

Texting While Driving Rates are High, But Penalties are Low in California

Distracted driving occurs in one out every five traffic fatalities in California, and the state's paltry fines hardly discourage it. by Maureen Rubin, J.D.

PALMDALE, CALIFORNIA, UNITED STATES, May 26, 2021 /EINPresswire.com/ -- California drivers

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who cross double lines to access carpool lanes and those who enter them alone to avoid traffic jams must pay \$100 in fines, plus \$390 in penalty assessments if they are caught. While these vehicle code violations might slow down traffic, they rarely if ever cause accidents or fatalities. Texting while driving is far more dangerous. It is the number one cause of car crashes in the state. But the California Vehicle Code assesses first-time texting offenders a paltry fine of only \$20.

A survey on the website Automotive Fleet ranks California as the nation's second most lenient state when it comes to texting while driving, just behind Montana, which imposes no fine and no points. After penalty assessments are added, California's first-time texting offenders will only have to pay the court a total of \$121. The low cost of violating a law intended to protect Californians from distracted drivers does little to reduce the over 3,500 deaths in the state attributed to this cause each year. While statistics differ, most reports find that about 20% of traffic fatalities are attributed to distracted driving, a category that includes texting, eating, talking and “fidgeting” with the radio or navigation devices -- anything that takes your attention away from the task of safe driving,” according to the National Highway Traffic Association (NHTSA).

Oregon, the strictest state for texting violations, has a maximum fine of \$1,000 but no points. Utah's fine is \$750 and 50 points. Adult drivers who accumulate 200 points in a three-year period can lose their driver's licenses for up to a year.

A retired California Superior Court Commissioner, interviewed for this article, said, “It is literally one of the cheapest tickets in the whole vehicle code, despite the fact that it is one of the most dangerous.” He contrasted it with parking in a handicapped space or driving without car insurance, both of which carry fines of \$250 and penalties that bring total costs to nearly

\$1000.

The dangers of texting while driving were addressed by state legislators in their 2018 amendments to California Vehicle Code Section 23123.5. This law was enacted to crack down on the use and abuse of handheld electronic devices in cars. NHTSA reports, "Texting is the most alarming distraction. Sending or reading a text takes your eyes off the road for 5 seconds. At 55 mph, that's like driving the length of an entire football field with your eyes closed. You cannot drive safely unless the task of driving has your full attention. Any non-driving activity you engage in is a potential distraction and increases your risk of crashing."

Texting is arguably even worse than drunk driving because while drunk drivers are impaired, most are still looking at the road. Texting drivers are not looking at the road at all.

Although fines may be low, liability to another driver or pedestrian injured in a crash can be quite high. Texting while driving is "negligence per se" under California Vehicle Code 23123.5. California personal injury attorney Paul Kistler explains that this legal doctrine makes it easier to prove the fault of a driver who was found to be in violation of a specific law designed to prevent motor vehicle accidents and injuries. "Although in many cases liability is clear-cut, such as in a rear-end collision," Kistler explains, "some cases involving turns or lane changes are not so clear, and a negligence per se instruction is extremely helpful to prove an injured plaintiff's case."

Without a citation from the police, attorney Kistler maintains that proving someone was texting while driving when a crash occurred can be challenging. "Usually," says Kistler, "you will have to



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rely on witness testimony or subpoenaed cell phone records that are only available once you are engaged in protracted litigation. Sometimes the driver may make an admission to a responding police officer or paramedic at the scene as a way of explanation for the behavior. Those statements, while considered hearsay, are often admissible under various exceptions at a subsequent trial." Kistler recommends that injured drivers or pedestrians relay any suspicions of texting while driving to their attorney to allow for a full investigation.

