

NO. 85408-4

**SUPREME COURT OF THE STATE OF WASHINGTON**

MICHAEL W. GENDLER,

Respondent,

v.

JOHN R. BATISTE, WASHINGTON STATE PATROL CHIEF;  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Petitioner,

CLERK

**BRIEF OF AMICI CURIAE  
WASHINGTON CITIES INSURANCE AUTHORITY AND  
WASHINGTON COUNTIES RISK POOL**

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FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2011 SEP 19 P 3:04  
BY RONALD N. CARPENTER

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2011 SEP -9 A 10:44  
BY RONALD N. CARPENTER

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## **I. ISSUES PRESENTED FOR REVIEW**

1. Did the Washington State Patrol (WSP) maintain a database of collision reports by precise location and collision characteristics before the Federal Highway Safety Act of 1966 required the Washington State Department of Transportation (WSDOT) to create such a database to prioritize funding for highway safety improvements?

2. Does state law require the Washington State Patrol (WSP) to create a collision database in addition to the one created by WSDOT to comply with the Federal Highway Safety Acts of 1966 and 1973?

## **II. STATEMENT OF THE CASE**

### **A. Washington Collision Records Before The Federal Highway Safety Act Of 1966**

Before the Federal Safety Highway Act of 1966, a 1937 statute gave WSP the responsibility to “file, tabulate, and analyze” collision reports. *See* RCW 46.52.060. WSP was to publish monthly and annual statistical information showing number, location, and frequency of accidents. *Id.*

In 1966, Washington law enforcement agencies did not have a uniform collision report form and the various report forms did not contain fields for highway safety data. CP 193–194. At that time collisions were not coded to precise locations on roads and lists of collision reports for

specific locations could not be produced. *Id.* WSP did not have a collision records database because the necessary information and computer systems did not exist. *Id.* Under the collision report system that existed before federal highway safety laws, WSP could not sort collision data by specific query. *Id.* WSP could produce only certain pre-programmed collision summaries and reports, which are still produced today as the statewide and county collision and fatality summaries. CP 194; see [www.wsdot.wa.gov/mapsdata/collision/collisionannual](http://www.wsdot.wa.gov/mapsdata/collision/collisionannual).

**B. Federal Requirements For The Development Of Collision Databases**

While Congress was considering the bill that became the Highway Safety Act of 1966, the Bureau of Public Roads did a comprehensive study of the elements needed for a new national highway safety improvement program. Roy Jorgensen & Assoc., *Evaluation of Criteria for Safety Improvements On The Highways: A Report To The United States Department Of Commerce, Bureau Of Public Roads, Office Of Highway Safety (1966)* (Jorgensen Report).<sup>1</sup> The Jorgensen Report set out a detailed plan for identifying hazardous locations on existing roads and for analyzing the effectiveness of proposed improvements. A major part

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<sup>1</sup> This report can be obtained from the federal document depository at the University of California in Berkeley.

of the report reviewed the suitability of using existing (in 1966) state accident records to identify hazardous locations.

The Jorgensen Report found that states kept accident records, but that they were of little use for highway safety because the records “related primarily to provisions of law requiring maintenance of data for possible legal proceedings or determinations of financial responsibility.” Jorgensen Report at 94. In other words, state accident records were collected for limited purposes “not related to the determination of accident causal factors.” *Id.* According to the Report, an effective highway records system required “[u]niform, complete and accurate accident reports, stored in one center in every state, subject to rapid retrieval and analysis, and compatible with a national record system at the federal level.” *Id.*

The Jorgensen Report recommended to the Bureau of Public Roads that the federal government require each state to develop a comprehensive accident record system. *Id.* at VIII. The report also recommended that accurate and standardized information on accident locations, highway features, accident causation, and injuries would identify hazardous locations to be considered for safety improvements. *Id.* at VII, 102–108.

