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The Failure of State Texting-While-Driving Laws

Cody J. Harding

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INTRODUCTION

Despite being the latest trend in state legislatures, laws meant to combat texting while driving do not work. Statistics show that laws banning texting while driving have a negligible impact on highway safety. The success of these laws is impaired by prosecution limitations, inconsistent enforcement, and perhaps most importantly, the public's willingness to violate them.

Texting while driving laws have been unable to improve public safety because they are not reducing the number of cellphone related automobile accidents on America's roadways. They are demonstrating that they are not lasting solutions. Meanwhile, states that have banned cell phone use completely have seen an improvement in highway safety. In light of these statistics, some advocates have called for a complete ban on cell phones while driving. Evidence suggests that this will prove to be the only lasting solution to the problem of distracted driving.

I. DEFINING THE PROBLEM

The issue of automobile fatalities has developed over years, and it continues to evolve today. United States highway fatalities have dipped to numbers unseen since the 1940s.[1] However, the number of preventable crashes caused by cell phone usage continues to increase every year.[2] State legislatures have responded to this problem and, since 2001, all but five states have passed related legislation.[3] By

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[1] Tanya Mohn, *Traffic Deaths Fall to Lowest Level Since 1949*, N.Y. TIMES (Dec. 9, 2011, 6:03 PM), http://wheels.blogs.nytimes.com/2011/12/09/traffic-deaths-fall-to-lowest-level-since-1949/.

[2] *What is Distracted Driving?*, DISTRACTION.GOV, http://www.distraction.gov/content/get-the-facts/facts-and-statistics.html (last visited on Mar. 21, 2013); *see also* Ashley Halsey III, *Cellphone Use, Texting in 28 Percent of Crashes*, WASH. POST (Jan. 13, 2010), http://articles.washingtonpost.com/2010-01-13/news/36800274_1_focusdriven-cellphone-hands-free-devices.

[3] *Cellphone and Texting Laws*, INS. INST. FOR HIGHWAY SAFETY: HIGHWAY DATA LOSS INST., http://www.iihs.org/laws/maptextingbans.aspx (last visited Mar. 21, 2013).

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January 2013, 39 states, the District of Columbia, Guam, and Puerto Rico have all banned texting and driving.[4]

The measurers passed by the states vary greatly. The majority of states have made texting while driving a primary offense resulting in a ticket.[5] Four states have made it a secondary offense, resulting in a fine after a driver is pulled over for another traffic violation.[6] Some states have completely banned cell phone use while driving.[7] Conversely, several states—mostly rural—have placed no limits on cell phone use while driving.[8]

Like the laws themselves, the success they achieve varies. The attempt to prohibit texting and driving, but still allowing cell phone calls, complicates matters. As texting while in a car is by nature inconspicuous, such laws make it difficult for officers to catch people in the act. Because many of these laws are only beginning to take effect, their value will not be completely understood for several years. Currently, however, their effectiveness is inconsistent.

Any analysis of texting and driving legislation should begin by examining nationwide trends on cell phone use and driving. By the late 1990s, widespread use of cellular phones had taken root nationwide. In the second quarter of 2008, texting became the primary type of cell phone communication in the United States.[9]

Widespread data regarding texting while driving has become available recently. Accordingly, early statistics are based on limited survey analyses conducted by the National Highway Traffic and Safety Administration ("NHTSA") and Department of Transportation ("DOT").[10] Years passed before government agencies began to coordinate reporting efforts and compile nationwide data; only

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[4] *Id.*

[5] *Distracted Driving Laws*, GOVERNOR'S HIGHWAY SAFETY ASS'N (Mar. 2013), http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html [hereinafter GOVERNOR'S HIGHWAY SAFETY ASS'N].

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] David Kiley, *Texting Surpasses Calling Among Cell Phone Subscribers*, BLOOMBERG BUSINESSWEEK (Sept. 24, 2008), http://www.businessweek.com/stories/2008-09-23/texting-surpasses-calling-among-cell-phone-subscribers.

[10] *See* Dennis Utter, *Passenger Vehicle Driver Cell Phone Use Results from the Fall 2000 National Occupant Protection Use Survey*, U.S. DEP'T OF TRANSP., NAT'L HIGHWAY TRAFFIC AND SAFETY ADMIN. 4 (July 2001), *available at* http://www-nrd.nhtsa.dot.gov/Pubs/809-293.pdf (explaining the survey methods); Donna Glassbrenner, *Driver Cell Phone use in 2005*, U.S. DEP'T OF TRANSP., NAT'L HIGHWAY TRAFFIC AND SAFETY ADMIN. 5–6 (Dec. 2005), *available at* http://www-nrd.nhtsa.dot.gov/Pubs/809967.pdf (stating the number of observational sites and methods).

