Enforcement of Texting While Driving Bans

By Sean Slone [1]
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Laws in forty-two states, the District of Columbia, Guam and the Virgin Islands prohibit texting behind the wheel by all drivers. The eight states without such laws have all seen efforts in recent years to follow suit. Four of the states with texting bans have secondary enforcement statutes requiring an officer to catch the driver in another traffic offense. Two of those states have seen legislation introduced this year to move up to primary enforcement, where an officer can ticket a driver solely for texting while driving. But even as states are trying to crack down on texting, some in law enforcement question the degree to which such laws can be enforced and the degree to which they can be successful.

In March 2014, New Mexico Gov. Susana Martinez signed legislation to ban texting while driving in the state.1

“We know that texting while driving is a lethal distraction,” Martinez said, according to press reports. “There is no text message that is worth a person's life.”2

The measure, which takes effect in July 2014, prohibits drivers from sending or reading text messages and emails, or making Internet searches from smartphones or other handheld wireless devices. Drivers who violate the law will have to pay a $25 fine for the first offense and $50 for subsequent violations.3 New Mexico joined 41 other states plus the District of Columbia, Guam and the Virgin Islands to prohibit texting behind the wheel by all drivers.

The New Mexico law allows for primary enforcement, which means an officer can stop and ticket a driver solely for texting while driving.4 [4] Four states with texting bans—Florida, Iowa, Nebraska and Ohio—have secondary enforcement statutes, which require an officer to catch the driver in another traffic offense, such as speeding.5 Legislators in two of those states—Iowa and Nebraska—have introduced bills in recent months to make texting while driving a primary offense. The eight states with no texting while driving ban have all seen texting legislation introduced in recent years.

But even as states and law enforcement seek to crack down on texting and other forms of distracted driving, some question the degree to which such laws can be enforced and the efficacy of the tools and strategies available to them. Some of those strategies are being evaluated around the country by a number of law enforcement and government agencies, which should have data and best
practices to present soon. But ultimately, some believe, it may be reminders about the existence of
the laws and about the dangers of texting while driving are the best enforcement tools available.

**States Without Comprehensive Texting Bans**
As of March 2014, eight states had neither a primary nor secondary ban on texting for all drivers. But
all of them have seen legislative efforts to change that in 2013 and/or 2014.

