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'Vulnerable user' law would protect bicyclists, pedestrians

Dan DeWitt, Times Columnist

This seems like a natural for the most lethal state in the country for walkers and cyclists - a "vulnerable user" law.

I received an e-mail on this subject in response to Sunday's column about Brad Ash, the Pasco County middle school teacher who was killed after being hit while riding his bicycle on St. Joe Road.

Like many other such drivers, the woman whose car struck Ash received only a minor traffic citation: careless driving. It was a charge that suited the action - briefly taking her eyes off the road - but not the consequence, thereby creating a legal puzzle.

The solution? Maybe a vulnerable user law.

Ash died mainly because, like all cyclists and pedestrians, he was traveling without the protection of what Portland, Ore., lawyer Ray Thomas calls a car's "steel ectoskeleton."

Other aspects of law have long recognized that certain populations, including children and the elderly, are more susceptible to harm than others, said Thomas, who helped pioneer vulnerable user legislation in the United States.

So why don't traffic statutes do the same for walkers, people in wheelchairs and on bikes and, ideally, motorcyclists? The idea is not to make criminals of drivers who hit them - just to make sure these motorists reflect on the potentially grave results of distracted driving and spread that word to others.

Before the passage of the 2008 Oregon law, based on similar ordinances in several European countries, the maximum fine for a careless driver who caused a death in that state was \$750. Now, if the victim is a vulnerable user - as they often are when minor slip-ups end tragically - that amount is \$12,500.

Drivers can greatly reduce this fine by taking traffic classes and doing community service, usually giving talks about their experience. The drivers in these fatal crashes "of course feel terrible, and this gives them an opportunity for reconciliation," Thomas said.

In doing so, of course, they increase public awareness of the danger faced by cyclists and pedestrians. So did just passing the law - the state giving its stamp of approval to a legal shield for these folks.

Since then, Thomas said, the law has received lots of publicity, including in this month's trial of a Portland bus driver who was convicted of striking five pedestrians, killing two of them.

Said Thomas: "Law enforcement people aren't as likely to think, 'What is that goofy guy doing riding his bike on the road? Doesn't he know he can get killed?' "

Some enhanced penalties are already in Florida law.

Tuttle, for example, could lose her license for as long as a year and be fined as much as \$1,000; if there was no fatality or injury, she'd keep her license and probably face a smaller fine. Another provision allows judges to impose as much as 120 hours of community service, though they rarely do, according to lawyers to whom I spoke.

"I've never seen it. Never, ever, at all," said J. Steele Olmstead, a Tampa personal injury lawyer and cyclist.

Bike and motorcycle groups in Florida have lobbied for tougher penalties for careless drivers who cause deaths - and gotten nowhere.

Which is too bad, and not only for the main reason - that people's lives are in danger - but because scary roads are expensive.

People who, say, liked to ride their bikes to hang out at a coffee shop or play a game of basketball at a park will now drive. That puts more cars on highways and eventually more burden on us to pay for widening projects.

And the roads in Florida are more than scary; they're terrifying. Not just recently, and not just because of the dozen cycling deaths in the Tampa Bay area since late July. Year after year, more cyclists and almost as many pedestrians die in Florida as in California, which has twice our population. Mike Lasche, a longtime cycling activist from Sarasota, found that between 2001 and 2008, Florida ranked among the top three states in per-capita cycling and pedestrian deaths.

Nowhere else came close, certainly not New York or Delaware, both of which followed Oregon's lead and passed vulnerable user laws last year.

Can anyone seriously argue that Florida should not do the same?

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