

Introduction

Recent statistics indicate that, motorcycles make up approximately 2.5 percent of all registered vehicles in the United States and account for only 0.4 percent of all vehicle miles traveled (VMT).¹ Unfortunately, however, motorcyclists account for more than 10 percent of the total traffic fatalities recorded. Also not surprising, for every vehicle mile traveled in 2005, motorcyclists were about 37 times more likely to die in motor vehicle traffic crashes than were passenger car occupants.² Fluctuating fuel prices, severe economic downturns in many regions of the country, and the ever-increasing desire to reduce our carbon footprints are just some of the reasons why municipal courts have seen an increase in the motorcycle use, and abuse over the past few years.

The increase in motorcycle activity also brings with it an increase in cycle-related offenses, injuries and fatalities as national statistics demonstrate. This paper gives an overview of motorcycle-related traffic statistics compiled by state and federal agencies showing current safety (or lack of safety!) trends. It also surveys some of the primary areas of focus with which prosecutors and other court personnel regularly deal and it discusses some of the areas of legislative focus for the upcoming 81st Legislature as it relates to motorcycles laws and enforcement.

I. Motorcycle Safety Facts and Figures³

- Nationwide, motorcycle crash fatalities have increased for the 10th year in a row⁴.

¹ NHSTA's *Fatal Two-Vehicle Motorcycle Crashes*, September 2007, DOT HS 810 834, p. 1.

² NHSTA's *Traffic Safety Facts – 2006: Motorcycles*, DOT HS 810 806, p. 3.

³ NHSTA's *National Center for Statistics and Analysis and NHTSA - Traffic Safety Facts: Texas 2003-2007*.

⁴ NHSTA's *Motor Vehicle Traffic Crash Fatality Counts And Estimates of People Injured for 2007*, DOT HS 811 034 p. 80.

- In Texas, motorcycle-related fatalities have increased more than 11% over the previous year.
- There were 104,000 motorcycle crashes in the U.S. in 2006
- Of all motorcycle riders killed in crashes in 2007, 57% are over 40 years of age with the largest increase in riders 60-69 years of age.⁵
- 27% of motorcycle operators involved in fatal crashes were legally intoxicated (only 23% for passenger car crashes).
- 1 out of 4 motorcycle operators involved in fatal crashes did not have a valid motorcycle license.
- Per mile traveled, the number of deaths on motorcycles in 2006 was about 35 times the number in cars.
- 90% of motorcycle operators killed are male.
- In 2007, 5,154 motorcyclists were killed – an increase of 5 percent over the 4,837 motorcyclists killed in 2006.
- Nationwide, there were 88,000 motorcyclists injured during 2006.
- Motorcycle registrations have increased for the last 9 years by 63%.

II. **Motorcycle: Is it or Isn't it!** - *“That depends on what the meaning of 'is' is”*⁶

Much of what we see in our courts is straight forward and unremarkable. It has two wheels, is usually going too fast and often times it comes in pairs. For those situations, the following definitions are useful and applicable. The definition of a motorcycle can be found in a variety of places. A motorcycle means:

- a) a motor vehicle designed to propel itself with not more than three wheels in contact with the ground. The term does not include a tractor. T.C.§502.001(12)

⁵ *Motor Vehicle Traffic Crash Fatality Counts And Estimates of People Injured for 2007, NHSTA, DOT HS 811 034 p. 87.*

⁶ Statement of Bill Clinton made during his 1998 grand jury testimony on the Monica Lewinsky affair.

- b) a motor vehicle, other than a tractor, that is equipped with a rider's saddle⁷ and designed to have when propelled not more than three wheels on the ground. T.C.§541.201(9)
- c) in this section, "motorcycle" has the meaning assigned that term by Section 502.001, and includes a motorcycle equipped with a sidecar. T.C.§525.001(b)
- d) a motor-driven cycle equipped with a motor that has an engine piston displacement of 250 cubic centimeters or less. The term does not include an electric bicycle. T.C.§541.201(10)
- e) a "moped" that cannot attain a speed in one mile of more than 30 miles per hour and the engine of which cannot produce more than two-brake horsepower; and if an internal combustion engine, has a piston displacement of 50 cubic centimeters or less and connects to a power drive system that does not require the operator to shift gears. T.C. §541.201(8).

However, there are times when it is just hard to tell what it is and so the following additional definitions may be helpful. A motorcycle does not include:

- a) an "electric bicycle".⁸ T.C.§541.201(24)
- b) a "pocket bike or mini-motorbike".⁹ T.C.§ 551.301(3)¹⁰
- c) a "motor-assisted scooter".¹¹ T.C.§ 551.351
- d) a "motorized mobility device".¹² T.C.§ 542.009(a)

⁷ A passenger can't ride on a motorcycle unless it is designed (has seating) for two. T.C.§545.416 (b) & (c).

