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HJ : MOTORCYCLE REGULATIONS

DEC 2 10 46 AM '68

DEPT. OF PUBLIC
SAFETY

Committee on Medical Aspects
of Automotive Safety

Medical Aspects of Motorcycle Safety

In recent years physicians have seen more and more injuries and deaths as a result of the increase in motorcycling. Physicians with patients who drive motorcycles or who have children who drive, or plan to drive, have an unusual opportunity to practice preventive medicine by giving counsel concerning the safe operation of such vehicles. This guide has been compiled by the American Medical Association's Committee on Medical Aspects of Automotive Safety to give physicians general background information and suggestions which should be of help in cutting down the tragic and increasing toll of injury and death.

In the decade following 1956, the number of motorcycles registered in the United States has more than quadrupled, and the trend shows every indication that it will continue to rise. In 1956 there were 400,000 registered motorcycles, but by 1967, the figure reached 2 million. If the trend continues, by 1970 there will be more than 5 million such vehicles in use. The word "motorcycle" as used in this guide means all two-wheeled motor-powered vehicles. A number of three-wheeled (sidecar) motorcycles are used primarily by police departments and package-delivery firms, and the suggestions in this guide apply to these as well.

The rapid increase in motorcycle popularity can be traced to the introduction of the small, lightweight vehicle. The cost of these smaller vehicles has placed them within reach of hundreds of thousands of young adults. Motorcycling may seem to those not familiar with accident records to be merely a harmless sport and an efficient means of transportation, but statistics prove that it can be hazardous and that lives and limbs are being sacrificed at an increasing rate.

The Committee on Medical Aspects of Automotive Safety: H. A. Fenner, Jr., MD, *Chairman*, Hobbs, NM; Richard C. Dillihunt, MD, Portland, Me; Arthur H. Keeney, MD, Philadelphia; William K. Keller, MD, Louisville; Abraham J. Mirkin, MD, Cumberland, Md; Paul L. Weygandt, MD, Akron, Ohio; and Lee N. Hames, *Secretary*, Chicago.

Reprint requests to Secretary, Committee on Medical Aspects of Automotive Safety, 535 N Dearborn St, Chicago 60610.

Safety authorities are deeply concerned over the more than 2,000 persons who were killed in motorcycle crashes in 1966¹ and even more so by the predictions that about 5,000 will be killed yearly by 1970 if the present trend continues. In addition, the National Safety Council estimates that approximately 250,000 motorcyclists were injured in 1966. As with the fatalities, the number of injuries also undoubtedly will continue to increase. The medical profession is concerned not only with the number of injuries, but with the type of injury that often results. Severe head injury, with permanent brain damage, is a¹ too common, and fractured extremities, while not ordinarily critical, often do result in permanent disability.

Although automobile crashes are of concern to all, the "packaged" automobile occupant has a much greater chance of not being injured or killed. Death rates from motorcycle crashes per 100,000 registered vehicles are more than double those for automobile crashes, and when in a crash, the motorcyclist is injured 80% to 90% of the time, often very seriously. This is due largely to the fact that when he loses control of his vehicle, he almost always is thrown onto the road or into surrounding solid objects, and when he collides with another vehicle, there is even a greater danger of serious injury or death. Although many collisions undoubtedly are the fault of an automobile driver, it is the cyclist who bears the brunt of the crash because he has very little protection.

During recent years there has been a growing interest in finding ways to reduce these deaths and injuries. The motorcycle problem is attacked in the highway and traffic safety legislation now being implemented. Many states are cooperating in searching for ways to reduce the unnecessary toll. The American Medical Association and many of the state and large county medical associations are devoting efforts to this problem. The motorcycle industry itself is concerned about safety in cycling.

To help reduce the alarming toll and to help

make motorcycling a safe means of transportation, as well as a safe and pleasurable sport, the following suggestions are given:

Concerning the Health of the Driver

1. The physical and mental condition of the motorcyclist must be at least as good as that of the automobile driver: regular medical examinations are advisable.

2. Known handicaps, such as those connected with vision, must be compensated. Patients with cardiac problems must be evaluated most carefully if they intend to drive a motorcycle.

3. A proper mental attitude must be developed by the driver: every effort must be made to avoid carelessness, recklessness, irresponsibility, and anger.

4. Drugs and narcotics must not be used before or while driving, unless under medical prescription, in which case, the physician should be informed that his patient intends to drive while using these prescriptions.

5. The use of alcohol adds tremendously to the normal hazards of motorcycling and should not be used if the individual intends to drive. If the driver does drink, a one-hour wait before driving for every drink consumed will help to keep the driver from becoming intoxicated.

Concerning the Vehicle

1. The driver should learn all he can about the motorcycle he intends to purchase.

2. Instructions in its operation should be obtained from a qualified instructor.

3. Different sizes and types have different handling qualities, and the driver should not switch to other machines without learning about their characteristics.

4. The importance of upkeep cannot be overemphasized: it can easily be the difference between life and death.

Concerning Vehicle Operation

1. All state and community motor vehicle laws, both as to licensing and operation, should be learned and obeyed.

2. New drivers have the most crashes. The operation of a motorcycle requires special skills, which are learned only through adequate instruction and extensive experience.

3. Public roads should not be used until the driver is completely familiar with the operation of his vehicle.

4. Night driving is extremely dangerous, even for the experienced driver, and alertness is especially necessary at dusk. Special care must be taken, also, when unfavorable road or weather conditions exist.

5. A safe distance must be kept between the motorcycle and any vehicle in front—at least twice the one-vehicle length for each 10 miles per hour, which is recommended for automobiles.

6. Since the automobile driver may not give the motorcyclist adequate space, or may not even see it, the motorcyclist must always be alert.

