



Fighting for Product Safety

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To the House Sub-Committee on Consumer Protection and Commerce, *Protecting Americans From Dangerous Products: Is The Consumer Product Safety Commission Fulfilling Its Mission?*

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Thank you, Chairman Schakowsky, Ranking Member McMorris Rodgers and Subcommittee members for this opportunity to testify before you today regarding the U.S. Consumer Product Safety Commission's mission. I offer this testimony on behalf of Kids In Danger (KID).

KID is a nonprofit organization dedicated to protecting children by fighting for product safety. The organization was founded in 1998 by Linda Ginzel and Boaz Keysar, both University of Chicago professors, after the death of their son Danny in a poorly designed and inadequately tested portable crib. A portion of the 2008 Consumer Product Safety Improvement Act (CPSIA) was named after Danny. As Danny's mother, Linda, foresaw when she testified before the then House Subcommittee on Commerce, Trade and Consumer Protection in 2004, "improved children's product safety will be Danny's legacy."

Recalls and Recall Effectiveness

Since 2001, KID has been reporting on children's product recalls annually. Last month, we released our report on 2018 recalls. We found the number of recalls overall was the lowest since 2003; and the number of children's product recalls as well as units of children's products recalled were the lowest since we started tracking¹.

It is tricky to say whether low recall numbers are a good thing – pointing to safer products – or a sign of lax enforcement, leaving dangerous products on store shelves and in our homes. Indicators this year, such as other less effective actions in lieu of recalls and fewer findings of design defects in the recalls that were announced, make us worry it is the latter.

Almost all recalls are voluntarily agreed to by the manufacturer. Only rarely has CPSC used its authority to call for a mandatory recall. One example was in the news just last week. After filing suit last year for a recall of the BOB strollers with almost one hundred injuries from front wheels' disengagement, CPSC ended up settling for an information campaign that is explicitly not a recall and lasts only one year – almost a month of which was wasted during the government shutdown. Unlike recalled products, these BOB jogging strollers can be legally sold in the secondhand market, meaning that we will see continuing injuries well into the future.

¹ <https://kidsindanger.org/wp-content/uploads/2019/03/KID-2019-Recall-Report.pdf>

It is hard enough with an official recall to fix or remove products from use. Announcing the recall is only part of the job of the agency – it does no good if most of those recalled products remain in homes and in use.

In past reports, KID has looked at recall effectiveness numbers reported by recalling companies to CPSC. But we could not do that analysis this year due to lack of response from the Freedom of Information Act (FOIA) office at CPSC. But looking at other publicly available data there is general agreement that the number is somewhere under 10% -- meaning most recalled products remain in use in homes and child care facilities.²

One example is the 2016 recall of IKEA dressers. Originally reported at 29 million³, that number was revised to 17 million⁴ a year later. Whatever the number, publicly available information shows fewer than 2% of those dressers have been returned to IKEA for a refund. IKEA has blocked our requests for more information on the recall effectiveness numbers. Other consumers, both before and after the recall, asked for and received anchoring kits, but there is no available data on how many were used to secure the unstable dressers. We also do not believe that anchoring is an effective recall remedy for these dressers since they will be moved, sold, or set out in the alley and someone else can use them without the anchor. We know that nine children have died in IKEA furniture tip-overs, one after the start of an ‘information campaign’⁵ in 2015 – like the current Britax BOB jogging strollers action -- and another since the 2016 recall. An additional child has died in a tip-over incident involving a dresser IKEA has not recalled. IKEA has focused their messaging almost exclusively on anchoring the dressers rather than returning them for a refund and getting them out of homes.

Furniture Tip-over

But it isn’t just IKEA. Every 10 days a child dies when a dresser or other furniture tips and crushes them. Every 18 minutes a family rushes a child to the emergency room for the same hazard⁶.

There is no federal standard to stop manufacturers from making unstable furniture. The voluntary ASTM standard lags behind the evidence all these incidents provide. Industry has been dragging their feet for years and children are paying the price. But things are beginning to change. CPSC Acting Chairman Buerkle has called on industry to increase the test weight and include shorter dressers in the ASTM standard and advised that CPSC will take enforcement action against dressers that don’t meet the current voluntary standard. These are important first steps.

Several families whose children were killed by the IKEA dressers have joined with other families who lost children to furniture and TV tip-overs to form PAT – Parents Against Tip-overs.

