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## Keeping that Doggie in the (Car) Window Safe: Recommendations for Driving with Canine Companions

By Phyllis Coleman\*

### Introduction

More than half the estimated 78,000,000 dogs in the United States in 2011 rode in a car once a month or more.<sup>1</sup> Predictably, in addition to the fact that they always want to be with their “pack,” many love the experience as they delight not only in the sights and sounds, but most importantly, the smells that are part of the outing. Regrettably, the thrill they apparently feel, and the pleasure their human companions derive from their joy, come with a high price tag: unrestrained pets may distract the person at the wheel and cause accidents that injure or kill drivers, as well as both human and nonhuman passengers.<sup>2</sup> Not

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1. *Dog Travel Statistics*, KURGO [hereinafter *AAA/Kurgo Pet Passenger Survey*], <https://www.kurgo.com/dog-travel-statistics/> (last visited Apr. 30, 2018). See *infra* notes 41-43, 51-52, 133, 157, 159, 170 and accompanying text. This 2011 study examines habits of people driving with canine companions and potential distractions. Although published seven years ago, it is still a primary resource cited in almost every discussion on this issue. Thus, this article uses the study but also provides more recent statistics when available. For example, an update reveals there are currently 89,700,000 dogs in the United States. See *Pet Industry Market Size & Ownership Statistics*, AM. PET PRODUCTS. ASS’N [hereinafter *APPA Pet Owners Survey*], [http://www.americanpetproducts.org/press\\_industrytrends.asp](http://www.americanpetproducts.org/press_industrytrends.asp) (last visited Apr. 30, 2018).

2. Sue Manning, *Experts Warn About the Dangers of Driving with Unrestrained Pets in the Car*, L.A. TIMES (Jan. 26, 2011, 9:33 PM), <http://latimesblogs.latimes.com/unleashed/2011/01/dog-car-travel-safety.html> (noting that “no one has solid numbers” because the NHTSA does not track such crashes but “[t]ens of thousands of car accidents are believed caused every year by unrestrained pets.”).

surprisingly, there is also a huge financial cost.<sup>3</sup>

Thus, mixing dogs with automobiles raises three different but related issues: how to (1) determine if canine/human interaction while driving causes accidents; (2) eliminate or significantly reduce such collisions, assuming data demonstrate this is a problem; and (3) ensure the safety of all the involved cars' occupants, including the dog, in the event of a crash.<sup>4</sup> A significant obstacle to addressing these objectives is the scarcity of information about the frequency and nature of canine-involved accidents. This is at least partially because, until recently, people did not recognize how dangerous inattention while driving, even if only for a second or two, can be.<sup>5</sup> Based on this realization, several states have passed distracted driver statutes.<sup>6</sup> Unfortunately, most of these laws are restricted to regulating cell phone usage, with a strong focus on texting.<sup>7</sup> Only Hawaii has a statute that explicitly mentions dogs,<sup>8</sup> and

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3. The numbers are astonishing. Nevertheless, although potentially a very serious monetary drain, the financial aspects of this problem are beyond the scope of this article. See, e.g., LAWRENCE BLINCOE ET AL., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., DOT HS 812 013, THE ECONOMIC AND SOCIETAL IMPACT OF MOTOR VEHICLE CRASHES (rev. 2015) (2010), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812013>. The revised report explained that distracted driving, which was identified as a factor in roughly 10% of all fatalities and 18% of crashes in 2010, caused \$40,000,000,000 in economic costs and \$123,000,000,000 in societal harm. *Id.* at 174. However, it also noted that, "[t]hese estimates are almost certainly conservative" as police records frequently fail to identify whether distraction was involved. *Id.* See also Jeramy Gordon, *Life on the Road: The Cost of Distracted Driving*, TELETRAC NAVMAN (Jan. 31, 2017), <http://www.teletracnavman.com/blog/cost-distracted-driving>.

4. Most courts and legislators treat animals as property. This is inappropriate because, rather than inanimate objects, nonhuman animals are sentient beings entitled to respect. Consequently when referring to dogs, this article uses words like "who," "he," and "she," rather than "that" or "it." As one animal expert explained, "unless discussing a female dog, I usually call the dog 'him,' as this is our gender-neutral term. The reputedly more neutral 'it' is not an option, for anyone who has known a dog." ALEXANDRA HOROWITZ, INSIDE OF A DOG: WHAT DOGS SEE, SMELL, AND KNOW 12 (2009).

5. See *infra* notes 47-49 and accompanying text.

6. *Distracted Driving*, GOVERNORS HIGHWAY SAFETY ASSOCIATION, <https://www.ghsa.org/state-laws/issues/Distracted-Driving> (last visited May 7, 2018).

7. *Id.* Some municipalities have also passed local ordinances. See, e.g., TROY, MICH., ORDINANCES ch. 106, § 1.20.05 (2010) (defining "distracted driving" to include "physical interaction with pets").

8. To clarify, there are statutes that ban or regulate traveling with a dog

even it confines the ban to sitting on the driver's lap or being "in the driver's immediate area."<sup>9</sup> While a step in the right direction, as such conduct is dangerous for the dog and others in the vehicle, the limitations are a mistake as people engage in many other risky human/canine interactions. Stopping this type of behavior should substantially decrease the number of collisions.

Nevertheless, because there is no way to eliminate all accidents, it is also necessary to find ways to protect humans and nonhumans should a crash occur. Similar to seat belts for adults and car seats for children, some type of restraint seems appropriate. But this apparently simple solution faces two important hurdles. First is the absence of sufficient scientific and statistical evidence supporting the need for such constraints. Thus, because the notion of confining dogs is generally unpopular, decision makers must begin by collecting data to demonstrate whether there really is a need for action. The second barrier is the fact that, although some restraints may be effective in ensuring the dog does not become a dangerous projectile, thereby protecting other occupants of the automobile, because of the lack of regulation, many harnesses and other products securing pets do not survive crashworthiness tests.<sup>10</sup> Thus, the animal may stay in place in an accident so that he does not hurt anyone else but the equipment does not protect him from being hurt or killed,<sup>11</sup> and, in some cases, might even exacerbate his injuries.<sup>12</sup>

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in the open bed of a truck. *See, e.g.*, OR. REV. STAT. § 811.200 (2015). However, these laws are beyond the scope of this article.

9. HAW. REV. STAT. § 291C-124(b) (2013).

10. *See* Lindsey A. Wolko, *Center for Pet Safety 2013 Harness Crashworthiness Study Summary Report*, CTR. FOR PET SAFETY (Sept. 7, 2013), [http://centerforpetsafety.org/wpcontent/uploads/2013/07/2013\\_cps\\_harness\\_study\\_summary\\_final.pdf](http://centerforpetsafety.org/wpcontent/uploads/2013/07/2013_cps_harness_study_summary_final.pdf). *See also* Melissa Erickson, *Choosing the Safest Travel Harness, Crate for Your Vehicle*, ECHO PILOT (Pa.), Oct. 13, 2016, at B6, 2016 WLNR 31340665. This article points out that, although most people do not realize it, travel gear for pets is not regulated and thus does not have to meet any external standards. "It's a \$60 billion industry but there's absolutely no oversight," according to the founder of the Center for Pet Safety. *Id.*

11. Jeff Rossen & Jovanna Billington, *Pet Owner Alert: Most Restraints for Pets in Cars Fail Crash Tests*, TODAY (Jan. 4, 2016, 7:26 AM), <http://www.today.com/pets/pet-owner-alert-most-restraints-pets-cars-fail-crash-tests-t59271>.

12. *See Pet Travel Tips*, CTR. FOR PET SAFETY, <http://www.centerfor>

Part I of this article uses the empirical research of experts (animal behaviorists, ethologists, and cynologists) to explain reasons canine companions and their humans love riding together.<sup>13</sup> It also highlights the potential risks when dogs distract drivers. Acknowledging that only a few studies exist, it provides whatever statistics are available and posits that data strongly suggest dogs who are roaming free in a car cause or at least contribute to many accidents.<sup>14</sup> This means, in addition to

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[petsafety.org/pet-parents/pet-travel-tips](http://petsafety.org/pet-parents/pet-travel-tips) (last visited Apr. 30, 2018). See also Phil Zeltzman, *Choosing a Dog Harness for the Car*, PETHEALTHNETWORK.COM, <http://www.pethealthnetwork.com/dog-health/new-dog-checklists/choosing-a-dog-harness-car> (last visited Apr. 30, 2018) (cautioning that the results of the CPS harness study were “very disheartening[] [as] [o]ut of the 7 companies and 20 harnesses, only a single company provided a harness with optimal performance” and concluding “not all harnesses are created equal. In fact, most harnesses are not even adequate.”). But see Stephanie Turner, *Traveling with Pets This Summer?: Here Are Some Tips*, AIKEN STANDARD (S.C.) (July 9, 2016), [http://www.aikenstandard.com/entertainment/traveling-with-pets-this-summer-here-are-some-tips/article\\_76609acd-8142-5903-9fa4-1df647df818b.html](http://www.aikenstandard.com/entertainment/traveling-with-pets-this-summer-here-are-some-tips/article_76609acd-8142-5903-9fa4-1df647df818b.html) (stating that “[c]rates are important because of safety . . . [s]ome are safer than others but all are safer than nothing.”).

13. This article is limited to dogs rather than all pets for several reasons. While there are some similarities when traveling with a cat who might also become a dangerous missile in a crash, two distinctions are more important. First, the relationship is generally different as cats neither crave nor seek the same degree of attention as dogs and second, when traveling with their pet, owners typically already keep their feline companions in a crate. Morieka Johnson, *Rethink Your Dog Roaming Freely*, CNN (Apr. 3, 2012, 10:29 AM), <http://www.cnn.com/2012/03/16/living/pet-car-ride-dangers>.

14. See *Our Mission*, PAWS TO CLICK, <http://www.pawstoclick.com> (last visited Apr. 30, 2018). According to the Paws to Click website, its mission is “to inspire every pet owner to travel responsibly with their pets.” *Id.* Not only does the site list the 30,000 figure, it breaks the numbers down further claiming “[e]very 18 minutes, a car accident occurs due to a loose pet in the vehicle.” Paws to Click, *Every 18 Minutes a Car Accident Occurs Due to a Loose Pet in the Vehicle*, FACEBOOK (May 24, 2013), <https://www.facebook.com/pawstoclick/>. Unfortunately, there is no description of how these numbers were calculated. Other articles also use the 30,000 figure without explanation. See, e.g., Barbara Chuck, *Dog-Safe Driving: When You’re Behind the Wheel, Your Pet Should Be Secured*, EDMUNDS (Apr. 3, 2015), <https://www.edmunds.com/car-safety/dog-safe-driving.html> (noting that “[t]he exact number of accidents caused every year by such dogs is unknown, but Paws to Click, which seeks to educate drivers about riding with unrestrained dogs, puts the number at about 30,000 accidents annually.”). There do not seem to be people tracking this information and such claims without persuasive support are suspect. Another problem is the available statistics are “extrapolated from a small amount of data,” according to Lindsey A. Wolko, founder of the Center for Pet Safety. Erickson, *supra* note 10. To remedy the situation, data designed to identify the extent of the problem need to be collected.

drivers and passengers in other vehicles and even pedestrians,<sup>15</sup> these animals represent a significant potential danger to themselves and occupants of their car in one of two respects.<sup>16</sup> First, they can distract the driver in any number of ways and cause or contribute to an accident.<sup>17</sup> Second, they can become deadly projectiles if there is a collision (or even just the need to stop short).

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15. This article does not address the dog who is wandering around on the road, forcing the driver to swerve and possibly causing an accident, unless the reason that the animal is on the road is because he escaped from a motor vehicle either before or after a collision. In other words, the only canines who are included are those for whom a restraint to keep them in place, and inside the car, could have avoided the crash or reduced injury to occupants in vehicles or pedestrians. *Cf. Duvigneaud v. Gov't Emps. Ins. Co.*, 363 So. 2d 1292 (La. Ct. App. 1978). In this case that seems to straddle the line, an uninsured motorist stopped his car to look at sailboats. He left behind his passenger and a large dog (owned by the man's spouse). Unfortunately, the windows were open and the dog jumped out, almost immediately slamming into plaintiff who lost control of his motorbike. He fell and suffered injuries for which he sought compensation from his insurance company under his uninsured motorist coverage. He claimed the driver "was negligent in failing to secure the animal in the car by rolling up the windows, and that this constituted 'use' of the vehicle[.]" – a finding that was necessary to make the policy applicable. *Id.* at 1293. The majority agreed. *Id.* at 1295. The concurring opinion concluded the driver's omission was also a legal cause of the accident.

The duty to secure the animal or the car is designed to prevent exactly what happened. Furthermore, there is an ease of association (the duty-risk counterpart of foreseeability) between the injury and the duty to prevent the reasonably anticipated act of an unrestrained dog's jumping out of an open window of a car momentarily stopped adjacent to a lane of travel.

