

## Sentences vary for adults who leave kids to die in hot cars

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MANASSAS, Va. (AP) — Kevin Kelly is a law-abiding citizen who, much distracted, left his beloved 21-month-old daughter in a sweltering van for seven hours.

Frances Kelly had probably been dead for more than four hours by the time a neighbor noticed her strapped in her car seat; when rescue personnel removed the girl from the vehicle, her skin was red and blistered, her fine, carrot-colored hair matted with sweat. Two hours later, her body temperature was still nearly 106 degrees.

What is the appropriate punishment for a doting parent responsible for his child's death? A judge eventually spared Kelly a lengthy term in prison. Still, it is a question that is asked dozens of times each year.



As part of a manslaughter sentence in the death of his daughter, Kevin Kelley must hold a blood drive every year in Manassas, Va. The Frances Kelley Blood Drive was held this year on May 26.

Since the mid-1990s, the number of children who died of heat exhaustion while trapped inside vehicles has risen dramatically, totaling around 340 in the past 10 years. Ironically, one reason was a change parent-drivers made to protect their kids after juvenile air-bag deaths peaked in 1995 — they put them in the back seat, where they are more easily forgotten.

An Associated Press analysis of more than 310 fatal incidents in the past 10 years found that prosecutions and penalties vary widely, depending in many cases on where the death occurred and who left the child to die — parent or caregiver, mother or father:

\_ Mothers are treated much more harshly than fathers. While mothers and fathers are charged and convicted at about the same rates, moms are 26 percent more likely to do time. And their median sentence is two years longer than the terms received by dads.

\_ Day care workers and other paid baby sitters are more likely than parents to be charged and convicted. But they are jailed less frequently than parents, and for less than half the time.

\_ Charges are filed in half of all cases — even when a child was left unintentionally.

In all, the AP analyzed 339 fatalities involving more than 350 responsible parties. July is by far the deadliest month, accounting for nearly a quarter of the total.

A relatively small number of cases — about 7 percent — involved drugs or alcohol. In a few instances, the responsible parties had a history of abusing or neglecting children. Still others were single parents unable to find or afford day care. Many cases involved what might be called community pillars.

"But no one thinks it's going to happen to them," says Janette Fennell, founder and president of Kids and Cars, a nonprofit group that tracks child deaths and injuries in and around automobiles. The AP's analysis was based largely on a database of fatal hyperthermia cases compiled by Fennell's organization.

Some of these children crawled into cars or trunks on their own, but most were left to die by a caregiver. Most often, it was a parent who simply forgot the child was inside.

There were deaths recorded in 44 states — most in the Sun Belt, but many in places not known for hot weather.

The correlation between the rise in these deaths and the 1990s move to put children in the back seat is striking.

"Up to that time, the average number of children dying of hyperthermia in the United States was about 11 a year," says Jan Null, an adjunct professor of meteorology at San Francisco State University who has studied this trend. "Then we put them in the back, turned the car seats around. And from '98 to 2006, that number is 36 a year."

Few understand just how quickly a car can heat up, even on a moderate day.

According to one study, the temperature inside a vehicle can rise more than 40 degrees in the span of an hour. And researchers found that cracking the windows did little to help.

Children, often too young to escape, are particularly vulnerable because their immature respiratory and circulatory systems do not manage heat as efficiently as adults'. Already this year, at least 16 children have died in hot vehicles from Hawaii to Virginia.

Since 1998, charges were filed in 49 percent of cases. In those that have been decided, 81 percent resulted in convictions or guilty pleas, and half of those brought jail sentences — the median sentence being two years. Parents were only slightly less likely to be charged and convicted than others, but the median sentence was much higher — 54 months.

In cases involving paid caregivers, 84 percent were charged, with 96 percent of those convicted. But while they are jailed at about the same rate as parents, the median sentence in those cases was just 12 months.

Women were jailed more often and for longer periods than men. But when the AP compared mothers and fathers, the sentencing gap was even wider.

Mothers were jailed 59 percent of the time, compared to 47 percent for fathers. And the median sentence was three years for dads, but five for moms.

"I think we generally hold mothers to a higher standard in the criminal justice context than in just family life generally," says Jennifer M. Collins, a professor at the Wake Forest University School of Law who has studied negligence involving parents and such hyperthermia cases.

