

HOUSE BILL REPORT

HB 1339

As Reported by House Committee On: Judiciary

Title: An act relating to negligent driving resulting in substantial bodily harm, great bodily harm, or death of a vulnerable user of a public way.

Brief Description: Concerning negligent driving resulting in substantial bodily harm, great bodily harm, or death of a vulnerable user of a public way.

Sponsors: Representatives Fitzgibbon, Hope, Rolfes, Appleton, Billig, Liias, Frockt, Haigh, Cody, Goodman, Moeller, Pedersen and Kenney.

Brief History:

Committee Activity:

Judiciary: 2/3/11, 2/10/11 [DPS].

Brief Summary of Substitute Bill

- Creates a new traffic infraction, which is committed when a person operates a vehicle in a manner that is both negligent and endangers any person or property, and he or she proximately causes the death, great bodily harm, or substantial bodily harm of a vulnerable user of the public way.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Eddy, Frockt, Kirby, Klippert, Orwall, Rivers and Roberts.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler and Nealey.

Staff: Kelly Pfundheller (786-7289).

Background:

Negligent Driving.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Related but separate provisions in current traffic law may apply when a person harms another person while operating a motor vehicle in a manner that is negligent. These include negligent driving in the first degree and negligent driving in the second degree.

A person is guilty of negligent driving in the first degree if that person operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug. Negligent driving in the first degree is a misdemeanor, carrying a sentence range of zero to 90 days in jail and being subject to a fine of up to \$1,000.

A person is guilty of negligent driving in the second degree if that person operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property. Negligent driving in the second degree is an infraction and is subject to a fine of \$250.

Relevant Terms.

The term "proximate cause" is a legal term referring to the causal connection between an individual's conduct and the harm done to another when the individual's conduct is a substantial factor in bringing about the harm. The conduct must usually produce a particular foreseeable result in a natural unbroken sequence, without which the harm would not have occurred.

"Great bodily harm" is defined in the criminal code as a bodily injury which creates a probability of death, a significant serious permanent disfigurement, or a significant permanent loss or impairment of the function of any bodily part or organ.

"Substantial bodily harm" is defined in the criminal code as a bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

Distinct from the term "motor vehicle," the term "vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. The term does not include power wheelchairs or devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks.

Summary of Substitute Bill:

New Infraction.

The infraction of negligent driving in the second degree with a vulnerable user victim is created. A person commits the infraction if, under circumstances not constituting negligent driving in the first degree, he or she operates a vehicle in a manner that is both negligent and

endangers any person or property, and he or she proximately causes the death, great bodily harm, or substantial bodily harm of a vulnerable user of the public way.

A vulnerable user of the public way is defined as a pedestrian; person riding an animal; or a person operating a farm tractor, a bicycle, an electric assist bicycle, an electric personal assistive mobility device, a moped, a motor-driven cycle, or a motorized foot scooter.

Hearing and Penalties.

A person who has committed the infraction must pay a fine of \$5,000 and have his or her driving privileges suspended for 90 days. The court may not reduce the fine to less than \$1,000.

If a person requests and personally appears for a hearing, the court may impose an alternative penalty and require the person to: pay a fine of \$250; complete traffic school for a number of days determined by the court; and perform community service related to driver improvement for a number of hours determined by the court (but not exceeding 100 hours). The person must submit certification to the court that the person has completed the requirements. If a person fails to complete the required traffic safety and community service requirements within one year of the date of the violation, the court must assess a fine in an amount between \$1,000 and \$5,000 and suspend the person's driving privileges for 90 days. The court has discretion to extend the period of time in which the person must complete the requirements.

In imposing the alternative penalty, the court may require the person to pay administrative costs.

A person whose license is suspended as a result of a violation of this infraction and who is found operating a motor vehicle during the suspension is guilty of driving while license suspended in the second degree.

The infraction may not be deferred.

Substitute Bill Compared to Original Bill:

The infraction applies to persons operating vehicles rather than motor vehicles. The definition of vulnerable user is expanded to include persons riding a moped, motorized foot scooter, and a motor-driven cycle.

The mandatory hearing requirement is removed, and the \$5,000 fine and suspension of driving privileges for 90 days is the default penalty. The person may request a hearing where the court may impose the alternative penalty scheme. Changes are made to the alternative penalty scheme, including the requirement to complete traffic school (rather than a traffic safety course) and community service (rather than "court approved" community service).

The court has the discretion to impose administrative costs, but may not grant a deferral for the infraction.

The language regarding which entity suspends driving privileges is clarified. The court issues an order, and the Department of Licensing suspends driving privileges.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2012.

Staff Summary of Public Testimony:

(In support) This legislation creates legal consequences that are proportional to the injuries resulting from negligent driving. When a person negligently drives a vehicle and kills or harms a pedestrian or bicyclist on the road, the end result for the driver is usually only a civil traffic infraction. This reveals a gap in the current law between felony crimes and civil infractions. If someone is severely injured or killed due to a driver's negligence, the repercussions should include more than a small fine.

When pedestrians are careless, they put their own lives at risk. When drivers are careless, they risk the lives of innocent people. Certain types of people using our roads and crosswalks are more vulnerable than others, and drivers should be aware of their responsibility to the safety of others. The bill will protect everyone because we all use the roads and the crosswalks.

The families of people who have suffered and died due to drivers' negligence want to see those drivers receive safety education. The bill is an important step forward in promoting driver safety and creating reasonable expectations regarding the responsibilities of all persons who use the roadways. This new infraction will provide fair consequences for those who fail to drive safely.

(With concerns) The bill requires the courts to approve the community service and, in effect, will require the court to monitor the persons who elect the alternative penalty. It would be less burdensome on the courts if the community service does not need to be approved and if the courts could offset the burden of the monitoring by imposing administrative costs.

The new infraction will likely have a significant impact on those who receive it. Many people are likely to hire attorneys. Since this is only an infraction, the prosecutor will not be present to rebut the attorney's arguments, which will result in a high percentage of persons being found not committed. Therefore, the bill should require the presence of a prosecutor at the hearings.

(Opposed) None.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; David Hiller and Philip Junkins, Cascade Bicycle Club; Brian Faller, Bicycle Alliance of Washington; Jacob

Strulcksma, National Federation for the Blind; Paul David; Colleen Zakar; Nancy Norris; and Melissa Brulotte.

(With concerns) Brett Buckley, District Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.