

Bill as Introduced

HB 546 - AS INTRODUCED

2011 SESSION

11-0029

03/05

HOUSE BILL **546**

AN ACT relative to the use of hand-held cellular phones while driving.

SPONSORS: Rep. Pantelakos, Rock 16; Rep. Hofemann, Straf 6; Rep. Welch, Rock 8;
Rep. Swinford, Belk 5

COMMITTEE: Transportation

ANALYSIS

This bill prohibits the use of hand-held cellular phones while driving a motor vehicle.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the use of hand-held cellular phones while driving.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Rules of the Road; Prohibited Uses of Cellular Phones While Operating a Motor
2 Vehicle. Amend RSA 265 by inserting after section 105-a the following new section:

3 265:105-b Prohibited Uses of Cellular Phones While Operating a Motor Vehicle. No person shall
4 operate a motor vehicle on a public way while using any type of hand-held cellular telephone to
5 engage in a call while such vehicle is in motion. An operator of a motor vehicle who holds a cellular
6 telephone to, or in the immediate proximity of, his or her ear while such vehicle is in motion, is
7 presumed to be engaging in a call within the meaning of this section. This limitation shall not
8 prevent persons from using "hands-free" mobile telephones, if they do not require hand-held
9 operation. A police officer charging a person with violating this section is authorized to examine the
10 person's cellular phone in order to verify the time of the call. Any person who violates this section
11 shall be subject to a fine of \$100.

12 2 Effective Date. This act shall take effect January 1, 2012.

Amendments

Rep. Pantelakos, Rock. 16
February 22, 2011
2011-0432h
04/05

Amendment to HB 546

not adopted

1 Amend RSA 265:105-b as inserted by section 1 of the bill by replacing it with the following:

2

3 265:105-b Prohibited Uses of Cellular Phones While Operating a Motor Vehicle. No person shall
4 operate a motor vehicle on a public way while using any type of hand-held cellular telephone to
5 engage in a call while such vehicle is in motion. An operator of a motor vehicle who holds a cellular
6 telephone to, or in the immediate proximity of, his or her ear while such vehicle is in motion, is
7 presumed to be engaging in a call within the meaning of this section. This limitation shall not
8 prevent persons from using "hands-free" mobile telephones, if they do not require hand-held
9 operation. Any person who violates this section shall be subject to a fine of \$100.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON TRANSPORTATION

PUBLIC HEARING ON HB-546

BILL TITLE: Relative to use of hand-held cellular phones while driving

DATE: 2/22/11

LOB ROOM: 203

Time Public Hearing Called to Order: 11:00 am

Time Adjourned: 12:17pm

(please circle if present)

Committee Members: Reps. Packard, Hikel, Hinch, Tholl, Coughlin, Dwinell, Hogan, Jones, Lindsley, Marcus, Reed, Scotsas, Rhodes, Williams, Cloutier, Clagnon and Hawkes.

Bill Sponsors: Rep. Pantelakos, Rock 16; Rep. Hofemann, Straf 6; Rep. Welch, Rock 8; Rep. Swinford, Belk 5

TESTIMONY

*Use asterisk if written testimony and/or amendments are submitted.

Rep. Pantelakos Introduced the bill. Prime sponsor. feel that it is very dangerous. people slow down when talking on the phone then speed up after the call. Questions about why now after the bills like this failing several times over the past year. would be amenable to inserting a rebuttable presumption such as NY has. This law will not be applicable if the vehicle is stopped.

Rep. Baldasaro Opposes the bill stop government getting into peoples lives. Is on the phone a lot while driving and used the radio in military vehicle a lot and I survived. just another frivolous feel good bill.

Rep. Theberge Supports the bill. I have been rear ended by a person on a cell phone. My mother had been struck while parked in a handicapped parking space by a truck that the driver was on a cell phone. There was another accident where a pedestrian was hit by a vehicle that the driver was using a cell phone. Two hands on the wheel are better than 1/

Rep. Lambert opposes the bill talked about a portion of the bill that the sponsor had already removed by an amendment. Thinks all conduct should be the responsibility of the driver

*Al Jones supports the bill represents "Granite State Wheelmen" and Bike-walk Alliance of NH. the present distracted law is not working.