In 1967 the National Highway Safety Bureau of the United States Department of Transportation (successor to the Bureau of Public Roads)

issued sixteen Uniform Standards for State Highway Safety Programs. 33 Fed. Reg. 16337, 16339, Nov. 7, 1968; 33 Fed. Reg. 16560–64, Nov. 14, 1968. Standards Nos. 9 and 10 required states to create programs to identify and correct high-accident locations and to create a traffic records system which included accident records containing accident location, accident “type”, description of injuries, description of environmental conditions, and “causes and contributing factors.” The requirements of Standards 9 and 10 were closely related to the recommendations of the Jorgensen Report.

The 1967 Standards inaugurated a several decades long effort by the federal government to create state accident records, and computerized systems to process them, that contained comprehensive, accurate, and detailed information on accident locations, injuries, causes, and roadway features. A 1971 U. S. Department of Transportation report on activities under the 1966 Highway Safety Act reported the progress on developing state traffic records systems during the first five years under Standards 9 and 10. One significant problem identified by the report was that “State and local agencies are still inhibited in the use of data exchange because each has had to develop traffic records systems with data elements, codes, formats, and documentation unique to their internal systems. Thus a ‘data wall’ is created in the interchange of information.” United States

Department of Transportation National Highway Traffic Safety Administration, *Highway Safety 1971, A Report On Activities Under The Highway Safety Act Of 1966, at 37 (1971)* (Nat'l Safety '71 Report). To solve this problem, "NHTSA developed reference and guidance documents for both traffic records systems concept and detailed data uniformity" – the State Traffic Records Systems Design Manual. Nat'l Safety '71 Report at 37.

More than 20 years after the 1966 Highway Safety Act, states were still working on creating the computerized system to store and process collision data by collision causes, highway characteristics, and precise locations. Location data was the most difficult. By 1988, all states had accident location reference systems for interstates and state highways, but only thirty-one states had such systems for all roads. The remaining states did not have location systems for accidents on local roads. United States Department of Transportation National Highway Traffic Safety Administration, *Highway Safety 1984: A Report On Activities Under The Highway Safety Act Of 1966, at 9 (1984)* (Nat'l Safety '84 Report); United States Department of Transportation Federal Highway Administration, *The 1988 Annual Report On Highway Safety Improvement Programs 18 (Apr. 1988)* (Fed. Safety '88 Report).

**C. Implementation Of Federal Requirements By Washington State Department Of Transportation**

To comply with federal highway safety laws, Washington State developed a uniform collision report with highway feature coding, precise collision location data, and a computerized collision database. CP 193–194. The collision database was developed at WSDOT. *Id.* The raw collision reports were collected by WSP and the collision data was entered into a computer that could store the data but not process it by location or highway characteristic. CP 194. The data file was then transferred to transportation department computers that had the capacity and programming to create databases, manipulate the data, and respond to queries by accident and road characteristics, and by precise location. *Id.*

This collision records system developed to implement the Federal Highway Safety Acts of 1966 and 1973 continued unchanged until 1997. CP 194. In 1997, WSP data entry failed when WSP unsuccessfully tried to convert entries of collision reports to an optical character recognition system. CP 195. From 1997 to 2002, WSDOT did data entry for state highway collisions, in order to maintain the collision database for state highways, but did not do data entry for local roads. *Id.*

Beginning in 2002, WSP used WSDOT computers to maintain its copies of collision reports. CP 196. WSP scans collision reports into the

WSDOT computer and indexes them by basic categories, such as name, report number, and date. *Id.* WSP, other law enforcement agencies, insurance companies, motorists, and other interested parties have access to all individual scanned reports by using these indexes. *Id.* WSP's computer file of collision reports cannot be searched by collision and road characteristics or precise location. *Id.*

After WSP scans the new collision reports, the scanned reports are sent to 30 WSDOT collision analysts. CP 196. The analysts extract collision, road, and precise location information needed for federal purposes, correct errors and inconsistencies in the data, and enter the data into the WSDOT collision database. *Id.* WSDOT can search and analyze the database by road and collision characteristics and by precise locations as required by federal highway safety laws, but WSP does not have access to the WSDOT database. CP 196–97.

