

HOUSE BILL REPORT

ESHB 2095

As Passed House:
February 17, 2026

Title: An act relating to protecting vulnerable users of public ways.

Brief Description: Protecting vulnerable users of public ways.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Reed, Parshley, Ryu, Ramel, Doglio, Berry, Obras, Santos, Cortes, Street, Scott, Fosse and Pollet).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/14/26, 2/3/26 [DPS].

Floor Activity:

Passed House: 2/17/26, 53-44.

Brief Summary of Engrossed Substitute Bill

- Establishes a rebuttable presumption of negligence for certain tort claims arising from a vehicle collision that proximately causes the injury or death of a vulnerable user of a public way if the victim was injured or killed in a protected area.
- Requires the Criminal Justice Training Commission and Administrative Office of the Courts to develop educational materials for certain law enforcement officers, prosecutors, and judges regarding Negligent Driving with a Vulnerable User Victim.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman,

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

Goodman, Jacobsen, Peterson, Salahuddin and Thai.

Minority Report: Do not pass. Signed by 2 members: Representatives Abell, Assistant Ranking Minority Member; Burnett.

Minority Report: Without recommendation. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Graham and Walen.

Staff: Yelena Baker (786-7301).

Background:

Negligent Driving with a Vulnerable User Victim.

A person commits the crime of Negligent Driving with a Vulnerable User Victim in the first degree if he or she operates a vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and he or she proximately causes the death of a vulnerable user of a public way.

Negligent Driving with a Vulnerable User Victim in the first degree is a gross misdemeanor, punishable by up to 364 days of imprisonment, a fine up to \$5,000, and suspension of driving privileges for 90 days.

A person commits the infraction of Negligent Driving with a Vulnerable User Victim in the second degree if, under circumstances not constituting Negligent Driving with a Vulnerable User Victim in the first degree or Negligent Driving in the first degree, he or she operates a vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and he or she proximately causes great bodily harm or substantial bodily harm of a vulnerable user of a public way.

Negligent Driving with a Vulnerable User Victim in the second degree is a traffic infraction, punishable by a fine up to \$5,000, and suspension of driving privileges for 90 days. If the driver requests and personally appears for a hearing, he or she may, in place of the above penalties, pay a penalty of \$250, attend traffic school, and perform community service within one year of the hearing.

Law Enforcement Reporting of Accidents.

If an accident results in injury to or death of any person or damage to the property of any person, a law enforcement officer present at the scene or in possession of facts concerning the accident is required to make a report of the accident to the Department of Licensing (DOL), on a form prescribed by the DOL. The report must identify the operator of a vehicle involved in a collision when the collision results in:

- a fatality and the officer has reasonable grounds to believe the operator of the vehicle caused the collision; or
- a serious injury and the officer has reasonable grounds to believe that the operator who caused the serious injury may not be competent to operate a motor vehicle.

The Washington State Patrol (WSP) may require any driver involved in an accident or any witness of the accident to file supplemental reports of the accident. The WSP is required to create a sample form for accident reports and to make it available to other agencies or individuals. The report form is designed to capture all material facts related to the accident, including the location, circumstances, and the conditions present at the time of the accident.

Civil Liability in General.

A tort is a type of legal wrong. When one party injures or otherwise harms another person, that person, the plaintiff, can typically bring a legal civil action for the tort against the responsible party, the defendant, and seek an award of damages.

Ordinary Care and Negligence.

A plaintiff who has been harmed by a defendant's unintentional misconduct can bring a civil claim for negligence. A negligence claim requires proof of four basic elements: (1) that the defendant owed the plaintiff a duty of ordinary care; (2) that the defendant's acts or omissions breached their duty of care; (3) that the breach caused the plaintiff damages; and (4) that the plaintiff suffered a cognizable injury.

Ordinary care means the care a reasonably careful person would exercise under the same or similar circumstances. Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

Burden of Proof.

Generally, the plaintiff has the burden of proof when bringing a civil action and must prove each element of their claim by a preponderance of the evidence. To meet the preponderance of the evidence standard, the party with the burden of proof must persuade the trier of fact that, considering all evidence in the case, the proposition on which that party has the burden of proof is more probably true than not.

Summary of Engrossed Substitute Bill:

Civil Liability for the Injury or Death of a Vulnerable User of a Public Way.

"Vulnerable user of a public way" is defined to include a pedestrian, a person riding an animal, or a person operating or riding any of the following on a public way: a farm tractor or implement of husbandry, without an enclosed shell; a bicycle; an electric-assisted bicycle; an electric personal assistive mobility device; a moped; a motor-driven cycle; or a motorized foot scooter.