*Katherine Cooper Director of NH Criminal Defense Lawyers. opposes the bill primarily due to the search and seizure issue. new study out that says drivers may drive better if they engage in secondary tasks. No difference between hands free and hand held cell phones

Rep. Roland Hoffmann Supports the bill. Using the cell phone is the same as if you were drunk. cell phone use puts other in danger,

*Linda Gould Bike -Walk NH supports the bill would protect the vulnerable road users. people don't take responsibility for their actions.

Director Bailey, NH DMV. supports the bill. Current distracted should cover the bill but there is difficulty in enforcing. Distracted driving is getting more and more an issue. Good legislation because the increase in cell phone and the difficulty in enforcement.

Respectfully submitted


John E. Tholl Jr.
Clerk

HOUSE COMMITTEE ON TRANSPORTATION

PUBLIC HEARING ON HB 546

BILL TITLE: relative to the use of hand-held cellular phones while driving.

DATE:

LOB ROOM: 203 Time Public Hearing Called to Order:

Time Adjourned:

(please circle if present)

Committee Members: Reps. Packard, Hikel, Hinch, Choff, Coughlin, Dwinell, Hogan, Jones, Lindsay, Marcus, Reed, Scotsas, Rhodes, Williams, Cloutier, Gagnon and Hawkes.

Bill Sponsors: Rep. Pantelakos, Rock 16; Rep. Hofemann, Straf 6; Rep. Welch, Rock 8; Rep. Swinford, Belk 5

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Testimony

Archive

CONSOLIDATED LAWS OF NEW YORK

Vehicle and Traffic

Title 7. RULES OF THE ROAD

Article 33. MISCELLANEOUS RULES

Current through Laws 2010, Chapter 482

§ 1225-C. Use of mobile telephones

1. For purposes of this section, the following terms shall mean:

(a) "Mobile telephone" shall mean the device used by subscribers and other users of wireless telephone service to access such service.

(b) "Wireless telephone service" shall mean two-way real time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(c) "Using" shall mean holding a mobile telephone to, or in the immediate proximity of, the user's ear.

(d) "Hand-held mobile telephone" shall mean a mobile telephone with which a user engages in a call using at least one hand.

(e) "Hands-free mobile telephone" shall mean a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, 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.

(f) "Engage in a call" shall mean talking into or listening on a hand-held mobile telephone, but shall not include holding a mobile telephone to activate, deactivate or initiate a function of such telephone.

(g) "Immediate proximity" shall mean that distance as permits the operator of a mobile telephone to hear telecommunications transmitted over such mobile telephone, but shall not require physical contact with such operator's ear.

2. (a) Except as otherwise provided in this section, no person shall operate a motor vehicle upon a public highway while using a mobile telephone to engage in a call while such vehicle is in motion.

(b) An operator of a motor vehicle who holds a 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. The presumption established by this subdivision is rebuttable by evidence tending to show that the operator was not engaged in a call.

(c) The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

3. Subdivision two of this section shall not apply to (a) the use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office or health clinic; an ambulance company or corps; a fire department, district or company; or a police department, (b) any of the following persons while in the performance of their official duties: a police officer or peace officer; a member of a fire department, district or company; or the operator of an authorized emergency vehicle as

defined in **section one hundred one** of this chapter, or (c) the use of a hands-free mobile telephone.

4. A violation of subdivision two of this section shall be a traffic infraction and shall be punishable by a fine of not more than one hundred dollars.

Archive

New data from Virginia Tech Transportation Institute provides insight into cell phone use and driving distraction

Contact:

- [D]
 - (540) 231-1549
 -
-

BLACKSBURG, Va., July 29, 2009 – Several large-scale, naturalistic driving studies – using sophisticated cameras and instrumentation in participants' personal vehicles -- conducted by the Virginia Tech Transportation Institute (VTTI), provide a clear picture of driver distraction and cell phone use under real-world driving conditions, according to the institute.

