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## COMMENTS ON HOUSE BILL 363 MANSLAUGHTER BY VEHICLE OR VESSEL—CRIMINAL NEGLIGENCE

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The Washington Area Bicyclists Association endorses House Bill 363 which would create a new offense of negligent homicide by vehicle (or vessel), when someone is killed as a result of a substantial deviation from the standard of care expected from a driver (or boat operator).

- Additional enforcement is needed against the most dangerous drivers.
- This bill is a reasonable, measured step toward better enforcement.
- Arguments advanced against the bill mostly represent opportunities for minor markup of the bill, rather than reasons to reject it entirely.

Our roads have too many really bad drivers. Even if you never experience a tragedy like those of today's other witnesses, aggressive drivers add to the daily frustration of most commuters. Even if there is no collision they can ruin your morning.

The problem is not so much the unskilled driver, but the presumably skilled drivers who behave as if it is everybody else's duty to get out of their way. That behavior is not inadvertent or simple negligence. For example, drivers who use a shoulder to pass a line of cars are intentionally executing an illegal maneuver with indifference about how it puts other people at risk, just to save a few seconds in their travel time.

Usually this type of driving is just annoying. But sometimes a car pulls out of a driveway, or somebody crosses the shoulder to board a bus, or there is a bicyclist riding in the shoulder. A collision occurs, and now someone is dead.

Is this reckless driving and manslaughter with some time in prison? Or is it just negligent driving and a fine? It depends on whether the state can prove what the driver was thinking. If a passenger in the car tells the jury:

I told him "Don't drive on the shoulder, this is a bike route to the college."  
But he said: "We're late."

Then we have proof the driver knew the risk he was taking, that he was wanton and reckless; and this meets the requirements of gross negligence under §2-209. But if we never know what he was thinking when he pulled into that shoulder, then there is no proof that the driver knew of the specific disaster he was courting. There is insufficient evidence that the driver had the required mental state for the common law crime of involuntary manslaughter,

which is the standard that the Court of appeals adopted long ago for §2-209. So the case will be dismissed or reversed on appeal. More broadly, dangerous drivers will not be criminally punished unless they are either drunk, 30 mph over the speed limit, or explain to someone why they are driving recklessly.

This bill does not change what is expected of a driver. It defines a lesser offense for those cases where the state cannot prove the driver's mental state but can prove that the driving itself was a substantial deviation from what is expected.

Last year, the Maryland Office of Public Defender opposed the bill for two reasons. Their concerns can easily be addressed and should be viewed as helpful hints. One concern was that courts might confuse the new "substantial deviation from the standard of care" standard with the gross negligence standard in 2-209. I'd say that most trial judges—and certainly appellate judges—will clearly understand the fundamental difference between the new negligent homicide standard and the old manslaughter standard. But some clarification would not hurt. For example, this new offense really is not manslaughter so it might be best to revise the title to simply call it "negligent homicide by vessel or vehicle."

Their other concern was that judges might equate "substantial deviation from the standard of care" in the bill with simple negligence. This seems even less likely given the bill's references to the Model Penal Code—and the standard for simple negligence is familiar to any law student.

Some have pointed out that we can not amend the criminal code for every problem society has. Yet the alternative to punishing those who kill is for everybody to protect themselves. That is simply not possible for pedestrians or bicyclists, and it's not really practical for anybody on a highway.