

# THE ROAD TO SAFER STREETS: TACKLING THE PEDESTRIAN & CYCLIST SAFETY CRISIS IN INDIANAPOLIS

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## I. INTRODUCTION

Henry Najdeski, a distinguished attorney, embodied success and integrity in his career at Barrett McNagny, an Indiana law firm.<sup>1</sup> Specializing in real estate law, Najdeski's accolades were numerous—listed in *The Best Lawyers in America* since 2019, recognized as a “Rising Star” in the 2009 *Indiana Super Lawyers* publication, and featured among *Fort Wayne Monthly's* “Top Lawyers.”<sup>2</sup> A loving family, a flourishing career, and a promising future marked his life.<sup>3</sup>

Yet, in April of 2023, tragedy struck. Najdeski, while crossing the street in a designated crosswalk with a pedestrian walk sign in downtown Fort Wayne, was fatally struck by an unmarked police truck driven by Sgt. Joshua Hartup turning left into the crosswalk.<sup>4</sup> Sgt. Hartup, asserting that he hadn't seen Najdeski,<sup>5</sup> received only a \$35.50 fine with an additional \$139.50 in court fees.<sup>6</sup> He faced no criminal charges or disciplinary action from the police force.<sup>7</sup> Compounding the issue, it was revealed that Hartup had been involved in four prior crashes while operating a police vehicle, each classified as “preventable.”<sup>8</sup> Remarkably, for all these prior occurrences, which included hitting curbs and

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1. Rex Smith et al., *Coroner Rules on Death of Man Hit by Police Officer's Vehicle*, WANE, <https://www.wane.com/top-stories/update-victim-struck-by-police-officers-vehicle-dies/> [https://perma.cc/Z3L6-7J7Z] (last updated Apr. 25, 2023, 1:31 PM).

2. *Id.*

3. *Id.*

4. Jazlynn Bebout, *Allen County Prosecutor Finds 'No Criminal Liability' for FWPDP Officer Who Struck, Killed Pedestrian*, 21 ALIVE (Aug. 8, 2023, 11:18 AM), <https://www.21alivenews.com/2023/08/08/allen-county-prosecutor-finds-no-criminal-liability-fwpdp-officer-who-struck-killed-pedestrian/> [https://perma.cc/TC97-23US].

5. *Id.*

6. Rebecca Green, *Officer Fined for Traffic Violation in Fatal Pedestrian Collision*, WFYI INDIANAPOLIS (Aug. 30, 2023), <https://www.wfyi.org/news/articles/officer-fined-for-traffic-violation-in-fatal-pedestrian-collision> [https://perma.cc/CY2Q-UC5V].

7. Jamie Duffy, *Fort Wayne Police Officer Involved in Pedestrian Fatality Pleads Guilty to Failure to Yield*, WANE, <https://www.wane.com/top-stories/fort-wayne-police-officer-involved-in-pedestrian-fatality-pleads-guilty-to-failure-to-yield/> [https://perma.cc/425Z-ZKTG] (last updated Aug. 30, 2023 10:38 AM).

8. Jazlynn Bebout, *21 Investigates: New Documents Detail Past Letters of Reprimand Filed Against FWPDP Officer Police Say Hit, Killed Pedestrian*, 21 ALIVE (May 10, 2023, 9:57 AM), <https://www.21alivenews.com/2023/05/10/21-investigates-new-documents-detail-past-letters-reprimand-filed-against-fwpdp-officer-police-say-hit-killed-pedestrian/> [https://perma.cc/ZSU2-UZHY].

concrete poles, Hartup faced more significant disciplinary measures—receiving letters of reprimand, undergoing mandatory remedial driver's training, and even a suspension.<sup>9</sup> The outcome here is clear: Hartup faced harsher penalties for damaging property than for taking a pedestrian's life.<sup>10</sup>

The story of Najdeski's untimely death serves as a poignant illustration of a systemic problem demanding urgent reform. While his story garnered attention due to his prominence, countless similar incidents involving people who are low-income or face other disadvantages go unnoticed. In Indianapolis alone, the numbers reveal a stark reality: only fifteen out of sixty-eight fatal crashes involving pedestrians or cyclists in 2020 and 2021 led to criminal charges.<sup>11</sup>

This Note aims to shed light not only on the specific injustices encountered by individuals such as Henry Najdeski, but also on the widespread issue of disregard for the safety of vulnerable road users. It's a troubling trend where accidents involving pedestrians and cyclists are frequently dismissed as unpreventable.<sup>12</sup> This perspective is not limited to the Fort Wayne Police Department; it's a viewpoint often echoed by public officials and policymakers throughout the state. Such attitudes reveal a broader, institutionalized indifference towards ensuring the safety of those most at risk on our roads. While some attribute these incidents to the inevitabilities of our car-centric society, numerous cities, states, and countries have proven such collisions are preventable.<sup>13</sup> Proposing a comprehensive reevaluation of Indiana's protections for pedestrians and cyclists, this Note advocates for reforms in criminal and civil liability, improved enforcement, and enhanced infrastructure.

To navigate through the complexities of the pedestrian and cyclist safety crisis, this note unfolds in a structured manner. It first examines the nationwide crisis, comparing that with the specific challenges faced in Indianapolis. This sets the stage for an in-depth examination of the root causes contributing to the pedestrian and cyclist safety crisis in Central Indiana, where factors such as increased walking and cycling trends, vehicle miles traveled, and poor driver behaviors are scrutinized, along with policy-driven challenges including deficiencies in traffic enforcement and infrastructural shortfalls. Shifting focus, the subsequent section proposes actionable solutions, advocating for a strategic mix of traffic law enforcement enhancements, infrastructure improvements, and legislative reforms, with each evaluated for their potential impact and feasibility. Recognizing the intricacies of policy implementation, the narrative also delves into the legislative hurdles that pose impediments to progress, giving insight into the complex policy landscape. The conclusion underscores the necessity for Indianapolis to secure dedicated funding for pedestrian safety

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9. *Id.*

10. *Id.*

11. Kayla Dwyer, *People Keep Dying in Crashes on Indianapolis Streets. What Can Actually be Done About it?*, IND. STAR, May 9, 2022.

12. Bebout, *supra* note 8.

13. Gregory H. Shill, *Regulating the Pedestrian Safety Crisis*, 97 N.Y.U. L. REV. 194, 200 (2022).

initiatives, effectively enforce the rules of the road, bridge infrastructural gaps that disproportionately endanger vulnerable road users, and rethink the car-centric legal framework by altering laws that disadvantage pedestrians and cyclists.

*A. Nationwide Crisis: Pedestrian and Cyclist Safety Concerns*

In the broader context of the nationwide crisis surrounding pedestrian and cyclist safety, the alarming surge in crashes leading to injuries and fatalities transcends the boundaries of Indiana. In 2018, the United States experienced the highest number of pedestrian deaths in a generation, with pedestrian fatalities escalating by 50% over the past decade.<sup>14</sup> Concurrently, cyclist fatalities surged by 38% during the same period.<sup>15</sup>

Data released in June of 2023 by the National Highway Traffic Safety Administration (NHTSA) reveals a trend of rising pedestrian and cyclist casualties due to traffic crashes.<sup>16</sup> A traffic crash is defined as “an incident that involve[s] one or more [] vehicles in-transport that originated on or had a harmful event (injury or damage) on a public traffic way, such as a road or highway.”<sup>17</sup> A pedestrian is defined as “any person on foot, walking, running, jogging, hiking, sitting, or lying down” who is involved in a motor vehicle traffic crash.<sup>18</sup> According to the NHTSA, in 2021 there were 7,388 pedestrians killed in traffic crashes, a 12.5% increase from the 6,565 pedestrian fatalities in 2020.<sup>19</sup> This is the highest number since 1981 when 7,837 pedestrians died in traffic crashes.<sup>20</sup> In addition, in 2021 there were an estimated 60,577 pedestrians injured in traffic crashes, an 11% increase from 54,771 pedestrians injured in 2020.<sup>21</sup>

The situation is also alarming for pedal cyclists, defined as bicyclists and other cyclists including riders of two-wheel, non-motorized vehicles, tricycles, and unicycles powered solely by pedals.<sup>22</sup> In 2021 there were 966 pedal cyclist fatalities, accounting for 2.2% of all traffic fatalities that year.<sup>23</sup> Moreover, in 2021 an estimated 41,615 pedal cyclists were injured, a 7% increase from 38,886 pedal cyclists injured in 2020.<sup>24</sup> In sum, the 2021 data displays that traffic crashes claimed the lives of 8,354 pedestrian and pedal cyclists, and

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14. ANGIE SCHMITT, RIGHT OF WAY 2 (2020).

15. *Id.*

16. U.S. DEP’T OF TRANSP., PEDESTRIANS TRAFFIC SAFETY FACTS 2021 DATA 2 (2023).

17. *Id.*

18. *Id.* at 1.

19. *Id.*

20. *Id.*

21. *Id.*

22. U.S. DEP’T OF TRANSP., BICYCLISTS AND OTHER CYCLISTS TRAFFIC SAFETY FACTS 2021 DATA 1 (2023).

23. *Id.*

24. *Id.*

injured another 102,192. Angie Schmitt, a leading expert and advocate for sustainable transportation, described the surge in pedestrian and cyclist deaths as “a mounting crisis,” that was “so unexpected and unusual that for a long time, experts dismissed it as . . . an aberration.”<sup>25</sup> However, as the pedestrian and cyclist deaths and injuries have continued to grow, quickly outpacing growth of driver and passenger fatality rates, it is now clear that pedestrians and cyclists are part of a fast-growing and frequently-overlooked epidemic.<sup>26</sup>

The danger to pedestrians and cyclists in the U.S. has risen significantly since 2010, but this cannot be explained only by the less than 10% increase in vehicle miles traveled or the 6.14% population growth during the same period.<sup>27</sup> This trend also cannot be simply categorized as part of a global trend; on the contrary, it is a global outlier.<sup>28</sup> As Gregory H. Shill, who is Professor of Law at the University of Iowa College of Law and a transportation policy expert, observed in a 2022 law review note titled “Regulating the Pedestrian Safety Crisis”, “The dismal state of U.S. pedestrian safety contrasts sharply with the significant reductions in pedestrian deaths achieved by peer nations during a comparable window.”<sup>29</sup>

Most importantly, the pedestrian and cyclist safety crisis exhibits a pattern of discrimination. Data reveals these tragedies disproportionately impact marginalized groups, specifically people of color and individuals in low-income communities who rely on walking and biking for transportation.<sup>30</sup> The death rates from such collisions vary significantly by race and ethnicity, as shown in *Figure 1*.