7. Passengers should not be carried unless the motorcycle is equipped to do so, and never more than one.

8. Driving abreast should be avoided. Not only is it usually illegal, but it cuts down on the "safe maneuvering" area.

9. A "tailgating" vehicle should be encouraged to pass at the first safe opportunity.

10. Motorcyclists should be meticulous in signaling for slowing, stopping, or turning.

11. Brakes should be used before entering a curve—not after the vehicle is in it.

12. The motorcycle should never be driven between traffic lanes, or on the "shoulder," since a suddenly swerving automobile may be difficult or impossible to avoid.

13. Objects which prevent both hands from being on the handlebars at all times should not be carried.

14. Motorcyclists should slow down and be especially alert if dogs and other animals are in the vicinity. The same applies to pedestrians, especially children and older persons, who often do the unexpected.

15. Defensive driving can be successful in reducing the number of automobile crashes: it probably can be just as successful as far as motorcycle crashes are concerned. (The National Safety Council, Chicago, sponsors a national defensive-driving course.)

Concerning Clothing and Equipment

1. Approved protective headgear should always be worn by driver and passenger. (Helmets should meet the specifications [Z90.1-1966] set by the USA Standards Institute, New York.)

2. Eye protection should be used at all times.

3. Clothing should be heavy enough to protect—preferably of a highly visible color. Bare arms and legs are an invitation to unnecessary injury.

Concerning Courtesy

1. Noise should be kept to a minimum. The motor should never be revved up unnecessarily and original muffler equipment should not be removed or altered.

2. Special care should be taken in residential areas, especially at night.

Concerning Emergency Care.—Even if the above suggestions are followed, the motorcyclist may still become involved in a crash. Severity of the injuries may be minimized and lives may be saved by summoning emergency medical care immediately. However, when the victim is in obvious need of immediate care, as in the case of heavy bleeding, first-aid care should be provided on the spot. Injured persons should be kept warm and made as comfortable as possible, but should not be moved unless necessary for their safety.

Reference

1. *Accident Facts: 1967 Edition*, Chicago: National Safety Council, 1967, p 56.

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Child Without Crash Helmet Dies of Motorcycle Injuries

A novice motorcycle rider from Unalakleet died of her injuries here Saturday night after doctors fought unsuccessfully to save her life.

The victim was Gloria Millie Kayourkluk, 13, daughter of Mr. and Mrs. Lawrence Kayourkluk of Unalakleet.

Trooper Chuck Miller of the Nome post of the Alaska State Troopers, said the child was not wearing protective head gear and added that she had learned to ride the motorbike only the day before. The vehicle was the property of one of her brothers.

Riding tandem with Gloria at the time of the accident was a friend, Della Katchatag, who received minor injuries.

Della told Trooper Miller that just before the accident occurred at 9 o'clock in the evening she cried out to Gloria, asking her to slow the machine. The Trooper estimated the speed at 40-45 miles an hour at the time the vehicle left the road. It crashed into two upright four by four pieces of lumber used to mark the location of a utilidor.

Trooper Miller said the girl apparently turned the throttle the wrong way when her passenger pleaded to slow down.

They had ridden past the school and were headed for the Federal Aviation Agency housing area when the fatal accident occurred.

The body was returned to Unalakleet today.

Man Dies When Hit On Cycle

ADT 11-2-70

An Anchorage man was killed about 2:30 a.m. Sunday when the motorcycle he was riding was struck from the rear as he was stopped for a red light.

Ronald Peter LaFramboise, 18, of 2603 29th Ave., received massive internal injuries, a brain concussion and hemorrhaging of the brain in the accident. He died a few hours after the accident in Providence Hospital.

City police meanwhile arrested Larry Allen Austermaal, 29, of Kaslof. He was charged with driving while intoxicated and with failure to remain and render assistance, a felony.

Police Sgt. Ron Otte said LaFramboise was stopped for a red light at Spenard Road headed west on Northern Lights Boulevard when the incident occurred. The Austermaal vehicle continued through the intersection after the impact.

Otte said witnesses followed the vehicle to the Minnesota Bypass, where it turned right. Austermaal was apprehended at 26th Avenue and the bypass, Otte said.

The injured man was taken to Providence Hospital for treatment. He died a few hours later, Otte said. There was no indication that the motorcycle rider was wearing a safety helmet.

Austermaal was lodged in state jail pending arraignment on the charges.

LaFramboise had attended West High School and was employed with a local car wash. He was born in Anchorage.

He is survived by his father, Philip J. LaFramboise, Anchorage; his mother, Mrs. Philomene Evans, Anchorage; five brothers, Anthony, Larry and Marcel, all of Anchorage, Philip J. Jr., Fairbanks, and Gregory, in the U.S. Marines in Australia, and nine sisters, Mrs. Shirle Schmidt, Mrs. Beverly Babbitt, Mrs. Linda Estabrook, Mrs. Diann Martin, Mrs. Charlotte Kendrick, Miss Therise LaFramboise, Miss Janice LaFramboise and Miss Patricia LaFramboise, all of Anchorage, and Mrs. Carol Williams, Amboy, Wash.

Funeral arrangements are pending at Green Funeral Chapel.

The death brought to 83 the number of motor vehicle deaths in Alaska this year, compared with 53 at this time in 1969.

It brought the number of traffic deaths in Anchorage to 10 this year.



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
NATIONAL HIGHWAY SAFETY BUREAU
WASHINGTON, D.C. 20591

JAN 22 1970

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JUNEAU, ALASKA

JAN 20 9 07 AM '70

DEPT. OF PUBLIC
SAFETY

Mr. Mel J. Personett
Commissioner, Department of
Public Safety
Pouch N
Juneau, Alaska 99801

Dear Mr. Personett:

We are aware that State motorcycle protective headgear requirements, enacted to implement the Department of Transportation's Safety Program Standard No. 3 entitled Motorcycle Safety, are being challenged in many jurisdictions. In May of last year I provided the Governor of your State with a memorandum prepared by the legal staff of the Federal Highway Administration supporting the constitutionality of headgear legislation.

Subsequently the U.S. Supreme Court in Bisenius v. Karns, 89 S. Ct. 2033 (1969) dismissed an appeal attacking the constitutionality of the Wisconsin statute "for want of a substantial federal question." This is highly significant because such a disposition means that the Supreme Court viewed the Wisconsin court decision upholding constitutionality to be correct.