² <https://www.slideshare.net/USCPSC/cpsc-recall-effectiveness-workshop-recall-data>

³ <https://cpsc.gov/Recalls/2016/Following-an-Additional-Child-Fatality-IKEA-Recalls-29-Million-MALM-and-Other-Models-of-Chests-and-Dressers>

⁴ <https://cpsc.gov/Recalls/2018/IKEA-Reannounces-Recall-of-MALM-and-Other-Models-of-Chests-and-Dressers-Due-to-Serious-Tip-over-Hazard>

⁵ <https://www.cpsc.gov/newsroom/news-releases/2015/ikea-offers-free-wall-anchoring-repair-kit-for-chests-and-dressers>

⁶ <https://anchorit.gov/why-anchor-it/>

This group now participates in the voluntary standard meetings, has met with CPSC leadership and staff and I dare say will be in to see you all if they haven't already. As Lisa Siefert of Barrington, Illinois said when she joined KID last month to announce our support for legislation on this issue – if action had been taken when her son Shane was killed seven years ago, these other families could be home with their children instead of speaking out to keep other children safe.

An effective standard would include all clothing storage units: right now, shorter dressers are excluded even though deaths have been reported with those shorter dressers. In addition, the testing protocol would use weights that represent all children under 72 months – those most likely to be involved in a tip-over incident -- and include tests to account for real world use. This would include furniture on carpeting, drawers loaded with clothing, more than one drawer extended and dynamic testing. All of these are features involved in tip-over injuries and deaths. We also need that strong standard to be mandatory – so every family can be sure the furniture they purchase is stable. We support legislation, such as the STURDY Act to achieve this goal. The ASTM process has proven to move too slowly, and many members resist needed changes to protect children.

The good news is that while furniture testing by KID⁷ along with Shane's Foundation, and testing by Consumer Reports⁸ and the CPSC⁹ show that furniture is in the market that does not even meet the current weak standard, there are also units that exceed the standard and can meet some of the tougher testing that is being considered.

KID's TEST program, which works with engineering students, has produced some interesting prototypes that address this very serious issue. These furniture prototypes were designed to resist tipping as effectively as a restraint strap. Other alternative routes should be explored, and manufacturers should be challenged to innovate safer products. We cannot ignore the fact that most furniture in America is not anchored to the wall. We can work to both increase the use of anchoring devices and focus on improving furniture design to reduce the need for anchors.

Section 6(b)

The development of SaferProducts.gov was in part, a compromise on transparency in the Consumer Product Safety Improvement Act. Consumer advocates and others were calling then for a repeal of section 6(b) of the Consumer Product Safety Act. Simply put, 6(b) is a gag order – restricting CPSC's ability to warn the public about product hazards and keeping consumers in the dark about dangerous products they have in their homes and use daily with their families.

While SaferProducts.gov was set up to require public posting of consumer reports of product incidents and injuries, repealing 6(b) would allow many other reports and safety issues to be made public. Parents should not have to wait until a full recall effort is complete before learning their child is sleeping in a deadly crib, playing with a lead-tainted toy, or riding in a stroller prone

⁷ [https://kidsindanger.org/wp-content/uploads/Furniture_Stability_Report_Final_\(1\)1.pdf](https://kidsindanger.org/wp-content/uploads/Furniture_Stability_Report_Final_(1)1.pdf)

⁸ <https://www.consumerreports.org/furniture/furniture-tip-overs-hidden-hazard-in-your-home/>

⁹ https://www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20August%202016_1.pdf

to losing a wheel. Section 6(b) should be repealed or at the very least, more should be done to weaken its negative impact on public safety.

Section 104

Through the implementation of the Consumer Product Safety Improvement Act (CPSIA) Section 104 – Danny’s Law - the CPSC has successfully implemented strong mandatory standards for 20 types of durable infant and toddler products –leaving five in process.

Last year was CPSIA’s 10-year anniversary – more than a decade after passage of this landmark legislation, consumers still have no assurance that booster seats, high chairs, gates, changing tables, and infant inclined sleep products are tested for safety to a strong standard before they reach store shelves. There are standards for booster seats, high chairs and changing tables, but the effective dates of mandatory compliance have not been reached.

And products such as baby nests, crib hammocks and other potentially hazardous products have entered the market and are not covered by any standard. While a strong standard won’t eliminate all injuries, we have seen with other products that it makes a difference.

I’d like to address the products included in Section 104. This list was originally created in 2001 and updated in 2008 when CPSC began work on the CPSIA. Other products such as slings and infant inclined sleep products were added later as incidents pointed to the need for a safety standard. We believe that Section 104 should apply to all infant and toddler durable products. Parents will assume that any juvenile product they buy to care for their infant or toddler will be tested for safety to a strong standard. Just as standards evolve as new designs introduce new potential hazards, the group of products covered under Danny’s Law should evolve as new products enter the market. If CPSC had adhered to the timeline set out by CPSIA and adopted standards at the rate of two every six months, we would have thirty-six product types covered by the testing and safety that a mandatory standard brings. Parents should have confidence that all the durable infant and toddler products – not just those that were commonplace when the bill was adopted -- are safe.

