I'm Driving; G2G. I'll TTYL: The Inefficiencies of Pennsylvania's Text-based Communications Ban

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I’m Driving, “G2G.” I’ll “TTYL”: The Inefficiencies of the Pennsylvania Text-Based Communication Ban

I. INTRODUCTION

On May 18, 2008, Jacy Good graduated magna cum laude from Muhlenburg College in Allentown, Pennsylvania.\(^1\) Jacy’s dream was to become an environmental and human rights advocate.\(^2\) Following the ceremony, Jacy and her parents headed to their home in Lititz, Pennsylvania.\(^3\) On their way, an eighteen-year-old driver talking on a cell phone ran a red light and caused a tractor-trailer to swerve and crash into the Good’s vehicle.\(^4\) Jacy lost both her mother and father in the crash and barely escaped death herself. No one expected that Jacy would live past the first thirty-six hours.\(^5\) Jacy was in critical condition and stayed in the hospital for four months after the crash.\(^6\) Over the course of those four months, Jacy had to re-learn how to walk, talk, and feed herself.\(^7\) Since the crash, Jacy has devoted her life to raising awareness about the dangers of cell phone use behind the wheel.\(^8\) There were no criminal charges brought from the crash

\(^2\) Id.
\(^4\) U.S. Dep’t of Transp., * supra* note 1.
\(^5\) Wolfman Productions, *Hang up and Drive: Jacy Good and Steve Johnson*, http://www.wolfmanproductions.com/jacy_good.html (last visited Jan. 8, 2012) (Jacy and her fiancé Steve’s powerful talk, “HANG UP AND DRIVE!”, was created to facilitate face-to-face discussions about the reality of the irreparable damage caused by cell phones and driving.).
\(^6\) U.S. Dep’t of Transp., * supra* note 1.
\(^7\) Id.
\(^8\) Wolfman Productions, * supra* note 5. In February 2009, a press conference was held in Harrisburg, Pennsylvania where Jacy Good told her story to Pennsylvania legislators in hopes of persuading them to
because talking on a cell phone while driving was legal in Pennsylvania at that time, and still is.

Thousands of drivers are confronted with situations similar to Jacy’s each year.9 The technology age has given rise to more gadgets and also an increased number of tasks that we can perform on those gadgets.10 With cell phone’s mobility, convenience, and versatility, the opportunities for distractions from cell phones are nearly endless. This fact has made it harder for us to put our cell phones down while on the road. As a result, the number of distracted-driver-related crashes in the United States has increased tremendously.11 The proportion of distracted drivers at the time of fatal crashes increased from eight percent in 2004 to eleven percent in 2008.12 The United States Department of Transportation National Highways Traffic Safety Administration (NHTSA) reported in 2009 that eighteen percent of fatal distracted-driver-related crashes were attributable to the use of cell phones.13

Ultimately, this comment will address the inefficiencies of Pennsylvania’s ban on text-based communication while driving. In Section II, this comment will explore the background and history of cell phone legislation. Section III will describe the current state of these laws in the Commonwealth of Pennsylvania. Section IV will discuss some

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10 Id.
of the pitfalls of Pennsylvania’s new text-based communication and driving ban. In Section V, this comment will explain the necessity of additional restrictions on driver’s cell phone use in Pennsylvania. Last, Section VI will explain how the Commonwealth can make its cell phone legislation effectively work for the safety of all drivers in the Commonwealth.

II. BACKGROUND AND HISTORY

A. The Technology Age

Cellular telephones have become engrained in our society. The Technology Age has given rise to more gadgets, which in turn creates more issues with distracted drivers. Between 1995 and 2008, the number of people who held a wireless provider subscription increased to 270 million, an eight-fold increase. Text messaging, instant messaging, web browsing, and other mobile phone technologies are becoming increasingly popular. The use of text messages increased over 1,000 percent from June of 2005 to June of 2007. “In 2008, [wireless service providers] transmitted 2.5 trillion text messages for

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15 Id.
16 See INS. INST. FOR HIGHWAY SAFETY, supra note 11, at 5-6; U.S. DEP’T OF TRANSP. NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., supra note 13, at 1.
18 Id. (citing Matt Richtel, Drivers and Legislators, Dismiss Cell Phone Risks, N.Y. TIMES, July 19, 2009, at A1).
20 Id.
almost 263 million wireless subscribers in the United States.”\textsuperscript{21} It is estimated that 3.3 trillion text messages were sent in the United States in 2009.\textsuperscript{22}

Cell phones were once considered bulky and unnecessary.\textsuperscript{23} Now, not only are there more cell phones being used, but there is also more that users can do with their phones.\textsuperscript{24} Cell phones come in all shapes and sizes.\textsuperscript{25} Today, cell phones range from the very basic model to what has become known as the “smart phone.”\textsuperscript{26} Smart phones allow a user to make and receive calls, send and receive text messages and emails, play music, surf the internet with built-in internet connectivity, and take pictures and videos.\textsuperscript{27} Smart phones can also be used to instant message, watch videos on YouTube,\textsuperscript{28} check and update Facebook\textsuperscript{29} and Twitter,\textsuperscript{30} and message a friend on Gchat.\textsuperscript{31} All of these factors have led to an increased number of drivers using cell phones behind the wheel.\textsuperscript{32}

\textbf{B. The Dangers of Cell Phone Use While Driving}

\textsuperscript{21} Monique C.M. Leahy, \textit{Civil Liability for Text Messaging}, 121 AM. JUR. TRIALS 433, § 1 (2011) (Citing In re Text Messaging Antitrust Litigation, 2010-1 Trade Cas. (CCH) ¶76971, 2009 WL 5066652 (N.D. Ill. 2009)).
\textsuperscript{22} Id.
\textsuperscript{23} Id.
\textsuperscript{25} Id.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
\textsuperscript{28} YouTube, http://www.youtube.com (last visited Jan. 20, 2012).
\textsuperscript{29} Facebook, http://www.facebook.com (last visited Jan. 6, 2012) (social networking website that allows users to view friends’ status updates, post pictures, update status, and make comments on friends’ activities).
\textsuperscript{31} Google, \textit{Gchat}, http://www.google.com/talk (last visited Jan. 6, 2012) (Google’s instant messaging platform); see Verizon Wireless, supra note 24.
\textsuperscript{32} Sherzan, supra note 17, at 219.
In 2009, 5,474 people were killed on United States’ roadways and an estimated additional 448,000 were injured in motor vehicle crashes that were reported to have involved distracted driving. Of those people killed in distracted-driving-related crashes, 995 involved a report of cell phone use—eighteen percent of fatalities in distraction-related crashes. Of those injured in distracted-driving-related crashes, 24,000 involved a report of cell phone use—five percent of injured people in distraction-related crashes.

According to NHTSA, more than 3,000 people in 2010 lost their lives in distraction-related accidents. The cost of crashes caused by mobile phone usage while operating a motor vehicle is estimated at $43 billion annually.