*Figure 1: Age-Adjusted Death Rates for Pedestrians Involved in a Collision with a Motor Vehicle by Race and Ethnicity (per 100,000 standard population) in 2021*<sup>31</sup>

<b><u>Race/Ethnicity</u></b>	<b><u>Death Rate</u></b>
American Indian or Alaska Native	8.2
Black or African American	4.4
Hispanic or Latino	3.0
White	1.9
Asian	1.4

25. SCHMITT, *supra* note 14.

26. *Id.*

27. Shill, *supra* note 13, at 200.

28. *Id.*

29. *Id.*

30. SCHMITT, *supra* note 14.

31. CTRS. FOR DISEASE CONTROL AND PREVENTION, *QuickStats: Age-Adjusted Death Rates for Pedestrians Involved in a Collision with a Motor Vehicle, by Race and Hispanic Origin – National Vital Statistics System, United States, 2021*, 72 MORBIDITY & MORTALITY WKLY. REP. 670, 670 (2023). This graph was created by the author using the statistics provided in the cited article.

The CDC report on pedestrian collision death rates by race and Hispanic origin for 2021 paints a clear picture: marginalized groups, especially American Indian, Alaska Native, and Black or African Americans, are disproportionately affected by these tragedies. In 2021, the pedestrian death rate for American Indian or Alaska Native Persons was more than four times higher than that for White persons, and the rate for Black or African American persons was more than twice as high.<sup>32</sup> These disparities reflect the systemic barriers and risks that minorities face when accessing safe pedestrian and cyclist infrastructure.<sup>33</sup>

The nationwide crisis surrounding pedestrian and cyclist safety demands immediate attention and comprehensive solutions. The surge in injuries and fatalities, as highlighted by NHTSA, transcends state borders and constitutes a fast-growing, frequently overlooked epidemic, as aptly described by Angie Schmitt. The crisis, when viewed through the lens of discrimination against marginalized groups, emphasizes the need for equitable and sustainable solutions. Gregory H. Shill's comparison with peer nations emphasizes the failure of the U.S. to align with global trends. As the Note's focus shifts to Indiana, the urgency for localized and targeted interventions becomes even more evident. The state-specific examination acts as a detailed reflection of the broader problem, underscoring the critical need for wide-ranging policy reforms.

#### *B. Localizing the Issue: The Elevated Pedestrian Safety Crisis in Indiana*

In Central Indiana, comprising the eight-county region of Marion, Hamilton, Hancock, Shelby, Johnson, Morgan, Hendricks, and Boone, the Indianapolis Metropolitan Planning Organization witnessed a staggering 30% surge in fatal crashes from 2019 to 2020, far outpacing the national average of 6.8%.<sup>34</sup> This trend is especially strong in Marion County, the most populous county in the state and home to Indianapolis. As *Figure 2* shows, Marion County had the highest pedestrian fatality rate per 100,000 in the state and the nation every year since 2018.

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32. *Id.*

33. SCHMITT, *supra* note 14.

34. Kayla Dwyer, *In Indianapolis Fatal Pedestrian Crashes, 2022 Has Outpaced 2021. What's Being Done?*, INDY STAR, <https://www.indystar.com/story/news/local/transportation/2022/08/10/2022-may-be-deadliest-year-yet-for-pedestrians-on-indianapolis-streets/65393508007/> [https://perma.cc/W5P3-5NC9] (last updated Aug. 10, 2022, 9:21 AM).

*Figure 2: Pedestrian Fatality Rate per 100,000 for Marion County, Indiana, and the United States, 2018-2020*<sup>35</sup>

Year	Marion County	Indiana	United States
2016	1.90	1.31	1.31
2017	2.21	1.80	2.27
2018	2.81	1.96	2.35
2019	2.70	1.62	2.34
2020	4.30	1.72	2.38
2021	3.60	2.06	2.71

Data in chart represents crude fatality rates per 100,000 population sourced from the Centers for Disease Control and Prevention. Fatality rates are based on reported fatal incidents of pedestrians involved in collisions with motor vehicles.

In 2021, the Marion County's rate of 3.6 pedestrian fatalities per 100,000 individuals was nearly double the state's rate of 2.06 and 1.3 times higher than the nation's rate of 2.71.<sup>36</sup> 2020 was even worse, with Marion County experiencing pedestrian fatalities at a rate 2.5 times the State of Indiana and 1.8 times higher than the nation.<sup>37</sup> Furthermore, IndyStar reporter Kayla Dwyer found that "nearly twice as many severe crashes occur in . . . Census areas where the population rate of historically disadvantaged populations exceeds the regional rate, than in other parts of Central Indiana."<sup>38</sup> Dwyer used police reports and Census data to examine the spatial disparity and the impact of pedestrian crashes on historically disadvantaged populations in Indianapolis. Subsequently, it comes as no surprise that Indianapolis's pedestrian safety ranking is notably low among major U.S. cities—a fact corroborated by a Kuru Footwear study which ranked Indianapolis the tenth most dangerous city for pedestrians in the United States.<sup>39</sup> This study considered Indianapolis's walkability score and the number of pedestrian fatalities across the state in 2024.<sup>40</sup> Across the entire state, preliminary data for 2022 shows a 20.10%

35. WEB-BASED INJ. STATISTICS QUERY & REP. SYS. (WISQARS), *Explore Fatal Injury Data Visualization*, CTNS. FOR DISEASE CONTROL & PREVENTION, <https://wisqars.cdc.gov/explore/?o=MORT&y1=2021&y2=2021&g=00&t=0&i=0&m=20810&d=&s=0&r=0&me=0&ry=0&yp=65&e=0&a=ALL&a1=0&a2=199&g1=0&g2=199> [https://perma.cc/E5JQ-72RB] (last visited Nov. 12, 2024) (The author used the fatal injury explore tool to sort by year, state, country, and cause of death. This tool excludes pedacyclists). This graph was created by the author using statistics provided in the cited source.

36. *Id.*

37. *Id.*

38. Dwyer, *supra* note 34.

39. *How Safe Are U.S. Cities for Pedestrians? See If Your City Made The List In Our 2024 Rankings*, KURU FOOTWEAR BLOG, <https://www.kurufootwear.com/blogs/articles/safest-and-most-dangerous-cities-for-pedestrians> [https://perma.cc/72QT-JEFG] (last updated Sept. 16, 2024).

40. *Id.*

increase in pedestrian fatalities when compared to 2021.<sup>41</sup> Compared to other states, Indiana faced the 13<sup>th</sup> largest pedestrian fatality increase in the U.S.<sup>42</sup>

While the total number of incidents may seem relatively small because “accidents involving a pedestrian account for 1% of accidents in Indianapolis, they make up 20% of all fatalities involving a vehicle.”<sup>43</sup> Further, published numbers are often incomplete and fail to fully represent the breadth of the issue. Police track and record incidents only where a police report is filed, which does not happen with every accident.<sup>44</sup> Local pedestrian safety advocates created the Indianapolis Pedestrian and Bicyclist Safety Crisis Dashboard to expose the reality of the problem by tracking and recording all reported crashes involving pedestrians and bicyclists that have been called into emergency services.<sup>45</sup> Throughout 2023, the organization recorded 684 incidents, defined as “a crash between a person driving a vehicle and a person walking or biking.”<sup>46</sup> Of the 684 total incidents, forty-seven were fatal, while the remaining 637 were non-fatal.<sup>47</sup> In addition, “[t]otal fatalities increased from forty-five in 2022 to forty-seven in 2023. This ties 2020 for the year with the most total pedestrian and bicyclist fatalities in Indianapolis.”<sup>48</sup>

The escalating pedestrian and cyclist safety crisis in Central Indiana, particularly Marion County, requires immediate attention. The surge in fatal crashes, surpassing national averages, illuminates the urgency of this issue. Disparities in impact, notably affecting minority populations, emphasize the need for change. As the crisis’s background and causes are explored in the next section, the call to action from the Indy Pedestrian and Bicyclist Safety Crisis is clear: “While our elected leaders continue to downplay the severity of pedestrian and bicyclist safety issues in Indianapolis, the data does not lie: this crisis is continuing to worsen. It is beyond time our leaders step up and treat this crisis with the urgency it deserves.”<sup>49</sup>

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41. Kara Macek, *Pedestrian Traffic Fatalities by State: January – June 2022 Preliminary Data*, GOVERNORS HIGHWAY SAFETY ASS’N 1, 5 (2023), <https://www.ghsa.org/sites/default/files/2023-02/GHSA%20Pedestrian%20Traffic%20Fatalities%20by%20State%2C%20January-June%202022%20Preliminary%20Data.pdf> [https://perma.cc/PWW4-SCTD].

42. *Id.*

43. *Connectivity Fund*, INDYGO [https://perma.cc/TT53-NVHQ] (last visited Oct. 11, 2023).

44. Meredith Hackler, *Indianapolis Pedestrians, Organizations Raise Awareness of Vehicles Driving on the Monon Trail*, WRTV INDIANAPOLIS, <https://www.wrtv.com/news/public-safety/indianapolis-pedestrians-organizations-raise-awareness-of-vehicles-driving-on-the-monon-trail> [https://perma.cc/MT9D-DUTE] (last updated July 16, 2023, 11:18 PM).

45. *See generally 2023 Indianapolis Pedestrian and Bicyclist Safety Analysis*, INDY PEDESTRIAN/BICYCLIST SAFETY CRISIS (Jan. 30, 2024), [https://indypedcrisis.info/assets/downloads/2023\\_Indianapolis\\_Pedestrian\\_and\\_Bicyclist\\_Safety\\_Analysis.pdf](https://indypedcrisis.info/assets/downloads/2023_Indianapolis_Pedestrian_and_Bicyclist_Safety_Analysis.pdf) [https://perma.cc/HVT2-SNUM].

46. *Id.* at 2.

47. *Id.*

48. *Id.* at 6.

49. *Id.* at 7.

