



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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Traffic Safety: Legislative Trends and the Effects of the Pandemic | Aug. 17, 2020 | OAS Episode 104

Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith.

“In California, the Highway Patrol issued nearly 2,500 tickets for speeding at more than 100 miles per hour during a certain timeframe, and that was an 87% increase from the 1,335 during the same period of last year.”

Ed: That was Doug Shinkle, who directs the transportation program at the National Conference of State Legislatures, commenting on a phenomenon seen in a number of states during the Covid-19 pandemic. Doug is one of our guests today on “Our American States.” Doug is joined by Samantha Bloch, an NCSL transportation and traffic safety policy expert.

Our focus today is transportation safety and the type of legislation states have enacted to address concerns in that area. We discussed a range of topics: school bus safety, handheld devices, alcohol- and drug-impaired driving, to mention a few.

I also asked them to share their thoughts on how the Covid-19 pandemic might change some aspects of transportation and how states may respond. Doug and Samantha, welcome to the podcast.

Doug: Thank you very much, Ed, for having us.

Sam: It’s great to be here, Ed.

Time Marker (TM): 01:39

Ed: Well, Doug, let me start with you. We're here to talk about legislation and primarily legislation from 2019 dealing with traffic safety. But before we jump into that, how will the pandemic change traffic safety and enforcement?

Doug: That's a great question, Ed, and I think that's something we're grappling with and we're trying to understand at the moment. There may be a couple of takeaways that we can point to. One is that you would think that the incredible decrease in the number of people driving and the vehicle miles traveled, VMT, would lead to fewer traffic crashes.

That's not necessarily turning out to be the case thus far. Some data that was crunched by the National Safety Council is very instructive. They showed that the number of miles driven in May of 2020, of course during the middle of the Covid pandemic, decreased 25.5% compared to May 2019. So, number of miles driven down 25.5%.

However, the number of traffic motor vehicle deaths was only down 8% and, when you look at the number of fatal crashes as a percentage of the mileage rate per 100 million vehicle miles driven, the death rate has increased to 1.47 compared to 1.19 in 2019 per 100 million vehicle miles driven for the death rate.

So, what you're seeing is that this is an issue that you maybe hoped would be helped by the pandemic, but that's not necessarily looking like the case.

Now, this is early; we don't necessarily know a lot. Some states are seeing declines. But some states are even seeing increases, not just per miles driven, but they're seeing flat increases: like Louisiana, Missouri, North Carolina, Connecticut, Arkansas and New Hampshire are six states that have actually seen an increase in deaths compared to 2019, which is kind of amazing.

You're also seeing a lot of... you saw this maybe earlier in the pandemic when the roads were really empty, but there were lots of instances kind of anecdotal, but we started to see more numbers – a lot of tickets for kind of extreme speeding. For example, in California, the Highway Patrol issued nearly 2,500 tickets for speeding at more than 100 miles per hour during a certain timeframe, and that was an 87% increase from the 1,335 during the same period of last year.

So, you're seeing a lot of dangerous driving perhaps taking place and, of course, that's of concern when hospital beds are kind of at a premium.

The other trend that you see out there, and it really is too hard to know thus far, is that maybe traditional roadside enforcement is being less utilized at the moment due to competing priorities: Covid concerns about having a face-to-face interaction with someone you pull over. Of course, all of this is happening amidst the continuing debates over police reform and Black Lives Matter.

I'm not a criminal justice expert, so I'm not necessarily going to try to draw conclusions about that, but I think it probably plays some kind of role.

Where you're seeing the increase in citations is partly with automated enforcement: red light and speed cameras. What we're seeing is the number of citations from these automated enforcements like speed cameras in New York City and other jurisdictions seems to be going up

significantly. It kind of begs the question of, in the future, is this going to push more jurisdictions towards embracing automated enforcement so it can free up law enforcement personnel for other things? We'll have to see.

Another big dynamic is that there's going to be a big drop in fine revenue because there is so much less traffic safety enforcement going on in some jurisdictions, and so that will have an impact on maybe how much manpower they have.

