



# The Florida Senate

Interim Project Report 98-50

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Committee on Transportation

Senator James "Jim" Hargrett, Chairman

## ROAD RAGE AND AGGRESSIVE DRIVING

### SUMMARY

Recent surveys indicate that aggressive driving has eclipsed drunk driving as the number one traffic safety concern of many motorists. Aggressive driving is generally recognized as a combination of traffic violations, including speeding, unsafe lane changes, following too closely, improper passing, and violating traffic control devices. Traffic congestion and stress are the most frequently cited causes of aggressive driving.

Law enforcement agencies across the nation, including Florida, have developed strategies to combat aggressive driving. These programs typically combine intense enforcement efforts with a coordinated public information campaign. Similarly, a number of states have considered legislation relating to aggressive driving. Proposed legislation in some states would create a new traffic offense of aggressive driving while legislation considered in other states redefines the offense of reckless driving to specifically include behaviors generally regarded as aggressive driving.

Although current Florida law does not provide for a specific offense of aggressive driving, existing traffic laws generally address actions identified as symptomatic of aggressive driving behavior. Our survey of traffic safety stakeholders revealed that while aggressive driving is considered a growing problem in Florida, respondents differed in their recommended remedies. All survey respondents expressed support for intensified enforcement of existing traffic laws as well as greater public information and education programs.

Options which the Legislature may wish to consider include: create a new offense of aggressive driving; revise the current definition of reckless driving; increase penalties for existing traffic violations; and require that driver improvement programs include aggressive driving in course content.

### BACKGROUND

Road rage and aggressive driving have garnered national attention in recent years. Media accounts of such driving related incidents, particularly road rage incidents where the driving behavior escalates into assault with the vehicle itself or with a weapon, have heightened public awareness and concern. In fact, in a 1997 Gallup poll of motorists in the Washington, D.C., metropolitan area, 40% of the respondents identified aggressive drivers as their number one highway safety concern. Surprisingly, only 33% of the respondents identified drunk drivers as their number one safety concern.

While the media accounts have focused on the more horrific incidents generally regarded as road rage, it is the general risk-taking behavior behind the wheel that is more prevalent and appears to result in more deaths and injuries. There is some evidence to suggest that the problem is worsening. A recent study conducted by the AAA Foundation for Traffic Safety found that nearly 90% of drivers have experienced an aggressive driving incident in the past twelve months. The AAA study also concluded that since 1990, aggressive driving incidents have increased by an estimated 51%, resulting in an average of 1,500 fatalities and injuries each year. *The National Highway Traffic Safety Administration estimates that about one-third of the police-reported crashes can be attributed to behavior associated with aggressive driving.*

### Distinguishing Road Rage and Aggressive Driving

While there are no standard definitions, highway safety researchers and law enforcement agencies have generally made a distinction between aggressive driving and road rage. Aggressive driving is typically defined as a traffic offense or combination of traffic offenses such as speeding, following too closely, unsafe lane changes, disregard for traffic control devices, improper passing, failure to yield the right-of-way, and other examples of careless or provocative driving behavior. Although a myriad of factors may

contribute to aggressive driving, traffic congestion, frustration, and over extended schedules appear to be major contributors.

In contrast, road rage generally takes the form of a physical confrontation, an assault with a motor vehicle or other weapon. In most cases of road rage, an aggressive driving incident serves as the catalyst. The triggering incident is often minor or even unintentional. The violence escalates from verbal exchanges and gesturing to physical encounters, assault with a motor vehicle or even assault with a weapon. There is broad agreement among highway safety agencies that the intentional expression of road rage constitutes a criminal offense and is adequately addressed through criminal penalties.

## METHODOLOGY

In order to assess strategies for addressing the problem of aggressive driving, Senate staff interviewed and surveyed numerous law enforcement agencies, including county sheriffs, local police agencies, and the Florida Highway Patrol. In addition, staff interviewed and surveyed representatives of the judiciary, including states attorneys, public defenders, and county judges. Staff also sought input from national traffic safety organizations including the National Highway Traffic Safety Administration, AAA Foundation for Traffic Safety, the Insurance Institute for Highway Safety, Advocates for Highway and Auto Safety and others. Staff also conducted an extensive review of literature and published sources. Finally, staff consulted with legislators and administrators in other states where aggressive driving legislation has been considered.