## II. BACKGROUND – CAUSES OF THE CRISIS IN CENTRAL INDIANA

### *A. Increase in Walking, Cycling, and Public Transportation*

The surge in walking and cycling in the US reflects a positive shift towards sustainable transportation. Between 2019 and 2022, the average daily bike trips in the nation rose by 37%, with a substantial spike occurring in 2020.<sup>50</sup> Similarly, the Indianapolis metro area witnessed a 37.5% increase in cycling trips during the same period.<sup>51</sup> These trends indicate a growing demand and preference for active modes of transportation that are healthier, cheaper, and more environmentally friendly than driving.<sup>52</sup>

However, walking and cycling are not only personal choices; they are also influenced by the availability and quality of public transit. For many Indianapolis residents, especially those who do not own a car, public transit is a vital lifeline that connects them to jobs, education, health care, and other essential services.<sup>53</sup> Approximately 30,000 households in Marion County do not own a car, which is nearly three times as many as all the counties bordering it combined.<sup>54</sup> For these households, walking or cycling to and from IndyGo transit stops is often the only option to access their destinations.<sup>55</sup>

Recognizing the importance and potential of public transit, Marion County voters approved a transit tax referendum in 2016, authorizing a 0.25% income tax hike to fund IndyGo's transit plan.<sup>56</sup> This plan aimed to enhance the frequency, reliability, and coverage of the transit system through enhanced service which includes the implementation of three Bus Rapid Transit (BRT) lines: the Red Line, the Purple Line, and the Blue Line.<sup>57</sup> BRT is a high-capacity, high-frequency mode of transit utilizing dedicated lanes, level boarding, off-

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50. Casey Lewis, Erin O'Higgins & Emily Adler, *Bike Boom or Bust? Ranking U.S. Metros & States by Cycling Activity*, STREETLIGHT 5 (2023) <https://learn.streetlightdata.com/ranking-us-bicycle-count-trends> [<https://perma.cc/A36G-J9ZY>].

51. Alex Fitzpatrick & Alice Feng, *America's Bicycling Hot Spots, Mapped*, AXIOS (Oct. 12, 2023), [https://www.axios.com/2023/10/12/biking-cities-bike-friendly-bicycle-us-map?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=newsletter\\_axioswhatsnext&stream=science](https://www.axios.com/2023/10/12/biking-cities-bike-friendly-bicycle-us-map?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axioswhatsnext&stream=science) [<https://perma.cc/Y23M-LGSG>].

52. Lewis, O'Higgins & Adler, *supra* note 50.

53. Sydney Dauphinais, *Commuting Problems: Central Indiana's Lack of Public Transportation Limits Access To Good Jobs*, WYFI INDIANAPOLIS (June 8, 2022), <https://www.wfyi.org/news/articles/commuting-problems-central-indianas-lack-of-public-transportation-limits-access-to-good-jobs#:~:text=Not%20everyone%20in%20Central%20Indiana,households%20do%20not%20have%20vehicles> [<https://perma.cc/R7HJ-RNRZ>].

54. *Id.*

55. See generally *Mission and Values*, INDYGO <https://www.indygo.net/about-indygo/mission-and-values/> [<https://perma.cc/D5GE-YRFV>] (last visited Jan. 28, 2024).

56. John Tuohy, *Supporters Declare Victory For Mass Transit Tax Hike In Marion County*, INDYSTAR, <https://www.indystar.com/story/news/politics/2016/11/08/marion-county-voters-consider-tax-hike-mass-transit/93284726/> [<https://perma.cc/GJK3-A84K>] (last updated Nov. 9, 2016, 3:20 PM).

57. *Id.*

board fare collection, and traffic signal priority to provide faster, safer, and more convenient service than traditional buses.<sup>58</sup>

The Red Line launched in 2019 and has been a success story for IndyGo, evident from the 12.9% increase in ridership from 2021 to 2022, totaling over 1.6 million trips.<sup>59</sup> BRT encourages more people to utilize public transit, bringing with it a rise in individuals walking and cycling to and from transit stations, as “transit riders start and end every trip as pedestrians.”<sup>60</sup> The second BRT line, the Purple Line, which is expected to launch in late 2024, will bring essential infrastructure improvements, such as sidewalks, bike lanes, drainage, and curbs, to the neighborhoods along the route.<sup>61</sup> The third and final BRT line, the Blue Line, which is planned to launch in 2027, will run east-west along Washington Street from Cumberland to the Indianapolis International Airport.<sup>62</sup> The Blue Line plans also include a multitude of benefits to pedestrians and cyclists, in the form of approximately 359 new or replaced ADA curb ramps, 9.7 miles of new or replaced sidewalks, and 2.3 miles of new or refreshed crosswalks.<sup>63</sup> Unfortunately, major projects put on by the city often experience challenges and battles with the state of Indiana to implement. For example, a bill in the Indiana State Legislature, authored by State Senator Aaron Freeman (R-Indianapolis), threatened to prohibit public transportation projects from utilizing dedicated lanes, a crucial element for planned federal funding for the Blue Line.<sup>64</sup>

Walking, cycling, and public transit have gained popularity in Central Indiana, but the hesitation to respond to this shift has left many vulnerable. As more people walk, cycle, or give up cars due to rising costs or personal choice, they find themselves without adequate protections. Projects that would improve safety face criticism because losing a lane of traffic is seen as too high a price to pay. Episodes like Senator Aaron Freeman’s attempt to block a city-approved project due to the removal of car lanes on one of the city’s most dangerous streets illustrate the persistence of car-centric culture.

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58. *Bus Rapid Transit*, FED. TRANSIT ADMIN., <https://www.transit.dot.gov/research-innovation/bus-rapid-transit> [<https://perma.cc/NDC7-58PU>] (last updated Aug. 26, 2024).

59. INDYGO, JANUARY BOARD OF DIRECTORS & BOARD OF FINANCE MEETING BOOK 169 (2023).

60. *Purple Line*, INDYGO, <https://www.indygo.net/purple-line/> [<https://perma.cc/W68Z-DZ53>] (last visited Feb. 3, 2024).

61. *Id.*

62. *Blue Line*, INDYGO, <https://www.indygo.net/blue-line/> [<https://perma.cc/P4P8-USZ8>] (last visited Feb. 3, 2024).

63. *Id.*

64. S.B. 52, 124th Gen. Assemb., 2d Reg. Sess. (Ind. 2024).

*B. Increase in Vehicle Miles Traveled (VMT)*

<i>Figure 3: INDIANAPOLIS DRIVER DATA</i> <sup>65</sup>		
Year	Vehicle Miles Traveled (All Vehicles)	% Change
2016	6,612,675	0%
2017	6,716,260	2%
2018	6,666,493	-1%
2019	6,790,615	2%
2020	6,113,919	-10%
2021	6,644,752	9%
2022	7,938,444	19%
Chart displays total vehicle miles traveled (VMT) for all cars driving on Indianapolis roads and the percentage change in VMT year over year from 2016-2022.		

Vehicle miles traveled (VMT) serves as a key metric for assessing traffic safety, providing insight into the exposure to potential crashes. A single car driving one mile down a road constitutes one vehicle mile traveled.<sup>66</sup> *Figure 3* shows the VMT for all vehicles in Indianapolis from 2016 to 2022, along with the percentage change from the previous year. Notably, a contributing factor to the ongoing crisis is the sharp post-covid increase in VMT in Indianapolis. In 2022 alone, vehicles within the city covered a record-breaking 7,938,444 miles, reflecting a substantial 19% increase from 2021.<sup>67</sup> This surge in driving heightens the risk for pedestrians and cyclists, who face increased vulnerability to serious injuries and fatalities in the event of a collision.

However, VMT alone does not offer a comprehensive explanation for the uptick in collisions. For instance, in 2020 with a 10% reduction in VMT, there was a paradoxical thirty percent increase in fatal crashes.<sup>68</sup> This highlights the importance of considering that the culmination of multiple factors such as driver behavior, increase in walking and cycling, access to public transit, infrastructure, and enforcement, all play a crucial role in determining the level of safety on the streets.

65. *Mileage and Daily Vehicle Miles Traveled (DVMT) by Year, County, City, and Functional Classification*, IND. DEP'T OF TRANSP., <https://www.in.gov/indot/files/HistoricINVMT-ByCityandFunctionalClass-2015-2022-20230807.xlsx> [https://perma.cc/GWK3-8ESN] (last visited Nov. 12, 2024). This graph was created by the author using statistics found in the cited source..

66. *Id.*

67. *Id.*

68. Dwyer, *supra* note 34.

*C. Driver Behavior Trends in the Post-Pandemic Era*

Since 2020, distracted driving, aggressive driving, drowsy driving, and impaired driving have all been on the rise.<sup>69</sup> According to the American Automobile Association Traffic Safety Index, “driver’s risk-taking behaviors were associated with their perceived danger and social disapproval of the behavior.”<sup>70</sup> A noteworthy discovery from the index indicates that half of respondents acknowledged exceeding the speed limit by 15 mph in the past thirty days.<sup>71</sup> Based on this self-admission of frequent speeding, it comes as no surprise that only 45% of respondents supported a policy employing cameras to automatically ticket drivers exceeding the speed limit by 10 mph in residential areas.<sup>72</sup> This reluctance shows that people are comfortable with speeding because they rarely face consequences. Speed cameras challenge that comfort, threatening their ability to break the law without repercussions.

The pandemic played a significant role in exacerbating bad driving behavior. During lockdowns, the period of empty roadways inadvertently fostered a culture of not just speeding but “extreme speeding,” defined as exceeding the speed limit by more than 20 mph.<sup>73</sup> This was compounded by police reluctance to engage with drivers for fear of infection, creating a sense of impunity among drivers surrounding breaking traffic laws.<sup>74</sup> Moreover, studies reveal a surge in alcohol consumption during the pandemic,<sup>75</sup> contributing to a 5% increase in vehicular deaths related to both speeding and alcohol in 2022.<sup>76</sup> Pre-pandemic factors, notably distracted driving and cellphone use, continue to persist which further contributes to the poor driving behaviors.<sup>77</sup>

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69. AAA FOUND. FOR TRAFFIC SAFETY, 2021 TRAFFIC SAFETY CULTURE INDEX 6 (2022).

70. *Id.* at 7.

71. *Id.* at 16.

72. *Id.* at 18.

73. Alvin Powell, *Drivers Who are Frustrated, Distracted, Mad — and Somewhat Rusty*, HARV. GAZ. (July 6, 2022), <https://news.harvard.edu/gazette/story/2022/07/drivers-who-are-frustrated-distracted-and-rusty/> [<https://perma.cc/N2KT-EWQB>].

74. *Id.*

75. MEGAN E. SLATER & HILLEL R. ALPERT, SURVEILLANCE REPORT #120 APPARENT PER CAPITA ALCOHOL CONSUMPTION: NATIONAL, STATE, AND REGIONAL TRENDS, 1977–2021 1 (2023) (report sponsored by the National Institute on Alcohol Abuse and Alcoholism).

