

Vehicular Noise Enforcement Initiative

Background and Current Enforcement Options
July/2010

Compiled By

R.D. Holtsclaw SPO
Westside Division

Vehicular Noise Enforcement - Why?

The following letter by Dr. Louis Hagler offers some interesting insight into why noise enforcement should be an integral part of traffic enforcement and beat integrity initiatives.

Dear Mr. Motavalli,

I am a retired physician with an interest in the medical, social, and economic effects of noise pollution. I have been following the concerns about pedestrian safety that electric and hybrid vehicles create. I have also read your recent articles in the NY Times. I feel compelled to write to you because, it seems to me, you have given a one sided and therefore unbalanced presentation of the issue.

As noted by the World Health Organization environmental noise is one of the major problems in urban settings, worldwide. This fact has been long recognized by the US Government as well. Domestic tranquility is one of the six guarantees in the United States Constitution, a guarantee that is echoed in some form or other in every state constitution. In 1972, a Noise Control Act was passed by Congress (Title 42 United States Code Section 4901 et seq.). The legislative intent of the Act reads,

“(a) The Congress finds - -

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation’s population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment.

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this chapter to establish a means for effective coordination of Federal research and activities in noise control, to authorize the establishment of Federal noise emission standards for products distributed in commerce, and to provide information to the public respecting the noise emission and noise reduction characteristics of such products.” (Emphasis added.)

As noted by the World Health Organization, noise produces defense and startle reactions, damages hearing, disturbs communication, disrupts sleep, impairs cardiovascular function, interferes with teaching and learning, reduces productivity, harms relationships, provokes unwanted behaviors, and increases accidents. It is a major source of recurring annoyance, leading to stress which may not be recognized but which degrades the quality of life and adversely affects health. Many of these effects take place outside of conscious awareness. Cardiovascular effects can be detected even while we sleep.

Motor vehicles are major sources of urban noise. Individuals ride around in vehicles whose mufflers no longer muffle; instead they produce a low rumbling roar that is audible at great distances. They ride around in vehicles with sound systems whose power rivals that of major

public address systems. Making electric vehicles noisy will do two things. It will provide an additional source of noise in an already noisy world. It will also provide creative individuals an opportunity to modify the factory installed sound - as some have suggested - to one of their choosing that is certain to draw attention and most assuredly will be loud.

I have no argument with making the environment as safe as possible for the blind and other people with disabilities. I do have an argument with adding noise to our already noisy environment. Certainly, there must be a way to meet the needs of the blind without polluting the environment with additional unwanted, unnecessary, and unhealthy noise. I hope you will consider this side of the issue in your further writings on this subject.

Louis Hagler, MD
Oakland, CA

Subjectivity and Legal Precedent

The subjectivity issue, relevant to noise enforcement, will continue to be an obstacle to successful adjudication, but with proper prosecutorial representation legal precedent does exist that directly addresses this issue. In the Texas Appeals Court case of Aaron C. Aguilar v. State of Texas (2008), the perceived subjectivity of Texas Transportation Code 547.604, “Muffler Required,” is at issue. Judge Catherine Stone, in her memorandum opinion, clarifies that “the terms “excessive” and “unusual” noise, although not explicitly based on a reasonable person objective standard, are terms that imply that noise must be outside normal standards for motor vehicles, which ordinary persons can objectively determine.”

I believe that the decision rendered in “Aguilar v. Texas (2008) is most relevant to my enforcement efforts pertaining to City of Houston Ordinance 30-3/CC1400 “Noisy Vehicles Generally.” Though one may argue that COH 30-3 is “void for vagueness,” the following memorandum opinion nullifies this argument by insisting that “ordinary persons can objectively determine” what is “excessive” or “unusual” noise emanating from a motor vehicle.

MEMORANDUM OPINION

No. 04-07-00537-CR

Aaron C. **AGUILAR**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the County Court at Law No. 9, Bexar County, Texas
Trial Court No. 996010
Honorable Laura Salinas, Judge Presiding

Opinion by: Catherine Stone, Justice

Sitting: Catherine Stone, Justice

Sandee Bryan Marion, Justice

Rebecca Simmons, Justice

Delivered and Filed: March 12, 2008

AFFIRMED

Following the denial of his motion to suppress the evidence seized at his arrest, appellant Aaron C. Aguilar pled no contest to the offense of possession of less than two ounces of marijuana. Aguilar was sentenced to six months deferred adjudication and assessed a fine of \$250.00. He appeals the trial court's denial of his motion to suppress and challenges constitutionality of the statute he was stopped for violating, which prohibits mufflers that make "excessive or unusual noise." Aguilar contends (1) the muffler statute is unconstitutionally void for vagueness, and (2) even if the statute is constitutional, the State did not present sufficient evidence to support a finding that his vehicle violated the statute. We affirm.

