



# **Texting While Driving**

November 13, 2012

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# Overview



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# Study Authorization



- The Crime Commission was asked to study the issue of texting while driving, due to a fatal accident in Fairfax County.
- In that case, a judge dismissed the charge of reckless driving because the General Assembly had fixed the penalty of texting while driving in Va. Code § 46.2-1078.1 as a fined offense.

# Background



- According to the National Highway Traffic Safety Administration (NHTSA), distracted driving includes texting, using hand held cell phones, eating or drinking, using a navigation system, adjusting car stereo, and grooming.
- There are several studies that suggest drivers engaging in an additional cognitive task degrade their driving performance.

# Background



- A 2009 study from the Virginia Tech Transportation Institute reported drivers who manually manipulate phones are at a greater risk of an accident.
- According to the CTIA-The Wireless Association's latest survey, in the one year period ending June 2012, there were 2.72 trillion text messages sent and received in the U.S.

# Background



- A 2009 Pew study, involving 800 teens, concerning distracted driving reported that:
  - 26% of the teens reported texting while driving;
  - 48% had been in car when the driver was texting; and,
  - 40% had been in a car when the driver used a cell phone in a way that put themselves or others in danger.

# Background



- NHTSA recently started keeping records of highway deaths involving distracted driving, described as “distraction affected”:

Calendar Year	Total Highway Fatalities	Total “Distraction Affected” Highway Fatalities
2006	42,708	5,836
2007	41,259	5,917
2008	37,423	5,838
2009	33,883	5,474
2010	32,885	3,092

Source: National Highway Traffic Safety Administration.

# Background



- The Virginia Department of Transportation began to collect data for fatalities, injuries and crashes resulting from a driver texting in 2012.
  - The data is collected from accident report forms completed by law enforcement.



# Background



Driver Age	Drivers Texting Prior to a Crash, CY2012*
18	3
19	7
20	3
21 to 25	21
26 to 30	13
31 to 35	4
36 to 40	2
41 to 45	4
46 to 50	4
51 to 55	1
Unknown	1
<b>Total*</b>	<b>63</b>

Source: Virginia Department of Transportation, Fatal Crash Data. \* Data is for all crashes (injury crashes and property damage crashes). 2012 data is preliminary through October.

# Reckless Driving Offenses



- The Va. Code has 15 statutes which penalize reckless driving: 13 specific violations, and 2 general violations.
- The 13 specific offenses are:
  - § 46.2-829-overtaking or passing an emergency vehicle that is operating its lights or siren;
  - § 46.2-853-operating a vehicle “not properly under control or with “inadequate or improper adjusted” brakes;

# Reckless Driving Offenses



- § 46.2-854-passing or overtaking a vehicle on a curve or approaching a grade or crest;
- § 46.2-855-driving a vehicle that is loaded in such a way as to obstruct the driver's view or prevent proper control of the vehicle;
- § 46.2-856-passing two vehicles abreast, going the same direction;
- § 46.2-857-driving two abreast in a single lane, in the same direction;
- § 46.2-858-overtaking or passing at a railroad crossing;

# Reckless Driving Offenses



- § 46.2-859-failure to stop for a school bus;
- § 46.2-860-failure to give an adequate or timely signal when turning, slowing down, or stopping;
- § 46.2-861-driving too fast for conditions;
- § 46.2-862-exceeding the speed limit by 20 mph or more, or in excess of 80 mph;
- § 46.2-863-failure to stop at an entrance to a highway from a side road; and,
- § 46.2-865-racing two or more cars, on highways, roads, parking lots open to the public.

# Reckless Driving Offenses



- In addition to the specific reckless driving offenses, there are two “general” offenses:
  - § 46.2-852 describes the offense as “any person who drives a vehicle on any highway recklessly or at a speed or in a manner so as to endanger life, limb, or property of any person shall be guilty of reckless driving.”
  - § 46.2-864 applies to parking lots, driveways, and premises of churches, schools, public buildings, industrial establishments, and highways not yet open to the public.

# Virginia Case Law



- Virginia courts have addressed this statute and interpreted it in the following manner:
  - “Reckless” in terms of the statute, has been defined by the Supreme Court of Virginia as “a disregard by the driver of a motor vehicle for the consequences of his act and an indifference to the safety of life, limb, or property.” Powers v. Commonwealth, 211 Va. 386, 177 S.E.2d 628 (1970).

# Virginia Case Law



- Additionally, in Powers, the Court stated that speed alone is not a violation of the statute, but when speed endangers life, limb, or property, it violates the statute.
- The Court also noted that “the mere happening of an accident does not give rise to an inference of reckless driving.” Basically, where the evidence leaves “speculation and conjecture,” the Court will refuse to find one guilty under the statute.

# Virginia Case Law



- The Virginia Court of Appeals has held that intoxication, by itself, is not enough to sustain a conviction under the statute. Hall v. Commonwealth, 25 Va. App. 352, 488 S.E.2nd 651 (1997). There must be evidence that the driver operated the car recklessly.
- However, evidence that a driver was sleepy and there was a known defect with a car, is sufficient to infer reckless driving under the statute. Kennedy v. Commonwealth, 1 Va. App. 469, 399 S.E.2nd 905 (1997).



# Virginia Case Law



- And finally, the Virginia Court of Appeals held that a driver, with local knowledge of a short merge lane, who sped up, making it difficult for another driver to merge in front of him, was guilty of reckless driving, even when the other driver had the duty to yield. Robinson v. Commonwealth, 48 Va. App. 623, 633 S.E.2nd 737 (2006).

# Va. Code § 46.2-1078.1



- It is a secondary offense to operate a motor vehicle while:
  - Manually entering text to communicate to another person; or,
  - Reading an email or text, as long as its not a number stored or caller identification.
- There are exceptions for the use of GPS, emergency vehicles, reporting an emergency, or in a lawfully parked or stopped vehicle.
- There is a \$20 fine for a first offense, and a \$50 fine for subsequent offenses.

# Va. Code § 46.2-1078.1



## § 46.2-1078.1-Total Charges and Convictions, FY10-FY12

Fiscal Year*	Total Charges	Total Convictions
2010	285	229
2011	422	334
2012**	511	414

Source: Virginia Criminal Sentencing Commission.

*\*Fiscal year in which the charge was concluded.*

*\*\* Data do not include charges that were still pending at the end of FY12. Includes charges and convictions for subsequent offenses.*

# Other State Review



- All of the states surrounding Virginia have made texting while driving a primary offense:
  - Kentucky - \$25 to \$50 fine;
  - Maryland - fine up to \$500;
  - North Carolina – fine of \$100;
  - Tennessee - fine up to \$50; and,
  - West Virginia - fine from \$100-\$300.

# Other State Review



- Utah allows the prosecution of negligent homicide if a person operates a vehicle in a negligent or criminally negligent manner, while texting.
  - Additionally, Utah also has an enhanced penalty when a person commits a moving violation (other than speeding) while texting.
  - Up to 90 days, and possible revocation of license if a violation results in a death.

# Policy Considerations



## Option 1:

- Modify Va. Code § 46.2-1078.1, texting while driving, so that the acts covered by the statute are not precluded from being considered reckless driving under Va. Code § 46.2-852.

# Policy Considerations



## Option 2:

- Modify Va. Code similar to Utah, creating an enhanced penalty for traffic violations committed while texting.

# Policy Considerations



## Option 3:

- Make the acts covered by Va. Code § 46.2-1078.1 reckless driving per se.





## **Discussion**

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