- In Arizona, Sen. Steve Farley has introduced texting-while-driving bans the past several years,
  but with no success so far. “(Texting while driving) is so far out there as a danger than anything
  else—eating a burger, putting on makeup, anything else—it deserves to be called out as a
  specific practice that needs to be banned,” he said in 2013, according to *The Arizona Republic.*
  Opponents in the state have argued that drivers should be able to make their own decisions or that
  a separate law for texting is unnecessary because Arizona statutes regarding reckless driving and
  reasonable and prudent speed already apply to distracted drivers.⁶
- Mississippi House Transportation Committee Chairman Robert Johnson III also has supported stricter
  texting-while-driving laws for years to no avail. “I think it’s worse than drunk driving,” he said in
  February 2014, WJTV Newschannel 12 in Jackson reported. “I think it causes more accidents than
  DUI or any kind of other impairment.” Mississippi law only prohibits drivers with a learner’s permit,
  intermediate license holders and school bus drivers from texting while operating a vehicle. The 2013
  legislative session saw no fewer than 12 texting-while-driving bills introduced, but ultimately fail.
  Johnson and other supporters have seen more support in 2014 from both sides of the aisle for House
  Bill 484, which would make it illegal for anyone under 18 to text and drive.⁷ The measure cleared the
  House in February and cleared the Senate, as well as a House- Senate conference committee, in
  March. Senate Bill 2434, which the Senate passed Feb. 5 but eventually died in a conference with
  the House, would have taken a broader approach. Under that measure, anyone caught sending a
  text or checking a social media site while driving could have been charged with careless driving and
  face a fine of anywhere from $5 to $50.⁸
- Missouri law only prohibits drivers from texting if they are 21 or younger. At least half a dozen
  bills have been introduced during the 2014 session that would change that in some fashion. House
  Bills 1282 and 1316 would eliminate any reference to an age limitation in the statute. House Bills
  1256 and 1964 would not only remove the age limitation, but also would create an exception to
  the texting ban for those who use voice-activated, hands-free technology. House Bill 1106 and
  Senate Bill 840 would prohibit all drivers from using handheld cellphones to text or call while
  driving.⁹ As of late March, none of the bills had made significant progress through the legislature.
- Montana Sen. Christine Kaufmann sponsored unsuccessful legislation—Senate Bill 390—in 2013 that
  would have allowed drivers to talk on their cellphones only with a hands-free device. Minors behind
  the wheel would not be allowed to talk on their phones. No driver would have been allowed to text
  and drive under the measure, which died in committee.¹⁰ The Montana legislature did not have a
  regular legislative session in 2014.
- Much like Mississippi, Oklahoma bans only drivers with a learner’s permit, intermediate
  license holders, and bus and public transit drivers from texting.¹¹ Republican Rep. Terry
  O’Donnell bucked some members of his own party in 2014 to introduce House Bill 2540, which
  would outlaw texting while driving. His bill would allow only for secondary enforcement, unlike
  previously unsuccessful primary enforcement legislation. Officers could assess a $500 fine if a driver
  is pulled over for another offense and is suspected of texting and driving. The bill passed a House
  committee in February, but it was laid over by the full House.¹² Two other measures in the Senate
  have had some success. Senate Bill 442 would make it illegal to compose, send or read a text
  message while driving. Senate Bill 1601 would ban most cellphone use in school zones in the state.
  Both measures cleared the Senate Public Safety Committee in February.¹³ Senate Bill 442 was
  referred back to committee while Senate Bill 1601 passed the Senate unanimously and, as of late
  March, was awaiting consideration by a House committee.
South Carolina has no laws prohibiting drivers from texting. The Senate Judiciary Committee in February approved legislation—Senate Bill 416—that would implement a texting ban and subject offenders to escalating fines. The panel also recommended Senate Bill 459, a ban on drivers with beginner’s permits or restricted driver’s licenses from using a cellphone while traveling. The texting measure would be a primary enforcement measure; however, the bill language as introduced says, “A law enforcement officer shall not stop a person for a violation of this section except when the officer has probable cause that a violation has occurred based on the officer’s clear and unobstructed view of a person who is using a wireless electronic communication device to compose, send, or read a text-based communication while operating a motor vehicle on the public streets and highways.” Officers would not be able to seize or search a phone, however; some lawmakers said that would make the ban difficult to enforce and difficult to prove the texting took place. The full Senate passed the measure 41-1 in March. In the absence of a state texting law, several municipalities have passed their own texting measures, which Senate Bill 416 would trump if passed.

The South Dakota legislature approved a statewide ban on texting while driving during its 2014 session. Gov. Dennis Daugaard signed the bill in late March. When the law takes effect July 1, texting will be considered a secondary enforcement offense and carry a $100 fine. The measure will not prohibit local governments from having stricter bans. Texting bans previously extended only to drivers with a learner’s permit and intermediate license holders.

Texas law prohibits texting by bus drivers carrying minors, drivers who are younger than 18, drivers in school crossing zones and on public school property during times when reduced speed limits apply. A proposed statewide ban on texting while driving made it all the way through the legislature in 2011, but was vetoed by Gov. Rick Perry, who called texting while driving a matter of personal responsibility. The same measure, known as the Alex Brown Memorial Act, made it through the House in 2013 but was left pending in a Senate committee after Perry made it clear he had not changed his mind on the issue. Texas does not have a regular legislative session in 2014.

**Primary vs. Secondary Texting Laws**

While some states are still contemplating whether to pass a texting ban at all, others are now looking at the issue of whether to move up from a secondary enforcement measure to a primary one.

“Unfortunately, we made the mistake of passing a law that has no teeth,” Rob Reynolds said of Nebraska’s 2010 secondary enforcement texting law, according to *The Omaha World-Herald*. Reynolds’ 16-year-old daughter died in a 2007 crash caused by an apparently distracted driver. He joined other safety advocates at a Lincoln event in January 2014 to push for legislation making texting while driving—as well as failure to use a seat belt—a primary traffic offense.

State Sen. John Harms sponsored legislation in the 2014 legislative session calling for the change to Nebraska’s texting law. As of late March, the legislature had not taken action on Harms’ bill. In 2011 and 2012, there were 234 convictions statewide for texting while driving, which Harms said is not enough to deter texting.

“Just go down to the nearest stoplight, and you can see that,” Harms said, according to *The Omaha World-Herald*.