The other thing that I would say has been fairly obvious, I guess, about the pandemic is that it has led to more people kind of recreating and perhaps getting around for transportation by foot and bike. It's a little bit harder to tell exactly what the trips are for. But you're definitely seeing some datapoints that we can find that more people are walking and biking, and more cities have been devoting more space to allow people to walk and bike.

So, I think the question with that is how sticky that is. Is that something that's going to become the new norm? Or once we go back to our semi-new normal in the future, will some of that road space that was allocated for pedestrians and bicyclists, will that be given back to motor vehicle traffic?

TM: 06:34

Ed: So, let's jump back to that 2019 legislation. Doug, what are some of the key trends you saw in 2019?

Doug: NCSL does an annual traffic safety trends report and the latest one which summarizes 2019 legislation is coming out in the month of August. We definitely saw an uptick just in the number of bills considered in 2019 and, in the topic areas that I cover, it was really notable – school bus safety – there has been a number of high-profile crashes that tragically took the lives of some school children and some drivers in the last three or four years.

And so that's really led to legislatures focusing on how they can improve the safety of the busses themselves, the process for hiring and screening bus drivers, and improving the safety of the off- and on-loading situation.

So, we saw I think 20 states enact about 40 bills related to school bus safety in 2019, so way more than in previous years. And what we're seeing is this trend where legislatures became more active around school bus safety generally around 2016/2017, and it just keeps on ramping up.

There was a lot of legislation around bicyclist and pedestrian safety in 2019, not as easy to summarize into any trends. There was some safe bicycle passing, some laws increasing penalties for injuring or killing a vulnerable user, which usually includes a bicyclist, a pedestrian, and also can be a motorcyclist, someone in a wheelchair. And then there is a lot of activity in legislatures defining electric bikes and electric scooters, which have become pretty ubiquitous in a lot of cities.

Something that's kind of a related point is that there has been this trend in the last decade of states giving more flexibility to local governments to reduce speed limits. You'll be surprised if

you live in a city, that actually some of the roads are not necessarily city roads; they're state roads, but they run through a city. And in order to reduce those speed limits, you need the permission of the state and the state sometimes wants to make sure that the speed limits have certain speeds to keep traffic moving, but that local communities worried about pedestrian and bicyclist safety, maybe there's a school nearby...

So, what a lot of legislation has done in the 2010s is allowed more flexibility for local communities to set their own speed limits in specified circumstances. Eight states gave more flexibility to local governments to reduce speed limits just in 2019 alone.

The last thing I would say in terms of my area that was a trend is automated enforcement. Not a lot of bills passed this year, but a few very important ones did. The most notable one probably in two kind of yin-and-yang was that Texas banned the use of red-light cameras in the state after debating that and considering that in the legislature for about a decade.

On the opposite side of the coin, New York expanded their school zone speed camera program in New York City. It is now the nation's largest. And then they also created a speed camera program for the state's second-biggest city, Buffalo.

TM: 09:41

Ed: Well, thanks Doug. Let me switch over to Samantha. Samantha, in the areas that you track, what were the standout trends?

Sam: My tracking revealed continued or emerging trends mainly in the areas of distracted driving, impaired driving and driver's license suspension.

Regarding distracted driving, there were five states that enacted handheld bans, and two states, Arizona and Florida, changed their texting bans for all drivers from secondary to a primary enforcement law.

As a side note, I want to quickly mention that primary enforcement laws are laws that can be enforced without any other offense taking place, and secondary enforcement laws can be enforced only if the driver also committed a primary violation at the same time.

Regarding impaired driving, which is usually one of the more active areas of legislation, we observed three areas with the most legislative activity: ignition interlock devices; testing laws; and 24/7 sobriety monitoring programs, with many states finetuning or amending existing laws.

Another significant trend in 2019 was penalty enhancement for driving under the influence of alcohol and drug offenses. Hawaii, Indiana, Maryland, Texas and Virginia enhanced penalties for driving under the influence of alcohol and drugs, with Hawaii and Maryland having fines that can reach up to \$5,000 for repeat offenders.

