



## *Agency of Transportation Memorandum*

**TO:** Rep. Curt McCormick, House Transportation Committee Chair

**FROM:** Jon Kaplan, Bicycle and Pedestrian Program Manager  
Bruce Nyquist, Office of Highway Safety  
Jennifer Pittsley, DMV  
Keith Flynn, Office of Highway Safety

**DATE:** April 4, 2019

**SUBJECT:** **H.2 (Bicycle Helmet Law)**  
**H.346 (ATV Helmet Law)**

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Thank you for requesting written testimony in regard to H.2 and H.346 and for the opportunity to testify to the committee on H.2 this morning (4/4/19).

### *Safety*

VTrans' mission statement includes the word "safe", and we strongly support and take actions that promote the safety of all road users.

We advocate that people of all ages wear bicycle helmets and all our existing education materials include recommendations to wear a helmet and how to fit one properly (Share the Road brochure, Bicycle Commuter's Guide, Parent's Guide to Safe Bicycling and Quick Check stickers). Additionally, the on-bike curriculum that was developed when the Safe Routes to School program was funded is available online at <https://saferoutes.vermont.gov/> and includes similar information. The curriculum is used by schools and by groups like Local Motion, who conduct bicycle safety education.

Safe bicycling is much more dependent on quality infrastructure and driver and bicyclist behavior rather than whether a helmet is worn. A recent study by Toole Design Group (a national leader in bicycle and pedestrian planning and design) found that the U.S. has a very high rate of helmet use, but also the highest of the eight countries in bicyclist fatality rates. Countries like Denmark and the Netherlands, which have robust bicycling infrastructures and a culture of bicyclists being part of the transportation system, have very low rates of helmet use and the lowest fatality rates of the eight countries studies. I have attached a graph from this study, which can be found here - <https://usa.streetsblog.org/2016/06/02/why-helmets-arent-the-answer-to-bike-safety-in-one-chart/>.

Most states do not have a law similar to that being proposed however, the minority is growing.

- **21 states, the District of Columbia, the Northern Mariana Islands and the Virgin Islands** have a helmet law for bicyclists below a certain age, generally about 16.

- **Only the Virgin Islands** requires helmets for all bicyclists.
- **29 states and Guam** have no bicycle helmet law.

Sources: [Insurance Institute for Highway Safety \(IIHS\)](#) and [State Highway Safety Offices](#).

A review of the biennial Youth Risk Behavior Survey indicates that the percentage of students who “rarely or never” wear a helmet has been steadily decreasing since the nineties. Further, the Crash data in Vermont does not indicate a high occurrence of youth head injuries from bicycling.

### *Economics*

Although there are low cost helmets available to low income Vermonters it may be claimed that should this law be passed it will be regressive in nature. Currently, bicycle programs in Vermont offer reduced rates for helmets but no funding mechanism for dispensing helmets free of charge.

It may also be a concern to some that if this proposal were to become law it would establish a duty to wear that would negate liability of the defendant in a civil matter. This issue has been addressed in other jurisdictions but not squarely in Vermont. A review of this issue is discussed below.

### *Negligence*

Nine states (Connecticut, Delaware, Florida, Georgia, Louisiana, New York, Massachusetts, Pennsylvania, and Rhode Island) have laws that address noncompliance with statutory helmet requirements in the context of negligence. In four states (Connecticut, Delaware, Pennsylvania, and Rhode Island), evidence of a violation of the statute (e.g., failure to wear a required and properly secured helmet) would not be admissible in a negligence lawsuit. For example, Rhode Island law states “... nor shall the failure to wear a helmet be admissible as evidence in the trial of any civil action” (R.I. Gen. Laws, 2012). Suppose, for example, that a bicyclist who was not wearing a helmet while traveling in a designated bike lane was struck by a driver who veered into the bike lane. The fact that the bicyclist was not wearing a helmet could not be used against them to demonstrate comparative or contributory fault in a state with a law precluding the admissibility of such evidence. Eight of the above-mentioned states indicate that a failure to wear a helmet would not constitute comparative or contributory negligence. Delaware legislation provides that failure to wear a bicycle helmet as herein described shall not be considered evidence of either comparative or contributory negligence in any civil suit arising out of any accident in which a person under 18 years of age is injured .... (Del. C, 2012)