Combined, these studies continuously observed drivers for more than 6 million miles of driving.

"Given recent catastrophic crash events and disturbing trends, there is an alarming amount of misinformation and confusion regarding cell phone and texting use while behind the wheel of a vehicle. The findings from our research at VTTI can help begin to clear up these misconceptions as it is based on real-world driving data. We conduct transportation safety research in an effort to equip the public with information that can save lives," says Tom Dingus, director of the Virginia Tech Transportation Institute.

In VTTI's studies that included light vehicle drivers and truck drivers, manual manipulation of phones such as dialing and texting of the cell phone lead to a substantial increase in the risk of being involved in a safety-critical event such as a crash or near-crash. However, talking or listening increased risk much less for light vehicles and not at all for trucks. Text messaging on a cell phone was associated with the highest risk of all cell phone related tasks.

Risk Estimates

A snapshot of risk estimates from these studies includes the following.

For light vehicles or cars

- Dialing a cell phone made the risk of crash or near-crash event 2.8 times as high as non-distracted driving;
- Talking or listening to a cell phone made the risk of crash or near-crash event 1.3 times as high as non-distracted driving; and
- Reaching for an object such as an electronic device made the risk of crash or near-crash event 1.4 times as high as non-distracted driving.

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VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

An equal opportunity, affirmative action institution

For heavy vehicles or trucks

- Dialing a cell phone made the risk of crash or near-crash event 5.9 times as high as non-distracted driving;
- Talking or listening to a cell phone made the risk of crash or near-crash event 1.0 times as high as non-distracted driving;
- Use of, or reach for, an electronic device made the risk of crash or near-crash event 6.7 times as high as non-distracted driving; and
- Text messaging made the risk of crash or near-crash event 23.2 times as high as non-distracted driving.

Explanation of findings

Eye glance analyses were conducted to assess where drivers were looking while involved in a safety-critical event and performing cell phone tasks. The tasks that draw the driver's eyes away from the forward roadway were those with the highest risk.

Several recent high visibility trucking and transit crashes have been directly linked to texting from a cell phone. VTTI's research showed that text messaging, which had the highest risk of over 20 times worse than driving while not using a phone, also had the longest duration of eyes-off-road time (4.6-second over a six-second interval). This equates to a driver traveling the length of a football field at 55 miles per hour without looking at the roadway. Talking/listening to a cell phone allowed drivers to maintain eyes on the road and were not associated with an increased safety risk to nearly the same degree.

Recent results from other researchers using driving simulators suggest that talking and listening is as dangerous as visually distracting cell phone tasks. The results from VTTI's naturalistic driving studies clearly indicate that this is not the case. For example, talking and listening to a cell phone is not nearly as risky as driving while drunk at the legal limit of alcohol. Recent comparisons made in the literature greatly exaggerate the cell phone risk relative to the very serious effects of alcohol use, which increases the risk of a fatal crash approximately seven times that of sober driving. Using simple fatal crash and phone use statistics, if talking on cell phones was as risky as driving while drunk, the number of fatal crashes would have increased roughly 50 percent in the last decade instead of remaining largely unchanged.

These results show conclusively that a real key to significantly improving safety is keeping your eyes on the road. In contrast, "cognitively intense" tasks such as emotional conversations, or listening to books-on-tape, can have a measurable effect in the laboratory, but the actual driving risks are much lower in comparison.

VTTI's recommendations based on findings from research studies

- Driving is a visual task and non-driving activities that draw the driver's eyes away from the roadway, such as texting and dialing, should always be avoided.
- Texting should be banned in moving vehicles for all drivers. As shown in findings overview, this cell phone task has the potential to create a true crash epidemic if texting-type tasks continue to grow in

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popularity and as the generation of frequent text message senders reach driving age in large numbers.

