

Leaving a child unattended in a car is abuse or neglect, N.J. court rules

By Salvador Rizzo/The Star-Ledger on January 14, 2014 at 2:46 PM, updated at 9:24 PM



Superior Court Judge Clarkson Fisher Jr. is pictured in 2001. *(Tony Kurdzuk/The Star-Ledger)*

Thank you for voting!

Yes. Parents shouldn't risk the threat of danger, especially with very young children. 66.43% (283 votes)

No. Responsible parents know when it's risky to leave their kids unattended. 33.57% (143 votes)

Total Votes: 426

TRENTON — In ruling against a mother who left her toddler strapped in a car seat while she shopped, a state appeals court said today that leaving a young child alone in a vehicle — even briefly — is abuse or neglect.

The case originated in 2009 when the woman, identified in court papers only by the pseudonym Eleanor, left her car running with her sleeping 19-month-old inside for five to 10 minutes while she shopped for party supplies at the Middlesex Mall in South Plainfield.

By the time she returned to the vehicle, the police had arrived and the mother of four was arrested.

"A parent invites substantial peril when leaving a child of such tender years alone in a motor vehicle that is out of the parent's sight, no matter how briefly," Judge Clarkson Fisher Jr. wrote for the three-judge panel.

He cited the risk of "car theft or kidnapping" and the possibility that "on a hot day, the temperature inside a motor vehicle can quickly spike to dangerously high levels, just as it may rapidly and precipitously dip on a cold night."

New Jersey's law defining child abuse or neglect says parents must exercise "a minimum degree of care" and avoid risky situations that could harm their children or impair their "physical, mental or emotional condition."

Fisher, citing a state Supreme Court decision from 1999, wrote that abuse or neglect happens when a parent is aware of a dangerous situation but "fails adequately to supervise the child or recklessly creates a risk of serious injury to that child."

Eleanor's conduct fit that description, the court found.

Eleanor's husband vouched for her as "a good and caring" stay-at-home mom, and two of her children attested she had never left them alone. State officials should have considered that the Middlesex Mall was an "upscale" shopping locale when evaluating whether she was negligent, her attorney argued.

"Even the most upscale of neighborhoods and shopping centers are troubled by crime ... (and) the health risks of leaving a young child in an unattended motor vehicle no doubt produce more deaths or greater injuries than those caused by criminals," the court said.

The ruling, which can be applied to similar cases from now on, does not specify the age at which it no longer becomes negligent to leave a child in a car. Anyone under 18 is protected by the state child abuse law, but Fisher's ruling also speaks of the "tender" age of Eleanor's child.

Francesca Blanco, a family law attorney in Morris County, said abuse and neglect cases are usually thorny and require close analysis by the courts. Setting an age limit for leaving children in cars could create some confusion for parents, police officers and judges, she said.

If the court had set a specific age, "it gets a little tedious when someone is a little over or under the line," Blanco said. "I think the age of the child is absolutely key in this case.

"I don't know if there was a substantial risk of harm. It was five to 10 minutes. In five to 10 minutes, anything could happen anywhere," she said.

Eleanor was originally charged with child endangerment and requested a hearing with the Department of Children and Families to weigh the evidence against her. However, the department declined the request because the fact she left her child unattended was not in dispute.

The appeals court agreed.

"Such events are apparently not as uncommon as might be hoped," Fisher wrote. "The parties have cited no less than six fairly recent ... (cases) dealing with young children left unattended in motor vehicles."

In a similar case, a mother left her sick 2-year-old in her car while she bought medicine for the child. The woman was not found to be negligent, Fisher said, adding that other parents in similar situations might also be justified in those situations.

But in the case ruled upon today, the judges found there was no emergency to justify leaving the child in the car because "Eleanor was only purchasing items for a party, and other adults were available to watch the child at home while Eleanor ran her errand."

Eleanor's attorney, Daniel N. Epstein, did not respond to a request for comment.

Ernest Landante, a spokesman for the Department of Children and Families, welcomed the court's ruling and encouraged New Jersey residents to seek [more information at the department's website](#).

"Leaving a child alone in a vehicle – even for just a minute – is a bad idea," Landante said. "Left unattended, a child in a vehicle is vulnerable to abduction and dehydration."