And finally, driver's license suspension, which was widely debated in 2019 – I found six states that expanded the scope of their laws to include additional offenses that could lead to a suspension, and 13 states that reduced the scope, most of them prohibiting driver's license suspensions for nonpayment of fines and fees.

TM: 11:42

Ed: Samantha, as of last year, 21 states and DC had adopted laws to ban handheld mobile device use by all drivers. Is this one of the more active areas of legislation? Can you tell us how those laws are supposed to work and how effective they are?

Sam: Yes, Ed. As I said earlier, five states enacted handheld bans in 2019 and so far this year, four states have enacted handheld bans. Ohio also has a pending bill that would impose a handheld ban if enacted.

States primarily use handheld and texting bans to combat distracted driving. Handheld bans are laws that allow the use of mobile devices while driving only in hands-free mode, and that usually includes activating the device through voice communication or with a single tap or swipe.

A growing number of states also include a prohibition to access or view non-navigational related content in their distracted driving laws. These laws are supposed to educate drivers, change perceptions, and deter them from using handheld personal devices while driving. But experts have not reached a consensus on the question of the efficacy of these laws.

NHTSA concluded a study in 2013 that handheld mobile device use was associated with an increased crash or near-crash risk, but it has not adopted an official position on the effectiveness of distracted driving laws. And studies seem to agree that handheld bans have been somewhat effective in reducing handheld phone use, but the evidence does not point to a reduction in crashes.

TM: 13:20

Ed: So, we'll have to wait a little bit to see the data on whether or not those laws are having the intended effect.

Let me switch over to you, Doug. You mentioned earlier there had been a notable uptick in school bus safety legislation. What kinds of laws are states passing?

Doug: Yeah, Ed. As I mentioned, school bus safety has really been on the mind of lawmakers and this has been very much a bipartisan effort in most of the states I've seen because there have been some fatal school bus crashes in Indiana, New Jersey and Tennessee, and that was really a catalyst for action to look at school bus safety policies and see what can be changed.

Now, it's important to note that to be transported by a school bus is by far the safest way for a child to get to and from school. A few states like Indiana, Maine and New Jersey enacted a number of school bus safety laws this year. The main buckets were a focus on school bus drivers and addressing the illegal passing of school buses with stop-arm cameras.

School bus drivers and that kind of system is more complex than I think a lot of people understand. Oftentimes school districts are contracting with private transportation service providers and, of course, you already have a large amount of school districts in a state. So, you

already have a lot of jurisdictions and a lot of organizations that you have to act with and do some level of coordination.

So, if a school bus driver maybe gets a DUI outside of their hours operating a school bus with their own vehicle, that may not necessarily be something that that school district or that contractor finds out, or if they find out, they may not convey it to the appropriate parties.

So, what states have been trying to do is take steps to help ensure school bus drivers or applicants are screened for disqualifying violations. Connecticut, Georgia and New Hampshire did just that this year, I mean, in 2019. And then North Dakota and Virginia added new training requirements for school bus drivers.

New Jersey now requires a medical exam including a hearing and visual acuity test for school bus drivers, and then New Jersey also took some steps to make sure that basically the New Jersey Motor Vehicle Commission was talking with the Commissioner of Education and what-have-you to make sure that these gaps in communication that were leading to maybe some drivers driving when they should have no longer been driving, or been hired when they shouldn't even have been hired being put in place, and then giving them additional training requirements to make sure that they physically and mentally are ready to take on a very important job, which is transporting our nation's school children.

The second trend is the illegal passing of school busses. When a yellow school bus stops, it has its flashing lights and it typically has a stop-arm come out. You would think it's rare that motorists illegally pass a school bus, but actually the National Association of State Directors of Pupil Transportation Services, they conduct an annual survey to gauge how often this dangerous driving action takes place.

For the 2019 survey, they had school bus drivers from 39 states participate, so not all 50 states, but a pretty good amount – those drivers from the 39 states, and it's not all drivers from those states... it's a certain amount of drivers – they recorded over 95,000 drivers illegally passing a school bus in a single day. So that shows you that wow, this is... and that's very dangerous because not only are you putting the school children in danger, but a school bus is a very high-profile vehicle. You can't really see what's going on beyond it, so you could be hitting school children, there could be other people, there could be a car. It's just a very volatile situation.

