

“TALK 2 U L8R”—WHY CELL PHONES AND DRIVING HAVE “G2G”: AN ANALYSIS OF THE DANGERS OF CELL PHONE USE WHILE DRIVING

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I. INTRODUCTION

In terms of overall impact on modern society, few technological advances can match the importance and versatility of the cellular phone. Cell phones, once considered unreliable and bulky, have become engrained in our society. With technological advances throughout the years, cell phones are no longer limited simply to conversations between individuals; wireless technology allows a cellular phone to act as a music player, mobile e-mail, an Internet search engine, a digital camera, and even a video recorder. Further, with the development of new downloads and applications, a cell phone's functions are nearly endless. With such mobility, convenience, and versatility, the opportunities for distractions from cellular phones when making a phone call, texting a friend, listening to music, or searching the Internet are countless. Unfortunately, these distractions become deadly when mixed with driving a motor vehicle. But when traveling around the world, across the country, or down the street, one thing is clear: People everywhere drive and use their cellular phones simultaneously, sometimes at tragic costs. But are cell phones, with their benefits of accessibility, speed, and mobility, worth the risks they pose while operating a motor vehicle? What response has the government taken, and should further legislative action be used to remedy this problem? This Note will attempt to answer these questions.

It is no surprise the popularity of cell phones in American society continues to grow as these phones become more functional and versatile. Prevalent in American society is the need to be connected—as fast as possible, regardless of the situation—through the use of cellular phones and other wireless technology. The popularity of cell phones and other mobile devices in American culture is witnessed any time a person shops at the mall, attends a sporting event, or drives a motor vehicle. In fact, from 1995 to 2008, the number of people who held a wireless provider subscription in the United States increased to 270 million, an eightfold increase.¹ During this same time period, there was also a fifty-eightfold increase in the number of minutes spent talking while using cell phones.² As the popularity of cell phones has exploded, so too has the popularity of their use while driving and operating motor vehicles.³ In a survey

1. Matt Richtel, *Drivers and Legislators Dismiss Cellphone Risks*, N.Y. TIMES, July 19, 2009, at A1, available at <http://www.nytimes.com/2009/07/19/technology/19distracted.html> [hereinafter *Legislators Dismiss*].

2. *Id.*

3. See *id.* (finding during any daylight hour in 2007, 1.8 million drivers were using a cell phone—eleven percent of drivers on the road at the time).

conducted by Nationwide Mutual Insurance Company in 2008, eighty-one percent of cell phone owners stated they had talked on a cell phone while driving.⁴ In this same survey, an amazing ninety-eight percent of the respondents considered themselves safe drivers, but—ironically—nearly half of drivers commented that they had or nearly had been in an accident involving a driver using a cell phone.⁵ Unfortunately, actual crashes caused by cell phone use are common and often fatal.⁶

According to the United States Department of Transportation's website on distracted driving, over a half-million people were injured and almost six thousand people were killed in accidents involving driver distractions in 2008.⁷ Further, the proportion of distracted drivers at the time of fatal crashes has increased from eight percent in 2004 to eleven percent in 2008.⁸ The United States Department of Transportation defines distracted driving as "any non-driving activity a person engages in that has the potential to distract him or her from the primary task of driving and increase the risk of crashing."⁹ The Department highlights three specific types of distractions that can occur while driving: visual ("taking your eyes off the road"), manual ("taking your hands off the wheel"), and cognitive ("taking your mind off what you're doing").¹⁰ Certain activities, such as using a cell phone or text messaging, can include one or all of these types of distractions.¹¹

Distracted driving can produce tragic results, and some of the individual stories paint a graphic picture of the impact cell phone use has on driving capacity and overall driver function. In Utah in 2006, two scientists were killed when Reggie Shaw, a nineteen-year-old college student, crossed the centerline and clipped a Saturn sedan, causing the car to spin across the highway and hit an oncoming pickup truck.¹² Police were

4. *See id.* (citing a survey of 1,506 people).

5. *See id.*

6. *See U.S. Dep't of Transp., Statistics and Facts About Distracted Driving, DISTRACTION.GOV,* <http://www.distraction.gov/stats-and-facts/> (last visited Nov. 5, 2010).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *See Matt Richtel, Utah Gets Tough with Texting Drivers, N.Y. TIMES, Aug. 29, 2009, at A1, available at* <http://www.nytimes.com/2009/08/29/technology/29distracted.html> [hereinafter *Utah Gets Tough*]. The crash instantly killed the two

unable to determine the initial cause of the crash, but after an investigation, the police concluded Shaw was text messaging immediately before the accident occurred.¹³ Due to the accident, the State of Utah amended its law, so anyone caught text messaging while driving can face a misdemeanor charge punishable by three months of jail time and up to a \$750 fine.¹⁴

In another tragic accident, Christopher Hill, a twenty-year-old student, was leaving a Goodwill store when he called a neighbor to discuss the sale of a dresser.¹⁵ While having the conversation on his cell phone, Hill ran a red light and hit a sport utility vehicle, killing the driver of the other vehicle.¹⁶ When Hill was asked what color the stoplight was, he stated he never saw the stoplight, as he was too distracted by his cell phone conversation.¹⁷

In an accident involving a commercial truck driver, International Paper paid a \$5.2 million settlement resulting from a 2006 accident in which the injured driver's arm had to be amputated.¹⁸ The driver for International Paper had been using a cell phone while driving a company vehicle.¹⁹ International Paper's company policy allowed the use of a cell phone as long as the use involved a hands-free headset.²⁰

The dangers of cell phone use while driving are not limited to the United States. In England, an accident that involved a vehicle stopped on the side of the road further highlights the distractions cellular phones can create while driving.²¹ Phillipa Curtis, a twenty-two-year-old woman who

scientists. *Id.*

13. *Id.* Investigators looked at phone records and found Shaw sent eleven text messages in the thirty minutes prior to the accident, and sent the last text message one minute before he called the police. *Id.*

14. *Id.*; see also UTAH CODE ANN. § 41-6a-1716 (LexisNexis Supp. 2010) (stating a person found text messaging while driving is guilty of a class C misdemeanor or a class B misdemeanor if serious bodily harm is caused by an accident in which use of a wireless device was the proximate cause of the accident).

15. *Legislators Dismiss*, *supra* note 1.

16. *Id.*

17. *Id.*

18. See Matt Richtel, *At 60 M.P.H., Office Work Is High Risk*, N.Y. TIMES, Oct. 1, 2009, at A1, available at <http://www.nytimes.com/2009/10/01/technology/01distracted.html> [hereinafter 60 M.P.H.].

19. *Id.*

20. *Id.*

21. See Elisabeth Rosenthal, *When Texting Kills, Britain Offers Path to Prison*, N.Y. TIMES, Nov. 2, 2009, at A1, available at <http://www.nytimes.com/2009/11>

was text messaging while driving, hit a pulled-over Fiat she claimed was not visible.²² The driver of the Fiat was killed instantly when Curtis struck the back of the car.²³ Curtis thought she could text message and drive at the same time because she did not need to look at her phone to text, due to its “Predictive Text” function.²⁴ The police—and Britain’s Crown Court—disagreed and sentenced Curtis to twenty-one months in prison.²⁵ An appeal for a longer sentence was denied, although the lord chief justice considered the punishment to be lenient.²⁶

Unfortunately, individual stories such as these are often gruesome and tragic and invoke strong emotional responses. These stories bring to life the need for action on this deadly and evolving problem. And not surprisingly, a large percentage of drivers recognize that distracted drivers—including those using cell phones while driving—represent a real and deadly threat.²⁷

In response to the rapid increase in cell phone use while driving—and the horrific stories that can be the result of such action—lawmakers have felt it necessary to take action. Since 2000, every state in the United States, as well as Puerto Rico and the District of Columbia, has at least considered legislation to address the problem of cellular phone use while driving.²⁸ In 2009 alone, forty-six states considered nearly two hundred different driver-distraction bills.²⁹ While not all states have adopted laws regarding cell phone use while driving, many have, with varying levels of application and coverage.³⁰ This Note will examine and discuss different legislation across

/02/technology/02texting.html (discussing accident on England’s A40 Motorway).

22. *Id.*

23. *Id.*

24. *Id.* “Predictive Text” assists the cell phone user in entering the intended word when texting if a “rough approximation” of the correct word is used. *Id.*

25. *Id.*

26. *Id.*

27. See Melissa A. Savage, Anne Teigen & Nicholas Farber, *Traffic Safety and Public Health: State Legislative Action 2009*, TRANSP. SERIES, Feb. 2010, at 8, available at <http://www.ncsl.org/documents/transportation/09trafficsafety.pdf> (citing a 2009 AAA survey that found eighty percent of respondents felt distracted driving was a serious threat).

28. *Id.*

29. *Id.*

30. See generally Governors Highway Safety Ass’n, *Cell Phone and Texting Laws*, GHSA, http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html (last visited Nov. 2, 2010) [hereinafter GHSA] (providing a table of state-by-state cell phone legislation updated monthly); Ins. Inst. for Highway Safety, *Cellphone Laws*, HIGHWAY

the United States concerning cell phone use while driving, the problems caused by cell phone use while driving, and possible solutions that can be implemented to address the problem.

In Part II, this Note will examine the relationship between cellular phone use and motor vehicle operation, including a look at the facts and myths concerning hand-held versus hands-free cell phone use.³¹ Specifically, this section will examine studies that have looked at the relationship between various forms of cell phone use and the impact it has on a driver's reaction time and overall driving performance. Part III will analyze the action taken by federal, state, and local governments through cell phone legislation and other programs. This analysis will look at the wide range of provisions and statutes individual states have implemented and attempt to categorize the differences into identifiable categories. This section will also discuss any constitutional challenges to implemented legislation regarding cell phone use while driving. Part III will also examine the new legislation passed in Iowa during the 2010 legislative session. Part IV will look at the various obstacles that limit or prohibit more extensive legislation concerning cell phone use while driving throughout the United States. These obstacles include the difficulty in enforcement of cell phone laws and the perceived ineffectiveness of laws already in place. Finally, Part V will examine several alternative solutions proposed by institutions and agencies around the United States. These alternatives attempt to highlight several solutions that can be implemented to help limit the impact of the dangers of cell phone use and driving. This section will also offer a recommendation for the State of Iowa in how the newly passed legislation regarding cell phone use while driving can be improved.

SAFETY RESEARCH & COMMUNICATIONS, <http://www.iihs.org/laws/cellphonelaws.aspx> (last visited Nov. 2, 2010) [hereinafter IIHS] (same).

31. Throughout this Note, there will be references to text messaging or texting, a "hand-held cell phone," a "hands-free cell phone," and cell phone use in general. This Note will provide precise definitions of each term when discussing varying types of cell phones. Generally, "cell phone use" refers to any use of cell phones, including both hands-free and hand-held cell phone use. The term "hands-free" indicates the use of a cell phone that does not require the use of a person's hands or physical manipulation in order to operate, typically involving a headset or other hands-free technology. The term "hand-held cell phone" indicates the use of a cell phone that requires the use of a person's hand or other physical manipulation in order to operate. "Texting" refers to the act of sending a short message service (SMS) message or other electronic message through the use of a cell phone. The use of "texting" and "text messaging" is synonymous, as is the use of "cell" and "cellular."

II. CELL PHONES AND DRIVING: AN ANALYSIS OF THE RISK

Over the past decade, a multitude of research has studied the risk of cell phone use while driving and its effect on driver performance.³² Overall, these studies have found cell phone use to be a factor in decreased driver performance, but they differ on the level and magnitude of distraction the use of cell phones create while driving.³³ In order to better analyze the risk of cellular phone use while driving, it is easiest to discuss text messaging separately from hand-held and hands-free cell phone use.

A. *The Dangers of Text Messaging*

Text messaging has become a national obsession over the past decade. In June of 2000, nearly 12.5 million SMS text messages were sent monthly.³⁴ By June 2010, nearly 173 billion text messages were sent monthly.³⁵ While there has been a massive increase in text messaging over the past decade, law enforcement has been slow to respond to accidents caused by increased texting and cell phone use while driving. One reason for this is the difficulty in collecting crash information caused by text messaging because many law enforcement agencies do not collect data concerning cell phone use and text messaging involved in crashes, nor have many long-term studies been conducted.³⁶

The research that has been conducted shows the dangers of cell phone use while driving and finds text messaging—or “texting”—is widely considered the most dangerous activity while using a cell phone and driving.³⁷ Text messaging involves the sending and receiving of short

32. See *Driven to Distraction: Technological Devices and Vehicle Safety: Joint Hearing Before the Subcomm. on Commerce, Trade, and Consumer Protection and the Subcomm. on Commc’ns, Tech., and the Internet of the H. Comm. on Energy and Commerce*, 111th Cong. 2–3 (2009) (statement of Anne T. McCartt, Ins. Inst. for Highway Safety), available at http://energycommerce.house.gov/Press_111/20091104/mccartt_testimony.pdf (highlighting over 120 studies concerning hand-held and hands-free cell phone use) [hereinafter *McCartt Testimony*].

33. *Id.*

34. See *Wireless Quick Facts*, CTIA: THE WIRELESS ASSOC., http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited Nov. 2, 2010) (providing mid-year wireless user statistics for the United States).

35. *See id.*

36. Matt Richtel, *In Study, Texting Lifts Crash Risk by Large Margin*, N.Y. TIMES, July 28, 2009, at A1, available at <http://www.nytimes.com/2009/07/28/technology/28texting.html> [hereinafter *Texting Lifts Crash Risk*].

