Utah’s unique and diverse landscapes are a dream come true for off-road enthusiasts. Riding motorcycles and all-terrain vehicles (“ATVs”) is a popular sport among riders of all ages and skill levels. For many Utahans, recreating with off-highway vehicles (“OHVs”) is a family affair. However, recent news of children dying in ATV and motorcycle accidents has divided public opinion regarding the extent to which children should be allowed to operate these machines and what restrictions should be in place. Between November 2008 and June 2009, at least three children under age nine died in Utah from ATV and motorcycle accidents. In fact, between 1984 and 2004, fifty-six children under the age of sixteen died in Utah from ATV accidents.

In 1987, Utah legislators sought for the first time to combat the risks associated with OHVs by placing restrictions and requirements on a child’s ability to drive OHVs on public land. This Note considers why restrictions are needed, what the restrictions are in Utah and whether those restrictions are adequate. The

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1 As used in this note, ATV means “any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain.” UTAH CODE ANN. § 41-22-2(2) (West 2009).
2 Recreating on Utah’s public land is so popular that federal and state agencies are encouraged by statute to open public land to responsible off-highway vehicle use. UTAH CODE ANN. § 41-22-12(1) (West 2009).
3 Utah law defines OHVs as “any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.” UTAH CODE ANN. § 41-22-2(12) (West 2009). The statutes discussed in this Note apply equally to all OHVs. However, some statistical information and direct quotations pertain specifically to ATVs only. Thus, while this note speaks specifically about ATVs, the recommendations and conclusions contained herein may be applicable to all forms of OHVs.
Note then suggests amendments to remedy shortcomings in the current legislation, and concludes by emphasizing the importance of parental cooperation in following OHV rules.

I. “IMMINENTLY HAZARDOUS CONSUMER PRODUCTS”

There are two significant problems when children operate OHVs. First, OHVs are in and of themselves dangerous. Second, children are not physically and mentally prepared or developed to handle the complexities of operating complicated machinery while navigating unfamiliar terrain. The inherent dangers associated with OHVs combined with a child’s underdeveloped physiology and immature reasoning skills create accidents waiting to happen.

A. ATVs: The Dangers that Lurk Within

ATVs first began to sell in the United States during the 1970s, but it was during the 1980s when ATV use became increasingly popular.7 ATVs were marketed as “toys” suitable for use by the entire family.8 As ATV use increased, so did ATV related injuries and deaths. During the mid-1980s, the rise of ATV related injuries increased to such alarming rates that the Consumer Protection Safety Commission (“CPSC”) began to collect data on ATV-related injuries.9 After conducting studies regarding ATV safety, the CPSC and other public interest groups pursued civil actions seeking to have ATVs declared “imminently hazardous consumer product[s].”10 This resulted in a limited duration consent decree which “imposed voluntary standards on the [ATV] industry for marketing, safety training, warnings, and advertising.”11 The decree expired in 1998.12 Since the decree’s expiration ATV accidents have “skyrocketed,” most likely because manufactures have greatly increased advertising campaigns and created more aggressive and powerful ATVs that appeal to younger riders.13

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8 Id.
11 APPENDIX A, supra note 6, at 1.
13 Id.
ATVs have “fundamental design questions relating to the [vehicle’s] stability, handling, and control.” The horsepower, speed, and acceleration capabilities, along with a lightweight chassis, produce a high power-to-weight ratio. Many inexperienced riders find the power-to-weight ratio to be surprising.

“[M]ost ATVs are dangerously unstable at any speed and on any terrain.”

“The stability problem is compounded by the fact that the industry has built bigger, faster, more powerful ATVs since 1998 to attract thrill-seeking customers.”

“Some of these machines provide no rider restraint or protection and can exceed 70 mph and accelerate to 45 mph in 6.5 seconds or less.”

The dangers posed by ATVs are well known. In fact, “[l]osing control and flipping an ATV is a foreseeable and customary risk associated with the activity of driving or riding on an ATV.”