A study conducted by the University of Utah concluded that the impairments associated with cell phone use by drivers may be as great as those commonly observed in a driver with a blood alcohol content of 0.08. The study showed that the most dangerous part of cell phone use while driving is when the driver’s eyes divert from the road and go to the phone. Also, the results from the study further indicated that conversing is mentally taxing on the driver and caused reaction times to slow; this is the same affect that alcohol in the bloodstream has on drivers. Yet, despite the statistics,

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33 U.S. DEP’T OF TRANS. NATIONAL HIGHWAY TRAFFIC SAFETY ADMIN., supra note 13, at 1 (citing the National Highway Traffic Safety Administration’s Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System General Estimates System (GES)).
34 Id.
35 Id.
39 Id. at 382.
40 Id.
people still continue to use their cell phones while driving.\textsuperscript{41} Eighty-one percent of cell phone users admitted to talking on a cell phone while behind the wheel.\textsuperscript{42}

Some states have enacted restrictions on driver’s use of cell phones in an attempt to control this problem.

\textbf{C. The States’ Attempts to Control the Problem of Cell Phone Use While Driving}

Forty-three states and the District of Columbia have implemented some form of restriction on drivers using cell phones.\textsuperscript{43} This section will explore the history and background of these laws and will lay out the states’ cell phone and driving laws currently in force in the United States.

i. History of Cell Phone Bans

The first of these laws was introduced in 1999 when Brooklyn, Ohio became the first jurisdiction in the United States to ban the use of cell phones while driving.\textsuperscript{44} Then, in 2001, New York State became the first state to enact a ban of cell phone use while driving.\textsuperscript{45} The language of the New York statute reads: “No person shall operate a motor vehicle upon a public highway while using a mobile telephone to engage in a call while

\footnotesize{\textsuperscript{41} See Sherzan, supra note 17, at 219.}
\footnotesize{\textsuperscript{42}Id.}
\footnotesize{\textsuperscript{43}Ins. Inst. for Highway Safety, \textit{Cell Phone and Texting Laws}, http://www.iihs.org/laws/cellphonelaws.aspx (last visited Jan. 20, 2012). The remaining states that have no regulations on driver’s cell phone use are Florida, Hawaii, Idaho, Montana, Ohio, South Carolina, and South Dakota. Id.}
\footnotesize{\textsuperscript{44}Shannon L. Noder, \textit{Talking and Texting While Driving: A Look at Regulating Cell Phone Use Behind the Wheel}, 44 VAL. U. L. REV. 237, 257 (2009).}
\footnotesize{\textsuperscript{45}Kalin, supra note 14, at 248 (citing Act of June 28, 2001, ch. 69, 2001 N.Y. Laws 948 (codified at N.Y. VEH. & TRAF. LAW § 1225-c (McKinney 2011))).}
such vehicle is in motion.” The statute further provided that “‘[u]sing’ shall mean holding a mobile telephone to, or in the immediate proximity of, the user’s ear.”

Cellphone laws were met with challenges when first introduced.

a. Attacks on Cell Phone Legislation

One jurisdiction that has adjudicated several constitutional challenges to cell phone legislation is New York State. After New York passed its cell phone and driving ban the law was immediately challenged as unconstitutional. In People v. Neville, the defendant was charged with using a cell phone while operating a motor vehicle under Section 1225-c of New York’s Vehicle and Traffic Code. The defendant challenged New York State’s cell phone ban on three constitutional grounds: “(1) Is the law vague or overly broad? (2) Is the law overreaching and in violation of the right to privacy? and (3) Does the law violate Due Process and Equal Protection?”

A New York State Justice Court held on the first issue that the “language is clear and undisputable to the ordinary citizen[]” and therefore “the statute is not void for vagueness or overly broad.” On the second issue of whether this law was an overreaching of government and an invasion of privacy the court held that “a law

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46 N.Y. VEH. & TRAF. LAW § 1225-c (McKinney 2011)
47 § 1225c(1)(c).
49 People v. Neville, 737 N.Y.2d 251 (N.Y. Justice Ct. of Valley Stream 2002).
50 Id. at 253 (citing N.Y. VEH. & TRAF. LAW § 1225-c (McKinney 2011)).
51 N.Y. VEH. & TRAF. LAW § 1225-c (McKinney 2011).
52 Neville, 737 N.Y.2d at 254.
53 Id.
prohibiting the use of hand-held cell phones satisfies the state’s interest in protecting the health, safety[,] and welfare of its citizens and [is] a proper use of its police power.”

The third issue was whether the law violated the Equal Protection and Due Process Clauses of both the United States and the New York State Constitutions. The defendant contended that because there were exceptions for different circumstances under the law, such as emergencies and individuals who operate “authorized emergency vehicles,” this law was in violation of the Constitutions. The court found the cell phone law passed constitutional muster. The court said that

“[t]he legislature of the State of New York recognized the need for all drivers to assist at times of emergency, and also the fact that those phone calls are short in duration and would not result in the long, distracting phone calls that are likely to result in a motor vehicle accident.”

Another example of a constitutional attack on legislation restricting cell phone usage is the case of *Price v. New York City Board of Education*. In 2005, a New York City public school updated its disciplinary code. The code’s stated purpose was to maintain “order on school property” and for “the general management, operation, control, maintenance, and discipline of the school[].” The code forbade “bringing prohibited equipment or material to school without authorization.” One prohibited equipment was

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54 *Id.* at 255.
55 U.S. CONST. amend. XIV, § 1; N.Y. CONST. art. I, § 11.
56 U.S. CONST. amend. XIV, § 1; N.Y. CONST. art I, § 6.
57 *Neville*, 737 N.Y.2d at 255.
58 *Id.*
59 *Id.*
61 *Id.* at 533.
62 *Id.*
63 *Id.*
a cell phone. A parent advocacy group challenged the code and stated that the code “infringes on the rights of parents seeking to provide cellular phones as a tool of protection for [their] child[ren].” The Supreme Court of New York County held that a cell phone should not be considered a “fundamental” instrumentality. The court further concluded that the Supreme Court of the United States would be unlikely to find that banning cell phone use in schools infringed on the fundamental right of child-rearing. The court in this case concluded that banning the use of cell phones passed the rational basis test and therefore did not violate a constitutional right.

Constitutional challenges to cell phone laws in other jurisdictions have failed as well. In Schor v. City of Chicago, the Seventh Circuit Court of Appeals dismissed a challenge to Chicago's municipal hand-held cell phone ban. The appellants claimed that Chicago’s ordinance violated the Fourth Amendment and the Equal Protection clauses of the United States Constitution. The Seventh Circuit found the Fourth Amendment and equal protection claims to be without merit and quickly dismissed them. The

64 Id.
66 Id. at 542-43.
67 Id.
68 Id.
69 See Schor v. City of Chicago, 576 F.3d 775, 777 (7th Cir. 2009).
70 Schor v. City of Chicago, 576 F.3d 775 (7th Cir. 2009).
71 Id. at 777. “The Ordinance stipulates that no person is to drive a vehicle while using a mobile, cellular, analog wireless or digital telephone, with four exceptions: (1) when the person is an on-duty law enforcement officer or operator of an emergency vehicle, (2) when the person uses a “hands-free” device, (3) in the event of an emergency, or (4) when the motor vehicle is in a stationary position and not in gear. Amendments to the Ordinance in November 2008 clarify that the “use” of a mobile device includes: “(1) talking or listening to another person on the telephone; (2) text messaging; (3) sending, reading or listening to an electronic message; or (4) browsing the internet . . . .” Id. (quoting MUNICIPAL CODE OF CHI. § 9-76-230(a)).
72 U.S. CONST. amend. IV.
73 U.S. CONST. amend. XIV, § 1, cl. 2.
74 Schor, 576 F.3d at 777.
75 Id. at 778-79.
appellants also argued that they should have been able to amend their complaints to include claims of infringement of their fundamental right to travel and vagueness.\textsuperscript{76}