## FINDINGS

### The Causes of Aggressive Driving

Although aggressive driving, itself, is not a new phenomenon, it has only recently been focused on as a national problem. Researchers believe that aggressive driving is more than an action; it is a behavioral pattern. As with most behaviors, it arises from a culmination of overlapping factors. While some personality types may have a propensity for aggressive driving behaviors, given the right circumstances, anyone can fall victim. Though often regarded as a primarily urban, rush hour problem, incidence of aggressive driving have occurred in all driving environments.

*Traffic Congestion.* Congestion is a leading cause of aggressive driving. According to the Federal Highway Administration, almost 70% of urban freeways are congested as opposed to 55% in 1983. The amount of vehicle miles traveled since 1987 has increased by 35%, whereas miles of road increased by only 1%. In the past decade, the number of cars has grown faster than the population. Very slow or stationary traffic situations present conditions which may trigger driver aggression.

*Stress Factors.* The competing demands of contemporary society create a stressful environment for many Americans. As a result, most motorists budget travel time and try to adhere to time schedules. When certain individuals perceive that another motorist is impeding their progress, they become resentful and, in the case of aggressive drivers, retaliatory. Aggressive drivers respond with what they consider to be "instructive behavior." This instructive response may include anything from the flashing of lights to something more combative.

*Driving Mentality.* Research suggest that traffic induced aggression stems in part from territorial defensiveness. The car is often considered an extension of personal space. People become contentious when someone encroaches on that private territory, such as being cut off or bumped from behind. Some researchers believe that higher safety standards and features in automobiles, such as anti-lock braking systems, give motorists a greater sense of invulnerability. With this inflated sense of safety, they may take more chances on the road and thereby drive more aggressively.

*Reduced Traffic Enforcement.* Researchers have pointed to reduced enforcement of traffic laws as another explanation for the increase in aggressive driving. During the past decade many law enforcement agencies have reduced traffic enforcement patrols. Similarly, as traffic volume increases, the general deterrent effect from the presence of traffic enforcement patrols declines, since many motorists realize it is less likely they will be stopped for traffic violations.

Research has also pointed out that aggressive drivers are more likely to be high-risk drivers. They are more likely to drink and drive, speed, and drive unbelted. Aggressive drivers usually commit multiple violations as they try to make up for lost time or try to get ahead of other motorists. Interviews reveal that aggressive

drivers typically exhibit a lower level of concern for other motorists. Because they view motor vehicles as objects and fail to see the people in those motor vehicles, they seldom consider the consequences of their actions.

### **Efforts to Reduce Aggressive Driving**

According to the National Conference of State Legislatures, 22 states, including Florida, have implemented enforcement programs aimed specifically at aggressive driving. These programs typically combine intense enforcement with a coordinated media campaign. They rely on a variety of enforcement techniques to combat aggressive driving, including, unmarked patrol cars, aircraft, motorcycles, unmarked decoy vehicles, and automated enforcement.

In Florida, Troop E (Dade and Monroe) of the Florida Highway Patrol recently concluded the first phase of Operation SAFE R.I.D.E. (Road Rage/Intensified D.U.I. Enforcement). This program was launched in response to a series of highly publicized crashes involving impaired and aggressive drivers. While the Patrol's primary goal is to reduce the number of fatalities in the participating counties, an area of special concern is aggressive driving. The program is designed to supplement regular patrol duties and is concentrated on crash prone and problem areas. In order to facilitate public awareness of the project, the Patrol issued press releases, held press conferences, and arranged for media representatives to ride along with troopers.

During the first phase of the Operation SAFE R.I.D.E. (May 27, 1998 to July 5, 1998), fatalities were down 17 percent compared to the same period in 1997. Troopers made 45 arrests for a variety of criminal offenses and issued 1,048 citations for unlawful speed. In addition, troopers issued 461 citations relating to "aggressive driving." These were issued in instances where troopers witnessed motorists commit multiple traffic violations within a short distance of roadway. Patrol commanders reported that the program, funded through a federal grant, was a success in at least temporarily reducing the incidence of aggressive driving. The Patrol intends to conduct similar enforcement programs in Broward and Palm Beach Counties and is presently equipping several unmarked vehicles with cameras for use in a sustained aggressive driving enforcement program.

