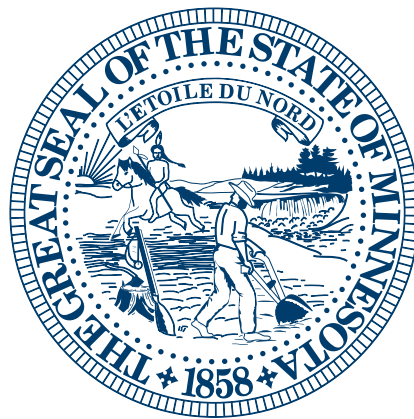


STATE OF MINNESOTA

DISTRACTED DRIVING

A Deadly Epidemic On Our Roads



OFFICE OF MINNESOTA ATTORNEY GENERAL
LORI SWANSON

TABLE OF CONTENTS

	Page
I. INTRODUCTION: DISTRACTED DRIVING HAS SPIKED.	1
II. SUMMARY AND ANALYSIS OF LEGISLATIVE RESPONSES TO THE DISTRACTED DRIVING PROBLEM.	4
A. Regulating Drivers’ Use of Cell Phones.....	4
1. No Restrictions on a Driver’s Use of a Cell Phone.	4
2. Total Bans on a Driver’s Hand-Held Use of a Cell Phone.	5
3. Bans on Text-Messaging and Similar Manual Cell Phone Activities.....	6
B. Penalties States Have Imposed For Texting While Driving Violations.	7
1. Fines.....	7
2. Limitations on Driving Privileges.....	9
III. MINNESOTA’S TEXTING WHILE DRIVING STATUTE AND RELATED DISTRACTED DRIVING STATUTES.	10
A. Using Wireless Communications Device Statute.	10
B. Recent Unsuccessful Attempts to Strengthen the Using Wireless Communications Device Statute.....	13
C. Statutes Prohibiting Cell Phone Use by Specific Classes Of Drivers.....	14
D. Other Related Distracted Driving Statutes.....	15
1. Criminal Vehicular Operation and Homicide Statutes.	15
2. Reckless or Careless Driving Statute.....	16
IV. PUBLIC EDUCATION AND ENFORCEMENT RESPONSES TO DRIVING WHILE TEXTING.	17
A. Public Awareness Campaigns.....	17
B. Driver Education.....	19
C. Law Enforcement and Public Safety Strategies.....	20
1. Spotter Technique.	20

2.	Using Cameras to Document Violations.....	20
3.	Strategic Placement of Patrol Cars.	20
4.	High Visibility Enforcement Campaigns.....	21
V.	RECOMMENDATIONS FOR STRENGTHENING MINNESOTA’S RESPONSE TO THE ELECTRONIC DEVICE DISTRACTED DRIVING EPIDEMIC.	22
A.	Prohibiting All Handheld Cell Phone Use While Driving.....	23
B.	Fines for First Time Offenders.	23
C.	Fines for Subsequent Offenders.....	24
D.	Mandatory Driver’s License Suspensions.	25
E.	Misdemeanor for Repeat Offenses.....	26
F.	Public Awareness.....	26
VI.	CONCLUSION.....	27

I. INTRODUCTION: DISTRACTED DRIVING HAS SPIKED.

Distracted driving results in over 3,000 deaths and 400,000 injuries annually in the United States.¹ In Minnesota, there are more than 50 deaths each year in proven cases of distracted driving, although the actual number of deaths and injuries is likely much higher.² Distracted driving now surpasses impaired driving as the leading cause of death for young drivers.³

"It's killing people, it's killing our loved ones, our neighbors. A lot of people think it's teens causing it, but really it is a lot of age groups at fault." – Chief Deputy, Washington County Sheriff's Office.

The prevalence of electronic devices, text messaging, and social media has dramatically increased distraction rates. One government study estimates that at any given moment during daylight hours, approximately 481,000 drivers are handling a cell phone while driving.⁴ The National Safety Council estimates that as many as 1.5 million vehicle accidents occur each year in the United States as a result of texting and other forms of distracted driving.⁵ One-quarter of teen drivers state that they respond to at least one text message every time they drive.⁶ The risks are not, however, limited to text messaging. One study by AT&T demonstrated that 27 percent of self-reported distracted drivers were using Facebook, 17 percent were taking photos, and 10 percent were video chatting.⁷

Statistics on distracted driving in Minnesota are consistent with these national trends. In Minnesota, 265 people were killed and 1,080 suffered serious injuries in distracted driving crashes from 2013 to 2017.⁸ One in five crashes resulting in death or serious injury in that period was caused by distracted driving.⁹ The Minnesota Department of Public Safety conducted an observational driving survey of 11,471 drivers at 201 locations across 40 counties in 2015.¹⁰ The survey found that 29 percent of Minnesota drivers were distracted.¹¹ The most

commonly distracted drivers were those between ages 16 and 29, exhibiting a distraction rate of 35 percent.¹² Unlike other forms of risky driving, such as speeding and driving while impaired, the incidence of texting while driving in Minnesota continues to climb.¹³

The consequences of a momentary lapse in attention to read or respond to a text message can be tragic. A driver sending a text is 23 times more likely to be involved in a vehicle accident or nearly be involved in one.¹⁴ A highway driver looking at a device for just 5 seconds will travel over 100 yards without seeing the conditions on the roadway.¹⁵ Consider several recent cases on Minnesota roadways:

- A mother stuck in traffic on I-35W on her way to pick up her two-year old daughter was killed when another driver struck her from behind. In the moments before the crash, the driver was leaning over to look for her phone, which she had dropped after texting.¹⁶
- A Wayzata police officer was removing debris from the side of the road when he was killed by a driver who was under the influence of a controlled substance. Just before the impact, the driver was texting and talking on her cell phone.¹⁷
- A retired business owner and veteran of the Vietnam war was killed when a woman ran a stop sign and crashed into the side of his vehicle. Prosecutors suspected she had been texting because she had two prior citations for texting while driving and all text messages had been wiped from her phone's memory by the time it was eventually seized.¹⁸

A primary challenge to combating distracted driving is changing the perception among drivers that reading or sending a text message does not pose a significant danger. While research indicates drivers superficially recognize the dangers associated with distracted driving, these same drivers often perceive that they can safely use their phones to text or check social media while driving.¹⁹ One American Automobile Association survey found that over 96 percent of

drivers considered texting while driving to be a serious threat to their safety, yet nearly 45 percent of them had read a text or email while driving within the last 30 days and nearly 35 percent had sent a text or email while driving within the last 30 days.²⁰ For many, the constant draw of online interaction in today's society creates a perception that electronic messages should be immediately read and answered.²¹

In many ways, today's problem of distracted driving resembles the problem of drunk driving. Like alcohol or drug impairment, the use of online devices while driving disrupts a driver's ability to adequately respond to his or her surroundings, thereby endangering everyone else on the road. Both activities are also problems of culture and habit, which cannot be cured through enforcement alone.

Minnesota adopted a broad, multi-faceted strategy to combatting impaired driving, one that incorporates elements of civil sanctions, law enforcement strategies, and public education. This approach has significantly reduced the number of fatalities in recent decades, from 206 drunk-driving deaths in 1998 to 72 in 2017.²² Minnesota should apply some of the same strategies used with impaired driving to distracted driving. To do so, cultural norms must change so that distracted driving is more uniformly viewed as inappropriate conduct that can take and shatter lives.

This report provides background on the distracted driving epidemic; reviews the legal mechanisms other states have enacted to fight distracted driving; summarizes the current state of Minnesota's distracted driving laws; discusses law enforcement and public education strategies that have been used across the country; and recommends legal reforms to strengthen Minnesota's response to distracted driving.

II. SUMMARY AND ANALYSIS OF LEGISLATIVE RESPONSES TO THE DISTRACTED DRIVING PROBLEM.

“I’m telling the kids constantly, ‘Cars win.’” – High school boys cross country coach, on explaining the danger of distracted drivers.

In the last decade, most states have enacted some form of legislative restriction on the use of cellphones and text messaging by motor vehicle drivers. With some exceptions, states have generally prohibited drivers from using electronic devices to send or receive text-based communication. With respect to penalties, many states treat texting while driving as a standard traffic violation, subject to a fine.

A. Regulating Drivers’ Use of Cell Phones.

Some states do not impose any restrictions on driver cell phone use. Others ban nearly all cell phone functions. Most states prohibit a limited range of manual cell phone use, with the goal of keeping driver attention focused on the road.

“Multi-tasking is often praised in our society, but behind the wheel it can be a death sentence.” – Former Director of the Minnesota Office of Traffic Safety

1. No Restrictions on a Driver’s Use of a Cell Phone.

Not every state regulates the use of cell phones while driving. Arizona, Missouri, and Montana have not enacted any state-wide law prohibiting the practice for adults, although texting while driving legislation has been proposed in these states.²³ A number of municipalities in these states, however, have enacted local ordinances attempting to curtail texting while driving.²⁴ The result can be a patchwork of different rules across the state, which can create “confusion and uneven enforcement.”²⁵

2. Total Bans on a Driver's Hand-Held Use of a Cell Phone.

On the other end of the spectrum, some states broadly prohibit all or nearly all hand-held use of cell phones while driving, including telephone calls. At least sixteen states—California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Maryland, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, and West Virginia—as well as the District of Columbia take this approach.

Some of these states, such as Illinois, use a single statute to prohibit all hand-held use of cell phones while driving.²⁶ These broad statutes generally prohibit all cell phone use while driving unless the driver uses the cell phone through hands-free technology, such as voice command.