I enclose for your information a revision of the legal memorandum provided your Governor which has been updated to include Bisenius and other cases which have come to our attention in the interim.

In addition to court challenges, many States will be facing increased attempts to create legislative opposition to their helmet requirements. As mentioned in my letter of May 16 to your Governor, there is substantial evidence that strongly supports these requirements and hence argues against repeal actions. If opposition to the statutory requirement is developing in your State, you might want to make available to legislators or legislative committees the

enclosed memorandum along with other material, such as the information we sent you last year showing a reduction in motorcycle fatalities of 30% in those States adopting the helmet requirement. Pertinent materials are enclosed for your use. We would be glad to help you in this regard, including making more copies available to you.

If I can be of any further assistance, please do not hesitate to call me.

Sincerely,



Robert Brenner
Acting Director

Enclosures

cc: Coordinator
State Attorney-General
Regional Highway Representative

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.



National Highway Traffic Safety Administration
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20591

IN REPLY REFER TO:

42-13

January 13, 1971

AIRMAIL

Mr. Robert J. Mahoney
Assistant Attorney General
State of Alaska
350 K Street
Anchorage, Alaska 99501

Attention: Sanford Gibbs

Dear Mr. Mahoney:

Lt. H. J. Sydnan, Director of the Alaska Traffic Safety Bureau asked that I send you the enclosed staff memorandum on motorcycle helmet law constitutionality. The enclosed document dated January 1970 is the complete staff memo. The document dated November 1970 is the material needed to update the January 1970 memorandum. We are in the process of having the revised memorandum printed, but it won't be available for several weeks.

If the National Highway Traffic Safety Administration can be of further assistance, please let us know.

Sincerely,

Lewis S. Duchanan
Motorcycle Safety Specialist
Traffic Safety Programs

Enclosures

cc: Lt. Sydnan w/incl

STAFF MEMORANDUM
ON THE
CONSTITUTIONAL QUESTION PRESENTED BY
STATE MOTORCYCLE HEADGEAR REQUIREMENTS

JANUARY 1970

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
NATIONAL HIGHWAY SAFETY BUREAU

QUESTION PRESENTED

Whether a State requirement that any person riding upon or operating a motorcycle on the streets or highways of the State shall wear upon his head a protective head device of a type approved by the State is unconstitutional under the Fourteenth Amendment.

BACKGROUND

Twenty-three U.S.C. § 402(a) (P. L. 89-564, the Highway Safety Act of 1966) requires each State to have a highway safety program approved by the Secretary of Transportation and in accordance with uniform standards promulgated by him.

Highway Safety Program Standard 4.4.3 released by the Secretary on June 26, 1967, and entitled Motorcycle Safety, (23 C.F.R. Part 204) requires each State to have a motorcycle safety program providing as a minimum, inter alia, that when a motorcycle is being operated on streets and highways, each motorcycle operator and passenger shall wear an approved safety helmet. Latest available information ^{1/} indicates that as of September 1, 1969, 41 states had enacted motorcycle protective headgear statutes ("headgear legislation" hereafter) of this type providing criminal penalties upon violation. Additionally an unknown number of cities may have enacted similar municipal ordinances.

As of January 1, 1970, there have been decisions in response to 43 known separate court challenges of State and municipal headgear legislation. In 31 instances legislation has been upheld, and in 12 it has been declared unconstitutional. ^{2/} Headgear legislation has been upheld by 11 State Supreme Courts (Vermont, Missouri, Florida, Washington, Oregon, North Carolina, Rhode Island, Massachusetts, Louisiana, North Dakota, and Wisconsin), 12 appellate courts (three in New York, two in New Jersey, and one each in Hawaii, Pennsylvania, Texas, Maryland, Ohio, Washington, and Connecticut), and 8 trial courts (two each in Pennsylvania, Kansas and New York, one each in South Dakota and Minnesota). Headgear legislation has been declared unconstitutional by 1 State Supreme Court (Illinois), 3 appellate courts (one each in Idaho, Arizona and Michigan), and 8 trial courts (two in New York, and one each in Ohio, Florida, Missouri, Kentucky, Colorado, and Michigan).

^{1/} Insurance Institute of Highway Safety, Legislative Review 1970, p. 20.

^{2/} This figure is computed on the basis of the last known decision in each case. Such decision, of course, may represent an appellate reversal, or be subject to reversal on appeal.

Additionally, it is the opinion of the Attorney General of Oklahoma that the State's headgear legislation is unconstitutional and the opinion of the Attorney General of New Mexico that a proposed city ordinance would be invalid if applied to citizens over 18 years of age.

The Supreme Court has never agreed to review one of these cases on the merits. However, in June 1969 the Court in Bisenius v. Karns dismissed an appeal (89 S. Ct. 2033 (1969)) attacking the constitutionality of the Wisconsin statute "for want of a substantial federal question". Such a disposition means that the Court viewed the decision below, upholding constitutionality, to be correct.

THE UNITED STATES SUPREME COURT VIEWS A STATE SUPREME
COURT DECISION UPHOLDING CONSTITUTIONALITY OF HEAD-
GEAR LEGISLATION TO BE CORRECT

During its 1968-69 term, the United States Supreme Court denied two petitions for certiorari in cases upholding headgear legislation ^{1/} and dismissed an appeal in a third case "for want of a substantial federal question", Bisenius v. Karns, 165 N.W. 2d 377 (S. Ct. Wisc. 1969), appeal dismissed, 89 S. Ct. 2033 (1969). The appellant had attacked Wisconsin's headgear legislation (§ 347.485(1)(a) Stats.) as a restriction upon individual liberty and as exceeding the police power of the state, alleging that both violated the due process clause of the Fourteenth Amendment.

