

**Committee Name:**  
**Senate Committee –**  
**Judiciary, Corrections and Privacy**  
**(SC–JCP)**

**Appointments**

03hr\_SC–JCP\_Appt\_pt00

**Committee Hearings**

03hr\_SC–JCP\_CH\_pt00

**Committee Reports**

03hr\_SC–JCP\_CR\_pt00

**Clearinghouse Rules**

03hr\_SC–JCP\_CRule\_03–

**Executive Sessions**

03hr\_SC–JCP\_ES\_pt00

# Hearing Records

03hr\_ab0000

# 03hr\_sb0223a\_p01

**Misc.**

03hr\_SC–JCP\_Misc\_pt00

**Record of Committee Proceedings**

03hr\_SC–JCP\_RCP\_pt00

Dave Dwyer  
ABATE  
SB 223

## Crash lab researchers no dummies

1. By LARRY SANDLER  
lsandler@journalsentinel.com

*Last Updated: Aug. 2, 2003*

It's the most dangerous parking place in Wisconsin. Every car left there is broadsided at 38 mph. And yet, 10 or 12 cars still wind up at this spot each year, waiting to be smashed in the inevitable side-impact collision.

Of course, only a dummy would sit in one of those cars. In fact, two dummies sit in each car. And they keep sitting in cars parked in the same jinxed parking place, no matter how many times they're hit.

None of this happens by accident. It is, however, designed to find out what really does happen by accident.

This is the Vehicle Crashworthiness Laboratory at Milwaukee's Zablocki Veterans Affairs Medical Center, a place where white-coated researchers work with crash-test dummies to come up with new ways to rate the chances of injuries in collisions.

As a result of the Milwaukee research team's work, the National Highway Traffic Safety Administration recently added information on head injuries to its side-impact crash ratings said Narayan Yoganandan, biomedical engineering chairman at the Medical College of Wisconsin, which runs the crash lab.

That's significant because one-third of crash-related head injuries are fatal, and the risk of head injuries is four times higher in side-impact crashes, according to research by Thomas Gennarelli, Medical College neurosurgery chairman; Frank Pintar, director of the college's neuroscience research labs; and Yoganandan.

For side-impact crashes, the federal agency's "star" ratings - in which a five-star rating represents the lowest risk of injury - are based on the chances of chest injuries, Yoganandan explained. But now NHTSA is adding footnotes to those ratings as a heads-up for possible head damage, he said.

Drivers can see the results of the crash lab's work on NHTSA's Web site, *nhtsa.gov*. Among 2003 sport-utility vehicles, for example, the Suzuki Grand Vitara 4x4 earned five stars for protecting back-seat passengers in side-impact crashes and the Honda Element 4x4 was awarded four stars, but both ratings have notations warning of higher risk of head injuries.

Medical College researchers are working with NHTSA to incorporate the head-injury risks into the regular star ratings, Yoganandan said.

Researchers also found that the combination of side air bags and properly worn seat belts helps reduce the risk of injury, Yoganandan said.

The road to those conclusions leads through a combination of violent crashes, engineering expertise and medical research at the crash lab, a \$1.5 million facility where three people work full time, joined by three to five others for each test, Pintar said.

A total of 15 to 20 people work on various aspects of the Medical College's crash research, which

has been going on in different ways for more than 20 years, Pintar said.

To conduct the vehicle crash tests, NHTSA has been paying the lab \$150,000 to \$200,000 a year, plus all the cars the researchers can destroy, for the past three years, Pintar said. This is one of only a few federally funded crash labs, and it's the only one tied to an academic institution that helps analyze the test results, Yoganandan said.

Each test starts with wheeling a shiny new car into position at the end of the lab's test track. They're often top-of-the-line models, and technicians enjoy sitting in them for a moment before they're demolished, Pintar said.

"It is sometimes sad to take a brand-new Mercedes or a brand-new BMW and smash something into it," Pintar said. A new Ford Thunderbird "was very difficult to test," he said.

Technicians place one of the lab's six crash-test dummies in the driver's seat and another in a rear passenger seat. Each of the \$30,000 dummies is made of metals, plastic and other materials that can withstand repeated impacts, Pintar said.

"The unique thing about dummies is that they don't break like we would," he said.

Instead, the dummies are outfitted with sensors to measure how they would be injured if they were real people. They're even dressed in street clothes to increase the realism of the tests. "We don't drive naked," Pintar noted.

