

CHEAT SHEET: BICYCLE CRASH INVESTIGATION BASICS¹

1. APPROACHING THE SCENE OF A CRASH

- a. ***Be Wary of the “Windshield Perspective.”*** Recognize that in a car-oriented society, many people perceive bicycle crashes through the lens of a motor vehicle operator and fail to consider the events leading up to the crash and the crash from the perspective of a bicyclist. Be cognizant of this tendency when interviewing witnesses and assessing a crash scene.
- b. ***Understand that Bicycles are “Traffic.”*** Under Maine Law, bicycles are included in the definition of traffic and bicycle riders generally have the same rights and duties as the operators of vehicles. See 29-A M.R.S.A. § 101(83) (defining traffic) & 29-A M.R.S.A. § 2063 (5) (bicyclists’ rights & duties). Be careful not to assume that because a road is dark, busy, or dangerous a bicycle rider does not belong.
- c. ***Make Balanced Inquiries.*** Investigate evenhandedly. For example, if collecting information on conspicuity, don’t just investigate what a bicyclist was wearing and using for lights and reflectors. Investigate whether the motor vehicle operator involved in the crash had headlights and whether they were on, clean and functioning well enough for the operator to see objects (including bike riders) within 200 feet.

2. ASSESSING THE BICYCLIST AND BODILY INJURY

- a. ***Identification/Medical Tags.*** Check for ID and medical bracelets and tags. These often contain important identification, medical, allergy and prescription information.
- b. ***Assess for Head and Other Injuries.*** Recognize that bicyclists are particularly susceptible to head and other serious bodily injuries even in low speed crashes.
 - i. Ask about points of impact (e.g. head to pavement, head to windshield, etc.).
 - ii. Check helmet and motor vehicle for damage that might signal injury (e.g. helmet or vehicle denting, cracking, etc.).
 - iii. Recognize that signs and symptoms of serious injuries may not present immediately (e.g. deep vein thrombosis and post-concussive syndrome).
- c. ***Superman/Superwoman Mentality.*** Recognize that many bicycle riders may act stoic and mask pain at the scene of a crash, but this does not mean that they do not need an ambulance or other medical assistance.
- d. ***Rider Likely More Injured Than His/Her Bike.*** Appreciate that it is common for concussed, shocked and confused injured bicycle riders to focus on their bicycle more than their injuries; don’t dismiss potential injuries because of this behavior.
- e. ***“Bodily injury” for Accident Reporting Statute.*** Remember that a crash report needs to be completed when a bicycle rider suffers any bodily injury—it does not need to be serious bodily injury or death. See 29-A M.R.S.A. § 2251.

¹ This handout was created by Lauri Boxer-Macomber, a civil attorney practicing bicycle and pedestrian law with Kelly, Rimmel & Zimmerman in Portland, Maine. It was developed with input from the Bicycle Coalition of Maine’s Law Enforcement Collaborative and is intended to be a quick reference guide / checklist that prosecutors can use when working with law enforcement officers who are investigating bicycle crash cases for civil or criminal purposes. It should not be construed as legal advice.

3. TAKING INVENTORY OF ELECTRONIC DEVICES

- a. **Bicycle.** Investigate and take steps to preserve data from recording devices, such as those collecting footage and tracking speed, distance and location (e.g. Garmin, GoPros, Cyclops, bicycle cameras, speedometers, cell phones, watches, etc.).
- b. **Motor Vehicle.** Investigate and take steps to preserve data from recording devices, such as those collecting footage and tracking speed, distance, braking history, signal use, location and movement (e.g. on-board cameras, GPS devices, cell phones, event data recorders, industry-specific devices and tracking systems).

