

NAMIC Policy Briefing

September 2009

Texting While Driving: States Move Aggressively to Enact Laws

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Introduction

During the past two years, state lawmakers have made texting while driving (TWD) one of the hottest public policy issues in the country. In that time, 18 states plus the District of Columbia have enacted all-driver texting bans and another nine states have imposed similar bans on young drivers.¹

This *Policy Brief* looks at possible factors behind the push to enact TWD laws and examines the similarities and differences in the enacted laws. The *Brief* also notes the response of federal policymakers to the TWD issue and what some organizations, including some large national insurance companies, are doing to help address the problem. The *Brief* concludes with some observations on where the TWD issue may be headed in 2010.

Defining the Issue

A number of factors have come together in quick succession to make TWD such a topical public policy issue. Certainly one factor is the phenomenal growth in wireless communications. Consider these statistics:

- 87 percent of the U.S. population now owns a cell phone;²
- In December 2008, Americans sent more than 110 billion text messages during the month, up from 9.8 billion messages in the same month three years earlier;³ and
- The National Highway Traffic Administration estimates that 11 percent of drivers (1,050,000 vehicles) use a hand-held device during daylight hours.⁴

Recent high-profile transit accidents in California⁵ and Massachusetts⁶ also can be seen as a contributing factor in raising the public's consciousness about the inherent dangers of TWD. In each case, the transit operators were texting at the time of the accidents.

A third factor for the rash of TWD laws may be the evolution of the research and the results of those efforts.

One of the first U.S. studies to examine driving and cellular phone usage was conducted by the Harvard Center for Risk Analysis in 2000. The center found that "...although there is evidence that using a cellular phone while driving poses risks to both the driver and others, it may be premature to enact substantial restrictions at this time. We simply do not have enough reliable information on which to base reasonable policy."⁷

The following year, researchers at the University of Utah began a series of dual-task studies among small groups of psychology majors to assess the effects of cellular phone usage on the performance of a simulated driving task. The researchers concluded that cell phones disrupted performance "by diverting attention to an engaging cognitive context other than the one immediately associated with driving."

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Subsequent studies by the same Utah researchers caused them to conclude by 2005 that talking on a cell phone while driving was as dangerous as driving drunk.⁸

That same year, the Insurance Institute for Highway Safety (IIHS) conducted one of the first “real-world” studies of drivers and cell phone usage. Using cellular phone records and emergency room reports of drivers involved in traffic accidents in Western Australia, the IIHS research team was able to conclude that “drivers using phones are four times as likely to get into crashes serious enough to injure themselves.”⁹

The most extensive real-world (“naturalistic”) study to date was completed in July 2009 by researchers from the Virginia Tech Transportation Institute (VTTI), who used sophisticated cameras and instrumentation in participants’ personal vehicles to continuously observe drivers for more than six-million miles.

VTTI researchers found that individuals sending or receiving text messages while driving were 23.2 times more likely to be involved in a crash. They recommended a texting ban for all drivers, noting that “this cell phone task has the potential to create a true crash epidemic if texting-type tasks continue to grow in popularity and the generation of frequent text message senders reaches driving age in large numbers.”¹⁰

While some researchers focused on simulation and naturalistic studies, others began looking at the TWD issue through a series of public attitude studies. One of the most unique collaborations in this regard has involved the Liberty Mutual Group and Students Against Destructive Decisions (SADD).

Since 2000, Liberty Mutual and SADD have produced an annual “Teen Today” survey in which high school students are asked about potential destructive behaviors. A recent survey, for example, found that 52 percent of teens surveyed said their parents were not likely to punish them if they talked on a cell phone while driving, compared to 36 percent who believed their parents would penalize them.¹¹

Nationwide Insurance also has sponsored public attitude surveys on driving and cell phone usage. Its latest “On Your Side” survey, released in late August 2009 found that 80 percent of respondents supported a TWD ban and two-thirds of respondents supported laws restricting phone calls while driving. And, of those who favored some form of cell phone restriction, three out of four respondents believed the law should apply to all drivers, not just specific groups.¹²

A March 2009 survey sponsored by Parrot, Inc., the world’s largest manufacturer of hands-free car kits, had a slightly different take on the driving while using a cell phone. Its survey found that 76 percent of Americans believed people were at least somewhat likely to vote against legislators who favored a proposed cell phone ban if it were passed in their state and 46 percent agreed that true voice-activated hands-free devices are a safe way of using cell phones in cars and should not be banned.¹³