- Headset cell phone use is not substantially safer than hand-held use because the primary risk is associated with both tasks is answering, dialing, and other tasks that require your eyes to be off the road. In contrast, true hands-free phone use, such as voice activated systems, are less risky if they are designed well enough so the driver does not have to take their eyes off the road often or for long periods.
- All cell phone use should be banned for newly licensed teen drivers. Our research has shown that teens tend to engage in cell phone tasks much more frequently -- and in much more risky situations -- than adults. Thus, our studies indicate that teens are four times more likely to get into a related crash or near-crash event than their adult counterparts.

The disconnect between naturalistic and simulator research

The institute says it is important to keep in mind that a driving simulator is not actual driving. Driving simulators engage participants in tracking tasks in a laboratory. As such, researchers that conduct simulator studies must be cautious when suggesting that conclusions based on simulator studies are applicable to actual driving.

With the introduction of naturalistic driving studies that record drivers (through continuous video and kinematic sensors) in actual driving situations, there is now a scientific method to study driver behavior in real-world driving conditions in the presence of real-world daily pressures.

So, if the point of transportation safety research is to understand driver behavior in the real-world and conflicting findings occur between naturalistic studies and simulator studies, then findings from the real-world scenarios (and not the simulator-world) must be considered the gold standard, according to the institute.

They go on to indicate it is also critical to note that some results of recent naturalistic driving studies, including those highlighted here as well as others are at odds with results obtained from simulator studies. Future research is necessary, according to VTTI, to explore the reasons why simulator studies sometimes do not reflect studies conducted in actual driving.

Listen to related podcasts.

- ^[2] (Length 7:30)
- ^[3] (Length 5:35)

Links

[1]. <http://www.vtnews.vt.edu/articles/media-contact/box-sherri-2-res.html>

[2]. <http://www.podcasts.vt.edu/vtti-texting-1.mp3>

[3]. <http://www.podcasts.vt.edu/vtti-texting-2.mp3>

Cell Phone and Texting Laws

February 2011

This chart outlines all state cell phone and text messaging laws. Some local jurisdictions may have additional regulations. Enforcement type is shown in parenthesis.



Handheld Cell Phones: 8 states (Calif., Conn., Del., Md., N.J., N.Y., Ore. and Wash.), D.C. and the Virgin Islands prohibit all drivers from using handheld cell phones while driving.

Except for Maryland, all laws are **primary enforcement**—an officer may cite a driver for using a handheld cell phone without any other traffic offense taking place.

[Learn More](#)

All Cell Phone Use: No state bans all cell phone use (handheld and hands-free) for all drivers, but many prohibit all cell phone use by certain drivers:

Novice Drivers: 28 states and D.C. ban all cell phone use by novice drivers.

School Bus Drivers: Bus drivers in 18 states and D.C. may not use a cell phone when passengers are present.

Text Messaging: 30 states, D.C. and Guam ban text messaging for all drivers. 11 of these laws were enacted in 2010. 26 states, D.C., and Guam have primary enforcement. In the other four, texting bans are secondary.

[Letters Supporting Federal Role \(October 21, 2009\)](#)

Novice Drivers: An additional 8 states prohibit text messaging by novice drivers.

School Bus Drivers: 2 states restrict school bus drivers from texting while driving.

Some states such as Maine, N.H. and Utah treat cell phone use and texting as part of a larger distracted driving issue. In Utah, cellphone use is an offense *only* if a driver is also committing some other moving violation (other than speeding).

Crash Data Collection: Many states include a category for cell phone/electronic equipment distraction on police accident report forms. Recently proposed federal legislation would require states to collect this data in order to qualify for certain federal funding.

Preemption Laws: Many localities have passed their own distracted driving bans. However, some states – such as Fla., Ky., La., Miss., Nev., and Okla. – prohibit localities from enacting such laws.

