

Cellphones and Driving

THE TOPIC

MAY 2009

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

RECENT DEVELOPMENTS

- **Studies:** Studies about cellphone use while driving have focused on several different aspects of the problem. Some have looked at its prevalence as the leading cause of driver distraction. Others have looked at the different risks associated with hand-held and hands-free devices. Still others have focused on the seriousness of injuries in crashes involving cellphone users and the demographics of drivers who use cellphones. Below is a summary of some recent research on the issue.
- In May 2008 the Public Policy Institute of California released a study, "What to Expect from California's New Hands-Free Law," which looks at the potential effect of a new state law prohibiting drivers from using hand-held cellphones. Based on the experience of the three states (New York, New Jersey, Connecticut) and Washington, D.C., where similar laws are already in effect, researchers concluded that the ban will reduce traffic deaths by about 300 a year, but only in adverse conditions, such as on wet or icy roads. The analysis also found that because of the relatively modest penalties for using hand-held phones, and no prohibition

against dialing and texting, even strict enforcement of the law might not discourage drivers from using their cellphones while driving.

- In July 2007 the National Highway Traffic Safety Administration and the National Center for Statistics and Analysis released the results of their National Occupant Protection Use Survey (NOPUS), which found that in 2006 5 percent of drivers used hand-held cellphones, down from 6 percent in 2005, the first decline since the survey began tracking hand-held cellphone use in 2000. The decline in use occurred in a number of driver categories, including female drivers (down from 8 to 6 percent), drivers in the Midwest (down from 8 to 4 percent), drivers age 25 to 69 (down from 6 to 4 percent) and drivers of passenger cars (down from 6 to 4 percent) to name but a few. NOPUS is a probability-based observational survey. Data on driver cellphone use were collected at random stop signs or stoplights only while vehicles were stopped and only during daylight hours.
- A survey of dangerous driver behavior was released in January 2007 by Nationwide Mutual Insurance Co. The survey of 1,200 drivers found that 73 percent talk on cellphones while driving. Cellphone use was highest among young drivers.
- Text messaging, or “texting” by teens, a driving distraction related to cellphone use, was the subject of an August 2006 Teens Today survey conducted by the Liberty Mutual Research Institute for Safety and Students Against Destructive Decisions (SADD). The survey showed that teens considered sending text messages via cellphones to be their biggest distraction. Of the teens surveyed, 37 percent said that text messaging was extremely or very distracting, while 20 percent said that they were distracted by their emotional states and 19 percent said that having friends in the car was distracting. The January 2007 survey by Nationwide found that 19 percent of motorists say they text message while driving.
- Motorists who use cellphones while driving are four times as likely to get into crashes serious enough to injure themselves, according to a study of drivers in Perth, Australia, conducted by the Insurance Institute for Highway Safety. The results, published in July 2005, suggest that banning hand-held phone use will not necessarily

improve safety if drivers simply switch to hand-free phones. The study found that injury crash risk didn't vary with type of phone.

- Many studies have shown that using hand-held cellphones while driving can constitute a hazardous distraction. However, the theory that hands-free sets are safer has been challenged by the findings of several studies. A study from researchers at the University of Utah, published in the summer 2006 issue of Human Factors, the quarterly journal of the Human Factors and Ergonomics Society, concludes that talking on a cellphone while driving is as dangerous as driving drunk, even if the phone is a hands-free model. An earlier study by researchers at the university found that motorists who talked on hands-free cellphones were 18 percent slower in braking and took 17 percent longer to regain the speed they lost when they braked.
- A September 2004 study from the NHTSA found that drivers using hand-free cellphones had to redial calls 40 percent of the time, compared with 18 percent for drivers using hand-held sets, suggesting that hands-free sets may provide drivers with a false sense of ease.
- A study released in April 2006 found that almost 80 percent of crashes and 65 percent of near-crashes involved some form of driver inattention within three seconds of the event. The study, The 100-Car Naturalistic Driving Study, conducted by the Virginia Tech Transportation Institute and the National Highway Traffic Safety Administration (NHTSA), breaks new ground. (Earlier research found that driver inattention was responsible for 25 to 30 percent of crashes.) The new study found that the most common distraction is the use of cellphones, followed by drowsiness. However, cellphone use is far less likely to be the cause of a crash or near-miss than other distractions, according to the study. For example, while reaching for a moving object such as a falling cup increased the risk of a crash or near-crash by nine times, talking or listening on a hand-held cellphone only increased the risk by 1.3 times. The study tracked the behavior of the 241 drivers of 100 vehicles for more than one year. The drivers were involved in 82 crashes, 761 near-crashes and 8,295 critical incidents.