B. Child Riders: Under Developed, Overly Aggressive

In addition to the inherent dangers associated with an ATV’s design and performance capabilities, children also lack the physiological characteristics to safely operate and control OHVs. The American Academy of Pediatrics (“AAP”) recommends that children under the age of sixteen be prohibited from operating OHVs under all circumstances. Studies conducted by the AAP have concluded that immature judgment and risk-taking are significant factors contributing to children’s ATV injuries.
Whether children possess the necessary skills to safely operate OHVs is doubtful.\textsuperscript{24} Experts claim that children are “not at a stage cognitively where they’re capable of handling a machine with the sort of skill that’s required with regards to speed, depth perception, remembering rules, and operating the [OHV] at the same time . . . .”\textsuperscript{25} Furthermore, most OHVs have “too many factors and variables that . . . have to [be taken] into account” by young children “because they typically could only carry out one task at a time without becoming confused.”\textsuperscript{26} Children also fail to adequately scan their immediate environment; doing so is essential to safely operating OHVs.\textsuperscript{27}

Children are also at a higher risk than adults for traumatic brain injuries because a child’s brain is not fully developed.\textsuperscript{28} Similarly, OHV accidents pose a greater risk to children because any damage to growth plates, which is not a concern for older teens and adults, may have long-term negative consequences on a child’s growth and development.\textsuperscript{29} For example, “[b]one injuries that would result in sprains for adults could potentially be serious for children.”\textsuperscript{30}

The inherent risks associated with OHVs compounded with the increased risks faced by children did not go unnoticed in Utah. While the CPSC was busy lobbying Capitol Hill for protective legislation, Utah lawmakers were on the eve of creating the first protective OHV legislation designed to protect children.

II. “GIVE THESE KIDS A CHANCE”:\textsuperscript{31} THE DEVELOPMENT OF PROTECTIVE OHV LAWS IN UTAH

In the mid- to late-80s, Utah lawmakers became quite aware of the dangers associated with ATVs and other types of OHVs used by children. These lawmakers found that an “extremely alarming” number of young children had died

\textsuperscript{24} For an in-depth discussion of a child’s physical ability to ride ATVs, see Memorandum from Robin L. Ingle, Mathematical Statistician, U.S. Consumer Prod. Safety Comm’n to Elizabeth W. Leland, Project Manager and Directorate for Econ. Analysis passim (Dec. 2, 2003), \textit{available at} http://www.cpsc.gov/LIBRARY/FOIA/foia05/brief/atvpt3.pdf.

\textsuperscript{25} Morales v. Am. Honda Motor Co., Inc., 151 F.3d 500, 508 (6th Cir. 1998) (testimony of expert witness psychologist during products liability action in which a nine-year-old child was injured while operating a motorcycle recommended by the manufacturer for ages seven and older).

\textsuperscript{26} \textit{Id.}

\textsuperscript{27} \textit{Id.}


\textsuperscript{29} \textit{Id.}

\textsuperscript{30} \textit{Id.}

in OHV accidents in 1985 and 1986. In 1987, while U.S. lawmakers were busy on Capitol Hill preparing legislation that ultimately banned the use of three-wheeled ATVs, Utah lawmakers were also debating protective OHV legislation that would become the first of its kind in the state.

A. The First Legislation: No Control—No Constraints

In 1987, faced with “a near-crisis problem” in the state, Utah lawmakers debated the first OHV legislation designed to protect children. Up to this point, Utah had “no control—no constraints” over OHV use. Exasperating the problem was fact that Utah ranked fifth or sixth in nation for OHV use. To alleviate growing concerns OHVs presented to children, Utah lawmakers were asked to pass Senate Bill 39 (“SB 39”). This bill, titled “Off-Highway Vehicle Operator Training and Funding,” was “designed to instill knowledge, attitudes, and skills necessary for the safe operation” of OHVs. By passing SB 39, Utah legislators adopted two new statutes aimed at curbing the dangers faced by children who operate OHVs.

First, SB 39 created Utah Code Ann. § 41-22-29—Operation by persons under eight years of age prohibited. As the title indicates, § 41-22-29 prohibited children under eight years of age from operating an OHV on any public land, and likewise prohibited OHV owners from giving permission to children under eight years of age permission to operate OHVs on public land. Setting a minimum age limit on OHV operators was certainly a step in the right direction in the quest to protecting children from the imminently hazardous products.

Next, and equally important, SB 39 created Utah Code Ann. § 41-22-30—Operation by persons eight years of age or older but under 16 years of age—Possess safety certificate—Penalty. This statute required children between the ages of eight and sixteen who operate OHVs on public lands to have in their possession a safety certificate issued by the Utah Division of Parks and Recreation. Requiring children to undergo a safety training course in order to operate OHVs on public land is in harmony with CPSC recommendations.
Passing SB 39 took some persuasion. Educating children about proper OHV use would now be required, an unpopular requirement with many Utah lawmakers.\footnote{Audio CD 1987, supra note 31.} However, one Utah Representative who supported the SB 39 pleaded with other members of the House, saying “we’ve got to teach these kids—we’ve got to give them an edge on [these OHVs] so that they can stay alive.”\footnote{Id.} Those who opposed SB 39’s training requirements said it’s the job of a parent to teach children how to ride OHVs.\footnote{Id.} However, the supporters of SB 39 countered by asking how many parents are actually qualified to teach their children proper OHV use, and what happens when a child who was properly trained is run over and killed by another child whose parents did not properly train their child.\footnote{Id.} The training requirement of SB 39 was designed to tilt the odds of OHV dangers in the favor of young children, even if it was “just a little bit.”\footnote{Id.}