Any driver who operates a vehicle in a manner that proximately causes the injury or death of a vulnerable user of a public way is presumed to have acted negligently in any tort action

alleging liability for the injury or death, but the driver may rebut this presumption by proving, by a preponderance of the evidence, that the driver was not negligent.

The presumption of negligence only applies when the vulnerable user was injured or killed by the driver while the vulnerable user was present on a sidewalk or shoulder, or in a crosswalk, bicycle lane, path, or area established by state or local law for the use of vulnerable users of a public way. In cases that involve both driver and nondriver defendants, the presumption of negligence applies only against driver defendants.

The presumption of negligence does not apply to a driver of an emergency vehicle who operates the emergency vehicle within the course and scope of the driver's employment or official duties directly related to the emergency vehicle. The presumption of negligence also does not apply if:

- the vulnerable user failed to abide by traffic control devices;
- the vulnerable user failed to stop at a stop sign, even if the vulnerable user was authorized to proceed without stopping under other state law;
- the vulnerable user was intoxicated or otherwise impaired and failed to abide by traffic control devices and right-of-way laws; or
- the vulnerable rider was riding a horse, and the horse was acting out of control of its rider.

In any legal action alleging liability for the injury or death of a vulnerable user, the plaintiff must prove by a preponderance of the evidence:

- that the plaintiff was a vulnerable user of a public way who was injured or killed in a qualifying area;
- the plaintiff's damages; and
- that the driver's negligence was the sole proximate cause of the plaintiff's damages.

A prevailing plaintiff or defendant is entitled to recover actual damages, statutory damages of \$1,500, and reasonable attorneys' fees and actual costs, including expert fees. A prevailing plaintiff may also recover punitive damages if the driver has previously been found civilly or criminally liable for injuring or killing a vulnerable road user while operating a vehicle.

Educational Requirements for Law Enforcement Officers, Prosecutors, and Judges.

By July 1, 2027, the Washington State Criminal Justice Training Commission (CJTC), in consultation with the Washington Association of Prosecuting Attorneys, must develop and provide educational classes and materials regarding the offense of Negligent Driving with a Vulnerable User Victim to all law enforcement officers who enforce traffic laws or respond to traffic injuries or fatalities, and to all prosecutors who enforce traffic laws or who initiate civil infraction or criminal proceedings in response to traffic injuries or fatalities.

Classes and materials must be provided to all covered law enforcement officers and prosecutors within three months of the beginning of their employment and at least once

every three years thereafter. Covered officers and prosecutors must complete these classes and materials within six months of beginning their employment and every three years thereafter, but only if the CJTC makes the classes and materials available.

Classes and materials for law enforcement officers must be designed to be delivered in a manner that minimizes disruption of officer duties. Classes and materials for prosecutors and judges must be designed to qualify for some continuing legal education credits.

By January 1, 2028, the Washington State Administrative Office of the Courts must develop and provide similar educational classes and materials to all judicial officers and judges pro tempore in Washington who hear cases involving violations of traffic laws or which involve traffic injuries or fatalities. This requirement is subject to the availability of amounts appropriated for this specific purpose.

Law Enforcement Reporting of Accidents That Involve Vulnerable Users.

The DOL form used by law enforcement officers for accident reports and the WSP sample form for accident reports must state whether the accident involved a vulnerable user of a public way and, if so, the specific type of vulnerable user.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2026.

Staff Summary of Public Testimony:

(In support) A presumption of liability for collisions involving vulnerable users of public ways is a common concept in other countries. The bill's presumption of liability is rebuttable and only applies when an injury or death occurs in a protected area designated for vulnerable road users, such as sidewalks, bike lanes, and crosswalks. This provision reflects a common sense understanding that when a vulnerable user of a public way is using a facility set aside for their specific use, that person should have an expectation of safety. A person injured or killed by a negligent driver, using a facility as intended, should not need to prove their own nonnegligence. Drivers should be encouraged to be attentive when crossing through protected areas where collisions frequently occur. The burden of responsibility should be placed on those who can do the most harm.

This bill will help protect vulnerable road users and make communities more accessible. Cyclists are being killed by negligent drivers. In some instances, the drivers causing injuries or deaths have suspended licenses, no insurance, no mandated ignition interlock, and long histories of negligent driving. Such drivers are sometimes receiving minimal punishment, while victims are left with medical bills and loss of family members. Studies indicate American roads can be made safer, saving 30,000 Americans' lives each year. Too

many people are being injured or killed in crosswalks and on sidewalks. The bill's punitive damages provisions will address defendants with a repeated pattern of negligent driving.