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recently has an overwhelming amount of data become available. The rush to record and report these statistics is an additional testament to the recent spike in cell phone related automobile accidents.

II. CELL PHONE USE WHILE DRIVING

A. Early Statistics

In 2000, DOT conducted a national study of cell phone use while driving.[11] The Department's report acknowledged the difficulty in quantifying these statistics, but estimated that during daylight hours 3% of drivers were using cell phones nationwide.[12] Additionally, the survey found that approximately 54% of drivers had a cell phone in their vehicle.[13] Of those individuals, three out of four admitted to using a cell phone while driving.[14] In 2000, there were a reported 191 million licensed drivers in the United States.[15] At the time, the population of the United States stood at an estimated 281 million.[16] Thus, based upon the NHTSA survey, roughly 77 million Americans were using cell phones while driving. At any given time, over 600,000 drivers were using cell phones.[17]

In 2005, NHTSA noted a considerable increase in cell phone use by drivers. The agency estimated that, "there were 974,000 vehicles on the road at any given daylight moment being driven by someone on a hand-held phone."[18] NHTSA also stated that there were an "estimated 10 percent of vehicles in the typical daylight moment whose driver is using some type of phone, whether hand-held or hands-free."[19] NHTSA gathered these statistics by observing 43,000 vehicles from 1,200 different nationwide locations.[20] Before iPhones and text messaging were the cell phone standard, NHTSA observed that: "In the first nationwide probability-based estimate of the incidence of hand-held device manipulation, the survey found that

[11] Utter, *supra* note 10, at 1.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Highway Statistics 2000*, U.S. DEP'T OF TRANSP., FEDERAL HIGHWAY ADMIN., https://www.fhwa.dot.gov/ohim/hs00/dlchrt.htm (last visited Mar. 20, 2013).

[16] *Id.*

[17] Utter, *supra* note 10.

[18] Glassbrenner, *supra* note 10.

[19] *Id.*

[20] *Id.* at 5.

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0.2 percent of drivers were dialing phones, checking PDAs, or otherwise manipulating some hand-held device while driving."[21]

Meanwhile, the medical profession and insurance industry had begun to take note of the role cell phones played in automobile accidents. A 2005 British Medical Journal study based on emergency medical and phone records concluded that drivers using a cell phone were four times more likely to be in an accident than those not using a cell phone while driving.[22] The study also found that hands free devices did not reduce the likelihood of an accident.[23] Because U.S. phone companies were unwilling to release cell user phone records, the study was conducted in the Australian City of Perth.[24] Nevertheless, the Insurance Institute for Highway Safety concluded that the study was applicable to all drivers and the results corroborated a similar Canadian study conducted in 1997.[25]

B. 2008—Present

By 2008, a vast amount of statistics regarding the relationship between cell phones and driving had become available. Similar to the 2000 and 2005 nationwide studies, NHTSA observed tens of thousands of vehicles to gather statistical evidence in its 2008 survey.[26] The agency found that the percentage of drivers visibly using cell phones held relatively constant at 6%.[27] However, the number of drivers manipulating hand-held devices (i.e. texting, emailing) had risen from 0.2% in 2005 to 1% in 2008.[28] By this time, NHTSA noticed how this behavior influenced car accidents:

> 5,870 people lost their lives and an estimated 515,000 people were injured in police-reported crashes in which at least one form of driver distraction was reported on

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[21] *Id.* at 1.

[22] Suzanne P. McEvoy et al., *Role of mobile phones in motor vehicle crashes resulting in hospital attendance*, BRITISH MED. J. (July 12, 2005), *available at* http://www.bmj.com/content/ 331/7514/ 428.pdf%2Bhtml.

[23] *Id.* at 4.

[24] *1st Evidence of Effects of Cell Phone Use on Injury Crashes*, INS. INST. FOR HIGHWAY SAFETY, at 2 (July 12, 2005), *available at* http://www.iihs.org/news/2005/iihs_news_071205.pdf.

[25] *Id.*

[26] *Driver Electronic Device Use 2008*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. 5–6 (Sept. 2009), http://www.distraction.gov/download/research-pdf/Driver-Electronic-Device-Use-2008.pdf.

[27] *Id.* at 1.

[28] *Id.*

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> the crash report. While these numbers are significant, they may not state the true size of the problem, since the identification of distraction and its role in the crash by law enforcement can be very difficult.[29]

In response, many states have enacted laws banning or limiting cell phone use while driving.

States have approached the texting and driving issue in different ways. Ten states, as well as the District of Columbia, Guam, Puerto Rico and the Virgin Islands, have completely banned cell phone use while driving.[30] New York became the first state to do so in 2001.[31] Police officers can pull over and cite drivers in violation of this ban.[32] In West Virginia and Maryland, however, a violation is only a secondary offense.[33] This means that a citation can be issued only if a driver is first pulled over for another violation.[34]

Instead of a comprehensive ban, other states have implemented a texting ban. Of these states, thirty-five have made texting and driving a primary offense.[35] A violation results in a citation and fine.[36] These states' laws are not identical, but most distinguish between manipulating a phone to make a phone call and reading/sending text messages.[37] Using a sampling of states, this article examines the effectiveness of their texting legislation and the issues each creates.

