



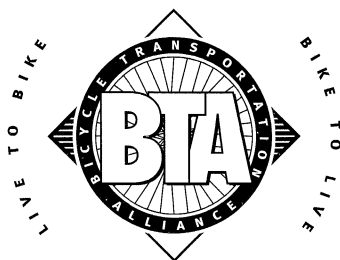
Bicycle Transportation Alliance
January 13, 2010

VEHICULAR HOMICIDE

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OPENING MINDS AND ROADS TO BICYCLING



Bicycle Transportation Alliance
January 13, 2010

VEHICULAR HOMICIDE

Testimony of Doug Parrow, BTA Board Member

Road users in Oregon regularly encounter other drivers whose actions and inability to safely operate their vehicles endangers everybody around them. Regardless of whether the road user is a motorist, a bicyclist, or a pedestrian, their safety is subject to the whims of an enormous number of individuals who are driving carelessly and illegally. Despite our awareness of the hazards to the public presented by these individuals, current public policies are ineffective and ineffectual. There is little accountability for the tragic effects of these individuals' inability or unwillingness to operate their vehicles safely.

For too long we have accepted the notion that the often violent and tragic collisions on our roads are “just accidents.” Investigations of airplane crashes have demonstrated that most incidents are not the end products of simple mistakes. Rather they represent the logical conclusion of the operators' failure to respond appropriately to a series of events. We are confident that an evaluation of the crashes on our roadways would demonstrate a similar pattern—these incidents typically are a result of habitual inattention to the serious activity of operating a potentially lethal projectile, overly aggressive behavior, and, too frequently, continued driving by individuals who have demonstrated their inability to safely operate a motor vehicle. In fact, most transportation professionals have discontinued the use of the term “accident” with its connotations of inevitability in favor of the use of “crash.”

In Oregon, approximately 40,000 drivers are convicted each year for driving while suspended or driving while revoked. These illegal drivers, particularly those who have been suspended for driving-related offenses, are among the most dangerous people on our roads. They are twice as likely to violate traffic laws and four times as likely to be involved in a crash. Reports of crashes in which the driver was cited for driving while suspended occur with mind-numbing regularity.

Notwithstanding the danger that these suspended drivers represent to the law-abiding public, the State of Oregon's typical response is to issue yet another license suspension. During just a five-year period, 1,684 drivers accumulated 10 or more DWS/DWR convictions. More than 33,000 received three or more convictions during that period. These people are a continuing threat to every other road user and what do we do when they are caught behind the wheel yet again? Issue another license suspension and wring our hands when they finally kill somebody.

In 2007, 27,849 people were injured in crashes on Oregon roads and 455 were killed. While about 0.5 percent of those people who were in motor vehicles at the time of the crash were killed, the fatality rate for pedestrians and bicyclists involved in a crash was 10 times higher. Undoubtedly, some of the fatalities are a result of the victims' own carelessness. However, far

too many of these individuals died because of the actions of a driver who had no business behind the wheel of a motor vehicle.

When the Bicycle Transportation Alliance asked Rep. Reed to introduce HB 3399, we hoped that the bill would serve as the basis for a discussion of how Oregon could better respond to serious problem created by the dangerous actions of a relatively small portion of the driving public. We recognize—and think we have addressed—the legitimate concerns that some other groups raised about the approach that we proposed in HB 3399. In our continued work on this issue, we have surveyed the laws pertaining to vehicular homicide in all 49 other states and have developed a proposal based on the approach taken in other states.

Nine other states have adopted laws that establish sanctions for drivers who kill, but whose actions did not rise to the level of gross negligence currently required in Oregon for criminal prosecution. We believe that the laws in these states can be used as a model for Oregon and we offer a modified proposal under which deaths caused by suspended or revoked motorists would constitute a felony and deaths caused by other road users would constitute a misdemeanor. We urge the committee to move this approach forward during the upcoming special session. Alternatively, we request that the committee convene a work group of parties including members of law enforcement and other safety advocates to develop draft legislation for introduction in the 2011 session to make those road users who are causing havoc on our roads accountable for the tragic consequences of their behavior. The Bicycle Transportation Alliance supports either alternative.