Summary

State	All Cell Phone Ban			Text Messaging Ban		Crash Data	
	Handheld Ban	School Bus Drivers	Novice Drivers	All Drivers	School Bus Drivers		Novice Drivers
			16, and 17 with intermediate license <6 months (Primary)			16, and 17 with intermediate license <6 months (Primary)	
				Yes (Primary)	Covered under all driver ban		Yes
		Yes (Primary)					
	18 - 20 years old (Primary)	Yes (Primary)	<18 (Secondary)	Yes (Primary)	Covered under all driver ban		Yes
	Yes (Primary)	Yes (Primary)	<18 (Secondary)	Yes (Primary)	Covered under all driver ban		Yes
			<18 (Primary)	Yes (Primary)	Covered under all driver ban		Yes
	Yes (Primary)	Yes (Primary)	Learners Permit and <18 (Primary)	Yes (Primary)	Covered under all driver ban		
	Yes (Primary)	Yes (Primary)	Learner's permit and intermediate license holders (Primary)	Yes (Primary)	Covered under all driver ban		Yes
	Yes (Primary)	Yes (Primary)	Learners Permit (Primary)	Yes (Primary)	Covered under all driver ban		Yes
		Yes (Primary)	<18 (Primary)	Yes (Primary)	Covered under all driver ban		Yes

				Yes (Primary)	Covered under all driver ban	
	See footnote					
						See footnote
	See footnote	Yes (Primary)	<19 (Primary)	Yes (Primary)	Covered under all driver ban	Yes
			<18 (Primary)			<18 (Primary) Yes
			Restricted or Intermediate Licenses (Primary)	Yes (Secondary)	Covered under all driver ban	Yes
			Learner or Intermediate License (Primary)	Yes (Primary)	Covered under all driver ban	Yes
		Yes (Primary)	<18 (Primary)	Yes (Primary)	Covered under all driver ban	
	Learner or Intermediate License (regardless of age)	Yes (Primary)	1st year of licensure (Primary for <18)	Yes (Primary)	Covered under all driver ban	Yes
			<18 (Primary)			<18 (Primary) Yes
	Yes (Secondary)		<18 w/ Learner or Provisional License (Secondary)	Yes (Primary)	Covered under all driver ban	Yes
		Yes (Primary)	<18 (Primary)	Yes (Primary)	Covered under all driver ban	Yes
			See footnote	Yes (Primary)	Covered under all driver ban	Yes
		Yes (Primary)	<18 w/ Learner or Provisional License (Primary)	Yes (Primary)	Covered under all driver ban	Yes
						Learner or Provisional License (Primary)
						<21 (Primary)
						Yes
			<18 w/ Learners or Provisional License (Secondary)	Yes (Secondary)	Covered under all driver ban	Yes
						Yes
				Yes (Primary)	Covered under all driver ban	
	Yes (Primary)	Yes (Primary)	<21 w/ GD/L or Provisional License (Primary)	Yes (Primary)	Covered under all driver ban	Yes
	In State vehicles					Yes
	Yes (Primary)			Yes (Secondary)	Covered under all driver ban	Yes
		Yes (Primary)	<18 (Primary)	Yes (Primary)	Covered under all driver ban	
						Yes
	Learners Permit or Intermediate License (Primary)	Yes (Primary)			Yes (Primary)	Learners Permit or Intermediate License (Primary) Yes
	Yes (Primary)		<18 (Primary)	Yes (Primary)	Covered under all driver ban	Yes
						Yes
		Yes (Primary)	<18 (Primary)	Yes (Primary)	Covered under all driver ban	Yes

							See footnote
							Yes
		Yes (Primary)	Learners Permit or Intermediate License (Primary)	Yes (Primary)	Covered under all driver ban		Yes
		Yes, w/ passenger ≤17 (Primary)	Intermediate Stage, 1st 12 mos. (Primary)		Yes, w/ passenger ≤17 (Primary)	Intermediate Stage, 1st 12 mos. (Primary)	Yes
	See footnote			Yes (Primary)	Covered under all driver ban		Yes
			<18 (Primary)	Yes (Primary)	Covered under all driver ban		
	Yes						Yes
		Yes (Primary)	<18 (Secondary)	Yes (Secondary)	Covered under all driver ban (Primary)	Covered under all driver ban	Yes
	Yes (Primary)		Learner or Intermediate Stage (Primary)	Yes (Primary)	Covered under all driver ban		Yes
			Learner or Intermediate Stage (Primary)			Learner or Intermediate Stage (Primary)	
				Yes (Primary)	Covered under all driver ban		
				Yes (Primary)	Covered under all driver ban		Yes
Total	8 + D.C., Virgin Islands Primary (7) Secondary (1)	18 + D.C. All Primary	28 + D.C. Primary (23 + D.C.) Secondary (5)	30 + D.C., Guam Primary (26 + D.C., Guam) Secondary (4)	2 Both Primary	8 All Primary	34 + D.C., Virgin Islands