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[29] *An Examination of Driver Distraction as Recorded in NHTSA Databases*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. (Sept. 2009), http://www-nrd.nhtsa.dot.gov/Pubs/811216.PDF.

[30] GOVERNOR'S HIGHWAY SAFETY ASS'N, *supra* note 5.

[31] *Id.*

[32] *See State Laws*, U.S. DEPARTMENT OF TRANSPORTATION, *available at* http://www.distraction.gov/content/get-the-facts/state-laws.html (last visited Mar. 21, 2013) (explaining difference between primary and secondary offenses).

[33] *Id.* (on July 1st, 2013, cell phone use while driving becomes a primary offense in West Virginia).

[34] *Id.*

[35] GOVERNOR'S HIGHWAY SAFETY ASS'N, *supra* note 5.

[36] *Id.*

[37] *See, e.g.*, W. VA. CODE, § 17C-14-15; OHIO REV. CODE ANN. § 4511.204.

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III. COMPLETE CELL PHONE BAN—DELAWARE

In 2010 Delaware joined states such as Connecticut and New York by banning all cell phone use by drivers.[38] Under this law, any use of a cell phone, while a vehicle is in motion, constitutes a primary offense.[39] A $50 fine is levied for a first infraction, and a $100–$200 fine is imposed for subsequent violations.[40] A violation does not result in any points against an individual's license.[41] The law allows exceptions for school bus drivers, emergency personnel, reporting emergency situations, and using a hands-free device.[42] The Delaware law went into effect on January 2, 2011.[43]

In 2010, there were 648,125 licensed drivers in Delaware.[44] In that year, there were 20,697 vehicle accidents and ninety-four of them were fatal.[45] This represented a 9% increase in total accidents from 2009.[46] In 2011, when the cell phone ban first took effect, licensed drivers increased slightly to 653,141.[47] Despite the cell phone ban, accidents rose slightly as well. There were 20,872 vehicle accidents in which 103 people were killed.[48]

In 2011, the percentage of accidents increased relative to the slight increase in drivers and registered vehicles. Thus, in its first year in place, Delaware's statewide ban on cell phone use while driving did little to make the state's highways safer. Although data for 2012 is not available, Delaware has announced a plan for

[38] *Distractive Driving > > Cell Phone*, DELAWARE OFFICE OF HIGHWAY SAFETY, *available at* http://ohs.delaware.gov/CellPhone (last updated Apr. 1, 2013) [hereinafter DELAWARE OFFICE OF HIGHWAY SAFETY].

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] GOVERNOR'S HIGHWAY SAFETY ASS'N, *supra* note 5.

[43] *Delaware: Cell Phone Laws, Legislation*, HANDS FREE INFO, http://handsfreeinfo.com/delaware-cell-phone-laws-legislation (last visited Mar. 31, 2013).

[44] *Delaware's Annual Statistical Traffic Report*, DELAWARE STATE POLICE (2010), http://dsp.delaware.gov/Annual%20Traffic%20Statistical%20Report%202010.pdf.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

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redoubled visibility and enforcement efforts.[49] However, despite enforcement efforts, the ban has had little effect on highway safety.[50]

IV. TEXTING BAN (PRIMARY OFFENSE)—KENTUCKY

The majority of states have made texting and driving a primary offense. Currently thirty-nine states have primary bans on texting while driving, including the ten states that have outlawed all cell phone use while driving.[51] This type of legislation seems to be the preferred choice among state legislatures. Most have failed to pass complete bans on cell phone use, and the texting ban remains a more popular alternative.

Kentucky, for example, recently made texting and driving a primary offense.[52] The law became effective in 2010, but police did not begin enforcement until January 1, 2011.[53] The law prohibits drivers, while their vehicle is in motion, to "write, send, or read text-based communication using a personal communication device . . . including but not limited to communications referred to as a text message, instant message, or electronic mail."[54] However, like many similar laws, it provides some exceptions, including the use of a GPS device or entering a telephone number to make a call.[55]

As is the case in other states, Kentucky's law is not providing the anticipated results on Kentucky's highways. In 2010, there were 150,517 accidents and 706 highway fatalities.[56] Despite a small increase in population, the numbers dropped to 150,278 accidents and 721 fatalities in 2011, the year the ban was first enforced.[57]

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[49] *Distracted Driving Enforcement Pilot Begins in Delaware*, DELAWARE DEPARTMENT OF TRANSPORTATION (Nov. 7, 2012), http://fastlane.dot.gov/2012/11/distracted-driving-enforcement-pilot-begins-in-delaware.html.

