



June 14, 2011

Senator Thomas McGee and Representative William Straus
Joint Committee on Transportation
State House, Room 134
Boston, MA 02133

RE: H3079, An Act To Protect Vulnerable Road Users

Dear Senator McGee, Representative Straus, and Members of the Committee:

I am writing in support of H3079, An Act To Protect Vulnerable Road Users, on behalf of the Massachusetts Bicycle Coalition (MassBike), the statewide bicyclist advocacy group. As the author and principal proponent of this bill, I want to take this opportunity to provide some perspective on the need for greater protection of vulnerable road users, including bicyclists and pedestrians. I also want to acknowledge legislators who have already expressed support for the bill, which was filed by Representative Sean Garballey and co-sponsored by Representatives William Brownsberger, Kay Khan, and Carl Sciortino.

The bill will strongly encourage motorists to exercise more caution when operating around vulnerable road users, will educate motorists to operate more safely, and will provide law enforcement with additional tools to protect vulnerable road users.

In my remarks below, I will explain why this bill is needed, describe the changes the bill will make in the law and what effect those changes will have, and address the carefully scoped limitations of this bill.

Why This Bill Is Needed

For 2007, the Massachusetts Department of Public Health reported 93 bicyclist and pedestrian deaths. Of these, 83% were the result of crashes between motor vehicles and bicyclists or pedestrians. For 2008, DPH reported 1136 hospitalizations, and 12887 emergency room visits for bicyclists and pedestrians. Of these, 59% of hospitalizations, and 35% of emergency room visits were the result of crashes between motor vehicles and bicyclists or pedestrians. These numbers clearly indicate that motor vehicles represent a significant risk for the most vulnerable users of Massachusetts roadways.

At the same time, one need look no further than news reports of crashes between motor vehicles and bicyclists or pedestrians to see that charges are rarely brought against motorists in these incidents. Numerous victims of these crashes are submitting written testimony to this committee documenting the often devastating impact on their lives, for which the motorists who injured them

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faced little, if any, consequence. Too often, police reports – and the resulting decisions whether to file charges – are based upon only the account of the motorist (because the bicyclist was too shaken or injured to be interviewed at the scene). Bicyclists are often faulted for merely being in the road, despite the fact that Massachusetts law (MGL chapter 85, section 11B) clearly permits bicycling on all but limited access or express state highways. And motorists can frequently escape even receiving a traffic violation for a crash with a bicyclist or pedestrian merely by claiming “I didn’t see them”, which should not be an automatic excuse. Motorists should instead be more strongly encouraged to actively look for bicyclists and pedestrians, and more carefully questioned when they fail to see them.

The Commonwealth has recognized that bicyclists and pedestrians face a disproportionate level of risk on Massachusetts roads, identifying them as “Higher Risk Transportation System Users” in the 2006 Massachusetts Strategic Highway Safety Plan, noting that bicyclist and pedestrian fatalities in Massachusetts exceed U.S. averages. The Plan stated that the Commonwealth needs to implement a range of additional protections for bicyclists and pedestrians.

Massachusetts has several statutes on the books that can be applied to crashes between motorists and vulnerable road users:

MGL chapter 90, section 24G deals with homicide by motor vehicles, and a motorist may be charged for killing someone while either under the influence of drugs or alcohol, or while operating recklessly or negligently.

MGL chapter 90, section 24L addresses serious bodily injury by motor vehicle, but allows a motorist to be charged only if under the influence of drugs or alcohol.

MGL chapter 90, section 24 consolidates a number of offenses, including operating under the influence or drugs or alcohol, reckless driving, and knowingly failing to stop after a collision. This section does not address charging a motorist for recklessly or negligently failing to stop after a collision.

None of these statutes distinguish among different types of victims, or acknowledge in any way that the consequences of a crash can be far more serious when the victim is a vulnerable road user. Massachusetts law does not even contemplate the existence of vulnerable road users. The section regarding serious bodily injury by motor vehicle does not even currently permit a motorist to be charged when they are reckless or negligent, leaving law enforcement with only the option of charging the lesser offense of reckless operation which carries much less severe penalties. Finally none of these statutes includes an educational component or community service component, which would give prosecutors and the courts the option of using these tragedies as a means to educate motorists and the public about the need to be more aware vulnerable road users and how to operate more safely around them.

Several U.S. states have enacted laws to protect vulnerable road users, including Oregon, Illinois, New York, Delaware, and, most recently, Washington. Efforts to pass such laws are also underway in Texas, California, Virginia, Rhode Island, and Connecticut. Similar laws in Europe have proven effective in reducing bicyclist and pedestrian fatalities.

What This Bill Does

The bill has two primary purposes: providing law enforcement with additional tools to hold motorists accountable for killing or injuring vulnerable road users (like bicyclists and pedestrians), and raising awareness among motorists that they must take more responsibility for the safety of vulnerable road users.

The first purpose is to provide law enforcement with additional tools to promote roadway safety and hold motorists accountable for killing or injuring vulnerable road users. The bill would harmonize these statutes so that law enforcement always has the option of pursuing charges for reckless or negligent behavior for motor vehicle homicide, serious bodily injury, or fleeing the scene of a collision. The bill would make new penalties available to emphasize the importance of operating safely around vulnerable road users, by increasing the applicable fines when the victim is a vulnerable user. Finally, the bill would give prosecutors and courts the option of educating motorists convicted of any of these crimes about traffic safety, and requiring them to perform community service to educate the public about traffic safety.

The second purpose is to send a very clear message to motorists that they must be more aware of the growing presence of vulnerable road users, and that they must take more responsibility for the safety of the most vulnerable users. The bill will accomplish this by the threat of increased fines, traffic safety school, and community service as described above.

The bill does not in any way diminish or limit the discretion of police or prosecutors to determine whether to bring charges based upon their evaluation of all the circumstances of the incident, including the actions of the vulnerable road user. Law enforcement would not be required to bring charges, but would have additional options for charges and penalties. If the actions of the vulnerable user contributed to the crash, that can and should be taken into account, but in an appropriate manner – the lawful actions of a bicyclist or pedestrian should never excuse the negligence or recklessness of a motorist.

Conclusion

For all of the reasons stated above, MassBike urges the Joint Committee on Transportation to report favorably on H3079, An Act To Protect Vulnerable Road Users. If I can be of further assistance to the committee in its consideration of this bill, please contact me at 617-542-2453 or david@massbike.org.

Very truly yours,



David Watson
Executive Director