

SCIENCE

Texting and Driving? Watch Out for the Textalyzer

By MATT RICHTEL APRIL 27, 2016

Over the last seven years, most states have banned texting by drivers, and public service campaigns have tried an array of tactics — “It can wait,” among them — to persuade people to put down their phones when they are behind the wheel.

Yet the problem, by just about any measure, appears to be getting worse. Americans confess in surveys that they are still texting while driving, as well as using Facebook and Snapchat and taking selfies. Road fatalities, which had fallen for years, are now rising sharply, up roughly 8 percent in 2015 over the previous year, according to preliminary estimates.

That is partly because people are driving more, but Mark Rosekind, the chief of the National Highway Traffic Safety Administration, said distracted driving was “only increasing, unfortunately.”

“Radical change requires radical ideas,” he said in a speech last month, referring broadly to the need to improve road safety.

So to try to change a distinctly modern behavior, legislators and public health experts are reaching back to an old strategy: They want to treat distracted driving like drunken driving.

Harvard's School of Public Health, for example, is developing a new push based on the effective designated driver campaign it orchestrated in the United States beginning in the late 1980s. Candace Lightner, the founder of Mothers Against Drunk Driving, has helped found a new group this year, Partnership for Distraction-Free Driving, which is circulating a petition to pressure social media companies like Facebook and Twitter to discourage multitasking by drivers, in the same way that Ms. Lightner pushed beer and liquor companies to discourage drunken driving.

The most provocative idea, from lawmakers in New York, is to give police officers a new device that is the digital equivalent of the Breathalyzer — a roadside test called the Textalyzer.

It would work like this: An officer arriving at the scene of a crash could ask for the phones of any drivers involved and use the Textalyzer to tap into the operating system to check for recent activity.

The technology could determine whether a driver had used the phone to text, email or do anything else that is forbidden under New York's hands-free driving laws, which prohibit drivers from holding phones to their ear. Failure to hand over a phone could lead to the suspension of a driver's license, similar to the consequences for refusing a Breathalyzer.

The proposed legislation faces hurdles to becoming a law, including privacy concerns. But Félix W. Ortiz, a Democratic assemblyman who was a sponsor of the bipartisan Textalyzer bill, said it would not give the police access to the contents of any emails or texts. It would simply give them a way to catch multitasking drivers, he said.

“We need something on the books where people's behavior can change,” said Mr. Ortiz, who pushed for the state's 2001 ban on hand-held devices by drivers. If the Textalyzer bill becomes law, he said, “people are going to be more afraid to put their hands on the cellphone.”

If it were to pass in New York, the first state to propose such an idea, it could well spread in the same way that the hands-free rules did after New York adopted them.

Ms. Lightner said the intensifying efforts around distracted driving “are the equivalent of the early ’80s” in drunken driving, when pressure led to tougher laws and campaigns emphasizing corporate responsibility.

Distracted driving “is not being treated as seriously as drunk driving, and it needs to be,” she said.

“It’s dangerous, devastating, crippling, and it’s a killer, and still socially acceptable,” she added.

The safety administration plans to release the final fatality numbers as early as Thursday but previously announced that the numbers appeared to be up sharply.

Jay Winsten, an associate dean and the director of the Center for Health Communication at Harvard’s School of Public Health, said, “We’re losing the battle against distracted driving.”

Dr. Winsten is developing a distracted-driving campaign based on designated-driver efforts that were ultimately backed by major television networks and promoted by presidents, sports leagues and corporations.

He said the new campaign would urge drivers to be more attentive, rather than scold them for multitasking, and would encourage parents to set a better example for their children.

The campaign, though still in development, has already garnered support from YouTube, which has agreed to recruit stars on the website to create original content involving the message. Dr. Winsten said he had also been in talks with AT&T, Nascar, a major automaker and potential Hollywood partners.

Dr. Winsten said the new campaign could be a kind of carrot to encourage better behavior by drivers, but he added that a stick was also needed.

While the Textalyzer raises potential privacy concerns, it might help enforce texting bans that have so far proved ineffective, he said.

“Right now, we have a reed, not a stick,” Dr. Winsten said, adding that the Textalyzer would “make enforcement that much more credible.”

Now, the police can obtain a warrant for cellphone records, but the process takes time and resources, limiting the likelihood of investigation, Mr. Ortiz said. But those protections are there for good reason, according to privacy advocates, who oppose the New York bill.

“It really invites police to seize phones without justification or warrant,” said Donna Lieberman, the executive director of the New York chapter of the American Civil Liberties Union.

A unanimous decision by the Supreme Court in 2014 ruled that the police could not search a cellphone without a warrant, even after an arrest, suggesting an uphill fight on the New York legislation.

But the bill’s authors say they have based the Textalyzer concept on the same “implied consent” legal theory that allows the police to use the Breathalyzer: When drivers obtain a license, they are consenting in advance to a Breathalyzer, or else they will risk the suspension of their license.

Matt Slater, the chief of staff for State Senator Terrence Murphy of New York, a Republican and a sponsor of the bill, said the constitutional concerns could and should be solved. “It’s monumental if we can get this done,” he said.

Mr. Slater said he hoped it could happen this session, which ends in June, but, he added, it may take several tries and may require broader public support.

“We’re facing the same hurdles we faced with drunk driving,” he said. “We’re trying to make sure safety and civil liberties are equally protected.”

Fourteen states prohibit the use of hand-held devices by drivers, and 46 ban texting, with penalties ranging from a \$25 fine in South Carolina to \$200 fines elsewhere, and even points assessed against the driver’s license.

A handful of states have strengthened their original bans, including New York, which in 2014 adopted tougher sanctions that include a 120-day suspension of a permit or a license suspension for drivers under 21, while a second offense calls for a full-year suspension.

Deborah Hersman, the president of the nonprofit National Safety Council and a former chairwoman of the National Transportation Safety Board, said she liked the Textalyzer idea because it would give the police an important tool and would help gather statistics on the number of crashes caused by distraction.

She said the Textalyzer-Breathalyzer comparison was apt because looking at and using a phone can be as dangerous as driving drunk.

“Why are we making a distinction between a substance you consume and one that consumes you?” Ms. Hersman said.

The Textalyzer legislation has been called Evan’s Law for Evan Lieberman, who was asleep in the back of a car on June 16, 2011, when the vehicle, driven by a friend, lost control.

Mr. Lieberman, 19, died from his injuries, and his father, Ben Lieberman, spent months trying to gain access to phone records, which ultimately showed that the driver had been texting.

Ben Lieberman became an advocate for driving safety, and in December, looking to develop the Textalyzer concept, he approached the mobile forensics company Cellebrite, which was involved in helping the government find a way

into a locked iPhone, and which works with police departments around the country.

Jim Grady, the chief executive of Cellebrite U.S.A., said that the Textalyzer software had not been fully built because it was not clear what a final law might require, but that it would not be too technologically challenging.

“I hope it will have the same effect as the Breathalyzer,” he said.

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