SB 39 created a balance between public safety concerns and the desires of families wanting to engage in OHV activities.\footnote{Id.} Public safety advocates claimed SB 39 fell far short of adequately protecting the public.\footnote{Id.} If these advocates had their way, children under the age of twelve would have been completely restricted from operating OHVs.\footnote{Id.} On the other hand, supporters of SB 39 claimed the training provisions and age limitations would adequately address the concerns of Utah OHV accidents.\footnote{Id.} Regardless, the bill passed and became law; unfortunately, the balance created by the bill would dangerously shift eleven years later.

\textbf{B. The Amendment: Boys and Girls, START YOUR ENGINES!}

In 1999, \textsc{Utah Code Ann.} §41-22-29 was amended by House Bill 140 (“HB 140”).\footnote{Act of Mar. 17, 1999, ch. 114, 1999 Utah Laws 453 (codified as amended at \textsc{Utah Code Ann.} §41-22-29 (West 2009)).} The amendment changed the statute in such a way that even the bill sponsor, Representative Brent H. Goodfellow, informed his fellow lawmakers that the proposed amendments “may seem somewhat questioning.”\footnote{Audio CD: Utah House of Representatives Floor Debate (Feb. 22, 1999) (on file with author) [hereinafter Audio CD 1999].} HB 140 was

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intended to “open th[e] window just a little bit to allow someone under the age of eight to ride [OHVs] . . . under certain conditions . . . .” 54

The window was opened more than just a little bit. The amendment removed any age restrictions whatsoever for children wanting to practice and race in sanctioned events. 55 This result is contrary to the original legislative intent in passing § 41-22-29. It is also contrary to the recommendations of the CPSC and the AAP. 56

The reasoning used by Representative Goodfellow during floor debates places business and economics over child safety. For example, in attempting to collect votes to pass HB 140, Representative Goodfellow noted that other surrounding states allow children to race in sanctioned events and twice mentioned the “good amount” of money parents spend on racing. 57 He distinguished the occasional OHV rider from the “fanatics”—or those who race competitively. 58 Not only does such a distinction fail to consider the vulnerable state of a young child’s physical and mental abilities, but it also overlooks the increased dangers posed by racing and the great lengths ‘fanatics’ will go to win.

For example, a father of a seven-year-old boy, who is now allowed to race under the 1999 amendment, “loosened” the boy’s motorcycle brakes so “he [wouldn’t] use them as much.” 59 HB 140 has also made it possible for very young children to race OHVs. It is not uncommon for Utah children to begin racing motorcycles and ATVs as young as three years old. 60

SB 39 took a step in the right direction, even if only a small one. The evidence was undeniable; Utah children were being injured and killed in OHV accidents, and SB 39 attempted to provide protections for these young people. HB 140, on the other hand, replaced sound reasoning with dollars and cents. Because OHV accidents have been increasing since 1998, laws designed to protect children should not have been altered to “open the window” to increased child endangerment.

54 Id.
55 While the amendment removed the eight-year age requirement for practicing and racing in sanctioned events, it did require that (1) the child be under immediate supervision of an adult, (2) advanced life-support personnel be on the premises, and (3) ambulance service be on the premises. Id.
56 All-Terrain Vehicle Injury Prevention, supra note 22, at 1352.
57 Audio CD 1999, supra note 53. Representative Goodfellow also considered many non-economic reasons for allowing children younger than age eight to race OHVs in sanctioned events, such as channeling children into productive activities to avoid gang involvement and promoting family activities. Id. However, even the non-economic justifications do not outweigh the dangers posed to young children who ride OHVs.
58 Id.
60 Id. at 1.
III. IF A MAN BRANDISHING A STICK OF DYNAMITE HAS SOMETHING TO SAY, IT’S A GOOD IDEA TO LISTEN: COMPREHENSIVE OHV LAWS WE CAN ALL LIVE WITH

OHVs can be “unpredictable,” and the dangers associated with these vehicles may “strike suddenly and violently.” The OHV industry acknowledges these dangers and has attempted to improve rider safety through legislation and various rider education programs. If only parents and lawmakers would listen.

