

# TORKLAW

The Ultimate Motorcycle Accident Guide



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Motorcycle riders face unique challenges, both on the road and, if they have an accident, again in the personal injury system. At TorkLaw, our attorneys have extensive experience in representing motorcyclists who have been injured in traffic accidents. We've compiled our knowledge into this comprehensive guide on exactly what to do after a [motorcycle accident](#).



## Risks on the Road

Motorcyclists face all sorts of risks on the road that drivers of passenger vehicles do not:

- Motorcycles are much smaller than ordinary cars, which makes them harder to see. Often, a motorcyclist becomes invisible in a car's blind spots.
- Motorcycles are more likely to overturn than passenger cars, because motorcyclists are balancing on two wheels, an inherently less stable position than occupants of four-wheeled vehicles.
- **Risks that pose a minor nuisance to drivers, such as potholes, puddles of water, and debris, can be deadly for motorcyclists.**
- When motorcyclists do collide with other vehicles, they have much less protection than the occupants of passenger cars. They do not have seat belts or airbags, and may not even have helmets. **In even minor vehicle collisions, motorcyclists are frequently thrown directly onto the pavement, often at very high rates of speed.**

Due to all these factors, per miles traveled, [motorcyclist riders are nearly 28 times more likely to die in a traffic accident](#) than occupants of other vehicles.

## Bias against Motorcyclists

Many American drivers resent motorcyclists for a variety of reasons. Because of their size, the fact that some cycles make a lot of noise, and their tendency to “appear out of nowhere” from a car’s blind spot, there is a false impression that motorcyclists are traveling faster and taking more risks than they actually are.

This is perpetuated by social stereotypes of motorcyclists as reckless, deviant, and unconcerned with safety. Pop culture is replete with images of rough-and-tumble bikers with wild hair and beards, roaring down the freeway, and hanging out in biker bars, clad all in leather. (Never mind that leather is worn more for safety than as a fashion statement.)

Of course, these stereotypes aren’t fair at all. Motorcyclists are a more diverse group than many people think, and include people from all walks of society. Most motorcyclists (including those who fit the “biker” image) are good citizens who take every necessary safety precaution.

In fact, [studies have shown](#) that in collisions between motorcycles and passenger cars, the driver of the car is much more likely to be at fault. But unfortunately, many people don’t know this, and so the stigma against motorcyclists persists, and often, for an injured motorcyclist, bleeds into the personal injury legal system. When motorcycle injury cases [go to trial](#), injured motorcyclists may receive smaller verdicts than passenger car drivers would under similar circumstances.

And while most injury claims don’t end up going to trial, the ripple effects of this bias go through the insurance industry. [Insurance adjusters](#) know that if the case goes to court, the motorcyclist is less likely to win, so they routinely offer motorcyclists smaller settlements.

A good lawyer who cares about your case can break through stereotypes and help you receive what you are legitimately owed.



## Special Laws that Apply to Motorcyclists

In general, motorcyclists must follow the same laws as other vehicles. They have all the same privileges as drivers of larger motor vehicles do, but also the same legal obligations, including obeying the posted speed limit and all traffic signs and signals. However, there are a few special stipulations that apply to motorcyclists:

- **Motorcycle riders must have a special motorcyclist's license.** You need more than an ordinary driver's license to operate a motorcycle legally. Typically, motorcyclists must undergo a special training class to learn the basics of handling a motorcycle, and then take separate written and practice tests. Surprisingly, many motorcyclists don't even know about this requirement. In 2016, 27 percent of motorcyclists involved in fatal crashes didn't have a valid motorcycle license. If a motorcyclist is caught riding without a proper motorcycle license, they will receive a citation, even if licensed to drive a passenger vehicle. If a motorcyclist in a collision lacks a valid license, it may jeopardize the case, even if the other party was at fault. The requirements for a motorcyclist's license vary from state to state, so find out the requirements for your state.
- **Depending on the state, motorcyclists may be required to wear a helmet.** 19 states, including California, New York, and Georgia, require that **all riders** wear motorcycle helmets. Most other states do not have universal helmet laws, but may still have a partial helmet law which typically applies to minors or younger motorcyclists. Only three states (Illinois, Iowa, and New Hampshire) have no helmet laws at all.
- **Motorcyclists are also required to don various other types of safety gear and equipment.** They may be required to wear eye wear, even if not required to wear a helmet. They may also be required to wear certain types of padded clothing, and equip their motorcycle with reflectors, turn signals, safety lamps, and features to accommodate passengers. Check out [the equipment requirements for your state](#) before getting on the road.
- **Motorcyclists sometimes engage in "lane-splitting," which involves riding between two lanes of traffic, often at a higher rate of speed than the traffic around them. Lane-splitting is something that only motorcyclists can do, because no other vehicles are small enough to fit between lanes.** In the United States, lane-splitting is illegal in every state except the state of California. Utah recently passed a law allowing lane filtering, which allows motorcycles to move between lanes of stopped cars to pull to the front of an intersection at a traffic light. If a motorcyclist is injured by another driver's negligence while lane-splitting in California or lane filtering in Utah, that motorcyclist has a right to sue. (There's actually some evidence that [lane-splitting, contrary to what many non-motorcyclists think, is actually safer for motorcyclists](#) than riding in ordinary traffic during periods of peak congestion.)