37. See Press Release, Va. Tech Transp. Inst., New Data from VTTI Provides Insight into Cell Phone Use and Driving Distraction (July 27, 2009), available at

message service (SMS) messages, but it can also be defined to include other actions, such as sending electronic mail, instant messages, or reading and responding to a World Wide Web page.³⁸ For example, text messaging can be defined as “using an electronic wireless communications device to compose, send, receive, or read a written message or image using a text-based communication system, including communications referred to as a text message, instant message, or electronic mail.”³⁹ In states that allow the use of hand-held cell phones while driving, the definition of text messaging can exclude dialing numbers into the cell phone to place a call.⁴⁰ The determination of what is considered texting is defined by state law, which makes comparison data of crashes caused by cell phone use—and specifically text messaging—difficult to compile.

The Virginia Tech Transportation Institute conducted a naturalistic driving study concerning driver habits while using a cell phone.⁴¹ This research study was conducted by placing cameras and measuring instruments in participating vehicles and observing the driver’s actions while using a cell phone.⁴² The study included both light vehicle drivers and truck drivers, and was financed by the Federal Motor Carrier Safety Administration.⁴³ The study, which observed drivers for more than six million miles of driving, concluded that “tasks that draw the driver’s eyes away from the forward roadway were those with the highest risk.”⁴⁴ The study concluded that text messaging while driving created a 23.2 times higher risk of a crash or near-crash event as compared to a nondistracted driver.⁴⁵ The study also found text messaging created the longest duration of time when a driver’s eyes were off the road—4.6 seconds over a six-

http://www.vtti.vt.edu/PDF/7-22-09-VTTI-Press_Release_Cell_phones_and_Driver_Distraction.pdf [hereinafter VTTI].

38. See, e.g., MINN. STAT. ANN. § 169.475 (West Supp. 2010).

39. D.C. CODE § 50-1731.02(4A) (LexisNexis Supp. 2009).

40. See, e.g., N.H. REV. STAT. ANN. § 265:105(a)(I) (LexisNexis Supp. 2009) (“A person does not write a text message when he or she reads, selects, or enters a phone number or name in a wireless communications device for the purpose of making a phone call.”); accord. WASH. REV. CODE ANN. § 46.61.668(1) (West Supp. 2010).

41. VTTI, *supra* note 37. Naturalistic-driving students observe drivers in actual driving situations, as opposed to simulator studies where a driver uses a simulator in a lab. *Id.*

42. *Id.*

43. See *Texting Lifts Crash Risk*, *supra* note 36 (stating the Federal Motor Carrier Safety Administration’s purpose is “improving safety in trucks and buses”).

44. VTTI, *supra* note 37.

45. *Id.*

second interval.⁴⁶ Shockingly, this is equivalent to an individual driving the length of a football field without having his eyes on the road—all while traveling fifty-five miles per hour.⁴⁷ Overall, text messaging was found to be far more dangerous than other actions involving a cell phone while driving, and according to Rich Hanowski, who oversaw the study, “[T]exting is in its own universe of risk.”⁴⁸ The main finding of this study was that keeping the driver’s eyes on the road was the key to improving safety.⁴⁹ Based off research from the study, the Virginia Tech Transportation Institute recommended texting “be banned in moving vehicles for all drivers.”⁵⁰ Other studies cited by the Insurance Institute of Highway Safety found text messaging led to decreases in overall driving performance for young drivers, especially in the specific areas of changing lanes and driver reaction time.⁵¹

The dangers of text messaging have not gone unnoticed by the greater public. According to polling conducted by the New York Times, ninety-seven percent of individuals polled supported a ban on text messaging while driving.⁵² Nearly half the respondents felt punishment for texting and driving should be as strict as that imposed for drunk driving.⁵³ These opinions are not limited to the general public. Various agencies and groups support an outright ban on text messaging while driving, including CTIA, the International Association for the Wireless Telecommunications Industry, which has stated, “[T]ext-messaging while driving is incompatible with safe driving, and we support state and local statutes that ban this activity while driving.”⁵⁴ The National Safety Council has also called for a ban on text messaging while driving.⁵⁵ Even Verizon Wireless, one of the

46. *Id.*

47. *Id.*

48. *See Texting Lifts Crash Risk, supra* note 36 (quoting Rich Hanowski, Virginia Tech Transportation Institute).

49. VTTI, *supra* note 37.

50. *Id.*

51. *See McCart Testimony, supra* note 32, at 4 (citations omitted).

52. Marjorie Connelly, *Many in U.S. Want Texting at the Wheel to Be Illegal*, N.Y. TIMES, Nov. 2, 2009, at A8, available at <http://www.nytimes.com/2009/11/02/technology/02textingside.html>.

53. *Id.*

54. *Safe Driving*, CTIA: THE WIRELESS ASSOC., http://www.ctia.org/advocacy/policy_topics/topic.cfm/TID/17 (last visited Nov. 2, 2010).

55. *See* Steven Reinberg, *Nationwide Cell Phone Ban for Drivers Urged*, WASH. POST, Jan. 12, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/11/AR2009011101959.html>. Further, the Council favors a

largest providers of wireless services in the world, has called for a ban on text messaging while driving through the use of government legislation.⁵⁶ Verizon has teamed up with the National Safety Council to promote driver safety through their “Don’t Text and Drive” Campaign, and Verizon Wireless’s Vice President Steven E. Zipperstein “support[s] federal legislation to ban texting and e-mailing while driving.”⁵⁷ The research shows text messaging is extremely dangerous while driving. Various agencies, including those in the wireless industry, acknowledge the danger text messaging creates and the need for legislation banning its use while driving.

B. Hand-Held and Hands-Free Cell Phone Use

While there appears to be a consensus on the dangers of text messaging while driving, a more contentious debate exists on the dangers of using hand-held and hands-free cell phones while doing the same. A significant amount of research has been conducted to examine the effect of cellular phone use on the cognitive functions of the driver’s brain and to determine the effect cell phone use has on driving performance.

According to a study conducted at the University of Utah by Professor David Strayer, drivers who talk on a cell phone—hands-free or hand-held—are just as dangerous behind the wheel as drunk drivers.⁵⁸ According to the study, drivers displayed significant variations in reaction time and traveling distances when driving.⁵⁹ The study acknowledged there are several distractions for drivers—listening to the radio, consuming food, applying makeup—but new electronic devices may be more dangerous as “these new multitasking activities may be substantially more distracting than the old standards because they are more cognitively engaging and because they are performed over longer periods of time.”⁶⁰

complete ban on all cell phone use while driving. *Id.*

56. *Please Don’t Text and Drive*, VERIZON WIRELESS, <http://aboutus.vzw.com/wirelessissues/driving.html> (last visited Nov. 2, 2010).

57. *Id.*

58. David L. Strayer, Frank A. Drews & Dennis J. Crouch, *A Comparison of the Cell Phone Driver and the Drunk Driver*, 48 HUM. FACTORS 381, 388 (2006).

59. *Id.* at 386 (finding drivers who used cell phones were nine percent slower in reacting to braking vehicles, varied twenty-four percent in their following distances, and were nineteen percent slower when returning to normal speed).

60. *Id.* at 381; see also Robert W. Hahn & Patrick M. Dudley, *The Disconnect Between Law and Policy Analysis: A Case Study of Drivers and Cell Phones*, 55 ADMIN. L. REV. 127, 156–57 (2003) (discussing the format of other Strayer experiments and the advantages of a large sample size, and comparing hand-held and hands-free

Other studies have also shown impairment in simulations that involved both hand-held and hands-free cell phones.⁶¹ The Insurance Institute for Highway Safety cited two separate studies in a 2009 joint hearing before the United States House of Representatives Subcommittee on Commerce, Trade, and Consumer Protection and the United States House of Representatives Subcommittee on Communications, Technology, and the Internet. This research showed a fourfold increase in the risk of damage to property from crashes, as well as a fourfold increase in the risk of crashes that resulted in serious injuries when a driver was talking on a cell phone.⁶² These two studies controlled outside factors that could influence the likelihood of crashing due to cell phone use and found the increased risk was similar for both hands-free and hand-held cell phones.⁶³ Another study cited by the Institute found text messaging resulted in a twenty-threefold increase in crashing or the possibility of crashing.⁶⁴ Dialing a hand-held cell phone resulted in a sixfold increase in risk.⁶⁵

A 2003 internal memorandum by the National Highway Traffic Safety Administration, which was not made public until 2009, found that the “use of cellphones while driving has contributed to an increasing number of crashes, injuries, and fatalities.”⁶⁶ The memorandum cited several studies from researchers that found a reduction in reaction times, wider variance in speed, and overall decreased driving performance resulting from cell phone use while driving.⁶⁷ The memorandum recommended wireless devices not

cell phones).

61. *McCart Testimony*, *supra* note 32, at 2–3.

62. *Id.* at 2 (citations omitted); see also Jessica Croze, Note, *How Hands-On Will Regulation of Hands-Free Be? An Analysis of SB 1613 and the Effectiveness of Its Proposed Regulation*, 31 HASTINGS COMM. & ENT. L.J. 463, 471–72 (2009) (noting cell phone discussions often last longer than other activities while driving and require the use of multiple cognitive functions at one time); Dusty Horwitt, Note, *Driving While Distracted: How Should Legislators Regulate Cell Phone Use Behind the Wheel?*, 28 J. LEGIS. 185, 191–97 (2002) (citing several studies about cell phone use and driving).

63. *McCart Testimony*, *supra* note 32, at 2. The studies used cell phone providers’ billing records to determine whether crashes involved any cell phone use. *Id.*

64. *Id.* at 4 (citing REBECCA L. OLSON ET AL., U.S. DEP’T OF TRANSP., DRIVER DISTRACTION IN COMMERCIAL VEHICLE OPERATIONS 146–47, tbl. 77 (2009)).

65. *Id.*

66. NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP’T OF TRANSP., STATUS SUMMARY: USING WIRELESS COMMUNICATION DEVICES WHILE DRIVING 3–4 (2003) (on file with the author) [hereinafter STATUS SUMMARY].

67. *Id.* at 37.

be used when driving unless for an emergency.⁶⁸

Many studies concerning cell phone use while driving have noted that the primary problem may not be the type of cell phone used, but rather the distraction that occurs in the cognitive and mental functions of the brain while simultaneously driving a vehicle and talking on a cell phone.⁶⁹ According to Steven Yantis, a psychological and brain sciences professor at Johns Hopkins University, the problem may be caused by directing one's attention to sound, at the cost of the brain's capacity to interpret and understand visual images.⁷⁰ According to Yantis, when people interact in conversation on a cell phone, they suffer a decreased ability to recognize and respond to things they are looking at while driving.⁷¹ Yantis states:

[W]hen people talk on the phone, they are doing more than simply listening. The words conjure images in the mind's eye, including images of the person they are talking to. That typically doesn't interfere with driving. The problem starts when a car swerves unexpectedly or a pedestrian steps into traffic . . . and the mind lacks the processing power to react in time.⁷²

Several studies have looked at the impact a cell phone conversation has on an individual when they are attempting to drive a motor vehicle. In a study that used functional magnetic resonance imaging to compare the impact of spoken language comprehension on brain activity associated with simulated driving, researchers found there to be a "capacity limit" on the amount of attention that can be distributed across the two differing tasks.⁷³ The researchers found listening to sentences reduced driving performance

68. Matt Richtel, *U.S. Withheld Data on Risks of Distracted Driving*, N.Y. TIMES, July 21, 2009, at A1, available at <http://www.nytimes.com/2009/07/21/technology/21distracted.html> [hereinafter *U.S. Withheld Data*].

69. See Matthew C. Kalin, Note, *The 411 on Cellular Phone Use: An Analysis of the Legislative Attempts to Regulate Cellular Phone Use by Drivers*, 39 SUFFOLK U. L. REV. 233, 253–55 (2005) (discussing three studies that found the problem was driver distraction and not the type of phone used (citations omitted)).

70. Gilbert Cruz & Kristi Oloffson, *Distracted Driving: Should Talking, Texting Be Banned?*, TIME, Aug. 24, 2009, available at <http://www.time.com/time/magazine/article/0,9171,1916291-1,00.html>.

71. *Id.*; see also *Legislators Dismiss*, *supra* note 1 (stating the mind has difficulty processing multiple inputs of information, causing the brain to lack the "processing power" to be able to react in time to events that occur while driving).

72. *Legislators Dismiss*, *supra* note 1.

73. Marcel Adam Just, Timothy A. Keller & Jacquelyn Cynkar, *A Decrease in Brain Activation Associated with Driving When Listening to Someone Speak*, 1205 BRAIN RES. 70, 76 (2008).

and concluded “it may be dangerous to mindlessly combine the special human capability of processing spoken language with a more recent skill of controlling a large powerful vehicle that is moving rapidly among other objects.”⁷⁴ If conversation degrades driving performance why is any conversation in a vehicle allowed? Why not ban all conversation in motor vehicles, as some have suggested?⁷⁵ The answer is conversations with a person seated in the motor vehicle are not comparable to conversations with a person on a cellular phone. Some studies suggest passengers in a motor vehicle—as opposed to those on a cell phone—are much more adept at responding to driving conditions during a conversation with the driver.⁷⁶ Also, some assert talking on a cell phone has a “special social demand” differing from an in-person conversation, such that not responding to a cell phone conversation could be considered rude behavior.⁷⁷ In contrast, passengers in the motor vehicle are more likely to be aware of the demands of driving and suppress their conversation when the situation would deem it necessary.⁷⁸ Overall, research shows conversations on a cell phone—as opposed to all conversations—can diminish overall driving performance and comparing these conversations to those conducted within a motor vehicle is not necessarily accurate.

