



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, the politics that compel them, and the important work of democracy.

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States Fighting Urge to Text and Drive | Aug. 16, 2018 | OAS Episode 41

Welcome to “Our American States,” a podcast of meaningful conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them and the important work of democracy. For the National Conference of State Legislatures, I’m your host, Gene Rose.

Do you text and drive? Eat and drive? Program your maps while driving? While we would all like to say no to those questions, we know that we and those we share the roads with don’t always keep their eyes and their minds on the road.

There are a number of challenges to effectively enforce distracted driving laws including loopholes that give motorists a number of plausible excuses for holding or manipulating a mobile device, as well as a lack of law enforcement staff and resources.

Several states are being innovative in addressing distracted driving issues and we’ll talk with a Tennessee highway patrol lieutenant later who will let us know how a big rig is helping them address the issue.

We start our discussion on the topic of distracted driving enforcement by getting a national perspective on how states are trying to encourage drivers not to be distracted, especially when it comes to texting and driving.

We’re talking with Liza LeMaster-Sandbank, who is a highway safety specialist with the National Highway Traffic Safety Administration. Our topic today is distracted driving and particularly as it relates to texting and driving. It’s been a heavily debated item in state legislatures over the past few years. Can you give us a status report from your perspective? Are things better or worse with regards to distracted driving?

Liza: Well, that is a loaded question, Gene. I will tell you that while it may seem on paper and through data that the problem is getting a little bit better, we’ll talk about some of the complexities of the issue as we continue our conversation. But in all honesty, our latest numbers in terms of motor vehicle crashes and those folks who have been unfortunately killed in these types of distracted driving crashes, in 2016 we had 3,450 people killed in a distracted driving crash.

Now, that number is about 2.2 percent lower than our previous years. However, it still represents over 9 percent of all fatal crashes that were reported as distracted affected crashes. However, that number is most likely not completely representative because of the complexities of documenting distracted driving crashes.

So unfortunately while the numbers may not be 100 percent clear, if you ask general population folks, they're going to tell you that distracted driving is probably at its all-time high.

Gene: And can you give us a definition of what distracted driving is just in terms of the statistics that you collect?

Liza: Yes. So distracted driving is anything that's going to take your attention away from the primary task, which would be driving the vehicle in this case, and there are several types of distraction. There is visual; there are manual and cognitive—that's how we at NHTSA define it. And examples of distracted driving are texting, using a cellphone or a GPS, adjusting the radio or an mp3 player, conversations with other passengers, eating, drinking, grooming and so forth. So distractions can be many things that would take your attention away from the driving task.

Gene: Are the statistics that you collect broken down into those categories, or is that kind of part of the problem in terms of finding out how prevalent of a problem it is?

Liza: Well, exactly Gene. So the real problem here is that distraction comes in many shapes and forms and some are easier to detect than others. And quite frankly, if you're involved in a fender-bender, if you're involved in any type of crash that doesn't involve a major injury or fatality, how often can you determine if someone was actually distracted? And how often can you expect the driver to tattle on themselves?

So it takes a lot of skill on the part of the law enforcement agency and their representatives and their officers to determine if indeed there was some other causal factor that created the situation to begin with. So therein lies the complexity in terms of distracted driving, texting, cellphone use, anything that falls within that category—how to document it and how to get a real picture of the problem.

And so we talk about distracted driving, but that encompasses texting, it can be cellphone use and all these other things. And so when an officer documents an incident, it really does depend on how clearly they are able to assess the situation and also how factual our drivers are going to be and honest they're going to be when there is a situation.

Now, if there were a fatal crash, there would be a crash investigation and in those cases, we have really skilled crash reconstructionists that may be able to get to the bottom of the issue or even do some further investigation into cellphones. But that is a very complex and very controversial issue.

So you can see, Gene, how complex it is for us to determine what the real status of the problem is across the country and within our own communities.

Gene: Liza, I know that your organization, the National Highway Traffic Safety Administration, recently released a report on the enforceability of texting laws in Connecticut and Massachusetts. Can you share with us some of the key insights that were identified in that report?

Liza: Absolutely. We're pleased to have conducted the study. There were two other pilot demonstration projects that involved texting and driving and in this case, we were really fortunate to work with law enforcement that were willing to do a couple of things, and that was to look at handheld mobile phone use and the other one was to look at texting and driving use and how to enforce those laws.

