

# Office of Highway Safety

## Bill Review – White Paper H.165 and H.19-1006

### H. 165 An act relating to increasing penalties for using a portable electronic device while operating a moving motor vehicle

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1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 23 V.S.A. § 1095a is amended to read:

3 § 1095a. JUNIOR OPERATOR USE OF PORTABLE ELECTRONIC

4 DEVICES

5 (a) A person under 18 years of age shall not use any portable electronic  
6 device as defined in subdivision 4(82) of this title while operating a moving  
7 motor vehicle in a place open temporarily or permanently to public or general  
8 circulation of vehicles.

9 \* \* \*

10 (d) A person who violates this section commits a traffic violation as defined  
11 in section 2302 of this title and shall be subject to a civil penalty of \$0.00 and  
12 have five points assessed against his or her driving record.

13 Sec. 2. 23 V.S.A. § 1095b is amended to read:

14 § 1095b. HANDHELD USE OF PORTABLE ELECTRONIC DEVICE

15 PROHIBITED

## Comments:

As indicated below a pre-requisite for receiving a Distracted Driving Grant under 405e is that the State statute shall “[e]stablish a minimum fine of \$25.00 for a violation of the statute”. 23 VSA 1095a is silent as to the minimum penalty that is imposed for a violation. In the instance where the statute is silent 23 VSA 2302 (c) applies. However, that statute does not provide for a minimum fine. The CFR cited below requires a minimum fine of \$25.00 for a violation of the statute.

This proposed statutory amendment offers a fix that imposes a minimum fine and thereby makes Vermont eligible for grant funding of approximately \$100k for distracted driving enforcement and education.

## 23 CFR 1300.24 - Distracted driving grants.

### § 1300.24 Distracted driving grants.

**(a) Purpose.** This section establishes criteria, in accordance with 23 U.S.C. 405(e), for awarding grants to States that enact and enforce a statute prohibiting distracted driving.

**(b) Definitions.** As used in this section -

*Driving* means operating a motor vehicle on a public road, and does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

*Texting* means reading from or manually entering data into a personal wireless communications device, including doing so for the purpose of SMS texting, e-mailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication.

**(c) Qualification criteria for a Comprehensive Distracted Driving Grant.** To qualify for a Comprehensive Distracted Driving Grant in a fiscal year, a State shall submit as part of its HSP, in accordance with Part 6 of Appendix B -

(1) Sample distracted driving questions from the State's driver's license examination; and

(2) Legal citations to the State statute demonstrating compliance with the following requirements:

**(i) Prohibition on texting while driving.** The State statute shall -

**(A)** Prohibit all drivers from texting through a personal wireless communications device while driving;

**(B)** Make a violation of the statute a primary offense;

**(C)** Establish a minimum fine of \$25 for a violation of the statute; and

**(D)** Not include an exemption that specifically allows a driver to text through a personal wireless communication device while stopped in traffic.

**(ii) Prohibition on youth cell phone use while driving.** The State statute shall -

**(A)** Prohibit a driver who is younger than 18 years of age or in the learner's permit or intermediate license stage set forth in § 1300.26(d) and (e) from using a personal wireless communications device while driving;

**(B)** Make a violation of the statute a primary offense;

**(C)** *Establish a minimum fine of \$25 for a violation of the statute; and*

**(D)** Not include an exemption that specifically allows a driver to text through a personal wireless communication device while stopped in traffic.

**(D)** Not include an exemption that specifically allows a driver to text through a personal wireless communication device while stopped in traffic.

### 23 V.S.A. 2302- Traffic Violation Defined.

(a) As used in this chapter, "traffic violation" means:

**(c)** *A violation of a traffic law in this title for which no penalty is otherwise provided shall be subject to a penalty of not more than \$1,000.00.*

2 (1) A person who violates this section commits a traffic violation as  
3 defined in section 2302 of this title and shall be subject to a ~~fine~~ civil penalty  
4 of not less than \$100.00 and not more than \$200.00 for a first violation, and of  
5 ~~not less than \$250.00 and not more than \$500.00 for a second or subsequent~~  
6 ~~violation within any two-year period~~ \$500.00 and shall have five points  
7 assessed against his or her driving record.

8 (2) A person convicted of violating this section while operating within  
9 the following areas shall have ~~four~~ an additional three points assessed against  
0 his or her driving record ~~for a first conviction and five points assessed for a~~  
1 ~~second or subsequent conviction:~~

2 (A) a properly designated work zone in which construction,  
3 maintenance, or utility personnel are present; or

4 (B) a school zone marked with warning signs conforming to the  
5 Manual on Uniform Traffic Control Devices.