Another argument often made is that, although cell phone use while driving may be dangerous, other sources of distraction are just as, if not more, dangerous.⁷⁹ This assertion, however, is not necessarily true. The

74. *Id.*; see also Melina A. Kunar et al., *Telephone Conversation Impairs Sustained Visual Attention via a Central Bottleneck*, 15 PSYCHONOMIC BULL. & REV. 1135, 1139 (2008) (finding “telephone conversations impair sustained visual attention” while driving).

75. See Andrew F. Amendola, Note, *Can You Hear Me Now? The Myths Surrounding Cell Phone Use While Driving and Connecticut’s Failed Attempt at a Remedy*, 41 CONN. L. REV. 339, 358 (2008) (asking why all conversations in cars are not prohibited and discussing assumptions upon which researchers rely).

76. See Frank A. Drews, Monisha Pasupathi & David L. Strayer, *Passenger and Cell Phone Conversations in Simulated Driving*, 14 J. EXPERIMENTAL PSYCHOL.: APPLIED 392, 398 (2008) (stating “passengers take an active role in supporting the driver” by discussing surrounding traffic); Kunar et al., *supra* note 74, at 1139 (stating conversations with passengers are less dangerous because passengers can adapt their conversations according to surrounding traffic).

77. Just, Keller & Cynkar, *supra* note 73, at 77.

78. *Id.* (citing David Crundall et al., *Regulating Conversation During Driving: A Problem for Mobile Telephones?*, 8 TRANSP. RES. 197, 207 (2005)).

79. See Amendola, *supra* note 75, at 351–53 (noting studies done on the dangers of eating while driving and driver fatigue); see also Horwitt, *supra* note 62, at 202 (commenting on distractions such as eating, shaving, or applying makeup).

ability to decide when, where, and how long these distractions occur is important to understand—drivers can choose when to eat, shave, drink, or apply makeup while they are driving, and these activities often last for only a few brief moments.⁸⁰ Cell phone conversations, on the other hand, can change dramatically and last several minutes.⁸¹ Also, according to research, “the processing of spoken language has a special status by virtue of its automaticity, such that one cannot willfully stop one’s processing of a spoken utterance whereas one can willfully stop tuning a radio.”⁸² Using a cellular phone is different from other types of distractions, where a driver can willfully stop the action of eating, drinking, or tuning a radio dial.⁸³ Talking on a cell phone simply involves more biological and neurological distractions than other activities in which individuals may engage while driving.⁸⁴

So, with all the possible distractions of using a cell phone while driving, why do drivers not hang up the phone? Part of the problem may be that drivers become bored with tasks like driving and look to cell phones and other wireless devices to stimulate their brain.⁸⁵ According to Professor John Ratey of Harvard University, the brain of today’s society “is being rewired to crave stimulation,” and the use of a cell phone helps to satisfy this craving.⁸⁶ According to Ratey, the brain can become bored while driving and thus looks for stimulation from a variety of sources, including a cell phone conversation.⁸⁷

Overall, studies conducted over the past decade show the use of cell phones while driving creates a distraction that leads to reduced reaction speed and overall decreased driving performance.⁸⁸ However, state

80. Horwitt, *supra* note 62, at 202.

81. *Id.*

82. Just, Keller & Cynkar, *supra* note 73, at 77 (citing Sharlene Newman, Timothy A. Keller & Marcel Adam Just, *Volitional Control of Attention and Brain Activation in Dual-Task Performance*, 28 HUM. BRAIN MAPPING 109, 114–16 (2007)).

83. *Id.*; see also Horwitt, *supra* note 62, at 202–03 (noting other distractions do not require the same level of biological distractions cell phone conversations require).

84. See Horwitt, *supra* note 62, at 202 (“[T]alking on a cell phone is the only activity that combines visual, auditory, biomechanical, and cognitive distractions.” (citing Telephone Interview with Frances Bents, Vice President, Dynamic Sci. (Dec. 18, 2000))).

85. See *Legislators Dismiss*, *supra* note 1.

86. *Id.*

87. *Id.*

88. See Jesse A. Cripps, Jr., Comment, *Dialing While Driving: The Battle over Cell Phone Use on America’s Roadways*, 37 GONZ. L. REV. 89, 93–98 (2002); Croze,

governments have been apprehensive to propose complete bans on cell phone use, and they have been even more apprehensive to ban hands-free cell phone use.⁸⁹ Why have so many state governments been slow to create a more comprehensive ban on all cell phone use while driving? One answer may be that many individuals feel the increase in hands-free technology has made using a cell phone safer while driving, as opposed to the hand-held cell phones that existed prior to hands-free technology.⁹⁰

C. The Hands-Free Myth

Perhaps the greatest area of disagreement concerning cell-phone-while-driving legislation deals with the distinction between hand-held and hands-free cell phones. As evidenced by state laws prohibiting cell phone use, there is still a general belief that hands-free devices are safer than hand-held devices.⁹¹ This legislative divide along the hand-held–hands-free line appears to match public opinion concerning the safety of the two devices. In a *New York Times* and *CBS* Poll, ninety-seven percent of Americans supported banning texting while driving and eighty percent supported a ban on the use of hand-held cell phones.⁹² However, when asked about the use of hands-free devices, two-thirds of the respondents felt it was safer than using hand-held cell phones, and almost ninety percent felt the use of such hands-free devices should be legal.⁹³ Perhaps

supra note 62, at 465–66; Hahn & Dudley, *supra* note 60, at 139–45; Horwitt, *supra* note 62, at 187–97. These writings all acknowledge and discuss statistics and research that show cell phone use while driving is dangerous but differ on recommendations and steps going forward in addressing the problem.

89. See IIHS, *supra* note 30 (showing only nine states and the District of Columbia have a hand-held cell phone ban for all drivers, and noting for states that do have any form of a total cell phone ban—hand-held or hands-free—the ban is for less experienced or younger drivers).

90. See Cruz & Oloffson, *supra* note 70 (stating the common assumption is hands-free phones have reduced more dangerous aspects of driving while using a cell phone).

91. See IIHS, *supra* note 30 (highlighting states that have a total ban on cell phone use—which includes hands-free devices—only place the ban on younger drivers or drivers with intermediate or learner’s permit licenses, and noting a large number of states allow hands-free technology).

92. Connelly, *supra* note 52; *see also* NATIONWIDE MUT. INS. CO., FACT SHEET: NATIONWIDE INSURANCE SURVEY ON TEXTING WHILE DRIVING BAN, available at http://www.nationwide.com/pdf/Texting_ban_survey_fact_sheet.pdf (finding eighty percent of people questioned favored a ban on text messaging and two-thirds of respondents favored laws restricting calls while driving).

93. Connelly, *supra* note 52.

strengthening this belief are research and statements that hold the dangers of hands-free devices are limited compared to hand-held devices.⁹⁴ This belief resulted in nearly one million purchases of hands-free cell phone devices in 2008, with the number expected to increase in the coming years.⁹⁵

There are, however, many studies and compelling amounts of research that find no discernible safety difference between the use of hands-free and hand-held cell phone devices.⁹⁶ Studies used by the National Highway Traffic Safety Administration found it was the *conversation* that took place while using a cell phone—not the physical manipulation of the phone—which resulted in decreased driver performance.⁹⁷ The studies also noted the decreases in driver performance were equivalent for all cell phone users, regardless of whether a hands-free or hand-held device was used.⁹⁸ The overall conclusion of the 2003 National Highway Traffic Safety Administration internal memorandum stated:

The experimental data indicates that, with the exception of the consequences of manipulating a wireless communication device, there are negligible differences in safety relevant behavior and performance between using hand-held and hands-free communications devices while driving from the standpoint of cognitive distraction. Specifically, the experimental data *reveal observable degradations in driver behavior and performance and changes in risk-taking and decision-making behaviors when using both hand-held and hands-free mobile phones*, and the nature of those degradations and changes are symptomatic of potential safety-related problems.⁹⁹

Further proving this point are statements given in front of

94. See Sam Grobart, *High-Tech Devices Help Drivers Put Down Phone*, N.Y. TIMES, Nov. 22, 2009, at A1, available at <http://www.nytimes.com/2009/11/22/technology/22distracted.html> (citing Virginia Tech Transportation Institute research finding hands-free conversations while driving represented “only a minor distraction to drivers”); Hahn & Dudley, *supra* note 60, at 164 (citing a Japanese study that found a ban on hand-held cell phones resulted in a fifty percent decrease in cell-related traffic accidents the year following the implementation of the ban).

95. Grobart, *supra* note 94.

96. E.g., Hahn & Dudley, *supra* note 60, at 162–67 (concluding “hands-free devices are barely, if at all, safer than hand-held ones”).

97. STATUS SUMMARY, *supra* note 66, at 3.

98. *Id.*

99. *Id.* (emphasis added).

congressional subcommittees: “Given that crash risk increases substantially when drivers talk on either kind of phone, banning hand-held phone use will not eliminate cellphone-related crashes for those who merely switch to hands-free.”¹⁰⁰ As seen, further research has confirmed the National Highway Safety Traffic Administration’s findings, which note the use of hands-free devices does little to improve driver function and performance behind the wheel.¹⁰¹

Perhaps the greatest indicator of the “hands-free myth” is the action taken by some insurance companies and other corporations. Nationwide Insurance recently adopted a policy that customers who sign up to use a call-blocking service while driving a car receive reductions in their annual premiums.¹⁰² Other insurance companies are examining the benefits of call-blocking systems in cars—while, in contrast, no insurance company currently offers any discount for the use of a hands-free system in motor vehicles.¹⁰³ If insurance companies believe hands-free devices are a safe alternative to hand-held cellular phones, they should be willing to offer premium discounts for hands-free devices as well. It appears insurance companies believe cell phone blocking systems—as opposed to hands-free systems—are the best solution to the cell-phone-while-driving problem.¹⁰⁴ Other corporations are taking notice of the effects of cell phone conversations on driver function when implementing rules for their employees.¹⁰⁵ Companies found that implementing a ban on cell phone use while driving does little to affect overall productivity.¹⁰⁶

100. *McCarr Testimony, supra* note 32, at 5.

101. See Press Release, Univ. of Utah, Drivers on Cell Phones Are as Bad as Drunks: Utah Psychologists Warn Against Cell Phone Use While Driving (June 29, 2006), *available at* <http://unews.utah.edu/p/?r=062206-1> (finding conversation itself, not the type of device used, creates impaired driving function because of “inattention blindness,” where drivers look at the road but do not see changing road conditions due to the phone conversation occurring); *see also* Cruz & Olofsson, *supra* note 70 (citing studies by Strayer showing hands-free devices are not equivalent to talking to someone else in the car because an additional passenger can act “as another set of eyes for the driver” and can acknowledge driving conditions, which should result in reduced conversation with the driver).

102. Grobart, *supra* note 94.

103. *Id.*

104. *See id.* (quoting Bill Windsor, Nationwide Insurance’s safety officer: “We’re not convinced . . . that hands-free is safer”).

105. *See 60 M.P.H., supra* note 18 (citing a finding by the National Safety Council that 469 member companies had banned employees from doing work on cell phones when they are driving vehicles).

106. *Id.* (looking at a ban implemented by AMEC—an engineering and project

Although there is some debate over the safety differences between hands-free and hand-held cell phones, the mounting evidence—as well as current movement by insurance companies and some corporations as a whole—suggests the opinion towards the supposed safety of hands-free devices is changing.

III. VARIOUS RESPONSES TO CELL PHONE USE WHILE DRIVING

A. *Constitutional Attacks on Cell Phone Legislation*

Cell phone legislation has not been immune from constitutional challenges after becoming law. One jurisdiction that has seen several constitutional challenges to cell phone legislation is the New York state court system. In 2007, the Supreme Court of New York County held that cell phones should not be considered “fundamental” instrumentalities” and concluded the United States Supreme Court would not be likely to find that banning the use of a cell phone violated a fundamental right.¹⁰⁷ The court concluded that a cell phone ban implemented by a school did not violate a constitutional right and met the rational basis requirement.¹⁰⁸

The illustrative case challenging the constitutionality of cell-phone-use-while-driving legislation was also from the state of New York.¹⁰⁹ In *People v. Neville*, Victoria Neville was pulled over after a police officer observed her using her hand-held cell phone device to make a phone call while driving.¹¹⁰ She was charged with violating a New York statute that prohibited hand-held cell phone use while driving.¹¹¹ Neville challenged her violation under three separate constitutional issues—vagueness, violation of the right of privacy, and violation of due process and equal protection.¹¹² In addressing the vagueness issue, the court found that the statute specifically distinguished between prohibited hand-held cell phones

management company—in which ninety-five percent of employees said the ban had no effect on their productivity and a ban enacted by Exxon Mobil for its employees that found any marginal benefit that could be gained from the use of cell phones was insignificant compared to the risk posed).

107. *Price v. N.Y.C. Bd. of Educ.*, 837 N.Y.S.2d 507, 529 (Sup. Ct. 2007).

108. *Id.* at 519, 530.

109. *People v. Neville*, 737 N.Y.S.2d 251 (J. Ct. 2002); *see also* Kalin, *supra* note 69, at 240–42 (discussing the *Neville* case).

110. *Neville*, 737 N.Y.S.2d at 253.

111. *Id.*; *see also* N.Y. VEH. & TRAF. LAW § 1225–c(4) (McKinney Supp. 2010) (stating violation of this statute would result in a fine of up to one hundred dollars).