Two of the victims' family members who have provided testimony for the hearing today are back again after having appeared during the hearing on HB 3399. Since then, the carnage has continued and there are now more people whose loved ones were killed as a result of the irresponsible and dangerous behavior of a relatively few users of Oregon's roads. These deaths have caused unending grief to their families and loved ones. However, absent effective legislative action, the carnage will continue. We urge the committee to act now to develop and pass legislation to hold the people who are killing our fellow citizens accountable for their actions.

Copies of the following materials are included with my testimony:

- Our proposed Oregon Vehicular Homicide Law;
- A Survey of State Criminal Statutes with Culpability Levels Below Gross Negligence for Death Caused by a Motor Vehicle;
- A Chart Summarizing the Vehicular Homicide Laws in each of the other 49 states;
- A Summary of Selected State Criminal Statutes on Vehicular Homicide; and
- The written testimony of family members of four victims of dangerous, irresponsible drivers.

The Bicycle Transportation Alliance is a statewide non-profit organization that works to improve the conditions for bicycling and bicyclists. We provide safety education in Oregon elementary schools and encourage all bicyclists to ride safely, legally, and courteously. We represent bicyclists and the bicycle industry with more than 5,000 members from throughout the state and have eighteen years of experience in bicycle engineering, planning, education, and advocacy.

PROPOSED OREGON VEHICULAR HOMICIDE LAW

For drivers who kill while violating a traffic law when their drivers' license is suspended or revoked:

Class C Felony with Crime severity indicating presumptive prison time of 6-10 months for causing death while driving with suspended or revoked driver license and committing a violation of traffic law. This proposal follows the example of the law used in Arizona.

For other drivers who kill while violating a traffic law:

Class A Misdemeanor (probation and up to one year local jail time) for causing death while driving and committing a violation of traffic law. This proposal is similar to the laws in Nebraska, Nevada and North Carolina. (The states of Alabama and Georgia have felony crimes for this level of behavior and Hawaii and Idaho make it a misdemeanor to kill due to simple negligence even if there is no traffic law violation).

A Survey of State Criminal Statutes With Culpability Levels Below Gross Negligence For Death Caused By the Use of a Motor Vehicle

By Ray Thomas, Oregon Bike and Pedestrian Lawyer
www.stc-law.com

Introduction

In October 2009, Transportation Alternatives (TA), an 8000-member, nonprofit, nonpartisan advocacy organization working for better biking, walking and public transit in New York City and the Tri-State Transportation Campaign (TSTC) organized a panel presentation titled “Can Justice Be Had, A Legal Symposium Exploring The Prosecution of Vehicular Homicide”. At that legal conference, incoming Manhattan District Attorney Cyrus Vance, Jr. stated that in New York City’s five boroughs, there were 500 homicides in 2008. However, in Manhattan alone, there were 300 traffic fatalities in the same year, demonstrating that the streets are at their meanest toward the people using them for transportation.

Throughout the United States, the epidemiology of traffic injury and death demonstrates that roadways are arteries both for transportation and an excessive number of deaths. Overburdened and underfunded traffic, law enforcement and court systems tend to limit their focus to the worst of the worst – reckless or intoxicated drivers – but the majority of traffic deaths are caused by sober, avoidable errors of judgment by drivers. Few families would seek to send to prison the soccer dad whose moment of inattention caused the death of a child attempting to walk to school. But when responding police officers merely issue a

minor traffic violation or no ticket at all, victims' families are justifiably frustrated and angry that so little is done to provide some public accountability for the horrific mistake and to reduce the likelihood the driver will kill again.

The Status Quo Is Unacceptable

Bicycle and pedestrian advocates cannot ignore the fact that whichever numbers one chooses for the numerator and denominator, the risk of serious injury or death is far greater for road users who are not surrounded by a steel exoskeleton. And few personal choices carry a greater potential for death and destruction to non-motorized road users than driving a several thousand pound motor vehicle at typical roadway speeds. While sending every driver who makes a fatal error of judgment to prison is not a realistic solution, the time has come to recognize that driving is a dangerous privilege and serious consequences should follow any time a needless death occurs because a driver failed to drive carefully.