Factual and Procedural Background

Aguilar filed a motion to suppress in the trial court, alleging that evidence of the marijuana seized when his vehicle was stopped by police should be suppressed because the officers seized the evidence without a warrant, probable cause, or lawful authority, in violation of his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments under the United States Constitution; and under Article I, Section 9 of the Texas Constitution, and Article 38.23 of the Texas Code of Criminal Procedure.

At a hearing on the motion to suppress, San Antonio Police Officers Reyes Martinez and Tracy Williams testified they were on patrol near Medical Drive in Bexar County, on January 12, 2007. Officer Martinez was in an unmarked vehicle, and Officer Williams was in a patrol car. According to their testimony, both officers noticed Aguilar's vehicle because of excessive noise from his exhaust. Officer Martinez said Aguilar's vehicle was "very loud. I had my windows up. So that's when I signaled Officer Williams [to make a traffic stop]. . . ." Officer Williams testified that she could hear Aguilar's vehicle through rolled up windows and over the sound of the police radio.

Officer Williams initiated the stop, and was assisted by Officer Martinez. When Williams approached the driver's side window, Aguilar was smoking a cigarette and acting nervous. Williams asked him to put his cigarette out and believed Aguilar acted like he was looking for something in the car as he put his cigarette out. Williams asked Aguilar to get out of the car, and as he stood up, Williams saw what she recognized as a bag of marijuana on the driver's seat. Officer Williams handcuffed Aguilar, verified that the bag on the seat contained marijuana, and then arrested Aguilar for possession of the marijuana.

Discussion

In his sole issue on appeal, Aguilar argues it was error to deny his motion to suppress. Aguilar's argument presents two points: (1) whether Section 547.604(a) of the Texas Transportation Code which requires that "[a] motor vehicle shall be equipped with a muffler in good working condition that continually operates to prevent excessive or unusual noise," is unconstitutionally

void for vagueness because it does not provide an objective standard for what constitutes excessive or unusual noise; and (2) even if the statute is valid, whether the evidence is insufficient to show there was reasonable suspicion that Aguilar's muffler violated the statute.

Standard of Review

In an appeal of a trial court's ruling on a motion to suppress, an appellate court applies a bifurcated standard of review, giving almost total deference to a trial court's determination of historical facts and reviewing *de novo* the court's application of the law. *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002); *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). In doing so, we afford almost total deference to a trial court's determination of historical facts supported by the record, especially when the findings are based on an evaluation of credibility and demeanor of the witnesses. *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005). We review the record to determine whether the trial judge's ruling is supported by the record and correct under some theory of law applicable to the case. *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex. Crim. App. 2003). Absent an abuse of discretion by the trial court, we will uphold the trial court's decision. *Maddox v. State*, 682 S.W.2d 563, 564 (Tex. Crim. App. 1985).

Constitutionality of the Statute

When reviewing an attack upon the constitutionality of a statute, we begin with the presumption that the statute is valid and the legislature has not acted unreasonably or arbitrarily. *Luquis v. State*, 72 S.W.3d 355, 365 n.26 (Tex. Crim. App. 2002); *Ex parte Ports*, 21 S.W.3d 444, 446 (Tex. App.--San Antonio 2000, pet. ref'd). The party challenging the constitutionality of a statute bears the burden of establishing that it is unconstitutional. *Ports*, 21 S.W.3d at 446. It is a basic principle of due process that a statute is void for vagueness if its prohibitions are not clearly defined. *See Papachristou v. City of Jacksonville*, 405 U.S. 156, 165 (1972); *State v. Holcombe*, 187 S.W.3d 496, 499 (Tex. Crim. App. 2006), *cert. denied*, 127 S.Ct. 176 (2006). Due process requires criminal laws to be defined so that (1) fair notice is given to ordinary persons as to what conduct is forbidden; and (2) definite standards are established to prevent arbitrary and discriminatory enforcement by police, judges, and juries. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Holcombe*, 187 S.W.3d at 499.

Aguilar contends that Section 547.604(a) of the Texas Transportation Code is unconstitutionally vague because defining the prohibited level of noise as "excessive" or "unusual" does not give him adequate notice of whether his conduct is legal and it gives police discretion to arbitrarily enforce the statute. "However, a statute is not unconstitutionally vague merely because the words or terms used are not specifically defined." *Engelking v. State*, 750 S.W.2d 213, 215 (Tex. Crim. App. 1988). The Texas Court of Criminal Appeals previously upheld the validity of the predecessor statute to Section 547.604(a) and rejected a claim that the statute was void for indefiniteness because of the "excessive and unusual noise" language. *Ex Parte Trafton*, 160 Tex. Crim. 407, 271 S.W.2d 814 (1953). The court rejected the void for vagueness challenge because it determined that a person could know what level of noise is unusual or excessive for a muffler. ⁽¹⁾