¹ Hawaii does not have a state law banning the use of handheld cell phones. However, all of the state's counties have enacted distracted driving ordinances.
² Idaho has a "Distraction in/on Vehicle (List)" attribute as part of its Contributing Circumstances element, and officers are supposed to list the distractions in the narrative.
³ Illinois bans the use of cell phones while driving in a school zone or in a highway construction zone.
⁴ Maine has passed a law making it against the law to drive while distracted in the state.
⁵ In Michigan, teens with probationary licenses whose cell phone usage contributes to a traffic crash or ticket may not use a cell phone while driving.
⁶ Dealt with as a distracted driving issue; New Hampshire enacted a comprehensive distracted driving law.
⁷ South Carolina has a Distracted/Inattention attribute under Contributing Factors.
⁸ Texas has banned the use of hand-held phones and texting in school zones.
⁹ Utah's law defines careless driving as committing a moving violation (other than speeding) while distracted by use of a handheld cellphone or other activities not related to driving.

Sources: _____ and _____

Disclaimer: The information on this page is for general information purposes only and is not to be considered legal authority. For clarification on any law, consult the appropriate _____

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HB 546

Good Morning Mr. Chairman and members of the House Transportation Committee; My name is Al Jones and I represent "The Granite State Wheelmen", New England's most active recreational bicycle club and The "Bike-Walk Alliance of New Hampshire" and with our 800 members in support of HB-546. Most of us have observed other motorists "wandering" within their lane and often crossing over the marked lane or onto the shoulder and in a majority of the time the operator is invariably talking on their cell phone. Every year dozens of pedestrians, cyclists and other motorists are injured or killed by distracted drivers. Many of the members of the committee may remember the accident, here in Concord on October 15th 2009 which seriously injured Susanne Kibler-Hacker of Dunbarton. Ms. Kibler-Hacker was biking east on Clinton Street during her commute to work. At the time of the accident she was wearing fluorescent clothing and a helmet. The police investigation determined the accident was caused by a distracted driver and the operator was later charged with failing to exercise due care. It was estimated the victim was thrown 20 feet from her bike. She continues a long and painful recovery from her injuries. This legislation could avoid countless cases of this type of carnage and save countless lives. Recent figures from The New Hampshire Highway Safety Agency and The New Hampshire Department of Safety list the average number of motor vehicle/bicycle for the last five years at 279.4 and the annual average number of vehicle/bicycle fatalities at 010.80 over the last five years in the state. The members of the Granite State Wheelmen and Bike Walk Alliance of New Hampshire stand in strong support of HB 546
Thank you very much for your time.
Al Jones, Granite State Wheelmen and the Bike-Walk Alliance of New Hampshire

**WRITTEN TESTIMONY OF
Katherine Cooper**

on behalf of
THE NEW HAMPSHIRE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

before
**THE NEW HAMPSHIRE HOUSE OF REPRESENTATIVES,
TRANSPORTATION COMMITTEE**

**HB 546
February 22, 2011**

I. INTRODUCTION

The New Hampshire Association of Criminal Defense Lawyers (NHACDL) consists of approximately 300 Granite State lawyers whose practices include a significant amount of criminal defense work. Our membership includes private practitioners, and state and federal public defenders. NHACDL is the local affiliate of the National Association of Criminal Defense Lawyers and shares its mission to ensure due process and fairness in the administration of the criminal justice system. NHACDL provides its membership with significant continuing legal education opportunities in the field of criminal defense. Additionally, NHACDL facilitates communication amongst the members of our organization on the issues which confront criminal defense practitioners on a daily basis. NHACDL will also, from time to time, take public positions with respect to important cases before the courts, or proposed legislation that affects fairness, individual and Constitutional rights and due process in the administration of the criminal justice system.