### **III. STATEMENT OF PROCEDURE**

Plaintiff requested that WSP provide to him copies of all collision reports involving bicycles occurring at a specific location on State Route 513 (the Montlake Bridge). CP 8. WSP could not provide the reports because its data system required the name of the person in the collision and a date, and could not retrieve records by specific location. CP 9–10.

WSP advised Plaintiff to contact WSDOT, which maintains collision records by specific location and collision characteristics. CP 23. Plaintiff declined the records from WSDOT because 23 U.S.C. § 409 makes them unavailable in discovery or as evidence for persons seeking the records for purposes of a damage action at the location of the collision in the records, and Plaintiff was unwilling to accept them with that limitation. CP 23–24.

Plaintiff filed an action against WSP claiming that he had been denied public records. CP 5–16. The superior court ruled that WSP was obligated to provide the collision reports by specific location and characteristics. CP 320–23. The Court of Appeals affirmed. *Gendler v. Batiste*, 158 Wn. App. 661, 242 P.3d 947 (2010).

#### IV. ARGUMENT

##### A. **Local Governments Have An Interest In Supporting Federal Law That Prevents The Use Of Federal Highway Safety Data To Expand Road Improvement Liability**

In the mid-1960's, Congress embarked on a major new program to improve highway safety by providing special funding to states for highway safety improvements. *Pierce County v. Guillen*, 537 U.S. 129, 123 S. Ct. 720, 154 L. Ed. 2d 610 (2003). In order to implement this program, federal law required states to collect and analyze safety data and identify hazardous locations on their roads. *Id.*

The federal law had the unintended consequence of increasing state and local government liability. As this Court noted in *Guillen v.*

*Pierce County*:

This 1973 statute (successor to the 1966 Federal Highway Safety Law) apparently had a side effect not intended by Congress. By forcing state and local governments to identify all “public roads that “may constitute a danger to motorists, bicyclists, and pedestrians,” and to rank the most hazardous among them *in writing*, Congress accorded private tort plaintiffs an *added* advantage in their efforts to prove negligent governmental design or maintenance of certain traffic sites.

*Guillen*, 144 Wn. 2d 696, 717, 31 P.3d 628 (2001). After the passage of the 1966 and 1973 Highway Safety Acts, legal treatises advised that plaintiffs should use the accident data and safety studies required by the federal acts to establish that highway authorities had liability for failing to make highway improvements when they had notice of hazardous roads. William E. Kenworthy, *Kuhlman’s Killer Roads: From Crash to Verdict*, 161–62, 176–78 (Second Edition, 1999 [1st ed. 1974]). The treatises instructed that the safety data could be used to convince courts to allow liability for failure to improve older roads to new safety standards, contrary to the courts’ usual application of governmental immunity and lack of duty to dismiss such claims. *Id.* 7–10.

As a result of states’ concerns that the federal safety laws “would increase the risk of liability for accidents that took place at hazardous

locations before improvements could be made,” the USDOT supported legislation prohibiting disclosure of the safety information required by the federal acts. *Pierce County v. Guillen*, 537 U.S. 129 at 134. In 1987, Congress enacted 23 U.S.C. § 409, which prohibited (with amendments in 1991 and 1995) the discovery or admission into evidence of reports and data compiled or collected to develop safety improvement projects eligible for federal funds. In Washington, and in states with similar public records laws, the privilege preventing discovery in litigation also made the federally required data exempt from public records disclosure to litigants seeking to use the data in damage lawsuits.<sup>2</sup> RCW 42.56.290 (formerly RCW 42.17.310 (1)(j)).

The cities and counties who are members of the Amici risk pools share the interest of the State of Washington in the proper application of 23 U.S. C. § 409. This statute protects local governments from the use of federal safety data to create liability for alleged failures to improve federal-aid eligible roads for which safety improvements have not yet been funded. Local governments have many more of this kind of road than the state, and much less funding to make improvements to roads.