And some of the things that they found were exactly some of the things we've been talking about already and the complexity of determining what the distraction was. How do you identify whether someone was actually looking at their phone for GPS, or whether or not they were texting or simply reading?

The challenge there for these states was that having a strong law is best, but where there is a hindrance is when the law is really not as specific and it provides some hindrances to enforcement of the law.

So in these two cases, for example, in one of the states they had a backup law, which meant that if they couldn't really determine what the distraction was, they can actually state one of their laws as impeded operation. This was done in Massachusetts. So law enforcement was able to find other ways to enforce distraction when it became a major issue on the road.

In the case of Connecticut, in lieu of a texting citation, they had other alternatives when it became very difficult to establish some clear evidence that the driver was texting. But, again, they were able to identify that the driver was driving erratically and that there was cause for concern.

And so you have to be very insightful into your laws and know how to best approach distracted driving, texting and cellphone use within your own state, and that requires you to know your law. So one of the insights at this point was you really have to know your laws; you have to know where there are hindrances and what you can do to still create a safe community on the road.

The other thing that they found was that training, officer training, was an important component to the enforcement of any distracted driving law, whether it be texting or handheld cellphone use, and that's important so that when officers are on the road, they know what they're looking for, how to document the infraction, and how to carry out that enforcement activity within their communities.

Gene: Liza, have you had any response to this report from the states or the law enforcement community?

Liza: Not yet, Gene. We haven't seen a whole lot of response, but we do refer to it a great deal when we're working with our states and when our regional offices are working with the states, because they're always looking for different approaches and different insights on how to conduct enforcement.

So from that standpoint we have referenced this report and continue to reference our other demonstration projects so that we can help local law enforcement agencies who are interested in doing more. We use these as a resource for officers to learn how to best approach the enforcement of their distracted driving laws.

Gene: And Liza, a number of states have had laws on their books to prohibit the use of handheld phones while driving, and obviously we have several states where it is still legal. Do you have any statistics to prove whether those laws that have the hand-phone ban are working?

Liza: Well, that's an interesting question and, in fact, we are working on multiple studies that are looking at the different laws and how they have impacted the distracted driving problem within their states. Again, I come back to the challenge with data collection and we're also in the process of changing the way we code various distracted events.

And so that has not been an easy feat at this point. However, I will tell you that we are very proud of all the states which have adopted different laws. So what I can tell you is that something must be going right because our states and their legislatures are doing a good job of passing different bans.

For example, we're now up to 47 states, Washington, D.C., and all the territories that have a texting ban. Forty-three of those are primary bans and four of them are secondary, and there are only three states in the entire union that do not have a texting ban on the books. And, in fact, when it comes to handheld cellphone bans, we have 15 states that have a handheld cellphone ban and we still have work to do in that area. But the good news is that the states are really getting smart about distraction and recognizing that their constituents really do want something done.

What's interesting though, Gene, is that while we see more and more states adopting different bans, it's interesting to note that we did our own study, which we do every so many years, and that is a survey that asks folks about their distracted behavior. And many folks will say that they recognize that distracted driving and texting is unsafe; however, they still continue to partake in some type of distraction while driving. So it's really interesting to note that as a driver, many drivers will say, you know, I don't want to be a passenger in a vehicle when someone is being distracted. However, they do have some part in a distracted event while they're driving.

So we have a lot of work to do in distracted driving and I think a lot of it has to do with education, the need for some knowledge of resources that are out there, including how to best collect data from an enforcement standpoint, how to best collect observational data if that's at all possible for distracted driving as a behavior, so that we get a real flavor and a status of what that looks like within communities and states.

And I think it's really important to note that we're doing everything we can as an agency to educate and create awareness among our stakeholders, whether it be law enforcement, whether it be healthcare providers, and other safety advocates.

Gene: Your answer to that last question made me wonder: Are you getting responses from manufacturers of cars, phones, from an industry in order to help address this problem?

Liza: Well we proudly work with all of our partners, and that includes the industry, but we can only do so much. And so we are constantly educating ourselves as an agency in terms of what is out there. And many folks have talked about self-discipline and self-patrolling, if you will, by using applications on phones and sending out instant messages, if you will, through an app that says: Hey, I'm driving; I'll get back to you.