Aguilar argues the *Trafton* decision predates substantial changes in void for vagueness jurisprudence under federal constitutional law. However, recent cases from other jurisdictions apply similar reasoning to the *Trafton* decision to uphold the validity of muffler statutes prohibiting "excessive and unusual noise." ⁽²⁾

A recent decision of the Texas Court of Criminal Appeals upheld the validity of a different noise statute in a void for vagueness challenge. See *Holcombe* at 187 S.W.3d at 499. In *Holcombe*, the defendant filed a motion to suppress after he was charged with driving while intoxicated, arguing the noise ordinance relied upon for his traffic stop was void for vagueness. The statute prohibited playing music "in such a manner as to . . . unreasonably disturb or interfere with the peace . . . of neighboring persons of ordinary sensibilities." *Id.* at 497. The *Holcombe* court noted that "we cannot demand mathematical certainty" from the words in statutes, and given their plain meaning the terms "unreasonable disturbance" and "noise" do create an objective standard by which persons of ordinary intelligence know when a particular noise is too loud. *Id.* at 500.

Applying this analysis to the muffler statute, we believe the terms "excessive" and "unusual" noise, although not explicitly based on a reasonable person objective standard, are terms that imply that noise must be outside normal standards for motor vehicles, which ordinary persons can objectively determine. The statute does not present a standard that depends solely on what an enforcement officer finds annoying, irritating, or unsatisfactory. Cf. *Howard v. State*, 617 S.W.2d 191, 192 (Tex. Crim. App. 1979) (finding a loitering statute void for vagueness because it depends on subjective determinations of a police officer to decide "suspicious circumstances" and "a satisfactory explanation"). In light of the recent *Holcombe* opinion, we see no reason to come to a different conclusion than the Texas Court of Criminal Appeals came to in *Trafton*. Therefore, we overrule Aguilar's constitutional challenge to the statute.

The Arrest

Having concluded Section 547.604(a) of the Texas Transportation Code is not unconstitutionally void for vagueness, we must resolve Aguilar's contention that the evidence was insufficient to show there was reasonable suspicion he violated the statute. Both the United States Constitution and the Texas Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Tex. Const. art. I, § 9. When a police officer stops a defendant without a warrant and without the defendant's consent, the State has the burden at a suppression hearing of proving the reasonableness of the stop. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). An officer conducts a lawful temporary detention when he has reasonable suspicion to believe that an individual is violating the law. *Id.* In certain circumstances, however, arrests may be legally procured without a warrant. Tex. Code Crim. Proc. Ann. art. 14.01(b) (Vernon 2005) (providing that "[a] peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view"). The State does not have to show that the law has actually been violated, but only that the officer had a reasonable basis for believing the defendant has committed, or is in the process of committing an offense. See *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001). A reasonable-suspicion determination is made by considering the totality of the circumstances. *Ford*, 158 S.W.3d at 492-93.

Aguilar argues there was insufficient evidence that the officers had a reasonable suspicion to stop him for a violation of Section 547.604(a) of the Texas Transportation Code. He contends the officers' ability to hear his vehicle with their windows rolled up was the only evidence to support the stop. Aguilar claims that buses, garbage trucks, tractor trailers, and commuter vehicles can be heard through rolled-up windows; and that in the absence of evidence of a particular decibel level, unusual backfiring, gunning of the engine, or distance between the officers' vehicles and his vehicle, there was no objective evidence presented to show Aguilar was in violation of the statute.

The State responds that both officers testified they first noticed Aguilar's vehicle because of the excessive noise from his exhaust. Additionally, both said the windows of their vehicles were rolled up at the time they heard Aguilar's exhaust, and Officer Williams could hear the exhaust over the sound of her police radio. Each officer testified that in their opinion the noise from Aguilar's exhaust was excessive and unusual, and that they initiated the stop because they believed his exhaust violated the Transportation Code. The State contends that under the totality of the circumstances, Officer Williams had reasonable suspicion to believe that she had observed Aguilar in violation of Section 547.604(a) of the Transportation Code, and therefore she had authority to stop his vehicle.

In reviewing a trial court's factual determinations in a suppression hearing, we give almost total deference to the trial judge as the trier of fact to determine the credibility of witnesses based on their demeanor as they present the evidence. *See Estrada*, 154 S.W.3d at 607. The evidence elicited by the State at the hearing on the motion to suppress provided sufficient evidence for the trial court to determine that Officer Williams had probable cause to believe the noise from Aguilar's muffler violated the law. The trial court heard Officer Williams's testimony and decided in light of all the evidence presented that it was credible that she reasonably believed that when she pulled him over, Aguilar was violating the Transportation Code. We defer to the finding of the trial court. Accordingly, we overrule Aguilar's first issue.