In 27 percent of the cases the AP studied, the children got into the vehicles on their own. Those cases are much less likely to be prosecuted.

The AP identified more than 220 cases in which the caregiver admitted leaving the child behind. More than three-quarters of those people claim they simply forgot.

It's easy to forget your keys or that cup of coffee on the roof. But a child?

The awful truth, experts say, is that the stressed-out brain can bury a thought — something as trite as a coffee cup or crucial as a baby — and go on autopilot. While researchers once thought the different parts of the brain worked in conjunction with each other, they now realize that different portions dominate at different times.

"The value of the item is not only not relevant in these competing memory systems," says memory expert David Diamond, an associate psychology professor at the University of South Florida. "But, in fact, we can be more complacent because we tell ourselves, 'There's no way I would forget my child.'"

Nationwide, about 60 percent of cases where the child was left unintentionally result in charges. But policies vary wildly from one jurisdiction to the next.

At least nine children in Las Vegas have died in hot vehicles since 1998, but charges were filed in only two of those cases. For several years, it has been the policy of the Clark County prosecutor's office not to file charges unless there is proof of "some general criminal intent ... to put the child in harm's way," says chief deputy DA Tom Carroll.

But in Memphis, Tenn., District Attorney General William L. Gibbons scoffs at the notion that he wouldn't charge someone — especially a parent — who claims to have simply forgotten a child.

"We're not talking in most cases about sending anyone to prison," says Gibbons, whose office has prosecuted five cases involving nine parents and day-care workers since 1998. "We are talking about placing someone on probation, maybe requiring them to go to some parenting classes or something like that, and giving them a felony record as a result of what happened."

Not surprisingly, the harshest treatment is reserved for those who intentionally left their children. According to the AP's analysis, those people are nearly twice as likely to serve time than people who simply forgot the child. And on average, they received sentences that were 5 1/2 years longer.

But in many cases, police, prosecutors and judges must wrestle with whether to charge, try and punish an already grieving parent.

In Lexington, Ky., Fayette Circuit Judge James Ishmael said the question of what to do with Leon Jewell was perhaps the toughest of his career.



According to police, Jewell admitted buying beer and vodka at a liquor store on Aug. 1, 2005, and drinking in his SUV on the way home. When his wife returned home from work later that day, she found 9-month-old Daniel still strapped in his car seat.

Jewell pleaded guilty to second-degree manslaughter. Ishmael placed him on probation and ordered alcohol treatment.

But six months later, on what would have been Daniel's second birthday, Jewell got drunk and was kicked out of his treatment program. Ishmael revoked the probation and sent Jewell to prison for seven years.

"Where ever I am is the worst place in the world," Jewell wrote to Ishmael. "I have violated man's laws. I have violated God's laws."

So what did Kevin Kelly deserve?

Would it influence your opinion to know that the day Frances died, May 29, 2002, the Manassas engineer was watching 12 children alone while his wife and oldest daughter were abroad visiting a cancer-stricken relative?

Does it matter that when he returned home that day, he'd asked two teenage children — both of baby-sitting age — to attend to their younger siblings while he went back to school for another daughter who was late getting out of an exam?

Or that during the next seven hours, he was accosted by an air conditioning repairman with news that he was going to have to spend several thousand dollars on a new unit? That he fixed lunch, did laundry, mended a gap in the fence that the little ones were using to escape the yard, drove to the store for parts to fix his air conditioner, took a son to soccer practice and fixed a leaking drain pipe in the basement?

A jury convicted Kelly of involuntary manslaughter and child endangerment, and recommended a year in prison. But the judge instead ordered Kelly to spend one day a year in jail for seven years and to hold an annual blood drive around the anniversary of his daughter's death.

"The judge was very, very merciful," Kelly said recently while waiting in line at All Saints Catholic Church to donate blood. "I have always loved life. And this is an opportunity to honor my daughter and save lives."

EDITOR'S NOTE: AP researcher Monika Mathur performed data analysis for this report; National Writer Martha Mendoza also contributed.

On the Net:

Kids and Cars: <http://www.kidsandcars.org/>

Golden Gate Weather Services: <http://ggweather.com/heat/index.htm>