⁸ This is a vehicle propelled by an electric motor, exclusively or in combination with the application of human power and cannot attain a speed of more than 20 miles per hour without the application of human power and does not exceed a weight of 100 pounds.

⁹ This is a vehicle that is equipped with an electric motor or internal combustion engine having a piston displacement of less than 50 cubic centimeters, designed to propel itself with not more than two wheels in contact with the ground, has a seat or saddle for the use of the operator, is not designed for use on a highway, and is ineligible for a certificate of title under Chapter 501.

¹⁰ There is a specific prohibition to operating these vehicles on a public roadway. T.C. §551.304

¹¹ This is a vehicle with at least two wheels in contact with the ground during operation, a braking system capable of stopping the device under typical operating conditions, a gas or electric motor not exceeding 40 cubic centimeters, a deck designed to allow a person to stand or sit while operating the device and the ability to be propelled by human power alone.

¹² This is a device designed for transportation of persons with physical disabilities that has three or more wheels, propelled by a battery-powered motor, with not more than one forward gear and is not capable of speeds exceeding eight miles per hour.

III. Motorcycle Licenses – “*Your Ticket to Ride...*”

The basic rule articulated by the Texas Transportation Code is that “*A person, other than a person expressly exempted under this chapter, may not operate a motor vehicle on a highway in this state unless the person holds a driver's license issued under this chapter.*”¹³ However, to operate a motorcycle in Texas, a particular license is required. Section 521.084 authorizes the holder of a “Class M” driver's license to operate a motorcycle or moped. There are no limitations on the type or size of motorcycle a person may ride with this type of license. The designation will be indicated on the license in the “CLASS” alongside the other type of license “CM” or possibly “AM” or “BM” if the license holder is rated to drive larger vehicles.

In addition to Class M, Texas DPS will issue four other classifications of “motorcycle” licenses, a “Restricted Class M License” and a Class M with restriction code “I”¹⁴ which allows operation of any motorcycle or moped 250cc or less, Class M with restriction code “K” for operation of any approved moped, and Class M with restriction code “J” for operation of a motorcycle with licensed motorcycle operator over 21 within sight.

All of these licenses have different qualifications and restrictions, primarily based on the size of the vehicle or the age and experience of the operator. Section 521.224 of the Texas Transportation Code, entitled “Restricted Class M License” states:

- a) In this section, "motorcycle" includes a motor driven cycle.
- b) The department may issue a special restricted Class M license that authorizes the holder to operate only a motorcycle that has **not more than a 250 cubic centimeter** piston displacement.
- c) A person is eligible for a restricted motorcycle license if the person:
 - (1) is **15 years of age or older but under 18 years of age**;
 - (2) has **completed and passed a motorcycle operator training course** approved by the department; and

¹³ Sec. 521.021

¹⁴Sec. 521.224

- (3) has met the requirements imposed under Section 521.145.
- d) The department shall make the motorcycle operator training course available.
- e) On the 16th birthday of a holder of a special restricted Class M license, the department shall remove the 250 cubic centimeter restriction from the license without completion by the holder of an additional motorcycle operator training course.
- f) An applicant for the special restricted license must apply in accordance with Subchapter
- g) The applicant is subject to the requirements of Section 521.161 and to other provisions of this chapter in the same manner as an applicant for another license. The department shall prescribe the form of the license. (*emphasis added*)

The DPS will also issue a “Moped License”. This is more correctly identified as a “Class M, restriction code K” under section 521.225 and states:

- a) A person may not operate a moped unless the person holds a driver's license. An applicant for a moped license must be **15 years of age or older**.
- b) The department shall administer to an applicant for a moped license a **written examination** relating to the traffic laws applicable to the operation of mopeds. A test involving the operation of the vehicle is not required.
- c) An applicable provision of this chapter relating to a restricted Class M license applies also to a moped license, including a provision relating to the application, issuance, duration, suspension, cancellation, or revocation of that license.
- d) The department shall **certify** whether a vehicle alleged to be a **moped is a moped**. The department shall:
 - (1) by rule establish the procedure for determining whether a vehicle is a moped;
 - (2) compile a list of mopeds certified by the department; and
 - (3) make the list available to the public on request. (*emphasis added*)

A license examination is administered to all applicants and must include:

- (a) a test of the applicant's:
 - (1) vision;
 - (2) ability to identify and understand highway signs in English that regulate, warn, or direct traffic; and
 - (3) knowledge of the traffic laws of this state;
- (b) a demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the applicant will be licensed to operate; and
- (c) any additional examination the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely.

