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ACCOMMODATING PEDESTRIANISM IN THE TWENTY-FIRST
CENTURY: INCREASING ACCESS AND REGULATING URBAN
TRANSPORTATION SAFETY

Bicycle Laws in the United States-Past, Present, and Future

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BICYCLE LAWS IN THE UNITED STATES— PAST, PRESENT, AND FUTURE

Ken McLeod

Introduction	870
I. Traffic Laws for Bicyclists.....	875
A. Laws that Affect the Treatment of Bicycles as Vehicles.....	875
B. Where to Ride Laws	881
C. Mandatory Use of Bicycle Facility Laws.....	885
D. Mandatory Helmet Use Laws.....	888
E. Sidewalk Riding Laws	894
II. Traffic Laws for Motorists that Affect Bicyclists	898
A. Safe Passing and “Three Foot” Laws	898
B. Vulnerable Road User Laws	903
C. “Dooring” Laws	905
III. What Is the Future for Bicycle-Related Laws?.....	909
A. Bicycling Under the Influence Laws.....	909
B. Distracted Driving Laws	911

* There are many practicing attorneys who are currently writing thoughtful blogs and others writing on bicycle-related laws, including many members of the League of American Bicyclists’ Legal Affairs Committee, who have been immensely helpful in keeping my knowledge of bicycle-related laws up-to-date and accurate, and in informing the perspectives in this Article. Many of the members of the League of American Bicyclists’ Legal Affairs Committee blog and write about legal issues related to bicyclists, particularly Ray Thomas, *Get Legal with Ray Thomas*, BIKEPORTLAND.ORG, <http://bikeportland.org/tag/get-legal-with-ray-thomas> (last visited Mar. 31, 2015), Steve Magas, STEVE MAGAS: BIKE LAW, <http://www.ohiobike-lawyer.com/> (last visited Mar. 31, 2015), Bob Mionske, BICYCLELAW.COM, <http://www.bicyclelaw.com/> (last visited Mar. 31, 2015), Peter Wilborn, *Blog*, BIKE LAW.COM, <http://www.bikelaw.com/cambio-corsa/> (last visited Mar. 31, 2015), and Adam White and Steve Vaccaro, VACCARO & WHITE, <http://www.vaccaroandwhite.com/> (last visited Mar. 31, 2015), who are strong advocates for bicyclist and pedestrian safety efforts in New York City. There are also many lawyers who specialize in bicycle law with active and insightful blogs. *See, e.g.*, BIKE SAFE BOS., <http://bikesafeboston.com/> (last visited Mar. 31, 2015); CHI. BICYCLE ADVOC., <http://www.mybikeadvocate.com/> (last visited Mar. 31, 2015). This Article would not have been possible without the League of American Bicyclists and the hard work of bicycle advocates in many states.

C. “Idaho Stop,” “Dead Red,” and Other Laws that Create Special Rules for Bicyclists.....	913
D. Laws for Electrically-Assisted Bicycles.....	915
E. Laws that Alter Liability Rules.....	917
Conclusion.....	918

INTRODUCTION

In the last decade, bicycling has been the fastest growing mode of travel used to commute to work.¹ Many states, cities, and the federal government have shown an interest in promoting bicycle use. Despite this increase, there are substantial misunderstandings about the laws that govern bicyclist behavior and laws that govern how bicyclists and motorists share our nation’s roadways.² It is my hope that this article clears up misunderstandings and explains features of bicycle-related laws through documenting the evolution of bicycle-related traffic laws. It will also look at examples of potential new types of legislation that might legitimize and promote bicycling. Much of this Article draws upon the research I have done for the League of American Bicyclists, digesting every state law mentioning bicycling and compiling my findings in 2012.³

Many traffic laws in place today are related to the Uniform Vehicle Code (UVC). The UVC was created in 1926 by the National

1. See BRIAN MCKENZIE, *MODES LESS TRAVELED—BICYCLING AND WALKING TO WORK IN THE UNITED STATES: 2008–2012*, at 3 (2014), <http://www.census.gov/prod/2014pubs/acs-25.pdf> (noting that the “increase in the number of bicycle commuters exceeded the percentage increase of all other travel modes during that period”).

2. See, e.g., BILL BONE BIKE LAW, *DRIVER VS. CYCLIST: FLORIDA’S STRUGGLE TO ‘SHARE THE ROAD’* (2013), <http://www.billbonebikelaw.com/wp-content/uploads/2013/12/Whitepaper-Drivers-vs-cyclists-Floridas-Struggle-to-share-the-road.pdf> (documenting perceptions of bicycling laws through a Facebook survey).

3. In the fall of 2012, I began a major research project for the League of American Bicyclists that looked at every state law that mentioned bicycling. The results of that project were eventually distilled into a state law resource on the League of American Bicyclists website and a series of articles published under the title “Bike Law University.” See *Bike Laws*, LEAGUE AM. BICYCLISTS, <http://bike.league.org/bikelaws> (last visited Mar. 31, 2015). This series was meant to help people understand the facts about laws that affect bicyclists and provide context for bicycling advocates and jurisdictions examining changes to traffic laws. Since 2012, I have updated the website and articles as I have become aware of new legal developments, but have not comprehensively revisited all of the laws reviewed in 2012. Accordingly, this Article will focus on the comprehensive laws up until 2012.

Committee on Uniform Traffic Laws and Ordinances (NCUTLO).⁴ The National Council on Uniform Traffic Control Devices (NCUTCD) and NCUTLO have been tied together through their history, including the early creation of the Manual on Uniform Traffic Control Devices and Uniform Vehicle Code.⁵ In the early 2000's, the NCUTLO ceased operations and no longer maintains the UVC.⁶ Since that time, the NCUTCD has taken steps to update the UVC.⁷ The last version of the UVC was published in 2000.⁸ It is not clear at this time whether the NCUTCD will be a long-term replacement for the NCUTLO or whether an alternative body or system for state traffic law coordination will emerge. Whatever the future holds, organizations will continue to pursue uniformity in traffic laws to aid public education, messaging, and the ability to safely travel between the states.

While the NCUTLO was active, it published periodic reviews of traffic laws to promote uniformity throughout the nation. While the publication of such comprehensive reviews is historically inconsistent,⁹ at least two are publicly available through online resources such as Google Books.¹⁰ This Article will use two

4. Jeremy Chapman, *Uniform Vehicle Code and State Statutes Governing Bicycling: Analysis of Definitions and Statutes*, 2247 TRANSP. RES. REC.: J. TRANS. RES. BOARD 8 (2011), <http://www.topslab.wisc.edu/publications/> (follow "Uniform Vehicle Code and State Statutes Governing Bicycling, 2010" hyperlink).

5. See AM. ASS'N OF STATE HIGHWAY & TRANSP. OFFICIALS, HISTORY OF THE NATIONAL COMMITTEE ON UNIFORM TRAFFIC CONTROL DEVICES (NCUTCD) 2 (2012), <http://www.ncutcd.org/doc/History.pdf>.

6. See John S. Allen, *Electric Bicycle Legal Hodgepodge*, JOHN S. ALLEN'S BICYCLE BLOG (May 24, 2011), <http://john-s-allen.com/blog/?tag=ncutlo>; *Bike Law: The UVC*, ARIZ. BIKE LAW (Mar. 22, 2014), <http://azbikelaw.org/blog/uvc/>.

7. See *Rules of the Road Revisions—Request for Comment*, NAT'L COMM. ON UNIFORM TRAFFIC CONTROL DEVICES, <http://www.ncutcd.org/rulesroad042013.shtml> (last visited May 19, 2015).

8. See *id.* (using the 2000 version of the UVC as the basis for current proposed changes).

9. Chapman, *supra* note 4. The NCUTLO website (ncutlo.org) has a members section, but is not available as the organization has not operated since at least 2010. Previous reviews of bicycle-related laws, particularly Chapman, *supra* note 4, suggest that more reviews exist (Chapman only mentions the 1979 Traffic Laws Annotated which is publicly available on Google Books).

10. See NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, TRAFFIC LAWS ANNOTATED (1972), available at http://books.google.com/books/about/Traffic_Laws_annotated.html?id=HAXAAAAIAAJ [hereinafter TRAFFIC LAWS ANNOTATED 1972] (follow hyperlink to access free e-book); NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, TRAFFIC LAWS ANNOTATED (1979), available at http://books.google.com/books/about/Traffic_Laws_Annotated_1979.html?id=f3xPAAAAMAAJ [hereinafter TRAFFIC LAWS ANNOTATED 1979] (follow hyperlink to access free e-book).

NCUTLO publications, Traffic Laws Annotated 1972 and 1979 (collectively, “Traffic Laws Annotated”), to look at the evolution of traffic laws as documented by those publications and the state of traffic laws relevant to bicyclists as reviewed in those publications.¹¹ Since the 1970s, there has been significantly less publicly available, organized documentation of traffic laws and their conformity with the UVC or with alternative standards.¹² In addition to the above highlighted laws, this Article will rely upon four additional publications.¹³

In 1982, Edward Kearney, at that the time the Executive Director of the NCUTLO and later author of *Bicycle Law and Practice*,¹⁴ wrote an article for *American Wheelmen* magazine titled *What’s the Legal Climate for Bicyclists in Your State?*¹⁵ That article looks at ten different types of traffic laws and compares them to UVC provisions using a ten-point scoring system with unique scoring criteria for each type of law.¹⁶ In some cases, the scoring system makes it obvious what the state’s law says, but in others there are multiple ways in which states could achieve the same score, making it difficult to know what a

11. See TRAFFIC LAWS ANNOTATED 1972, *supra* note 10; TRAFFIC LAWS ANNOTATED 1979, *supra* note 10; BARBARA A. SCHEIB, BICYCLE LAWS: A SURVEY AND COMPARISON OF REGULATIONS IN VIRGINIA AND THE NATION (1998); Chapman, *supra* note 4, at 8–16; Edward Kearney, *What’s the Legal Climate for Bicyclists in Your State?*, AMERICAN WHEELMEN, Feb. 1982, at 10; *Bike Law University*, LEAGUE AM. BICYCLISTS, <http://www.bikeleague.org/content/bike-law-university> (last visited Apr. 1, 2015) (providing analysis of bicycle laws with information charts for various types of bicycle laws); *NHTSA Resource Guide on Laws Related to Pedestrian and Bicycle Safety*, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., <http://www.nhtsa.gov/people/injury/pedbimot/bike/resourceguide/> [hereinafter NHTSA RESOURCE GUIDE] (follow “Download Guide” hyperlink); *Where to Ride Laws*, LEAGUE AM. BICYCLISTS, http://bikeleague.org/sites/default/files/where_to_ride.pdf (comparing relevant laws in all fifty states and the District of Columbia to inform bicyclists where they can legally ride in each state).

12. See Chapman, *supra* note 4, at 8–9. No NCUTLO published review of bicycling laws is available. Literature review includes two privately published books, a FHWA publication, a Virginia Department of Transportation publication, and a NHTSA cd-rom publication; none of these sources explicitly includes the text of all statutes mentioned or comprehensively notes how statutes relate to UVC language.

13. The articles in the *Bike Law University*, LEAGUE AM. BICYCLISTS, <http://bikeleague.org/content/bike-law-university>, series provide more in-depth discussions of many of the features of the laws examined by this Article, as the nature of the publications reviewed made it difficult to look at some features over time.

14. See Chapman, *supra* note 4, at 9.

15. Kearney, *supra* note 11, at 10.

16. See *id.* (noting that scoring was used primarily to provide an aggregate score for states).

particular score means.¹⁷ Kearney's article provides a useful snapshot of laws as well as the priorities of bicycling advocates in the early 1980s.

Unfortunately, no useful compilation or review of bicycle-related laws could be found from the early 1990s. During this time, the Federal Highway Administration (FHWA) published *A Synthesis of Existing Bicyclist and Pedestrian Related Laws and Enforcement Programs* which provides a limited understanding of state laws as of 1993.¹⁸ However, the publication failed to provide a comprehensive analysis of bicycle-related laws, and individual state laws cannot be disaggregated from the information that is provided.¹⁹ The focus of this publication, rather, was promoting best practices and FHWA model legislation, so it contains some useful discussions for why certain laws are preferable or may be controversial.

Another pertinent publication for the purposes of this Article is *Bicycle Laws: A Survey and Comparison of Regulations in Virginia and the Nation* by Barbara Scheib of the Virginia Transportation Research Council, as part of a project initiated by the Virginia Department of Transportation.²⁰ The publication looks at ten types of laws, but only four of the laws examined overlapped with Kearney's analysis in 1982.²¹ Unlike the FHWA publication in 1993, Scheib did include a review of each state's laws.²² Scheib did not use particular criteria or a defined comparative scheme for examining each state's law, but generally looked at whether state laws provided a rule or not and, for certain laws, provided additional information.²³

17. *See id.* at 13–14 (describing the scoring criteria for each type of law). Some laws are scored in a binary manner, while others have up to six criteria. *See id.* In a few isolated cases, scores are not explained. *See id.* For example, the District of Columbia received a score of seven for its “Opening Car Doors” law, even though the criteria set forth does not provide for that score. *See id.* at 12–14.

18. BRIAN L. BOWMAN ET AL., FED. HIGHWAY ADMIN., CASE STUDY NO. 13: A SYNTHESIS OF EXISTING BICYCLIST AND PEDESTRIAN RELATED LAWS AND ENFORCEMENT PROGRAMS (1993).

19. *See generally id.* The publication only discusses state laws in passing. *See id.* Most of the publication focuses on the FHWA's proposed model law and references the UVC or individual state laws relevant to the proposed language for a particular provision. *See, e.g., id.* at 17–18 (discussing the UVC, publications, and case law in relation to the proposed language).

20. SCHEIB, *supra* note 11.

21. *See id.* at 2; Kearney, *supra* note 11, at 12.

22. *See* SCHEIB, *supra* note 11, at 15 app.

23. *See id.* at 15–28. Scheib provides a “Statutory Comparison of Selected Legal Issues” which reviews selected laws for each state. *See id.* For each legal issue, Scheib asks a question and provides an answer. Most answers are Yes or No. *See id.* Some states have additional information, which appear to be paraphrases of portions

Lastly, in 2002, the National Highway Traffic Safety Administration (NHTSA) published a *Resource Guide of Pedestrian and Bicycle Safety Laws* (NHTSA Guide).²⁴ This publication is unique in that it was published as a CD-ROM and meant to be used like a computer program. Perhaps due to its unique format, the NHTSA Guide has a complicated comparative scheme that relies upon the UVC, state laws, and municipal and proposed model ordinances in addition to the author's examination of the safety relevance of each type of law.²⁵

Unfortunately, the NHTSA Guide does not always provide a clear picture of state law in the same way the Traffic Laws Annotated publications do. Traffic Laws Annotated compares each state's law to current or previous versions of the UVC and provides full excerpts where there are significant differences. The NHTSA Guide does not provide the same clarity because it only references the 2000 version of the UVC, and it provides a paragraph explaining differences rather than full excerpts. When a state's law is based on a previous version of the UVC, rather than the 2000 version, or uses any language that is not exactly the same as the 2000 version of the UVC, it is noted as an "equivalent" or "variation."²⁶ While it is possible to reconstruct statutory language from the paragraph explanations of differences, the comparative scheme chosen for the NHTSA Guide does not seem to be an improvement upon Traffic Laws Annotated and is significantly more complicated.

Due to the variations in laws examined and comparative schemes, it is difficult to say exactly how particular state laws have changed without an examination of the history of each law in each state. However, major changes in laws can be found over time, such as a state having a type of law that it did not have before or having a type of provision that was examined in the comparative scheme of one of the publications reviewed. This Article will use these notable changes and the types of law that were examined to discuss the evolution of bicycle-related laws in the United States. This Article focuses on traffic laws that affect the behavior of bicyclists and the motorists that share the roads with bicyclists. For the most part, the discussed legal

of the statutes examined. *See id.* While the UVC rule for each question is provided, there is no comparison between state statutes, which are not directly cited, and the corresponding UVC rule. *See id.*

24. NHTSA RESOURCE GUIDE, *supra* note 11.

25. *See id.* (including sections with titles such as "Contents of the Guide," "Organization of the Guide," "Categories of Conformity," and "Safety Relevance").

26. *See id.* (follow Table of Contents to "Categories of Conformity" section).

topics were selected because of the historical information available about their prevalence and their continued relevance to bicyclist safety and behavior. This Article also looks at newer laws that have not been extensively reviewed and legal topics that seem likely to impact the future of bicyclist safety and behavior.

This Article looks at the selected traffic laws because they provide an insight into how views towards bicyclists have changed in the last fifty years and what the future of bicycling-related laws might look like. Overall, I believe that the evolution of bicycling-related laws since 1972 reflects an increased willingness to recognize the unique characteristics of the bicycle as a vehicle and that bicyclists can make safe choices without prescriptive laws. In addition, there has also been a recognition that bicyclists, pedestrians, and other people who use our roads outside of motor vehicles face distinct safety challenges. As a response, new traffic laws for motorists have been created, primarily by private advocates for bicyclists and other vulnerable road users. I hope that the future of bicycling-related laws involves a continuation and deepening of these trends. By understanding the history of these laws and the concerns they address, perhaps there will be more official support for the reconsideration of traffic laws and how laws affect bicyclist safety.

I. TRAFFIC LAWS FOR BICYCLISTS

There are a few types of traffic laws that affect bicyclists: laws written specifically to provide rules for bicyclist behavior, laws written to provide rules for all road users that apply to bicyclists, and laws written to provide rules for motorists. This section will focus primarily on laws written specifically to provide rules of bicyclist behavior. Almost by definition, these laws provide rules that are different than the laws that apply to motorists and highlight the differences between motorists and bicyclists.

A. Laws that Affect the Treatment of Bicycles as Vehicles

The dominant mode of transportation in the United States is the motor vehicle.²⁷ Our traffic laws are written from this perspective and focus on “vehicles.”²⁸ For this reason, it is important for bicycles to be

27. Over eighty-six percent of U.S. commuters use a motor vehicle to get to work. See AM. ASS'N OF STATE HIGHWAY TRANSP. OFFICIALS, COMMUTING IN AMERICA 2013: THE NATIONAL REPORT ON COMMUTING PATTERNS AND TRENDS 5–6 (2013), <http://traveltrends.transportation.org/Documents/CA10-4.pdf>.