6 ~~(3) A person convicted of violating this section outside the areas~~  
7 ~~designated in subdivision (2) of this subsection shall have two points assessed~~  
8 ~~against his or her driving record.~~

9 \* \* \*

Comments A \$500 fine/violation and 5 PTs for Operator License may result in:

- More operator license suspensions/added workload for DMV
- The disparity between a \$0 fine/5 PTs for a Junior Operator and \$500/5 PTs fine for Motor Vehicle Operator appears to be large.
- Police officers may hesitate or not issue the violation/give warnings
- The deterrent for a \$500 fine is not easily quantifiable and could result in the prevention of serious injury and fatal crashes.

- A non-tiered monetary violation/fine structure could be easier for the public and police to understand.
- State Amnesty Days may increase
- More individuals may be driving around DLS and uninsured.

### **NE and Surrounding States Violations/Fines:**

#### **New Hampshire:** (Ban on hand held use)

1<sup>st</sup> Offense = \$ 100.00

2<sup>nd</sup> Offense = \$ 250.00

3<sup>rd</sup> Offense = \$ 500.00

#### **Massachusetts:** (Ban on Texting only, considering hand held ban in Legislature now)

1st Offense= \$100.00

2nd Offense= \$250.00

3rd Offense= \$500.00

#### **New York:** (Ban on hand held use)

1st Offense= Min \$50.00/Max \$200.00

2nd Offense= Min \$50.00/Max \$250.00

3rd Offense= Min \$50.00/ Max \$450.00

#### **Maine:** (Ban on texting, all use for those under 18)

Texting

1st Offense= \$250.00

2nd within 3 years= \$500.00 and license suspension.

Suspension:

30 days if 2 adjudications within 3 years

60 days if 3 adjudications within 3 years

90 days if 4 or more adjudications within 3 years.

Use of phone by minors:

1st Offense=\$50.00

2nd Offense= \$250.00

#### **Rhode Island:** (Ban on hand held use)

\$100.00- Fine suspended for first time violator who provides proof of acquisition of hands free accessory subsequent to the violation, but prior to the imposition of the fine.

#### **Connecticut:** (Ban on hand held use)

1st Offense= \$150.00

2nd Offense= \$300.00

3rd Offense= \$500.00

#### **Pennsylvania:** (Ban on texting only)

\$50.00 fine/no points

**New Jersey:** (Ban on hand held use)

1st Offense= \$200-\$400

2nd Offense= \$400-\$600

3rd Offense= \$600-\$800 and possible suspension.

## **All State Laws: Governor's Highway Safety Association:**

Source: <https://www.ghsa.org/state-laws/issues/distracted%20driving> (Accessed 02122019)

Insurance Institute of Highway Safety:

This chart outlines state distracted driving laws. Some localities have additional regulations. Enforcement type is also noted.

- **Hand-held Cell Phone Use:** 16 states, D.C., Puerto Rico, Guam and the U.S. Virgin Islands prohibit **all drivers** from using hand-held cell phones while driving. All are **primary enforcement laws**—an officer may cite a driver for using a hand-held cell phone without any other traffic offense taking place.
- **All Cell Phone Use:** No state bans all cell phone use for all drivers, but 38 states and D.C. ban all cell phone use by **novice drivers**, and 20 states and D.C. prohibit it for **school bus drivers**.
- **Text Messaging:** Washington was the first state to pass a texting ban in 2007. Currently, 47 states, D.C., Puerto Rico, Guam and the U.S. Virgin Islands ban text messaging for all drivers. All but 4 have primary enforcement. Of the 3 states without an all driver texting ban, 2 prohibit text messaging by **novice drivers**.

**Crash Data Collection:** All states except 2 include at least one category for distraction on police crash report forms, although the specific data collected varies. The Model Minimum Uniform Crash Criteria (MMUCC) guideline provides best practices on distraction data collection.

**Preemption Laws:** Some states have preemption laws that prohibit local jurisdictions from enacting their own distracted driving bans. States with such laws include – but may not be limited to – Florida, Iowa, Kentucky, Louisiana, Mississippi, Nevada, Pennsylvania, Oklahoma, Oregon and South Carolina.

