

Safe Passing Laws: The Intersection of Law, Vehicles, Bicycles, Pedestrians and Other Vulnerable Road Users



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Safe Passing Laws: The Intersection of Law, Vehicles, Bicycles, Pedestrians and Other Vulnerable Road Users

One of the hardest things for those who design roads and write the laws and ordinances governing their use is to develop ways for cars, bicycles, pedestrians, and other users to all share and use the same public space at the same time and do so safely. The problem is not a new one,¹ and the challenges presented in the execution are many.

Motor vehicles move much faster than bicycles, and bicycles move much faster than pedestrians. These different characteristics mean that different users have different needs, but all these requirements must be addressed to allow everyone to use the same roadway. The different actors also have different purposes; motorists are often in a hurry to get from point A to point B, while bicycle riders may be out for some exercise or just to enjoy a nice day. These different uses lead to different needs and considerations. Finally, there is also the practical consideration that all the design choices and laws governing road use are actually applied by real human beings, people who sometimes make mistakes or are ignorant of their duties. Often, these mistakes and ignorance can result in people being badly hurt. A collision between a bicyclist or pedestrian and a motor vehicle rarely ends well for the bicycle rider or the person in the crosswalk, regardless of who may have had the right of way and whatever the law may be.

Current Texas law, at both the state and municipal level, is a patchwork of requirements and prohibitions intended to let everyone use our roads while keeping them safe. This article will discuss the current state of these laws and the movement to pass “safe passing” statutes (at both the state and local level in Texas) that are intended to give those most

vulnerable to mistakes a cushion of space and time that may save their lives.

A. Current State Law

The nonspecific nature of the laws and regulations governing the interaction between cars and trucks on the one hand and more vulnerable users (most commonly bicycle riders and pedestrians, but also those driving or riding buses, golf carts, scooters, farm equipment, and even horses) on the other is clearly shown by a review of current state law, mostly found in the chapters of the Texas Transportation Code governing the rules of the road.²

These laws begin by (helpfully) defining “traffic” as “pedestrians, ridden or herded animals, and conveyances, including vehicles and streetcars, singly or together while using a highway for the purposes of travel.”³ “Vehicle” is defined to include almost any kind of conveyance one could imagine that might share the road as “traffic.”⁴ Having defined “traffic” and “vehicle” in these ways, the state makes it clear that most of those who wish to use the roads have the right to do so, as long as they follow the same laws as all other drivers.⁵ This being the case, the question becomes how to provide for all of these very different uses while keeping those using the roads as safe as possible.⁶

The general approach to solving this problem is to post signs governing the flow of traffic and defining what is and what is not permissible on roadways. Vehicles are required to obey these signs, which the law grandly calls “traffic control devices,”⁷ and individual vehicles are to use their own lights or

Tex. Transp. Code § 541.201(8), “trailer,” Tex. Transp. Code § 541.201(20) and even for “pedestrian,” self-evidentially defined as “a person on foot.” Tex. Transp. Code § 541.001(3).

⁴ Tex. Transp. Code § 541.201(23).

⁵ Tex. Transp. Code § 551.101(a) (those operating bicycles, mopeds and electric bicycles are subject to all traffic laws, unless affirmatively changed by statute).

⁶ See, generally, 7A MCQUILLIAN THE LAW OF MUNICIPAL CORPORATIONS § 24:620 (3rd ed. Supp. 2015).

⁷ Tex. Transp. Code § 544.004(a).

¹ See, e.g., *Rights of a Pedestrian Crossing a Street at an Intersection*, 7 TEX. L.R. 667 (June, 1929).

² There are other laws affecting road safety, such as laws prohibiting driving under the influence. However, because these laws are more general and affect all road users equally they are outside the scope of this article. The drunk driver who hits another car is just as guilty as the drunk driver who hits a cyclist or a pedestrian and is likely to be punished in a similar way.