28. The conference that led to the creation of the Uniform Vehicle Code stressed the need for “appropriate and uniform traffic and motor vehicle laws.” See Chapman,

considered “vehicles” and for bicyclists to be treated like other people using vehicles so that traffic laws apply to bicyclists. If traffic laws did not apply to bicyclists, then a comprehensive alternative bicycle-specific set of laws would be needed regarding a bicyclist’s behavior and the behavior of others on the road toward a bicyclist. I am not aware of any state that has taken this approach and it seems difficult given the multitude of vehicle-like conveyances that exist. Until a comprehensive alternative scheme is proposed, it is important that bicycles are treated like vehicles in most situations so that bicyclists are offered the same protection by our laws as other road users and have clear rules to follow in most situations.

Whether bicycles are vehicles is one of the fundamental issues of traffic law for bicyclists. One of the earliest issues for bicycle advocates was how bicycles would be classified and regulated for the purposes of traffic laws.²⁹ Through the work of the League of American Wheelmen, court decisions, and legislative enactments, states developed the solution of classifying bicycles as carriages.³⁰ This initial classification was carried forward into the original version of the UVC.³¹

All six of the publications examined for this Article include the question of how bicycles are defined. However, not all of the publications examine the question in the same way. Four of the six publications examine the issue from the perspective of the definition of “vehicle” and looking at whether that definition includes a bicycle.³² The other two publications do not look at the definition of “vehicle,” but rather look at the definition of “bicycle.”³³ The UVC has defined what is and is not a “vehicle” since its creation in 1926.³⁴ A definition for “bicycle” was added in 1944.³⁵ This inconsistency

supra note 4, at 8; *see also* PETER D. NORTON, *FIGHTING TRAFFIC: THE DAWN OF THE MOTOR AGE IN THE AMERICAN CITY* (2008).

29. *See* Bob Shanteau, *The Marginalization of Bicyclists*, I AM TRAFFIC (June 8, 2013), <http://iamtraffic.org/equality/the-marginalization-of-bicyclists/> (discussing early bicycle advocacy and regulation).

30. *See id.*; *see also* BOB MIONSKE ET AL., *BICYCLING & THE LAW: YOUR RIGHTS AS A CYCLIST* 2–14 (2007).

31. *See* TRAFFIC LAWS ANNOTATED 1979, *supra* note 10 (discussing UNIF. VEHICLE CODE § 1-184).

32. *See* NHTSA RESOURCE GUIDE, *supra* note 11; TRAFFIC LAWS ANNOTATED 1972, *supra* note 10, at 2–4, 58–62; TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 1–3, 26–27; Kearney, *supra* note 11.

33. *See* SCHEIB, *supra* note 11; Chapman, *supra* note 4.

34. *See* TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 26 (discussing modifications to the definition of “vehicle” in the Uniform Vehicle Code over time).

35. *See id.* at 1.

may reflect confusion about what is important to look at when determining how bicycles are regulated, and the same inconsistency is seen in other aspects.³⁶ This Article seeks to demonstrate that the proper way to look at the question is by examining the definition of “vehicle.”

The vast majority of states³⁷ have a statute that, regardless of whether a bicycle is defined as a vehicle, gives people on bicycles the rights and duties of operators of other vehicles.³⁸ All of the publications except Barbara Scheib’s also examined this related issue.³⁹ This “rights and duties” provision stems from the UVC in 1930, when bicycles were taken out of the UVC definition of “vehicle.”⁴⁰ It has remained as part of the UVC and in state statutes despite the UVC definition of “vehicle” including bicycles since 1975.⁴¹

Over time, a slight majority of states have not changed their laws defining vehicles since 1972, but there has been a shift from the pre-1975 UVC definition (or its equivalent, where bicycles are not vehicles) to the modern UVC definition (where bicycles are vehicles).⁴² The changes that have occurred have been gradual, with most occurring after 1982.⁴³ Despite the UVC change in 1975 to

36. See *supra* Introduction (discussing inconsistencies in formatting, scopes, purposes, and comparative schemes of several of the sources listed).

37. Only one state—South Dakota—does not have this type of statute or regulation. It includes bicycles as vehicles in its definition of vehicle. S.D. CODIFIED LAWS § 32-14-1(39) (2015). None of the publications ever list South Dakota as having this type of statute.

38. *E.g.*, CONN. GEN. STAT. § 14-286a (2012) (“Every person riding a bicycle, as defined by section 14-286, upon the traveled portion of a highway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any vehicle subject to the requirements of the statutes relating to motor vehicles, except as to those provisions which by their nature can have no application and except that each town, city or borough and the Office of the State Traffic Administration within its jurisdiction as provided in section 14-298 shall have authority to regulate bicycles as provided in section 14-289 and said section 14-298, and except as provided by section 14-286c.”).

39. See *generally* NHTSA RESOURCE GUIDE, *supra* note 11; TRAFFIC LAWS ANNOTATED 1972, *supra* note 10; TRAFFIC LAWS ANNOTATED 1979, *supra* note 10; Chapman, *supra* note 4; Kearney, *supra* note 11.

40. See TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 26–27, 316–17 (discussing UNIF. VEHICLE CODE § 11-1202); see also Shanteau, *supra* note 29.

41. See TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 26–27.

42. See NHTSA RESOURCE GUIDE, *supra* note 11; TRAFFIC LAWS ANNOTATED 1972, *supra* note 10; TRAFFIC LAWS ANNOTATED 1979, *supra* note 10; Kearney, *supra* note 11. In 1972, twelve states defined vehicles in a way that included bicycles. In 2012, thirty-one states defined vehicles in a way that included bicycles. See Spreadsheet comparing the history of laws over time (on file with author).

43. See Kearney, *supra* note 11, at 10.

define vehicles in a way that included bicycles, and according to NCUTLO making “rights and duties” statutes “no longer as important,”⁴⁴ supplementary “rights and duties” statutes continued to be adopted in many states between 1972 and 1982.⁴⁵ The modern practice appears to be that many states both define vehicles in a way that includes bicycles and give bicyclists the rights and duties of operators of vehicles.

As of 2012, thirty-one states defined vehicles, for the purpose of their traffic laws, in a way that included bicycles.⁴⁶ In all states, bicycles are either defined as vehicles or have the rights and duties of vehicles by a separate statute.⁴⁷ The combination of these laws has led to the concept of “same rights, same road, same rules.”⁴⁸ However, in application it is less clear how either the definition or the “rights and duties” statute truly impacts the rights of bicyclists and the rules that they must obey.

The concept of “same rights, same road, same rules” becomes more complicated due to some of the features of “rights and duties” statutes and the application of definitions to certain situations by courts. Specifically, three features of “rights and duties” statutes limit the application of vehicle, or motor vehicle, laws to bicyclists. First, only five states have rights and duties statutes that do not limit the rights and duties that apply to bicyclists.⁴⁹ The majority of states limit the rights and duties that apply to bicyclists in some way, most commonly by naming chapters, sections, or parts of the traffic law that apply to bicyclists.⁵⁰ In some cases, the wording of this limitation

44. TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 316–18 (discussing UNIF. VEHICLE CODE § 11-1202 and related developments).

45. *See generally* NHTSA RESOURCE GUIDE, *supra* note 11. At least twelve states changed their “rights and duties” law between 1972 and 1982. *Id.* An additional six states have changed their “rights and duties” statute since 1982. *Id.* No state has gotten rid of this type of law because it is unnecessary. *See also* TRAFFIC LAWS ANNOTATED 1972, *supra* note 10, at 739–41 (discussing UNIF. VEHICLE CODE § 11-1202 and related developments); TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 316–18 (discussing UNIF. VEHICLE CODE § 11-1202 and related developments); Kearney, *supra* note 11.

46. *See State Bike Laws*, LEAGUE AM. BICYCLISTS, <http://bikeleague.org/StateBikeLaws> (last visited Apr. 2, 2015).

47. *See id.*

48. *See Same Roads, Same Rights, Same Rules—Not True*, M-BIKE.ORG, <http://www.m-bike.org/blog/2010/01/07/same-roads-same-rights-same-rules-not-true/> (last visited Mar. 27, 2015) (explaining that although “Same Roads, Same Rights, Same Rules” is a popular pro-bike bumper sticker slogan, the concept has problems when examined).

49. *See State Bike Laws*, *supra* note 46.

50. *See id.*

makes it unclear which laws apply to bicyclists.⁵¹ Second, thirty-nine states have a limitation equivalent to the last phrase of the UVC model, which exempts bicyclists from “those provisions [of the UVC] which by their nature can have no application.”⁵² There is limited case law on what this phrase means.⁵³ While it appears that this phrase usually exempts bicyclists from certain requirements, it may also contribute to bicyclists receiving different legal treatment by state courts. Finally, thirty-three states have limitations that apply their “rights and duties” statute only to bicyclists when bicyclists are upon a specified type of roadway, highway, shoulder, or other area.⁵⁴

51. *See, e.g.*, LA. REV. STAT. ANN. § 32:194 (2011) (“Every person riding a bicycle upon a highway of this state shall be granted all of the rights and shall be subject to all the duties applicable to the driver of a vehicle by this Chapter, except as to special regulations in this Part, including special regulations applying to peace officers utilizing bicycles in furtherance of their official duties, and except as to those provisions of this Chapter which by their very nature can have no application.”); *see also* WYO. STAT. ANN. § 31-5-702 (West 1977) (“Every person propelling a vehicle by human power or riding a bicycle has all of the rights and all of the duties applicable to the driver of any vehicle under this act, except as to special regulations in this act and except as to those provisions which by their nature can have no application.”).

52. UNIF. VEHICLE CODE § 11-1202 (2000), *available at* <http://iamtraffic.org/wp-content/uploads/2013/01/UVC2000.pdf>; *see State Bike Laws, supra* note 46.

53. *See* *People v. Schaefer*, 654 N.E.2d 267, 269 (Ill. App. Ct. 1995) (refusing to use rights and duties to apply DUI law to bicyclists); *Schallenberger v. Rudd*, 767 P.2d 841, 843–44 (Kan. 1989) (refusing to use rights and duties to prohibit bicyclists from sidewalks); *Secor v. Kohl*, 415 N.Y.S.2d 434, 436–37 (N.Y. App. Div. 1979) (holding that bicyclists are exempt from signaling continuously for the same number of feet as a car because that requirement was based upon the speed at which a car travels). *But see* *Boub v. Wayne Township*, 702 N.E.2d 535, 536 (Ill. 1998) (holding that the rights and duties statute does not supersede the intent of the locality regarding the duties owed under the Tort Immunity Act because bicycles are not vehicles, and because the rights and duties law was not about general rights, but about traffic laws).

54. *See* ALA. CODE § 32-5A-260 (2015); ALASKA ADMIN. CODE tit.13, § 02.385 (2015); ARIZ. REV. STAT. ANN. § 28-812 (1997) (West); ARK. CODE ANN. § 27-49-111 (West 2014); CAL. VEH. CODE § 21200 (West 2011); CONN. GEN. STAT. ANN. § 14-286a (West 2015); HAW. REV. STAT. § 291C-142 (West 2014); ILL. COMP. STAT. 5/11-1502 (2014); IND. CODE ANN § 9-21-11-2 (West 2015), IOWA CODE ANN. § 321.234 (West 2015), KAN. STAT. ANN. § 8-1587 (West 2014); LA. REV. STAT. ANN. § 32:194 (2011); MASS. GEN. LAWS ANN. ch. 85, § 11B (West 2014); MD. CODE ANN., TRANSP. § 21-1202 (West 2014); MICH. COMP. LAWS ANN. § 257.657 (West 2014); MISS. CODE ANN. §§ 63-3-207, 63-3-1303 (West 2014); MO. ANN. STAT. § 307.188 (2014); NEV. REV. STAT. § 60-6,314 (2014); NEV. REV. STAT. § 484B.763 (2009); N.J. STAT. ANN. § 39:4-14.1 (West 2015); N.M. STAT. ANN. § 66-3-702 (West 2014); N.Y. VEH. & TRAF. LAW § 1231 (McKinney 2015); N.D. CENT. CODE § 39-10.1-02 (West 2013); OHIO REV. CODE ANN. § 4511.01 (West 2013); OHIO REV. CODE ANN. § 4511.55 (West 2014); OKLA. STAT. tit. 47, § 11-1202 (2014); OR. REV. STAT. ANN § 814.400 (West 2014); 75 PA. CONS. STAT. ANN. § 3501 (West 2014); S.C. CODE ANN. § 56-5-3420 (West 2014); TENN. CODE ANN. § 55-8-172 (West 2014); VA. CODE ANN. § 46.2-800

At least one case has used this limitation to say that bicyclists on shoulders are not owed the same duties as bicyclists on other parts of the roadway.⁵⁵

When bicyclists are educated about how to ride safely, they are often taught that they have the rights and responsibilities of other vehicles on the roadway and should act accordingly.⁵⁶ For the most part state laws work for this type of education, as some combination of the state vehicle definition and the state “rights and duties” statute gives bicyclists equal footing with drivers.⁵⁷ However, the reality for bicyclists is that this scheme creates discrepancies between how bicycles and other vehicles are treated and how various laws are applied to them.⁵⁸ If states want to promote bicycling, then they should examine how their laws provide different rules for bicyclists

(West 2014); WASH. REV. CODE ANN. § 46.61.755 (West 2015); W. VA. CODE § 17C-11-2 (2001); WISC. STAT. ANN § 346.02 (West 2012).

55. See *Polzo v. Essex*, 35 A.3d 653, 664–65 (N.J. 2012) (holding that bicyclists are not owed the same duties on a road shoulder as they would be on the roadway).

56. See, e.g., Rick Price, *Price: Six Rules for Safer Cycling*, COLORADOAN, Jan. 5, 2015, <http://www.coloradoan.com/story/news/local/2015/01/05/price-six-rules-safer-cycling/21287565/> (“Bicyclists ‘fare best when they act and are treated as drivers of vehicles.’ This last rule is the mantra of the League of American Bicyclists and dominates 99 percent of safe-cycling curricula developed and taught in the U.S. over the last 40 years.”).

57. States can have a vehicle definition that says that bicycles are vehicles and a “rights and duties” statute that says that bicyclists have the rights and duties of drivers of vehicles. Compare COLO. REV. STAT. ANN. § 42-1-102 (West 2015) (including bicycles in the definition of vehicles), with COLO. REV. STAT. ANN. § 42-4-1412 (West 2015) (affording bicyclists the rights and duties pertaining to drivers of other vehicles). States can have a vehicle definition that says that bicycles are vehicles but no “rights and duties” statute. See, e.g., S.D. CODIFIED LAWS § 32-14-1 (2014). States can have a vehicle definition that does not say that bicycles are a vehicle, but have a “rights and duties” statute that gives bicyclists the rights and duties of drivers of vehicles. See, e.g., S.C. CODE ANN. §§ 56-5-120, 56-5-3240 (2015). No state fails to have one of the three situations just described.

58. See Shanteau, *supra* note 29 (“Excluding bicycles from the definition of vehicles has been and is being used to justify the following inequities:

- Police not preparing collision reports for bicycle crashes.
- Highway engineers ignoring bicycles in the design of streets and highways.
- Judges ruling that bicyclists are not intended users of highways, as an Illinois appellate court did.
- Not treating bike paths as highways. This has led to treating bike paths as though they were walkways. For instance, instead of treating a location where a bike path crosses a street or highway as an intersection, with the same rules as a locations [sic] where a street or highway crosses another street or highway, a bike path crossing is usually treated as a crosswalk. Also, a California appellate court ruled that a bike path was equivalent to an unpaved walking trail, for which public agencies have immunity from liability for injuries of bicyclists caused by negligence of their employees in the design and construction of bike paths.”)

and other vehicles. States should ensure that they treat bicycles as vehicles or in a way that is reasoned and justifiable based upon what is known about promoting safe bicycling.

It is hard to imagine a future where bicycles are not defined as vehicles and bicyclists do not have the rights and duties of drivers of motor vehicles in most situations. However, it could be a valuable exercise to examine if an alternative would work and still provide clear rules and protections for bicyclists, motorists, pedestrians, and our legal system. Most of our current traffic laws were not written for bicyclists, and it could be time to consider how a system of traffic laws that are not primarily aimed at motor vehicles may differ from our current laws.

B. Where to Ride Laws

In all but two states, regardless of their status as discussed in the prior section,⁵⁹ bicyclists do not have the same rights to the use of the roadways as do other vehicle operators.⁶⁰ Bicyclists have limited rights to the use of the road because they are required to ride “as close as practicable to the right-hand curb or edge of the roadway.”⁶¹ This requirement was created in 1944, and in its initial incarnation had no exceptions, forcing bicyclists in all situations to keep to the right.⁶² Over time bicyclists have created several shorthand references for this requirement, such as FTR (Far to the Right)⁶³ and AFRAP (As Far to the Right as Practicable).⁶⁴ I refer to this type of law as a “Where to Ride”⁶⁵ law because I believe that it captures the

59. *See supra* Part I.A.

60. States either have statutes specifically directing bicyclists where to ride or statutes specifically directing slow moving vehicles where to drive. Only Arkansas and Massachusetts do not have laws that provide different rules for bicyclists or slow moving vehicles; neither state’s law requires operating anywhere other than on the right side of the roadway. *See* ARK. CODE ANN. § 27-51-301 (West 2014); MASS. GEN. LAWS ANN. ch. 85, § 11B (West 2014).

61. *See* UNIF. VEHICLE CODE § 11-1205(a) (2000).

62. *See* TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 320–23 (setting forth and discussing UNIF. VEHICLE CODE § 11-1205(a), the text of which reads as follows: “Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.”)

63. *See* Shanteau, *supra* note 29.

64. *See* Steve Magas, *How To Win An AFRAP Case—A Close Look at Doug Morgan’s Columbus, Ohio Slam Dunk Victory*, STEVE MAGAS BIKE LAW. (Apr. 13, 2012), <http://www.ohiobikelawyer.com/bike-law-101/2012/04/how-to-win-an-afrap-case/>.