[50] Brian C. Rittmeyer, *Texting While Driving Law Hasn't had Desired Impact on Accidents*, TRIB TOTAL MEDIA (Mar. 13, 2013), *available at* http://triblive.com/neighborhoods/yourallekiskivalley/yourallekiskivalleymore/3645972-74/citations-texting-driving#axzz2PLIaC113.

[51] GOVERNOR'S HIGHWAY SAFETY ASS'N, *supra* note 5.

[52] KY. REV. STAT. ANN. § 189.292 (2012).

[53] *Kentucky: Cell Phone Laws, Legislation*, HANDS FREE INFO (last updated Mar. 10, 2013), http://handsfreeinfo.com/kentucky-cell-phone-laws-legislation.

[54] KY. REV. STAT. ANN. § 189.292 (2012).

[55] *Id.*

[56] *Traffic Safety Performance (Core-Outcome) Measures for Kentucky*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/21_KY/2011/21_KY_2011.htm (last visited Mar. 31, 2013) [hereinafter NAT'L HIGHWAY TRAFFIC SAFETY ADMIN.].

[57] *Id.*

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These numbers suggest that the law—at least in part—contributed to saving lives on the state's highways. However, in 2012, the state police reported 746 highway fatalities.[58] Therefore, the number of fatalities increased during the second year of enforcing the ban on texting. The increase could be attributed to a rise in population or more licensed drivers. However, between 2010 and 2011, the population increased but fatalities decreased.[59] Those results appear counter-intuitive. Some of the issues may be explained by the problem of enforcement and public compliance.

V. TEXTING BAN (SECONDARY OFFENSE)—IOWA

Iowa treats texting while driving as a secondary offense.[60] Therefore, a driver can be fined or cited only after being stopped for another violation. The Iowa law states:

> A peace officer shall not stop or detain a person solely for a suspected violation of this section. This section is enforceable by a peace officer only as a secondary action when the driver of a motor vehicle has been stopped or detained for a suspected violation of another provision of this chapter, a local ordinance equivalent to a provision of this chapter, or other law.[61]

This legislation went into effect on July 10th, 2010, but police did not begin enforcement until roughly a year later.[62] A driver can be fined $30.00 for a violation, and up to $1,000 for causing a serious accident.[63]

In 2010, Iowa had 2,181,534 licensed drivers, 54,346 automobile accidents, and 390 accident fatalities.[64] Thus, approximately one out of every forty licensed

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[58] *Kentucky Highway Fatalities*, KENTUCKY STATE POLICE (2012), http://www.kentuckystatepolice.org/tip2012.htm.

[59] NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 56.

[60] IOWA CODE ANN. § 321.276 (West 2012).

[61] *Id.*

[62] *Iowa: Cell Phone Laws, Legislation*, HANDS FREE INFO, http://handsfreeinfo.com/iowa-cell-phone-laws-legislation (last visited Mar. 31, 2013).

[63] IOWA CODE ANN. § 321.276 (West 2012).

[64] *Iowa Motor Vehicle Statistics—1925–2011*, IOWA DEPARTMENT OF TRANSPORTATION, http://www.iowadot.gov/mvd/ods/stats/crashhistory.pdf (last visited Mar. 31, 2013).

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Iowa drivers was involved in an automobile accident in 2010. In 2011, the number of licensed drivers in Iowa increased to 2,231,429.[65] However, total car accidents decreased to 48,713 with 360 fatalities.[66] This represented the lowest number of accidents in the state since 1949, and both accidents and fatalities dropped noticeably from their 2010 levels.[67] Despite this, the influence of the texting ban may have been negligible given that the law had only been enforced during the second half of the year. Moreover, accidents caused by cell phones are apparently on the rise. As noted in May 2012: "Iowa tallied 680 crashes involving drivers distracted by a phone or other device in the 2011 calendar year, and that number appears to be on the rise with 217 already registered in 2012, according to the Iowa Department of Transportation."[68]

Like the states with primary bans, Iowa is experiencing unsatisfactory results. Enforcement is even more difficult because a violation is only a secondary offense, with minimal fines. Police officers find it almost impossible to catch anyone in the act and note that drivers are willing to continue to text and drive, despite the law.[69] Judging by this conduct on Iowa's roadways, the state's citizens are aware of the law's ineffectiveness.

VI. NO LEGISLATION—FLORIDA

Currently, only five states have no legislation related to cell phone use and driving: Arizona, Florida, Montana, South Carolina and South Dakota.[70] Florida provides the best example, as the state keeps detailed traffic accident statistics and is the most densely populated of these states.

