

Pedaling Backwards: Examining the King County Board of Health’s Choice to Repeal Its Bicycle Helmet Law

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INTRODUCTION

The city of Seattle is consistently evaluated as one of the best cities for cyclists.¹ Bicycling is a means of exercise and recreation and an

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1. Michael Kolomatsky, *The Best Cities for Cyclists*, N.Y. TIMES (June 24, 2021), <https://www.nytimes.com/2021/06/24/realestate/the-best-cities-for-cyclists.html> [<https://perma.cc/7V77-L6DV>].

integral part of many Washingtonians' commutes.² While it is an enjoyable activity, it also comes with risks. In fact, “[f]rom 2018–2021, an average of 5 bicyclists died each year in King County and 147 entered Harborview’s Trauma Center for their injuries.”³ In 2016 alone, there were seventeen bicyclist traffic fatalities in Washington State.⁴

One of the simplest ways that bicyclists can help protect themselves also happens to be the best protection available against head and brain injury—wearing a helmet.⁵ Studies estimate that bike helmets provide “a 63 to 88% reduction in the risk of head, brain and severe brain injury for all ages of bicyclists.”⁶ Both empirical research and general common sense often point to a well-known sentiment: helmets save lives.⁷ Why, then, on February 17, 2022, did the King County Board of Health (BOH) vote to repeal a law mandating that bicycle riders wear helmets?⁸ The answer was seemingly straightforward: data showed that police enforced the Helmet Law discriminatorily toward people of color and unhoused populations in King County.⁹ And why then, did the BOH board member who brought this important issue to the table become the sole dissenter in its eventual vote to repeal?¹⁰

The best way to address the BOH’s concerns about discriminatory policing while ensuring bicyclists’ safety is to work with legislators to provide robust and consistent funding, increase education for helmet use

2. See *Pedestrians & Bicyclists*, WASH. TRAFFIC SAFETY COMM’N (2022), <https://wtsc.wa.gov/programs-priorities/pedestrians-bicycles/#:~:text=The%20number%20of%20serious%20injuries,increased%20from%201%2C992%20to%202%2C351> [https://perma.cc/JJK3-PYDW]; Ken McLeod, *2022 Bicycle Friendly State Report Cards*, LEAGUE AM. BICYCLISTS (2022), <https://bikeleague.org/content/state-report-cards> [https://perma.cc/BZS3-QZGX].

3. *Bicycle Helmets and Bicycle Safety*, KING CNTY. (2023), <https://kingcounty.gov/en/dept/dph/health-safety/safety-injury-prevention/traffic-safety/bike-helmets> [https://perma.cc/6C5B-BUSV].

4. *Pedestrians & Bicyclists*, *supra* note 2.

5. *Injury-Control Recommendations: Bicycle Helmets*, CTNS. FOR DISEASE CONTROL & PREVENTION: MORBIDITY & MORTALITY WKLY. REP. (Feb. 17, 1995), <https://www.cdc.gov/mmwr/preview/mmwrhtml/00036941.htm#:~:text=The%20use%20of%20bicycle%20helmets%20is%20effective%20in%20preventing%20head,who%20are%20killed%20or%20disabled> [https://perma.cc/L7G9-GPPG]; *Bicycle Helmets and Bicycle Safety*, *supra* note 3.

6. Diane C. Thompson, Fred Rivara & Robert Thompson, *Helmets for Preventing Head and Facial Injuries in Bicyclists*, COCHRANE DATABASE SYST. REV., 1999, at 1.

7. See generally Bellal Joseph, Asad Azim, Ansab A. Haider, Narong Kulvatunyou, Terence O’Keeffe, Ahmed Hassan, Lynn Gries, Emily Tran, Rifat Latifi & Peter Rhee, *Bicycle Helmets Work When It Matters the Most*, 213 AM. J. SURGERY 413, 413 (2017) (An analysis of National Trauma Data Bank data amongst individuals in bicycle crashes showed individuals wearing a helmet at the time of their crash had “44% reduced odds of mortality” compared to riders who did not wear a helmet.).

8. See David Kroman, *King County Repeals Mandatory Bicycle Helmet Law*, SEATTLE TIMES (Feb. 17, 2022), <https://www.seattletimes.com/seattle-news/transportation/king-county-repeals-mandatory-bicycle-helmet-law/> [https://perma.cc/W6RQ-GHXY].

9. See *id.*

10. See Jeanne Kohl-Welles (@KCKohlWelles), TWITTER (Feb. 9, 2021, 12:33 PM), <https://twitter.com/KCKohlWelles/status/1359239090273538054> [https://perma.cc/C4UC-XTBV].

and access, fund outreach programs to get helmets to those who are in need, and—without the punitive enforcement mechanism that the repealed law included¹¹—reinstate the “Helmet Law” to reinforce the ultimate goals of the BOH: to keep King County citizens, of all ages, safe.¹²

In Part I, this Comment will explain the Helmet Law itself and the timeline that ultimately led to its repeal. Part II will focus on the positive impact of the Helmet Law, the dangers associated with the repeal, why the repeal should not have occurred in the manner it did, and what societal costs stem from the BOH’s decision. Part III will address the actions that must be taken to revoke this repeal and the reasons behind these alternative pathways, including an Equity Impact Review study specifically on the consequences of repeal, a collaborative outreach program to bring helmets to King County’s riders, educational programming, and a removal of the enforcement mechanism while reinstating the law. These ideas, inspired by the original proposed amendments, would be a solution that would do the difficult work of solving many sides of a complex problem rather than checking a box to solve a problem only halfway.

I. THE HELMET LAW AND ITS REPEAL

For approximately thirty years, King County’s Helmet Law aimed to “protect and preserve the public health and welfare.”¹³ To fully understand the consequences of the repeal, it is important to outline the former law and what led to its ultimate removal from the Board of Health’s regulatory scheme.

A. The King County Bicycle Helmet Regulation

King County implemented its first helmet law on December 4, 1992.¹⁴ In 2003, the Board of Health passed an amendment to the 1992 law, keeping the law itself substantively similar, but updating it with

11. King County Board of Health Code Title 9 (Nov. 20, 2013), <https://www.redmond.gov/DocumentCenter/View/2709/HelmetLawsPDF?bidId=> [<https://perma.cc/9T37-EHPR>] [hereinafter BOH Code Title 9].

12. See discussion *infra* note 16.

13. *Id.*; see also King County Board of Health Code Title 9 (July 18, 2003), <https://kingcounty.gov/depts/health/board-of-health/~media/depts/health/board-of-health/documents/regulations/reg0305.ashx> [<https://perma.cc/WS26-UJWZ>] [BOH Title 9 2013 Amendment]. Title 9 did not actually originate in 2003; this copy is an amendment to the original law that was passed in January of 1993. After multiple public records requests and telephone conversations with King County archivists, it seems that the Executive, Legislative, and general King County Archives departments are unable to find a print or electronic copy of the original law that was proposed in 1992 and passed in 1993. Jonathan Fowler, Board Member Jeanne Kohl-Welles’s Chief of Staff, stated that the original law was written in 1992. E-mail from Jonathan Fowler to author (Jan. 27, 2023, 1:50 PM) (notes and correspondences on file with author).

