

Client Newsletter

Dibble & Miller, P.C.

March 1, 2014 – No 079

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D&M^{P.C.}

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Touching or Holding a Phone or GPS While Driving May Result in Loss of Drivers License

Texting While Driving (TWD) is looking like the new Driving While Intoxicated (DWI) as far as enforcement severity and penalties. The danger that TWD and DWI creates on our roadways justifies the severity.

People raised in the digital age seem to be addicted to their smart phones. The omnipresence and addictiveness of smart phones (the Thruway now has signs advising of “text stops” and asking people to wait to send a text message until they reach those areas!) and the danger of their use while driving has caused an uncharacteristically rapid legislative reaction to the problem (a warp speed reaction compared to DWI).

Vehicle and Traffic Law § 1225-d states that no person shall operate a motor vehicle while using any portable electronic device while such vehicle is in motion. “Portable electronic device” (hereinafter “PED”) is broadly defined. Emergency calls are exempted.

“Using” means holding a PED while viewing, taking or transmitting images, playing games, or, for the purpose of present or future communication: performing a command or request to access a world wide web page, composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving email, text messages, instant messages, or other electronic data.

“Using” mobile phones is defined differently than using PEDs. The use of mobile telephones is governed by V&T § 1225-c, which distinguishes between hand-held and hands-free mobile telephones. Hand-held mobile phones cannot be used when operating a vehicle. A hands-free mobile telephone can legally be used when operating a vehicle. V&T § 1225-c defines a “hands-free mobile telephone” as a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a function of such telephone. V&T § 1225-c also exempts emergency calls.

Violations of V&T § 1225-d and § 1225-c are traffic violations, and are punishable by fines, which increase for multiple convictions within eighteen months. The larger impact is that conviction for texting while

driving or illegal use of a mobile phone now carries five driver violation points.

Simply holding a PED OR a mobile phone in your hand while driving your car can result in an arrest and conviction. We have seen reports of drivers convicted for adjusting the volume on a GPS or looking at a mobile phone to see the time. The only permissible mobile phone use while operating a vehicle is the use of a hands-free device. ***A hands-free device must be operable by pressing a single button!***

A five (or more) point violation is a “high point driving violation” that may trigger a review of your driving record by the DMV (see Dibble & Miller, P.C. December, 2013, Newsletter No 76). Use of a PED and use of a hand-held mobile phone while operating a vehicle are now both five point violations, along with reckless driving and failing to stop for a school bus.

Depending on your driving history, the Commissioner may have the power to review your lifetime driving record, for the past 25 years or more, to determine your driving worthiness if you commit what constitutes a “high point driving violation.”

If your record reveals four alcohol related offenses and a “serious driving offense” in the past 25 years, your license can be revoked permanently. A “serious driving offense” can include two or more violations for which 5 or more points are assessed on a violator’s driving record, or 20 or more points from any violations. Also, if your record reveals five or more alcohol related offenses, no matter how remote, your license can be revoked permanently. Thus, with either of these two past driving records, a text from your cell phone while you are driving can cause a review of your driving record and result in a lifetime revocation of your driver license.

Eleven or more points within eighteen months can result in a suspension of your drivers license. Six or more points within eighteen months can result in a driver responsibility assessment (a minimum of \$100 per year for three years).

A conviction for texting while driving can result in suspensions or revocations of the drivers licenses of probationary and junior drivers.

Interesting aside: a New Jersey Appellate Court has held that a person who sends a text message when she knows the recipient is driving may be liable for negligence if the driver causes harm while texting in response! The court reasoned when a texter knows or has special reason to know that the intended recipient is driving and is likely to read the text message while driving, the texter has a duty to users of the public roads to refrain from sending the driver a text at that time.

If you are in danger of being convicted of a high point driving violation, you should have us investigate your driving record for the past 25 years, or possibly for your lifetime, so that we may advise you of the potential consequences of a conviction after trial or a guilty plea. It is important to be aware that conviction of a high point driving violation can, after review of your driving record by DMV, result in the revocation of your driver license.

Do not leave a potential loss of your privilege to drive to chance or good luck. Dibble & Miller, P.C. is familiar with these laws and experienced in defending those charged with violations. Call us as soon as the issue arises.

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