The appellants argued the ordinance infringed on their constitutional right to travel because it required them to be aware of local ordinances that might be inconsistent with other regulations in the state, and signs telling motorists to dial “*999” caused motorists to believe they could use cell phones while driving in Chicago.\textsuperscript{77} The court acknowledged that “[t]he constitutional right to travel has been understood as one of the rights implicit in the Due Process Clauses of the Fifth and Fourteenth Amendments.”\textsuperscript{78} The Seventh Circuit Court of Appeals held that the Chicago ordinance did not infringe on this right because it did not ban anyone's right to travel\textsuperscript{79} and dismissed these claims.\textsuperscript{80}

The appellants also claimed the ordinance should be void for vagueness because there were too many possible interpretations of the terms “use” and “hands-free.”\textsuperscript{81} The court dismissed this claim as well, stating that “it is impossible to take seriously the argument that Chicago's Ordinance is so vague that no ordinary person could understand it; the appellants themselves understood that they were engaged in conduct proscribed by the Ordinance.”\textsuperscript{82}

The challenges to cell phone legislation mentioned above were all unsuccessful. There have been few more attacks on these cell phone and driving laws even with the increased number of states that have passed cell phone restrictions.\textsuperscript{83} “This could be due

\textsuperscript{76} Schor v. City of Chicago, 576 F.3d 775, 780 (7th Cir. 2009)
\textsuperscript{77} Id.
\textsuperscript{78} Id. (citing U.S. CONST. amend. V, XIV).
\textsuperscript{79} Id.
\textsuperscript{80} See id.
\textsuperscript{81} Id. at 780-81.
\textsuperscript{82} Id.
\textsuperscript{83} Sherzan, supra note 17, at 237.
to future challengers taking note of *Neville* and *Schor* and avoiding constitutional challenges that would most likely result in judicial confirmation of the statute’s constitutionality.**84**

**ii. State Criminal Statutes**

The states’ criminal statutes can be separated into five different categories: complete hand-held cell phone bans, young driver cell phone bans, bus driver cell phone bans, texting bans, and school bus and young driver texting bans.**85** The state laws further differ in enforcement and penalties.**86**

**a. Hand-held Bans**

Hand-held cell phone bans while driving have been enacted in ten states**87** and the District of Columbia.**88** This is the strictest form of this regulation.**89** Drivers are prohibited from using a hand-held while driving to talk or send or receive text-based communication. However, a driver may engage in a cell phone conversation if the device

**84 Id.**
**85 Ins. Inst. for Highway Safety, supra note 43.**
**86 Id.**
**87 Id.**
**88 D.C. CODE § 50-1731.04(a) (2012).**
**89 An example of this type of statute is the New Jersey hand-held cell phone ban, which states that [t]he use of a wireless telephone or electronic communication device by an operator of a moving motor vehicle on a public road or highway shall be unlawful except when the telephone is a hands-free wireless telephone or the electronic communication device is used hands-free, provided that its placement does not interfere with the operation of federally required safety equipment and the operator exercises a high degree of caution in the operating of the motor vehicle. N.J. STAT. ANN. § 39:4-97.3(a) (West 2012).**
is hands-free. The states that have enacted this type of legislation are California, Connecticut, Delaware, Maryland, Nevada, New Jersey, New York, Oregon, Utah, and Washington. Utah’s ban is unorthodox in that under the Utah law, no one commits an offense while talking on a cell phone unless they are also committing some other moving violation other than speeding. All hand-held bans have an exception for emergencies such as a driver whom needs to report an accident or if a driver feels that he or she is in imminent danger.

b. Novice Driver Cell Phone Bans

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90 See, e.g., id.
91 CAL. VEH. CODE § 23123(a) (West 2012).
92 CONN. GEN. STAT. ANN. § 14-29aa(b)(1) (West 2012).
93 DEL. CODE ANN. tit. 21, § 4176(C) (2010).
94 MD. CODE ANN., Transp. § 21-1124.2.
96 N.J. STAT. ANN. § 39:4-97.3(a) (West 2012).
97 N.Y. VEH. & TRAF. LAW § 1225-c (McKinney 2012).
98 OR. REV. STAT. ANN. § 811.507(2) (West 2012).
99 UTAH CODE ANN. § 41-6a-1715(1)(b)(i) (Utah has placed its cell phone ban under the careless driving provision. This section further bans “searching for an item in the vehicle” and “attending to personal hygiene or grooming.”).
100 WASH. REV. CODE ANN. § 46.61.667(1) (West 2012).
102 See, e.g., supra notes 88-101. A good example of this type of regulation is New Jersey’s statute which states that

[the operator of a motor vehicle may use a hand-held wireless telephone while driving with one hand on the steering wheel only if: (1) The operator has reason to fear for his life or safety, or believes that a criminal act may be perpetrated against himself or other persons; or (2) The operator is using the telephone to report to appropriate authorities a fire, a traffic accident, a serious road hazard or medical or hazardous materials emergency, or to report the operator of another motor vehicle who is driving in a reckless, careless or otherwise unsafe manner or who appears to be driving under the influence of alcohol or drugs.

N.J. STAT. ANN. § 39:4-97.3(a) (West 2012)
Cell phone use by novice drivers is restricted in thirty states\textsuperscript{103} and the District of Columbia.\textsuperscript{104} The use of cell phones by young drivers seems to be a major concern for many states.\textsuperscript{105} This is because studies show that teen drivers are “the least experienced drivers, have the worst judgment, and have texting ingrained in their culture, often since before they started driving.”\textsuperscript{106} These laws do not allow a novice driver to even use a hands-free device with a cell phone while driving.\textsuperscript{107} Most of the novice-driver cell phone bans distinguish between drivers who have attained an age of eighteen years or more, and those that have not.\textsuperscript{108} Maryland’s statute is a good example of a novice driver cell phone ban.

A holder of a learner’s instructional permit or a provisional driver’s license who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle. “Wireless communication device” means: A handheld or hands-free device used to access a wireless telephone service; or a text messaging device.\textsuperscript{109}

\begin{flushright}
\begin{footnotesize}
\textsuperscript{103} Ins. Inst. for Highway Safety, supra note 43 (These states are: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, and West Virginia.).
\textsuperscript{104} Ins. Inst. for Highway Safety, supra note 43.
\textsuperscript{105} See id.
\textsuperscript{107} See, e.g., CAL. VEH. CODE § 23124 (West 2012). An example of a state that has enacted such a law is California. Id. The California statute reads:
\begin{quote}
(a) This section applies to a person under the age of 18 years. (b) Notwithstanding Section 23123, a person described in subdivision (a) shall not drive a motor vehicle while using a wireless telephone, even if equipped with a hands-free device, or while using a mobile service device. . . . (f) This section does not apply to a person using a wireless telephone or a mobile service device for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity.
\end{quote}
§ 23124(a), (f) (West 2012).
\textsuperscript{108} See, e.g., CAL. VEH. CODE § 23124 (West 2012); see also Ins. Inst. For Highway Safety, supra note 43.
\textsuperscript{109} MD. CODE ANN., Transp. § 21-1124(a)(3), (c) (West 2009)
\end{footnotesize}
\end{flushright}
One criticism of this type of statute is that it requires a police officer to speculate about a driver’s age.\textsuperscript{110} Under these statutes, law enforcement officers are required to guess the age of a driver using a cell phone, and if he or she looks younger than eighteen, the officer can stop the car.\textsuperscript{111} This means that people who have attained the age of eighteen years or older could be stopped by police even though he or she is not violating any traffic laws.

c. Bus Driver Cell Phone Bans

The use of cell phones while driving a school bus is prohibited in twenty states\textsuperscript{112} and the District of Columbia.\textsuperscript{113} The District of Columbia statute is a good example of this type of legislation.