At the other end of the 470-foot track is a wheeled 3-ton barrier, powered by a 270-horsepower motor, Yoganandan said. That device is made of steel and loaded with aluminum to simulate the materials in a car, Pintar said.

Video cameras are placed in the test car, on the barrier and around the lab, for a total of nine cameras recording the action at 1,000 frames per second, Yoganandan said.

One of the first things technicians do after a crash is to swing over a crane that picks up the test car and flips it upside down, Yoganandan said. The car's gas tanks have been filled with a non-flammable fluid, and researchers check whether any of that fluid is leaking.

If a leak is detected, "that raises a huge eyebrow right away," because of the risk of fire, Yoganandan said. Researchers send that information to NHTSA, which orders an immediate recall in such cases, he said.

In most cases, no leaks are detected, and researchers focus on analyzing potential injuries to occupants, Yoganandan and Pintar said.

Testing usually runs from November through March, using cars, minivans, SUVs and light trucks from the current model year, Pintar said.

Scientific research aside, is it fun to crash big metal things into cars?

"Oh, absolutely," Pintar said. "When you were little, didn't you like smashing (toy) cars into each other?"

From the Aug. 3, 2003 editions of the Milwaukee Journal Sentinel

# MEMORANDUM

To: Members of the Wisconsin Legislature

From: Eric Englund

Date: August 6, 2003

Subject: Senate Bill 223  
Assembly Bill 455  
Use or Non-Use of Protective Headgear as Evidence in Civil Actions

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The Wisconsin Insurance Alliance (WIA) is opposed to SB-223 and AB-455.

## BACKGROUND

Under current law, if an individual is injured or killed as a result of negligence, that person or their estate may recover damages from the person that caused the accident. The recovery of damages can be reduced in proportion to the negligence of the person injured or killed. In 2002, the Wisconsin Supreme Court held in *Stehlik v. Rhoads*, (see <http://www.wicourts.gov/html/sc/99/99-3326.htm>), that the failure of an adult ATV operator to wear a helmet could be considered by a jury in reducing the damages recoverable by the injured person. For example, a person driving a motorcycle/ATV or snowmobile without a helmet is injured when the driver of a car fails to stop at a stop sign and runs into them. The operator of the motorcycle/ATV or snowmobile sustains injuries. It is determined that those injuries would have been reduced by 40% if the operator of the motorcycle/ATV or snowmobile had been wearing a helmet. Under existing Wisconsin law, the operator of the vehicle that crashed into the motorcycle/ATV or snowmobile would not have to pay for 40% of those damages.

SB-223 and AB-455 prohibit the introduction of evidence as to whether or not the driver of the motorcycle/ATV or snowmobile was wearing a helmet, thus reducing the potential for that individual's damages to be reduced by the portion of their injuries sustained because they were not wearing a helmet. Interestingly, the legislation specifically allows the introduction of this evidence when the driver of the motorcycle/ATV or snowmobile sues the manufacturer of the helmet alleging that the driver of the motorcycle/ATV or snowmobile was injured because of a defective design in the helmet.

The concept of an injured person's damages being reduced by their failure to use a safety device is common in Wisconsin tort law. An exception is created in the instance where a person's failure to use a seat belt magnifies the damages they incur when they are injured as a result of the negligence of a third party. In that instance, the maximum reduction of the damages has been set statutorily at 15 percent (see Sec. 347.48(g) Wis. Stat.).

## ARGUMENTS IN OPPOSITION

- 1) The legislation is a typical "I want my cake and eat it too" effort. On the one hand, individuals whose damages are magnified through not wearing a helmet don't want to suffer the consequences of reduced compensation. On the other hand, they admit that helmets are a safety device and want evidence of their wearing a helmet to be used when they turn around and sue a manufacturer alleging that the helmet was defective.