In Maryland, the Maryland State Police have an ongoing aggressive driver program known as "ADVANCE" (Aggressive Driver Video and Non-Contact Enforcement). This enforcement program uses digital video cameras in cooperation with laser technology to identify and record aggressive driving and other dangerous violations. Drivers are also encouraged to report incidence of aggressive driving on their cellular phones by calling #77. Offending motorists are mailed an administrative warning which identifies the time and location of the incident. Both of these programs are supported by public information campaigns.

In the metropolitan Washington, D.C., area, a coalition of law enforcement agencies conducted a regional enforcement and public awareness program known as "Smooth Operator." The enforcement component is delivered through one week "waves." These intense, high profile operations specifically targeted aggressive driving. During one such wave in June 1997, law enforcement officials stopped almost 16,000 vehicles and issued 15,134 summons. Immediately following each wave, public service announcements were aired on television to educate drivers about the program. Participating law enforcement agencies reported that the program was highly effective and anticipate continuation of the program on a reduced scale.

A number of public and private entities have focused on research and education relating to aggressive driving. At the federal level, the National Highway Traffic Safety Administration (NHTSA) has assumed the role of lead agency. In addition to funding a number of aggressive driving demonstration projects, including the "Smooth Operator" campaign previously discussed, NHTSA is cooperating with other entities in the development and marketing of print, audio and video public service announcements. In addition, NHTSA has several on-going research projects designed to identify the relationship between unsafe driving acts and crash involvement for use in enforcement and public information programs.

### **Aggressive Driving Legislation in Other States**

At least ten states considered legislation relating to aggressive driving during the 1998 legislative season. Legislation in several states would define aggressive driving as a combination of specified traffic offenses and position this new offense between the existing offenses of reckless driving (criminal) and careless driving (moving infraction). Alternatively, other states

have attempted to address this problem by revising the definition of their existing reckless driving provision to specifically include behaviors generally regarded as aggressive driving. Finally, legislation in several states attempts to address this problem through driver's education and behavior modification.

Although aggressive driving legislation was enacted in only one state (Arizona) during 1998, legislative staff in other states and the National Conference of State Legislatures report that interests in the subject is growing. Discussed below are examples of aggressive driving legislation considered in other states.

*Arizona* - HB 2311 creates a new statutory section for the offense of aggressive driving. The bill provides that aggressive driving occurs when a driver speeds and commits two or more listed offenses that include failing to obey a traffic control device, driving recklessly, passing a vehicle on the right by traveling off the pavement, changing lanes erratically, following too closely and failing to yield right of way. The person's driving must be an immediate hazard to another person or vehicle. The legislation classifies aggressive driving as a class 1 misdemeanor. In addition to other penalties allowed by law, it requires drivers convicted of the offense to attend driver training and education. This bill was approved by the Governor on May 26, 1998.

*Connecticut* - SB 2054 creates a penalty for aggressive driving of not more than \$250 and a 30-day driver's license suspension. Aggressive driving is defined as driving "in a manner that evidences a pattern of dangerous conduct contributing to the likelihood of a collision or necessitating evasive action by another operator of a motor vehicle to avoid a collision." A similar bill, HB 5675, allows the commissioner of Motor Vehicles to require a driver with two or more moving violations in one year to attend a class about controlling aggressive driving.

*Illinois* - HB 2509 creates the offense of road rage for any person who intentionally drives a vehicle, with malice, in such a manner as to endanger the safety or property of another. It is a class A misdemeanor. Aggravated road rage occurs when the violation results in great bodily harm or disfigurement to another and is a class 4 felony. Road rage violations result in mandatory driver's license revocation. The bill also creates the offense of aggressive driving for incidents where a person: operates a vehicle carelessly or heedlessly in disregard for the rights of others, drives

in a manner that endangers or is likely to endanger any property or person, or commits three or more traffic offenses. Aggressive driving is a class B misdemeanor and a second offense is a class A misdemeanor.

*Maryland* - HB 292 creates the offense of aggressive driving "if a person drives a motor vehicle in a deliberately discourteous, intolerant, and impatient manner that evidences a pattern of dangerous conduct contributing to the likelihood of a collision or necessitating evasive action by another driver of a motor vehicle to avoid a collision." A similar bill, HB 989, requires the Motor Vehicle administrator to assess points for multiple violations committed by an aggressive driver. An aggressive driver is defined as a person convicted of four or more violations occurring at the same time or three violations with one of the offenses being exceeding the speed limit by at least 30 mph.

