



Luther S. Olsen

State Senator

14th District

Assembly Bill 388 Testimony of Senator Luther Olsen

Assembly Committee on Transportation

Thank you Chairman Ripp and Committee members for holding a hearing on Assembly Bill 388. Representative Bies and I appreciate the opportunity to submit testimony and discuss this bipartisan legislation which modifies traffic violation penalties against vulnerable highway users.

Every year, injuries and fatalities occur when motor vehicles collide with other roadway users who are not quite as protected as those traveling in motor vehicles. Senate Bill 307 defines vulnerable users as: pedestrians; bicyclists; operator of a moped or motor bicycle; an operator or passenger of an animal drawn vehicle, farm tractor, farm truck tractor, or implement of husbandry; a person riding in-line skates, a horse, or a play vehicle; law enforcement or emergency services operators while performing official duties; or a person who is rendering assistance to another.

Under current law, it is difficult for police and prosecutors to apply a consequence in line with the actions that have taken place. Today you will be hearing from a number of our friends and neighbors who have lost loved ones to motor vehicle accidents. Perhaps friends of Robert Gunderson of Muskego who was struck and killed by a driver who fell asleep at the wheel. The driver crossed the centerline and hit Gunderson head-on. The resulting fine was \$126 for failure to keep control of the vehicle. Loved ones of Sam Ferrito undoubtedly question the gravity of the penalty when he was struck and killed by a driver who merely received a \$206.80 fine for driving left of the center line and speeding. But it isn't just bicyclists who get injured and killed on the roads. Between 2005 and 2012, there were nearly 1,400 collisions involving farm machinery, including 708 injuries and 25 fatalities.

Senate Bill 307 accomplishes two main goals. The first is to raise awareness that Wisconsin roadways are used by more than just motor vehicles and in order to prevent injury to those not traveling with the protection of a vehicle, it is necessary to exercise caution while driving near



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them. This is similar to the double fines in work zones, which I think it is fair to say have made all of us more aware that we may see a construction worker on the road while passing through a work zone. To further raise awareness, this legislation includes an education component, which requires all approved driver education courses to include instruction relating to vulnerable highway users. They may or may not do this under current law; this bill would require the inclusion of a lesson on vulnerable users.

Secondly, in the event that an accident occurs and a vulnerable user is hurt, this bill gives police and prosecutors additional tools so that they can apply consequences that match the severity of the infraction. Specifically, violations that result in severe injury could face fines of up to \$1,000 and/or up to 90 days in jail. Incidents that cause death could result in fines of up to \$10,000 and/or up to nine months in jail. District attorneys have expressed frustration that under current law, even in egregious situations, they are often only able to issue an offender a relatively small fine. This bill addresses that problem without going so far as include any felony provisions.

Once again, thank you for the opportunity to submit testimony in favor of Assembly Bill 388.



STATE REPRESENTATIVE
Garey Bies
1ST ASSEMBLY DISTRICT

Representative Keith Ripp, Chair
Assembly Committee on Transportation
Room 223 North, State Capitol

Dear Chairman Ripp,

Thank you for holding a hearing on Assembly Bill 388, relating to vulnerable highway users. This is an issue that's very important to my district because we have thousands of visitors every year who come to bike or hike in our many parks and wonderful trails. I often hear how these bikers and other vulnerable individuals need better protections while using our roads. I think this bill strikes a reasonable balance on what penalties are appropriate should an accident occur.

The Senate held a public hearing on the bill on October 16, 2013. We heard several individuals testify about their own horrific experiences and others shared personal stories of a loved one who was killed. These stories all ended the same way. The driver of the automobile was either cited with a traffic fine or simply not cited at all. Bikers, pedestrians, farmers, etc. have every legal right to be on the road, but they don't have tons of steel protecting them like those driving automobiles. They deserve to have greater protections under the law.

Most drivers know that fines increase in construction zones. We passed that law in an effort to protect our highway workers. We need to draw this same type of attention to other vulnerable users on our roads.

At the Senate hearing, questions were asked about how this bill would actually change anything. I'm attaching with my testimony a response I received from Legislative Council outlining a few of the differences. Specifically, current law doesn't define someone as a "vulnerable highway user". So a driver who hits someone is subject to the same penalties as if they had hit someone not defined as vulnerable highway user.

The bill also creates penalty enhancers that would apply when a driver, while violating certain existing motor vehicles, hurts or kills a "vulnerable highway user". The legislation also changes certain offenses currently considered civil traffic forfeitures into crimes, carrying with it a wider range of penalties. And finally, the bill includes an important education component requiring that all driver education courses include 30 minutes of instruction on vulnerable highway users.

