

HB 468: DISTRACTED DRIVING PROPONENT TESTIMONY 5-19-20

Chairman Green, Vice Chairman McClain, Ranking Member Sheehy, and members of the House Transportation and Public Safety Committee, I am here to support HB 468 on behalf of all the victims we know about, all the victims we don't know about, and all those who don't want to become victims. There is no longer any question that driving under the influence of electronics (DUIE) is too dangerous to be legal. The only question remaining is how will we stop it.

This bill takes the next two crucial steps. First, it allows primary enforcement. The benefit of this is three-fold. It lets police stop distracted drivers *before* they cause harm. It increases the certainty of penalty, which research shows is a stronger deterrent than what the penalty actually is. And, it makes Ohio eligible for federal money to help with enforcement. An unenforced law is an idle threat and we all know how useless an idle threat is.

Second, this bill expands beyond texting. E-devices, and their users, do many things unrelated to driving, which result in impairing a driver's ability to be alert and safe.

In her sponsor testimony, Rep. Lightbody gave you disturbing numbers on crashes and fatalities due to this behavior. These numbers are widely acknowledged to be lower than the actual numbers. This behavior is under-reported for a variety of reasons. I am working with law enforcement to improve reporting.

I have some other disturbing numbers for you. This is the 28th distracted driving bill in the Ohio General Assembly, the first being in 1997. Twenty-six of those died in committee, some without even having public input.

In the past 15 months, 13 other states¹ have enacted a total of 1 bills upgrading their existing DUIE laws, primarily to do exactly what HB 468 does: make it a primary offense and/or to expand beyond texting.

Our current texting law, HB 99, made texting a primary offense and had 24 proponent witnesses and zero opponents. It passed the House by a large bipartisan majority. Unfortunately, the Senate would not vote on the bill without amending it to a secondary offense for adults. Some senators said their "yes" vote was only on the condition that the bill be a first step towards a more effective bill. Some voted "no" because secondary would be ineffective.

When Gov. Kasich signed HB 99 in 2012, he said he would have signed it even if it had been stronger, and if the bill didn't work, we'd fix it.

The bill hasn't worked and we haven't fixed it. Meanwhile, more people have phones, phones have more tempting functions, and more people are dying. HB 468 includes fixes we need.

Some other important numbers:

- 94% of more than 1500 officers surveyed last year by OSU for ODOT said they want a primary-enforcement law.²
- One of the the National Transportation Safety Board's 10 "Most Wanted" safety improvements is on distracted driving.³
- Crashes cost Ohio over \$1.3 billion in 2013, the second highest in the midwest.⁴ Can Ohio afford this with the pandemic depression? Should we ever have to "afford" this?
- Ohio is again in the red zone on the Advocates for Highway and Auto Safety's rating for meeting too few benchmarks for traffic safety laws. We are one of 12 in the red this year.⁵

The current lack of protection for Ohio road users is unacceptable. It is also embarrassing. There seems to be more excitement about being #1 in football than in traffic safety.

Some of you have heard my story more times than you'd probably like. I need the rest of you to fully understand the ramifications of DUIE. Here's the "Reader's Digest" version:

In September of 2000, my husband John and I drove from our home in Gahanna to Mt. Vernon to have his birthday dinner with our son and his Kenyon College roommate. We lingered in the parking lot after dinner, continuing our visit. (This lingering adds to the pain: What if we'd talked only a few minutes longer, or left a few minutes sooner?) On our way home, going west on US 62, just outside of Johnstown, a completely preventable crash occurred.

A driver going east was using his phone—with his four-year-old granddaughter in the car! He failed to see the car ahead of him which was stopped and signaling to turn left after we cleared the intersection. The phoning driver slammed into the waiting car, throwing it into our path in the intersection.

The waiting car and ours (a "tank"—an '88 Lincoln Town Car) were so damaged we had to be extricated with tools. The waiting driver and I were life-flighted to Columbus Grant Hospital. John endured the 30-minute ride in the squad with multiple broken bones!

The waiting driver is now permanently partially disabled. John died after six weeks in ICU—at age 51. I had life-threatening complications with my injuries, am still being treated for PTSD, and recently had to resume physical therapy for one of my injuries. Because of lung involvement, I am at greater risk during this pandemic. As we learn more about brain injuries, I worry about my future including whether my small family will again have to be my care-takers.