Other states have enacted multiple statutory provisions. Generally, these states have one provision prohibiting phone calls while driving and another provision prohibiting texting and other manual cell phone functions. For example, in New York, one statute generally prohibits cell phone calls and another prohibits the use of a hand-held device to view images, play games, or send and receive e-mail, text messages, or other electronic data.²⁷

In California, which prohibits any hand-held phone calls while driving, the number of convictions for violating that statute has dropped from over 460,000 in 2011 to a total of 237,642 in 2015.²⁸ During that same period, however, the number of convictions under California's separate texting while driving statute rose from 14,886 in 2011 to 31,492 in 2015.²⁹ The percentage of California drivers who self-report to having sent a text message or email in the last 30 days increased from 28.3 percent in to 44.7 percent during that period.³⁰ In 2017, 52.3 percent of Californians reported texting or emailing while driving within the last 30 days.³¹

3. Bans on Text-Messaging and Similar Manual Cell Phone Activities.

The majority of states have taken a middle-ground approach.¹ These states, including Minnesota, prohibit text messaging and other similar cell phone activity that would occupy a driver's hands and distract the driver's attention away from the road.

Statutes in these states are not uniform and vary with respect to the scope of regulated activity. For example, Wisconsin has a relatively straightforward ban on texting and emailing while driving:

§ 346.89. Inattentive Driving

(3)(a) No person may drive, as defined in s. 343.305(1)(b), any motor vehicle while composing or sending an electronic text message or an electronic mail message.³²

By contrast, Utah prohibits a variety of forms of manual cell phone data entry:

§ 41-6a-1716. Prohibition on using a handheld wireless communication device while operating a motor vehicle—Exceptions—Penalties

(2) Except as provided in Subsection (3), a person may not use a handheld wireless communication device while operating a moving motor vehicle on a highway in this state to manually:

- (a) Write send or read a written communication, including:
 - (i) a text message;
 - (ii) an instant message; or
 - (iii) electronic mail;
- (b) dial a phone number

¹ These states appear to include: Alabama, Alaska, Arkansas, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, Wisconsin, and Wyoming.

- (c) access the Internet
- (d) view or record video; or
- (e) enter data into a handheld wireless communication device.³³

Some state statutes expressly prohibit sending and viewing an “image communication,”³⁴ or “accessing, reading or posting to a social networking site.”³⁵ Some of these states, for example Wisconsin, impose an additional prohibition on hand-held cell phone calls in certain restricted areas, like highway construction zones.³⁶

B. Penalties States Have Imposed For Texting While Driving Violations.

“It’s the worst feeling ever to know that you hurt somebody. . . . I still have nightmares about it.” – 17-year-old Eagan resident, describing a crash she caused while reading a text message.

The vast majority of states punish texting while driving offenses with fines, like other standard traffic violations. Recently, however, some states have also begun to suspend driving privileges to assist their deterrence efforts.

1. Fines.

In Minnesota, a driver’s first texting while driving offense results in a \$50 dollar fine.³⁷ All subsequent offenses result in a fine of \$275.³⁸ In addition to these fines, all offenders are subject to the standard \$75 surcharge that district courts impose on anyone convicted of an offense.³⁹

Most states impose a higher fine on first time offenders than Minnesota does. The common texting while driving statute punishes first time violators with a fine in the \$100 to \$200 range, often enhancing the fine for subsequent offenses.ⁱⁱ For example, a driver who texts in

ⁱⁱ The following states allow first time offenders to be fined at least \$100: Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Indiana, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota,

Virginia is subject to an initial \$125 fine and a \$250 fine for all subsequent offenses.⁴⁰ New Jersey provides for a more comprehensive, but also common, graduated fine schedule:

§ 39:4-97.3 Use of hands-free and hand-held wireless communication devices while driving; when permitted; penalty

- d. A person who violates this section shall be fined as follows:
- (1) For a first offense, not less than \$200 or more than \$400;
 - (2) For a second offense, not less than \$400 or more than \$600; and
 - (3) For a third or subsequent offense, not less than \$400 or more than \$800.⁴¹

Examples of other states that take this approach include Massachusetts, which fines first-time offenders \$100, second-time offenders \$250, and third-time offenders \$500,⁴² and Louisiana, which fines first-time offenders up to \$500 and all subsequent offenders up to \$1,000.⁴³

A number of states, however, impose low-end fines that appear to treat texting while driving no differently from other moving violations.ⁱⁱⁱ Examples of low-end fines include Alabama, which fines first-time offenders \$25, second-time offenders \$50, and third-time offenders \$75;⁴⁴ and South Carolina, which imposes a \$25 fine on all drivers convicted of texting while driving.⁴⁵ California has the nation's lowest maximum fine for first-time offenders: \$20. The state's fine increases to \$50 for all subsequent violations.⁴⁶

Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Vermont, and Virginia, Washington, West Virginia, Wisconsin, and Washington D.C.

ⁱⁱⁱ States that require less than a \$100 fine for first time violations include: Alabama, California, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maryland, Minnesota, Nevada, New Mexico, Pennsylvania, South Carolina, Tennessee, Texas, and Wyoming.

2. Limitations on Driving Privileges.

In 2013, Maine, New Jersey, and Rhode Island amended their texting while driving statutes to include the suspension of driving privileges as a sanction.⁴⁷ Washington D.C. also permits a temporary driver's license suspension for certain violators.⁴⁸ These jurisdictions take two different approaches to suspending driving privileges: discretionary suspension and mandatory suspension.

In New Jersey and Rhode Island, the law gives discretion to judges to sanction an offender's driving privileges. In New Jersey, when a driver has violated the wireless communication device statute three or more times, "the court, in its discretion, may order the person to forfeit the right to operate a motor vehicle" for 90 days.⁴⁹ In Rhode Island, first-time offenders can have their license suspended "for up to thirty (30) days," while second- and third-time offenders can have their license suspended for up to three or six months, respectively.⁵⁰ These suspensions can be imposed in lieu of a fine or in addition to a fine, at the tribunal's discretion.⁵¹

In Maine and Washington D.C., a driver's license suspension is mandatory for drivers who repeatedly violate the state's texting while driving statute. In Maine, for any texting while driving violation within three years of a prior violation, the violator's driver's license "shall" be suspended "without right to a hearing."⁵² The length of suspension depends on how frequently the driver has violated the texting while driving statute: 30 days for a second violation within three years, 60 days for a third violation within three years, and 90 days for a fourth violation within three years.⁵³ In Washington D.C., the Mayor is required to suspend the driver's license of anyone who accrues three texting while driving violations within an 18-month period.⁵⁴ The

suspension must be at least 30 days in duration, but may be as long as 90 days at the Mayor’s discretion.⁵⁵

III. MINNESOTA’S TEXTING WHILE DRIVING STATUTE AND RELATED DISTRACTED DRIVING STATUTES.

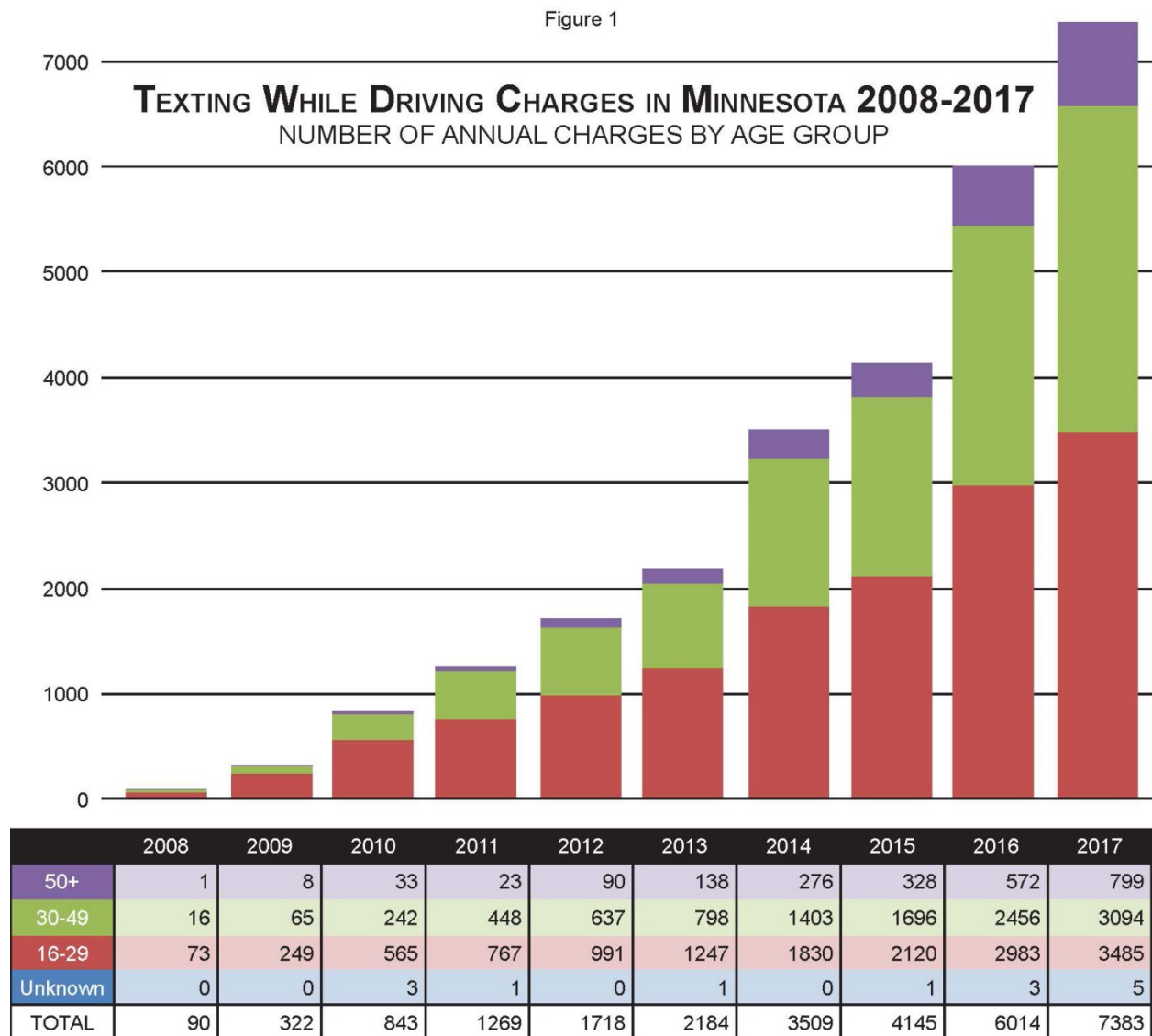
A. Using Wireless Communications Device Statute.

