

January 20, 2004

California Highway Patrol  
Sacramento, CA

Attn: Chief Michael Nivens

Chief Nivens,

I'm not sure how you intend to help local law enforcement understand the current state of the helmet law here in Santa Cruz County (although I'm certain that you do have a plan), but I can't help but think it would be a lot easier if the CHP policy manual were updated to reflect the existing problems for both bikers and law enforcement.

I took the liberty of obtaining and duplicating (below) your policy – taking the time to highlight (in red) some of the portions of the policy that seem most troublesome.

Going in, I would like to point out that the labeling requirements located in Section 3(a)(2)(a-e) are limited to products offered for sale, much like the window sticker on a new car (or a mattress tag), and are not part of the ongoing identifiers of a "motorcycle safety helmet" as defined in the statutes, as interpreted by the courts (like I need to tell you.)

Anyway, here you go:

### 3 MOTORCYCLE HELMET REQUIREMENTS.

#### a. Authority.

(1) Section 27803 VC was enacted to help reduce injuries to passengers and operators of motorcycles and/or motorized bicycles (including mopeds). Section 27803 VC requires all operators and passengers of these vehicles to wear a motorcycle safety helmet, certified by the manufacturer at the time of sale to meet federal standards, while on a highway.

NOTE: Effective January 1, 1998, Section 27803(f) VC exempts a person operating or riding in a fully enclosed three-wheeled motor vehicle that is not less than seven feet in length and not less than four feet in width and has an unladen weight of 900 pounds or more, if the vehicle meets or exceeds all of the requirements of the VC, the Federal Motor Vehicle Safety Standards (FMVSS) for motorcycles, and the rules and regulations adopted by the United States Department of Transportation and the National Highway Traffic Safety Administration from the requirement to wear a safety helmet.

(2) **A motorcycle safety helmet is any helmet** certified by the manufacturer at the time of sale to meet FMVSS. The specific requirements are contained in FMVSS 218 (49 CFR, Part 571). This standard requires that each helmet be labeled permanently and legibly so that the label(s) can be read showing:

- (a) Manufacturer's name.
- (b) Model designation.
- (c) Size.
- (d) Month and year of manufacture.
- (e) The symbol "DOT" should appear on the outer surface, in a color that contrasts with the helmet color, on the bottom edge of the posterior portion of the helmet.

(3) Proper use of the safety helmet is defined in Section 27803(e) of VC. The helmet shall be worn on the head with straps fastened and be of a size that fits the wearing person's head securely, without excessive lateral or vertical movement.

b. Policy. Enforcement of Section 27803 VC shall apply to all persons whether they are the operator of, or the passenger on, a motorcycle or a motorized bicycle operated on a highway. This includes an operator or passenger of a three-wheel motorized bicycle.

c. Procedure.

(1) Section 27803(b) VC should be used to cite the operator of a motorcycle or motorized bicycle for **not wearing an approved safety helmet** or for allowing a passenger to ride without a motorcycle safety helmet.

(2) Section 27803(c) VC should be used to cite the passenger of a motorcycle or motorized bicycle for not wearing a motorcycle safety helmet.

(3) As the result of several court decisions and the terms of a partially-vacated injunction placed against the Department, it is extremely difficult to cite motorcyclists for wearing a helmet not in compliance with FMVSS 218. Therefore, officers shall not attempt to make this determination prior to or during an enforcement stop. Additionally, officers shall not seize any helmet, or purported helmet, as evidence to prove that a particular helmet worn by the violator does not meet FMVSS 218.

(4) Officers shall focus enforcement action on the following:

(a) Motorcyclists not wearing a helmet.

(b) Motorcyclists wearing helmets which are **obviously** not motorcycle helmets, such as styrofoam bicycle helmets or football helmets.

(c) Officers should not cite operators or passenger of a motorcycle or motorized bicycle for nonuse of a helmet if that nonuse was incidental to the off-highway use of the vehicle while crossing the highway.

As I read CHP policy: Obviously, a "motorcycle safety helmet" is any "approved safety helmet." But "approved" by whom?

Wouldn't anybody considered smart enough to "approve" a motorcycle safety helmet for use by anyone but himself, obviously be smart enough not to. So where does that leave us?

Besides, isn't "obvious," like "stupid," a relative term? Wouldn't whether or not something is "obvious" depend on how "stupid" the person is making the call?

And might I suggest the term "headgear" as a back-up reference to "helmet" in defining a "helmet"? "A helmet is a helmet" is the line that confuses too many judges, some to the point of declaring a "common objective experience" standard.

Speaking of "approved," as I eluded to in our telephone conversation, the California Police Officers Standards and Training curriculum states that "helmets must be of an approved type." (see attached "Exhibit B.pdf") The belief in this bogus concept is so pervasive that even the QuikCode (by LawTech Publishing) makes this "approved type" helmets reference in their publication(s). We have concluded that both POST and LawTech Publishing are holding fast to their interpretation of the statutes – the portion about "approved type" helmets – because it is written into CHP policy.

And then there's that "obviously" reference in 3(c)(4)(b). You know as well as anyone, better in fact, that there's nothing obvious about the helmet law statute except its lack of an objective standard for compliance.

Anyway, not having heard back from you, in the sure and certain belief that you're probably very busy; I thought it would be best to get this thing handled in writing so that I might be more secure in my Freedom as I go about my daily chores.

You're welcome to respond by e-mail or phone – your call. I am planning to ride up there tomorrow . . . something about filing some papers with the court (nothing helmet law related). If I get the chance, I'll stop by.

Thanks,

(electronic signature)  
Richard Quigley, Senior Deputy Director  
Helmet Law Defense League  
State Director, BOLT

Attached: Exhibit B.pdf