So, 22 states explicitly allow local governments or school districts to use cameras that are actually mounted on those school bus stop-arm cameras to capture images and issue tickets for drivers who illegally pass stopped school buses. In 2019, Idaho, Indiana, Maine, New York, Oklahoma, Tennessee, and West Virginia became the latest states to allow essentially these cameras to be mounted on school bus stop-arms.

And then a few other states revised their penalties for illegally passing a stopped school bus. Some state laws prescribed different fines and penalties for violations captured by school bus cameras as opposed to a law enforcement officer. And one common component is to not assess points against a driver's license for a violation captured by a camera. So, those are the two buckets.

The one other thing I would mention real quick is that in Indiana, in part as a reaction specifically to the school bus crash that took place there where some children were crossing from a mobile home park across like a 50-mile-per-hour... I think it was a 50- or 55-mile-per-hour road, they had to cross that road to their bus stop and were actually struck in that wall crossing that high-speed road.

So, Indiana passed a few pieces of legislation trying to make sure the districts and schools avoid those kinds of stops, which I think schools are trying to do anyways, and sometimes there are not a lot of good options. But that was something that Indiana focused on as getting on and off the bus is really... you're more in danger as a school child getting on and off the bus than you are actually on the bus. But those are some of the trends from 2019, Ed.

Ed: Well, I have to say I'm not easily shocked and the notion that that many people are blowing by a school bus is pretty shocking. I can understand why there's been a lot of legislation related to that.

TM: 18:58

Ed: Samantha, let's switch over to talk a little bit about marijuana-impaired driving, which is certainly an issue we're very concerned about here in Colorado where there are both recreational and medical marijuana. Can you talk a little bit about how states are approaching this issue?

Sam: Some states are focusing on educating the public on the dangers of marijuana-impaired driving and training law enforcement to detect it. I have also seen bills that try to enhance reporting and data collection on marijuana-impaired driving. Some 2019 examples that come to mind are California and Illinois.

Colorado recently published key findings from a two-year statewide study aimed at learning more about the public's attitudes, beliefs and behaviors on cannabis-impaired driving. Some of the key findings were that people who consume cannabis more often consider driving under the influence of marijuana to be less dangerous, and many cannabis users are highly skeptical of the laws, policies and enforcement regarding driving impaired, and they want credible and nuanced information.

In fact, tackling drug-impaired driving or defining what it is, is particularly tricky since the presence of drugs in a person's body does not necessarily imply impairment.

Regarding enforcement, we have seen a somewhat increased interest in implementing or learning more about oral fluid testing. Oral fluid testing is a technology that is less invasive and cheaper than blood tests, and it doesn't only identify the presence of marijuana in a person's body, but a variety of drugs.

In 2019, three states included testing of oral fluids in their laws, and this year New York has a pending bill that would add saliva tests to its implied consent laws.

Currently about half of U.S. states authorize some form of oral fluid testing for screening or evidentiary purposes, but the majority of states don't have an active oral fluid testing program.

Most of the studies that I have read concluded that oral fluid tests are helpful for presumptive screening and may be a helpful additional tool for investigating drug-impaired driving, but that they're not sufficient as a standalone tool.

TM: 21:22

Ed: Doug, let me switch over to you. I've read that people are riding their bicycles a lot more during the pandemic and I know for a fact that I am, so I'm not too surprised by that. I am particularly interested in the rise well before the pandemic in these bicyclist and pedestrian fatalities. Can you talk about that a little bit and how states are responding?

Doug: Yeah. And as you noted, Ed, you can kind of see it with your eyes and it's notoriously difficult to get great data on the number of trips by bicycle and foot, although you can look at things like the number of bicycles going over bridges in Portland and New York and in certain geographic areas, and it can give you a good sense.