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<sup>2</sup> Plaintiff asserts that the public records exemption violates the general rule that agencies cannot inquire about the reasons for a request. See Respondent’s Supplemental Brief pp. 6-7. However, this is a situation that cannot fall under the general rule because inquiring into the purpose of the request is an inherent requirement of the exemption itself. This Court approved the application of this exemption to litigants in *Guillen v. Pierce County*, 144 Wn. 2d at 713.

Local governments cooperate with the state in providing data for the state collision records database maintained by WSDOT and desire to receive continued federal safety improvement funding. However, local governments do not want the federal highway safety program, and the required database, used to increase local government liability for roads. Local governments agree with the State's concern that the Court of Appeals' opinion, requires WSP to create a database to provide to plaintiffs compilations of collision records that can otherwise be obtained only from the WSDOT database that is protected from use in tort litigation by § 409. For reasons explained in the argument below, Amici believe that the Court of Appeals' opinion misinterprets *Pierce County v. Guillen*, 537 U.S. 129 (2003) and permits circumvention of § 409.

**B. Highway Safety Information Held By Non-Highway Agencies Is Protected By § 409 To The Extent That The Information Was Not Available To Plaintiffs Before Federal Highway Safety Laws Were Enacted**

The U.S. Supreme Court's decision on the constitutionality of 23 U.S.C. § 409 required the Court to decide first the scope of the privilege established by the statute. The Court decided that § 409 protected safety information generated or collected for a highway safety purpose, but not information "compiled or collected for purposes unrelated to § 152 [the

major highway improvement funding statute] and held by agencies that are not pursuing § 152 objectives.” *Pierce County v. Guillen*, 537 U.S. 129.

The Court described safety information that falls outside § 409 as follows:

However, the text of §409 evinces no intent to make plaintiffs worse off than they would have been had §152 funding never existed. Put differently, there is no reason to interpret §409 as prohibiting the disclosure of information compiled or collected for purposes unrelated to §152, held by government agencies not involved in administering §152, if, before §152 was adopted, plaintiffs would have been free to obtain such information from those very agencies.

*Pierce County v. Guillen*, 537 U.S. 129. Under the Court’s interpretation of § 409, the keys to deciding whether highway safety information held by non-highway agencies receives § 409 protection are whether this information is unrelated to the federal highway safety program and whether this information was available from the non-highway agencies before the advent of federal highway safety laws. The question in this case is whether the data sought by Plaintiff would have been available to him if the federal highway safety laws “never existed.” The U.S. Supreme Court’s interpretation is similar to that stated in the concurrence to this Court’s decision in *Guillen v. Pierce County*, 144 Wn.2d 696 at 751.

**C. Reports Of Prior Collisions By Precise Highway Locations And Road And Collision Characteristics Are A Product Of The Federal Highway Safety Acts And Were Not Historically Available From WSP**

Plaintiff sought from WSP all collision reports involving bicycles for a precise location on SR 513 in order to show that the State had notice of an allegedly hazardous road condition that needed improvement. CP 23. WSP cannot produce these reports without identifying them by use of the WSDOT computerized collision database that was developed to implement federal highway laws. CP 202-03. The Court of Appeals held that WSP must provide the collision reports despite the § 409 prohibition on the use in tort litigation of data collected or compiled to implement federal highway safety laws.

Plaintiff claims that WSP must identify and produce the collision reports because WSP collects collision reports as a law enforcement agency and the information sought was not generated or collected by WSDOT to implement federal highway safety laws. Under the U.S. Supreme Court's interpretation of § 409, the collision reports requested by Plaintiff can be provided to him only if they are information that is unrelated to the federal highway safety program and would have been available to him before Congress enacted the highway safety laws.

The only evidence in the record concerning the historical availability of the collision reports sought by Plaintiff is the declaration of Brian Limotti, a retired long-time manager of WSDOT data systems related to collision records. CP 192–98. Mr. Limotti worked with both WSP and USDOT on collision record systems and has knowledge of the history and development of the collision records systems at WSP and WSDOT. CP 193. Mr. Limotti’s declaration is attached as Appendix A for the Court’s reference.