In 2010, Florida had 15,553,387 licensed drivers and 235,461 car accidents,[71] which resulted in 2,444 fatalities.[72] In 2011, there were 15,507,284 licensed drivers

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] Vanessa Miller, *Police Ticket Few Iowans for Texting While Driving*, ABC KCRG (June 3, 2012, 7:37 AM), http://www.kcrg.com/news/local/Police-Ticket-Few-Iowans-for-Texting-While-Driving-156891175.html?m=y&smobile=y.

[69] Mike Wiser, *Texting-driving Law Difficult to Enforce*, GLOBE GAZETTE (May 15, 2011, 12:01 AM), http://globegazette.com/news/local/texting-driving-law-difficult-to-enforce/article_75f3174e-7ea3-11e0-8b65-001cc4c03286.html.

[70] GOVERNOR'S HIGHWAY SAFETY ASS'N, *supra* note 5.

[71] *Florida Highway Traffic Statistics Report 2010–2012*, FLORIDA HIGHWAY SAFETY AND MOTOR VEHICLES (2012), http://www.flhsmv.gov/html/FactsFigures/1012.pdf (last visited Apr. 3, 2013).

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and 227,998 car accidents, with 2,400 fatalities.[73] This marks a 3.1% decrease in car accidents. The decrease may be explained by the fact that Florida had a 45,000 decrease in licensed drivers. However, looking at the trend in Florida over several years may be informative. From 2005 to 2011, Florida's annual vehicle fatalities have decreased from 3,533 to 2,400.[74] At a time when drivers were increasingly using their cell phones for calls, texting, social media, and navigation, Florida has seen a 32% decrease in vehicle fatalities.

VII. PUZZLING STATISTICS—NATIONWIDE

Florida's statistics are symbolic of a nationwide trend; across the country motor vehicle fatalities have decreased steadily since 2002.[75] That year, there were 38,491 vehicle fatalities nationwide.[76] That number fell to 32,367 in 2011.[77] Vehicles are safer now than ever before, and state and national authorities have spent almost a century making roads safer through enforcement and design. Despite these efforts, drivers are increasingly distracted by their cell phones. This begs the question: what influence have these state laws had in bringing the number of accidents and fatalities down?

A survey of 2011 nationwide crash fatalities shows inconsistencies across the board.[78] No clear patterns seem to exist. The number of fatalities increased in some states, while others saw a decrease.[79] Some states saw decreases as large as 20%, while others saw a similar increase.[80] The survey suggests that whether a state implemented merely a texting or a comprehensive cell phone ban had a negligible

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[72] *Id.*

[73] *Id.*

[74] *Crash Facts*, FLORIDA HIGHWAY SAFETY AND MOTOR VEHICLES (Nov. 15, 2012), https://www.firesportal.com/Pages/Public/documents/2011CrashFacts/Official2011CrashFacts.pdf.

[75] *Fatality Analysis Reporting System Encyclopedia*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., http://www-fars.nhtsa.dot.gov/Main/index.aspx (last visited Apr. 3, 2013).

[76] *Id.*

[77] *Id. See also 2011 Motor Vehicle Crashes: Overview*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. (Dec. 2011), http://www-nrd.nhtsa.dot.gov/Pubs/811701.pdf [hereinafter NAT'L HIGHWAY TRAFFIC SAFETY ADMIN.].

[78] *State Motor Vehicle Fatalities and State Alcohol-Impaired Motor Vehicle Fatalities*, 2011, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. (Dec. 2012), http://www-nrd.nhtsa.dot.gov/Pubs/811699.pdf.

[79] *Id.*

[80] *Id.*

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effect.[81] Common sense points to the conclusion that if a state implemented any degree of cell phone restriction, roads would be at least marginally safer because there would be less distracted drivers. However, many studies show otherwise.

Government bodies and insurance companies have recognized this counter-intuitive trend. According to NHTSA research, at any moment in America, "nearly one in every 100 car drivers was texting, . . . or otherwise using a hand-held electronic device . . . [T]hose activities spiked 50 percent over the previous year, even as states rush to ban the practices."[82] Now that local and federal government agencies understand the importance of the information, they have begun collecting data related to distracted driving and automobile accidents.[83] NHTSA has even refined its definition of distracted driving to better illustrate the problem caused by cell phones and driving.[84] Under this new definition, NHTSA found that 3,092 people died in distraction related crashes in 2010.[85]

Some analysts now believe that texting bans actually increase the number of automobile accidents. The Highway Loss Data Institute ("HLDI") conducted a survey in California, Louisiana, Washington and Minnesota after each of these states enacted bans in 2008.[86] Adrian Lund, president of the HLDI and Insurance Institute for Highway Safety explained the survey's results: "[C]rashes increased in 3 of the 4 states we studied after bans were enacted. It's an indication that texting bans might even increase the risk of texting for drivers who continue to do so despite the laws."[87] However, other statistics paint a different picture.

