

Motorcycles, Helmets, TBIs, and the Law



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To wear ... or not wear ... a helmet, that is the question. The answer to that question is easy: wear one. But in the eyes of the law, are the question and answer always as easy?

Everyone knows that every state in America requires children to wear helmets when riding a bicycle. And the reasoning is simple: children are more prone to falling and suffering injury. They also cannot easily avoid errant, negligent drivers who may hit the children while riding on sidewalks or crosswalks. The worst possible injury is a head injury; therefore, requiring children to wear helmets can prevent or reduce head injuries.

But what about the law with adults and helmets on motorcycles?

U.S. states, *in general*, do not require adults to wear helmets on motorcycles. The law believes adults are more capable of making decisions for their own safety. The law also believes adults are more capable of realizing the consequences of their actions. If they want to take the risk of riding without a helmet, so be it. But then the question becomes, if a non-helmet wearing motorcyclist is hit by a negligent driver, and the motorcyclist suffers a traumatic brain injury, who is to blame for the brain injury?

Every state in the country has laws related to contributory and/or comparative negligence.

What to do after a motorcycle crash:

- Call 911
- Seek medical attention
- Take photographs of your bike and all clothing you were wearing at the time of the crash
- Call a lawyer who can immediately have a crash reconstruction performed
- If you have any continuing symptoms, make sure your doctors are aware

Contributory negligence means how responsible is the injured person for their own injuries? For example, if a car backs out of a driveway in front of an oncoming car and a crash happens, is the oncoming car responsible for not avoiding the crash? Did the oncoming car driver have time to perceive the other car backing out of the driveway? Was the oncoming car driver speeding? Was the oncoming car driver on their cellphone? All of these different actions are used to determine whether the injured person is partially responsible for their own injuries.

Along those same lines, *comparative negligence* means to what degree are they responsible? In some states, if a person is just 1% responsible for an accident, they are responsible for *all* the injuries that occurred. In other states, if a person is partly responsible for an accident, then their outcome is reduced by their amount of responsibility. For example, in the scenario above with the car backing out of a driveway, if a jury finds the oncoming car driver 50% responsible, then their jury verdict is reduced by 50%. In other states, if a party making an injury claim is 50% or more responsible for their own injuries, they get nothing. This happens all the time across the country.

In a motorcycle accident where the rider is not wearing a helmet and suffers a head injury, the defense will certainly be that the rider is responsible for all of their head injuries. To put it differently, because they were not wearing a helmet, they are 100% contributorily negligent for their head injuries.

If this situation happens to you, do not worry. Hiring a lawyer who specializes in traumatic brain injury and motorcycle crashes will help you avoid being blamed for your injuries. Some of the counter arguments are: (1) there are likely no laws in your state that require you to wear a helmet, so you were not violating the law; (2) a significant