³ Tex. Transp. Code § 541.301. The Code also contains other definitions, including definitions for “bicycle,” Tex. Transp. Code § 541.201(2), “moped,”

other signals to make their intentions while driving clear to others.⁸ There are also laws governing road use more generally, particularly those intended to keep vehicles separate from one another as they travel, such as the statute requiring vehicles to maintain an “assured clear distance” from other vehicles on the road.⁹

Such rules and regulations are broadly intended to keep different vehicles from trying to occupy the same space at the same time. They are most likely to be violated in some way when vehicles are forced to approach one another, which usually occurs when one vehicle is trying to pass another.

Passing is, reasonably enough, the act of overtaking and proceeding past another vehicle that is traveling in the same direction.¹⁰ When passing on the left, vehicles are generally required to pass at a “safe distance” and not return to the right lane and continue travel until “safely clear of the passed vehicle.”¹¹ The vehicle being passed is supposed to allow this to happen and is specifically not supposed to speed up in a way that interferes with the vehicle passing it.¹²

These procedures are all well and good, but concepts like “assured clear distance,” “safe distance” and “safely clear” are rather vague. When faced with such general standards, reasonable people can disagree about what is required in any given situation. Unfortunately, in the real world of Texas roadways, such disagreements can result in collisions. The danger is especially high when vehicles with different characteristics are sharing the road: the “assured clear distance” between cars both traveling at 55 miles per hour is very different than the “assured clear distance” between a car traveling at 55 miles per hour and a bicycle in the same lane.

Recognizing this, the legislature sometimes takes away the discretion of those using the road, at least in certain instances. For example, if a school bus has stopped, all vehicles traveling in either direction must stop until the bus resumes its travel.¹³ Vehicles that are approached by emergency vehicles with lights and sirens on are supposed to yield the right of way and pull over to the right side of the road until the vehicle has passed,¹⁴ and when passing an emergency vehicle stopped on the side of the road, vehicles are supposed to pull into the left lane or (if this is not possible) to slow down significantly.¹⁵ In all these cases, relative concepts like “safely” are replaced with objective requirements or prohibitions, such as the requirement that one either stop completely or change to a specified lane.

Unfortunately, with a few exceptions,¹⁶ the legislature has proven unable or unwilling to write similarly objective laws allowing users of vehicles other than cars and trucks to integrate their vehicles into the flow of traffic in a considered way. Instead, every time a new kind of vehicle makes an appearance, the legislature passes a new subsection of the code to address the use of that type of vehicle, resulting in a patchwork of non-uniform traffic laws.

For example, bicycles and mopeds are generally treated in the same way as other vehicles, so long as they obey a few specific requirements, such as riding on the right hand side of the road to the extent possible and not riding more than two abreast.¹⁷

Another section of the law governs “electric personal assistive mobility devices,” i.e., electric wheelchairs, which are allowed on sidewalks but generally not allowed on roads unless crossing them or unless there is no sidewalk.¹⁸

⁸ Tex. Transp. Code §§ 545.106, 545.107.

⁹ Tex. Transp. Code § 545.062(a).

¹⁰ Tex. Transp. Code § 545.001(1).

¹¹ Tex. Transp. Code § 545.053(a)(1), (a)(2).

¹² Tex. Transp. Code § 545.053(b).

¹³ Tex. Transp. Code § 545.066(a). Somewhat similar laws govern passing streetcars driving on rails. Tex. Transp. Code §§ 545.201, 545.202. Such laws seem more suited to San Francisco than anywhere in Texas.

¹⁴ Tex. Transp. Code § 545.156(a).

¹⁵ Tex. Transp. Code § 545.157(b).

¹⁶ Tex. Transp. Code § 545.422(a) (prohibiting driving a motorized vehicle on the sidewalk, unless crossing a sidewalk on a driveway).

¹⁷ Tex. Transp. Code §§ 551.002, 551.101-103. Bicycles and pedestrians, both because they are common and have been around for many years, tend to be subject to more laws and ordinances than other kinds of road users, such as the electric wheelchair. *See, generally*, 7A MCQUILLIAN THE LAW OF MUNICIPAL CORPORATIONS §§ 24:624, 24:626 (3rd ed. Supp. 2015).

¹⁸ Tex. Transp. Code §§ 551.201-203.

