

**HB 74    TRANSPORTATION BUDGET  
DISTRACTED DRIVING PROVISIONS  
PROPONENT - Feb. 16, 2021**

Chairman Oelslager, Vice Chairman Plummer, Ranking Member Crawley, and House Finance Committee, I am Sharon Montgomery. I want to add my STRONG support for the provisions in this bill to better address distracted driving.

I'd like you to be aware of some history on this topic. Nearly a quarter of a century ago, the first bill to address this danger was introduced in the General Assembly. With that 1997 bill, we have had 29 before this one (see attached). Only two<sup>1</sup> have been enacted and they are insufficient.

When Gov. Kasich signed HB 99 (creating 4511.204 and .205) in June of 2012 he said he would have signed it even if it had been stronger and if this didn't work, we'd fix it. Nine of those dead bills have attempted to fix it. The provisions in this bill are the most comprehensive attempt so far to "fix it." Gov. DeWine, expert safety advocates, law enforcement all the way up to the Dept. of Public Safety, medical personnel, and many others firmly back the need to "fix it." This is a crucial next step toward protecting people on and near Ohio roads from drivers who chose to drive under the influence of electronics (DUIE). DUIE is always dangerous and almost always unnecessary. These provisions allow for the rare necessary uses.

Over a half century of studies<sup>2</sup> have shown us the effects of trying to get our brains to do two tasks at once. They can't. The best they can do is flit back and forth between the two, giving neither the attention it needs for success. We also have mountains of evidence of the disastrous results when one of those tasks is driving and the other is interacting with a function of an e-device.

I'm not using the word "disastrous" lightly. The crash that killed my husband, very nearly killed me, and left the driver of a second victim car permanently partially disabled is still—20 years later--having a negative effect on our lives—physically, emotionally, and financially. It breaks my heart to say there are many, many other victims whose experiences are as bad or worse than mine.

So, if we have all this evidence of the danger, why do we need a law to tell people they can't combine driving and e-device use? Think about the culture of acceptance we've created about using these devices in general. I've attached some alarming examples

Why do we need a law to supplement the message that this is dangerous? Because people are addicted to their devices. The devices are deliberately designed to be addictive.

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<sup>1</sup> Not counting HB 337 in 2011; see attached list for reason.

<sup>2</sup> In 1969, I.D. Brown, A. H. Tickner, and D.C. Simmons, of the Medical Research Council (a publicly-funded government agency in the United Kingdom) published their findings in "Interference Between Concurrent Task of Driving and Telephoning" in the *Journal of Applied Psychology*, Vol. 53, #5, pp. 419-424. Their conclusion: Skills such as steering were not affected by mobile telephone use, but perception and decision making were negatively affected.

The most important provision is in 4511.204. By deleting section (C), the offense now has primary enforcement. This allows law enforcement officers to stop drivers using e-devices *before* they can cause harm. Benjamin Franklin didn't have a smart phone, but he knew that "an ounce of prevention is worth a pound of cure."

The law is has no preventive power without primary enforcement but primary enforcement raises the concern of targeted enforcement against some drivers. I think there are solutions for that.

A second important provision is that each of the sections on causing harm (2903.06, 2903.07, and 2903.08) are strict liability offenses. To the best of my understanding, this means that the offender's *intention* is irrelevant. What is relevant is that the offense was committed and harm resulted.

This is very important because a popular argument defending distracted drivers who cause harm is, "But, the driver didn't intend to cause harm." That's right; no one gets in the car saying, "I think I'll use my phone and crash." Sadly though, not nearly enough drivers get in saying, "I'll put my phone where I can't get to it, to make sure I don't crash." *People don't intend to crash; the problem is, when they use their e-devices, they also don't intend not to.*

Another important part of this set of provisions is the attempt to hold offenders more accountable. This is necessary as one way to help deter others from this behavior and also to provide justice to the victims. There are harsher penalties, especially for causing harm. As a victim, I'd like to see this go even further.

