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## **Hands-Free Use of Mobile Devices While Driving**

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**

## **Legal Update**



### **November 2019**

On November 25, 2019, Governor Baker signed House Bill 4203, "*An act requiring the hands-free use of mobile telephones while driving,*" which will become effective on **February 23, 2020.**

An operator shall be issued a warning for a first offense violation of G.L. c. 90, § 13B occurring after February 23, 2020, until March 21, 2020, inclusive, unless the violation under § 13B is for typing or reading an electronic message.

- 1. Definition:** "Hands-free mode" is the operation of a mobile electronic device by which the operator engages in a voice communication or receives audio without touching or holding the device, provided that a mobile device may require a single tap or swipe to activate, deactivate or initiate the hands-free mode feature.

• **What does the bill prohibit? (G.L. c. 90, §13B)**

- No operator of a motor vehicle shall use a mobile electronic device unless the device is being used in hands-free mode.
- No operator of a motor vehicle shall read or view text, images, or video displayed on a mobile electronic device; **provided**:
  - An operator may view a map generated by a navigation system or application on a mobile electronic device that is mounted on or affixed to a vehicle's windshield, dashboard or center console in a manner that does not impede the operation of the motor vehicle.
- No operator of a motor vehicle shall hold a mobile electronic device.
  - **NOTE:** A driver is **not** considered to be operating a motor vehicle if the vehicle is stationary and not located on a public way where motor vehicles and bicycles travel.

**3. Emergency Provision.** The law does permit the use of an electronic device in response to an emergency. The bill designates the following situations as emergencies:

- a. vehicle was disabled
- b. medical assistance or attention is required
- c. police, fire or other emergency services are needed for the personal safety of the operator, passenger or to ensure the safety of the public
- d. a disabled vehicle or an accident was present on a roadway.

❖ **NOTE:** Public safety personnel or emergency first responders can use a device while operating an emergency service vehicle and are engaged in the performance of their duties.

**4. Penalties:**

**1<sup>st</sup> offense:** \$100 fine.

**2<sup>nd</sup> offense:** \$250 fine and will have to complete a distracted driving program offered by the RMV.

**3<sup>rd</sup> offense or subsequent offenses:** \$500 fines and become surchargeable.

❖ **NOTE:** The above citations do not require forfeiture of the driver's phone nor does it authorize police to seize the phone.

**5. Data Collection (G. L. C. 90, §63):** The Registry of Motor Vehicles shall collect the following data from any Massachusetts Uniform Citation:

- age, race and gender of individuals who receive a warning or citation;
- traffic infraction;
- date and time of the offense and the municipality in which the offense was committed;
- whether there was a search initiated as a result of the stop;
- whether the stop resulted in a warning, citation or arrest.

Data collected will only be used for statistical purposes and should not identify the individual or the officer involved in the underlying stop.

## **6. Executive Office of Public Safety and Security: Process and Procedure**

The Secretary of Public Safety and Security shall a standardized process and develop procedures to assist law enforcement in collecting this data. Failure to collect the data will not impact the validity of the stop.

The Secretary of Public Safety and Security shall transmit the data collected by the Registry of Motor Vehicles to a university, non-profit organization or institution, whether private or public with experience in analyzing data and reporting its findings. The Secretary of Public Safety and Security will publish a summary of the data annually and provide it to the Attorney General, the Department of State police, the Massachusetts Chiefs of Police Association and the clerks of the House of Representatives and Senate. If the summary data suggests that a law enforcement agency has engaged in gender or racial profiling, then the law enforcement agency will be required to collect data for one (1) year. The data shall include the information already collected from the citation as well as the reasons for the stop, even if the operator did not receive a warning, citation or arrest. The bill would also mandate that the law enforcement agency complete bias training using best practices.

### **Safety and Security**

The data collected shall be stored in a secured system in a cryptographically encrypted form. The data shall only be provided upon the execution of a written confidentiality agreement with the Secretary of Public Safety and Security that is authorized to protect the privacy and prohibit further distribution of the data. Unencrypted data shall not be accessed, copied, or communicated without express written approval of the secretary.

Additionally, any process data can only be collected for aggregate information and cannot reveal the identity of the law enforcement officer or the identity of the person.

### **Annual Report**

The Secretary of Public Safety and Security shall publish a summary of the annual data.

The report shall include the information listed below:

- containing aggregate numbers,
- listed by municipality and law enforcement agency,
- for the information categories identified in subsection (a);
- provided, that data concerning age shall be aggregated into categories for persons
  - aged 29 and younger, and
  - aged 30 and older;
- and provided further, that data concerning time of day shall be aggregated into categories for offenses committed:

- from 12:01 am to 6:00 am,
- from 6:01 am to 12:00 pm,
- from 12:01 pm to 6:00 pm, and
- from 6:01 pm to 12:00 am.

