KIDS IN DANGER℠
10 Years of Dedication 1998-2008
Protecting Children by Improving Children's Product Safety

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Crib Safety: Assessing the Need for Better Oversight
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Good morning Chairman Stupak, Ranking Member Walden and committee members. First, let me thank the House Subcommittee on Oversight and Investigations for holding this important hearing on crib safety and for giving us the opportunity to participate.

Kids In Danger (KID) is a nonprofit organization dedicated to protecting children by improving children's product safety. The organization was founded in 1998 by Linda Ginzel and Boaz Keysar, after the death of their son Danny Keysar in a poorly designed, inadequately tested and finally recalled portable crib. KID's mission is to promote the development of safer children's products, advocate for children and educate the general public about children's product safety.

KID works closely with other consumer groups, especially the Consumer Federation of America, Consumers Union and Keeping Babies Safe on the issue of crib safety and urge the committee to seek input from these groups as well. This testimony today represents the views of Kids In Danger along with the Consumer Federation of America.

Importance of Crib Safety

KID has always had a special interest in sleep environment safety, including cribs. The crib is first and foremost a safety device – meant to keep a child safe while sleeping and more importantly while the caregiver is sleeping. Cribs are the only children's product meant to be safe enough for a helpless infant to use while unattended by an adult.

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DON'T LEARN ABOUT RECALLS FROM YOUR BABY

The issue of sleep environments is larger than just cribs and yet the safety issues are similar across all products meant for sleeping –

- Again, cribs must be safe enough to leave the child unattended while sleeping, with the assumption that a baby will also spend some time awake, but unattended, in the product.
- Parents must understand the age, weight, height and developmental limits of each product. Bassinets can be used only until the time a baby starts to roll over or push up on her hands and knees. Crib mattresses must be lowered as a child grows. And most cribs are considered safe sleeping environments only until a child can attempt to climb out – usually around age two, but sometimes earlier.
- Cribs are usually set up in the home by the consumer. Rarely do they come pre-assembled or does a professional from the manufacturer or retailer come to the consumer's home for installation.
- Cribs are probably the most expensive nursery item parents buy. It should be expected that parents plan to use cribs for more than one child or sell or hand it down when their children outgrow it.
- Cribs are often taken apart and reassembled, either between children or while moving or changing location in the home. In between, they may be stored in attics, basements or garages until needed again.

History of crib standards and safety efforts

While we appreciate the committee taking the historic step of holding a hearing about crib safety, concerns about this issue are not new. Back in 1984, the parents of Danny Lineweaver started the Danny Foundation after their Danny was strangled on the corner post of a crib. Their experience led to changes in the voluntary standard (ASTM F 1169) on that issue and others. I joined the ASTM

International subcommittees on juvenile products in the spring of 2001. Since that time, and even before, crib durability, more strenuous testing, hardware failures and assembly problems have been raised at every meeting, addressed by task groups, and the subject of testing on everything from humidity to side impact – with little or no changes to the standard for years.

At the same time, the mandatory standard has been stuck in time as well. All new changes have been made to the voluntary standard – even the vital safety measure of banning corner posts on crib was integrated into the ASTM voluntary standard and does not appear in the Federal standard.

In 2001, Marla Felcher's book, **It's No Accident, How Corporations Sell Dangerous Baby Products**[1], was published. All the concerns raised here today are addressed in that book. The failure of the voluntary system to adequately protect children is what led KID to support the drafting of strong mandatory standards for cribs and other juvenile products and to require third party testing to those standards. Congresswoman Jan Schakowsky first introduced legislation calling for this in 2001; it was included in the Consumer Product Safety Improvement Act of 2008 (CPSIA) and has led to U.S. Consumer Product Safety Commission (CPSC) now developing a mandatory crib standard.

In the spring of 2005, working with freshman engineering students at Northwestern University through KID's Teach Early Safety Testing (TEST) program, KID asked students to review incident data from crib injuries or failures and design a product that would address a prevalent hazard. The students chose to develop an aftermarket device that parents could install to prevent drop-side failures. Nineteen year old students could see more than four years ago that this was a likely failure scenario.

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[1] Felcher, E. Marla. *It's No Accident: How Corporations Sell Dangerous Baby Products*. Monroe, ME: Common Courage, 2001. Print.

So, it is not that the problem wasn't known; rather it is that CPSC lacked the resources and authority, and manufacturers lacked the will, to strengthen standards. Now, with the statutory requirement in the CPSIA, a strong standard must be developed.

Current State of Crib Safety

Since September 2007, 5.8 million cribs have been recalled in the U.S. – this number does not include at least a million more of the same cribs that were recalled in Canada. Most were certified by the Juvenile Products Manufacturers Association, indicating compliance with the ASTM standard for full-size cribs, which includes the mandatory federal standards as well. Many were recalled for hardware failures and drop-side failures, but some were recalled for clear violations of the current mandatory standard – painted with lead paint or not meeting the required dimensions to keep a baby safely contained in the product. If manufacturers are making cribs that don't meet standards that can be confirmed with a tape measure and lead testing swab, it is not surprising that their designs lead to hardware failures that cause entrapments and deaths.

