

**The Bill Blackwood  
Law Enforcement Management Institute of Texas**

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**Distracted Driving: A Silent Attacker**

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**A Leadership White Paper  
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## **ABSTRACT**

More and more people are operating advanced technology in their vehicle while simultaneously operating that vehicle. Unfortunately, that technology is not limited to hands-free devices. It is the objective of this paper to educate all who read that regulations and laws need to be enacted to mandate the use of hands-free electronic devices while operating a motor vehicle. Researchers have begun to look at this issue and have found several instances where operating a hand-held device impairs a person's ability to drive the same as a driver that is impaired by alcohol. They have also considered the law enforcement officer and how the officer responds to calls using the various electronic devices in the modern-day patrol vehicle. Those studies also correlate the number of driving incidents to the use of the electronic device while driving. Some of the issues facing the people who are working to educate others on the dangers of driving and operating hand-held devices are the costs associated with mass implementation. Other areas are the tools that are being developed to help monitor and combat the use of the electronic devices while driving. Privacy laws as well as 4<sup>th</sup> Amendment concerns have been brought up in those discussions. Regardless of the final regulations and laws that may be passed, it is important that everyone understands the detrimental impact that is caused when accidents occur. The costs to the public through insurance premiums due to accidents while a driver is not paying attention. The loss of life because a quick glance away from the road to check an incoming text message cannot be replaced. Local jurisdictions, state legislatures along with U.S. congressional legislatures need to continue their discussions and move to passing laws that may deter vehicle operators from driving while operating hand-held devices.

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## INTRODUCTION

There is a growing problem with the amount of distracted driving incidents that are occurring with today's electronic technology. Since the mid-1980s and the implementation of the cell phone along with other electronic technology placed in cars, the amount of accidents has increased (Dewey-Kollen, 2004). Due to this increasing problem, states should enact laws that prohibit the use of hand-held electronic technology while operating a motor vehicle. The City of College Station (2016) stated that "Hands-free device means speakerphone capability or a telephone attachment or other piece of equipment, regardless of whether permanently installed in the motor vehicle allowing use of the wireless communication device without use of either of the operator's hands" (Definition section, para. 2). Use means employing, accessing or operating the wireless communication device for any reason. Wireless communication device has the meaning assigned in Texas Transportation Code 545.425, as amended. The age of the driver does not seem to matter due to the accessibility of electronic devices that are readily available on the market. The problem is not just limited to the use of cellphones. Distracted driving can occur in numerous forms, not just by electronic means. For the purposes of this paper, it will only concentrate on electronic devices as defined above. It will also discuss the importance of not only the citizens in the community refraining from the use of those devices while driving but also the reduction of the amount first responders is utilizing the same devices while performing their official duties. While many states and communities are beginning to pay attention to the problem, more still can be done to help lower the detrimental driving effects of distracted driving.

## POSITION

The increase in cellphone usage over the past decade is obvious if one is to just stop and look around. In 1985 cellphone users were at an estimated 500,000 people. A number that rose to an estimated 165 million by 2003 (Dewey-Kollen, 2004). The development of cellular phone technology has increased the way in which people can communicate and the speed they do it in. Cellphone usage is not limited to certain areas of life or times in a day. A study completed by Dr. David Strayer and his associates from the University of Utah found that people driving a vehicle and talking on a cellphone missed twice as many simulated traffic signals and took twice as long to react to the signals they did detect (Dewey-Kollen, 2004).

This distracted driving is not just limited to disregarding traffic control devices. Considering that it is taking someone twice as long to react to a stimulus, it can only add to the normal stopping distance that it takes to stop on normal road conditions. A vehicle traveling at 40mph on a roadway under normal conditions takes approximately 139 feet to stop and 348 feet to stop if traveling at 70mph (Wren, 2004). These two speeds are common among roadways. Based on the numbers provided, without additional distractions, it takes almost one half of an American football field to stop at 40mph and over the entire length of an American football field to stop if travelling at 70mph. This can be detrimental if the driver's attention is placed elsewhere.