Once again, thank you for holding a hearing on this important piece of legislation. These changes will bring greater awareness and make our roads safer for everyone who uses them.

Sincerely,

First for Wisconsin!

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Bruce, Cory

Subject: FW: SB 307/AB 388 - questions for leg. council

From: Moore, David
Sent: Monday, October 28, 2013 4:02 PM
To: Bruce, Cory
Cc: Queensland, Michael; Archibald, Sarah
Subject: RE: SB 307/AB 388 - questions for leg. council

Cory,

My responses to your questions are below. Your original questions are in red. My explanations are not exhaustive because, as I wrote to you earlier, there are numerous permutations within the motor vehicle code's penalty sections, so the penalty for any specific incident may be highly fact-specific.

1. Under current law, if a person defined as a "vulnerable user" under SB 307/AB388 is struck by an automobile and suffers harm, great bodily harm, or death what penalties or charges can be brought against the auto driver if cited for a) passing violation; b) failure to yield; c) inattentive driving.

Current law does not recognize a category of "vulnerable highway user"; therefore, under current law, a driver who strikes someone defined under the bill as a "vulnerable user" would be subject to the same penalties as if he or she had struck someone not defined under the bill as a vulnerable highway user. Further, only one of the offenses listed above—failure to yield—contains specific penalties that apply only when a person is injured or killed. Here are the penalties under current law for the offenses you asked about.

Failure to Yield

Failure to Yield, 1st offense: \$20 to \$50 forfeiture

Failure to Yield, second or subsequent conviction within a year: \$50 - \$100 forfeiture

Failure to Yield, bodily harm: \$200 forfeiture, 2 month license suspension, reinstatement contingent on completion of right-of-way class

Failure to Yield, great bodily harm: \$500 forfeiture, 3 month license suspension, reinstatement contingent on completion of right-of-way class

Failure to Yield, death: \$1,000 forfeiture, 9 month license suspension, reinstatement contingent on completion of right-of-way class

Passing Violation (I assume that by "passing violation" you mean a violation of s. 346.075, which prescribes the method of overtaking and passing bicycles and other devices; therefore, my response below will address that statute.)

Violation of s. 346.075, Stats., first offense: \$25 to \$50 forfeiture

Violation of s. 346.075, Stats., second offense: \$50 – 500 forfeiture

Inattentive Driving

The penalty for violating the inattentive driving statute depends on the type of violation that occurs. This statute contains four types of violations:

1. Driving a motor vehicle while so engaged or occupied as to interfere with the safe driving the vehicle.

2. Driving a motor vehicle equipped with a device for visually receiving a television broadcast when the device is located in the motor vehicle at any point forward of the back of the operator's seat or when the device is visible to the operator while driving the vehicle.
3. Driving a motor vehicle while composing or sending an electronic text message or an electronic mail message.
4. Driving a motor vehicle while using a cellular or other wireless telephone if the person's operator's license is a probationary license or instruction permit.

The penalties for these violations are as follows:

For circumstances numbered 2. and 4. above, first offense: \$20 - \$40 forfeiture

For circumstances numbered 2. and 4. above, second or subsequent conviction within 1 year: \$50 - \$100 forfeiture

For circumstances numbered 1. and 3. above, first offense: \$20 - \$400, forfeiture

There are no specific penalty enhancers that apply to these crimes in the event a violation also results in injury or death to another. However, under such circumstances, the person might also be cited for violation of another statute; for example, s. 346.62 (2), Stats. (recklessly endangering the safety of a person or property by negligent operation of a vehicle), s. 346.62 (3) or (4), Stats., (causing bodily harm, and great bodily harm to another by negligent operation of a vehicle), or s. 940.10, Stats. (homicide by negligent operation of a vehicle).

2. In the aforementioned circumstances, under SB 307/AB 388, what penalties/charges can be brought against the same auto driver.