All too often harried government officials decide not to pursue traffic or criminal charges and when criticized for their decisions, complain that even if charges of Criminal Negligence were filed against a driver, many jury members would employ a subjective, "there but for the grace of God go I" analysis. Prosecutors share the perception that jurors are reluctant to convict negligent drivers in the absence of high-risk activity (high speed, passing on known dangerous curves, etc.) or intoxication. While most states criminalize driving recklessly or while intoxicated, criminal negligence or criminal homicide statutes usually require a "gross deviation from the standard of care" or "gross

negligence” for criminal culpability, standards so vague they are nearly impossible to enforce in a consistent or uniform manner.

Serious Consequences Are Necessary to Protect From Drivers Who Kill

Traffic laws governing fatal collisions must contain specific, objective criteria in order to provide clear standards for law enforcement and the court system. For human powered traffic advocates, greater accountability is necessary to create real consequences for drivers who kill, and to reduce the likelihood they will do it again. One possible solution is to create a driving-related crime for driving causing death while violating a traffic law. Such a solution avoids the subjectivity inherent in a deciding what constitutes a “gross deviation” from the standard of care. Another alternative is to criminalize a violation of the law that causes a particular level of severity of injury or type of damage to the victim. Another option is to create traffic laws that link driving causing death with a driver’s decision to engage in some other risky activity, such as “texting” or emailing with a hand-held device, “driving while suspended” or violating a traffic law protecting vulnerable users. Using laws with clear, specific requirements provides police, prosecutors and jurors with objective standards that do not invite the line of thinking (and argument by defense counsel at trial) that “the collision was only an accident and it could happen to anyone”.

Non-Criminal Solutions Provide Limited Consequences

In 2007 the state of Oregon passed the “Vulnerable User Law”, which is by definition a non-criminal traffic violation containing enhanced penalties. But Vulnerable-User type laws cannot be used to impose a sentence of probation

containing the potential for local jail time because violations are civil, not criminal prosecutions. The increased penalties available in the criminal justice system significantly increase the level of oversight and supervision for drivers who have demonstrated a fatal driving error because the judge can impose conditions of probation, which if violated can result in jail time.

State Criminal Laws Carry the Potential for a Partial Solution

States with traffic laws requiring something less than “gross negligence” or “recklessness” for criminal prosecutions after fatal collisions offer useful examples for legislative efforts to provide greater accountability when drivers kill on the roads. Toward that end, the materials provided with this article include state law tables and summaries to provoke discussion about expanding state criminal laws to cover more instances of dangerous driving. Creating standards that are more specific than vague terms such as “gross negligence” or “criminal negligence” are a good first step because time and time again, after a needless roadway death, victims’ families are shocked to discover that so many deaths involving clear negligence can only be adjudicated as noncriminal violations or offenses such as Careless Driving, Driving While Suspended or Driving Without Insurance. The patchwork of different approaches by states requiring something less than gross negligence for criminal liability provide useful examples for reform and legal efforts in other states.

States Requiring Less Than Gross Negligence For Possible Criminal Charges

Three states, Hawaii, Nevada, and Utah, provide interesting variations on the culpability requirement for commission of a crime. Each state requires only simple negligence (behavior that is below the standard of behavior a reasonable person should use under the same or similar circumstances), without requiring proof of a “gross deviation” from the reasonable person standard to trigger prosecution.

In Hawaii, the crime of Negligent Homicide 3 requires causing death in a “negligent manner” which is simple negligence, not gross negligence or criminal negligence. The penalty is a misdemeanor conviction which, while a crime, does not subject the offender to a potential penitentiary sentence.

Nevada also has a vehicular homicide law which requires only simple negligence for a misdemeanor conviction. However, the statute imposes a “double penalty” if the actions occur in a work zone.

Utah’s crime of “Automobile Homicide” combines simple negligence and driving while text messaging or emailing with a hand-held device. The offense is a third degree felony upon conviction, subjecting convicted offenders to a potential penitentiary sentence.

States That Criminalize Driving While Suspended And Causing Death While Committing a Violation

Arizona and Nebraska create a crime for driving while suspended and causing a death while violating a traffic law. These statutes avoid the entire

negligence/gross negligence analysis, substituting in its stead a focus on the driver's license status and violation of a traffic law.

