February 6, 2006. It expires on February 6, 2011. The rule is in the Manual of Requirements for Resource Family Parents at N.J.A.C. 10:122C, specifically N.J.A.C. 10:122C-7.2(a)(3).

Actual text of N.J.A.C. 10:122C-7.2(a)3:

3. The resource family parent shall maintain a smoke-free environment in all indoor areas of the home, and in all vehicles used to transport a child in placement.

i. The resource family parent shall prohibit smoking and the use of smokeless tobacco by children in placement.

ii. The resource family parent shall comply with the provisions of [N.J.S.A. 2A:170-51.4](#) prohibiting any person from directly or indirectly selling, giving or furnishing to a minor under 18 years of age any cigarettes made of tobacco, any matter or substance that can be smoked, any cigarette paper or tobacco in any form, including smokeless tobacco.

iii. The resource family parent may permit smoking outdoors when no child in placement is present.