AB 388 does not create new offenses; it creates penalty enhancers that apply when a driver, while violating certain existing motor vehicle laws, hurts or kills a "vulnerable highway user." The penalty enhancers that apply to the crimes described above are as follows (however, as noted above, in any circumstance, there may be statutes the person could be cited under in addition to these statutes):

Failure to Yield

Failure to yield, great bodily harm to a vulnerable highway user: Class B misdemeanor (penalized by a fine of up to \$1,000, jail for up to 90 days, or both), license suspension for six months (reinstatement contingent on completion of right-of-way class, as under current law)

Failure to yield, resulting in death to a vulnerable highway user: Class A misdemeanor (penalized by a fine of up to \$10,000, jail for up to 9 months, or both), license suspension for 1 year (reinstatement contingent on completion of right-of-way class, as under current law)

Passing Violation

Passing violation, great bodily harm to a vulnerable highway user: Class B misdemeanor

Passing violation, death to a vulnerable highway user: Class A misdemeanor

Inattentive Driving

Inattentive driving violation, great bodily harm to a vulnerable highway user: Class B misdemeanor

Inattentive driving violation, death to a vulnerable highway user: Class A misdemeanor

3. Are any of the current law penalties automatic or mandatory?

Generally, the offenses you asked about are civil traffic forfeitures. When an officer issues a citation for a particular traffic violation, he or she writes the ticket for an amount for an amount, established by the Wisconsin Judicial Conference, prescribed in the Uniform State Traffic Deposit Schedule for that offense. If the offense is one for which the person is not required to appear in court, he or she may simply pay the amount on the citation. If the offender does appear in court, the judge may impose a forfeiture that is different than the one in the Uniform Traffic Deposit Schedule, so long as it is within the range allowed by statute.

4. Are any of the proposed penalties under SB 307/AB388 automatic or mandatory?

The bill would increase the penalties for certain traffic offenses if the driver, in the course of the offense, harmed or killed someone defined as a vulnerable highway user. If the driver were cited for that violation, the penalties provided would apply. One change the bill makes, as relevant to the imposition of penalties, is that it changes certain offenses that, under current law are civil traffic forfeitures, into crimes—which carry a broader range of penalties.

5. If a vulnerable user suffers great bodily harm or death in a crash with an auto and the auto driver is cited for a passing violation, failure to yield, or inattentive driving, what is the process by which a DA would prosecute the auto driver if SB 307/AB 388 were law?

The bill eliminates the requirement that a driver possess a particular mental state (mens rea) to be convicted of a crime if he or she injures or kills a vulnerable highway user during the course of certain traffic violations. Accordingly, a prosecutor prosecuting a driver for one of these offenses would need to prove: (1) that the driver committed the underlying violation; and (2) that a particular type of harm (e.g., great bodily harm) occurred. He or she would not need to prove the harm was caused by the driver's lack of care or recklessness.

If you have any questions, please let me know.

Sincerely,
David

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October 28, 2013

Chairman Keith Ripp
Assembly Committee on Transportation

RE: Assembly Bill 388, Relating to Traffic Violations Resulting in Harm to Vulnerable Highway Users

Dear Chairman Ripp and Members of the Committee:

Thank you for the opportunity to offer some input relative to Assembly Bill 388, in writing. I have been a State of Wisconsin prosecutor for 23 years, and was elected the Waukesha County District Attorney in 2006. I am a member of the Board of the Wisconsin District Attorneys Association, and currently serve as the Chair of the Legislative Committee. The WDAA has not yet had an opportunity to discuss this Bill among its membership, so I am not writing today as a representative of the WDAA, but rather in my individual position as Waukesha County District Attorney. It is my hope that there will be an opportunity for the WDAA to consider this Bill and weigh in prior to it moving much further in the legislative process.

In general, I support the idea of developing a Bill along these lines. Under existing law, prosecutors have relatively few options when reviewing potential charges in a case involving a traffic fatality. On the one end we have the felony charge for homicide by negligent operation of a vehicle. The standard for proving criminal negligence, however, is high, and this does not fit very many of the non-alcohol or drug-related cases that we see. The other option we have available takes us all the way down to a simple traffic forfeiture citation. There is no middle ground, which is often very dissatisfying to members of a family who have had a loved one killed or seriously injured. I support the effort to develop some middle ground for prosecutors making these charging decisions, however, I have a few concerns.

My primary concern is that the Bill may not go far enough. This Bill addresses "vulnerable users" and while I consider that meritorious, there are other innocent highway users who would not be covered by this Bill. For instance, the definition of "vulnerable users" would not include a family lawfully stopped at a stop sign in an automobile who are struck and killed by a person who has fallen asleep and careened out of their traffic lane. I understand that the "vulnerable user" designation has an important public policy purpose and do not lightly dismiss that aspect of the Bill, but we may want to consider adding protections for other types of innocent highway users, as well.

