

Cellphones and Driving

THE TOPIC

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Increased reliance on cellphones has led to a rise in the number of people who use the devices while driving. There are two dangers associated with driving and cellphone use, including text messaging. First, drivers must take their eyes off the road while dialing. Second, people can become so absorbed in their conversations that their ability to concentrate on the act of driving is severely impaired, jeopardizing the safety of vehicle occupants and pedestrians. Since the first law was passed in New York in 2001 banning hand-held cellphone use while driving, there has been debate as to the exact nature and degree of hazard. The latest research shows that while using a cellphone when driving may not be the most dangerous distraction, because it is so prevalent it is by far the most common cause of this type of crash and near crash.

RECENT DEVELOPMENTS

- **Research:** Studies about cellphone use while driving have focused on several different aspects of the problem. Some have looked at its prevalence as the leading cause of driver distraction. Others have looked at the different risks associated with hand-held and hands-free devices. Still others have focused on the seriousness of injuries in crashes involving cellphone users and the demographics of drivers who use cellphones. Of increasing concern is the practice of texting. The following is a summary of some recent research on the issue.
- **Texting:** In response to a growing body of research showing the dangers of texting while driving, highlights of which are discussed below, at the end of August 2009 the Governors Highway Safety Association changed its position and called for a ban on the practice. The association had previously said that such a ban would be difficult to enforce.
- A survey by Nationwide Insurance Survey released in August 2009 shows overwhelming support for laws banning texting while driving. The survey, conducted by Harris Interactive, found that 80 percent of respondents support a ban on text messaging while driving, 80 percent are in favor of a ban on emailing and 67 percent say they support restricting phone calls while driving. More than half of respondents say they see more drivers using cellphones on the roads than a year before and almost three-quarters say that they often or always see other drivers using cellphones. Forty-nine percent of drivers say they do not currently use cellphones while driving. This contrasts sharply with only 20 percent of drivers who said they did not talk on cellphones when driving in Nationwide's 2008 distracted driving survey and could suggest denial or embarrassment about the problem, according to Nationwide. In the new survey, 82 percent of people who admit using cellphones while driving say they would change their behavior if cellphone usage were restricted by law.
- In July 2009 Virginia Tech Transportation Institute released a study showing that the risk of texting while driving is far greater than previous estimates found and far exceeds the hazards associated with other driving distractions. Researchers used cameras in the cabs of

trucks traveling long distances over a period of 18 months and found that the collision risk became 23 times higher when the drivers were texting. The research also measured the time drivers stopped looking at the road and used their eyes to send or receive texts. Drivers generally spent nearly five seconds looking at their devices before a crash or near crash, a period long enough for a vehicle to travel more than 100 yards at typical highway speeds.