“Neighborhood electric vehicles” (whatever those may be) are allowed on some roads (subject to laws allowing local governments to forbid such use) and generally allowed on roads in certain subdivisions and on beaches, subject to special speed rules.¹⁹

Still different rules govern the use of “motor-assisted scooters/pocket bikes”²⁰ and golf carts, which are apparently different enough from neighborhood electric vehicles to justify their own set of laws.²¹

A similar, but shorter, mix of laws attempts to protect pedestrians using roadways or adjacent sidewalks. All vehicles are generally required to yield to pedestrians who have the right of way under a traffic control signal and who are in a crosswalk,²² but in other cases the law’s tenets are more vague; for example, some require cars to yield the right of way to the pedestrian only if he or she is on the same side as the vehicle and close enough “as to be in danger.”²³ Drivers are also told generally to “exercise due care” when around pedestrians,²⁴ to use their horn to give warnings “when necessary,”²⁵ and to “exercise proper precaution” when there is a child or an “obviously confused or incapacitated person on a roadway.”²⁶ It is no wonder we have so many problems.²⁷

B. Safe Passing Statutes Generally

Those affected by the variance and vagueness of existing laws have long pushed for clearer and more objective laws to protect vulnerable road users.²⁸ Some of these laws are very specific, such as laws that prohibit those in vehicles from “dooring” bicycle riders, i.e., hitting them with opened doors as the

vehicle passes, but others are more general.

Some states, taking their cue from legislation common in Europe,²⁹ have implemented a more punitive approach by passing so-called “vulnerable road user” laws, which seek to increase the penalties in cases where a vehicle has been used in a way that injures or kills a bicyclist or pedestrian. Oregon was the first to pass such a law in 2007,³⁰ and since then a number of other states have at least considered them.³¹

These laws may be useful and are recognized for establishing a fairly broad definition for who qualifies as a “vulnerable user,”³² but their use of penalties to encourage compliance with the law to protect cyclists and the like means the same subjective laws are left in place.

The second approach, called a “safe passing law” or “three-foot law,” does not specifically address penalties, but rather makes the steps necessary to comply with the law more clear. As the name suggests, a “three-foot law” requires vehicles that are near certain defined groups of road users (such as bicyclists or pedestrians) to give members of that group at least three feet of clearance, such as when passing. The idea is that by giving drivers an objective measure of the amount of room needed to make others safe, it will make their obligations more clear while ensuring (to the extent possible) that cyclists and pedestrians are not endangered.³³ This will, in turn, protect what are usually called “vulnerable road users” from collisions while being overtaken, which is the scenario considered to be the most likely to be deadly.³⁴

¹⁹ Tex. Transp. Code §§ 551.301-304.

²⁰ Tex. Transp. Code §§ 551.351-353.

²¹ Tex. Transp. Code §§ 551.401-405.

²² Tex. Transp. Code § 552.002.

²³ Tex. Transp. Code § 552.003(a)(2).

²⁴ Tex. Transp. Code § 552.008(1).

²⁵ Tex. Transp. Code § 552.008(2).

²⁶ Tex. Transp. Code § 552.008(3).

²⁷ In fairness, some fitful efforts have been made to address some of the more obvious problems. *See, e.g.*, Tex. Health & Safety Code § 758.002 (authorizing DPS to establish a statewide bicycle safety program).

²⁸ The discussion in this section owes much to a law review article: Ken McLeod, *Bicycle Laws in the U.S., — Past, Present & Future*, 42 *FORDHAM URB. L.J.* 869

(May, 2015).

²⁹ Europe has other kinds of legislation on the issue that seem to be far less likely to be adopted here, such as laws presuming any collision between a car or truck and a vulnerable road user is the fault of the motorist, who then has to bear the burden of proving his lack of culpability or innocence. *Bicycle Laws* at 917-18.

³⁰ H.B. 3314, 74th Leg., Reg. Session (Or. 2007).

³¹ *Bicycle Laws* at 903.

³² *Id.* at 904.

³³ *See, generally*, FAQs found at <http://www.biketexas.org/en/advocacy/safe-passing/safe-passing-faqs> (all websites cited in this article were last accessed on 1 March 2016).