And everything we're seeing is showing that the number of people on foot, on bike, on scooter has gone up significantly. One data point that I found that was really interesting is that according to Google and Google Maps, since February there has been a 69% increase in searches for cycling directions, with the all-time peak in Google Maps searches for cycling directions taking place this June.

So, clearly there are more people out on the roads and trails and, as I mentioned, some cities are closing down streets to vehicular traffic and opening them specifically just for non-motorized traffic.

So, this is interesting how this is coming amidst this time period where the number of bicyclist and pedestrian deaths is spiking back up to very concerning levels. There was some progress seemingly being made in the early 2000s. Some of that may have had to do with just fewer vehicle miles traveled by cars during those time periods.

But now what we see is that in 2018, which is the year for which we have the most complete data available from the National Highway Traffic Safety Administration, in 2018 there were 6,283 pedestrians killed in traffic crashes. That was a 3.4% increase from the year before and the highest number of pedestrian traffic deaths since 1990.

And for bicycling you saw something similar; I think it was also the highest number of bicyclist deaths since 1990. And bicyclists and pedestrians now make up about 19.5% of all traffic fatalities. That used to be around 10 or 12%, but as vehicles have gotten increasingly safer, the percentage of overall traffic deaths that are pedestrians and bicyclists is just rising because the interventions to make pedestrians and bicyclists safe are just more difficult because they're not inside a vehicle or something that really can help protect them.

So, what did states do in 2019? Two states, Oklahoma and Washington, passed laws requiring that a motorist leave at least three feet while passing a bicyclist. There are now at least 33 states with such laws. Now, as to whether those are effective, not sure and NHTSA is doing a study on those. But at least it's kind of a form of education for motorists and bicyclists alike.

Oregon and Arkansas, interestingly, passed something called stop-is-yield laws. They're also known as Idaho stop. They allow bicyclists to treat a stop sign as a yield sign in specified instances. They still have to stop if someone else is in the intersection before them, but if there's no one there, they can continue on.

There's not a lot of research yet, but it's showing that that actually can maybe make bicyclists safer in some instances because they're not having to start and re-stop. It's an interesting trend. Idaho has that law and has had it in place since 1982 and it definitely doesn't seem as if it's made bicyclists less safe in the state. And then Colorado and Delaware have more limited forms.

But I think I just saw the other day that Washington or another state passed one of those this year, so there continue to be more states looking at that.

There's the concept of increasing penalties for injuring or killing a vulnerable user. And then the other huge trend is these legislatures grappling with electric bikes and electric scooters. We saw electric scooters kind of explode in 2019, in the second half of 2018 and 2019. So, there are now 19 states just in 2019 alone which created e-scooter laws, basically defining what these e-scooters are and establishing some baseline operating rules for them including maximum speed limits and some helmet requirements, although not all states require those.

And then the same thing with e-bikes. E-bikes have been around a little bit longer and states have been passing laws around them since around 2014. There are now 26 states with this kind of three-tier model e-bike system that basically classifies the different kinds of e-bikes that have different speeds. Some of them can go up to 20 miles per hour without being pedaled, while others have to be pedaled, but basically creating definitions for those.

So, a lot of activity in a lot of different places in the bicyclist and pedestrian safety realm, Ed.

TM: 26:40

Ed: Great. Well, thank you, Doug. We're going to take a quick break here, and then return for more discussion on traffic safety policy.

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TM: 27:20

Ed: I'm back with Doug and Samantha. Samantha, to return to impaired driving, I know many states use ignition interlock devices to prevent convicted drunken drivers from taking the wheel again after having too much to drink. What legislative developments did you see in this area in 2019?

Sam: In 2019, at least eight states enacted legislation regarding ignition interlock devices or IIDs. The most noteworthy development in this regard is that Kentucky and New Jersey now require or strongly encourage all DUI offenders to install IIDs. Previously only recidivists and offenders with a high blood alcohol content had to install such a device.

Louisiana and Oklahoma now give the opportunity to individuals with a suspended driver's license who committed a DUI to install IIDs in their vehicles, and they are allowed to drive as soon as the device is installed.