Safe Sleep

Among children’s product safety issues, a safe sleep environment is an overriding concern to KID. Suffocation – most of it in a sleeping environment – is the leading cause of unintentional death in infants. Almost three times more infants (under 12 months) die in sleep environments (3,607)¹⁰ than all children under 13 years old die in motor vehicle related crashes as occupants in cars, pedestrians or on bicycles (1023)¹¹. Danny Keysar died in a recalled portable crib. Whether they are bassinets, portable cribs, play yards, cribs, or some newly designed product or accessory, sleep products must meet the highest standards for safety. These products are intended to be safe

¹⁰ <https://www.cdc.gov/sids/data.htm>

¹¹ <https://www.iihs.org/iihs/topics/t/child-safety/fatalityfacts/child-safety/2016>

for a child even without an adult in direct supervision. The number of sleep related deaths in infants is too high and is not showing signs of decreasing – it is a public health emergency.

Crib Bumper Pads

Crib bumper pads are an unnecessary risk to sleeping infants. The American Academy of Pediatrics (AAP) warns against the use of crib bumper pads in their safe sleep guidelines. Because of that and the history of suffocation and possible link to Sudden Unexpected Infant Death (SUID) almost all hospitals tell parents not to use crib bumpers in the crib. A 2016 report in the Journal *Pediatrics* noted that the suffocation rate from bumper pads was increasing.¹² Most major retailers such as Wal-Mart, Target and IKEA have removed bumpers from their shelves. Ohio, Maryland and the city of Chicago have banned the sale of padded bumper pads. Almost every childcare facility in the country is prohibited from using bumpers.

But CPSC has announced rulemaking under section 104 on crib bumper pads and ASTM International, the voluntary standards organization, is responding to the CPSC's Notice of Proposed Rulemaking by looking at firmness of crib bumper pads. A standard that doesn't fully address the risk and gives a false sense of safety to parents is more dangerous than no standard. Any mandatory standard should prohibit padded bumpers.

Inclined Products

Products such as car seats, swings, bouncers, etc. are often used as alternative sleeping equipment by caregivers. However, recent research has thrown this practice into question.¹³ Researchers have found that it can take as little as four minutes for an unattended infant to suffocate in these inclined products. A young baby, Shepard Dodd, died in Oklahoma on April 6, 2015 when he was left to sleep in a car seat at childcare.

Infant inclined sleep products mimic this reclined, but not flat, sleeping position and have great appeal to parents whose babies seem to have trouble sleeping. The CPSC has added infant inclined sleep products to the Section 104 list to promulgate a mandatory standard. But as we saw from last week's joint warning on the Fisher Price Rock 'n Play Sleeper, those products can carry similar risks and lead to deaths. Children can become entrapped in an unsafe position and suffocate. This week, *Consumer Reports* released an article¹⁴ documenting additional deaths under the age the warning covers and the additional hazard of positional asphyxia in younger babies. We agree with Consumer Reports that the warning does not do enough to protect children and the product, and other products that pose the same hazard, should be recalled.

The AAP warns against infants sleeping on an incline. Canada does not allow products with an incline either for sleep. All sleep products must meet the Cribs, Cradles or Bassinets regulations to be sold.¹⁵

¹² [https://www.jpeds.com/article/S0022-3476\(15\)01284-6/pdf](https://www.jpeds.com/article/S0022-3476(15)01284-6/pdf)

¹³ [https://www.jpeds.com/article/S0022-3476\(15\)00345-5/pdf](https://www.jpeds.com/article/S0022-3476(15)00345-5/pdf)

¹⁴ <https://www.consumerreports.org/recalls/fisher-price-rock-n-play-sleeper-should-be-recalled-consumer-reports-says/>

¹⁵ <https://lois-laws.justice.gc.ca/eng/regulations/SOR-2016-152/page-1.html>

Other sleep products

Beyond safety and health, there are two main concerns of all new parents – is my baby eating and growing and is my baby sleeping? Products that help parents achieve either of these flood the market. Nevertheless, they are not all safe – especially sleep products. From cushions to prop up babies, to specific products such as the Nap Nanny or other inclined cushions, to products intended to help babies share an adult bed: these products enter the market with little or no testing. There are no standards for these products. Entrepreneurs are struck with great ideas – usually in the middle of the night when they are sleep deprived and up with their own babies and rush to market without considering potential hazards. Products intended for infant sleep must be safe enough to leave a child unattended.

Again, thank you for allowing us to testify here today. The CPSC is a small agency with a big mission. We appreciate the attention and oversight your committee can bring to increase the effectiveness of the agency and help keep children safe.

Kids In Danger is a nonprofit organization dedicated to protecting children by improving children's product safety. Our mission is to save lives by enhancing transparency and accountability through safer product development, better education and stronger advocacy for children. Learn more at www.KidsInDanger.org.

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