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COMMENTS:

[silkee](#)

This is so ludicrous; it's a slippery slope from here in our imprison everybody for everything society. If it's not safe to leave a child alone in a car because "anything might happen," then it's not safe to let your child go play outside unattended because "anything might happen." A five year old can be stolen from the back yard, or the corner park as easily as from the back seat of your car. What about the parent having a barbeque out back, while leaving the child sleeping in it's room? "Anything could happen." The party out back just "invites" a criminal to sneak in and kidnap the child. "Anything could happen" at anytime in virtually every situation; the problem is that we evaluate the risk (before pulling out into traffic, before venturing into a neighborhood, before riding a horse). The vast majority of humans don't want to steal a child - they are messy and expensive. No car thief wants a car with a child in it as it will bring the weight of the law down on them, and who wants that? (plus most parents who leave their child in the car lock it behind them.) Only a very small segment of the population - horrible psychopaths - would kidnap or harm a child like this, and the chances of you running into one of them are extremely low no matter what the news would have us believe. These psychopaths could just as easily climb into the child's bedroom window at night, or steal them from the corner playground, than break a car window and remove a child.

Rather than stigmatize this...more

[compujas](#)

What about in your own driveway when you need to unlock the door to the house? Anyone with children knows how difficult it is to get in the house with a screaming infant in your arms. When I get home I'll typically leave him strapped in the carseat while I take his stuff from that day and unlock the door, then come back and get him out and go inside.

As for locking your car and going into businesses to run errands, that's just wrong, too much can happen in that amount of time. But for 30 seconds going from your car to your door to unlock it and free up your hands, I see no problem with that.

[so_fed_up](#)

My ex did this NUMEROUS times and for extended periods of time. Ex has/had connections. To top it off, ex would many times blame it on me as they were out and they had time to kill before they could return the children. So they shopped and left the young children in the car alone.

[so_fed_up](#)

[6 hours ago](#)

Ex did this almost every time they had to go in somewhere. On some occasions, ex left the children (3, 4 and 5 years old) home alone.

[Ironboundlandlord7](#)

Would you leave your wallet on the front seat of your car and walk into a store; I bet not for fear of someone breaking into your car and taking it. Then why would you leave your small child in the same circumstance? I would like to think that the child would be considered MUCH more valuable than the wallet and not be left unattended and certainly defenseless.

[silkee](#)

[4 hours ago](#)

I have left my wallet, in my car numerous times as well as my purse, and even cellphone. What kind of a neighborhood do you live in? Many people want my wallet, but few would risk breaking into it to get it, and even fewer have the knowledge of how to break into my car without attracting a lot of attention. The percentage of people want to steal a child, know how to unlock a car without attention, and happenstance upon a child strapped in a carseat in a locked car are infinitesimal. The chances of this happening to any parent are slim to none. Please cite me ONE CASE where a child was stolen this way. I know of several cases where a car was jacked when a child was in the car, but I can't recall one single case where a child was stolen from a parked and locked car with no parent in it.

[chasingbids](#)

I used to battle with my kids on this topic all the time as they got a bit older and felt they were old enough to sit in the car alone. The rule was very simple...you may sit in the car alone when you are old enough to drive it. I don't understand the thought process of parents that leave young children in vehicles and even worse, in running vehicles. So many things can go wrong.

[non sequitur](#)

Well, duh. Kids under 12 can't be left without adult supervision. The law doesn't say "but in a car is okay", or "but just for a few minutes is okay", or "but with their 7 year old older brother is okay".

My friend hired a nanny, and they went to an indoor tennis club. My friend brought her older daughters in, and told the nanny to get the baby and lock up the car. The nanny returned without the baby, and my friend flipped. The nanny ended up getting deported and not eligible for a visa. The baby was probably in the car for two minutes by itself, and it

[sadpunkin](#)

fourth and fifth graders, who aren't yet 12, can be released from school and walk home alone, so it can't be 12.

[GardenStateCFP](#)

You've posted that 12 year old rule, multiple times, but I believe you are incorrect. I don't think there is a specific age and a child is just not supposed to be left alone if they are not ready for it. Each of my kids started walking home alone from school when they were 9. Often they would walk with friends or a parent would meet them half way home, but either way, I don't think we were ever breaking the law.

[Salvador Rizzo/The Star-Ledger](#)

Hello, everyone. I'm the reporter who wrote the story on today's court decision. I'll be checking the comments tonight and tomorrow morning in case you have any questions, which I'm happy to answer as best I can.

A few notes first:

* This is what's known as a "published" or "signed" opinion, which means it can be applied to all future similar cases.

* This is civil litigation, not a criminal appeal. "Eleanor," the mother in the case, has been seeking a hearing to weigh the evidence against her. The appeal court today said no because it's undisputed that she left her child in the car. Hearings are usually reserved for when facts are in dispute.

*In civil litigation concerning child abuse or neglect, the state judiciary does not name the parties so as to protect the identities of the abused or neglected children.

I've posted a copy of the decision below for those who want to read it firsthand.

With all that said, ask away!