Unfortunately, distracted driving runs across the board, from traffic offenses to fatality accidents. The Center for Disease Control and Prevention (CDC) 2015 figures support that claim. They found that "421,000 people were injured in motor vehicle crashes involving a distracted driver in 2012, a nine percent increase from 2011"

(Scullin, 2015, Distracted Driving Stats section, para. 1). These numbers are beginning to get the attention they need. More and more research is now being conducted to determine just how impactful distracting driving has become. Researchers and many drivers know and readily agree that distracting driving, not just cellphone use, is a problem (Dewey-Kollen, 2004).

Fatality accidents are a sad reality to distracted driving. Society has an understanding that drinking while driving is a risk factor that can lead to a crash involving death. With distracted driving, society is now having to learn and understand that trying to divide attention while driving can have the same detrimental effects.

Drew et al (2008) stated, "Talking on a cellphone produces the same level of impairment as being intoxicated at a blood alcohol level of 0.08 (as cited in James, 2015, p. 507). Allocca (2016) stated the "National Highway Traffic Safety Administration, 10 percent of all fatal car crashes were linked to some form of distracted driving in 2014, resulting in 520 non-occupant deaths" (para. 2). An example of a non-occupant death would be a runner being hit and killed by a distracted driver. Out of the 32,675 fatalities in that same year, 10% were caused by distracted driving, or 3,179 deaths per the NHTSF report (Allocca, 2016). Much research has been dedicated to the understanding in why people continue to drive and use hand-held electronic technology at the same time. The numbers continue to pour in and the statistics continue to show a correlation between distracted driving and collisions. Studies have shown that texting while driving reduces reaction and control more than drinking while driving, while another stated that those who text are 23 more times likely to crash relative to non-distracted drivers (Quisenbury, 2015).

This is true for law enforcement too. Today's police car utilizes numerous types of technology. Most of the equipment has become what is thought to be the norm for officers to be able to complete their daily jobs and tasks. In the 1920s, law enforcement agencies in the United States began utilizing motor vehicles. In the 1930s, law enforcement agencies began equipping the police vehicles with radios, which became the standard (James, 2015). When in-car radios were first implemented it was common to see two-man patrol units. Over the years, the use of two-man patrol units have dwindled and are no longer the norm for law enforcement agencies. In a survey conducted of 233 California police and sheriff agencies, 91 percent stated they utilize single-man patrol units. Only the Los Angeles Police Department (LAPD) stated they use two-man units as the norm (James, 2015, p. 507). Officers are not only expected to utilize the radio, the use of the mobile data terminal (MDT) is also expected. Officers receive calls for service information, including notes for the specific calls and caution notes to the MDT. This compounds the divided attention tasks when also trying to drive. In one case, "A study conducted by Ma and Kaber (2007) examined situational awareness while driving that required the driver to divert their attention to a laptop (as cited in James, 2015, p. 506). Their study directly correlated with an officer driving and operating a MDT in the vehicle. The results showed this task had a detrimental effect on driving behavior like that associated with the use of a cellphone (James, 2015).

Some say that the creation of laws will not make a difference in safety on the roadways for distracted driving. This has led to the discussion of what causes a person to pick up the phone or take part in other forms of distracted driving. Phillip Quisenberry's (2015) study found that 96 percent of respondents knew it was against

the law but continued to text and drive anyway. This data seems to suggest they were still making the deliberate decision to use the phone no matter the risks involved. The Insurance Institute for Highway Safety found in New York found that hand-held cell phone use by drivers dropped 50 percent three months after the law took effect but returned to the prior levels within a year and a half. The implementation without the education will not be as effective.

### **COUNTER POSITION**

Not everyone believes by removing hand-held electronic devices that the roadways would be safer. There is resistance to hands-free devices in patrol cars when talking to some law enforcement. It is expected that first responders will have electronic technology in their vehicles to do the job. Some of the equipment used requires the use of their hands to manipulate buttons for the operation. If wide-sweeping regulations are set in place prohibiting the use of every hand-held electronic technology in vehicles, this could have a negative impact on a first responder's ability to respond as needed. As mentioned above, a common piece of technology found in today's police vehicle is the mobile data computer (MDC) or otherwise known as a MDT. Officers receive calls for service and valuable information on the MDT. The use of the MDT reduces the amount of radio traffic that must be broadcast. Sometimes for feasibility reasons while other times it is for safety reasons. Radio broadcast are oftentimes listened to by people outside of law enforcement. When information is given that reduces the officer's ability to covertly arrive, it gives the advantage to someone who may want to cause harm to an officer. Officers are oftentimes in their responding patrol cars alone and must get the information while responding to the call, thus causing them to have to operate the MDT