One of the downsides of IIDs is their high cost. And so, some states have indigent programs to help certain offenders. In 2019, Kentucky and Texas strengthened their indigent programs by allowing additional fee waivers or steeper fee discounts.

And finally, Idaho, Kentucky and Maryland amended their laws to require IIDs to be camera-equipped, so that as of the end of 2019, a total of 21 states required IIDs to be equipped with a camera so that it was possible to confirm that it was the offender who was blowing into the device when a test had to be submitted.

IIDs are one of the most effective tools to prevent impaired driving and NHTSA and CDC data show that IIDs effectively reduce recidivism among repeat offenders.

TM: 29:12

Ed: Now, let me switch over to Doug. Doug, what do you see as the toughest challenges to solve in the area of traffic safety?

Doug: That's a good question, Ed, and it can be a frustrating question for those working in the traffic safety field. There has certainly been a lot of progress made in the last 30/40/50 years, but what we've seen in the last decade is that it's hard to drive down the number of fatalities, particularly for vulnerable users.

Some of that is just because if they're in an unsafe situation, or if the driver is impaired, or if the person on foot or bike is impaired as well or separately, there's not really a great way to protect them without having better infrastructure and having more robust enforcement.

And essentially at the end of the day, traffic safety depends on states passing laws, and those laws kind of serve as norms, and your hope is that the great majority of the population complies with those laws. And then law enforcement focuses on the few that do not.

Now, if you have a situation where those norms break down, and I would argue that's kind of breaking down with distracted driving and Samantha can go into that in a little more detail, but when those norms kind of don't exist or are getting broken down, and then you also don't necessarily have a lot of law enforcement time and resources to devote to traffic safety, that makes it really difficult.

I don't think you're necessarily going to be able to pass laws that are going to increase traffic safety in a vacuum. They need to have the funding, they need to have an educational component, they need to have leadership, they need to have buy-in. For example, a lot of state

highway patrols, some of those are funded through some dedicated funding, but some of them don't necessarily have a source of dedicated funding and, of course, that becomes problematic.

So, I would say that's the big challenge, and then just the idea of: How do you keep people outside of the vehicles safe?

TM: 31:24

Ed: Yeah, Samantha, do you have thoughts on that notion of the toughest challenges?

Sam: One of the toughest challenges I see is preventing cellphone distracted driving and enforcement of distracted driving laws. Regarding impaired driving prevention, for example, while there is no perfect solution, there are some alternatives for people and some established ways to enforce the laws.

People can choose to use ride-hailing services. There are sobriety checkpoints. In general, it is easier to observe when a person is driving impaired than when a person is using their cellphone while driving. There are some studies that suggest that high-visibility enforcement campaigns of distracted driving laws are effective, but they are costly and require a lot of manpower.

There is also a difference in social acceptance, attitudes and perceptions between impaired driving and distracted driving. Distracted driving is definitely not as stigmatized as impaired driving. While most drivers realize the dangers of cellphone-distracted driving, many drivers continue to operate under the assumption that they can drive safely while using their phone, but other people cannot.

Distracted driving laws are also difficult to enforce. As I explained earlier, handheld bans, authorized hands-free cellphone use if the phone is activated by voice or with a single tap or swipe. But not all laws are that precise and it is sometimes difficult to know when a person is violating the law.

One possible solution could be automated enforcement. I know that New South Wales, a state in Australia, is using cameras to enforce handheld bans, and Montgomery County, Maryland was interested in using this technology and asked the general assembly to adopt a bill authorizing the county to use it. The bill was introduced early this year, but it failed.

So, we will have to see if this gains any traction in the U.S. in the coming years.

Ed: I have to say, these are issues that affect pretty much all of us every day, so I want to thank both of you for your time and expertise today. And stay safe.

And that concludes this edition of our podcast. We encourage you to review and rate our episodes on iTunes, Google Play or Spotify. You may also go to Google Play, iTunes or Spotify to have these episodes downloaded directly to your mobile device when a new episode is ready. For the National Conference of State Legislatures, this is Ed Smith. Thanks for listening and being part of "Our American States."

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