76. Powell, *supra* note 73.

77. *Id.*

<i>Figure 4: Pedestrian Severe Injuries Based on Vehicle Speed</i> <sup>78</sup>					
Vehicle Impact Speed (mph)	16	23	31	39	46
Average Risk of Severe Injury for Pedestrians Struck	10%	25%	50%	75%	90%

As speeding becomes ingrained in driver behavior, it is crucial to examine the pivotal role vehicle speed has in a pedestrian or cyclist collision. *Figure 4* illustrates the severity at varying impact speeds, with a 50% risk of severe injury at 31 mph—a common speed on city streets. If a driver exceeds the speed limit by 9 mph, pedestrians face a 75% risk of severe injury.

<i>Figure 5: Pedestrian Deaths Based on Vehicle Speed</i> <sup>79</sup>					
Vehicle Impact Speed (mph)	23	32	42	50	58
Average Risk of Death for Pedestrians Struck by a Vehicle	10%	25%	50%	75%	90%

*Figure 5* shifts the focus to the stark reality of pedestrian deaths based on vehicle speed. At 32 mph, pedestrians face a 25% risk of death, escalating to a 50% risk if a driver exceeds the speed limit by 10 mph. These statistics underscore the unforgiving nature of increased vehicle speeds, especially at a time when half of drivers admit to exceeding speed limits by 15 mph regularly.<sup>80</sup> These rates, presented as averages, can vary based on the victim's age. For instance, “the average risk of severe injury or death for a 70-year-old pedestrian struck at 25 mph aligns with the risk for a 30-year-old pedestrian struck at 35 mph”<sup>81</sup>—highlighting the heightened vulnerability of the elderly in these situations. What seems like a minor increase in speed to drivers can mean the difference between life and death for pedestrians, especially for the most vulnerable. In their pursuit of saving a few seconds, drivers are casting aside the safety and lives of those not in a car.

In response to the surge in reckless driving behaviors and fatal vehicle collisions, the Indianapolis City-County Council created a Fatal Crash Review

78. BRIAN C. TEFFT, *IMPACT SPEED AND A PEDESTRIAN’S RISK OF SEVERE INJURY OR DEATH* 11 (2011) (report sponsored by the AAA Foundation for Traffic Safety). This graph was created by the author using statistics provided in the cited source.

79. *Id.* This graph was created by the author using the statistics provided in the cited article.

80. AAA FOUND. FOR TRAFFIC SAFETY, *supra* note 69, at 6.

81. TEFFT, *supra* note 78, at 9.

Board in 2022.<sup>82</sup> However, according to one of the board appointees, most fatal crashes involving vehicles in Indianapolis are caused by drivers breaking traffic laws.<sup>83</sup> Minutes from a meeting of the board highlight the ongoing problem, with the board attributing numerous fatalities to "reckless driving" without making actionable recommendations or addressing preventive measures.<sup>84</sup> This highlights the pressing need for stronger and more consistent enforcement of traffic laws to combat reckless driving.

*D. Policy-Driven Challenges in Indianapolis: Impact on Traffic Enforcement and Street Infrastructure*

*1. Critical Gaps in Indianapolis Traffic Enforcement*

A significant contributor to the crisis in Central Indiana is the lack of traffic enforcement by the Indiana Metropolitan Police Department (IMPD), particularly post-pandemic. IMPD's Chief of Police Chris Bailey has acknowledged a notable decline in the robustness of IMPD's traffic unit, which now predominantly focuses on managing sporting events and conventions.<sup>85</sup> This shift translates to fewer officers patrolling the streets and enforcing traffic laws, including speeding, running red lights, and driving under the influence. Between 2017 and 2021, Indianapolis had a decrease of twenty sworn officers in the IMPD, despite the city's population growing by 55,818 over the same period.<sup>86</sup> In 2021, the total number of sworn officers fell to eighty-seven officers below the allocated force strength of 1,743.<sup>87</sup> With a change in focus and a declining force, it is unsurprising that drivers feel emboldened to violate traffic laws.

A key indicator of the level of traffic enforcement in Indianapolis is reflected in the number of traffic tickets issued by IMPD. Unfortunately, this critical data is not readily available to the public, and it must be obtained by submitting a lengthy records request or aggregating the tickets available in yearly reports from all six of the IMPD districts covering Indianapolis. In 2017,

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82. Eric Graves, *Fatal Crash Review Board Trying to Make Indy Safer as Crash Deaths Grow*, FOX 59, <https://fox59.com/news/fatal-crash-review-board-trying-to-make-indy-safer-as-crash-deaths-grow/> [<https://perma.cc/T8ML-DAFV>] (last updated Dec. 6, 2022, 10:46 PM).

83. *Id.*

84. See generally INDIANAPOLIS FATAL CRASH REVIEW COMM'N, MEETING MINUTES AND REPORT (2022) (minute meeting report from the August 24, 2022 and November 15, 2022 meetings of the Commission).

85. Vic Ryckaert, *Traffic Deaths Increasing Statewide as Fewer Officers Ticket Drivers in Indianapolis*, WRTV INDIANAPOLIS (Aug. 17, 2023, 4:45 PM), <https://www.wrtv.com/news/local-news/crime/traffic-deaths-increasing-statewide-as-fewer-officers-ticket-drivers-in-indianapolis> [<https://perma.cc/799S-AGLT>].

86. See INDIANAPOLIS METRO. POLICE DEP'T, 2017 ANNUAL REPORT 44 (2017) [hereinafter 2017 REPORT] ; INDIANAPOLIS METRO. POLICE DEP'T, 2021 ANNUAL REPORT 5–6 (2021) [hereinafter 2021 REPORT].

87. 2021 REPORT, *supra* note 86, at 6.

IMPD issued 31,602 total “traffic tickets”.<sup>88</sup> The annual report did not specify the type of tickets issued. While subsequent yearly breakdowns are unavailable, two reports from 2022 show the total number of combined traffic citations and warnings for the majority of 2022, totaling 29,377.<sup>89</sup> Even without the breakdown of citations versus warnings in the 2022 total, this source of data suggests a decline in ticketing activity compared to 2017.

<i>Figure 6: IMPD Provided Ticket Totals<sup>90</sup></i>			
Total Traffic Citations Issued		Total No-Turn on Red Violations Issued	
<b>Year</b>	<b>Tickets</b>	<b>Year</b>	<b>Tickets</b>
2018	34069	2018	1225
2019	38980	2019	1047
2020	30259	2020	1199
2021	29018	2021	203
2022	37519	2022	1106
2023	33873	2023	376
Note: The term “Traffic Citation” refers to a single instance of issuing a ticket. Each citation is counted individually, and this figure does not encompass multiple violations that could be associated with a single citation.			

Further examination through a public records request unveils more specific data on citations from 2018 to 2023, including those for no-turn-on-red violations (NTOR), as depicted in *Figure 6*. On June 5, 2023, the Indianapolis City-County Council passed a General Ordinance, establishing “Pedestrian Safety Priority Areas” and NTOR restrictions in intersections to improve pedestrian safety.<sup>91</sup> The decrease in issued violations in 2023, despite nearly 100

88. 2017 REPORT, *supra* note 86, at 45–46.

89. See INDIANAPOLIS METRO. POLICE DEP’T, TRAFFIC VIOLATOR RACE AND SEX BY OFFICER YEARS OF SERVICE AND RACE AND SEX JANUARY 1, 2022 - JUNE 30, 2022 1–2 (2022); *see also* INDIANAPOLIS METRO. POLICE DEP’T, TRAFFIC VIOLATOR RACE AND SEX BY OFFICER YEARS OF SERVICE AND RACE AND SEX JULY 1, 2022 - SEPTEMBER 30, 2022 1–2 (2022).

90. See *generally* Indianapolis Metro. Police Dep’t, Request for Traffic Citation Data (2018–2023) (unpublished data) (on file with the author). This graph was created by the author using statistics from the cited source.

91. INDIANAPOLIS, IND., CITY-COUNTY COUNCIL, GEN. ORDINANCE NO. 27 (2023).

new NTOR intersections being implemented across the city,<sup>92</sup> points to a major enforcement deficit. This is especially concerning given the city's acknowledgment that 57% of downtown pedestrian crashes stem from vehicles failing to yield to pedestrians crossing the road.<sup>93</sup>

Although city leaders initially expressed reservations about adopting the ordinance without a concrete plan for its enforcement, they reassured constituents that there was federal funding allocated to IMPD specifically for policing NTOR infractions.<sup>94</sup> Despite these assurances, the subsequent decline in enforcement suggests that these commitments were never truly fulfilled.

This cycle reveals a systemic lack of accountability. Drivers feel emboldened to break the law without consequences, while municipal actors offer empty solutions to rising pedestrian deaths. The City creates task forces that identify reckless driving as a cause of pedestrian deaths and passes *de jure* ordinances to enforce driving laws in response, yet, when those laws are not enforced and a pedestrian is subsequently killed, city officials can maintain, "[w]e passed a law to help," and police respond, "[w]e need more resources," which leaves all parties unaccountable. Ultimately, drivers continue to violate traffic laws unchecked, and every party involved avoids responsibility—except the pedestrian, who pays with their life.

## 2. *The State of Sidewalks in Indianapolis*

Indianapolis has a substantial shortage of sidewalks, a challenge amplified by the extensive road network the city must maintain in Marion County. In addition, because of Indiana's income tax system, which directs taxes to residents' counties rather than where they work,<sup>95</sup> many commuters utilize city infrastructure without contributing to its maintenance. Constrained by limited resources and competing priorities, sidewalks in the city have endured decades of neglect.<sup>96</sup> This has resulted in streets either lacking sidewalks altogether or experiencing deterioration and disrepair.<sup>97</sup> This is not a new problem. In fact, most of the road and sidewalk issues seen today originated in the 1970s when the city of Indianapolis and Marion County consolidated.<sup>98</sup> Prior to the city-

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92. Jill Sheridan, *No Turn On Red Signs Going Up in Indianapolis*, WYFI INDIANAPOLIS (Aug. 10, 2023), <https://www.wfyi.org/news/articles/no-turn-on-red-signs-going-up-in-indianapolis> [https://perma.cc/JA8E-FTS4].

93. Matt Christy, *Republican State Senator Moves to Void Indy's No-Turn-On-Red Ordinance*, FOX 59, <https://fox59.com/indianapolitics/republican-state-senator-moves-to-void-indys-no-turn-on-red-ordinance/> [https://perma.cc/N4KT-YU3M] (last updated Jan. 4, 2024, 2:40 PM).