To help change the culture, and help victims feel like the state recognizes the seriousness of the offense against them, I'd like to see e-distraction crashes more specifically aligned with aggravated vehicular homicide, aggravated vehicular assault, and vehicular harm. As written in this bill, they are not fully *penalized* as such nor do they appear to be *labeled* as such<sup>3</sup>.

Too many drivers can't or won't prevent themselves from causing harm, so it is the responsibility of the state to do all it can to prevent them, up to and including an enforceable law.

Thank you for allowing me to share some of what I've learned in nearly two decades of advocacy. Thank you, too, to Chairman Oelslager for co-sponsoring a primary texting bill in 2009 and your yes vote when the House passed HB 99 in June 2011, when it was still primary.

I'd be happy to answer any questions.

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<sup>3</sup> see 2903.06(B)(2)(c) and 2903.08(B)(1)(b)

Sharon Montgomery

speaking for myself as a victim of 2000 fatal phone crash, and an independent traffic safety and victims' rights activist 2002 - present

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ODOT Distracted Driving Task Force 2018 - 2019 member

Legislation Team leader, OSU Risk Institute Distracted Driving Initiative spring 2017 - present

Ohio Traffic Safety Council Distracted Driving Subcommittee member fall 2020 – present

**“[H]ow many deaths will it take till he knows that too many people have died?”**

*- Bob Dylan, 1962*

**DD LEGISLATIVE HISTORY: OHIO GENERAL ASSEMBLY**

|      |        |   |   |
|------|--------|---|---|
| 1997 | HB 627 | Prohibit impairing activity.  | Died in committee.                              |
| 1999 | HB 251 | Prohibit hand-held use.   | Died in committee.                              |
| 2001 | HB 280 | Prohibit impairing activity;<br>Prohibit hand-held use.                   | Died in committee.                              |
| 2001 | HB 281 | Increase fine for DD;<br>Hwy Patrol collect data.                         | Died in committee.                              |
| 2003 | HB 210 | Prohibit impairing activity;<br>Prohibit hand-held use.                   | Died in committee.                              |
| 2005 | HB 274 | Prohibit hand-held use;<br>create offense of inattentive driving.         | No public input hearings;<br>died in committee. |
| 2006 | HB 317 | Felony to seriously injure or kill by<br>device use.                      | No public input hearings;<br>died in committee. |
| 2008 | HB 425 | Texting as a secondary offense.   | No public input hearings;<br>died in committee. |
| 2009 | SB 160 | Hand-held use as secondary offense.                                       | No public input hearings;<br>died in committee. |
| 2009 | SB 164 | Texting as a secondary offense.   | Died in committee.                              |
| 2009 | HB 130 | Talking and texting by probationary<br>licensee <17 as secondary offense. | No public input hearings;<br>died in committee. |
| 2009 | HB 261 | Texting as a secondary offense.   | No public input hearings;<br>died in committee. |
| 2009 | HB 262 | Talking and texting as secondary<br>offenses.                             | No public input hearings;<br>died in committee. |
| 2009 | HB 266 | Prohibit hand-held use.   | No public input hearings;<br>died in committee. |
| 2009 | HB 270 | Texting as a primary offense.   | No public input hearings;<br>died in committee. |