65. MIONSKE ET AL., *supra* note 30, at 55–72 (discussing the broader concept and laws that govern where bicyclists should ride).

essence of the law with a more descriptive phrase, and because most states have added “exceptions” which make it easier for bicyclists to “take the lane”⁶⁶ and not ride to the right in a variety of circumstances.

Since 1972 there have been significant changes to Where to Ride laws in many states. The changes have been both good and bad for the rights of bicyclists. Where to Ride laws are now more widespread,⁶⁷ but are also much more adapted to the circumstances faced by bicyclists.⁶⁸ The evolution of Where to Ride laws have primarily focused on the “exceptions” to the requirement to ride to the right. In 1972, only Maine had an exception to this requirement.⁶⁹

Many bicyclists, and bicycle advocates, loath Where to Ride laws. Some bicycling groups criticize Where to Ride laws as discriminatory, overly complicated, and dangerous.⁷⁰ The issue that bicyclists, and bicycle advocates, face in reforming Where to Ride laws is that they do not exist in isolation as the only laws that govern where bicyclists are supposed to ride, but instead are a part of, and parallel to, non-bicyclist-specific traffic law that tells all vehicles where and how to operate. Merely repealing them would most often result in a state’s version of UVC § 11-301(b), applying to bicycles as vehicles “proceeding at less than the normal speed of traffic.”⁷¹ Unlike the various Where to Ride laws, UVC § 11-301(b) does not have “exceptions” that contemplate the particular hazards faced by bicyclists that do not have as great an effect on motorists; such as surface hazards, “substandard lane width,” and being hit by right

66. A bicyclist will “take the lane” by riding in the middle of the lane. Many advocate that “taking the lane” is safer than riding to the right because it allows better sight angles for bicyclists and other road users. See *Better Bicycling: Traffic Laws*, LEAGUE AM. BICYCLISTS, <http://bikeleague.org/content/traffic-laws> (discussing lane positioning) (last visited May 19, 2015).

67. In 1972 there were eighteen states and Washington D.C. with no bicyclist-specific Where to Ride law. Spreadsheet, *supra* note 42. In 2012, only six states and Washington D.C. had no Where to Ride law. *Id.*

68. Thirty-nine states with Where to Ride laws have more than one exception to the far to the right requirement. See *Where To Ride Laws*, *supra* note 11.

69. See TRAFFIC LAWS ANNOTATED 1972, *supra* note 10, at 746 (“Maine law provides: ‘Every person propelling a bicycle shall ride said bicycle as far as practicable to the right side of the roadway at all times except when making a left turn.’”).

70. See Shanteau, *supra* note 29 (discussing the idea that “[i]f you can’t keep up, you don’t belong (in the lane),” and how this notion has been reflected in the law).

71. UNIF. VEHICLE CODE § 11-301(b) (2000). An equivalent or variation of UNIF. VEHICLE CODE § 11-301(b) was located in all but two states.

turning vehicles.⁷² This application of vehicle laws to bicycles makes reform more difficult and highlights an issue with regulating bicycles as vehicles.

Since repealing Where to Ride laws would not necessarily create a better situation for bicyclists, most changes have focused on improving clarity and reducing confusion. The primary source of confusion is the use of the word “practicable,” which is a subjective standard about what is “capable of being put into practice”⁷³ and often interpreted as meaning “possible.”⁷⁴ There are two alternatives to the phrase “practicable” that have been adopted by states. The first approach, adopted by New York, defines its standard in terms of a cyclist’s impact on traffic, providing the bicyclists must ride “near the right-hand curb or edge of the roadway or upon a usable right-hand shoulder in such a manner as to prevent undue interference with the flow of traffic.”⁷⁵ The second approach, adopted by Colorado, Missouri, Oklahoma, and Washington, essentially substitutes “as safe” for “as practicable.”⁷⁶

These two alternatives highlight the major considerations of states that have adopted Where to Ride laws—how to balance traffic flow and safety. The evolution of Where to Ride laws in some ways is a reflection of finding that balance.⁷⁷ Over time, states have added “exceptions” to the “practicable” requirement in order to account for situations that negatively impact bicyclist safety.⁷⁸ Unfortunately, these “exceptions” add to the confusion about what “practicable” means as they are perhaps more appropriately read as examples of when riding to the right is not “practicable” than exceptions.⁷⁹ Common exceptions include passing other vehicles, turning left, avoiding road hazards, operating in a lane that is not wide enough for

72. See UNIF. VEHICLE CODE § 11-301(b). Section 11-301(b) is equivalent to a version of UNIF. VEHICLE CODE § 11-1205(a) that is missing parts (3) and (4). See also NHTSA RESOURCE GUIDE, *supra* note 11.

73. *Practicable Definition*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/practicable> (last visited Apr. 3, 2015).

74. See BOWMAN ET AL., *supra* note 18, at 57–61.

75. See N.Y. VEH. & TRAF. LAW § 1234(a) (McKinney 2015).

76. See COLO. REV. STAT ANN. § 42-4-1412 (West 2015); MO. ANN. STAT. § 307.190 (West 2014); OKLA. STAT. tit. 47, § 11-1205 (2014); WASH. REV. CODE ANN. § 46.61.770 (West 2015).

77. See *Bike Law University*, *supra* note 11 (discussing bicyclist safety and traffic flow as justifications for Where to Ride laws).

78. Compare TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 320–21 (setting forth and discussing UNIF. VEHICLE CODE § 11-1205), with *Where To Ride Laws*, *supra* note 11.

79. See MIONSKE ET AL., *supra* note 30, at 59.

a vehicle to safely pass, operating on a one way street, and heading straight when there is a right turn only lane⁸⁰—all situations in which a bicyclist cannot successfully remain to the right of the road.

Colorado is the state that has pushed the furthest in creating a new standard for Where to Ride laws.⁸¹ Colorado explicitly balances the safety of bicyclists against the demand for efficient traffic flow by providing that bicyclists shall ride “far enough to the right as judged safe by the bicyclist to facilitate the movement of . . . overtaking vehicles.”⁸² Its statute does not contain the word practicable and does not mention exceptions.⁸³ Instead of listing “exceptions,” Colorado’s statute provides positive statements explaining where a bicyclist can ride and where a bicyclist shall not be expected or required to ride.⁸⁴ By stating the law’s requirements in this way, Colorado’s law provides significantly more autonomy to bicyclists than other Where to Ride laws and avoids many of the pitfalls of this type of law. Specifically, where in other states a bicyclist would have to show how his behavior fit and “exception” if he were not riding far to the right, in Colorado the person claiming the bicyclist is riding inappropriately must show why.⁸⁵

Moving forward, it will be interesting to see if other states embrace features of Colorado’s law such as explicitly acknowledging the judgment of the bicyclist in where to ride, positively phrasing reasons to ride to the left, and enumerating actions that a bicyclist cannot be required to do. Perhaps the biggest issue with Colorado’s approach is that it is relatively long and complicated, involving multiple features and subparts that vary from the standard Where to Ride law. This length and complexity may make the choices of bicyclists easier to explain to the public and police, but may not provide a simple shared understanding about where bicyclists should be and how they should behave.

If states truly trust bicyclists to make decisions about where they ride, as Colorado’s law implies, then states may accomplish

80. *See Bike Law University, supra* note 11.

81. COLO. REV. STAT. ANN. § 42-4-1412(5); *see also Where To Ride Laws, supra* note 11 (showing a comparison to other laws). Colorado’s law is also unique in its phrasing of certain exceptions as things “a bicyclist shall not be expected or required to” do rather than simply as exceptions to the requirement to ride far to the right. *See* COLO. REV. STAT. ANN. § 42-4-1412(5).

82. COLO. REV. STAT. ANN. § 42-4-1412(5); *see also Bike Law University, supra* note 11 (discussing Colorado’s law).

83. *See* COLO. REV. STAT. ANN. § 42-4-1412(5).

84. *See id.*

85. *See id.*

substantially the same rule with a law like the one in Massachusetts. Massachusetts does not specifically require bicyclists to ride in a way different than any other vehicle⁸⁶ and does not have any law that would apply to a bicycle as a slow moving vehicle. In addition, Massachusetts provides that “[e]very person operating a bicycle upon a way . . . shall have the right to use all public ways in the commonwealth except limited access or express state highways where signs specifically prohibiting bicycles have been posted”⁸⁷ Together, these laws provide bicyclists a clear right to make decisions about where to ride on roadways. However, they do not provide bicyclists or law enforcement with an easily referenced guide that justifies the behavior of bicyclists.

It would be interesting to see research into which approach creates a better shared understanding for the public, police, and courts. In the absence of strong evidence that the public, police, and courts believe that the Massachusetts approach enables the same decisions as are clearly enabled by the Colorado approach, this Article maintains that the Colorado approach provides a better model for states considering improving conditions for bicyclists by allowing bicyclists to make choices about where they ride.

C. Mandatory Use of Bicycle Facility Laws

In eleven states bicyclists face further restrictions on their ability to use roads because they are required to use bicycle lanes or off-road paths where they are available.⁸⁸ This restriction used to be much more common, with some version being adopted in thirty-eight states by 1979.⁸⁹ While the origins of the restriction are inexact,⁹⁰ it was added to the UVC in 1944 and remained unchanged until at least 1979.⁹¹

The requirement to use adjacent paths was removed from the UVC in either 1992 or 1995.⁹² By 1998 states had taken significant steps to

86. See MASS. GEN. LAWS ANN. ch. 89, §§ 2, 4B (West 2014).

87. MASS. GEN. LAWS ANN. ch. 85, § 11B (West 2014).

88. See *Bike Law University*, *supra* note 11 (discussing Mandatory Use of Separated Facilities laws).

89. See TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 320–21.

90. See James Longhurst, *Mandatory Sidepath Confusion*, BIKE LAW (Nov. 5, 2014), <http://www.bikelaw.com/2014/11/05/mandatory-sidepath-confusion/> (discussing the term “sidepath”).

91. See TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 320–21; see also JOHN FORESTER, EFFECTIVE CYCLING 381 (7th ed. 2012).

92. Due to the unavailability of NCUTLO documents since its hiatus, it is hard to confirm when exactly this restriction was removed from the UVC, but it seems likely

remove the requirement from their laws. Scheib found that twenty-seven states and the District of Columbia did not have a similar requirement.⁹³ The changes made by sixteen states in sixteen or fewer years is one of the more dramatic changes in law for bicyclists examined.⁹⁴ Many bicyclists and advocacy organizations proudly take credit for their part in this wave of repeal.⁹⁵

More recently the rate of repeal has slowed and the battleground may be shifting from adjacent paths to bicycle lanes. Since 1998, only six states have wholly removed a similar requirement from their laws,⁹⁶ and the majority of laws that apply in most situations now reference bicycle lanes rather than adjacent paths.⁹⁷ In states where these restrictions persist, there has been only limited success in making them less onerous. If advocates cannot win outright repeal, two paths of adaptation seem promising.

First, advocates may push for requiring a strong design standard. The UVC provision prior to its repeal required that paths be usable,⁹⁸

to have been removed in 1992 or 1995. “Several years ago NCUTLO went into hiatus because of a lack of funding. The primary problem was that the Internet provided, at no cost, much [but not all] of the information that was previously easily available only from the committee for the cost of an annual membership.” *Bike Law: The UVC*, *supra* note 6. Some reports say that it was removed in 1979, *see* FORESTER, *supra* note 91, but Edward Kearney, the Executive Director of the NCUTLO in 1982, specifically mentioned that he disagrees with the UVC requirement that bicyclists use adjacent paths in his 1982 article for American Wheelmen. *See* Kearney, *supra* note 11, at 14. In 1993, the FHWA’s Synthesis referenced that bicyclists must use adjacent paths if available according to the 1987 UVC, but said that the requirement may soon be overturned. *See* BOWMAN ET AL., *supra* note 18. In 1998, Scheib mentioned that the requirement to use adjacent paths was repealed, but does not mention which version of the UVC is used for her comparison, or when the requirement was repealed from the UVC. *See* SCHEIB, *supra* note 11, at 16. The current edition of the UVC, published in 2000, notes that it is the first comprehensive revision since 1992, but also references significant changes in 1995. *See* UNIF. VEHICLE CODE (2000). I have not been able to obtain a copy of the 1992 or 1995 UVC, but find the uncertainty of this timeline intriguing and the lack of documentation of this time period unfortunate.

93. *See* Scheib, *supra* note 11, at 16–24.

94. *Compare id.*, with *State Safe Passing Laws*, LEAGUE AM. BICYCLISTS, <http://bikeleague.org/sites/default/files/Safe-passing-laws2.pdf> (last visited Mar. 31, 2015).

95. *See, e.g.*, Brent Hugh, *How MoBikeFed Got Missouri’s Mandatory Sidepath Law Repealed*, MO. BICYCLE & PEDESTRIAN FOUND. (Oct. 24, 2002, 1:20 AM), <http://mobikedef.org/2002/10/how-mobikedef-got-missouris-mandatory-sidepath-law-repealed.php>.

96. *See* Spreadsheet, *supra* note 42.

97. *See* *Bike Law University*, *supra* note 11 (discussing Mandatory Use of Separated Facilities laws).

98. *See* TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 320–21.

and several states continue to have that minimal standard.⁹⁹ However, a few states, notably Georgia and Oregon, have stronger standards for the types of facilities that bicyclists can be required by law to use.¹⁰⁰ In both states, the adequacy of the quality of a facility that a bicyclist is required to use includes the possibility of a public hearing.¹⁰¹

Second, advocates may recommend exceptions that are similar to those provided in where to ride laws. Several states provide exceptions that allow bicyclists to leave a bicycle lane or adjacent path when a particular circumstance exists. These circumstances are equivalent to the “exceptions” that exist for Where to Ride laws, and no unique circumstance exists that is present in these exceptions but not in Where to Ride law exceptions.¹⁰² It is notable that five of the eleven states that require the use of separated facilities have no exceptions, which is higher than the rate of no exceptions for Where to Ride laws, and that all but one of the states with no exceptions requires the use of an adjacent path.¹⁰³ This indicates that these states have simply not updated their laws since 1944 or whenever their version of the UVC requirement was adopted.

New bicycle lanes and paths can be a reason for some bicyclists to worry that they will be forced to use this new infrastructure. While current laws do not suggest that there is a movement to this type of restriction, the past experience of bicyclists certainly warrants their concern. Recent studies have shown that bicyclists will use well-designed lanes and paths regardless of any requirement,¹⁰⁴ which suggests that a law requiring their use is unnecessary. Where states feel that it is necessary to force bicyclists to use facilities, they should consider at least granting bicyclists the ability to choose their safety over obeying the law by giving exceptions to the requirement.

99. *Mandatory Use of Separate Facilities*, LEAGUE AM. BICYCLISTS, <http://bikeleague.org/sites/default/files/mandatoryuse1-1.pdf> (last visited Mar. 31, 2015) (listing state “Standards for Facilities”).

100. *See id.*

101. *See id.*

102. *See Bike Law University*, *supra* note 11.

103. *Compare Mandatory Use of Separate Facilities*, *supra* note 99, and *Where to Ride Laws*, *supra* note 11.

104. *See* CHRISTOPHER MONSERE ET AL., EVALUATION OF INNOVATIVE BICYCLE FACILITIES: SW BROADWAY CYCLE TRACK & SW STARK/OAK STREET BUFFERED BIKE LANES 3 (2014), <http://bikeportland.org/wp-content/uploads/2011/02/PSUCycleTrackBBLReportFINAL.pdf>; *see also Statistics Library/Participation Statistics*, PEOPLE FOR BIKES, <http://www.peopleforbikes.org/statistics/category/participation-statistics> (last visited Apr. 3, 2015).

D. Mandatory Helmet Use Laws

It will be interesting to see the evolution of mandatory helmet laws in the future. The Uniform Vehicle Code has never had a mandatory helmet law for bicyclists.¹⁰⁵ The first review of bicycle-related laws that looked at mandatory helmet laws was performed by Scheib in 1998.¹⁰⁶ She found that fourteen states had statewide laws requiring the use of helmets or setting rules for how localities can adopt laws requiring the use of helmets.¹⁰⁷ Since that time, eight additional states have adopted similar laws.¹⁰⁸ According to the Bicycle Helmet Safety Institute, very few state laws have been adopted in the last ten years, and the “pace of new helmet laws has slowed to almost zero.”¹⁰⁹ It also appears that the adoption of local ordinances requiring the use of helmets has slowed.¹¹⁰

In recent times, mandatory helmet laws have come under attack by many bicycling-related organizations, academic research, and the proliferation of bicycle share systems.¹¹¹ Bicycle advocacy organizations, which often are committed to promoting safety, frequently support individual helmet use but oppose mandatory helmet use laws.¹¹² When the Governor’s Highway Safety Association released a report lamenting a lack of helmet use by bicyclists, it was widely criticized by bicycling-related groups and researchers. Critics highlighted that it focused primarily on bicyclist behavior, like helmet use, rather than infrastructure and other policies that make cyclists safe.¹¹³ In this criticism, there is a sense that helmet laws, and helmet

105. Mandatory helmet laws were not discussed in *Traffic Laws Annotated* 1972, 1979, or any secondary source in the literature review as ever being part of the UVC.

106. See SCHEIB, *supra* note 11, at 9.

107. *Id.* at 25–28.

108. Compare *id.*, with *State Helmet Laws*, LEAGUE AM. BICYCLISTS, http://bikeleague.org/sites/default/files/state-helmet-laws-chart_.pdf (last visited Apr. 3, 2015).

109. See *Helmet Laws for Bicycle Riders*, BICYCLE HELMET SAFETY INST., <http://www.helmets.org/mandator.htm> (last updated Apr. 19, 2015).

110. *Helmet Laws by Date of Effectiveness*, BICYCLE HELMET SAFETY INST., <http://www.helmets.org/manddate.htm> (last updated Apr. 27, 2015).

111. See Danielle Kurtzleben, *CHARTS: The Exploding Growth of Bikesharing*, U.S. NEWS, June 5, 2013, <http://www.usnews.com/news/articles/2013/06/05/the-exploding-growth-of-bikesharing> (showing bicycle share systems growing 700% between 2007 and 2012).

112. See, e.g., *Helmet Use*, LEAGUE AM. BICYCLISTS, <http://bikeleague.org/sites/default/files/Helmet%20Use.pdf> (last visited Apr. 3, 2015).