## Motorcycle Accidents by the Numbers

Thousands of Americans are killed in motorcycle accidents every year. [According to the National Highway Traffic Safety Administration \(NHTSA\)](#), in 2016, nearly 5,300 motorcyclists were killed on the road. These deaths make up around 14 percent of all motor vehicle accident fatalities in America annually. These numbers have been increasing steadily over the past decade, while car accident deaths in general have been on the decline.

Most fatal motorcycle accidents, around 77 percent, involve collisions with other vehicles. 23 percent of fatal motorcycle accidents are single-vehicle collisions in which the motorcycle hits a fixed object, as compared to 17 percent of fatal passenger vehicle accidents.

Motorcycle accidents can affect both the driver (the person operating the motorcycle) and the [passengers](#) (people riding on the motorcycle but not operating it). Passengers are the minority of motorcycle accident casualties; in 2016, only 6 percent (336) of the motorcyclist deaths were passengers, while the other 94 percent (4950) were drivers.

In addition to the thousands killed in motorcycle accidents, tens of thousands more were injured. It is estimated that in 2015, around 88,000 motorcyclists were injured on U.S. roads.

## Statistics

**Gender:** Men represent the vast majority of motorcyclist deaths: [91 percent in 2017](#). The majority of men who died were drivers.

Of all women killed in motorcycle accidents that year, 41 percent were drivers and 59 percent were passengers. However, women represented all 92 percent of the passengers who died in 2017.

**Age:** In 2016, 54 percent of motorcyclists killed in fatal traffic accidents were over the age of 40, with most of those being in the 50-and-older range.

**Helmet Use:** Motorcycle helmets are a clear benefit to motorcyclists' safety; they reduce the risk of death in a motorcycle accident by 37 percent for drivers, and 41 percent for motorcycle passengers. Helmets reduce the risk of brain injury by 69 percent. NHTSA estimates that in 2016, motorcycle helmets saved 1,859 lives, and could have saved 802 more if all motorcyclists had worn them.

**Alcohol:** 25 percent of motorcyclists involved in fatal crashes in 2016 were alcohol-impaired. This was a higher rate than any other vehicle type involved in deadly accidents. Motorcyclists who are intoxicated are also less likely to wear helmets.

**Motorcycle Size:** In the past, smaller and sportier motorcycles (the type young men and women are most likely to buy) constituted the vast majority of motorcycle fatalities. They are still the majority, but the number of large motorcycle crashes has gone up. This trend seems to correlate with the increased rates of motorcycle ownership among middle-aged men, who tend to buy the larger models.

**Time:** The summer months are deadliest for motorcycle accidents, with July being the worst. Around half of motorcycle accidents occur in the afternoon. During the weekend, there are more fatalities in the three-hour window from 6 pm to 9 pm. On weekdays, there are more fatal crashes between 3 pm to 6 pm.

## Motorcycle Accident Causes

**Driving under the influence:** The [Insurance Information Institute \(III\)](#) reported that motorcyclists represented 30 percent of people killed in alcohol-impaired accidents. Given that motorcycles represent only 3 percent of all registered vehicles in the U.S., and account for only 0.6 percent of all vehicle miles traveled, this is an astoundingly high number.

**Unsafe turns by other motor vehicles:** NHTSA data shows that found that 41 percent of fatal motorcycle accidents involved a driver of a passenger vehicle making a left turn or a U-turn, and hitting a motorcyclist who is going straight through an intersection.

**Dangerous lane changes:** Passenger vehicle drivers don't always look over their shoulder before changing lanes, and may not see a motorcycle in their blind spot. In California and Utah, where it is legal for motorcycles to ride between lanes (and other states, where motorcycles may still do it, even though it's not legal), motorcycles may be at particular risk from drivers who change lanes without checking thoroughly.

**Distracted driving:** Because of their size, motorcycle riders are especially susceptible to being hit by drivers who aren't focusing at the road.