Further, Georgia law states that a violation of the helmet law “shall not constitute negligence per se nor contributory negligence per se or be considered evidence of negligence or liability” (Ga. Code Ann., 2012). However, Louisiana states in their law that where there is a violation of the helmet law, “The comparative negligence statutes of Louisiana shall apply in these cases as in all other cases of negligence” (La. R.S., 2012). Other states may also have provisions that prevent the legal lack of helmet use from being used against an injured bicyclist to show contributory or comparative negligence or to reduce damage awards, however, they are often found in code sections addressing negligence or rules of evidence (Mionske, 2007).

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Original Research

John B. Egberts, Daniel P. Connaughton, J.O. Spengler<sup>al</sup>

University of Florida

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It may be argued that where a child was not wearing a bicycle helmet the child's negligence could be raised as a **defense** to liability and either defeat liability or diminish damages under our comparative negligence statute. See [12 V.S.A. § 1036](#). Alternatively, the failure to wear a helmet could be used to apportion damages according to which cause resulted in those damages, assuming the damages could be divided. See [Restatement \(Second\) of Torts §§ 433A, 454 \(1965 & Supp.1986-87\)](#).

Many states have enacted provisions to limit or bar the use of failure to wear a helmet in civil actions.

Example:

Failure to wear a bicycle helmet as herein described shall not be considered evidence of either comparative or contributory negligence in any civil suit arising out of any accident in which a person under 18 years of age is injured, nor shall failure to wear a bicycle helmet be admissible as evidence in the trial of any civil action.

## H. 346

Over the past 6 years in Vermont, on average, slightly over 8 ATV crashes occur on public roadways. The following is a breakdown of the ATV crashes.

ATV/UTV Crashes by Year & Crash Type				
Year	Fatal Crashes	Injury Crashes	Property Damage Only Crashes	Total by Year
2013	3	5	3	11
2014	0	13	1	14
2015	1	5	0	6
2016	1	6	1	8
2017	0	3	1	4
2018*	1	4	2	7
<b>Total by Crash Type</b>	6	36	8	50

*\*2018 data is not yet complete. As submitted as of 4/4/19.*

In the above fatalities 5 of 6 were impaired at the time of the crash.

## **Nationally**

Deaths of ATV riders on public roads have increased more than nine-fold since 1982, the first year they were explicitly identified in FARS (Fatality Analysis Reporting System). The proportion of fatally injured ATV riders who were 40 and older increased from 9 percent in 1982 to 41 percent in 2016. The proportion younger than age 20 decreased from 54 percent in 1982 to 19 percent in 2016.

An ATV (All-Terrain Vehicle) is defined in 23 V.S.A. § 3801(1) as:

any nonhighway recreational vehicle, except snowmobiles, when used for cross-country travel on trails, or on any one of the following or a combination thereof; land, water, snow, ice, marsh, swampland, and natural terrain.

The definition of ATV is broad and encompasses a wide range of vehicles in this industry category.

Some vehicles within this category can reach speeds in excess of 80 mph whereas some have a maximum speed capability of 25 mph.

Vermont does not have a vast array of trails and pathways that permit what is known as “Side-by-side” access.

Vermont has approximately 800 miles of trails.

The enforcement of a helmet law is primarily a duty of VSP, DMV and the Fish and Wildlife. It is recommended that those Departments be consulted for the enforcement impacts.

The Behavioral Unit does not award any grants under NHTSA programing that touches, and concerns ATV use or safety.

Not unlike with bicycle helmets, “helmet negligence”, if a permitted as a defense, is a limitation on recoverable damages, not a potential bar to recovery under the comparative negligence statute.