In 2008, the Minnesota Legislature enacted the Use of Wireless Communications Device statute, Minn. Stat. § 169.475, to address the emerging problem of injuries and fatalities caused by texting while driving.⁵⁶ The statute prohibits drivers from “using a wireless communications device to compose, read, or send an electronic message.”⁵⁷ An “electronic message” includes, but is not limited to, “e-mail, a text message, an instant message, a command or request to access a World Wide Web page, or other data that uses a commonly recognized electronic communications protocol.”⁵⁸ Violating the statute is a petty misdemeanor level offense, similar to other tickets.⁵⁹ Under Minnesota law, a petty misdemeanor is not a crime.⁶⁰ As noted above, the fine is \$50 for a first violation under this statute.⁶¹ In 2015, the Minnesota Legislature amended the statute to increase the fine for second or subsequent violations to \$225 plus any additional amount established by the Judicial Council.⁶² The Judicial Council has set the fine at \$275.⁶³

“We live in a society built on trust. We surrender our well-being and lives to other people’s judgment. . . . You committed a profound breach of trust. Innocent people traveling the public’s highway were entitled to believe you would obey the rules of the road. Your betrayal of that trust has had a most unimaginable impact.” – Judge, sentencing a 17 year-old driver from Little Falls who killed two people while texting and driving.

In 2008, the first year that texting while driving was illegal in Minnesota, 90 people were cited.⁶⁴ The number of citations grew rapidly in the following years: 322 in 2009; 843 in 2010; 1,269 in 2011; 1,718 in 2012; 2,184 in 2013; and 3,509 in 2014.⁶⁵ After the statute was amended

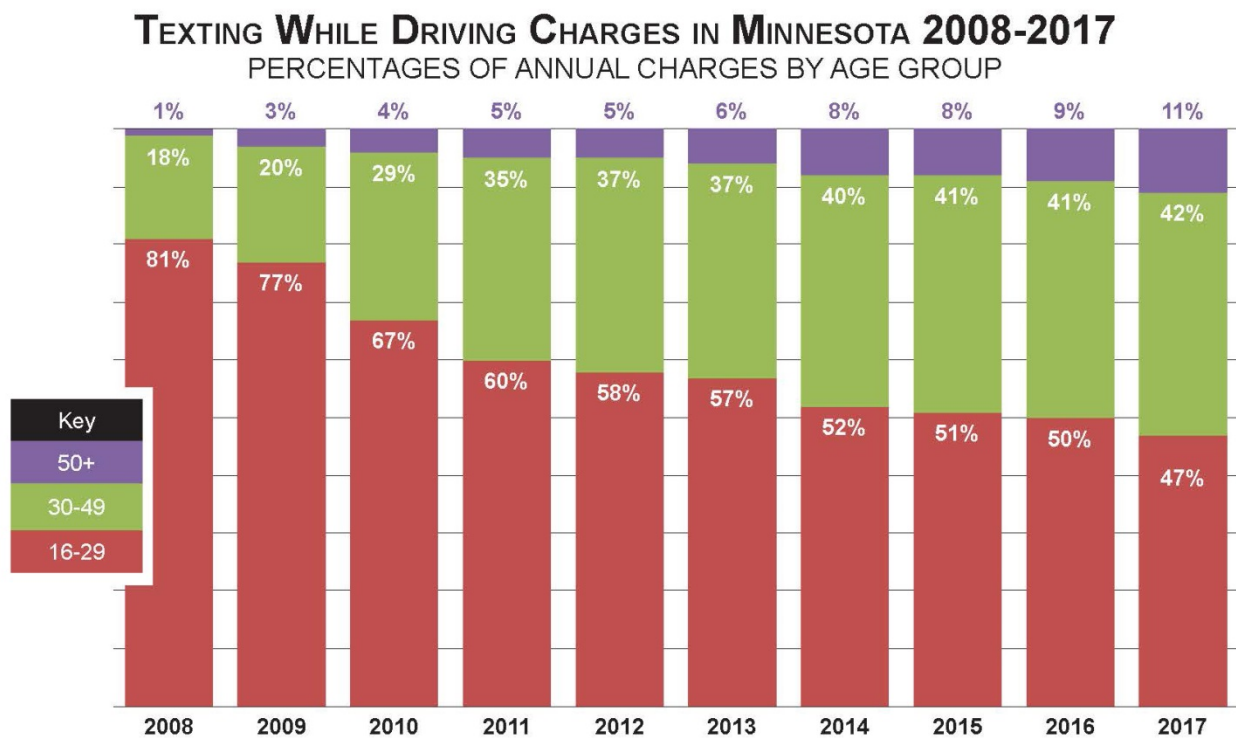
to include citations for repeat offenders in 2015, the number of citations issued continued to grow: 4,145 in 2015, 7 of which were for a second or subsequent offense; 6,014 in 2016, 73 of which were for a second or subsequent offense, and 7,383 in 2017, 137 of which were for a second or subsequent offense.⁶⁶ In 2018, as of September 26, 7,251 citations had been issued, 165 of which were for a second or subsequent offense.⁶⁷



The number of drivers cited for texting while driving in each age group has increased every year since the activity was made illegal.⁶⁸ The rate of increase has varied, however,

between age groups. Although drivers in Minnesota between the ages of 16 and 29 receive more citations for texting and driving, the percentage of all citations issued to that one age group has declined from 81 percent in 2008 to 47 percent in 2017.⁶⁹ During the same time period, drivers aged 30 to 49 went from receiving 18 percent of texting while driving citations to receiving 42 percent of citations in 2017.⁷⁰ This represents an increase from 16 total citations in 2008 to 3,094 citations in 2015.⁷¹ Drivers aged 50 and older have seen similar increases, as their share of total citations rose from 1 percent in 2008 to 11 percent in 2018.⁷²

Figure 2

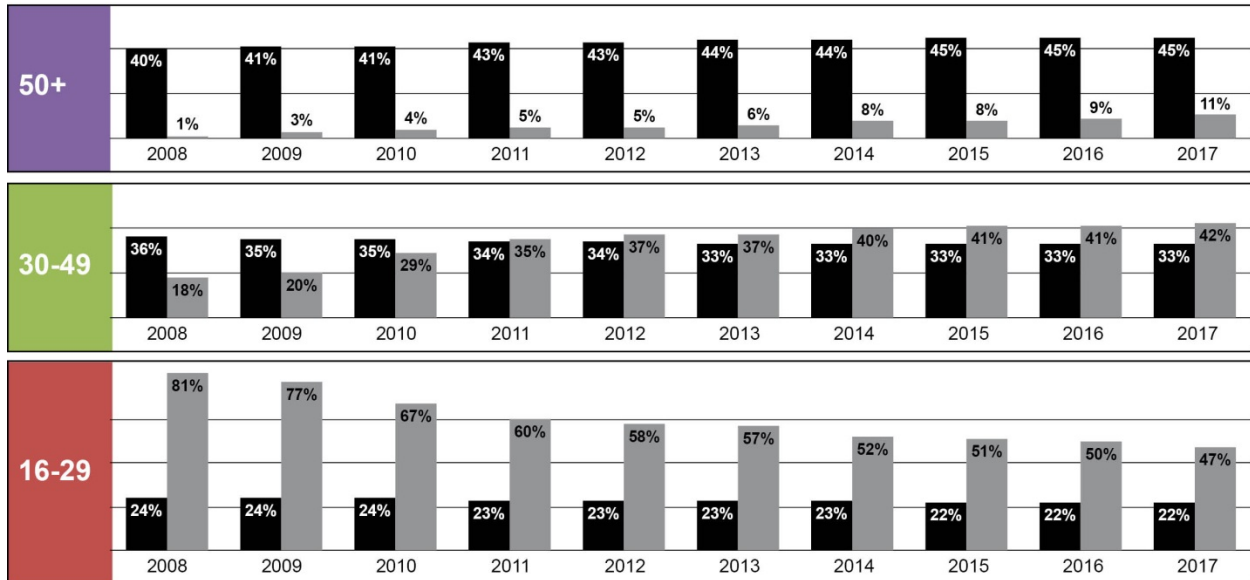


Despite well-established legal prohibitions against the activity, drivers aged 30 and older are cited for texting while driving at increasing rates. These changes are significant given that each of the three age ranges have constituted relatively steady portions of the State’s total driving population during this period.⁷³

Figure 3

TEXTING WHILE DRIVING CHARGES IN MINNESOTA 2008-2017

■ PERCENTAGE OF DRIVERS ■ PERCENTAGE OF ANNUAL CHARGES



NUMBER OF MINNESOTA DRIVERS										
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
50+	1,556,954	1,591,027	1,641,943	1,692,710	1,735,687	1,774,069	1,813,295	1,832,804	1,859,727	1,883,827
30-49	1,399,207	1,380,920	1,376,205	1,360,181	1,353,819	1,358,679	1,352,754	1,345,331	1,354,481	1,360,780
16-29	956,099	948,267	949,067	929,440	923,266	921,184	924,086	909,847	910,937	905,198
TOTAL	3,912,260	3,920,214	3,967,215	3,982,331	4,012,772	4,043,932	4,090,135	4,087,982	4,125,145	4,149,805

NUMBER OF ANNUAL CHARGES										
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
50+	1	8	33	23	90	138	276	328	572	799
30-49	16	65	242	448	637	798	1403	1696	2456	3094
16-29	73	249	565	767	991	1247	1830	2120	2983	3485
Unknown	0	0	3	1	0	1	0	1	3	5
TOTAL	90	322	843	1269	1718	2184	3509	4145	6014	7383