A person shall not use a mobile telephone or other electronic device, including those with hands-free accessories, while operating a moving school bus that is carrying passengers; provided, that this section shall not apply to a school bus driver who places an emergency call to school officials . . . .\textsuperscript{114}

d. Text Messaging Bans

Text messaging while driving has been banned for all drivers in thirty-five states\textsuperscript{115} and the District of Columbia.\textsuperscript{116} Far more states ban texting than talking on a hand-held

\textsuperscript{111} Id.
\textsuperscript{112} Ins. Inst. for Highway Safety, supra note 43.
\textsuperscript{113} Id. (Connecticut, Delaware, Maryland, Nevada, New Jersey, New York, Oregon, Utah, and Washington).
\textsuperscript{114} D.C. CODE § 50-1731.05(a) (2012).
phone.\(^{117}\) Texting while driving seems to be a big concern for a lot of states.\(^{118}\) This is because the danger comes when a driver’s eyes divert away from the road and go to the phone.\(^{119}\) This happens when the driver is trying to see what his or her hands are typing on the phone.\(^{120}\)

e. Novice Driver and Bus Driver Texting Bans

In addition, novice drivers are banned from texting in seven states—Alabama,\(^{121}\) Mississippi,\(^{122}\) Missouri,\(^{123}\) New Mexico,\(^{124}\) Oklahoma,\(^{125}\) Texas,\(^{126}\) and West

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\(^{116}\) Id.

\(^{117}\) Compare supra Part II(C)(ii)(1) (stating that only 10 states have banned talking on a handheld while driving), with supra Part II(C)(ii)(3) (stating that thirty-four out of the fifty states have put restrictions on text messaging while driving).

\(^{118}\) Id.


\(^{120}\) An example of a statute that makes it illegal to text while driving is New York State’s statute prohibiting the use of portable electronic devices, which is distinguished from the use of a mobile telephone. Except as otherwise provided in this section, no person shall operate a motor vehicle while using any portable electronic device while such vehicle is in motion.

For the purposes of this section, the following terms shall have the following meanings: (a) “Portable electronic device” shall mean any hand-held mobile telephone . . . personal digital assistant (PDA), hand-held device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device. (b) “Using” shall mean holding a portable electronic device while viewing, taking or transmitting images, playing games, or composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages, or other electronic data.


\(^{121}\) ALA. CODE § 32-6-7.2(c)(3) (2011) (Drivers age 16 and 17-years-old who held an intermediate license for fewer than 6 months.).

\(^{122}\) MISS. CODE ANN. § 63-1-73(2)(a) (learner’s permit holders and intermediate license holders prohibited from texting while driving).


Virginia—127—and school bus drivers are banned from texting in three states—Mississippi, 128 Oklahoma, 129 and Texas. 130

f. Primary vs. Secondary Enforcement

The states’ cell phone and driving laws further differ in enforcement; namely, primary and secondary enforcement. A law that calls for primary enforcement means a police officer can stop a car if he or she observes a driver illegally using a mobile telephone while driving. 131 Secondary enforcement denotes a situation where a driver must be committing some other offense, such as speeding, in order for an officer to stop a car. 132 Once a driver has been stopped for the primary offense, a police officer may then issue an additional ticket for prohibited use of a cell phone while driving. 133

ordinances restrict driving while using a cell phone and/or texting in Albuquerque, Santa Fe, Las Cruces, Gallup, Taos and Espanola. Id. 125 OKLA. STAT. ANN. tit. 47, § 6-105(f) (West 2011) (Texting is prohibited for learner’s permit and intermediate license holders.). See also OKLA. STAT. ANN. tit. 47, § 11-901(b) (West 2012) (“The operator of every vehicle, while driving, shall devote their full time and attention to such driving.”).
126 TEX. TRANSP. CODE ANN. § 545.424(2) (West 2012) (drivers younger than eighteen years of age). See also § 545.425 (prohibiting the use of cell phones in school zones unless hands-free or vehicle is stopped: Except as provided by Subsection (c), an operator may not use a wireless communication device while operating a motor vehicle within a school crossing zone . . . unless: (1) the vehicle is stopped; or (2) the wireless communication device is used with a hands-free device.).
127 W. VA. CODE ANN. § 17B-2-3a (West 2012) (Drivers younger than 18 who hold either a learner’s permit or an intermediate license.).
129 OKLA. STAT. ANN. tit. 47, § 11-901(a) (West 2012).
130 TEX. TRANSP. CODE ANN. § 545.425(c) (West 2012) (when a passenger 17 and younger is present).
132 See id.
133 Id.
Almost all of the states with cell phone and driving legislation have made enforcement of the statute primary. However, there are four states that have taken a different route. In Maryland and Utah, talking on a hand-held phone is a secondary offense while texting and driving is a primary offense. In Virginia, texting is a secondary offense, but it is primary for school bus drivers. Nebraska has made its texting and young driver cell phone ban a secondary offense.

iii. The Federal Government’s Reaction to Cell Phone and Driving Issues

The Obama Administration and the United States Congress have also recognized the problems caused by drivers using cell phones. The Department of Transportation held a two-day distracted driving summit in 2009. After the summit, President Barack Obama

134 See Ins. Inst. for Highway Safety, supra note 43 (thirty-nine states make cell phone restrictions while driving a primary offense).
135 Id. (Maryland, Utah, Virginia, and Nebraska).
136 Md. Transp. § 21-1124.2 (West 2011). (“A police officer may enforce this section only as a secondary action when the police officer detains a driver for a suspected violation of another provision of the Code.”); Utah Code Ann. § 41-6a-1716(2) (West 2012).
137 Va. Code Ann. § 46.2-1078-1 (2010) (“No citation for a violation of this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code . . . .”); § 46.2-919.1 (“No person shall use any wireless telecommunications device, whether handheld or otherwise, while driving a school bus . . . .”); see also Ins. Inst. for Highway Safety, supra note 43.
138 Neb. Rev. Stat. § 60-6, 179.01(3) (2011) (“Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.”).
139 Consumer Reports, Distracted Driving: Government Pursues Texting Law, http://news.consumerreports.org/cars/2009/11/government-takes-on-distracted-driving-and-texting-law.html. Another news article by Consumer Reports summed up the highlights of the summit conference. It will take a mix of technology, legislation, and education to combat this issue. Teen drivers pose a great risk. They are the least experienced drivers, have the worst judgment, and have texting ingrained in their culture, often since before they started driving. We’ve barely touched the surface of the potential distraction. Technology is likely to move quicker than laws or public opinion. After all, connected devices are here today and built-in Internet connectivity is on the horizon. Summing up the research, it is simply safest to stay off the phone . . . .Texting is a “perfect storm,” and represents a universe all its own when it comes to risk.
signed Executive Order 13,513. Executive Order 13,513 is the federal government’s reaction to the problem of texting while driving. Section 2 of the Order states: “Federal employees shall not engage in text messaging (a) when driving GOV [Government-owned vehicle], or when driving POV [Privately-owned vehicle] while on official Government Business, or (b) when using electronic equipment supplied by the Government while driving.” The Executive Order cites as one of the policy reasons behind its enactment as “set[ting] an example for state and local governments” to pass anti-texting laws.