112. *Neville*, 737 N.Y.S.2d at 254–55.

and permitted hands-free cell phones.¹¹³ The court also noted the law called for a limitation on police enforcement in that police could only offer verbal warnings for the month prior to the law going into effect.¹¹⁴ The statute was found neither vague nor overbroad, and the court held the law was a proper exercise of New York's police powers.¹¹⁵

The court next addressed the individual right-to-privacy challenge that Neville claimed the state statute violated.¹¹⁶ The constitutionality of the statute was compared to New York's early seat belt laws, which were held valid under the state constitution.¹¹⁷ The court held that the statute was within the state's valid police powers "in protecting the health, safety and welfare of its citizens."¹¹⁸ The court found the statute only limited the use of hand-held cell phones, and such an inconvenience was no worse than the inconvenience of seat belts, motorcycle helmets, and prohibition of smoking in public places.¹¹⁹ The legislation was found reasonable because it constituted a valid use of the police powers granted to the legislature.¹²⁰

Finally, the court addressed the equal protection claim by Neville.¹²¹ The basis of the claim concerned the exceptions of the statute that allowed phone calls on hand-held cell phones in cases of emergency and by emergency personnel.¹²² In stating the cell phone legislation was "not based on race, sex, age or national origins," the court did not require the use of strict scrutiny in examining the statute under the Equal Protection Clause.¹²³ The court found the legislature's exemptions for emergency

113. *Id.*; see also N.Y. VEH. & TRAF. LAW § 1225-c(1)(d)–(e) (explaining a hand-held mobile telephone is defined as "a mobile telephone with which a user engages in a call using at least one hand" and a hands-free mobile telephone is defined as "a mobile telephone that has an internal feature or function . . . by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a function of such telephone").

114. *Neville*, 737 N.Y.S.2d at 254.

115. *Id.*

116. *Id.*

117. *Id.* at 255 (citing *Wells v. State*, 495 N.Y.S.2d 591 (Sup. Ct. 1985)).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.* at 255–56.

122. *Id.*; see also N.Y. VEH. & TRAF. LAW § 1225-c(3)(a)–(b) (McKinney Supp. 2010) (stating the hand-held restriction does not apply when contacting emergency personnel, or to police officers, fire department members, or other authorized emergency personnel).

123. *Neville*, 737 N.Y.S.2d at 256 (citing *Wells v. State*, 495 N.Y.S.2d 591 (Sup.

vehicles and situations logical and reasonable actions by the state and thus permitted the statute to survive the equal protection attack brought by Neville.¹²⁴ The *Neville* court held that New York's hand-held cell phone ban was constitutional under both the New York and United States Constitutions.¹²⁵

Constitutional challenges to cell phone ordinances in other jurisdictions have failed as well.¹²⁶ In *Schor v. City of Chicago*, the Seventh Circuit Court of Appeals affirmed an Illinois federal district court's decision to dismiss a challenge to Chicago's municipal hand-held cell phone ban.¹²⁷ The Seventh Circuit reviewed the dismissal of the Fourth Amendment and equal protection claims and found the claims to be without merit.¹²⁸ The plaintiffs also argued they should have been able to amend their complaints to include claims of violations of a fundamental right to travel and vagueness.¹²⁹ The court acknowledged that while “[t]he constitutional right to travel has been understood as one of the rights implicit in the Due Process Clauses of the Fifth and Fourteenth Amendments,” the Chicago ordinance did not infringe on this right because it did not ban anyone's right to travel.¹³⁰ The plaintiffs argued the ordinance infringed on their constitutional right to travel because it required them to be aware of local ordinances that might be inconsistent with other regulations in the state, and signs telling motorists to dial “*999” caused motorists to believe they could use cell phones while driving in Chicago.¹³¹ The court was quick to dismiss these claims.¹³² The plaintiffs also stated the ordinance should be void for vagueness because there were too many possible interpretations of the terms “use” and “hands-free” within the ordinance.¹³³ The court dismissed this claim as well, believing “it

Ct. 1985)).

124. *Id.*

125. *Id.*

126. See *Schor v. City of Chi.*, 576 F.3d 775, 777 (7th Cir. 2009), *aff'g* *Schor v. Daley*, 563 F. Supp. 2d 893 (N.D. Ill. 2008) (finding plaintiffs had not stated a claim for which relief could be granted under Federal Rule of Civil Procedure 12(b)(6) and the case had “no legs whatever”).

127. *Id.*

128. *Id.* at 778–79.

129. *Id.* at 780.

130. *Id.*

131. *Id.*

132. See *id.* (“What [these claims have] to do with anyone's right to travel escapes us.”).

133. *Id.* at 780–81.

is impossible to take seriously the argument that Chicago's Ordinance is so vague that no ordinary person could understand it; the plaintiffs themselves understood that they were engaged in conduct proscribed by the Ordinance.”¹³⁴

Even with the increased number of states that have passed cell phone limitations or bans, there have been very few attacks on these statutes through the judicial system. It seems as though future challengers to state statutes are taking note of *Neville* and avoiding constitutional challenges that would most likely result in judicial confirmation of the statute's constitutionality. While *Neville* and *Schor* only looked at a cell phone ban of hand-held cell phones,¹³⁵ it has yet to be determined if bans that go further in their restrictions will be challenged through the judicial process in the future.

B. Legislative Response to Cell Phone Use While Driving

The current legislation across the United States concerning cell phone use while driving varies greatly from state to state.¹³⁶ Prior to discussing the action taken by the State of Iowa in addressing this problem, an overview of the national landscape of states' laws concerning cell phone use while driving is prudent. State laws vary greatly, from bans on text messaging or hand-held cell phone use for all drivers, to complete cell phone bans for younger or specific drivers or laws that preempt local restrictions on cell phone use.¹³⁷ Currently, however, there are no states in which both hand-held and hands-free cell phones are banned while driving for all drivers.¹³⁸ There is also a difference in whether the state law is considered one of primary or secondary enforcement.¹³⁹ Under primary enforcement laws, an officer does not need a reason in addition to illegal cell phone use while driving to pull the vehicle over and issue a citation.¹⁴⁰ If the law is one of secondary enforcement, an officer needs a separate reason to stop the driver and an additional citation for illegal cell phone use may be issued.¹⁴¹

134. *Id.*

135. *See id.* at 777; *People v. Neville*, 737 N.Y.S.2d 251, 254 (J. Ct. 2002).

136. *See GHSA, supra* note 30 (providing a summary of current state cell phone statutes).

137. *See id.* (providing a summary and comparison chart of current state laws).

138. *See id.*

139. *See IIHS, supra* note 30 (identifying the differences between primary and secondary enforcement laws among the states).

140. *Id.*

141. *Id.*

For example, a secondary enforcement for a hand-held or texting ban may be worded in this way:

No citation for a violation of this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.¹⁴²

Secondary enforcement laws dilute cell-phone-while-driving legislation's enforceability and limit the action officers can take when they see a driver using a cell phone illegally, as the driver must be committing another violation before an officer may stop the driver.

1. *State Preemption Laws*

Several states have taken preemptive action and restricted cell phone legislation solely to the state government. For example, the states of Florida,¹⁴³ Kentucky,¹⁴⁴ Louisiana,¹⁴⁵ Mississippi,¹⁴⁶ Nevada,¹⁴⁷ Oklahoma,¹⁴⁸ Oregon,¹⁴⁹ and Utah¹⁵⁰ all preempt any local ordinance or law concerning cell phone use. While the exact language of the preemption statutes differ in each state, these laws typically contain language similar to the following: "No city, county, urban-county, charter county, consolidated local government, or special district shall impose a restriction on the use of a mobile telephone in a motor vehicle."¹⁵¹ One interesting state preemption law is that of Nevada, which seems to allow a state subdivision to regulate hands-free cell phones but not hand-held devices.¹⁵² These statutes are in

142. VA. CODE ANN. § 46.2-334.01(F) (2010).

143. FLA. STAT. ANN. § 316.0075 (West 2006).

144. KY. REV. STAT. ANN. § 65.873 (LexisNexis 2004).

145. LA. REV. STAT. ANN. § 33:31 (Supp. 2010).

146. MISS. CODE ANN. § 63-3-212 (West 2009).

147. NEV. REV. STAT. § 707.375(1) (2009).

148. OKLA. STAT. ANN. tit. 47, § 15-102.1(A) (West 2007).

149. OR. REV. STAT. ANN. § 801.038 (West 2003).

150. UTAH CODE ANN. § 41-6a-208(2)(b) (LexisNexis Supp. 2010).

151. KY. REV. STAT. ANN. § 65.873 (LexisNexis 2004); *see also* LA. REV. STAT. ANN. § 33:31 (Supp. 2010) ("Regulation of operator or passenger use of cellular telephones . . . is exclusively reserved to and preempted by the state."); OKLA. STAT. ANN. tit. 47, § 15-102.1 ("The State Legislature hereby occupies and preempts the entire field of legislation in this state touching in any way inattentive driving and cellular phone usage in automobiles . . .").

152. NEV. REV. STAT. § 707.375. Nevada's law states a subdivision of the state

place so that cell phone legislation remains a state—rather than a local—issue.¹⁵³

2. Complete Hand-Held Cell Phone Bans

In terms of state regulation, the strictest cell phone laws ban the use of hand-held cell phone use, including text messaging, for *all* drivers. Currently, only nine states and the District of Columbia have a statute that offers a complete ban on hand-held cell phone use while driving for all drivers. The jurisdictions that currently ban hand-held cell phone use for all drivers are California,¹⁵⁴ Connecticut,¹⁵⁵ Delaware,¹⁵⁶ the District of Columbia,¹⁵⁷ Maryland,¹⁵⁸ New Jersey,¹⁵⁹ New York,¹⁶⁰ Oregon,¹⁶¹ Utah,¹⁶² and Washington.¹⁶³ Oklahoma—while not banning hand-held cell phone use for all drivers—bans such use for drivers with learner’s permits or intermediate licenses.¹⁶⁴ Arkansas bans hand-held cell phones for drivers aged eighteen to twenty.¹⁶⁵ These statutes offer multiple definitions to differentiate between types of cell phones as well as usage of such devices.¹⁶⁶ Statutes can also create a presumption of use of a hand-held cell

“shall not regulate the use of a telephonic device by a person who is operating a motor vehicle.” *Id.* § 707.375(1). The statute then defines a “telephonic device” as a “cellular phone . . . that is *handheld* and designed or used to communicate with a person.” *Id.* § 707.375(2) (emphasis added).

153. See Shannon L. Noder, Note, *Talking and Texting While Driving: A Look at Regulating Cell Phone Use Behind the Wheel*, 44 VAL. U. L. REV. 237, 272–73 (2009) (explaining why it is better for state or local governments to regulate cell phone use); *see also* Cripps, *supra* note 88, at 103–04 (discussing problems created by preemption when local municipalities pass ordinances that may conflict with state law).

154. CAL. VEH. CODE § 23123(a) (West Supp. 2010).

155. CONN. GEN. STAT. ANN. § 14-296aa(b)(1) (West Supp. 2010).

156. 77 Del. Laws ch. 343 (2010) (to be codified at DEL. CODE ANN. tit. 21, § 4176C).

157. D.C. CODE § 50-1731.04(a) (LexisNexis 2007).

158. 2010 Md. Laws ch. 538 (to be codified at MD. CODE ANN., TRANSP. § 21-1124.2).

159. N.J. STAT. ANN. § 39:4–97.3(a) (West Supp. 2010).

160. N.Y. VEH. & TRAF. LAW § 1225–c(2)(a) (McKinney Supp. 2010).

161. OR. REV. STAT. ANN. § 811.507(2) (West Supp. 2010).

162. UTAH CODE ANN. § 41-6a-1715(1)(b)(i) (LexisNexis Supp. 2010). Utah states the use of a hand-held cell phone violates the state’s careless driving statute. *Id.*

163. WASH. REV. CODE ANN. § 46.61.667(1) (West Supp. 2010).

164. See GHSA, *supra* note 30.

165. ARK. CODE ANN. § 27-51-1604(a)(1)–(2) (Supp. 2009).

166. See, e.g., CONN. GEN. STAT. ANN. § 14-296aa(a)(3)–(7) (West Supp. 2010)

phone if the cell phone is close to the driver's ear¹⁶⁷ in addition to various exceptions to the hand-held ban.¹⁶⁸ Some states, while not banning hand-held cell phone use during all driving situations, do ban the use when certain situations occur.¹⁶⁹

3. Complete Categorical Cell Phone Bans

While no state bans all cell phone use for all drivers, several states do enforce complete bans against specific types of drivers, such as young drivers¹⁷⁰ and bus drivers.¹⁷¹ This section of the Note will focus primarily on younger drivers or drivers with intermediate licenses.

Even within these complete bans for younger drivers, variances exist in their applicability, both in age and types of licensed drivers affected.¹⁷² Typically, the statutes first define the type of license or age restriction and

(providing definitions for “[h]and-held mobile telephone,” “[h]ands-free accessory,” “[h]ands-free mobile telephone,” “[e]ngage in a call,” and “[i]mmediate proximity”).

167. See CONN. GEN. STAT. ANN. § 14-296aa(b)(2) (“An operator of a motor vehicle who holds a hand-held mobile telephone to, or in the immediate proximity of, his or her ear while such vehicle is in motion is presumed to be engaging in a call within the meaning of this section.”).

168. See, e.g., CAL. VEH. CODE § 23123(c) (West Supp. 2010); CONN. GEN. STAT. ANN. § 14-296aa(b)(1); N.J. STAT. ANN. § 39:4-97.3(b)(1)-(2) (West Supp. 2010) (providing exceptions for communicating with emergency personnel during an emergency situation and exceptions for police officers, firefighters, operators of ambulances, and military personnel operating a military vehicle).

169. See 625 ILL. COMP. STAT. ANN. 5/12-610.1(e) (West Supp. 2010) (banning hand-held cell phone use in school zones and highway construction areas); TEX. TRANSP. CODE ANN. § 545.425(b-1)(2)(B) (West Supp. 2009) (prohibiting use in school zones).