**A PDF chart of state distracted driving laws is available for download here.**

NOTE: GHSA does not compile any additional data on distracted driving laws other than what is presented here.

For more information, consult the appropriate State Highway Safety Office.  
Sources: Insurance Institute for Highway Safety (IIHS) and State Highway Safety Offices.

[Distracted Driving Is Far Worse Source Zen Drive:](http://blog.zendrive.com/distracted-driving-is-far-worse/)  
<http://blog.zendrive.com/distracted-driving-is-far-worse/> (Accessed 02122019)

## All But One State Got Worse

We also ranked the states in terms of average percent of time people spent using their phones while driving each day, and compared them to their previous rankings. Oregon remains the least distracted state, while Mississippi moved down one spot to become the most distracted state.

STATE RANKING (MOST DISTRACTED TO LEAST DISTRACTED)					
51	Mississippi	34	Alabama	17	Pennsylvania
50	Rhode Island	33	Delaware	16	Arizona
49	Louisiana	32	Tennessee	15	New Hampshire
48	Oklahoma	31	New Jersey	14	Florida
47	Connecticut	30	West Virginia	13	Nebraska
46	Texas	29	Illinois	12	Idaho
45	Arkansas	28	South Carolina	11	Nevada
44	Massachusetts	27	Maine	10	Iowa
43	District of Columbia	26	Virginia	9	New York
42	Kentucky	25	Wisconsin	8	South Dakota
41	Missouri	24	New Mexico	7	Minnesota
40	Maryland	23	Colorado	6	Hawaii
39	Ohio	22	Michigan	5	North Dakota
38	Indiana	21	Alaska	4	Wyoming
37	Vermont	20	Kansas	3	Washington
36	California	19	Utah	2	Montana
35	North Carolina	18	Georgia	1	Oregon

Nationwide, Zendrive found more driver phone use in our 2018 study than we did in our 2017 study:

- Distracted driving increased in every state, except for **Vermont**.
- Driver phone use also increased in every city we studied.
- The average duration of phone use also increased.

(5) Eight points assessed for:

(A) § 1095b(c)(2). Handheld use of portable electronic device inside work or school zone;

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(B) § 1099(c)(2) Texting inside work or school zone;

(C) § 4125(e)(1) Texting violations; handheld mobile telephone violations outside work or school zone;

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### Vermont Violations (Source: Judicial Bureau Reports)

Violations	FFY-2018	FFY-2017	% change	
Occupant Protection Violations				
Seatbelt Violations*	1,232	1,581	-22%	* (not included in grand total below)
Child Passenger Safety Violations	176	206	-15%	
Total Occupant Protection Violations	1,408	1,787	-21%	
Distracted Driving Violations				
Operating w/television installed	8	4	100%	
Use of handheld device - general	3,642	4,284	-15%	
Use of handheld device - work zone	76	132	-42%	
Use of handheld device - school zone	22	2	1000%	
Use of handheld device - comm. veh.	40	37	8%	
Use of handheld device - jr. operator	36	18	100%	
Texting	237	255	-7%	
Total Distracted Driving Violations	4,061	4,732	-14%	
Speeding Violations				
Basic Rule (50 mph zone) - state	3,923	4,429	-11%	
Basic Rule (50 mph zone) - local	1,956	2,342	-16%	
State Speed Zones (other than 50 mph)	1,941	2,167	-10%	
Local Speed Zones (other than 50 mph)	22,472	23,857	-6%	
Too fast for conditions	610	635	-4%	
Interstate Highways Speeding	12,148	15,681	-23%	
Total Speeding Violations	43,050	49,111	-12%	
All Other Civil Violations**	40,514	43,483	-7%	
GRAND TOTAL of ALL TICKETS ISSUED* **	87,801	97,532	-10%	
* Seatbelt violations are not included in the Grand Total of All Tickets Issued due to being a secondary violation; the primary violation is counted instead.				

Other resources:

<https://www.nhtsa.gov/risky-driving/distracted-driving>

## House Bill 19-1006 Review

Safety Agenda Items:

**1. Junior Operator Use of Portable Electronic Devices**

Purpose

Amend 23 V.S.A. § 1095a to set minimum penalties for distracted driving by Junior Operators. This change will allow the Agency of Transportation to secure an additional \$100K in federal highway safety funding.

Potential Opposition/Support

Junior operators convicted of distracted driving may oppose this change. Safety advocates will support this change.