The Supreme Court's dismissal of appeal "for want of substantial federal question" means that the Court views the decision below to be correct, and that no substantial question on the merits was raised. ^{2/}

The issues raised in Bisenius are essentially the same as those raised in other suits challenging the constitutionality of headgear legislation.

^{1/} Everhardt v. City of New Orleans, 217 So. 2d 400 (S. Ct. La. 1968) reversing 208 So. 2d 423 (La. App. 1968), cert. denied 89 S. Ct. 1775 (1969); Mass. v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass. 1968), cert. denied 89 S. Ct. 485 (1968).

^{2/} Stern and Gressman, Supreme Court Practice 195 (3rd ed. 1962)

THE PRESUMPTION IN FAVOR OF THE CONSTITUTIONALITY OF
A STATUTE IS ESPECIALLY APPROPRIATE WHEN A STATE STATUTE
IMPLEMENTS THE EXPRESS COMMAND OF THE CONGRESS OF THE
UNITED STATES.

There is a "long established presumption in favor of the constitutionality of a statute", Brandeis J., Ashwander v. Tennessee Valley Authority, 297 U.S. 288 at 354, (1936). This presumption has been recognized by the Supreme Court since the earliest days of the United States. Calder v. Bull, 3 Dall. 386, 399, (1795). In the words of Mr. Chief Justice Waite: "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt." Sinking-Fund Cases, 99 U.S. 700, 718, (1879). Accord: Marshall C.J., Dartmouth College v. Woodward, 4 Wheat. 518, 625 (1818); Washington, J., Ogden v. Saunders, 12 Wheat. 213, 270 (1827).

This presumption applies to an Act of a State legislature as well as an Act of Congress, and "all reasonable doubts will be resolved in favor of the lawful exercise of their powers by the representatives of the people." State of North Carolina v. Anderson, 164 S.E. 2d 48 (1968) upholding that State's helmet legislation. The presumption extends to a city ordinance as well. Everhardt v. City of New Orleans 217 So. 2d 400 (S. Ct. La. 1968), reversing 203 2d 423 (La. App. 1958) cert. denied 89 S. Ct. 1775 (1969).

The presumption of constitutionality seems especially appropriate when a State enacts legislation as a complement to an Act of Congress. The Highway Safety Act of 1966 (P. L. 89-564) was enacted "To provide for a coordinated national highway safety program through financial assistance to the States to accelerate highway traffic safety programs" It requires that "Each State shall have a highway safety program . . . designed to reduce traffic accidents and deaths" These programs "shall be in accordance with uniform standards promulgated by the Secretary." 23 U.S.C. § 402(a)

Pursuant to the authority granted him by the Act the Secretary released Highway Safety Program Standard 4.4.3 (23 C.F.R. Part 204, Highway Safety Program Standard No. 3) title "Motorcycle Safety." The purpose of the Standard was

"To assure that motorcycles, motorcycle operators, and their passengers meet standards which contribute to safe operation and protection against injuries."

The background of the Standard shows the imperative need for such a Standard:

"Deaths and injuries from motorcycle accidents doubled between 1963 and 1965. This fact is particularly alarming when it is understood that most of those killed and injured were young people under the age of 25. Motorcycle registrations have jumped from 574,080 in 1960 to 1,914,700 in 1966. By 1970 the annual increase is expected to reach 1 million per year. Motorcycle safety takes on grave dimensions in view of the fact that since 1960 the rate of motorcycle fatalities has increased at about the same rate as the number of motorcycles."

The Standard requires that "Each State shall have a motorcycle safety program to insure . . . that protective safety equipment for driver and passengers will be worn," specifically, "as a minimum," that

"B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.

"C. Each motorcycle passenger wears an approved safety helmet"

This, then, is the Federal Standard that the State legislation was enacted to implement at the express command of the Congress.

III

THE POLICE POWER OF A STATE INCLUDES THE POWER TO REQUIRE A MOTORCYCLIST TO WEAR PROTECTIVE HEADGEAR.

Headgear legislation stems from the police power of a State. The police power includes the power to enact laws within constitutional limits to promote the public safety and health, but from its nature it is incapable of exact definition. See e.g. Berman v. Parker 348 U.S. 26 (1954). It is one of the least limitable of governmental powers, and a proper exercise thereof may involve limitation of the use and enjoyment of private property without violation of the due process clause of the Constitution. See e.g. Queenside Hills Realty Co. v. Saxl, 328 U.S. 80 (1945).

The public streets, roads, and highways of a State are the property of all the people of a State, and a State has plenary power over the regulation of the use of such for the safety and best interests of the public. The Supreme Court has recognized and given sanction to the State exercise of its police power over use of the public way for more than 40 years:

"Motor vehicles are dangerous machines, and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all . . . who use its highways."

Hess v. Pawloski, 374 U.S. 352, at 356 (1927).

Protection of a motorcyclist and his passenger while on the public roads then is within the legitimate concern of the State and not an area reserved to the individual. Legislation requiring the use of protective headgear by both cyclist and passenger is reasonably related to the end envisioned of reducing deaths and injuries to cyclists and passengers upon the public roads. Therefore State headgear legislation is a valid exercise of the police power by a State. See Massachusetts v. Howie, 338 N.E. 2d 373 (S. Jud. Ct. Mass., 1968); 89 S. Ct. 485 cert. denied 1968; State v. Edwards, Case No. 583370, Mun. Ct. Hennepin Cty. Minn. (1968).

IV

A STATE STATUTE REQUIRING A MOTORCYCLIST AND PASSENGER TO WEAR PROTECTIVE HEADGEAR DOES NOT VIOLATE THE FOURTEENTH AMENDMENT.

A. EVEN IF THE PRIMARY OBJECT OF HEADGEAR LEGISLATION IS TO PROTECT AN INDIVIDUAL FROM HIMSELF, SUFFICIENT PUBLIC INTEREST EXISTS TO JUSTIFY THIS STATUTE AND THERE IS NO VIOLATION OF THE DUE PROCESS CLAUSE.