### **Public Hearings**

The Secretary of Public Safety and Security will make the information available to the public online. Additionally, the Secretary of Public Safety and Security shall hold no less than three (3) public hearings thirty days after the report is released. The hearings shall take place in different regions of the state to present the annual analysis and report and to accept public testimony regarding such report. The public shall receive notice of the public hearing, no less than fourteen (14) before the hearing. The dates of the public hearings will be posted on the Executive Office of Public Safety and Security's website and any official social media accounts and by providing written notice to the Joint Committee on Public Safety and Security, the Joint Committee on the Judiciary, and the clerks of the House of Representatives and the Senate.

### **7. Additional Training for Distracted Driving:**

The RMV along with the Highway Safety Division, the Department of Elementary and Secondary Education (DESE), the Department of Higher Education and Municipal Chiefs of Police Association (MCOPA) shall develop and implement an annual public awareness campaign for junior and adult operators regarding the dangers and consequences of distracted driving.

The training will provide information on the restrictions of mobile telephone and mobile electronic device use while operating a motor vehicle and information on the fines and punishments that may be imposed for violations of said chapter 90 and bicycle safety. All driver's manuals that the RMV develops shall include information on the hazards of distracted driving in each revised publication.

### **8. Study for Collecting Accurate Data (G.L. c. 90, §63):**

The Secretary of Public Safety and Security shall investigate and study alternative methods for collecting more accurate data. The study shall examine the feasibility of expanding the data collected:

- including expansion of the data collection to include the race and gender of each individual subject to traffic stops,
- searches resulting from a traffic stop or frisks resulting from a traffic stop,
- whether or not a Massachusetts Uniform Citation was issued. (e.g., Verbal Warnings)

The Secretary shall file a report with the results of the investigation and study together with legislation, if any, with the Joint Committee on Transportation no later than April 1, 2020.

	<b>Changes</b>
<b>What is considered a violation of hands-free mode?</b>	<ul style="list-style-type: none"> <li>Operator of a motor vehicle <u>cannot use mobile electronic device</u> unless the device is being used in hands-free mode.</li> <li>Operator of a motor vehicle <u>cannot hold a mobile electronic device.</u></li> <li>Operator of a motor vehicle <u>cannot read or view text, images, or video displayed on a mobile electronic device.</u></li> </ul> <p><b>Exception:</b> Operator can use GPS application on a mobile electronic device as long as it is <u>mounted on or affixed to a vehicle's windshield, dashboard or center console.</u></p>
<b>Penalties</b> (G.L. c. 90, §8M)	<ul style="list-style-type: none"> <li>1<sup>st</sup> Offense: \$100 fine</li> <li>2<sup>nd</sup> Offense: \$250 fine and distracted driving training through RMV</li> <li>3<sup>rd</sup> Offense or subsequent: \$500 fine and distracted driving training through RMV. This offense is surchargeable.</li> </ul>
<b>Emergency Provision</b>	<p>An operator using electronic device during emergency is permitted if the following occurs:</p> <ul style="list-style-type: none"> <li>Disabled vehicle</li> <li>Seeking medical attention for operator or driver</li> <li>Disabled vehicle or accident on public way</li> </ul>
<b>Junior Operators</b> (G.L. c. 90, §8M)	<p style="text-align: center;">❖ <b>NOTE:</b> The bill added language to the law pertaining junior operators using hands-free electronic devices while operating a motor vehicle.</p> <ul style="list-style-type: none"> <li>No person under the age of 18 shall <u>hold in their hand</u> or use a mobile telephone, hands-free mobile telephone or mobile electronic device while operating a motor vehicle on any public way. A junior operator is not considered operating at motor vehicle that is stationary and not located in a part of the public way where a motor vehicle or bicycle travel.</li> </ul> <p><b>Penalties:</b> Same fines as adults.</p> <p><b>License Suspension for Junior Operator License</b></p> <ul style="list-style-type: none"> <li>1<sup>st</sup> Offense: 60 day loss of license and required attitudinal retraining program</li> <li>2<sup>nd</sup> Offense: 180 day loss of license</li> <li>3<sup>rd</sup> Offense: 1 year loss of license</li> </ul>
<b>Data Required to be collected</b>	<p>The bill requires the following data be collected:</p> <ul style="list-style-type: none"> <li>age, race and gender of individuals who receive a warning or citation.</li> <li>traffic infraction</li> </ul>

	<ul style="list-style-type: none"><li>• date and time of the offense and the municipality in which the offense was committed</li><li>• whether there was a search initiated as a result of the stop</li><li>• whether the stop resulted in a warning, citation or arrest</li></ul>
<b>Executive Office of Public Safety and Security</b>	<ul style="list-style-type: none"><li>• Standardize a process and develop a procedure for law enforcement to collect data</li><li>• Publish a summary of annual data collected</li><li>• Maintain Secure System for data that is collected</li><li>• Must have no less than three public hearings in different parts of the state to present annual analysis and report</li><li>• Investigate and Study Alternative Methods of Collecting Data</li></ul>