94. E-Mail from Indianapolis City-Councilor to Constituent (on file with author).

95. Brenna Cooper, *Indianapolis Infrastructure Impacts Pedestrian Safety*, INDIANAPOLIS RECORDER (Oct. 7, 2021), <https://indianapolisrecorder.com/indianapolis-infrastructure-impacts-pedestrian-safety/> [https://perma.cc/Z65V-9F6W].

96. *Id.*

97. *Id.*

98. *Id.*

county merger, every Indianapolis Street had a sidewalk while the County had no set standards.<sup>99</sup> Post-merger economic woes led to the city halting new sidewalk construction altogether during the 1990s.<sup>100</sup> This compounded the challenges faced by pedestrians, particularly those reliant on walking as their primary mode of transportation.<sup>101</sup>

Despite boasting a vast road network spanning 3,400 miles (or 8,400 miles if each lane is counted), Indianapolis has a serious issue—more than half of these roads, primarily residential streets, are without sidewalks.<sup>102</sup> Nearly 2,000 miles of roads in the city have no sidewalks at all, rendering them hazardous and inconvenient for pedestrians.<sup>103</sup>

The financial burden of installing sidewalks on all the roads in Indianapolis is far beyond the city's budget and capacity.<sup>104</sup> In 2022, the city contracted the infrastructure firm HNTB Corporation to conduct a study examining the cost of fixing all of the city's transportation-related infrastructure, including sidewalks, culverts, traffic signals, and bridges.<sup>105</sup> The study estimated that it would take \$7.2 billion to build missing sidewalks, with an additional \$92 million needed to rectify the poor condition of existing sidewalks.<sup>106</sup> For context, the city's proposed total budget for 2024 slightly exceeds \$1.5 billion, with only a fraction of that (\$325.7 million) allocated for transportation infrastructure.<sup>107</sup> Furthermore, a mere \$6.3 million is expected to go towards pedestrian safety improvements.<sup>108</sup> This fiscal reality means that city leaders must make tough choices and prioritize other projects and solutions over addressing the sidewalk deficiency.

While it is easy to attribute Indianapolis's sidewalk shortage solely to financial constraints, a deeper investigation reveals the issue's roots in historical and systemic discrimination. These roots are exemplified in a July 2022 incident reviewed by the Indianapolis Fatal Crash Review Commission, where a pedestrian fatality on Dr. MLK Jr. Drive highlighted the ongoing consequences of interstate highways on local connectivity.<sup>109</sup> Such highways, legacies of discriminatory urban planning, have fragmented communities and led to

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99. *Id.*

100. *Id.*

101. INDYGO, *supra* note 43.

102. Kayla Dwyer, *Indianapolis Should Spend 5 Times What it Currently Does on Infrastructure, Study Says*, INDYSTAR (Mar. 16, 2022, 5:01 AM), <https://www.indystar.com/story/news/local/transportation/2022/03/16/indianapolis-infrastructure-billion-dollar-gap-roads-bridges-sidewalks/7006898001/> [<https://perma.cc/EQX4-33EG>].

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. CITY OF INDIANAPOLIS, 2024 PROPOSED BUDGET BOOK 7–8 (2023).

108. *Id.* at 8.

109. INDIANAPOLIS FATAL CRASH REVIEW COMM'N, *supra* note 84.

underinvestment in pedestrian infrastructure.<sup>110</sup>

Andrew W. Ramsey, a local civil rights activist and educator, wrote about this issue in the *Indianapolis Recorder* in 1970, deconstructing the adverse impacts of these "concrete ribbons."<sup>111</sup> His critique highlighted how interstate highways, particularly in Indianapolis, carved "island towns" within the city, cutting through neighborhoods and severing essential connections to city services.<sup>112</sup> This urban dissection left a scar on the community, leading to isolation, heightened insurance rates, and plummeting property values.<sup>113</sup>

Figure 7: Map of the 2022 Fatal Pedestrian Collision Site<sup>114</sup>



110. *Fact Sheet: Equity in the Bipartisan Infrastructure Law*, U.S. DEP'T OF TRANSP., <https://www.transportation.gov/bipartisan-infrastructure-law/fact-sheet-equity-bipartisan-infrastructure-law> [<https://perma.cc/M2SQ-8ZPX>] (last updated Jul. 5, 2022).

111. Andrew W. Ramsey, *Denizens of Island Black Ghettos Get the Official 'If'*, *INDIANAPOLIS RECORDER*, June 27, 1970, at 9.

112. *Id.*

113. *Id.*

114. *INDIANAPOLIS FATAL CRASH REVIEW COMM'N*, *supra* note 84.

Figure 7 showcases an example of the aftermath of such planning in the area surrounding the fatal collision on Dr. MLK Jr. Drive. This neighborhood, once a hub of local activity and connectivity, has been disrupted since the early 1970s.<sup>115</sup> During their daily commutes, pedestrians are met with perilous conditions as they navigate unmarked crossings at 33rd or 32nd Street to find continuity in their sidewalks.<sup>116</sup>

The allocation of infrastructure funding has historically favored commuters and car owners, often at the expense of pedestrian safety and mobility in historically disadvantaged communities.<sup>117</sup> With over 30,000 Marion County households living without a vehicle and relying on these inadequate sidewalks,<sup>118</sup> the recent pedestrian fatality on Dr. MLK Jr. Drive serves as an important reminder of the need to address long-standing inequities resulting from past infrastructural decisions.

### 3. Lighting Infrastructure Inadequacies in Indianapolis

Transitioning from the pressing issue of sidewalks, the spotlight now shifts to another critical aspect of pedestrian safety—lighting infrastructure inadequacies in Indianapolis. While strides have been made through initiatives like "Operation Night Light," Indianapolis is still far behind other comparably sized cities in terms of street lighting.<sup>119</sup> Exploring the deficiencies in lighting infrastructure reveals an additional layer to the challenges pedestrians face.

In 1980, Indianapolis city leaders, when faced with a staggering \$2.9 million annual electric bill, instituted a moratorium on new street light installations.<sup>120</sup> For the next thirty-five years, the city remained in the dark, until Mayor Joe Hogsett initiated "Operation Night Light" in 2015.<sup>121</sup> The initiative aimed to install up to 4,000 new streetlights in Indianapolis.<sup>122</sup> Despite these efforts, Indianapolis still trails behind comparable cities in terms of street lighting. By 2025, the initiative is expected to increase the total number of lights in the city to 33,000,<sup>123</sup> which will still be significantly lower than other comparably sized cities such as Minneapolis (48,000) and Milwaukee (77,000), according to an

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115. *Id.*

116. *Id.*

117. U.S. DEP'T OF TRANSP., *supra* note 111.

118. Dauphinais, *supra* note 53.

119. *Operation Night Light*, INDY.GOV, <https://www.indy.gov/activity/operation-nightlight> [https://perma.cc/A979-BBGC] (last visited Oct. 12, 2023).

120. John Tuohy & Tony Cook, *Left in the Dark: Indy's Deadly Streets*, INDYSTAR, <https://www.indystar.com/story/news/2016/09/18/left-dark-indys-deadly-streets/88838610/> [https://perma.cc/LR9T-CMJX] (last updated Sept. 19, 2016, 7:44 AM).

121. INDY.GOV, *supra* note 119.

122. *Id.*

123. Amelia Pak-Harvey, *Indianapolis has installed hundreds of new streetlights*, INDYSTAR, <https://www.indystar.com/story/news/local/marion-county/2020/03/18/indianapolis-has-installed-hundreds-streetlights/4798738002/> [https://perma.cc/ZHZ6-BWJ8] (last updated Mar. 21, 2020, 8:38 PM).

IndyStar analysis.<sup>124</sup>

<i>Figure 8:</i> % of Indianapolis Pedestrian Crashes in the Dark <sup>125</sup>	
2016	100%
2017	83%
2018	91%
2019	94%
2020	84%
2021	89%

*Figure 8* sheds light on the inadequate street lighting in Indianapolis, revealing that the percentage of pedestrian crashes in the dark remained consistently high from 2016 to 2021, ranging from 83% to 100%. This data suggests that the ongoing addition of only 4,000 streetlights through Operation Night Light has not markedly improved pedestrian safety. Furthermore, the data indicates a worsening situation over time. Between 2010 and 2016, the average percentage of incidents occurring in dark conditions was 78%. However, from 2016 to 2021, the average rose to 90%, underscoring the urgent need for increased and enhanced lighting in the city reflective of its growing population and size.<sup>126</sup> The 10% drop between 2019 and 2020 is most likely attributable to fewer cars on the road during COVID-19 lockdowns, resulting in fewer pedestrian deaths at night. The shortcomings in street lighting in Indianapolis not only underscore immediate safety concerns, but also pave the way for a deeper exploration of policy-driven challenges that hinder progress in safeguarding pedestrians and cyclists.

### *E. Policy-Driven Challenges at the State Level in Indiana*

#### *1. Inequitable Road Funding Formulas*

At the state level, a central challenge stems from the imbalanced distribution of road funding. Gas tax revenues, intended for road maintenance and improvements, are allocated based on the number of center lane miles without considering road width, usage, or an urban-rural classification.<sup>127</sup> Consider a

124. Tuohy & Cook, *supra* note 120.

125. HEALTH BY DESIGN, MARION COUNTY PEDESTRIAN CRASH DATA REPORT 8 (2022). This graph was created by the author using the statistics provided in the cited article.

126. *Id.* at 2, 8 (averages calculated by taking the mean of the percentages reflected in the chart on page 8 of the report).

127. *Transportation Funding Flowchart* (illustration), IND. DEP'T OF TRANSP. (2003), <https://www.researchgate.net/profile/Qiang-Bai-3/publication/254638489/figure/fig1/AS:669496935202819@1536631916134/ndiana-Transportation-Funding-Chart-INDOT-2003.png> [https://perma.cc/8YUA-52FN].

scarcely used two-lane rural road serving family farms in a remote area of Indiana. Contrast this with Washington Street in Indianapolis, a bustling four-lane urban thoroughfare complete with crosswalks, traffic lights, sidewalks on both sides, and a high volume of vehicle traffic contributing to rapid road wear. Despite the differences in usage and maintenance needs, the funding formula treats these roads as identical, focusing solely on their length.<sup>128</sup> Indianapolis City-County Councilor, Dan Boots, analyzed the funding disparities, finding that “Indianapolis gets about \$3.22 per vehicle mile traveled (VMT) of the total statewide distribution, while the smallest county in Indiana . . . receives \$19.15.”<sup>129</sup> This funding strategy is inequitable, unsustainable, and fails to address the varied demands and maintenance requirements of diverse road types.