113. See Daniel Vock & Mike Maciag, *Why Cyclist Groups Lashed Out on the Latest Bike Safety Report*, GOVERNING (Nov. 4, 2014), <http://www.governing.com/topics/public-justice-safety/gov-governors-highway-safety-association-report-backlash.html>.

use moralism, is a form of victim blaming¹¹⁴ that shifts attention away from widespread motorist behavior, like speeding, and roads made primarily for motorists, like arterial streets with non-existent or minimal bicycle lanes, that create unsafe conditions for bicycling. This shift from individual behavior to systems has been an important step towards broader changes that support bicycling and make bicycling safer.¹¹⁵

As bicycle advocates have grown more adverse to helmet laws and discussing the safety of bicyclists in terms of helmet use, researchers have questioned the efficacy of helmets, mandatory helmet laws, and how they should be judged. In 2013, the Federal Highway Administration, the National Highway Traffic Safety Administration, and the Center for Disease Control responded to a petition by the Washington Area Bicyclist Association by agreeing to remove a claim that helmets reduce the risk of head injury by eighty-five percent because of problems with the 1989 study supporting that claim.¹¹⁶ Research that has looked at the relationship of helmet requirements and ridership has pointed to the safety impacts of mandatory helmet laws likely being due to a decrease in riders rather than more widespread helmet use.¹¹⁷ Ridership has become a new safety mantra as researchers have examined the “safety in numbers” phenomenon where more bicyclists and pedestrians mean a decreased risk for individual bicyclists and pedestrians.¹¹⁸ Perhaps the most extreme

114. See, e.g., *The Problem with Bicycle Helmets*, ONE STREET, <http://www.onestreet.org/resources-for-increasing-bicycling/136-bicycle-helmets> (last visited Mar. 18, 2015); see also *Dangerous by Design 2014*, SMART GROWTH AM., <http://www.smartgrowthamerica.org/research/dangerous-by-design/dbd2014/national-overview/> (last visited Apr. 3, 2015) (examining pedestrian safety and the effects of road design and speeds on pedestrian safety, rather than pedestrian behavior).

115. This shift is mirrored in road safety efforts like Sweden’s Vision Zero. See *The Vision Zero: No Loss of Life is Acceptable*, VISION ZERO INITIATIVE, <http://www.visionzeroinitiative.com/en/Concept/> (last visited Apr. 3, 2015). (“The Vision Zero approach has proven highly successful. It is based on the simple fact that we are human and make mistakes. The road system needs to keep us moving. But it must also be designed to protect us at every turn.”).

116. See Jim Titus, *Feds Will Stop Hyping Effectiveness of Bike Helmets*, GREATER GREATER WASH. (June 4, 2013), <http://greatergreaterwashington.org/post/19036/feds-will-stop-hyping-effectiveness-of-bike-helmets/>.

117. See Shane Farthing, *Why Maryland’s Proposed Helmet Law Would Make Cyclists Less Safe*, WASH. AREA BICYCLISTS ASS’N (Feb. 11, 2013), <http://www.waba.org/blog/2013/02/why-marylands-proposed-helmet-law-would-make-cyclists-less-safe/> (referencing Dorothy Robinson, *No Clear Evidence from Countries that have Enforced the Wearing of Helmets*, 332 BRIT. MED. J. 722 (2006)).

118. See Farthing, *supra* note 117; P L Jacobsen, *Safety in Numbers: More Walkers and Bicyclists, Safer Walking and Bicycling*, 9 INJURY PREVENTION 205 (2003), available at <http://injuryprevention.bmj.com/content/9/3/205.full.pdf+html>.

argument against helmet requirements is that bicycling, even where relatively dangerous, provides a positive health benefit despite whatever risks are incurred; thus public policy should be wary of any requirement that discourages bicycling.¹¹⁹ Helmet law advocates in the field of public health particularly may need to question the trade-off in public health effects between an increased helmet use rate due to compliance with a mandatory helmet law and any decrease in ridership related to a mandatory helmet law.¹²⁰ This new research calls into question the reasons for promoting helmets and the social utility of mandatory helmet laws.

Finally, bicycle share systems, where fewer people are observed wearing helmets than the general population of people bicycling,¹²¹ have so far been very safe in the United States.¹²² This experience “has raised basic questions about the need for helmets” according to the Bicycle Helmet Safety Institute.¹²³ Mandatory helmet use laws have been blamed for the failure of bicycle share systems in Australian cities,¹²⁴ and the lack of helmets has been seen as a common denominator for successful systems throughout the world.¹²⁵ Cities contemplating or implementing bicycle share systems are now facing questions if they have a mandatory helmet law on the books.¹²⁶

119. See *The Health Benefits of Cycling*, BICYCLE HEALTH RES. ASS'N, <http://www.cyclehelmets.org/1015.html> (last visited Apr. 3, 2015).

120. See, e.g., Alison Bateman-House, *Bikes, Helmets, and Public Health: Decision-Making When Goods Collide*, 104 AM. J. PUB. HEALTH 986 (2014) (discussing how two New York Mayors opposed mandatory bicycle helmet laws and considering how they may have balanced public health considerations in doing so).

121. See, e.g., Ted Burnham, *Why Do Bike-Share Riders Skip Helmets?*, NPR (May 3, 2012), <http://www.npr.org/blogs/health/2012/05/03/151955048/why-do-bike-share-riders-skip-helmets>; see also Corey H. Basch et al., *Helmet Use Among Users of the Citi Bike Bicycle-Sharing Program*, 39 J. COMMUNITY HEALTH 503 (2014).

122. Injuries decreased in American cities with bicycle share systems according to one study. See Rachel Dovey, *So Should Bike-Shares Provide Helmets or Not*, NEXT CITY (Aug. 13, 2014), <http://nextcity.org/daily/entry/bike-share-helmets-bicycle-safety>. No bicycle share user has suffered a fatality through August 2014. See Barbara Goldberg, *After 23 Million Rides, No Deaths in US Bike Share Programs*, REUTERS (Aug. 12, 2014), <http://www.reuters.com/article/2014/08/12/us-usa-transportation-bikes-idUSKBN0GC10T20140812>.

123. *Helmet Laws for Bicycle Riders*, *supra* note 109.

124. See, e.g., *Proportion of Queenslanders Cycling has Collapsed Since Bike Helmet Law Was Introduced*, CYCLE-HELMETS.COM, <http://www.cycle-helmets.com/queensland-cyclist-numbers.pdf> (last visited Apr. 3, 2015).

125. Elisabeth Rosenthal, *To Encourage Biking, Cities Lose the Helmets*, N.Y. TIMES, Sept. 29, 2012, http://www.nytimes.com/2012/09/30/sunday-review/to-encourage-biking-cities-forget-about-helmets.html?pagewanted=all&_r=0.

126. Dallas repealed its mandatory helmet law in anticipation of its bicycle share program. Seattle has faced multiple questions about its all-ages mandatory helmet law in anticipation of the early implementation of its Pronto bicycle share system,

Seattle may end up being a bellwether for the future of mandatory helmet laws.¹²⁷ According to the most recent five-year estimate from American Community Survey, 3.5% of Seattle commuters use a bicycle as their primary mode of transportation.¹²⁸ Among cities with similar populations, Seattle has the second highest bicycle commuter rate, after Portland.¹²⁹ Comparable cities with bicycle share systems, like Washington, D.C. and New York City, have 3.5% and 0.9% commuting rates, respectively.¹³⁰ Both Washington, D.C. and New York have nearly doubled their percent of people commuting to work by bicycle since 2009, while Seattle has increased by slightly more than 16%.¹³¹ Seattle has a fatality rate per 10,000 bicycle commuters that is twice as high as Washington D.C., but three times less than New York City.¹³² Estimates of bicycle commuters only measure one type of bicycling; accounting for total city population, Seattle currently has a worse bicycle fatality rate than Washington, D.C. and New York City.¹³³ Given Seattle's current safety and ridership statistics, it seems reasonable to question Seattle's helmet law, but the data provided by the use, or non-use, its bicycle share system may provide significant new information about how mandatory helmet laws impact helmet use.

which has helmet distribution stations at each bicycle share station. See Tom Fucoloro, *How Pronto Plans to Make Bike Share Work Even With Seattle's Helmet Law*, SEATTLE BIKE BLOG (July 29, 2014), <http://www.seattlebikeblog.com/2014/07/29/how-pronto-plans-to-make-bike-share-work-even-with-seattles-helmet-law/>.

127. See *Bicycle Helmet Requirements in Washington*, WASH. ST. DEP'T TRANSP., <http://www.wsdot.wa.gov/bike/helmets.htm> (last visited Apr. 3, 2015); see also Ansel Herz, *Will a Mandatory Helmet Law Hurt Seattle's New Bike Share Program?*, STRANGER (Sept. 3, 2014), <http://www.thestranger.com/seattle/will-a-mandatory-helmet-law-hurt-seattles-new-bike-share-program/Content?oid=20489601>.

128. See *American Factfinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Apr. 12, 2015) (data retrieved from American Factfinder using table B08006 for datasets 2009–2013 five-year survey).

129. See *id.* Comparable cities were cities with +/- 200,000 people based on 2013 one-year estimate of total population. *Id.*

130. See *id.* (follow "Advanced Search" link; then follow "Show Me All" link; then enter "B08006" into "topic or table name" box and hit "GO"; then enter a city name in the "state, county or place" box and hit "GO"; then follow the hyperlink to the left of the "Dataset" field that indicates "2013 ACS 5-year estimates"; then repeat process for all cities and compare results).

131. See *id.*

132. *Fatality Analysis Reporting System*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., <http://www-fars.nhtsa.dot.gov/QueryTool/querysection/selectyear.aspx> (data retrieved from National Highway Traffic Safety Administration's Fatality Analysis Reporting System for all three cities for years 2009–2013); see also *American Fact Finder*, *supra* note 128.

133. *Fatality Analysis Reporting System*, *supra* note 132; see also *American Fact Finder*, *supra* note 128.

Although it currently seems like few jurisdictions are considering mandatory helmet use laws, there are several features of mandatory helmet use laws that vary significantly between states, including the maximum age of persons who must wear helmets, reasons for helmet-related tickets being waived, and how a mandatory helmet law affects civil lawsuits.

Between 1998 and 2012 the average age of people affected by mandatory helmet use laws increased.¹³⁴ Several of the early statutes were focused on the very young.¹³⁵ Now the statutes exist that affect people up to eighteen years old.¹³⁶ This is noteworthy because it provides some insight into what is being accomplished by a mandatory helmet law. When focused on young children the law may be more about protecting vulnerable children who may lack the coordination or ability to behave well on a bicycle. When applied to an eighteen year old it seems that the purpose must be more akin to a seatbelt law with a focus on the public health problems caused by traffic crashes. It seems odd that existing helmet laws have expanded to cover more ages at the same time that few states have enacted new helmet laws.¹³⁷ The differences are small,¹³⁸ but it would be great for future research to look at the appropriateness of specific age limitations and how specific age limits might impact the transportation options available to children and families.

Several states have notable exceptions and excuses to the requirement that people under a certain age wear bicycle helmets. These include exceptions for religious practices,¹³⁹ excuses based on showing financial hardship,¹⁴⁰ and excuses based on proof of helmet purchase.¹⁴¹ These exceptions and excuses recognize the complexity

134. Compare SCHEIB, *supra* note 11, at 25–28, with *State Helmet Laws*, *supra* note 108 (illustrating that the average maximum age affected by a state mandatory helmet use law increased from 14 to 15.7 years old).

135. The first four state statutes enacted only applied to passengers under the age of five. See *Helmet Laws for Bicycle Riders*, *supra* note 109.

136. *State Helmet Laws*, LEAGUE AM. BICYCLISTS, http://bikeleague.org/sites/default/files/state-helmet-laws-chart_.pdf.

137. See *Helmet Laws for Bicycle Riders*, *supra* note 109 (demonstrating that the “pace of new helmet laws has slowed to almost zero”).

138. See *supra* note 135; compare SCHEIB, *supra* note 11, at 25–28, with *State Helmet Laws*, *supra* note 136.

139. See, e.g., 75 PA. CONS. STAT. § 3510(b)(3) (2014). Explanations of this exception point to Sikh populations that wear turbans as a likely reason for this exception. See, e.g., *Turbans and Bike Helmets*, BICYCLE HELMET SAFETY INST., <http://www.bhsi.org/turbans.htm> (last visited Apr. 3, 2015).

140. N.Y. VEH. & TRAF. LAW § 1238(6)(c) (McKinney 2005).

141. 75 PA. CONS. STAT. ANN. § 3510(b)(2).

of requiring equipment that is not an integral part of the bicycle and may also recognize the possibility for discrimination that has been studied in the enforcement of other types of bicycle-related law.¹⁴² These excuses and exceptions are important for making certain that mandatory helmet laws do not disproportionately impact vulnerable members of our society. They may also be illustrative of the limitations of this type of mandatory law.

Most states with mandatory helmet laws have enacted provisions that limit the consideration of compliance with mandatory helmet laws in civil lawsuits.¹⁴³ This is an important protection for the minor children affected by these laws and their families if there is an injury while not wearing a helmet. Without this type of protection an injured child would face a significant barrier to recovering for injuries caused by a motor vehicle or unsafe road condition. A plaintiff might have to expend significant resource to show that not wearing a helmet was not a factor in causing the crash or the extent to which an injury could have occurred even with a helmet. Excluding consideration of compliance with a mandatory helmet law also helps preclude any prejudice that might exist against lawbreakers being applied to children who did not comply with the helmet law.

It is not clear that mandatory helmet laws will be widespread in the future. They will likely have continued relevance and continue to exist in many jurisdictions, but current trends seem to be pushing against them. It is possible that safety equipment campaigns will pivot to other safety devices in the future, particularly lights, brakes,

142. See, e.g., *ACLU of Michigan Settles “Biking While Black” Case; Teens Finally Given Closure*, AM. CIVIL LIBERTIES UNION (May 30, 2006), <https://www.aclu.org/racial-justice/aclu-michigan-settles-%E2%80%9Cbiking-while-black%E2%80%9D-case-teens-finally-given-closure> (discussing a lawsuit related to a memo that instructed officers to pull over black youths on bicycles); Michael Andersen, *Communities of Color Bear the Brunt of Sidewalk-Biking Enforcement*, PEOPLE FOR BIKES (Oct. 21, 2014), <http://www.peopleforbikes.org/blog/entry/communities-of-color-bear-the-brunt-of-sidewalk-biking-enforcement>; Kyle Swenson, *Biking While Black is a Crime*, MIAMI NEW TIMES, Oct. 31, 2013, <http://www.miaminewtimes.com/2013-10-31/news/biking-while-black-fort-lauderdale/full/> (examining selective enforcement of a bicycle registration law).

143. See *Bike Law University*, *supra* note 11 (follow “Helmet Laws” hyperlink) (“Of states that require helmet use, most (12) only require helmets for persons less than 16 years of age. 16 of the states that require helmet use, the District of Columbia and Virginia—which does not require helmet use but does enable local authorities to require helmet use—have a law that limits the consideration of the failure to wear a helmet in a lawsuit.”).

and possibly technology that allows bicycles to communicate their position to cars.¹⁴⁴

E. Sidewalk Riding Laws

What I call “sidewalk riding laws” are laws that dictate whether bicyclists can ride on sidewalks and what their rights and duties are while on a sidewalk.¹⁴⁵ This is an area of bicycling-related law that is often unclear because most states have not passed laws specifically stating when a bicyclist can be on a sidewalk and how a bicyclist should behave when on a sidewalk.¹⁴⁶ No state explicitly bans bicycles from riding on sidewalks in all circumstances. However, eight states seem to ban them as vehicles: bicycles are defined as vehicles, and there is no more specific law to provide for bicycles being allowed on sidewalks.¹⁴⁷ In ten states it is unclear whether bicycles are prohibited from sidewalks because they are not defined as vehicles. Nevertheless, a bicyclist has all of the rights and all of the duties applicable to the driver of any vehicle except as to those provisions that by their nature can have no application, and vehicles are prohibited on sidewalks.¹⁴⁸ In eight states no law specifically regulates the use of sidewalks by bicycles or vehicles, meaning that bicyclists can presumably ride on sidewalks and perhaps other vehicles can be used on sidewalks as well.¹⁴⁹

Unfortunately, the ill-defined current state of sidewalk riding laws is not particularly aided by examining compilations of bicycle-related laws in the past. Traffic Laws Annotated in 1979 notes that the UVC

144. See, e.g., *Volvo Cars and POC to Demonstrate Life-Saving Wearable Cycling Tech Concept at International CES 2015*, VOLVO (Dec. 19, 2014), <https://www.media.volvocars.com/us/en-us/media/pressreleases/155565/volvo-cars-and-poc-to-demonstrate-life-saving-wearable-cycling-tech-concept-at-international-ces-2015>.

145. See *Bike Law University*, *supra* note 11 (follow “Sidewalk Riding” hyperlink).

146. As of 2012, only twenty-one states provide that bicyclists must yield to pedestrians while on a sidewalk, the most common sidewalk riding law and in my opinion the best proxy for whether a state has contemplated the situation of bicyclists on sidewalks. See *Sidewalk Riding Laws*, LEAGUE AM. BICYCLISTS, http://bikeleague.org/sites/default/files/sidewalkriding_chart.pdf (last visited Apr. 5, 2015).

147. See *id.* It seems possible that a court could find that laws prohibiting bicycles, as vehicles, are laws “which by their nature can have no application” to bicycles based upon a state’s “rights and duties” statute. However, in these eight states the definition itself would be examined and the “which by their nature can have no application” would not likely play a role in the examination based upon how courts have interpreted similar statutes in driving while intoxicated cases. See *Bike Law University*, *supra* note 11 (follow “Bicycling Under the Influence” hyperlink) (discussing related case law).