or hand-held radio. This is in conjunction with them driving and watching for other potential problems. Ma and Kaber in 2007 conducted a study to examine the situational awareness of officers while they were driving and required to divert their attention to a laptop. Their studies found the officers showed their distracted driving tasks were detrimental to their driving behavior (James, 2015). James (2015) went on to state that “As law enforcement officers regularly drive distracted, this degradation of situational awareness may be detrimental to their driving performances (p. 505). This can be counter through educating the officers and teaching them about the risks associated with driving and operating other hand-held electronic devices. The use of electronic hand-held devices is not only in law enforcement vehicles. They are often found in fire department vehicles as well. Not all, but many fire department personnel respond to scenes with multiple people inside their vehicles. This allows for one to operate the vehicle and others inside the vehicle to utilize the radio and MDT. Local policies should be written to state the proper protocol for the use of electronic hand-held technology for first responders.

It does not matter the size of the community, cost usually will become a factor in the implementation of any new idea. The need for educating the community about a new law would need to be wide ranging. The use of public service announcements (PSA), visible signage, mailouts and town hall meetings would be a good starting point. A notable example of this was the implementation of the seatbelt law in the early 1980s. It was resisted by many but effective education and enforcement changed the mindset and increased compliance. In 1981, only 14% of Americans used a safety belt despite 15 years of educational campaigns aimed at convincing drivers to buckle-up. However,

after a shift in strategy that included not only education but also enactment of mandatory seat belt laws and high visibility enforcement, the national seat belt use rate rose to 86% by 2012 (Chase, 2014 Discussion section, para. 2).

There has been interests in developing technology to help determine if people were operating their cell phones at the time of an accident. One such piece of equipment is the "Textalyzer." The idea behind the equipment is to be able to gain access immediately to a person's cell phone to determine usage if they were involved in an accident (Allocca, 2016). This idea was being promoted in New York by law makers during 2016. As may be suspected, there are privacy concerns with this type of search. The U.S. Supreme Court affirmed that police must obtain a search warrant to search a cellphone even after an arrest (Liptak, 2014). That finding has an adverse effect and any use of equipment such as a Textalyzer. An officer's best approach is to just apply for a search warrant when applicable and document the findings.

## **RECOMMENDATION**

Over the past couple of decades distracted driving due to electronic technology in vehicles has become an issue that needs to be focused more on. Unfortunately, the issue has not just been isolated to a few. It is a problem that affects many and can cause great devastation to families through the loss of love ones killed in accidents. When accidents do not cause death, they often cause property damage. A study from the Harvard Center for Risk Analysis estimated property damage at 1.5 million dollars in 2002 (Dewey-Kollen, 2004). With the growing number of accidents and damage, states should pass legislation that prohibits the use of hand-held electronic technology while operating a vehicle. The legislation should take into consideration the current state of

first responders and their use of certain electronic technology. It is however, a necessity of each first responder and agency to properly train the need to reduce and if possible in situations eliminate the use of hand-held electronic technology while operating a vehicle. Recent studies have proven that enforcement is not enough on its own. The enforcement must be coupled with education. Together the process is known as the three E's: enactment, education and enforcement (Allstate Insurance Company, 2010; Liptak, 2014). Education campaigns need to be set in place to educate the public not only about the fines for being caught but the personal costs through loss of life and property that can occur. Working with local city councils, state representatives and other interested parties to enact the ordinances and laws to prohibit the use while operating a vehicle is essential in getting the process started. The education should be coupled with high visibility enforcement so the public sees the efforts being made.

The overall task of changing individuals' personal habits will not be easy. It is a choice that each must make. The efforts made to help curb each person's habits are where the greatest progress will be made. Trying to determine all the factors that are involved in every crash would be impossible. The idea behind implementing restrictions to ban operating a vehicle while using a hand-held electronic device is just one step. Researchers are gathering data to help consider the causes but they need reliable data. Many drivers do not indicate whether they were using electronic devices at the time they became involved in a crash. Without the reliable data, it makes it difficult to convince policymakers to develop new legislation. A potential law or ordinance may look like the one set in place for the City of College Station. Although in the state of Texas there is no statewide governing law, many communities have begun to set their own ordinances

in place. The City of College Station is one of the newest and put theirs into effect in November 2016. The ordinance for the City of College Station, Texas is in the appendix A.