*Id.* at 1296 (Lemmon, J., concurring). However, the dissent insisted, by rejecting certain charges, the trial judge erroneously took the issue away from the jury, the "proper arbiter" of the factual issue of whether the basis for this litigation arose from the "ownership, maintenance or use" of the uninsured motorist's automobile. *Id.* at 1296-97 (Beer, J., dissenting).

16. Lisa Wade McCormick, *New Group Promotes Buckle-Up Laws for Pets: Unrestrained Dogs and Cats a Menace in Moving Vehicles*, CONSUMER AFFAIRS (Jan. 16, 2008), [https://www.consumeraffairs.com/news04/2008/01/pet\\_seat\\_belts.html](https://www.consumeraffairs.com/news04/2008/01/pet_seat_belts.html) (noting that "[p]ets can become 'missiles' if they're in an accident or if the driver makes a hard stop or quick turn. This can kill or severely injure not only the animal, but also the people in the vehicle").

17. Jim Sanders & Kevin Yamamura, *Schwarzenegger Vetoes Bill Forbidding Drivers to Hold Pets*, SACRAMENTO BEE, Sept. 28, 2008, at 3A.

Part II tackles the important question of how to significantly decrease the number of canine-involved accidents. This section analyzes the relevant cases and laws in the United States. It briefly contrasts what is happening in other places in the world, including the United Kingdom where it is illegal to drive with an unrestrained dog. Doing so actually permits insurance companies to reject any resulting claims.<sup>18</sup> Then, after conceding the impossibility of eliminating all such mishaps, Part III explores ways to protect human and nonhuman animals when a crash occurs. These include the need to collect information about collisions where dogs distracted the driver similar to what was done when deciding that adults need to wear seat belts and children must be in safety seats. Finally, the Conclusion provides several recommendations:

The National Highway Transportation Safety Administration (NHTSA) should study this issue and provide enticements to others to assist in obtaining relevant factual information on how often “free roaming” dogs in vehicles cause or contribute to accidents.

In light of the extremely successful campaigns to save lives by mandating seat belts and child safety seats, lawmakers should acquire the information collected by the NHTSA and use it to educate drivers about the importance of addressing this issue and, if ultimately supported by the data, requiring people to restrain dogs who are riding in their automobiles.

Encourage development of an effective, comfortable, less restrictive way to keep canines from distracting drivers and, at the same time, protect the dogs and other occupants in the car, as well as other motorists and pedestrians.

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18. See *infra* notes 147-50 and accompanying text.

Compare the appropriate and exacting standards and the detailed scrutiny of seat belts and child safety seats with the total absence of guidelines, official testing, or regulation of available dog restraints. Further, to establish standards, evaluate available restraints to see if they meet those standards, and implement a program by which the appropriate agency uses the results to regulate the equipment that claims to keep dogs, other passengers, and drivers safe in the event of a crash. Finally, simply reclassifying products for animals so that they are treated as “consumer goods” would be an easy way to begin to provide much needed oversight.<sup>19</sup>

### Part I

The image of a dog with his head out the car window and ears straight back as if he could fly is a picture of pure joy and likely brings a smile to his owner’s face (as well as those of almost all who see him). But why do canines love the experience so much?<sup>20</sup> Before answering that question, it is important to look to the works of animal behaviorists, anthrozoologists, ethologists, and cynologists<sup>21</sup> for perspective. Despite the fact that people typically believe they know what their pets are thinking, these specialists warn it is difficult to “translate” communications outside our species. While messages between and among humans may also be misinterpreted, “[a]dd another species to the mix and you have the potential for significant,

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19. See *infra* note 185 and accompanying text.

20. There are some dogs who, for a number of reasons (including that they get motion sickness or associate cars with trips to unpleasant places), do not like driving. See, e.g., Mikkell Becker, *Help! My Dog Hates Riding in the Car. What Can I Do?*, VETSTREET (Oct. 23, 2013), <http://www.vetstreet.com/our-pet-experts/help-my-dog-hates-riding-in-the-car-what-can-i-do?page=1> (explaining that although many dogs are “tail-wagging happy” to travel in cars, others get physically ill and stressed).

21. *Cynologist*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/cynologist> (last visited Apr. 30, 2018) (a person who “specializes in the care and training of dogs”).

even catastrophic, misunderstandings.”<sup>22</sup> Nevertheless, given what experts have learned about canines in the last decade or so since studying them became a serious profession, it is possible to theorize why pets get so enthusiastic when invited along on a ride.

As pack animals, dogs love to be with their families.<sup>23</sup> On a car trip, everyone is together on an exciting escapade, just as it would be in the wild. In addition, canines are typically interested in any adventure.<sup>24</sup> And one of the primary reasons a car trip is so stimulating to dogs is their super sensitivity to smells. Indeed, in using their noses to obtain information, they “are miles ahead of us humans,”<sup>25</sup> which means when traveling with access to an open window, they are experiencing a cornucopia of thousands of new odors every minute.<sup>26</sup> Turning to science,<sup>27</sup> it is easy to understand why a canine’s sense of smell

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22. JENNIFER ARNOLD, THROUGH A DOG’S EYES 106 (2010). Jennifer Arnold has trained service dogs for people with disabilities and special needs for more than two decades. *Our Founder*, CANINE ASSISTANTS, <http://www.canineassistants.org/our-founder/> (last visited Apr. 30, 2018).

23. Indeed, renowned anthrozoologist (someone who studies interactions between human and nonhuman animals) and author Dr. John Bradshaw says “[m]any dogs — maybe as many as half the dogs in the West — that are kept in homes have a real problem with being left alone at some point in their lives . . . [a]nd the problem may last for weeks or years. . . . They crave the company of people.” John Bradshaw, *The New Science of Understanding Dog Behavior*, NPR BOOKS (May 26, 2011, 11:30 AM), <http://www.npr.org/2011/05/26/136497064/the-new-science-of-understanding-dog-behavior>.

24. *Why Dogs Love Car Rides*, TRIPSWITHPETS.COM [hereinafter *Why Dogs Love Car Rides*], <https://www.tripswithpets.com/twp-blog/why-dogs-love-car-rides> (last visited Apr. 30, 2018).

25. JOHN BRADSHAW, DOG SENSE: HOW THE NEW SCIENCE OF DOG BEHAVIOR CAN MAKE YOU A BETTER FRIEND TO YOUR PET 232 (2011). The author explains “[d]ogs live in a world that’s dominated by their sense of smell — one that’s quite unlike ours, which is constructed around what we see.” *Id.* at 189, 225-28.

26. *Why Dogs Love Car Rides*, *supra* note 24.

27. Although a dog’s strong sense of smell has been studied, repeatedly confirmed, and widely accepted for many years, a May 2017 article in *Science* challenges the common belief that, in this area, humans are comparatively deficient. John P. McGann, *Poor Human Olfaction is a 19th-Century Myth*, 356 *SCIENCE* 7263, 7263 (2017). Attributing “the idea that humans have tiny olfactory bulbs and a poor sense of smell” at least partially to religious politics of 19th-

is so much stronger than a human's, but it is almost impossible to actually comprehend the magnitude of the difference. Humans have approximately 5,000,000 scent receptors inside their noses. Contrast that with dogs who, although the numbers vary by breed,<sup>28</sup> have somewhere between 200,000,000 and 300,000,000.<sup>29</sup> In fact, a canine's sense of smell is 10,000 to 100,000 times as acute as a human's, according to James Walker, one of the authorities on the well-known and respected study that reached this "jaw-dropping" conclusion.<sup>30</sup> Even just using the smaller 10,000 figure, Walker explained,<sup>31</sup> "[i]f you make the analogy to vision, what you and I can see at a third of a mile, a dog could see more than 3,000 miles away and still see as well."<sup>32</sup> Further, while unlike people, dogs tend to believe their noses more than their eyes, they are still aroused by all the

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century France, Professor McGann claims "almost since these beginnings, the neuroanatomy of the olfactory bulb has inspired misunderstandings and incorrect conclusions about olfactory function in humans compared to other mammals." *Id.* While the article raises interesting points that scientists can debate, the outcome is not relevant to the point of this article. Whatever the comparative strength of the sense of smell, or however it is calculated, it seems indisputable that dogs do "follow their noses" and enjoy new and exciting scents.

28. In one recent study, scientists discovered that breeds originally specifically selected for scent work seem to have retained a higher olfactory acuity than breeds that had not been chosen for such work. Notably, when tested, not only were they more successful than the other groups, but at the most difficult level, they were also the only group that performed above chance. *See Zita Polgár et al., A Test of Canine Olfactory Capacity: Comparing Various Dog Breeds and Wolves in a Natural Detection Task*, PLOS ONE (May 6, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4859551>.

29. HEATHER DUNPHY, SECRET LANGUAGE OF DOGS: THE BODY LANGUAGE OF FURRY BODIES 38 (2011). "[T]he mechanics of the canine nose" also contribute, including the fact that it is wet as the moisture actually helps capture scent particles. *Id.*

30. Peter Tyson, *Dogs' Dazzling Sense of Smell*, NOVA (Oct. 4, 2012), <http://www.pbs.org/wgbh/nova/nature/dogs-sense-of-smell.html>.

31. *Id.* (quoting James Walker, former director of the Sensory Research Institute at Florida State University). Alexandra Horowitz (noted dog-cognition expert, Barnard College professor, and book author) used a different analogy. She says a person would perceive the presence of a teaspoon of sugar in a cup of coffee while a dog could detect a teaspoon of sugar in a million gallons of water (the equivalent of two Olympic swimming pools). HOROWITZ, *supra* note 4, at 72.

32. *See* Tyson, *supra* note 30 and accompanying text.

new, seemingly ever-changing visual images.<sup>33</sup> In addition, some experts believe the car's forward motion, surrounded by other moving cars, produces the same euphoric sensations as hunting<sup>34</sup> and might actually trigger the canine's instinct to chase because the objects outside the car seem to be moving quickly.<sup>35</sup>

Of course, it is not only nonhuman animals who enjoy these trips. People do too. In fact, bloggers extol the virtues of driving with a pet, even calling them "the best possible travel companions."<sup>36</sup> Many of the suggested reasons are humorous ("[t]hey never criticize your driving" and "[t]hey never ask 'Are we there yet?'").<sup>37</sup> However, other supporting arguments highlight how easily pets can be distracting. For example, one blogger calls them "built-in entertainment" because "[t]hey are cute to look at in the rearview mirror," and "they make funny faces at the passing scenery[.]"<sup>38</sup> But, to even see his dog, the driver would have to take his eyes from the road. According to the NHTSA,<sup>39</sup> "distracted driving" is "any activity that diverts attention from driving . . . anything that takes your attention away from the task of safe driving."<sup>40</sup> Certainly, looking at a pet

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33. See generally BRADSHAW, *supra* note 25.

34. Aaron Seminoff, *5 Reasons Why Dogs Love Car Rides*, ANIMAL HEARTED (Apr. 21, 2018), <https://www.animalhearted.com/blogs/dogs/dog-car-ride>.

35. *Why Dogs Love Car Rides*, *supra* note 24. But see Eric Pfeiffer, *The Surprising and Scientific Reasons Why Dogs Absolutely Love Riding in Cars*, GOOD (July 8, 2016), <https://www.good.is/articles/why-dogs-love-car-rides> (discussing many of the usual reasons canine companions "love to go cruising with their human pals[.]" but cautioning "don't just assume your dog loves a good car ride" as some dogs get queasy).

36. *10 Reasons Pets Make the Best Travel Companions*, TRIPSWITHPETS.COM, <https://www.tripswithpets.com/twp-blog/10-reasons-pets-make-the-best-travel-companions> (last visited Apr. 30, 2018).

37. *Id.*

38. *Id.*

39. The federal agency that "regulates the safety of motor vehicles and related equipment." NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., <https://www.nhtsa.gov/laws-regulations> (last visited Apr. 30, 2018).

40. *Distracted Driving*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812\\_381\\_distracteddriving2015.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812_381_distracteddriving2015.pdf) [hereinafter *Distracted Driving*], (last visited Apr. 30, 2018). The NHTSA included the following examples: "talking or texting on your phone,

rather than the street ahead qualifies.<sup>41</sup>

Notably, 65% of owners in the AAA/Kurgo<sup>42</sup> survey “admit to engaging in at least one potentially distracting activity while driving with their dog.”<sup>43</sup> Moreover, when asked directly if they had actually been distracted by their canine companion, 29% of participants confessed they had.<sup>44</sup> This study revealed drivers engaged in the following activities:

- Petting their dog (52%)
- Using hands or arms to restrict dog’s movement or hold dog in place when putting on brakes (23%)
- Using hands or arms to keep dog from climbing from the backseat to the front seat (19%)
- Reaching into backseat to interact with dog (18%)
- Allowing dog to sit in lap or holding dog while driving (17%)
- Giving food or treats to dog (13%)
- Playing with dog (4%)
- Taking a photo of dog (3%)<sup>45</sup>

The list does not include accidental situations where a dog somehow inadvertently hits the driver, steering wheel, brake, or gas pedal – any of which could easily cause loss of control of the

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eating and drinking, talking to people in your vehicle, fiddling with the stereo, entertainment or navigation system . . .” *Id.*

41. *Take Care of Your Best Friend*, N.Z. HERALD, Dec. 10, 2016, at F037, 2016 WLNR 37678133 (noting that “[d]ogs distracting drivers is the most common cause of road accidents involving pets” and that, in New Zealand, “it was the cause of seven crashes causing injury last year”).