Furthermore, with over 180,000 individuals commuting to work in Marion County but residing elsewhere, the city lacks an effective means to tax these individuals who contribute to the daily wear and tear on Indianapolis’ roads.<sup>130</sup> This leads to an inequitable situation where commuters benefit from city’s job opportunities, amenities, and infrastructure, yet pay their income taxes to neighboring counties that already enjoy superior infrastructure. Meanwhile, Marion County residents are left shouldering the financial burden and crumbling infrastructure. In the face of this, the state should reconsider how road funding is dispersed, incorporating additional metrics beyond center line miles to ensure proper upkeep and fair distribution.

## 2. *Lack of Statutory Protections for Pedestrians*

Indiana’s legal framework offers limited safeguards for pedestrians, both in the civil and criminal courts, perpetuating an environment where accountability for collisions is hard to come by. For example, crossing streets outside designated areas requires pedestrians to yield the right-of-way to all vehicles on the roadway.<sup>131</sup> Further, Indiana law holds children as young as twelve responsible for contributory negligence in pedestrian accidents, illustrated in the case of Dale Smith, where a twelve-year-old was struck while crossing a road in Kokomo.<sup>132</sup> Smith, crossing a four-lane road with no sidewalks, crosswalks, or stop signs to get milk for his family, was deemed negligent by the court of appeals for not seeing the incoming vehicle and was, therefore, unable to recover

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128. *Id.*

129. Dan Boots, *Why Indianapolis Roads Don’t Ever Seem to Get Better*, N. SHADELAND ALLIANCE (Feb. 8, 2023), <https://northshadeland.com/why-indianapolis-roads-dont-ever-seem-to-get-better/> [https://perma.cc/BH5N-3D96].

130. *Indiana Commuting Patterns* (illustration), HOOSIERS BY THE NUMBERS (June 2023), <https://www.hoosierdata.in.gov/infographics/commuting-acs.asp> [https://perma.cc/VEA5-ANCK].

131. IND. CODE § 9-21-17-7 (2024).

132. *Smith v. Diamond*, 421 N.E.2d 1172, 1180 (Ind. Ct. App. 1981).

damages after a driver hit him.<sup>133</sup> Given the infrastructural shortfalls in Indianapolis, such as the lack of proper crosswalks, sidewalks, and lighting, cases like this create a presumption that children are guilty when accidents occur. In Smith's case, the court debated whether he could have even seen the vehicle due to a car blocking his view, yet he was still held responsible.<sup>134</sup>

Similarly, Esther Jones, who was struck by a car on a rainy night in Indianapolis while crossing the street, was found negligent by the Indiana Supreme Court due to being outside a crosswalk, even though her testimony, and that of another witness, revealed that the driver did not have headlights on.<sup>135</sup> The driver's simple denial was enough to convince the majority of the court that Jones was to blame, resulting in her receiving no recovery on her claim.<sup>136</sup> Justice DeBruler dissented, questioning how the testimony of two witnesses could be so easily dismissed by one person's claim that he had his headlights on.<sup>137</sup> This case reflects a troubling pattern: the courts' willingness to dismiss pedestrian testimony in favor of drivers, even when evidence suggests the driver's negligence.

Guidance for pedestrians walking on streets lacking sidewalks or shoulders is outlined by statute, directing them to walk near the roadway's edge.<sup>138</sup> If the road is two-way, they must walk on the left side of the road.<sup>139</sup> However, legal complexities arise, as seen in *Hill v. Gephart*, where a pedestrian's violation of this statute led to a severe collision.<sup>140</sup> In this case, Hill and his daughter walked to a park near their home.<sup>141</sup> On their way back, near dusk, they walked on the side of the street with their backs to traffic.<sup>142</sup> The street had no sidewalks.<sup>143</sup> Hill was hit by a jail transport vehicle that was driving 10 mph over the speed limit and suffered numerous severe injuries that left him incapacitated.<sup>144</sup> An accident reconstruction specialist concluded that the cause of the accident was the dusk environment and the dark clothes Hill wore.<sup>145</sup> Although the trial court granted summary judgment in favor of the driver, the Court of Appeals reversed, finding that Hill should be allowed to argue why he was walking on the right side of the road, where vegetation blocked the left side.<sup>146</sup> The court held that a jury should decide whether his decision was reasonable under the

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133. *Id.* at 1173.

134. *Id.* at 1179–80.

135. *Jones v. Gleim*, 468 N.E.2d 205, 208 (Ind. 1984).

136. *Id.* at 207.

137. *Id.* at 208 (DeBruler, J., dissenting).

138. IND. CODE § 9-21-17-14 (2024).

139. *Id.*

140. 54 N.E.3d 402, 407 (Ind. Ct. App. 2016), *aff'd on reh'g*, 62 N.E.3d 408 (Ind. Ct. App. 2016).

141. *Id.* at 404.

142. *Id.*

143. *Id.* at 404 n.1.

144. *Id.* at 404–05.

145. *Id.* at 405.

146. *Id.* at 407.

circumstances, rather than barring his claim outright.

These examples underscore the difficulties pedestrians face in navigating roads without proper infrastructure and highlight the judicial leniency often afforded to drivers. Even though Hill was struck by a speeding driver on a road without sidewalks, the trial court initially granted summary judgment against him.<sup>147</sup> Only on appeal was he given the opportunity to justify his decision to a jury.<sup>148</sup> The broader concern is that if pedestrians are consistently held to unreasonable standards in a city with no traffic law enforcement and skyrocketing rates of accidents, they will never succeed in court. One could argue that it is not the driver's fault if a street has improper infrastructure or crosswalks, but that raises the issue of accountability. If not the driver, then responsibility must fall on the city, the police, or the state, because multiple failures allowed such accidents to occur in the first place.

The state's stance on criminal charges further complicates the pursuit of justice for pedestrians and cyclists. In Indiana, when a driver crashes into a vulnerable road user causing harm or death, the driver's actions are not necessarily considered to be criminal.<sup>149</sup> It only ascends to criminality if accompanied by additional illegal conduct, such as impaired driving<sup>150</sup> or hit-and-run behavior.<sup>151</sup> For the driver's actions to be considered criminal, the act of crashing into the vulnerable road user must be linked to illicit behavior such as driving under the influence<sup>152</sup> or fleeing the scene after the crash.<sup>153</sup> In the instances where drivers face criminal charges for causing a fatality, the penalties can be surprisingly lenient—often no more severe than a temporary license suspension or a small fine, which scarcely reflects the serious nature of taking a life.<sup>154</sup>

This leniency is illustrated in a July 2022 case documented by the Indianapolis Fatal Crash Review Commission.<sup>155</sup> In this collision, a cyclist was struck from behind by a motorist with eighteen prior offenses.<sup>156</sup> Remarkably, the incident's potential criminality hinged not on the act of causing death but on the driver's failed attempt to flee the scene. Under Indiana's existing legal framework, had the driver not tried to evade, they likely would have faced minimal consequences. It is troubling that someone with 18 prior offenses can continue driving and ultimately cause a fatality.

Complicating matters further, Indiana lacks a "negligent vehicular homicide" law, a gap acknowledged in *Whitaker v. State*, where the court noted

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147. *Id.* at 404.

148. *Id.* at 407.

149. IND. CODE § 9-30-16-2 (2024).

150. IND. CODE § 9-30-5-5 (2024).

151. IND. CODE § 9-26-1-1.1 (2024).

152. IND. CODE § 9-30-5-5 (2024).

153. IND. CODE § 9-26-1-1.1 (2024).

154. IND. CODE § 9-30-16-2 (2024).

155. INDIANAPOLIS FATAL CRASH REVIEW COMM'N, *supra* note 84 at 7.

156. *Id.*

that the General Assembly has not enacted statutes for “negligent homicide” or “vehicular homicide,” unlike in other states.<sup>157</sup> Such a statute would address deaths caused by careless, yet not intentionally reckless, driving. Currently, establishing accountability in fatal traffic accidents demands proof of reckless disregard for safety.<sup>158</sup> In other words, a driver must knowingly take substantial risks that endanger lives to be held accountable.<sup>159</sup> The high burden of proof is exemplified in *Cozmanoff v. State*, where the defendant received a four-year sentence for reckless homicide after fleeing a scene where he hit four correctional officers, resulting in one death.<sup>160</sup> The *Cozmanoff* case demonstrates how the absence of a negligent vehicular homicide statute allows for a significant gap in accountability. While Cozmanoff’s actions were extreme enough to meet the threshold for reckless disregard, many cases involving fatal traffic accidents do not rise to this level. Without a statute addressing negligent driving, drivers who cause deaths through careless actions—such as speeding or distracted driving—can evade criminal liability. This leaves victims’ families with little recourse and perpetuates a legal framework that fails to adequately address the seriousness of negligent driving in fatal accidents.

In Indiana, one final law stands out for its inadequacy in safeguarding pedestrians and cyclists. The state’s safe passing statute mandates a minimum three-foot clearance for vehicles overtaking bicycles.<sup>161</sup> However, this statute fails to offer any mandates for drivers overtaking pedestrians walking on roads. In the city of Indianapolis, where over half the city roads (2,000 miles) do not have sidewalks, pedestrians often have no choice but to walk on and alongside roads.<sup>162</sup> Additionally, the statute explicitly allows drivers to pass cyclists in no-passing zones when it is “safe to do so,” which appears to contradict the very purpose of no-passing zones.<sup>163</sup> Roads are marked with double lines due to unclear sightlines or the lack of a safe opportunity to pass. By allowing exceptions to these markings, the law promotes risky behavior, encouraging drivers to attempt unsafe maneuvers that put themselves, oncoming drivers, and cyclists at unnecessary risk. The absence of a mandated safe passing distance for pedestrians, coupled with their obligation to yield to vehicles on the roadway, highlights the extent to which pedestrian safety is marginalized in favor of motorists.<sup>164</sup>

Indiana’s legal protections for pedestrians and cyclists are alarmingly inadequate, casting a shadow over the state’s commitment to public safety. In

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157. *Whitaker v. State*, 778 N.E.2d 423, 425 (Ind. Ct. App. 2002).

158. *Id.* (noting the absence of statutes for negligent or vehicular homicide in Indiana, which would address deaths caused by less than reckless conduct).

159. *Id.* (explaining that accountability for fatal traffic accidents in Indiana requires proof of reckless disregard, rather than mere negligence).

160. *Cozmanoff v. State*, 134 N.E.3d 513, 514 (Ind. Ct. App. 2019).

