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Time Is Right To Roll Out Bicycle Legislation

By **Bob Anderton**

What will the future bring for bicycle-related legislation in Washington? Hopefully, bills that actually become enforceable laws and make our state safer for everyone.

Prosecution of Drivers Who Kill Bicyclists

The City of Seattle adopted an ordinance in 2005 making it a crime to commit a traffic infraction that results in death or great bodily harm, without requiring that the driver have a culpable mental state.¹ The Court of Appeals, in *Seattle v. Wilson*, recently held that the ordinance violated a state statute that prohibits classifying a traffic infraction as a criminal offense.²

The court's ruling prompted an uproar among many bicyclists, who have repeatedly seen their fellow cyclists killed by drivers who were not prosecuted for vehicular homicide because, according to prosecutors, recklessness was too hard to prove. Seattle's ordinance was an attempt to remedy this.

After Seattle's ordinance was found to be unenforceable, Cascade Bicycle Club hosted a Traffic Justice Summit to work toward statewide legislation to make it easier to prosecute drivers who kill bicyclists. I attended the summit and heard the testimony of Michelle Black, whose husband was killed earlier this year while riding to work. She said she was more interested in ensuring that drivers who kill bicyclists lose their licenses than putting them in jail.

Like Black, I am concerned with the state spending money we don't have to lock up people who are only dangerous when they are behind the wheel. There must be a better way. Cascade Advocacy Director David Hiller says that the organization is open to input on this legislation. Mandatory loss of one's license after killing someone with a motor vehicle would seem to be a reasonable approach.

Wrongful-Death Damages Reform

In *Phillippides v. Bernard*,³ a divided Washington Supreme Court ruled that non-economic damages were not recoverable for the family members of an unmarried adult bicyclist who were not economically dependant upon him at the time of his death.

My office recently represented the family of another unmarried bicyclist with no economic dependants. For almost three years, we lobbied in favor of bills that would have allowed complete recovery and stop the perverse current reality that it is cheaper to kill certain people than to simply injure them.

The Legislature has come close to passing bills that would correct this injustice.⁴ Unfortunately, with the economy in a tailspin, legislators were concerned that expanding damages could result in the state paying larger verdicts and the legislation has yet to pass.

More recently, however, in *Armantrout v. Carlson*,⁵ the Court narrowed *Phillippides*, holding that dependency can be proven by showing "services that have a monetary value."

The legislation should still become law. While the state may indeed pay out additional damages, this

would only be to compensate for fault on the part of the state in a loved one's death. On the other hand, money spent locking up a driver who kills someone compensates no one. If saving money is a priority — and it is — let's incarcerate fewer people and compensate more people.

Strict Liability

Even better than more fully compensating victims and their heirs would be to prevent collisions in the first place. How do we do that? Strict liability. Very few drivers intentionally hit bicyclists, but every day drivers blithely turn in front of oncoming bikes, open doors, and cut off and try to squeeze by bicyclists.

Those of us who ride daily frequently experience angry drivers who see bicyclists as infringing upon "their" roads. A law that clearly requires drivers to yield to bicycles and pedestrians and which makes motorists liable for not yielding would go a long way to deter drivers who like to give bicyclists a scare or simply fail to pay sufficient attention when operating a dangerous machine.

This is not unprecedented. It is the law in the Netherlands. At sea, power boats yield to sailboats. Here in Washington we have strict liability for dog bites.⁶ The law is fairly clear for bicyclists using the sidewalk:

The driver of a vehicle shall yield the right of way to any pedestrian or bicycle on a sidewalk. The rider of a bicycle shall yield the right of way to a pedestrian on a sidewalk or crosswalk.⁷

Why not just continue and clarify this line of thought:

Motor Vehicles Shall Yield to Bicycles and Pedestrians. The driver of a motor vehicle who fails to yield to a bicycle or pedestrian shall be strictly liable for such damages as may be caused by the failure to yield.

What about a crazy bicyclist wearing all black, riding at night, with no reflectors or lights? Just as there is a defense for harassing a dog that bites,⁸ there could be a defense for bicyclists or pedestrians with a death wish:

Visibility or Recklessness as a Defense. Proof that a bicyclist or pedestrian intentionally or recklessly caused a collision, or that a bicyclist's failure to have required visibility equipment⁹ was a proximate cause of a collision, shall constitute contributory negligence.

If drivers were more wary of bicyclists, more people would be willing to bicycle. In the Netherlands, about one-third of all trips are made by bicycle. Here in Seattle, where many people think we are big bike riders, only about 3 percent of us bike to work.

Bicycling is good for the planet, it's good exercise for bicyclists, and it's even good for drivers because more people on bikes means fewer people in cars. Making drivers strictly liable for collisions with bicyclists and pedestrians would do more than make liability clear — it would encourage bicycling by making it safer.

Rules of the Road

The Bicycle Alliance of Washington and Cascade Bicycle Club have been advocating for a law requiring a minimum three feet of distance for vehicles passing bikes.¹⁰ This is probably good, although three feet doesn't sound like much and I wonder whether it would actually reduce side-swiping. Certainly it would not have the deterrent effect that strict liability would.

Seattle has been busy painting "sharrows" on many of our streets. The 2009 Seattle Bicycling Guide Map raises the obvious question, "What do sharrows mean for motorists and bicyclists?" For both, it states: "Follow the rules of the road as if there were no sharrows." Sharrows, therefore, are not as helpful as bike lanes where cars have the duty to yield to bikes.¹¹

Now, Seattle also has green bicycle lanes. According to the Guide Map, these "are intended to reinforce good behavior for all road users." The green just confused me. But the Map Guide clarifies, for both drivers and bikers, "Follow the rules of the road as if there were a bicycle lane with no green coloring." One might wonder whether the paint industry had a hand in drafting the Seattle Bike Master Plan.

Bike boxes (or advanced stop lines) are my preferred approach for modifying the rules of the road. Our neighbors in Portland are using their green paint to denote a space for bicyclists to stop in front of cars at intersections.¹² Bike boxes help prevent "right-hook" collisions where cars pass bikes and turn into them. They also clarify that bicyclists can and should go to the front of the line at intersections.

Seattle ought to use our paint for bike boxes that encourage bicycling and help prevent collisions rather than for symbols that mean nothing. ■

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¹ SMC 12A.06.010(B).

² *Seattle v. Wilson*, 213 P.3d 636 (2009).

³ 151 Wn.2d 376 (2004).

⁴ SB 5816 in 2007 and HB 1873 in 2008.

⁵ 214 P.3d 914 (2009).

⁶ RCW § 16.08.040.

⁷ RCW § 46.61.261.

⁸ RCW § 16.08.060.

⁹ RCW § 46.61.780 requires bike lighting during the "hours of darkness."

¹⁰ House Bill 1491 would amend RCW § 46.61.110(3) to read: "The driver of a vehicle approaching a pedestrian or bicycle that is on the roadway or on the right-hand shoulder or bicycle lane of the roadway shall pass to the left at a safe distance, of no less than three feet, to clearly avoid coming into contact with the pedestrian or bicyclist, and shall not again drive to the right side of the roadway until safely clear of the overtaken pedestrian or bicyclist."

¹¹ The Seattle Municipal Code states: "The operator of a motor vehicle shall not drive in a bicycle lane except to execute a turning maneuver, yielding to all persons riding bicycles thereon." SMC 11.53.190 (emphasis added).

¹² Bike boxes are a common sight in the Netherlands, Denmark and the U.K.