B. Recent Unsuccessful Attempts to Strengthen the Using Wireless Communications Device Statute.

Attempts to further amend Minn. Stat. § 169.475 have not been enacted in recent legislative sessions. Multiple recent bills have been proposed to ban all phone calls while driving. For example, a 2016 bill sought to prohibit drivers from “using a wireless communications device,” which it defined as “(1) composing, reading, or sending an electronic

message; (2) dialing, answering, or talking on a cellular telephone; and (3) otherwise making a cellular phone call.”⁷⁴ More recently, a 2018 bill proposed banning all drivers from texting or “initiating a cellular phone call and talking or listening on the phone,” unless the text or call was facilitated by a “voice activated or hands-free mode.”⁷⁵ The bill would have also prohibited using any “wireless communications device to view video content” while driving.⁷⁶ Although the bill passed out of a House committee, it was not brought to a floor vote before the 2018 legislative session expired.⁷⁷

The 2018 Legislature did, however, enact a measure that would have increased the penalties for texting while driving, but it was contained within a large supplemental budget bill the Governor ultimately vetoed for other reasons.⁷⁸ Had it been enacted, the bill would have increased penalties for texting while driving recidivists. Violators would be fined \$150 for their first offense, \$300 for their second offense, and \$500 for any third offense, if all three offenses occurred within a single 5-year period.⁷⁹ The legislation also would have made any such third violation within 5 years a misdemeanor-level criminal offense.⁸⁰

C. Statutes Prohibiting Cell Phone Use by Specific Classes Of Drivers.

In 2005, the Minnesota Legislature amended the Provisional License statute, Minn. Stat. § 171.055, to prohibit a provisional driver’s license holder (i.e. a juvenile with a temporary license) from operating a vehicle “while communicating over, or otherwise operating, a cellular or wireless telephone, whether handheld or hands free, when the vehicle is in motion.”⁸¹ In other words, juveniles with a provisional license may not use a cell phone while driving in any fashion. A violation is a petty misdemeanor and is subject to a \$50 fine.⁸² Upon conviction, the district court has discretion to order the violator to attend a driver improvement course.⁸³ Failure to complete the course may result in suspension of the provisional license.⁸⁴

In 2007, the Minnesota Legislature amended the Safety of School Children; Bus Driver’s Duties statute, Minn. Stat. § 169.443, to prohibit bus drivers from communicating or operating “a cellular phone for personal reasons, whether handheld or hands free, when the vehicle is in motion.”⁸⁵ Violation of this statute is a misdemeanor, and the Department of Public Safety is required to revoke the violator’s school bus endorsement.⁸⁶

D. Other Related Distracted Driving Statutes.

In Minnesota, driving-related injuries and fatalities have historically been prosecuted under two different statutory schemes: the Criminal Vehicular Operation—Homicide statutes, Minn. Stat. §§ 609.2111-.2114, and the Reckless or Careless Driving statute, Minn. Stat. § 169.13.

1. Criminal Vehicular Operation and Homicide Statutes.

“It is critical to be attentive while driving, as the life you save may be another driver, a family member or even your own.” – West Central Tribune Editorial.

In 1937, the Minnesota Legislature enacted the Criminal Negligence, Driving While Intoxicated, and Reckless Driving statutes.⁸⁷ The Criminal Negligence statute prohibited persons from causing the death of another while “operating or driving a vehicle of any kind in a reckless or grossly negligent manner.”⁸⁸ By 1983, the crime of Criminal Negligence had been renamed Criminal Vehicular Operation.⁸⁹ The “reckless” provision of the statute had been removed, leaving the State to prove that a person operated a vehicle in a “grossly negligent manner.”⁹⁰ In 1983, the Minnesota Legislature also expanded the scope of the Criminal Vehicular Operation statute to include causing either death or great bodily harm.⁹¹

The Criminal Vehicular Operation and Homicide statutes were renumbered in 2014 to Minn. Stat. §§ 609.2111-.2114.⁹² A charge of what is now called Criminal Vehicular Homicide requires proof that a driver caused the death of another under any of a variety of circumstances, including, but not limited to:

- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of:
 - (i) alcohol
 - (ii) a controlled substance; or
 - (iii) any combination of those elements;
- (3) while having an alcohol concentration of 0.08 or more;
- (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving; [. . .]⁹³

The crimes of Criminal Vehicular Operation—Bodily Harm and Criminal Vehicular Operation—Unborn Child require proof of one of those same circumstances.⁹⁴

There are four severity levels for these offenses: a maximum of 10 years in prison for Criminal Vehicular Homicide or Death to Unborn Child,⁹⁵ a maximum of 5 years in prison for Criminal Vehicular Operation—Great Bodily Harm or Injury to an Unborn Child,⁹⁶ a maximum of 3 years in prison for Criminal Vehicular Operation—Substantial Bodily Harm,⁹⁷ and a maximum of 1 year in jail for Criminal Vehicular Operation—Bodily Harm.⁹⁸

2. Reckless or Careless Driving Statute.

As noted above, the Legislature first criminalized reckless driving in 1937.⁹⁹ It then added the crime of careless driving in 1939.¹⁰⁰ Reckless driving prohibits driving conduct that exhibits a conscious disregard of a substantial and unjustified risk of injury to person or

property.¹⁰¹ Careless driving makes it a crime for a driver to disregard the rights of others or endanger person or property.¹⁰² Both crimes are misdemeanors, but a recent change to the law in 2015 provides that reckless driving may be enhanced to a gross misdemeanor if the defendant's driving caused great bodily harm or death.¹⁰³ Reckless and careless driving may be charged as a lesser offenses in criminal vehicular operation prosecutions.

IV. PUBLIC EDUCATION AND ENFORCEMENT RESPONSES TO DRIVING WHILE TEXTING.

A. Public Awareness Campaigns.

Multiple studies conducted by the National Highway Traffic Safety Administration (“NHTSA”) demonstrate that increasing public awareness about the dangers associated with texting while driving is an important part of curbing its prevalence.

“Education alone is a proven failure. Education and enforcement are a success.”
– Former Executive Director of Mothers Against Drunk Driving.

NHTSA is the federal agency responsible for administering and enforcing national highway safety legislation and reducing death, injury, and loss resulting from motor vehicle accidents.¹⁰⁴ NHTSA conducted two multi-state studies—one in New York and Connecticut, the other in California and Delaware—that examined the success of campaigns that used public service announcements, press conferences, and paid television and radio commercials to spread awareness.¹⁰⁵ The studies found that these campaigns were successful in increasing public awareness about texting while driving laws.

The commercials in these campaigns used slogans such as, *“Phone in One Hand, Ticket in the Other”* and advised the audience of increased police efforts to enforce texting while driving laws.¹⁰⁶ The commercials were aired in “waves” beginning with an initial two-week

advertising period, and then sporadic week-long “waves” of advertising in the following months.¹⁰⁷

In Hartford, Connecticut, each “wave” of advertising increased the percentage of survey respondents who had heard about the increased enforcement efforts.¹⁰⁸ Overall, 31 percent of respondents were aware of the increased enforcement before the first wave, and 71 percent were aware of it after the fourth wave.¹⁰⁹ Survey responses also demonstrated an increase in the public’s overall recognition of the campaign slogan.¹¹⁰ The survey results in California, Delaware and Syracuse, New York were similar.¹¹¹

AT&T also runs a national public awareness campaign called “It Can Wait.”¹¹² The campaign includes a series of dramatic commercials emphasizing that slogan as well as an opportunity for drivers to pledge their commitment to the anti-texting while driving message.¹¹³ Nationwide, over 30 million people have signed the “It Can Wait” pledge to “always drive distraction free” and to “never allow my phone to endanger myself or others behind the road.”¹¹⁴ One striking “It Can Wait” commercial depicts two young adult men discussing what they wanted to do with their lives when they were 16 years old. The commercial goes on to reveal that these young men are actually digital recreations of what two teenagers would look like “if they had not been killed in distracted driving accidents.”¹¹⁵ In 2018, the “It Can Wait” campaign visited a number of high schools in Minnesota to educate young drivers about the dangers of texting while driving.¹¹⁶ In 2014, similar high school events allowed the “It Can Wait” message to reach 20,000 high schoolers in Minnesota.¹¹⁷

B. Driver Education.

Some states have used other types of driver education to increase public awareness about the hazards of texting while driving. For example, the Texas Department of Public Safety developed the Impact Texas Teen Drivers Course (“ITTD”) to teach young drivers about distracted driving in order to reduce the number of accidents it causes.¹¹⁸ ITTD is an eight-part video that young drivers must complete before sitting for the driver skills examination.¹¹⁹ Once a driver completes the course, the driver gets a certificate of completion that must be presented prior to the driver skills exam.¹²⁰

Another driving safety program is Driving MBA, a private company based in Arizona that uses computer simulators to teach safe driving, thereby removing some of the risks associated with experiencing dangerous driving situations for the first time out on the road.¹²¹ As part of its computer simulated training, Driving MBA shows drivers the repercussions of texting while driving.¹²² During the texting-while-driving exercise, students experience first-hand the inherent dangers, as the exercise involves a 100% crash rate.¹²³

In Minnesota, driver’s education courses are required to train new young drivers on a variety of subjects, including the effects of alcohol and drugs, vehicle speed, vehicle ownership, and becoming an organ donor.¹²⁴ Driver’s education courses are not, however, legally obligated to teach students about the dangers associated with texting while driving in particular.¹²⁵

Other initiatives are aimed at employers. For example, Network of Employers for Traffic Safety (“NETS”) has teamed up with the United States Department of Transportation to hold an annual Drive Safely Work Week, and the federal government prohibits federal employees from texting while driving or while using government-issued equipment.¹²⁶ In Minnesota, some local companies, like Ecolab and Cargill, prohibit their employees from texting while driving

company-owned cars.¹²⁷ Cargill's policy encourages a corporate culture that accommodates the ban, one which tries to change the "drive time as productive time mentality."¹²⁸

C. Law Enforcement and Public Safety Strategies.

Enforcing texting while driving laws can be difficult because it is hard for officers to distinguish between illegal texting and forms of permitted cell phone use, such as dialing a phone number. Despite these difficulties, agencies have developed a number of techniques to increase enforcement and detection of texting while driving violations.