The Congress of the United States has also taken action in an attempt to decrease distracted driving caused by cell phone use. Two separate bills have been introduced to committees that address cell phones and driving. One of these bills is the “Avoid Life-Endangering and Reckless Texting by Drivers Act of 2009” (ALERT Drivers Act).


141 See id. at § 1.
142 Exec. Order No. 13,513, § 2, 74 Fed. Reg. 51,225 (October 1, 2009). Section 1 of the Order lays out the policy reasons behind the Order. Id at § 1. Section 1 states:

> With nearly [three] million civilian employees, the Federal Government can and should demonstrate leadership in reducing the dangers of text messaging while driving. Recent deadly crashes involving drivers distracted by text messaging while behind the wheel highlight a growing danger on our roads. Text messaging causes drivers to take their eyes off the road and at least one hand off the steering wheel, endangering both themselves and others. Every day, Federal employees drive Government-owned, Government-leased, or Government-rented vehicles (collectively GOV) or privately-owned vehicles on official Government business, and some Federal employees use Government-supplied electronic devices and some Federal employees use Government-supplied electronic devices to text or e-mail while driving. A Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment will help save lives, reduce injuries, and set an example for state and local governments, private employers, and individual drivers.

Id.

143 Exec. Order No. 13,513, § 1.
145 S. 1536.
This bill proposed to withhold twenty-five percent of federal highway funds from states that do not enact a text messaging ban.\textsuperscript{146} Congress also considered another bill which would offer incentives for states to implement text messaging and hand-held cell phone bans, as well as allocating grant money to be used for distracted-driving education programs.\textsuperscript{147} Neither of these bills passed Congress.\textsuperscript{148}

Most recently, the National Transportation Safety Board (NTSB) issued its first ever nationwide cell phone and driving ban on December 13, 2011.\textsuperscript{149} The safety recommendation requests all fifty states and the District of Columbia to ban all cell phone use for all drivers.\textsuperscript{150} This recommendation includes talking and texting on a hand-held phone and also discourages the allowance of hands-free devices.\textsuperscript{151} The recommendation states that hands-free devices can be just as distracting to drivers as hand-held phones.\textsuperscript{152}

\textbf{III. CURRENT STATE OF THE LAW IN PENNSYLVANIA}

The problems arising from distracted driving are no less serious in Pennsylvania than in any other jurisdiction. The Pennsylvania Department of Transportation\textsuperscript{153} (PennDOT) reported that in 2007, hand-held cell phones contributed to 1,245 vehicle accidents in

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{146} \textit{Id.}
\item \textsuperscript{147} S. 1938, §§ 2-3 (2009).
\item \textsuperscript{148} See S. 1556; S. 1938.
\item \textsuperscript{149} Press Release, Nat’l Traffic Safety Board, \textit{supra} note 36 (This press release was given in response to a highway accident on August 5, 2010 in Gray Summit, Missouri. The crash involved two school buses, a bobtail, and a passenger vehicle. Evidence shows that the driver of the passenger vehicle was distracted by a text message conversation when the accident occurred. Two people were killed and thirty-seven were injured as a result of the collision.).
\item \textsuperscript{150} \textit{Id.}
\item \textsuperscript{151} \textit{Id.}
\item \textsuperscript{152} \textit{Id.}
\item \textsuperscript{153} 75 PA. CONS. STAT. § 511 (2004).
\end{itemize}
\end{footnotesize}
Pennsylvania.\textsuperscript{154} According to PennDOT, since 2002 there were 425 accidents on Pennsylvania roadways where a driver was using a cell phone equipped with some form of hands-free device.\textsuperscript{155} During that same time period, there were almost 7,000 accidents where a driver was using a hand-held device.\textsuperscript{156} Hand-held cell phone use while driving is a problem that the Commonwealth must address.

\textit{A. The Pennsylvania Municipalities’ Attempts to Address this Problem}

Before the 2011 law\textsuperscript{157} passed by the Commonwealth, some municipalities had recognized this problem and passed legislation that prohibited cell phone use while driving. Philadelphia, Harrisburg, Wilkes-Barre, Erie, and Allentown had banned cell phone use by drivers unless a hands-free attachment was in use.\textsuperscript{158} However, these local laws were met with challenges.\textsuperscript{159}

Pennsylvania’s vehicle code states that motor vehicle laws must be uniform throughout the Commonwealth.\textsuperscript{160} Section 6101 of Pennsylvania’s Motor Vehicle Code states that “[t]he provisions of this title shall be applicable and uniform throughout this Commonwealth and in all political subdivisions in this Commonwealth and no local authority shall enact or enforce any ordinance on a matter covered by provisions of this

\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} 75 PA. CONS. STAT. ANN. § 3316 (West 2011) (effective March 8, 2012).
\textsuperscript{158} Id.
\textsuperscript{160} 75 PA. CONS. STAT. § 6101 (2004).
In addition to Section 6106, there are also cases that have held that the Commonwealth has preempted the entire field of motor vehicle regulations. Any challenge to the validity of these local laws would result in the ordinance being struck down as outside the authority of the municipality to enact.

For example, Allentown’s ordinance banning the use of cell phones while driving was thrown out by a county judge who ruled that the ordinance was preempted by Commonwealth law. Philadelphia was one city that had successfully passed legislation to prohibit drivers from using cell phones while on the road. The Philadelphia ordinance reads: “No person shall use a mobile telephone or wireless communication device in any way, including for voice communication, messaging or emailing: (a) while operating a motor vehicle on any Street within the City.”


163 Hands Free Info., supra note 159. 164 Id. (This ruling came May 6, 2011.). 165 Id. (Philadelphia, like many of the cities in the Commonwealth that try this legislation, avoided issuing tickets and enforcing the ordinance so as to avoid challenges to the law that would result in it being struck down.). 166 PHILA. CODE. § 12-1132(3)(a). The Philadelphia statute further states that motorists may use cell phones to call *911 if there is an emergency, the “vehicle [is] in a stationary position in a parking lane or space out of moving traffic lanes, and not in gear,” and when “using on-board communications device for non-personal communication in the course of ordinary business in their employment with a City, State, or Federal agency or authority.” § 12-1132(3). Philadelphia’s ordinance sets forth many policy factors behind the legislation.