According to the National Highway Traffic Safety Administration (NHSTA), “One out of four motorcycle operators in fatal crashes in 2006 were operating their vehicles with an invalid license.”¹⁵ Although these are national statistics, a reasonable inference can be drawn for Texas.

IV. **Texas Helmet Law** – *“To be, or not to be? That is the question...”*¹⁶

There is a reason why motorcycle helmets are called “brain buckets”. In 2007, 63% of motorcyclists who were fatally wounded in States without universal helmet laws were not wearing helmets. This is in contrast to a mortality rate of 14% in States where universal helmet laws are in place.¹⁷ The moral of this story is that helmets really do save lives. Unfortunately (or fortunately, depending on your perspective), Texas is a limited-use helmet state. During the period from 2003 through 2007, more than 60% of the motorcycle fatalities in Texas were “unhelmeted”.¹⁸

So, what are the laws regarding helmet use in Texas? Section 661.003 of the Texas Transportation Code states,

- a) A person commits an offense if the person:
 - (1) operates or rides as a passenger on a motorcycle on a public street or highway; and
 - (2) is not wearing protective headgear that meets safety standards adopted by the department.”

But, like most provisions, there are exceptions. In 1997, Section 661.003 was amended to allow motorcyclists to ride without helmets under certain circumstances. Subsection (C) states:

It is an exception to the application of Subsection (a) or (b) that at the time the offense was committed, the person required to wear protective headgear was at least **21 years old** and had **successfully completed a motorcycle operator training and safety course** under

¹⁵ *Traffic Safety Facts – 2006 Data*, NHTSA, DOT HS 810 806, p. 4.

¹⁶ *Hamlet – Soliloquy*, William Shakespeare, ab. 1600.

¹⁷ *Motor Vehicle Traffic Crash Fatality Counts And Estimates of People Injured for 2007*, NHSTA, DOT HS 811 034 p. 90.

¹⁸ *Traffic Safety Facts Texas 2003-2007*, NHSTA, p. 3

Chapter 662 or was covered by a **health insurance plan** providing the person with at least **\$10,000 in medical benefits** for injuries incurred as a result of an accident while operating or riding on a motorcycle. A peace officer may not arrest a person or issue a citation to a person for a violation of Subsection (a) or (b) if the person required to wear protective headgear is at least 21 years of age and presents evidence sufficient to show that the person required to wear protective headgear has successfully completed a motorcycle operator training and safety course or is covered by a health insurance plan as described by this subsection.¹⁹

To identify who those “exempted” riders are, the DPS created a program to issue *Helmet Exemption stickers* to persons who:

- apply to the DPS on the form provided; and
- own the motorcycle listed on the application;
- provide proof of successful completion of the 1) Basic or Advanced Motorcycle Operator Training Course, or 2) health insurance coverage; and,
- pay a \$5.00 non-refundable fee for each sticker.

A helmet exemption sticker displayed on the license plate or license plate mounting bracket creates a presumption that the person operating or riding the motorcycle meets the training or insurance requirements for riding without a helmet. Each sticker is serialized and is not transferrable from one motorcycle to another. Further, the sticker expires on the third anniversary of their date of issuance.

Texas Transportation Code Chapter 661 (Helmet laws) also applies to passengers of motorcycles. They must wear a helmet unless they are exempted!

V. **Motorcycle Operator Training Course**

The basic Motorcycle Operator Training Course (MOTC) is the motorcycle equivalent of the Driving Safety Course and can be used for purposes of dismissal of a moving violation.²⁰ The

¹⁹ It should come as no surprise that in more than 75% of the cases, hospital costs for motorcyclists injured in crashes exceeded \$10,000.

²⁰ C.C.P. 45.0511

cost for the course varies by provider, but the maximum is \$195. The course is required for those riders under the age of 18 and participants must have a motorcycle permit or license to enroll. The course is held in 15 hours over 2 to 3 days depending on specific provider's schedule. With a completion certificate (MSB-8), the DPS may waive the on-road portion of the test if the person is 16 years old or older and has an unrestricted class A, B or C license. There is a more advanced course called the "Experienced Rider Course" which also qualifies as a DSC equivalent. The course is held in six (6) hours and the maximum cost is \$80 and participants must hold a valid Texas class "M" license to qualify for the course.