161. IND. CODE § 9-21-8-5(3)(A) (2024).

162. Dwyer, *supra* note 102.

163. IND. CODE § 9-21-8-5(4) (2024).

164. IND. CODE § 9-21-17-7 (2024).

civil matters, victims face barriers impacting their ability to secure compensation for injuries. In criminal matters, drivers are not held accountable; in 2020 and 2021, a staggering 78% of fatal crashes involving vulnerable road users went without criminal charges.<sup>165</sup> The report of a driver with eighteen prior offenses fatally striking a cyclist underscores a broader issue: a tolerance for repeat offenders until it's too late. With the legal shortcomings now acknowledged, the following section proposes preventative measures to ensure crashes are avoided before they occur.

### III. ANALYSIS

#### *A. Combatting Traffic Law Enforcement Inadequacies*

Even those who may not initially grasp the severity of the pedestrian and cyclist safety crisis cannot ignore the compelling evidence it presents. Data reveals a troubling reality: half of all incidents involving pedestrians and cyclists are concentrated in just 7% of the city's land area;<sup>166</sup> areas often inhabited by vulnerable groups such as people of color and the elderly.<sup>167</sup> This crisis is exacerbated by a no-traffic law enforcement. Yet, proposing an increase in police patrols in the most affected neighborhoods introduces potential risks, including discriminatory enforcement and harassment, particularly towards marginalized communities. For example, in Carmel, Indiana, statistics show that Black individuals are ticketed at a rate eighteen times higher than their representation in the local population.<sup>168</sup> While Indianapolis exhibits less racial bias in ticketing, with Black residents receiving about 40% of tickets despite making up 30% of the population, it still raises questions about fairness and equity in law enforcement practices.<sup>169</sup> Accordingly, while increased traffic enforcement might reduce the risk of traffic-related danger, it may simultaneously increase the risk of the harms associated with racial profiling, harassment, and violence at the hands of law enforcement.

A better alternative to increased police presence can be found with the implementation of speed cameras, which offer a promising solution with a track record of successfully reducing speeding and accidents across the country. Indiana legislators saw the value in this technology as a means to bolster road

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165. Dwyer, *supra* note 11.

166. Kayla Dwyer, *Indianapolis' Fatal Crash Problem is Worsening. Here are 4 Takeaways and What's to be Done*, INDYSTAR, <https://www.indystar.com/in-depth/news/local/transportation/2022/05/02/accident-takeaways-indianapolis-traffic-fatal-car-crashes-pedestrian-safety-crisis-viable-answers/7268573001/> [<https://perma.cc/ZK4A-W6KR>] (last updated May 2, 2022, 1:50 PM).

167. *Id.*

168. Stephanie Zepelin, *Carmel Police Ticket Black Drivers at Higher Rate, Data Shows*, WISHTV, <https://www.wishtv.com/news/i-team-8/carmel-police-ticket-black-drivers-at-higher-rate-data-shows/> [<https://perma.cc/NK2D-2HHL>] (last updated Jun. 24, 2020, 11:35 AM).

169. *Id.*

safety for pedestrians after investigating how to combat the noticeable uptick in work zone fatalities and injuries observed from 2019 to 2022.<sup>170</sup> However, the deployment of speed cameras in Indiana has been cautiously approached by the state legislature, resulting in the implementation of a limited pilot program confined to highway work zones.<sup>171</sup> This program is tightly regulated, allowing only four speed cameras statewide and mandating extensive advance notice to drivers, reflecting legislative concerns about privacy and the potential for increased surveillance.<sup>172</sup>

In addressing privacy concerns associated with the widespread implementation of speed cameras across Indiana, the necessity for precise and transparent legislation cannot be overstated. Such legislation must guarantee that data captured by speed cameras is restricted in scope, securely safeguarded, and quickly deleted after its intended use for public safety.<sup>173</sup> This approach helps protect people's privacy while also keeping roads safe.<sup>174</sup> Another factor to consider is that the emphasis on privacy concerns in discussions surrounding speed camera legislation may not be entirely rooted in privacy advocacy. Considering the extensive surveillance networks already established in Indianapolis and other cities within Indiana, the opposition to only speed cameras is surprising.

Remarkably, the City of Indianapolis administers a comprehensive surveillance system, comprised of over 300 license plate readers that monitor the movements of thousands of vehicles every minute, a practice that has been in place for the better part of a decade.<sup>175</sup> Katie Blair of the ACLU of Indiana has articulated apprehensions regarding the potential of such pervasive surveillance to empower oppression, effectively casting all community members as subjects of suspicion.<sup>176</sup> While the extensive data collection by these readers undeniably raises legitimate privacy concerns, speed cameras emerge as a narrowly tailored solution. Their aim is straightforward: to enforce speed limits for the sake of public safety, without engaging in the broader, more

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170. Casey Smith, *Indiana Senate Advances License Plate Speed Camera Pilot Despite Republican Pushback*, IND. CAP. CHRON. (Apr. 4, 2023, 6:00 AM), <https://indianacapitalchronicle.com/2023/04/04/speed-camera-pilot-bill-advances/> [<https://perma.cc/Z92T-MB2V>].

171. IND. CODE § 8-23-32-11 (2024). *See also* H.B. 1015, 122d Gen. Assemb., 1st Reg. Sess. (Ind. 2023).

172. Smith, *supra* note 170.

173. Steve Scauzillo, *Controversial Bill to Put 'Speed Cameras' on LA Streets has Backers in Sacramento*, L.A. DAILY NEWS, <https://www.dailynews.com/2023/04/21/controversial-bill-to-put-speed-cameras-on-la-streets-has-backers-in-sacramento/> [<https://perma.cc/XUH6-BLPM>] (last updated Oct. 16, 2023, 3:36 PM).

174. *Id.*

175. Vic Ryckaert, *License Plate Readers are Solving Crimes but Critics Fear Misuse, Privacy Concerns*, WRTV, <https://www.wrtv.com/news/local-news/crime/license-plate-readers-are-solving-crimes-but-critics-fear-misuse-privacy-concerns#:~:text=They%20snap%20pictures%20of%20thousands,%2C%20Muncie%2C%20Anderson%20and%20Plainfield> [<https://perma.cc/VSU3-PNAZ>] (last updated July 25, 2023, 1:20 PM).

176. *Id.*

intrusive surveillance practices associated with license plate readers. Unlike the current readers, speed cameras do not track the comprehensive movements of drivers across the city, state, and country, nor do they share or retain data indefinitely.<sup>177</sup>

Examining success stories from other states offers a compelling argument for Indiana to expand the adoption of speed cameras. Pennsylvania's automated work zone speed enforcement program, one of the first in the nation, has achieved remarkable results in curbing excessive speeding and reducing work zone crashes with only 2.6% of drivers exceeding the speed limit by more than 11 mph in work zones equipped with speed cameras. Moreover, work zone crashes decreased for Pennsylvania in 2022, while the national average has increased.<sup>178</sup>

New York's experience with speed cameras since 2013, particularly around school zones where children are vulnerable to speeding drivers, further strengthens the case for this technology. A pilot program with 20 speed cameras operating during school hours showed dramatic decreases in speeding violations (63%), injuries (17%), and fatalities (55%) in the selected school zones. The program has since expanded to be the largest urban network of safety cameras in the U.S., with 2,000 cameras in operation.<sup>179</sup>

Given the proven effectiveness of speed cameras, Indiana lawmakers must permit the usage of speed cameras beyond work zones. These devices, being cost-effective and evidence-based, can significantly enhance safety in pedestrian and cyclist high-risk areas. Furthermore, speed cameras mitigate the risk of officer discretion in ticket issuance, resulting in more equitable enforcement of traffic laws. Beyond speed cameras, it is essential for the city to tackle the infrastructural shortfalls that initially place pedestrians and cyclists in harm's way, paving the way for a comprehensive strategy to enhance urban safety.

### *B. Improving Infrastructure*

Indianapolis leaders are at a crossroads, grappling with a dire need for infrastructure improvements while facing severe financial constraints. Transforming and pedestrianizing all 3,000 miles of Marion County's roads is a logistical impossibility.<sup>180</sup> Hindered by the inability to levy sales taxes, capped property taxes, and the improbability of instituting new levies like a commuter tax, Indianapolis finds its hands tied, pushing the city into an overreliance on

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177. *Id.*

178. PA. DEP'T OF TRANSP., 2023 ANNUAL REPORT AUTOMATED WORK ZONE SPEED ENFORCEMENT 2 (2023).

179. U.S. DEP'T OF TRANSP. FED. HIGHWAY ADMIN., SUCCESSFUL STRATEGIES FOR ADOPTION OF SAFETY CAMERAS 2 (2020), [https://safety.fhwa.dot.gov/speedmgt/ref\\_mats/fhwasa20076/FHWA-SA-20-081-Successful\\_Strategies\\_for\\_Adoption\\_of\\_Safety\\_Cameras.pdf](https://safety.fhwa.dot.gov/speedmgt/ref_mats/fhwasa20076/FHWA-SA-20-081-Successful_Strategies_for_Adoption_of_Safety_Cameras.pdf) [https://perma.cc/525F-4H7F].

180. Dwyer, *supra* note 102.

federal funds to bridge the gap in its infrastructure budget.<sup>181</sup> This is not a good position for pedestrians and cyclists to be in, given the slow and competitive nature of federal funding allocations.

The city's receipt of \$25 million from the Bipartisan Infrastructure Law of 2021—matched with an additional \$20 million of Indianapolis's own funding—marks a step forward, yet this \$50 million investment will only slightly dent the city's vast needs, covering a mere 3.5 miles of sidewalk improvements and 5.5 miles of resurfaced bike lanes.<sup>182</sup> With construction bids not anticipated until 2026 and completion a year later, the pace of progress is alarmingly out of sync with the immediacy of the crisis.<sup>183</sup> Indianapolis's struggle for more comprehensive federal support was evident when its application for the Safe Streets and Roads for All (SS4A) Grant Program was turned down in 2023.<sup>184</sup> This cycle of dependency on uncertain federal support underscores the city's vulnerability to shifting political winds and policy priorities, emphasizing the inadequacy of piecemeal funding in tackling widespread infrastructure deficits.<sup>185</sup>

Amid these challenges, addressing the inequitable gas tax formulas could be a potential avenue to unlock additional funding for Indianapolis. City leaders recently put forth two proposals for the state legislature that, if adopted, could dramatically increase urban infrastructure funding.<sup>186</sup> The first proposal seeks to shift the basis for allocating state funds from center line miles—a method that doesn't account for traffic volume or road usage intensity—to a system based on total vehicle miles traveled (VMT). This change would ensure that roads with higher traffic volumes, typically found in urban areas like Indianapolis, receive a fairer share of funding.<sup>187</sup>

Although the proposal to base funding on VMT would better reflect the infrastructure demands of urban areas, it is likely to face resistance. Given the state's historical interference in Indianapolis' affairs, particularly to the city's disadvantage, it remains uncertain whether such a change will be promptly adopted. Nevertheless, discussions on reforming the funding formula to account

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181. *Id.*

182. *Indianapolis to Spend \$46.5M on Road Improvements. Here's What the City Plans*, INDYSTAR, <https://www.indystar.com/story/news/local/indianapolis/2023/06/29/indianapolis-road-improvements-bipartisan-infrastructure-law-grant/70370273007/> [https://perma.cc/Q2ZP-78GV] (last updated June 29, 2023, 4:52 PM).