170. GHSA, *supra* note 30 (showing statistics for states that ban use by novice drivers and bus drivers); see DEL. CODE ANN. tit. 21, § 2710(k)(5) (2005) (banning permit holder from operating vehicle while using a cell phone or other similar electronic device); IND. CODE ANN. § 9-24-11-3.3(4) (LexisNexis Supp. 2010) (“[I]ndividual may not operate a motor vehicle while using a telecommunications device until the individual becomes eighteen (18) years of age unless the telecommunications device is being used to make a 911 emergency call.”).

171. See, e.g., ARK. CODE ANN. § 6-19-120(b) (2007); GA. CODE ANN. § 40-6-165(d)-(e) (West 2008).

172. Compare TENN. CODE ANN. § 55-50-311(n)(1) (2008) (requiring no driver with a learner permit or intermediate license use “a hand held cellular telephone, cellular car telephone, or other mobile telephone” while driving on the highway), with 625 ILL. COMP. STAT. ANN. 5/12-610.1(b) (West 2008 & Supp. 2010) (banning any person under the age of nineteen from driving “on a roadway while using a wireless phone”).

then place the restriction on the specific type of driver.¹⁷³ For example, several states base their complete cell phone bans on age.¹⁷⁴ Of the states that have a complete cell phone ban for younger drivers, several keep the restriction in place until the driver reaches the age of eighteen.¹⁷⁵ Illinois keeps its complete cell phone ban in place until the driver reaches the age of nineteen.¹⁷⁶ Still, other states implement the complete ban based both on the driver's age and type of license.¹⁷⁷ A number of states simply look to the type of license the driver holds when determining whether the complete ban applies.¹⁷⁸ A few states' cell phone laws use different criteria when prohibiting cell phone use that can be difficult to categorize.¹⁷⁹ With

173. See, e.g., N.C. GEN. STAT. § 20-11(c)(6) (2009) (defining different levels of permits, depending on age and training, and stating “[t]he permit holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the motor vehicle on a public street or highway or public vehicular area”).

174. See GHSA, *supra* note 30 (showing statistics for states that ban all cell phone use by novice drivers, and discussing specific age restrictions).

175. ARK. CODE ANN. § 27-51-1603(a) (Supp. 2009); CAL. VEH. CODE § 23124(a)–(b) (West Supp. 2010); COLO. REV. STAT. § 42-4-239(2) (2009); CONN. GEN. STAT. ANN. § 14-296aa(d) (West Supp. 2010); IND. CODE ANN. § 9-24-11-3.3(b)(4) (LexisNexis Supp. 2010); ME. REV. STAT. ANN. tit. 29-A, § 1311(1)(c) (Supp. 2009); N.C. GEN. STAT. § 20-137.3(b); OR. REV. STAT. ANN. § 811.507(2) (West Supp. 2010); R.I. GEN. LAWS § 31-22-11.9(a) (Supp. 2009); TEX. TRANSP. CODE ANN. § 545.424(a)(2) (West Supp. 2009); VA. CODE ANN. § 46.2-334.01(C1) (2010); 2010 Vt. Acts & Resolves 150 (to be codified at Vt. STAT. ANN. tit. 23, § 1095a).

176. 625 ILL. COMP. STAT. ANN. 5/12-610.1(b).

177. See, e.g., MD. CODE ANN., TRANSP. § 21-1124(c) (LexisNexis 2006) (placing a limitation on a driver with an “instructional permit or a provisional driver’s license who is under the age of 18”); MINN. STAT. ANN. § 171.05(2b)(c) (West Supp. 2010) (placing a limitation on a driver with an instruction permit under the age of eighteen); N.J. STAT. ANN. § 39:3-13.2a(a) (West Supp. 2010) (placing a limitation on a driver with a special learner’s permit over the age of sixteen); 2010 Ga. Laws 1156 (to be codified at GA. CODE ANN. § 40-6-241.1(b)).

178. See, e.g., DEL. CODE ANN. tit. 21, § 2710(c)(8) (Supp. 2008) (driver with Level 1 learner’s permit); D.C. CODE § 50-1731.05(b) (2007) (driver with learner’s permit); KAN. STAT. ANN. § 8-2,100(b)(4) (Supp. 2010) (driver with instruction permit); NEB. REV. STAT. ANN. § 60-4,120.01(3)(c) (LexisNexis Supp. 2009) (driver with provisional operator permit); TENN. CODE ANN. § 55-50-311(n)(1) (2008) (drivers with learner’s permit or intermediate license); W. VA. CODE ANN. § 17B-2-3a(c)(2)(F), (d)(2)(G) (LexisNexis 2009) (using graduated license program); 2010 Wash. Sess. Laws 233 (to be codified at WASH. REV. CODE ANN. § 46.20.055(3)(b)) (driver with instruction permit).

179. See, e.g., LA. REV. STAT. ANN. § 32:289.1(A) (Supp. 2010) (“[A]ny person, regardless of age, issued a first driver’s license from this state shall be prohibited from using a cellular telephone for any purpose while operating a motor vehicle for a period

such a wide variance in the ways in which complete cell phone bans are implemented and enforced across the United States, drawing comparisons to determine the specific laws' effectiveness can be difficult.

4. *Text Messaging Bans*

Certain jurisdictions limit their legislation to banning text messaging, as opposed to other states that ban both text messaging and hand-held cell phones or all cell phone use by specific types of drivers. States that solely ban text messaging include Alaska,¹⁸⁰ Utah,¹⁸¹ Wisconsin,¹⁸² and Wyoming.¹⁸³ A few states ban text messaging, but only for younger drivers or those who hold instructional or provisional permits.¹⁸⁴

5. *Common Exceptions to Cell-Phone-While-Driving Statutes*

There is also the issue of exceptions within statutes regulating the use of cell phones while driving. Almost all jurisdictions that ban hand-held cell phone use for all drivers include some form of exception for emergency situations.¹⁸⁵ These exceptions can be for general emergency services or can include specific agencies, as evidenced by the California hand-held ban,

of one year commencing from the date of issuance of his first driver's license.").

180. *See* ALASKA STAT. § 28.35.161(a)(2), (c)(1) (2008) (prohibiting operation of a motor vehicle if "the vehicle has a television, video monitor, portable computer, or any other similar means capable of providing a visual display," but allowing the use of a cell phone "for *verbal* communication or displaying caller identification information") (emphasis added).

181. UTAH CODE ANN. § 41-6a-1716(2) (LexisNexis Supp. 2010). While Utah specifically prohibits text messaging while driving, the use of hand-held cell phones while driving is considered a violation of the state's careless driving statute. *Id.* § 41-6a-1715(1)(b)(i).

182. WIS. STAT. ANN. § 346.89(3)(a) (West Supp. 2010) (effective Dec. 1, 2010).

183. WYO. STAT. ANN. § 31-5-237(a) (Supp. 2010).

184. *See, e.g.*, MISS. CODE ANN. § 63-1-73(2) (West Supp. 2009) ("A person who is authorized to drive under an intermediate license, a temporary learning permit or a temporary driving permit, shall not operate a motor vehicle on a highway while using a cellular telephone or a personal digital assistant to send or receive a written message while the motor vehicle is in motion."); MO. ANN. STAT. § 304.820(1) (West Supp. 2010) ("[N]o person twenty-one years of age or younger operating a moving motor vehicle upon the highways of this state shall . . . send, read, or write a text message or electronic message.").

185. *See, e.g.*, OR. REV. STAT. ANN. § 811.507(3)(a) (West Supp. 2010) (hand-held ban not applicable "[t]o a person who is summoning medical or other emergency help if no other person in the vehicle is capable of summoning help").

which states the hand-held ban “does not apply to a person using a wireless telephone for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity.”¹⁸⁶ Some exceptions seem to be applicable to a large percentage of the population, thus threatening the efficacy of the ban in the first place.¹⁸⁷ The difficult question, as with most exceptions to legislation, is how broad or narrow the exception should be construed. While allowing a driver to use a cell phone when driving would seem to be prudent in certain emergency situations, the possibility for abuse of the exception becomes more prominent. The difficulty in defining what should be considered an “emergency” or other type of exception requires the exception be broad enough to include pertinent emergency situations, while not allowing the exception to swallow the rule.¹⁸⁸

So what conclusions can be drawn from this overview of cell phone legislation across the United States? First, there is a wide spectrum of laws on the subject, ranging from prohibition of text messaging solely for minors to a complete hand-held ban for all drivers.¹⁸⁹ Even within this wide spectrum, there are subtle differences in how states apply, enforce, and define their individual statutes. Despite these differences, there is currently no total ban for all drivers—for all cell phone types—in any state. Second, differences in state laws can make data concerning cell phone use and motor vehicle accidents difficult to obtain. Differences in primary and secondary enforcement and in defining what is considered a “cellular phone” or “texting,” in combination with “roughly half” the states not requiring police officers to ask accident victims whether they were using their cell phone prior to, or during, the accident, makes data comparisons difficult.¹⁹⁰ Even if there was such a requirement, there is no guarantee an individual involved in an accident would be willing to volunteer such information. The fact that such little data exists—combined with regulations varying from state to state—makes it difficult to convince

186. CAL. VEH. CODE § 23123(c) (West Supp. 2010).

187. See OR. REV. STAT. ANN. § 811.507(3)(g) (allowing use of a hand-held cell phone if the phone is used “in the scope of the person’s employment if operation of the motor vehicle is necessary for the person’s job”).

188. See Horwitt, *supra* note 62, at 205–06 (discussing what should qualify as an emergency and problems of passing ambiguous legislation defining exceptions).

189. See GHSA, *supra* note 30.

190. Matt Richtel, *Bills to Curb Distracted Driving Gain Momentum*, N.Y. TIMES, Jan. 2, 2010, at A3, available at <http://www.nytimes.com/2010/01/02/technology/02distracted.html> [hereinafter *Bills to Curb Distracted Driving*].

lawmakers who are skeptical of such dangers of the impact that legislation could have on preventing these dangers.¹⁹¹

C. Federal Government Action

Under the Obama Administration, the federal government has been aggressive in addressing distracted driving caused by cell phone use. In 2009, the United States Department of Transportation held a two day summit concerning cell phone use and its effect on drivers.¹⁹² The summit brought together various safety experts, researchers, elected officials, and members of the public to discuss the dangers of distracted driving and cell phone use.¹⁹³ Transportation Secretary Ray LaHood has been especially persistent in his attempts to inform the public about the dangers of cell phone use while driving. In his opening remarks at the Distracted Driving Summit, Secretary LaHood stated: “Every single time someone takes their eyes or their focus off the road—even for just a few seconds—they put their lives and the lives of others in danger Distracted driving is unsafe, irresponsible and in a split second, its consequences can be devastating.”¹⁹⁴

The Summit allowed various experts to share their expertise and knowledge, lead sessions concerning a range of relevant topics concerning cell phone use while driving, and come up with recommendations for the future.¹⁹⁵

From this summit, the Obama Administration has enacted two different federal measures to combat the problem of distracted driving. On October 6, 2009, President Obama signed Executive Order 13,513, which aimed to reduce text messaging by federal employees when driving during government business.¹⁹⁶ The order states, “Federal employees shall not engage in text messaging (a) when driving [Government owned vehicles], or when driving [privately owned vehicles] while on official Government business, or (b) when using electronic equipment supplied by the

191. *Id.*

192. Press Release, U.S. Dep’t of Transp., Transportation Secretary Ray LaHood Kicks Off Historic Summit to Tackle Dangers of Distracted Driving (Sept. 30, 2009), *available at* <http://www.dot.gov/affairs/2009/dot15509.htm> [hereinafter Historic Summit].

193. *Id.*

194. *Id.*

195. *Id.*

196. Exec. Order No. 13,513, 74 Fed. Reg. 51,225 (Oct. 1, 2009).

Government while driving.”¹⁹⁷ In January of 2010, an interpretation of chapter forty-nine of the Code of Federal Regulations section 390.17 led to a ban of text messaging for drivers of commercial vehicles.¹⁹⁸ The federal ban on text messaging for drivers of commercial vehicles, such as trucks and buses, was effectuated based on recommendations by Anne Ferro, Administrator for the Federal Motor Carrier Safety Administration.¹⁹⁹

The United States Congress has also taken action in an attempt to limit distracted driving caused by cell phone use. Two separate bills have been introduced to committees that address cell phone use while driving. The “Avoiding Life-Endangering and Reckless Texting by Drivers Act of 2009” (ALERT Drivers Act), introduced by Senator Charles Schumer from New York, would withhold twenty-five percent of federal highway funds from states that do not enact a text messaging ban.²⁰⁰ Another bill, introduced by Senator John Rockefeller of West Virginia and also favored by Senator Schumer, offers incentives for states to implement text messaging and hand-held cell phone bans, as well as allocating grant money to be used for distracted-driving education programs.²⁰¹ At this point in time, however, neither of these bills has been passed by Congress and signed by the President.

197. *Id.*

198. Regulatory Guidance Concerning the Applicability of the Federal Motor Carrier Safety Regulations to Texting by Commercial Motor Vehicle Drivers, 75 Fed. Reg. 4,305-07 (Jan. 27, 2010) (to be codified at 49 C.F.R. ch. III); *see also* 49 C.F.R. § 390.17 (2009) (“Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the commercial motor vehicles on which they are used.”).

199. Press Release, U.S. Dep’t of Transp., U.S. Transportation Secretary Ray LaHood Announces Federal Ban on Texting for Commercial Truck Drivers (Jan. 26, 2010), *available at* <http://www.distraction.gov/files/dot/MotorCarrierPressRelease.pdf> [hereinafter Commercial Truck Drivers] (stating regulations will eliminate unsafe driving habits inside the cab).