4. EXAMINING ROAD AND SURFACE CONDITIONS

- a. **Widths.** Measure the width of the way, including the traffic lanes and the shoulder. Assess whether the traffic lane where a crash occurred was standard or substandard width (less than 14 feet).
- b. **Surface Conditions.** Examine not only how the weather impacts surface conditions, but also look for things like loose gravel, sand piles, potholes, alligator cracking, slippery painted surfaces. These conditions may impact operational choices and pre-crash maneuvering.
- c. **Object and Hazard Assessment.** Assess for hazards in the immediate vicinity of the crash scene, as well as those ahead of and behind the crash scene.
- d. **Crash Debris.** Look for and document the location of crash debris.

5. THINKING COMPREHENSIVELY ABOUT SPEED

- a. **Think Beyond the Posted Speed Limit.** Regardless of the posted speed limit, consider whether all parties' chosen speeds were "reasonable and proper having due regard to the traffic, surface and width of the way and of other conditions then existing." See 29-A M.R.S.A. § 2074.
- b. **Evaluate Data from Devices.** If available, evaluate GPS and speed data from electronic devices.
- c. **Time/Distance Analysis.** Consider doing a time distance analysis.
- d. **Distance to an Upcoming Intersection.** Measure the proximity of the crash to the nearest intersection and analyze how that relates to safe speed for that time and place.

6. ASSESSING BICYCLE AND OTHER PROPERTY DAMAGE

- a. **Avoid Assumptions.** When conducting a post-crash assessment of a bicycle, avoid assumptions about broken and hanging/dropped chains causing a crash. Often chains fall off in a crash. Similarly, avoid other assumptions about damage and/or broken parts of a bicycle.
- b. **Valuing Property Damage for "Accident Reporting" Statute.** When valuing property for the accident reporting statute (29-A M.R.S.A. § 2251) recognize that many road and commuter bikes are worth far more than the \$1,000 property damage. Also, note that the structural integrity and safety of most carbon and aluminum bikes is compromised after a motor vehicle crash, regardless of whether cracking is shown on the exterior of the frame. Further, note that damage to clothing and accessories counts towards that \$1,000 threshold.

7. HANDLING THE BICYCLE POST-CRASH

- a. **Track All Movements of the Bike from the Time of the Crash Forward.** Find out where the bicycle was hit and/or initially crashed, where it (or pieces of it) landed, whether it was moved, etc.
- b. **Take Measurements.** Measure the distances between the initial crash / point of impact and where the bicycle landed, as well as the distance from the bicyclist and the bike post-crash.
- c. **Preserve the Bike and Think About Chain of Custody Issues.** Don't leave the bicycle at the scene of the crash. Don't turn the bicycle over to, or leave it in the custody of, the driver that hit it. Don't release the bicycle to people at the scene of the crash, especially without the bicycle rider's permission. Be careful when transporting the bicycle. Track the chain of custody.

8. INTERVIEWING WITNESSES AND PARTICIPANTS / PRESERVING WITNESS INFORMATION

- a. **Statutory Mandate.** Interviewing witnesses and participants is a statutory mandate, not just a suggestion. See 29-A M.R.S.A. §2251 (4).
- b. **Comprehensive Contact Information.** Record full contact information, including cell, home and work numbers, email and home and work addresses for witnesses and participants.
- c. **Key Role of Witnesses in Bicycle Crash Cases.** Appreciate that witness statements and recollections of events are particularly important in bicycle crash cases because bicycle rider victims are often not able to recall crashes and/or to offer details about the crashes, particularly when they are seriously injured, unconscious, concussed or deceased.
- d. **Victim Inability to Collect Information.** Understand that there is a huge disparity in the ability of the driver to collect witness statements and contact information and the ability of an injured bicyclist to collect this same information. Gathering full contact information and comprehensive witness statements from all persons with information regarding a crash helps to ensure that both the driver and the bicyclist have complete information, as well as ensures that the District Attorney can follow up with witnesses as necessary.
- e. **Sample Areas of Inquiry Specific to Bicycle Crash Cases**
 - i. Signals: What pre-crash signals were used (or not used) by motor vehicle operator and bicyclist?
 - ii. Traffic Control Devices: What color lights and symbols were displayed by primary and secondary traffic control devices, including those governing crosswalk travel?
 - iii. Operational Decisions: Were there any movements from the lane, turns, changes in lanes or changes in speed post-crash? Was the bicycle operating with traffic? On the sidewalk? Was the motor vehicle speeding?
 - iv. Distractions: Did the witnesses observe any evidence or circumstantial evidence of distracted driving (eating, drinking, erratic driving, phone use, electronic device use, inattention to lights, etc.)?
 - v. Location: Where were the bicycle rider and the motor vehicle operator in the last minute and the last 1000 feet before the crash?
 - vi. Conspicuity/Visibility: Was the motor vehicle equipped with headlights? Did the bicycle have lights and reflectors? Were there any lighting and/or reflector requirements for either the motor vehicle operator or the bicyclist under Maine law in effect at the time of the crash? What was the bicycle rider wearing? How visible was the motor vehicle to the bicycle rider and other traffic?

