

## **Hands Free, Hands Off! New York Passes Driving Phone Use Prohibition**

By: Natalie Campo, Esq.



You may have noticed the large electric signs on our New York roadways have a new message: "Don't Text While Driving. New Law. 5 Point Fine." Upon first glance I dismissed this new message thinking it didn't really apply to me. Little did I know I was Guilty as Charged! There is a huge misconception that I am sure most of you have made (as I did) that the new "Texting" doesn't apply: (1) if you are not actually moving; or (2) if you are not actually "Texting"! The previous statement is incorrect, and I am taking this opportunity to address any misunderstandings by our

community, friends and clients about the new "Texting" law.

The significance and importance of New York's Texting Laws have been overlooked and blatantly ignored resulting in the impeding efforts to win passage of tougher laws and punishments. Despite increasing media attention and laws forbidding the use of a mobile device, more people than ever still use them while driving. In response, Governor Cuomo has taken affirmative action in order to make drivers think twice before they use their cell phones while driving. This hands-off approach while behind the wheel has slowly developed to basically encompass any and all touching of a portable electronic device.

New York's Texting Law, put into place by the legislature in November 2009, made the use of a portable electronic device while operating a vehicle punishable by issuance of a traffic ticket and a fine up to \$150.00. Since taking effect, we have seen not only a rise in the increase of penalties but more importantly a growing effort to crack down on this growing epidemic. Effective July 26, 2013 a violation of the Texting Law carries the additional burden of five driver penalty points along with new maximum fines for repeat offenders. The maximum allowable fine now reflects an allowable fine of up to \$200.00 for a second violation, if committed within a period of eighteen months, and up to \$400.00 for a third or subsequent violations if committed within a period of eighteen months.<sup>1</sup>

Effective October 28, 2013, the code also modifies and broadens many terms. For all purposes "use" will mean holding a portable electronic device while viewing, taking or transmitting images, playing games, or, for the purpose of present or future communication: performing a command or request to access a world wide web page, composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages, instant messages, or other electronic data. Further, "operating" a motor vehicle does not only mean while in motion. It encompasses if a vehicle is temporarily stationary because of traffic, a traffic control device, or other momentary delays. However, there is an exception if the vehicle is stopped at the side of, or off, a public highway in a location where such vehicle is not otherwise prohibited from stopping by law, rule, regulation or any lawful order or direction of a police officer. Any conspicuous actions equate to a presumption of use.<sup>2</sup>

Additionally, Governor Cuomo has signed legislation hoping to deter young and new drivers from using their cell phones. Effective July 1, 2013, there will be enforcement of 60-day suspensions for first convictions and revocations of 60 days (for junior licenses) or 6 months (for probationary licenses) for

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<sup>1</sup> NY Vehicle and Traffic, Title 7, Article 33 §1225-d

<sup>2</sup> <http://www.safeny.ny.gov/phon-vt.htm>

subsequent convictions within 6 months of the time a license is restored after suspension. For new and inexperienced drivers this threat of suspension and/or revocation can be extremely tragic.<sup>3</sup>

This upward trend in tougher penalties results from the ongoing social media epidemic. With the sophistication of technology and instant gratification with one touch of your mobile device, drivers have become more distracted and reliant on them than ever. Has it really become so imperative not to miss the latest trends or posts on Twitter or Facebook that prompted the need these "Texting Zones?" Sadly and unfortunately the answer is yes. It is not shocking to find that people have become so caught up in social media and technology that the Governor unveiled the creation of special "Texting Zones" to further the efforts in reducing distracted driving. These zones, 91 in total, will offer drivers a pull-off area to park and use their mobile devices along major highways across the state.<sup>4</sup>

A recent analysis of state and federal data by the National Safety Council showed that crash deaths in cases where drivers were on the phone are seriously underreported making the problem of distracted driving seem less significant and harmful than it really is. Because text messaging requires visual, manual, and cognitive attention from the driver, it is by far the most alarming distraction. Based on US Department of Transportation- Engaging in visual-manual subtasks (such as reaching for a phone, dialing and texting) takes a driver's eyes from the road for an average of 4.6 seconds, the equivalent-at 55 mph-of driving the length of an entire football field, blind.<sup>5</sup> It is ironic that the same technology that essentially enhances our quality of life, while behind the wheel can also have devastating and life threatening consequences. So what do you really need to know? Put down your cell phone and focus on the road.

**About the Author:**

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<sup>3</sup> <http://www.governor.ny.gov/press/07012013-new-penalties-for-texting-while-driving>

<sup>4</sup> <http://www.governor.ny.gov/press/09232013-governor-unveils-texting-zones>

<sup>5</sup> VTTI