200. *See* ALERT Drivers Act, S. 1536, 111th Cong. (2009); *see also* Liza Barth, *Distracted Driving: Government Pursues Texting Law*, CONSUMER REP. CARS BLOG (Nov. 4, 2009), <http://blogs.consumerreports.org/cars/2009/11/government-takes-on-distracted-driving-and-texting-law.html> (summarizing “carrot” versus “stick” approach used by the two bills).

201. Distracted Driving Prevention Act of 2009, S. 1938, 111th Cong. §§ 2-3 (2009); *see also* Barth, *supra* note 200 (offering a summary of the Distracted Driving Prevention Act of 2009).

D. Previous Attempts at Regulation by the State of Iowa

During the 2010 legislative session of the Iowa General Assembly, House File 2456 sparked a great amount of debate concerning cell phone use while driving and eventually led to a new law in Iowa concerning the same.²⁰² Prior to 2010, the State of Iowa had no specific law that regulated the use of cell phones while driving. This does not mean various attempts to address the problem of cellular phone use while driving had not occurred at the state level prior to 2010.

1. Previous Legislative Attempts

Past legislative solutions to cell phone use while driving addressed various types of cell phone use, but these previous attempts all failed to make it past the committee level. Bills that attempted to limit cell phone use to hands-free headsets,²⁰³ ban text messaging,²⁰⁴ and ban cell phone use by novice drivers or drivers with instructional permits,²⁰⁵ as well as overall hand-held bans,²⁰⁶ all failed to pass out of committee. These failed attempts did not deter the Iowa Legislature from attempting to pass cell-phone-while-driving legislation during the 2010 legislative session.

2. House File 2456

During the 2010 legislative session of the Iowa General Assembly, several bills specifically addressed the problem of text messaging.²⁰⁷ The proposed bills attempted to regulate text messaging but differed in how they dealt with the problem. Two separate Senate files, which remained at the subcommittee level, would have created a simple misdemeanor for text messaging while driving²⁰⁸ and an aggravated penalty scheme if any injuries resulted from an accident caused by a driver using a cell phone to text

202. H.R. File 2456, 83d Gen. Assemb., Reg. Sess., 2010 Iowa Acts 1105.

203. *See, e.g.*, H.R. File 2349, 82d Gen. Assemb., Reg. Sess. (Iowa 2008) (limiting cell phone use in vehicles to those who have a headset or hands-free adaptor).

204. *See, e.g.*, S. File 2104, 82d Gen. Assemb., Reg. Sess. (Iowa 2008).

205. *See* S. File 2009, 81st Gen. Assemb., Reg. Sess. (Iowa 2005) (banning cell phone use for individuals under eighteen years of age and individuals with an instructional permit).

206. *See* H.R. File 2158, 80th Gen. Assemb., Reg. Sess. (Iowa 2004).

207. *See, e.g.*, S. File 2032, 83d Gen. Assemb., Reg. Sess. (Iowa 2010) (prohibiting text messaging while operating a vehicle, and subjecting a violator to a \$100 fine).

208. *Id.*

message.²⁰⁹ A bill in the House of Representatives, which stalled in subcommittee, looked to classify text messaging as “reckless driving” and would have included language similar to that in effect in the current Iowa Code section on reckless driving.²¹⁰

While these other bills stalled at the subcommittee level, House File 2456 was the subject of several debates and amendments during the 2010 legislative session.²¹¹ When the bill was first introduced in the Iowa House of Representatives, it was limited to text messaging while using a hand-held device and only covered the writing or sending of an electronic message.²¹² Specifically, the bill as introduced stated, “A person shall not use a hand-held electronic communication device to *write or send* a text message while driving a motor vehicle unless the motor vehicle is at a complete stop off the roadway.”²¹³ Under the bill as introduced, drivers were not able to write or send electronic messages, but there was no prohibition against *reading* electronic messages. This distinction was problematic to many legislators and led to the proposal of several amendments. The numerous amendments filed in the House of Representatives included, among others, amendments to simply require “common sense” while driving²¹⁴ and to increase the regulation to all cell phone use, but only for those under the age of eighteen.²¹⁵ After all amendments were debated, the bill passed the Iowa House of Representatives and was sent to the Iowa Senate, practically mirroring the original bill, aside from some minor changes to

209. S. File 2056, 83d Gen. Assemb., Reg. Sess. (Iowa 2010). Under the proposed bill, a simple violation results in a fine and simple misdemeanor. If there is an accident that caused serious injury to a person, the result is a class D felony, with a \$750 to \$7,500 fine and confinement of no more than five years. *Id.* Finally, if there was an unintended death, the result would be a class C felony, with a \$1,000 to \$10,000 fine and confinement up to ten years. *Id.*

210. H.R. File 2021, 83d Gen. Assemb., Reg. Sess. (Iowa 2010); *see also* IOWA CODE § 321.277 (2009) (Iowa’s reckless driving statute).

211. *See Bill History for HF 2456*, IOWA LEGISLATURE, <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=BillInfo&Service=DspHistory&var=HF&key=1398C&ga=83> (last visited Nov. 5, 2010) (providing a history of the legislative process concerning House File 2456).

212. H.R. File 2456, 83d Gen. Assemb., Reg. Sess. (Iowa 2010) (as introduced by the House Committee on Transportation).

213. *Id.* (emphasis added).

214. H.R. Amend. 8193, 83d Gen. Assemb., Reg. Sess. (Iowa 2010) (“A person shall use common sense at all times when the person is operating a motor vehicle.”).

215. H.R. Amend. 8203, 83d Gen. Assemb., Reg. Sess. (Iowa 2010) (“A person under eighteen year [sic] of age shall not use an electronic communication device to engage in a call, to write, send, or read a text message . . .”).

the language of the bill.²¹⁶

Upon receiving House File 2456 from the Iowa House of Representatives, the Iowa Senate was quick to amend the perceived “reading” deficiency of the bill. The Senate filed an amendment to House File 2456 to prohibit the writing, sending, and *reading* of text messages.²¹⁷ The Senate passed the amended bill and sent it back to the House of Representatives for consideration. It was this amendment that spawned a great deal of legislative action that eventually led to the finalization of House File 2456 and a new statute regulating all cell phone use while driving in the state of Iowa.

The Iowa House of Representatives quickly made their own changes in response to the Senate amendment that added “reading” to the prohibited actions under House File 2456. Upon receiving the amended House File 2456 from the Senate, an amendment was proposed in the House that completely changed the structure of the bill by prohibiting the use of “an electronic communication device or an electronic entertainment device” only for those drivers with a restricted driver’s license.²¹⁸ Another amendment was filed, amending this House amendment, that changed some language in the bill concerning when a cellular phone could be used in a motor vehicle.²¹⁹ This “third degree” amendment was adopted by the House of Representatives.²²⁰

Upon discussing the amended version of House Amendment 8328 to Senate Amendment H-8251 of House File 2456, a point of order was raised that House Amendment 8328 was not germane to Senate Amendment H-8251.²²¹ The Speaker of the House ruled the point of order well taken and

216. H.R. Amend. 8174, 83d Gen. Assemb., Reg. Sess. (Iowa 2010) (inserting language concerning “operators” and “electronic communication device”).

217. H.R. Amend. 8251, 83d Gen. Assemb., Reg. Sess. (Iowa 2010) (emphasis added).

218. H.R. Amend. 8328, 83d Gen. Assemb., Reg. Sess. (Iowa 2010).

219. *Compare id.* (“[S]hall not use an electronic communication device or an electronic entertainment device while driving a motor vehicle unless the motor vehicle is at a complete stop off the roadway.”), *with* H.R. Amend. 8342, 83d Gen. Assemb., Reg. Sess. (Iowa 2010) (“[S]hall not use an electronic communication device or an electronic entertainment device while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway.”).

220. *See* H.R. JOURNAL, 83d Gen. Assemb., Reg. Sess. 842 (Iowa 2010). A “third degree” amendment is just as it sounds: an amendment of an amendment of an amendment to the original bill.

221. *Id.*

determined House Amendment 8328 was not germane.²²² A motion to suspend the rules to consider House Amendment 8328 was made, and the Iowa House of Representatives voted fifty-one to forty-six in favor of suspending the rules and considering the Amendment.²²³ The House of Representatives then passed House Amendment 8328 by a vote of fifty-three to forty-three.²²⁴ After another vote on Senate Amendment H-8251, House File 2456, as amended by the House of Representatives, came up for a vote on its passage.²²⁵ The amended House File 2456 passed the House with a vote of fifty-five to forty-one and was immediately messaged to the Senate.²²⁶

Upon receipt of the message from the House of Representatives, the Iowa Senate considered the Amendment—now labeled Senate Amendment 5200—and refused to concur in the House amendment to Senate Amendment H-8251.²²⁷ In order to remedy the apparent stalemate between the Senate and the House versions of House File 2456, a conference committee with members from each house of the Iowa General Assembly was commissioned to find a middle ground.²²⁸

After a few meetings, the combined House and Senate conference committee filed a report, hoping to create a bill both houses would find acceptable.²²⁹ The adopted committee report was voted on in both houses on March 23, 2010, and passed the House of Representatives sixty-six to thirty-three, and the Senate thirty-seven to twelve.²³⁰ The bill was sent to Governor Chet Culver's desk, and on April 1, 2010, Iowa's new law regarding cellular phone use while driving was enacted.²³¹

As amended and enacted, House File 2456 implemented three major changes to Iowa law: a total cell phone ban for young drivers, state preemption of cell-phone-while-driving legislation, and a text messaging

222. *Id.*

223. *Id.* at 842–43.

224. *Id.* at 843–44.

225. *Id.* at 844.

226. *Id.* at 844–45.

227. See S. Amend. 5200, 83d Gen. Assemb., Reg. Sess. (Iowa 2010); S. JOURNAL, 83d Gen. Assemb., Reg. Sess. 724 (Iowa 2010).

228. See H.R. JOURNAL, 83d Gen. Assemb., Reg. Sess. 958 (Iowa 2010); S. JOURNAL, 83d Gen. Assemb., Reg. Sess. 815 (Iowa 2010).

229. See H.R. JOURNAL, 83d Gen. Assemb., Reg. Sess. 1157–61 (Iowa 2010).

230. See *id.* at 1162; S. JOURNAL, 83d Gen. Assemb., Reg. Sess. 952 (Iowa 2010).

231. See H.R. JOURNAL, 83d Gen. Assemb., Reg. Sess. 1561 (Iowa 2010).

ban for all drivers.²³²

The first change under the bill affected Iowa drivers with restricted licenses,²³³ drivers with graduated licenses,²³⁴ and drivers with special minor's licenses.²³⁵ House File 2456 added the following provision to all three of these sections:

A person issued a [license] under this section shall not use an electronic communication device or an electronic entertainment device while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway. This subparagraph division does not apply to the use of electronic equipment which is permanently installed in the motor vehicle or to a portable device which is operated through permanently installed equipment.²³⁶

Further, the bill contained an instruction that "for the period beginning July 1, 2010, through June 30, 2011, peace officers shall issue only warning citations for violations . . .".²³⁷ Thus, the first major implementation of House File 2456 was to ban all cell phone use for young drivers.

The second major action of House File 2456 concerned state preemption of county and municipal legislation. The bill created a new section in the Iowa Code, section 321.238, which states:

The provisions of this chapter restricting the use of electronic communication devices and electronic entertainment devices by motor vehicle operators shall be implemented uniformly throughout the state. Such provisions shall preempt any county or municipal ordinance regarding the use of an electronic communication device or electronic entertainment device by a motor vehicle operator. In addition, a county or municipality shall not adopt or continue in effect an ordinance regarding the use of an electronic communication device

232. See H.R. File 2456, 83d Gen. Assemb., Reg. Sess. (Iowa 2010).

233. IOWA CODE § 321.178(2)(a) (2009) (stating restricted licenses are for drivers between the ages of sixteen and eighteen).

234. *Id.* § 321.180B (stating graduated licenses are for drivers between the ages of fourteen and seventeen).

235. *Id.* § 321.194(1) (stating special minor's licenses are for drivers who drive motor vehicles to and from school-related activities).

236. H.R. File 2456, 83d Gen. Assemb., Reg. Sess. §§ 1–3 (to be codified at IOWA CODE §§ 321.178(2)(a)(2), 321.180B(6A)(a), 321.194(1)(c)(1)).

237. *Id.*

or electronic entertainment device by a motor vehicle operator.²³⁸

The Iowa General Assembly was especially explicit that this bill would represent the one uniform law throughout the state. The legislature was unwilling to allow any county or municipality to adopt or enforce any ordinance regarding cell phone use while driving.²³⁹ Therefore, even if a municipality wanted to enforce a stricter law against drivers using cell phones, such action would be preempted by the state.²⁴⁰

The final major action under House File 2456 concerned text messaging. The bill created a new section to the Iowa Code, section 321.276, which states, “A person shall not use a hand-held electronic communication device to write, send, or read a text message while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway.”²⁴¹ In order to interpret the statute, the Iowa General Assembly included several definitions of key terms in the prohibition. Specifically, a “hand-held electronic communication device” is defined as “a mobile telephone or other portable electronic communication device capable of being used to write, send, or read a text message.”²⁴² In an attempt to provide further clarification, the definition of “hand-held electronic communication device” excluded “a voice-operated or hands-free device which allows the user to write, send, or read a text message without the use of either hand except to activate or deactivate a feature or function” and “a wireless communication device used to transmit or receive data as part of a digital dispatch system.”²⁴³ However, the definition does include “a device which is temporarily mounted inside the motor vehicle, unless the device is a voice-operated or hands-free device.”²⁴⁴ Further, the Iowa General Assembly defined a text message to include “a text-based message, an instant message, and electronic mail.”²⁴⁵ As these definitions demonstrate, simply defining “hand-held electronic communication device” can be a strenuous task.