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[81] *See also 2010 Traffic Fatalities by State and Percent Change from 2009*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., http://www-fars.nhtsa.dot.gov/States/StatesCrashesAndAllVictims.aspx (last visited on Mar. 21, 2013).

[82] Joan Lowy, *Despite State Texting Ban, More Drivers Messaging at the Wheel*, HUFFINGTON POST (Dec. 8, 2011, 9:37 PM), http://www.huffingtonpost.com/2011/12/09/texting-ban-drivers_n_1139029.html.

[83] *FCC: Encyclopedia, Distracted Driving*, FEDERAL COMMUNICATIONS COMMISSION, http://www.fcc.gov/encyclopedia/distracted-driving (last visited on Apr. 20, 2013) (outlining recent government efforts to understand, inform and prevent the problem of distracted driving).

[84] James R. Healey, *Feds: Phoning, Texting Killed 3,092 in Car Crashes Last Year*, USA TODAY (Dec. 12, 2011, 6:29 PM), http://content.usatoday.com/communities/driveon/post/2011/12/nhtsa-cell-phones-killed-3092-car-crashes-/1#.UTP3uxnfL-l.

[85] *Id.*

[86] *Texting Ban's Don't Reduce Crashes; Effects are Slight Crash Increases*, INS. INST. FOR HIGHWAY SAFETY: HIGHWAY LOSS DATA INST. (Sept. 28, 2010), http://www.iihs.org/news/rss/pr092810.html.

[87] *Id.*; *see also Do Texting-While-Driving Bans Actually Increase Crashes?*, CBS NEWS (Sept. 28, 2010, 10:18 AM), http://www.cbsnews.com/8301-501465_162-20017855-501465.html [hereinafter CBS NEWS].

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Of the five states without any cell phones restrictions,[88] each one has consistently more highway fatalities per 100,000 citizens than the nationwide average.[89] Each of these five states has more than double the highway fatality rate per 100,000 citizens than densely populated New York,[90] which has banned cell phone use while driving since 2001. In 2011, New York had approximately six roadway fatalities per 100,000 citizens.[91] This ratio is only slightly higher than the nation's lowest rate of 4.37 fatalities per 100,000 citizens in Washington D.C.[92]

Like other crash statistics, however, this number serves to complicate rather than clarify the issue. Other factors may be at play, such as incidents of drunk driving or the number of miles driven per capita. In fact, most rural states (including those with cell phone restrictions) have significantly higher fatality rates than the nation's average.[93]

Because overall crashes and fatalities are down, the rising number of distracted driving deaths is partially concealed. Nonetheless, much evidence still shows that texting bans do little to make highways safer.[94]

VIII. DIFFICULTY OF ENFORCEMENT

In every state with a restriction on texting or cell phone use while driving, law enforcement officers are well aware of the difficulty of enforcement. The degree of difficultly depends on the law's language and provided exceptions, as well as the state's enforcement policy.

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[88] *See supra* Part VII.

[89] *State Traffic Safety Information for Year 2011*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/USA%20WEB%20REPORT.HTM (last visited Mar. 31, 2013) (stating that nationwide fatalities average is about 10 per 100,000 citizens).

[90] *Id.* (comparing the fatality rate of AZ, FL, MT, SC, SD to NY; The average number of fatalities in the states without bans ranges from 12-20 per 100,000 people, compared to approximately 6 fatalities per 100,000 people in New York state).

[91] *Traffic Safety Performance (Core-Outcome) Measures for New York*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/36_NY/2011/36_NY_2011.htm (last visited Mar. 31, 2013).

[92] *Traffic Safety Performance (Core-Outcome) Measures for Oklahoma*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/40_OK/2011/40_OK_2011.htm (last visited Mar. 31, 2013).

[93] NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 77.

[94] INS. INST. FOR HIGHWAY SAFETY: HIGHWAY LOSS DATA INST., *supra* note 86; CBS NEWS, *supra* note 87.

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In many states, the laws are barely enforced. As of September, 2012, two years after Georgia enacted its ban on texting and driving, the state had convicted 1,281 drivers of violating the law.[95] *The Atlanta Journal Constitution*, highlighting the issue of enforcement, noted that this number constituted only a "small fraction of the 22,500 people convicted of driving under the influence of alcohol or drugs during the same time frame" and amounted to less than 50 convictions per month.[96]

Other states share similar results. Pennsylvania is one of the more recent states to implement a texting ban. However, the state's law permits drivers to manipulate their phone for the purpose of "read[ing], select[ing] or enter[ing] 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."[97] Officers in central Pennsylvania have noted the difficulty of proving that someone has violated the law.[98] As stated by a Pennsylvania police officer, police are "hard pressed to prove that [drivers] were actually texting versus checking an address on their phone's GPS or dialing a phone number in order to engage in a telephone conversation, all of which are permitted under the new law."[99]

Secondary offenses are even harder to enforce, as Iowa has experienced.[100] Between July 2011 and June 2012, Iowa state troopers issued ninety tickets and forty-eight warnings.[101] Over this same period, DOT recorded 119 total convictions for violations.[102] State troopers and local police officers concede that the law is difficult to enforce.[103]

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[95] Andria Simmons, *Texting While Driving Law Rarely Enforced*, THE ATLANTA JOURNAL CONSTITUTION (Oct. 30, 2012, 6:37 AM), http://www.ajc.com/news/news/texting-while-driving-law-rarely-enforced/nSrTD/.

