

<http://bike.risingsea.net>

From: Jim Titus <[Jim Titus](mailto:Jim.Titus)>

To: Carol <carolsilldorff@verizon.net>; Jon Morrison <jonbmorrison@yahoo.com>; GREGHINCH <GREGHINCH@aol.com>; [Michael Sonnenfeld \(Bike Maryland\)](#)

Cc: James Swift <jks36@verizon.net>; Pat Sheehan <Pat.Sheehan@va.gov>

Sent: Tuesday, April 10, 2012 7:34 PM

Subject: Lose end re: safe-passing bill

Carol, Jon, Greg, and Michael

As you may recall, I opposed HB 1397 which all of you supported. WABA and a number of people who often support cyclists were neutral. I think that the disagreement resulted from different expectations about the likely result, and about the correct interpretation of the existing statute. In my end-of-session report (which may become a resource for steps to be taken next year) I want to make sure that I correctly and completely characterize the latter issue, so I am writing to make make sure that I am not forgetting any of your reasoning, regarding and ambiguity in § 21-1209 (iii), which says:

the driver of a vehicle shall...(2) When overtaking a bicycle...pass safely at a distance of not less than 3 feet, unless, at the time... (iii) The highway on which the vehicle is being driven is not wide enough to lawfully pass the bicycle...at a distance of at least 3 feet.

It seems to me that all four of you have told me that exception (iii) means that drivers are not required to pass at a distance of at least three feet when riding (for example) along a typical 2-lane road with 10-ft lanes and a double yellow line. Do I have that right?

That is, you seem to they believe that "highway...is not wide enough to lawfully pass the bicycle at a distance of 3 feet" means the same things as "a lane that is too narrow for a bicycle... and another vehicle to travel safely side by side within the lane in a no passing zone." Do I have that right?

As you may recall, I have told each of you that I don't think this is the meaning because the legislature used the lane-too-narrow wording in §21-1205(a)(6) which establishes the right to use full lane, and the definition of a highway is very different than a lane. A standard rule of statutory construction is that when a statute defines a word, then that is the meaning that must be attached to any sentence that uses the word. Moreover, when a statute uses very specific language to convey a requirement (e.g. lane is too narrow) then there is a presumption that different words with different definitions (e.g. highway too narrow) are intended to mean something different unless the only reasonable interpretation is for the words to mean the same thing. And in this case, it is possible to envision situations where lanes can be too narrow but the highway is not too narrow to pass, so it follows that the two phrases have different meanings. (We agree that "too narrow" and "not wide enough" mean the same thing.)

I know that my argument did not persuade any of you, but aside from Carol, I am not sure why you did

not find this persuasive. (In an email, Carol was clear that she is not a lawyer and was relying upon previous interpretations from people whom she viewed as more likely to analyze the law correctly than me; and at MBPAC she similarly indicated that I am the only person with this view and hence, more likely to be wrong than the greater number of people with a different view.)

Could the rest of you please explain why my reasoning does not persuade you that the exception (iii) does not absolve a driver from passing with a clearance of 3 feet on a roadway that is 20 feet wide with a double yellow line?

Going forward, is there anything that would persuade you that drivers do indeed have to pass with a 3-foot clearance in these circumstances? An A.G. opinion? Getting a cooperating police officer to issue a ticket which could be tested in court? If I am mistaken I would like to help correct this problem in the statute.; but if you are mistaken I would like to avoid spending time on legislation motivated by an inaccurate legal interpretation.

Best regards

Jim

-----Original Message-----

From: Carol

Sent: Tuesday, April 10, 2012 8:56 PM

To: 'Jim Titus' ; 'Jon Morrison' ; 'GREGHINCH' ; Michael Sonnenfeld (Bike Maryland)

Cc: 'James Swift' ; 'Pat Sheehan' ; Michael Jackson

Subject: RE: Lose end re: safe-passing bill

I've also copied Michael Jackson.

From: Jim Titus <jtitus@risingsea.net>

To: Carol <carolsilldorff@verizon.net>; 'Jon Morrison' <jonbmorrison@yahoo.com>; 'GREGHINCH' <GREGHINCH@aol.com>; Michael Sonnenfeld (Bike Maryland)

Cc: 'James Swift' <jks36@verizon.net>; 'Pat Sheehan' <Pat.Sheehan@va.gov>; Michael Jackson <mjackson3@mdot.state.md.us>

Sent: Tuesday, April 10, 2012 10:29 PM

Subject: Re: Loose end re: safe-passing bill [2]

Jon's reply was quite informative as to Jon's reasoning. I've replied to John individually, but the heart of his explanation is that he construes the exception as a broad attempt to ensure that the 3-foot passing rule does not inconvenience a driver who wishes to pass immediately, and that the legislature really meant "lane" when it said "highway" but the Legislature often fails to pick the best words for accomplishing a goal. (By contrast I assume that the Legislature meant what it said, and that it was creating a narrow exception that would only apply to highways that are so narrow that a car can not pass the bike and still allow 3 feet).