1. Spotter Technique.

A spotter technique is when one officer, usually standing on the side of the road, radios to a second officer if the first officer sees a passing driver texting.¹²⁹ The second officer then makes the stop and issues the ticket.¹³⁰ In Hartford, Connecticut, this enforcement method led to a decrease in drivers observed texting.¹³¹ A number of Minnesota's law enforcement agencies have employed this technique with some success.¹³²

2. Using Cameras to Document Violations.

Police in Minnesota have also used GoPro cameras in their squad cars to record and photograph drivers who are texting while driving or using the internet while driving.¹³³ Acquiring this direct evidence of texting while driving violations makes enforcement easier because it prevents drivers from denying that they committed an offense.¹³⁴

3. Strategic Placement of Patrol Cars.

Another technique is to place officers where they can directly observe texting while driving violations.¹³⁵ Some agencies have enhanced visual confirmation of texting violations by utilizing higher vantage points, unmarked cars, and taller vehicles such as SUVs.¹³⁶ In Syracuse, New York, these strategies resulted in a decreased rate of drivers seen texting.¹³⁷ Law

enforcement officers in Minnesota have also utilized higher vantage points to observe texting while driving violations.¹³⁸ During Minnesota’s statewide distracted driving campaign in April 2013, state troopers in the metro area rode school buses and semitrailers looking for drivers who were texting.¹³⁹

4. High Visibility Enforcement Campaigns.

“We have to view distracted driving as we view drunk driving.” – Greg Tikalsky, son of Joseph Tikalsky, at the sentencing hearing for the woman who killed his father while texting and driving in Le Sueur County.

Another method of increasing public awareness of law enforcement priorities is the use of High Visibility Enforcement (“HVE”) campaigns. HVE is a law enforcement model that seeks to change the behavior of drivers by combining active and visible law enforcement presence with public awareness campaigns.¹⁴⁰ In Hartford, this type of targeted campaign increased the percentage of drivers who believed they would always or nearly always be ticketed if they drove while using their cell phone.¹⁴¹

In Minnesota, one of the main texting while driving HVE campaigns is the “U drive. U text. U pay.” effort that law enforcement agencies across the country participate in every April.¹⁴² During this period, the Minnesota Department of Public Safety and over 300 law enforcement agencies across the State conduct a period of heightened enforcement of distracted driving laws, including texting while driving.¹⁴³ This campaign resulted in 550 texting while driving citations over 10 days in 2014,¹⁴⁴ 909 citations over 6 days in 2015,¹⁴⁵ 972 citations over 7 days in 2016,¹⁴⁶ 1,017 citations over 14 days in 2017,¹⁴⁷ and 1,576 citations over 14 days in 2018.¹⁴⁸ The Minnesota Department of Public Safety purchased \$199,473 in media to accompany the April 2016 campaign, including advertisements on television, radio, and social media.¹⁴⁹ Its April 2017 media purchase was \$223,791.¹⁵⁰

This media campaign and other roadway-safety paid media campaigns receive funding from federal grants.¹⁵¹ In 2012, the United States Congress enacted the Moving Ahead for Progress in the 21st Century Act (“MAP-21”), which provided such grants.¹⁵² In 2013, Minnesota received a \$1,224,866 grant under section 405(e).¹⁵³ Connecticut was the only state awarded MAP-21 section 405(e) grants in 2014 and 2015.¹⁵⁴

In December 2015, the United States Congress enacted the Fixing America’s Surface Transportation Act (“FAST Act”).¹⁵⁵ It was intended to “build[] on the changes made by MAP-21.”¹⁵⁶ The FAST Act makes dedicated distracted driving grants available to states that meet certain eligibility requirements, including a distracted driving awareness component in its driver’s license examination, a statute prohibiting texting while driving, a prohibition on all cell phone use for juvenile drivers, and a minimum fine for all texting while driving violations.¹⁵⁷ The National Highway Traffic Safety Administration reports that Minnesota’s 2017 application for a FAST Act distracted driving grant was rejected because Minnesota law does not prohibit all drivers under the age of 18 from all cell phone use and does not impose a minimum \$25 fine.¹⁵⁸ In 2018, Minnesota did not apply for a dedicated distracted driving grant under the FAST Act, apparently because the application would likely have been denied again for the same reasons.¹⁵⁹

V. RECOMMENDATIONS FOR STRENGTHENING MINNESOTA’S RESPONSE TO THE ELECTRONIC DEVICE DISTRACTED DRIVING EPIDEMIC.

There are a number of changes to Minnesota law that the Legislature should consider to ensure the safety of Minnesota’s drivers against distracted driving.

A. Prohibiting All Handheld Cell Phone Use While Driving.

The Minnesota Legislature should consider prohibiting all drivers from using all handheld digital devices (i.e. prohibit non-“hands free” cell phone use). This broad prohibition should encompass all texting, emailing, and social media activity on cell phones and other digital devices, as well as all phone calls. Because phone calls would be prohibited, the existing exception for “making a cellular phone call” in Minn. Stat. § 169.475, subd. 3(2) should be struck. The existing exception for the use of a wireless communications device “solely in a voice-activated or other hands-free mode,” should remain. Thus, messages and other written communication composed or received entirely by voice command, without the use of a driver’s hand, and all voice-activated phone calls, would remain lawful.

“In the 1970s, almost 90 percent of Americans didn’t buckle up. Today, nearly 90 percent do. Once, drunk driving wasn’t taken seriously; today its dangers are known and it isn’t tolerated. . . . As sure as we’ve eradicated disease, we’ve fought against—and won against—bad behavior, sending it off to a small corner of the population, where it still can harm, but doesn’t as often. We’ll do the same with distracted driving.”
— Anthony Foxx, Former Secretary of the U.S. Department of Transportation.

This type of broad prohibition was recently proposed in 2018 and should be considered again.¹⁶⁰ Minnesota should join the District of Columbia and at least 16 other states in banning all handheld cell phone use for drivers of all ages.

B. Fines for First Time Offenders.

The Legislature should consider raising the fine for first-time offenders. According to the 2018 Judicial Council payable schedule, first time offenders are subject to a fine of \$50 plus the \$75 general surcharge.¹⁶¹ This is the same fine that drivers receive for traveling below the posted speed limit.¹⁶² A number of states allow higher fines than Minnesota’s for first time

offenders, including: Alaska (up to \$500), Arkansas (up to \$250), Colorado (\$300), Connecticut (\$150), Delaware (\$100), Hawaii (\$250), Indiana (up to \$500); Louisiana (up to \$500), Maine (\$250), Massachusetts (\$100), Michigan (\$100), Mississippi (\$100), Nebraska (\$200), New Hampshire (\$100), New York (up to \$200), New Jersey (between \$200 and \$400), North Carolina (\$100), North Dakota (\$100); Ohio (up to \$150), Oklahoma (up to \$100), Oregon (\$265), Rhode Island (\$100), South Dakota (\$100), Texas (up to \$99); Utah (up to \$100), Vermont (between \$100 and \$200), Virginia (\$125), Washington (\$136), West Virginia (\$100), Wisconsin (up to \$400), and Washington D.C. (\$100).¹⁶³

To encourage all drivers to refrain from texting while driving, rather than just those who have already been convicted of doing so, the State should consider imposing a \$175 fine against first-time offenders (which will require a \$250 payment from the offender after addition of the \$75 surcharge).

C. Fines for Subsequent Offenders.

Subsequent offenders should receive even higher fines based on their number of prior offenses. A number of states have imposed this type of graduated schedule to impose high-end fines upon repeat offenders, including: Arkansas (up to \$250/ up to \$500); Connecticut (\$150/\$300/\$500), Delaware (\$100/\$200-\$300), Louisiana (up to \$500/up to \$1,000), Maine (\$250/\$500), Massachusetts, (\$100/\$250/\$500), Michigan (\$100/\$200), Nebraska (\$200/\$300/\$500), Nevada (\$50/\$100/\$250), New Hampshire (\$100/\$250/\$500), New Jersey (\$200-\$400/\$400-\$600/\$600-\$800), New York (up to \$200/up to \$250/up to \$400), Oregon (\$265/\$440/ up to \$2,500), Rhode Island (\$100/\$150/\$250), Vermont (up to \$200/ up to \$500), Virginia (\$125/\$250), Washington (\$136/\$234), and West Virginia (\$100/\$200/\$300), as well as Washington D.C. (\$100/\$150/\$200).¹⁶⁴

Minnesota currently fines all subsequent offenders \$275, regardless of how many prior texting while driving convictions are on their record.¹⁶⁵ The Legislature should adopt a high-end graduated fine schedule.

D. Mandatory Driver's License Suspensions.

The Legislature should also consider an additional penalty for drivers who refuse to stop texting while driving. Three states and Washington D.C. have adopted driver's license suspensions to punish texting while driving recidivists. New Jersey authorizes up to a 90-day driver's license suspension upon a third texting while driving conviction.¹⁶⁶ Rhode Island authorizes suspensions of 30 days, three months, and six months, for first-, second-, and third-time offenders, respectively.¹⁶⁷ Maine requires the imposition of 30-, 60-, and 90-day suspensions for second-, third-, and fourth-time offenders, respectively.¹⁶⁸ And the District of Columbia requires a suspension of at least 30 days for certain third-time offenders.¹⁶⁹

A driver's license suspension is a common penalty for violating the law in Minnesota.¹⁷⁰ Sanctioning a person's driving privileges was an effective component of the State's approach to drunk driving and would likely have similar success in deterring texting while driving. Minnesota should adopt a suspension schedule similar to the schedules adopted in Rhode Island and Maine: a 30-day mandatory suspension upon a driver's second conviction, a 60-day suspension upon a third conviction, and a 90-day suspension for all subsequent convictions.