If headgear legislation bears no relationship to the general welfare but has the sole effect of requiring an individual to protect himself from himself, it will establish a restriction upon personal liberty such as to constitute a denial of due process.

But such legislation is based upon sufficient public interest to constitute a valid exercise of the State police power.

The unprotected motorist presents a potential traffic hazard to the public at large. Unlike the operator of an enclosed motor vehicle a cyclist without a helmet is unprotected against falling objects such as tree branches. He is also unprotected against flying stones or gravel from the wheels of other moving vehicles. If struck in the head an unprotected cyclist could be so affected as to lose control of the vehicle and be the cause of death or injury to himself and other users of the highway. Everhardt v. City of New Orleans, supra; State ex rel. Colvin v. Lombardi, 241 A. 2d 625 (S. Ct. R. I. 1968).

Further, once a cyclist, passenger, or other person is injured because of the action of an unprotected cyclist, there is a tangible effect upon the public. There is an effect upon insurance rates, public hospital services, income tax revenues because of lost manhours of employment, public services to the disabled, and national defense since many motorcyclists are young men.

Severe injuries may result in an individual becoming a public charge; his death may call into force the State's welfare responsibility for his widow and children. State v Lombardi, supra; People v. Newhouse, 287 N.Y.S. 2d 713 (1968).

The interdependence of the acts of an individual and the interest of the State has long been recognized. "The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the State must suffer."

New York Central R. Co. v. White, 243 U.S. 188 at 206-07 (1916).

Accordingly States have legislated in many situations where there is a demonstrable risk to an individual which can be substantially reduced by requiring him to take certain protective measures. State laws prohibiting self-maiming and attempted self-destruction are well known. Additionally many States require safety devices to be worn by window cleaners, eye protection for welders, hard hats for those involved in demolition work, life preservers to be worn while water skiing, and nets protecting aerial performers from the effects of accidental falls. Headgear legislation belongs to this class of legislation.

B. HEADGEAR LEGISLATION DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE SINCE THE DISTINCTION BETWEEN MOTORCYCLES AND OTHER VEHICLES IS BASED UPON SUBSTANTIAL DIFFERENCES AND THEREFORE REASONABLE IN LIGHT OF ITS PURPOSE.

Headgear legislation restricts the liberty of only one class of users of the public highway: motorcyclists and their passengers. There is no similar restriction upon the liberty of operators and passengers of other motor vehicles.

But headgear legislation does not violate the equal protection clause because the distinction between motorcycles and other vehicles such as bicycles and automobiles is based upon substantial differences and is reasonable in light of its purpose:

"The power-driver cycle is a unique machine. It is capable of moderate to high speeds by motor vehicle standards, with the hazards inherent in speeds at which the vehicle is driven. A bicycle is limited in its speed by the nature of the power which propels it. An automobile differs from a motorcycle in

providing a shell surrounding the motorists. Both bicycles and automobiles can be dangerous to the riders, but the hazards of speed on the one hand and lack of an enclosure on the other hand do distinguish the motorcycle from both the bicycle and the automobile and make the hazard of operation distinguishable from both the bicycle and the automobile. Just because both the bicyclist and the motorist are subjected to hazards of head and face injuries does not mean that in order to make Sec. 347.485 valid it must apply to bicyclists and motorists. The degrees of hazards differ and therein lies the distinction. A classification is not unreasonable because it does not affect everyone who has any exposure to an evil." Bisenius v. Karns, Case No. 124423(Cty. Ct. Wisc. 1968).

C. HEADGEAR LEGISLATION DOES NOT VIOLATE THE DUE PROCESS CLAUSE SINCE IT IS CLEAR AND DEFINITE ENOUGH TO GIVE UNEQUIVOCAL WARNING OF THE RULE TO BE OBEYED.

even though headgear legislation may require the wearing of a helmet of a type approved by a designated State official, such a statute is sufficiently definite, clear, and positive to give unequivocal warning to citizens of the rule which is to be obeyed.

A statute does not have to specify precise helmet performance requirements in order to be clear and definite, since the use and nature of protective helmets in industry, athletics, and the military service is known generally to the public. People v. Schmidt, 54 Misc. 2d 702, 283 NYS 2d 290 (1967). It is sufficient that the regulations, or proposed regulations of the designated State official "indicates that the requirements will be definite and certain with standards based upon tests to be made of the various headgear." Bisenius v. Karns, Case No. 124423 (Cty. Ct. Wisc. 1968).

D. HEADGEAR LEGISLATION DOES NOT VIOLATE THE DUE PROCESS CLAUSE SINCE IT LAWFULLY DELEGATES POLICE POWER TO AN ADMINISTRATIVE OFFICIAL.

The established rule is that the legislature may delegate to a subordinate body the discretionary power to execute and administer a law, provided a reasonably clear standard is formulated to govern the exercise of discretion by the subordinate body. The test is the completeness of the statute so that no part of the legislative function is left to the judgment of a delegate. People v. Carmichael, 288 NYS 2d 931 (1968) rev. 279 NYS 2d 272 (1967). Even though a standard by its nature is a general one it is valid if it is capable of reasonable application under the circumstances. Headgear legislation constitutes a lawful delegation of the police power since it describes the job to be done, who must do it, and the scope of his authority. Bowles v. Willingham, 321 U.S. 502, 575 (1944).

Numerous examples of legislative delegation of powers pertaining to vehicle and traffic standards can be found in State laws. In New York, for example, the Commissioner of Motor Vehicles may make rules and regulations prescribing standards of brake efficiency, brake linings, hydraulic brake fluid, commercial vehicle lighting, emergency equipment, school bus equipment, splash guards, safety belts and shoulder harnesses, and traffic hazard warning devices. ^{3/}

^{3/} Subject to sec. 103(d) of P.L. 89-563 (The National Traffic and Motor Vehicle Safety Act of 1966).