14. E-mail from Jonathan Fowler to author, *supra* note 13.

empirical research and statistics emphasizing the need for the law.¹⁵ It originally was codified in the BOH regulations in Title 9, titled “King County Bicycle Helmet Regulations” (the Helmet Law/Title 9).¹⁶ Its goals to advocate for public health were justified by the data King County provided: each year, approximately one thousand Americans die of bicycle-related injuries, and 75% are due to head injuries which lead to “profound, disabling, and long-lasting conditions” where those affected cannot return to a normal life.¹⁷ In addition, the background to the law included studies completed by investigators at Group Health Cooperative of Puget Sound and the Harborview Injury Prevention and Research Center showing that wearing helmets could reduce amounts of bicycle-related head injuries by up to 85%.¹⁸

The law began by outlining its general requirements. Section 9.10.10(A) stated that “[a]ny person operating or riding on a bicycle not powered by motor on a public roadway, bicycle path or on any right-of-way or publicly owned facilities located in King County including Seattle, shall wear a protective helmet designed for bicycle safety.”¹⁹ Subsection B emphasized that the guardian of a person under eighteen “shall not knowingly allow, or fail to take reasonable steps to prevent, that person from operating or riding on a bicycle not powered by motor . . . unless that person is wearing a helmet that meets the requirements of subsection (A) of this section.”²⁰ Subsection E explains that a person or organization is prohibited from renting a bicycle to someone unless they have a helmet.²¹

Following the general requirements was a description of the law’s enforcement mechanism.²² It states that “[a] violation of this regulation is designated a civil infraction” and was enforced by law enforcement officers.²³ Persons found to have violated this law were given a \$30 penalty, “not including applicable court costs.”²⁴ The penalty can be immediately paid, and a court may grant an extension for those who were unable to pay or waive, reduce, or suspend the monetary penalty prescribed.²⁵ In fact, the court may also substitute the monetary penalty for performance of community service hours at the state minimum wage per

15. See generally BOH Title 9 2013 Amendment, *supra* note 13.

16. BOH Code Title 9, *supra* note 11, at § 9.01.010.

17. *Id.* § 9.04.10(A).

18. *Id.* § 9.04.10(B).

19. *Id.* § 9.10.10(A).

20. *Id.* § 9.10.10(B).

21. *Id.* § 9.10.10(E).

22. *Id.* § 9.15.010.

23. *Id.* § 9.15.010(A).

24. *Id.* § 9.15.010(C).

25. *Id.* § 9.15.010(D).

hour.²⁶ Further, on the first offense, if the person appears in court and supplies proof of helmet purchase, the court must dismiss the notice of infraction by cost, or alternatively, the person could send such proof by mail without costs.²⁷

B. The Road to Repeal

On June 11, 2020, King County declared racism “a public health crisis.”²⁸ On June 18, the King County Board of Health made the same declaration through Resolution 20-08.²⁹ Part of the policy priorities of making this declaration included transforming the criminal legal system by shifting away from punitive practices and investing in approaches grounded in public health.³⁰ To realize these goals within the BOH, board member Jeanne Kohl-Welles introduced the topic of the bicycle helmet law to her Board colleagues.³¹ The important issue she referred to was brought to light in part by *Real Change News*, a non-profit organization that publishes news with the goals of “provid[ing] opportunity and a voice to low-income and homeless people while taking action for economic, social and racial justice.”³² The tweet, which Kohl-Welles re-tweeted in her statement, said that the Helmet Law was the “most common way” that police ticket cyclists in Seattle and that the ticketing was being done inequitably.³³ After learning about discriminatory enforcement of the law against unhoused and minority populations,³⁴ Kohl-Welles tweeted that she would “be offering an amendment at [the] next Board of Health meeting to add this important issue to the work plan.”³⁵ While *Real Change* may have been the spark that lit the fire under the helmet conversation, there were other groups well underway with advocating for a repeal.

26. *Id.* § 9.15.010(E).

27. *Id.* § 9.15.010(F).

28. Presentation, King County Public Health, *Bike Helmets in King County: Background and Summary of Key Research and Data* (June 17, 2021) (on file with author).

29. *Id.*

30. *Id.*

31. King County Board of Health, *Board of Health Meeting* (June 17, 2021) at 52:31. http://king.granicus.com/MediaPlayer.php?view_id=4&clip_id=8825 [https://perma.cc/A5JL-FUWY] [hereinafter BOH Meeting, June 17, 2021].

32. *About*, REAL CHANGE, <https://www.realchangenews.org/about> [https://perma.cc/MC7A-4GCK].

33. @RealChangeNews, TWITTER (Feb. 9, 2021, 11:49 AM), <https://twitter.com/RealChangeNews/status/1359228002094043137> [https://perma.cc/4G92-9YPS].

34. David Kroman, *Nearly Half of Seattle’s Helmet Citations Go to Homeless People*, CROSSCUT (Dec. 16, 2020), <https://crosscut.com/news/2020/12/nearly-half-seattles-helmet-citations-go-homeless-people> [https://perma.cc/ST2C-Z2BZ].

35. Kohl-Welles, *supra* note 10.

Much of this deeper examination of the “Helmet Law” in King County was done by the Helmet Law Working Group (HLWG) and Central Seattle Greenways.³⁶ This group defined themselves as “[s]afe streets, bicycling, and homeless advocates from Central Seattle Greenways, Real Change, Cascade Bicycle Club, and other groups” who “strongly support helmet use.”³⁷ On May 27, 2021, the HLWG sent a letter to the BOH, outlining their coalition’s stance on the inequitable impacts that this law has had on individuals in King County.³⁸ In articulating its thoughts on Title 9, the HLWG explained that while the King County Helmet Law was “implemented with the best of intentions . . . its impacts have been far from equitable.”³⁹ For instance, the group noted that in Seattle, nearly 50% of all helmet citations since 2017 were issued to people experiencing homelessness.⁴⁰ The HLWG also highlighted racial disparities in the policy’s policing.⁴¹ Compared to white cyclists, Black cyclists “received citations at a rate 3.8 times higher, Indigenous cyclists 2.2 times higher, and Hispanic/Latino cyclists [at] 1.4 times higher.”⁴² The HLWG pointed out that the Board of Health declared racism a public health crisis and explained that the “local helmet law offers, at best, negligible benefits for injury prevention.”⁴³ Ultimately, the group called for the Board of Health to fully repeal the Helmet Law for both adults and youth.⁴⁴

On June 17, 2021, the Working Group also presented in a panel discussion to the Board of Health, where the coalition reiterated and emphasized its thoughts on this law.⁴⁵ While the Group conceded that studies have overwhelmingly shown that bicycle helmets are effective at reducing the risk of head injuries, it argued that helmet laws are not effective at increasing helmet use.⁴⁶ Pointing to a 2018 observational study that suggested that 87% of bicyclists wear helmets in Seattle, the Working

36. *See generally* Ethan C. Campbell, Presentation of the Enforcement of the King County Bicycle Helmet Law (June 17, 2021) (on file with author).

