

On the Road with Bikes and the Law

By Bob Anderton

Think you know the law when it comes to bicycles? Recent legislation and arcane statutes may be quite different than many bicyclists, pedestrians, drivers — and even some lawyers — believe.

Here is a quick overview of some of the most vexatious bike laws:

Bicycles on the Sidewalk

Whether one can ride a bike on the sidewalk depends upon where that sidewalk is, but contrary to popular belief, it's generally allowed.

- Seattle bicyclists may ride on any sidewalk provided they do so in a "careful and prudent manner." See Seattle Municipal Code 11.44.120.
- Bellevue bicyclists can ride on the sidewalk unless doing so would "unreasonably inconvenience pedestrians." See Bellevue Municipal Code 11.60.070.
- Anywhere in Washington, unless otherwise locally legislated, "every person riding a bicycle upon a sidewalk or crosswalk must be granted all of the rights and is subject to all of the duties applicable to a pedestrian by this chapter." RCW 46.61.755(2).

Bike Lights

RCW 46.61.780 requires bike lighting during the "hours of darkness." This phrase is defined as beginning "a half hour after sunset." RCW 46.37.020. The Pacific Science Center provides a helpful table for calculating sunsets (it's on the web at <http://exhibits.pacsci.org/weather/Sunrise.html>).

Bicyclists are sometimes ticketed for not having lights after being in a collision with a car. As an attorney representing injured bicyclists, I've experienced the joy of finding a 911 transcript beginning one minute before the "hours of darkness" and eliminating an allegation of contributory negligence and (the insult to the injury) a traffic ticket, too.

Passing Laws

- *No Passing when Approaching:* Drivers may no longer cross the center line to pass when they can see a bicyclist or pedestrian "approaching from the opposite direction" or who is simply "present" when this would be "within a distance unsafe to the bicyclist or pedestrian due to the width or condition of the roadway, shoulder, or bicycle lane." See RCW 46.61.125(1)(d).
- *Stay Left Until Clear:* When approaching a bicycle or pedestrian in the road, on the right shoulder or in a bike lane, passing drivers have a duty to stay left "at a safe distance to clearly avoid coming in 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." RCW 46.61.110(2).

Passing on the Right

SMC 11.44.080 specifically allows bicyclists to pass cars on the right when

safe. The state's rules of the road are less clear:

Every person operating a bicycle upon a roadway at a rate of speed less than the normal flow of traffic at the particular time and place shall ride as near to the right side of the right through lane as is safe except as may be appropriate while preparing to make or while making turning movements, or while overtaking and passing another bicycle or vehicle proceeding in the same direction.

RCW 46.61.770(1) (emphasis added).

When this might be "appropriate" is explained in RCW 46.61.115 which permits passing only in two situations:

1. When passing a left-turning vehicle, see RCW 46.61.115(a); or
2. When there is room on the pavement. The actual language reads, "Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle." RCW 46.61.115(b).

While RCW 46.61.115 also limits passing to "conditions permitting such movement in safety" and without "driving off the roadway," it is not hard to imagine "appropriate" circumstances with room for a bicycle to safely pass where a Hummer or even a Honda would be stuck in traffic. As a bicycle commuter, I can personally attest to the pleasure of "appropriate" bicycle passing in the urban environment.

Stoptlights and Stop Signs

Many drivers (including our current Bar Bulletin editor) have been frustrated or shocked when bicyclists flagrantly fly through intersections. I have been asked to point out that these displays are illegal. They are: "The driver of any vehicle, every bicyclist, and every pedestrian shall obey the instructions of any official traffic control device applicable thereto . . ." RCW 46.61.050.

The difference, however, between a 30-pound bicycle and a 3,000-pound vehicle is clear: bicyclists who ignore red lights and stop signs do so largely at their own peril, whereas motorists risk the lives of others.

Crosswalks

One law that clearly makes sense is Seattle's SMC 11.44.100 which gives bikers using crosswalks "all the rights and duties applicable to a pedestrian under the same circumstances," meaning that motor vehicles must yield, but also requires bikers to yield to pedestrians in the crosswalk.

SMC 11.44.100 also prohibits foolishly aggressive bicycling with: "No person operating a bicycle shall suddenly enter a crosswalk into the path of a vehicle which is so close that the driver cannot yield safely."

Opening Doors

Urban bicyclists often use the phrase "getting doored" when hit by an abruptly opened vehicle door. Frequently, the painful result is a fractured shoulder.

