

**HB 95 DISTRACTED DRIVING PENALTY**  
**March 29, 2017**

**Sharon Montgomery**  
**victim, 15-year traffic safety activist, and proponent with reservations**

Chairman Green, Vice Chairman Greenspan, ranking member Sheehy, and members of the House Transportation and Public Safety Committee, I am here to speak for the known Ohio victims of e-distracted driving [*list attached*], all the victims we don't know about, and all those who don't want to become victims. I support the *concept* of enhanced penalties for distracted driving and have suggestions for how to increase the likelihood that this bill will achieve its goal of changing drivers' behavior.

I apologize profusely for the length of my testimony and appreciate your patience. You all have many topics you have to learn about and decide on. I have been able to focus on this one topic so naturally I have had a chance to access and study more information about it.

The more information you have, the better decision you can make on this so I need to offer you everything I've learned that I think is most pertinent.

I am a victim of a serious three-car crash caused in 2000 by a driver using his phone. Since then, I have studied this issue in great detail and have worked at the local and state levels around Ohio to get meaningful legislation to reduce the dangers of driving under the influence of electronics.

The driver of the other victim car is now permanently partially disabled. My husband died after six weeks in ICU. I had life-threatening complications from my injuries, had related physical health problems for three more years and worry about my future as we continue to learn more about the effects of brain injury. I continue to be treated for PTSD.

One of the most painful lasting effects for me is the memory that when my family needed me most, I was unable to be there for them: as my husband was losing his life and our son was losing his father. There is much more to this nightmare but I need to use my time here to address HB 95.

The offender was charged with assured clear distance and mailed in his \$75 fine. The prosecutor refused to complete the review I requested and amend the charges to *at least* vehicular manslaughter. The offender freely admitted to me five years later that he was still using his phone while driving and that he had "had other crashes."

Why didn't he change his behavior after the devastation he caused? Because he was comfortably insulated from the devastation. This man who had a professional job and owned two homes lost only \$75 to the incident and never had to face his victims and the serious, long-lasting harm he caused.

So, I strongly support the principle of more severe penalties for this unnecessary and dangerous behavior. I have been asking for this for years and I am very grateful to Rep. Hughes and Rep. Seitz for attempting to provide stronger penalties. After I address comments made at sponsor testimony, I'll tell you why I worry that the specific provisions in this bill can't achieve the goal we want.

The sponsors reported that when this bill was SB 146 in the previous General Assembly, there were no opponents. That's technically correct because there was no opponent/interested party hearing. I was not the only witness with reservations about the effectiveness of the bill who had to speak at the proponents' hearing to have our concerns and suggestions heard.

The question of repeat offenses was raised and the sponsors said they hadn't thought about it. That was one of my suggestions for SB 146.

There was the usual—and justified--concern about profiling. The sponsors said one (of three) reasons this would not increase profiling was that the distraction violation would be a secondary offense. The problem with secondary offenses is that they deal with the problem *after* the violation; they do nothing to prevent the violation before it causes harm.

Profiling is a problem that needs to be solved and there is a Senate bill pending right now that addresses this problem. **Choosing not to effectively address e-distracted driving will not solve the profiling problem.** We don't solve one problem by deciding to ignore a different problem; we work on both problems.

You need to know that some of the previous bills on this danger have been introduced by members of the Black Caucus.

It's also important to know that the Centers for Disease Control and Prevention analyzed pedestrian deaths from 2001 through 2010 and discovered that African American pedestrians were twice as likely to die from daytime crashes as white pedestrians. A law that can actually change behavior and reduce crashes would help protect the same people who are subject to discriminatory profiling. And, the protection is greater if the e-distraction is a primary offense so the dangerous drivers can be stopped *before* they hit a pedestrian.

The sponsors used the words “required” and “will” when they spoke to you about their proposed additional fine. However, this “requirement” is not in the bill. The offender can choose a driving class instead of the fine, and the judge has discretion to impose or not impose the fine and discretion on how much of the \$100 fine he will impose.

As I sifted through all the conditions and exceptions in the bill, this is what I found:

- IF a driver commits a moving violation in sight of a law enforcement officer, and
- IF the officer decides to stop the driver, and
- IF the officer determines the driver had distracted himself with an electronic device, and
- IF the device is not on the exceptions list, and
- IF the driver is not on the exceptions list, and
- IF the officer determines the distraction caused the moving violation, and
- IF the distracting device was not built into the vehicle, and
- IF the officer can determine that the device was not used hands-free, and
- IF the driver chooses not to attend a safety class, and
- IF the driver chooses to go to court and contest the citation, and
- IF the court decides the driver is guilty, and
- IF the court decides to levy fines for both the moving violation and for distraction,
- THEN the offender might get the new \$100 fine or might get a fine of less than \$100.

How many drivers are likely to make it through all these IFs? I think it's a safe bet to guess "very few." Each of us was a child and many of us are parents. We know the problem with **idle threats: they rarely change behavior.**

With these concerns about the bill, why am I testifying as a proponent, with reservations? Because I agree with the sponsors that stronger penalties *can* change drivers' behavior. Remember that "it's the law" means "it's on the books" to a lawmaker or law enforcer. But, "it's the law" means nothing more to a driver than "The chances I'll get caught are too high to risk committing the violation" and/or "The price I'll have to pay outweighs the benefits I'll get from committing the violation." If stronger penalties exist but are not imposed, they might as well not exist.

I believe any or all of the following adjustments to this bill will make it much more likely to actually change behavior.

1) Remove as many IFs as possible. The sponsors spoke of SB 146 as a way to supplement education on the dangers of distracted driving. The driving public has already learned, with texting being only a secondary offense some places and low enforcement rates everywhere, that their chances of getting caught and penalized for using their devices are so slim that there is no reason to change their behavior. This bill is intended to motivate them to change their behavior but is more likely to simply reinforce their perceptions that the odds are in their favor.