This schedule of suspensions has multiple benefits. First, because suspensions only occur upon conviction, they can be imposed without the due process concerns that arise in the context of an immediate driver's license revocation under the implied consent statute.¹⁷¹ Second, the existing license suspension statute grants drivers some additional process by permitting administrative challenges to any suspension.¹⁷² And third, increasing the length of the license

suspension for subsequent convictions follows the model set by the implied consent statutes, which helped to decrease recidivism for driving while impaired.¹⁷³

E. Misdemeanor for Repeat Offenses

The current texting while driving statute makes every offense a petty misdemeanor, regardless of how many prior offenses a driver may have. This prevents courts from imposing fines higher than the \$300 maximum for petty misdemeanor offenses. The Legislature should consider making second and subsequent texting while driving violations misdemeanor level offenses.

F. Public Awareness.

The Legislature should consider appropriating additional funds to the Minnesota Department of Public Safety to implement comprehensive, multi-faceted, anti-texting while driving campaigns. The campaigns should follow the HVE model by publicizing periods of heightened, visible law enforcement activity through various forms of media, including television and radio commercials, as well as social media advertising. Like driver's license sanctions, the HVE model helped to reduce the number of DWI fatalities from 164 in 2007 to 72 in 2017.¹⁷⁴ As NHTSA concluded, the "HVE model can be effectively applied to distracted driving," particularly in "encourage[ing] compliance with State laws and modify[ing] behavior."¹⁷⁵

The Legislature should also position the state to take advantage of any available federal distracted driving funding grants. At the very least, the Legislature should amend the Using Wireless Communications Device Statute so that it complies with the minimum requirements for dedicated distracted driving grants under the FAST Act. First, all drivers under the age of 18 should be prohibited from engaging in any form of cell phone use, including phone calls.

Currently, juveniles are only subject to this restriction if they hold a provisional driver's license.¹⁷⁶ Some 17-year olds are eligible for a non-provisional license.¹⁷⁷ Second, the minimum fine for first-time texting while driving violations should be written into the Using Wireless Communications Device Statute, instead of determined by the Judicial Council's schedule of fines, which currently sets the minimum.¹⁷⁸ Third, the Legislature should enact a provision requiring the Commissioner of Public Safety to adopt a rule adding distracted driving and texting while driving to the list of topics that must be covered on all driver's license examinations,¹⁷⁹ as the FAST Act requires.¹⁸⁰ Adopting these changes will ensure that Minnesota is eligible for federal grants to help fund the fight against distracted driving.

VI. CONCLUSION

Distracted driving is at epidemic levels in terms of frequency of such behavior by drivers and the dangers it imposes on our roadways. Unfortunately, the laws addressing distracted driving have not kept pace with the threat distracting driving poses. Just as the driving while intoxicated laws have evolved over the years to address the seriousness of drunk driving, distracted driving laws also should be adjusted to address the growing problem. The death toll of drunk driving was reduced significantly when the laws got tougher and society stopped tolerating it. We should accomplish the same thing for distracted driving.

¹ National Highway Traffic Safety Administration, *Traffic Safety Facts Research Note: Distracted Driving 2016*, at 1, 3(April 2018).

² *Distracted Driving*, Minnesota Office of Traffic Safety, <https://dps.mn.gov/divisions/ots/distracted-driving/Pages/default.aspx> (last visited: Sept. 30, 2018).

³ Emma Gormley, *Indiana's Texting-While-Driving Ban: Why Is It Not Working and How Could It Be Better*, 19 Ind. L.J. Supp. 88, 92 (2016).

⁴ National Highway Traffic Safety Administration, *Traffic Safety Facts Research Note: Driver Electronic Device Use in 2016*, at 1 (June 2017).

⁵ Gormley, *supra* note 3, at 88.

⁶ *Id.*

⁷ James Gempler and Lindsay Mancini, *Smart Phones, Dumb Driving, and the Law*, Bench and Bar of Minnesota, Nov. 2016, 20, 21.

⁸ *Distracted Driving*, *supra* note 2.

⁹ *Id.*

¹⁰ Minnesota Office of Traffic Safety, *Minnesota Distracted Driving Survey: 2015 Final Report*, at 1 (2015).

¹¹ *Id.*

¹² *Id.*

¹³ Mary Lynn Smith, *Number of Distracted-Driving Stops Continues to Rise in Minnesota*, Star Tribune, March 11, 2018.

¹⁴ Gormley, *supra* note 3, at 91.

¹⁵ *Id.* at 91-92.

¹⁶ Sarah Horner, *Gross Negligence, or Just a Horrible Mistake, in Deadly I-35W Crash?*, Pioneer Press, February 9, 2018.

¹⁷ Matt Sepic, MPR News, *Prison for Driver Who Struck, Killed Wayzata Cop While Texting, DUI* (May 11, 2018), <https://www.mprnews.org/story/2018/05/11/texting-woman-pleads-guilty-wayzata-officer-mathews-mn>.

¹⁸ Paul Walsh, *10-Day Jail Term for Driver Who Ran Stop Sign, Killed Other Motorist Near Twin Cities*, Star Tribune July 4, 2018.

¹⁹ Catherine C. McDonald & Marilyn S. Sommers, *Teen Drivers' Perceptions of Inattention and Cell Phone Use While Driving*, Traffic Injury Prevention, at 4-5 (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4594631/> (last visited: Sept. 30, 2018).

²⁰ AAA Foundation for Traffic Safety, *2017 Traffic Safety Culture Index*, at 14-16 (2018).

²¹ McDonald & Sommers, *supra* note 19, at 5.

²² Minnesota Office of Traffic Safety, *Minnesota Motor Vehicle Crash Facts 2017*, at 40 (2018).

²³ *E.g.*, H.B. 1600, 99th Gen. Assemb., 2nd Reg. Sess. (Mo. 2018).

²⁴ *E.g.*, Missoula, MT, Municipal Code § 10.20.310; Phoenix, AZ, City Code § 36-76.01.

²⁵ Florian Martin, *What Happened to Banning Texting While Driving in Houston?*, Houston Public Media (Sept. 7, 2015), <https://www.houstonpublicmedia.org/articles/news/2015/09/07/120469/what-happened-to-banning-texting-while-driving-in-houston/>.

²⁶ 625 Ill. Comp. Stat. § 5/12-610.2.

²⁷ N.Y. Vehicle and Traffic L. §§ 1225-c(2)(a), 1225-b(1-2) (McKinney).

²⁸ *Annual Convictions for Cell Phone Laws in California*, obtained from California Office of Traffic Safety (Oct. 24, 2016).

²⁹ *Id.*

³⁰ California Office Traffic Safety, *Annual Performance Report 2015*, at 19 (2015); California Office of Traffic Safety, *Annual Performance Report 2013*, at 17 (2013).

³¹ California Office Traffic Safety, *Annual Performance Report 2017*, at 23 (2017);

³² Wis. Stat. § 346.89(3)(a).

³³ Utah Code § 41-6a-1716(2).

³⁴ N.M. Stat. § 66-7-374(A), (C)(3).

³⁵ Miss. Code Ann. § 63-33-1(2).

³⁶ Wis. Stat. § 346.95(4m)

³⁷ *2018 Payables List, Traffic/Criminal*, Minnesota Judicial Council, available at <http://mncourts.gov/JusticePartners/Statewide-Payables-Lists.aspx> (last visited: Sept. 30, 2018).

³⁸ Minn. Stat. § 169.475, subd. 2(b); *2018 Payables List*, *supra* note 37.

³⁹ Minn. Stat. § 357.021, subd. 6; *2018 Payables List*, *supra* note 37.

⁴⁰ Va. Code Ann. § 46.2-1078.1(C).

⁴¹ N.J. Rev. Stat. § 39:4-97.3(d).

⁴² Mass. Gen. Laws ch. 90, § 13B(b).

⁴³ La. Stat. Ann. § 32:300.5(C).

⁴⁴ Ala. Code § 32-5A-350(c).

⁴⁵ S.C. Code Ann. § 56-5-3890(D)(1).

⁴⁶ Cal. Veh. Code § 23123.5(d).

⁴⁷ Me. Pub. L. 2013, Ch. 188 (June 3, 2013); N.J. Pub. L. 2013, Ch. 70 (June 27, 2013); R.I. Pub. L. 2013, Ch. 393 (July 15, 2013).

⁴⁸ D.C. Code § 50-1731.06(a-2).

⁴⁹ N.J. Rev. Stat. § 39:4-97.3(d).

⁵⁰ R.I. Gen. Laws § 31-22-30(e).

⁵¹ *Id.*

⁵² Me. Stat. tit. 29-a, § 2119(3)(B).

⁵³ Me. Stat. tit. 29-a, § 2119(3)(B)(1-3).

⁵⁴ D.C. Code § 50-1731.06(a-2).

⁵⁵ *Id.*

⁵⁶ 2008 Minn. Laws, ch. 350, art. 1, § 38.

⁵⁷ Minn. Stat. § 169.475, subd. 2(a).

⁵⁸ Minn. Stat. § 169.475, subd. 1.

⁵⁹ Minn. Stat. § 169.89, subd. 1.

⁶⁰ Minn. Stat. § 609.02, subd. 4a.

⁶¹ *2018 Payables List*, *supra* note 37.

⁶² 2015 Minn. Laws, ch. 75, art. 1, § 22; Minn. Stat. § 169.475, subd. 2(b).

⁶³ *2018 Payables List*, *supra* note 37.