As indicated in the Fact Statement above, before the federal highway safety laws changed the content of collision reports, and created computerized databases, WSP could not provide reports by precise location and with detailed collision and road data. Prior to the late 1960’s, there were no uniform collision reports, the reports did not contain data on accident causation factors, and computerized databases for the reports did not exist and could not be created due to lack of and inconsistency of data. *See Jorgensen Report, supra.*

In 1966 Plaintiff could not have obtained from WSP, the information that he now seeks from WSP. As pointed out in the Kenworthy treatise cited at page 9, collision information of the kind sought by Plaintiff became available and useful to plaintiffs in highway improvement lawsuits as a result of the data and data system mandates of

the federal highway safety acts. The new availability and use of this data in the 1960's and 1970's created the liability problem for state and local governments that Congress sought to solve by enacting § 409. Thus, under the U.S. Supreme Court's interpretation of § 409, Plaintiff is not entitled to obtain collision information that can only be provided to him through use of data and systems developed to implement federal law.

The Court of Appeals relied primarily on RCW 46.52.060 to hold that WSP had an obligation to provide the collision records to Plaintiff. This 1937 statute required WSP to "file, analyze, and tabulate" accident reports and produce monthly and annual statistical summaries based on the reports, analysis, and tabulation. The evidence in the record shows that WSP filed the collision reports and did the analysis and tabulation needed to produce the monthly and annual reports. *See* CP 193–96. There is no evidence that this statute required the creation of a searchable computerized collision record database or that it was intended to do such. The concept of such a database, and the data and technology that would permit it, did not develop until the 1960's or later. *See* pp. 2-5 above. There is also no evidence that RCW 46.52.060 required the precise location coding system that WSDOT later developed to implement the federal highway safety laws. RCW 46.52.060 does not show that Plaintiff could have obtained the requested collision reports from WSP before the

federal highway safety laws required WSDOT to create a modern collision records database.

Plaintiff did submit a declaration by a lawyer stating that in the lawyer's practice since 1975, he had previously been able to obtain collision histories by specific location, types of collisions, and contributing factors. *See* CP 294-96. The superior court, but not the Court of Appeals, relied on this declaration to show availability of data before the enactment of the federal safety laws. *See* CP 322. The declarant did not begin practicing law until 1975, several years after federal law required WSDOT to create the collision records database. *See* CP 193. Therefore, the declarant cannot be referring to availability of collision information from WSP before the enactment of the Federal Highway Safety Act in 1966.<sup>3</sup> A database by precise location and causal characteristics did not exist. The declaration can be referring only to requests made to WSDOT from 1975 until the late 1990's, before Congress enacted § 409, and its amendments, to solve the liability problem created by highway safety laws. In the period of time between

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<sup>3</sup> The Court of Appeals and Plaintiff also rely on the enactment of the main federal highway safety improvement statute, 23 U.S.C. § 152 (now 23 U.S.C. § 148) in 1973, as showing that the new state collision records system in the late 1960's was not a product of the highway safety law. *See* 158 Wn. App. at 674-75. However, as shown by the history at pp. 2-5 above, and the Limotti declaration, the collision report database was a product of the 1966 Federal Highway Safety Act. The 1973 act simply expanded and recodified the 1966 act.

1975 and the 1990's, WSDOT would have responded to the declarant's discovery requests for database information.

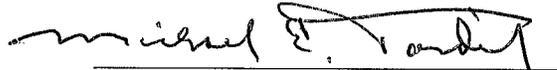
Plaintiff relies on a Louisiana case, *Goza v. Parish of W. Baton Rouge*, 21 So. 3d 320 (La. App. 2009), *cert. denied*, 130 S. Ct 3277 (2010) to support its argument that § 409 does not prevent the disclosure of the collision report data in this case. *Goza* allowed the admission into evidence of collision reports that plaintiffs had obtained from a county sheriff. Under the U.S. Supreme Court's holding in *Pierce County v. Guillen*, this would be a correct ruling as long as those collision reports were historically available to plaintiffs from the local sheriff's office. In this case, the evidence is that collision reports by precise location and collision and road characteristics were not available from WSP before the 1966 Federal Highway Safety Act required WSDOT to create a collision database. *Goza* did not involve the issue in this case, which is whether the specialized collision data sought by Plaintiff would have existed if federal highway safety laws "never existed."

