

# Distracted Driving vs. DUI: The Legal Consequences



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With the explosion of cell phones in the consumer marketplace, texting and driving has emerged as a national health crisis for individual motorists, the public, and the courts. In 2013, 10 percent of all fatal crashes involved distraction, resulting in the deaths of 3,154 people. Additionally, it is estimated that another 424,000 people were injured in accidents involving distracted drivers.<sup>1</sup> In addition to texting while driving, other types of distracted driving include talking on cell phones, eating, using in-dash electronics, and any other activity that takes a driver's attention away from the road.<sup>2</sup>

In response to the problems presented by texting and driving, 46 states and the District of Columbia have instituted laws forbidding the action, criminalizing texting and driving as at least an infraction.<sup>3</sup> At the same time, other forms of distracted driving, including using social media applications such as Twitter, Facebook, LinkedIn, SnapChat and recently, Pokemon Go, have emerged as major problems in their own right.<sup>4</sup> In a study recently completed by Liberty Mutual Insurance, a survey of 2,500 teenagers revealed that almost 70 percent admitted to using social media apps while they drive.<sup>5</sup> In another survey completed by the National Safety Council of 2,409 drivers of all ages, 74 percent of those who were surveyed indicated that they would use Facebook while they drove.<sup>6</sup>

## Distracted Driving vs. DUI: Levels of Impairment

A 2006 study looked at the impairment levels of people who were using cell phones versus people who were intoxicated while driving. The University of Utah researchers used a driving simulator and compared study participants who were talking on their cell phones versus those who were legally intoxicated. The researchers looked at results using the simulator involving 49 adult participants who ranged in age from 22 to 45. They first obtained baseline driving results, then looked at driving while using cell phones and finally, driving with blood alcohol concentrations of 0.08 percent over a 3-day period.<sup>7</sup> By looking at data obtained from driving profiles the researchers created using 10-second epochs, the researchers found that cell phone users, regardless of whether or not they were using hands-free or handheld devices, showed greater levels of driver impairment than did the drivers who were intoxicated by alcohol.<sup>8</sup>

## **Injury and Fatality Statistics for Distracted Driving Vs. Drunk Driving**

The Centers for Disease Control and Prevention reports that distracted driving injures 1,161 people and kills eight every day in the U.S.<sup>9</sup> By comparison, the agency reports that 28 people are killed every day in accidents involving drunk drivers.<sup>10</sup> While the percentages of people using cell phones while driving has increased, drinking and driving has decreased.<sup>11, 12</sup>

## **Overview of State Laws: Distracted Driving vs. DUI Penalties in California and Alaska**

The penalties for texting and driving vary from state to state. While the act is banned in 46 states, some jurisdictions, such as California, make texting and driving only an infraction. In California, a first offense is punishable by a fine of \$20, and subsequent convictions are punishable by fines of \$50.<sup>13</sup>

By comparison, Alaska treats texting while driving quite harshly, along with using other electronic devices while operating a motor vehicle. If a person does not injure another while texting and driving, he or she may still be convicted of a class A misdemeanor carrying a fine of up to \$10,000 and imprisonment in a county jail of up to one year.<sup>14</sup> If a person is injured in an accident caused by someone who was texting while driving in Alaska, the driver may be convicted of a class C felony, and if a person is killed, the driver may be convicted of a class A felony, making the felony sentencing range anywhere from 5 years for a class C conviction up to 20 years for a class A conviction and a fine of up to \$50,000 for a class C conviction and up to \$250,000 for a class A conviction.

As compared to its treatment of texting while driving, California takes a much harsher approach to people who are convicted of driving under the influence. For a first offense, a person may receive up to 6 months in jail and a fine of up to \$1,000. If the DUI offense resulted in an injury, then the person may either be charged with a misdemeanor or a felony as a wobblers offense. A felony conviction can result in up to 3 years in jail along with a fine of up to \$5,000.<sup>16</sup>

# Distracted Driving: Does the Punishment Fit the Crime?

In states like California, which make texting while driving only a traffic infraction carrying very minimal fines, it is interesting to note the disparity between it and a DUI conviction in the same state. While texting and driving may cause greater driver impairment and potentially serious injuries or deaths, it is treated as a much less serious offense. In Alaska, by contrast, texting while driving is treated very seriously, potentially carrying penalties that are as great or greater than those for various levels of drunk driving offenses. The remainder of the states represents a mishmash, ranging between the four with no penalties at all to Alaska with the potential for a serious felony conviction.

## Conclusion

Distracted driving is potentially just as or more dangerous than driving while under the influence of alcohol. With millions of people routinely texting while driving or using social media applications while driving, the roads are becoming more dangerous. Still, the states have yet to catch up to the dangers posed by these forms of distracted driving with a majority treating them as minor infractions. States should review the research and consider bringing parity between their DUI statutes and penalties with their statutes criminalizing texting and driving. An added emphasis on educational campaigns about texting while driving along with campaigns about using social media apps while driving may also be added steps that states should consider. Failing to take further action to curb these forms of distracted driving could be potentially disastrous.

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13. Cal. Veh. Code § 23123.5(d).

14. Alaska Stat. §§ 28.35.161, 12.55.035, 12.55.135, 12.55.125.

15. Cal. Veh. Code §§ 23152, 23153.

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