

HB 283 DISTRACTED DRIVING
Sharon Montgomery, proponent with suggestions
6-10-21

Chairman LeRe, Vice Chairman Swearingen, Ranking Member Leland, and members of the House Criminal Justice Committee, I am here on behalf of all the victims we know about, all those we don't know about, and everyone who doesn't want to become a victim.

In an effort to prevent more people from becoming victims, I have worked on my own, and have been a member of the ODOT Distracted Driving Task Force, the OSU Risk Institute Distracted Driving Initiative, and the Ohio Traffic Safety Council Distracted Driving Subcommittee, as well as groups working on other aspects of traffic safety. **It is important for you to understand that I am not speaking on behalf of any of these groups or any of the organizations I collaborate with. I am giving my own evaluation of HB 283.**

Distracted driving, the most dangerous form of which is driving under the influence of electronics (DUIE), has become an epidemic. As Rep. Lampton said, e-devices are designed to be addictive (*see below*), the ways they can be used increase regularly, and psychologists now recognize that phone owners turn to their phones for emotional reasons, not just practical uses or even entertainment. The state has a responsibility to keep people on and near public roads safe. If people can't stop themselves from using these devices while driving, the state must assist drivers in changing their behavior .

My personal experiences will allow you to understand why I know curbing DUIE is vital. On my husband's 51st birthday in 2000, we drove from our home to Mt. Vernon to meet our son and his Kenyon College roommate for dinner. On our way home, heading west on US 62 and approaching Johnstown, a grandfather was driving his four-year-old granddaughter east on 62. While using his phone, he failed to see the car ahead of him, which was stopped, signaling for a left turn, and waiting for us to come through the intersection. The grandfather slammed into the back of the waiting car and threw it into our path just as we entered the intersection.

The waiting driver is now permanently partially disabled. My husband John died after six weeks in ICU. I was released after three weeks then rushed back gushing blood from an ulcer the surgeon attributed to the physical injuries and/or the stress of the crash. I survived that only because our son had decided to be at home that night and could call the squad and because the surgeon was able to resuscitate me during surgery.

I missed four months of work with no paid leave time. My self-employed sister lost real-time income and future clients while taking care of me, our house and bills, and our son. Both victim cars were demolished. The uninjured offender's car was repaired and he mailed in his \$75 check for violating assured clear distance ahead. Four months after the crash report was updated to indicate that John died of injuries sustained in the crash, I hadn't heard about revising the charges to at least vehicular manslaughter so I called the prosecutor's office to ask about an increase in the penalties for the driver who caused the crash and my losses. The prosecutor would not change the charges.

I was also a victim of insufficient or unfair insurance, victim rights, and tort laws. I've been working on those problems, too, but my focus today is on distracted driving—and prevention.

If you've been lucky enough not to have been in a serious crash, you probably have the same vague ideas about it that I once had: the doctor fixes you, the auto shop fixes your car, and the insurance companies pay the bills. In real life, it isn't anywhere near that simple and straightforward.

Aside from the obvious economic problems, I experienced:

- grief at the loss of a loved one;
- enormous regret that I couldn't be there to support my husband as he was losing his life and our son as he was losing his father;
- survivor guilt;
- the nagging "what ifs"--what if we'd visited a few minutes longer or left a few minutes earlier so we wouldn't have been at that intersection at that moment;
- the agony of hearing John's 86-year-old mother say, when we had to discuss when to stop life support, that she knew we had to but she felt like she was killing her son;
- the horrors of PTSD from the overwhelming physical and emotional traumas, plus the cost of various treatments, one of which I still need;
- the loss of my "security blanket" of "it won't happen to me"--because it did happen;
- delayed diagnosis and treatment of a related medical problem because the symptoms were indistinguishable from lingering pain from the direct crash injuries;
- fear of living alone for the first time in my life after very nearly bleeding to death with essentially no warning;
- fear for my future cognitive abilities as we learn more about brain injuries; and
- the indignity of seeing signs for a \$500 littering fine and wishing John's life were considered more important than a candy bar wrapper. (Remember that \$75 fine!)

Time and deliberate efforts help put these experiences into perspective, but they never go away completely.

Our son Andy graduated from Kenyon a year and a half after his father died. When we should have been driving to and enjoying graduation *with John*, we were instead driving through the crash intersection on our way to graduation.