But recalls don't paint the full picture. Cribs still on the market have similar hardware and drop-side failure incidents to those that have been recalled. KID received information from an attorney[2] that detailed an incident in a Dorel Juvenile Group crib that appears identical to those involving both Simplicity and Storkcraft cribs that have been recalled. Kids In Danger is currently working with a mother whose new Graco crib's drop-side fails continually and yet the companies involved won't replace her product. A recent document sent to the ASTM task group that met these last two days on the crib standard listed more than 300 incidents.

[2] Kelly, Charles, Hersh & Hersh,. "Citizen Letter on Dorel Industries Inc. Drop-Side Cribs." Letter to Theresa Nelson, CPSC. 7 Dec. 2009. MS.

The current situation leaves parents in a horrible position. Kids In Danger get calls often asking which cribs are safe, which ones won't be recalled. We can be of limited help. We can't say to look for the JPMA label, even though it does indicate minimum testing – since most of the recalled cribs were certified. We can say to stay away from drop-side cribs, but there are also incidents and deaths with mattress support issues, fixed side failures, other hardware failure and breaking crib slats. Other parents, who may already have a drop-side crib, now hear of the move away from this design and wonder what to do with their crib. The last thing any of us want is for parents to begin to believe other places are safer for their baby than the crib. That is what gives urgency to the development of a strong standard with rigorous testing requirements – so parents can rest assured while their baby sleeps at night that the crib is safe.

Consumer Use of Cribs

Let me address consumer expectation and use of cribs and other sleeping environments. There is not a consumer out there who expects to pay anywhere from $200 to over $1000 for a crib, use it for two years for one child and then destroy it. We welcome the addition of 'lifetime products' that allow parents to convert a crib to a toddler bed and then an adult bed – increasing the likelihood a new crib will be bought for a new child. But in reality almost every crib is used for more than one child, for more than 2 years. Using the same crib for all of your children, even if you have many; lending it to your sister, donating it to charity or even selling it, is not a misuse of a product. In these tough economic times and in the midst of a growing 'green' mindset, it is exactly what manufacturers should expect will happen to their products.

At ASTM meetings, currently the only forum for discussing cribs, CPSC brings incident data on these products for the committee to review and consider if changes to the standard are needed to address a safety hazard. Automatically, the manufacturers in the room want to dismiss any incident in a crib older than five

years that has been used more than once – somehow blaming the family for thinking their product should last through more than one child. Here are the facts of consumer use:

- Parents will use a crib, bassinet and portable crib for more than one child. They will offer these products to their family and friends and even sell them secondhand. It isn't consumer misuse when a crib is assembled, taken apart and reassembled more than once. In addition to our military families who move frequently, other families do move and many parents, on the advice of their doctors, initially set up a crib in their room and then move it. Portable cribs are meant to be set up and taken down numerous times. So if a crib can't handle being reassembled – it should not be sold.

- If a crib falls apart, losing screws or little safety plugs, or has a drop side that won't stay up – parents are going to try to fix it. They aren't engineers in most cases and don't clearly understand the risk that a different screw or even duct tape might pose. Give parents a crib that lasts, hardware that doesn't fall out and clear instructions on how to assemble, store, and use the product.

CPSC Development of a Strong Mandatory Crib Standard

CPSC staff, in particular Patricia Edwards and Jonathan Midgett, have been strong advocates for standards and testing requirements to address the failures being reported to the agency. KID is confident that now, as they work on the mandatory standard required by the CPSIA, that the staff will continue to press for a strong standard that will assure parents of the safety of their crib. KID applauds the CPSC's decision to move up the development and release of that standard to this year – it is a crisis situation that needs an immediate response.

There are not adequate performance requirements in either the mandatory or ASTM voluntary standards pertaining to: (1) the durability of drop-side systems

and related hardware, (2) the durability of other crib hardware, (3) wood strength or quality, (4) the hazards that can result from incorrect assembly and reassembly/storage issues and (5) warnings to parents to ensure safe usage.

ASTM just spent two days at CPSC working to address these shortcomings in the voluntary standard. Once this process is complete, hopefully at the full ASTM juvenile product subcommittee meeting in March, CPSC can more easily integrate the voluntary standard into the new mandatory one.

We also urge CPSC to look beyond ASTM and consider all current test methods in other standards, including crib standards from Underwriters Laboratories (UL) developed in 2001, British Standards Institute (BSI), Health Canada, and the International Organization for Standardization (ISO), as well as retailers' internal testing methods that have been shared with CPSC (such as those from Toys"R"Us). The UL standard was developed with input from many parties and appears to be the most rigorous standard currently available – exactly what is needed to stop the myriad failures seen in the field.

Recommendations for a Strong Mandatory Standard

The ASTM F1169 standard now contains an effective ban on the drop-side design of cribs. While the need for durability testing for drop-side hardware and other hardware issues has been discussed for years, the ban on the design was a new proposal in the past year. While it solves the problem for drop-side crib failures, it does nothing to subject cribs to more strenuous testing that would weed out designs that weren't durable and bring to light hardware issues. Consumer groups support the ban – the injury and death rate in these cribs has been too high, but still believe the durability question of hardware in general needs to be addressed.