The judgment of the trial court is affirmed.

Catherine Stone, Justice

Do Not Publish

1. Aguilar argues that *Trafton* is distinguishable because it addressed the issue of a defective muffler and not whether the noise from the muffler was excessive enough to give reasonable suspicion for the stop. Although *Trafton* presented a different factual situation, it was decided on the grounds that a person could know that the noise coming from the muffler was unusual or excessive.

2. *See U.S. v. Ross*, 400 F.Supp.2d 939, 944 (W.D. Tex. 2005) (denying a motion to suppress the evidence pursuant to a stop for a sputtering muffler under Tex. Transp. Code Ann. § 547.604 (Vernon 1999)); *St. Louis County v. McClune*, 762 S.W.2d 91, 92 (Mo. Ct. App. 1988) (upholding a void for vagueness challenge to a similar Missouri statute with the same standard which "is sufficient to inform a person of ordinary intelligence the nature of the act prohibited . . . [is] an unreasonable deviation from the level of noise normally produced from the average automobile").

No Objective Standard - Why?

Providing law enforcement with an objective standard relevant to loud motor vehicle enforcement would be a relatively uncomplicated endeavor. First, a simple “distance limitation” could be established similar to the **50 foot limitation** included in City of Houston Ordinance 30-4 “Amplified Sound.” Second, the City of Houston could adopt the “**Label Match-up Program**” now in effect in a growing number of metropolitan areas. For a detailed explanation of the Label Match-up Program please visit the following websites. I have also included an overview of the Label Match-up Program at the end of this presentation. The **SAE J2825 Stationary Motorcycle Test** is a viable option that provides a concrete objective standard. This test could easily be incorporated into my enforcement of C/O 30-3 to confirm my “subjective” determination that the exhaust in question is too loud.

<http://www.calmusa.org/How%20to%20Enforce/How%20to%20Enforce.htm>

http://www.noisefree.org/EPA_Label_Matchup.pdf

<http://www.youtube.com/watch?v=2KdYUhH3JSo>

The Label Match-up Program targets only motorcycles, but the problem with loud vehicles extends to automobiles and trucks as well. “Flowmaster” exhaust modifications, especially the 40 series Flowmaster, along with the large canister slip-ons, as seen on the “banger-cars” throughout our city, are major contributors to unlawful vehicular noise. A state statute or city ordinance that incorporates an “objective” distance limitation combined with the Label Match-up requirement would provide a comprehensive, relevant and easily enforceable vehicular noise suppression initiative.

Unfortunately, it appears that any proactive initiative pertaining to noise enforcement in the City of Houston or the State of Texas is severely hindered by a conflict of interest. Allegedly, the legislative body in the Texas House and Senate is inundated with motorcycle riders and enthusiasts who are easily swayed by lobbyists opposing more stringent laws relevant to motorcycle noise suppression. I received the following quote in a recent email,

"It's with a heavy heart that we have to report this next bit, as many of you know, Sputnik Strain passed away last week. For those of you who aren't familiar with Sputnik's life work. I'll try to sum it up. Sputnik organized the State of Texas motorcyclists and convinced a bulk of them to run for elected office.

He was so effective, that by 1996, the entire State House and Senate were run by biker majorities. It didn't matter to Sput if you were a Republican or a Democrat, just that you were a biker. They held the majority until just few years ago. It is, without question, a feat that has gone unrivaled in the motorcyclists' political world."

Apparently, the House and Senate biker majority had a lasting effect on Texas motorcycle noise control policy.

Who's complaining? You might be surprised!

Though citizens throughout the United States are demanding that something be done regarding loud motor vehicles, especially loud motorcycles, pleas to "pipe down" are also coming from some unexpected sources.

Loud Pipes' Cost: Harley-Davidson Tries to Quiet Motorcycle Noise

In a message posted on the Harley-Davidson website, CEO Jim McCaslin asks riders to recognize and consider the consequences of loud exhaust pipes. With this step, Harley returns to the forefront in addressing the issue of motorcycle noise.

By [From the February, 2009 issue of Motorcycle Cruiser](#)

Jim McCaslin is President...

In other words, it's time to pipe down.

This is the second stage of Harley-Davidson's campaign against loud exhaust pipes. Its initial effort last year was directed at and through dealers, with posters and literature that attempted to educate dealers and riders about the negative consequences of loud pipes. Harley-Davidson spokesman Paul James also told *Motorcycle Cruiser* that during the next few months Harley will cease shipments to dealers of racing exhaust systems that can be fitted to street models. We could no longer find any racing exhaust systems listed on the company's accessory website. However, Harley-Davidson still offers dozens of accessory exhaust systems that are street-legal (and therefore acceptably quiet), including for use in California.