- A Pew Internet & American Life Project survey of 800 young people called “Teens and Distracted Driving” found that 75 percent of all American teens ages 12 to 17 have a cellphone. The survey, conducted during the summer of 2009, found that 26 percent of American teens ages 16 to 17 have texted while driving and 43 percent have talked on a cellphone while driving. Forty-eight percent of teens ages 12 to 17 say they have been in a car when the driver was texting and 40 percent say they have been in a car when the driver used a cellphone in a way that put themselves or others in danger.
- Texting by teens was also the subject of an August 2006 Teens Today survey conducted by the Liberty Mutual Research Institute for Safety and Students Against Destructive Decisions. The survey showed that teens considered sending text messages via cellphones to be their biggest distraction. Of the teens surveyed, 37 percent said that text messaging was extremely or very distracting, while 20 percent said that they were distracted by their emotional states and 19 percent said that having friends in the car was distracting.
- **Talking on Cellphones:** A study released in January 2010 by the Highway Loss Data Institute (HLDI), an affiliate of the Insurance Institute for Highway Safety (IIHS), shows that the number of traffic crashes have not declined in California, Connecticut, New York and Washington, DC, the three states and jurisdiction that prohibit drivers from using handheld cellphones. The study was based on an analysis of insurance claims for crash damage. Officials said more research is needed to clarify the findings, which run counter to the result of other IIHS research.
- In January 2010 the National Safety Council (NSC) released a report that estimates that at least 1.6 million crashes (28 percent of all crashes) are caused each year by drivers talking on cellphones (1.4 million crashes) and texting (200,000 crashes). The estimate is based on data of driver cellphone use from the National Highway Traffic Safety Administration and from peer-reviewed research that quantifies the risks using cellphones and texting while driving.
- In September 2009 the National Highway Traffic Safety Administration and the National Center for Statistics and Analysis released the results of their National Occupant Protection Use Survey (NOPUS), which found that in 2008, 6 percent of drivers used hand-held cellphones, the same percentage as in 2007. Hand-held cellphone use was highest among 16 to 24 year olds (8 percent in 2008, down from 9 percent in 2007) and lowest among drivers 70 and older (1 percent in both 2007 and 2008). Hand-held cellphone use by drivers in the West increased from 6 to 7 percent from 2007 to 2008, but fell in the Northeast (from 5 to 4 percent), the Midwest (from 6 to 5 percent) and the South (from 8 to 7 percent). Data on driver cellphone use were collected at random stop signs or stoplights only while vehicles were stopped and only during daylight hours.
- In May 2008 the Public Policy Institute of California released a study, “What to Expect from California’s New Hands-Free Law,” which looks at the potential effect of a new state law prohibiting drivers from using hand-held cellphones. Based on the experience of the three states (New York, New Jersey, Connecticut) and Washington, D.C., where similar laws are already in effect, researchers concluded that the ban will reduce traffic deaths by about 300 a year, but only in adverse conditions, such as on wet or icy roads. The analysis also found that because of the relatively modest penalties for using hand-held phones and no prohibition against dialing and texting, even strict enforcement of the law might not discourage drivers from using their cellphones while driving.
- **State and Federal Initiatives:** On April 7, 2010 Transportation Secretary Ray LaHood announced a pilot program to stop motorists from texting or talking on cellphones. Drivers in Syracuse, New York, and Hartford, Connecticut, will be targeted by ticketing blitzes and ads that emphasize the dangers of distracted driving. The one-year program will be funded by \$2.2 million in federal and state money. The program's slogan is "Phone in One Hand. Ticket in the Other." The initiative will also encourage automakers to reconsider the installation of hands-free communications systems in cars.

- On March 3, 2010 the Treasury Department proposed that an interim plan prohibiting texting by drivers of interstate buses and trucks over 10,000 pounds announced by Transportation Secretary LaHood in January be made permanent. On October 1, 2009 President Obama signed an executive order prohibiting federal employees from texting while driving. The order applies to employees using cars or cellphones provided by the government or using their own cars or phones for government business. The order applies to some 4.5 million federal employees, including the military.
- The number of state legislatures debating measures that address the problem of cellphone use while driving and other driver distractions continues to rise.
- As of June 2010 eight states—California, Connecticut, Maryland, New Jersey, New York, Oregon, Utah and Washington State—plus the District of Columbia, had laws on the books banning the use of hand-held cellphones while driving. Except for Utah and Washington State, the laws are all "primary enforcement," meaning a motorist may be ticketed for using a hand-held cellphone while driving without any other traffic offense taking place, according to the Insurance Institute for Highway Safety. Also as of June 2010, 37 states and the District of Columbia have passed laws specifically banning or restricting young drivers from using cellphones.
- As of June 2010 the practice of texting with a cellphone while driving was banned in 28 states and the District of Columbia. The Utah law, passed in May 2009, is the toughest in the nation. Offenders convicted of causing an accident that injures or kills someone while texting behind the wheel face up to 15 years in prison. The law does not consider a crash caused by a multitasking driver as an accident but rather as an inherently reckless act, like drunk driving.
- **Businesses:** Businesses are increasingly prohibiting workers from using cellphones while driving to conduct business. Exxon Mobil and Shell are examples of large companies that ban employees' use of any type of cellphone while driving during work hours. The California Association of Employers recommends that employers develop a cellphone policy that requires employees to pull off the road before conducting business by cellphone.
- **Court Decisions:** In December 2007 International Paper Co. agreed to pay a \$5.2 million settlement to a Georgia woman who was rear-ended by one of its employees. The employee was driving a company car and talking on a company cellphone at the time of the accident. The settlement was reached even though the employee had violated her company's policy of requiring the use of hands-free headsets while driving. The suit is among the most recent of several cases where an employer has been held liable for an accident caused by a driver using a cellphone. (See background section on Employer and Manufacturer Liability.)