183. *Id.*

184. Kaitlyn Kendall, *Indianapolis Denied Federal Money by Biden Administration to Make Roads Physically Safer*, WRTV, <https://www.wrtv.com/news/state-news/indiana-denied-federal-money-by-biden-administration-to-make-roads-physically-safer> [https://perma.cc/3E9Z-2HSQ] (last updated Feb. 23, 2023, 9:18 PM).

185. Dwyer, *supra* note 102.

186. Ko Lyn Cheang, *Hogsett to put \$30M into Residential Streets and Press State for Fair Funding Formula*, INDYSTAR, <https://www.indystar.com/story/news/local/indianapolis/2023/07/06/indianapolis-roads-joe-hogsett-to-spend-30-million-wants-fair-state-funding-formula/70388030007/> [https://perma.cc/YX82-XQ4S] (last updated July 6, 2023, 4:19 PM).

187. *Id.*

for traffic volumes are critical. Additionally, factoring in pedestrian and cyclist traffic could help further address the reality that cars are not the sole users of roads in urban environments.

The second proposal focuses on the Community Crossing Grant Program, a source of funding the state holds for local road projects, currently endowed with over \$221 million.<sup>188</sup> City leaders are advocating to merge this program with the Motor Vehicle Highway Account and, crucially, to eliminate the existing \$1 million cap on grants.<sup>189</sup> This cap disproportionately affects larger cities which face more substantial infrastructure challenges and costs, while inadvertently favoring smaller, rural communities with lesser needs. By lifting the cap and rewriting the road funding formulas, Indianapolis could gain access to an additional \$49 million a year, facilitating significant improvements in road safety and maintenance.

This \$49 million could provide critical resources for the city's recently established Vision Zero Task Force.<sup>190</sup> Announced as part of a broader effort to eliminate traffic deaths and serious injuries by 2035, Vision Zero currently lacks meaningful funding, which undermines its potential impact. As it stands, the task force risks becoming yet another symbolic initiative without the power to resolve the pedestrian and cyclist safety crisis. However, with proper funding—whether from state grants, reallocating current city resources, or securing additional federal support—the Vision Zero initiative could be positioned for real success. For that to happen, city leaders must move beyond promises and commit to real, sustained action.

Cincinnati offers a clear example of how proper investment can lead to meaningful results. After traffic deaths in the city peaked in 2018, Cincinnati increased its spending for pedestrian-focused engineering projects from \$500,000 to \$7 million annually.<sup>191</sup> As a result, the city has seen real progress in reducing traffic fatalities.<sup>192</sup> City Councilor Mark Jeffries noted that more community members are noticing the visible impact of traffic-calming measures now that significant investment and enforcement have been in place for the past two years—something Indianapolis has yet to catch onto.<sup>193</sup> Indianapolis' Vision Zero task force could follow a similar path, but only if city leaders take decisive action to allocate proper resources.

The next section turns to the state level, where legislative resistance frequently undermines efforts to protect pedestrians and cyclists, stalling crucial

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188. *Id.*

189. *Id.*

190. INDIANAPOLIS, IND., CITY-COUNTY COUNCIL, GEN. ORD. No. 224 (2024).

191. Andrew Rowan, *Cincinnati Has Made Meaningful Progress on Pedestrian Safety, but Still Working Toward 'Vision Zero'*, WCPO CIN., <https://www.wcpo.com/news/local-news/finding-solutions/cincinnati-has-made-meaningful-progress-on-pedestrian-safety-but-still-working-toward-vision-zero> [https://perma.cc/PG3K-HFDJ] (last updated Jan. 18, 2024, 8:58 PM).

192. *Id.*

193. *Id.*

projects like the Blue Line that are vital for creating safer and more accessible streets.

### *C. Legislative Hurdles*

Another piece of a comprehensive solution to the crisis could come in the form of a venerable road user law (VRU). A VRU law would define who are considered vulnerable road users, such as people who walk, bike, use wheelchairs, operate farm equipment, work along streets and highways, operate tow trucks, or are first responders.<sup>194</sup> A VRU law would also enhance the civil and criminal liability of drivers who cause harm to VRUs, by suspending or revoking licenses, imposing higher fines or fees, requiring driver education or community service, or increasing jail time for drivers who “commit a moving traffic offense that results in serious bodily injury or death of a vulnerable road user.”<sup>195</sup> Analogous to the higher penalties in construction work zones, VRU laws acknowledge that the same kind of careless driving or traffic offenses that may cause minor crashes between cars can have much worse consequences when a vulnerable road user is involved, allowing there to be clear criminal ramifications for the disparity of the outcomes.<sup>196</sup>

Unfortunately, proposals for VRU laws in Indiana face significant opposition from state legislators who are more concerned about protecting driver rights and driver convenience than saving lives.<sup>197</sup> This reluctance to implement protections for vulnerable groups underscores a misconceived notion of a “war on cars,” while failing to recognize that enhancing safety for one group benefits all road users, including drivers.<sup>198</sup>

In tandem with a VRU law, revisiting Indiana’s safe passing law could provide additional protections for pedestrians and cyclists.<sup>199</sup> For example, New Hampshire’s safe passing law sets a higher standard by creating a due care responsibility for drivers passing cyclists, defining a reasonable and prudent distance based on road conditions, and requiring greater distances when speed and road conditions demand it.<sup>200</sup> Indiana’s current law, by contrast, provides only a rigid three-foot buffer, without consideration for varying speeds or road conditions, and lacks many of the additional protections seen in other states.<sup>201</sup>

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194. S.B. 211, 123rd Gen. Assemb., 1st Reg. Sess. (Ind. 2023).

195. *Id.*

196. Ken McLeod, *Bike Law University: Vulnerable Road User Laws*, LEAGUE OF AM. BICYCLISTS (Mar. 28, 2013), <https://bikeleague.org/bike-law-university-vulnerable-road-user-laws/> [<https://perma.cc/JB6E-DXER>].

197. Ko Lyn Cheang, *In Bid to Protect Pedestrians, Indy Defies State Lawmaker to Push No-Turn-On-Red Proposal*, INDYSTAR, <https://www.indystar.com/story/news/local/indianapolis/2023/06/02/indianapolis-no-turn-on-red-city-county-council-defies-legislature/70278284007/> [<https://perma.cc/5L9C-PCR4>] (last updated June 2, 2023, 9:46 AM).

198. *Id.*

199. *See* IND. CODE § 9-21-8-5 (2024).

200. N.H. REV. STAT. ANN. § 265:143-a (2024).

201. IND. CODE § 9-21-8-5 (2024).

To improve safety, Indiana's law should define specific guidelines for safely passing pedestrians walking on streets without sidewalks, as these individuals are particularly vulnerable. Furthermore, the statute's provision allowing drivers to pass bicycles in no-passing zones "when it is safe to do so"<sup>202</sup> should be eliminated. This exception contradicts the very purpose of no-passing zones, especially when vulnerable road users are involved. Instead of setting a fixed passing distance, Indiana could follow New Hampshire's model by instituting a general duty of care. This would allow for a more adaptable approach, ensuring that drivers maintain a safe distance based on the specific conditions of the road.

Finally, the state must refrain from interfering in city affairs and obstructing vital safety projects, as seen with their failed attempts to block both the no-turn-on-red ordinance and the Blue Line expansion. These critical initiatives, aimed at improving pedestrian safety, should not face opposition from state legislators more concerned with preserving road miles than protecting vulnerable road users, as this not only jeopardizes federal funding but also puts the entire project at risk of never being realized.<sup>203</sup> Pedestrian corridors like Washington Street, which make up only 0.4% of the city's road mileage, saw thirty-two fatal crashes between 2015 and 2020, accounting for 6% of the county's total fatal crashes during that period.<sup>204</sup> The planned rework of Washington Street, utilizing federal funding for the Blue Line expansion, is a clear example of significant progress at risk due to state interference. These obstructions must be actively opposed by advocates, city officials, and the community to ensure that critical infrastructure improvements, policy changes like the VRU law, and safety measures are not blocked by legislative resistance.

#### IV. CONCLUSION

The tragic story of Henry Najdeski and the subsequent deaths highlighted in this Note underscore the tragedy of pedestrian and cyclist safety in Indiana. These deaths and many others across the city, state, and nation are not merely accidents. They are the result of systemic failures—failures to prioritize safety, enforce accountability, and address the racial and infrastructural divides that persist today. As of September 2024, Indianapolis is on pace to experience its third consecutive record-breaking year for pedestrian and cyclist incidents, with 589 reported to date.<sup>205</sup> This is not the time to push blame from one party to

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202. *Id.*

203. James Briggs, *The View from Aaron Freeman's Indianapolis*, INDYSTAR, <https://www.indystar.com/story/opinion/columnists/james-briggs/2024/01/09/aaron-freeman-returns-to-fight-indygos-blue-line-right-on-red-ban/72154360007/> [https://perma.cc/BU5U-QUJS] (last updated Jan. 9, 2024, 6:04 AM).

204. Dwyer, *supra* note 11.

205. *Indy Pedestrian Safety Crisis Dashboard*, INDIANAPOLIS PEDESTRIAN & BICYCLIST SAFETY CRISIS, <https://www.indypedcrisis.info/#/dashboard> [https://perma.cc/DT8F-WZAS] (last visited Nov. 21, 2024).

another; it is the time for clear, decisive action.

The solutions to this crisis are within reach. From infrastructure upgrades to legislative reforms, the tools necessary to prevent these tragedies are already available. Now is the time for clear enforcement, transparent funding, and unwavering commitment from all stakeholders—policymakers, engineers, city planners, and law enforcement. A proactive approach must be adopted, recognizing that safer streets inherently serve the common good, fostering a healthier, more vibrant, and equitable city for all.