



Nashville, Tennessee

Legislative Agenda for 2011

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Campaign Against Careless and Dangerous Drivers

In Tennessee careless and dangerous drivers are not prosecuted even when they violate traffic laws and cause fatalities or serious injuries to others. The victims include: children, walkers, runners, bicyclists, motorcyclists and motorists who were in complete compliance with traffic laws. Tell your elected officials that you demand serious penalties for drivers who cause serious injuries and fatalities. Automobiles are as dangerous as weapons when operated by careless and inattentive drivers. Citizens using the streets of Tennessee want to be safe from both violent criminals and from careless and dangerous drivers.

By enforcing stiff penalties, Tennessee has made great strides in reducing fatalities caused by driving while drunk. We need to take the same approach to combat driving while distracted and driving while drowsy. In the past 5 years, it is estimated that about 1,200 people were killed on the roads of Tennessee in accidents related to distracted driving and another 300 were killed by drowsy drivers.

Most traffic fatalities in Tennessee are related to bad drivers choosing to engage in dangerous behaviors. Drunken driving is related to 32% of the fatalities, but distracted and drowsy driving is close behind at 25%. Aggressive driving and speeding are also dangerous behaviors that cause or contribute to these fatalities.

Falling asleep or becoming so distracted as to cause a serious accident is not an involuntary act. Just as some drivers choose to drink and drive; some drivers choose to drive when they have had insufficient sleep, they choose to continue to drive knowing they are drowsy, they choose to engage in activities that are so distracting they lead to serious accidents.

According to some District Attorneys, under current state law hitting a legally parked car and killing a pedestrian on a sidewalk carry the same penalty, a traffic ticket. Killing a duck out of season carries a far greater fine. A human life deserves greater protection under the law than parked cars and ducks.

We are **not** asking for protection for bicyclists who run stop lights or for pedestrians who run out in front of cars. We are asking for protection for bicyclists, pedestrians, motorcyclists and motorists who know and obey the laws. We also want distracted and drowsy drivers ticketed for hitting parked cars and telephone poles; they are the same type of bad drivers who also hit people.

The District Attorneys (DA's) and Law Enforcement Agencies need the tools to prosecute these offenses. Currently we require too much of DA's as they must often prove drivers committed willful and wanton acts if they want to prosecute anything more than a traffic ticket. Law enforcement officers and the DA's across the state need a clear directive from the Legislature and Governor to prosecute these offenses.

Lawmakers can neither define, nor would DA's be able to prove in court all of the activities that cause distracted or drowsy driving. However, drivers are already required to stay alert and focused "*by devoting full time and attention to operating the motor vehicle*". We can use existing traffic laws and stiffen the penalties when serious injuries or fatalities occur.

The Human Costs and the Financial Costs

Only the victims and their families can truly understand the suffering and burden these careless accidents cause. Victims can face months or years of painful rehab without being able to work. These victims had duties not only in their work but as parents and spouses. The burden of raising children or grandchildren must now be carried by others. Family members of victims are burdened by performing additional roles as caretakers while suffering both an emotional loss and a financial loss.

The financial loss is not limited to the victims and their families. Some victims are covered by Tennessee's Medicaid or Tennessee's employee health insurance plans. Some are covered by Medicare and others are covered by health insurance plans. Businesses pass along the cost of their employees health insurance in the price of their goods and services and taxpayers pick up the tab directly for Medicaid, Medicare and government employee insurance. All Tennesseans pay directly or indirectly for these careless accidents through their taxes, health insurance premiums, or in the cost of goods and services they buy.

Proposed Amendments to "Failure to yield right of way - TCA 55-8-197":

Tennessee law "Failure to yield right of way TCA 55-8-197" has a maximum jail time of 11 months 29 days for certain traffic offenses that cause a fatality and a maximum jail time of 6 months for traffic offenses that cause "serious bodily injury". The law also calls for the revocation of the violator's drivers license for either 1 year or 6 months, respectively. The list of traffic laws covered by 55-8-197 are basic traffic laws such as: stop at a stop sign, yield to other traffic when making a left hand turn, drive on the right-hand side of the road, pass on the left and when entering the road from a driveway yield to existing traffic on the road.

The list of traffic laws covered by TCA 55-8-197 needs to be expanded to include the following 3 traffic laws:

- (1) Drivers shall exercise due care (TCA 55-8-136),
- (2) Motorists shall pass bicyclists safely (TCA 55-8-175(c)), and
- (3) Drivers shall yield to pedestrians in crosswalks (TCA 55-8-134).

Background Information - “Failure to yield right of way - TCA 55-8-197”

The Failure to yield right of way - TCA 55-8-197 is a state law that the Concerned Motorcyclists of Tennessee and the American Bikers Aimed Towards Education helped push through the legislature in 2007 and amend in 2009. As stated above, the penalties are increased when basic traffic laws are violated and serious injuries or death results. This law protects all users of the roadway including motorists, motorcyclists, pedestrians and bicyclists; however when it was amended it failed to list laws needed to protect pedestrians and bicyclists.

Vehicular Homicide

In Tennessee only a limited number of traffic fatalities can be prosecuted as a felony. These include driving while intoxicated, drag racing, speeding in a construction zone where the fatality is a construction worker and reckless conduct with willful intent . The prison time for these felonies vary from 1 year to 30 years. These violations are more egregious than the traffic violations covered by 55-8-197 which are either Class A or B misdemeanors, thus it is appropriate that the penalties are far greater.