APPENDIX

I

MOTORCYCLE PROTECTIVE HEADGEAR STATUTES

A typical statute requiring use of protective headgear by motorcycle operators and/or passengers might read:

No person shall ride upon or operate a motorcycle on the streets or highways of this State (city) without wearing upon his head a protective head device (crash helmet, safety headgear, protective helmet) of a type approved by the Director of Public Safety (Commissioner, City Council Department of Health).¹

The following 40 States have enacted statutes of this type:

Alabama	Kentucky	North Dakota
Arizona	Louisiana	Ohio
Arkansas	Maine	Oklahoma
Colorado	Maryland	Oregon
Connecticut	Massachusetts	Pennsylvania
Delaware	Minnesota	Rhode Island
Florida	Missouri	South Carolina
Georgia	Nebraska	South Dakota

¹ The legislature of Michigan, in response to a decision of the Court of Appeals on April 30, 1968, holding its protective headgear statute unconstitutional, enacted a new statute on June 12, 1968, which reads:

A motor driven cycle shall be operated with, and carry when it is being operated, a number of crash helmets equal to the number of drivers and passengers carried during operation. Helmets shall be approved by the department of State police. The department shall promulgate rules for the implementation of this section in accordance with the provisions of [here follows thy citation]

Hawaii	New Hampshire	Tennessee
Idaho	New Jersey	Texas Utah
Illinois	New Mexico (under 18)	Vermont
Indiana	New York	Washington
Kansas	North Carolina	Wisconsin

The factual situations in the cases are virtually identical: the operator of a motorcycle was apprehended while operating a motorcycle upon the public streets without wearing on his head a protective head device as required by law.

APPENDIX

II

Courts and Cases

The following is a listing and citation of motorcycle protective headgear legislation opinions known as of January 1, 1970

I. United States Supreme Court

1. Krafft v. New York, 90 S. Ct. 198 (1969), certiorari denied.
2. Bisenius v. Karns, 89 S. Ct. 2033 (1969), appeal dismissed "for want of a substantial federal question."
3. Everhardt v. City of New Orleans, 89 S. Ct. 1775 (1969), certiorari denied.
4. Massachusetts v. Howie, 89 S. Ct. 485 (1968), certiorari denied.

II. State

A. Supreme or Highest Courts

1. State v. Solomon, _____ A. 2d _____ (S. Ct. Vt. 1969) upholding § 1256.
2. State v. Darrah, _____ S.W. 2d _____ (S. Ct. Mo. 1969) upholding § 301.010 R.S. Mo. and reversing 1968 decision of Sedalia Mun. Ct.
3. State v. Eitel, 227 So. 2d 489 (S. Ct. Fla. 1969), reversing Small Claims - Magistrate Cts., Palm Beach Cases Nos. 68M-7013/14, 68M-7234 (1968) and upholding F. S. 317.981.
4. State v. Iaitinen, 459 P. 2d 789 (S. Ct. Wash. 1969) holding constitutional RCW 46.37.530(3).
5. State v. Fetterly 456 P. 2d 996 (S. Ct. Oreg. 1969), holding constitutional ORS 483.443(1).
6. People v. Fries, 250 NE. 2d 149 (S. Ct. Ill., 1969) Docket No. 41624, holding unconstitutional Ill. Rev. Stat. 1967, ch. 971/2 Par. 189c(a).
7. State v. Anderson, 166 S.E. 2d 49 (S. Ct. N.C. 1969), affirming 164 S.E. 2d 48 (1968) reversing decision of Superior Ct., Guilford Cty., and upholding G.S. 20-140.2(b).
8. Bisenius v. Karns 165 N.W. 2d 377 (S. Ct. Wisc., 1969) upholding § 347.485 (1) and (2), Stats., 1967. Appeal dismissed, 89 S. Ct. 2033 (1969).

9. State v. Odegaard 165 N.W. 2d 677 (S. Ct., N.D., 1969), upholding N.D.T.C. § 39-21-48.
10. Everhardt v. City of New Orleans 217 So. 2d 400 (S. Ct. La. 1968), reversing 203 So. 2d 423 (La. App. 1966), upholds city ordinance which is similar to state statute, R.S. 32:190. Cert. denied 89 S. Ct. 1775 (1969).
11. Massachusetts v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass., 1963), Memorandum decision upholding Massachusetts statute. Cert. denied 39 S. Ct. 485 (1968).
12. State ex rel Colvin v. Lombardi 241 A. 2d 625 (S. Ct. R. I., 1968), upholding G. L. 1956, § 31-10.

B. Appellate Courts

1. Commonwealth v. Arnold, (Pa. Super. Ct. 1969) upholding P. L. 58, section 29.1 as amended, and reversing Clearfield Cty. Ct. (1969) decision.
 2. State v. Betts (Warren Cty. Ct., Ohio, 1969) holding unconstitutional § 4511.53 Revised Code.
 3. People v. Krafft (Onondaga Cty. Ct. 1969) upholding subdivision 6, section 381 of Vehicle and Traffic Law; cert. denied, 90 S. Ct. 193 (1969).
 4. People v. Thoreson, (Maricopa Cty. Ct. 1969), holding Arizona law unconstitutional.
 5. State v. _____ (Seneca Cty. Ct., Ohio, 1969) upholding § 4511.53 Revised Code (See Cycle News East, Nov. 4, 1967, p. 30).
 6. People v. Albertson, Dist. Ct. (1969) holding Idaho statute unconstitutional, reversing Cty. Ct.
 7. State v. Krammes, 252 A.2d 223 (1969) upholding N.J. S.A. 39:3-76.7.
 - **** 8. Ex Parte Smith, 441 S.W. 2d 544 (1969) upholding Art. 6701c-3 V.A.C.S., Texas.
 9. State v. Myers, (Balto. Cty. Ct. 1969), affirming 1968 decision of Magistrate Ct. upholding Md. headgear and goggle legislation.
 10. State v. Burawski, 37 Law Week 2443, Conn. Cir. Ct. App. Div. (1967) File No. EV 10-63528 AP upholding Conn. Gen Stat. § 14-289(e), petition for appeal to S. Ct. Conn. denied, 252 A2d 812 (1969).
- **** This case should be listed under Section A. Supreme or Highest Courts.
The Texas Appellate Court serves as the Supreme Court in criminal matters.