*New York* - AB 8817/SB5959 creates the offense of aggressive driving that includes: operating a vehicle in a reckless manner that creates a substantial risk of serious physical injury to another; displaying a weapon or what appears to be a weapon in such a manner as to place another person in reasonable fear of injury or death; or operating a vehicle in such a manner as to place another in reasonable fear of physical injury or death. The bill classifies aggressive driving as a class E felony and requires aggressive driving education as a prerequisite for obtaining a driver's license.

*Virginia* - HB 895 creates an aggressive driving offense defined as: operating a vehicle with a wanton disregard for the life, limb, or property of another; driving and brandishing a firearm or weapon in such a manner as to reasonably induce fear in the mind of another; or operating a vehicle in a threatening or intimidating manner with the intent to cause others to lose control or be forced off the highway. Aggressive driving constitutes a misdemeanor punishable by a fine of not less than \$200 nor more than \$2,500 and jail time for no less than one month nor more than one year.

Another Virginia bill, HB 1309/SB 546, creates the offense of aggressive driving defined as operating a vehicle with a reckless disregard for the rights of others or in a manner that endangers any property or person. Aggressive driving means committing any two or more violations in a single act or series of acts in close proximity to another vehicle, including changing lanes unsafely, following too closely, failing to yield, speeding, driving too fast for conditions, failing to

signal, and racing. The penalty is a class 1 misdemeanor with a mandatory, minimum fine of \$250, driver's license suspension for a minimum of 10 days, and attendance at a remedial driving program.

*Washington* - SB 6708 creates the offense of aggressive driving and defines it as committing any two or more acts of aggressive driving within five consecutive miles in a manner that "intimidates or threatens another person." The following traffic infractions constitute acts of aggressive driving: failing to obey traffic control devices, passing improperly, following too closely, changing lanes improperly, failing to yield right of way, signaling improperly, overtaking and passing a school bus, and speeding.

### Current Florida Law

Florida law does not currently provide for a specific aggressive driving offense as defined in this report. However, Florida law does contain provisions relating to reckless driving and careless driving, offenses which incorporate aggressive driving behaviors. Similarly, many of the specific actions which are generally identified as aggressive driving behavior (speeding, unsafe lane changes, following too closely, etc.) are addressed in existing Florida law as separate offenses. Laws relating to state uniform traffic control are established in Chapter 316, Florida Statutes.

*Reckless Driving* - Section 316.192(1), F.S., provides "[r]eckless driving is driving any vehicle with a willful or wanton disregard for the safety of persons or property." *Collins v. State*, 605 So.2d 568, 569 (Fla. 5th DCA 1992). "Reckless driving is one step down from vehicular homicide." *Barritt v. State*, 517 So.2d 65, 67 (Fla. 1st DCA 1987). The offense is "a necessarily lesser included offense of vehicular homicide." *Id.* "'Willful' means 'intentionally, knowingly and purposefully,' and 'wanton' means with a 'conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.'" *W.E.B. v. State*, 553 So.2d 323, 326 (Fla. 1st DCA 1989), quoting Florida Standard Jury Instructions (Misdemeanors).

Reckless driving is a misdemeanor offense. Upon a first conviction of reckless driving, the offender will be punished by imprisonment in the county jail for a period of not more than 90 days, or by a fine of not less than \$25 nor more than \$500, or by both a fine and imprisonment. On a second or subsequent conviction,

the punishment will be by imprisonment of not more than six months in the county jail, or by a fine of not less than \$1,000, or by both a fine and imprisonment. Additionally, if the offender's reckless driving causes or results in the death of another person, the offender may serve 120 community hours. *During 1997, 12,147 citations were issued for reckless driving.*

*Careless Driving* - Section 316.1925, F.S., provides that "any person operating a motor vehicle within this state must drive in a careful and prudent manner, having regard for attendant circumstances, so as not to endanger the life, limb, or property of any other person." Failure to drive in such a manner constitutes careless driving which is punishable as a moving infraction and a fine of \$60. In addition, three points are assessed against the motorist driving record. *During 1997, 189,834 citations were issued for careless driving.*