A. Attention: Calling All Legislators

The OHV industry has recommended standards designed to reduce the chance of serious injury or death. In fact, the industry has “made unprecedented and unified efforts to promote the safe and responsible use” of OHVs for over twenty-five years. These efforts have included training programs and public awareness campaigns to promote safe and responsible OHV use. Perhaps most significant is the industry’s recommended model legislation, which includes the following primary safety provisions:

1. Requires protective gear: All ATV riders are required to wear eye protection and an approved safety helmet.
2. Prohibits passengers: The carrying of passengers is not allowed in any circumstance.
3. Codifies operator age restrictions: No one under age sixteen may operate an adult-sized ATV (engine capacity greater than 90 cc) on public land. Youth-size ATVs (engine capacity 70 cc up to and including 90 cc) may be operated on public land only by those aged twelve and older.
4. Requires adult supervision: Persons under age sixteen must be under continuous adult supervision while operating an ATV on public land.
5. Promotes education: States must implement a comprehensive ATV safety education and training program, which provides for the hands-on training of ATV operators.
6. Establishes safety certification: All persons operating an ATV on public land must have a safety certificate.
7. Prohibits ATV operation on public roads.

Utah legislators have failed to adopt one of the most important provisions of the industry’s model legislation: operator age restrictions. Most children who die

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61 U.S. Consumer Prod. Safety Comm’n, supra note 16.
62 Setchell, supra note 11, at 38.
65 SPECIALTY VEHICLE INST. OF AM., supra note 63, at 3.
or become injured in ATV accidents drive or ride on adult-sized ATVs. In fact, 
“[c]hildren younger than 16 are twice as likely to be injured on adult ATVs as 
compared to those riding youth ATVs.”

Similarly, Utah legislators should also increase the minimum age allowed to 
operate OHVs on public land from age eight to age twelve. The balance, strength, 
agility, and other cognitive factors needed to control ATVs are significantly more 
developed in twelve-year-olds than in eight-year-olds. Also, older children are 
able to appreciate the risks of their actions more, even if they still engage in risk-
taking behaviors.

Finally, Utah legislators should also prohibit OHV riders from carrying 
passengers on vehicles designed for single person use. Most ATVs are designed to 
carry only one person. Moreover, “ATVs are designed for interactive riding — 
drivers must be able to shift their weight freely in all directions, depending on the 
situation and terrain.” Carrying passengers on ATVs designed for a single rider 
makes it difficult for drivers to control the vehicle.

Adopting all of the industry’s model legislation provisions would significantly 
increase child safety. For example, when New Jersey prohibited children younger 
than sixteen years old from operating ATVs over 90cc on public lands, fatalities 
involving riders under sixteen decreased from 29% of total ATV fatalities to 0%. 
Likewise, when Kentucky adopted a similar law, the percentage of total ATV 
fatalities involving riders under sixteen decreased from 55% to 22%

Critics of the model legislation may claim that it is a parent’s responsibility to 
determine what size of ATV is appropriate for their child. Likewise, because 
children possess varying degrees of skill needed to ride and control OHVs, parents 
should determine at what age their child may ride OHVs. Additionally, because 
OHV recreation is a family-oriented activity, critics may also claim that 
prohibiting passengers on OHVs is overly restrictive on an individual’s right to 
choose how she raises her family. To answer the critics, the original intent of Utah 
lawmakers when they created the first protective OHV legislation of its kind 
should be revisited. In passing SB 39, Utah lawmakers doubted a parent’s ability to

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66 Current Utah laws in harmony with industry standards include: OHV riders under 
the age of eighteen and riding on public land must have completed a safety course, UTAH 
CODE ANN. § 41-22-30 (West 2009); riders younger than eighteen must wear safety 
helmets, UTAH CODE ANN. § 41-22-10.8 (West 2009); ATVs that are limited to on-
highway use, UTAH CODE ANN. § 41-22-10.3 (West 2009); and, adult supervision 
required for children younger than eighteen, UTAH CODE ANN. § 41-22-30 (West 2009).

67 ATV Safety, supra note 42.

68 Id.

69 Id., supra note 24, at 101.

70 Id.

71 Id., supra note 42.

72 Id.

73 Id.

74 SPECIALTY VEHICLE INST. OF AM., supra note 63.

75 Id.
properly teach and educate children on ATV safety. And, just because one parent is qualified to instruct and properly monitor the safety of their child does not mean parents of other OHV users are likewise qualified. By passing SB 39, Utah lawmakers sought to give children a better chance of staying alive—to place the odds “just a little bit in their favor.” Adopting all provisions of the industry’s model legislation would help to increase these odds.