Causing Death or Serious Injury While Committing a Violation of The Law

Four states have created crimes for driving that causes serious injury or death while committing a violation of law. Alabama, Idaho, North Carolina, and Georgia all provide criminal penalties and fines as shown on the table below.

State	Summary of Statutes
Alabama	<ul style="list-style-type: none"> -Unintentionally Causing Death <ul style="list-style-type: none"> - While engaged in violation of state law or municipal ordinance - That is a proximate cause of death -Penalty: <ul style="list-style-type: none"> - greater than \$500 but less than \$2000 fine - Greater than one year, but less than or equal to five years incarceration
Idaho	<ul style="list-style-type: none"> -Misdemeanor Vehicular Manslaughter <ul style="list-style-type: none"> - Killing of a human "because of" "commission of an unlawful act" - <u>Without gross negligence</u>
North Carolina	<ul style="list-style-type: none"> -Misdemeanor Death By Vehicle <ul style="list-style-type: none"> - While violating traffic law
Georgia	<ul style="list-style-type: none"> -Homicide by Vehicle in Second Degree <ul style="list-style-type: none"> - Causing death by violating any provision of OCGA § 40-6-393 (malice; leaving the scene; most other traffic-law violations; habitual impaired driver) - 3 to 15 year incarceration - Except § 40-6-393 (c) (other traffic laws) sets a \$1000 fine and/or up to 1 year incarceration -Serious Injury By Vehicle <ul style="list-style-type: none"> - Through violation of §40-6-390 or 391 (reckless driving; DUII) - 1 to 15 years incarceration - Establishes "body damage rule" with criteria: <ul style="list-style-type: none"> - Deprive of member of body - Serious disfigurement - Organic brain damage

Conclusion

Nine states provide criminal penalties for driving that cause death due to something less than gross negligence. Georgia links causing death with the commission of a traffic law violation. Other states, such as Nevada (work zone) or Utah (texting or emailing) focus on engaging in a high-risk behavior likely to cause impaired attention, or create an enhanced criminal sentence for causing a death through simple negligence in a highway work zone. The Arizona and Nebraska statutes criminalize the choice to drive while suspended that causes someone's death while committing a traffic law violation. Hawaii, requiring only simple negligence in causing a death in a negligent manner, lowers the penalty to a misdemeanor; however, even a misdemeanor allows the court to set a period of probation and conditions including driver training, community service and restitution, which if violated subjects the offender to local jail time.

Experience has demonstrated that victim families will gladly support legislative efforts to reform traffic laws to provide real consequences for deadly drivers, even if the primary intent of legislation is to improve, not punish, bad drivers and deter others from careless fatal mistakes. The laws of the nine states described above provide useful legal and legislative precedents for other states. While legislative reform of traffic laws cannot undo the damage caused by the careless motorist, the resources of the criminal justice system have the potential to provide real consequences after a needless roadway tragedy that include protecting others from dangerous drivers.