- These findings confirm an August 2003 report from the AAA Foundation for Traffic Safety that concluded that drivers are far less distracted by their cellphones than by other common activities, such as reaching for items on the seat or glove compartment or talking to passengers. That study was based on the analysis of videotapes from cameras installed in the vehicles of 70 drivers in North Carolina and Pennsylvania.
- **State and Federal Initiatives:** The number of state legislatures debating measures that address the problem of cellphone use while driving and other driver distractions continues to rise. As of May 2009 six states -- California, Connecticut, New Jersey, New York, Utah and Washington State -- plus the District of Columbia, had laws on the books banning the use of hand-held cellphones while driving. Except for Utah and Washington State, the laws are all "primary enforcement," meaning a motorist may be ticketed for using a hand-held cellphone while driving without any other traffic offense taking place, according to the Insurance Institute for Highway Safety.
- As of May 2009 about 20 states have passed laws banning or restricting young drivers from using cellphones.
- As of May 2009 the practice of texting with a cellphone while driving was banned in 10 states (Alaska, Arkansas, California, Connecticut, Louisiana, Minnesota, New Jersey, Utah, Virginia and Washington) and the District of Columbia.
- **Businesses:** Businesses are increasingly prohibiting workers from using cellphones while driving to conduct business. Exxon Mobil and Shell are examples of large companies that ban employees' use of any type of cellphone while driving during work hours. The California Association of Employers recommends that employers develop a cellphone policy that requires employees to pull off the road before conducting business by cellphone.
- **Court Decisions:** In December 2007 International Paper Co. agreed to pay a \$5.2 million settlement to a Georgia woman who was rear-ended by one of its employees. The employee was driving a company car and talking on a company cellphone at the time of

the accident. The settlement was reached even though the employee had violated her company's policy of requiring the use of hands-free headsets while driving. The suit is among the most recent of several cases where an employer has been held liable for an accident caused by a driver using a cellphone. (See background section on Employer and Manufacturer Liability.)

BACKGROUND

Cellphones play an integral role in our society. However, the convenience they offer must be judged against the hazards they pose. Inattentive driving accounted for 6.4 percent of crash fatalities in 2003—the latest data available—according to the U.S. Department of Transportation. Inattentive driving includes talking, eating, putting on make up and attending to children. Using cellphones and other wireless or electronic units are also considered distractions.

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

Supporters of restrictions on driving while using a cellphone say that the distractions associated with cellphone use while driving are far greater than other distractions. Conversations using a cellphone demand greater continuous concentration, which diverts the driver's eyes from the road and his mind from driving. Opponents of cellphone restrictions say drivers should be educated about the effects of all driver distractions. They also say that existing laws that regulate driving should be more strictly enforced.

Employer and Manufacturer Liability: Although only a handful of high-

profile cases have gone to court, employers are still concerned that they might be held liable for accidents caused by their employees while driving and conducting work-related conversations on cellphones. Under the doctrine of vicarious responsibility, employers may be held legally accountable for the negligent acts of employees committed in the course of employment. Employers may also be found negligent if they fail to put in place a policy for the safe use of cellphones. In response, many companies have established cellphone usage policies. Some allow employees to conduct business over the phone as long as they pull over to the side of the road or into a parking lot. Others have completely banned the use of all wireless devices.

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