Current law holds dog owners to a higher standard of liability than drivers and gives drivers the benefit of the doubt. This bill corrects a misalignment between law and intent. Discussions with actuarial experts indicate insurance pricing the effects of this law should not be an issue and that a typical practice is to set up a risk premium. This bill's fee-shifting provisions are an important deterrent to drivers, defense attorneys, and insurers denying liability, and forcing the hiring of experts that subtracts from a plaintiff's recovery. The bill will discourage baseless disputes.

The bill's legal education components will ensure law enforcement, prosecutors, and judges are up-to-date and informed on the law. Currently, there is no standard training and some collision reports are omitting information that indicates a potential violation of the state's laws protecting vulnerable users of public ways. In some instances, vulnerable road users are being wrongly ticketed and police reports will parrot a driver's statements regarding a pedestrian. The bill supports law enforcement who provide critical reporting at the scene of a collision. Law enforcement reports are essential for victims and their family considering next steps.

(Opposed) The bill's deterrent effect is overstated. It is already a crime to hit a vulnerable road user, and there are statutes that prohibit vehicular assault and homicide.

The attorneys' fees and punitive damages provisions will result in uninsurable risks. Washington drivers are required to purchase automobile insurance. Every driver will be at risk and there will be no limit on what a plaintiff can ask for. The combination of the bill's presumption of negligence, statutory damages, one-sided fee shifting, and punitive damages will increase costs and affect affordability.

The punitive damages provision imposes liability on a defendant, not just a driver. By naming a defendant instead of a driver, the bill allows targeting of businesses and other entities. This bill is not limited to individuals, and the real goal is to create incentives to target businesses. Permitting punitive damages after three prior injuries or deaths is particularly problematic for businesses with thousands of drivers.

The state's current liability system is not broken. People who are harmed by negligent drivers are compensated. The presumption of negligence provision is exotic in tort law. The attorneys' fees' shifting provision of this bill will create a cottage industry for plaintiff's attorneys to litigate cases. Commercial trucking has a low risk of being involved in collisions with vulnerable road users, but the industry is a focus for litigators because of the potential for a high settlement.

The protected area provision of this bill is overbroad and could be interpreted to cover any street, or any area designated by law for people to operate a vehicle in. The definition of

vulnerable users is too broad and includes motorcycles.

The bill's training components should focus on collision investigations; some incidents are complex.

Roadway design is an issue that should be considered.

(Other) The effort to keep roads safe is supported, but the bill raises liability concerns. Cities and businesses may be brought into litigation against drivers and need exemptions. Cities and towns that control crosswalks and lanes will be pulled into lawsuits. The bill will invite more litigation and increase costs of cities. Local governments are already struggling. An exemption from joint-and-several liability should be added to the bill to protect cities. This bill will disincentivize cities from building protected areas if each space increases a city's liability risks.

Educational classes and materials for judges and prosecutors should be designed to provide continuing legal education credits. Officer training is good, but many new training requirements have been added in the last five years. The CJTC is struggling to meet all its training obligations and many new training materials are not yet available.

The weak and vulnerable should be protected, and the elderly should be able to travel on roads and paths without fear of harm. The requirement for three prior instances of injury or death before punitive damages are allowed is problematic. One prior instance should be enough, similar to the one-bite rule for a dangerous dog.

The bill raises potential liability issues for employers, who can have thousands of employees. With that many drivers, an issue will eventually happen.

The attorneys' fees' shifting provisions in the bill should be at the discretion of the court, not automatic.

Persons Testifying: (In support) Representative Julia Reed, prime sponsor; Holden Ringer; Bob Anderton, Washington Bike Law; Vicky Clarke, Washington Bikes; Rita Hulsman; Stacie Bain, Law Office of Stacie Bain; and Annemarie Dooley, Washington Physicians for Social Responsibility.

(Opposed) Kris Tefft, Washington Liability Reform Coalition; Alison Turnbull, Washington Defense Trial Lawyers; Michael Rhodes, Mix Sanders Thompson; and Jeff DeVere.

(Other) Derrick Nunnally, Association of Washington Cities; James McMahan, WA Assoc Sheriffs and Police Chiefs; and Arthur West.

Persons Signed In To Testify But Not Testifying: None.