I know some legislators and citizens believe a law is not the answer. I strongly hope you will share your reasons with me now or later so I can offer you another perspective and maybe some research. And, please note that polls keep showing that the majority of drivers know DUIE is dangerous but most of them do it anyway. Research shows e-device use in any setting is at best a habit, at worst an actual addiction. If people can't stop themselves, we must help them stop. Addicted smokers couldn't stop themselves from harming others, so we had to do it for them.

There is concern about increased racial profiling. I don't have enough information to know whether a primary DUIE law increases racial profiling but I know profiling in general is a very real concern. I have attached my two summaries of relevant information I could find about that to my testimony.

Please think about all the driving you have to do and remember what Smokey Bear says, **“The life you save may be your own.”**

I owe thanks to many for their work on this danger. In particular, today I want to thank

- my state representative Mary Lightbody for allowing me to give her a great deal of information about DUIE, studying it with an open mind, investigating the issue even further, and then introducing this bill. I also thank the co-sponsors.
- Rep. Sheehy for affording me the same privilege a few years ago, and then introducing a bill to strengthen HB 99.
- Columbus Police Officer Keith Conner for his effective enforcement of Columbus’s primary texting law in his patrol area, where he has seen a noticeable reduction as word spreads that he’ll stop you.
- Chairman Green for allowing public input on this bill when the legislature is so busy catching up from shut-down and with so many pandemic-related bills.

And, thank you all for hearing me out. I welcome any questions or comments.

¹ AR, AZ, CA, FL, ID, IL (2), IN, MA, ME, MN, SD, TN, & VA (3)

² “Challenges of Distracted Driving Enforcement: Survey of Law-Enforcement Officers.” Dr. Brittany Shoots-Reinhard, Cognitive and Affective Influences in Decision-Making Lab, Ohio State Univ. Dept. of Psychology, 2019. Funded by Ohio Dept. of Transportation.

³ “2019-2020 Most Wanted List-Associated Open Safety Recommendations,” National Transportation Safety Board, as of 4-17-20. *[Note: The list is not identified as being in order of priority; however, “Eliminate Distractions” is the first safety recommendation on the list.]*

⁴ “State Specific Costs of Motor Vehicle Crash Deaths.” Centers for Disease Control, National Center for Injury Prevention and Control, Division of Unintentional Injury Prevention, 2015.

⁵ “17th Annual Roadmap of State Highway Laws,” Advocates for Highway and Auto Safety, 2020.

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RACIAL PROFILING CONCERNS RE: DISTRACTED DRIVING PRIMARY ENFORCEMENT

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2-6-20 & 5-18-20, smontgomery77@yahoo.com*

OHIO

Using a variety of search terms and opening a variety of web pages, I found no evidence of any specific action by OHIO ACLU or OHIO NAACP to research or oppose primary enforcement of DD laws. This is not to say they support primary enforcement; this is only to say that they don't appear to have taken any specific action.

From the beginning of 2011 through Feb. 6, 2020, there have been only three bills introduced in the Ohio General Assembly to address the problem of racial profiling in any traffic stops. Each proposed specific solutions; none made it out of committee. Two were sponsored by Sen. Sandra Williams, who is a member of the Black Caucus and was, at least in 2018, an ex-officio member of the Ohio Collaborative Community-Police Advisory Board.

While ACLU, NAACP, and the GA share the concern of many of us about "driving while black," this lack of specific action by any of them on the specific topic of a possible increase in profiling with primary enforcement of distracted driving laws seems to indicate a low level of concern.

OTHER STATES

The ACLU in several states (CO, FL, IA, IL, MA, MI, NE, & SC that I found) have taken a public stand against primary enforcement based on the fear of increased profiling. I couldn't find evidence that they based this fear on collected data. They cited studies showing racial disproportionality in traffic stops in general but not as that relates to primary enforcement and/or distracted driving specifically.

MI ACLU also opposes increasing DD penalties because the extra revenue "may

incentivize over-policing and increase racial profiling as well as overly burden low income individuals.”