NHACDL opposes HB 546 because it highlights an incredibly important 4th Amendment issue -- the right to remain free of unreasonable searches and seizures by the government. This bill allows for the warrantless search of the contents of a cell phone, which is a violation of the 4th Amendment.

All searches and seizures are required to be reasonable pursuant to Part I,

Article 19 of the New Hampshire Constitution and the 4th and 14th Amendments to the United States Constitution. The New Hampshire Supreme Court has held that Part I, Article 19, of the New Hampshire Constitution affords greater protection for individual rights than does the Fourth Amendment under the United States Constitution. State v. Ball, 124 N.H. 226, 231-32 (1983).

In the absence of a lawful warrant, all searches are per se unreasonable unless conducted within the narrow confines of a judicially crafted exception." State v. Murray, 135 N.H. 369, 374 (1992). Such exceptions include: exigent circumstances (i.e. it is necessary to prevent harm or death to another person); consent (which must be freely and knowingly given); or plain view (the item viewed must be seen from a place where the police officer is legally authorized to be).

A person's cell phone contains a great deal of information in this day and age. What was once a simple device now holds entire email accounts, documents, PDFs, calendars and numerous other content that is personal, private and some cases, such as for an attorney, physician or priest, privileged and confidential. None of this is in plain view. It must be accessed by turning the phone on, going to the correct page and frequently is password protected. Allowing a search by police would give the government access to all of this information. How do you stop the wandering eyes of the police when they have possession of your cell phone and are claiming a statutory basis to search? The short answer is, you can't. Therefore, this statute violates the Constitution.

In addition, NHACDL objects to this statute in its entirety because it has no evidentiary basis. There are several studies of cell phone use in automobiles and those studies find that people are no less "safe" when operating a hand held phone

than they are a hands-free phone. The Applied Cognition Lab at the University of Utah Department of Psychology has conducted numerous studies to determine the level of impairment caused by cell phone conversations as well as by texting. They have found that drivers are no more distracted by hands-free conversations than they are by hand held phones. Their study had the subjects drive and tested reaction time and braking time and other driving reactions while engaged in both kinds of conversations. They also have conducted studies about texting while driving, which showed a much greater level of impairment (interestingly, it was shown that **READING** a text message is more distracting than typing one out).

There is also a recent study that shows that drivers in the car more than 30 minutes actually benefit from a secondary task, such as talking on the phone because the monotony of driving tends to make people's focus drift from the road. "Driver's Engaging in a Secondary Task May Pay More Attention to the Road," February 14, 2011, The Journal of Human Factors and Ergonomic Society. Therefore, the estimated 100 million motorists who use cell phones while driving may actually be making themselves safer drivers when they are on journeys lasting more than 30 minutes. (Cellular Telecommunications Industry Association statistic, circa 2004).

Data such as this should be studies so that our laws are made using research and evidence rather than suspicion and gut assumptions. For these reasons NHACDL opposes HB 217 and urges the Committee to recommend that it is inexpedient to legislate.

Contact Information
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The New Hampshire Association of Criminal Defense Lawyers (NHACDL) is a voluntary bar association consisting of approximately three hundred New Hampshire lawyers who devote a significant part of their practice to the representation of the criminally accused. NHACDL membership includes state and federal public defenders and private practitioners. NHACDL is the New Hampshire affiliate of the National Association of Criminal Defense Lawyers and shares its mission to ensure justice and due process for persons accused of crime and to promote the proper and fair administration of criminal justice.