Is Jon's argument the best argument? Or does someone have a better argument?

Thanks again Jon

Jim

-----Original Message-----

From: Michael J. Sonnenfeld <Michael.Sonnenfeld (Bike Maryland)>
To: Jon Morrison <jonbmorrison@yahoo.com>; Jim Titus <Jim Titus>; Carol <carolsilldorff@verizon.net>; GREGHINCH <GREGHINCH@aol.com>
Cc: James Swift <jks36@verizon.net>; Pat Sheehan <Pat.Sheehan@va.gov>; emailmeao <emailmeao@yahoo.com>; mjackson3 <mjackson3@mdot.state.md.us>
Sent: Wed, Apr 11, 2012 5:19 pm
Subject: Re: Loose end re: safe-passing bill - my thoughts

Jim Titus: you are correct that your argument about the width of a highway has not convinced me: everyone else I have talked with (including those at MDoT) understands the exception to the 3' to pass rule included in Section 21-1209(a)(2)(iii) of the Maryland Transportation Article to apply to lanes that are too narrow to allow a vehicle to pass a cyclist with 3' of clearance, and Jon was correct that if there is a solid line marking the travel lane, then the lane width has to be determinant in that section since it is still not lawful in Maryland to cross a solid line to pass a cyclist (and that section specifically refers to lawfully passing a cyclist).

I think it is crazy that MDoT takes the position that the law should not reflect what they instruct drivers to do when passing a cyclist, or said otherwise, it is crazy that MDoT instructs drivers to break the law when passing cyclists. From what I recall of their opposition, they would be ok with a bill that allowed drivers to cross a solid lane marker when safe to do so to pass any slow moving vehicle, but they were not ok to allow crossing a solid line only to pass a cyclist.

Other States, including PA, have found it very easy to simply require drivers to allow a specified clearance, in PA it is 4', and to allow in general drivers to cross a solid lane marker to do so.

The proposed language in HB 1397 was ok, I thought, but my strong sense in the hearing on that bill was the Del. Cardin did not really support the bill and did not expect Del. Malone to support it or to bring it to a vote in the committee.

What I think would make sense to do in the future is to:

(A) require drivers to slow down and wait to pass a cyclist until it is safe to do so, which is almost specifically NOT required given the exception to the 3' to pass rule included in Section 21-1209(a)(2)(iii)

(B) eliminate the exception to the 3' to pass requirement in Section 21-1209(a)(2)(iii) and

(C) allow drivers to cross a solid lane marker to pass a cyclist with the required 3' of clearance when it is safe to do so.

If repealing Section 21-1209(a)(2)(iii) is considered "impossible," then I would ask to adopt (A) and (C) together, since once (C) is in place there are many fewer situations in which Section 21-1209(a)(2)(iii) would apply (once it is lawful to cross the solid lane marker).

I was driving behind a pickup truck last week on Falls Road in Baltimore County, MD Rt 25, and it was literally the case that the truck completely filled the lane: the outside of the Left mirror of the truck was over the solid lane marker in the middle of the road and the outside of the Right mirror was over the Fog Line on the right side of the lane... and that road is a designated bike route on the State biking route map... There is no way that driver could pass a cyclist going the same direction without crossing the solid lane marker.

As Jon Morrison said: everyone makes small mistakes ("loose" vs. "lose," for example), it's just that the mistakes are harder to correct in legislation than in e-mails...

Thanks for including us all in your considerations: all the best.

Michael

Michael J. Sonnenfeld

e-mail [Michael Sonnenfeld \(Bike Maryland\)](#)

From: Jim Titus [mailto:Jim Titus]
Sent: Wednesday, April 11, 2012 11:21 PM
To: Michael J. Sonnenfeld
Subject: Re: Loose end re: safe-passing bill - my thoughts

Thanks Michael,

If I am not mistaken, much of your motivation on this bill was your view that Section 21-1209(a)(2)(iii) provides a very 0062ig exception. If an AG opinion concluded that the 3-foot rule does apply to these cases, would that satisfy you?

Thanks

Jim

From: [Michael Sonnenfeld](#)
Sent: Thursday, April 12, 2012 8:50 AM
To: '[Jim Titus](#)'
Cc: '[Jon Morrison](#)'; carol@bikemd.org; greghinch@aol.com; jks36@verizon.net; pat.sheehan@va.gov; emailmeao@yahoo.com; mjackson3@mdot.state.md.us
Subject: RE: Loose end re: safe-passing bill

Jim:

An effective “rule of the road” to protect cyclists requires a clearly written law, straight-forward implementation and education of drivers by MDoT, active enforcement by the various police forces and effective prosecution by the States’ Attorneys. As we are seeing with the manslaughter bill passed in 2011, if one of these “constituencies” refuses to accept a statute, it will not be implemented in practice. To answer your question, I do not think that an opinion from the Attorney General’s office about whether Section 21-1209(a)(2)(iii) relates to lanes or entire roadways will make much of a difference for two reasons: first, the various State’s Attorneys in each county seem to take their own views of how to interpret statutes (as we are seeing with the manslaughter statute), and second, any defense attorney engaged to defend a driver accused of violating the law would in most cases have a simple argument that a driver was required to remain in his or her lane and therefore could not lawfully pass the cyclist with three feet of clearance. I believe this argument would be persuasive since it relates to the language of the statute on its face, and an opinion from the Attorney General’s office would not change that statutory language.