37. *Id.*

38. Letter from the Helmet Law Working Group and additional signatories, to members of the King County Board of Health (May 27, 2021), <https://docs.google.com/document/d/1zg00Gk2DHW0JuzD83qLEGh67YrULHgRMKiNFZAfpUoY/edit> [<https://perma.cc/7FU4-YYFE?type=standard>] [hereinafter Letter from HLWG].

39. *Id.* at 1.

40. *Id.*

41. *See generally id.*

42. *Id.*

43. *Id.*

44. *Id.* at 2.

45. *See* Campbell, *supra* note 36.

46. The Helmet Law Working Group, Rationale for Recommendations on the King County Helmet Mandate 7 (May 27, 2021), <https://docs.google.com/document/d/1aSkHp9s3VO-Iyiw-5Y6zOvgNflQNcjrK3POImkW0/edit> [<https://perma.cc/JD74-L4DK>].

Group concluded that the presence of an all-ages helmet mandate is “minimally connected to population-wide rates of helmet use today.”⁴⁷ In this June 17 meeting, the BOH chose to take on this issue, and it decided to focus its work on the disparate enforcement of the law.⁴⁸ The Board specified that the conversation was “not intended as a debate on the values of bike helmets as a tool to prevent head injury trauma,” but rather an assessment of how the law is enforced, how this enforcement may harm riders, and how these harms may be addressed.⁴⁹

During the public comment time allotted at the BOH’s meeting, experts from the region’s medical community weighed in on the tremendous importance of helmets. Dr. Fred Rivara, University of Washington medical professor and physician at Seattle Children’s Hospital, agreed that there has been problematic inequitable application of the law, but he warned that the focus of the BOH’s work should be “how can we get helmets on people to protect their heads” in a fairer way.⁵⁰ Tony Gomez, Manager of the Violence and Injury Prevention team for both Seattle and King County Public Health, presented to the BOH as well, citing information from a local 2016 study, which found that King County’s helmet requirement was associated with a significant decrease in the severity of head injuries, as well as bicycle-related fatalities.⁵¹ Simultaneously, he noted that bike ridership in King County has appeared to increase since 2013.⁵² As a whole, the BOH noted that the law should be a “repeal and replace,” not just a repeal.⁵³

On February 17, 2022, while many community members, individuals impacted by traumatic brain injury (TBI), and local medical doctors voiced their concerns for a repeal of the Helmet Law, Title 9 was officially repealed by the BOH. The impact of this decision means that today, there are no laws for children or adults to wear a helmet in Washington State.⁵⁴

47. *Id.* at 8–9.

48. See BOH Meeting, June 17, 2021, *supra* note 31, at 52:31.

49. *Id.*

50. *Id.* at 59:45.

51. *Id.* at 1:29:59 (citing Paula Kett, Frederick Rivara, Anthony Gomez, Annie Phare Kirk & Christina Yantsides, *The Effect of an All-Ages Bicycle Helmet Law on Bicycle-Related Trauma*, 41 J CMTY. HEALTH 1160 (2016)).

52. BOH Meeting, June 17, 2021, *supra* note 31, at 1:31:05.

53. *Id.* at 1:40:25.

54. *Bicyclist Laws & Safety*, WASH. STATE DEP’T TRANSP., <https://wsdot.wa.gov/travel/bicycling-walking/bicycling-washington/bicyclist-laws-safety#:~:text=Bicycle%20helmets%20%2D%20C%20currently%2C%20there%20is,and%20counties%20do%20require%20helmets> [https://perma.cc/FF7C-W3H2].

II. THE DEVASTATING CONSEQUENCES OF THE HELMET LAW REPEAL

The discriminatory enforcement of Title 9—or any law—should be examined closely and those who have broader legislative powers should take action to right these societal wrongs. For complex issues such as this, careful consideration and listening are imperative in order to make the best choice possible. When it made this choice, the BOH may have had the best intentions of eliminating the specific inequitable enforcement of the Helmet Law in King County, but it also took a massive misstep in actually ensuring that the County was keeping all people—including all protected classes and the most vulnerable—safe. Furthermore, this decision brings an even harsher sting when considering that this repeal comes from the legislators who have the privilege of advocating “for the preservation, promotion, and protection of public health.”⁵⁵

Before fully analyzing the proposed alternatives to repeal, it is imperative to understand why the BOH should have further considered other options prior to its vote. There are two clear reasons why the repeal should not have taken place: (1) the severe consequences for bicyclists who get into accidents without helmets, and (2) the fact that the repeal was a missed opportunity to face the broader issue of discriminatory enforcement head on.

First, data shows that there is discriminatory enforcement.⁵⁶ The same can be said about bicycle accidents.⁵⁷ The complicated part of this analysis stems from the fact that no one can be certain when these two things may happen, or how. However, although these unfortunate realities exist, solutions exist to help solve them both.

A. The Helmet Law’s Positive Community Impact

The unfortunate reality of bicycle accidents was initially addressed in Title 9, and studies show that the law had a positive impact on King County riders. Researchers performed an observational study in Seattle and King County on the effect of the all-ages bicycle helmet law on bicycle-related trauma.⁵⁸ After collecting data from the Washington State Trauma Registry from before to 2000 (pre-helmet law update) and after 2010, these researchers found a decrease in the severity of bicycle-related traumatic brain injury (TBI) since implementation of the law, as well as a

55. *About the Board of Health*, KING CNTY. BD. HEALTH, <https://kingcounty.gov/en/dept/dph/about-king-county/about-public-health/board-of-health/about> [https://perma.cc/666M-KJXP].

56. *See generally* Letter from HLWG, *supra* note 38.

57. *See* SEATTLE DEP’T OF TRANSP., VISION ZERO TOP TO BOTTOM REVIEW 8 (2023), <https://www.seattle.gov/documents/Departments/SDOT/VisionZero/SDOT-Vision-Zero-TopToBottomReview-FullReport.pdf> [https://perma.cc/U4QC-LBKZ] [hereinafter VISION ZERO].