State Responses

In 2007, Washington became the first state to enact a specific text messaging ban on all drivers.¹⁴ Prior to that time, only Connecticut,¹⁵ the District of Columbia¹⁶ and New Jersey¹⁷ had enacted jurisdiction-wide bans on cell phones while driving, but those bans applied only to hand-held devices, not hands-free phones. Several states had, however, enacted laws that imposed restrictions on the use of cell phones by school bus drivers, teen drivers, and on the use of TV and other video devices within sight of drivers.¹⁸ (See Table 1).

The Washington legislation was initiated by Republican state Rep. Joyce McDonald in response to a five-car and bus pileup near Seattle, where the driver responsible for the crash apparently had taken his eyes off the road to use an electronic wireless communications device.

The law was straightforward. It said a person who sends, reads or writes a text message was guilty of a traffic infraction; however, there was no violation where a person “enters a phone number or names in a wireless communication device for the purpose of making a phone call.” Exceptions were allowed for persons operating an emergency vehicle or to report an illegal activity. Enforcement of the law was considered secondary offense, meaning a police officer could not issue a citation unless the driver had been stopped for another offense.¹⁹

Four states – Alaska, California, Louisiana and Minnesota – followed Washington’s lead in 2008 by enacting texting bans. And, 11 states – Arkansas, Colorado, Illinois, Maryland, New Hampshire, New York, North Carolina, Oregon, Tennessee, Utah and Virginia – have followed suit so far this year.

An analysis of the 18 texting laws reveals several similarities and a few differences in how states approached this issue. Texting bans appear to be a bipartisan issue in that an almost equal number of Democrats and Republicans introduced the bills in their respective states.

Like Washington, other states prohibit drivers from using any wireless communications device to send, read or write a text message while driving, but the prohibition does not extend to drivers who use their hand-held cell phones to make phone calls. The exceptions allowed in most states are similar to Washington’s, but in a couple of cases, special interest groups (highway construction workers in Illinois²⁰ and campus police in Tennessee²¹) appear to have succeeded in getting their constituents exempted from the law.

Unlike Washington, most states chose to treat their texting laws as primary offenses with only New Jersey²² and Virginia²³ treating their laws as a secondary offense. The states differ widely on penalties for violations of their laws. Monetary penalties range from \$20 for first violations in California²⁴ and Virginia²⁵ to \$500 in Maryland.²⁶ In Utah,²⁷ a TWD violation is considered a Class C misdemeanor punishable by a fine of up to \$750 and three months in jail, or a felony offense resulting in a fine of up to \$10,000 and 15- year prison term if the texting driver caused injury or death. Alaska’s statute²⁸ provides a 20-year prison term for a driver who causes a fatal accident while texting.

The nine states that have banned teens from texting while driving include Delaware, Indiana, Kansas, Maine, Mississippi, Missouri, Nebraska, Texas and West Virginia. The allowable exceptions are similar to the all-driver bans, as are the level of monetary penalties for violations of the law. Mississippi imposes the largest fines – up to \$500 per offense, and up to \$1,000 if the person violates the act at the time of a motor vehicle accident.²⁹

The Federal Response

Unlike their state counterparts, federal lawmakers have been slower to respond to the TWD issue, but two events this summer provide some preliminary indications of possible federal involvement going forward.

On July 29, four Democratic senators introduced the “Avoiding Life-Endangering and Reckless Texting by Drivers Act of 2009” or the “ALERT Drivers Act” (S. 1536).³⁰ If enacted, the bill would give states two years from the date of regulations promulgated by the Transportation Secretary to enact a TWD ban or face losing 25 percent of their federal highway funding. The bill’s language follows relatively closely the provisions in existing state texting bans.