We encourage all of that. We can't say that one is better than the other. But we educate ourselves on a regular basis as to what technologies are out there so that folks can help themselves and self-discipline. However, what we do on our end is to provide resources for education and training, and we keep an open dialogue with all of our partners so that we can continually improve the way we address distracted driving. As you know, it's very complex and there's no one answer.

I will say, however, that we continue to ask for all of our stakeholders to become aware of the final role of FAST Act that has to do with distracted driving so that the local laws are in place, so that all advocates, all enforcement agencies can play an active role in trying to curb distracted driving in their own communities.

Gene: And finally, Liza, we'd like to get from you, from the perspective of the National Highway Traffic Safety Administration, what steps that states, and specifically in state legislatures, should take to enhance their states' distracted driving enforcement awareness methods?

Liza: That's a great question, Gene. So I think it's really important, number one, to understand what our authorization asks of us through our congressional mandate—what does it ask of us in terms of states addressing distracted driving within their laws, understanding that laws are part of the equation, not the total equation, but definitely part of the equation? And so recognizing that a law on the books, some kind of ban for texting, is really important, as well as some kind of cellphone use prohibiting use behind the wheel is also important.

And through our FAST Act, there are different criteria that are out there so that states can become able to receive federal funding to support their distracted driving program. So first I would say become familiar with what those criteria are as a state and work together. Secondly, I would say that it's important for all of the stakeholders to meet on a regular basis to discuss the status of the issue within their own communities.

That includes law enforcement talking with their state legislators so that they can understand and have a dialogue about what the challenges are when it comes to documenting the issue, when it comes to enforcing the laws, and talking about the hindrances in the laws and how they can work together to create a safe community.

Lastly, I would say training—that there needs to be awareness training, not only for law enforcement and state legislators, but also for the public of all ages, all age groups, because this is not an issue that is simply a young driver issue or a millennial issue. This is across all ages there's some type of distraction that involves a device, the mobile phone device.

So I think it's important that those resources are shared and to note that as an agency, we do have several trainings available and guides available on our website. We have an online virtual

live course that we provide to law enforcement. We have prosecutor and law enforcement guides that help provide resources and steps for the court system to be able to handle fatal crashes involving distracted affected crashes.

So that we are a resource for all of them and we would encourage them to continue to look at the issue locally, comprehensively, and that they never forget why we do this and that is for the safety of our own community and our own family and friends.

Gene: An excellent point to end on. We've been talking with Liza LeMaster-Sandbank who is a highway safety specialist with the National Highway Traffic Safety Administration. Liza, thank you so much for your time today.

Liza: Thank you for having me. It was a pleasure.

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Gene: So joining us now is Lieutenant Bill Miller who is a public information officer with the Tennessee Highway Patrol, which currently has a statewide effort to raise awareness of the dangers of distracted driving. Lieutenant Miller, first welcome to the program. And tell us a little bit about Tennessee's distracted driving awareness and enforcement campaign and what prompted state officials to introduce this.

Miller: Well first, Gene, let me say thank you for having me on as a guest speaker and it's a pleasure and honor to be here. I hope that what I can share about the Tennessee Highway Patrol and our initiatives may actually help another agency.

Really, in short, what we looked at: What were we doing good and what were we not? And the distracted driving aspect, we noticed that we were lacking in enforcement on that. So there wasn't for many years a law on the books here in Tennessee that kept up with the rapid use of cellphones.

So the state legislature did pass a law that made it illegal for a driver to drive and text, or use their cellphone for anything other than a cellphone, as far as dialing a number, making a phone call or receiving a phone call. That means it's illegal for you to text, receive a text, go on Facebook or any social media site—Twitter, Instagram, Pinterest, whatever it is that you're looking at—it's against the law to go on there and use a website or anything in general.

But that's very hard to articulate because, as you know, you can hold a phone with one hand and use your thumb to dial a number, and that's what many people do to text a message. So we really were not having very much success in court and were not having very much success with seeing the distracted number of citations go up or seeing distracted driver crashes go down.

So we went back to the drawing board because it's much easier to look to see what you have on the books as far as laws than it is to maybe try to reinvent the wheel. So we looked back at our Tennessee code, our traffic laws, and we found a law that was already on the books and had been there for some time, and it's the "exercise due care" law. As we read that law, lightbulbs went off and this was just an epiphany for us that we knew we had to utilize this law.

That law simply states that you as a driver, you are required to give 100 percent full attention to the safe operation of your vehicle to prevent possibly being involved in a crash. So that means anything that you're doing that causes you to swerve, exit your lane, have erratic stopping and going while you're operating your vehicle, to allow you to be stopped and have this citation applied to your driving habits.