Voting Sheets

HOUSE COMMITTEE ON TRANSPORTATION

EXECUTIVE SESSION on HB 546

BILL TITLE: relative to the use of hand-held cellular phones while driving.

DATE: March 2, 2011

LOB ROOM: 203

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL Interim Study (Please circle one.)

Moved by Rep. Scentsas

Seconded by Rep. Hinch

Vote: 10-4 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. John Tholl, Clerk

HOUSE COMMITTEE ON TRANSPORTATION

EXECUTIVE SESSION on HB 546

BILL TITLE: relative to the use of hand-held cellular phones while driving.

DATE: 3/2/11

LOB ROOM: 203

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. SCOUTSAS

Seconded by Rep. ~~Attie~~ Hinch

Vote: 10-4 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

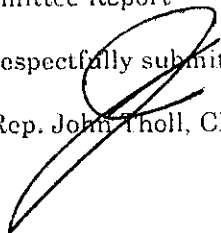
CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. John Tholl, Clerk



TRANSPORTATION

Bill #: HB 546 Title: relative to the use of hand-held cellular phones while driving
 PH Date: 2, 22, 11 Exec Session Date: 3, 2, 11

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Packard, Sherman A, Chairman	✓	
Hikel, John A, V Chairman	✓	
Hinch, Richard W	✓	
Tholl, John E		✓
Coughlin, Sean E	✓	
Dwinell, Richard J	✓	
Hogan, Timothy		
Jones, Kyle D	✓	
Lindsley, Mark H		✓
Marcus, Bruce		
Reed, Michael T		
Scontsas, Lisa E	✓	
Rhodes, Brian D	✓	
Williams, Robert W	✓	
Cloutier, John R		✓
Gagnon, Raymond G		✓
Hawkes, Samuel L	✓	
TOTAL VOTE: <u>10-4</u>		

Committee Report

REGULAR CALENDAR

March 3, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on TRANSPORTATION to which was referred HB546,

AN ACT relative to the use of hand-held cellular phones while driving. Having considered the same, report the same with the following Resolution: **RESOLVED**, That it is **INEXPEDIENT TO LEGISLATE**.

Rep. Lisa E Scontsas

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	TRANSPORTATION
Bill Number:	HB546
Title:	relative to the use of hand-held cellular phones while driving.
Date:	March 3, 2011
Consent Calendar:	NO
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The negligent driving statute already covers this type of distraction. As a committee we are going to work on this statute to be more effective. There are many distractions on the road today. We must try to make people understand that they need to be more responsible while driving

Vote 10-4.

Rep. Lisa E Scontsas
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

TRANSPORTATION

HB546, relative to the use of hand-held cellular phones while driving. **INEXPEDIENT TO LEGISLATE.**

Rep. Lisa E Scoutsas for TRANSPORTATION. The negligent driving statute already covers this type of distraction. As a committee we are going to work on this statute to be more effective. There are many distractions on the road today. We must try to make people understand that they need to be more responsible while driving **Vote 10-4.**

Original: House Clerk
Cc: Committee Bill File

Blurbs

HB 546 relative to the use of hand-held cellular phones while driving.

ITL RC 10-4

The negligent driving statute already covers this type of distraction. As a committee we are going to work on this statute to be more effective. There are many distractions on the road today. We must try to make people understand that they need to be more responsible while driving.

Rep. Scentsas



COMMITTEE REPORT

COMMITTEE: Transportation
BILL NUMBER: HB 546
TITLE: relative to the use of hand-held cell phones while driving.
DATE: 3/2/11 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
 OUGHT TO PASS W/ AMENDMENT
 INEXPEDIENT TO LEGISLATE
 INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

~~Distracting Driving Ordinance covers this and other distractions on the road. This Bill violates constitutional rights and would require a police officer to obtain a warrant to enforce this Bill.~~
The negligent driving statute already covers this type of distraction. As a comm we are going to work on this statute to be more effective. There are many distractions on the road today. We must try to make people understand that they need to be more responsible while driving.

COMMITTEE VOTE: 10-4 *SP*

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. *[Signature]*

For the Committee