- 2) Studies have demonstrated that the use of helmets reduces the severity of injuries:
  - a. The National Highway Traffic Safety Administration (NHTSA) estimates helmets reduce the risk of fatal head injuries by 40 percent.
  - b. Motorcycle fatalities have declined in states that have reinstated or enacted a motorcycle helmet law.
  - c. Hospital costs for unhelmeted riders were 8% percent higher than helmeted riders according to a 1996 NHTSA Crash Outcome Data Evaluation System study. .
  - d. Healthcare costs for head injuries sustained in motorcycle accidents declined 17 percent (study done in San Diego, California) and 38 percent (Nebraska) in states with a mandatory helmet law.
- 3) The question of whether or not the failure to wear a helmet contributed to the severity of head injuries sustained in motorcycle/ATV or snowmobile accident is a question of fact which will be determined by a jury based upon the submittal of evidence.
- 4) While Wisconsin law gives drivers and passengers a choice of wearing helmets, once an individual makes the choice they should be held accountable for that personal choice. The risk inherent in riding a motorcycle and the failure to use safety equipment add to the risk of injury or enhanced injury. This additional assumption of risk by the person who fails to use safety equipment should be assessed against them, and should not be paid for by a third party.

Should you have questions, comments and/or concerns, please feel free to contact me.

Compiled and edited by Bill Bish  
National Coalition of Motorcyclists (NCOM)

We need to get involved in what is going on, you can bet this will spread Nation wide. The insurance companies can say, "No Helmet No Money" no matter who's fault it is!

The Wisconsin Supreme Court has ruled that ATV riders injured in accidents may have damage awards reduced by up to 100% for failing to wear a helmet. On June 26, 2002, the court issued a decision in an All-Terrain Vehicle accident case that allowed a reduction in damages from a head injury because the injured party was not wearing a helmet, reports ABATE of Wisconsin.

Although this was an ATV case, the court also stated that, **"Our conclusion here pertains to helmet use while operating or riding a motorized, non-enclosed, moderate-to-high-speed vehicle such as an ATV or like vehicle."**

"The leaders and Legislative Committee of ABATE are taking this threat very seriously and giving it a Level One priority," reports Dave Dwyer, Legislative Chair for ABATE of Wisconsin. "We have already been in contact with legislators to let them know what is going on and how we feel about it."

Wisconsin State Senator Dave Zien, long time biker and member of the National Coalition of Motorcyclists (NCOM) Legislative Task Force, is working with ABATE to determine if the decision can be applied to motorcycle riders who suffer a head injury while not wearing a helmet.

"We intend to be ready with a bill to introduce when the new legislature comes into session in January," said Dwyer. "If for some reason this decision cannot be applied to motorcycles, I feel that we should go ahead with language to clarify how the courts should handle the 'no helmet' defense."

Wisconsin has enacted legislation that allows damages to be reduced by 15% for anyone injured in a car accident who is not wearing a seat belt, in reaction to an earlier Wisconsin Supreme Court decision regarding seat belt use and injury damages award reductions. But the high court refused to transfer that over to the helmet use case, even though they used the seat belt use ruling as a guide in their recent decision.

The court stated, "that, ultimately, is a question for the legislature."

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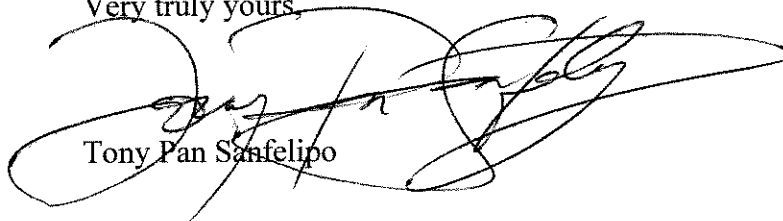
Senate Committee on Judiciary, Corrections and Privacy  
Chairperson: Sen. Dave Zien

Enclosed is the document and authorities I referred to during my testimony regarding Senate Bill 223 on Tuesday, August 26, 2003.

Please copy and distribute to the committee members and feel free to advise them that I am available to answer any questions they might have.

Thank you for hearing our testimony on SB 223 and I look forward to helping advance this bill in any way I can.

Very truly yours,



Tony Pan Sanfelipo

**Vote Record**

**Committee on Judiciary, Corrections and Privacy**

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Date: 10-2-3

Moved by: Zien

Seconded by: Fitz

AB \_\_\_\_\_

SB 223

Clearinghouse Rule \_\_\_\_\_

AJR \_\_\_\_\_

SJR \_\_\_\_\_

Appointment \_\_\_\_\_

AR \_\_\_\_\_

SR \_\_\_\_\_

Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_

A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:

- |   |                                    |                                       |   |  |
|---|------------------------------------|---------------------------------------|---|--|
| <input checked="" type="checkbox"/> Passage | <input type="checkbox"/> Adoption  | <input type="checkbox"/> Confirmation | <input type="checkbox"/> Concurrence    | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction       | <input type="checkbox"/> Rejection | <input type="checkbox"/> Tabling      | <input type="checkbox"/> Nonconcurrence |  |

Committee Member

**Senator David Zien**

**Senator Scott Fitzgerald**

**Senator Cathy Stepp**

**Senator Gary George**

**Senator Tim Carpenter**

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**Totals:** \_\_\_\_\_





# STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

CHAIRPERSON  
 COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY  
 VICE CHAIRPERSON  
 COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM  
 MEMBER  
 COMMITTEE ON SENATE ORGANIZATION  
 COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES  
 COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS  
 SENTENCING COMMISSION  
 COUNCIL ON TOURISM  
 JUDICIAL COUNCIL

## MEMORANDUM

TO: Senator Cathy Stepp, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: October 2, 2003 (hand delivered 11:30am)

RE: Paper Ballot for SB49, SB223, SB86, AB232 (3 pages)

Please consider the following bills and vote on the motions below. **Return this ballot to Senator Dave Zien, Room 15 South, no later than 2:00pm (Today), October 2, 2003.** Committee members' ballots not received by the deadline will be marked as not voting.

### Senate Bill 49

Relating to: evidence of lay and expert witnesses.

By Senators Welch, Stepp and Kanavas; cosponsored by Representatives Gundrum, Olsen, Hines, Albers, Townsend, McCormick, Krawczyk, Nass, Vukmir, Musser, Van Roy, Gunderson and Ladwig.

Please consider the following motion:

- Moved by Senator Zien, seconded by Senator Fitzgerald that SENATE BILL 49 be recommended for **PASSAGE**:

Aye  No

### Senate Bill 223

Relating to: the reduction and recovery of damages and admissibility of evidence in civil actions related to use or nonuse of protective headgear by operators and passengers of motorcycles, all-terrain vehicles, and snowmobiles.

By Senators Zien, A. Lasee, Welch, Stepp, Decker, Kanavas and Lazich; cosponsored by Representatives Vrakas, Gard, Suder, Kreibich, M. Lehman,



Hines, Gronemus, Musser, Weber, Albers, Pettis, Kerkman, Kestell, Ott, Petrowski, Vruwink and Gunderson.

- Moved by Senator Zien, seconded by Senator Fitzgerald that SENATE BILL 223 be recommended for PASSAGE:

Aye  No

**Senate Bill 86**

Relating to: failure to pay for gasoline or diesel fuel and suspension of operating privileges after conviction for theft of gasoline or diesel fuel and providing penalties.

By Senators S. Fitzgerald, M. Meyer, Cowles, Breske, Welch, Roessler, Lazich, Kedzie, Leibham and Stepp; cosponsored by Representatives Weber, Vruwink, Montgomery, Huebsch, Gronemus, Vrakas, Freese, Ott, McCormick, J. Fitzgerald, Hahn, Nass, Townsend, Owens, Zepnick, Loeffelholz, Shilling, Towns, F. Lasee, Jeskewitz, Gunderson, Hines, Kestell, Ladwig, Suder and Lassa.

- Moved by Senator Fitzgerald, seconded by Senator Zien that SENATE BILL 86 be recommended for PASSAGE:

Aye  No

**Assembly Bill 232**

Relating to: failure to pay for gasoline or diesel fuel and suspension of operating privileges after conviction for theft of gasoline or diesel fuel and providing penalties.

By Representatives Weber, Vruwink, Montgomery, Huebsch, Gronemus, Vrakas, Freese, Ott, McCormick, J. Fitzgerald, Hahn, Nass, Townsend, Owens, Zepnick, Loeffelholz, Shilling, Towns, F. Lasee, Jeskewitz, Lassa, Gunderson, Hines, Kestell, Ladwig, Suder, Hundertmark, Ward, Van Roy, Bies, Stone, M. Lehman, Krawczyk, Grothman, Albers, Seratti and M. Williams; cosponsored by Senators S. Fitzgerald, M. Meyer, Cowles, Breske, Welch, Roessler, Lazich, Kedzie and Schultz.