**B. Attention: Calling all Parents**

Adopting all provisions of the industry’s recommended standards would not be a fix-all solution. These laws and recommendations only apply to riding OHVs on public land. This means parents and guardians of young children must be well-informed about proper OHV use and safety standards, and more importantly, parents must be willing to enforce the same standards that apply to public land in private settings. Any doubt regarding the need of parental cooperation in ensuring OHV safety is overshadowed by the fact that two of the last three OHV-related child deaths in Utah occurred on private property, and, also resulted from violations of Utah law or the industry’s recommendations. Research suggests that more than 92% of all ATV crashes involve one or more user behaviors that are strongly and visibly “warned against” by the OHV industry.

Many parents who allow their children to ride ATVs and motorcycles claim that it is a family affair that strengthens family bonds. As the modified adage goes, “the family that rides together stays together.” No doubt parents enjoy well established “constitutional rights to manage the ‘care, custody, and control of their children.’” Parents enjoy these rights, however, based on the presumption that they act in the best interest of their child. Parental discretion is supposed to protect children because of a child’s under-developed “maturity, experience, and capacity for judgment required for making life’s difficult decisions.”

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76 Audio CD 1987, supra note 31.
77 Id.
78 See Boy, 8, Dies in Dirt Bike Accident, supra note 4; 4-Wheeler Accident Kills a Southern Utah Boy, supra note 4.
79 For example, in one incident, a six-year-old boy who was riding as a passenger was killed when the ATV, driven by a ten-year-old child, flipped over. Neither child was wearing a helmet. 4-Wheeler Accident Kills a Southern Utah Boy, supra note 4. In another incident, a seven-year-old boy was killed after his ATV collided with a dump truck on a dirt road. Draper Boy Killed in ATV Crash with Dump Truck, supra note 4.
80 SPECIALTY VEHICLE INST. OF AM., supra note 63.
81 Renzhofer & Turner, supra note 28 (“The [motocross] racing community brings families together. It brings a lot of people together.”).
82 See, e.g., Abbott, supra note 59, at 1 (“a family that races together stays together”).
83 In re Estate of S.T.T., 2006 UT 46, ¶ 13, 144 P.3d 1083, 1087 (citing Troxel v. Granville, 530 U.S. 57, 66 (2000)).
85 Id. (quoting Parham v. J.R., 442 U.S. 584, 602 (1979)).
“The line between letting boys be boys and reckless parenting is elusive.”86 Utah’s largely conservative population is “supportive of parents running their own children and the right to choose . . . .”87 After all, even crossing the street is dangerous. In fact, Utah lawmakers felt justified in passing HB 140 because “we allow children to participate in little league football, and soccer, and baseball, and basketball, and all of these sports have some risk.”88 While there are certain risks involved in any activities children engage in, child health experts have a hard time believing children are safe while driving OHVs.89

Parents must take responsibility and become educated about OHV safety and enforce the same laws and recommendations that apply on public land even if their child is operating an OHV on private property. Of the three most recent OHV-related child deaths, one child died doing what he “loved doing the most.”90 Another child “loved to jump and go fast” and “ride with the older boys.”91 Despite a particular child’s passion or favorite activity, parents must heed the “tobacco-like warnings” found in owner’s manuals and labeled on newer OHV vehicles.92 Because parental discretion is supposed to protect children, all of the laws and OHV industry recommendations suggested in this Note must also be enforced by parents in private settings.

CONCLUSION

The OHV industry’s recommended model state legislation should be adopted in Utah in its entirety. OHVs have inherent design and operational features that can be overwhelming and dangerous to riders of all ages. However, OHVs pose a heightened risk to children who have immature cognitive skills and an underdeveloped physiology.

Utah lawmakers were aware of the heightened risks OHVs posed to children back in 1987 when SB 39 was passed. The Bill effectively increased the welfare and safety of children who ride OHV’s. Recently, however, Utah lawmakers seem to have placed economics over the welfare and safety of young children, yet OHVs continue to pose dangers to children and others on both public and private land. Because the OHV industry has acknowledged and attempted to remedy these dangers, it is suggested that both Utah lawmakers and parents alike take action to implement the industry’s recommendations as doing so would greatly decrease the instances of child fatalities caused by OHVs.

87 Id.
88 Audio CD 1999, supra note 53.
89 Renzhofer & Turner, supra note 28.
90 Draper Boy Killed in ATV Crash with Dump Truck, supra note 4.
91 Boy, 8, Dies in Dirt Bike Accident, supra note 4.
92 Setchell, supra note 11, at 36.