58. Kett, Rivara, Gomez, Phare Kirk & Yantsides, *supra* note 51, at 1160.

clear decrease in the number of fatalities—including death rates for children.⁵⁹ This study concluded that the “implementation of the helmet legislation may have contributed significantly to injury prevention in Seattle and throughout King County.”⁶⁰ In addition, while they found that the number of injured bicyclists had increased over the last decade (likely due to increased ridership, which has led to an increase in the incidence of bicycle-related trauma and head injuries) there has simultaneously “been a *decrease* in the proportion of riders with major head injuries.”⁶¹ For those under the age of eighteen, bicyclist injuries had not increased, potentially indicating that helmet legislation had a protective effect on children.⁶²

B. The Direct and Indirect Costs of the Repeal

The physical and financial costs to community members affected by head trauma caused from bicycle accidents go beyond what could be imagined by the previously implemented punitive system found in Title 9. Many have heard of the acronym “TBI,” but the outcome of the injury is more serious than some might suggest. In 2021, the Center for Disease Control (CDC) estimated that about 190 Americans died from TBI-related injuries each day.⁶³ This type of injury affects “how the brain works” and while a TBI can have relatively short-term serious effects, such as when an athlete gets a concussion,⁶⁴ other brain injuries may lead to long-term health problems that may affect “all aspects of a person’s life.”⁶⁵ Individuals affected by TBIs may need full-time care for the rest of their lives, and they may lose the ability to work, speak, or eat on their own.⁶⁶ Not only does this take an unimaginable toll on those affected or their family members, but the CDC also notes how debilitating the societal and economic costs can be for someone living with a TBI for the rest of their life.⁶⁷ Considering the fact that bicycling leads to the “highest number of sport and recreation-related emergency department (ED) visits for traumatic brain injuries (TBIs) in the United States,” and that helmet use can help reduce bicycle-related injuries,⁶⁸ it would appear that the BOH

59. *Id.* at 1164.

60. *Id.*

61. *Id.* (emphasis added).

62. *Id.*

63. *Traumatic Brain Injury and Concussion*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/traumaticbraininjury/index.html> [<https://perma.cc/K4BQ-CHUS>].

64. *Id.*

65. *Moderate and Severe TBI*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/traumaticbraininjury/moderate-severe/index.html> [<https://perma.cc/2VGY-5VPN>].

66. *Id.*

67. *Id.*

68. *Morbidity and Mortality Weekly Report: Emergency Department Visits for Bicycle-Related Traumatic Brain Injuries Among Children and Adults—United States, 2009–2018*, CTRS. FOR DISEASE

for King County should do everything in its power to help increase helmet use rather than decrease it.

Recognizing the significant health consequences associated with head trauma from bicycle accidents, it should be noted that an even greater cost—a cost that extends beyond financial obligation—may stem from the cost from injury of individuals who get into a bicycle accident without a helmet. A study available in the National Institute of Health’s National Library of Medicine compared injury from traumatic brain injuries—and their costs—for those who wore helmets and those who did not.⁶⁹ Researchers determined that the median costs of hospitalization were significantly higher for those who did not wear helmets; non-helmet riders that were injured in accidents spent \$7,246.67, and those who wore helmets and were injured in accidents spent on average \$4,328.17.⁷⁰ The *Pacific Institute for Research & Evaluation* (the *Pacific Institute*) cited 2009 research conducted on the cost of child and adolescent injuries and the savings from prevention measures, such as bicycle helmets.⁷¹ For adults, it was predicted that for every \$18 spent on an adult helmet, individuals or governments would save \$32 in medical spending, \$79 of work loss, and would preserve a “Quality Adjusted Life Years” valued at \$150.⁷² This study was published in 2012; as such, the *Pacific Institute* clarifies that while the numbers may be outdated, the methodology is not.⁷³

In King County in 2019, approximately 100,000 King County adults were uninsured (approximately 7.2%),⁷⁴ and Black, Indigenous, and people of color (BIPOC) King County residents were uninsured at even

CONTROL & PREVENTION, https://www.cdc.gov/mmwr/volumes/70/wr/mm7019a1.htm?scid=mm7019a1w_ [<https://perma.cc/7TKE-U4HB>].

69. See generally Camille K. Costa, Jehane H. Dagher, Julie Lamoureux, Elaine de Guise & Mitra Feyz, *Societal Cost of Traumatic Brain Injury: A Comparison of Cost-of-Injuries Related to Biking with and Without Helmet Use*, 29 *BRAIN INJ.* 843 (2015).

70. *Id.* at 843.

71. *Economic Statistics: Helmets and Injury Costs*, PAC. INST. FOR RSCH. & EVALUATION: BICYCLE HELMET SAFETY INST. (May 29, 2023), <https://helmets.org/costs.htm> [<https://perma.cc/PKT2-D5BC>] [hereinafter *PACIFIC INSTITUTE*]; Ted R. Miller, A. Eric Finkelstein, Eduard Zaloshnja & Delia Hendrie, *The Cost of Child and Adolescent Injuries and the Savings from Prevention*, in *INJURY PREVENTION FOR CHILDREN & ADOLESCENTS 21* (Karen DeSafey Liller ed., Am. Pub. Health Ass’n, 2012).

72. *PACIFIC INSTITUTE*, *supra* note 71. There are “uncosted elements” to be considered, such as suffering and pain not associated with a monetary value, the decision of individuals who spend more or less time receiving medical care for themselves or their children, the reality that lawyers file fewer lawsuits seeking compensation for cyclists, and the ties of helmet requirements to possible higher levels of health conditions due to less exercise.

73. *Id.*

74. HEALTH CARE ACCESS IN KING COUNTY: MARCH 2020–JUNE 2021 1 (2021), <https://kingcounty.gov/depts/health/~media/depts/health/communicable-diseases/documents/C19/health-care-access-king-county.ashx> [<https://perma.cc/8MEH-KC4Z>] [hereinafter *HEALTH CARE ACCESS*].

higher rates.⁷⁵ Moreover, due to the COVID-19 pandemic and housing, economic, and work uncertainties related to the international health emergency, the percent of uninsured adults in King County has increased to more than 10.6% of the adult population as of January 2021.⁷⁶

For injured bicycle riders in King County, the cost of a helmet—or the cost of a fine for not wearing one—may be too severe. Helmets can often seem like an extra unnecessary expense when individuals and families are trying to make ends meet, and the Helmet Law’s punitive provisions may have been financially and socially burdensome. Financially, the cost of a ticket was \$30, not including any applicable court costs.⁷⁷ Additionally, each ticket represented a negative interaction with law enforcement—further straining the relationship between minority and houseless populations and the police.⁷⁸ However, weighing socioeconomic concerns of BIPOC communities against public health concerns, with the latter taking precedent over the former, can seem paternalistic. The proposed legislation in this Comment ensures that bicycling safety concerns are addressed equitably by seeing and addressing all sides of the issue.

If the County were to focus its energy on providing helmets to individuals and emphasizing the importance of their use, members of the community—including our most vulnerable—may be spared from the physical and financial costs of not wearing a helmet and getting into an accident. Creating solutions to increase helmet use and availability should be at the forefront of our minds—not just for the safety and health of King County citizens, but for their financial security as well. While financial security is not a legislative goal implemented into the BOH’s Helmet Law, this issue does coincide with the Board’s mission to address racism in its own system, as financial security (in health insurance, food insecurity, and ability to work to name a few) is deeply intertwined with one’s physical and mental health and safety.

Unfortunately, the physical, financial, and societal costs of traffic accidents involving pedestrians have only increased nationwide since the start of the COVID-19 pandemic in 2020.⁷⁹ Five bicyclists in 2021, and five more in 2022, died while biking on Seattle streets.⁸⁰ This data is alarming, and it does not include the rest of King County. This information was compiled through a ninety-day review plan of the safety of Seattle’s

75. *Id.*

76. *Id.* at 1–2.