**V. CONCLUSION**

The Washington Counties Risk Pool and Washington Cities Insurance Authority respectfully request this Court to reverse the decision of the Court of Appeals.

DATED this 9<sup>TH</sup> day of September, 2011.

FREIMUND JACKSON TARDIF  
& BENEDICT GARRATT, PLLC



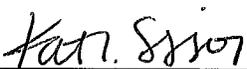
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### DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the state of Washington, that the following is true and correct:

That on September 9<sup>th</sup>, 2011, I arranged for the service of the foregoing *Brief of Amici Curiae by WCIA and WCRP* to the court, and to the parties to this action as follows:

Rene D. Tomisser Attorney General's Office Torts Division P.O. Box 40126 Olympia, WA 98504-0126	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
Keith L. Kessler Garth L. Jones 413 Eighth Street Hoquiam, WA 98550	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
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\_\_\_\_\_  
KATHRINE SISSON

# APPENDIX A



1 4. I spent more than 20 years of my career at WSDOT involved with  
2 transportation data, primarily collision report data. I worked closely with federal transportation  
3 agencies and have become familiar with federal requirements for collision record databases  
4 and the historical development of those requirements. I have also worked closely with local  
5 transportation agencies and the Washington State Patrol (WSP). I am familiar with the kinds  
6 of collision records historically maintained in Washington and the development of the systems  
7 used to maintain those collision records.

8 **I. FORMER WASHINGTON STATE PATROL  
9 COLLISION RECORDS SYSTEM**

9 **A. History of WSP Uniform Police Traffic Collision Reports and Collision Database**

10 5. Prior to the adoption of the federal Highway Safety Programs in 1966, there  
11 were no uniform police traffic collision report forms (PTCR's). Law enforcement agencies  
12 utilized a myriad of different rudimentary report forms that did not specifically focus on a  
13 system for the collection of highway safety data. Prior to 1966 collisions were not coded to  
14 precise locations on roads, nor was collision data collected in a manner that would allow the  
15 WSP to generate an accurate list of accidents occurring at any specific location. Before the  
16 federal Highway Safety Programs, Washington did not have a comprehensive collision records  
17 database because neither the necessary information nor the necessary computer systems  
18 existed.

18 6. In Washington, a comprehensive collision records database was created in the  
19 late 1960s and early 1970s to comply with federal highway safety reporting requirements. In  
20 order to qualify for federal highway safety funding, the Federal Highway Administration  
21 (FHWA) required states to maintain a computerized collision record database. The uniform  
22 PTCR was created during this time in order to capture and collect the data that was necessary  
23 to satisfy federal reporting requirements.

24

1           7.       One of the first changes in response to the passage of the federal Highway  
2 Safety Programs was the creation of the uniform PTCR. This form contained numerous  
3 database fields and created, for the first time, a comprehensive and uniform system by which  
4 law enforcement officers could collect the collision data necessary for WSDOT to evaluate a  
5 given accident location for highway safety purposes pursuant to 23 U.S.C. §152, §130, and  
6 §144. The United States Department of Transportation was instrumental in encouraging  
7 standard data elements in uniform collision reports in response to the federal Highway Safety  
8 Programs. The uniform PTCR currently has approximately 113 data elements that were  
9 specifically created and embedded in the PTCR in response to the federal Highway Safety  
10 Programs and the ensuing regulatory guidelines.