148. See *Bike Law University*, *supra* note 11 (follow “Sidewalk Riding” hyperlink).

149. *Id.*

adopted substantially new rules governing bicycles on sidewalks in its 1975 version.¹⁵⁰ The rules adopted in the 1975 version of the UVC have remained unchanged through the 2000 version of the UVC.¹⁵¹ Ten states had adopted at least part of the UVC rules by 1982.¹⁵² Another examination, by NHTSA in 2002, found sixteen states to have similar laws.¹⁵³ Today, twenty-three states have some version of a sidewalk riding law that allows sidewalk riding.¹⁵⁴

There does not seem to have been a wave of adoption of sidewalk riding laws, perhaps suggesting that states do not feel that these are important rules, that the current model rules are not appropriate, or that states are not the right jurisdiction for setting these rules. The fact that nineteen states have provisions in their law that contemplate local restrictions, signage, or other geographic specific rules suggests that states feel this is a local matter.¹⁵⁵ This is also supported by the fact that this type of rule was initially included in the Model Traffic Ordinances published by NCUTLO rather than the UVC.¹⁵⁶ The reality for bicyclists is that they must be aware of local laws, even in states with statewide laws. This situation undermines the uniformity of traffic laws sought for in the UVC and sought for many state traffic rules. It may open the door to discriminatory or unfair enforcement of laws against bicyclists¹⁵⁷ and contribute the societal confusion about where bicyclists are supposed to ride.¹⁵⁸

150. TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 324–35 (setting forth and discussing UNIF. VEHICLE CODE § 11-1209). The only provision that overlapped from the rule prior to 1975 was part (c), requiring any person riding a bicycle on a sidewalk to yield the right of way to any pedestrian and give an audible signal before overtaking and passing such pedestrian. *Id.* Because the prior rule was part of the Model Traffic Ordinance, rather than the UVC, it was not examined in the 1972 version of Traffic Laws Annotated.

151. Section 11-1209 was renumbered to 11-1210 in the 2000 version. *Compare id.*, with UNIF. VEHICLE CODE § 11-1209 (2000).

152. Kearney examined state adoption of similar laws in 1982, but his grading scheme makes it unclear which laws particular states had because he aggregated scoring for three separate UVC provisions. *See* Kearney, *supra* note 11, at 12, 14. Kearney examined sections 11-1209(c), 11-509, and 11-502. *Id.*

153. NHTSA RESOURCE GUIDE, *supra* note 11, at 29–34 (analyzing UNIF. VEHICLE CODE § 11-1210(a)–(c)).

154. *See Sidewalk Riding Laws*, *supra* note 146.

155. *See id.*

156. *See* TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 324.

157. *See* Andersen, *supra* note 142; *see also* Johnathan Maus, *Dispatch from Downtown on Sidewalk Biking Enforcement Day*, BIKEPORTLAND.ORG (July 31, 2014), <http://bikeportland.org/2014/07/31/dispatch-downtown-sidewalk-biking-enforcement-day-109657>.

158. According to the FHWA Synthesis of Laws in 1993, “[o]rdinances regarding the use of bicycles on sidewalks are so varied among jurisdictions that few citizens are

It is unfortunate that more states have not adopted rules regarding sidewalk riding and that current rules contribute to the confusion about whether bicyclists can ride on sidewalks. Laws for bicyclists on sidewalks are necessary because bicyclists are drawn to sidewalks for utility and for safety. Utility is somewhat obvious, as destinations and bicycle parking are usually on sidewalks.¹⁵⁹ Safety can be more contentious, but is often given as a reason for choosing to use a sidewalk.¹⁶⁰ Both bicyclists and pedestrians have a common fear for their safety from cars,¹⁶¹ but on sidewalks bicyclists are the biggest, heaviest, and fastest objects, and laws can give them the responsibility to act more like mechanized pedestrians than cars with special rights. States should provide rules for bicyclists on sidewalks so that bicyclists, pedestrians, and motorists can have a common understanding of what acceptable bicyclist behavior looks like.

Laws should strive to provide a clear indication to bicyclists that they are guests on sidewalks meant for pedestrians, and more dangerous users on shared use paths where they mix with pedestrians. High quality bicycle lanes may mitigate the need for sidewalk riding,¹⁶² but bicyclists will always find reasons where it is sometimes convenient to use a sidewalk. Simpler, and more uniform, laws coupled with education will do more to mitigate any dangers to

aware of the legality of such actions in their community.” BOWMAN ET AL., *supra* note 18, at 14.

159. See, e.g., John Kelly, *Cyclists Explain Why They Sometimes Ride on the Sidewalk*, WASH. POST, July 14, 2014, http://www.washingtonpost.com/local/cyclists-explain-why-they-sometimes-ride-on-the-sidewalk-in-downtown-dc/2014/07/14/411cdbc6-0b64-11e4-b8e5-d0de80767fc2_story.html; *In Defense of Sidewalk Cycling*, WASHCYCLE (Aug. 26, 2008), <http://www.thewashcycle.com/2008/08/dc-special-requ.html>.

160. Compare Robert Prinz, *Sidewalk Cycling Laws*, BIKE EAST BAY (Mar. 7, 2015, 12:15 PM), <https://bikeeastbay.org/SidewalkCycling> (discussing some of the safety issues for bicyclists on sidewalks and showing how complicated it can be for bicyclists to know whether they can use sidewalks); with Kelly, *supra* note 159 (noting that some bicyclists view the sidewalk as a safer place to ride).

161. According to a 2012 survey by the NHTSA, 83% of bicyclists felt threatened for their personal safety due to cars and 67% of pedestrians felt threatened for their personal safety due to cars. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., 2012 NATIONAL SURVEY OF BICYCLIST AND PEDESTRIAN ATTITUDES AND BEHAVIOR VOLUME 2: FINDINGS REPORT 26, 101 (2012), <http://www.nhtsa.gov/nti/811841>.

162. See *Statistics Library/Protected Bike Lane Statistics*, PEOPLE FOR BIKES, <http://www.peopleforbikes.org/statistics/category/protected-bike-lane-statistics> (last visited Apr. 5, 2015) (“Where protected lanes were installed in New York and Washington D.C., the number of bikes on sidewalks immediately fell by an average of 56 percent.”).

pedestrians caused by bicyclists than the creation and adoption of more complicated or prohibitory laws.¹⁶³

When the law shifts between local jurisdictions, or within the central business district of a jurisdiction, it becomes extremely difficult for bicyclists, and others, to be aware of the sidewalk riding law that applies to bicyclists.¹⁶⁴ Signage may help, but it seems technically difficult to provide information to bicyclists, who can move in any direction and access sidewalks anywhere a pedestrian can. Signage that tells bicyclists that they are not allowed on sidewalks may not be intuitive for bicyclists, who are sometimes told by motorists to use the sidewalk¹⁶⁵ and who must go on a sidewalk to park in most circumstances. When bicyclists find themselves on a sidewalk, signage telling them they cannot be there is unlikely to make them choose to use a road that they feel is unsafe and does not necessarily signal to them how to behave appropriately while on the sidewalk.¹⁶⁶ Prohibition alone does not address the actual experience of bicyclists, pedestrians, and motorists, and it does not create a shared understanding that helps people behave safely.

Traffic laws for bicyclists are important so that bicyclists can safely and predictably follow traffic laws. Good traffic laws for bicyclists help bicyclists, pedestrians, and motorists have shared expectations of proper behavior and should be based on data, or at least experience. Most of the evolution of traffic laws for bicyclists has occurred due to states modifying laws originally written primarily for motor vehicles so that they address issues experienced by bicyclists. In most cases this has meant modifications that give bicyclists more control over where they ride and relaxing the prescriptive rules that were put in place to keep bicyclists out of the way of motor vehicles. Helmet laws

163. See David Alpert, *A New Bill Would Ban Cycling or Segway Riding on DC Sidewalks Next to Bike Lanes*, GREATER GREATER WASH. (Oct. 21, 2014), <http://greatergreaterwashington.org/post/24618/new-bill-would-ban-cycling-or-segway-riding-on-dc-sidewalks-next-to-bike-lanes/> (proposing a law to make bicycling on a sidewalk prohibited when a bicycle lane going in the same direction is present, except for children twelve and under).

164. See generally BOWMAN ET AL., *supra* note 18.

165. See, e.g., Mark Pedini, *Death Threat*, BICYCLE AUSTIN (Aug. 15, 2001), <http://bicycleaustin.info/justice/harassment.html> (“I had a motorist tell me that he would ‘run my ass over’ and he would not be prosecuted due to the fact that I was in the street rather than on the sidewalk.”).

166. Compare *No Bicycle Sign*, ROAD TRAFFIC SIGNS, <http://images.roadtrafficsigns.com/img/lg/K/No-Bicycle-Sign-K-7212.gif> (prohibiting bicyclists on sidewalks), with *Bicycles Yield to Pedestrians Sign*, AM. TRAILS, <http://www.americantrails.org/photoGalleries/cool/41images/11.jpg> (telling bicyclists to yield to pedestrians on a trail).

and sidewalk riding laws are examples of traffic laws being created for situations that only, or mostly,¹⁶⁷ apply to bicyclists. These laws have not been as widely adopted as the early prescriptive laws. While I would like to see more evidence that mandatory helmet use laws accomplish their purpose of increasing safety, it is good to see traffic laws written with bicyclists specifically in mind and tailored to the situations bicyclists face. I hope that the trends discussed in this section continue and that this discussion helps policymakers considering how to regulate bicyclist behavior in the future.

II. TRAFFIC LAWS FOR MOTORISTS THAT AFFECT BICYCLISTS

Treating bicycles as vehicles has sometimes been used to promote the idea that bicycles do not need any special accommodations. More recently, there has been recognition of the risks imposed on bicyclists and other non-motorized road users by motorists. This has led to the creation of laws focused on motorist behaviors when they interact with bicyclists and other people who are not in motor vehicles while on our roads. This Part will look at two types of laws that regulate driver and vehicle occupant behavior and that have been adapted to provide additional protections for bicyclists, pedestrians, and other people outside of vehicles, and at one type of law that provides different penalties for crashes that involve a non-motorized road user.

A. Safe Passing and “Three-Foot” Laws

Laws that require an overtaking vehicle to pass at a safe distance to the left of an overtaken vehicle have existed since at least the original UVC in 1926,¹⁶⁸ but laws focused on the safety of overtaken bicyclists have taken more time to be adopted. In 1972, all of the states except for Kentucky, North Carolina, and Virginia required that vehicles pass at a safe distance to the left.¹⁶⁹ On the other hand, Wisconsin is credited as the first state to pass a law requiring motor vehicles to

167. There are people who suggest that drivers of motor vehicles and pedestrians wear helmets based on the number of head injuries that occur to drivers of motor vehicles and pedestrians. Data from Australia shows that there are more head injury deaths per million hours of walking than million hours of bicycling. See Joseph Stromberg, *Stop Forcing People to Wear Bike Helmets*, VOX (May 16, 2014, 11:40 AM), <http://www.vox.com/2014/5/16/5720762/stop-forcing-people-to-wear-bike-helmets>.

168. See TRAFFIC LAWS ANNOTATED 1972, *supra* note 10, at 282 (discussing the history of UNIF. VEHICLE CODE § 11-303(a)).

169. Kentucky had no standard for its passing distance, but North Carolina and Virginia required that vehicles pass two feet to the left of the vehicle being overtaken. See *id.* at 282–85.

pass bicyclists at a safe distance of no less than three feet in 1973.¹⁷⁰ During this same time period, Massachusetts also passed a safe passing law specifically targeted at motorists passing bicyclists.¹⁷¹

There is little information available on safe passing laws for motorists overtaking bicyclists until almost forty years after the first one was adopted. Laws that defined a safe passing distance for motorists overtaking bicyclists were not promoted or comprehensively examined by Kearney in 1982, Scheib in 1998, or NHTSA in 2002.¹⁷² The first compilation of state safe passing laws that defined a safe distance for a motorist overtaking a bicyclist did not appear until 2011,¹⁷³ although there were earlier online compilations that did not define safe distance.¹⁷⁴

In the intervening years, without apparently much official prompting,¹⁷⁵ bicycling advocates successfully enacted “three foot passing” laws that defined a safe passing distance of three feet in eighteen states and the District of Columbia.¹⁷⁶ In 2014, these “defined distance” laws reached the milestone of being the law in more than half the country.¹⁷⁷ Oregon and Rhode Island take an

170. See CHARLES BROWN, *THE 3 FT. LAW: LESSONS LEARNED FROM A NATIONAL ANALYSIS OF STATE POLICIES AND EXPERT INTERVIEWS* 65 (2013), available at http://njbikeped.org/wp-content/uploads/2013/04/3-Foot-Final-Report-Draft_V7.pdf; see also Assemb. B. 1046, 1973–1974 Leg. (Wis. 1973), available at <https://docs.legis.wisconsin.gov/1973/related/acts/182.pdf>.

171. See *TRAFFIC LAWS ANNOTATED* 1979, *supra* note 10, at 123 (“([C]h. 90, § 14) requires slowing for bicyclists and passing at a safe distance.”). Oddly enough, *Traffic Laws Annotated* does not take note of Wisconsin’s three-foot passing law. See *id.* at 123–24.

172. See *NHTSA RESOURCE GUIDE*, *supra* note 11; SCHEIB, *supra* note 11; Kearney, *supra* note 11. Scheib does briefly mention that Minnesota and Wisconsin have laws that “define safe distance as being ‘in no case less than 3 feet clearance.’” SCHEIB, *supra* note 11, at 5 (quoting MINN. STAT. § 169.1(3) (1995)).

173. See *3-Foot Passing Laws*, PEOPLE POWERED MOVEMENT, http://www.peoplepoweredmovement.org/site/images/uploads/3-Foot_Passing_Law_Updated_05_18_11.pdf (last visited Apr. 5, 2015).

174. See, e.g., *Arizona’s Three-Foot Passing Law*, ARIZ. BIKE LAW, <http://azbikelaw.org/articles/ThreeFoot.html>.

175. Three foot passing laws were not advocated by the NHTSA Resource Guide or FHWA Synthesis FHWA-PD-93-018 produced in 1993. See BOWMAN ET AL., *supra* note 18; *NHTSA RESOURCE GUIDE*, *supra* note 11. It is not mentioned by the FHWA’s current bicycle safety countermeasure tool, BIKESAFE. See, e.g., *Bicycle Safety Guide and Countermeasure Selection System*, BIKESAFE, <http://pedbike.safe.org/BIKESAFE/countermeasures.cfm>.

176. See *3-Foot Passing Laws*, *supra* note 173.

177. See *Bike Law University*, *supra* note 11 (demonstrating that North Carolina only specifies a distance of two feet while Pennsylvania specifies a distance of four feet; every other state with a “defined distance” law sets that distance as not less than three feet).

alternative approach, setting a safe distance as “a distance that is sufficient to prevent contact with the person operating the bicycle if the person were to fall into the driver’s lane of traffic,”¹⁷⁸ sometimes called a “fall over” distance standard.¹⁷⁹ This trend has been strong, with at least one state adopting a three-foot passing law in every year since 2006.¹⁸⁰

The rise of “three-foot passing” laws has not been without problems. Although defining a measurable standard distance seems like a good way to increase the enforceability of a safe passing law, most states have not invested time into enforcing their three-foot passing laws.¹⁸¹ When police officials have enforced the law, they have not found it technically difficult to enforce,¹⁸² but its enforcement is still viewed as challenging.¹⁸³ When police do not actively enforce the law, bicyclists may still benefit from increased fines for motorists who hit them,¹⁸⁴ easier court cases or insurance claims when hit while being overtaken,¹⁸⁵ and the educational effect of three foot passing laws.¹⁸⁶ There are also bicyclists, and bicycling groups, who use action cameras, such as GoPros, to document violations in the hopes of law enforcement writing tickets or otherwise warning motorists that exhibit dangerous behavior while on the road.¹⁸⁷

178. OR. REV. STAT. § 811.065 (2014).

179. Ray Thomas, *Get Legal with Ray Thomas: Oregon’s ‘Safe Passing’ Law Explained*, BIKEPORTLAND.ORG (Jan. 6, 2014, 3:53 PM), <http://bikeportland.org/2014/01/06/get-legal-with-ray-thomas-oregons-safe-passing-law-explained-99506>.

180. See Ken McLeod, *Austin Ramps up Enforcement of Passing Law*, LEAGUE AM. BICYCLISTS (Aug. 12, 2013), <http://bikeleague.org/content/austin-ramps-enforcement-passing-law> (graphing the adoption of three foot passing laws).

181. See BROWN, *supra* note 170, at 17; see also Dan Noyes, *Can the New 3-Foot Safety Law Be Enforced?*, ABC 7 NEWS (June 7, 2014), <http://abc7news.com/politics/can-the-new-3-foot-safety-law-be-enforced/99222/> (noting that Florida issued just 337 citations for violations of its three-foot law from 2006 to 2010).

182. See Ashley Halsey III, *Putting a Bite in the 3-Foot Bike Law*, WASH. POST, Aug. 9, 2013, <http://www.washingtonpost.com/blogs/dr-gridlock/wp/2013/08/09/putting-a-bite-in-the-3-foot-bike-law/> (describing a process of training officers on bicycles and using GoPro cameras for three-foot passing enforcement).

183. See BROWN, *supra* note 170, at 17, 25–67, 73 (discussing interviews with advocates and officials in states that have implemented three-foot laws, in which law enforcement, agency officials, and legislatures often lamented that it is unenforceable).

184. See *id.* at 15.

185. See *id.* at 64 (noting that insurance companies opposed the law in Utah).

186. See *id.* at 75 (asserting that “the most vital attribute of the 3 Foot Law is its potential as an educational tool.”).

187. See *Webinar: 3 Foot Law Enforcement Using Bike Mounted Video Cameras*, BIKE EAST BAY (Nov. 21, 2014), <https://bikeeastbay.org/events/webinar-3-foot-law-enforcement-using-bike-mounted-video-cameras>.