BACKGROUND

Cellphones play an integral role in our society. However, the convenience they offer must be judged against the hazards they pose. Their use contributes to the problem of inattentive driving, which also includes talking, eating, putting on make up and attending to children.

As many as 40 countries may restrict or prohibit the use of cellphones while driving. Countries reported to have laws related to cellphone use include Australia, Austria, Belgium, Brazil, Botswana, Chile, the Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Ireland, Israel, Italy, Japan, Jordan, Kenya, Malaysia, the Netherlands, Norway, the Philippines, Poland, Portugal, Romania, Russia, Singapore, the Slovak Republic, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, Turkmenistan, the United Kingdom and Zimbabwe. Most countries prohibit the use of hand-held phones while driving.

Supporters of restrictions on driving while using a cellphone say that the distractions associated with cellphone use while driving are far greater than other distractions. Conversations using a cellphone demand greater continuous concentration, which diverts the driver's eyes from the

road and his mind from driving. Opponents of cellphone restrictions say drivers should be educated about the effects of all driver distractions. They also say that existing laws that regulate driving should be more strictly enforced.

Earlier Studies: Over the past decade numerous studies have been conducted on driver inattention, in particular focusing on the use of cellphones. Below is a summary of some these studies.

Motorists who use cellphones while driving are four times as likely to get into crashes serious enough to injure themselves, according to a study of drivers in Perth, Australia, conducted by the Insurance Institute for Highway Safety. The results, published in July 2005, suggest that banning hand-held phone use will not necessarily improve safety if drivers simply switch to hand-free phones. The study found that injury crash risk didn't vary with type of phone.

Many studies have shown that using hand-held cellphones while driving can constitute a hazardous distraction. However, the theory that hands-free sets are safer has been challenged by the findings of several studies. A study from researchers at the University of Utah, published in the summer 2006 issue of *Human Factors*, the quarterly journal of the Human Factors and Ergonomics Society, concludes that talking on a cellphone while driving is as dangerous as driving drunk, even if the phone is a hands-free model. An earlier study by researchers at the university found that motorists who talked on hands-free cellphones were 18 percent slower in braking and took 17 percent longer to regain the speed they lost when they braked.

A September 2004 study from the National Highway Traffic Safety Administration (NHTSA) found that drivers using hand-free cellphones had to redial calls 40 percent of the time, compared with 18 percent for drivers using hand-held sets, suggesting that hands-free sets may provide drivers with a false sense of ease.

A study released in April 2006 found that almost 80 percent of crashes and 65 percent of near-crashes involved some form of driver inattention within three seconds of the event. The study, *The 100-Car Naturalistic Driving Study*, conducted by the Virginia Tech Transportation Institute and the NHTSA, broke new ground. (Earlier research found that driver inattention was responsible for 25 to 30 percent of crashes.) The newer study found that the most common distraction is the use of cellphones, followed by drowsiness. However, cellphone use is far less likely to be the cause of a crash or near-miss than other distractions, according to the study. For example, while reaching for a moving object such as a falling cup increased the risk of a crash or near-crash by nine times, talking or listening on a hand-held cellphone only increased the risk by 1.3 times.

Employer and Manufacturer Liability: Although only a handful of high-profile cases have gone to court, employers are still concerned that they might be held liable for accidents caused by their employees while driving and conducting work-related conversations on cellphones.

Under the doctrine of vicarious responsibility, employers may be held legally accountable for the negligent acts of employees committed in the course of employment. Employers may also be found negligent if they fail to put in place a policy for the safe use of cellphones. In response, many companies have established cellphone usage policies. Some allow employees to conduct business over the phone as long as they pull over to the side of the road or into a parking lot. Others have completely banned the use of all wireless devices.

In an article published in the June 2003 edition of the North Dakota Law Review, attorney Jordan Michael proposed a theory of cellphone manufacturer liability for auto accidents if they fail to warn users of the dangers of driving and talking on the phone at the same time. The theory holds that maker liability would be similar to the liability of employers who encourage or demand cellphone use on the road. Holding manufacturers liable would cover all persons who drive and use cellphones for personal calls. Michael notes that some car rental agencies have already placed warnings on embedded cellphones in their cars.

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