10       **B.       Description of the Evolving System**

11           8.       Until 1997, the WSP entered collision data from the PTCRs into a computer  
12 database and the procedure for entering the data was very similar to that described below for  
13 WSDOT. The principal difference between the WSP collision records system and the WSDOT  
14 system is that the WSP computer was very old (circa 1970), and was unable to sort data in  
15 response to specific queries. The WSP computer was used only to produce certain pre-  
16 programmed collision summaries and reports. The WSP computer could not generate an  
17 accurate list of accidents by specific location.

18           9.       Until 1997, the WSP sent electronic copies of its database to WSDOT and the  
19 public works or road departments of larger jurisdictions. WSDOT and those public works or  
20 road departments loaded the electronic files onto their more modern computers. Those  
21 computers could sort and analyze the collision data for highway safety purposes by specific  
22 locations and highway and accident characteristics. For smaller jurisdictions, the WSP sent  
23 quarterly hard copy printouts of collision data, and the public works or road departments of  
24 those jurisdictions would have to manually sort the data for use in their highway safety  
activities.

1           10.     The WSP maintenance of the collision database, but not individual collision  
2 reports, ended in 1997 when there was an unsuccessful attempt to convert to an optical  
3 character recognition system. After 1997, WSDOT maintained the state highway collision  
4 database to comply with essential federal highway safety requirements. Local collision data  
5 was not separately available until spring 2002 when WSDOT began implementing the new  
6 collision database for all state roads, which included local city streets.

## 7                           II.     CURRENT COLLISION RECORDS SYSTEM

### 8           A.     Reason for System

9           11.     Beginning with collisions occurring in 2002, the WSDOT TDO has compiled  
10 and collected the data needed by WSDOT and the local jurisdictions (usually a public works or  
11 road department) to prioritize and fund improvements to state highways and local roads. A  
12 significant portion of the raw data compiled by the TDO are the uniform PTCR's for collisions  
13 on all state and local roads. The implementing federal regulations for the Hazard Elimination  
14 Act of 1973 require each state to maintain the collision reports in a comprehensive  
15 computerized database: the database contains extensive coding of highway features and  
16 collision causes that might be useful in developing federally funded highway improvement  
17 projects. The federal regulations also require WSDOT and local road agencies to accurately  
18 locate all collisions that occur on public roadways, something which is not typically done by  
19 officers or motorists who complete the forms (approximately 10% of the collision reports are  
20 submitted by vehicle operators and not law enforcement officers).

21           12.     As indicated above, the federal government has a major hazard reduction  
22 program for roads (23 U.S.C. §152) and specific safety improvement programs for bridges (23  
23 U.S.C. §144) and for railroad crossings (23 U.S.C. §130).

### 24           B.     Description of Current System

          13.     Pursuant to state law, and as a part of the cooperative system for identifying,  
evaluating, and planning highway safety enhancements, local law enforcement agencies submit

1 the original copy of the PTCR to the WSP collision records section. Drivers involved in  
2 collisions submit vehicle collision reports (VCR) when law enforcement officers are not called  
3 to a collision. The WSP collision records section scans the collision reports into WSDOT's  
4 database. The scanned report becomes the official record and the paper report is destroyed.

5 14. The WSP indexes the scanned reports by driver's name and collision report  
6 number, among other items. The scanned reports are available to law enforcement, insurance  
7 companies, motorists, and other interested parties who must determine the legal and financial  
8 responsibility of the drivers involved in the reported collisions.

9 15. After the raw collision reports are scanned, they are sent to one of  
10 approximately 30 WSDOT collision analysts. The role of the analyst is to extract and compile  
11 data from the reports for entry into the comprehensive collision database required by federal  
12 highway safety laws. The collision analyst reviews the location information, collision, and  
13 injury codes on the report forms. The analyst changes the codes as needed to correct errors, to  
14 improve consistency, and to make the data more accurately reflect the prose descriptions and  
15 collision diagrams on the reports. The corrected data is then entered into the collision  
16 database.