[96] *Id.*

[97] 75 PA. CONS. STAT. § 3316 (2012).

[98] Matthew Kemeny, *Pennsylvania's No-Texting Law is Difficult to Enforce, Police Say*, THE PATRIOT NEWS (May 8, 2012, 9:00 AM), http://www.pennlive.com/midstate/index.ssf/2012/05/pennsylvanias_no-texting_law_i.html.

[99] *Id.*

[100] *See supra* Part V (discussing Iowa's texting ban).

[101] Miller, *supra* note 68.

[102] *Id.*

[103] *Id. See also* Jeremy Maskel, *Compromises Complicate IA Texting Ban Enforcement*, SIOUXLAND NEWS (Mar. 30, 2010), http://www.siouxlandnews.com/Global/story.asp?S=12230558&clienttype=mobile.

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Some states are recognizing this issue and attempting to strictly enforce the new laws.[104] In 2012, Delaware renewed efforts to enforce their ban on cell phone use while driving.[105] By November 7, 2012, the state's official website claimed that over 20,000 citations had been issued for violations of the law.[106]

IX. POSSIBLE SOLUTIONS

Given recent trends and public opinion, more legislation on cell phone use while driving is all but certain.[107] Nonetheless, these statutes are undermined by enforcement difficulties, limited bans, and drivers' willingness to violate the law. Thus, the solution may be in stricter laws, stronger enforcement, advanced technology, or a combination of all of the above.

Transportation Secretary Ray LaHood has urged Congress to enact a nationwide texting ban.[108] LaHood and others believe that, if diligently enforced, these bans will decrease highway fatalities.[109] However, because accidents increased in many states that have enacted bans, it is difficult to support his contention. At the very least, the results have been inconsistent and a solution is far from clear.

In contrast to LaHood's contention, some argue that a nationwide ban would not work. A recent *USA Today* article opposing a nationwide ban noted that:

> 3,092 people who died last year in crashes caused by distracted driving. But that's misleading. Only a small portion—13%, to be exact—involved calling or texting on cellphones. The vast majority involved other distractions, including things such as rowdy toddlers or

[104] *See, e.g.*, DELAWARE OFFICE OF HIGHWAY SAFETY, *supra* note 38.

[105] *Id.*

[106] *Id.*

[107] *See, e.g.*, Chris Hooks & Maurice Chammah, *House Passes Texting-While-Driving Measure*, TEXAS TRIB. (Apr. 17, 2013), http://www.texastribune.org/2013/04/17/texting-while-driving-ban-hit-house-floor/; Bill Cotterell, *Texting-While-Driving Ban Passes Florida Senate*, HUFFINGTON POST MIAMI (Apr. 16, 2013 at 2:48 PM), http://www.huffingtonpost.com/2013/04/16/texting-ban-florida_n_3094295.html.

[108] Larry Copeland, *LaHood Seeks Federal Texting While-Driving-Ban*, USA TODAY (Dec. 7, 2011, 10:09 PM), http://usatoday30.usatoday.com/news/nation/story/2011-12-07/texting-while-driving-ban/51722780/1.

[109] *Id.*

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> pets, eating in the car, or rubbernecking at roadside accidents.[110]

In addition, the public seems willing to break these laws.[111] However, many also support cell phone and texting bans while driving—even supporting large fines.[112] When NHTSA conducted a survey of 6,000 drivers, it found that 71% supported a ban on cell phone use and 94% supported a ban on texting and driving.[113] Of those surveyed, however, "[m]ost said they would answer a cellphone call while driving and continue to drive after answering. And nearly two of 10 acknowledged sending texts or emails from behind the wheel."[114] Half of all drivers aged 21–24 admitted to texting while driving.[115] The solution may need more teeth than our nation's current texting bans.

In December 2011, the National Transportation Safety Board ("NTSB") became the first federal agency to recommend a nationwide prohibition on cell phone use while driving.[116] The cell phone industry's trade organization, CTIA, also supports a similar ban.[117] The experiences of New York and other states that ban cell phone use while driving suggest that this may be the best solution. Of the seven states that have banned cell phones while driving, all but Delaware have a lower fatality rate per 100,000 than the national average.[118]

Emerging technology may provide additional solutions. Developers have created numerous phone applications to prevent phones from being used in

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[110] *Cell Phone Bans Won't Work*, USA TODAY (Dec. 15, 2011, 8:00 PM), http://usatoday30.usatoday.com/news/opinion/editorials/story/2011-12-15/cellphone-driving-ban-NTSB/51985106/1.