There are several features of three-foot passing, or other defined distance laws, that are worth examining. One criticism of the three-foot standard is that it is not a sufficient distance at higher speeds. New Hampshire is the only state to currently address this criticism by providing a variable distance that increases with speed.¹⁸⁸ Nevada requires motorists to move to a left adjacent lane if available and moving over is reasonably safe.¹⁸⁹ Another criticism is that some states have exceptions or limitations on their three-foot passing laws.¹⁹⁰ Maryland is unique in having several exceptions to its law, seemingly fixated on actions of the bicyclist that may make the law difficult to obey.¹⁹¹ California recently passed a three-foot law, after years of trying,¹⁹² which provides an exception based on road conditions and slowing to a “speed that is reasonable and prudent.”¹⁹³ One study examined the three-foot law in Maryland and found that it had little effect,¹⁹⁴ although it is hard to know if the exceptions to the law contributed to that result. Finally, an important consideration for effective safe passage laws involves crossing double yellow lines. At least four states directly address the perceived need to allow motorists to pass bicyclists in no-passing zones marked by double-yellow lines.¹⁹⁵ Motorists can likely pass bicyclists in far less space and time than other motorists, making it likely that this allowance may rarely impact the safety of motorists and may contribute to greater safety for bicyclists.

188. N.H. REV. STAT. ANN. § 265:143-a (2014).

189. See NEV. REV. STAT. ANN. § 484B.270(2) (2014).

190. See, e.g., MD. CODE ANN. § 21-1209 (2014); see also Rick Bernardi, *5 Ways to Improve 3 Foot Passing Laws*, BICYCLELAW.COM (Sept. 16, 2014, 10:45 AM), <http://www.bicyclelaw.com/blog/index.cfm/2014/9/16/Five-Ways-to-Improve-3-Foot-Passing-Laws>.

191. See MD. CODE ANN. § 21-1209(a)(2); see also Erin Beresini, *Why the 3-Foot Law Doesn't Work*, OUTSIDE (Sept. 24, 2014), <http://www.outsideonline.com/1925986/why-3-foot-law-doesn't-work> (discussing criticism of the three-foot law generally).

192. Five previous versions of the law were vetoed. See Tom Stienstra, *California's 3-Foot Rule for Cars Passing Bikes to Take Effect*, SFGATE, Sept. 7, 2014, <http://www.sfgate.com/outdoors/article/California-s-3-foot-rule-for-cars-passing-bikes-5740392.php>.

193. CAL. VEH. CODE § 21760(d) (West 2014).

194. See David C. Love et al., *Is the Three-Foot Bicycle Passing Law Working in Baltimore, Maryland?*, 48 ACCIDENT ANALYSIS & PREVENTION 451 (2012) (finding that seventeen percent of motor vehicle passes of cyclists were three-feet or less).

195. See KAN. STAT. ANN. § 8-1516 (West 2014); LA. REV. STAT. ANN. § 76.1 (2014); ME. REV. STAT. tit. 29, § 2070 (2014); OR. REV. STAT. ANN. § 811.065 (West 2014); see also BROWN, *supra* note 170, at 46 (discussing how Maine dealt with concerns about the inability of motorists to cross double yellow lines).

Safe passing laws recognize a threat to bicyclists caused by motor vehicles overtaking them. Crashes caused by overtaking tend to be uncommon, but are a common cause of bicyclist fatalities.¹⁹⁶ At this time, three-foot passing laws are the best tool available to bicycle advocates and states to address this threat. Further research is certainly warranted into the relative effectiveness of laws designed to make the overtaking of bicyclists safer and whether there are alternatives to the three-foot passing law. Research into enforcement and targeted enforcement campaigns may point the way to evolution of this type of law in the future.

In pedestrian safety, there is quite a bit of research into the effectiveness of targeted enforcement campaigns to improve specific aspects of pedestrian safety, for example, to increase yielding to pedestrians in crosswalks.¹⁹⁷ There seems to be less development of targeted enforcement campaigns to improve specific aspects of bicyclist safety.¹⁹⁸ Three-foot passing laws appear to be a logical starting point for effective targeted enforcement campaigns that improve bicyclist safety.

If three-foot passing laws begin to be commonly enforced, then law enforcement, courts, and the public may advocate for changes to these laws. Experience with enforcing these laws would help develop best practices around (1) how to incorporate variable distances, as seen in New Hampshire and Nevada;¹⁹⁹ (2) the effects of exceptions, as seen in Maryland and California, on enforcement campaigns; and (3) the necessity, due to politics or safety considerations, of allowing motorists to cross double-yellow lines in order to comply with the law. Targeted enforcement may also lead to data that supports new legal features, such as providing for increased penalties for repeat

196. See, e.g., LEAGUE OF AM. BICYCLISTS, BICYCLIST SAFETY MUST BE A PRIORITY 6 (2014), http://bikeleague.org/sites/default/files/EBC_report_final.pdf (finding that forty percent of collected reports of bicyclist fatalities in 2012 reported a hit from behind as the crash type).

197. See, e.g., JILL MEAD ET AL., FED. HIGHWAY ADMIN., EVALUATION OF PEDESTRIAN-RELATED ROADWAY MEASURES: A SUMMARY OF AVAILABLE RESEARCH 117–21 (2014), http://www.pedbikeinfo.org/cms/downloads/PedestrianLitReview_April2014.pdf (discussing four studies).

198. Compare *PEDSAFE: Countermeasures*, PEDBIKESAFE, <http://pedbikesafe.org/PEDSAFE/countermeasures.cfm> (providing a link to a review of “Safety Effects” research), with *BIKESAFE: Countermeasures*, PEDBIKESAFE, <http://pedbikesafe.org/BIKESAFE/countermeasures.cfm> (making no mention of any “Safety Effects” related to law enforcement countermeasures).

199. In Nevada, motorists must change lanes if an open lane is available. See NEV. REV. STAT. § 484B.270(2)(a) (2014). In New Hampshire, motorists must give an additional foot of clearance for each 10 miles per hour over 30 miles per hour they are traveling when passing a bicyclist. See N.H. REV. STAT. ANN. § 265:143-a (2014).

offenders. Without active enforcement, and studies of how these provisions affect enforcement, it is difficult to say how or why three-foot passing laws might evolve or the safety effects of their further evolution.

B. Vulnerable Road User Laws

In 2007, bicycle advocates in Oregon innovated the concept of a “vulnerable roadway user” law.²⁰⁰ In its initial formulation, a “vulnerable roadway user” law created enhanced penalties for careless driving that contributed to the serious physical injury or death of a person who was defined as a “vulnerable roadway user.”²⁰¹ Since this initial use of the term, at least seventeen states have considered similar laws or laws that use similar terminology related to protecting bicyclists and pedestrians.²⁰² Six states have passed similar laws that provide enhanced penalties and define a group of “vulnerable users.”²⁰³ At least two states have expanded the use of the “vulnerable user” concept to other types of laws, including the design standards of bicycle facilities²⁰⁴ and the standards for driver education on their responsibilities to others.²⁰⁵

Although Oregon advocates created the “vulnerable roadway user” law, they were knowledgeable and conscious of the concept’s origins in Europe.²⁰⁶ The concept of a “vulnerable roadway user” has been used in Europe in a variety of traffic safety contexts, including planning, to account for the diversity of people who do not use motor vehicles or find themselves outside of motor vehicles on roadways.²⁰⁷ This single term and concept creates a naturally broader coalition of parties interested in protection and encapsulates the basic asymmetry of motor vehicles with protective steel shells sharing the road with

200. See H.B. 3314, 74th Legis. Assemb., Reg. Sess. (Or. 2007); see also RAY THOMAS, *PEDAL POWER: A LEGAL GUIDE FOR OREGON BICYCLISTS* 49 (8th ed. 2012).

201. See THOMAS, *supra* note 200, at 49.

202. Based on a query of all years of the State Traffic Safety Legislation Database maintained by the National Conference of State Legislatures and National Highway Traffic Safety Administration (2007–2014). *State Traffic Safety Legislation Database*, NAT’L CONF. ST. LEGIS., <http://www.ncsl.org/research/transportation/state-traffic-safety-legislation-database.aspx>.

203. See *Vulnerable Road User Laws*, LEAGUE AM. BICYCLISTS, http://bikeleague.org/sites/default/files/vulnerable_road_user_laws.pdf (last visited Apr. 6, 2015).

204. See Assemb. B. 1193 (Cal. 2014).

205. See Assemb. B. 388 (Wis. 2013).

206. See THOMAS, *supra* note 200, at 49.

207. See *id.*

persons with no similar protection.²⁰⁸ Europe, like the United States, has seen its focus on traffic safety result in reductions in traffic deaths, but those reductions have primarily come among motorists²⁰⁹—further creating the need for focused legislation on those who do not benefit from occupant protection innovations or engineering solutions focused on motorist safety.

While seven states have adopted the model of defining a class of “vulnerable users” and providing specific enhanced penalties for certain motorist behavior that results in the injury or death of a member of that class, many states have laws that provide enhanced penalties of some sort when a crash involves a bicyclist or pedestrian, or that provide for the criminalization of harmful actions directed at bicyclists and pedestrians.²¹⁰ From the perspective of these broader laws, “vulnerable user” laws are unique mostly for the way they define a broader group of people deserving legal protection. This shift towards thinking about people who face the same threats as bicyclists, rather than just bicyclists, will likely be very important for bicycling-related laws and the groups that pursue them in the future.²¹¹

There is currently no consideration of “vulnerable user” laws planned for the Uniform Vehicle Code.²¹² The League of American Bicyclists has promoted “vulnerable user” laws through its one and only model law as of January 2015, and within its feedback to states as part of its annual Bicycle Friendly State[®] rankings.²¹³ The model law

208. *See id.*; *see also* *Vulnerable Road Users: A Challenge for Sustainable Mobility in Europe*, TRANSP. RES. ARENA, <http://tra2014.traconference.eu/vulnerable-road-users.html> (last visited Apr. 6, 2015) (“A lack of protection, such as that provided by the passenger compartment of a car, and an inability to move around easily are essential factors. Everyone can be a vulnerable user at some time in their lives.”).

209. *See* *Vulnerable Road Users: A Challenge for Sustainable Mobility in Europe*, *supra* note 208; *see also* Tanya Snyder, *NHTSA Touts Decrease in Traffic Deaths, But 32,719 Ain't No Vision Zero*, STREETS BLOG USA (Dec. 21, 2014), <http://usa.streetsblog.org/2014/12/22/nhtsa-touts-decrease-in-traffic-deaths-but-32719-aint-no-vision-zero/>.

210. *See* *Vulnerable Road User Laws*, *supra* note 203.

211. Another example of this type of shift is “complete streets” legislation, which directs states to consider all users in the design of their streets, but that legislation is not focused on rules for people using our roads like the laws examined in this Article. *See* DOUGLAS SHINKLE, TRANSPORTATION REVIEW: BICYCLE AND PEDESTRIAN SAFETY (2012), <http://www.ncsl.org/documents/transportation/BicyclePedestrianSafety.pdf> (discussing complete streets laws in seventeen states).

212. *See* NAT'L COMM. ON UNIFORM TRAFFIC CONTROL DEVICES, *supra* note 7 (discussing proposed changes to the UVC).

213. *See* *Model Legislation*, LEAGUE AM. BICYCLISTS, <http://bikeleague.org/content/model-legislation> (last visited Apr. 14, 2015); *see also* *2014 Report Card*:

is based on Oregon's 2007 law, but includes the feedback of a nine-member Legal Affairs Committee, whose membership is composed of lawyers throughout the United States committed to representing bicyclists and promoting bicycling.²¹⁴ In the absence of the NCUTLO, groups like the Legal Affairs Committee of the League of American Bicyclists stand ready to promote and spread best practices in "vulnerable user" and bicycle-related legislation.

It is important that legislation is beginning to understand that some road users are more vulnerable than others. Current vulnerable road user legislation is promising for general deterrence of poor behavior by motorists around more vulnerable road users. Current legislation focuses on criminal penalties, which are appropriate for general deterrence. Now that policymakers are open to this discussion it seems reasonable to wonder what other issues might be addressed through this concept. One major issue is compensation for crash victims, which is discussed later in the Article in the section on Laws that Alter Liability Rules. Other issues that may be useful to re-examine through this lens include laws and standards regarding road designs,²¹⁵ speed limits,²¹⁶ and other building blocks of our transportation system that potentially prioritize motor vehicle mobility over the safety of vulnerable road users.

C. "Dooring" laws

Dooring laws are fairly straightforward statutes based on a simple concept—people who open car doors should be responsible for ensuring that they do not injure or cause damage to others when they do so. However, the states that remain without these statutes have found it difficult to have this simple rule enacted.²¹⁷ There is very

Minnesota, LEAGUE AM. BICYCLISTS, http://bikeleague.org/sites/default/files/BFS2014_Minnesota.pdf (last visited Apr. 14, 2015) (recommending adoption of vulnerable road user law).

214. See Carolyn Szczepanski, *Justice for Bicyclists*, AM. BICYCLIST, Sept.–Oct. 2012, at 22, <http://www.bikeleague.org/sites/default/files/ABsept-oct2012-final.pdf>.

215. See, e.g., *National Complete Streets Coalition*, SMART GROWTH AM., <http://www.smartgrowthamerica.org/complete-streets/complete-streets-fundamentals/factsheets/safety> (last visited Apr. 6, 2015).

216. See, e.g., Angie Schmitt, *One for the Dustbin: The 85th Percentile Rule in Traffic Engineering*, STREETS BLOG (Nov. 16, 2012), <http://streetsblog.net/2012/11/16/one-for-the-dustbin-the-85th-percentile-rule-in-traffic-engineering/>.

217. See Tom Jackman, *Virginia House Panel Again Shoots Down Bill to Protect Cyclists from 'Dooring'*, WASH. POST, Feb. 25, 2014, <http://www.washingtonpost.com/blogs/local/wp/2014/02/25/virginia-house-panel-again-shoots-down-bill-to-protect-cyclists-from-dooring/>; see also Tom Jackman, *Bill to Protect Virginia Cyclists from "Dooring" Sparks Dismissive Rage from Norfolk Columnist*, WASH. POST STATE OF

sparse case law dealing with examinations of fault in incidents where people open doors into traffic and cause damage or injury to others in the absence of a “dooring” statute. Where the statute does exist, some jurisdictions have used their laws for substantial public education efforts, particularly using stickers on taxis.²¹⁸ In the Netherlands, concern with dooring has led driver education efforts to open doors with the hand furthest from the door, facilitating looking over your shoulder for oncoming traffic, including bicyclists.²¹⁹

“Dooring” laws were not created until after cars became widespread. The Uniform Vehicle Code did not have a provision assigning responsibility to people opening car doors until UVC § 11-1105 was added in 1956.²²⁰ It was amended in 1962 and 1975 to clarify responsibilities regarding interfering with traffic and traffic on both sides of a vehicle.²²¹ Most states had not adopted any version of the UVC provision by 1972,²²² but significant gains were made by 1979.²²³ By 1982, thirty-two states had laws similar to UVC § 11-1105,²²⁴ but then laws similar to UVC § 11-1105 were not again examined until 2002, when all but thirteen states had similar laws.²²⁵

Data on dooring is limited, but in some cities in the United States it appears to be a major contributor to bicyclist crashes, accounting for twenty percent or more of bicyclist crashes.²²⁶ If states are wary of

NOVA (Jan. 15, 2013, 5:11 AM), http://www.washingtonpost.com/blogs/the-state-of-nova/post/bill-to-protect-virginia-cyclists-from-dooring-sparks-dismissive-rage-from-norfolk-columnist/2013/01/14/5d6a2008-5e91-11e2-a389-ee565c81c565_blog.html.

218. See, e.g., Andy Ambrosius, *Chicago Approves Crackdown on Dooring, Rule-Breaking Bicyclists*, N. CENTER-ROSCOE VILLAGE PATCH (June 6, 2013), <http://patch.com/illinois/northcenter-roscoevillage/chicago-approves-crackdown-on-dooring-rule-breaking-bicyclists> (discussing Chicago’s ordinance increasing penalties for dooring and its sticker campaign).

219. See Russell Shorto, *The Dutch Way: Bicycles and Fresh Bread*, N.Y. TIMES, July 30, 2011, http://www.nytimes.com/2011/07/31/opinion/sunday/the-dutch-way-bicycles-and-fresh-bread.html?_r=0 (“Dutch drivers are taught that when you are about to get out of the car, you reach for the door handle with your right hand—bringing your arm across your body to the door. This forces a driver to swivel shoulders and head, so that before opening the door you can see if there is a bike coming from behind.”).

220. See TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 302.

221. *Id.*

222. See TRAFFIC LAWS ANNOTATED 1972, *supra* note 10, at 712–13; Spreadsheet, *supra* note 42.

223. See TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 302–03.

224. See Kearney, *supra* note 11.

225. NHTSA RESOURCE GUIDE, *supra* note 11.

226. See CITY OF BOSTON, BOSTON CYCLIST SAFETY REPORT 2013, at 16 (2013) (remarking that an analysis of police reports involving bicyclist crashes showed that “18% of the cases involved a driver or passenger opening a car door into an

assigning responsibility to persons opening doors, there are other options to mitigate this crash type, including legal options.

One of the primary reasons that bicyclists find themselves at risk is the requirement that they ride “as far right as practicable” in many states.²²⁷ In most states “practicable” is not defined, and “door zone,”²²⁸ where bicyclists may be hit by opening doors, is not specifically listed as a reason to not ride to the right.²²⁹ A Georgia statute provides an example of a statute that specifically contemplates bicyclists riding further out into the road to avoid opening doors. The statute defines “hazards to safe cycling” as including “potentially opening car doors,” and it provides an exception to the “practicable” requirement when avoiding “hazards to safe cycling.”²³⁰ Specifically providing an exception to the “as far to the right as practicable” requirement, or adopting a Where to Ride law that gives greater discretion to bicyclists, can help address the need for bicyclists to be able to avoid the door zone.

Another reason that bicyclists find themselves in the “door zone” is the design of many bicycle lanes,²³¹ which some states require bicyclists to use,²³² and which motorists expect bicyclists to use. At

oncoming cyclist. This represents 40% of all cases in which driver behavior is noted.”); Alex Goldmark, *Data from Only State that Tracks Dooring Show Its Big Problem*, WNYC (Sept. 28, 2012), <http://www.wnyc.org/story/285015-data-from-only-state-that-tracks-dooring-show-its-big-problem/> (reporting that data from Chicago showed that between 2010 and 2012, dooring crashes made up between 7.3% and 19.7% of reported bike crashes); *but see* Andrew Priest, *Research into the Dooring of Cyclists*, AUSHIKER.COM (Nov. 21, 2013), <http://aushiker.com/research-into-the-dooring-of-cyclists/> (“As a proportion of all cyclist crashes, cyclist-open vehicle door crashes accounted for 3.1% (hospital) and 8.4% (police).”) (quoting Marilyn Johnson et al., *Cyclists and Open Vehicle Doors: Crash Characteristics and Risk Factors*, 59 SAFETY SCI. 135 (2013)).