[jackiero](#)

This ruling is far too vague to really mean anything...until someone is arrested again for leaving their child alone in a running car for 30 seconds. I think we all understand that laws are not based on common sense. Otherwise we wouldn't need "don't use while in shower or tub" tags on hairdryers.

[sadpunkin](#)

the poll needs a third answer: it depends on the age of the child, the location of the car, the weather, etc.

[Enrique Lavin/The Star-Ledger](#)

Good afternoon: @ravensclaw and other readers have asked that Judge Fisher meant by "tender" age. I've asked Rizzo, who's tied up with State of the State coverage, to see if had an answer. This is what he told me:

"The tender age question is a good question that unfortunately the court does not squarely address in today's opinion.

The state statute on child abuse or neglect covers any child under 18, but notice Judge Fisher spoke of the child's "tender" age in the circumstances of this case. That could limit the reach of this decision somewhat, but we won't know until there is further guidance from the courts or state law.

I posed the question to the Department of Children and Families today -- to see specifically whether they see it covering everyone under 18 -- and will relay any answers they provide."

[money30](#)

Tender age is 0-3 yrs old.

[mls](#)

So a sixteen year old child can't drive alone? Under this ruling, they would be in a car alone, and that would be a violation. I realize this particular judge stated "tender age", however, at the moment it states any child under 18. I worry that precedents are being established without full consideration of the far reaching consequences.

[Salvador Rizzo/The Star-Ledger](#)

The state law on child abuse is broad. It covers everyone under 18. By that age, many people are already driving.

It seems unlikely that a police officer would arrest a mother in that scenario, but you raise a good point.

I am about to speak with an expert in this area who can provide some context on how the decision will play out in the courts. Stay tuned. This post will be updated with that interview when I've finished.

[sadpunkin](#)

a 16 year old can only get a permit and cannot drive alone in NJ.

[Richard Rabinowitz](#)

There is an old doctrine in Anglo-American common law known as the "tender years doctrine". According to this doctrine, the "tender years" are often considered to be age twelve and under.

Typical uses of this doctrine were in divorce proceedings, in determining which cases would lead to the mom getting a child. (Later rulings said that using this doctrine in divorce proceedings violated the 14th Amendment's equal protection clause.) However, maternal custody was presumed for children up to age 7 under the British Custody of Infants Act of 1839 (which is where the doctrine began), and the British Parliament later extended that age to 16.

tl;dr: even the "tender years doctrine" does not quite clarify what is a "tender" age; the best that can be said is that a "tender age" is any age before a child is able to have a sense of responsibility and to act responsibly.

[Leonard Henderson](#)

[20 hours ago](#)

So is this the only warning young parents will receive in this "one strike and you're out" system?

Leonard Henderson co-founder American Family Rights <http://familyrights.us> "Until Every Child Comes Home"

[non sequitur](#)

Oh please, do you read the stories about how many children are killed by being left in a car on a hot summer day, or how many times per year in NJ a car is stolen with a baby in the back seat?

[wink](#)

this has been a law for years, glad to see its headlines today

[Salvador Rizzo/The Star-Ledger](#)

The New Jersey law defining child abuse or neglect says nothing about leaving children in vehicles. In today's decision, the court interpreted the statute's wording to include those children. This is new. It is a published opinion, meant to serve as precedent for all similar future cases. The state Supreme Court said in 1999 that child abuse or neglect happens when a parent is aware of a dangerous situation but "fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." Today's decision establishes that leaving a child of a "tender" age unattended in a vehicle for whatever period of time fits into that definition.

[Richard Rabinowitz](#)

This is how common law works. You have a vague statute that needs clarification. The judge clarifies the law, and thus provides goalposts and markers, thus adding onto the law so far as judges and courts are concerned. Many common law concepts hail from old England, schlepped across the ocean to our shores by the British colonists.

[non sequitur](#)

My understanding is that you cannot leave a child under 12 alone and unattended by an adult. Is that not the case? Or is a car magically different than a home?

[sadpunkin](#)

they give babysitting classes to 10 and 11 year olds

[Flash_NNJ](#)

I'll say it's dangerous to leave your kid in the car while you run up to the ATM with your child in full view. You should unstrap, unharness and carry that child 15 feet in the rain or cold so you can spend 1 minute at the ATM and then subject them to wind, rain and cold, especially if they've been sleeping. You know why this is dangerous? Because some busy-body's going to call the cops on you where you'll have to pay, and pay and pay. Because it's all about \$afety!!!

[maxypaxy](#)

I love this about you people. Do you have ESP? How do you know the ATM is going to take you only one minute? If everything goes your way it'll take you probably 3-5 minutes at least. That's enough time for someone not paying attention to hit your car with your kid(s) inside. Instead of making sure that nothing happens to the kids, what you're doing is just HOPING that nothing happens to the kids. Great logic to apply when it's your children at stake.