If texting is so hazardous, why isn't it punishable by more than the cost of a pizza? A bit of history may clarify. A December 2018 article in *Foundations of Law and Society*, a publication by students at the University of California at Berkeley Law School, explains efforts in the early 2000s to "curb the public nuisance" of cell phone usage and texting that led to the modifications of the California Vehicle Code. The first law made the use of electronic devices illegal for bus drivers. It was amended in 2006 to prohibit cell phone use without hands-free devices. The penalty was \$20, the same as today. Violators would not receive any points on their driving records.

Texting while driving was specifically banned in 2008 when the prohibition passed the legislature in an unopposed vote. It was supported by Verizon and a variety of electronics and insurance companies and was signed into law by Governor Arnold Schwarzenegger.

But the problem was far from solved. The 2018 amendments addressed a problem that arose during a court case when a driver escaped liability because the previous law said drivers could not "talk on the phone" while driving. The current law says, "A person shall not drive a motor vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device unless the wireless telephone or electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation, and it is used in that manner while driving."

Bluetooth, voice commands, or being in speaker mode are all permitted as is using a mounted GPS that can be operated with a single tap. However, those under 18 may not use a mobile phone for any reason while driving.

Even the new amendments did not solve several additional problems related to enforcement. For example, drivers are now more likely to try to hide their phones when they are texting. This will cause them to look at their laps instead of at the road.

Drivers' ages make a difference, too. Those in the 15 to 29 range cause the most distraction-related fatal crashes. A study by the Centers for Disease Control and Prevention (CDC) found 42% of high school students admitted to sending texts while driving during the month the survey was administered. Adults are no better, as 75% of them admitted to an AT&T survey that they text and drive regularly, even though they know about the dangers. Two-thirds read texts at a red light. Why? They say they are afraid of "missing out on something," or they think the sender expects an immediate reply. These same people say they would never drink and drive.

There is also a problem with police reluctance to issue unpopular tickets which take lots of their on-duty time to defend. If a texter wants to fight a ticket, the police officer will have to go to court, participate in a trial, and miss a half-day of policing. According to the former Commissioner, "The reality is that police officers rarely issue tickets for texting offenses. "

And when police do stop texting violators, several studies show that racial profiling is often involved. An article in American Behavioral Scientist concluded that "Black, Hispanic, and other minority drivers are significantly more likely to be pulled over versus white drivers." This practice raises a separate issue that is in many ways far more serious than the moving violation.

It is also important to point out that while texting and driving is dangerous, it might not be the sole cause or even the main cause of a traffic accident. A texting driver could be struck by another negligent driver and not bear sole responsibility for the crash. In California, if both parties are at fault, the system allocates blame proportionately, and an injured crash victim can recover money damages from the other driver in proportion to their share of the blame. Personal injury attorneys like those at the [Kistler Law Firm in Palmdale](#) offer a free initial consultation and only receive a fee based on the recovery they obtain, so it is worthwhile for any injured party to consult an attorney after a car accident to explore their options.

What would make things better? A couple of ideas include much higher fines or making the infraction a misdemeanor, meaning it would carry a penalty of jail time. Jail time is not an option in texting cases unless an injury is involved and the driver is charged not with texting, but with a different misdemeanor or felony.

Technology could be the answer, but it is questionable whether people will accept it. Both Androids and iPhones can now be put in "Do Not Disturb" mode that give callers personal messages that the recipient is unavailable. Cell phones can also be set to block texting or anything else except 911 calls while the vehicle is in motion. Parents, especially of teens who are by far the most frequent texting offenders, could have blocking devices installed. But few do. There is also technology that allows people to dictate texts.

Further problems exist. Although the studies were done from 2007 to 2009, the Highway Loss Data Institute (HLDI) and the California Highway Patrol found that "California collision coverage did not decline after the texting ban."

Billboards across the state, targeted education in high school, and catchy slogans from public service campaigns don't seem to be making a difference. One example from the Ad Council says, "Stop the texts. Stop the Wrecks." Others aimed at teens are very graphic in their use of accident photos. Hopefully, these things will help. California needs to do better. Higher fines, stronger penalties, better enforcement are all necessary. Lives really do depend on it.

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