11. State v. Male, 247 A. 2d 176 (1968) upholding N.J.S.A. 39: 3-76.7.
12. American Motorcycle Association and Farnum v. Davids and State Police, 158 N.W. 2d 72 (Mich. Ct. of Appeals, 1968), reversing 1967 decision of Circuit Ct., Ingham Cty., and holding unconstitutional PA 1949, No. 300, § 6581(d) as added by PA 1966, No. 207 (CL 1948 § 257, 658[d]).
13. People v. Carrichael, 288 N.Y.S. 2d 931 (1968) reversing 279 N.Y.S. 2d 272 (1967) and upholding subdivision 6, section 381, of Vehicle and Traffic Law.
14. State v. Zektzer, Sup. Ct. King Cty. No. 47101 (Wash. 1967) upholding Ch. 232, Sec. 4 Sub^d 3, Laws of 1967, and reversing City of Seattle v. Zektzer, Seattle Mun. Ct. (1967).
15. People v. Schmidt, 283 N.Y.S. 2d 290 (Cty. Ct., Erie Cty. 1967) upholding subdivision 6, section 381 of Vehicle and Traffic Law. Appeal dismissed 295 N.Y.S. 2d 936 (1968).

C. Trial Courts

1. Sheneman v. Commonwealth (Dauphin Cty. Ct. Pa. 1969) upholding P. L. 58, section 625.1 as amended.
2. Commonwealth v. Molter, (Delaware Cty. Ct. Pa. 1969) No. S.A. #7, upholding P. L. 58, Section 625.1 as amended.
3. Colo. Motorcycle Ass'n v. Love, Hogan, (Denver Cty. Ct. 1969) holding Colo. law unconstitutional.
4. Commonwealth v. Coffman (Jefferson Cty. Ct., Ky. 1969) holding unconstitutional KRS 189.285.
5. City of Wichita v. White, Cases No. MC 150-151, (D. Ct. Sedgwick Cty. 1969) upholding city ordinance; on appeal Kansas Supr. Ct. (Case No. 45676).
6. S.D. Motorcycle Dealers Ass'n and Haight v. Parker, (S. D. Cir. Ct. 1969) upholding Section 4 of Chapter 215 of the 1967 Session Laws.
7. State v. Babbs, (Martin Cty. Ct., Fla. 1968) holding unconstitutional F.S. 317.981.
8. State v. Edwards, Case No. 582370 (Mun. Ct. Hennepin Cty., 1968) upholding Minn. Stat. 169.974, subd. (4)a.
9. People v. Newhouse, 287 N.Y.S. 2d 713 (Cty. Ct. of Ithaca, N.Y. 1968) upholding subdivision 6, section 381 of Vehicle and Traffic Law.

- 10. People v. Daugherty, (West Plains Mun. Ct. 1968) holding Missouri Law unconstitutional.
- 11. People v. Wattle, (Buffalo City Ct. 1967) holding unconstitutional subdivision 6, section 381 of Vehicle and Traffic Law.
- 12. City of Hutchinson v. Silvey, Case No. CR 8081 (D. Ct. Reno City., Kansas 1967) upholding city ordinance.
- 13. People v. Bielmeyer 282 N.Y.S. 2d 797 (Buffalo City Ct. 1967) upholding subdivision 6, section 381 of Vehicle and Traffic Law.
- 14. State v. Duncan, No. 44835 (Wayne Cty. 1967) holding Michigan statute unconstitutional.
- 15. People v. Smallwood, 277 NYS. 2d 429 (Ct. Spec. Sess., Irondequoit, Monroe Cty. 1967), holding unconstitutional subdivision 6, section 381 of Vehicle and Traffic Law.

III. Opinions of States Attorneys - General

- 1. Opinion of Attorney - General of New Mexico, No. 69-14 Feb. 25, 1969. In response to an Attorney for the New Mexico legislative Counsel, the opinion notes cases contra position taken in No. 66-15 but states "we are unwilling to completely abandon our past position."
- 2. Opinion of Attorney - General of Oklahoma No. 68-267, December 31, 1968, that 470. S. Supp. 1967, § 40-105(b), is unconstitutional.
- 3. Opinion of Attorney - General of New Mexico, No. 66-15, Feb. 1, 1966. Proposed city ordinance unconstitutional as to citizens over 18.

IV. Law Review Notes and Articles

- 1. Constitutional Law - Validity of Safety Helmet Requirements, 71 W.Va. L. Rev. 191 (1969).
- 2. Constitutional Law - Police Power - Motorcycle Crash Helmet Laws' Relation to Public Welfare, 1969 Wisc. L. Rev. 320 (1969).
- 3. Constitutionality of Mandatory Motorcycle Helmet Legislation, 73 Dick. L. Rev. 100 (1968).

4. Constitutional law - Due Process - Statute Requiring Motorcyclist to Wear Crash Helmet is Unconstitutional, (American Motorcycle Ass'n. v. Davids), 82 Harv. L. Rev. 469 (1968).

Mr. Buchanan

STAFF MEMORANDUM
ON THE
CONSTITUTIONAL QUESTION PRESENTED BY
STATE MOTORCYCLE HEADGEAR REQUIREMENTS

NOVEMBER 1970

U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY SAFETY BUREAU

QUESTION PRESENTED

Whether a State requirement that any person riding upon or operating a motorcycle on the streets or highways of the State shall wear upon his head a protective head device of a type approved by the State is unconstitutional under the Fourteenth Amendment.

BACKGROUND

Twenty-three U.S.C. § 402(a) (P.L. 89-564, the Highway Safety Act of 1966) requires each State to have a highway safety program approved by the Secretary of Transportation and in accordance with uniform standards promulgated by him.