***NOTE: 2009-2010 was when a flurry of local ordinances were passed.  
This 2009 history shows why.***

|      |                     |   |  |
|------|---------------------|---|--|
| 2010 | HB 415              | Texting as a primary offense.<br><i>(as a compilation of the 2009 bills)</i>  | Passed House 86-12;<br>died in Senate committee.   |
| 2011 | SB 35               | Hand-held use as a secondary offense.   | No hearings.                                       |
| 2011 | SB 154              | Texting as a secondary offense.   | No hearings.                                       |
| 2011 | HB 337              | Texting as a “serious traffic violation”<br>(but not restricting the behavior) with<br>CDL. <i>[To conform with fed. regs.]</i> | Enacted; effective 1-27-12.                        |
| 2011 | HB 99<br>Sub. HB 99 | Texting as a primary offense.<br>Texting as a secondary offense.  | Passed House 88-10.<br>Enacted; effective 8-31-12. |
| 2014 | HB 637              | Texting as a primary offense.   | Recommended by committee;<br>no floor vote.        |
| 2015 | HB 53               | “Distracted driving” an offense if<br>committed with a moving violation<br>or vehicular homicide.                               | Removed from transportation<br>budget bill.        |
| 2015 | HB 86               | “Distracted driving” an offense if<br>committed with a moving violation<br>or vehicular homicide.                               | Died in committee.                                 |
| 2015 | HB 88               | Prohibit all use in school/work zones;<br>handheld texting as a primary offense.  | No public input hearings;<br>died in committee.    |
| 2015 | SB 146              | Enhance penalty for moving viola-<br>tion while distracted; broaden “dis-<br>Tracted” beyond device use.                        | Passed Senate 32-9;<br>died in House committee.    |
| 2017 | HB 95               | Enhance penalty for moving viola-<br>tion while distracted; broaden “dis-<br>tracted” beyond device use.                        | Enacted; effective 10-29-18.                       |
| 2020 | HB 468              | Handheld use as a primary offense.  | Died in committee.                                 |
| 2020 | SB 279              | Handheld use as a primary offense.  | Never assigned to a committee.                     |
| 2020 | SB 285              | Prohibit handheld use; enhance<br>penalties.  | Died in committee.                                 |
| 2021 | HB 74               | Handheld use as a primary offense;<br>Enhance penalties.<br><i>[In transportation budget bill.]</i>                             | Feb. House Finance Comm. hearings.                 |

## **E-DEVICE USE: CULTURE OF ACCEPTANCE**

An air traffic controller thought it was acceptable to phone someone about a dead cat on the runway when he was supposed to be watching his radar screen and communicating with pilots.

We now have to tell audience members to run off distracting devices during a performance.

Customers believe it is acceptable to be talking on their phone when a store employee is trying to conduct the customer's transaction.

Early in my advocacy, a lawmaker had not realized the insensitivity of telling me--a victim of a phone crash—that she considered her commute time a good time to catch up with constituent calls.

Some parents on their way to pick up their children, as prearranged, feel it is necessary to phone or text the children en route, just to say they are on their way.

There were actual incidences in which a driver stopped for suspicion of drunk driving claimed to be phoning or texting instead—because phoning or texting was considered socially acceptable but drunk driving is no longer.

People interviewing for a job have answered their phones during the interview.

Parents and other caregivers can be seen using e-devices when they are supervising children.

People have been seen starting a call or text or e-mail while they're driving out of a parking lot into traffic when all they have to do for safety is simply not drive out until the communication is completed and their mind is focused on driving.

We introduce the obsession with e-devices in infancy. A toy phone package says "6 months and up." We see adults in public settings give a real device to a small child to keep the child occupied while the adults interact with each other and/or with employees in that place.

A recent news article, about pandemic hygiene, states that people want built-in sanitizers for their phones in the car console. For years, catalogs have offered a variety of accessories for the cup holder or visor to make your phone easier to get at.

Just last month I saw Hyundai's new car commercial touting its driver alert system by showing a driver using his phone. The message: go ahead and pay no attention to your driving; we've got your back.

TV programs still show drivers phoning. Authors—even non-fiction--still refer to making or taking a call while driving.

Signs warn us of a \$500 fine for littering while the fine for texting is \$150 at the most.

Signs as we leave freeway rest areas say "buckle up" but none say "hang up."

Illegal bingo is a felony, but texting is only a misdemeanor and DUIE in and of itself isn't even fully illegal.

***And remember, when mobile phones were first available, we called them CAR phones!***