



To: House Ways and Means Committee
From: Kimberly Buddin, ACLU of Michigan
Date: May 16, 2019
RE: HB 4181, 4198, 4199- Distracted Driving
Position: Opposed

The ACLU understands the well-intended reasoning behind HB 4181, 4198, and 4199, but without appropriate measures, the collateral consequences on minorities and the poor are significant. No one denies the dangers of texting and using the phone while driving; however, we oppose this legislation without additional protections because it will perpetuate racial disparities, disproportionately impact low income communities, is impractical and unenforceable—all while having minimal, if any, impact on roadway safety.

Distracted driving laws disproportionately impact low income people and communities of color

This legislation is likely only to further perpetuate racial disparities and biases leading to an increase in poor minorities having suspended licenses and creating unnecessary involvement with the justice system. The incidences of racially discriminatory traffic stops is well-documented across the country and in Michigan. Once stopped, minorities are far more likely to be subsequently subjected to a police search. Where studies of traffic stop data have been conducted, African Americans and Latinos are far more likely to be pulled over than are whites for the same behaviors and offenses. Results from a FOIA request to Michigan State Police showed that during the first three months of 2017 (on six randomly selected Fridays), of the 82 individuals who were stopped 48% were black, Hispanic, or Asian, while only 24% were white, and 24% of unknown racial identity but with Spanish surnames. This legislation provides additional reasons for police to stop and cite drivers in an era where racial profiling is an unaddressed, but prevalent problem. Any such legislation MUST be accompanied by laws to address racial profiling.

This problem is further exacerbated by the fact that the legislation does not prohibit the funds from any fines associated with a violation from going directly to law enforcement. If these bills pass, the legislature must remove any incentive for over policing, especially where it explicitly creates a primary justification for traffic stops.

This legislation will also have a disparate impact on low-income people. The more than doubling of fines make it even less attainable for poor people to pay and face additional penalties, fees, and potential license expulsion. The current form of the bills removes the initial amended language providing non-financial penalty of community service. Moreover, hands free phone technology is a fairly recent development. Many low-income individuals may be unable to afford vehicles with this technology or an accessory to bring them into compliance with this legislation. Thus, this legislation both unreasonably presumes that people have an alternative to using their phones and places the financial burden on them to do so.

Distracted driving laws do not reduce crashes

Multiple studies show on the lack of effectiveness of distracted driving legislation such as this. A 2014 study¹ found that “bans appear moderately successful at reducing single-vehicle, single-occupant

¹ Abouk, Rahi, and Scott Adams. 2013. "Texting Bans and Fatal Accidents on Roadways: Do They Work? Or Do Drivers Just React to Announcements of Bans?" American Economic Journal: Applied Economics, 5 (2): 179-99.



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accidents if bans are universally applied and enforced as a primary offense. Bans enforced as secondary offenses, however, have at best no effect on accidents. Any reduction in accidents following texting bans is short-lived, however, with accidents returning to near former levels within a few months.”

Additionally, a study conducted by the Insurance Institute for Highway Safety of the highway Loss Data Institute found texting bans to be ineffective.² Analyzing five states (California, Louisiana, Minnesota, Washington, and Iowa), this study found that reports of crashes due to distracted driving were on the decline right before the ban, which showed a decrease and then leveled out. This is attributed to the fact that rather than not texting while driving, drivers tend to engage in more dangerous texting by lowering their hands (and thus eyes) to avoid detection by police. This can lead to an increase in accidents, rather than reducing them.

The legislation is an impractical and ineffective means of resolving a cultural and behavioral problem

While the bills as introduced created concern because of the potentially lower threshold for law enforcement, the substitutes remain problematic. It is impractical to ban the option for new and young drivers to utilize voice operated systems within a vehicle is an ineffective measure at curbing distraction and likely will cause more inexperienced drivers to text. Additionally, the timing associated with the definition of “operate” is arbitrary and unenforceable. The current form of these bills will do nothing to improve police’s enforceability, but instead simply increase the number of activities that are unlawful, without addressing racial disparities or improving safety.