But while Nebraska law enforcement officials said making texting a primary offense is a great step to help save lives, it can be difficult to enforce because motorists can claim they are performing some other task on their phone instead of texting. Proving a driver was texting may require a subpoena of cell phone records, something a judge would be unlikely to grant unless an accident is involved. Twelve states ban all cellphone use while driving, which many believe makes enforcement easier.
Iowa also allows only secondary enforcement of texting. According to The Des Moines Register’s Iowa poll conducted in February 2014, 83 percent of Iowans want the texting laws to be tougher.25 Between 2001 and 2012, Iowa saw about 8,000 crashes caused by distracted driving that resulted in 4,000 injuries and dozens of deaths.

The Iowa Senate approved legislation during the 2014 session to make texting while driving a primary offense and a moving violation, meaning drivers would accrue points on their license.26 But the Iowa House of Representatives did not consider the measure. Lawmakers said there simply was not enough time for a bill that was considered somewhat controversial. Similar legislation is expected to come before the legislature in 2015.

While the measure won 41 of 48 votes in the Iowa Senate, it was not without its detractors.

“I thought it was a little vague,” said Sen. Bill Anderson, who voted “no,” the LeMars Daily Sentinel reported. “You’re still able to program your navigation system, change CDs. I don’t think it would really do much to help with safety on the road. ... Unless you outlaw every activity in the car, I don’t know if you’re really dealing with distracted driving.”

Anderson also said he and some of his Republican colleagues were concerned about the measure opening the door to law enforcement officers seizing drivers’ cellphones and the breach of privacy that might entail.

Local law enforcement in Iowa questioned the enforceability of the measure. Plymouth County Sheriff Deputy Aaron Leusink told the LeMars Daily Sentinel he hasn’t made pulling over suspected texters a priority under the state’s secondary law because it’s difficult to prove.

“If I can’t prove it, I’m not going to pull somebody over and start guessing at that point,” said Leusink, who added the only people he has cited for texting and driving are people involved in accidents who admit to it.

LeMars Police Chief Stuart Dekkenga thinks a primary law might be an improvement and discourage more people from texting and driving, but it probably would continue to be difficult to enforce.

“I don’t know if the (proposed legislation would) have any real bearing on making any significant change,” he said.27

**Efficacy of High-Visibility Enforcement Demonstrated**

Enforcement of texting bans has become a significant focus for agencies at all levels of government in recent years.

In 2010 and 2011, the cities of Hartford, Conn., and Syracuse, N.Y., took part in demonstration programs to test whether a high-visibility enforcement model could reduce talking or texting using cellphones. The National Highway Traffic Safety Administration, also known as NHTSA, worked with the Connecticut Department of Transportation and the New York Department of Motor Vehicles’ Governor’s Traffic Safety Committee to conduct the programs along with state and local law enforcement.

The high-visibility enforcement included dedicated law enforcement during specified periods, paid and earned media emphasizing an enforcement-based message, and evaluation before and after the enforcement periods. Campaign messaging borrowed from NHTSA’s successful “Click It or Ticket” seat belt enforcement campaign and the “Drive Sober or Get Pulled Over” drunken driving campaign.
The enforcement techniques used to nab texters in each community differed slightly. Law enforcement in Hartford used a spotter technique, where an officer standing on the side of the road would radio ahead to another officer when he or she observed a passing motorist using a hand-held cellphone. The second officer would make the stop and write the ticket. Syracuse employed roving patrols, where officers actively sought out distracted drivers using cellphones or texting in their jurisdictions. Officers also noted that higher vantage points, SUVs and unmarked vehicles were particularly effective in helping them identify violators.

With four waves of high-visibility enforcement completed, Hartford reported a 72 percent decline in texting while driving, according to the NHTSA. Syracuse reportedly saw a 32 percent drop. In its assessment, NHTSA said the demonstration programs document that the “high-visibility enforcement model can be effectively applied to distracted driving enforcement and that various law enforcement strategies can be used to observe and ticket cellphone and texting violations.”

**Getting to Best Practices in Enforcement**

As a follow-up to the Hartford and Syracuse programs, NHTSA in October 2012 awarded grants to Connecticut and Massachusetts to help them plan and conduct high-visibility anti-texting enforcement programs. The grants are being used to train police on spotting texting offenders and to work on effective media campaigns that alert the public to the dangers of texting and driving.

The grants also call for the two states to develop best practices for anti-texting enforcement protocols and techniques, including things like stationary patrols, spotters on overpasses on elevated roadways and roving patrols. The states were charged with evaluating the effectiveness of their enforcement activities over a two-year period. The results will be documented for the benefit of other states.