77. BOH Code Title 9, *supra* note 11, at § 9.15.010.

78. Hubert Williams & Patrick V. Murphy, *The Evolving Strategy of Police: A Minority View*, U.S. DEPT. JUST.: PERSPECTIVES ON POLICING, Jan. 1990, at 1, 10.

79. VISION ZERO, *supra* note 57, at 7.

80. *Id.* at 6.

streets, known as “Vision Zero.”⁸¹ This plan was put in place by the City of Seattle to “end traffic deaths and serious injuries on city streets by 2030.”⁸² The Board of Health cited to Vision Zero as one of its justifications for repeal, believing that safety for our bicyclists will be handled through different avenues.⁸³

However, in the midst of Vision Zero’s 2022 winter ninety-day review, ten people walking and three people biking were hit by cars throughout Seattle in a single day.⁸⁴ As of May 21, 2022, the ten deaths on Seattle’s roads for the calendar year made the Vision Zero goal of no fatalities seem “maddeningly out of reach.”⁸⁵ In spite of the goal of keeping pedestrians and cyclists safe, the number of deaths and injuries have continued to rise.⁸⁶ Furthermore, this ties directly into the inequitable concerns that the BOH had about the Helmet Law, as the Vision Zero team explicitly referred to houseless populations and communities of color as the most vulnerable populations to traffic incidents in King County.⁸⁷ Unhoused people made up 27% of people killed on city streets in traffic accidents in 2021, and neighborhoods that are rated at the highest disadvantage⁸⁸ have the highest rate of traffic fatalities and serious injuries, with Black citizens being disproportionately affected by fatal crashes.⁸⁹ In addition, the Vision Zero review recognized that “[a]nyone who is outside the protection of a vehicle is more vulnerable to more serious harm,” and “[p]eople walking, biking, and rolling are involved in 7% of total collisions but make up 61% of fatalities in Seattle.”⁹⁰ Just as discriminatory enforcement is a real threat to minority populations, riding a bicycle is as well.

81. *Vision Zero*, SEATTLE DEP’T TRANSP. (July 2023), <https://www.seattle.gov/transportation/projects-and-programs/safety-first/vision-zero> [<https://perma.cc/HN3L-QFFG>].

82. *Id.*

83. King County Board of Health, *Board of Health Meeting* at 1:29:30 (Feb. 17, 2022) http://king.granicus.com/MediaPlayer.php?view_id=4&clip_id=9284 [<https://perma.cc/XC8M-DM7E>] [hereinafter BOH Meeting, Feb. 17, 2022].

84. Ryan Packer (@typewriteralley), TWITTER (Dec. 9, 2022, 9:13 PM), <https://twitter.com/typewriteralley/status/1601444954529988608> [<https://perma.cc/WE3L-FN46>].

85. David Kroman, *Seattle Traffic Deaths Show No Signs of Slowing as Second Bicyclist Fatally Struck This Year*, SEATTLE TIMES (May 21, 2022), <https://www.seattletimes.com/seattle-news/transportation/seattle-traffic-deaths-show-no-sign-of-slowing-as-second-bicyclist-fatally-struck-this-year/> [<https://perma.cc/EN6D-QV2X>].

86. *Id.*

87. VISION ZERO, *supra* note 57, at 17.

88. *Id.* The SDOT notes that Seattle’s Race and Social Justice Index characterizes neighborhoods by factors such as race, income, education, and English language use. The Index ranks neighborhoods according to “disadvantage.” *Id.* For example, in 2021, “56% of fatal crashes . . . were in City Council District 2, which is the district with the highest ‘disadvantage’ rating in the Race and Social Justice Index.” *Id.*

89. *Id.*

90. *Id.*

Significant concerns about bicyclists without helmets on the roadway have reached even the conversations of the federal agencies leading the fight on road safety. On November 5, 2019, after a thorough review of bicyclist safety on U.S. roadways, the National Transportation Safety Board (NTSB) stated that “critical changes” were needed to respond to the national number of fatal bicycle crashes involving vehicles.⁹¹ NTSB Chairman, Robert Sumwalt, emphasized that “[i]f we do not act to mitigate head injury for more bicyclists, additional bicyclists will die,” and the most effective way of protecting oneself from a serious head injury is by wearing a helmet.⁹² In fact, at this meeting, the NTSB felt so strongly about this safety concern it recommended “that all 50 states, the District of Columbia and Puerto Rico, require that all persons wear a helmet while riding a bicycle.”⁹³ Sumwalt claimed that “clearly more needs to be done to protect these most vulnerable users of our roadways.”⁹⁴

A proactive policy solution has a greater chance of protecting marginalized communities than the current reactive one does. The BOH itself stated that it “believes in an approach to helmet use that does not involve law enforcement in order to ensure that Black, Indigenous and people of color do not bear the burden of enforcement and the *resulting risk of negative outcome . . .*.”⁹⁵ It appears that the BOH focused on one foreseeable negative outcome over another. While this issue is unimaginably complex, one thing is clear: the repeal was reactive and shortsighted.

C. Developing Concerns: Lack of Helmet Use with the Ride-Share Market

The changing landscape for bicycle technology must also be accounted for when considering the danger of bicycling without a helmet in today’s society. While this Comment does not directly address a comparison between the repealed bicycle helmet law and Washington State’s motorcycle helmet laws, it is relevant to this conversation to understand where electric bikes (E-bikes) fit into this conversation. RCW

91. NTSB Says Changes to Roadway Design, Collision Avoidance Systems, More Helmet Use Needed to Address Increase in Bicyclist Fatalities, NAT’L TRANSP. SAFETY BD. (Nov. 5, 2019), <https://www.nts.gov/news/press-releases/Pages/NR20191105.aspx#:~:text=Because%20research%20shows%20that%20less,helmet%20while%20riding%20a%20bicycle> [https://perma.cc/PEH8-S9QC].

92. *Id.*

93. *Id.*

94. *Id.*

95. King County Board of Health Resolution 21-08 3:53–55 (Feb. 17, 2022) (emphasis added), <https://mkclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=5161091&GUID=74FAFC26-879E-4C4B-98B3-D465830E4356&Options=&Search=&FullText=1> [https://perma.cc/59E2-5W4L] [hereinafter BOH Res. 21-08].

46.37.530(1)(c) states that it is unlawful “[f]or any person to operate or ride upon a motorcycle, motor-driven cycle, or moped on a state highway, county road, or city street unless wearing upon [their] head a motorcycle helmet.”⁹⁶ At first glance, it would seem that “motor-driven” cycle would include E-bikes that have a motor within them, such as the battery-powered Lime Bikes or Veo Bikes that are becoming more popular on the streets of Seattle for ride-sharing short-term rentals.⁹⁷

The relevance of this issue is tremendous. If motorized bicycles were included in this motorcycle helmet requirement, then depending on what type of bicycle people were riding, a helmet law may still be in effect for E-bikes. However, RCW 46.37.530(1)(c)(iii) clarifies that “[p]ersons operating electric-assisted bicycles and motorized foot scooters shall comply with all laws and regulations related to the use of *bicycle helmets*.”⁹⁸ Curiously, the repealed-Title 9 is limited to only bicycles “not powered by motor,” which is defined in part as “every device propelled solely by human power upon which a person or persons may ride.”⁹⁹ Notwithstanding the clear hole in the legislation regarding E-bikes, one question comes to mind: why is this relevant to the repeal of the Helmet Law? It is relevant because E-biking without a helmet is significantly more dangerous than bicycling without a helmet.