9. WRITING UP THE CRASH REPORT

- a. ***Bike Crashes Are Generally Reportable Crashes.*** Pursuant to the Maine Motor Vehicle and Traffic Code, a "reportable accident" is "an accident on a public way or a place where public traffic may reasonably be anticipated, resulting in bodily injury or death to a person or apparent property damage of \$1,000 or more. . ." 29-A M.R.S.A. §2251. As such, crash reports generally should be generated and submitted to the Chief of the State Police.
- b. ***Accuracy is Important.*** Even though crash reports may be inadmissible at trial, they are reviewed by prosecutors, insurance adjusters and attorneys. Mistakes in them can re-victimize a victim already suffering from harm. Also, from a public policy perspective, it is important to get crash reporting right, as crash analytics are used to gain a better understanding of crashes in Maine and to plan for the future.
- c. ***Semantics Matter.*** Cars do not hit bicycles; drivers hit bicycle riders.

10. ANALYZING POTENTIAL CRIMINAL CHARGES AND/OR TRAFFIC CITATIONS

a. ***Possible Civil Traffic Citations²***

- i. Failure to Yield Right of Way (e.g. motor vehicle pulls out of shopping mall into path of bicycle rider). *See* 29-A M.R.S.A. §2053.
- ii. Failure to Obey Traffic Control Device. *See* 29-A M.R.S.A. §2057.
- iii. Unsafe Passing of a Bicyclist. *See* 29-A M.R.S.A. §2070(1-A)
- iv. Unsafe Right Turn Near Bicyclist. 29-A M.R.S.A. §2060(1-A)
- v. Unsafe Speed. 29-A M.R.S.A. §2074.
- vi. Failure to Maintain Control of a Motor Vehicle. 29-A M.R.S.A. §2118.

b. ***Possible Criminal Charges***

- i. Failure to Yield; Criminal Offense. A person commits a Class E crime if the person operates a vehicle past a yield sign and collides with a vehicle, person riding a bicycle or pedestrian proceeding on the intersecting way. 29-A M.R.S.A. §2057 (10).³
- ii. Driving to endanger. 29-A M.R.S.A. §2413.
- iii. Reckless conduct. 17-A M.R.S.A. § 211.
- iv. Terrorizing. 17-A M.R.S.A. § 210.
- v. Criminal threatening. 17-A M.R.S.A. § 209.
- vi. Assault / Aggravated Assault. 17-A M.R.S.A. §§ 207-208.
- vii. Manslaughter / Murder. 17-A M.R.S.A. §§ 201-203.

² Listed below are a few examples of possible civil traffic citations that could be issued to a negligent driver. Please see the handout entitled, *Bicyclist/Driver Law Enforcement Reference Guide* for a more comprehensive list of civil traffic citations. That handout includes citations available in cases where there are citable traffic violations by bicycle riders.

³ This statute is cited in full because it is relatively new and most DAs are not familiar with it.