227. *See supra* Part I.B.

228. *See, e.g.*, Ken McLeod, *Bike Law U: Dooring*, LEAGUE AM. BICYCLISTS (Jan. 13, 2015), <http://www.bikeleague.org/content/bike-law-u-dooring>.

229. There are seven common exceptions to the requirement to ride as far to the right as practicable. The one that is most relevant to avoiding the door zone is an exception to avoid a non-exhaustive list of road conditions, which, according to the most recent version of the Uniform Vehicle Code, includes parked vehicles. UNIF. VEHICLE CODE § 11-1205(3) (2000). Thirty-seven states have adopted a version of the exception that references hazardous road conditions. *See Where to Ride Laws, supra* note 11.

230. GA. CODE ANN. § 40-6-243 (West 2015).

231. *See, e.g.*, WAYNE PEIN, AASHTO AND DOOR ZONE BIKE LANES (2004), http://www.humantransport.org/bicycledriving/library/AASHTO_DZBL.pdf; Jack Cochrane, *Bike Lanes Next to Parking—How Wide is Wide Enough?*, CYCLE MOCO (Apr. 14, 2012, 4:42 PM), <http://cyclemoco.com/2012/04/bike-lanes-next-to-parking-%E2%80%93-how-wide-is-wide-enough/>.

232. *See supra* Part I.C.

the very least, the states that require the use of bicycle lanes could allow exceptions for avoiding the “door zone.” Implementing better design standards of bicycle lanes, by requiring that the lane not place bicyclists within the “door zone,” such as buffered or parking protected bicycle lanes, could mitigate this problem.²³³ New facility types, such as parking-protected bicycle lanes and cycletracks, have the potential to mitigate dooring crashes if well designed, although they increase the need for dooring laws to apply to all vehicle occupants and to any door.²³⁴ States should also consider provisions as found in Washington, D.C.,²³⁵ Massachusetts,²³⁶ Oregon,²³⁷ and Rhode Island²³⁸ that specifically address opening car doors into places where pedestrians and/or bicyclists operate but motor vehicles do not. These provisions, that make it clear that the dooring law applies to non-vehicle places, may be important as parking-protected bicycle lanes, which place bicycles between parked vehicles and a curb, are implemented.²³⁹

Traffic laws for motorists that affect bicyclists have made significant gains in the last forty years. These laws are focused on driver behaviors that disproportionately affect bicyclists, or other vulnerable road users, and were not part of the original Uniform Vehicle Code, which focused on motor vehicle laws. These laws owe much to bicycling advocacy groups that have championed them and

233. See, e.g., Steven Vance, *Study: To Keep Bicyclists Outside the Door Zone, You Need a Buffer*, STREETS BLOG CHI. (July 29, 2014), <http://chi.streetsblog.org/2014/07/29/study-shows-only-buffered-bike-lanes-keep-bicyclists-outside-door-zone/> (discussing research that shows a “narrower bicycle lane with a parking-side buffer . . . provides distinct advantages over a wider bike lane with no buffer”) (quoting NAT’L COOP. HIGHWAY RESEARCH PROGRAM, NCHRP REPORT 766: RECOMMENDED BICYCLE LANE WIDTHS FOR VARIOUS ROADWAY CHARACTERISTICS (2014), http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_766.pdf).

234. See generally Anne C. Lusk et al., *Bicycle Guidelines and Crash Rates on Cycle Tracks in the United States*, 103 AM. J. PUB. HEALTH 1240 (2013), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3682599/> (discussing differences between dooring in bicycle lanes and cycletracks); see also TRAFFIC LAWS ANNOTATED 1979, *supra* note 10, at 302 (discussing the amendment that made UNIF. VEHICLE CODE § 11-1105 applicable to all occupants and on both sides of a vehicle in 1975).

235. D.C. MUN. REGS. tit. 18, § 2214 (effective Apr. 9, 1997).

236. MASS. GEN. LAWS ANN. ch. 90, § 14 (West 2014).

237. OR. REV. STAT. ANN. § 811.490 (West 2014).

238. R.I. GEN. LAWS ANN. § 31-21-14 (West 2014).

239. See *One-Way Protected Cycle Tracks*, NAT’L ASS’N CITY TRANSP. OFFICIALS, <http://nacto.org/cities-for-cycling/design-guide/cycle-tracks/one-way-protected-cycle-tracks/> (last visited Apr. 6, 2015) (describing parking protected bicycle lanes and suggesting that they reduce the risk of dooring because most motor vehicles are only used by a single occupant who will be opening their door into the street side rather than on the side of the bicycle lane).

raised concerns over behaviors that were previously overlooked. There are still many states without three-foot passing and vulnerable road user laws, but their spread has been persistent over the last decade. At this point only a handful of states do not have a dooring law and perhaps for this reason there is less innovation in the features of dooring laws. This Part highlights some of the ways these laws have evolved and some of the features that may be important to their evolution in the future. If these laws reach ubiquity then it will be interesting to see if the current features of these laws are retained or if new features become popular.

III. WHAT IS THE FUTURE FOR BICYCLE-RELATED LAWS?

Bicycle-related laws have evolved significantly from the restrictive laws of the UVC in 1972. Most modern bicycle-related laws focus on protecting bicyclists while allowing bicyclists to make safe decisions. Although there are still misperceptions about bicyclist behavior and disagreements about how best to make bicycling safer, it appears that legislative interest has shifted to motorist behaviors. The future of bicycling-related laws will likely balance efforts to promote bicycling with an ongoing concern for safety, but reflect the recognition that the greatest threat to bicyclists is motorists.

A. Bicycling Under the Influence Laws

A recent report by the Governors Highway Safety Association, noting an increase in bicycle fatalities, pointed to two bicyclist behaviors contributing to the increase—helmet use or non-use, and alcohol impairment.²⁴⁰ While the report was criticized for its emphasis on bicyclist behavior, disregard for increases in bicycling, and lack of enthusiasm for facilities that make bicycling safer,²⁴¹ bicyclists impaired by alcohol represent twenty-eight percent of fatally injured riders aged sixteen and older, and that rate has “remained relatively constant since the early 1980s.”²⁴²

240. See *Bicyclist Fatalities a Growing Problem for Key Groups*, GOVERNORS HIGHWAY SAFETY ASS'N (Oct. 27, 2014), http://www.ghsa.org/html/media/press_releases/2014/20141027bikes.html.

241. See, e.g., Mary Lauren Hall, *The News Reports About Bicycling Fatalities Aren't Quite Right. Here's Why.*, ALLIANCE FOR BIKING & WALKING (Oct. 28, 2014), <http://www.bikewalkalliance.org/blog/433-why-the-news-reports-about-bicycling-fatalities-arent-quite-right>; *Morning Links: More Criticism of the GHSA Bike Safety Report*, BIKINGINLA (Oct. 28, 2014), <http://bikinginla.com/2014/10/28/morning-links-more-criticism-of-the-ghsa-bike-safety-report-register-now-for-socal-state-highway-safety-summit/>.

242. See *Bicyclist Fatalities a Growing Problem for Key Groups*, *supra* note 240.

Despite the attention given to this bicyclist behavior, only nine states have directly addressed bicycling under the influence (BUI) with laws.²⁴³ Of those states, five have taken the step to exempt bicyclists from all or part of their driving under the influence statute.²⁴⁴ Four states have created BUI-specific penalties.²⁴⁵ In the other forty-one states, case law suggests that the DUI laws of a plurality of those states do not apply to bicyclists.²⁴⁶

When courts have examined the issue, the language of the DUI statutes, whether or not they are written for “motor vehicles” or all “vehicles,” and the definition of vehicles, whether or not the definition includes bicycles, are usually the main points of discussion.²⁴⁷ However, several states have noted that bicyclists pose much less risk to other road users than motorists and that penalties related to licensing do not make sense when applied to bicyclists.²⁴⁸

Many advocates and experts believe that states should consider BUI as a different problem than DUI and create different solutions.²⁴⁹ Washington State may point the way forward in terms of providing a way for intoxicated bicyclists to be taken off the street without a severe punishment.²⁵⁰ After a court of appeals decision²⁵¹ that found that the state’s DUI law was not meant to apply to bicyclists, in part due to public policy considerations, Washington state passed a law that allows law enforcement officers to place intoxicated bicyclists into protective custody or transport a bicyclist to a safe place or a

243. See *Bike Law University*, *supra* note 11 (discussing states with Bicycling Under the Influence (BUI) laws).

244. See *id.*

245. See *id.*

246. See *id.*; *Bicycling Under the Influence*, LEAGUE AM. BICYCLISTS, http://bikeleague.org/sites/default/files/bui_full_chart.pdf.

247. See *Bike Law University*, *supra* note 11 (discussing states with BUI laws and related case law trends).

248. See *id.* (discussing issues courts have had in applying DUI laws to bicyclists in cases such as *Clingenpeel v. Mun. Court*, 108 Cal. App. 3d 394, 401 (Cal. Ct. App. 1980), *State v. Tehan*, 190 N.J. Super. 348, 352 (N.J. Super. Ct. Law Div. 1982), and *City of Montesano v. Wells*, 902 P.2d. 1266 (Wash. Ct. App. 1995)).

249. See, e.g., Rick Bernardi, *Is BUI like DUI?*, BICYCLELAW.COM (Nov. 30, 2012, 6:00 PM), <http://www.bicyclelaw.com/blog/index.cfm/2012/11/30/Is-BUI-like-DUI> (“What does not make sense is to pretend that drunk cycling is exactly the same as drunk driving—and states that do make this mistake need to remember exactly what problem the tougher drunk driving laws are intended to prevent, and find a more rational approach to drunk cycling that reflects the very real differences between drunk driving and drunk cycling.”).

250. See *State Bike Laws*, *supra* note 46 (follow “Washington” link for a discussion of relevant state laws, including WASH. REV. CODE §§ 46.04.670, 46.61.502, 46.61.790 (2014)).

251. *City of Montesano v. Wells*, 902 P.2d. 1266 (Wash. Ct. App. 1995).

competent person who can care for them, and impound the bicyclist's bicycle if necessary to reduce the threat to public safety.²⁵² Another potential way forward is clearer application of public intoxication laws to bicyclists and exempting bicyclists from DUI laws.²⁵³ It is also possible that more transportation options, particularly public transportation and ride share services, and more secure bicycle parking may reduce the prevalence of BUI.

B. Distracted Driving Laws

Distracted driving is not a bicyclist-specific issue, but research suggests that bicyclists, and pedestrians, are bearing the brunt of cell phone and other device use by drivers.²⁵⁴ Therefore, bicyclists and pedestrians should be advocates for strong distracted driving laws and infrastructure solutions that mitigate distracted driving.²⁵⁵

Most states have adopted some sort of distracted driving law,²⁵⁶ but it seems likely that these laws will evolve as evidence is collected about their effectiveness.²⁵⁷ Technological advances, either related to cell phones or cars,²⁵⁸ may also affect what distracted driving means and how states can work to solve it. Bicyclists and pedestrians may

252. See *State Bike Laws*, *supra* note 46 (discussing WASH. REV. CODE § 46.61.790).

253. My previous analysis of BUI laws did not examine how public intoxication laws are used against bicyclists. See *Bike Law University*, *supra* note 11.

254. See JIM P. STIMPSON, FATALITIES OF PEDESTRIANS, BICYCLE RIDERS, AND MOTORISTS DUE TO DISTRACTED DRIVING MOTOR VEHICLE CRASHES IN THE U.S., 2005–2010, 128 PUB. HEALTH REP. 436, 436 (2013), <http://www.publichealthreports.org/issueopen.cfm?articleID=3020> (“Distracted drivers are the cause of an increasing share of fatalities found among pedestrians and bicycle riders. Policies are needed to protect pedestrians and bicycle riders as they cross intersections or travel on roadways.”).

255. See STIMPSON, *supra* note 254 (advocating lighted crosswalk markings, sidewalks, and separate bicycle lanes with barriers as part of changes to the built environment); *Comprehensive Review of Distracted Driving Research Released*, GOVERNORS HIGHWAY SAFETY ASS'N (July 7, 2011), http://www.ghsa.org/html/media/pressreleases/2011/20110707_sfdist.html (advocating physical countermeasures, such as rumble strips).

256. See *Distracted Driving Laws*, GOVERNORS HIGHWAY SAFETY ASS'N (Apr. 2015), http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html.

257. States are very active about considering distracted driving laws. In 2013, legislators in forty states considered approximately 170 driver distraction bills. See ANNE TEIGEN & DOUGLAS SHINKLE, TRAFFIC SAFETY TRENDS: STATE LEGISLATIVE ACTION 2013, at 8 (2014), <http://www.ncsl.org/documents/transportation/2013TrafficSafetyTrends.pdf>.

258. See, e.g., *Self-Driving Cars of the Future*, ORIGO (Sept. 10, 2014), <http://www.driveorigo.com/blog/self-driving-cars-future> (considering, as a provider of an anti-distracted driving technology for fleet vehicles, how self-driving cars will impact distracted driving).

find it worthwhile to include references to distracted driving law violations in future vulnerable road user laws as reasons for the application of increased penalties. Best practices for distracted driving legislation currently include cell phone use and texting bans for novice drivers, all ages texting bans, and enforcement and educational programs to promote compliance.²⁵⁹ However, some research has pointed to other sources of distraction being nearly as bad, or worse, than cell phone-related distractions.²⁶⁰

As we develop greater understanding of distracted driving, we may find that laws that would effectively reduce distraction, such as distraction caused by talking to a friend or child, are not politically acceptable. An alternative may be technological solutions. Motor vehicles manufacturers are beginning to explore sensor-based²⁶¹ and radio-based²⁶² systems that augment drivers' vision and situational awareness. Some are also looking at technologies that notice driver distraction, caused by any source.²⁶³ Another alternative is crash avoidance technology that does not depend on a driver to pay

259. See, e.g., GOVERNORS HIGHWAY SAFETY ASS'N, *DISTRACTED DRIVING: WHAT RESEARCH SHOWS AND WHAT STATES CAN DO 5* (2011), <http://www.ghsa.org/html/files/pubs/sfdist11execsum.pdf> (advocating for various state activities to reduce distracted driving).

260. *Eyes on the Road: Searching for Answers to the Problem of Distracted Driving*, INSURANCE INST. FOR HIGHWAY SAFETY (Oct. 24, 2014), <http://www.iihs.org/iihs/sr/statusreport/article/49/8/1> (finding that talking on a cell phone is not the most common type of secondary behavior engaged in by drivers).

261. Jaguar Land Rover has unveiled a "Bike Sense" system that uses sensors to trigger a variety of human-vehicle interface responses to alert a driver of a nearby bicyclist. A driver may experience a virtual touch on the shoulder to warn him of a bicyclist to his side or a buzz from a door handle when potentially opening his door into a bicyclist's path. See Alex Davies, *Jaguar Land Rover's Virtual Backseat Driver Could Stop You Hitting Cyclists*, WIRED (Jan. 21, 2015), <http://www.wired.com/2015/01/jaguar-land-rover-bike-sense/>.

262. Vehicle-to-vehicle and vehicle-to-pedestrian (sometimes called V2X, with X meaning any non-vehicle that is not infrastructure) technology using dedicated short-range communication protocols is currently undergoing a NHTSA rulemaking process. Bicyclists, pedestrians, and others have not been a major part of this rulemaking. See, e.g., Richard Masoner, *Will Vehicle-2-Vehicle Communication Improve Cyclist Safety?*, CYCLELICIOUS (Jan. 16, 2015), <http://www.cyclelicious.us/2015/will-vehicle-2-vehicle-communication-improve-cyclist-safety/comment-page-1/>. But some manufacturers have demonstrated at least the concept of vehicle-to-bicyclist or pedestrian communication. See, e.g., Seyth Miersma, *Honda Demonstrates New Vehicle-to-Pedestrian Safety Tech*, AUTOBLOG.COM, (Aug. 30, 2013), <http://www.autoblog.com/2013/08/30/honda-demonstrates-new-vehicle-to-pedestrian-safety-tech-vid/>.

263. See Caleb Garling, *Jaguar Demos a Car That Keeps an Eye on Its Driver*, MIT TECH. REV. (Jan. 5, 2015), <http://www.technologyreview.com/news/533801/jaguar-demos-a-car-that-keeps-an-eye-on-its-driver/> (describing a company called "Seeing Machines" that provides driver-monitoring systems).

attention, which could one day lead to driverless cars.²⁶⁴ If research shows that current distracted driving laws are not particularly effective,²⁶⁵ then federal regulation or incentives to encourage technological solutions in new cars and the aftermarket may offer a solution to this problem.

C. “Idaho Stop,” “Dead Red,” and Other Laws that Create Special Rules for Bicyclists

Bicyclists and motorists are different in many ways, including size, weight, and source of power. These differences have led to some rules that restrict bicyclists,²⁶⁶ but also some rules that give special abilities to bicyclists.²⁶⁷ There are at least three laws that give special abilities to bicyclists that have not been widely adopted, but may deserve widespread consideration.

“Idaho stop” laws modify the rules for bicyclists approaching stop signs and red lights.²⁶⁸ In essence this type of law gives bicyclists the ability to treat stop signs like yield signs and red lights like stop signs.²⁶⁹ Although little analysis exists about the effectiveness of this type of law, it appears to legitimize a common bicyclist behavior without any adverse safety effect,²⁷⁰ and may encourage bicycling by making it easier.²⁷¹ This type of law potentially gives bicyclists the ability to make bad decisions about when to proceed, but that risk

264. See *Technology That Pays Attention to the Road When Drivers Don't*, INSURANCE INST. FOR HIGHWAY SAFETY (Oct. 24, 2014), <http://www.iihs.org/iihs/sr/statusreport/article/49/8/4>.