Industry concern over the problem of loud exhaust pipes is nothing new. The American Motorcyclist Association (AMA) has long warned riders that attitudes shaped by complaints about loud pipes frequently compromise the AMA's efforts to battle anti-motorcycling legislation and regulation. That same concern was echoed by the Motorcycle Riders Foundation a few years ago when it [adopted the AMA's stance](#) against loud pipes. The Motorcycle Industry Council has conducted anti-noise campaigns for over 30 years.

These days, the loud motorcycle you hear roaring past is likely to be a modified Harley-Davidson. This is somewhat ironic because Harley was among the first motorcycle makers to tackle exhaust noise a century ago. In the early days of internal-combustion [vehicles](#), many vehicles were annoyingly loud as delivered, but the threat of anti-motor-vehicle legislation soon had automakers fitting mufflers to their vehicles. As [McCaslin's message](#) points out, quieting motorcycle exhaust pipes posed greater difficulties because there is no room for a bulky muffler on a bike. However, Harley engineered an effective silencer, and the resulting bike became known as The Silent Gray fellow. Its relative quiet contributed to

its reputation as an [elegant](#), advanced machine and helped distinguish Harley-Davidson Motor Company from dozens of rival American motorcycle makers.

Changing to an aftermarket exhaust system has become almost a knee-jerk reaction for many cruiser buyers. However, unless labeled as meeting federal and state standards, all of these exhaust systems are illegal and virtually all are illegally loud. There are exceptions, such as systems offered by Harley that meet requirements for all 50 states or all states except California. Exhaust pipes are changed for a variety of reasons. One is the search for performance improvements, although, as McCaslin and the AMA point out, not all deliver—and some increase power in a portion of the power band while reducing it in others. Some motorcycle owners change exhaust pipes to personalize the appearance. And many who modify their bikes' exhaust systems simply want the noise, often for vanity's sake. Some motorcyclists profess to believe that "loud pipes save lives," although research tends to contradict that popular axiom. (Few of those who say they want exhaust noise for [safety's](#) sake use other means—such as brightly colored apparel—which have been proven effective.)

Harley-Davidson's current stance actually puts it on the cutting edge of corporate responsibility regarding exhaust-noise. It is the only company that has both taken an anti-noise stance *and* offers street-legal accessory exhaust systems as an alternative to loud aftermarket pipes. Honda, Kawasaki, and Suzuki have never offered nor endorsed accessory systems for their cruisers. Both Victory and Yamaha offer exhaust systems that are not illegally loud as "racing" modifications, though no effort is made to qualify customers by asking for racing credentials. You have to find and click on footnote notices on their sites to learn that that the systems are not legal for the street, and the disclaimer page on Yamaha's site was not working when we visited. Neither company offers legal accessory exhausts. We also asked Yamaha if it had any plans to follow Harley-Davidson's lead on this issue, but we had received no reply to our email a few days later.

As the leader in the cruiser market, Harley's public stance on loud exhaust pipes may finally signal a turning point for an issue that continues to put motorcyclists in a very bad light and prompts increasing calls for restrictions on motorcycles and motorcyclists. Though some riders will try to contend that their noise doesn't really bother anybody, that they have some sort of right to annoy everyone they ride past, or that their noise protects them, such arguments have to sound increasingly hollow when the biggest cruiser-motorcycle maker points out that they are actually risking all motorcyclists' freedoms and asks them to "think about the consequences our actions have on others, before others take action against us."

Statement Released by the American Motorcycle Association (AMA)

Excessive Motorcycle Sound

Since its inception in 1924, the American Motorcyclist Association (AMA) has maintained a position of strong opposition to excessive motorcycle sound. The AMA has funded information and public relations campaigns in support of quieter motorcycle use, and was the world's first motorsports sanctioning body to regulate and reduce the sound level of racing vehicles.

The AMA believes that few other factors contribute more to misunderstanding and prejudice against the motorcycling community than excessively loud motorcycles. All motorcycles are manufactured to meet federally mandated sound control standards. Unfortunately, a small number of riders who install unmuffled aftermarket exhaust systems perpetuate a public myth that all motorcycles are loud. Efforts by regulators to rein in excessive motorcycle sound often miss the mark by singling out motorcyclists with ordinances and laws that are unfair, impractical and unenforceable.

No single segment of the motorcycling community--riders, event organizers, retailers and distributors, original equipment and aftermarket manufacturers, law enforcement and the safety community--can single-handedly solve this problem. Although there are other sources of excessive sound such as loud cars and trucks, booming car stereos, poorly maintained generators, and whining leaf blowers, motorcyclists have a responsibility to be part of the solution. Shifting blame and failing to adopt responsible, voluntary practices will only result in greater prejudice and discrimination against all motorcyclists, including excessively rigorous state and federal standards, more expensive and less attractive motorcycles, the reduction of choices in aftermarket products, abusive enforcement of current laws, and other measures that will negatively impact both riders and the motorcycle industry.