A study by researchers in the *Journal of Clinical Medicine* determined the greater severity of injuries of E-bike injuries when compared to bicycle injuries.¹⁰⁰ These scientists found that the rate of pelvic injuries was twice as high on E-bikes as compared with non-motorized bicycle accidents, and the level of craniocerebral trauma of E-bikers was increased in comparison to traditional cyclists.¹⁰¹ While there is only limited research at this time that has compared E-bike injuries and pedal bicycle injuries, it is clear that the general increased speeds powered by the batteries in E-bikes have led to an increased rate in traffic accidents.¹⁰² Even more worrisome, King County Public Health issued a Bicycle Helmet Final Report in March 2023 that showed that ride-share

96. WASH. REV. CODE § 46.37.530(1)(c).

97. Tom Fulcoro, *Veo Launches E-Bike Share in Seattle*, SEATTLE BIKE BLOG (Dec. 13, 2021), <https://www.seattlebikeblog.com/2021/12/13/veo-launches-e-bike-share-in-seattle/#:~:text=Veo%20today%20announced%20a%20partnership,to%20get%20to%20their%20destinations> [<https://perma.cc/5JVD-78XY>]; *Electric Bike*, Lime (2022), <https://www.li.me/vehicles/electric-bike> [<https://perma.cc/667E-BWQV>].

98. WASH. REV. CODE § 46.37.530(1)(c)(iii) (emphasis added).

99. BOH Code Title 9, *supra* note 13, at §§ 9.04.010(D), 9.07.020.

100. *See generally* Emilian Spörri, Sascha Halvachizadeh, Jamison G. Gamble, Till Berk, Florian Allemann, Hans-Christoph Pape & Thomas Rauer, *Comparison of Injury Patterns Between Electric Bicycle, Bicycle and Motorcycle Accidents*, 10 J. CLIN. MED. 3359 (2021).

101. *Id.* at 3359.

102. *Id.*

bicycles and scooters (both E-bikes or E-scooter and pedal bikes) have “much lower helmet use rates than riders of personal bikes and scooters.”¹⁰³

In totality, these dangers are at their most literal sense a matter of life and death. The BOH, in making its decision to repeal, “checked a box” toward their racial justice aims without doing the more difficult work of facing the broader issues head on. As Joe McDermott, Chair of the BOH, stated in the February 17 repeal meeting, “everyone should wear a helmet. Full stop. Helmets are a vital tool to . . . protect riders and they should be readily available and accessible to everyone. This has *never* been a conversation about the value of helmet use. It’s about protecting riders.”¹⁰⁴ In this statement, Chairman McDermott claimed that the repeal was about protecting riders. But if it were about protecting riders, would the BOH not balance its own aims of combatting discrimination with the very purpose of the law itself?

On March 13, 2022, the *Seattle Times Editorial Board (STEB)* released its thoughts on this issue in its article titled, *Dropping Bike Helmet Law Is a Wrongheaded Decision*.¹⁰⁵ The *STEB* plainly stated that “[f]or the sake of public safety, the board [of health] should reconsider.”¹⁰⁶ In addition, the group made it clear that “more needs to be done to protect cyclists, not less.”¹⁰⁷ Continuing with this line of thinking, the *STEB* explained that “[p]ublic health demands both a law that can reinforce safety measures and the ability for everyone in the community to ride without worry they will be unfairly targeted.”¹⁰⁸ The group continued by stating that “[g]etting rid of the law is easy, working on ways to guarantee equitable enforcement is hard. It’s a shame the health board took the easiest path.”¹⁰⁹

Some may argue that the BOH did enough to emphasize the importance of helmet use when it passed a resolution “strongly recommending helmet use as a tool to prevent injuries and fatalities,”¹¹⁰

103. SEATTLE & KING CNTY. PUB. HEALTH, VIOLENCE & INJURY PREVENTION UNIT, KING COUNTY BICYCLE HELMET & SAFETY PROJECT 2022: FINAL REPORT 12 (2023), <https://kingcounty.gov/depts/health/violence-injury-prevention/traffic-safety/~media/depts/health/violence-injury-prevention/documents/bike-helmet-safety-report-2022.ashx> [<https://perma.cc/M6NC-DL8C>] [hereinafter PHSKC].

104. BOH Meeting, Feb. 17, 2022, *supra* note 83, at 1:20:15 (emphasis added).

105. Seattle Times Editorial Board, *Dropping Bike Helmet Law Is a Wrongheaded Decision*, SEATTLE TIMES (Mar. 13, 2022), <https://www.seattletimes.com/opinion/editorials/dropping-bike-helmet-law-is-a-wrongheaded-decision/> [<https://perma.cc/W8CR-7LWM>].

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. BOH Res. 21-08, *supra* note 95, at 1:1–2.

on February 17, 2022 (immediately after the Board repealed the Helmet Law itself and denied all proposed amendments).¹¹¹ However, this attempt at praising helmet use falls flat. Resolutions are not legally enforceable, and they merely reflect a hollow policy statement in support of the BOH's opinion on this matter.¹¹²

III. ROLLING FORWARD: BUILDING ON THE BOH'S PROPOSED AMENDMENTS TO CRAFT A SOLUTION

Work needs to be done to promote helmet use and adequately protect King County riders. When board member Kohl-Welles introduced the critical issue of discriminatory enforcement to the BOH, she helped bring the much-needed conversation of discriminatory enforcement to light. Likely in an attempt to stall the plans for a full repeal, Kohl-Welles and Samantha Porter¹¹³ presented multiple amendments to the Board for approval.¹¹⁴

While some amendment components are concerning, such as those that fail to eradicate discriminatory enforcement or merely ask for a stay of the decision for one year, the ideas presented in the amendments are a beneficial starting place in developing a more robust alternative to repeal—one that removes punitive enforcement mechanisms while also creating an organized and strong approach to providing helmet education and access.¹¹⁵

A. Analysis of the Proposed Amendments

Amendment 1 planned to delay the repeal to one year after the date of the law's adoption, included a proviso to conduct an Equity Impact Review (EIR) specifically on the effects of the repeal, and requested public health groups to conduct public awareness campaigns prior to the repeal going into effect—as long as the Board could guarantee adequate funding.¹¹⁶ The EIR Tool works to “identify, evaluate, and communicate the potential impact—both positive and negative—of a policy or program on equity.”¹¹⁷ As attorney Sheley Anderson noted in public comment to

111. See BOH Meeting, Feb. 17, 2022, *supra* note 83, at 1:20:15.

112. *About the Board of Health*, *supra* note 55.