(d) A person who violates this section shall be subject to a civil penalty of not less than \$100.00 and not more than \$200.00 for a first violation, and of not less than \$250.00 and not more than \$500.00 for a second or subsequent violation within any two-year period.

As indicated below a pre-requisite for receiving a Distracted Driving Grant under 405e is that the State statute shall “[e]stablish a minimum fine of \$25.00 for a violation of the statute”. 23 VSA 1095a is silent as to the minimum penalty that is imposed for a violation. In the instance where the statute is silent 23 VSA 2302 (c) applies. However, that statute does not provide for a minimum fine. The CFR cited below requires a minimum fine of \$25.00 for a violation of the statute.

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## 23 V.S.A. 2302- Traffic Violation Defined.

(a) As used in this chapter, "traffic violation" means:

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## 2. School Bus Driver BAC limitation

### Purpose

Amend Sec. 1. 23 V.S.A. § 1201(a) to ensure school bus drivers do not operate over 0.02 alcohol concentration *Protecting the Vulnerable (Improve Highway and Roadway Safety)*

Potential Opposition/Support

School bus drivers impacted by this change may oppose this language. Safety advocates, school officials and parent are likely to support this change.

23 V.S.A. § 1201(a) is amended to read:

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person's alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a ~~school bus as defined in subdivision 4(34) of this title~~ vehicle when the operation requires an operator's license with a school bus endorsement; or

- This change is apparently requested to reach an operator in the instances where the operator is required to have such an endorsement. At its heart this is a technical change.

### 3. Blood Draws for Evidentiary Tests

Purpose

Amend 23 V.S.A. § 1202 & 23 V.S.A. § 1203 to expand the testing procedures for detecting the presence of drugs for impaired driving.

Potential Opposition/Support

Drivers forced to undergo testing for evidentiary purposes may oppose this change. Law enforcement and safety advocates will support this change.

23 V.S.A. § 1203 is amended to read:

§ 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND VIDEOTAPE

(a) A breath test shall be administered only by a person who has been certified by the Vermont Criminal Justice Training Council to operate the breath testing equipment being employed. In any proceeding under this subchapter, a person's testimony that he or she is certified to operate the breath testing equipment employed shall be prima facie evidence of that fact.

(b) Only a physician, licensed nurse, medical technician, physician assistant, medical technologist, ~~or~~ laboratory assistant, intermediate or advanced emergency medical technician, or paramedic acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the presence of alcohol or ~~other~~ another drug. This limitation does not apply to the taking of a breath sample. A medical facility or business may charge not more than \$75.00 for services rendered when a person is brought to a facility for the sole purpose of a blood test or when an emergency medical technician or paramedic draws an evidentiary blood sample.

- This expands that group of professionals that can take blood for forensic testing.
- The imposition of a maximum fee of \$75.00 is likely to be opposed by Hospital Administrators.

#### 4. Increased Penalties for Violating Alcohol Laws with a Minor in the Vehicle

##### Purpose

Create a penalty for violating existing alcohol laws when there is a minor in the vehicle.

##### Potential Opposition/Support

Safety and child welfare advocates will support this proposal.

23 V.S.A. § 1210(l) is added to read:

(l) Minor in vehicle. A person who violates section 1201 of this title while a minor is in the person's vehicle shall, in addition to any other penalty imposed by law, be:

(1) fined not more than \$300.00 or imprisoned for not more than six months, or both; or

(2) fined not more than \$5,000.00 or imprisoned for not more than 10 years, or both, if the violation results in the death of or serious bodily injury to the minor.

Issues- There are some Judges that will not find probable cause for an accompanying charge of 13 VSA 1025, Reckless Endangerment or 13 VSA 1304, Cruelty to Children in the absence of extenuating aggravating factors. The proposed change, it can be argued, creates a strict liability crime for having a minor in the vehicle and being in violation of 23 VSA 1201. See *State v. Roy*, 151 Vt. 17, 25, 557 A.2d 884, 889 (1989), *partially overruled on other grounds by State v. Brillon*, 2008 VT 35, 183 Vt. 475, 955 A.2d 1108 (5 part test for determining if a crimes is in fact a strict liability crime where no common law precedent exists)

#### 5. Zero Tolerance for Drugs for Drivers Under Age 21

##### Purpose

Require that drivers under the age of 21 abstain from all use of drugs while driving.

##### Potential Opposition/Support

Youth may be opposed to this proposal. Law enforcement and safety advocates will support this proposal.