[111] *See, e.g.*, Natalie Doss, *Texting Bans Fail as Drivers Ignore Rules, Insurer Study Says*, BLOOMBERG.COM (Sept. 28, 2010 at 2:46 PM), http://www.bloomberg.com/news/2010-09-28/texting-bans-fail-as-u-s-drivers-ignore-rules-insurer-funded-study-says.html; Dan Whitcomb, *US Teens Ignore Laws Against Texting While Driving*, REUTERS (Dec. 11, 2009 at 12:11 PM), http://www.reuters.com/article/2009/12/11/us-usa-drivers-texting-idUSTRE5BA0F920091211.

[112] Lowy, *supra* note 82.

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] Ashley Halsey III, *NTSB Urges Nationwide Ban on Cellphone Use While Driving*, WASH. POST (Dec. 13, 2011), http://articles.washingtonpost.com/2011-12-13/local/35287951_1_hands-free-cellphone-nationwide-ban.

[117] *Id.*

[118] NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 89 (Delaware = 10.91 fatalities; Nationwide = 10.39).

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vehicles.[119] For example, the cell phone app MobiLocPlus prevents a phone from receiving or typing texts and calls when the GPS senses it is moving faster than 10 mph.[120] Cell phone carriers have developed their own programs as well. DriveSmart (T-Mobile), Drive First (Sprint), Drive Mode (AT&T) all can be similarly activated to prevent phones from operating while in a moving automobile.[121] Other devices have been created that can be installed in your vehicle to disable cell phones. For example, cellcontrol is a small device that can be installed under the dashboard.[122] The device requires the phone to have a responsive application installed on it and costs $129.95.[123] These trends may continue in the future, and even DOT is investigating similar solutions.[124]

CONCLUSION

The national landscape of texting while driving laws is complicated. The variety of laws throughout the country has created enforcement issues. Many of the laws are proving to be ineffective. In addition, despite great public support for these measures, many citizens are willing to disobey them. Consequently, states find themselves struggling to respond.

Statistics show numerous inconsistencies and counter-intuitive trends. There is even disputed evidence that cell phone distractions are a minimal cause of accidents and fatalities, compared to other distractions and causes. If trends continue, our nation's roadways will become increasingly safer. Consequently, authorities will sharpen their focus on efforts to prohibit driving and cell phone use.

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[119] *See, e.g.*, Amy Burke, *5 Apps to Prevent Teens from Texting and Driving*, MASHABLE.COM (Dec. 17, 2012), http://mashable.com/2012/12/17/texting-driving-apps/.

[120] Mary Kay, *Eliminate the Temptation—Best Ways to Prevent Your Teen from Texting While Driving*, YOURSPHERE: FOR PARENTS (Apr. 25, 2012), http://internet-safety.yoursphere.com/2012/04/eliminate-the-temptation-best-ways-to-prevent-your-teen-from-texting-while-driving/.

[121] *Drive Smart Applications*, T-MOBILE DRIVESMART, http://support.t-mobile.com/docs/DOC-2374 (last visited Mar. 21, 2013); *Sprint: Prevent Distracted Driving*, SPRINT, https://drivefirst.sprint.com/welcome.htm (last visited Mar. 31, 2013); *AT&T DriveMode FAQ*, AT&T COMM., http://www.att.com/Common/about_us/pdf/drivemode_faq.pdf (last visited Mar. 21, 2013).

[122] *Texting While Driving—How does it work?*, CELLCONTROL, http://www.cellcontrol.com/stop-texting-while-driving-how-it-works/ (last visited on Apr. 20, 2013).

[123] Doug Aamoth, *Heads Up, Kids: New Device Disables Your Phone While You're Driving*, TIME (Jan. 23, 2012), http://techland.time.com/2012/01/23/heads-up-kids-new-device-disables-your-phone-while-youre-driving/#ixzz2OJMDkafE.

[124] Athima Chansanchai, *US Agency Calls for Disabling Phones While Driving*, NBC NEWS, http://www.nbcnews.com/technology/technolog/us-agency-calls-disabling-phones-while-driving-118565 (last visited on Mar. 31, 2013).

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Despite whether or not cell phone use is truly a great danger on our highways, recent trends show that legislation is coming. The strongest evidence may support a nationwide cell phone ban, or stricter state bans. Technology may also provide possibilities that eliminate enforcement issues. What the future holds in this area is largely unknown. One thing is certain—we are far from a solution. The landscape will continue to change as we learn more about the impact of cell phone use on driving.

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