³⁴ *Bicycle Laws* at 902.

Safe passing laws are not perfect. It takes two to tango, and many complain that even if they try to give the vulnerable road user a three-foot berth, the other person may do things that make this difficult to do. There is also some criticism that the laws are difficult to enforce because police officers cannot be standing everywhere with yardsticks to measure distances;³⁵ although, it is also thought that giving drivers an objective responsibility has some value, even in the absence of strong enforcement. Some believe three feet is insufficient room, especially at higher speeds, but the simplicity of a bright-line rule may have value even if a graduated system of distance that increases as speed increases might be slightly safer.³⁶ Still other laws are full of exceptions to a degree that much of the value of the objective three foot distance requirement is lost.³⁷ Some have called for studies to determine the effect of these laws and whether the various provisions found in different versions of the law make them better or worse.³⁸

Wisconsin adopted the first safe passing law that required a three-foot cushion over 40 years ago in 1973.³⁹ Massachusetts soon followed suit with a similar law specific to bicycle riders.⁴⁰ There the matter rested for many years, with most state laws on the issue resembling current Texas law, i.e., requiring that overtaking and passing be done “safely” but not fixing any specific distance considered to be “safe.”

However, in the last decade, advocacy groups representing bicyclists have begun a series of grass roots campaigns resulting in fixed-distance safe passing laws being enacted by about half the states with a couple of states enacting so-called “fall-over laws,” which require giving cyclists enough distance that the bicycle rider could fall over and not hit the vehicle passing.⁴¹

³⁵ Although affordable personal cameras like GoPros may make it possible to document violations of safe passing laws or at least call attention to the problem.

³⁶ *Bicycle Laws* at 901-02.

³⁷ *Id.* at 901.

³⁸ *Id.* at 902-03.

³⁹ Assembly Bill 1046, 1973-74 Leg. (Wisc. 1973).

⁴⁰ *Bicycle Laws* at 899.

⁴¹ *Id.* at 899-900; *see also*

<http://www.ncsl.org/research/transportation/safely-passing-bicyclists.aspx> (indexing various state safe

D. Safe Passing Law in Texas

Unfortunately, Texas is not yet one of the states with a safe passing law, although it is not for want of trying.

In 2009, a bill was introduced into the legislature, eventually becoming Senate Bill 488. SB 488 is, for the most part, a fairly typical safe passing law requiring drivers who approach a vulnerable road user to either change lanes (such as when passing a stopped emergency vehicle) or pass at a “safe distance,” which is defined by the statute to be at least three feet (or six feet for certain trucks).⁴²

Where SB 488 differed from some other safe passing laws is in the expansive definition it gave to “vulnerable road user,” those subject to its protections. The definition included not only those riding bicycles, but also all manner of pedestrians and workers who might be close to a street, those on horseback, and those driving farm equipment.⁴³ The proposed statute also tried to deal with “road rage,” specifically prohibiting (in an admittedly somewhat subjective way) acts by drivers that are intended to intimidate, harass, or threaten a vulnerable road user.⁴⁴

Despite having overwhelming bipartisan support in the legislature (ultimately passing in the House by a vote of 142–0 and the Senate by a vote of 26–5), HB 488 ended up being vetoed by Governor Perry at the very end of the 2009 legislative session and never became law.⁴⁵ Why he vetoed the law is not entirely clear; the veto came as a surprise to many because Governor Perry had never expressed any opposition to its provisions before the bill made it to his desk and because he is known to be a bicyclist himself.⁴⁶

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⁴² 2009 Tex. Senate Bill 488, 81st Leg. (Reg. Session), § 1(b).

⁴³ *Id.* at § 1(a).

⁴⁴ *Id.* at § 1(f).

⁴⁵ *See* [http://www.biketexas.org/en/news/action-alerts/723-action-update-governor-vetoes-safe-passing and](http://www.biketexas.org/en/news/action-alerts/723-action-update-governor-vetoes-safe-passing-and)
<http://www.cyclingnews.com/news/texas-governor-vetos-safe-passing-bill/>.

