

Management Memorandum

No. 08-071 (Expires: 11/2/2009)

February 2, 2009

TO: All Commanders

MOTORCYCLE HELMET ENFORCEMENT

Motorcycle helmet enforcement policy is contained in Highway Patrol Manual (HPM) 100.68, Traffic Enforcement Policy Manual, Chapter 4.

Currently, policy states (HPM 100.68, Chapter 4, paragraphs 2.c.[3] and [4]):

(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 helmets 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.

In a recent Appeals Court case (California Highway Patrol vs. The Superior Court of Santa Cruz), a judge upheld this enforcement policy.

It has become apparent officers continue to cite motorcyclists for wearing helmets they determine do not meet the Federal Motor Vehicle Safety Standards.

To clarify departmental policy, the following changes have been adopted:

- Officers shall not cite for hard shell "beanie-type" helmets.
- Officers shall not seize any helmet, or purported helmet as evidence.

- Supervisor approval shall be obtained before citing a motorcyclist for wearing any type of head covering an officer determines is not a motorcycle helmet.
- A photograph of the non-compliant head covering should be obtained at the time of the stop as evidence to support the violation.
- Section 27803(b) of the Vehicle Code (VC) should be used to cite the operator of a motorcycle, a motor-driven cycle, or motorized bicycle for not wearing a safety helmet, or for allowing a passenger to ride without a motorcycle safety helmet.
- Section 27803(c) VC should be used to cite the passenger of a motorcycle, a motor-driven cycle, or motorized bicycle for not wearing a safety helmet.
- Officers shall focus enforcement action on the following:
 - Motorcyclists not wearing any type of head covering.
 - Motorcyclists wearing a head covering which is obviously not a motorcycle helmet, such as a styrofoam bicycle helmet, football helmet, ball cap, scarf, stocking cap, leather aviator cap, any variation of a fabric cap, etc.
 - ✓ With approval of the 2009 Uniform Bail Schedule, a citation for a violation of Section 27803(b) or (c) VC, when wearing a non-compliant head covering, can be eligible for correction, if in the judgment of the officer, after consultation with a supervisor, such action is warranted.
 - ✓ When making a determination of whether the head covering should be eligible for correction, Section 40610(b) VC shall be referenced.

Section 40610(b) VC allows a mechanical violation be eligible for correction unless the officer finds any of the following:

1. Evidence of fraud or persistent neglect.
2. The violation presents an immediate safety hazard.
3. The violator does not agree to, or cannot, promptly correct the violation.

An officer's belief that a wearer knows, or should know that a particular item of headwear is or is not a safety helmet is insufficient to establish if any of the three conditions above is present.

- ✓ When requested to sign off on a correctable violation for Sections 27803(b) or (c) VC, uniformed personnel shall not sign off on the citation if the "corrected" head covering is obviously not a motorcycle helmet, such as a styrofoam bicycle helmet, football helmet, ball cap, scarf, stocking cap, leather aviator cap, any variation of a fabric cap, etc.

These changes to policy will be incorporated into the next revision of HPM 100.68. Any questions regarding this information can be directed to Research and Planning Section at (916) ~~887-7700~~

OFFICE OF THE COMMISSIONER

OPI: 051

DISTRIBUTION: (3)Field Commands
Headquarters Commands

AS A RESULT OF THE ABOVE, VIOLATIONS THE DEPARTMENT TYPICALLY CLASSIFIED AS NOT ELIGIBLE FOR CORRECTION IN THE CHP 291, REDI-REF, WILL NOW BE CLASSIFIED AS ELIGIBLE FOR CORRECTION AS DETERMINED BY THE OFFICER. THE FOLLOWING EXAMPLES ARE PROVIDED:

- SECTION 24002(B) VC, VEHICLE NOT EQUIPPED AS REQUIRED BY CODE**
- SECTION 24250 VC, NOT USING REQUIRED LIGHTING EQUIPMENT DURING DARKNESS**
- 27151(A) VC, HAVING AN EXHAUST SYSTEM WHICH HAS BEEN MODIFIED TO INCREASE NOISE**

THE ENTIRE 2009 UNIFORM BAIL AND PENALTY SCHEDULE IS ON-LINE AND AVAILABLE FOR VIEWING AT: <http://WWW.COURTINFO.CA.GOV/JC/DOCUMENTS/REPORTS/120908ITEM3.PDF>. ANY QUESTIONS MAY BE DIRECTED TO SERGEANT [REDACTED] OR [REDACTED] IN RESEARCH AND PLANNING SECTION, AT (916) [REDACTED].