Based on its opposition to excessive motorcycle sound, the AMA recommends the following:

- All motorcyclists should be sensitive to community standards and respect the right of fellow citizens to enjoy a peaceful environment.
- Motorcyclists should not modify exhaust systems in a way that will increase sound to a level that is offensive. This includes the installation of unmuffled exhaust systems.
- Organizers of motorcycle events should take steps--through advertising, peer pressure and enforcement--to make excessively loud motorcycles unwelcome.
- Motorcycle retailers should discourage the installation and use of excessively loud replacement exhaust systems, including unmuffled "straight pipes."
- The motorcycle industry, including aftermarket suppliers of replacement exhaust systems, should adopt responsible product design and marketing policies aimed at limiting the cumulative impact of excessive motorcycle sound.

- Manufacturers producing motorcycles that meet the appropriate federal standards should continue to educate their dealers and customers that louder exhaust systems can decrease the performance of motorcycles.
- Law enforcement agencies should fairly and consistently enforce appropriate laws against excessive vehicle sound and other sources of undesirable sound.
- The motorcycle industry and the safety community should educate customers and riders that excessive sound can be fatiguing, thus impairing good riding skills and judgment, making riding less enjoyable.

The AMA and its Board of Directors wholeheartedly endorse these recommendations and the Association will continue to advocate for responsible behavior on the part of its members and all motorcyclists.

Why Ride Loud?

“Loud Pipes Save Lives”

Practically every motorcyclist I stop on traffic that attempts to defend his “right” to ride loud uses the age old manta “Loud Pipes Save Lives.” Fact is, loud pipes have no significant impact on rider safety or accident avoidance. The sound emanating from a motorcycle exhaust, while the motorcycle is in motion, is primarily focused between 4 O’clock and 8 O’clock, in other words, the exhaust noise is directed to the rear of the motorcycle. The greatest danger to a motorcyclist falls within the 10 O’clock to 2 O’clock position or to the front of the cyclist where exhaust noise is irrelevant.

See DOT Study, DOT HS-5-01160 (The Hurt Report) which negates the claim that “loud pipes save lives.” A more accurate perspective relevant to loud pipes is the appropriate response of “Loud Pipes Violate Rights.”

The Hurt Report (Condensed Conclusion) see,
<http://www.magpie.com/nycmoto/hurt.html>

17. The typical motorcycle pre-crash lines-of-sight to the traffic hazard portray no contribution of the limits of peripheral vision; more than three-fourths of all accident hazards are within 45deg of either side of straight ahead.

18. Conspicuity of the motorcycle is most critical for the frontal surfaces of the motorcycle and rider.

36. Motorcycle modifications such as those associated with the semi-chopper or cafe racer are definitely overrepresented in accidents.

46. The most deadly injuries to the accident victims were injuries to the chest and head.

47. The use of the safety helmet is the single critical factor in the prevention of reduction of head injury; the safety helmet which complies with FMVSS 218 is a significantly effective injury countermeasure.

I find it rather humorous that these loud pipes advocates insist that safety is their primary reason for creating a rolling nuisance all the while they are standing in front of me with no helmet, no protective jacket, no gloves and no boots. I will, on occasion, point out the obvious disconnect between what they say and what they do.

The EPA mandates an 80 decibel upper limit on motorcycle noise emissions. The EPA also regulates the amount of pollutants emitted by a motorcycle. More often than not, the particulates emitted by a motorcycle are regulated by an emissions control system/catalytic converter that is integral with the exhaust mechanism. When the original exhaust, as installed by the manufacturer (OEM) and approved by the EPA, is replaced with an after-market exhaust, noise suppression and particulate filtration is negatively affected.

Overheating, rough idling and back-firing are relatively common problems associated with aftermarket exhaust installation. To correct or minimize these problems a fuel control adjustment is needed. Carbureted bikes need to be jetted while injected bikes require remapping, both of which generally mean a richer running motorcycle, more fuel burn, more pollutants in conjunction with the absence of a catalytic converter. I've been told that a remapped large displacement motorcycle emits pollutants equaling 7 to 10 EPA compliant automobiles.

Why Ride Loud - The Truth

I have ridden motorcycles, off and on, for approximately 40 years. Some of those years I rode professionally, others for pleasure. I have owned approximately 30 motorcycles since I was twelve-years-old. I am very familiar with the motorcycle industry and motorcycle riders in general.