The Iowa General Assembly was also sure to list certain exceptions to the statute prohibiting text messaging. Specifically listed exceptions

238. *See id.* § 5 (to be codified at IOWA CODE § 321.238).

239. *See id.*

240. *Id.*

241. *Id.* § 6(2) (to be codified at IOWA CODE § 321.276).

242. *Id.* § 6(1)(b).

243. *Id.*

244. *Id.*

245. *Id.* § 6(1)(c).

relating to the reading of a text message under House File 2456 include exceptions for “[a] member of a public safety agency,” “[a] health care professional in the course of an emergency situation,” and “[a] person receiving safety-related information including emergency, traffic, or weather alerts.”²⁴⁶ The legislature also stated the use of “a global positioning system or navigation system” was excluded under the statute, as was the use of a cell phone “when, for the purpose[s] of engaging in a call, the person *selects or enters a telephone number or name in a hand-held mobile telephone* or activates, deactivates, or initiates a function of a hand-held mobile telephone.”²⁴⁷

There are a few problems with these exceptions and the manner in which their application will affect the texting ban as a whole. Under the plain language of the statute, the Iowa General Assembly required peace officers to differentiate between a driver who is using a cellular phone for text messaging and a driver who is simply entering a number into a phone.²⁴⁸ This is in addition to the requirement that the peace officers must already determine the age of the driver, as younger drivers are not allowed to use any cellular phone while driving.²⁴⁹ For police officers, making such distinctions will be difficult at best and impossible at worst. In terms of the listed exceptions, the Iowa General Assembly declined to define what “safety-related information” includes or excludes under the statute. Such a broad, undefined term could include a wide range of text messages. Theoretically, a driver reading a text message concerning the snowy weather and icy roads during an Iowa winter could qualify for the “safety-related information” exception, especially when considering that “weather alerts” is included in the exception.²⁵⁰

In a further limitation to the statute’s effectiveness, the Iowa General Assembly decided text messaging should be enforceable only as a secondary action. Specifically, the statute requires the following:

A peace officer shall not stop or detain a person solely for a suspected violation of this section. This section is enforceable by a peace officer only as a secondary action when the driver of a motor vehicle has been

246. *Id.* § 6(2)(b).

247. *Id.* § 6(2)(a) (emphasis added).

248. Compare *id.* § 6(2) (prohibiting text messaging), with *id.* § 6(2)(a) (permitting the driver to enter a telephone number or initiate the call function of a cell phone).

249. See *id.* §§ 1–3.

250. See *id.* § 6(2)(b)(3).

stopped or detained for a suspected violation of another provision of this chapter, a local ordinance equivalent to a provision of this chapter, or other law.²⁵¹

Therefore, peace officers are only permitted to stop a driver who is text messaging if they are violating another provision of Iowa's traffic laws. Iowa joins Nebraska, New York, and Virginia as the only states that ban text messaging but consider it a secondary action.²⁵²

So, what general conclusions can be drawn from House File 2456? First, under the bill, younger drivers are not permitted to use any cellular phone while driving; all drivers are banned from text messaging, but only as a secondary action; and any local ordinances are now preempted by this law. Second, under the plain language of the bill, enforcement and exception issues will impact the effectiveness and implementation of the law. The extent of the impact the prohibitions under House File 2456 will have on driver safety in the State of Iowa remains to be seen.

IV. ATTACKS AGAINST CELL PHONE LEGISLATION

A. *Difficulty in Enforcement*

One of the primary arguments against the implementation of cell phone bans is the difficulty that arises with enforcement.²⁵³ Enforcement can be especially difficult in states that only ban a certain age or class of drivers, as law enforcement officials can have difficulty determining how old a driver is from a distance.²⁵⁴ Also, officers often must learn how to enforce the law, and many times they are required to write only warnings—as opposed to tickets with fines—when laws are first enacted in an attempt to educate drivers who are not aware or not used to the new legislation.²⁵⁵

251. *Id.* § 6(5)(a).

252. See NEB. REV. STAT. ANN. §§ 60-4,120.01(3)(c), 60-4,123(3)(b) (LexisNexis Supp. 2009); N.Y. VEH. & TRAF. LAW § 1225-d(6) (McKinney Supp. 2010); VA. CODE ANN. § 46.2-334.01(F) (2010); *see also* IIHS, *supra* note 30 (listing states that consider text messaging either a primary or secondary action).

253. See Amendola, *supra* note 75, at 361 (commenting that almost half the drivers in states with hand-held bans still used cell phones while driving and large numbers of people were unaware of any law regulating cell phone use while driving).

254. See *Missouri Texting-While-Driving Ban Yields Few Tickets*, ST. LOUIS POST-DISPATCH, Jan. 25, 2010, available at <http://www.columbiamissourian.com/stories/2010/01/26/mo-texting-while-driving-ban-yields-few-tickets/> [hereinafter *Missouri Texting-While-Driving Ban*] (averring state troopers have difficulty enforcing Missouri's ban because it only applies to younger drivers).

255. *See id.*

For example, for the first five months of Missouri's texting ban, officers issued only thirteen tickets.²⁵⁶ When coupled with statutes that only allow for secondary enforcement, these difficulties can provide little motivation for drivers to follow the law or officers to enforce the law.

Another difficulty in enforcing these laws involves the individual drivers themselves—many of whom believe laws do not have an effect on them.²⁵⁷ Whether it is from limited enforcement, small fines for a violation, or a lack of knowledge concerning bans of cell phone use while driving, many drivers simply ignore the law because they think they are safe drivers and any possible punishment for a violation will be minimal.²⁵⁸ This mentality is evidenced by the Nationwide Mutual Insurance Company survey noted above. While ninety-eight percent of survey respondents considered themselves safe drivers, forty-five percent of those individuals said they had been hit or nearly hit by a driver who was using a cell phone.²⁵⁹ Another Nationwide Insurance survey found only sixty-three percent of drivers planned to follow laws that banned cell phone use while driving.²⁶⁰ These surveys paint a picture in which individuals admit there is a problem but do not believe they are personally contributing to the cause. Part of the reason drivers may continue to use cell phones while driving is because they think constantly being in communication outweighs any and all risks that exist from using a cell phone.²⁶¹ Another reason drivers may continue to use cell phones while driving is because they do not fear being prosecuted or convicted of crimes if they are actually caught.²⁶²

Lastly, legislators across the country are apprehensive about adopting new regulations on cell phone use while driving.²⁶³ Legislators also cite other distractions—and a lack of regulation against these distractions—as

256. *Id.*

257. *See* Amendola, *supra* note 75, at 361–62 (explaining, even in states with various types of hand-held bans, a large percentage of drivers still admit to using cell phones).

258. *See id.*; *see, e.g.*, CAL. VEH. CODE § 23123(b) (West Supp. 2010) (fine of twenty dollars for a first offense).

259. *Legislators Dismiss*, *supra* note 1.

260. *See Cruz & Oloffson*, *supra* note 70.

261. *Legislators Dismiss*, *supra* note 1.

262. *See Amendola*, *supra* note 75, at 361–62 (noting in the first six months of 2007, over fifty percent of tickets issued under Connecticut's cell phone law were dismissed from court).

263. *See Legislators Dismiss*, *supra* note 1 (stating legislators in several states need more evidence about cell phone dangers before restricting freedom, including long-term crash data).

reasons they oppose bans on cell phone use while driving.²⁶⁴ They often claim other distractions are just as dangerous as cell phone use behind the wheel, yet no action is taken on regulating them. Another argument from legislators is that current legislation in place for reckless driving is much more effective at addressing the cell-phone-while-driving issue.²⁶⁵ There is also the belief by some lawmakers that banning cell phone use while driving is an invasion of an individual's freedom.²⁶⁶ For some, “the death of freedom is far worse than the risk of talking on the phone while driving,” and to them, specifically choosing to regulate cell phones when other forms of distraction exist is not logical because “[y]ou can't legislate against stupidity.”²⁶⁷ Many state legislators simply believe state governments, by stepping into the cell-phone-use-while-driving arena, have gone too far.²⁶⁸ Overall, convincing lawmakers to pass comprehensive cell phone regulation will be difficult to accomplish. As best summarized by California State Senator Joe Simitian: “It's a political nonstarter It'll be a cold day in hell before people give up their phones altogether in cars.”²⁶⁹

B. Ineffectiveness of Current Regulations

In addition to enforcement difficulties, another argument against cell phone regulations—especially those that focus on hand-held bans—is that statistics seem to indicate there has not been a reduction in the number of crashes in states where such a ban is in place. According to a study by the Highway Loss Data Institute, a comparison of four United States jurisdictions before and after hand-held cell phone bans were implemented

264. *Id.*; see also Annie Barret Wallin, Note, *Cell Phones Pose a Distraction to Drivers but Legislative Ban Is Not the Answer*, 98 KY. L.J. 177, 188–89 (2009) (highlighting a 2003 Virginia survey that found cell phones ranked ninth among common driver distractions).

265. See Wallin, *supra* note 264, at 200 (providing statements by Kentucky legislators that there is no need for an additional cell phone ban because the reckless driving statute is already applicable to any dangerous driving cell phone use may cause).

266. *Legislators Dismiss*, *supra* note 1.

267. *Id.* (quoting Carl Wimmer, state representative from Salt Lake City, Utah, on his reason for opposing a bill to ban talking on a cell phone while driving).

268. See Wallin, *supra* note 264, at 191–92 (providing statements by various state legislators around the country who feel bans are too much government intervention in peoples' lives).

269. *Legislators Dismiss*, *supra* note 1 (quoting Joe Simitian, California state senator).

showed no reductions in crashes.²⁷⁰ The study looked at months immediately prior to and after the enactment of hand-held bans in New York, the District of Columbia, Connecticut, and California.²⁷¹ The study also controlled possible changes in claim rates that would not be related to cell phone bans, including miles driven due to the economy and seasonal changes in driving patterns.²⁷² This finding of no reduction in crashes was troubling to Adrian Lund, president of the Insurance Institute for Highway Safety: “The laws aren’t reducing crashes, even though we know that such laws have reduced hand-held phone use, and several studies have established that phoning while driving increases crash risk.”²⁷³ These findings follow other crash statistics, which show that reported accidents per year fell from 6.7 million in 1997 to 6 million in 2007.²⁷⁴ From these statistics, one could argue if talking on a cell phone while driving is so risky, it would make sense that accidents would increase during a time period that saw such an explosion in cell phone use.²⁷⁵ The Highway Loss Data Institute is gathering additional information as to the reason there is such a “mismatch” in the data.²⁷⁶ Statistics such as these have led some to believe a hand-held cell phone ban is an inappropriate remedy and should be abandoned as an option.²⁷⁷

An explanation exists for the findings that hand-held bans do not reduce accidents caused by cell phone distraction. Drivers, in response to hand-held cell phone bans, may be shifting to hands-free cell phones,²⁷⁸ which no state currently bans for all types of drivers.²⁷⁹ Bans on hand-held cell phones may simply encourage drivers to use hands-free devices that

270. Press Release, Highway Loss Data Inst., Laws Banning Cellphone Use While Driving Fail to Reduce Crashes, New Insurance Data Indicate (Jan. 29, 2010), available at <http://www.iihs.org/news/rss/pr012910.html> [hereinafter HLDI].

271. *Id.*

272. *Id.*

273. *Id.*

274. *Legislators Dismiss*, *supra* note 1.

275. See *id.* (summarizing comments from John Walls, spokesman for the Cellular Telecommunications and Internet Association).

276. Joelle Tessler, *Study: Distracted-Driving Laws Don’t Stop Crashes*, SEATTLE TIMES, Jan. 29, 2010, available at http://seattletimes.nwsource.com/html/nationworld/2010932005_distract30.html.

277. See Amendola, *supra* note 75, at 366 (noting cell phone bans only remedy one distraction, while leaving others unaddressed); Wallin, *supra* note 264, at 198 (stating the Kentucky Legislature should abandon attempts at a hand-held ban, despite the belief cell phones create “a hazardous distraction for drivers”).

278. Tessler, *supra* note 276.

279. GHSA, *supra* note 30.

create the same risk and distraction for drivers.²⁸⁰ A lack of enforcement is another possible explanation, especially in states in which total cell phone bans for young drivers are in place, because drivers continue to use cell phones while driving, resulting in skewed research data.²⁸¹ While findings seem to show hand-held bans are not as effective as first believed, the answer is not to abandon cellular phone legislation altogether, as some critics argue. The answer to reducing collisions and distracted driving is to expand cell phone bans to include both hand-held and hands-free devices for all drivers.

V. A LOOK AT ALTERNATIVE SOLUTIONS AND A RECOMMENDATION FOR IOWA

A. Increased Educational Awareness

Regardless of action taken on the state and federal government levels, increasing awareness of the dangers of cell phone use while driving is key to reducing the impact cellular phone use has on drivers. Any educational awareness campaign needs support from both the public and private sector. State governments need to work with driver education programs to implement awareness programs that focus on the dangers of cell phone use and driving.²⁸² Wireless providers also need to take action on the education front. Educational awareness programs sponsored by the cell phone industry and cellular companies need to be continued.²⁸³ For example, the efforts by Verizon Wireless in its “Drive Responsibly” campaign need to be expanded to inform consumers that wireless companies themselves acknowledge the dangers of cellular phone use while driving, and the only safe option while driving is to refuse to use a cellular

280. See HLDI, *supra* note 270 (noting drivers may be switching to hands-free devices and, thus, the risk remains the same as before); *see also* Tessler, *supra* note 276 (stating the hand-held ban may simply promote the use of hands-free devices).