Evidently, these bills are not an effective means of creating safer roadways. This requires a longer conversation about how to implement best practices for preventing cellphone-related driving injuries, which may include behavior change programs, education, and/or interventions, rather than simply additional penalization. Ultimately, this legislation creates more problems that it purports to resolve. We urge this legislature not to pass HB 4181, 4198, or 4199 without additional protections.

Respectfully submitted,
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²Insurance Institute for Highway Safety, *Texting bans don't reduce crashes; effects are slight crash increases*, HLDI News, Sept. 2010, <https://www.iihs.org/iihs/news/desktopnews/texting-bans-dont-reduce-crashes-effects-are-slight-crash-increases>.



To: House Transportation Committee
From: Mark P. Fancher, ACLU of Michigan
Date: May 9, 2019
Re: HB 4181, 4198, 4199 – Distracted Driving
Position: Opposed

The ACLU previously registered concerns about HB 4181, 4198, and 4199. I appear today for the specific purpose of explaining why the proposed legislation creates an enhanced risk of racial profiling.

The ACLU of Michigan's concerns about racial profiling were prompted by separate complaints from two African American drivers who were not only stopped by members of MSP's 5th District Home Town Security Team on separate Fridays during Autumn, 2016, but the purported reason for the stops is that they were both allegedly following too closely behind tractor-trailers. They were not accused of offenses that require arrest. Nevertheless, they were both asked to exit their vehicles. Their vehicles were searched, and they were asked whether they were transporting drugs or other contraband. In both cases a canine officer was called, and a dog sniffed the vehicles. Both motorists believe their race was the sole reason they were stopped by Michigan State Police while traveling on Interstate 94.

In a letter to the ACLU dated June 4, 2018, former Michigan State Police Director Kriste Kibbey Etue said:

“Our [Hometown Security Teams] are specially trained and tasked with disrupting drug trafficking, human trafficking, and other criminal enterprises when they are most vulnerable to detection and capture, in transport. Oftentimes, to avoid detection, many criminals will attempt to blend in with the motoring public and not commit obvious traffic violations such as speeding and reckless driving. This is why troopers place special emphasis on less-obvious, but equally concerning driver behaviors such as lane use and *following too closely*.” (emphasis added)

The suspicions of the two motorists who contacted the ACLU became more credible when traffic stop data obtained under the Freedom of Information Act showed apparent racial disproportionality with respect to traffic stops. This data is not conclusive as to the issue of racial profiling, but it prompts questions about whether troopers, in their efforts to determine which vehicles will yield arrests and seizure of contraband, are relying upon racial stereotypes and profiles, and using offenses like “following too closely” as pretexts for traffic stops.

In most cases the troopers have the challenge of determining which of the hundreds if not thousands of vehicles they observe on the highways are carrying contraband or are otherwise engaged in criminal activity. This can be difficult, if not impossible when, for example a vehicle carries a concealed cache of illegal weapons and travels at a speed above 70 miles per hour. Consequently, when troopers stop vehicles for observable traffic violations they will at the same time observe and evaluate drivers and passengers to determine whether there are tell-tale behaviors or circumstances that betray concealed criminal activity.

If the proposed distracted driving legislation is passed, it will provide not only state troopers, but law enforcement officers generally with yet another pretext option when they are looking for an excuse to stop a person of color using a cell phone who fits a racial stereotype profile. Such a racial profile is not only unconstitutional, it is ineffective policing. Research conducted in various parts of the country shows that contrary to widely-held beliefs, whites and not people of color are more likely to be carrying contraband.

In sum, the proposed legislation creates enhanced risks of unconstitutional racial profiling and bad policing. We urge this legislature to reject HB 4181, 4198, and 4199.

Respectfully Submitted,

Mark P. Fancher

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