2) Add escalating penalties for repeat offenses. This is used enough in sentencing laws that I assume it has been shown to be effective.

3) Require a court appearance when serious harm resulted. With no court appearance, there is no sentencing. With no sentencing, there is no victim impact statement or possibility of restitution. With no impact statement and restitution, the offender is comfortably insulated from the consequences of his or her actions. There are still people who believe we don't need laws against driving under the influence of electronics, we just need drivers to exercise personal responsibility. Personal responsibility works two ways: the responsible decision not to use the device behind the wheel, **and** taking responsibility for any consequences from using the device while driving.

4) Make penalties proportionate to the amount of harm done. Currently, traffic violation penalties are based primarily on the name of the offense committed. A drunk driver can cause no harm and be penalized much more severely than a sober driver who kills. The rights afforded by the Victims Rights Law are based more on what the offense was than on what the consequences were and how much help the victim needs.

The sponsors told you about the proponents for SB 146. It is important for you to know that HB 99 in the 129<sup>th</sup> General Assembly, which became our current state law on texting, started as an enforceable primary offense law. At that stage, it was supported by AAA, the National Safety Council, MORPC, Verizon, and many major newspaper editors. Twenty-four proponents including law enforcement, victims, researchers, motorcyclists, the bicycle and pedestrian community, the medical community, and citizens concerned about their safety testified—with no reservations about the bill provisions--and zero opponents testified. Eighty-two members of the House voted for it, as a primary offense.

When Senate leadership reduced it to a secondary offense, a number of Senators either voted no because it would have no meaningful effect as a secondary offense *or* voted yes on the expectation that it was simply a first step. That was in May of 2012. Five years later we have still not taken a next step.

When he signed the watered-down version, Gov. Kasich said he would have signed it even if it were stronger.

I'm hoping this bill can be made stronger so it can actually change behavior in the direction of safety.

Again, thank you for your patience and I would be happy to answer any questions.

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***victim list attached***

***NOTE:***

- 1) These are the names I have found; underreporting by law enforcement & media, with the fact that I can't read every Ohio newspaper every day, means there are more victims I don't know about.*
- 2) These are only from crashes where evidence of some kind showed the distraction to be from use of an electronic device.*
- 3) The tragedy of young Maria Tiberi is not included because the crash report said "something" unknown distracted her & her father told me she wasn't texting and he didn't want her to be a "poster child for something she didn't do."*

## OHIO VICTIMS OF E-DISTRACTED DRIVING

### INJURED

2000 Sharon Montgomery, 54  
2000 John Guthman  
2001 Pamela Salvatore, 51  
2002 Ann Jacobs,  
2002 Matthew Seager, 17  
2002 Jared Savage, 16  
2005 John Hammond, adult  
2005 Gahanna man  
2005 Gahanna man's son  
2006 Lorain boy, 5  
2008 Sarah Stearns, 18  
2008 Connie Phillips, adult  
200? Aloha Baugh, adult  
2009 Linda Kupiec, 52  
2009 Connie Bizios, adult  
2009 Kristen Rosan, adult  
2009 Jonathan Harp, 32  
2009 Shannon Harp, 7  
2010 Dayton woman  
2010 Kris Kettendorf, 20  
2010 Alexander Stepuary, 12  
2010 Ryan Thogmartin, 27  
2010 Floyd Evans, 62  
2010 Melissa Fox, adult  
2010 Fox baby  
2011 Leon Brazill, 32  
2011 Trelane Grayson, 33  
2011 Kelly Drummond, 41  
2011 Jaye Drummond, 35  
2011 Matthew Drummond, 3  
2011 Derek Vanhorn, 24  
2013 Vicki Navarro, 16  
2014 Cincinnati boy, 8  
2015 Kathryn Pennington, 24  
2015 Rick Elfrick, adult  
2016 Kenan Ferebee, adult

### KILLED

1998 Kathleen Sullivan  
2000 John Montgomery, 51  
2002 Kim Seager, 17  
2002 Kathy Seager, 17  
2002 Mr. Mehl's grandfather  
2002 Joseph Holdrieth, 18  
200? Mentor man  
2004 Ms. Singleton, 16  
2004 Tirzah Amrein, 72  
2005 Demeatrius McCleary, 5  
2005 Nhiem Jennings, 2  
2006 Glen Saxbury, 71  
2006 Trent Fogt, 16  
2006 Nikki Cordell, 22  
2006 Dartagnan Rowe, unborn  
2007 Tara Davis, 24  
2008 Aaron Gilmore, 35  
2008 Domingo Hernandez, 28  
2008 Leslie Whiteman, 28  
2008 John Gordon, 35  
2008 Dalynaca Watrous, 11  
2008 Patrick Merrill, 59  
2009 Becky Ickes, 18  
2009 Macy Harp, 3  
2010 Kim Smith, 29  
2010? Miami U. student  
2010 Cindy Inscho, adult  
2010 Dave Muslovski, 55  
2010 Nick Darr, 23  
2010 Dalton Ludwig, 16  
2010 Keith Homstad, 23  
2010 Eben Wildman, 20  
2010 Rachel Woodruff, 19  
2011 Norbert Thiel, 80  
2011 Nancy Thiel, 76  
2011 Dawon Fisher, 27  
2011 Dalon Fisher, 2½ weeks  
2011 Paul Raimonde, 55  
2011 Lauren Drummond, 5  
2012 Miranda Lane, 17  
2012 Mathilde Yde Jessen, 17  
2013 Sydnee Williams, 17  
  
2014 Gayle Jackowski, 58  
2016 Micah Ferebee, 7 mos.