Table 1 Snapshot of U.S. Distracted Driving Laws (as of September 2009)	
Statewide hand-held bans (7 states plus D.C.)	California, Connecticut, District of Columbia, New Jersey, New York, Oregon, Utah and Washington.
Local option cell phone bans (5 states)	Massachusetts, Michigan, New Mexico, Ohio and Pennsylvania.
Texting bans (all drivers) (18 states plus D.C.)	Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Illinois, Louisiana, Maryland, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Oregon, Tennessee, Utah, Virginia and Washington.
Young driver texting bans (9 states)	Delaware, Indiana, Kansas, Maine, Mississippi, Missouri, Nebraska, Texas and West Virginia.
School bus driver cell phone bans (21 states plus D.C.)	Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, Tennessee, Texas and Virginia.
Video Prohibitions in Sight of Driver (36 states plus D.C.)	Alabama, Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Illinois, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Sources: The Insurance Institute for Highway Safety, the Governors Highway Safety Association, National Council of State Legislatures and NAMIC.

Not everyone has greeted the ALERT Drivers Act as a possible favorable development. Michael Hough of the American Legislative Exchange Council, for one, has argued that preempting states that don't enact TWD laws runs counter to the intent of the Tenth Amendment, which reserves to the states all powers not designated to the federal government. Hough says the Transportations Trust Fund, which distributes highway funds to the states, "should be used to improve our roads and not as the federal government's tool to write state laws."³¹

The second federal development came August 18 when Transportation Secretary Ray LaHood announced the details of a two-day distracted driving summit in Washington, D.C. at the end of September. LaHood said the "summit will bring together senior transportation officials, elected officials, safety advocates, law enforcement representatives, private-sector representatives and academics to address a range of issues related to reducing accidents through enforcement, public awareness and education."³²

Fixing the Problem?

While current crash data on driving and cell phone usage is scarce,³³ a 2003 study by the Harvard Center of Risk Analysis estimated that cell phone use while driving contributed to 6 percent of crashes, which equated to 636,000 crashes, 330,000 injuries, 12,000 serious injuries and 2,600 deaths each year. The Harvard study also put the annual financial toll of cell phone-related crashes at \$43 billion.³⁴

The Harvard data are six years old, and were compiled when text messaging was not as popular as it is today. As a result, it is probably safe to assume that if current reliable data were available, these numbers would be even higher.

Given that, the next logical question to ask is: what is being done to mitigate this problem given the pervasiveness of driving, cell phones and text messaging? A couple of recent examples look promising.

For instance, Utah-based Safe Driving Systems, LLC has created Key2SafeDriving™, a software solution that can be installed on a person's cell phone within minutes. Key2SafeDriving is not a jamming device; rather, it reroutes calls directly to voice mail and sends automated text message responses informing the caller that the driver will respond once he reaches his destination.³⁵

Meanwhile, Nationwide Insurance has signed an exclusive partnership with Canadian-based Aegis Mobility to promote a similar product called DriveAssist™. Nationwide also plans to offer policyholders an auto insurance discount for using the product.³⁶

What Lies Ahead?

More state TWD bills likely will be considered next year, particularly now that the Governors Highway Safety Association, a nonprofit association composed of state highway safety officials, has recently endorsed a new policy calling for an all-driver TWD ban.³⁷ The debate should continue to center around whether TWD bans should apply to all drivers or only to young drivers. While teenagers send and receive the most text messages, some studies have shown that drivers in the 30- to 39-age category are also heavy TWD users.³⁸

Federal lawmakers are not likely to pass their ALERT Drivers Act next year given other priorities and the reluctance of some in Congress to take away highway funds from the states. It is possible, however, that Secretary LaHood's summit could lead to public discourse on different aspects of this issue, such as the need to collect more data on TWD accidents or having states enact laws requiring hands-free devices only while driving. Only seven states and D.C. have such laws.

Finally, education will continue to be an important component in any efforts to address the TWD issue. The work undertaken by Nationwide Insurance in this regard is certainly commendable and should be followed by others.

Endnotes

¹ The Insurance Institute for Highway Safety (www.iihs.org), the Governors Highway Safety Association (www.ghsa.org) and the National Council of State Legislators (www.ncsl.org) are excellent sources for tracking state legislation on texting while driving and other distracted driving laws.

² Statistics on the phenomenal growth of the wireless communication industry can be obtained from CTIA – The Wireless Association website (www.ctia.org).

³ Ibid.

⁴ Traffic Safety Facts, National Highway Traffic Safety Administration, June 2008.

⁵ The California accident involved a Metrolink commuter train that plowed into a Union Pacific freight locomotive on September 12, 2008 in Chatsworth, California, killing 25 people and injuring 135.