Highway Safety Program Standard 4.4.3 released by the Secretary on June 26, 1967, and entitled Motorcycle Safety, (23 C.F.R. Part 204) requires each State to have a motorcycle safety program providing as a minimum, *inter alia*, that when a motorcycle is being operated on streets and highways, each motorcycle operator and passenger shall wear an approved safety helmet. Latest available information indicates that as of November 1, 1970, 42 States and the District of Columbia had enacted motorcycle protective headgear statutes ("headgear legislation" hereafter) of this type providing criminal penalties upon violation. Additionally an unknown number of cities may have enacted similar municipal ordinances.

As of November 1, 1970, there have been decisions in response to 48 known separate court challenges of State and municipal headgear legislation. In 38 instances legislation has been upheld, and in 10 it has been declared unconstitutional. ^{1/} Headgear legislation has been upheld 20 times by Supreme or highest Courts ^{2/} in 19 States (Arkansas, Minnesota, Idaho, Kentucky, Oklahoma, Hawaii, Colorado, Vermont, Missouri (twice), Florida, Texas, Washington, Oregon, North Carolina, Rhode Island, Massachusetts, Louisiana, North Dakota, and Wisconsin), 12 appellate courts (three in New York, two in New Jersey, and one each in Utah, Pennsylvania, Texas, Maryland, Ohio, Washington, and Connecticut), and 7 trial courts (two each in Pennsylvania, Kansas and New York, and one in South Dakota). Headgear legislation has been declared unconstitutional by 1 State Supreme Court (Illinois), 2 appellate courts (Arizona and Michigan), and 7 trial courts (two each in New York and Ohio, and one each in Florida, Missouri, and Michigan).

^{1/} This figure is computed on the basis of the last known decision in each case. Such decision, of course, may represent an appellate reversal, or be subject to reversal on appeal.

^{2/} In addition, the Supreme Court of Ohio has refused to consider an appeal from a decision upholding constitutionality of State legislation.

APPENDIX.

I

MOTORCYCLE PROTECTIVE HEADGEAR STATUTES.

A typical statute requiring use of protective headgear by motorcycle operators and/or passengers might read:

No person shall ride upon or operate a motorcycle on the streets or highways of this State (city) without wearing upon his head a protective head device (crash helmet, safety headgear, protective helmet) of a type approved by the Director of Public Safety (Commissioner, City Council Department of Health). ^{1/}

The following 42 States and the District of Columbia have enacted statutes of this type:

Alabama	Louisiana	Ohio
Alaska	Maine	Oklahoma
Arkansas	Maryland	Oregon
Colorado	Massachusetts	Pennsylvania
Connecticut	Minnesota	Rhode Island
Delaware	Missouri	South Carolina
Florida	Nebraska	South Dakota
Georgia	North Dakota	
Kentucky		

^{1/} The legislature of Michigan, in response to a decision of the Court of Appeals on April 30, 1968, holding its protective headgear statute unconstitutional, enacted a new statute of June 12, 1968, which reads:

A motorcycle and a motor driven cycle shall be equipped with, and carry when it is being operated, a number of crash helmets equal to the number of drivers and passengers carried during operation. Helmets shall be approved by the department of State police. The department shall promulgate rules for the implementation of this section in accordance with the provisions of [here follows a lengthy citation]

Hawaii	New Hampshire	Tennessee
Idaho	New Jersey	Texas
Illinois	New Mexico (under 18)	Utah ^{2/}
Indiana	New York	Vermont
Kansas	North Carolina	Virginia
		Washington
		Wisconsin

The factual situations in the cases are virtually identical: the operator of a motorcycle was apprehended while operating a motorcycle upon the public streets without wearing on his head a protective head device as required by law.

^{2/} The Utah statute, however, does not require cycle riders to wear protective headgear while traveling on streets zoned below 35 miles per hour.

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3. Byerhardt v. City of New Orleans, 89 S. Ct. 1775 (1969), certiorari denied.
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II. State

A. Supreme or Highest Courts

1. Fenney v. City of North Little Rock, 455 S.W. 2d 132 (S. Ct. Ark. 1970), upholding Ark. Stat. Ann. § 75-1703 [Supp. 1969].
2. State v. Edwards, 177 N.W. 2d 40 (S. Ct. Minn. 1970), upholding Minn. Stat. 169-974, subd. (4)a. /
3. State v. Cushman, 451 S.W. 2d 17 (S. Ct. Mo. 1970), upholding § 301-010 R.S. Mo.
4. State v. Albertson, 470 P. 2d 300 (S. Ct. Idaho 1970), upholding I.C. § 49-761A and reversing Dist. Ct. which had reversed Cty. Ct.
5. Commonwealth v. Coffman, 453 S.W. 2d 759 (Ky. Ct. of Appeals, 1970), upholding KRS 189.285 and reversing Jefferson Cty. Ct.
6. Elliott v. Oklahoma City, 471 P. 2d 944 (Ct. of Crim. Appeals 1970), upholding Okla. City Ord. 12,071.
7. State v. Lee, 465 P. 2d 573 (S. Ct. Hawaii 1970), upholding KRS § 286-81(1)(A).
8. People v. Ball, _____ P. 2d _____ (S. Ct. Colo. 1970), upholding CRS 1962, 14-8-159 and reversing Colorado Motorcycle Ass'n. v. Love, Moran (Denver Cty. Ct. 1969).

9. State v. Solomon, 260 A. 2d 377 (S. Ct. Vt. 1969), upholding 23 V.S.A. § 1256.
10. State v. Darrah, 446 S.W. 2d 745 (S. Ct. Mo. 1969), upholding § 301.010 R.S. Mo. and reversing 1968 decision of Sedalia Mun. Ct.
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5. State v. Craig, (Ct. of Appeals, Seneca Cty., Ohio, 1969), upholding § 4511.53 Revised Code. S. Ct. of Ohio dismissed motion to certify record (1969).
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Laws' Relation to Public Welfare, 1969 Wisc. L. Rev. 320
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3. Note, 37 U. Mo. K.C. L. Rev. 385 (1969).
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73 Dick. L. Rev. 100 (1968).
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