I had two kids exactly two years apart and when they fell asleep in their car seats it was up to me to decide either I wake them up and run that errand or forget about that last stop and drive home.

[compujas](#)

@maxy, How exactly would remaining in the car with the children protect them in the event that the car is hit? Or what about ATMs that are very close to the curb but are not drive-up? I use several ATMs that are within 5 feet of the curb, so I pull up right in front of it, get out and use it. Are the children in danger then? Also, if it takes you 3-5 minutes to use an ATM, you're doing something wrong. That's how long it takes to go inside and have a teller assist you with depositing a dozen checks. An ATM should take you no more than 1 minute if you're doing it right, unless you're making complex transactions like depositing multiple checks as well as cash and still making a withdrawal and checking your balance.

[non sequitur](#)

No, you should go to a drive-thru ATM, dumbazz.

[mrstag](#)

I don't care what mall upscale or not, and Middlesex Mall is not upscale. No one should ever leave a child in the car unattended. It's a lot safer to take the child with you. It may be a bother taking them in and out, but a whole lot safer.

[dasgreater](#)

In other words, if you have a good enough excuse, then it may be ok... Can anyone say arbitrary?

[non sequitur](#)

Good excuse = emergency such as you are injured or the child is injured, and you need to get help. Good excuse <> I wanted to shop without the hassle of a toddler or the baby was asleep, I didn't want to disturb her.

[AREgularGuy](#)

Hmmm...someone go tell my parents. I remember lots of time in the car alone or with my brother. We'd play with the radio, get out and run around the car, read, whatever. Hot? roll down the windows. Cold? Button up. Of course, we were over 7 or 8 and it was never on really hot or really cold days, but still..... (and yes, I agree at 19 months at any mall in the car alone is neglect).

[non sequitur](#)

We'd beat the crap out of each other when left alone in the car.

[iheartnjdotcom](#)

if the middlesex mall is "upscale", nevermind...

[UndocumentedUser](#)

yeah, it's been a while but wasn't a woman carjacked and killed at middlesex mall

[ssmbf](#)

Never an excuse.....

[Thee Truculent Troll](#)

What age group are we talking about. Newborn to 6, 8 12yo? Article doesn't provide this information

[frankesg](#)

The article says the child was 19 months.

[Richard Rabinowitz](#)

I'd say 19 months (which is a little over a year-and-a-half) is a "tender age". So is 3 years old, 5 years old, perhaps 7 or even 9 years old. Teenagers aren't really of a "tender age" anymore, IMHO, but there is a gray area from age 8 to age 12.

[ravensclaw](#)

Just curious, at what age does it stop being abuse to leave a child in the car? I can't imagine leaving a teenager in the car would be abuse. Is it the age at which they no longer require a special seat?

[iheartnjdotcom](#)

after the red stickers come off the license plate?

[Commentator73](#)

For the court to specify an age, as opposed to as it did limiting this decision to the 19-month old child "of tender years" would be legislation outside the court's authority.

[non sequitur](#)

12 years old is the age you can leave a child alone and not immediately be accused of neglect. However, I do believe that you can't leave an older and a younger child together legally without an adult.

[sadpunkin](#)

NS, Do you have a cite for that? Since fourth and fifth graders can be dismissed from school and walk home alone, I don't see how the "age of non-supervision" can be 12.

[TrafficCircle](#)

It took a court to tell us that this is abuse???

[Christina Ayoub](#)

Hold on... So, "Eleanor" is wealthy enough to not be named or have her mugshot splattered all over the internet?

If this was a woman caught in any OTHER neighborhood, she'd be publicly shamed. Cmon Salvador Rizzo, I expect better.

[yellowfin](#)

You mean like the women who left her kids in a storage shed because she had no place to stay?

[frankesq](#)

I just read the opinion. This was not a criminal case. It was a civil action by DYFS. They use the initials in cases like this not for the benefit of the mother, but for the kids.

[Salvador Rizzo/The Star-Ledger](#)

Frankesq is correct. In the decision today, the appellate judges say they do not know what resulted from Eleanor's criminal charges. What we are reporting on today is civil litigation. In those cases, identities are obscured by the courts to protect the identity of the children. The Department of Children and Families intervened and sought custody of Eleanor's children at first, the judges wrote. That intervention ended in September 2009, "and the action was consensually dismissed." See the decision below.

[Leonard Henderson](#)

ALL CPS cases are "civil actions". No Constitutional Rights apply and the "court" is not a real court of "Constitutional Due Process"

Leonard Henderson

co-founder, American Family Rights

<http://familyrights.us>

"Until Every Child Comes Home"