## Common Motorcycle Accident Injuries

Here are some types of injuries common to motorcycle accident victims:

**Bone fractures:** Broken bones are usually not life-threatening; however, they can be life-altering in terms of recovery and financial cost. A bone fracture victim may need physical therapy to regain mobility, function, and strength in the affected area. Often, this type of rehabilitation is not fully covered by health insurance, and patients must pay out of pocket for these treatments.

**Facial injuries:** Injuries to the eyes can result in loss of vision. Other facial injuries may include a broken jaw, which will affect the person's ability to eat, a broken nose, which can result in breathing difficulty or sinus problems, or facial scars and/or disfigurement. Unfortunately, injuries to the face are extremely common in motorcycle accidents, especially when the riders are not wearing protective gear.

**Head trauma:** Motorcycle collisions can result in a traumatic brain injury for drivers or passengers, especially if they are thrown from the bike. In this all-too-common occurrence, the person strikes his or her head against the pavement or another object. Without a helmet, this is almost always deadly. Even with a helmet, it can result in a catastrophic closed head injury.

**Road rash:** When motorcyclists aren't wearing protective gear such as kneepads, gloves, and jackets, and slide across pavement due to a crash, the result is often a friction burn to the skin, or "road rash." Severe cases may cause nerve damage.

**Spinal cord trauma:** This may happen when a helmeted rider is ejected onto the pavement in a crash. Helmets are not necessarily more likely to lead to injury. The helmet absorbs the force of the blow so the skull is not crushed, but the impact may still injure the spinal cord or vertebrae. This is the reason riders who wear helmets are more likely to suffer spinal cord injury – because without the helmet, those same riders would be dead. However, they could be left with paraplegia or quadriplegia, or other spinal cord injury requiring lifelong treatment and care.

## Liability for Motorcycle Accidents

Various parties may be held [liable](#) for a motorcycle accident, depending on the circumstances. The first, and most obvious, is the other driver. If a motor vehicle driver caused harm to a motorcyclist, the motorcyclist's best option is to file a claim with the other driver's insurance provider.

Motorcyclists are more likely than other vehicle drivers to suffer as a result of road design or maintenance flaws. If the roads on which the accident happened were poorly designed or maintained, the motorcyclist may sue the agency responsible for the road's design or maintenance. For example, it might have an uneven surface, debris, blind corners, poor or missing traffic signs or signals, faulty guardrails, or any number of other problems. Agencies that maintain roads, typically state and local governments, are responsible for removing as many of these dangers as reasonably possible.

Lawsuits against government agencies are sometimes hindered by the doctrine of sovereign immunity, which adds a few special caveats. For instance, the statute of limitations for lawsuits against a government agency is typically only six months.

Finally, if the crash was caused by a problem with the motorcycle itself, that may fall under the umbrella of products liability law, which has a separate set of laws and legal precedents from motor vehicle accident law. Motorcycle product liability lawsuits typically fall into two categories:

- **Manufacturing flaws** involve a problem with how the motorcycle was assembled
- **Design flaws** involve motorcycles which were manufactured as ordered but poorly designed

Defective motorcycles may also be the subject of recalls, either by the manufacturer or the federal government, and this too may have an impact on your suit. Another possibility is that the motorcycle may have received inadequate maintenance or repair by a mechanic.





If you were injured in a motorcycle accident, your lawsuit may include any of these parties mentioned above, and a good motorcycle accident lawyer will expand the scope to include as many relevant parties as possible.

## Determining Fault in a Motorcycle Accident

In a motorcycle accident case, as in any accident case, fault is determined according to the standard of negligence. If you are the injured party, you are the **plaintiff**, and you must prove the **defendant** (the party who injured you) was guilty of [negligence](#).

There are four elements to proving negligence: duty, breach, harm, and causation:

- All drivers on the road, including motorcyclists and passenger car drivers, have the legal **duty** to drive safely, with respect for both written traffic law and for the basic safety of other road users.
- Motorists **breach** their duty when they do not drive with the required degree of caution, sobriety, or attentiveness.
- If another party suffered **harm**, and;
- A motorist's breach of duty is the direct **cause**, the motorist may be held liable for damages.

In some cases, the plaintiff must prove that the defendant's conduct was not that of a "**reasonable person**." This can be an abstract standard, although there is significant legal precedent defining what constitutes reasonable driving.

In other cases, negligence is easier to prove; the plaintiff must simply demonstrate that the defendant broke a traffic law (such as running a stop sign or red light). This is known as **negligence per se**.

In some cases, a personal injury lawsuit goes beyond mere negligence. This occurs in extreme cases, where the defendant's behavior was so egregious, and so lacking in regard for the safety of others, that they are instead charged with recklessness. Recklessness may include actions such as driving far above the speed limit, street racing, and fleeing police.