As we noticed drivers who were texting and driving or having some type of electronic device in their hand or doing anything in the car, whether it be holding a dog, eating a sandwich, anything that is causing them to drive erratically and not give that attention to the safe operation of their vehicle, we were addressing.

So our citations are going up for not only distracted driving violations such as the due care and texting and driving, but we're seeing that other agencies are catching on to this and are also applying this law. So we knew we also needed to take it a step further because if you just sit back and you try to respond to a situation, you're going to constantly be behind. So we knew we had to be proactive.

In our Chattanooga district, the idea was to utilize our tractor trailer; we have a large semi that's black and tan, it's marked, it's strive for Tennessee state trooper decals, has blue lights on it—you cannot miss this vehicle; you really cannot miss it. If you are missing it, you are so distracted that you shouldn't be on the road, period.

But we had troopers who were driving the truck and troopers who were also sitting in the truck and they would peer down in plain view into vehicles. Of course the higher elevation really, really gave us a huge advantage to see what people were doing and be able to articulate that in court. The troopers would look down into vehicles, look over to other tractor trailers, and could call out that violation to another trooper who was possibly in a marked unit, an unmarked unit, a motorcycle, or whatever the case that they were riding or driving, and they could pull over that vehicle and take the appropriate action and put down as a witness the trooper who was in a semi, so that person could also come to court if need be.

This really caught on across the state. As a matter of fact, we even made Fox national news of what our steps and what our measures were because we took this truck all across the state of Tennessee and we utilized it from Memphis to Mountain City in East Tennessee. And with that, the idea grew.

We have a couple of different marked busses, passenger-type busses that are very similar to a motor coach or something that you may see in a commercial bus line that may travel across the country—so very large busses. And they are also black and tan, marked blue lights and so forth with even larger decals of the Tennessee state trooper decals on this bus.

So we took these busses across the state, troopers rode the busses, they went into our most congested areas of the state and did the same practice and, again, with huge, huge success. We invited the media to come out and ride the bus with us so that the media now becomes a stakeholder. They see what we're seeing. They see the epidemic that we're facing, that distracted driving is not just someone else's problem; it's everyone's problem.

So we got the media on board with this and that just really helped us tremendously. This is earned media; this is not paid media; so this is free media attention that we're getting to this epidemic that's taking place in our state of distracted driving.

Gene: While the number of citations is going up, you're definitely reaching more people who understand that this is a problem and they're being watched?

Miller: Yes, it truly is and obviously it's very difficult to get a quote "search warrant" or to look at someone's phone without verbal consent, or them signing a consent form to let you look at their phone. So therefore, we had to be smart with how we do this.

When you can articulate and you can really put that articulation down on paper and talk about what it is that that driver was doing and how their actions led to just blatant distraction, and you then take the time to educate that driver on their practices and the hazards of their practices, that education we hope will spread like wildfire and go from one driver to another driver to a friend or family member, because one thing we all as drivers really must keep in mind, especially when we have younger people in the car, our children, they will imitate what you do.

If you are driving distracted, if you're not wearing your seatbelt, if you're drinking and driving, if you're holding a cheeseburger, for example, and driving your vehicle with your knees as we've witnessed happen before as well, your children will do just as you're doing; and then when something happens, you're going to be the one asking the question: Why? Why did this happen? And the question has a simple answer: It's because you have demonstrated this improper driving behavior for your children or your family members to emulate.

So we really want to stress that to our motorists. We don't want to write a ticket, first of all. We do not want to give a citation. We wish we didn't have to issue any citations. If we can educate you and tell you the hazards of what you're doing, then we hope that that, again, like I said, will catch on like wildfire.

In theory, our actions are catching on here in Tennessee because we've partnered with our sister agency, the Tennessee Highway Safety Office, and the Tennessee Highway Safety Office, they are taking our bus enforcement that troopers used to only do alone and now we're doing that with the Tennessee Highway Safety Office. They are an educational branch of the State of Tennessee's Safety and Homeland Security and they also help local agencies have those resources needed so that they can... state and local agencies so that they can conduct their job and do it well.