State	Summary of Selected State Criminal Statutes on Vehicular Homicide
Alabama	<ul style="list-style-type: none"> -Homicide by Vehicle <ul style="list-style-type: none"> - Unintentionally Causing Death - While engaged in violation of state law or municipal ordinance - That is a proximate cause of death - Penalty: <ul style="list-style-type: none"> - Greater than \$500 but less than \$2000 fine - Greater than one year, but less than or equal to five years incarceration
Arizona	<ul style="list-style-type: none"> -Death by Vehicle <ul style="list-style-type: none"> - Driving while suspended, and - Causing a death - While violating a traffic law
Georgia	<ul style="list-style-type: none"> -Homicide by Vehicle in Second Degree <ul style="list-style-type: none"> - Causing death by violating any provision of OCGA § 40-6-393 (malice; leaving the scene; most other traffic-law violations; habitual impaired driver) - 3 to 15 year incarceration - Except § 40-6-393 (c) (other traffic laws) sets a \$1000 fine and/or up to 1 year incarceration
Hawaii	<ul style="list-style-type: none"> - Negligent Homicide 3 <ul style="list-style-type: none"> - Causing death in a “negligent manner” - Simple negligence only required - Misdemeanor with no jail time
Idaho	<ul style="list-style-type: none"> -Misdemeanor Vehicular Manslaughter <ul style="list-style-type: none"> - Killing of a human “because of” “commission of an unlawful act” - <u>Without gross negligence</u>
Nebraska	<ul style="list-style-type: none"> -Motor Vehicle Homicide <ul style="list-style-type: none"> - Causing death - While committing a traffic law violation - Class 1 Misdemeanor
Nevada	<ul style="list-style-type: none"> -Vehicular Homicide <ul style="list-style-type: none"> - Requires only simple negligence - Misdemeanor - Penalty doubles for violation in work zone
North Carolina	<ul style="list-style-type: none"> -Misdemeanor Death By Vehicle <ul style="list-style-type: none"> - Causing death - While violating traffic law
Utah	<ul style="list-style-type: none"> -Automobile Homicide <ul style="list-style-type: none"> - Requires simple negligence, plus <ul style="list-style-type: none"> - Driving while text messaging, or - Emailing with a hand-held device - Third-degree felony with potential for jail time

Summary of State Criminal Vehicular Homicide Laws

State	Statute(s)	<i>Mens rea</i>
Alabama	Homicide by vehicle	Violation of traffic law
Alaska	Manslaughter Criminally negligent homicide NOTE: Alaska does not have a vehicular homicide statute.	Recklessness Criminal negligence
Arizona	Death by vehicle	A person is guilty if person: (1) is not allowed to operate a motor vehicle, (2) causes death, and (3) is committing a violation of any of the following: (a) Traffic control signals, (b) right of way on left turn at intersection, (c) right of way at crosswalk, (d) exercise due care for pedestrian, (e) school crossings, (f) stop signs, or (g) school bus signs.
Arkansas	Negligent homicide	Reckless/wanton disregard of safety
California	Gross veh. manslaughter w/DUI Gross vehicular manslaughter Veh. manslaughter w/DUI Veh. manslaughter	DUI w/misd. or inf., w/gross neg. Misd. or inf., w/gross negligence DUI w/misd. or inf., w/negligence Misd. or inf., w/negligence
Colorado	Vehicular homicide – felony 3 – felony 4	DUI Recklessness
Connecticut	Manslaughter 2 w/ motor vehicle Misconduct w/ a motor vehicle	DUI Criminal negligence
Delaware	Vehicular homicide 1 Vehicular homicide 2	DUI w/criminal negligence Criminal negligence, or DUI w/negligence
DC	Negligent homicide	Operation in a careless, reckless or negligent manner – may be based on UVC
Florida	Vehicular homicide	Recklessness
Georgia	Homicide by vehicle 1 Homicide by vehicle 2	Improper passing school bus, hit & run, reckless driving, DUI, or fleeing police officer Traffic violation other than above.
Hawaii	Negligent homicide 1 Negligent homicide 2 Negligent homicide 3	Operating veh. w/DUI Operating veh. w/gross negligence Operating veh. w/simple negligence

Summary of State Criminal Vehicular Homicide Laws

State	Statute(s)	<i>Mens rea</i>
Idaho	Vehicular manslaughter (felony) (misdemeanor)	DUI, or misd. or infraction w/gross neg. Misd. or infraction w/negligence
Illinois	Reckless homicide	Recklessness or DUI
Indiana	Involuntary manslaughter Reckless homicide	Committing or attempting to commit a felony, class A misd., or battery. Recklessness or DUI
Iowa	Homicide by vehicle	DUI
Kansas	Vehicular homicide	Operating a vehicle in a manner that creates an unreasonable risk and a material deviation from the standard of care of a reasonable person.
Kentucky	Manslaughter 2	Wantonly caused
Louisiana	Vehicular homicide	DUI
Maine	Manslaughter	Recklessly or with criminal neg. (Not vehicle specific, but vehicle specific penalties apply.)
Maryland	Homicide by motor vehicle Manslaughter by vehicle	Negligence w/DUI Gross negligence
Massachusetts	Homicide by motor vehicle/DUI Homicide by motor vehicle	DUI w/recklessness or negligence DUI, or recklessness or ordinary negligence
Michigan	Negligent homicide	Immoderate speed, or careless, reckless, or negligent manner (ordinary negligence) – may be based on UVC.
Minnesota	Criminal vehicular homicide	Grossly negligent, negligent w/alcohol/drugs, DUI, hit & run, or driver cited for repairs and no repairs made.
Mississippi	Manslaughter	Culpable negligence
Missouri	Involuntary manslaughter	Recklessness, or DUI w/ criminal negligence
Montana	Vehicular homicide while under influence	DUI w/negligence
Nebraska	Motor vehicle homicide (Class 2 felony) (Class 3 felony) (Class 3A felony) (Class 1 misdemeanor)	DUI, or revoked license, with priors DUI, or revoked license due to DUI Recklessness Violation of law