The Council of the City of Philadelphia finds:

The City of Philadelphia is the largest city in the Commonwealth of Pennsylvania and the sixth-largest city in the United States. As a result of its large and dense population, the City of Philadelphia experiences significant motor vehicle and pedestrian traffic within its boundaries. Philadelphia has consistently been named as one of the most walkable cities in the United States and this bill will protect the health, safety and welfare of pedestrians, bicyclists, skateboarders and inline skaters.
All of the ordinances passed by municipalities prohibited hand-held cell phone use.\textsuperscript{167} The municipalities’ attempts at confronting the problem of hand-held cell phone use while driving is evidence that there actually is a problem that the Commonwealth needs to address.

\textit{B. Pennsylvania’s Solution to the Problem}

On November 2, 2011, the Pennsylvania General Assembly passed a texting-while-driving ban.\textsuperscript{168} The law only prohibits reading, writing, and sending text while driving; carries a fifty-dollar fine; and is enforceable as a primary offense.\textsuperscript{169} The statute reads:

\begin{quote}
No driver shall operate a motor vehicle on a highway or trafficway in this Commonwealth while using an interactive wireless communications device to send, read or write a \textit{text-based communication} while the vehicle is in motion. A person does not send, read or write a text-based communication when the person reads, selects or enters a telephone number or name in an interactive wireless communications device for the purpose of activating or deactivating a voice communication or a telephone call.\textsuperscript{170}
\end{quote}

Mobile telephone usage has continued to increase in popularity in the United States. Studies show: Mobile phone usage while driving increases the likelihood of a crash fourfold; Drivers operating motor vehicles while using a mobile phone are as impaired as drivers with a 0.08 percent blood alcohol level – the level that defines drunk driving in most states; The act of dialing a mobile phone is the most dangerous part of making a mobile phone call while operating a motor vehicle . . . . Today, Americans send and receive more text messages per month than phone calls. The use of mobile phones while operating a motor vehicle, skateboard, inline skates or bicycle poses a great risk to the health, safety and welfare of the operator of those vehicles, as well as pedestrians.

\textsuperscript{167} Hands Free Info., \textit{supra} note 159.
\textsuperscript{168} 75 PA. CONS. STAT. ANN. § 3316 (West 2011) (effective March 8, 2012).
\textsuperscript{169} \textit{Id.}
\textsuperscript{170} § 3316(a) (emphasis added). “A person who violates subsection (a) commits a summary offense and shall, upon conviction, be sentenced to pay a fine of $50.” \textit{Id.}
The statute defines “text-based communication” as “a text message, instant message, electronic mail[,] or other written communication composed or received on an interactive wireless communications device.”\textsuperscript{171} The statute also addresses preemption of local ordinances and states that the new amendment to Title 75 “supersedes and preempts all ordinances of any municipality with regard to the use of an interactive wireless communications device[s].”\textsuperscript{172}

IV. ISSUE

The new Pennsylvania statute\textsuperscript{173} is a step in the right direction for the Commonwealth. However, the statute falls short of what is needed to effectively keep drivers in Pennsylvania safe. The statute prohibits text-based communication but specifies that typing a phone number into a phone to make a call is allowed.\textsuperscript{174} The reality is that there is no functional difference between punching in numbers and punching in letters. Both acts cause the driver to take his or her eyes off of the road to operate the phone. A driver is not any less dangerous when typing letters into a phone than he or she is when typing numbers.\textsuperscript{175} If the legislature wants to eliminate the distraction caused by drivers using cell phones then both acts should be prohibited.

There is also an administrability problem with the new law.\textsuperscript{176} Under the statute, every driver stopped by the police for texting on a phone has an opportunity to claim that they were dialing a number to make a call. Drivers will claim that they were not violating

\begin{itemize}
\item \textsuperscript{171}§ 3316(f).
\item \textsuperscript{172}§ 3316(e).
\item \textsuperscript{173} 75 PA. CONS. STAT. ANN. § 3316 (West 2011) (effective March 8, 2012).
\item \textsuperscript{174}§ 3316(a).
\item \textsuperscript{175}H.R. 193-26, 2009 Reg. Sess., at 22 (Pa. 2009).
\item \textsuperscript{176} 75 PA. CONS. STAT. ANN. § 3316 (West 2011) (effective March 8, 2012).
\end{itemize}
the law because they were not sending a text-based communication. Alan Lazarow gives
a good example of how this type of law will play out in court.\textsuperscript{177}

[DEFENSE COUNSEL] You testified that you stopped my
client because he was writing and sending a text message,
is that correct?
[OFFICER] That is correct.
[DEFENSE COUNSEL] And you are certain he was
writing and sending a text message because you witnessed
it occur, is that correct?
[OFFICER] Yes, I witnessed him write and send a text
message.
[DEFENSE COUNSEL] But, you were not able to
physically view the screen of the cell phone, were you,
Officer?
[OFFICER] No, I could not physically see the screen.
[DEFENSE COUNSEL] Then you cannot be sure that my
client was not, in fact, [dialing a number], correct?
[OFFICER] I guess he could have been. . . . I cannot say []
for sure.\textsuperscript{178}

However, a response to the administrability problem is that the courts could impose
the burden of proof on the defendant to show that he or she actually was making a call
and not sending or receiving a text. This could easily be proven through phone records
showing that there was no text message activity at the time the driver was stopped by
police. However, this is a solution for proof of text messaging but not for email, web-
browsing, or Facebook.\textsuperscript{179} A phone record would not likely show these types of data-
usage activities. Thus, a driver could get away with violating the statute if he or she were
writing an email or browsing the web.

\textsuperscript{177} Alan Lazerow, Near Impossible to Enforce at Best, Unconstitutional at Worst: The Consequences of
Maryland's Text Messaging Ban on Drivers, 17 RICH. J.L. & TECH. 1, 3 (2010).
\textsuperscript{178} Id.
\textsuperscript{179} Facebook, supra note 29.
The local police also want this law to be a hand-held ban.\textsuperscript{180} This is because the police recognize the difficulty that they will face trying to enforce a law that only bans text-based communications.\textsuperscript{181} The Pennsylvania Commonwealth Police wrote a letter in 2010 asking the Commonwealth legislature to enact a hand-held ban.\textsuperscript{182} The Pennsylvania statute is a step in the right direction but it does not go far enough to effectively keep people on the road safe.

V. Solution

Pennsylvania should adopt legislation prohibiting all hand-held usage while driving as a primary offense. Pennsylvania should ban the use of a hand-held cell phone—\textsuperscript{183} and not just sending and receiving text-based communication—\textsuperscript{184} Doing so would be consistent with the demands of public safety and would also result in the legislature honoring the majority opinion.