42. Kurgo is a leading manufacturer of pet travel products. *Nearly One in Five Respondents to AAA/Kurgo Survey Admit to Taking Hands Off the Wheel to Keep Dogs from Climbing in Front Seat*, AAA (July 19, 2011) [hereinafter *Taking Hands Off the Wheel*], <http://newsroom.aaa.com/2011/07/2011-kurgo-pet-surve/>.

43. *AAA/Kurgo Pet Passenger Survey*, *supra* note 1. *See also* *Nappe v. Fuerst*, No. 63889, 1990 WL 457770 (S.D.) (observing in summary of settlement defendant admitted he was attempting to control his dog at the time of the accident but tried to escape liability based on the fact that plaintiff improperly changed lanes).

44. *AAA/Kurgo Pet Passenger Survey*, *supra* note 1.

45. *Id.*

vehicle and can only happen if the dog is not restrained. All these behaviors are hazardous and potentially lethal as they take the driver's "attention away from the task of safe driving."<sup>46</sup> Disaster only takes a moment because, according to the AAA Foundation for Traffic Safety, if a person takes his eyes off the road for two seconds, it actually doubles his risk of being in a crash.<sup>47</sup> To put this in perspective, an automobile moving at 55 miles per hour covers more than 80 feet every second. That means if a driver is in some way engaged with his dog for 4.6 seconds, it is as if his vehicle traveled the length of a football field while he had his eyes closed.<sup>48</sup>

Put that way, there can be no doubt that distracted driving, which claimed 3477 lives and contributed to 391,000 people being injured in 2015 alone,<sup>49</sup> is dangerous. However, when addressing the problem, a growing number of states confine the discussion (and statutory bans) to cell phones and/or texting. While texting currently is the most problematic, with statistically significant proof between the sidetracking activity and accidents,<sup>50</sup> such a limitation is a mistake. No matter what diverts his attention, the person who is not focused on driving is a menace to everyone on the road.<sup>51</sup> Thus, so long as a dog is loose in the vehicle, the driver might switch his attention to the animal rather than driving. While not a perfect solution, one way to reduce the temptation (for both human and nonhuman animals) is to restrain the dog. Although it is almost certainly true that canines would prefer to be loose, it is the guardian's<sup>52</sup>

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46. *Distracted Driving*, *supra* note 40.

47. *AAA/Kurgo Pet Passenger Survey*, *supra* note 1.

48. Kiernan Hopkins, *Is Texting While Driving More Dangerous Than Drunk Driving?*, DISTRACTEDDRIVERACCIDENTS.COM (Apr. 2, 2013), <http://distracteddriveraccidents.com/texting-driving-dangerous-drunk-driving/>.

Although this article is discussing texting and used 4.6 seconds as that is the average time necessary to send or read a message, the point is still the same.

49. *Distracted Driving*, *supra* note 40. *Cf.* NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., TRAFFIC SAFETY FACTS, DOT HS 812 326, DRIVER ELECTRONIC DEVICE USE IN 2015 (2016), [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/driver\\_electronic\\_device\\_use\\_in\\_2015\\_0.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/driver_electronic_device_use_in_2015_0.pdf).

50. *See* Hopkins, *supra* note 48.

51. *Distracted Driving*, *supra* note 40.

52. Many animal activists prefer the term *guardian* to *owner* as the former more properly describes the person's role. Phyllis Coleman et al., *It's Raining*

responsibility to keep his pet safe. Surely no one would suggest that because a toddler objects to being in his safety seat, his parents should not strap him in. The same is true for a dog.

## Part II

The ultimate goal is to eliminate, but more realistically in the short term to significantly reduce, automobile accidents caused by potentially dangerous human/dog interaction. To determine how best to accomplish this, it is necessary to analyze the cases as well as existing and proposed laws.

### *Cases*

There are not only a number of appellate decisions where dogs seemed to play a role in car crashes, but a general online search of news stories turns up hundreds of such instances in this country and abroad. These cases fall into various categories and provide important data about the types of situations where these pets are at least part of the reason a collision occurred. They also demonstrate the paucity of information about these crashes and the resulting critical need for further study that will likely support recommendations for additional or modified legislation.<sup>53</sup>

#### *Caused Accident – Out of the Car*

Owners want their dogs to enjoy the adventure, and, probably because they do not even consider or know the possible hazards,<sup>54</sup> 63% reported their canine companions were not

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*Cats and Dogs . . . Government Lawyers Take Note: Differential Licensing Laws Generate Revenue, Reduce Costs, Protect Citizens, and Save Lives*, 40 STETSON L. REV. 393, 434 n.65 (2011) (explaining “Advocates believe this terminology better reflects the relationship between humans and the companion animals with whom they share their homes.”).

53. McCormick, *supra* note 16 and accompanying text.

54. See *AAA/Kurgo Pet Passenger Survey*, *supra* note 1.

restrained in 2016.<sup>55</sup> Indeed, a window is often left open for the animals, maximizing their ability to savor the millions of smells as the car travels down the highway. Unfortunately, this is dangerous for a number of reasons,<sup>56</sup> but primarily because a pet may be ejected, fall or jump out, or flee after a crash.

Because of this, it is important to recognize an alarming 75% of people who ended up outside the vehicle following an accident died.<sup>57</sup> In fact, one of the primary reasons seat belts save lives is that they are effective in keeping users in their cars. Only 1% of individuals who were using restraints during a collision were totally ejected, compared with 30% of unrestrained occupants.<sup>58</sup> Based on these statistics, following years of research (much of it incentivized by government funding), states passed laws mandating that adults wear seat belts and children be confined in safety seats.<sup>59</sup>

Although no one seems to be collecting this type of data for dogs, because most canines are not restrained they would be more likely to fall<sup>60</sup> or be thrown out of the vehicle. They can be propelled through an open window or, based on the speed of the automobile and the size of the dog, might also be hurled against

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55. *APPA Pet Owners Survey*, *supra* note 1, tbl. 55. This was actually a substantial increase over the 72% two years earlier. Compare both figures to the 79% in 2006. *Id.*

56. *See infra* notes 174-76 and accompanying text.

57. WORLD HEALTH ORG., *The Need for Seat-Belts and Child Restraints*, in SEAT-BELTS AND CHILD RESTRAINTS: A ROAD SAFETY MANUAL FOR DECISION-MAKERS AND PRACTITIONERS 1, 6 (2009), [http://www.who.int/roadsafety/projects/manuals/seatbelt/seat\\_belt\\_manual\\_module\\_1.pdf](http://www.who.int/roadsafety/projects/manuals/seatbelt/seat_belt_manual_module_1.pdf). *See also* NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. TRAFFIC SAFETY FACTS, DOT HS 811 160, OCCUPANT PROTECTION (2008), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811160>. Although there are no similar statistics for dogs who are ejected, it seems the numbers should be similar. While it would appear that more canines would be ejected (as more of them are driving unrestrained), once they are out of the car, assuming the individuals are of identical weight and the vehicle was traveling at an equal rate of speed, the impact and outcome will likely be the same.

58. OCCUPANT PROTECTION, *supra* note 57, at 3.

59. *See infra* notes 155-62 and accompanying text.

60. Liz Dunphy, *Shocking Video Shows the Moment a Dog Falls Out of a Moving Car and Gets DRAGGED by its Leash Along a Motorway*, DAILYMAIL.COM (May 15, 2017, 9:17 AM), <http://www.dailymail.co.uk/news/article-4506952/A-dog-falls-car-DRAGGED-leash.html>.

the windshield with such force they would crash right through the glass. Therefore, in the cases where the dog is the only fatality<sup>61</sup> it might be because he was the only one not constrained. Of course, there are times when everyone in the car dies,<sup>62</sup> when the dog is the only survivor,<sup>63</sup> or when he is either one of those who died<sup>64</sup> or one who survived.<sup>65</sup>

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61. See, e.g., Tracie Mitchell, *I Injured in Single-Vehicle Crash on South Flat Road*, N. WYO. DAILY NEWS, Apr. 7, 2017, at A1, 2017 WLNR 10841980 (noting that the driver was “life flighted from Worland . . . [but] [t]he canine passenger, who was ejected along with the driver, did not survive”); *Woman Escapes Serious Injury in Crash; Pet Dog Killed*, ARGUS-PRESS (Mich.), Mar. 28, 2017, 2017 WLNR 9699245.

62. While it is not clear exactly what caused the accident, a South Carolina man and his dog were both ejected when he crossed the center line, left the highway, over-corrected, and rolled multiple times. As is often true in these situations, both died. Staff Reports, *Chesnee Man and His Dog Killed in Highway 11 Vehicle Crash*, GOUPSTATE.COM (Feb. 3, 2017, 7:51 AM), <http://www.goupstate.com/news/20170203/chesnee-man-and-his-dog-killed-in-highway-11-vehicle-crash>. Not all dogs who are ejected die, but they are traumatized and many times injured. If their owners are hurt or dead, no one may even look for them. In one such instance, an eighteen-wheeler ran a red light and hit Katherine Scott’s Hyundai, crushing her car. Both drivers were taken to a medical center and she was later air lifted to another facility where she was treated for serious injuries. Her dog, Alcide, was thrown from the car and was missing for seven days. Although Scott was able to return to work after two months, she suffers from PTSD. Alcide has become her therapy pet, and she is thinking about having him formally trained to help others. Pennylynn Webb, *Palestine Wreck Victim Receives \$1.6 Million Settlement*, PALESTINE HERALD-PRESS (Jan. 9, 2017), [http://www.palestineherald.com/news/palestine-wreck-victim-receives-million-settlement/article\\_5956f466-d6db-11e6-b0cc-27db0a721c30.html](http://www.palestineherald.com/news/palestine-wreck-victim-receives-million-settlement/article_5956f466-d6db-11e6-b0cc-27db0a721c30.html).

63. See, e.g., Elisa Marques & Philil Luciano, *Motorist in Double-Fatal Wreck on Route 29 Ran Red Light*, CHILICOTHE TIMES-BULLETIN (Ill.), Nov. 16, 2016, at A1, 2016 WLNR 35122441.

64. Clay Kirby, *Shreveport, Caddo Crash Victims Identified*, KTBS (Mar. 8, 2017), [https://www.ktbs.com/news/shreveport-caddo-crash-victims-identified/article\\_fc09e864-4e05-5252-8367-8dd8b9231185.html](https://www.ktbs.com/news/shreveport-caddo-crash-victims-identified/article_fc09e864-4e05-5252-8367-8dd8b9231185.html) (stating that the driver, who was not wearing a seat belt, and a small dog [also presumably unrestrained] were both killed).

65. See, e.g., *Besant v. Blackard*, No. 01-CV-957, 2002 WL 33576737 (Colo. May, 2002) (plaintiff contended that the seventeen-year-old “defendant operated the vehicle in a negligent manner, failed to keep a proper lookout, failed to maintain an assured clear distance, and drove while under the influence of alcohol[,]” killing one of his two family dogs which were in his vehicle at the time of the accident); *Marine Patrol Officers Rescue Dog from Biloxi Back Bay*, US

Unfortunately, because there are not comprehensive scientific studies or methodical data collection to determine how many crashes involve dogs, it is difficult at this point to analyze these situations and suggest procedures to avoid or at least minimize the damage.<sup>66</sup> Nevertheless, the California Highway Patrol does collect these statistics, and reports that four people were killed and 346 injured in crashes from 2001 to 2007 “due to driver inattention caused by an animal.”<sup>67</sup> Convincing other law enforcement agencies around the country to gather and maintain similar data would help in determining whether this really is a major problem causing loss of life and/or serious injuries to both human and nonhuman animals.

Dogs who are not ejected actually jump out of windows “pretty frequently.”<sup>68</sup> This happens in several different scenarios. *Beavers v. Dean* is illustrative of both the risk that because canines are loose they might cause an accident as well as the lack of sufficient information about what occurred.<sup>69</sup> The only relevant reported facts were plaintiff, a fifty-year-old factory worker, claimed she suffered soft tissue injuries when defendant, who was trying to stop his vehicle to retrieve his dog who had escaped through the window, crossed the centerline,

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OFFICIAL NEWS (Miss.), July 11, 2016 (explaining that a black Doberman-Pit Bull mix was rescued after falling about six stories into the water when he jumped from a car window following an accident on a bridge).

