



WSDOT Assistance to Local Governments by Providing Crash Data

May 2016

Enhanced WSDOT partnership with state and local highway safety agencies will increase crash data sharing, roadway performance assessment, and crash analysis¹ in the development of potential response alternatives. This will help us all move toward the ultimate goal of carrying out Washington's ongoing Highway Safety Improvement Program.

WSDOT maintains records for motor vehicle, bicycle and pedestrian crashes on all public highways in the state. Typically, WSDOT receives pedestrian and bicycle crashes from law enforcement only when a motor vehicle is involved. WSDOT's crash data includes data on Interstate highways, United States highway routes, Washington State highway routes, county roads and city streets. WSDOT developed and maintains this record keeping to comply with federal statutes requiring such in order to seek and obtain Federal-aid highway funds for roadway safety improvements.

WSDOT is not the only potential recipient of Federal-aid highway funds for roadway safety improvements. Other state and local roadway operators can seek such funding for safety improvements to roadways under their jurisdiction by using crash data provided by WSDOT. Safety improvements can take many forms besides the traditional example of roadway reconstruction and improvement. Other examples include special law enforcement efforts, public education, and modifications to mass transit.

In spite of WSDOT and other state and local highway operators' best efforts, crashes and other injury events occur on virtually all portions of Washington State roadways. When these crashes and other injury events occur, tort claims and lawsuits are often pursued against the governmental roadway operator because the causing, at-fault entity does not have enough insurance or other assets to compensate the injured person(s) for the losses. Under Washington law and a doctrine known as "joint liability," a defendant in a civil action for damages can be required to pay 100% of a plaintiff's

damages even though that defendant was adjudged as little as 1% at fault.

Attorneys for tort claimants against governmental roadway operators often rely on crash data when pursuing tort claims and lawsuits. These attorneys use the data to argue that the roadway "was dangerous" and the operator was on notice. This tactic puts the governmental agency in a dilemma: by collecting and considering crash data to develop and implement roadway safety plans, the agency makes itself



more vulnerable to tort claims and lawsuits. In recognition of this governmental vulnerability, the United States Congress enacted laws (23 USC §409, and later §148; collectively "Section 409") providing that crash data compiled or collected for purposes of seeking Federal-aid funding is exempt from discovery or as evidence in suits against governmental highway operators for damages.

When WSDOT crash data is shared with state and local highway safety agencies, it retains its Section 409 protection, even if the safety agency does not intend to use it to seek Federal-aid funds. The protection follows the crash data as long as WSDOT compiled or collected it to consider a potential improvement project to be implemented using Federal-aid

¹ WSDOT is moving from referencing the data as collision data, "crash data" is consistent with national highway safety nomenclature.

funds. There are things that can be done by the safety agency to enhance Section 409 protection of the crash data from unlawful use:

- Upon request and receipt of a completed [WSDOT Crash Data Request Form](#), WSDOT can provide maps from its Crash Data and Reporting Branch to a state or local highway safety agency. These maps will reflect WSDOT as the source and the legal restrictions regarding their use. Once WSDOT receives the request form, a WSDOT reports analyst will contact the agency to discuss the request and provide data in the format needed. During that contact, the agency can work with the WSDOT analyst to determine the best way for the data to be provided and protected.
- Whether the roadway safety agency performs analysis and mapping using its own Section 409-qualified crash data or that provided by WSDOT, it is recommend that the agency include a statement of the legal restrictions on its use on all materials that disseminate such data. The following statement communicates such restrictions: "Under 23 U.S. Code, Section 409, this data cannot be used in discovery or as evidence at trial in any action for damages against state, tribal or local government that involves the locations mentioned in the crash data."

- Tools provided by WSDOT to allow additional access to useful data also include the [Washington State Crash Data Portal](#) or the [Target Zero Plan](#). If crash data obtained from these WSDOT sources is publicized or otherwise redistributed by the agency, the agency can include the Section 409 statement.

If the state or local highway safety organization has questions about WSDOT crash data or how to protect it, WSDOT welcomes them. Such questions can be directed to the WSDOT Crash Data and Reporting Office or your Regional WSDOT contact.



For More Information, Please Contact:

- WSDOT Crash Data & Reporting Office** http://www.wsdot.wa.gov/mapsdata/tdgo_home.htm#collision
- Warren Stanley, Crash Data Systems Project Manager, (360) 570-2497, stanlew@wsdot.wa.gov

WSDOT Contacts by Region

- Greg Figg, Eastern Region, (509) 324-6199, figgg@wsdot.wa.gov
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