October 28, 2013

Page 2

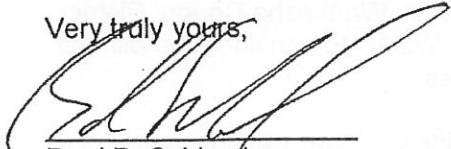
I also have concerns that the Bill may not cover enough types of traffic violations. For instance, when prosecutors review a case where a vehicle is traveling excessively over the lawful speed limit and causes a crash, the current laws are often adequate. However, when a person is traveling at something more like 15 miles per hour over the limit, and causes a crash with serious injuries or death, it is unlikely we would convince a jury to convict for homicide by negligent operation. That would leave us with only the option of issuing a traffic citation. A middle ground misdemeanor charge could provide prosecutors with a way to bring some justice for the family of the victim in a case involving elevated speeds without going so far as to issue a serious felony charge.

Perhaps, we may also want to add unsafe lane deviation among the violations that are specifically enumerated in the Bill. The failure to yield right of way sections included in the Bill would not always cover a crash in which an individual has deviated from their proper lane of travel.

I reiterate that I support the effort to create additional protections for innocent individuals who are seriously injured or killed by others who are intentionally or criminally negligently violating the traffic laws. My hope is that there will be time for the Wisconsin District Attorneys Association to discuss this legislation and formulate an official position that could be presented at a future date.

If any member of the Committee has any questions or concerns, they should not hesitate to contact me. Thank you for your kind consideration of my input.

Very truly yours,



Brad D. Schimel
District Attorney
Waukesha County

jad

Dear Legislators:

On October 1, 2010 Jeff Littmann and I were enjoying an amazing early morning bike ride. During that ride Jeff talked about his wife Kelly that he loved dearly, some of his great friends, and some possibilities of things that we were thinking about teaming up on in the future. Happiness and hope were in the air. Suddenly, without warning, we were hit from behind by an inattentive motorist. In the end, it was a tragedy that Jeff did not survive and that left me with significant injuries, physically and emotionally. Three years later I am still being treated for some of the physical injuries as well as the posttraumatic stress.

I knew Jeff for over 15 years and in all that time I never once heard him say a negative thing about another person. Jeff lived with a welcoming, positive and forgiving spirit. He was an amazing example of how to live and how to love. There is a reason there were over 4000 people at Jeff's visitation before his funeral. Jeff affected people in a way that lifted them up, and made them better.

Coming back from something so significant is no easy journey. It takes a lot of time and a lot of support. Many, many people have played a major role in that. Many were directly or indirectly affected by the events of this one day. The proof was seen in the outpouring of support, help and love that was almost overwhelming at times, but definitely appreciated.

I ask for your support of the passage of the Vulnerable User Law. It will help raise awareness to prevent senseless tragedies leading to the loss of great people like Jeff and needless pain and suffering by surviving friends and families whether or not they were directly injured by a negligent motor vehicle operator.

Thank you for this opportunity to present my story.

Sincerely,

Lauren Jenson

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ABATE OF WISCONSIN
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October 15, 2013

Vulnerable Roadway User Bill SB 307 / AB 388 Position Paper

Why is ABATE of Wisconsin opposing this bill in its current form?

The answer is simple, *what makes the injury or death of one person any more of a tragedy than the injury or death of another simply because of their means of conveyance?*

If we are going to enhance the penalties for injuring or killing someone on our roadways, and I believe we should,

- the penalties should be increased for all violations involving great bodily harm or death not just a select few
- and for all seriously injured or killed persons regardless of their means of conveyance.

If this bill were worded that way ABATE would be much more inclined to be supportive of it.

We do appreciate that the authors chose to include our suggested list of additional violations that should carry a greater penalty for causing great bodily harm or death in their latest draft. The drivers in this country have gotten away with murder and mayhem for far too long with little to no personal consequences for their actions. If this bill were to include violations for great bodily harm or death of all roadway users the penalties would still be enhanced more often for the vulnerable user group just because of their vulnerability on the road. We should not give bad drivers a free pass for injuring or killing another user outside of these listed groups by their actions.

We are also uncomfortable with the jail time called for in this bill. An alternative would be to use an administrative function of the DOT to suspend the operator privileges of the violators as was done in 2011 Act 173, and require attendance at a driving school class designed for these violators to have their operator license reinstated. Those causing injury or death while driving with a suspended or revoked license should receive a stiffer penalty than license suspension: as a suspension of a license they do not have would be meaningless to them. This may be when jail or prison time would be appropriate.

Dave Dwyer
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