An overwhelming majority of those who ride with loud aftermarket exhausts want attention, they want others to notice them - vanity, not safety, is their primary motivation. Seventy percent of new Harley owners make the purchase of an aftermarket exhaust their first "performance upgrade." Your ability to ignore them is made impossible by the unavoidable distraction and nuisance they create. They are, for all intensive purposes, selfish bullies on two wheels that have absolutely no regard for another person's right to enjoy a peaceful environment. The excessive noise emitted by the modified exhaust mechanisms on these motorcycles, automobiles and trucks permeates residential, educational and commercial structures, interrupts the lives of families within the protective confines of their home and disrupts businesses, churches and hospitals. Their excessive noise creates a distraction to other motorists and stifles the sound of an approaching emergency vehicle. The excessive noise emitted by these loud exhaust mechanisms raises blood pressure/heart rate, creates stress/anxiety and violates personal freedoms, i.e. basic Constitutional rights.

For a more thorough understanding of the average citizen's perception of those who operate obnoxiously loud motorcycles please type in the following URL, turn up the volume and enjoy a unique perspective. Though I do not advocate the vulgarity I agree with the message.

<http://www.southparkstudios.com/episodes/251889/>

Vehicular Noise Enforcement in Houston Texas (or the lack thereof)

Unfortunately, the only viable City of Houston Ordinance applicable to noisy engines or noisy exhausts is City Ordinance 30-3 “Noisy Vehicles Generally.” Initially, I was issuing citations with the wording: Violation C/O 30-3 “Noisy Vehicles Generally” To Wit: Loud Exhaust.

After issuing approximately 100 of these citations I discovered that there was a “data entry” problem when the clerks entered the words “loud exhaust.” When entering “loud exhaust” into the computer used to select the appropriate charging instrument the required element “commercial vehicle” was automatically included. This subsequently generated a defective complaint because my citations were not issued to commercial vehicles. I was told that it was not possible to delete the “commercial vehicle” entry; therefore, another complaint form under City Ordinance 30-3 would have to be used.

I’ve pleaded with the Municipal Court to refile these “defective complaints” but I’ve been told by a prosecutor in Municipal Court 18 that she (something to the effect) “is not going to be sucked into my fight and my complaints...I will think about it and refile these cases if I think they are lawful and fair.” Needless to say, I’m not getting much support on this issue as motorcycle groups, the news media and attorneys coalesce to battle my enforcement efforts. My IAD file is growing exponentially as Central Intake finds it necessary to lend a sympathetic ear to the lies and exaggerations of those determined to ride loud at the expense of the citizens of Houston Texas.

The most recent recommendation from the prosecutor’s office and the data entry supervisor is to write my noisy vehicle citations as follows,

CC1400: Excessive Noise by use of a Loud Engine

I questioned this wording seeing that my interest was focused on “loud exhausts” not “loud engines,” but I’ve been told by the prosecutor’s office that CC1400 is acceptable. Prefacing the citation with CC1400 will ensure that the data entry clerks attach the correct charging instrument.

I do wish that better legislation was available. An ordinance that provided an objective standard would exponentially reduce my burden-of-proof during testimony. Until the issue of vehicular noise suppression is taken seriously within the City of Houston the current noise ordinance, 30-3/CC1400, “Noisy Vehicles Generally,” will have to suffice.

Adjudication Dilemma

I’ve been asked, not ordered, to avoid issuing subsequent citations to noisy vehicle violators until such time their initial citation has been adjudicated. This undermines enforcement efforts and is, with all due respect, an unfair burden on me. My enforcement responsibilities are completely separate from the adjudicatory and record keeping responsibilities of Houston’s Municipal Court

System. Those defendants that request a jury trial at their arraignment setting are receiving court dates extending into the first part of 2011. This means that a citation issued in July/2010 is basically a “ticket to ride” with excessively loud exhausts until sometime in the year 2011. This “ticket to ride” comes with a free get-out-of-jail card without any concerns of legal ramifications for continuing the illegal behavior. To the best of my knowledge this adjudication restriction does not apply to any other violation of city, state or federal law.

The Law

Sec. 30-3. - Noisy vehicles generally. (Houston City Ordinance)

The use of any motor vehicle so out of repair, so loaded, or so noisy that it creates any loud and unreasonable grating, grinding, rattling, or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.

(Ord. No. 01-945, § 2, 10-17-01)

§ 547.604. MUFFLER REQUIRED. (Texas Transportation Code)

(a) A motor vehicle shall be equipped with a muffler in good working condition that continually operates to prevent excessive or unusual noise.

(b) A person may not use a muffler cutout, bypass, or similar device on a motor vehicle.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Sec. 30-4. - Amplified sound. (Houston City Ordinance) Note: can be used in conjunction with COH 30-3 when an operator of a stereo equipped motorcycle has turned up the audio to compensate for an excessively loud exhaust system. If the amplified sound is plainly audible at a distance of 50 ft. or more, the violation is citable. Violations of CO 30-4 are considered a NT (non-traffic) offense.