⁴⁶ <http://blog.chron.com/texaspolitics/2009/06/more-on-that-safe-passing-veto/> and

There was speculation when the threat of a possible veto was rumored that he believed the law placed too much responsibility on motorists and not enough on the “vulnerable road users,”⁴⁷ which is what he claimed in his veto declaration,⁴⁸ but this supposed concern bears little relationship to the reality of a law requiring either three or six feet of clearance when passing designated kinds of road users.

Although other versions of the law have been proposed,⁴⁹ most recently in 2015,⁵⁰ none have passed.

E. Safe Passing Ordinances

Where the state of Texas has failed to act, many municipalities have stepped into the breach and passed their own safe passing ordinances.

According to a Texas bicyclist advocacy organization, at least 23 Texas cities have passed their own safe passing ordinance. Some of these cities are small, such as Alton, Helotes, and Pharr, but some of the largest cities in Texas have also passed safe passing ordinances, including Austin, Corpus Christi, El Paso, Fort Worth, Houston, and San Antonio (see appendix).⁵¹

In many cases, these municipal ordinances are identical to SB 488 that Governor Perry vetoed.⁵² This is likely because the bill itself is used as a model ordinance that those interested in the issue can ask their local municipality to enact into law—no sense reinventing the wheel.⁵³ Others are substantively the same as SB 488, reflecting only the kinds of minor changes one would expect when local politicians add their views about some matter.⁵⁴

While better than nothing, this local ordinance approach leaves much to be desired. The

<https://www.texastribune.org/2010/12/21/cyclists-gear-push-safe-passage-laws/>.

⁴⁷ <http://offthekuff.com/wp/?p=19443>.

⁴⁸ <http://www.journals.senate.state.tx.us/sjrn/81r/pdf/81RSJ06-01-F.PDF#page=120>.

⁴⁹ <https://www.texastribune.org/2010/12/21/cyclists-gear-push-safe-passage-laws/> (discussing effort in wake of Perry’s veto of HB 488).

⁵⁰ See text of proposed law, <http://www.biketexas.org/downloads/safe-passing-language-2015.pdf>.

⁵¹ [http://www.biketexas.org/en/advocacy/safe-](http://www.biketexas.org/en/advocacy/safe-passing)

effect of such ordinances is necessarily local, and much of the benefit of having safe passing laws is that their statewide scope means all drivers will (or will be expected to) know the law. As a legal matter, ignorance of the law is no excuse, but if some cities have safe passing laws and others do not, many drivers will be factually ignorant of the law where they happen to be driving, an ignorance that can be fatal for vulnerable road users.

F. Conclusion

Many people believe that the existence of a statewide safe passing law would make no difference—that it would be too difficult to enforce and that vulnerable road users would be no safer. However, the creation of a statewide legal standard is a step in the right direction. It would define the conduct expected of the motoring public rather than leaving in place a patchwork of varying municipal ordinances. A state law would also help juries assess responsibility in legal cases arising from collisions between motorists and vulnerable road users.

The first step to preventing harm is awareness of the danger. Safety improvements are often the result of incremental changes, and a statewide safe passing law is one such change that will, in some small way, improve safety for all users of our roadways.

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⁵² See, e.g., Austin Mun. Code § 12-1-35; Beaumont Code Ord. Art. 20.08; San Antonio Code of Ord. § 19-9.

⁵³ <http://www.biketexas.org/en/advocacy/safe-passing> (link to model ordinance). Other organizations have their own model laws. See, e.g., <http://bikeleague.org/content/model-safe-passing-law-0>.

⁵⁴ See, e.g., Houston City Code § 45-44.

APPENDIX

2009 Texas Senate Bill No. 488, Texas Eighty-First Legislature.

Houston City Code Sec. 45-44. – Vulnerable road users. Ord. No. 2013-429, § 2, 5-8-2013.

San Antonio Code Sec. 19-9. – Vulnerable road users. Ord. No. 2010-0097, § 1, 2-4-10).

Beaumont Code Article 20.08 - Vulnerable road users, Sec. 20.08.001. Ord. No. 11-001, sec. 1, adopted 1/11/11).

Austin Municipal Code § 12-1-35-Vulnerable road users. Ord. 20091022-030.