23 V.S.A. § 1217 is added to read:

§ 1217. PERSONS UNDER 21 YEARS OF AGE; OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF A DRUG; CIVIL PENALTIES

(a) A person under 21 years of age shall not operate, attempt to operate, or be in actual physical control of a vehicle on a highway while under the influence of a drug.

(b) A violation of subsection (a) of this section shall be a civil offense subject to the jurisdiction of the Judicial Bureau and subject to the following sanctions:

(1) For a first violation, the Commissioner shall suspend the person's license to operate a motor vehicle for a period of six months.

(2) For a second or subsequent violation, the Commissioner shall suspend the person's license to operate a motor vehicle for a period of one year or until the person reaches 21 years of age, whichever is longer.

(3) Any suspension imposed pursuant to this section shall run concurrently with any suspension imposed pursuant to section 1205, 1206, 1208, or 1216 of this title, any suspension imposed by another jurisdiction under comparable statutes, or a suspension resulting from a conviction for a violation of section 1091 of this title if it arose from the same incident. A person shall receive credit for any elapsed period of a suspension served in Vermont against a later suspension imposed in Vermont.

(c) No fine shall be imposed and no points shall be assessed for a violation of this section.

(d) Any civil penalty imposed by this section shall not bar prosecution for any crime arising out of the same violation, including a prosecution under section 1201 of this title.

(e) As used in subsection (a) of this section, "under the influence of a drug" shall have the same meaning as in subsection 1201(h) of this title.

Issues: Unlike 23 VSA 1216, the Statute does not designate a screening device. Is it contemplated that DREs will be called? Will there be a statutory right to counsel? What is the position of the Judicial Bureau? Does the Judicial Bureau have the capacity to handle the increased docket?

This proposed statute appears to create a civil violation for drug impaired not unlike 23 VSA 1205. However, impairment is not an element of 1205 it is a per se statute only. Here, the proposed statute, in the absence of a test, imposes the element of proving impairment albeit only by a preponderance of the evidence.

23 VSA 1220- has timed out and should be repealed.

NOTE- The State's Attorneys are considering moving to repeal the implied consent statute 23 VSA 1202. This is worthy of consideration. It would create an avenue for a search warrant application to obtain the evidentiary sample should a request for a sample be denied and would significantly reduce processing time without effecting a constitutional right. The implied consent is a statutory creation.

## **Child endangerment; definition; penalties**

(A) A person eighteen years of age or older is guilty of child endangerment when:  
the person violates:

(1) 23 VSA § 1201;

(2) 23 VSA § 1133; or

(3) 23 VSA § 1091(b); and

the person has one or more passengers younger than sixteen years of age in the motor vehicle when the violation occurs.

(B) (1) A person who violates subsection (A) which does not result in the serious injury or death of a child and which is a first conviction shall be fined not more than \$750.00, or imprisoned for not more than two years, or both. Any fine or term of imprisonment imposed under this subsection shall run consecutive to any fine or term of imprisonment imposed for a conviction under 23 VSA § 1201, or 23 VSA § 1133 or 23 VSA § 1091(b).

(2) A person who violates subsection (A) which does not result in the serious injury or death of a child and which is a second conviction shall be fined not more than \$1,500.00 or imprisoned not more than two years, or both. At least 200 hours of community service shall be performed, or 60 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed.. Any fine or term of imprisonment imposed under this subsection shall run consecutive to any fine or term of imprisonment imposed for a conviction under 23 VSA § 1201, or 23 VSA § 1133 or 23 VSA § 1091(b).

(3) A person who violates subsection (A)(1) which does not result in the serious injury or death of a child and which is a third conviction all be fined not more than \$2,500.00 or imprisoned not more than five years, or both. At least 96 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. Any fine or term of imprisonment imposed under this subsection shall run consecutive to any fine or term of imprisonment imposed for a conviction under 23 VSA § 1201, or 23 VSA § 1133 or 23 VSA § 1091(b).

(4) A person who violates subsection (A)(1) which does not result in the serious injury or death of a child and which is a fourth or subsequent conviction shall be fined not more than \$5,000.00 or imprisoned not more than 10 years, or both. At least 192 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol treatment facility pursuant to sentence if the program is successfully completed. Any fine or term of imprisonment imposed under this subsection shall run

consecutive to any fine or term of imprisonment imposed for a conviction under 23 VSA § 1201, or 23 VSA § 1133 or 23 VSA § 1091(b).