66. In Australia, where it is illegal to drive with an unrestrained dog, they report more than 5000 pets are injured or killed each year. Craig Duff, *Protecting Your Precious Pooch*, GLADSTONE OBSERVER (Austl.), May 20, 2017, 2017 WLNR 15544640 [hereinafter *Protecting Your Precious Pooch*].

67. Diane Lade, *Pets Still in the Driver’s Seat in California and Florida*, SUN SENTINEL (Sept. 29, 2008, 8:04 AM) (quoting Sanders & Yamamura, *supra* note 17), [http://www.sun-sentinel.com/sfl-mtblog-2008-09-pets\\_still\\_in\\_the\\_drivers\\_seat-story.html](http://www.sun-sentinel.com/sfl-mtblog-2008-09-pets_still_in_the_drivers_seat-story.html).

68. Sean Rowley, *Pets in Drivers’ Laps is Legal, but Still Discouraged*, TAHLEQUAH DAILY PRESS (Jan. 29, 2014), [http://www.tahlequahdailypress.com/news/local\\_news/pets-in-drivers-laps-is-legal-but-still-discouraged/article\\_b3c625ec-cd01-5dd5-bfb4-c553f491c249.html](http://www.tahlequahdailypress.com/news/local_news/pets-in-drivers-laps-is-legal-but-still-discouraged/article_b3c625ec-cd01-5dd5-bfb4-c553f491c249.html).

69. *Beavers v. Dean*, No. 92-200889-NI, 1993 WL 598132 (Mich. Cir. Ct. Mar., 1993).

and struck her car.<sup>70</sup> With no more discussion about the dog in the Verdict and Settlement Summary, “defendant disputed the extent of the plaintiff’s injuries[,]” a claim that apparently was persuasive as judgment was for the defense.<sup>71</sup>

It appears, however, that more dogs flee *after* a crash. This is because they are understandably traumatized and scared so, if they can get out of the car, they run away. In one recent incident, state troopers arrived at an accident site only to discover there had actually been two crashes. A man and woman had lost control of their Mustang and rolled into a field. They left the car to search for their pet, who had bolted. According to witnesses, a woman traveling on the highway did not hit the dog but she apparently did not see the pedestrians and struck and killed them.<sup>72</sup> Obviously, had the dog not been able to get out of the vehicle, the second fatal collision would never have occurred.

It is important to note that these dogs are likely to be in an unfamiliar area when an accident occurs. Therefore, if they leave the scene, while some find their way home, others are never located. In other words, not many are as lucky as Shiva, a two-year-old Quinson-Heeler who fled from a Tucson, Arizona crash.<sup>73</sup> After an unsuccessful three-and-a-half-week search, her owners feared she would be among the pets who do not ever come home. Thankfully, although Shiva ended up in Folsom, California, nearly 900 miles away,<sup>74</sup> a local resident coaxed her into the car and drove her to a shelter where they scanned her and reunited her with her owner.<sup>75</sup>

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70. She also sued the car manufacturer, asserting negligence because the seat belts were defective and broke during the accident. The co-defendant was dismissed after he contested the allegation. *Id.*

71. *Id.*

72. Denise Marquez, *DPS: 2 Killed Trying to Retrieve Dog from Highway After Crash*, LUBBOCK AVALANCHE-J. (Tex.), Sept. 30, 2016, 2016 WLNR 29997377 (the dog was captured by witnesses to keep him safe and the driver was not injured).

73. Rachel Zirin, *Arizona Pup Found in Folsom*, EL DORADO HILLS TELEGRAPH (Cal.), Dec. 6, 2016, 2016 WLNR 37396222.

74. Distance from Tucson, AZ to Folsom, CA, DISTANCESONLINE.COM, <http://distancesonline.com/Tucson,AZ/Folsom,CA> (last visited Apr. 30, 2018).

75. Zirin, *supra* note 73.

*Caused Accident – Distracted by Dog*

Although there is little hard evidence because of the scarcity of research, sometimes the dog's behavior undeniably distracted the driver and that preoccupation caused the accident. *Lewellin v. Huber*<sup>76</sup> was such a case. Defendants, who owned a six-month-old golden retriever, hired Tonia Stomberg, a sixteen-year-old, to watch their home as well as their puppy while they were on vacation. The teenager was driving with the dog in the back seat when he began “bugging’ her”<sup>77</sup> by trying to climb between the bucket seats and putting his head in her face. “Tonia was distracted, and while attempting to get the dog settled, the car went off the road and ran over a 9-year-old boy . . . who was lying in the ditch. The boy was killed.”<sup>78</sup> Interestingly, the court noted that:

The dog had a tendency to be “frisky” . . . On one occasion, while Mr. Huber had the dog in the car, it tried to get in the front seat. As a result, Mr. Huber usually restrained the dog in the back seat by putting a seat belt through the dog's collar. Tonia was not aware of this.<sup>79</sup>

In a lawsuit by the child's estate against the dog's owners, the Supreme Court of Minnesota acknowledged “there may be causation in fact here,” but decided “this chain of events is too attenuated to constitute legal causation for the radical kind of liability that the statute imposes.”<sup>80</sup> This is because “legal causation for absolute liability . . . must be direct and immediate, *i.e.*, without intermediate linkage.”<sup>81</sup> The majority reversed and refused to impose strict liability, but correctly remanded to permit plaintiff to assert a negligence cause of action.

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76. 465 N.W.2d 62 (Minn. 1991).

77. *Id.* at 63.

78. *Id.* (the case did not explain why a nine-year-old boy was lying in a ditch apparently by himself).

79. *Id.*

80. *Id.* at 66.

81. *Id.* at 65.

Therefore, after recognizing that “[h]arshness of result in certain extreme situations is a social price sometimes paid for the perceived benefits of the strict liability policy[,]” the dissent raises what appears to be the critical point on the possible negligence claim.<sup>82</sup> “[T]he owners knew of the dog’s habit of attempting to crawl into the front seat of the car, thus making it a still stronger case of liability.”<sup>83</sup> Mr. Huber actually took steps to secure the puppy when he himself was driving with the dog. So, if it turns out plaintiff could pursue a negligence claim, the owner’s failure to warn Tonia of the puppy’s tendency to try to get into the front seat, and the corrective (although arguably very dangerous) measure of “putting a seat belt through the dog’s collar” to stop him, would help prove the necessary elements.<sup>84</sup>

In attempting to avoid either civil liability or criminal responsibility, some drivers actually try to blame their canine companion for a crash.<sup>85</sup> This argument should not be successful and generally is not. For purposes of this article, even assuming the dog was the factual cause, the primary reason the claim should be rejected is that, in almost every case, had the owner properly restrained his pet, the collision would never have happened. Therefore, if anyone is at fault, it is owner, not the dog.

*People v. Hall*<sup>86</sup> is a particularly tragic example. Jodie Mae Hall appealed her conviction for driving “under the influence of intoxicating liquor (OUIL) causing death”<sup>87</sup> when her SUV slammed into the rear of a stopped school bus. The crash killed her ten-year-old daughter, Samantha, who was sitting in the

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82. *Lewellin*, 465 N.W.2d at 68 (Yetka, J., dissenting).

83. *Id.* (emphasis added).

84. *Id.* at 63.

85. Sometimes drivers blame the dog for distracting them in some way. *See infra* notes 115-18 and accompanying text. But other times they actually claim the dog was driving. *See, e.g., Intoxicated Man Claims Dog was Driving*, XAVIER DWI DEF., <https://www.nysdwi.com/intoxicated-man-claims-dog-driving> (last visited Apr. 30, 2018) (noting that Georgia man confronted about the possibility that he had been drinking and driving denied it and explained that his dog, who was in the car, drove him to the store which “heightened officers’ suspicion about the driver’s sobriety, and they eventually arrested him”).

86. No. 270015, 2007 WL 2067598 (Mich. Ct. App. July 19, 2007).

87. *Id.* at \*1.

front seat. According to forensic evidence and a witness, Hall should have been able to stop without hitting the bus. The prosecutor argued she did not even try because she was drunk and alcohol slows reaction time. A nurse in the emergency room reinforced that defendant was impaired when she testified Hall was “too intoxicated to carry on a conversation” with a physician who tried to speak with her about her child.<sup>88</sup>

Defendant admitted having had three-and-a-half glasses of wine with dinner but she insisted she had been fine to drive. According to her, the problem occurred when her dog, who weighed between eighty and ninety pounds, jumped into the front seat and frightened her daughter. After Hall attempted to return the animal to the back of the vehicle, she said she “became distracted, and failed to brake[.]”<sup>89</sup> She claimed to have been “surprised” by the behavior because her pet “never jumped into the front seat[.]”<sup>90</sup>

Because Hall did not deny that she was driving when the fatal crash occurred, and both sides stipulated that her blood alcohol was .16%,<sup>91</sup> the only issue was whether her operation of the vehicle was the reason Samantha died. In other words, defendant’s conduct has to be the factual as well as proximate cause of the death. Although the judge did not explicitly include an instruction that, in determining proximate cause, the jury should consider the existence of any intervening superseding cause, defendant’s lawyer vigorously contended the dog’s behavior was “completely unanticipated and therefore broke the chain of causation.”<sup>92</sup> Rejecting that argument, the opinion explains “for an intervening cause to be a superseding cause, the intervening cause must not have been foreseeable ‘based on an objective standard of reasonableness.’”<sup>93</sup> Consequently, jurors could rationally conclude that even if the dog had distracted Hall

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88. *Id.*

89. *Id.*

90. *Id.*

91. The current limit is .08% in most states. See Marra Kassman, Note, *The Fourth Amendment and Driving While Intoxicated: When Does a Police Officer Need a Warrant?*, 33 TOURO L. REV. 1167 (2017).

92. *Hall*, 2007 WL 2067598, at \*2.

93. *Id.* at \*3 (quoting *People v. Schaefer*, 703 N.W.2d 774, 786 (Mich. 2005)).

as she contended, “this act was reasonable [sic] foreseeable for an “unrestrained animal,” and did not supersede defendant’s operation of the SUV as the cause of Samantha’s death.”<sup>94</sup> In other words, although there is no law mandating a canine companion be crated or belted in some way, it is reasonably foreseeable that a loose dog might do something to distract the driver and cause an accident.

Therefore, even assuming Hall was correct about her dubious assertion that she was capable of safe driving despite a blood alcohol level approximately two times the legal limit, she should still be responsible for Samantha’s death because she could have made sure that the dog was not able to get into the front of the vehicle. While no state currently has a statute expressly mandating that dogs be restrained while driving,<sup>95</sup> owners have a well-established legal obligation to ensure that their canine companions do not harm human or nonhuman animals.<sup>96</sup> Thus, along with the joy and benefits (and a myriad other advantages, including improved health) owners enjoy by sharing their lives with a dog comes responsibility to control their companion animals at all times and potential criminal prosecution and/or civil liability for damage their pets cause.<sup>97</sup> Notably, apparently without objection, the judge permitted Hall to testify that her dog had “never jumped into the front seat” prior to this incident.<sup>98</sup>

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94. *Id.* (emphasis added).

95. There are some local ordinances. *See, e.g.*, TROY, MICH., ORDINANCES ch. 106, § 1.20.05 (2010). Also, Hawaii has a statute prohibiting people from driving with dogs in their laps or being “in the driver’s immediate area[.]” HAW. REV. STAT. § 291C-124(b) (2013).

96. Phyllis Coleman, *We Say “Tomato,” They Say “Woof”*: *The Argument for Abandoning “Provocation” in Dog Bite Statutes*, 47 U. MEM. L. REV. 485, 529-31 (2016).

97. *See generally id.* This article proposes abolishing “provocation” as the test for whether an owner should be liable if his dog bites because there is no way humans can really know what is going on in the animal’s head. Instead, the standard should be whether the injury occurred because the owner did not properly train and/or supervise the dog. Failure to do either or both could lead to civil and/or criminal liability. *Id.*

98. *Hall*, 2007 WL 2067598, at \*1.

*Caused Accident – Habit Evidence*

As was true in *Hall*,<sup>99</sup> sometimes either plaintiff or defendant wants to introduce evidence of what the dog has done in the past to show that it is more or less likely he did what is alleged. But in *Hodges v. Baurmann*,<sup>100</sup> defendant objected when plaintiff and his witnesses were allowed to testify as to his canine's habit to refuse to ride in the front seat.<sup>101</sup> The court disagreed. The issue was contributory negligence based on conflicting evidence of where the animal was at the time of the crash and whether plaintiff was looking at him rather than focusing on his driving. Acknowledging that evidence about customs and habits are generally found in dog bite cases, the appellate court determined the testimony was appropriate here because it "shed some light upon a disputed inference: Did plaintiff have his eyes or his mind on the dog, and not on the road? Or was he alert and vigilant, with his eyes and his mind upon the hazards ahead of him?"<sup>102</sup>

Interestingly, almost eighty years ago, defendant in *Morse v. Sturgis* raised a similar defense when her poodle, who had been lying beside her, became sick and jumped into the steering wheel, causing her to lose control of the car and injure plaintiff.<sup>103</sup> The dog, who had ridden next to Edith Sturgis like this "for 'hundreds of miles[,] . . . was well behaved and had never shown any tendency to change its position or cause any trouble[.]'"<sup>104</sup> As a result, Sturgis sought a jury instruction that so long as she was driving "appropriately" and "the accident was caused solely by the act of the dog in unexpectedly jumping into or upon the steering wheel, or otherwise interfering with the operation of the automobile, because of its sudden illness, paroxysm, spasm, or other involuntary movement due to its illness, then [she] was not liable."<sup>105</sup>

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99. *Id.*

100. 310 P.2d 24 (Cal. Dist. Ct. App. 1957).