113. Samantha Porter is a Legislative Analyst for the King County Council. See Domenica Clark, *Samantha Porter, Legislative Analyst with King County Council*, EVERGREEN (Feb. 20, 2019), <https://www.evergreen.edu/mpa/post/samantha-porter-legislative-analyst-king-county-council> [<https://perma.cc/H7FT-8EG7>].

114. BOH Meeting, Feb. 17, 2022, *supra* note 83, at 1:35:10

115. See Seattle Times Editorial Board, *supra* note 105.

116. BOH Meeting, Feb. 17, 2022, *supra* note 83, at 1:35:06.

117. *Tools and Resources*, KING CNTY., (Apr. 8, 2020), <https://kingcounty.gov/elected/executive/equity-social-justice/tools-resources.aspx> [<https://perma.cc/A88K-MPK7?type=standard>].

the BOH, the previous EIR study that the Board conducted was focused specifically on the pretextual stops and discriminatory enforcement and the manner the Helmet Law was being used, and “it did not address the impact the helmet law repeal would have on Black and brown communities”¹¹⁸

Because the repeal took place, the delayed repeal is no longer relevant to this consideration. However, the BOH certainly should conduct an EIR process specifically on the impact of the repeal to understand what consequences stemmed from their decision. Through this study, the BOH would be able to make a research-based decision on how to move forward with potential helmet legislation. The “Final Report” published in March 2023 and the temporary post-repeal plans of the BOH are not enough. Although the BOH’s decision to provide less than 2,000 bicycle helmets and collecting data on how many people wear helmets on King County streets does help, it does not take the more permanent step of providing widespread access to and awareness about helmets through distribution and educational community programming.

Amendment S3 planned to make the Helmet Law only applicable to those under eighteen years of age, remove the enforcement ability, and remove the infraction penalty.¹¹⁹ While the particular focus on children is logical because children are “particularly vulnerable to being harmed by collisions,”¹²⁰ all ages should be supported and protected.

Amendment S4 amended the enforcement section of the bicycle Helmet Law, prohibited penalties for bicycle helmet violations, and supported the BOH in making a public awareness campaign if the Board gave funding.¹²¹ Porter expressed concerns that removing the enforcement section entirely “would allow law enforcement more discretion in how to enforce, or what kinds of consequences would be brought for violations,”¹²² so this amendment would alter it rather than removing it entirely. The Amendment clarified that “any violation would be exempt from citation and enforcement under this section and a penalty shall not be issued for a violation.”¹²³

118. BOH Meeting, Feb. 17, 2022, *supra* note 83, at 8:50 (emphasis added).

119. *Id.* at 1:35:06.

120. VISION ZERO, *supra* note 57, at 17.

121. BOH Meeting, Feb. 17, 2022, *supra* note 83, at 1:38:10.

122. To clarify, the concerns around removing the enforcement mechanism entirely stemmed from legal counsel that the BOH received. Without any clear guidance on what consequences would come from violating the Helmet Law, the BOH feared that officers would have absolute discretion in determining what infractions were warranted—leading to a potential for even further discrimination. *See id.*

123. *Id.*

This last sentence echoes the same language that should have been implemented prior to repeal or that should now be reinstated back into Title 9's regulation. Just before the BOH vote to repeal took place, board member Kohl-Welles warned that repealing the mandate before more work was done to understand the implications of doing so was "mind-boggling."¹²⁴ Kohl-Welles reiterated the thoughts of many of the medical doctors that provided public comment at the February 17, 2022, BOH meeting when she emphasized that the BOH would send a dangerous message to the public by repealing this law.¹²⁵

B. What Needs to Be Done

Ultimately, further examining these alternatives and implementing the EIR Impact Study from Amendment 1 and the full plan from Amendment S4 would have been a significantly better option than removing the law altogether. In repealing the Helmet Law, the Board did not find a solution that addressed the worries of all bicycle riders and advocacy groups. The BOH should also have made a more organized plan for their public awareness campaign and worked to garner funding from the appropriate legislators that would provide more helmet access, more education, and act as a permanent fixture rather than a temporary one. This way, the campaign and reinstatement of the law would address both Kohl-Welles's concerns and those echoed by the concerns of Central Seattle Greenways and other proponents of the repeal.

The hypotheticals complicate the considerations in this case. Beyond the data provided of both injuries and disproportionate enforcement, it is not known if or when an accident or traffic stop could occur. With a complete removal of the ability for officers to enforce the Helmet Law, the BOH then only needs to focus on helmets; specifically, an EIR Impact Study should be conducted to understand how to combat the consequences of this decision, the areas in the county most impacted by bicycle accidents, and the best ways to improve helmet education and access. As such, the BOH should have removed the enforcement mechanism, clarified per proposed Amendment S4 that the law no longer can be enforced, and included an organized plan for community outreach. To clarify, this would mean that the Helmet Law would be reinstated as a regulation under Title 9 with all enforcement ability removed. What would the purpose of this be? The answers are simple: to garner funding for legislation and to uphold the mission of the BOH through a physical—yet in some ways symbolic—legal statement.

124. Kroman, *supra* note 8.

125. BOH Meeting, Feb. 17, 2022, *supra* note 83, at 1:27:09.

The BOH “does not have appropriation (budget) authority,” and as such, any grant funding would have to come from city legislatures, other King County legislative agencies, or state or federal funding.¹²⁶ With counts of fatalities “headed in the wrong direction,”¹²⁷ the BOH should have focused its energy on a long-term funding, education, and community and relationship-oriented plan. While many believe that the Helmet Law criminalized poverty and that policing is the problem so cannot be the solution, working to mend those fences may be the most productive option to address both strained police-community relations and bicyclist safety. A systematic, collaborative, and groundbreaking approach can help attack discriminatory enforcement structures in our law enforcement while also supporting the Helmet Law. King County is nationally recognized for its innovative and socially minded solutions to seemingly unsolvable problems.¹²⁸ Rather than shying away from an opportunity to address these complex issues head-on, the County should embrace the challenge and work swiftly and strategically to make productive changes.

While the BOH, under state law, has the authority to issue rules and enforcement associated with those rules, it is not allowed to legislate police procedures.¹²⁹ As such, the BOH should lean into a collaborative approach that echoes the Law Enforcement Assisted Diversion (LEAD) program.

LEAD first began in Seattle in 2011 before growing into a national organization.¹³⁰ It is a “collaborative community safety effort that offers law enforcement a credible alternative to booking people into jail for criminal activity that stems from unmet behavioral health needs or poverty.”¹³¹ Taking part in LEAD is a voluntary process as well.¹³² LEAD officers work with case managers, medical professionals, and the prosecutor’s office to help program participants find housing,

126. *About the Board of Health*, *supra* note 55.

127. Gracie Todd & Diana Opong, *Pedestrian Deaths Climb in Seattle, Despite City’s Pledge to Eliminate Them*, KUOW (Jan. 24, 2022), <https://www.kuow.org/stories/pedestrian-deaths-climb-in-seattle-despite-city-s-pledge-to-eliminate-them> [<https://perma.cc/T9X7-U3J7>].