CHP HEADQUARTERS/OFFICE OF THE COMMISSIONER/DS

From: Judy Chavez
To: AIMS_ALL
Date: Fri, Jan 2, 2009 9:47 AM
Subject: Action Required -- 2009 UNIFORM BAIL/PENALTY SCHEDULE, SIGNIFICANT CHANGES - BRIEFING REQUIRED

CHP2 00002 01/02/09 09.35.58
OP86 00001 12/31/08 14.25.10

N 003

TO: ALL COMMANDS

REFERENCE: 2009 UNIFORM BAIL/PENALTY SCHEDULE, SIGNIFICANT CHANGES -
BRIEFING REQUIRED

PLEASE BRING THE FOLLOWING INFORMATION TO THE ATTENTION OF ALL UNIFORMED EMPLOYEES OF YOUR COMMAND.

VEHICLE CODE SECTION 40310 PROVIDES THAT THE JUDICIAL COUNCIL OF CALIFORNIA MUST ANNUALLY ADOPT A UNIFORM TRAFFIC BAIL AND PENALTY SCHEDULE FOR ALL MISDEMEANOR AND INFRACTION OFFENSES. THE 2009 REVISION OF THE UNIFORM BAIL AND PENALTY SCHEDULE HAS BEEN ADOPTED AND WILL BECOME EFFECTIVE ON JANUARY 1, 2009.

TYPICALLY AMENDMENTS TO THE SCHEDULE ARE FOR NEW CODES AS WELL AS MODIFICATIONS OF PENALTIES FOR CURRENT CODES. HOWEVER, ONE SIGNIFICANT CHANGE INCLUDES THE DETERMINATION OF OFFENSES POTENTIALLY ELIGIBLE FOR CORRECTION. IN A RECENT COURT CASE (CALIFORNIA HIGHWAY PATROL V. SUPERIOR COURT (2008) 158 CAL_APP.4TH 728), THE COURT OF APPEAL, SIXTH APPELLATE DISTRICT, ANALYZED THE AUTHORITY TO ISSUE CORRECTABLE CITATIONS FOR INFRACTION OFFENSES UNDER VEHICLE CODE (VC) SECTIONS 40303.5 AND 40610. THE COURT HELD THAT AN OFFICER MAY DETERMINE THAT RIDING A MOTORCYCLE WITHOUT WEARING ANY HELMET PRESENTS AN IMMEDIATE SAFETY HAZARD AND ISSUE A NON-CORRECTABLE CITATION.

AS A RESULT OF THIS DECISION, MOTORCYCLISTS NOT WEARING ANY TYPE OF HEAD COVERING SHALL BE ISSUED A NON-CORRECTABLE CITATION. HOWEVER, MOTORCYCLISTS WEARING A HEAD COVERING THAT IS OBVIOUSLY NOT A MOTORCYCLE HELMET (I.E., BICYCLE HELMET, BALL CAP, FABRIC CAP, ETC.) SHALL BE ISSUED A CORRECTABLE CITATION. WHEN REQUESTED TO SIGN OFF ON A CORRECTABLE VIOLATION FOR SECTIONS 27803(B) OR (C) VC, PERSONNEL SHALL NOT SIGN OFF ON THE CITATION IF THE "CORRECTED" HEAD COVERING IS OBVIOUSLY NOT A MOTORCYCLE HELMET, SUCH AS A STYROFOAM BICYCLE HELMET, FOOTBALL HELMET, BALL CAP, SCARF, STOCKING CAP, LEATHER AVIATOR CAP, ANY VARIATION OF A FABRIC CAP, ETC. FURTHER GUIDANCE REGARDING MOTORCYCLE HELMET ENFORCEMENT WILL BE FORTHCOMING IN MANAGEMENT MEMORANDUM NUMBER 08-071, WHICH IS CURRENTLY UNDER REVIEW.

THE COURT ANALYZED SECTION 40303.5 VC AND DETERMINED THAT ALL REGISTRATION, DRIVER'S LICENSE, AND EQUIPMENT OFFENSES ENUMERATED BY SECTION 40303.5 ARE POTENTIALLY ELIGIBLE FOR CORRECTION. UNDER SECTION 40610, A CITING OFFICER MAY ISSUE A NON-CORRECTABLE CITATION IF THE OFFICER DETERMINES (1) THERE IS EVIDENCE OF FRAUD OR PERSISTENT NEGLIGENCE, (2) THE VIOLATION PRESENTS AN IMMEDIATE SAFETY HAZARD, OR (3) THE VIOLATOR DOES NOT AGREE TO, OR CANNOT, PROMPTLY CORRECT THE VIOLATION.