So, we now have local officers on the bus calling out to local officers, whether it be a city police officer or a county deputy sheriff, working side-by-side with Tennessee state troopers. And the partnership and the buy-in and the stakeholder-ship are tremendous. And we've had a statewide bus tour now three times and we're working on our fourth bus tour coming up in October, where we have multiple busses or vans running simultaneously across the state. And with that, several local agencies have also started their own type of bus tour or van enforcement, or some other type of distracted driving enforcement designed to fit their local community.

So we're very proud of what we're doing and being proactive and how our partners within city police departments and county sheriff departments are also taking this problem and addressing it.

Gene: And looking at the people that you are giving citations to, I think most people would think that it must be young people doing social media and stuff like that, but is it all ages of people that you're seeing this problem with?

Miller: You know, that's one of the most common myths is that it's a young person doing this, you know, those teenagers don't have the experience. It's everyone really, Gene; it is everyone. As our older age groups are learning and discovering Facebook, it's just like any other type of social media outlet or something new that we learn electronically how to do, you know, it's fascinating to us.

Just like angry birds, the app back in the day, everyone used to play that little game angry birds, and it was contagious; just like "Fortnite" is now for young kids that play video games. But as our older generations catch on to Facebook and Instagram, that's how they connect with their grandchildren, that's how they connect with their children when they live some distance away from where they are now. Younger children are into Snapchat, Instagram, Facetiming, instant messages that they can instantly post or send to someone, and once it's open and received it disappears, it's gone. There are so many social media outlets out there that make it so convenient for any age group to use.

They're so easy that they're not law-enforcement friendly, to put it like that, because they're so easy to use that people think they can use them while they're driving. But the fact is, the time it takes you to read a text and send a text, the average time it takes you to do that, which is just four to five seconds, you can travel the length of a football field, and that is extremely dangerous because: What have you passed? Who have you passed? What have you done or what have you struck? What have you hit that you don't know about in that 100-plus yards?

Gene: As you're having success with this program, Lieutenant Miller, what kinds of lessons or experiences do you think other states around the country would benefit from learning or adopting from what you've done there?

Miller: Again, we've had success, but have we had enough success? No. We have so much further to go. We're experiencing crashes that are happening for no reason: clear, bright, beautiful days, middle of the day, long stretches of roadway where there are no curves, no inclement weather, no roadway hazards, and vehicles are crossing the center line and striking other vehicles head-on. That tells us in and of itself that we have so much more that we need to do.

If another state agency, if another city police department or county sheriff's department, if you're not taking this problem seriously, you really need to stop and look at what it is that you're doing as an agency, because nationwide we're going to have 40,000, on average 40,000 traffic deaths this year nationwide.

Now if that was 40,000 homicides, 40,000 murders of any type, the nation would be up in arms to their state legislatures, to their congressmen, to their senators screaming and demanding that they do something. That's 40,000 people that are not going to be here for Christmas, not

going to be here for their children's weddings, they're not going to be here for birthdays, they're not going to be here for any holiday—they're not going to be here to just enjoy life.

And if you're listening, if you're not taking this seriously as a driver or as someone who rides in a passenger vehicle of any type, you need to take this seriously because it could be you that's not here to enjoy your family. And to simply put it, it's one bad choice, one second away from tragedy that will last forever.

So if you as an agency are not taking traffic enforcement seriously, you're not taking distracted driving seriously, I really submit that it needs to be a top priority.

Gene: We've been talking with Lieutenant Bill Miller, public information officer with the Tennessee Highway Patrol. Lieutenant Miller, thank you so much for being a part of "Our American States."

Miller: Thank you so much. And together as stakeholders, together as one unit, one team pulling on the wagon going the same direction, I know we can make a difference and we are making a difference. Again, it just takes education.

If I may leave you with this: We wear on our uniforms a pin and that pin simply has the word "zero," and it's the answer to a question that we ask numerous people who ask us about this zero pin ... You can imagine the jokes that we get about it ... But it's a very serious answer that comes with a very serious question:

How many friends and family are you willing to lose in a car crash due to distracted driving, driving intoxicated or not wearing your seatbelt? And the answer is zero. So please, we just really need everyone's help to join us in this fight against distracted driving and make our roadways safer. Thank you.

Gene: A very positive message to end on. Thank you, Lieutenant Miller.

Miller: Thank you, sir. Have a great day, Gene.

Music and Gene VO:

And that concludes this edition of "Our American States." More resources on this issue are available at the National Conference of State Legislatures website, nclsl.org and putting in the search term, distracted driving.

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