128. *See, e.g., What Is LEAD?*, NAT’L SUPPORT BUREAU, <https://www.leadbureau.org/about-lead> [<https://perma.cc/8DMF-ZVYF>]. *See generally* KATHERINE BECKETT, SEATTLE’S LAW ENFORCEMENT ASSISTED DIVERSION PROGRAM: LESSONS LEARNED FROM THE FIRST TWO YEARS, (Ford Foundation 2014), <https://www.fordfoundation.org/wp-content/uploads/2015/07/2014-lead-process-evaluation.pdf> [<https://perma.cc/XE3K-8EEM>].

129. BOH Meeting, Feb. 17, 2022, *supra* note 83, at 1:41:40.

130. *What Is LEAD?*, *supra* note 128.

131. LEAD is a diversion program that offers individuals who are engaged in low-level drug crime, prostitution, and crimes of poverty to connect with intensive case managers. *See Law Enforcement Assisted Diversion (LEAD)*, KING CNTY. (June 15, 2020), <https://kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/diversion-reentry-services/lead.aspx> [<https://perma.cc/S5M8-TDTH>].

132. *Id.*

employment, and mental and physical health services.¹³³ For the Helmet Law, the County would benefit from collaborating with law enforcement, local city officials, bicycling activist groups and other recreational programs, social services, schools, and cultural and social organizations to educate citizens about the Helmet Law and put helmets on the heads of our communities' riders.

Like LEAD, which has worked to regain trust between community members and law enforcement, officers who see individuals without a helmet could immediately provide resources to individuals without punishing them for not having a helmet. In 2021, King County included \$221,000 in its budget for a “bicycle safety and helmet distribution program,” which emphasized providing helmets to unhoused individuals and others who may not be able to afford a helmet.¹³⁴ In 2022, the King County Council funded 1,875 free helmets, conducted an observational study, and provided some community outreach education.¹³⁵ This is an excellent step, but unfortunately, it is also a temporary one. There is no evidence in the 2023 budget that there was a renewal of this funding.¹³⁶ This reality is twofold: it not only continues to make our community less safe for bicyclists, but it also delegitimizes the trust our community has with its BOH.

By reinstating the modified Helmet Law, the BOH would reaffirm its mission to provide helmets; it could explicitly state that the Helmet Law cannot be utilized as pretext, but only as a community outreach program. Although funding is not guaranteed, this message would be clearer than its hollower one in Resolution 21-08, and it—alongside further data gained by the EIR Study—would be more persuasive to the legislative bodies able to give funding. With this plan in mind, and through the advocacy groups that represented Central Seattle Greenways, Real Change, the Brain Injury Alliance of Washington, and other interested organizations, the BOH could help facilitate donations and funding to allocate helmet supplies in schools, fire departments, childcare programs, police departments, hospitals, and youth programming, such as the YMCA. Many free and low-cost resources are already available,¹³⁷ and this funding would help

133. *Id.*

134. King County, Wash., Ordinance 19364 33: 749–750 (Nov. 23, 2021), <https://aqua.kingcounty.gov/council/clerk/OldOrdsMotions/Ordinance%2019364.pdf> [<https://perma.cc/CSN2-B29P>].

135. PHSKC, *supra* note 103, at 9.

136. *See id.* This was the “Final Report” of the King County Bicycle Helmet & Safety Project 2022, and there is no evidence in the 2023 budget that it has been renewed. After multiple discussions with county employees regarding receiving the updated budget, this question still remains unanswered.

137. KING CNTY., FREE AND LOW-COST BICYCLE HELMET RESOURCES IN KING COUNTY (2023), <https://kingcounty.gov/~/-/media/depts/health/violence-injury-prevention/documents/low-cost-bike-helmet-providers.ashx?la=en> [<https://perma.cc/W2MX-VMRM>].

increase these groups' reach. These helmets could be purchased in bulk and donated for free or subsidized for prices as low as \$6 per helmet.¹³⁸ These interested parties, led by the BOH, could also help organize methods to bring helmets to individuals who may be in need—such as community rides, neighborhood canvassing, or tabling outside of local libraries, grocery stores, or light rail facilities. Working with these public agencies, advertising and educational posters could coincide with the Vision Zero campaigns that are spread throughout Seattle,¹³⁹ and advocacy groups could connect with local school districts to plan “Bike to School” weeks with helmet drives and classroom lessons on pedestrian and bicyclist safety. Through adequate and consistent funding, education, and community outreach, helmet-wearing ridership can increase, and the BOH can promote safety through its regulation.

One clear argument against removing the enforcement mechanism is that without a punitive function, the law would just be obsolete. While a law might not have the power to punish someone, it nonetheless has power, and it remains important. Kohl-Welles emphasized her concern for the BOH's choice to ultimately repeal the Helmet Law—the very body tasked with promoting health for all of King County. Why? Because whether someone could be ticketed for violating this law was not the only way this law had power, but rather, it could be also found in what it *represents*. People know helmets save lives, and to repeal the law simply because it had a flawed discriminatory mechanism flies in the face of the BOH's overall mission—to help protect King County residents. This law is tied closely to the moral and societal goals of the BOH and to repeal it outright is counterintuitive.

CONCLUSION

For the betterment of all people in our society, it is a grave error to turn our backs on safety—whether that be safety from injustice or safety from avoidable injury. While removing the harm of discriminatory enforcement is, and should be, a health-minded priority for our leaders to act swiftly on, it also cannot be a hasty decision made without a careful and considerate look at the consequences. With an EIR study, collaborative outreach program to bring helmets to King County's riders, educational programming, and a removal of the enforcement mechanism while reinstating the law, the BOH would do the work they should have done initially.

138. *Id.*

139. See, e.g., Ethan Bancroft, *It's Time to Slow the Flock Down!*, SDOT BLOG (July 11, 2022), <https://sdotblog.seattle.gov/2022/07/11/slow-the-flock-down-safety-campaign/> [<https://perma.cc/DQV5-4AWB>].

While discriminatory enforcement, as the BOH noted, is certainly a public health crisis, so are bicycle injuries and head trauma caused by accidents on our streets. Like the sentiments that board member Kohl-Welles cautioned on the day of repeal, what kind of message does the BOH send by repealing a law that objectively protects people from more serious injury? Throughout the repeal process, Chair McDermott, medical professionals on the call, and other board members echoed the same statement: they all support helmet use.¹⁴⁰ In reaction to this support, Jeanne Hoffman, University of Washington Professor in the Department of Rehabilitation, stated that “[t]he decision to repeal a law that directly addresses prevention of brain injury as a way to ignore—not address—discriminatory enforcement practices seems actually in direct opposition to the stated goal.”¹⁴¹ Stated even simpler, the BOH should have taken the time to take a more comprehensive approach to addressing both discriminatory enforcement and bicycle safety. This work is crucial as we move forward in a more equitable society.

140. BOH Meeting, June 17, 2021, *supra* note 31, at 1:04:55; BOH Meeting, Feb. 17, 2022, *supra* note 83, at 7:05, 13:00, 21:25, 23:24.

141. BOH Meeting, Feb. 17, 2022, *supra* note 83, at 23:24.