A. Public Safety

\textsuperscript{180} \textit{Id.}
\textsuperscript{182} \textit{Id.}
\textsuperscript{183} The use of a hands-free device should be allowed.
\textsuperscript{184} The Pennsylvania legislatures should make the penalty for hand-helds a fine. A ban on cell phones while driving will increase the Commonwealth’s revenue. The sentencing for texting under Pennsylvania’s law is a fine so this would make the two laws consistent. Also, the year the state of New Jersey implemented this system, it had ticketed 108,000 drivers and brought in $25 million in revenue. H.R. 193-26, 2009 Reg. Sess., at 20 (Pa. 2009). Some arguments to the contrary are that this is nothing other than a back-door tax on Pennsylvanians. \textit{Id.} The thing is that our capital just filed for bankruptcy, we should be open to anything when it comes to potential ways for the Commonwealth to generate income. Especially in light of the magnitude.
As discussed above, since 2002 there were 425 accidents on Pennsylvania roadways where a driver was using a cell phone equipped with some form of a hands-free device.\(^{185}\) There were almost 7,000 accidents where a driver was using a hand-held device.\(^{186}\) These statistics show that hand-held cell phones are much more dangerous when used behind the wheel than hands-free devices. Prohibiting people from talking on a hand-held cell phone or dialing a number will help keep Pennsylvania’s roads safer. This will not only protect drivers from being distracted and causing harm to themselves, but it will also stop people from doing harm to others on the road.

**B. Honoring the Majority Opinion**

Enacting a cell phone ban will result in the Pennsylvania legislature honoring the majority opinion. One of the jobs of the legislature is to pass reasonable laws that the people of the Commonwealth want. According to the Quinnipiac Poll, eighty-five percent of people in Pennsylvania are in favor of a hand-held ban.\(^{187}\) This view of the majority opinion is further bolstered by the fact that the Commonwealth municipalities have demonstrated a desire to place restrictions on hand-held use while driving.\(^{188}\) All of the Pennsylvania municipal ordinances banned hand-held cell phone use— and not just text-based communications.\(^{189}\) The municipalities of the Commonwealth may serve as a barometer of the public opinion.\(^{190}\) The municipalities circumventing the legislature by

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\(^{186}\) Id.


\(^{188}\) Hands Free Info., supra note 159.

\(^{189}\) See Hands Free Info., supra note 159. Also, Philadelphia enacted a complete ban on any form of cell phone use behind the wheel. PHILA. CODE § 12-1132(2) (2009).

passing hand-held ordinances is an indication to the legislature that this is a problem that the people at the local level are experiencing and that needs to be remedied.

The Philadelphia ordinance states that “[t]he act of dialing a mobile phone is the most dangerous part of making a mobile phone call while operating a motor vehicle.” ¹⁹¹ All of these facts are further proof that Pennsylvania’s law does not go far enough by just addressing text-based communication while driving.

C. Reasons Why the Commonwealth has Been Reluctant to Ban Hand-held Usage While Driving

There have been many arguments advanced as to why Pennsylvania does not need a hand-held ban for drivers. ¹⁹² Some of these arguments include: (1) Stricter cell phone legislation is unnecessary in light of other restrictions on drivers, and (2) Doing so would be a slippery slope and would require the legislature to ban other similar activities that are distracting to drivers. ¹⁹³

One argument cited for why Pennsylvania does not need to pass a hand-held ban is that restrictions on hand-held use while driving are unnecessary in light of other restrictions on drivers that are already in place. ¹⁹⁴ Pennsylvania already has a careless driving statute. ¹⁹⁵ If a driver is talking on a phone and swerving, he or she will be stopped

¹⁹⁵ 75 PA. CONS. STAT. § 3714 (2004).

Any person who drives a vehicle in careless disregard for the safety of persons or property is guilty of careless driving, a summary offense. . . . If the person who violates this section unintentionally causes the death of another person as a result of the violation, the person shall, upon conviction, be sentenced to pay a fine of [five-hundred dollars]. . . . If the person who violates this section unintentionally causes the serious bodily injury of another person as a result of the violation, the person
and ticketed for that offense.\textsuperscript{196} Also, if a driver is speeding and talking on a phone, he or she will be ticketed for that offense.\textsuperscript{197}

The problem with this argument is this approach is not proactive. This is not going to stop drivers from picking up a cell phone and putting other drivers’ lives at risk. If it is not illegal, people are going to do it.\textsuperscript{198} In motor vehicle accidents, there are only seconds to react before an accident, and the harm caused to person and property is great.\textsuperscript{199} Pennsylvania needs to have a law that prohibits people from picking up their phones at all. The thousands of drivers in the Commonwealth that have been injured on Pennsylvania roadways due to drivers distracted by cell phones may not have been injured if this careless-driving statute was sufficient. “[F]or example, it would be foolish—not to mention dangerous—to suggest laws prohibiting drunk driving are unnecessary because such illegal activity would be covered under a reckless driving statute.”\textsuperscript{200} Pennsylvania needs to have a law that stops drivers from picking up their phones at all, just like the Commonwealth’s laws that stop drivers from getting behind the wheel when they have been drinking.

Another argument that has been presented for why Pennsylvania does not need to ban hand-held use while driving is that doing so would be a slippery slope.\textsuperscript{201} Some people in the Commonwealth say: “why ban handhelds and driving if you are not going to place limitations on other similar distractions; such as playing with the radio dials, smoking a

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{196}] 75 PA. CONS. STAT. § 3714(a) (2004).
\item[\textsuperscript{197}] 75 PA. CONS. STAT. § 3362 (2004).
\item[\textsuperscript{199}] PHILA. CODE § 12-1132(1) (2009).
\item[\textsuperscript{200}] Sherzan, supra note 17, at 258.
\end{enumerate}
\end{footnotesize}
cigarette, or eating while driving.” The response to this argument is that “we cannot regulate all distractions, but this is one where we have the technology available to us today at virtually no cost to the consumer to be able to make a real difference and save lives in Pennsylvania.” There is no feasible way that Pennsylvania can regulate every distraction on the road such as people eating or tuning into their radio while driving.

However, cell phone distractions are a serious problem, and the legislature can pass a law that is easy for police officers to implement and for judges to administer. The legislature would not be telling people that they are not allowed to have conversations on the phone while driving; it is simply telling drivers to use a hands-free device. Using a hands-free device would ensure that the driver’s hands will be on the wheel and more of their attention can be on the road.

Along with this argument is the analogy to Global Positioning Systems (GPS) while driving. A GPS allows the user to enter his or her destination and gives turn-by-turn directions. It is argued that using a GPS is just as distracting as being engaged in a phone call. The problem with this analogy is that when a driver is using a GPS it is not an ongoing discussion with someone. If you are on a phone call with someone there is back-and-forth dialog and ongoing thought. Thus, the driver is distracted beyond the initial tapping of the keys. With a GPS, the driver is distracted only for as long as it takes to enter the address, which the GPS manual advises you do before you start to drive.

202 See id.; see also Hands Free Info., supra note 159.
206 eHow, supra note 204.
The great thing about a GPS is that you set it and just follow the directions. Even if the driver misses his or her turn, the device will automatically reroute and put the driver back on track. Unlike an ongoing phone conversation which is likely to hold the driver’s attention for the entire length of the call.

In addition, to the extent that a GPS is a distraction, it benefits the individual driver and increases the overall safety of the roads by allowing the driver to anticipate upcoming maneuvers and prepare for them accordingly. This is unlike cell phone conversations which do not create this benefit. A GPS is also better than using a paper map; which is cumbersome and difficult to read while driving. A phone conversation does not have a similar attendant positive effect on overall highway safety. Even if a driver is calling for directions, that call is more of a distraction than simply entering a destination into a navigation device and allowing the device to guide the driver.

D. Primary Enforcement for a Hand-held Ban

As discussed above, some states have made text based communication while driving a primary offense and hand-held use a secondary offense. Pennsylvania should make talking on a hand-held a primary offense. Primary enforcement will help to stop more accidents, whereas secondary does not do as good of a job at preventing accidents and saving lives.