The Rules of the Road are clear that drivers and their passengers have a duty to prevent this from happening:

No person shall open the door of a motor vehicle on the side adjacent to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle adjacent to moving traffic for a period of time longer than necessary to load or unload passengers.

RCW 46.61.620.

Seattle has a more comprehensive law that also prohibits entering or leaving a motor vehicle when doing so would interfere with traffic. See SMC 11.58.050.

Bicyclists Side-by-Side

SMC 11.44.060 forbids bicyclists to ride "more than two (2) abreast," thus, two bikes side-by-side would appear to be allowed. The exception is "on paths or parts of roadways set aside for the exclusive use of bicycles." On such bike-ways, there appears to be no specific limitation on the number of bicyclists who can ride side-by-side.

Helmets

Most people believe that bicyclists need to wear helmets, and in King County that's true, but the actual law is harder to find than some questionable tax loopholes.

There is no statewide requirement for bicyclists to wear a helmet. Perhaps there should be. A 1998 study by Harborview's Injury Prevention & Research Center found that helmet use varied according to age and location. In Seattle, helmet wearing was 60% for children, 37% for teens and 71% for adults. Outside of Seattle, it's a bit lower and it's much lower on the other side of the Cascades. Helmet use for Western Washington generally was 56% and only 33% in Eastern Washington.

The Spokane City Council attempted to legislate helmets for bicyclists, but Jim West, the city's infamous former mayor, vetoed the legislation. In 2004, the Spokane City Council overrode the veto and Spokane bicyclists must now wear a helmet or face a \$25 fine.

Where is the local helmet law? In the Seattle Municipal Code? No. In the King County Code? Nope. With some determination, you might find it hidden in the King County Board of Health Code, provided you can find the King County Board of Health Code (try www.metrokc.gov/HEALTH/bob/code/).

BOH 9.10.010(A) states, "Any person operating or riding on a bicycle not powered by motor on a public roadway, bicycle path or on any right-of-way or publicly owned facilities located in King County including Seattle, shall wear a protective helmet designed for bicycle safety."

Any police officer can impose a \$30 fine for violations of this hard-to-find law, however few do, probably because

they can't find the law under which to make the charge. See BOH 9.15.010.

Nevertheless, everyone ought to wear a helmet. The BOH law includes the following in its findings:

Studies completed in 1989 and 1996 by investigators at Group Health Cooperative of Puget Sound and the Harborview Injury Prevention and Research Center show that helmet use could reduce the number of head injuries involving bicycling by sixty-nine percent (69%) to eighty-five percent (85%).

. . . using tools developed by The Centers for Disease Control and Prevention it is estimated that nearly \$10 million would be saved annually in both direct and indirect costs for bicycle-related head injuries if every cyclist were wearing a helmet in King County.

BOH 9.04.010(B).

Riding Under the Influence

While it may not be legal to ride without a helmet, it is legal to ride while intoxicated. There is a specific RCW provision on "Intoxicated bicyclists." It allows a police officer to "offer to transport a bicycle rider who appears to be under the influence of alcohol or any drug" to a "safe place." RCW 46.61.790. However, it also states that the officer "shall not provide the assistance offered if the bicycle rider refuses to accept it." *Id.*

Apparently, the worst that can happen (at least as far as criminal issues are concerned) is the impoundment of a bike "if the officer determines that impoundment is necessary to reduce a threat to public safety, and there are no reasonable alternatives to impoundment." *Id.* And, "The bicycle must be returned without payment of a fee." *Id.*

The Court of Appeals has specifically held that "neither legislative intent, the statutory scheme, nor public policy support the conclusion that RCW 46.60.502 [the DUI law] was intended to apply to bicyclists."¹

The *Montesano* court noted that "drunk bicyclists are not capable of causing the tremendous 'carnage and slaughter' associated with drunk driving." Nevertheless, a drunken bicyclist is more likely to become carnage out on the road. Legal or not, it's probably a good idea not to ride drunk. ■

Bob Anderton is a bike commuter and represents bicyclists and other good people with serious injury claims. He is the immediate past editor of the Bar Bulletin and appreciates the Bar Bulletin Committee for choosing the "On the Road" theme with which he can shamelessly promote his practice area. Contact Bob at 206-262-9290 or at bob@andertonlaw.com. Check out www.washingtonbikelaw.com for more bicycling information.

¹ *City of Montesano v. Daniel Wells*, 79 Wn. App. 529, 536, 902 P.2d 1266 (1995).