“We are doing this pilot in a pre-selected area of the state that includes a large municipality, a small town and a regional traffic unit that consists of several small towns working together as a regional team,” said Edmund Hedge, law enforcement liaison for the Connecticut Department of Transportation’s Highway Safety Office. “We have been trying different enforcement techniques—roving, spotter-type, officer-initiated, etc.—and they are all working, of course. But preliminary indicators are that using a spotter-type enforcement technique works the best.”

Hedge explained how the latest iteration of the spotter technique works.

“The spotter (police officer) stands in an area where he can observe vehicles passing at a slower speed, usually just before an intersection, stoplight or stop sign,” he said. “When he observes a violation, he will call ahead by radio to (up to five other) waiting officers who stop the vehicle and issue a citation. With this all said, it is extremely important that the spotter obtain as much of a description as possible (including the) color of car, color of phone, left hand/ right hand, before a ticket is issued.” Hedge conceded the efficacy of the technique in other communities may depend on their geography and demographics, as well as the available manpower of the local police forces.

Connecticut officials plan to wrap up their pilot project with two more waves of high-visibility enforcement by June 2014. A NHTSA contractor, Sam Schwartz Engineering, will help process what they discover.

“We are systematically collecting and analyzing observational data, survey data, and spending time with the law enforcement agencies to assess the strategies used under this project,” said Richard Retting, director of safety research for the engineering firm. “We will work with NHTSA to develop firm conclusions from the research process to help define best practices in enforcement techniques and
protocols.”

But Retting cautioned even though the data collection process is scheduled to be completed in 2014, he is unable to predict a timetable for producing a final report because of NHTSA’s internal review processes. Other states looking for guidance on how best to enforce texting laws likely will have to wait a little longer.

Even as the pilot projects in Connecticut and Massachusetts continue, some in law enforcement remain skeptical about how successful any such enforcement techniques can ever be.

“It’s next to impossible to enforce,” said Wayne Sampson, executive director of the Massachusetts Chiefs of Police Association. “The reality is if somebody’s driving down the road and they’re doing it down in their lap, you don’t know what they’re doing in their lap. Really, unless the kid is holding (the phone) up on the steering wheel and you drive by him, you can’t see it.”

Sampson agreed that often the only way to prove someone was texting at a certain time is to obtain his or her phone records after the fact through legal means, which can prove too much of a challenge if texting is the only offense.

“In Massachusetts, they’re still allowed to use their cell phone,” he said. “All they have to say is ‘Yeah, (I was) dialing the phone.’ How do we know the difference? Without going and getting a search warrant, which our courts are not going to let us do for every car that we see with (a driver with) a cellphone in their hand. You have to have more (in the way of probable cause) than just that they had a cell phone in their hand.”

Sampson said such loopholes make even primary enforcement laws like the one in Massachusetts debatable.

“It’s nice, feel-good legislation, but is it really that effective? The jury’s still out on that one,” Sampson said.

Sampson doesn’t believe complete bans on cellphones in vehicles are very realistic either. “I’m not promoting that,” he said. “I’m just saying that enforcement is always going to be difficult. With the number of new drivers every single day who are kids (and who believe) those particular laws don’t apply to them because they can drive better than everybody else and they know how to text better than everybody else and it only takes a second—all of the standard excuses that kids always use.”

When enforcement is possible, often the best way to have an impact on younger generations is through their parents, Sampson said.

“If you want to see somebody go ballistic, you issue a citation to some high school kid and have them lose their license for 60 days,” Sampson said. “They could care less. They’re just going to go on with their life. Their parents go nuts because now they’re going to have to drive them every place again. This is a huge inconvenience for the parents and they’re the ones that get so upset about it. That’s where it really hits home.”

Many believe more than being just an enforcement issue, distracted driving is about a constant education process.

“We have signs all over the highways,” said Hedge. “As soon as you enter the state, there’s a big, huge sign that says ‘hands-free state.’ We use our overhead, variable message board signs. April is...
distracted driving month. Every variable message board in the state will say ‘no texting’ or ‘one text will wreck it all’ or something like that.”

Still, Hedge sounded somewhat frustrated the state’s heavily publicized law and the seemingly common sense recognition about the perils of texting and driving don’t sway everyone.

“The normal person can’t drive and text at the same time,” he said. “Texting while driving is like driving with a (high blood alcohol content). Everybody knows the risks. ... You can’t text (and drive). Everybody knows that. I don’t know how much education you have to do.”

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Enforcement of Texting While Driving Laws [30]

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Content Type [36]› Publications [37]