- Moved by Senator Fitzgerald, seconded by Senator Zien that ASSEMBLY BILL 232 be recommended for CONCURRENCE:

Aye  No



Signature \_\_\_\_\_  
Senator Cathy Stepp



# STATE SENATOR DAVE ZIEN

**CHAIRPERSON**

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

**ASSISTANT MAJORITY LEADER**

**VICE CHAIRPERSON**

COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM

**MEMBER**

COMMITTEE ON SENATE ORGANIZATION

COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

## MEMORANDUM

TO: Senator Gary George, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: October 2, 2003 (hand delivered 11:30am)

RE: Paper Ballot for SB49, SB223, SB86, AB232 (3 pages)

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Relating to: evidence of lay and expert witnesses.

By Senators Welch, Stepp and Kanavas; cosponsored by Representatives Gundrum, Olsen, Hines, Albers, Townsend, McCormick, Krawczyk, Nass, Vukmir, Musser, Van Roy, Gunderson and Ladwig.

Please consider the following motion:

- Moved by Senator Zien, seconded by Senator Fitzgerald that SENATE BILL 49 be recommended for PASSAGE:

Aye \_\_\_\_\_ No   X  

### Senate Bill 223

Relating to: the reduction and recovery of damages and admissibility of evidence in civil actions related to use or nonuse of protective headgear by operators and passengers of motorcycles, all-terrain vehicles, and snowmobiles.

By Senators Zien, A. Lasee, Welch, Stepp, Decker, Kanavas and Lazich; cosponsored by Representatives Vrakas, Gard, Suder, Kreibich, M. Lehman,



Hines, Gronemus, Musser, Weber, Albers, Pettis, Kerkman, Kestell, Ott, Petrowski, Vruwink and Gunderson.

- Moved by Senator Zien, seconded by Senator Fitzgerald that SENATE BILL 223 be recommended for PASSAGE:

Aye \_\_\_\_\_ No X

**Senate Bill 86**

Relating to: failure to pay for gasoline or diesel fuel and suspension of operating privileges after conviction for theft of gasoline or diesel fuel and providing penalties.

By Senators S. Fitzgerald, M. Meyer, Cowles, Breske, Welch, Roessler, Lazich, Kedzie, Leibham and Stepp; cosponsored by Representatives Weber, Vruwink, Montgomery, Huebsch, Gronemus, Vrakas, Freese, Ott, McCormick, J. Fitzgerald, Hahn, Nass, Townsend, Owens, Zepnick, Loeffelholz, Shilling, Towns, F. Lasee, Jeskewitz, Gunderson, Hines, Kestell, Ladwig, Suder and Lassa.

- Moved by Senator Fitzgerald, seconded by Senator Zien that SENATE BILL 86 be recommended for PASSAGE:

Aye X No \_\_\_\_\_

**Assembly Bill 232**

Relating to: failure to pay for gasoline or diesel fuel and suspension of operating privileges after conviction for theft of gasoline or diesel fuel and providing penalties.

By Representatives Weber, Vruwink, Montgomery, Huebsch, Gronemus, Vrakas, Freese, Ott, McCormick, J. Fitzgerald, Hahn, Nass, Townsend, Owens, Zepnick, Loeffelholz, Shilling, Towns, F. Lasee, Jeskewitz, Lassa, Gunderson, Hines, Kestell, Ladwig, Suder, Hundertmark, Ward, Van Roy, Bies, Stone, M. Lehman, Krawczyk, Grothman, Albers, Seratti and M. Williams; cosponsored by Senators S. Fitzgerald, M. Meyer, Cowles, Breske, Welch, Roessler, Lazich, Kedzie and Schultz.

- Moved by Senator Fitzgerald, seconded by Senator Zien that ASSEMBLY BILL 232 be recommended for CONCURRENCE:

Aye X No \_\_\_\_\_

Signature Gary R. George  
Senator Gary George

SB 203

(-) England

- Kair Reed ...

2566 MCR accidents/year

- Carpenter: Room for and? 15% as  
in seat belts?

E. England: Let jury decide whether you  
should have been wearing a helmet.

Stepf: Ins Co's trying to mitigate  
downwards.

- Person e fault should be accountable.

(+) Weigel: I know what'll happen next  
force hegemony against Ins Co in  
case of guy in Convertible, jet ski,  
ATV, etc, whatever.

(+) Pan Helmets can hurt you - "Reasons."

- DAZ asked to see his testimony

- DAZ Report on 1979 intentional MCRu down

- Response = TRIAGE