One of the most important provisions to include in a CPSC mandatory crib standard is a durability test which is sometimes called a "racking test." This test

includes moving the crib and applying forces that more accurately imitate a child in a crib for longer periods of time and might loosen hardware or stress plastic parts.

The ASTM standard also addresses the issue of wood slat strength, after thousands of cribs were recalled because slats were breaking – some with only the force of a toddler waking up from a nap. CPSC should closely examine the performance standard and tests included to make sure they are adequate to address the hazard.

In 1997, Brandon Dorian was found hanging through the side rail of his Cosco metal crib[3]. His face was pressed against the mattress and he was suffocated. When assembling the crib, Brandon's grandfather had inadvertently replaced one of the side rails with the mattress support. The parts fit perfectly with one deadly difference – the slats were farther apart on the mattress support, allowing Brandon's body to slip through while his head was trapped. And Brandon wasn't the only baby trapped – the CPSC had 47 reports of misassembly and 27 reports of additional entrapments. After Brandon's death, the company recalled the crib, but due to the ineffective nature of recalls, another baby was trapped and killed a year later.

So here it is 2010 and cribs are still easily misassembled and assembly instructions are confusing and unclear. The new standard must address assembly issues as well as the likelihood that a product will be taken apart, stored and reassembled at least once in its useful life. The standard should address what type of hardware should be allowed for parts a consumer will assemble, how parts fit together and ways to increase the likelihood it will be properly assembled or reassembled. Far from seeing misassembly as solely a consumer use problem, I would assert that products designed in such a way that parts can be assembled in

[3] "Plaintiff vs. Cosco, Inc., Montgomery Ward, and Juvenile Products Manufacturers Association," Summons & Complaint, State of Michigan Circuit Court for the County of Oakland, Case #97 547894-NP, July 16, 1997

multiple ways, including ways that lead to death, is a design problem that must be solved.

In the new mandatory standard, CPSC should carefully review the warning labels and instructions. Consumers need basic straightforward information written not to appease the lawyers, but to communicate clearly to parents what is safe and what is not. Warnings should be placed where parents as well as occasional caregivers will see the information. When possible, hazards should be eliminated rather than warned against. So rather than warning parents to avoid putting the side rail on upside down, manufacturers should design the crib so that isn't possible. To avoid parents going to the local hardware store to get replacement parts, manufacturers can make screws and bolts an unusual size or shape to make that unlikely.

As CPSC writes a new mandatory standard and develops a strong third party testing program for cribs, the process must be open and inclusive. Manufacturers are an important sector of the standards setting process –their knowledge and experience is vital– but other stakeholders must be involved in the process. In particular, the process by which products are tested and certified to meet the new mandatory standard must be transparent, with testing results available to consumers and others.

Other Actions to Keep Cribs Safe

In addition to the new standard that is underway and a rigorous and transparent testing program, CPSC can do more to improve crib safety.

First, CPSC should continue work already started on the public consumer incident database. This important source of safety information is scheduled to be up and running by March of 2011. The database is a vital approach to get safety information to consumers, even before there is a recall and will provide essential data to CPSC to act quickly on emerging hazards or troubling products.

Second, CPSC, with oversight from Congress, must strengthen recall effectiveness. It is not enough to recall a product if CPSC's own data shows that

most of the dangerous items remain in use. Just this week, while preparing for this testimony, I found an Evenflo Happy Cabana Portable Crib for sale through eBay, without the manufacturer's 'fix' for the hazardous product. This product was recalled in 1997 after the death of Jared Adams[4]. The provision in the **Danny Keysar Child Product Notification Act**, part of the CPSIA which require a product registration program for cribs and other durable infant and toddler products, will help get unsafe products out of consumer use. CPSC must be rigorous in monitoring not only the collection of the data and its use in a corrective action plan, but in publicizing the value in participating in the manufacturers' program as well as registering for CPSC's own recall notices.

This Committee, as part of your ongoing oversight role, could ask CPSC for an annual report on recall effectiveness. The report could include information from the monthly Corrective Action Plan reports that manufacturers file with CPSC. Currently that data is only available to the public through the lengthy FOIA process at CPSC and filings appear to be incomplete. By making this information public, the Committee will provide incentive to companies to improve their recall programs.

Finally, CPSC should use their enforcement powers to require adequate corrective actions for recalls. While manufacturers might prefer to send out a new plastic part to fix the plastic part that broke, it is often in the best interest of the consumer to replace or refund the product. A recent survey KID conducted with families in Illinois showed a marked increase in participation when a refund or replacement is offered.

Again, many thanks to CPSC staff for their hard work on crib safety and for beginning this process for a strong mandatory standard. And thanks to this Committee for airing these issues and taking seriously Congress's role of oversight of consumer safety.

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[4] Jared, a toddler from Antioch, was the third child to die in the Evenflo portable crib, a product that has the same flawed design as the Playskool Travel-Lite that killed Danny Keysar. Another child died in 2003 in Wisconsin.