This background brings me to my comments about HB 283. In my opinion, the strong points of this bill are

- **Primary enforcement:** Primary enforcement is proactive; secondary enforcement is reactive. Primary is preventive, and it is Action Step 2.1 in the Ohio Strategic Highway Safety Program (OSHSP) for Distracted Driving.
- **Exceptions:** The bill acknowledges there are a few circumstances in which the safety benefit outweighs the risks of danger and allows those uses.
- **Penalties:** Increasing penalties for repeat offenses is used in a number of other traffic offenses. And, adding points will help with prosecution, I have been told by a Columbus Deputy Chief Prosecutor. Increasing the penalty for DUIE in a construction zone will hopefully be a stronger deterrent.
- **Data collection and reporting:** The goal is to ensure that if we give peace officers more authority to stop drivers, they won't deliberately or unwittingly target certain populations for stops.

My story, and those of other victims, tell you why we need **A** bill to restrict DUIE. I have seen additional provisions that could make **THIS** bill even better. I have looked very carefully at last session's SB 285, this session's HBs 74, 111, & 283, and the Sub HB 111 that was proposed but not yet accepted for further consideration in the Transportation Committee. I have also looked at the National

Council of Insurance Legislators' (NCOIL) model bill and the bills and laws of many Ohio cities and all 50 states over my 19 years of advocacy. And, I have talked to law enforcement personnel and prosecutors, to learn more about how a law works in real life.

With this experience, my suggestions for amendments to strengthen this bill include:

- Bi-partisan Joint sponsorship: Bi-partisan sends a much stronger message to everyone. Our current texting law had bi-partisan joint sponsors.
- Devices: Focus has traditionally been on communications devices. As I warned years ago, not only will more people get these devices, but the devices will do more things. Now we are beyond communications. The NCOIL model covers two basic kinds of devices—a “wireless telecommunications device” and a “stand-alone electronic device” which is portable but is not for communications. This is more realistic and comprehensive.
- Exceptions: They are so numerous and detailed that I fear enforcement will be too difficult. And, the more actions we allow, the more the public will perceive DUIE as safe. prescribed If the bill will single out and prohibit viewing images, it should also cover making images and videos of any type. HB 111 allows use of a hand-held medical device, which is necessary.
- Strict liability: A Summit Co. Asst. Prosecutor told me this should be in a distracted driving bill.
- Penalties: Taking the driving class instead of paying the fine on a first offense is an “easy out.” The class is a 60-minute online course. If we have evidence the class is effective, it should be required in addition to the fine. If we can justify increasing penalties in a construction zone, why not also in a school zone?
- Data collection: The results will be much more accurate and useful if the collection is on all traffic stops, not just the ones that result in tickets and not just tickets for distracted driving. A police agency in an affluent suburb uses expensive software to collect the data. A police agency in a tiny village can't afford the software. ODPS has a contract for software for e-citations and e-crash reports, which local law enforcement agencies can use at no charge. Could DPS do the same for data collection software?
- Data analysis: Why collect data if we're not going to analyze and learn from it?
- Data reporting: The public is demanding transparency in government in general and law enforcement in particular. A report of collected data should be made public.
- Corrective actions: If data will be collected and sorted by agency and our goal is to identify and eliminate profiling, then there needs to be follow-up action to change the behavior in agencies shown to have a problem.
- Public awareness: People aren't always aware of what the law is, especially if it is a new one. People need to know about this new law before we can hold them liable for violating it. This relates to Action Steps 1.2, 1.3, 1.4, 3.2 and 3.4 in the OSHSP for Distracted Driving.
- ORC 4511.205: Make a legal determination as to whether the bill might need to align with or possibly repeal this section which prohibits all device use in all ways by drivers under 18.

Thank you for your patience. This was long but there is so much I need you to know. I would like to leave you with some food for thought:

- “The life you save may be your own.” (*Smoky Bear*)
- “[H]ow many deaths will it take till he knows that too many people have died?” (*Bob Dylan, 1962*)

I would be happy to answer any questions.

Addiction research:

- AT&T study by the Center for Internet & Technology Addiction founder Dr. David Greenfield, 2014
- Center for Internet and Technology Addiction study, 2016
- *Irresistible: The Rise of Addictive Technology and the Business of Keeping Us Hooked*, Adam Alter of NYU's Stern School of Business; Penguin Press, 2017
- World Health Organization, 2018

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