The basic MOTC is not the same as the "Riding Skills Test" required by the DPS. However, if a person has completed a MOTC, the DPS can waive the Riding Skills portion of the licensing exam. The course will also allow a motorcyclist to apply for a helmet exemption sticker so he or she can ride without a helmet.

VI. **Miscellaneous Motorcycle Laws**

A. **Financial Responsibility**. The law is the same regarding motorcycles; if it is a motor vehicle, it has to have one of the following:

- (1) a motor vehicle liability insurance policy that complies with Subchapter D;
- (2) a surety bond filed under Section 601.121;
- (3) a deposit under Section 601.122;
- (4) a deposit under Section 601.123; or
- (5) self-insurance under Section 601.124.

As with most things, there are exceptions to this requirement. Section 601.051 does not apply to the operation of a motor vehicle that:

- (A) is a former military vehicle or is at least 25 years old;
- (B) is used only for exhibitions, club activities, parades, and other functions of public interest and not for regular transportation; and

- (C) for which the owner files with the department an affidavit, signed by the owner, stating that the vehicle is a collector's item and used only as described by Paragraph (B);

Without the affidavit mentioned in subsection (C), the defense is inapplicable and the rider must provide proof of compliance with the general provisions for financial responsibility

B. **Registration.** Chapter 502 of the Transportation Code deals with vehicle registration and the general rule is that if it is a “motor vehicle” and has a title, it must be registered to be operated on a public roadway or highway. That also means it must have license plates. They only have to have one license plate (on the rear mounted above the rear tire) but it must be visible (§502.405).

Mopeds are treated the same as motorcycles except that the license plate must have a distinctive lettering designation and include the word "moped."²¹ Electric bicycles are not considered motorcycles and therefore are not required to be registered.²² There is also an “active military” exception to registration requirement. If the person is on active military duty and is deployed out of the country, the registration remains valid for 90 days after the return to the United States.

C. **Vehicle Inspection.** Chapter 458²³ of the Transportation Code deals with vehicle inspection and the general rule is that, “an inspection certificate shall be attached to or produced for a vehicle in the manner required by department rule.²⁴ The Department of Transportation shall require that a certificate for a motorcycle be attached to the rear of the motorcycle near the license plate and shall adopt rules with respect to display of an inspection certificate for a moped.

²¹ T.C. 502.007(b)

²² T.C.502.0075(b)

²³ Sec. 548.255

²⁴ Title 37, Part 1, Chap. 23, Subchapter B, Motor “Vehicles Without Windshields”

The vehicle “inspection” refers to the mechanical safety of the motorcycle (e.g., motorcycle-specific lighting, motorcycle-specific brakes, turn signals, etc.) and not to emission system testing.²⁵

VII. **Pending Legislation of Interest** – “*What’s on the Horizon?*”

As of the writing of this paper, the 81st Legislature is in full swing and bills are being filed with gusto. A number of bills affecting motorcycles have been filed and the following is a survey of some of those bills which could impact motorcyclists in the coming year(s):

- HB 339 – Time and Hour Restrictions for New Riders under 18
- HB 454 – Removal of Points on Driving Record by Completion of a DSC
- HB 662 – Ban on Use of Cell Phones in School Zones
- HB 827 – Increased Protection for Vulnerable Road Users (including Motorcycles)
- HB 1569 – Prohibits Discrimination Against Motorcyclists in Public Accommodations
- SB 488 – Increased Protection for Vulnerable Road Users (including Motorcycles)
- SB 506 – Increased Penalties for Driving in congested Traffic Conditions
- SB 772 – No Cell Phone Use By Minors While Operating a Motorcycle

Conclusion

Motorcycles are ubiquitous and ridership is increasing every year. They can be a great way to get to work, to have fun on the weekends or to just add some additional excitement to your life. They can also be a great way to become better acquainted with your local emergency room physician. NHTSA’s motorcycle crash statistics are sobering and should give pause to anyone who thinks he or she was “*born to ride*”. Although the size of the motorcycle makes a big

²⁵ Texas Administrative Code, Title 37, Rule §23.93(b)(9)(C)

difference in how it will be used, if it is a “motorcycle” as that term is used by the Transportation Code, the rider must have the appropriate license for his age and experience. As with any motor vehicle, “things happen” and when moving or helmet-use violations do occur, the motorcycle version of DSC can result in a dismissal of the offense.

The 81st Legislature is currently in session which means changes are coming to the transportation code. With those changes will come new challenges to municipal prosecution of motorcycle violations and hopefully, this brief overview of the laws affecting motorcycles and motorcycle use will provide at the least a starting point for research into the thornier issues that may come up in your court.