265. See, e.g., Rahi Abouk & Scott Adams, *Texting Bans and Fatal Accidents on Roadways: Do They Work? Or Do Drivers Just React to Announcements of Bans?*, 5 AM. ECON. J. 179 (2013); Jeff Maher, *New Research Challenges Effectiveness of Texting Laws*, NEWS10 KXTV (July 25, 2014), <http://www.news10.net/story/news/traffic/2014/07/25/new-research-challenges-effectiveness-of-texting-laws/13147479/>.

266. See *supra* Part I.B–C (discussing Where to Ride and Mandatory Use laws).

267. See, e.g., *supra* Part I.E (discussing Sidewalk Riding laws).

268. These laws are called “Idaho stop” laws because Idaho is the only state that has adopted the law. Several localities have also adopted the law. See *Bike Law University*, *supra* note 11 (follow “‘Idaho Stop’ and ‘Dead Red’ Laws” link).

269. See *id.*

270. See *The Idaho Law: Allowing Safer Choice and Happier Travel*, MEGGS REP. (Sept. 29, 2011), <https://meggsreport.wordpress.com/2011/09/29/the-idaho-law-allowing-safer-choice-and-happier-travel/>.

271. See Joseph Stromberg, *Why Cyclists Should be Able to Roll Through Stop Signs and Ride Through Red Lights*, VOX (May 9, 2014, 9:40 AM), <http://www.vox.com/2014/5/9/5691098/why-cyclists-should-be-able-to-roll-through-stop-signs-and-ride>; see also Joel Fajans, *Why Bicyclists Hate Stop Signs*, ACCESS MAG., Spring 2001, at 21, <http://nacto.org/wp-content/uploads/2012/06/Fajans-J.-and-M.-Curry.-2001..pdf>.

must be balanced with the benefits that bicyclists may gain and the risk aversion that comes with being an unprotected person sharing the road with motor vehicles. However, the primary motivating force behind resistance to the “Idaho stop” may be that motorists view it as a form of cheating²⁷² in a game with established rules. The “Idaho stop” law recognizes that bicyclists and motorists do not necessarily need the same rules, because they are involved in very different games. It does not take any appreciable physical exertion for a motorist to stop and start, and a motorist does not face the same severity of danger when he makes a poor decision about his right of way. Bicyclists currently are burdened with conforming to motor vehicle norms, and it does not seem clear how burdens might be redistributed if they were allowed to follow their own.

“Dead red” is another type of law providing bicyclists with special abilities. These laws modify the rules for bicyclists, and often motorcyclists, when red lights that rely on vehicle detection fail to detect a bicycle, or motorcycle.²⁷³ Two states have taken the step of not modifying their rules, but rather requiring that traffic lights that rely upon vehicle detection that can detect bicycles.²⁷⁴ Reportedly, sixteen states currently have a version of a “dead red” law.²⁷⁵

At least one state, Illinois, has recently clarified the ability of bicyclists to pass other vehicles on the right.²⁷⁶ As of 2002, all states had some version of UVC § 11-304, which restricts when vehicles may pass on the right but does not reference bicycles.²⁷⁷ Because bicyclists are often directed to ride to the right on roadways and to ride in bicycle lanes to the right of traffic, there are often situations in which bicyclists find themselves to the right of slow moving or stopped

272. See Susan Perry, *Why Motorists Get So Angry at Cyclists—a Psychologist’s Theory*, MINNPOST (Feb. 20, 2013), <http://www.minnpost.com/second-opinion/2013/02/why-motorists-get-so-angry-cyclists-psychologists-theory> (explaining that motorist resentment is triggered when bicyclists “use the roads but don’t follow the same rules as cars”).

273. See *Bike Law University*, *supra* note 11 (follow “‘Idaho Stop’ and ‘Dead Red’ Laws” link); see also Alyx Arnett, ‘Dead Red’ Law Passes in Indiana, KOKOMOPERSPECTIVE.COM (Apr. 23, 2014, 8:00 AM), http://kokomoperspective.com/kp/news/dead-red-law-passes-in-indiana/article_c215c534-c97f-11e3-97af-001a4bcf887a.html.

274. See CAL. VEH. CODE § 21450.5 (West 2014); WASH. REV. CODE ANN. § 47.36.025 (West 2015).

275. See Arnett, *supra* note 273 (“Indiana joined 15 other states with the passing of house bill 1080, better known as the ‘dead red’ law.”).

276. See *Now Clarified in State Law: Bicycles May Pass Cars on the Right*, ACTIVE TRANSP. ALLIANCE (Aug. 29, 2013), <http://activetrans.org/node/12105>.

277. See NHTSA RESOURCE GUIDE, *supra* note 11.

traffic which they are physically unable to pass.²⁷⁸ In many states the law does not directly address this situation and relies upon applying the state's version of UVC § 11-304 to bicyclists. While this may often allow bicyclists to pass on the right, it would help bicyclists, motorists,²⁷⁹ and law enforcement to have a law that clearly allows this behavior.

This list of laws that legitimize common bicycling behavior is likely incomplete. Our roads were rarely built for easy bicycling, and it may be difficult to tell which behavior should be legitimized and which behavior is simply an adaptation to poor bicycling conditions that should be minimized as bicycling conditions are improved. It would be great to see an examination of real world bicyclist behaviors²⁸⁰ and ways they may be accommodated or mitigated by law or facilities.

D. Laws for Electrically-Assisted Bicycles

Electrically-assisted bicycles may be a major development for transportation and bicycle-related laws. By making bicycling easier and faster, it seems possible that electrically-assisted bicycles will make up a substantial portion of bicycles and contribute to increases in bicycling in the future.²⁸¹ States interested in reducing vehicle

278. See, e.g., Rick Bernardi, *Can a Bicyclist Pass on the Right?*, BICYCLELAW.COM (Nov. 14, 2012, 3:56 PM), <http://www.bicyclelaw.com/blog/index.cfm/2012/11/14/Can-a-bicyclist-pass-on-the-right> (discussing situations in which bicyclists may pass vehicles on the right).

279. According to Rick Bernardi, passing on the right is legal in California and other states with similar laws regarding passing on the right and the treatment of bicycles as vehicles. See *id.*

280. See David Alpert, *What's Our Bicycle "Social Contract"*, GREATER GREATER WASH. (Jan. 5, 2011), <http://greatergreaterwashington.org/post/8731/whats-our-bicycle-social-contract/> (examining the bicycle "social contract" of behaviors that are not legal, but perhaps not anti-social); see also Emily Badger, *Let's Talk Seriously About Why Cyclists Break Traffic Laws*, WASH. POST, Jan. 9, 2015, <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/01/09/lets-talk-seriously-about-why-cyclists-break-traffic-laws/> (describing efforts by researchers at the Active Communities Transportation Research Group to examine the "scofflaw" bicyclist behavior).

281. There are already 150 million electric bicycles in the Chinese market and electric bicycles account for 11% of bicycles in Germany. See JOHN MACARTHUR & NICHOLAS KOBEL, NAT'L INST. FOR TRANSP. & CMTYS., REGULATIONS OF E-BIKES IN NORTH AMERICA: A POLICY REVIEW 1 (2014), http://ebike.research.pdx.edu/sites/default/files/NITC-RR-564_Regulations_of_E-Bikes_in_North_America_2.pdf; see also JENNIFER DILL & GEOFFREY ROSE, ELECTRIC BIKES AND TRANSPORTATION POLICY: INSIGHTS FROM EARLY ADOPTERS 3 (2012), [http://ebike.research.pdx.edu/sites/default/files/Dill%20%26%20Rose%20-%20E-Bikes%20and%20Transportation%20Policy-%20Insights%20from%20Early%20Adopters%20\(2012\)%20-%20TRB%2012-4621.pdf](http://ebike.research.pdx.edu/sites/default/files/Dill%20%26%20Rose%20-%20E-Bikes%20and%20Transportation%20Policy-%20Insights%20from%20Early%20Adopters%20(2012)%20-%20TRB%2012-4621.pdf) ("E-bikes appear to change owners' bicycling behavior and substitute for driving a motor vehicle to some extent. Most of the

emissions, providing transportation options, and enabling healthier transportation choices, should examine whether their laws are ready to allow a substantial amount of people riding electrically-assisted bicycles.

Currently, states approach electrically-assisted bicycles in a variety of ways. Nineteen states recognize electrically-assisted bicycles as unique vehicles.²⁸² Many states impose additional requirements on electrically-assisted bicycles, such as an operator's license, vehicle registration, minimum age for use, and additional certifications.²⁸³ Although the Consumer Products Safety Commission has adopted a federal standard for the technical specifications of a vehicle to be regulated as a "low speed electric bicycle,"²⁸⁴ many states have adopted their own definitions that allow for more powerful or faster vehicles.²⁸⁵

It is not clear how this diversity of approaches will affect the market for electric bicycles in America, but it seems likely to be the subject of legislation in the future.²⁸⁶ As of yet, no state has adopted a tiered approach as is the rule in the European Union.²⁸⁷ The electric bicycle industry in North America, and bicycle advocacy community, has shown an interest in this approach.²⁸⁸

owners (23 of 28) indicated that they had increased their overall amount of cycling since purchasing their e-bikes.”).

282. See MACARTHUR & KOBEL, *supra* note 281, at 18.

283. See *id.* at 18–25.

284. See *id.* at 2–3, 11–13.

285. See *id.* at 19.

286. The bicycle industry is making an effort to pass model legislation in New York and California. It has also identified legislation in Montana, South Carolina, and Nebraska that was introduced for the 2015 legislative session. See Doug McClellan, *BPSA Schedules Feb. 26 'E-Bike Summit'*, BICYCLE RETAILER (Feb. 6, 2015), <http://www.bicycleretailer.com/industry-news/2015/02/06/bpsa-schedules-feb-26-e-bike-summit>.

287. The European Union regulates electric bicycles as either pedelecs or S-pedelecs. Pedelecs are treated more or less like non-motorized bicycles, while S-pedelecs, which are more powerful and faster, have stricter regulations. See MACARTHUR & KOBEL, *supra* note 281, at 3.

288. See *What Are Electric Bike Classes and Why Do They Matter?*, ELEC. BIKE REV., <http://electricbikereview.com/guides/electric-bike-classes/> (last visited Apr. 7, 2015) (“By introducing classes, specifically the first three classes above, cities and states can help guide use for ebikes. These classes are being established in the U.S. by the BPSA (Bicycle Products Suppliers Association) using a special Electric Bike Committee and are being modeled on what has worked in Europe.”); see also *With Optimism from 2014 Wins, California Bicycle Coalition Sets Ambitious 2015 Agenda*, CAL. BICYCLE COALITION (Dec. 3, 2014), <https://calbike.org/2015legislativeagenda/> (discussing a legislative agenda that includes legislation “to permit certain electric bikes on more paths, especially all paved paths where regular bikes are allowed”).

E. Laws that Alter Liability Rules

In most countries with civil law systems,²⁸⁹ presumed liability laws exist, which prescribe particular rules for how liability will be decided when a motorist crashes into a vulnerable road user.²⁹⁰ In the Netherlands, for example, this law presumes that a motorist is responsible for all or part of the resulting damages to vulnerable road users, especially children under the age of fourteen.²⁹¹ This rule is based on the idea that the operators of larger, faster, more dangerous vehicles should have greater responsibilities. It also recognizes that motorists have access to an insurance system, which non-motorized road users do not have.

Discussion of presumed liability, as seen in much of Europe, has been more limited in countries with common law systems, like the United States. Advocates in the United Kingdom have campaigned for the adoption of this doctrine of presumed liability as an alteration to their civil fault-based system since at least 2003.²⁹² This rule has been given the unfortunate shorthand of “strict liability”²⁹³ when it has come up in North America and the United Kingdom.²⁹⁴ This shorthand may contribute to the hesitancy of common law countries to adopt the policy. No state has attempted to adopt a presumed liability law.²⁹⁵ There are many examples of European concepts being

289. See *Presumed Liability: The Civilised System for Civil Compensation*, ROADPEACE, http://www.roadpeace.org/change/fair_compensation/stricter_liability/ (last visited Apr. 7, 2015) [hereinafter ROADPEACE] (“In 2012 we produced a THIRD INFORMATION SHEET on presumed liability.”).

290. See *Strict Liability in the Netherlands*, BICYCLE DUTCH, <https://bicycle-dutch.wordpress.com/2013/02/21/strict-liability-in-the-netherlands/> (last visited Apr. 7, 2015) (explaining Article 185 of the *Wegenverkeerswet* (Road Law)).

291. See *id.*

292. See ROADPEACE, *supra* note 289. The organization RoadPeace produced its first briefing on the subject in 2003. *Id.*

293. See, e.g., Alex Marshall, *Bikers, Walkers Need Cities to Protect Them*, GOVERNING (Aug. 2012), <http://www.governing.com/columns/eco-engines/col-bikers-walkers-need-cities-to-protect-them.html> (“The countries where cycling is an integral part of life, such as Holland and Denmark, as well as much of the rest of continental Europe, have something in effect called ‘strict liability.’”).

294. RoadPeace and other advocates for its adoption have moved away from the term, but it is still often used. See M.S., *The American Right-of-Way*, ECONOMIST (Nov. 11, 2013), <http://www.economist.com/blogs/democracyinamerica/2013/11/cycling-v-cars> (using the term strict liability); see also ROAD SHARE, <http://www.roadshare.co.uk/home> (last visited Apr. 7, 2015) (using “strict liability” and “presumed liability”); ROADPEACE, *supra* note 289 (discussing “presumed liability” and “stricter liability”).

295. In five jurisdictions—the District of Columbia, Maryland, Virginia, North Carolina, and Alabama—bicyclists, and other road users, face a contributory negligence tort rule, which often makes it extremely difficult for bicyclists to recover

adapted by North Americans interested in promoting and protecting bicyclists²⁹⁶ and this policy may be one to look for in the future.

CONCLUSION

Bicycling has the opportunity to be a major part of solutions to traffic congestion, obesity and other health problems, environmental challenges, and economic challenges facing communities throughout the United States. Bicycling will not be widely adopted without investments that create facilities that people want to use and which address the strong perceptions regarding the unsafety of bicycling.

The traffic laws examined in this Article document how bicyclists have been increasingly legitimized as road users since 1972. There are many restrictions and requirements for bicyclists that have been repealed and new laws that recognize the unique challenges that bicyclists face. The study of these laws highlights that there are still many changes needed for bicyclists to be fully legitimized and for every state to account for the risks imposed by motor vehicles on bicyclists, pedestrians, and all persons.

As states and communities face new questions about traffic laws raised by advancements in technology, such as autonomous vehicles, or by changing priorities between safety and mobility, they should consider how people outside of vehicle drivers will be affected and how laws will shape how, or whether, roads are shared. It is possible that the perspective of the most vulnerable road users is the most important perspective for policy makers, and making rules that work for the most vulnerable will create more effective rules for all who share the road.

To promote and recognize bicycles as a form of transportation, states should focus on laws that promote the safety of bicyclists and recognize the unique properties of bicycles. Many of the traffic laws

for damages due to the way in which it is applied, the many unique traffic laws that apply to bicyclists, and a lack of comprehensive education about those laws. Advocates in the District of Columbia are attempting to change the contributory negligence rule for bicyclists and pedestrians. See Shane Farthing, *The Duties of Prescience & Perfection*, MEDIUM (Oct. 17, 2014), <https://medium.com/@ShaneFarthing/the-duties-of-prescience-perfection-561c4c2ea191> (describing the problems of contributory negligence for bicyclists); see also *Fairness for Crash Victims*, WASH. AREA BICYCLIST ASS'N, <http://www.waba.org/advocacy/campaigns/dc-contributory-negligence/> (last visited Apr. 7, 2015) (describing actions related to the advocacy campaign of the Washington Area Bicyclist Association).

296. See, e.g., *World Class Cities 2015*, PEOPLE FOR BIKES, <http://www.peopleforbikes.org/green-lane-project/pages/2015studytours> (last visited Apr. 7, 2015) (describing a study tour of northern European cities for American policymakers and professionals with the goal of expanding separated bicycle lanes).

for bicyclists have evolved over time to allow bicyclists to take more responsibility for their own safety, rather than relying on restrictions to force them to do behavior that legislators believe to be safe. Moving forward, it seems reasonable to expect this tension between safety and externally imposed order to continue. Imposed order, in the form of Where to Ride laws, laws that require the use of certain facilities, and laws that prohibit bicyclists from sidewalks, are appealing, but there is little research showing that they make bicyclists safer. In exchange for this imposed order, bicyclists face legal sanction and a decreased ability to recover when injured, due to the laws that do not allow them to judge what is safe. Rather than imposed order, laws for bicyclists should seek to build common understandings about good behavior between bicyclists, motorists, and pedestrians.

Bicyclists, and pedestrians, are different from drivers of motor vehicles. Both bicyclists and pedestrians have strong incentives to make safe decisions due to the threat of collisions with motor vehicles, and their decisions are more likely to affect their own safety rather than the safety of others. Drivers of motor vehicles do not face the same risks, and will only face fewer risks from collisions as safety technology improves. Decisions made by drivers also greatly affect the safety of others. The different incentives and safety impacts justify rules for drivers of motor vehicles that recognize the potential danger caused by poor driver behavior and the lack of corresponding danger caused by many types of bicyclist and pedestrian behavior. The trend in traffic laws that impose additional requirements for motorists around bicyclists and pedestrians, such as safe passing laws, vulnerable road user laws, and dooring laws, are a response to earlier rules that did not recognize the danger of motor vehicles mixing with people.

Current traffic laws, enforcement, and street design allow 30,000 or more people to die each year on our roadways, including roughly 5000 bicyclists and pedestrians.²⁹⁷ Our ability to tackle this issue will take a multi-faceted approach, but one of the central questions is how our laws will balance the need for safety, particularly the safety of the most vulnerable, against the purported needs of mobility and convenience for motorists. The trend in traffic laws shows an evolution that is pointing towards greater safety for bicyclists and a greater willingness to reconsider the responsibilities that should come

297. See, e.g., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., QUICK FACTS 2012 (2014), <http://www-nrd.nhtsa.dot.gov/Pubs/812006.pdf>.

with operating a motor vehicle. I hope that this trend continues so that bicyclists can safely share the road with motorists, and whatever vehicles emerge in the future, and benefit from a system that recognizes their unique characteristics.