101. *Id.* at 25-26.

102. *Id.* at 26.

103. 159 N.E. 622 (Mass. 1928).

104. *Id.* at 623.

105. *Id.*

At the time, Massachusetts had a statute that prohibited drivers from doing anything that might interfere with their vehicle's operation. Violating this law was evidence of negligence. Moreover, no matter what Sturgis said, the fact that she drove the car accompanied by her dog did not excuse her from the obligation to use "due care under all the circumstances[.]" even if the animal had not shown any signs of such illness before.<sup>106</sup> Consequently, the appellate court allowed consideration of the dog's previous behavior, but pointed out that defendant's own evidence established she neither slowed down nor made any effort to use the emergency brake. Therefore, the jury could legitimately conclude that, although the car was mechanically fine, she did not drive it with ordinary caution. If Sturgis put her dog where he "might interfere with the proper management of the automobile, she cannot escape liability for the consequences."<sup>107</sup>

*Conyers v. Vinti*<sup>108</sup> reached a similar result although it had to reverse a jury verdict to do so. Both Leroy Conyers and Patricia Vinti had been stopped at a red light for about thirty seconds when her car hit him from behind. Defendant claimed she had "come to a full stop approximately seven feet behind Mr. Conyers' vehicle when her nine-year-old Scotch terrier 'jumped on the gas pedal, knocking [her] foot off the brake[.]'"<sup>109</sup> The dog, who was approximately twenty-five pounds, a foot and a half long, and ten inches tall, unnerved her so much she "apparently [became] 'confused \* \* \* and the car sped forward and \* \* \* hit the \* \* \* truck[.]'"<sup>110</sup> According to Vinti, the dog had been riding with her in the same spot for nine years and had "never budged."<sup>111</sup>

Explaining that the important inquiry is whether the accident was "unforeseeable' *in the legal sense*[.]"<sup>112</sup> the judges concluded that the "mere fact" that the animal had not shifted position in any earlier trips was not sufficient to satisfy the

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106. *Id.*

107. *Id.* (internal citations omitted).

108. 484 N.Y.S.2d 620, 621 (App. Div. 1985).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 622 (emphasis added).

requisite standard. This is because even the most domesticated animals are basically unpredictable, often acting precipitously and erratically. Here, the dog was “unattended and unrestrained” while he was near the controls of a dangerous automobile driving on public roads. Consequently,

defendant’s failure to restrain her pet or to place him in the vehicle in such a way as to prevent him from interfering with its mechanical controls (e.g., by placing him in the rear seat) fell well below any acceptable standard of care and constituted negligence as a matter of law.<sup>113</sup>

Based on the foregoing, the majority determined that “no rational process” existed to justify the jury’s verdict for defendant.<sup>114</sup> Thus, even without an explicit statutory prohibition on loose dogs riding in cars, a New York court found the owner liable because he failed to properly secure his canine companion. Cases like this demonstrate the importance of further study of the issue and recommendations on how to ensure the safety of the car’s occupants, human and nonhuman, in a crash.

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113. *Id.* (citations omitted). The court had little trouble dismissing defendant’s attempt to switch her theory to either “unavoidable accident” or “intervening cause.” *Vinti*, 484 N.Y.S.2d at 622.

114. *Id.* The dissenting opinion characterized the dog as a “tiny, tame and obedient nine-year-old Scotch terrier” and said the cases on which the majority relied were “so obviously distinguishable on their facts as to warrant no further comment.” *Id.* at 622-23 (Mangano, J., dissenting). In fact, Justice Guy James Mangano said, “the majority’s reliance on these cases is not only misplaced, but represents, in my view, an affront to that particular species of the animal kingdom, i.e., the tame dog ‘which the law, guided by experience, has always regarded as the friend and companion of man[.]’” *Id.* As a result, he concluded that *Vinti*’s conduct was not negligence per se and the decision should have been left to the jury. *Id.*

*Caused Accident – Insurance*

Factually similar to other cases where a defendant tried to escape liability by claiming an accident was his dog's fault, in *Hogle v. Hogle*, a married couple was driving with their collie when the husband lost control of his car, injuring the wife.<sup>115</sup> Mr. Hogle alleged the animal caused the crash when he jumped from the back seat to the left front window, striking him while he was driving.<sup>116</sup> Based on this, he claimed his homeowner's insurance<sup>117</sup> should provide him representation and pay for his spouse's injuries as property (the dog) he owned caused the damage. Not surprisingly, the Connecticut Supreme Court declined to even discuss the dog's possible role in the collision because the terms of this policy explicitly excluded accidents that arose "out of the 'use' of an automobile[.]"<sup>118</sup>

By contrast, in *State Farm Fire & Casualty Co. v. Strobe*, the Minnesota appellate court explained judges typically require proof of "active involvement of the vehicle and not mere speculation"<sup>119</sup> when seeking recovery under an automobile policy. In this somewhat unusual factual situation, David (who was driving) and Doris Strobe were in their pickup with their Labrador Retriever on the seat between them. Because they were on their way to participate in the opening of hunting season, David had placed two automatic rifles in front of them. When the dog slid to the floor, his feet got tangled in the casing enclosing one of the guns. As Doris was unable to free him, she asked her husband for help. Unfortunately, Doris was shot because the loaded weapon accidentally fired when David placed

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115. 356 A.2d 172, 173 (Conn. 1975).

116. *Id.*

117. While not immediately obvious, it is not surprising that the Hogles tried to recover under their homeowner's policy as an astonishing one-third of all such liability claims are for dog bites. Phyllis Coleman, *Dog Bites Human: Why Florida Lawyers Should Care and What They Need to Know*, 88 FLA. B.J. 26 (2014) (noting that the number and size of such claims actually being paid by insurance companies, as well as the "uncertainty and complexities" of the statute, "provid[e] numerous opportunities for attorneys to expand their practices while helping human and nonhuman animals"). So, even though it is not a bite case, this claim is arguably not much of a stretch.

118. *Hogle*, 356 A.2d at 174.

119. 481 N.W.2d 853, 856 (Minn. Ct. App. 1992).

his hand on the casing handle.<sup>120</sup> The appellate court reversed the trial court's decision because "[t]he facts fail to demonstrate that David Strope's continued operation of the vehicle contributed in any way to the discharge of the gun."<sup>121</sup> Therefore, the insurance company had no duty to provide coverage or indemnification and basic economic loss benefits to his wife for her injuries.<sup>122</sup> This is another example of a situation where, had someone ensured that the dog was restrained (and thus, in this case, unable to get to the floor), the accident would never have happened.

*Referenced, but Not Discussed*

Sometimes, there is no more than a mere mention of the presence of a dog. For example, in *Espinosa v. Potteiger*,<sup>123</sup> the three-year-old plaintiff was in the backseat of Jessica Potteiger's car when she failed to stop at the sign and collided with the two other defendants' vehicles. Even though Potteiger's negligence was clear, because none of the defendants could remember exactly what occurred, plaintiff failed to prove that the two other defendants breached a duty to him—one of the essential elements necessary to establish negligence. Interestingly, without explaining why, or even if, it was important, in listing the witnesses to the accident, a footnote states "[t]here was also a dog in the Tease vehicle and a puppy in the Potteiger vehicle."<sup>124</sup>

Another illustration is an arbitration opinion where the grievant was suspended for ten days from his job as a high school special education teacher following a single car accident.<sup>125</sup> In a

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120. *Id.* at 854. *Cf.* Frank Cerabino, *Welcome to Florida, Home of the Pistol-Packin' Pooches*, PALM BEACH POST (Fla), Mar. 3, 2017, at 1B, 2017 WLNR 6728919 (noting that "about once a year, a dog in America will shoot a person. . . . [T]he four aggravating factors for predicting dog-perp gun violence are: (a) happened while hunting; (b) happened in car; (c) happened in boat; and (d) happened in Florida.").

121. *Strope*, 481 N.W.2d at 856.

122. *Id.*

123. No. 2006-C-896, 2007 WL 5023229 (Pa. C.P. Lehigh Cty. 2007).

124. *Id.* at n.2.

125. 2009 Am. Arb. Ass'n LEXIS 1166 (Nov. 18, 2009) (Bornstein, Arb.).

twenty-one-page opinion, there were only two references to the dog, stating grievant claimed his canine companion “nudged him”<sup>126</sup> from the road. Although the implication is that this action caused, or at least contributed to, the collision (as seems to be the situation in so many of these cases), there was no follow-up discussion or analysis in the arbitrator’s decision.

### **Legislation**

Although a few states have flirted with the idea of passing a statute specifically addressing this issue,<sup>127</sup> only Hawaii has actually done so.<sup>128</sup> The idea is to enact specific laws that would stop dogs from being in places where they can distract the driver. These laws would fall under the more general “distracted drivers” umbrella and could be subdivided within one of three categories.

**General distracted driving.** These laws can be drafted to include many different types of behavior. This is possible because the NHTSA defines the term as “any activity that diverts attention from driving . . . anything that takes your attention away from the task of safe driving.”<sup>129</sup> A few states already have such statutes and experts opine some may be broad enough to prohibit human/dog interaction while driving.<sup>130</sup> However, depending on interpretation seems problematic as owners will not be sure what behavior is prohibited and there

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126. *Id.* at \*1, \*4-5.

127. Jenni Bergal, Dog In Lap is Distracted Driving: But Ban It? That Dog Won’t Hunt, <https://www.autoblog.com/2017/12/20/distracted-driving-dog-lap> (Dec. 20, 2017). The author explains that, in the previous five years, although none were enacted, “nearly a dozen states” considered such bills, according to the National Conference of State Legislatures. Notably, in 2008, the California Legislature actually passed a bill that then-Governor Arnold Schwarzenegger vetoed. In 2017, Indiana, Maine, North Carolina, Oregon and Pennsylvania also discussed similar legislation and, in November, a Michigan state legislator filed a bill for the 2018 session. *Id.*

128. As previously mentioned, at least one municipality, Troy, Michigan, has enacted an ordinance on the subject. *See* TROY, MICH., ORDINANCES ch. 106, § 1.20.05 (2010).

129. *See Distracted Driving, supra* note 40 and accompanying text.

130. *See id.* *See also* PAUL FRISMAN, OFF. OF LEGIS. RES., PETS IN CARS AND DISTRACTED DRIVING, REP. NO. 2009-R-0458, (Conn. Dec. 17, 2009).

likely will be inconsistencies in application. It would be possible to explicitly include the types of conduct that would be forbidden but a list that tries to be exclusive is likely to omit something that should be in the law and one that is non-exclusive has the same potential ambiguity issues as no examples at all.

**Ban on specific distractions.** Typically, the laws in this group prohibit only use of electronic devices and, sometimes are limited to certain circumstances. Although initially the attempts were to control any use of cell phones, currently texting is the major problem.<sup>131</sup> Of course, legislators could target other precise distractions such as the human/canine interaction. This is what Hawaii did by passing a statute clearly prohibiting dogs from sitting on the driver's lap or being "in the driver's immediate area," thereby "interfer[ing] with the driver's control over the driving mechanism of the vehicle."<sup>132</sup> Although most media reports on this statute only talk about the first part of the proscription, stating that the law bans dogs on the driver's lap as if that is the only restriction,<sup>133</sup> the second phrase seems to be open to the interpretation that a dog cannot be unrestrained in the front seat.<sup>134</sup>

**Include prohibition in other, related statute.** Rather than creating a new, separate act, legislators could address the issue as part of an existing law. An amendment to the New Jersey anti-cruelty statute which makes it illegal to "carry, or cause to be carried, a living animal or creature in or upon a vehicle . . . in a cruel or inhumane manner"<sup>135</sup> provides an

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131. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., INVESTIGATION AND PROSECUTION OF DISTRACTED DRIVING CASES, DOT HOS 812 407 (May 2017), <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812407-distracted-drivingreport.pdf> (explaining that "experts can testify that it is not just common sense that dictates that texting or using a mobile device while driving is dangerous, but also the research and data").

132. HAW. REV. STAT. § 291C-124(b) (2013).

133. *See, e.g.*, Rowley, *supra* note 68 (stating "Hawaii directly forbids pets in the laps of drivers"); Manning, *supra* note 2 (stating "Hawaii is the only state that specifically forbids drivers from operating a vehicle with a pet on their lap").

134. This restriction is a good one as it is dangerous for dogs to be in the front seat. *See infra* note 171 and accompanying text.