(a) It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any sound using any sound amplifier that is part of or connected to any speaker system, radio, stereo receiver, compact disc player, cassette tape player, microphone, or any other sound source, when operated: (i) in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants, or (ii) at any time with louder volume than is necessary for convenient hearing for persons who are in the vehicle or within the property or premises in which such sound amplifier is operated and who are voluntary listeners thereto. **The operation of any such sound amplifier in such a manner as to be plainly audible at a distance of 50 feet from a vehicle shall be presumed to be violative of this section.** The operation of any such sound amplifier in such a manner that bass sounds are plainly audible at a distance of 50 feet from the property line of a property or premises in which the amplification is located shall be presumed to be violative of this section.

(b) It is an affirmative defense to prosecution under this section that the sound source is a motor vehicle and that (i) the motor vehicle is a mobile sound stage or studio that is being used on a stationary basis at a location not situated upon any street for the purpose of providing sound, during daytime hours, for an event or function and (ii) the use is in compliance with all other provisions of this chapter, including but not limited to section 30-8 of this Code, if applicable.

(Ord. No. 01-945, § 2, 10-17-01)

Federal Regulations

Though the City of Houston has not yet adopted the Label Match-up Program, noting that the aftermarket exhaust system installed on the motorcycle in question does not have the EPA label inscribed or affixed to the exhaust enhances probable cause and assists in addressing burden-of-proof issues relevant to illegality.

Federal Regulations/Motorcycle Exhaust Systems

The EPA sets the maximum noise emissions levels by measurement under a strict scientifically derived testing procedure (SAE j331a) to recreate the vehicles' maximum noise levels while under heavy acceleration. This test represents what can be expected in actual real world use. Currently the maximum noise emissions are 80dba for street motorcycles. This current noise emissions limit (or cap) offers the minimum level of protection to the public.

Labeling

Once the motorcycle successfully passes the noise emissions test (J331a), two labels (one on the vehicle chassis, the other on the vehicle muffler) are required to be affixed in a "readily visible position" at the factory. Both these labels contain an identical model specific code (along with other information) that is unique to the make and model of the motorcycle. The comparison of the model specific code between the two labels provide a way to "match up" the muffler to the motorcycle.

A regulated motorcycle that has an exhaust system installed without the correct label (i.e. competition use, pre regulation, export only, or no label at all) or has an exhaust system from a different make and model of motorcycle (un-matching model specific codes), is in violation of federal regulations and section 4909a(2) of the Noise Control Act (NCA).

The first is the "motorcycle noise emissions control information label" affixed to the motorcycle chassis (as defined and required by 40 CFR205.158). This label includes the model year, a model specific code that only appears on an approved muffler designed for a specific vehicle, engine rpm during federal test procedure, the statement "this motorcycle meets EPA noise emissions requirements of either 83dba or 80dba" and a warning that "tampering" is in violation of federal law.

The second is the "exhaust system noise emissions control information label" to be affixed on the quiet and tested muffler (as defined and required by 40CFR205.169a(1)). This muffler label (in general) states that the exhaust system meets EPA noise emissions requirements and includes the manufacturer's name, noise emissions limit, and a unique model specific code that only appears on a motorcycle this exhaust system is designed for.

All of the above exhaust systems (bold above), when installed on a federally regulated motorcycle constitutes a violation of section 4909(a)2 of the Noise Control Act (NCA). In addition, the absence of a muffler label is also a violation of section 4909(a)1 which is applicable to the manufacturers.

Thank You

Thanks to those supervisors who have taken an interest in vehicular noise enforcement. Our current ordinance relevant to vehicular noise is, in my opinion, rather impotent, but we will do the best we can with what we have available to us. I hope this information/explanation packet has been helpful.

My enforcement efforts directed toward those who ride and drive loud have been, to say the least, challenging. Texas is one of the last remaining bastions of “anything goes” relevant to very fast and very loud motor vehicles. Law enforcement in Texas has, for the most part, completely neglected noise issues relevant to motor vehicles. This neglect on the part of law enforcement to protect the rights of citizens to enjoy a peaceful environment has led to a sense of entitlement among those who ride and drive loud. My enforcement efforts are certainly not popular and are viewed with anger and hostility by some influential individuals within law enforcement as well as those in the motoring public who advocate this illegal and selfish behavior. “No Smoking” legislation faced similar challenges during its inception but through perseverance and patient incrementalism advocates of smoking legislation ultimately changed the social atmosphere forever. I believe the day will come when “riding loud” and “driving loud” will be as socially unacceptable as smoking in a public venue is today.

Rick Holtsclaw SPO
Westside Division