



# RAPID CITY POLICE DEPARTMENT

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## **A Texting and Driving City Ordinance is Needed**

### **Facts/Stats**

Motor Vehicle collisions are a leading cause of death in North America; the single most frequent cause of death among children and young adults (account for a fatality every 10 minutes). -New England Journal of Medicine (1997).

The Highway Safety Loss Data Institute concluded, "In any case, the evidence to date indicates that cellphone conversations and texting no doubt increase crash risk during their occurrence" (2010).

The Highway Safety Loss Institute compiled data following handheld cellphone bans and discovered the following: In New York (2001) following a cellphone ban, driver phone use dropped immediately by an estimated 47%. The District of Columbia passed a ban in 2004 and cellphone use dropped by an estimated 41%. A Connecticut ban took effect in 2005 and cellphone use dropped by an estimated 76%

The Insurance Institute for the Highway Safety of Virginia found that in Washington DC there was an initial decline of about 50% in drivers talking on a handheld phone following a ban and this decline was sustained for at least a year (2010).

According to a study performed by the University of Berkley in 2012, overall injury accidents declined by 12.7% and fatality accidents declined by 22.1% after California banned the use of hand held cell phones in 2008.

A study by the National Highway Traffic Safety Administration (2009) found that driver distraction was involved in 16% of all fatal crashes.

The same study cited that distraction accounted for 18% of all injury crashes.

In 1997 the New England Journal of Medicine (1997) advised the risk of a collision when using a cellphone was 4.5 times higher than the risk when a cellphone was not being used. The relative risk is similar to the hazard associated with driving with a blood alcohol at the legal limit.

The Colorado School of Mines (2013) cited an article demonstrating that drivers talking on a cell phone are more likely to miss traffic cues or respond with delay. They also found that driver distraction is equivalent to driving while intoxicated.

## **The State Legislature fails to take the issue seriously**

After more than five years of repeated attempts to address texting and driving with a state law banning it, a bill was passed in the 2014 session. The bill however, is largely unenforceable. Below is the bill (HB1177). I have highlighted the area that will guarantee its failure and will provide explanation afterward.

*AN ACT*

*ENTITLED, An Act to prohibit certain use of handheld electronic wireless communication devices while driving and to provide a penalty therefor.*

*BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:*

*Section 1. That chapter 32-26 be amended by adding thereto a NEW SECTION to read as follows:*

*No person may operate a motor vehicle on a highway while using a handheld electronic wireless communication device to write, send, or read a text-based communication. This section does not apply to a person who is using a handheld electronic wireless communication device:*

- (1) While the vehicle is lawfully parked;*
- (2) To contact any emergency public safety answering point or dispatch center;*
- (3) To write, read, select, or enter a telephone number or name in an electronic wireless communications device for the purpose of making or receiving a telephone call; or*
- (4) When using voice operated or hands free technology.*

*State or local law enforcement agencies shall enforce this section as a secondary action.*

*A violation of this section is a petty offense with a fine of one hundred dollars.*

*Section 2. That chapter 32-26 be amended by adding thereto a NEW SECTION to read as follows:*

*Terms used in this Act mean:*

- (1) "Electronic wireless communication device," a mobile communication device that uses short-wave analog or digital radio transmissions or satellite transmissions between the device and a transmitter to permit wireless telephone communications to and from the user of the device within a specified area;*
- (2) "Voice operated or hands free technology," technology that allows a user to write, send, or listen to a text-based communication without the use of either hand except to activate, deactivate, or initiate a feature or function; and*
- (3) "Write, send, or read a text-based communication," using an electronic wireless communications device to manually communicate with any person using text-based communication including communications referred to as a text message, instant message, or electronic mail.*

*Section 3. That chapter 32-26 be amended by adding thereto a NEW SECTION to read as follows:*

*The Department of Public Safety shall expend lawfully appropriated funds to develop and communicate a distracted drivers public awareness campaign.*