\(^{207}\) See id.

\(^{208}\) Id.

\(^{209}\) See supra Primary vs. Secondary Enforcement Part II(c)(ii)(6) (meaning that the driver must be doing something else illegal and get pulled over and then you will be issue an additional citation for not wearing a seat belt, but he or she cannot just get pulled over for not wearing you seat belt if you are not doing anything else that gives a police officer a reason to pull the driver over).
Not wearing a seat belt while driving is a secondary offense in Pennsylvania.\textsuperscript{210} Cell phones and driving are distinguishable from wearing a seatbelt while driving. This is because not wearing a seat belt does not pose a threat of harm to other drivers on the road. If a driver does not fasten his or her seat belt, the only person that is in proximate danger is the driver. If that driver gets into an accident, the consequence of not wearing a seatbelt is an increase in that driver’s chance of— and severity of— injury. However, if a driver is talking on a hand-held, that driver is putting the other drivers on the road in jeopardy. One danger of hand-held use while driving is when the driver is distracted and not keeping his or her full attention on the road in front of them or minding the other cars on the road.\textsuperscript{211}

Furthermore, making hand-held use a secondary offense will not stop people from picking up their phones while behind the wheel. Secondary enforcement will only make people want to go the speed limit and obey traffic signs while driving if they are going to use a hand-held. This does not solve the problem that the danger comes when you take your eyes off the road to dial a number or are distracted in a conversation. Consider what the Insurance Institute for Highway Safety has to say on the matter. "Laws [with secondary enforcement] probably will have a big effect on making people feel good about passing a law, but zero effect on highway safety."\textsuperscript{212}

\begin{flushright}
\begin{footnotesize}
\textsuperscript{210} 75 PA. CONS. STAT. § 4581(a)(2)(ii) (2004) ("[E]ach driver and front seat occupant of a passenger car . . . operated in this Commonwealth shall wear a properly adjusted and fastened safety seat belt system."); § 4581(b) ("No person shall be convicted of a violation . . . unless the person is also convicted of another violation of this title which occurred at the same time.").
\end{footnotesize}
\end{flushright}
Thus, Pennsylvania should make a law that bans hand-held use while driving a primary offense.

VI. HOW PENNSYLVANIA CAN MAKE THE LEGISLATION WORK EFFECTIVELY

In order for Pennsylvania to see results from legislation that bans hand-helds while driving, there needs to be strict enforcement and advertising to educate drivers about the dangers of cell phones. This recommendation also includes Pennsylvania’s current no-text-based-communication law.213

A. Strict Enforcement

Pennsylvania’s cell phone laws will have little to no effect unless they are strictly enforced. Doing so would be consistent with NTSB’s recommendation in its 2011 press release.214 The safety recommendation urges the use of NHTSA strict enforcement to support these bans and communication campaigns to inform motorists of the new law and heightened enforcement.215

Also, studies show that strict enforcement of these laws is the most effective way to increase traffic safety.216 In 2010, the Network of Employers for Traffic Safety (NETS) conducted a study examining fleets from forty-five leading companies in the pharmaceutical, oil and gas, food and beverage, telecommunications, transportation, package delivery, and insurance industries.217 The study examined company vehicle fleet

213 75 PA. CONS. STAT. ANN. § 3316 (West 2011) (effective March 8, 2012).
215 Id.
217 Network of Employers for Public Safety, supra note 216.
crash rates and found that the top safety performers were companies with policies enacting a total ban on cell phone use and that established strong consequences—including termination—for employees who violate such policies.\textsuperscript{218} The benchmark study shows the potential for well-written state laws combined with strong enforcement to eventually reduce crash rates among the general population.\textsuperscript{219} Therefore, in order for Pennsylvania to see results from laws banning cell phone use behind the wheel, the laws must be strictly enforced.

\textit{B. Education Through Advertising}

Educational awareness programs sponsored by the state and cell phone industry should be continued.\textsuperscript{220} Some wireless service providers have recognized the dangers of cell phones while driving.\textsuperscript{221} For example, the efforts by Verizon Wireless in its “drive responsibly” campaign acknowledge the dangers that its products create when used behind the wheel.\textsuperscript{222} Verizon Wireless’ own policies require employees to use hands-free devices if they choose to talk on their mobile phones while driving, and forbid texting and e-mailing while driving.\textsuperscript{223}

The Commonwealth’s government can work with driver education programs that focus on the dangers of cell phones and driving. Some citizens were skeptical about the efficacy of seatbelt laws when they first were introduced.\textsuperscript{224} Through the states’
advertising, such as “Click it or Ticket” campaigns,225 seatbelts have become automatic for most of us when we drive.226 The same can be true of cell phone use while driving. Road signs, public service announcements, and state advertising campaigns can help inform the public about these dangers.

Foreign jurisdictions have also recognized a strong need for these educational programs. The United Kingdom has an effective public service announcement.227 It depicts three teenage girls riding in a car.228 The driver is distracted by sending a text message when she crosses the center line and collides with oncoming traffic.229 The ad then, in slow motion, shows the crash and the subsequent collision that occurred when the car lands in the opposite lane and is hit broadside by another vehicle.230 The consequence of the driver’s text message is her being pulled from the wreckage and rushed to the hospital while her two friends are still lying dead in the car.231 This public service announcement sends a very strong message and also increases awareness of the dangers of cell phone use while driving.

Thus, in order for Pennsylvania to see results from laws that restrict drivers’ use of cell phones behind the wheel, these laws should be strictly enforced and advertised.

226 “Click it or Ticket is the most successful seat belt enforcement campaign ever, helping create the highest national seat belt usage rate of [eighty-five] percent.” See Nat’l Highway Traffic Safety Admin., supra note 225.
228 Id.
229 Id.
230 Id.
231 Id.
The technology age has caused an increase in the use of cell phones by drivers. Many states and the Federal Government have recognized this problem and enacted legislation restricting the use of cell phones while driving. Pennsylvania recently passed legislation that prohibits drivers from sending or receiving text-based communications on a cell phone. This new Pennsylvania statute is a step in the right direction but falls short of what is needed to effectively keep drivers in the Commonwealth safe.

Pennsylvania should take a strict approach and ban hand-held use while driving—and not just text-based communication. Both acts cause the driver to take his or her eyes off the road. A driver is not any less dangerous when typing letters into a phone than he or she is when typing numbers.\textsuperscript{232} If the legislature wants to eliminate the distraction and damage caused by drivers using cell phones then both acts should be prohibited. There is also an administrability problem with the law. Under the statute, every driver stopped by the police for sending text-based communication on a phone has an opportunity to claim that he or she was dialing a number to make a call.

Because of these deficiencies of the current law, Pennsylvania should ban the use of hand-held phones while driving. Doing so would be consistent with the demands of public safety and would also result in the legislature honoring the majority opinion. Furthermore, in order for the Commonwealth to see results from this legislation, Pennsylvania needs strict enforcement of the laws and the use of advertising to educate people about the dangers of cell phones and driving. A hand-held ban on drivers in the

Commonwealth could result in less drivers in Pennsylvania being faced with experiences like that of Jacy Good.