135. N.J. STAT. ANN § 4:22-18 (1998). *See, e.g.*, NEV. REV. STAT. § 574.190 (2011) (noting "[a] person who carries or causes to be carried in or upon any vessel or vehicle or otherwise any animal in a cruel or inhuman manner, or so as

example. Unfortunately, however, the language is ambiguous and potentially confusing. In fact, it actually created a bit of a fuss in 2012 when the New Jersey Motor Vehicle Commission (MVC), and the New Jersey Society for the Prevention of Cruelty to Animals (NJSPCA) joined together to spread the word about the dangers of driving with free roaming pets. The NJSPCA later insisted news stories and blogs at the time misconstrued their explanations and erroneously implied that the new law mandated restraining dogs and provided for aggressive enforcement and extreme penalties for those who refused to comply. To “set the record straight and clarify any misconceptions,” the agency posted a detailed clarification on its website.<sup>136</sup>

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to produce torture, is guilty of a misdemeanor”); WASH. REV. CODE § 16.52.080 (2016) (stating “[a]ny person who wilfully [sic] transports or confines or causes to be transported or confined any domestic animal or animals in a manner, posture or confinement that will jeopardize the safety of the animal or the public shall be guilty of a misdemeanor”).

136. Below is the NJSPCA statement. It is no longer available on the organization’s website:

The State of New Jersey’s [sic] has NOT passed a “new law” requiring animals to be restrained while being transported in a vehicle. In fact, for over fifteen (15) years, New Jersey has had a law on the books called “improper transport” (4:18:22). This law was explained during the event to highlight the fact that the NJSPCA does have the authority to file animal cruelty charges if and when animals are observed being transported in an improper manner.

The State of New Jersey is NOT mandating that animal owners run out to their local pet store or go online and purchase an animal harness that integrates into a vehicle seat belt system. While the NJSPCA urges motorists to consider purchasing a harness to keep their animals safe, New Jersey state law does not require these devices.

The NJSPCA is NOT patrolling the streets and highways of New Jersey actively seeking dogs on the laps of drivers or unrestrained in the back seat of a car. We partnered with the NJMVC to send the message to motorists that there are ways to transport animals in a safe and secure manner that will protect both motorists and animals alike. However, if in the course of their duties NJSPCA personnel observe an animal being transported in an unsafe manner, they will take corrective action

Some people caution legislation is neither needed nor even desirable at this time.<sup>137</sup> A number of reasons are raised for not mandating restraints.<sup>138</sup> At the top of the list for organizations like the American Kennel Club and some pet equipment manufacturers that generally advise containing dogs is the belief that education is a better alternative.<sup>139</sup> However, while providing the public with additional information generally seems to be good, and should absolutely be part of a legislative solution, the statistics that are available demonstrate awareness is not really the problem. This is because, as far back as the 2011 AAA/Kurgo study, 83% of respondents stated they knew driving with an unrestrained dog was dangerous.<sup>140</sup> Nevertheless, 84% of the people who answered the questions admitted they continued to do it.<sup>141</sup> If drivers know what they are doing is risky, and even potentially lethal to everyone in their car and others on the road, but insist on doing it anyway, simply telling them again what they are doing is not safe is

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by issuing a summons and/or warning and spend some time educating the motorist.

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It's unfortunate that so many news organizations — local and national — have chosen to mischaracterize the intent of an event the NJSPCA held with the NJ Motor Vehicle Commission (NJMVC) on May 30, 2012 regarding unrestrained animals in vehicles. The purpose of this statement is to set the record straight and clarify any misconceptions people may have as a result of incorrect news reports from the event.

Susan Fyfe, *Pet Restraints: What is the "New Law" Regarding Pet Restraints?*, MY COMMUNITY SOURCE (Sept. 16, 2012), <http://mycommunitysource.com/spotlight/pet-restraints-what-is-the-new-law-regarding-pet-restraints/>.

Press Release, New Jersey Society for the Prevention of Cruelty to Animals, NJSPCA Clarifies Unrestrained Animals in Vehicle Controversy (Aug. 16, 2012), [http://webcache.googleusercontent.com/search?q=cache:UiWaFR\\_ntAIJ:www.lombardolawoffices.com/new-jersey-sPCA-backtracks-on-statement-regarding-animal-restraint-enforcement/+&cd=9&hl=en&ct=clnk&gl=us](http://webcache.googleusercontent.com/search?q=cache:UiWaFR_ntAIJ:www.lombardolawoffices.com/new-jersey-sPCA-backtracks-on-statement-regarding-animal-restraint-enforcement/+&cd=9&hl=en&ct=clnk&gl=us), quoting NJSPCA statement.

137. McCormick, *supra* note 16.

138. *See infra* notes 170-76 and accompanying text.

139. McCormick, *supra* note 16.

140. AAA/Kurgo *Pet Passenger Survey*, *supra* note 1.

141. *Id.*

unlikely to change their behavior.<sup>142</sup> Looking to what happened with seat belts and child safety seats, making that conduct illegal, while certainly not 100% effective,<sup>143</sup> has a much better chance of affecting what people actually do. Nevertheless, until researchers study the issue and obtain legitimate verifiable data, it is difficult to determine the most appropriate resolution.

### *International application*

Other countries facing this issue have adopted a more aggressive position. For example, the United Kingdom has taken strong steps to stop preventable injuries resulting from dogs who are allowed to move around in cars unrestricted. Their Highway Code provides “[w]hen in a vehicle make sure dogs or other animals are suitably restrained so they cannot distract you while you are driving or injure you, or themselves, if you stop quickly.”<sup>144</sup> It also suggests appropriate methods to protect the animal and the humans including seat belt harnesses, pet carriers, crates, or dog guards.<sup>145</sup> Similar to language in the animal cruelty statutes in the United States that include this issue, the 2006 Welfare of Animals Order prohibits transporting “any animal in a way which causes, or is likely to cause, injury or unnecessary suffering to that animal.”<sup>146</sup>

Notably, the government appears very serious about this even though many citizens seem to be unaware, or at least noncompliant, with the requirement.<sup>147</sup> However, ignoring the

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142. Amy Burkert, *State Laws Require Pets to Be Restrained in Vehicles*, GOPETFRIENDLY.COM (June 6, 2012), <http://blog.gopetfriendly.com/state-laws-require-pets-to-be-restrained-in-vehicles> (noting that “[w]hen we acknowledge that things are dangerous, but we do them anyway – putting the lives of others at risk – it’s time for new laws.”).

143. See *infra* notes 155-62 and accompanying text.

144. DEPARTMENT FOR TRANSPORT, THE OFFICIAL HIGHWAY CODE R. 57 (2015) (U.K.).

145. *Id.*

146. THE WELFARE OF ANIMALS (TRANSPORT) (ENGLAND) ORDER, 2006 No. 3260, pt. 2 § 4(1) (Eng.). Parallel national legislation exists in Scotland, Wales, and Northern Ireland.

147. James Andrews, *Does Your Dog Have a Seatbelt On? If Not, You Could Be Breaking the Law*, MIRROR (May 16, 2017, 1:05 PM), <http://www.mirror.co.uk/money/dog-seatbelt-car-insurance-rules-5651379>. Australia also mandates

mandate could be costly because not only are drivers violating the rule, they could actually be invalidating their insurance. “The law is clear . . . if . . . an animal roaming freely around the vehicle is said to have contributed to causing an accident, then an insurance company could be well within their rights not to pay out on a claim.”<sup>148</sup> This means the driver would be responsible to pay for any damage to his own car and to repair other vehicles that were involved, as well as medical or other costs, “something that could easily add up to a five-figure bill.”<sup>149</sup> In addition, offenders might be fined up to £2500 (approximately \$3319), get points on their license, and possibly need to take a re-test.<sup>150</sup>

Australia considers itself “a nation of animal lovers[,]”<sup>151</sup> many of whom transport their dogs in their cars. Therefore, in 2013, they introduced rules prohibiting pets from causing the driver not to be in full control of his vehicle, requiring them to be in appropriate areas of the vehicle, forbidding them from being in the driver’s lap, and mandating they be restrained. In addition, under the anti-cruelty law, if the animal is injured because he was not tethered or caged, owners face up to six months in jail and fines of up to \$5500.<sup>152</sup> As is true in the United States, the rules vary in different Australian states and territories and enforcement is a problem. Thus, after three fatal

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restraining dogs but, apparently, many of its citizens also ignore the law. See Duff, *supra* note 66 and accompanying text.

148. Andrews, *supra* note 147 (quoting Matt Oliver, a spokesman for Gocompare car insurance).

149. *Id.*

150. Lucy Ball, *VOTE: Driving with Your Dog in Car Could Land You a £2,500 Fine*, BUXTON ADVERTISER (June 3, 2017, 2:52 PM), <http://www.buxtonadvertiser.co.uk/news/vote-driving-with-your-dog-in-car-could-land-you-a-2-500-fine-1-8576950>.

151. Genevieve Alison, *Australians Spend More on Pets than on Themselves, Report Finds*, HERALD SUN (July 3, 2017, 4:35 AM), <http://www.heraldsun.com.au/news/victoria/australians-spend-more-on-pets-than-on-themselves-report-finds/news-story/d173b22fe6ecd24d1214140587ab62a7> (quoting La Trobe University’s Associate Professor Pauleen Bennett).

152. Caroline Marcus, *Police Get Hot Over the Collar*, SYDNEY MORNING HERALD (Oct. 25, 2009), <http://www.smh.com.au/national/police-get-hot-over-the-collar-20091024-he0j.html> (warning against traveling with unrestrained pets and explaining potential penalties).

accidents on the same highway in a month, in each of which there was an unrestrained dog in one of the cars, police began urging people to follow the law. Although there was no immediate confirmation that the pets actually caused the crashes, “having an unrestrained dog in a moving car was a serious risk and an offence [sic].”<sup>153</sup>

### Part III

The number of dogs riding in cars, whether going on vacation or just running errands around town, has grown in the last few years.<sup>154</sup> While this trend is generally considered to be beneficial to the human and his canine companion, it highlights the importance of determining whether there really is a problem when mixing dogs and motor vehicles and, if so, how best to protect everyone involved.

Americans drove without any safety restraints for many years after the invention of the automobile. However, as a result of considerable research (frequently incentivized by government and private funding),<sup>155</sup> leading to numerous scientific studies of crashes that repeatedly proved seat belts save lives, all states

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153. Renee Albrecht, *Calls to Properly Restrain Pets After Road Crash Deaths*, GYMPIE TIMES (Apr. 26, 2017 at 5:45 PM), <https://www.gympietimes.com.au/news/calls-to-properly-restrain-pets-after-road-crash-d/3171068/>. The article also lists three other incidents of unrestrained pets causing accidents: (1) elderly man died four days after accident where he was hit by his own vehicle while attempting to release his dog who had gotten stuck under the pedals, (2) 75-year-old woman and her little dog were killed leaving a service center on the highway, and (3) dog was in one of the involved vehicles when a collision killed two people and set three cars on fire. *Id.*

154. *APPA Pet Owners Survey*, *supra* note 1.

155. *State Highway Safety Plans and Annual Reports*, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., <https://www.nhtsa.gov/highway-safety-grants-program/state-highway-safety-plans> (last visited Oct. 13, 2017) (providing individual state grant annual reports from the National Highway Traffic Safety Administration). *See also* NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., OFF. OF GRANTS MGMT. & OPERATIONS, FY2015 GRANT AWARDS SUMMARY AUTHORIZED AWARDS THROUGH SEPTEMBER 30, 2015, <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/fy15-grant-awards-tracker.pdf> (calculating the grand total for 2015 at \$43,519,999.77).

now require that people “buckle up.”<sup>156</sup> This is a good thing as seat belts saved 344,447 lives between 1975 and 2015 and, had everyone been complying with the law and wearing them, it would have saved more than twice that amount in the same time period.<sup>157</sup> In fact, for people large enough to use seat belts, proper “use is one of the most effective ways to save lives and reduce injuries in crashes.”<sup>158</sup> After it was obvious belts were protecting adults, following many additional surveys and crash tests using similar procedures and analysis, governments mandated child safety seats for infants, babies, and small kids.<sup>159</sup> Also mimicking what was done with seat belts, the NHTSA and others made grant money available for programs designed to make child restraints available.<sup>160</sup> Although the laws vary by state, the numbers are clear and consistent. Motor

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156. Even New Hampshire, the only state that does not have a mandatory safety belt law for adults because the majority of residents believe the decision should be an individual choice, requires restraints for children under eighteen with special car seat rules for kids younger than seven or fifty-seven inches or shorter. *Seat Belt Law*, CITIZENS COUNT NH, <http://www.lfda.org/issues/seat-belt-law> (last visited Oct. 13, 2017). For a concise, interesting review of the evolution of seat belts, see, e.g., Defensive Driving, *A History of Seat Belts*, DEFENSIVEDRIVING.COM (Sept. 14, 2016), <https://www.defensivedriving.com/blog/a-history-of-seat-belts>. State laws differ in several ways. One important distinction is whether the laws are primary (a driver can be stopped for not wearing a seat belt) or secondary (a driver cannot be stopped for not wearing a seat belt, but, if he is pulled over for some other infraction, he can be ticketed if he is not wearing his seat belt). See, e.g., *Seat Belts*, AAA EXCHANGE, <http://exchange.aaa.com/safety/driving-advice/safety-belts> (last visited Oct. 13, 2017) (discussing primary and secondary laws and their efficacy in increasing usage, saving lives, reducing injuries, and lowering crash costs).

157. NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., DOT HS 812 374, TRAFFIC SAFETY FACTS 2015 DATA, p. 6 tbl. 7, (2017), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812374> (noting that 381,788 additional lives would have been saved had 100% of the people been wearing seat belts).

158. *Seat Belts: Get the Facts*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/motorvehiclesafety/seatbelts/facts.html> (last updated June 2, 2017).

159. For an excellent comprehensive review, see generally Kathleen D. Klinich et al., *Crash Protection for Child Passengers: Rationale for Best Practice*, 43 U. MICH. TRANSP. RES. INST. 1 (2012).

160. See, e.g., Child Safety and Child Booster Seats Incentive Grants, 71 Fed. Reg. 5110-01 (proposed Jan. 31, 2006).

vehicle accidents are the leading cause of death for children age one to fifteen, killing approximately five youngsters a day. More than 200,000 children a year are seriously injured. Appropriate use of car safety seats reduces the risk of death by an astonishing 71% for infants and 54% for children age one to four.<sup>161</sup> This is important as, similar to adults, children under sixteen travel an average of 3.4 trips per day, representing forty-five to fifty minutes in the car.<sup>162</sup>

It is true that the multiple surveys and hundreds of pages of analysis that buttressed the arguments for restraining adults, and later children,<sup>163</sup> simply do not exist when the issue is whether dogs need to be restricted to protect them and their human companions from them. But the research that is available points to the same conclusion. Proper restraints save lives.

At a time when there were approximately 78,000,000 dogs living in the United States, 56% of respondents in the still widely-cited 2011 AAA/Kurgo seminal study reported they had driven with their dog at least once a month during the previous year.<sup>164</sup> This means approximately 44,000,000 canines were traveling in automobiles twelve or more times a year. Of these, 84% were unrestrained. Therefore, some 37,000,000 dogs presented an unnecessary danger of serious injury or death to

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161. Ben Hoffman, *New Legislation on Child Car-Seat Safety Will Save Kids' Lives*, OR. HEALTH & SCI. U. (Feb. 17, 2017), <https://news.ohsu.edu/2017/02/17/new-legislation-on-child-car-seat-safety-will-save-kids-lives>.

162. Dennis R. Durbin, *Technical Report—Child Passenger Safety*, 127 PEDIATRICS 1050, 1051 (2011).

163. See, e.g., Jacob P. Byl, Note, *Protecting the Innocent with a Premium for Child Safety Regulations*, 8 U. MASS. L. REV. 264 (2013). In this interesting law review article, the dual degree (Ph.D. Program in Law & Economics and J.D. candidate at Vanderbilt) student author argues that, when analyzing cost/benefit of proposed regulations, federal agencies should “put a premium on saving the lives of children.” *Id.* at 270. He was “the first to combine market evidence of what people are willing to pay for child safety with a practical method for agencies to implement a child-specific benefit measure.” *Id.* at 270. He concludes estimates of children’s value of a statistical life (VSL) are “roughly one and a half to two times that of adults,” therefore, “agencies should measure benefits of child safety in a way that reflects this premium.” *Id.* at 294-95.

164. *Taking Hands Off the Wheel*, *supra* note 42.

themselves and everyone else in their car or on the road<sup>165</sup> for at least two reasons. First, dogs who are free to wander throughout the car can distract the driver, causing him to lose control of the vehicle. Second, “an unrestrained 10-pound dog in a crash at 50 mph will exert roughly 500 pounds of force[,] while an unrestrained 80-pound dog in a crash at only 30 mph will exert approximately 2[,]400 pounds of force[,]”<sup>166</sup> either of which is certainly more than enough to seriously injure or even kill the driver or other passengers (and the dog).

Overwhelming proof similar to what convinced almost everyone to require adults to wear seat belts, and children to need to be in some sort of age and size appropriate safety seat, does not presently exist to support restraining dogs. However, that evidence regarding people, in addition to these numbers, should be sufficient to initiate studies to test the reasonable hypothesis that restricting dogs (as is done for all other family<sup>167</sup> members) will save lives, reduce injuries, and actually decrease the number of accidents. Some jurisdictions agree and have already addressed the issue. To persuade others, government and private foundations need to provide grant money to follow a similar procedure to what was done in the past for humans. The working theory here is that the absence of statistical support is not because the hypothesis is wrong but, rather, because almost no one has asked the questions. In Australia, for example, where they do collect the data, car accidents are the third leading cause

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165. Using 2016 numbers, there are 89,700,000 dogs living in this country. *APPA Pet Owners Survey*, *supra* note 1. Of these, 63% travel unrestrained, representing 41,000,000 canines. Reliable statistics on how often these dogs travel in cars are not available. However, although the percentage of unrestrained dogs is decreasing, because the total number of dogs is rising, the absolute number of unrestrained dogs riding in vehicles is increasing.

166. *AAA/Kurgo Pet Passenger Survey*, *supra* note 1.

167. CARL SAFINA, *BEYOND WORDS: WHAT ANIMALS THINK AND FEEL* 410 (2015) (“When my experiences with dogs and other animals—and people—were fewer, I used to think it silly for people to speak of dogs as ‘family’ or other animals as ‘friends.’ Now I feel it’s silly not to[,]” said Professor Carl Safina, a noted author and conservationist; winner of several prestigious awards including a MacArthur genius prize; founding president of his not-for-profit, The Safina Center; and inaugural holder of the endowed chair for nature and humanity at Stony Brook University).

of death of dogs under the age of three<sup>168</sup> and more than 5000 die or are injured every year.<sup>169</sup> Therefore, once people in the United States investigate this, and the information is available, it should be easy to determine whether there really is a problem and what, if anything, needs to be done.

Not surprisingly, there are people who strongly oppose confining dogs for a variety of reasons. While it appears that research, if conducted, will likely prove stopping dogs from moving freely throughout the car will have similar beneficial results to those provided by requiring seat belts for people, many of the objections to mandating constraining dogs are valid and should be seriously considered.

### *Insufficient evidence*

The need for proof is a legitimate concern. This is true even though it seems obvious based on seat belt and child safety seat studies, common sense, physics, and the sheer (and ever increasing) numbers of dogs riding in cars, that unrestrained canines present a problem. Conducting similar studies to those concerning humans should persuade most skeptics that four-legged family members deserve the same protections as everyone else (and two-legged occupants are entitled to be protected from the animals). Grant money (whether public or private) could make it possible for research to be conducted in a relatively short period of time. Sponsorships similar to what Subaru has done with CPS are another creative response to the reality of the difficulty in obtaining grants.

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168. *Australia's 'Pet Census': Data-Sharing Program to Improve Pet Health*, MELBOURNE NEWSROOM (Sept. 3, 2016), <http://newsroom.melbourne.edu/news/australias-pet-census-data-sharing-program-improve-pet-health>.

169. Duff, *supra* note 66.

***Reducing enjoyment***

There are several ways to address this common fear. While it is true that people who study canine behavior frequently caution owners against believing they know exactly what their pet is thinking, and these experts do sometimes disagree about interpretations of certain conduct, just about everyone agrees dogs are pack animals who generally prefer humans to their own species.<sup>170</sup> Thus, it is likely that the primary reason a dog wants to ride in the car is because he wants to be with “his” pack. However, just as it is too dangerous for children to sit in the front seat because if air bags deploy they could kill most small humans, many canines would also be killed by airbags, so they should also be in the back of the vehicle.<sup>171</sup> Moreover, although most dogs would prefer to be closer to their owners, it is very likely that, given their choice, they would rather be anywhere in the car rather than left home alone.<sup>172</sup>

Because dogs gather information through their noses rather than their eyes or ears, to maximize their canine companion’s appreciation of the smorgasbord of scents, owners frequently open the windows<sup>173</sup> so they can put their heads out which, while enhancing the pleasure, also greatly increases the risk. Some dogs jump out while others fall.<sup>174</sup> Either way, they may injure or kill themselves or others. And, even if they stay in the vehicle, bad things may occur,<sup>175</sup> including inner ear damage, lung infections, and eye problems.<sup>176</sup>

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170. BRIAN HARE & VANESSA WOODS, *THE GENIUS OF DOGS: HOW DOGS ARE SMARTER THAN YOU THINK* 180, 266 (2013).

171. Rowley, *supra* note 68.

172. *See supra* text accompanying note 68.

173. *See supra* text accompanying note 68.

174. Newsflare Clips, *Dog Falls Out of Moving Car on UK Motorway*, YOUTUBE (May 15, 2017), <https://www.youtube.com/watch?v=pmFArj4qMxw>.

175. *Hot Animals*, WINCHESTER STAR (VA), July 29, 2016, 2016 WLNR 23022593.

176. *Pet Travel Tips*, CTR. FOR PET SAFETY, <http://www.centerforpet-safety.org/pet-parents/pet-travel-tips> (last visited Sept. 23, 2017) (noting that “[w]hile your dog’s ears flapping in the wind might be funny – road debris in his eyes can be painful and costly”).

***No perfect alternative***

Despite the fact that many products on the market claim to protect dogs by restraining them, it seems that only a small percentage (albeit growing) of people use them. Thus, according to the American Pet Products Association (APPA), in 2016, only 37% of owners restrained their dogs.<sup>177</sup> The remaining 63%, who drive with their loose dogs, object to restricting their pets for all kinds of reasons including but not limited to that they (1) believe their dogs would rather be free, (2) have never thought about the issue,<sup>178</sup> (3) object to the “big government oppression’ mentality” they believe requiring restraints represents,<sup>179</sup> or (4) treat the idea as a joke and ridicule the whole concept.<sup>180</sup> But, while the negative feelings toward restraints are definitely an issue, they are not the real problem. Much more important, the admittedly limited information that is available (primarily through studies by the Center for Pet Safety (CPS)),<sup>181</sup> demonstrates that most

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177. *APPA Pet Owners Survey*, *supra* note 1, tbl. 55.

178. McCormick, *supra* note 16.

179. Burkert, *supra* note 142 (explaining that “[a]fter considering the pluses and minuses,” her group, GoPetFriendly.com, supports legislation mandating restraints because “[t]he benefits outweigh the imposition[.]”).

180. Karin Brulliard, *A Politician Proposed a Seat-Belt Law for Dogs. You Could Hear the Howls.*, WASH. POST (Mar. 11, 2017), [https://www.washingtonpost.com/news/animalia/wp/2017/03/11/a-politician-proposed-a-seat-belt-law-for-dogs-you-could-hear-the-howls/?utm\\_term=.c89577f6143d&tid=a\\_inl](https://www.washingtonpost.com/news/animalia/wp/2017/03/11/a-politician-proposed-a-seat-belt-law-for-dogs-you-could-hear-the-howls/?utm_term=.c89577f6143d&tid=a_inl) (state Rep. Jim Handy, withdrawing the bill because of all the negative comments, stated “[a]s a dog owner myself, I had reservations about whether that’s a good idea from the beginning, but it’s my job as a legislator to hear and represent the concerns of my constituents.”)

181. “[D]edicated to companion animal and consumer safety,” the Center for Pet Safety is a registered 501(c)(3) non-profit research and consumer advocacy organization. *Who Is CPS?*, CTR. FOR PET SAFETY, <http://www.centerforpetsafety.org/who-is-cps/> (last visited Apr. 30, 2018). They were founded in 2011 to address the following concerns: absence of performance standards or test protocols for many classes of pet products, the fact that manufacturers are not required to test most pet items before marketing, and the lack of agency oversight (beyond FDA, EPA, and USDA for consumable products and drugs). *Id.*

Addressing these issues, this independent organization conducts rigorous crash testing and creates standards to measure whether pet products provide the safety advertised. In addition, they work with consumers and manufacturers to improve the items as well as testing methods. They are not affiliated with the

restraints are not effective because they are either not durable so they do not keep the dog in place, and/or not crashworthy so they do not protect the animal in a collision.<sup>182</sup>

Highlighting this issue, the CPS's testing revealed there is a "likelihood of poor performance of these harness products" because they fail "to provide crash protection to the consumer or companion animal."<sup>183</sup> Because there are no government regulations or tests of these items, and no standards against which to measure them, manufacturers can make claims that are never evaluated. This means customers purchase products that cannot do what they were led to believe they were designed for – to keep their dogs safe in an accident. "Pet owners should be screaming about this," according to Lindsey A. Wolko, CPS founder.<sup>184</sup> Her solution is actually quite simple. She explains the reason pet equipment such as harnesses and crates are not subject to oversight is that they are not defined as consumer products. Thus, all that is necessary to eliminate this important and dangerous loophole is to reclassify them.<sup>185</sup>

Another problem is that, even if people do purchase a restraint that is durable and crashworthy, some owners put them on incorrectly, according to Bark Buckle UP founder, Christina Selter.<sup>186</sup> Her group also collects and analyzes pet safety data and she recommends always buckling your pet up whether running a short errand or going on a vacation.<sup>187</sup>

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industry and, although they do report on products, and may even select the top one in a category, they do not endorse any. *Id.*

182. Rossen & Billington, *supra* note 11.

183. Wolko, *supra* note 10.

184. Rossen & Billington, *supra* note 11. Owners in Australia face similar issues. In fact, one article states that "[t]here is no official standard for pet restraints, meaning the quality of products varies from rubbish to robust." Duff, *supra* note 66.