⁶⁴ *Texting and Driving Charging & Conviction Data*, obtained from Minnesota State Court Administrator's Office (Sept. 26, 2018).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Crash Facts 2017*, *supra* note 22, at 5; Minnesota Office of Traffic Safety, *Minnesota Motor Vehicle Crash Facts 2013*, at 5 (2014).

⁷⁴ H.F. 3096, 2016 Minn. Leg., 89th Sess. (Mar. 14, 2016), *available at* https://www.revisor.mn.gov/bills/text.php?number=HF3096&session=ls89&version=list&session_number=0&session_year=2016.

⁷⁵ H.F. 1180, 2018 Minn. Leg., 90th Sess. (May 14, 2018), *available at* https://www.revisor.mn.gov/bills/text.php?number=HF1180&session=ls90&version=list&session_number=0&session_year=2017.

⁷⁶ *Id.*

⁷⁷ Eric Golden, *What Got Done and What Didn't at Minnesota Legislature*, Star Tribune, June 2, 2018; Tim Harlow, *Bill Banning Handheld Devices in Cars Passes Minnesota House Committee*, Star Tribune, May 10, 2018.

⁷⁸ *What Got Done and What Didn't*, *supra* note 77.

⁷⁹ S.F. 3656, art. 24, § 55, 2018 Minn. Leg., 90th Sess. (May 20, 2018), *available at* https://www.revisor.mn.gov/bills/text.php?number=SF3656&session=ls90&version=latest&session_number=0&session_year=2018.

⁸⁰ *Id.*

⁸¹ 2005 Minn. Laws 1st Spec. Sess., ch. 6, art. 3, § 64.

⁸² Minn. Stat. §§ 169.89, subd. 2, 171.055, subd. 2(a); *2018 Payables List*, *supra* note 37.

⁸³ Minn. Stat. § 169.89, subd. 5.

⁸⁴ *Id.*

⁸⁵ 2007 Minn. Laws, ch. 146, art. 1, § 4.

⁸⁶ Minn. Stat. § 169.443, subd. 7; Minn. Stat. § 171.17, subd. 1(b).

⁸⁷ 1937 Minn. Laws, ch. 464, art. V, § 25-27.

⁸⁸ *Id.*

⁸⁹ 1983 Minn. Laws, ch. 12, § 1.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 2014 Minn. Laws, ch. 180, § 9.

⁹³ Minn. Stat. § 609.2112, subd. 1(a)(1-4).

⁹⁴ Minn. Stat. §§ 609.2113, subds. 1-3; 609.2114, subds. 1-2.

⁹⁵ Minn. Stat. §§ 609.2112, subd. 1, 609.2114, subd. 1.

⁹⁶ Minn. Stat. §§ 609.2113, subd. 1, 609.2114, subd. 2.

⁹⁷ Minn. Stat. § 609.2113, subd. 2.

⁹⁸ Minn. Stat. § 609.2113, subd. 3.

⁹⁹ 1937 Minn. Laws, ch. 464, art. V, § 25-27.

¹⁰⁰ 1939 Minn. Laws, ch. 430, § 5.

¹⁰¹ Minn. Stat. § 169.13, subd. 1(a).

¹⁰² Minn. Stat. § 169.13, subd. 2.

¹⁰³ Minn. Stat. § 169.13, subd. 1(c).

¹⁰⁴ *About NHTSA*, National Highway Traffic Safety Administration, <https://www.nhtsa.gov/about-nhtsa> (last visited: Sept. 30, 2016).

¹⁰⁵ National Highway Traffic Safety Administration, *Evaluation of NHTSA Distracted Driving Demonstration Projects in Connecticut and New York*, at 6, 7, 16, 18, 22 (March 2014) (hereinafter: *Connecticut and New York*); National Highway Traffic Safety Administration, *Evaluation of NHTSA Distracted Driving High-Visibility Enforcement Demonstration Projects in California and Delaware*, at 5 - 6, 15 (January 2015) (hereinafter: *California and Delaware*).

¹⁰⁶ *Connecticut and New York*, *supra* note 105, at iii, 6; *California and Delaware*, *supra* note 105, at ii, 5.

¹⁰⁷ *Connecticut and New York*, *supra* note 105, at 7; *California and Delaware*, *supra* note 105, at 6.

¹⁰⁸ *Connecticut and New York*, *supra* note 105, at 18.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 19.

¹¹¹ *Id.* at 22, 41; *California and Delaware*, *supra* note 105, at 37.

¹¹² *It Can Wait*, AT&T, <https://www.itcanwait.com/home> (last visited: Sept. 30, 2018).

¹¹³ *Take the Pledge*, AT&T, <https://www.itcanwait.com/pledge> (last visited: Sept. 30, 2018).

¹¹⁴ *Id.*

¹¹⁵ AT&T, *Behind the Scenes of the Faces of Distracted Driving*, YouTube (April 25, 2018), <https://www.youtube.com/watch?v=KUo-ybk-SuU>.

¹¹⁶ See Brian Arola, *VR Highlights Distracted Driving Dangers*, The Free Press, Sept. 13, 2018, www.mankatofreepress.com/news/local_news/vr-highlights/distracted-driving-dangers/article_d91c963a-b797-11e8-b092-7b9eb65d8657.html; “*It Can Wait*” Tour Stops in Rochester, ABC 6 News, September 12, 2018, <http://www.kaaltv.com/news/quotit-can-waitquot-tour-stops-in-rochester/5068449/>.

¹¹⁷ *It Can Wait*, AT&T Minnesota, <https://engage.att.com/minnesota/blog/?PostId=811> (Jan. 17, 2015).

¹¹⁸ *Welcome to TXDPS Impact Texas Teen Driver Course*, Texas Department of Public Safety, <https://impacttexasdrivers.dps.texas.gov/ITTD/CourseOverview.aspx> (last visited: Sept. 30, 2018).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Dave Vanderwerp, *Retraining Wheels: Driving is the most deadly thing teenagers do, so why do they get such ineffective training? And so little of it?*, Car and Driver, June 2010, <http://www.caranddriver.com/features/redesigning-driver-education-for-teenagers> (last visited: Sept. 30, 2016).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Minn. R. 7411.0515.

¹²⁵ *Id.*

¹²⁶ Exec. Order No. 13,513, 74 Fed. Reg. 51225 (Oct. 10, 2009); Alexis M. Farris, Note, *LOL? Texting While Driving Is No Laughing Matter: Proposing A Coordinated Response To Curb This Dangerous Activity*, 36 Wash. U. J.L. & Pol’y 223, 257 (2011); *Drive Safely Work Week*, Network of Employers for Traffic Safety, <http://trafficsafety.org/road-safety-resources/drive-safety-work-week/> (last visited Sept. 30, 2018).

¹²⁷ Editorial, *Curb Cellphone Use Behind the Wheel in Minnesota*, Star Tribune, February 15, 2017; Tim Harlow, *Minnesota Law Enforcement Turns to Employers in Curbing Distracted Driving*, Star Tribune, April 10, 2016.

¹²⁸ *Cell Phone Ban Makes Us Safer*, Cargill, <https://www.cargill.com/story/cell-phone-ban-makes-us-safer> (April 5, 2017).

¹²⁹ *Connecticut and New York*, *supra* note 105, at 9, 17.

¹³⁰ *Id.*

¹³¹ *Id.* at 31.

¹³² Tim Harlow, *With Photos and Videos, Police Push for Evidence to Catch Texting Drivers*, Star Tribune, April 16, 2016.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Connecticut and New York*, *supra* note 105, at 9, 17; *California and Delaware*, *supra* note 105, at 38.

¹³⁶ *Connecticut and New York*, *supra* note 105, at 9, 17; Associated Press, *NY Troopers Using Tall SUVs to Catch Texting Drivers*, CBS News, Nov. 25, 2013, <https://www.cbsnews.com/news/ny-troopers-using-tall-suvs-to-catch-texting-drivers/>.

¹³⁷ *Connecticut and New York*, *supra* note 105, at 38.

¹³⁸ Tim Harlow, *Minnesota State Patrol Going After Those Driven to Distraction*, Star Tribune, April 18, 2013.

¹³⁹ *Id.*

¹⁴⁰ *Connecticut and New York*, *supra* note 105, at iii.

¹⁴¹ *Id.* at 20-21.

¹⁴² *U. Drive. U Text. U Pay.*, National Highway Traffic Safety Administration, <https://www.nhtsa.gov/es/distracted-driving/u-drive-u-text-u-pay> (last visited: Sept. 30, 2018).

¹⁴³ New Release, Minnesota Department of Public Safety, *Enough is Enough: Please Drive and Put Away Distractions* (April 5, 2018).

¹⁴⁴ News Release, Minnesota Department of Public Safety, *550 Drivers Cited for Texting While Driving Campaign During 10 Day Distracted Driving Campaign* (April 21, 2014).

¹⁴⁵ News Release, Minnesota Department of Public Safety, *Speak Up: Distracted Driving a Cause for Concern* (April 24, 2015).

¹⁴⁶ News Release, Minnesota Department of Public Safety, *Extra Enforcement Finds Too Many Distraction Dangers on Minnesota Roads* (April 27, 2016).

¹⁴⁷ News Release, Minnesota Department of Public Safety, *Risking Lives: Drivers Continue to Focus on Distractions Over Driving* (May 3, 2017).

¹⁴⁸ Tim Harlow, *Crackdown on Texting While Driving Catches More Repeat Offenders in Minnesota*, May 3, 2018.

¹⁴⁹ Minnesota Office of Traffic Safety, *2016 Minnesota Annual Report*, at 73-74 (2016).

¹⁵⁰ Minnesota Office of Traffic Safety, *2017 Minnesota Annual Report*, at 64-65 (2017).