In 2009, a presidential executive order was issued prohibiting federal employees, a workforce of approx. four million people from text messaging while driving (Halsey, 2009). This order is also extended to federal contractors. Kiesbye (2012) said "Traffic experts say that it only takes about seven seconds to send a text" (p. 47). Many times, some people feel that they can send a quick message and then continue to drive. Seven seconds to send a text message does not seem like that long until something occurs in front of the moving vehicle. As mentioned above, based on the speeds one is driving, the stopping distances can already be great even without the delayed response of distracted driving. Halsey (2009) stated that "The National Highway Traffic Safety Administration has estimated that at any given moment during daylight hours, 812,000 drivers are using hand-held cellphones. NHTSA said that equates to 11% of the vehicles on the road" (para. 10). This is a number that will tend to grow unless there are steps taken to reduce and educate others on this problem. As stated above, many know and understand the issues but have to make the conscious decision to put the cellphone or other hand-held electronic device down while driving.

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**APPENDIX A**

City of College Station hands-free ordinance;

ORDINANCE NO. 2016-3797

AN ORDINANCE AMENDING CHAPTER 10, " TRAFFIC CODE" OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY ADDING SECTION 10- 14 " USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE OR BICYCLE", PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That Chapter 10, " Traffic Code", be amended by adding Section 10- 14 " Use of Wireless Communication Devices While Operating a Motor Vehicle or Bicycle", as set out in Exhibit " A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$ 25. 00) nor more than Two Hundred Dollars (\$ 200.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal

ordinance, becomes effective ninety (90) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this 11th day of August, 2016.

#### EXHIBIT "A"

That Chapter 10, " Traffic Code", is hereby amended by adding Section 10- 14 " Use of Wireless Communication Devices While Operating a Motor Vehicle or Bicycle", and is to read as follows:

#### Section 10- 14

#### Use of Wireless Communication Devices While Operating a Motor Vehicle or Bicycle

##### A. Definitions.

1. Authorized Emergency Personnel means a person who is a law enforcement officer, firefighter, member of a governmental emergency medical services, communications or public utility function, or member of a governmental emergency management function.
2. Hands-free Device means speakerphone capability or a telephone attachment or other piece of equipment, regardless of whether permanently installed in the motor vehicle allowing use of the Wireless Communication Device without use of either of the operator's hands.
3. Use means employing, accessing or operating the Wireless Communication Device for any reason.
4. Wireless Communication Device has the meaning assigned in Texas Transportation Code § 545. 425, as amended.



B. Violation. An operator of a motor vehicle or a bicycle may not use a Wireless Communication Device while operating a motor vehicle or bicycle on a public roadway or highway.

C. Affirmative Defenses. It is an affirmative defense to prosecution to an offense under this section if:

1. Complete Stop. The motor vehicle or bicycle is at a complete stop.

2. Hands-free Device. The Wireless Communication Device is used in Hands-free Device mode of operation to engage in telephone communication or to listen to audio transmissions.

3. Navigation. The Wireless Communication Device is used as global positioning or navigation device or for its global positioning or navigation operating software and the Wireless Communication Device is affixed to the motor vehicle or bicycle.

4. Emergency Services. The Wireless Communication Device is used for obtaining emergency assistance to report a crime, traffic accident, medical emergency, serious traffic hazard or in prevention of a crime.

D. Presumption. Evidence that a police officer observed a person holding a Wireless Communication Device while operating a motor vehicle or bicycle in motion creates a rebuttable presumption that the person used a Wireless Communication Device in violation of this section.

E. Conflicts. To the extent this section conflicts with any provision of the Texas Transportation Code regarding the use of wireless communication devices or hand-held mobile telephones, this section does not apply.

F. Non-Applicability. This section does not apply to:

- a. A person licensed by the Federal Communication Commission while operating a radio frequency device other than a Wireless Communication Device.
- b. Authorized Emergency Personnel while acting in official capacity.