185. Wolko, *supra* note 10.

186. Bonnie Rothman Morris, *A Car Seat for Fluffy? It's the Safe Way to Go*, N.Y. TIMES (Oct. 30, 2008), <http://www.nytimes.com/2008/10/30/automobiles/autospecial2/30pets.html?mcubz=0>.

187. *Pet Radio Host Arden Moore Has a Car Accident with Her Dogs*, BARK BUCKLE UP (Mar. 11, 2011), <http://barkbuckleup.blogspot.com/2011/03/pet-arden-more-servives-car-accident.html>.

Years ago, when Bergan,<sup>188</sup> a pet products manufacturer, decided to develop a travel harness, the company discovered the lack of safety requirements. As a result, it joined with independent labs and designed the Pet Safety Durability Test Standard (V9DT), stating it is “the industry standard.”<sup>189</sup> Identifying “alarming discrepancies” when assessing restraining devices already on the market, Bergan vowed “to develop a harness that is much tougher than [sic] what’s out there and offer a better product.”<sup>190</sup> Naturally, their harness complies with their durability specifications.<sup>191</sup> However, while their test is a good first step, as its name implies, it addresses only the “durability issue” and ignores what needs to be the second prong – whether the item is crashworthy.<sup>192</sup>

In 2013, concerned about human and nonhuman occupants’ safety, Subaru teamed up with CPS to expand their earlier experiments. The CPS research studies both parts. First determines whether the equipment is durable enough to sustain a crash and keep the dog in place. If so, the product is then tested for crashworthiness to ascertain if it is likely to protect the animal from injury or death. Impressive in design and recommendations, the report identifies serious misgivings about existing products.<sup>193</sup>

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188. Bergan manufactures a variety of pet products. In early 2015, Ohio-based Coastal Pet Products acquired the company “known for its cat toys, soft-sided pet carriers, automotive pet harnesses, seat covers, as well as pet feeding solutions.” Matthew Bristow, *Oklahoma Acquisition – Bergan Pet Products*, CLEAR RIDGE (Mar. 2, 2015), <http://www.clearridgecapital.com/oklahoma-acquisition-bergan-pet-products>.

189. *Bergan Develops First Standard for Pet Restraints*, SPOT MAGAZINE, <http://spotmagazine.net/news/2012/10/1/bergan-develops-first-standard-for-pet-restraints> (last visited Apr. 30, 2018).

190. *Id.*

191. *Id.* See also Wireless Dog Fence Expert, *Dog Safety Harness: Is It Important?*, QUALITY DOG FENCE (Sept. 28, 2015), <http://www.qualitydogfence.com/dog-safety-harness-reviews> [hereinafter *Dog Fence*].

192. *Id.*

193. In some ways, the concerns appeared similar to the Bergan results. But, of course, Bergan only tested for durability while CPS does the second, all-important crashworthy test. Wolko, *supra* note 10.

Following extensive scientific testing of pet safety harnesses, CPS selected the top performer based on “[t]he innovative three-point connection [that] prevents the launch and subsequent rotation of the test dog, thus improving human occupant safety and providing the dog with the best possible chance of survival in the case of an accident.”<sup>194</sup> Notably, the Bergan harness passed CPS’s durability assessment. However, similar to several others, during the crashworthy test, “[t]he connection point of the size large harness broke, allowing the test dog to become a projectile.”<sup>195</sup> In other words, the large canine harness exhibited catastrophic failure<sup>196</sup> which might have caused the dog to launch into the vehicle, possibly injuring or killing himself and/or others in the car. Thus, it is easy to understand why, highlighting the need for both durability and crashworthiness, one reviewer said, “the Bergan Dog Auto Harness is optimal for traveling with a dog, but not for getting into an accident with one.”<sup>197</sup> The results also demonstrate that the appropriateness of the restraint may depend on the size of the dog.

Pet crates and carriers are additional unregulated ways to restrain dogs.<sup>198</sup> So, in 2015, Subaru and CPS once again partnered, this time to study the crashworthiness of pet travel

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194. *Id.*

195. Email from Lindsey A. Wolko, Founder, Center for Pet Safety, to Phyllis Coleman, Professor of Law, Shepard Broad College of Law (Aug. 30, 2017) (on file with the author). Small and medium harnesses actually exceeded the requirements. The failure was only on the equipment for large dogs. *Id.*

196. *2013 Harness Crash Test Videos*, CTR. FOR PET SAFETY (Aug. 6, 2014), <http://www.centerforpetsafety.org/test-results/harnesses/2013-harness-crash-test-videos>.

197. *Dog Fence*, *supra* note 191. As previously mentioned, the large Bergan harness was only one of the many harnesses that failed the crashworthy test.

198. Suzanne McCarroll, *Vets Urge Extra Precautions When Driving with Pets: ‘They Become Missiles’*, CBS DENVER (Nov. 4, 2015, 11:55 PM), <http://denver.cbslocal.com/2015/11/04/vets-urging-extra-precautions-when-driving-with-pets-they-become-missiles>.

crates<sup>199</sup> and carriers (plastic crates)<sup>200</sup> that claim they are “test[ed],” “crash test[ed]” or “crash protect[ed].”<sup>201</sup> With similar purposes and parameters to the 2013 harnesses experiments, these studies identified a top performing crate and top performing carrier. The top crate “retained structural integrity for the duration of the crash simulation, fully containing the test dog with no breach to the containment device. Additionally, the strength rated connection straps adequately restrained the crate and prevented the product from striking the seatback fixture.”<sup>202</sup> For the carriers, CPS selected two top performers that “successfully contained the weighted test simulant and wholly remained attached to the test bench for the duration of the experiment thus providing the pet with the best possible chance of survival in the case of an accident.”<sup>203</sup> It is important to note that experts warn against tethering pet carriers unless the manufacturer crash test video illustrates sufficient structural integrity. Using a seatbelt to secure a carrier can crush the carrier in an accident, increasing the likelihood the dog will be killed or seriously injured.<sup>204</sup>

Repeating the distinction between a crate or carrier designed to prevent driver distractions from one that is for crash protection, the report cautioned that both protections are necessary to achieve what the consumer actually seeks – maximum potential for safety in a collision for all human and nonhuman occupants.<sup>205</sup> CPS recommends creation of a performance standard and formal testing protocol “to ensure consistent and uniform performance of these safety devices to

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199. Lindsey A. Wolko, *Center for Pet Safety 2015 Crate Crashworthiness Study Summary Report*, CTR, FOR PET SAFETY (July 22, 2015) [hereinafter *Crate Crashworthiness*], [http://www.centerforpetsafety.org/wp-content/uploads/2015/07/2015\\_cps\\_crate\\_summary\\_072215.pdf](http://www.centerforpetsafety.org/wp-content/uploads/2015/07/2015_cps_crate_summary_072215.pdf).

200. Lindsey A. Wolko, *Center for Pet Safety 2015 Carrier Crashworthiness Study Summary Report*, CTR, FOR PET SAFETY (July 22, 2015) [hereinafter *Carrier Crashworthiness*], [http://www.centerforpetsafety.org/wp-content/uploads/2015/07/2015\\_cps\\_carrier\\_summary\\_072215.pdf](http://www.centerforpetsafety.org/wp-content/uploads/2015/07/2015_cps_carrier_summary_072215.pdf).

201. *Id.*

202. *Crate Crashworthiness*, *supra* note 199, at 19.

203. *Carrier Crashworthiness*, *supra* note 200, at 13.

204. *Pet Travel Tips*, *supra* note 176.

205. *Crate Crashworthiness*, *supra* note 199, at 19; *Carrier Crashworthiness*, *supra* note 200, at 13.

reduce the risk to consumers and their companion animals in the event of a sudden stop or accident.”<sup>206</sup>

One other method of keeping dogs from distracting drivers is the use of barriers which could be made of a variety of substances including mesh curtains or metal grills. These obstacles are typically effective in keeping canine companions from either (1) getting into the front of the vehicle and distracting the driver, thereby possibly precipitating a crash or (2) flying into other occupants following a collision. Unfortunately, however, they do little to protect the animal<sup>207</sup> who can still be injured or killed when he is slammed into the obstruction.

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206. *Crate Crashworthiness*, *supra* note 199, at 19; *Carrier Crashworthiness*, *supra* note 200, at 13.

207. Pippa Elliott, *Crash Test Doggies: Prevent Your Pet from Becoming a Projectile*, TRUSTED CHOICE (Jan. 15, 2015 11:00 AM), <https://www.trustedchoice.com/insurance-articles/home-family/pet-safety-during-car-crash>. Pippa Elliott has been a companion animal veterinarian for almost three decades. After a stint with a national charity that provides veterinary care for animals of owners who cannot afford to pay, she now works in a clinic in the UK. *Id.*

### Conclusion

It is not only dogs who see themselves as part of a pack. An ever-growing number of Americans view their pets as family members, important enough to have spent \$66,750,000,000 caring for them in 2016 alone.<sup>208</sup> Thus, it is not surprising that an increasing number of canine companions also accompany “their” humans on short trips around town as well as lengthy vacations. Both types of travel are becoming ever easier to accomplish as businesses and other facilities have become more “pet-friendly.” To address the legitimate safety concerns raised for people and their animals, this article makes the following recommendations:

- The NHTSA should study this issue and provide enticements to others to assist in obtaining relevant information on how often free roaming dogs in automobiles cause or contribute to crashes. One relatively easy change would be to modify police traffic accident report forms to include questions about whether there was a canine companion in the car and any possible role the animal might have played in the collision. It is interesting to note that in 2015 the NHTSA awarded 8.5% of its total budget, or almost \$24 million, in grants to study distracted driving.<sup>209</sup> Certainly dogs can engage in an “activity that diverts attention from driving . . . that takes your attention away from the task of safe driving.”<sup>210</sup> As such, it would be appropriate to specifically allocate a portion of these funds to study human/canine interaction while driving.
- As was done with seat belts and child safety seats, lawmakers should collect the information as it becomes available and use it to draft legislation that will produce public service announcements that educate people about

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208. *APPA Pet Owners Survey*, *supra* note 1.

209. NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., *Budget Estimates Fiscal Year 2015*, at 145, [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/fy2015\\_nhtsa\\_budget\\_justification.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/fy2015_nhtsa_budget_justification.pdf) (last visited Apr. 30, 2018).

210. *Distracted Driving*, *supra* note 40.

the importance of addressing these issues<sup>211</sup> and, if ultimately supported by the data, pass legislation to require dogs be restrained in moving vehicles.

- Incentivize creation of an effective, comfortable, least restrictive way to keep canines from distracting drivers and, at the same time, protect the dog and other occupants in the car.
- Compare the appropriate and exacting standards and the detailed scrutiny of seat belts and child safety seats with the total absence of guidelines, official testing, or regulation of available dog restraints. Recognize that the failure to oversee or evaluate these products means companies can make whatever claims they want and unsuspecting consumers, understandably concerned about the safety of their two- and four-legged family members, buy harnesses, car seats, and other gear that at best cannot keep their dogs safe and, in some cases, might even put their animals more at risk. In the CPS studies, many of the products failed the initial durability test and almost all failed crashworthiness. This means minimum uniform standards need to be created, the restraints must be rigorously crash-tested against those criteria by an independent, unbiased, certified organization, and a program should be established where the appropriate agency uses the results to regulate equipment claiming to protect dogs and others in a car accident. Because all this will take time, a good first step would be to redefine “consumer products” to include pet items, thereby incorporating the standards and testing protocols presently associated with the term.<sup>212</sup>

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211. Not surprisingly, the NHTSA already recognizes the importance of spreading the message to the public about the need for all drivers to not do anything that takes their attention away from “the task of safe driving.” *Id.* Thus, for example, in the 2015 budget, \$5,000,000 was allocated “for the development and placement of broadcasting media to support the enforcement of State distracted driving laws.” *Budget Estimates Fiscal Year 2015, supra* note 209 at 4. As an aside, \$44,592,484 (a total of 16%) was requested for occupant protection grants (seat belts). *Id.* at 144.

212. *See supra* note 19 and accompanying text.