⁶ The Massachusetts accident involved two Metropolitan Boston Transit Authority trolley cars rear ending on May 8, 2009. Forty-nine individuals were taken to area hospitals, but none with life-threatening injuries.

⁷ See, “Cellular Phones And Driving: Weighing The Risks And Benefits,” *Harvard Center for Risk Analysis*, Vol. 8, No. 6 (July 2000).

⁸ The University of Utah research was done by members of the school’s Department of Psychology. A full list of their findings can be found at their Applied Cognition Laboratory website, <http://www.psych.utah.edu/AppliedCognitionLab/>

⁹ More details on the IIHS study can be found in the IIHS Status Report, Vol. 40, No. 6 (July 16, 2005).

¹⁰ See “New Data from VTTI Provides Insight into Cell Phone Use and Driving Distraction,” news release dated July 27, 2009. An interesting side note in the VTTI release was a paragraph that appeared to be critical of the driving simulator studies and the notion that using a cell phone while driving was just as dangerous as driving drunk. The VTTI release noted that “if talking on cellphones was as risky as driving while drunk, the number of fatal crashes would have increased roughly 50% in the last decade instead of remaining largely unchanged.”

¹¹ Information about the “Teen Today” surveys can be found at the SADD website (www.sadd.org).

¹² See “New Nationwide Insurance Survey Shows Overwhelming Support for Laws Banning Texting While Driving,” news released dated August 31, 2009.

¹³ See “Not All U.S. Adults Support Full Ban of Cellphone Use in the Car,” Parrot, Inc. news release, dated March 10, 2009.

¹⁴ See Wash. Rev. Code §46.61.668.

¹⁵ See Conn. Gen. Stat. §14.296aa.

¹⁶ See D.C. Code §50-1731.04.

¹⁷ See N.J. Stat. Ann. §39:4-97-3.

¹⁸ For a list of various state law enactments dealing with wireless communication devices, see the sources referenced in endnote 1.

¹⁹ See “Distracted Drivers: State Lawmakers Attempt to Crack Down on Driving, Wireless Communication Devices,” *NAMIC Issue Brief*, June 2007.

²⁰ See 625 Ill. Com. Stat. 5/12-610.2.

²¹ See Tenn. Code Ann. §55-8-19.

²² See citation cited in endnote 17.

²³ See Va. Code Ann. §46.2-1078.1.

²⁴ See Cal. Veh. Code §23123.5.

²⁵ See citation cited in endnote 23.

²⁶ See Md. Transp. Code Ann. §21-1124.1.

²⁷ See Utah Code Ann. §41-6a-1716.

²⁸ See Alaska Stat. §28.35.161.

²⁹ See Miss. Code §61-1-9.

³⁰ A copy of S. 1536 can be found by accessing the Library of Congress Thomas website at <http://thomas.loc.gov/>.

³¹ See “Michael Hough: Text-and-drive bans belong in state legislatures,” *The Examiner*, August 20, 2009.

³² See “Transportation Secretary Ray LaHood Announces New Details on Distracted Driving Summit, U.S. Department of Transportation news release dated August 18, 2009.

³³ The U.S. Department of Transportation does not publish any crash statistics indicating the number of accidents caused each year by individuals who were texting while driving.

³⁴ The Harvard statistics were quoted in “Large Majority of Drivers Who Own Cell Phones Use Them While Driving Even Though They Know This Is Dangerous,” Harris Interactive news release, June 8, 2009.

³⁵ For more information about the Key2SafeDriving software, go to the company’s website at <http://www.safedrivingystems.com/>

³⁶ For more information about the Aegis Mobility-Nationwide Insurance relationship, go to the Aegis website at <http://www.aegismobility.com/>

³⁷ Despite having concerns about enforcing TWD laws, GHSA Chairman Vernon F. Betkey Jr. said the action by his membership is based on the fact that “texting while driving is indisputably a distraction and a serious highway safety problem. If every state passes a texting ban, it will send a message to the public that this dangerous practice is unacceptable.” See the GHSA website at www.ghsa.org.

³⁸ See “Large Majority of Drivers Who Own Cell Phones Use Them While Driving Even Though They Know This Is Dangerous,” Harris Interactive news release, June 8, 2009.