281. See HLDI, *supra* note 270 (citing a finding in North Carolina where teenage drivers did not limit cell phone usage despite a cell phone ban because the drivers felt the law was not enforced).

282. See Kalin, *supra* note 69, at 257 (recommending education on driver distraction to be implemented into driver's education courses).

283. See Croze, *supra* note 62, at 477 (highlighting action taken by the Cellular Telecommunications and Internet Association in sponsoring a “National Safety Wireless Week”); *see also* Wallin, *supra* note 264, at 194–95 (discussing action taken by AAA and Sprint Nextel in offering educational programs concerning distracted driving).

phone.²⁸⁴ The government needs to make drivers aware of existing cell phone laws as well, similar to what is currently done with road signs informing drivers of seat belt laws. Drivers traveling across the United States may be unaware that a certain state has cell-phone-while-driving statutes in effect. Overall, educational awareness plays a vital role in any attempt to prevent the problems created by cell phone use while driving.

B. Strict Enforcement of Current Laws with Harsher Consequences

Another alternative to new legislation meant to combat cell phone use while driving is to enforce states' current legislation that deals with reckless or negligent driving. Arguably, by using reckless driving statutes that are already in place, enforcement becomes easier and "governmental waste" can be avoided.²⁸⁵ Advocates for the use of current legislation argue that by adapting broad laws that allow law enforcement to make discretionary decisions regarding what constitutes "reckless driving," legislatures attempted to solve distracted driving generally, instead of specifically naming individual distractions such as cell phone use.²⁸⁶ While strictly enforcing reckless driving statutes is a smart and logical step, such reasoning does not suggest a reckless driving statute and cell-phone-while-driving statute cannot coexist. For example, it would be foolish—not to mention dangerous—to suggest laws prohibiting drunk driving are unnecessary because such illegal activity would be covered under a reckless driving statute.

An additional suggestion to increase the effectiveness of cell phone legislation is to heighten the monetary penalty a violator faces for ignoring or violating the law. Some suggest fines for violating cell phone statutes—generally ranging between twenty to one hundred dollars—are simply not persuasive enough to limit cell phone use.²⁸⁷ It is suggested that because fines for violations are so low, drivers will simply take their chances because the benefits of using a cell phone while driving outweigh the costs.²⁸⁸ Also, because cell phone legislation is intended to remedy

284. See VERIZON WIRELESS, *supra* note 56.

285. See Kalin, *supra* note 69, at 259 ("Stricter enforcement of current reckless driving laws would refocus state legislatures and the general driving public on the real issue of making roads safer." (citing Cripps, *supra* note 88, at 118)).

286. See Wallin, *supra* note 264, at 196.

287. Noder, *supra* note 153, at 275; see, e.g., CAL. VEH. CODE § 23123(b) (West Supp. 2010) (fine of twenty dollars for first offense); N.Y. VEH. & TRAF. LAW § 1225-c(4) (McKinney Supp. 2010) (fine of up to one hundred dollars).

288. See Croze, *supra* note 62, at 476 ("Harsher penalties will deter drivers

dangerous driving that puts both the cell phone user and other drivers at risk—as opposed to seat belt laws, which are intended to protect only the individual driver—fines should be higher.²⁸⁹ In the end, increased enforcement and higher penalties are vital to preventing the problems caused by distracted driving due to cell phone use.

C. Technological Solutions

Advances in technology are creating new possibilities for avoiding distractions caused by cellular phone use. Certain technologies have the ability to disable cell phones using GPS tracking whenever the vehicle is in motion.²⁹⁰ These systems route incoming calls to the owner's voice mail or another prerecorded message explaining the owner of the phone is currently driving.²⁹¹ Exceptions can be made for certain numbers, and the system can be overridden by those in the car, but doing so will send an update to the account holder saying the cell phone is in use while the user is driving.²⁹² Insurance companies seem to favor this call-blocking strategy as opposed to hands-free devices. For example, Nationwide Insurance is offering customers who sign up for the call-blocking system a discount on their annual premium.²⁹³ Some agencies, such as the Center for Auto Safety, have filed a petition that would require installation of a device in vehicles that would only allow emergency calls while the car is in motion.²⁹⁴ Other technological devices, such as “audible voice mail,” allow callers to leave a message on the driver's phone, and the driver is able to listen to the messages without actually having to answer the cell phone.²⁹⁵ There is also a suggestion cellular phone companies should work to create safer cell phone technology while hands-free devices are still allowed in vehicles.²⁹⁶ Overall, the advancements in technology present a variety of solutions to the cell-phone-while-driving problem.

who feel that the cost of losing business outweighs the fines imposed from violating the law.”).

289. Noder, *supra* note 153, at 275.

290. Grobart, *supra* note 94.

291. *Id.*

292. *Id.*

293. *Id.*

294. Cruz & Oloffson, *supra* note 70.

295. See Horwitt, *supra* note 62, at 208 (discussing the “audible voice mail” system). Audible voice mail, at minimum, would remedy the issue of text messaging and hand-held cell phone distraction.

296. See Amendola, *supra* note 75, at 372–73 (proposing cellular phone companies take a proactive approach to create safer cell phone technology).

D. A Recommendation for Iowa

Current research shows the difference between hand-held cell phone use and hands-free cell phone use in terms of driver distraction is negligible.²⁹⁷ The “talking-while-driving problem” is not rectified by allowing hands-free devices as “safer” alternatives to hand-held cell phones.²⁹⁸ For some, the answer is to scrap cell phone legislation altogether in favor of other solutions.²⁹⁹ However, instead of giving up on cell phone legislation entirely, another option exists: completely banning hand-held and hands-free cell phones for all drivers.³⁰⁰ This option is not often considered, partly because of perceived difficulty in implementation by unwilling elected representatives.³⁰¹ Despite this perceived difficulty, there is some support for a complete cell phone ban, both from commentators and advocacy groups.³⁰² The National Safety Council has called for a nationwide ban on all cell phone use while driving.³⁰³ Achieving—and in turn, enforcing—a complete cellular phone ban for the entire nation would be a difficult endeavor to accomplish. The National Safety Council believes such a ban could be implemented, in part because it has been able to overcome similar challenges in the past involving seat belt requirements, teenage driving laws, and child seats.³⁰⁴

297. See *McCartt Testimony*, *supra* note 32, at 5 (discussing similarly heightened risk while using either type of phone).

298. See *Wallin*, *supra* note 264, at 194.

299. See *Amendola*, *supra* note 75, at 366 (stating cell phone bans only remedy one distraction, while leaving others unaddressed); *Wallin*, *supra* note 264, at 198 (stating the Kentucky legislature should halt attempts to ban hand-held cell phone devices, despite the belief cell phones create “a hazardous distraction for drivers”).

300. See *Cripps*, *supra* note 88, at 99 (highlighting opinions of advocates of a complete cell phone ban).

301. See *Legislators Dismiss*, *supra* note 1 (quoting Joe Simitian, a California state senator, that it will be a “cold day in hell” before a complete cell phone ban is implemented).

302. See *Noder*, *supra* note 153, at 238 (“[E]ach state legislature needs to adopt a complete ban against cell phone use while driving that includes harsh penalties for those who violate the prohibition.”); *Reinberg*, *supra* note 55 (highlighting the National Safety Council’s plan to lobby Washington, D.C., and every state to ban cell phone use while driving).

303. *Reinberg*, *supra* note 55.

304. See *id.* *Reinberg* also quotes Janet Froetscher, President and CEO of the National Safety Council, who states, ““We have found ways to enforce those laws, and [a cell phone ban] is no different.”” *Id.*

The State of Iowa should follow the National Safety Council's suggestion and take the opportunity to implement a complete ban on all cell phone use—both hand-held and hands-free cell phones—for all drivers. The legislation enacted during the 2010 Iowa General Assembly is a step—a misguided one, unfortunately—towards action on the problem of cell-phone-induced distracted driving. The new law in Iowa makes enforcement difficult for local officials, and it will further strengthen the public perception that hands-free cell phones are safe alternatives to hand-held cell phones. Further, by making provisions of the law enforceable only as a secondary action, law enforcement can only intervene if they have a separate reason to stop the driver.

Iowa should implement a complete cell phone ban because partial bans, as already addressed, are ineffective and fraught with shortcomings.³⁰⁵ Under a complete cell phone ban for all drivers, there would be no confusion for law enforcement in determining a driver's age or whether a driver was using a cell phone for text messaging, answering a call, or dialing a number. All of these activities would be prohibited under a complete cell phone ban. Consequently, officers would not have to guess the driver's age or intended use of the cell phone. A complete cell phone ban would also remove the impression that hands-free devices are a safe alternative to hand-held devices, as many drivers simply switch to hands-free devices if hand-held cell phones are banned.³⁰⁶ Alternatively, many drivers in Iowa may simply continue to use hand-held devices, as they know the current law only allows enforcement as a secondary action. If Iowa were the first state to implement a complete cell phone ban for all drivers, the attention and acknowledgment across the United States of the dangers of cell phone distraction while driving could be dramatic.

Certainly, if a complete cell phone ban was implemented, it would be wise to keep in place certain exceptions the Iowa General Assembly included in the cell phone legislation.³⁰⁷ However, these emergency situations within the new law are fairly general, and some individuals are

305. See, e.g., *Missouri Texting-While-Driving Ban*, *supra* note 254 (noting bans on young drivers can be difficult to enforce).

306. See HLDI, *supra* note 270.

307. See H.R. File 2456, 83d Gen. Assemb., Reg. Sess. § 6(2)(b) (Iowa 2010) (including exceptions for “a public safety agency,” a “health care professional,” and “[a] person receiving safety-related information”).

likely to try to take advantage of the statutory vagueness.³⁰⁸ While statutory revision to clarify what should be included under the Iowa law would be an important step, an additional interesting remedy to this problem is in place in Suffolk County, New York. Under the Suffolk County provision, when an individual is ticketed for using a hand-held cellular phone in violation of the hand-held ban, the driver receives a ticket regardless of the explanation for using the cell phone.³⁰⁹ Drivers are then allowed the opportunity to contest the ticket and prove they were using their cell phone for an emergency exception.³¹⁰ By ticketing regardless of the explanation given at the time the citation is issued, and only allowing “an affirmative-defense-with-documentary-evidence provision” for the ticketed drivers, drivers would be less likely to place non-emergency calls.³¹¹ Such a presumption is a logical way to provide for necessary exceptions to a cell phone ban, while ensuring such exceptions are not abused as to render the law meaningless. Iowa should take the next step—this time in the right direction—and, in combination with educational awareness and proper enforcement, implement a complete cell phone ban for both hand-held and hands-free cell phone use for all drivers operating a motor vehicle.

VI. CONCLUSION

The impact of cellular phone use while driving has become a hot topic across the United States.³¹² As technology advances and individuals wish to be connected and stay mobile, the use of cell phones while driving will continue to expand. The impact of cell phone use while driving, fortunately, has not gone unnoticed, both on the federal and state level.³¹³ As the National Safety Council stated, “‘2009 will go down as the year we got national consensus on the dangers of texting.’ . . . ‘Hopefully, 2010 will be the year we get the same level of attention, if not consensus, on the dangers of conversation.’”³¹⁴ The dangers of cell phone use while driving

308. See Horwitt, *supra* note 62, at 206–07.

309. See *id.* at 207.

310. See *id.* (noting drivers are required to produce phone records in court to prove an emergency call was made).

311. *Id.*

312. See *Bills to Curb Distracted Driving*, *supra* note 190 (“It’s the hottest safety issue in the states right now by far.”).

313. Exec. Order No. 13,513, 74 Fed. Reg. 51,225 (Oct. 1, 2009); Historic Summit, *supra* note 192.

314. See *Bills to Curb Distracted Driving*, *supra* note 190 (quoting John Ulczycki, vice president for research at the National Safety Council).

and the call for action are growing louder each year, and legislative action is needed to keep up.

Looking at research on this issue, the impact cell phone use has on drivers' reaction and performance is clear.³¹⁵ Every time drivers get into a vehicle and decide to use a cell phone to have a conversation, dial a number, or send a text message, they put themselves and other drivers' lives in danger. Despite these acknowledged dangers, many states have been unwilling to adopt strict legislation for all drivers to remedy the cell-phone-while-driving problem. Because such a wide variance exists in the legislation among the states that have passed regulations, questions arise concerning enforcement and overall effectiveness of these laws.³¹⁶ With these perceived questions, it is understandable there is some doubt about the need for cell phone legislation. Additionally, because other options could possibly solve the problems of cell phone use while driving, some question the need for more regulation.

Comprehensive cell phone legislation is needed for all drivers, instead of relying on other options and remedies, however. At this point in time, other states have been unwilling to implement a complete ban on both hand-held and hands-free technology. The opportunity exists for the Iowa General Assembly to take the lead in this area by improving the existing law and implementing a complete ban on all cell phone use while driving. While implementing such a ban will not be easy, research shows it is necessary for the safety and well-being of drivers on the road. Statistics show that solely banning hand-held cell phone use is not effective.³¹⁷ The answer is not to scrap cell phone legislation altogether in the hope alternative remedies will provide the answer. Rather, the answer is to take the next step and combine these alternative remedies with a complete, comprehensive ban on all cell phone use while driving a vehicle. The

315. *Supra* Part II.

316. *Supra* Part III.B.

317. *See* HLDI, *supra* note 270.

impact of such a ban in the State of Iowa would have far-reaching effects across the United States because “as Iowa goes, so goes the nation.”³¹⁸

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318. *Quotes of the Day*, TIME, Apr. 3, 2009, available at <http://www.time.com/time/quotes/0,26174,1889410,00.html> (quoting Richard Socarides, former senior advisor to President Bill Clinton, discussing what is often said during presidential elections).

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