Two states have recently (FL HB 107, RC 316.305(5) effective 7-1-19; MA HB 4203, RC 90-63(A), effective late Feb. 2020) upgraded their distracted driving laws with provisions for data collection/analysis/reporting to identify and mitigate profiling. Virginia SB 160, introduced 1-23-20, has an extensive provision for data collection/analysis/reporting to address both racial profiling as well as effectiveness of the upgraded law itself. A year earlier, the VA Legislative Black Caucus supported the pending senate bill (which was enacted) because it addressed their profiling concerns. **The bill was signed by the governor on 3-31-20 and takes effect 1-1-21.**

THE RESEARCH

One of--or THE--leading researchers on this is Prof. David Harris of the Univ. of Pittsburgh's School of Law. He has a number of publications on the general subject of racial profiling in traffic stops.

In 1999, he did a national study for ACLU which looked at the history and recommended solutions.

- Recommendation #2 was to pass HR 118, Traffic Stops Statistics Study Act, in the 105th Congress.
- Recommendation #3 was for each state legislature to enact laws allowing traffic enforcement to be monitored. N. Carolina was the first to do so, April 21, 1999.
- Recommendation #5 was for the 50 largest cities to voluntarily collect data.

Two of the three Ohio bills called for data collection.

His report also noted that the ACLU of Northern CA had created a toll-free hotline for reporting discriminatory stops. The number was given in radio ads and on billboards, among other ways.

On 2-3-20, I e-mailed Prof. Harris asking if:

- Any of his publications address DD primary enforcement specifically.
- He knows of any studies in states with primary enforcement.
- He knows of any effective “no profiling” laws.
- He knows of any effective bias training programs.

I have not gotten a reply so far.

POLICIES & TRAINING

All 3 Ohio bills called for profiling training, as does the Ohio Collaborative Community-Police Advisory Board.

I was unable to find this kind of training in the course catalog for the Ohio Peace Officer Training Academy so I have asked the OPOT Commission for help in finding

the title(s) and description(s) of such courses.

A number of bills call for agency policies, which some (I don't know how many) law enforcement agencies have established.

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RACIAL PROFILING AND PRIMARY-ENFORCEMENT TRAFFIC LAWS

A concern often raised when efforts are made to make a distracted-driving law with primary enforcement, for the purpose of allowing offenders to be stopped BEFORE they can cause harm, is racial profiling.

It is a legitimate concern that “driving while black” exists. However, not allowing a preventive law for one of the (if not THE) most dangerous non-driving behaviors that drivers do will not solve the profiling problem. **We don't solve one problem by ignoring another.**

It is **important to know**

- There have been bills introduced in the Ohio General Assembly to address the profiling problem. Most recently, SB 84, was introduced in the 132 GA. These bills have not progressed to floor votes. The legislators and citizens who are truly concerned about profiling need to give strong support to
 - bills of this kind, and
 - bills to amend drug laws, which have been shown to be at the root of the proliferation of racially discriminatory traffic stops, and
 - bill provisions to collect demographic data on traffic stops (which would also give us valuable insight into any age or gender groups that might be more prone to commit certain violations, so we can address that aspect of those violations.)
- Some of the previous bills on distracted driving in the Ohio GA have been sponsored by members of the Black Caucus.
- Several studies* have analyzed pedestrian deaths and discovered that African American and Latino pedestrians are more likely to die from being hit by vehicles than white pedestrians. A distracted driving law that allows law enforcement to stop offenders BEFORE they cause harm will help protect the same people who are subject to discriminatory profiling.

* 1) *study in Las Vegas by UNLV community health sciences professor, reported in Las Vegas Sun 3-22-17*
2) *study in Portland OR <2017, referenced in Las Vegas Sun 3-22-17*

- 3) *"The New York City Pedestrian Safety Study & Action Plan," 2010, NYC DOT*
- 4) *Campos-Outcalt et al., 2003*
- 5) *Surface Transportation Policy Project, 2002, in California*
- 6) *Los Angeles Times survey, reported 11-28-99*
- 7) *Washington Post survey, reported 8-27-99*
- 8) *Kim & Palmisano, reported in Pediatric Emergency Care, 1992 vol. 8, issue 4*

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