*Unlawful Speed and Related Offenses* - Sections 316.183 - 316.1895, F.S., establish laws governing unlawful speed and related offenses, including speeding in a posted zone (school or construction) and speed too fast for conditions. Penalties for unlawful speed and related offenses are established in Chapter 318, F.S. The fine for unlawful speed is graduated and varies from \$25 (5-9 m.p.h. over the limit) to \$250 (30 m.p.h. and above). Persons exceeding the posted speed limit by 5 to 15 m.p.h. are assessed three points, while persons exceeding the posted limit by more than 15 m.p.h. are assessed four points. *During 1997, 948,511 citations were issued for unlawful speed and related offenses.*

*Other Traffic Offenses* - Chapter 316, F.S., provides for numerous traffic offenses which address specific behaviors associated with aggressive driving. These offenses are classified as non-criminal moving infractions and are subject to civil penalties provided for in s. 318.18, F.S. In addition, three points are assessed against the motorist driving record pursuant to s. 322.27(3)(d), F.S. Examples of these violations include:

- Improper Lane Change (70,806 citations in 1997)
- Failure to Yield Right-of-Way (105,390 citations in 1997)
- Violating Traffic Signals (334,769 citations in 1997)
- Improper Passing (40,695 citations in 1997)
- Following Too Closely (17,112 citations in 1997)

## Florida Survey Findings

While there is currently no reliable data which would reflect the extent to which aggressive driving is a significant highway safety concern in Florida, some evidence suggest that it is a growing problem. Surveys of key traffic safety stakeholders support this finding. However, there is considerable difference of opinion among these stakeholders with regard to effective remedies. For example, while more than 82% of the law enforcement respondents supported the creation of a new offense of aggressive driving, only 40% of the state attorneys' agreed with this proposition. There is broad agreement among all of the survey respondents that increased enforcement of existing traffic laws, combined with greater public education, could reduce the incidence of aggressive driving.

*Law Enforcement* - In our survey of 75 law enforcement officials, 96% (69 of 72) of the respondents indicated that aggressive driving is a greater problem now than five years ago and 63% (47 of 72) reported that current traffic laws do not adequately address aggressive driving. Law enforcement officers also strongly supported the concept that drivers education courses should include aggressive driving as an element of instruction and that persons determined to be aggressive drivers should be required to attend educational programs designed to address their aggressive behavior.

As previously noted, law enforcement officials expressed strong support (82%) for the creation of a new offense tailored to address the problem of aggressive driving. Support for a new offense stems in part from a perception that the current evidentiary standards for reckless driving ("wanton and willful disregard for the safety of other persons") make it difficult to obtain a conviction for reckless driving. Similarly, some of the respondents indicated that a new offense would better recognize the fact that aggressive driving constitutes a behavioral pattern and typically involves multiple traffic violations within a single incident or episode.<sup>1</sup>

*State Attorneys* - Our survey of states attorneys in each of the 20 judicial circuits revealed that less than half (6 of 15) supported the creation of a new offense for

aggressive driving. Most of the respondents reported that current traffic laws adequately address situations where a motorist commits multiple violations. Among those respondents indicating support for a new aggressive driving offense, opinion was evenly divided between making the offense a traffic infraction, or a criminal misdemeanor. Nearly all of the respondents expressed support for intensified traffic law enforcement and public education campaigns.

More than half (8 of 15) of the states attorneys indicated that it is difficult to obtain a conviction for reckless driving under the current statutory requirements. We noted that 40% of the respondents endorsed the concept of revising the definition of reckless driving. For example, several respondents suggested that the "wanton and willful" provision currently in statute should be supplemented to identify specific actions which would be considered prima facie evidence of reckless driving. In response to a concern raised within the law enforcement community, 60% (9 of 15) of respondents indicated that many, if not most, reckless driving convictions actually represent DUI cases which were plea bargained to reckless driving.