## Shared Fault and Comparative Negligence

Motorcyclists are expected to follow the rules of the road, just as passenger vehicle drivers are. If a motorcyclist's negligence was the sole cause of a crash, the motorcyclist will not be eligible to collect any damages in a personal injury lawsuit. In fact, if the motorcyclist causes harm to another party through their negligence, they may even be forced to pay damages to the other party.

What if both the motorcyclist and the other party involved in the crash were at fault? It is still possible for a motorcyclist to recover damages, but they may be decreased according to the rules of comparative negligence. Comparative negligence is a legal standard by which individuals receive damages at a diminished rate, based on the degree they were at fault.

## Damages in a Motorcycle Accident

As with other types of accidents, depending on the nature of your case, there are a different types of damages you may collect in a motorcycle accident lawsuit:

1. **Economic damages**, which include losses that can be quantified, such as:
  - Medical bills and expenses
  - Lost income
  - Cost of rehabilitative therapy
  - Loss of earning capacity
2. **Non-economic damages**, which include less easily quantifiable costs, such as:
  - Pain and suffering
  - Emotional distress
  - Permanent injuries, disabilities or disfigurement
  - Loss of enjoyment of life
  - Loss of consortium (for victim's spouse or partner)
3. **Punitive damages**, which are sometimes awarded by a jury for no other purpose than to punish an especially egregious offender, such as a reckless or drunk driver.



## What to Do If You Are in a Motorcycle Accident

Immediately after a motorcycle accident, **make sure you are safe**. Get out of the road, and out of the path of other cars and motor vehicles.

Once you are away from immediate danger, **check yourself for injuries** and **call 911**, even if you do not think you're severely injured. Adrenaline can hide the severity of your injuries after an accident, and some types of injuries can have [delayed symptoms](#).

Next, **exchange information with the other driver**, if another vehicle was involved. If you don't do this, you'll be guilty of hit-and-run. Exchange your name, contact information, license, and insurance information. Other than that, don't say much else to the other driver. Don't apologize, because this can be taken as an admission of guilt. Be respectful and helpful, and don't react with anger, which could create more problems.

If the other driver leaves the scene, report the accident to the police and take down as detailed a description as possible, including make, model, and color of the car, license plate, a description of the driver, and any identifying features. including damage done by the crash.

If you're able, **begin to collect evidence**. Talk to any other witnesses and get their contact information. Take pictures or video of the accident scene, if possible. Keep your motorcycle, helmet, and clothing, if any damage has been done to any of these. Take some draft notes as soon as you can about how the accident happened. Take written notes of any evidence to be collected later, including footage from any nearby security cameras, or your own dash cam, if you have one.

Even if you are not hospitalized, **see a doctor as soon as possible after the accident**. This is important for your health, but also [for legal protection](#). Seeing a doctor helps you provide proof that you were hurt. Save all your medical bills and your bills for damaged property, and keep a journal of all the ways in which your injuries interfere with your life; this will help you collect non-economic damages for pain and suffering.

After calling 911, the police will respond to the scene of the accident. They will take down notes on what happened, and later compile these notes into a police accident report. Accident reports can be helpful in a personal injury case; they typically have an assessment of fault, and this may differ from that of the insurance companies. That's why you should [order a copy of your police report](#), and add a correction if there are any mistakes.

Finally, **seek legal representation**. Hiring a lawyer with experience in motorcycle law will also allow you to focus on recovering from your injuries full-time, without the added stress of filling out paperwork and talking to insurance adjusters.

## What You Shouldn't Do

There are a few things to avoid after being injured in a motorcycle accident.

- Don't talk to the other party's insurance or lawyers without a motorcycle accident attorney present.
- Don't agree to be recorded or give any statements.
- Don't sign anything without reading it, or having a lawyer review it.
- Don't agree to any "lowball offers," which might seem generous at first. However, once you have a fuller understanding of your injuries and damages, that offer may not even scratch the surface. And, they wouldn't make the offer if they didn't think you could receive more in court.
- Don't post about the accident or injuries on social media. These posts can and will be used against you. In fact, stay off social media entirely, as anything you say online can be used to minimize your injury claim. Ask friends and family to not post anything about you on social media, either.



## TorkLaw Knows Motorcycle Law

TorkLaw attorneys have extensive experience in dealing with motorcycle accidents. We have won significant judgments and settlements for our motorcyclist clients against all odds, and we are passionate about leveling the playing field for motorcyclists, and ensuring they get the justice they deserve.

We only work on a contingency basis, which means you don't pay us anything unless we collect compensation for you. And your consultation is free.

If you've been injured in a motorcycle accident, call TorkLaw at 888.845.9696 – we're available 24/7.