17 16. For collisions on state highways, the WSDOT analyst also determines and  
18 enters a precise location for each collision, accurate to 100<sup>th</sup> of a mile. The ability to precisely  
19 locate a collision is critical to the analysis of potentially hazardous situation and is required by  
20 federal highway safety reporting requirements. Data fields that have been embedded in the  
21 PTCR for 23 U.S.C. § 152 purposes provides the raw data for collection that allows WSDOT,  
22 through further compilation and analysis, to create an accurate list of collisions that have  
23 occurred at a specific location. It is not possible for either the WSP or WSDOT to generate an  
24 accurate list of collisions at a specific location using nothing other than the raw collision  
report. An accurate list of collisions at a specific location can only be generated after the

1 collection of the data embedded in the PTCR, compilation of that data, and analysis of the raw  
2 collision reports that is performed by WSDOT for federal § 152 purposes.

3 17. In 2003, a Memorandum of Understanding was executed between the WSP and  
4 WSDOT regarding collision records. This agreement reflected the differing business needs of  
5 the agencies and in particular the data collection and analysis requirements imposed on  
6 WSDOT for federal highway safety purposes. The WSP collision records section and WSDOT  
7 share the collision records database, but have different levels of access. The portion of the  
8 database containing the ability to generate an accurate list of collisions at a specific location  
9 was created in order to comply with § 152 and is owned by WSDOT.

10 **III. FEDERAL RESTRICTIONS ON USE OF POLICE TRAFFIC  
11 COLLISION REPORT DATA**

12 18. A copy of the uniform PTCR sorted by location or by road, collision, or injury  
13 characteristics can be located only by using the information compiled in the collision database  
14 to comply with the federal highway safety laws and rules. Federal law provides that reports,  
15 surveys, schedules, lists, or data which are compiled or collected for purposes of the federal  
16 highway safety improvement programs are not discoverable or admissible as evidence in any  
17 court in any action for damages at a location addressed by the reports or other data. The  
18 FHWA treats 23 U.S.C. §409 as a grant condition with which states must abide by if they are  
19 to participate in the federal hazard elimination program. Washington participates in this  
20 federal program. A true and accurate copy of the FHWA guideline for implementing § 409 is  
21 attached to this declaration.

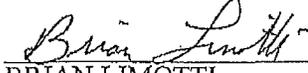
22 19. The WSP and local law enforcement agencies provide the implementation arm  
23 for the collection and compilation of this important highway safety collision data. The  
24 investigating officers are charged with specifically collecting the collision data, accurately  
filling out the PTCRs, and forwarding the original copy of the PTCR to the WSP in a timely  
manner.

1 20. Regarding the last two updates made to the PTCRs in the last ten years, I was  
2 involved in proposing revisions that would allow law enforcement officers to collect even  
3 more highway safety data during the course of an accident investigation, which in turn would  
4 allow TDO and state and local agencies to more accurately evaluate highway safety  
5 information. The WSP, WSDOT, Washington Department of Licensing, and the Washington  
6 State Traffic Safety Commission jointly publish a manual to train and instruct law enforcement  
7 officers as to the particulars of how to collect the accident data and how to accurately fill out  
8 the form. I assisted in drafting the current manual. The introduction to the training manual  
9 reads in part:

10 The information made available by accurate collision investigation and  
11 reporting is invaluable in developing programs to reduce the number and/or  
12 severity of vehicle collisions. It provides a basis for developing proper traffic  
13 laws and ordinances, traffic safety programs, and other collision prevention  
14 programs. . . .

15 21. There are currently more than 40 fields on the PTCR for a law enforcement  
16 officer to fill out, in order to access the 113 data elements imbedded in the forms. Each of  
17 these fields provides important collision data that is entered into the WSDOT collision  
18 database for purposes of complying with federal law and implementing regulations. In turn,  
19 this data is used to identify and evaluate particular accident locations to apply for federal aid  
20 highway safety funds for particular capital improvement projects.

21 EXECUTED this 8TH day of October, 2008, at OLYMPIA, Washington.

22   
23 BRIAN LIMOTTI