¹⁵¹ See Minnesota Department of Public Safety, *Highway Safety Plan: Federal Fiscal Year 2017*, at 37 (July 1, 2016) (planning \$175,000 in funds for distracted driving media buy in April 2017); Minnesota Department of Public Safety, *Highway Safety Plan: Federal Fiscal Year 2016*, at 36 (July 1, 2015) (planning \$199,000 in funds for distracted driving media buy in April 2016).

¹⁵² *MAP-21*, U.S. Department of Transportation Federal Highway Administration, <https://www.fhwa.dot.gov/map21/> (last visited: Sept. 30, 2018).

¹⁵³ National Highway Traffic Safety Administration, *MAP-21 FY 2013 Grant Funding Table*, <https://www.nhtsa.gov/highway-safety-grants-program> (last visited: Sept. 30, 2018).

¹⁵⁴ National Highway Traffic Safety Administration, *MAP-21 FY 2014 Grant Funding Table*, *MAP-21 FY 2015 Grant Funding Table*, <https://www.nhtsa.gov/highway-safety-grants-program> (last visited: Sept. 30, 2018).

¹⁵⁵ Fixing America's Surface Transportation Act, Pub. L. No. 114-94 (2015).

¹⁵⁶ *Fixing America's Surface Transportation Act or "FAST Act,"* Federal Highway Administration, <https://www.fhwa.dot.gov/fastact/summary.cfm> (July 2016).

¹⁵⁷ 23 U.S.C. § 405(e)(1-3).

¹⁵⁸ *FY 2017 State Grant Determinations*, National Highway Traffic Safety Administration, <https://www.nhtsa.gov/es/highway-safety-grants-program/fy-2017-grant-funding-table> (last visited: Sept. 30, 2018).

¹⁵⁹ *FY 2018 State Grant Determinations*, National Highway Traffic Safety Administration, <https://www.nhtsa.gov/es/highway-safety-grants-program/fy-2018-grant-funding-table> (last visited: Sept. 30, 2018).

¹⁶⁰ H.F. 1180, 2018 Minn. Leg., 90th Sess. (May 14, 2018), *available at* https://www.revisor.mn.gov/bills/text.php?number=HF1180&session=ls90&version=list&session_number=0&session_year=2017.

¹⁶¹ *2018 Payables List*, *supra* note 37.

¹⁶² *Id.*

¹⁶³ *See* Alaska Stat. §§ 28.35.161(f)(1), 12.55.035(b)(7); Ark. Code § 27-51-1506(a); Colo. Rev. Stat. § 42-4-239(5.5)(a); Conn. Gen. Stat. § 14-296aa(h); Del. Code tit. 21, § 4176C(d); Haw. Rev. Stat. § 291C-137(f); Ind. Code §§ 9-21-8-49; 34-28-5-4(c); La. Stat. Ann. § 32:300.5(C)(1); Me. Stat. tit. 29-a, § 2119(3)(A); Mass. Gen. Laws ch. 90, § 13B(b); Mich. Comp. Laws § 257.602b(6)(a); Miss. Code Ann. § 63-33-1(3); Neb. Rev. Stat. § 60-6,179.01(5)(a); N.H. Rev. Stat. § 265:79-C(III); N.J. Rev. Stat. § 39:4-97.3(d)(1); N.Y. Vehicle and Traffic L. § 1225-d(6) (McKinney); N.C. Gen. Stat. 20-137.4A(c); N.D. Cent. Code § 39-06.1-06(2)(d); Ohio Rev. Code §§ 4511.204(D), 2929.28(A)(2)(a)(v); Okla. Stat. tit. 47, § 901d(B); Or. Rev. Stat. §§ 153.019(1)(b), 811.507(5)(a); R.I. Gen. Laws § 31-22-30(e); S.D. Codified Laws § 32-26-47; Tex. Transp. Code, § 545.4251(e); Utah Code § 41-6a-1716(4)(a); Vt. Stat. Ann. tit. 23, § 1099(c); Va. Code Ann. § 46.2-1078.1(C); W. Va. Code § 17C-14-15(e); Wis. Stat. § 346.95(2); D.C. Code § 50-1731.06(a); Washington State Patrol, *Distracted Driving*, <http://www.wsp.wa.gov/crime/report-something/distracted-driving> (last visited: Sept. 30, 2018).

¹⁶⁴ Ark. Code § 27-51-1506(a); Conn. Gen. Stat. § 14-296aa(h); Del. Code tit. 21, § 4176C(d); La. Stat. Ann. § 32:300.5(C)(1-2); Me. Stat. tit. 29-a, § 2119(3); Mass. Gen. Laws ch. 90, § 13B(b); Mich. Comp. Laws § 257.602b(6); Neb. Rev. Stat. § 60-6,179.01(5); Nev. Rev. Stat. § 484B.165(4); N.H. Rev. Stat. § 265:79-C(III); N.J. Rev. Stat. § 39:4-97.3(d); N.Y. Vehicle and Traffic L. § 1225-d(6) (McKinney); Or. Rev. Stat. §§ 153.019(1), 161.635(1)(b), 811.507(5); R.I. Gen. Laws § 31-22-30(e); Vt. Stat. Ann. tit. 23, § 1099(c); Va. Code Ann. § 46.2-1078.1(C); W. Va. Code § 17C-14-15(e); D.C. Code § 50-1731.06; Washington State Patrol, *Distracted Driving*, <http://www.wsp.wa.gov/crime/report-something/distracted-driving> (last visited: Sept. 26, 2018).

¹⁶⁵ Minn. Stat. § 169.475, subd. 2(b); *2018 Payables List*, *supra* note 37.

¹⁶⁶ N.J. Rev. Stat. § 39:4-97.3(d).

¹⁶⁷ R.I. Gen. Laws § 31-22-30(e).

¹⁶⁸ Me. Stat. tit. 29-a, § 2119(3)(B)(1-3).

¹⁶⁹ D.C. Code § 50-1731.06(a-2)

¹⁷⁰ See Minn. Stat. § 169.09, subd. 14a (failure to report a traffic accident); Minn. Stat. § 169.797, subd. 4(a) (failure to maintain automobile insurance); Minn. Stat. § 169.92, subd. 4 (failure to appear in court); Minn. Stat. § 171.09, subd 1(e) (violating a driver’s license restriction); Minn. Stat. § 171.171(1) (underage purchase of alcohol); Minn. Stat. § 171.175, subd. 1 (motor fuel theft); Minn. R. 7409.2100 (traffic violations that contribute to another’s death or injury); Minn. R. 7409.2200, subp. 1 (habitual traffic law violations).

¹⁷¹ See, e.g., *Bendorf v. Comm’r of Pub. Safety*, 727 N.W.2d 410 (Minn. 2007).

¹⁷² Minn. Stat. § 171.18, subd. 3; Minn. R. 7503.0500.

¹⁷³ Minn. Stat. §§ 169A.52, subds. 3-4, 169A.54, subd. 1, 171.177, subds. 4-5.

¹⁷⁴ *Crash Facts 2017*, *supra* note 22, at 40. See also National Highway Traffic Safety Administration, *Increasing Impaired-Driving Enforcement Visibility: Six Case Studies*, at 62-85 (describing the “*NightCAP*” HVE campaign in Anoka County).

¹⁷⁵ *Connecticut and New York*, *supra* note 105, at 42.

¹⁷⁶ 171.055, subd. 2(a).

¹⁷⁷ Minn. Stat. §§ 171.04, subd. 1(1)(i),

¹⁷⁸ Minn. Stat. 169.475; *2018 Payables List*, *supra* note 37.

¹⁷⁹ E.g., Minn. R. 7410.4200 (listing the required contents of the driver’s license examination, including an impaired driving component).

¹⁸⁰ 23 U.S.C. § 405(e)(1).

Sidebar Quotations by Section

Section I: Kevin Giles, *Distracted Drivers Are Hitting New Lows, Washington County Survey Finds*, Star Tribune, May 25, 2016.

Section II: David Lavaque, *Cross-Country Coaches Raising Awareness of Unaware Drivers*, Star Tribune, September 26, 2016.

Tim Harlow, *Minnesota Police Cite 972 Drivers In Texting Crackdown, Some More Than Once*, Star Tribune, April 29, 2016.

Tim Harlow, *In 3 Seconds, Reading A Text Turned Into A Driving Disaster*, Star Tribune, May 1, 2015.

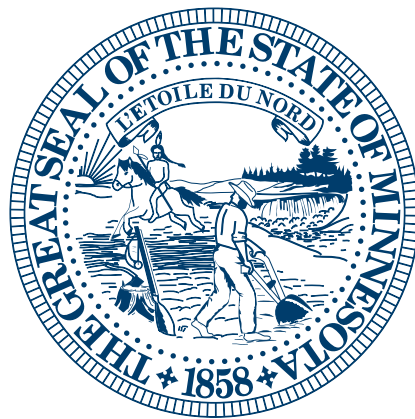
Section III: Zoe Peterson, *No Prison for Little Falls Teen Who Killed 2 While Texting Behind Wheel*, Star Tribune, March 4, 2016.

Editorial, *Distracted Driving is a Risk That Does Kill*, West Central Tribune (Willmar, Minn.), March 5, 2015.

Section IV: Alexis M. Farris, Note, *LOL? Texting While Driving Is No Laughing Matter: Proposing A Coordinated Response To Curb This Dangerous Activity*, 36 Wash. U. J.L. & Pol’y 223, 257 (2001).

Rochelle Olson, *Probation and Four Days In Jail for Texting Driver Who Killed New Prague School Bus Driver*, Star Tribune, Oct. 17, 2016.

Section V: Secretary Anthony Foxx, Remarks at the Harvard School of Public Health (April 28, 2014), *available at* <https://theforum.sph.harvard.edu/events/preventing-deadly-distracted-driving/> (last visited: Sept. 30, 2018).



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

445 Minnesota Street, Suite 1400, St. Paul, MN 55101
(651) 296-3353 • (800) 657-3787 • TTY: (651) 297-7206 • TTY: (800) 366-4812

www.ag.state.mn.us