*Public Defenders* - Our survey of public defenders in each of the 20 judicial circuits indicated that 85% (17 of 20) of the respondents were opposed to the proposition that the Legislature should create a new offense for aggressive driving. Public defenders indicated that current traffic laws (specifically, reckless driving) are adequate to address aggressive driving. Several respondents expressed concerns that another traffic offense would further increase the number of persons serving jail sentences without addressing the underlying behavioral problem. Public defenders generally endorsed the need for more traffic enforcement and stricter enforcement of the existing reckless driving statute. In addition, survey respondents supported expanded use of behavior modification programs, including anger management, and public information campaigns to educate the public on the dangers of aggressive driving.

*County Judges* - In our survey of 60 county judges, 53% (31 of 59) expressed support for the creation of a new aggressive driving offense. Respondents were evenly split with regard to the extent to which the current reckless driving offense adequately addresses aggressive driving. Most (40 of 60) judges indicated that current traffic laws are sufficient to address situations where an individual commits multiple traffic violations within a single incident or episode.

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<sup>1</sup>Most law enforcement agencies indicated that where a motorist commits multiple moving violations the officer will make only one charge, except when a DUI or other criminal violation requires additional charges.

Fifty-three percent (31 of 59) of the judges indicated that a new aggressive driving offense should be punishable as a criminal misdemeanor, rather than as a traffic infraction. Additionally, the majority of judges (47 of 60) indicated support for establishing a mechanism which would allow the law enforcement officer to indicate to the judge whether he considered the motorists actions aggressive. This could be accomplished through an indicator on the uniform traffic citation or requiring that law enforcement officers submit an affidavit under certain conditions. Judges endorsed intensified traffic enforcement and public information campaigns.

### Legislative Options

Concern in Florida over aggressive driving is evidenced by the survey findings, as well as the strong support shown for the Florida Highway Patrol's recent efforts to curb aggressive driving in Dade County. In addition to continued traffic enforcement and public information efforts, there are several options the Legislature may wish to consider in addressing the problem of aggressive driving.

*Create a new aggressive driving offense* - The Legislature may wish to create a new category of traffic offense, aggressive driving, which recognizes that this problem reflects a behavioral pattern and identifies specific traffic offenses which, in combination, are determined to be indicators of aggressive driving. In other states where similar legislation has been considered, aggressive driving has generally been defined as two or three offenses from a specified set of moving violations. In order to provide context, most aggressive driving bills contain language stipulating that the aggressive driving incident must occur within a certain length of highway and/or constitute an immediate danger to other motorists.

*Revise the definition of reckless driving* - The current definition of reckless driving incorporates most actions regarded as indicators of aggressive driving. However, a number of law enforcement officials and prosecutors maintain that the current requirements relating to the level of intent ("wanton and willful disregard for the safety of persons or property") constitutes an obstacle to successful prosecution for this offense. The

Legislature may wish to revise the definition of reckless driving contained in s. 316.192(1), F.S., to identify specific actions which constitute "wanton and willful" conduct.

*Increased penalties for multiple traffic violations* - Section 318.18(3)(a), F.S., provides that, with certain exceptions, all moving violations are punishable by a civil fine of \$60. Section 322.27(3)(d), F.S., provides that three points will be assessed against the motorist driving record upon conviction for a moving violation. To increase the deterrent effect, the Legislature may wish to provide for enhanced fine and point assessments where an individual is convicted of multiple moving violations arising from a single incident/episode or repeat incidents of multiple moving violations.

*Mandate the inclusion of aggressive driving in driver improvement/education programs* - Section 314.1451, F.S., provides that the Department of Highway Safety and Motor Vehicles must approve the courses of all driver improvement schools. The Legislature may wish to require that certain driver improvement programs must include aggressive driving and anger management as elements of course content.

## RECOMMENDATIONS

**We recommend that the Legislature consider the following:**

- Amend Ch. 318, F.S., to encourage law enforcement agencies to issue, where appropriate, multiple citations for moving violations occurring during a single driving episode and authorize judges to impose enhanced penalties where an individual commits multiple moving traffic violations or repeat incidents of multiple moving violations.
- Amend s. 318.1451, F.S., to require that driver improvement programs include aggressive driving and anger management as elements of instruction.

### COMMITTEE(S) INVOLVED IN REPORT *(Contact first committee for more information.)*

Committee on Transportation, 30 Senate Office Building, Tallahassee, FL 32399-1100, (850) 487-5223 SunCom 277-5223

### MEMBER OVERSIGHT

Senators Howard Forman and Anna Cowin