*Section 4. That chapter 32-26 be amended by adding thereto a NEW SECTION to read as follows:*

*No handheld electronic wireless communication device used in violation of this Act may be seized by a law enforcement officer to establish a violation of this Act. However, a handheld electronic wireless communication device may be seized upon compliance with the search and seizure requirements in chapter 23A-35.*

*Section 5. That § 23-1A-22 be amended to read as follows:*

*23-1A-22. If the plaintiff prevails in a petty offense case, the plaintiff shall be granted a judgment of twenty-five dollars. If the plaintiff prevails in a petty offense case under section 1 of this Act, the plaintiff shall be granted a judgment of one hundred dollars. However, the trial court may reduce or eliminate the award in the interest of justice. No award may be granted a defendant in a petty offense case. If a deposit is required by this chapter, it shall be the amount set by this section.*

The term “secondary action” is a term explained in only one state statute. SDCL 32-35-114:

*32-35-114. Evidence of financial responsibility when detained for a suspected violation. Every person who drives a motor vehicle, required to be registered in this state, if requested by a law enforcement officer as a **secondary action** when the driver of the vehicle is detained for a suspected violation of Title 32 or some other offense, shall provide evidence of financial responsibility.”*

As you can see, the use of this “secondary action” language is appropriate in this specific statute, otherwise, a police officer could stop a person just to check if they possessed proof of financial responsibility. The police could stop virtually every car on the road, when no violation of the law or dangerous condition had been observed.

An example of an inappropriate use of the term “secondary action” is found in SDCL 32-38-5, when referring to SDCL 32-38-1

*32-38-1. [Seatbelt] Use required--Public highways--Front seat passenger. Except as provided in chapter 32-37 and § 32-38-3, every operator and front seat passenger of a passenger vehicle operated on a public highway in this state shall wear a properly adjusted and fastened safety seat belt system, required to be installed in the passenger vehicle when manufactured pursuant to Federal Motor Vehicle Safety Standard Number 208 (49 C.F.R. 571.208) in effect January 1, 1989, at all times when the vehicle is in forward motion. The driver of the passenger vehicle shall secure or cause to be secured a*

*properly adjusted and fastened safety seat belt system on any passenger in the front seat who is at least five years of age but younger than eighteen years of age. Any violation of this section is not a moving traffic offense under the provisions of § 32-12-49.1.*

*32-38-5. Enforcement--Violation as petty offense. Enforcement of this chapter by state or local law enforcement agencies shall be accomplished as a **secondary action**. A violation of this chapter is a petty offense.*

This use of “secondary action is inappropriate and dangerous because a law enforcement officer can observe someone in violation of the law and a dangerous condition, but is powerless to intervene. As a result, after 20 years of having a seatbelt requirement, half of SD drivers who are killed in accidents were not wearing seatbelts. It makes me ask “what if” they had written the law with proactive enforcement in mind? It unnecessarily places the public in danger.

### **Now on to the texting issue.**

The state’s action to safeguard our citizens is unacceptable and not likely to change in the near future. If we implement a city ordinance version of the state law, making only one minor exception (omitting secondary action language) we can give our citizens what they need and desire.

The city ordinance version accompanies this report and is virtually a word for word copy of the state statute.

### **RCPD Ordinance Roll-Out Plan**

We will anticipate the ordinance approval timeline and accomplish the following:

#### Phase one

- Develop and print public awareness materials to be delivered to motorists.
- Develop public service announcements for community awareness
- Market awareness and enforcement campaign through social media
- Market awareness and enforcement through various media interactions
- Discuss and develop enforcement criteria and personnel deployment
- Educate and organize officers
- When the ordinance is approved, begin enforcement through traffic stops:
  - Handing out pamphlets
  - Warning tickets
  - Verbal interaction
- Continue this effort until at least July 1, 2014
- Develop phase two of this campaign to be implemented after July 1, 2014