I think the path forward should be to draft a bill that would simplify and clarify the obligation for drivers to allow at least three feet of clearance (as I outlined in the e-mail last night) and work with Del. Malone and one of the Senators over the summer to craft language that they would support in committee. My sense is that once out of the respective committees, such a bill would pass with little debate.

Thanks.

Michael

Michael J. Sonnenfeld

From: Greg Hinchliffe [mailto:greghinch@aol.com]

Sent: Wednesday, April 11, 2012 6:43 PM

To: Michael Sonnenfeld (Bike Maryland); jonbmorrison@yahoo.com; Jim Titus; carolsilldorff@verizon.net

Cc: jks36@verizon.net; Pat.Sheehan@va.gov; emailmeao@yahoo.com; Michael Jackson

Subject: Re: Loose end re: safe-passing bill - my thoughts

I am not a lawyer, but...

I agree with Michael's analysis and recommendations. I was stunned when the 3-foot bill included such a huge loophole and considered retracting my support, but decided that subsequently fixing a flawed bill would be easier than starting over from scratch. Jim may be correct in his parsing of the language regarding lane vs highway width, but I can easily imagine a future bicycle-grazing case in which a lawyer (one of which, did I mention? I am not) convincing a judge that the 3-foot rule did not apply in a 11-foot lane with a solid yellow stripe. I consider the law as it currently exists to be almost worthless.

HB 1397 would have eliminated much of the problem by removing the primary "illegality" preventing a safe pass, leaving very few circumstances in which the 21-1209(a)(2)(iii) exception would apply. It should have been easy; I remember during the debate over the original consideration of the 3-foot law that the representative of the trucking industry group said it was already legal to cross a solid yellow centerline to pass an obstruction, but that a moving bicyclist could not be considered an obstruction. I regret that I was unable to supply my silver-tongued oratory in support of passage of 1397.

I too am astounded by MDOT's "logic" in opposition, but, sadly, it is something which I have almost come to expect. Did Tom Hatch have anything to do with MDOT's position?

Lastly, while important, especially to allow injured cyclists to collect damages in future cases, this law has very little practical application on the roads. My cycling experience is that the vast majority of drivers give me considerably more than three feet of clearance when passing, many of them crossing a solid double yellow centerline to do so, and that the majority of the drivers who do pass me uncomfortably closely could have legally moved over to provide a wider margin, but chose not to do so.

Greg Hinchliffe

-----Original Message-----

From: Jim Titus

Sent: Thursday, April 12, 2012 9:49 AM

To: Michael Sonnenfeld

Cc: 'Jim Titus' ; 'Jon Morrison' ; carol@bikemd.org ; greghinch@aol.com ; jks36@verizon.net ; pat.sheehan@va.gov ; emailmeao@yahoo.com ; mjackson3@mdot.state.md.us

Subject: RE: Loose end-->Conclusion of this thread

Thanks to all for providing your thinking on what the correct legal interpretation is of 21-1209(a)(2)(iii), and your reasons why. With the exception of my question about MDOT's position, I think that everybody has answered my question. We could of course go back and forth ad infinitum, but I think it is unlikely that anyone would say anything new. We simply disagree about what the statute means,

A contrary opinion by the AG would persuade WABA that I am mistaken, but I gather that a contrary opinion would not persuade Bike Maryland that it is mistaken. So the primary value of an AG opinion is to educate WABA and those who share WABA's perspective. So that logically implies that the burden of obtaining an AG opinion would fall on WABA, rather than Bike Maryland. That is not to say that WABA will necessarily do so, just that Bike Maryland is very unlikely to do so.

I shall write my report and probably post it on Washcycle because it will be too detailed for the WABA blog. Because some people have copied MDOT and some people have not, I will assume that all emails whose authors have copied MDOT are public documents, but that emails that were forwarded to MDOT by someone else were not intended to be public documents; so I will treat them as private correspondence though technically they are available to the public. If you copied MDOT accidentally, or if you want me to broadcast your views even though you did not copy MDOT, please let me know.

I'll have some comments on "next steps" under a different subject header.

I do think it is a good idea to think about what to do next, but that topic will not be part of my final report on 1397.

Best regards

Jim