

Why Do Drivers Involved in Fatal Cycling Crashes Receive Only a Slap on the Wrist?

There have been two well-publicized cycling fatality cases in the news recently in which the driver was cited with only an infraction and was given no jail time. One was in Broward County and involved a driver who plowed into a group of fifteen cyclists in November 2018. It is alleged the driver was going 65 in a 55 mph zone and was momentarily distracted by looking away from the road. The driver apparently never applied her brakes until one to two seconds before impact even though the evidence shows the riders were in her view for at least ten seconds—ample opportunity for her to have slowed or stopped. Two people died and several were seriously injured. The driver was charged with an infraction of careless driving and sentenced to a \$1000 civil penalty, 120 hours of community service, and a six-month driver's license suspension.

The second was in Collier County. In that case the driver ran a stop sign and fatally struck a 62-year-old cyclist crossing at an intersection on her bike. News reports indicate the investigating officer has determined to issue a citation for a noncriminal infraction in this case as well. It must still be reviewed by the State Attorney's office for any evidence of willfulness that could make it a crime.

How can a driver take the life of a cyclist in an act of negligence and face no criminal penalty? The short answer is that there is no Florida statute making it a crime to take the life of a cyclist, a pedestrian, or other road user without criminal intent or driving under the influence. This is a source of frustration and disillusionment in the cycling community. It is also problematic for law enforcement.

Let's look at what the legal alternatives are in these fatal crashes.

First, vehicular homicide (sometimes referred to as vehicular manslaughter) is generally defined as operating a motor vehicle in a reckless manner likely to cause death or great bodily harm. Recklessness is operating a vehicle in a willful and wanton disregard for the safety of persons or property. This is a crime of intent, not negligence. As a crime, it must be proven by the criminal standard of beyond a reasonable doubt. Recklessness is a matter of degree. In the Broward case, the determination of the prosecutor was that speeding 65 in a 55 zone did not meet the

standard of recklessness. Driving 75 through a school zone clearly would meet the standard, in my view. It simply does not meet the standard in most negligent cycling crashes.

Second, DUI manslaughter (Florida statute 316.193) may be charged in cases in which the driver is DUI and takes someone's life (typically through an act of negligence). This is a felony. What would ordinarily be an infraction of careless driving may become a felony if the driver is under the influence of alcohol. DUI manslaughter carries a four year minimum mandatory prison sentence.

Third, leaving the scene of an accident (Florida Statute 316.027) may be charged in a number of situations. If the driver flees a fatal crash, he or she may be charged with a first degree felony and "shall be sentenced to four years" in prison. This is the Aaron Cohen law. If the driver causes "other than serious bodily injury" or "serious bodily injury," he or she may be charged with a lesser felony. The fleeing must be intentional.

Sadly, most situations in which the driver does not flee and is not under the influence involve acts of simple negligence for which a civil infraction is charged. Common infractions are careless driving, violation of right of way, and running a stop sign. These involve a fine, community service, and license suspension but no jail time because they are not criminal violations. Hopefully the legislature will change this law.

Jim Dodson is an experienced bicycle accident lawyer, cyclist and bicycle safety advocate who has been representing accident victims for over 25 years. Although his primary office is in Clearwater, he represents injury victims throughout Florida. He is the author of the [Florida Bicycle Accident Handbook](#) which answers the most commonly asked questions by injured cyclists. If you have questions about a Florida cycling accident this valuable resource is available to you absolutely free of charge at www.jimdodsonlaw.com.

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