Drivers shall exercise due care - TCA 55-8-136

The traffic ticket law which makes it illegal for drivers to fall asleep or become so distracted as to cause accidents is: Drivers shall exercise due care (TCA 55-8-136) which requires a driver to operate *“the motor vehicle at a safe speed, by maintaining a safe lookout, by keeping the motor vehicle under proper control and by devoting full time and attention to operating the motor vehicle, under the existing circumstances to avoid endangering life, limb or property.”* It is enforced frequently when drivers run off the road and hit road signs or guard rails or otherwise fail to see and avoid colliding with others using the road.

Proposed Amendments to “Drivers shall exercise due care - TCA 55-8-136”:

The language in “Drivers shall exercise due care” should be revised to more clearly require drivers of all vehicles (not just motor vehicles) to exercise due care to both see and avoid colliding with all persons or all vehicles (not just motor vehicles) who are lawfully using both the roadway and the area adjacent to a roadway; which would include any adjacent side walk, bike lane, shoulder or berm. A bicycle is defined as a vehicle but is not a motor vehicle, thus making this change will clearly require a bicyclist to exercise due care. Also the definition of a roadway excludes the shoulder or berm. At least one defense attorney has argued it was not illegal for a motorist to run over a bicyclist if they were using the paved shoulder of the road as a motorist was only required to pass safely if the bicyclist was on the roadway itself.

No-Win Dilemma for District Attorneys and Law Enforcement

Traffic fatalities caused by driving while distracted and driving while drowsy (DWD's) create a no-win dilemma. In the past year several traffic fatalities have not been prosecuted as the prosecution of a traffic ticket offense was thought to be an inappropriately insignificant charge for negligence that resulted in a fatality. The District Attorneys do not have the laws available to them to either discourage future cases of DWD nor will they convince the victims and/or their families that any justice has been served. The DA's have to choose between a traffic charge, stretching the legal definition of a criminal law such as "39-13-212 Criminally negligent homicide" which was written broadly and not specifically for traffic situations and not charging the crime at all. Of the 3 options, different DA's have chosen different charges or no charges, but none of the options are what they need to encourage safety on the road or provide a sense of justice to the public and the victims.

List of Attachments:

Attachment # 1: References

Attachment # 2 – House Bill 1007 and Senate Bill 1171

Attachment # 1 - References:

How to Find Tennessee Laws (know as Tennessee Code Annotated)

The Tennessee Secretary of State uses Michie's Legal Resources to provide an on-line version of the Tennessee Code Annotated (TCA). See <http://www.michie.com/> or google Tennessee Code Annotated to find a complete listing of all TN laws.

Direct links to specific laws are provided below:

[55-8-136 Drivers to exercise due care -](#)

[55-8-197 Failure to yeild right-of-way -](#)

[55-8-134 Pedestrians right-of-way in crosswalks -](#)

[55-8-175 Riding of roadways and bicycle paths -](#)

[39-13-212 Criminally negligent homicide -](#)

[39-13-213 Vehicular homicide -](#)

Tennessee Fatalities by Person Type

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
Pedestrian	70	89	69	60	70	358
Bicyclist	10	7	6	7	9	39
Motorcyclist	129	141	149	146	121	686
Total of Above	209	237	224	213	200	1083
All Fatalities in TN	1270	1284	1211	1043	989	5797
Distracted - 20% ⁽¹⁾	254	257	242	209	198	1159
Drowsy - 5% ⁽²⁾	64	64	61	52	49	290

Source: National Highway Traffic Safety Administration (NHTSA) – Traffic Safety Facts - Tennessee 2005-2009

(1) NHTSA estimate from: Distraction.gov the Official US Government Website for Distracted Driving

(2) NHTSA has estimated drowsy driving at approximately 1,550 deaths per year. As tragic as these numbers are, they only tell a portion of the story. It is widely recognized that drowsy driving is under-reported as a cause of crashes. The 1,550 deaths are about 5% of the total fatalities in a year.

Attachment # 2 – House Bill 1007 and Senate Bill 1171

Traffic Safety - As introduced, broadens requirement that drivers exercise due care to apply to bicyclists; enhances penalty for certain traffic violations that cause serious bodily injury or death. - Amends TCA Title 55, Chapter 8.

HOUSE BILL 1007
By Stewart

SENATE BILL 1171
By Berke

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 8, relative to rules of the road.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-8-136, is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b) Notwithstanding any speed limit or zone in effect at the time, or right of way rules that may be applicable, every driver of a vehicle shall exercise due care by operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control and by devoting full time and attention to operating the vehicle, under the existing circumstances as necessary in order to be able to see and to avoid endangering life, limb or property and to see and avoid colliding with any other vehicle or person, or any road sign, guard rail or any fixed object either legally using or legally parked or legally placed, upon any roadway, within or beside the roadway right of way including, but not limited to, any adjacent sidewalk, bicycle lane, shoulder or berm.

SECTION 2. Tennessee Code Annotated, Section 55-8-197(a), is amended by adding the following language as new, appropriately designated subdivisions:

- (4) Section 55-8-134, by failing to yield the right of way to pedestrians in crosswalks as provided in the section;
- (5) Section 55-8-136, by failing to exercise due care as provided in this section;
- or
- (6) Section 55-8-175(c), by failing to overtake and pass a bicycle safely as provided in the subsection; or

SECTION 3. Tennessee Code Annotated, Section 55-8-197(a), is further amended by deleting the language “Any person who violates subdivisions (a)(1)-(3)” in its entirety and by substituting instead the language “Any person who violates subdivisions (a)(1)-(6).”

SECTION 4. This act shall take effect July 1, 2011, the public welfare requiring it.