Summary of State Criminal Vehicular Homicide Laws

State	Statute(s)	<i>Mens rea</i>
Nevada	Vehicular homicide	DUI w/3 prior offenses
New Hampshire	Negligent homicide (Felony A) (Felony B)	DUI Recklessness
New Jersey	Vehicular homicide 1 Vehicular homicide 2 Vehicular homicide 3	DUI in school zone Reckless driving Hit & run
New Mexico	Homicide by vehicle	Unlawful operation
New York	Vehicular manslaughter 1 Vehicular manslaughter 2	Crim. Neg. w/DUI, hazardous veh. w/DUI and license is suspended or revoked in another state for DUI. Crim. Neg. w/DUI, or hazardous vehicle w/DUI
North Carolina	Felony death by vehicle Misdemeanor death by vehicle	DUI Traffic violation
North Dakota	Manslaughter Negligent homicide	Recklessness Negligence
Ohio	Aggravated vehicular homicide Vehicular homicide Vehicular manslaughter	DUI or recklessness Negligence Traffic misdemeanor
Oklahoma	Negligent homicide	Reckless disregard for safety – may be based on UVC.
Pennsylvania	Homicide by vehicle	Recklessness or gross negligence
Rhode Island	DUI, resulting in death Driving so as to endanger, death	DUI Reckless disregard for safety – may be based on UVC.
South Carolina	Reckless homicide Involuntary manslaughter	Reckless disregard for safety – may be based on UVC. Criminal negligence
South Dakota	Vehicular homicide	DUI w/negligence
Tennessee	Aggravated vehicular homicide	Prior convictions Recklessness, DUI, or drag racing
Texas	Intoxication manslaughter	DUI
Utah	Automobile homicide (Felony 2) Automobile homicide (Felony 3)	Criminal negligence and DUI Negligence and DUI
Vermont	Grossly negligent operation	Gross negligence

Summary of State Criminal Vehicular Homicide Laws

State	Statute(s)	<i>Mens rea</i>
Virginia	Aggravated invol. manslaughter	DUI w/gross, wanton, culpable reckless disregard for human life
	Involuntary manslaughter	DUI, or hit & run
Washington	Vehicular Homicide	DUI or recklessness
West Virginia	Negligent homicide	Reckless disregard for safety – may be based on UVC.
	Involuntary manslaughter	Reckless disregard for safety – may be based on UVC.
	NOTE: These are two separate charges, with the same elements; either may be charged	
Wisconsin	Hom. by intoxicated use of veh.	DUI
	Hom. by neg. operation of veh.	Criminal negligence
Wyoming	Aggravated homicide by vehicle	DUI or recklessness
	Homicide by vehicle	Criminal negligence

December 17, 2009

TESTIMONY FOR HOUSE JUDICIARY COMMITTEE

GARY JENSEN
PO BOX 15
WESTON, OR 97886

13 JANUARY 2010
HOUSE JUDICIARY COMMITTEE
VEHICULAR HOMICIDE LAW

I am a lifelong Oregonian whose wife of 46 years was killed on August 10, 2005 by a teenage driver. My wife Marilyn Jensen was riding her bike on her regular morning bike ride about 2 miles from town when she was hit from behind by a driver who was distracted by the sun and her efforts to adjust the sun visor on the passenger side of the car. Witnesses and the evidence indicate that the car had drifted about six feet across the fog line before striking Marilyn.

Marilyn was a wife, mother and community member who was a deacon in our church and a loving person who spread positive feelings wherever she went. She was known for her acts of kindness and compassion. On the day of her memorial service the mayor of Weston cancelled all meetings and closed the city offices. She was very active as a bicyclist, cross country skier and snowshoer.

The person who hit her was charged with Careless Driving and the state police told me that she would not even have to appear in court. Court records indicate that she pleaded no contest and received a fine totaling \$121. I felt that the court system failed to take sufficient action to create real consequences for Marilyn's death. While I did not feel the driver should be sent to jail, the amount of the fine and absence of any other follow-up action was not adequate in my opinion to either provide some accountability or protect others in the future.

If a vehicular homicide laws is passed into law then other families will not have to go through the upset and disappointment I experienced when I found out that so little was being done by the court after Marilyn was killed. I believe that a period of probation with requirements for driver training, safety and skills, community service and restitution should be required where a driver kills someone while violating a traffic law.

TESTIMONY FOR HOUSE JUDICIARY COMMITTEE

JENNY MOON
635 NW LINDSAY CT.
BEND, OR 97701

JANUARY 13, 2010
HOUSE JUDICIARY COMMITTEE
VEHICULAR HOMICIDE HEARING

My name is Jenny Moon. My husband, Keith Moon, was killed by a driver on August 13, 2008 while Keith was riding his bicycle home from work. Keith was an avid cyclist for recreation, exercise and transportation for shorter trips. Keith was riding in a bike lane on a straight avenue in the middle of a sunny summer day. The driver was pulling into or out of a parking-lot driveway and stopped suddenly in the bike lane in Keith's path, causing him to collide with the vehicle and his head to crash through the rear windshield of her SUV, killing him at the scene.

While the driver was not driving recklessly under the influence of alcohol, she violated Oregon traffic law and caused my husband's death. However, under the laws at the time, and despite a full investigation by local law enforcement, the only charge that could be filed against the driver was the minor traffic violation of Illegal Stopping, Standing or Parking, for stopping her vehicle in a bike lane. The driver only had to pay a typical traffic fine for the violation and was never required to appear even in traffic court.

Keith and I had been married for nearly 23 years and have two sons, Christopher Moon, age 18 and Jeremy Moon, age 12. Keith also owned and ran a highly successful small business, Moon Woodworking, Inc. that he built up from making cabinets on his own to a business that employed 19 people at the time of his death. His business was one of the most respected locally owned cabinet shops in Bend. I am currently in the very difficult process of dissolving the business as a result of Keith's death.

Under today's laws, the driver could not be charged with a criminal violation for causing my husband's death. Oregon law still does not impose sufficient consequences for drivers who wrongfully cause the death of vulnerable roadway users. While I understand that accidents happen, in

fatal collisions, the state of Oregon should impose serious consequences for tragic errors.

Oregon needs a vehicular homicide law that would apply to drivers who kill while violating a traffic law, such as the laws designed to protect vulnerable road users, to create real consequences for tragedies like this one. Our family does not feel like Keith's life was given sufficient value when the law allowed the person who caused his death to just mail a check in an envelope to court and never even appear before a judge to acknowledge the seriousness of her conduct. We felt that the penalty the driver received was trivial compared to the loss she caused in taking the life away from a father, husband, employer, and productive and important member of the local community.

Please support passage of an Oregon vehicular homicide law so that other families do not have to go through what we experienced when we were told the driver would face such small consequences for causing the death of our husband and father. We also hope to send a strong signal to law enforcement and the court system that the Oregon legislature supports roadway safety and that lawful users of Oregon's streets should be vigorously protected from careless drivers.

Thank you,

Jenny Moon

TO : JUDICIARY COMMITTEE, OREGON HOUSE OF REPRESENTATIVES
FROM: MARY O'DONNELL
DATE : JANUARY 13, 2010
RE : SUPPORT VEHICULAR HOMICIDE LAW

Dear Members of the Judiciary Committee:

My husband, Tim O'Donnell, died on Saturday, June 9th, 2007 doing something he really loved. Just about every Saturday, he joined members of Portland VELO for long distance rides on rural Washington County roads. During the week, he also rode his bike to work from Aloha to the Hillsboro airport – some 20 miles, roundtrip.

Tim did absolutely nothing wrong on that Saturday. Forty miles into the ride, the group of five bikes stretched about 30 feet single-file on the far right of NW Cornelius-Schefflin Road and was getting ready to turn left onto much less traveled Long Road. They could see at least 500 yards in both directions. The road was clear. They moved toward the center of the lane and signaled. The car came upon them so fast that one of his riding partners, who was wearing a bright red jersey and bringing up the rear, told me, "When I saw her, she was already next to us, straddling the center line."

They tell me that when she hit him, Tim went up into the air at least 20 feet. He went one way, and his bike went another. His helmet was knocked off. The car went all the way underneath him before he came down and hit the ground. On impact, the driver locked up her brakes, but she was going so fast, she skidded past the lead bicyclist, through the intersection and into the ditch with the car ending up on its driver's side door. One of the bicyclists is a paramedic, and he performed first aid, but Tim's injuries were so severe, he died on the ground where he lay.

It was raining a bit when they came to tell me about Tim. I had gone out to get the mail, and at first I didn't understand why a stranger with a gentle voice wanted to talk to me, and he asked me if we couldn't go inside. That man, Bryan McKelvey, Washington County Sheriff's Office Chaplain, knelt before me on my kitchen floor and held my hands in his as he told me that my Tim would not be coming home again. I tried to explain that there must be some mistake. The man I loved for 49 years could not be dead.

Tim and I would have been married 51 years last year, but I celebrated our anniversary by myself because a dangerous driver ran him down on his bike. The woman who ran Tim down paid her traffic ticket with her mother's credit card and faced no consequences for what she did. These drivers have already demonstrated their inability to safely operate a motor vehicle. Some drivers have been suspended multiple times and continue to drive. It is inexcusable and unacceptable for the state to continue to allow them to flaunt the law and to endanger everybody else who is using our roads including other motorists, bicyclists, and pedestrians.

Please support an Oregon Vehicular Homicide Law.

Respectfully,
Mary O'Donnell

TESTIMONY FOR HOUSE JUDICIARY COMMITTEE

DEAN SIGLER
18845 SW VISTA
ALOHA, OR 97006

13 JANUARY 2010
HOUSE JUDICIARY COMMITTEE
VEHICULAR HOMICIDE HEARING

My name is Dean Sigler and I am the grandfather of nineteen year old Jocelyn Latka who was killed January 4, 2006 while lawfully crossing SE Salmon Street in a crosswalk as she carried groceries home from the local Fred Meyer store. Jocelyn at the time was a Japanese language student at Portland State University and a talented musician, artist and judo competitor. Jocelyn's loss was entirely preventable if the driver had not cut the corner as he turned onto a residential side street. However, the driver was not driving recklessly or under the influence of any intoxicant so the police cited him for Failing to Stop for a Pedestrian in a Crosswalk and Careless Driving. The driver paid a total fine of \$704 for both violations by mail. He never even appeared in traffic court.

If Oregon had a vehicular homicide law that applied to drivers who kill while violating a traffic law, then there would be real consequences for these avoidable tragedies. I believe as the law stands now drivers do not have sufficient consequences when they wrongfully cause the death of a roadway user. While I can understand how accidents do happen, in a serious accident the state of Oregon should take greater responsibility than presently exists in the law in order to create real consequences for the tragic mistake. In Jocelyn's case our family felt that her life was not given sufficient weight when the law allowed the person who caused her death to send a check in an envelope to court and never even appear before a judge to acknowledge the seriousness of his conduct.

Our family felt that the penalty the driver received was trivial compared to the loss he caused in taking the life away from a young woman full of talent and promise.

Please support passage of an Oregon vehicular homicide law so that other families do not have to go through what we experienced when the police told us that there would be so little consequence for causing the death of our child. We also hope to send a strong signal to law enforcement and the court system that the Oregon legislature supports safety and these lawful users of Oregon's streets should be vigorously protected from careless drivers.

Thank you,

Dean Sigler